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Belavusau, U.

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On Ephemeral Memory Politics, Conservationist International Law and (In-)alienable Value of Art in Lucas Lixinski's *Legalized Identities: Cultural Heritage Law and the Shaping of Transitional Justice*

Uladzislau Belavusau*

If a work of art is rich, and vital, and complete, those who have artistic instincts will see its beauty, and those to whom ethics appeal more strongly than aesthetics will see its moral lesson [...]

Oscar Wilde (Letter to the Editor of the *Scots Observer*, August 2, 1890).

1. Introduction and summary of the book chapters

In his monograph, *Legalized Identities: Cultural Heritage Law and the Shaping of Transitional Justice* (further '*Legalized Identities*'),¹ Lucas Lixinski, revisits cultural heritage law in the context of mechanisms pertaining to transitional justice. Lixinski nurtures his analysis on the premise that transitional justice discourses undermine the capacity of the law in shaping memory and identity politics, and heavily rely on anti-impunity measures, whereas cultural heritage law at times

* Uladzislau Belavusau, Senior Researcher at the T.M.C. Asser Institute—University of Amsterdam, the Netherlands. Email: u.belavusau@uva.nl. The author would like to thank Nashab Parvez, Siân Lord, and Florent Beurret for their excellent editing assistance on this piece. He is also grateful to Marina Aksenova, Andrzej Jakubowski, and peer reviewer(s) of the JERUSALEM REVIEW OF LEGAL STUDIES for their valuable feedback, as well as to the participants of the online book symposium organized by Tomer Brouder at the Hebrew University of Jerusalem in November 2021, for a productive discussion.

¹ LUCAS LIXINSKI, *LEGALIZED IDENTITIES: CULTURAL HERITAGE LAW AND THE SHAPING OF TRANSITIONAL JUSTICE* (2021).

fails to incorporate *difficult* or *dissonant* heritage² and the politics of memory associated with it. The result being that these seemingly related fields remain largely out of touch with each other, a gap which Lixinski attempts to converge in *Legalized Identities*. Through an extensive analysis of case studies, ranging from the Auschwitz-Birkenau concentration camp in Poland to Confederate monuments in the United States, he masterfully demonstrates that cultural heritage law has been fundamental to the creation, preservation, and erasure of memory and identity in transitional societies. As such, Lixinski argues that in order to fulfil the *original* promise of transitional justice, that is, to advance societies towards a peaceful settlement of the future, pragmatic engagement with cultural heritage law is of central significance. A truly prolific and erudite scholar in the fields of cultural heritage law and broader human rights, Lucas Lixinski is an eminently suitable figure to investigate this interaction between transitional justice and cultural heritage law.

The book begins by mapping concepts of cultural heritage and transitional justice as well as the intricate relations between them. The author positions heritage as involving “a series of specific manifestations, and sites remembrances, among others”³ and transitional justice as “the conception of justice associated with periods of political change, characterised by legal responses to confront the wrongdoings of repressive predecessor regimes”.⁴ Lixinski claims that the fields of transitional justice and cultural heritage law seminally diverge, initially, at the academic level. He notes that while transitional justice literature focuses almost exclusively on anti-impunity measures, literature focusing on the role memory and heritage in transition has not sufficiently engaged with the law. Drawing upon these observations, he proposes two primary hypotheses: firstly, that the gap between the fields must be studied given the critical role they play in shaping memory and identity in transitional contexts; and secondly, that closing this gap may bring about “much-welcome opportunities for pragmatic engagement”⁵ in both transitional justice efforts and in the theory and practice of cultural heritage law.

Chapter two presents the reader with a systematic review of literature in the fields of transitional justice and cultural heritage law. First, it highlights the turn to anti-impunity within transitional justice discourses and the drawbacks that come with over-emphasizing narrow legal accountability. Second, it critically discusses the conservation paradigm and its paramount role in shaping the development of cultural heritage law. Furthermore, it touches on Engle’s concept of *anti-anti politics*,⁶ understood as acknowledging the pitfalls of politicizing

² *Difficult* or *dissonant* heritage is defined by the author as the kind of heritage that can “play a series of roles in favour of reconstructing the nation and can send important “never again” messages” see LIXINSKI, *Id.*

³ *Id.*

⁴ *Id.* 18.

⁵ *Id.* 12.

⁶ Karen Engle, *Self-Critique, (Anti) Politics and Criminalization: Reflections on the History and Trajectory of the Human Rights Movement*, in *NEW APPROACHES TO INTERNATIONAL LAW: THE EUROPEAN AND THE AMERICAN EXPERIENCES* (José M. Beneyto & David Kennedy eds., 2012).

transitional justice but “not turning a blind eye” to the fact that both transitional justice and cultural heritage are inherently political.⁷ By adopting this bird’s eye view, Lixinski aims to show how cultural heritage law can play a pivotal role through its pragmatic engagement in offsetting the (over) reliance on anti-impunity within transitional justice mechanisms throughout the next few chapters.

