

Critical Perspectives on Cultural Memory and Heritage

Construction, Transformation and Destruction

Edited by Veysel Apaydin

 **UCL**PRESS

First published in 2020 by
UCL Press
University College London
Gower Street
London WC1E 6BT

Available to download free: www.uclpress.co.uk

Text © Contributors, 2020
Images © Contributors and copyright holders named in captions, 2020

The authors have asserted their rights under the Copyright, Designs and Patents Act 1988 to be identified as the authors of this work.

A CIP catalogue record for this book is available from The British Library.

This book is published under a Creative Commons 4.0 International license (CC BY 4.0). This license allows you to share, copy, distribute and transmit the work; to adapt the work and to make commercial use of the work providing attribution is made to the authors (but not in any way that suggests that they endorse you or your use of the work). Attribution should include the following information:

Apaydin, V. (ed.). 2020. *Critical Perspectives on Cultural Memory and Heritage: Construction, Transformation and Destruction*. London: UCL Press. DOI: <https://doi.org/10.14324/111.9781787354845>

Further details about Creative Commons licenses are available at <http://creativecommons.org/licenses/>

Any third-party material in this book is published under the book's Creative Commons license unless indicated otherwise in the credit line to the material. If you would like to reuse any third-party material not covered by the book's Creative Commons license, you will need to obtain permission directly from the copyright holder.

ISBN: 978-1-78735-486-9 (Hbk.)
ISBN: 978-1-78735-485-2 (Pbk.)
ISBN: 978-1-78735-484-5 (PDF)
ISBN: 978-1-78735-487-6 (epub)
ISBN: 978-1-78735-488-3 (mobi)
DOI: <https://doi.org/10.14324/111.9781787354845>

Contents

| | |
|--|-----------|
| <i>List of figures</i> | ix |
| <i>List of contributors</i> | xii |
| <i>Acknowledgements</i> | xviii |
| Introduction: why cultural memory and heritage? <i>Veysel Apaydin</i> | 1 |
| Part I: Conceptualising Cultural Memory and Heritage | 11 |
| 1. The interlinkage of cultural memory, heritage and discourses of construction, transformation and destruction <i>Veysel Apaydin</i> | 13 |
| Part II: Urban Heritage, Development, Transformation and Destruction | 31 |
| 2. Mega-structural violence: considering African literary perspectives on infrastructure, modernity and destruction <i>Rachel King</i> | 33 |
| 3. Competing for the past: the London 2012 Olympic Games, archaeology and the ‘wasteland’ <i>Jonathan Gardner</i> | 45 |
| 4. Covert erasure and agents of change in the heritage city <i>Colin Sterling</i> | 67 |
| 5. Heritage, memory and social justice: reclaiming space and identity <i>Veysel Apaydin</i> | 84 |
| 6. Amnesia by design: building and rebuilding in a Mediterranean small island-state <i>Reuben Grima</i> | 98 |

| | |
|--|------------|
| 7. Vanishing heritage, materialising memory: construction, destruction and social action in contemporary Madrid | 111 |
| <i>Jaime Almansa-Sánchez and Nekbet Corpas-Cívicos</i> | |
| Part III: Indigenous Heritage and Destruction | 129 |
| 8. Considering the denigration and destruction of Indigenous heritage as violence | 131 |
| <i>George Nicholas and Claire Smith</i> | |
| 9. Indigenous Latino heritage: destruction, invisibility, appropriation, revival, survivance | 155 |
| <i>Paul Edward Montgomery Ramírez</i> | |
| 10. ‘Rescuing’ the ground from under their feet? Contract archaeology and human rights violations in the Brazilian Amazon | 169 |
| <i>Bruna Cigaran da Rocha</i> | |
| 11. Order and disorder: Indigenous Australian cultural heritages and the case of settler-colonial ambivalence | 189 |
| <i>Amanda Kearney</i> | |
| Part IV: Conflicts, Violence, War and Destruction | 209 |
| 12. Cultural memory as a mechanism for community cohesion: Dayr Mar Elian esh-Sharqi, Qaryatayn, Syria | 211 |
| <i>Emma Loosley Leeming</i> | |
| 13. Bosnia and the destruction of identity | 224 |
| <i>Helen Walasek</i> | |
| 14. ‘Bombing Pompeii!!! Why not the Pyramids?’ Myths and memories of the Allied bombing of Pompeii, August–September 1943 | 239 |
| <i>Nigel D. Pollard</i> | |
| Part V: Heritage, Identity and Destruction | 253 |
| 15. Reclaiming the past as a matter of social justice: African American heritage, representation and identity in the United States | 255 |
| <i>Erin Linn-Tynen</i> | |