Chapter three explains how victimhood has been instrumentalized in the contexts of transitional justice via international heritage listing mechanisms that are governed by international cultural heritage law. Herein, Lixinski considers examples of both *tangible cultural heritage*—by discussing sites listed in the World Heritage List, namely, Auschwitz-Birkenau (Poland), Hiroshima Peace Memorial Park (Japan), and Robben Island (South Africa), and *intangible cultural heritage*—by exemplifying Glasoecklo (male two-part singing in Dolni Polog in North Macedonia). Based on these examples, he contends that cultural heritage projects the ability to “promote pragmatic engagement with the law and foster dialogue and reconciliation in ways that traditional legal mechanisms of justice and accountability cannot.”⁸

Chapter four draws on the topical debate surrounding the removal of Confederate statues in the United States to show how a transitional justice approach, as opposed to one based on international cultural heritage law or international human rights law, can provide solutions due to its supposed compatibility with pragmatism. The chapter then turns to the example of the Memento Park in Hungary to address Lixinski’s claim that the re-location of monuments can fail to serve as a transitional justice mechanism when depoliticized from its historical context.

While the aforementioned case studies from chapter four deal with the erasure or replacement of cultural heritage, chapter five scrutinizes how the creation of new symbols, through the establishment of museums and archive collections, can mark a transition away from a past marred by atrocity and oppression. Herein, Lixinski employs the case studies of the House of Terror in Budapest, the Seodaemun Prison in Seoul and the Guatemalan National Police Archives as his central examples to capture the role of cultural spaces in administering the “truth” about past events by engaging with cultural heritage. His exposé from Hungary to Korea combined with his preceding historical inquiry into the drafting of the 2001 Convention on the Protection of the Underwater Cultural Heritage,⁹ further explain how cultural heritage law modifies and authorizes certain political and historical narratives, effectively shifting attention away from individual crimes towards the broader context.¹⁰ This paves the way for active

⁷ LIXINSKI, *supra* note 1 at 50.

⁸ *Id.* 93.

⁹ Convention on the Protection of the Underwater Cultural Heritage 2001 (adopted Nov. 2, 2001, entered into force Jan. 2, 2009) 2562 UNTS 3 (UCHC).

¹⁰ LIXINSKI, *supra* note 1 at 167.

participation from local communities, allowing for cultural heritage to pragmatically engage with the past in a manner that judicial prosecution does not.

In the final two chapters of the book, Lixinski ties the case studies discussed throughout this monograph back to his central normative claim, namely, that it is both possible and necessary to pragmatically engage cultural heritage law within transitional justice mechanisms. In advancing this argument, there should be reflection on whether cultural heritage law must transcend the conservation paradigm in favor of a more pragmatic understanding of cultural heritage.

2. Critical analysis: a valuable bridge with a risky iconoclastic twist

Having provided a summary of the contents within *Legalized Identities* in the initial part of this article, this section will proceed by adopting an analytical focus. First, the comment highlights the contribution of Lixinski's monograph to fields beyond international law of cultural heritage, namely, his construction of a heuristic bridge connecting memory studies more broadly with the more specific field of memory laws. In doing so, he skilfully paves said bridge with elements from transitional justice. Second, Lixinski's approach will be placed under a critical lens, exposing how his advocated magnification of transitional justice over aesthetics in the plethora of legitimate societal interests—protected by the current regime of cultural heritage—can tile a dangerous path towards censorship, further political instrumentalization of international law and even destruction of artworks.

2.1. Connecting cultural heritage and memory studies

The monograph offers an unquestionably significant contribution to the current scholarship and debate, in particular, by virtue of establishing a normative bridge between cultural heritage studies and memory politics, the *novum pontem* that Lixinski has paved from the stones of transitional justice. Memory politics in this sense, as extensively narrated through Lixinski's diverse use of case studies and practical examples—from Seodaemun Prison in Seoul to Ukrainian decommunization laws—echoes a more specific phenomenon of legal governance of history, in the past years addressed in the literature under the heading of “memory laws”.¹¹ This heading refers to various forms of legal governance of history, including punitive measures against the denial of historical atrocities