| | |
|---|-----|
| 16. Alternating cycles of the politics of forgetting and remembering the past in Taiwan <i>Nicolas Zorzin</i> | 269 |
| 17. A glimpse into the crystal ball: how do we select the memory of the future? <i>Monique van den Dries and José Schreurs</i> | 289 |
| Part VI: Epilogue | 307 |
| 18. ‘Cultural heritage is concerned with the future’: a critical epilogue <i>Cornelius Holtorf</i> | 309 |
| <i>Index</i> | 313 |

List of contributors

Jaime Almansa-Sánchez is a Postdoctoral Researcher at the Institute of Heritage Sciences (Incipit, CSIC) in Spain. His research focuses on public archaeology and the management of archaeological heritage. He is currently implementing the project #pubarchMED Public Archaeology in the Mediterranean Context, aiming at a better understanding of the dynamics and impact of archaeological heritage management throughout the Mediterranean. He is also editor of *AP: Online Journal in Public Archaeology*: <http://www.arqueologiapublica.es>.

Veysel Apaydin is a Senior Teaching Fellow in Art, Design and Museology at the UCL Institute of Education, Department of Culture, Communication and Media. He was a Research Associate at the EC Funded project, EMOTIVE, at the Department of Archaeology, University of York. He completed his PhD at the Institute of Archaeology, UCL. His doctoral thesis evaluated uses and abuses of cultural heritage, identity construction and the relationship between heritage, education and attitudes towards heritage, taking modern-day Turkey as its case study. Apaydin has worked as an archaeologist and heritage consultant in the United Kingdom and Turkey, and taught in heritage and museum studies and public archaeology courses at the UCL Institute of Archaeology. He is the author of numerous articles and edited *Shared Knowledge, Shared Power. Engaging Local and Indigenous Heritage* (2018). Apaydin is also currently editor of the heritage section of the *Open Archaeology Journal*.

Nekbet Corpas-Cívicos completed her studies on archaeology at the Universidad Complutense de Madrid in 2010, then further specialised in archaeological heritage and museums (University of Cambridge, 2016). She is now pursuing a PhD at the Universidad Complutense de Madrid on archaeological heritage management and conflicts, having been awarded a grant from the Spanish Ministry of Education, Culture and

Sports for training a prospective university faculty. She is also part of the Complutense University research team, Gestión del Patrimonio Cultural.

Monique van den Dries is Associate Professor in (Archaeological) Heritage Management at Leiden University (Faculty of Archaeology). She has been active in heritage management and in community work in the Netherlands and in an international context for over 25 years. Her research, publications and teaching cross the disciplinary boundaries of archaeology and heritage, focusing upon the societal values and impacts of heritage, participation and inclusiveness in the physical and digital worlds and the (current and future) effects of heritage management policies.

Jonathan Gardner is an archaeologist and Teaching Fellow in Heritage and Museum Studies at the UCL Institute of Archaeology. His recent doctoral research (UCL 2017) considered the archaeological traces of 'mega events', such as the 1851 Great Exhibition, the 1951 Festival of Britain and the London 2012 Olympic/Paralympic Games. Prior to his PhD, he completed an MA in Cultural Heritage Studies, following an undergraduate degree in archaeology. He has also worked extensively as a commercial field archaeologist, excavating sites across London and southeast England. Gardner's primary research interests lie in how the materials of the past and present intersect in large-scale urban development projects, and how varied ideas about such interactions (whether consciously articulated as 'heritage' or otherwise) are used to legitimise or challenge change in societies.

Reuben Grima studied archaeology at the universities of Malta and Reading, and read for his PhD at the Institute of Archaeology, UCL. He joined the curatorial staff of the Museum of Archaeology, Malta, in 1992. From 2003 to 2011 he joined Heritage Malta as Senior Curator responsible for prehistoric World Heritage Sites. In 2011 Grima moved to the Department of Conservation and Built Heritage at the University of Malta, where he lectures in cultural heritage management. His current research interests include cultural landscapes, the history of archaeology and public engagement with the past.

Cornelius Holtorf is Professor of Archaeology and holds a UNESCO Chair on Heritage Futures at Linnaeus University in Kalmar, Sweden. He is also Director of the Graduate School in Contract Archaeology (GRASCA) at his University. Holtorf's current research interests include the meaning of cultural heritage in present society and the management of memory across generations.

Amanda Kearney is a Professor and Matthew Flinders Fellow at Flinders University, South Australia. She is an Australian anthropologist whose academic career has been informed by the disciplines of cultural geography, heritage and ethnic studies. Her research addresses themes of Indigenous experience, cultural wounding and healing, land rights and the prevailing impact of settler-colonial violence on Indigenous lives, lands and waters. Her research has developed with the kind support of Yanyuwa families, the Indigenous owners of land and sea in the south-west Gulf of Carpentaria, Australia.

Rachel King is Lecturer in Cultural Heritage Studies at UCL. Her research interests include the relationships between heritage and infrastructure development (especially on the African continent), the archaeology and heritage of criminality and histories of knowledge production within and about archaeology. She is the author of *Outlaws, Anxiety and Disorder in Southern Africa: Material Histories of the Maloti–Drakensberg* (Palgrave Macmillan, 2019).

Emma Loosley Leeming is an Associate Professor at the University of Exeter. Her work is interdisciplinary and encompasses the fields of Archaeology, Art History and History of Religion. She has over 20 years' experience working on early Syrian Christianity and more recently has begun comparative research on early Christianity in the Levant and the Caucasus. She founded the Dayr Mar Elian Archaeological Project (DMEAP) in 2001 and hopes to return to Qaryatayn when the situation in Syria allows.

Erin Linn-Tynen is a doctoral student in the School of Social Sciences at the University of Western Australia. She received her MA in Archaeology from UCL and an MA in Cultural Heritage from Deakin University. She is the founder and director of Integrated Heritage Project, a non-profit organisation, and has worked as an archaeologist and heritage professional in South-East Asia, Jordan, Israel, Italy, the United States, Australia and the United Kingdom. Her research interests include cultural heritage, identity politics and community-based heritage initiatives. Her dissertation research explores the concept of 'shared heritage', the use of shared heritage narrative(s) as a form of cultural diplomacy and the ways in which these narratives impact both cultural heritage and local communities, specifically within the context of China's Belt and Road Initiative.

George Nicholas is Professor and Chair of Archaeology at Simon Fraser University (SFU) in Burnaby, British Columbia, and Adjunct Faculty Member of the Flinders University Archaeology Department in South Australia. He was the founding director of SFU's Indigenous Archaeology Program in Kamloops (1991–2005), and has worked closely with the Secwepemc and other First Nations in British Columbia and Indigenous groups worldwide. Nicholas's research focuses on Indigenous peoples and archaeology, intellectual property issues relating to archaeology, social justice and human rights, the archaeology and human ecology of wetlands and archaeological theory and practice. From 2008–16 he was Director of the Intellectual Property Issues in Cultural Heritage (IPinCH) project – an international collaboration of over 50 scholars and 25 partnering organisations concerned with the theoretical, ethical and practical implications of commodification, appropriation and other flows of knowledge about heritage (www.sfu.ca/ipinch). In 2013 he received the inaugural 'Partnership Award' from the Social Sciences and Humanities Research Council.

Nigel D. Pollard is an archaeologist and historian, and board member of UK Blue Shield. He is Associate Professor of Ancient History at Swansea University. The main focus of his current research is the Allied bombing of Pompeii in the Second World War, and the lessons to be learned from the Second World War experience of cultural property protection.