¹¹ See *inter alia*, my own theorization of this field in recent years: Uladzislau Belavusau, *Memory Laws and Freedom of Speech: Governance of History in European Law*, in *COMPARATIVE PERSPECTIVES ON THE FUNDAMENTAL FREEDOM OF EXPRESSION* 537–58 (András Koltay, ed., 2015). For definitions, classifications, and comparative legal, political and historical aspects of memory laws, see: EMANUELA FRONZA, *MEMORY AND PUNISHMENT: HISTORICAL DENIALISM, FREE SPEECH AND THE LIMITS OF CRIMINAL LAW* (2018); NIKOLAY KOPOSOV, *MEMORY LAWS, MEMORY WARS: THE POLITICS OF THE PAST IN EUROPE AND RUSSIA* (2017); ULADZISLAU BELAVUSAU & ALEKSANDRA GLISZCZYŃSKA-GRABIAS, *LAW AND MEMORY: TOWARDS LEGAL GOVERNANCE OF HISTORY* (2017).

and bans on the use of totalitarian symbols of the past, covering legal acts recognizing and commemorating historical events or figures, including laws establishing state celebrations, dates of mourning, street (re)naming, monument instalment and regulations regarding museums and school curricula on historical subjects.¹² This terminology stems from the wording of *lois mémorielles* advanced by French historians who mobilized in the late 1990s against increasing legal measures in this area.¹³ The subject itself, however, had appeared almost a decade before when the Federal Republic of Germany and Israel advanced punitive provisions against Holocaust denial.¹⁴

To connect the dots between international law and transitional justice, Lixinski, thus, explores legal governance of historical memory apparent within community, state and international narratives on tangible and intangible cultural heritage. He highlights this mnemonic governance intertwined with cultural heritage as a tool invoked by various national governments and even transnational organizations in shaping narratives on tangible and intangible heritage. The assorted examples scattered throughout his monograph consolidate a universalist image of transitional justice, or rather, its historical facet which states and transnational organizations have been manufacturing on the borderline between cultural heritage and governance of historical memory. Likewise, the recent literature on memory laws and politics has been positioning various non-punitive legislations regulating cultural heritage in broad terms, from artistic images and symbols to the monuments glorifying historical figures, in the context of transition, e.g. a transition from a dictatorship to democracy or from colonial regimes to independent statehoods.¹⁵ Lixinski's monograph further enriches the literature on international law in this regard, as the existing body of international cultural (tangible and intangible) heritage law lacked a convincing nexus of this field with the growing body of memory laws and policies.¹⁶ Lixinski has comprehensively covered this normative gap, opening promising horizons for further research on cultural heritage through the looking glass of memory regulation.

¹² Uladzislau Belavusau & Aleksandra Gliszczynska-Grabias, *The Remarkable Rise of "Law and Historical Memory" in Europe: Theorising Tendencies and Prospects in Recent Literature*, 47 J. LAW SOC. 325–38 (2020).

¹³ Sévane Garibian, *Pour une lecture juridique des quatre lois mémorielles*, 2 ESPRIT 158–73 (2006). In this context, see, [collective petition] *Liberté pour l'histoire: Une pétition pour l'abrogation des articles de loi contraignant la recherche et l'enseignement de cette discipline*, Dec. 13, 2005 https://www.liberation.fr/societe/2005/12/13/liberte-pour-l-histoire_541669/; [collective petition] *Appel de Blois*, Oct. 10, 2008 https://www.lemonde.fr/idees/article/2008/10/10/appele-de-blois_1105436_3232.html.

¹⁴ Marina Bán, *The Legal Governance of Historical Memory and the Rule of Law* (PH.D. thesis, 2020); Klaus Bachman et al., *The Puzzle of Punitive Memory Laws: New Insights into the Origins and Scope of Punitive Memory Laws*, 35, 4, EAST EUR. POLITICS AND SOC., 996–1012 (2021).

¹⁵ LEA DAVID, *THE PAST CAN'T HEAL US: THE DANGER OF MANDATING MEMORY IN THE NAME OF HUMAN RIGHTS* (2021); Uladzislau Belavusau & Aleksandra Gliszczynska-Grabias, *Memory Laws: Mapping a New Subject in Comparative Law and Transitional Justice*, in LAW AND MEMORY: TOWARDS LEGAL GOVERNANCE OF HISTORY (Uladzislau Belavusau and Aleksandra Gliszczynska-Grabias eds., 2017); STIINA LÖYTÖMÄKI, *LAW AND THE POLITICS OF MEMORY: CONFRONTING THE PAST* (2014); S. ELIZABETH BIRD & FRASER M. OTTANELLI (EDS.), *THE PERFORMANCE OF MEMORY AS TRANSITIONAL JUSTICE* (2014).

¹⁶ For the previous coverage of this subject, shaping identities through cultural heritage, in social sciences and humanities, see YVONNE WHELAN & NIAMH MOORE (EDS.), *HERITAGE, POLITICS AND THE POLITICS OF IDENTITY: NEW PERSPECTIVES ON THE CULTURAL LANDSCAPE* (2007).