Paul Edward Montgomery Ramírez is a decolonial heritage specialist and indigenous public archaeologist. A Nicaraguan-American, he holds degrees in anthropology and archaeology from Cleveland State University, the University of Glasgow and UCL. At the time of writing he was affiliated with the University of York in the United Kingdom, where he undertook his PhD in decolonial heritage tourism and economic sustainability at open-air museums. His research focuses on tourism, media and museums as tools to promote sustainability, dignity and decolonial narratives and options. He became a member of the World Archaeological Congress's Indigenous Council in 2016.

Bruna Cigaran da Rocha (PhD 2017 – Institute of Archaeology, UK) is Lecturer in Archaeology at the Universidade Federal do Oeste do Pará, in Santarém, Brazilian Amazonia. Her research has focused upon late Holocene archaeological sites situated in territories traditionally occupied by Mundurucu Indians and by riverine dwellers of Montanha and Mangabal along the middle and upper reaches of the Tapajós river – an area at the

centre of socio-environmental conflicts that threaten these peoples' singular ways of life. Rocha has sought to employ archaeology as a discursive tool in support of these forest peoples' claims to land and their rights.

José Schreurs has worked as Archaeology Advisor at the Cultural Heritage Agency of the Netherlands since 2005. Here she is involved with several projects, including the scheduling of ancient monuments and the listing of new monuments. She studied Prehistory of Northwestern Europe at Leiden University, specialising in the Neolithic period and functional analysis of flint artefacts. Following her studies, she undertook research at Leiden University on functional analyses of Middle-Neolithic Michelsberg sites and investigated flint assemblages from several other periods. Schreurs subsequently worked as an archaeology project manager at Rijkswaterstaat.

Claire Smith is a Professor of Archaeology at Flinders University, South Australia. She is the immediate past president of the World Archaeological Congress and editor of the 11-volume *Encyclopedia of Global Archaeology*. She has produced 12 books and more than 150 publications in English, Spanish, Catalan, Arabic, Russian, Portuguese and Japanese. Her academic life is driven by three passions: to convey the sophistication and accomplishments of Indigenous Australians, past and present; to enrich academia intellectually by strengthening the global impact of scholars from low-income countries; and to nurture the next generation of scholars who make a difference.

Colin Sterling is a Postdoctoral Researcher and AHRC Leadership Fellow at the UCL Institute of Archaeology. His research addresses critical-creative approaches to heritage practice, looking broadly across questions of preservation, photography, the Anthropocene and art and design. Sterling was previously a Project Curator at the Royal Institute of British Architects and a Research Associate with the heritage consultancy Barker Langham.

Helen Walasek is the author of *Bosnia and the Destruction of Cultural Heritage* and is Honorary Associate Research Fellow at the University of Exeter. She was Deputy Director of Bosnia-Herzegovina Heritage Rescue (BHHR), the only heritage NGO accredited as a humanitarian aid organisation during the 1992–5 Bosnian War. She has been a consultant expert to the Council of Europe, an advisor to the NGO Cultural Heritage without Borders (CHwB) and an Associate of the Bosnian Institute, London,

1998–2007. Her field trips with archaeologist Richard Carlton in 2000 and 2001 were the first major assessments of damaged and destroyed historic monuments across Bosnia-Herzegovina.

Nicolas Zorzin has been an Assistant Professor at the Institute of Archaeology of the National Cheng Kung University – 國立成功大學 – in Taiwan since 2017. His research projects are mainly focused on the social and political economy of archaeological practices worldwide and also, lately, on critical perspectives in cultural heritage. Since 2009 he has been involved in Neolithic archaeological fieldwork in Thessaly (northern Greece). Zorzin is interested in ethical issues in archaeology, identities, nationalisms and the politics of the past in general.

8

Considering the denigration and destruction of Indigenous heritage as violence

George Nicholas and Claire Smith

Beyond the sphere of lethal violence lays a much broader domain of destruction, fear, insecurity, vulnerability, and harm.

(Isaac 2012: 235)

Heritage matters. It is cherished and celebrated, but also frequently contested. It is a touchstone to the past, both individual and collective. It connects cultural memory to particular places or events and defines expectations about, and responsibilities to, the connections that people have between generations, over centuries if not millennia. Heritage, and the benefits that flow from it, is such an essential part of people's lives that a person's unfettered access to their heritage should be considered a basic human right.

Yet this is problematic. While heritage is important to all peoples, and everyone's cultural legacy is worthy of respect and protection, Indigenous peoples historically have had the least control over their heritage. Their history, identity, worldview and wellbeing are intrinsically tied to heritage, both tangible and intangible, in ways that are significantly different from the dominant society. In a world that aspires to be post-colonial, the challenges associated with state-controlled heritage legislation are acute and often a source of conflict, with substantial social, political and economic consequences. The limited ability of Indigenous peoples to make decisions concerning the control of their own heritage and welfare is a continuing affront to human rights. In addition, the persistent denigration of their intangible heritage and the destruction of ancient sites, burial grounds and sacred places constitutes a form of structural violence (Bernbeck 2008; Smith 2007).

To date, there has been only limited discussion of the ways in which cultural heritage informs the human rights of Indigenous peoples (for example, Baird 2014; Langfield et al. 2010; Lenzerini 2016a; Schmidt 1996; Silverman and Ruggles 2007). There is recognition in principle, most notably in the United Nation's Declaration on the Rights of Indigenous Peoples (UNDRIP), but little consideration in practice – and even then only incompletely in terms of what is actually protected (for example, tangible vs. intangible heritage [Nicholas 2017]). The question of who benefits from other people's heritage requires careful consideration (Anderson and Geismar 2017; Harrison 2010; Murphy 2016).

There is also the larger question of the responsibilities of, and opportunities for, academics and others whose careers have long profited from research on Indigenous cultures. In her frank discussion of challenges faced in her research on the human rights of children born of war, Charli Carpenter writes 'The choice of human rights subject matter is one of the first moments in which human rights intellectuals exercise power over the global rights agenda' (Carpenter 2012, 365). Carpenter's statement resonates with the intent of this paper, which is situated at the nexus of community engagement, academic discourse and political change regarding the nature of – and indeed the future of – Indigenous heritage protection.

We argue two points in this chapter. The first is that access to, and benefits from, one's heritage are basic human rights, and that the appropriation, denigration or destruction of that heritage is a denial of these fundamental needs. The second is that the cultural harms that occur when Indigenous peoples' heritage is lost or threatened through intentional actions, inaction or ignorance by others constitutes a form of structural violence; it is, to use Deborah Kapchan's phrase, 'an abrogation of human rights' (2014, 4).

Our orientation focuses on Australia, Canada and the United States, but extends in a more limited fashion to other settler countries. We intentionally foreground Indigenous heritage, but many of our comments also apply to other populations.

Human rights and Indigenous peoples

Human rights are the fundamental rights and freedoms that belong to all people, regardless of factors such as race, sex, nationality, ethnicity, language or religion. They are based on shared values such as dignity, fairness, equality, respect and independence. The United Nation's

International Bill of Human Rights includes the Universal Declaration of Human Rights, passed in 1948, and the International Covenant on Economic, Social and Cultural Rights. As outlined in these documents, human rights include the rights to life and liberty, freedom from slavery and torture, freedom of opinion and expression and the right to work and to receive an education. Though the International Covenant on Economic, Social and Cultural Rights highlights the right of benefits of cultural freedom and scientific progress, it stops short of including the right to protect and enjoy cultural heritage as a human right. However, the rights of Indigenous peoples in regards to their cultural heritage are outlined in the Declaration on the Rights of Indigenous Peoples (United Nations 2007). In this chapter we discuss anthropological and archaeological practice in terms of the following articles in this declaration:

Article 11

1. Indigenous peoples have the right to practise and revitalise their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge and traditional cultural expressions.

What is missing here is an acknowledgement of the consequences of governments and others ignoring or acting contrary to those listed rights – resulting in what is often termed ‘human rights abuses’.

For governments, this may be an act of convenience. However, there are consequences, often severe, for those whose rights are abused or ignored.

We also challenge the conventional emphasis on tangible expressions of heritage, which are foregrounded in the Hague Convention for the Protection of Cultural Property, as well as in the majority of those state, provincial and national policies drafted to protect archaeological sites and materials. Weighting the tangible over the intangible results in a skewed and incomplete means of acknowledging, respecting and protecting the intangible aspects of heritage (Anderson and Geismar 2017; Antons and Logan 2018; Smith and Akagawa 2009), which for Indigenous peoples tend to be the most important, as discussed below.