With that being said, however, the bridge he has constructed in this monograph is capable of providing intellectual mobility in both directions. Apart from exposing the discipline of cultural heritage to transitional justice focused on memory politics, he has equally and perhaps inadvertently facilitated *un chemin en sens inverse*, a path from memory studies in law towards engagement with cultural heritage. While it has not been unusual to link *collective memory* in its classic understanding—coined in social sciences by Maurice Halbwachs¹⁷—with *culture* by virtue of *cultural memory*,¹⁸ until recently, studies focused on the latter phenomenon rarely touched upon legal governance of historical memory. In contrast, the discussion on memory laws and policies has been very much focused, first, on exploring political instrumentalization of historical past,¹⁹ and second, on (in)compatibility of memory laws with fundamental rights and rule of law.²⁰

However, what this two-fold discussion on memory governance has vividly lacked so far is the body of knowledge about cultural heritage, which in international law comprises the whole parallel—to memory laws—mechanism of governing the past through a conservation paradigm, addressed by Lixinski in terms of transitional justice. This much-needed outlook from international law is indispensable to the exploration of memory laws, particularly when interpreting legal governance of historical monuments and other art works, including their renaming, relocating, erasing, reassigning, in the context of transition. The monograph, in this respect, offers an avenue for a more holistic analysis of memory laws. This analysis goes beyond the confines of human-rights and rule-of-law discourse and includes both tangible and intangible cultural heritage. The conservation paradigm embedded in the corpus of international law of cultural heritage should not be overlooked by proponents and critics of memory laws and policies alike. This paradigm elevates the discussion on the legal governance of historical memory from its assessment in terms of proportionality tests vis-à-vis various human rights towards balancing governance of historical memory with an international responsibility to protect cultural heritage.²¹

¹⁷ French sociologist Maurice Halbwachs formulated this seminal notion of “collective memory” in his *Les Cadres Sociaux de la Mémoire* (1952), highlighting the significance of the collective memory operating in the systems of family, religion and social communities. See MAURICE HALBWACHS, *LES CADRES SOCIAUX DE LA MÉMOIRE* (re-published by De Gruyter Mouton in 1976, with a preface by François Chatelet), Vol. 5, 146–222.

¹⁸ E.g., ALEIDA ASSMANN, *CULTURAL MEMORY AND WESTERN CIVILIZATION: FUNCTIONS, MEDIA, ARCHIVES* (2011); JAN ASSMANN, *CULTURAL MEMORY AND EARLY CIVILIZATION: WRITING, REMEMBRANCE AND POLITICAL IMAGINATION* (2021). Under this interpretation, cultural memory represents the faculty that allows us to build a narrative picture of the past and through this process develop an image and an identity for ourselves.

¹⁹ Maria Mälksoo, *Militant Democracy in International Relations*, 47(4) *RIS* 489 (2021); Uladzislau Belavusau, Aleksandra Gliszczynska-Grabias & Maria Mälksoo, *Memory Laws and Memory Wars in Poland, Russia and Ukraine*, 69 *JÖR* 95 (2021); George Soroka & Félix Krawatzek, *Nationalism, Democracy and Memory Laws*, 30(2) *J. DEMOCR.*, 157 (2019).

²⁰ Bán, *supra* note 14; Uladzislau Belavusau & Aleksandra Gliszczynska-Grabias, *Academic Legacy of Wojciech Sadurski, Rule of Law, and Mnemonic Constitutionalism in Central and Eastern Europe*, in *CONSTITUTIONALISM UNDER STRESS 1* (Uladzislau Belavusau & Aleksandra Gliszczynska-Grabias eds., 2020); Eric Heinze, *Theorizing Law and Historical Memory: Denialism and the Pre-Conditions of Human Rights*, 13(43) *NATL. J. COMP. LAW* 43 (2018).

²¹ See also James A.R. Nafziger, *The Responsibilities to Protect Cultural Heritage and Prevent Cultural Genocide*, in *THE OXFORD HANDBOOK OF INTERNATIONAL CULTURAL HERITAGE LAW* (Francesco Francioni & Ana Filipa Vrdoljak

2.2. A dangerous turn away from the intrinsic value of art in international law

- Do you know what, Professor? If you were not a luminary known to all Europe and if you had not been interceded for in the most disgraceful manner by people who, I am quite sure, we will eventually get to the bottom of, you should be arrested.

- And what for?

- You are a proletariat-hater!

(Mikhail Bulgakov, *The Heart of a Dog*, 1925)²²

As much as the inter-field bridge offered by Lixinski is helpful, if not outright indispensable, to advancing a holistic understanding of memory laws and policies in terms of responsibilities pertaining to protection of cultural heritage, his apparent advocacy of transitional justice as a value trumping over a conservation paradigm in international law of cultural heritage appears problematic for several reasons. I would argue that a somewhat anachronistic reanimation of past traumas advanced by the author *per se* (further explained and exemplified with Lixinski's case studies in this section of my review below) would not necessarily lead to a more emancipating paradigm in transitional justice. To the contrary, it has the potential to pave the way to a new dystopian vision of cultural heritage that has to be subjected to the temporality of identity politics and fluid instrumentalizations of the past by current social movements. The seemingly orthodox conviction by the author that cultural heritage should service the interests of transitional justice leaves the intrinsic aesthetical function of cultural heritage as *l'art pour l'art* (the art for the art's sake) out of this new "emancipating" picture.²³ In this regard, the author seems to uncritically reproduce currently dominant discourse of certain social movements *à la mode*, by instrumentalizing cultural heritage as a tool for achieving social justice. On the one hand, this mode of rationalizing art specifically and cultural heritage broadly may serve the interests of social artistry. On the other hand, it can equally justify a risky iconoclastic twist affecting a great deal of the global cultural patrimony. Such artistic diversity constituting this patrimony has been marked by various social phenomena that—if judged by contemporary standards of justice and equality—can or even must lead to its being outlawed, removed or destroyed.

Under such settings, the context becomes crucial. Whenever the past and the present are blended anachronistically, the context in which the monument or

eds., 2020); Maria-Sophie De Clippele, *Does the Law Determine What Heritage to Remember?*, 32 INT. J. SEMIOT. LAW 623 (2021).

²² "— Знаете ли, профессор, если бы вы не были европейским светилом и за вас не заступились бы самым возмутительным образом вас следовало бы арестовать.

— За что?

— А вы не любите пролетариат."

(Михаил Булгаков, «Собачье сердце», 1925) [in Russian].

²³ "Art for the art's sake" is a French slogan dating back to the 19th century and attributed to a writer and literary critic Théophile Gautier, who thus expressed the intrinsic value of art, whereas the true art can be perfectly detached from any didactic, political or another utilitarian function. See Constance Gosselin Schick, *Emigrations of 'l'Art pour l'Art' to America*, 32 (1/2) NINET 121 (2003).

another art work was created in the past can be invoked to reflect on it critically, instead of making the artefact itself accountable for how we view the reality today. In this regard, I do not necessarily argue that cultural heritage should be absolutely precluded from advancing certain goals of transitional justice, when the context and the distinction between the past and the present are articulated sufficiently clear to minimize anachronistic binaries. Lixinski's model can perhaps function to a certain degree, especially in museum spaces and via education system, on a premise decoupling the aesthetic and the socio-political values of an art work, without destroying or vandalizing the latter, still perfectly in line with the conservation paradigm advanced in international law.

A universal concept of "cultural heritage" remains a relatively new construct of modern international law, dating back, at best, to the 19th century, in particular, with the Congress of Vienne (1814–15) and the Hague Conventions of 1899 and 1907.²⁴ The notion of heritage, in this regard, has built on older concepts such "historic monument" and "cultural property".²⁵ These intellectual and further legal constructs share the idea that certain objects possess a symbolic and artistic value that transcends their functional purpose. Likewise, they share a premise that a collective interest in their preservation takes precedence over an owner's rights to (ab-)use their property. In contrast, a rudimentary concept of art undoubtedly dates back to the almost prehistoric roots of humanity. Likewise, the instances of vandalism and iconoclasm have, sadly, persisted throughout the history of humanity, whereas artistic work has been subjected not only to natural cataclysms, fires, and burglary. It was also censored or destroyed to entertain various mutually excluding individual and communal outlooks on the virtue of the art works, victimized by aesthetic tastes (or often, their absence), religious beliefs and destructive philosophical convictions.

While conservative Judaism and early Christianity adamantly destroyed art works with embedded imagery (depending on the period, humans or deities) following the dogmatic interpretation of the Second Commandment,²⁶ a tradition still visible in radical Islamism,²⁷ various non-religious demagogues of equality and community interests have been vehemently keen on erasing art works judged by contemporary standards of virtue, goodness and justice. Take for

²⁴ Francesco Francioni, "Cultural Heritage", *Max Planck Encyclopaedia of International Law*, 2020; Sebastian M. Spitra, *Civilisation, Protection, Restitution: A Critical History of International Cultural Heritage Law in the 19th and 20th Centuries*, 22 J. HIST. INT. LAW 329 (2020).