The intangibility of Indigenous heritage

‘Heritage’ can be defined as the objects, places, knowledge, customs, practices, relationships with other species, stories, songs and designs, passed between generations, that define or contribute to a person’s or group’s identity, history, worldview and wellbeing (Nicholas 2017, 214). Indigenous peoples have always made it clear that their heritage is an integral element of their lives and wellbeing, and that their conceptions of, and engagement with, the world may be fundamentally different from that of the dominant society. Yet historically they have had limited and generally very ineffective participation in matters concerning their own heritage in colonial contexts. Those concerns have been broadcast both widely and loudly, speaking to the social, spiritual and economic harms they have suffered in the past and still endure today. Government responses to these concerns have generally focused on consultation, rather than obtaining consent. The recent emphasis on reconciliation in settler countries is notable, but too often is a ‘feel good’ exercise, with no real effort to change fundamentally how things are done.

Worldwide a growing number of archaeologists, anthropologists and other researchers (often themselves Indigenous) have been working to achieve meaningful inclusion of, and collaborations with, Indigenous communities in projects related to their heritage. However, there remain tremendous challenges in establishing and enacting more respectful, ethical and effective policies to protect objects, practices and places of

significance, especially when fundamental differences exist between Western¹ and Indigenous societies over how heritage is perceived or defined. For example, familiar dichotomies that define a Western worldview – people/nature, natural/supernatural, and so on – may be absent in Indigenous perspectives, meaning that ancestral beings may be part of this existence, not some other realm. This necessitates a more inclusive definition of ‘heritage’ that is framed within some Indigenous worldviews as *hishuk ish tsawalk* (Nuu-chah-nulth for ‘everything is one and all is interconnected’ (Atleo 2011)).

Fully recognising, respecting and protecting Indigenous cultural heritage is more than an issue of academic interest. It is bound up with challenging questions about consent, sovereignty and jurisdiction, social justice and human rights, and about how all descendant groups can most effectively control access to, and benefit from, their own heritage. Professional associations, government agencies and international bodies are increasingly joining with universities and Indigenous organisations to develop solutions to these challenges. For its part, the United Nations has set a broad mandate with the Declaration on the Rights of Indigenous Peoples, but it is another matter to put this, and the recommendations of various Truth and Reconciliation Commissions, into practice. Thus, despite recognition of the need for change to achieve greater equity, making the transition from theory to practice to policy requires significant effort and understanding, as well as systemic level changes.

The task of protecting heritage objects and sites, of whatever cultural affiliation, falls primarily within the realm of provincial or federal laws and policies, with some protection afforded by intellectual property law. In Canada heritage legislation provides only limited protection of ancestral heritage. In some cases, there is unequal protection under the law for settler vs. Indigenous human remains, with the latter often considered to be scientific specimens (for example, Zimmerman 1989). Additionally, heritage policies are strongly influenced by economic pressures. Protecting heritage sites may thus pit Indigenous peoples against private landowners and other interest groups. Finally, the most powerful manifestation of heritage site protection is largely via the domain of professional cultural resource management, which is today over a \$1 billion-a-year industry. However, some critics note that this profession, which ostensibly serves to aid commercial endeavours in complying with heritage laws, effectively facilitates development more than it protects Indigenous peoples’ heritage.

The current situation is complex. The actions that heritage practitioners take are often situated at the nexus of debates over such topics

as open vs. restricted access to data, knowledge vs. justice and universal access vs. culture-based rights. There is also uncertainty about what a nation's acceptance of UNDRIP really means, and what the steps for implementation should be.

For example, only months after Canada officially removed its objector status to the Declaration, 'Justice Minister Jodi Wilson-Raybould called its adaptation into Canadian law "unworkable" in a statement to the Assembly of First Nations'. In Australia, Aboriginal people have raised concerns about its slow implementation. And in the United States, there is much uncertainty about what will happen under the Trump administration. What is also problematic with some UNDRIP signatories is that the appearance of governments acting ethically and responsibly towards human rights obscures the reality of the continuing loss of heritage sites.