²⁵ Andrzej Jakubowski, *STATE SUCCESSION IN CULTURAL PROPERTY* (2015).

²⁶ Uladzislau Belavusau, *Art, Pornography and Foucauldian Reconstruction of Comparative Law* 17(3) MJECL 252–80 (2010); Amy Adler, *The First Amendment and the Second Commandment* 57 N.Y.L. Sch. L. Rev. 41 (2013).

²⁷ See: Oleg Grabar, *From the Icon to Aniconism: Islam and the Image* 55(2) MUS. INT. 46–53 (2003); Joseph J. Kaminski, *'And Part not with my Revelations from a Trifling Price': Reconceptualising Islam's Aniconism through the Lenses of Reification and Representation as Meaning Making* 67(1) SOC. COMPASS 120–36 (2020); JOHANNA SUMIALA ET AL. (EDS.) HYBRID MEDIA EVENTS: THE CHARLIE HEBDO ATTACKS AND THE GLOBAL CIRCULATION OF TERRORIST VIOLENCE (2018); LYOMBE EKO, *THE CHARLIE HEBDO AFFAIR AND COMPARATIVE JOURNALISTIC CULTURES: HUMAN RIGHTS VERSUS RELIGIOUS RITES* (2019).

instance, Soviet Bolsheviks²⁸ and Mao Zedong's proponents of "cultural revolution".²⁹ More recent western movements have been also reproducing this iconoclastic zeal, visible in the radical streams within the 2020 wave of the 'Black Lives Matter' (BLM) movement.³⁰ Yet it is precisely against such subjective and anachronistic rationales along with wrongdoings of the war affecting art, that a contemporary universal obligation to protect cultural heritage has been postulated.

To give a specific example, it is hard to agree with the interpretation of the fight over confederate monuments in the United States, advanced by the author as one of his central case studies in this monograph (chapter four).³¹ It is even harder to support Lixinski's plea for cultural heritage to serve the—by default, temporal and informed by contemporary political imagination—interests of transitional justice. The way Lixinski positions monuments and artworks depicting historical figures who either possessed slaves or accepted slavery on the same scale with communist monuments in Central and Eastern Europe appears problematic from several standpoints. It will be, of course, subjectively difficult to capture how perfectly executed neo-classist monuments to, for example, King Léopold II in Belgium (1835–1909)³² or to Edward Colston in the UK (1636–1721),³³ vandalized by the recent stream of "anti-colonial" iconoclasm, echoing the fight against confederate monuments in the southern United States—could be comparable in their artistic merit to the monstrous, and identically-reproduced on an industrial scale, monuments to Lenin³⁴ and Dzerzhinsky.³⁵ The latter eyesores have been richly scattered by the communist—and what constitutes for many countries in the region, essentially occupation—regimes throughout Central and Eastern Europe.

²⁸ Vörös Boldizar, *Historical Figures under the New Regimes: 'Monumental Propaganda' in Soviet Russia and in the Soviet Republic of Hungary* 2(4) INT. J. REG. LOCAL HIST 199–239 (2018); Aaron J. Cohen, *The Limits of Iconoclasm: The Fate of Tsarist Monuments in Revolutionary Moscow and Petrograd, 1917–1918* 24 (3–4) CITY 616–26 (2020); Aliaksei Kazharski & Andrey Makarychev, *From the Bronze Soldier to the "Bloody Marshal": Monument Wars and Russia's Aesthetic Vulnerability in Estonia and the Czech Republic* 20(10) EAST EUR. POLITICS AND SOC., (2021).

²⁹ Hanzhou Pnag, *Visual Mao Zedong and New World Order* 22(6) SOC. IDENTITIES 577–89 (2016); DANIEL LEESE, MAO CULT: RHETORIC AND RITUAL IN CHINA'S CULTURAL REVOLUTION (2011); HU ANGANG, MAO AND THE CULTURAL REVOLUTION (2017).

³⁰ Brianna Mcgonigle Leyh, *Imperatives of the Present: Black Lives Matter and the Politics of Memory and Memorialization* 38(4) NQHR 239–45 (2020); Jim Brogden & Douglas Harper, *R WE LOUD ENOUGH?: Re-inscribing Monuments in the Public Sphere by the Black Lives Matter movement'* 10(1) APS 37–53 (2021).

³¹ LIXINSKI, *supra* note 1 at 94–128.

³² Matthew G. Stanard, *King Leopold's Bust: A Story of Monuments, Culture, and Memory in Colonial Europe* 12(2) JCCH (2011); Idesbald Goddeeris, *Colonial Streets and Statues: Postcolonial Belgium in the Public Space* 18(4) POSTCOLONIAL STUD. 397–409 (2015).

³³ See Lara Choksey, *Colston Falling* 74 J. HIST. GEOGR. 77–83 (2021); Eva Branscome, *Colston's Travels, or Should We Talk about Statues?* 6(1) AJAR 1–29 (2021).

³⁴ Mirjana Ristic, *Post-fallism: The afterline of the Lenin Monument in Berlin* 24(3–4) CITY (2020); Sergei Kruk, *Profits Rather than Politics: the Production of Lenin Monuments in Soviet Latvia* 20(3) SOC. SEMIOT 247–76 (2010).

³⁵ David Satter, *The Statue of Dzerzhinsky*, in *IT WAS A LONG TIME AGO, AND IT NEVER HAPPENED ANYWAY: RUSSIA AND THE COMMUNIST PAST* (David Satter ed., 2012); Natalia Beskhebnaya, *Russian History through the Eyes of Three Moscow Monuments* 60(1) RUSSIAN LIFE 38–45 (2017).

Yet it is not the only problem with Lixinski's advocated paradigm of putting transitional justice on a pedestal above the conservation ethics in governing artistic work. For example, the author rather unequivocally portrays the Civil War of 1861–65 in the United States as being inherently dichotomic in its nature. He thus reproduces a popular contemporary trope of viewing the North as fighting exclusively for racial equality despite many northerners not necessarily even opposing slave trade. Under this dichotomy, the triumphal North is positioned against the notorious South, populated with white tyrants exploiting African slaves. These simplistic narratives usually tend to deduce a complicated phenomenon of the Civil War towards the matter of slavery, which despite the contemporary American hagiography of the Civil War can hardly overscale the economic rationale behind the North–South tensions and their radical commercial divisions.³⁶ It is sufficient to say that Abraham Lincoln signed his famous Emancipation Proclamation, abolishing slavery, only in 1863, that is two years after the start of this War. Furthermore, the document applied only to enslaved people in the Confederacy, and not to those in the border states that remained loyal to the Union. Not to mention that Native Americans, another heavily oppressed minority in terms of contemporary human rights discourse, according to several accounts, overwhelmingly supported the Confederates.³⁷

Translating the contemporary notions of racial equality towards, in that case, the 19th century debate and identities seems to be a somewhat misleading path foremost for legal scholars. This pathway may effectively justify more restrictions and art destructions as opposed to launching new horizons for the emancipation of minorities. In contrast, the current paradigm of conservation is well-attuned to the need of protecting cultural objects in light of the ever-changing narratives and tastes. There is clearly a constant development (and arguably, even progress) in societal values observable over time. Yet it is certainly precarious to mount on historical artefacts the weight of reflecting in real time these ever-changing ethical shifts. Some cultural heritage could indeed potentially serve the purposes of transitional justice. Yet this purpose can be achieved not necessarily through destruction or the encouraged—legally unaccountable³⁸—vandalism but rather through education and appropriate contextualization, reassigning meanings of cultural artefacts in public spaces or explaining their historical context. Thus, it is rather the field of memory studies (and memory laws, in particular) that can and must benefit from normative foundations embedded in the international protection of cultural heritage. The decoupling of ephemeral

³⁶ Lixinski even offers an extensive footnote in his monograph that advances this folkloristic dichotomy by blaming “ongoing attempts to revise the history of the Civil War” as revisions which tend to downplay the role of slavery and the motivation behind the war. See LIXINSKI, *supra* note 1 at 98.

³⁷ See Natalie Joy, *The Indian's Cause: Abolitionists and Native American Rights* 8(2) J. CIV. WAR ERA 215–42 (2018); Danielle Gibson, *Fighting for the Confederacy: The Native American Role in the U.S. Civil War*, Oct. 6, 2020 <https://historyofyesterday.com/fighting-for-the-confederacy-d27ee57e387f>.

³⁸ For instance, Damien Gayle, *BLM Protesters Cleared over Toppling of Edward Colston Statue*, *Guardian*, Jan. 5, 2022 <https://www.theguardian.com/uk-news/2022/jan/05/four-cleared-of-toppling-edward-colston-statue>.

socio-political connotations from the aesthetic value of *l'art pour l'art* can help to take a healthy step away from alarming symptoms of contemporary iconoclasm that recently stemmed from both identity politics and “cancel culture” in Western societies.

One could disagree with, and rebut, this critical part in my appraisal of the monograph's approach by advancing the opposing view that confederate monuments in the United States or the aforementioned neoclassic monuments in Europe do not offer the same artistic value as the major artefacts catalogued in, for example, the UNESCO (United Nations Educational, Scientific and Cultural Organization) list of cultural heritage.³⁹ The degree of censorship based on this, for the sake of the moment, anti-colonial ethos married to transitional justice will then easily cover the vast artistic fields of, for example, literature and cinematography, in both elitist and popular mass cultures. In the same spirit of censorship to historical representations of racism, American broadcasters attempted to censor the U.S. filmography depicting the Civil War, for example, by removing the 1939 “Gone with the Wind” movie in the wake of the 2020 BLM claims that it was supposedly glorifying the Southern tyrants.⁴⁰ Yet following this logic and the novel ethos advocated in the legal settings against the value of conservation paradigm, one may want to destroy the remains of the Colosseum, the famous Roman amphitheater and conventionally a part of the world's cultural heritage, as a historical monument whose primary function was to offer the arena for exploiting gladiators, that is slaves from various part of the Roman empire. As deplorable as it stands, most of the history of our civilization has been marked by crimes against humanity, judged by contemporary standards of Western humanism, liberal democracies, and international law. Furthermore, much of our literature, portraits, sculptures, historical buildings, and classical music have been either commissioned, performed by or depicting personalities who justified or, at times, even participated in those wrong-doings. While history cannot heal us,⁴¹ art can.⁴²

Notwithstanding that, I certainly value the contribution of Lixinski's monograph in building a bridge between legal governance of history and international law of cultural heritage, though I equally see a problem with his choice of materials used for the erection of this bridge. There is a certain danger in extrapolating

³⁹ For the complete UNESCO's catalogue, see <https://whc.unesco.org/en/list/>.

⁴⁰ In 2020, the streaming service HBO Max temporarily removed the movie from its line-up, announcing that they intend to bring it back with added material discussing the racist characterizations of enslaved plantation works. See, Ann Hornaday, *HBO Max isn't censoring 'Gone With the Wind.' It's reframing it.*, June 10, 2020, https://www.washingtonpost.com/lifestyle/style/hbo-max-isnt-censoring-gone-with-the-wind-its-reframing-it/2020/06/10/d78544ec-ab3e-11ea-94d2-d7bc43b26bf9_story.html. Likewise, Netflix has removed several popular comedy shows from its broadcast in the wake of the 2020-BLM, including “Little Britain”, “The Mighty Boosh” and “Bo Selecta”. See, Sky News, *Black Lives Matter: The shows pulled by broadcasters and streaming services*, June 13, 2020 <https://news.sky.com/story/black-lives-matter-the-shows-pulled-by-broadcasters-and-streaming-services-12004775>.

⁴¹ Paraphrasing DAVID, *supra* note 15.

⁴² Marina Aksenova & Amber N. Rieff, *Setting the Scene: The Use of Art to Promote Reconciliation in International Criminal Justice* 33(2) LEIDEN J. INT. LAW 495–516 (2020).

the approach of the author to the temporality of transitional justice and ephemeral memory politics, namely, arming transient and fluid social movements with relatively static legal tools that were developed for the opposite “conservation” function. In this respect, the stream of critical thought advanced by Lixinski essentially proposes to subordinate the conservation paradigm of cultural heritage, a survival toolkit and a precious gift from international law for art works and the world’s art connoisseurs, shielding them from the temporality of transitional justice and the vulgarity of choices demanded by the iconoclastic crowds in the wake of religious obscurantism, political propaganda or hysterical media campaigns.⁴³ The inherent value of the conservationist paradigm is indispensable because it allows us to witness cultural evolution of our ancestors (both victims and perpetrators), learn from their colossal errors and provide future generations with invaluable inheritance of the humanity, the best of its artworks. In contrast, it is highly unlikely that past wrongs can be remedied in the present moment by virtue of destruction or vandalism. Lixinski, however, makes a convincing point to the extent that these “contradictory” cultural objects and spaces can be used for education, therapeutic mourning and possibly even healing from the past traumas if the context for the display of (art)works is well chosen and sufficiently illuminated.

3. Epilogue

Legalized Identities is a remarkable monograph written by one of the world’s most prolific global scholars in the field of international law of cultural heritage. Despite my crucial disagreement with the ethical turn suggested by Lixinski towards subjecting the aesthetic core of cultural heritage to the premises of transitional justice, the book deserves distinguished praise due to its normative contribution and the impressive number of case studies exposing cultural heritage through the looking glass of transitional justice in a truly ecumenical legal perspective. Written in language that is easy to follow, the monograph opens novel horizons for exploring international law from the standpoint of memory studies, as well as for enriching the toolbox of scholars working in the area of memory laws and policies with an evaluative yardstick apparent in the international regime of cultural heritage.

⁴³ Here I am echoing concerns from an iconic book by JOSÉ ORTEGA Y GASSET, *LA REBELIÓN DE LAS MASAS* [THE REVOLT OF THE MASSES] (1930).