The result is that in settler countries there is increasing acknowledgement that (a) Indigenous heritage must be protected more fully and effectively and (b) protection of heritage needs to be discussed in relation to human rights and social justice. This is reflected by discussions of heritage matters at the state, provincial or territory level (for example, Borrows 2017; Hunt and Ellsmore 2016; Soderland and Lilley 2015), the national level (for example, Truth and Reconciliation Commissions), and beyond (for example, UNDRIP). However, there is currently too little sense of direction, too much inertia or too little incentive by many of the parties who have a major role to play here. At the same time, in Canada and the United States, the public sees tax dollars being spent to rectify poor, ad hoc decisions made regarding heritage preservation when threatened Indigenous burial grounds or sacred sites slated for destruction and development are eventually purchased by the government.

Threats to heritage as acts of violence

For many archaeologists, one of the darkest moments in memory was the globally publicised destruction of the Bamiyan Buddhas in Afghanistan in 2001. That was until that event was eclipsed by the far wider destruction of artefacts and heritage sites by ISIS at Palmyra, Syria and elsewhere (for example, Newson and Young 2018). The impact of such events is especially vivid because participants often filmed the events. Such actions are not unique; Wikipedia's 'List of Destroyed Heritage' provides examples of intentional heritage destruction in almost 60 countries. These are but a sample of a much larger and longer-term history of such destructive acts.

1. Site damage or destruction (due to development)
2. Site looting
3. Intentional site destruction (e.g., Bamiyan)
4. Cultural appropriation and commodification
5. Challenging religious, ontological or historical beliefs and knowledge
6. Restrictions on access to/use of heritage objects and places
7. Failure to acknowledge oral history and traditional knowledge as legitimate
8. Failure to acknowledge heritage

Figure 8.1 Basic sources of harm to heritage sites and values.
Courtesy of the authors

The loss of archaeological sites daily is staggering – the result of development, erosion, conflict and looting. The sale of antiquities, both legal and otherwise, continues seemingly unabated, feeding a seemingly insatiable market (Barker 2018). This is exacerbated within conflict zones, where site looting and artefact sales by insurgents are used to fund weapon purchases, at the same time that explosions destroy sites and objects (for example, Hardy 2016; Weiss and Connelly 2017). Highlighted in such instances of wanton destruction is the loss of history and scientific potential, which can be interpreted as violence against history.

Below we discuss cases where Indigenous heritage sites, burial grounds and sacred places have been lost through intentional denigration, destruction or appropriation. We argue that this constitutes a form of both violence and human rights abuse. To understand why requires an understanding of how Indigenous conceptions of heritage across the world can be fundamentally different from those found in Western society. Identifying the wider scope of potential sources of harm (Fig. 8.1) is of vital importance in developing more inclusive and effective heritage protection practices.

What constitutes violence?

The World Health Organization defines violence as ‘the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation’.

Without wanting to detract attention from more explicit forms of harm, the loss of access to or, more obviously, the destruction of heritage sites is a form of violence that has significant adverse effects upon

Indigenous peoples. For them those sites are considered necessary not only to their historical continuity and world-views but also to their physical and psychological wellbeing, as well as their survival as distinct societies. This is articulated well by a First Nations community member in British Columbia:

Ruby Peters believed that the disturbance of the ancient burial ground at Somenos Creek not only offended and disrupted relations with the deceased but also resulted in physical danger for the living. Only by conversing with the deceased and using her ritual knowledge could she at least partially restore the requisite balance of relations between the world of the living and the world of the dead.

(McLay et al. 2008, 155)

When used to describe harms resulting from disturbing heritage sites, 'violence' is seldom in the vocabulary of archaeologists, except when it involves (in an abstract way) acts of violence against 'their' (shared worldly) heritage, such as the Bamiyan Buddhas (also see Hamilakis 2003; Lenzerini 2016b). Yet by looking at this through the lens of indigeneity, we must acknowledge that real harm occurs to people in these situations. The loss of less spectacular ancestral sites in settler countries occurs largely unnoticed every day.

Even when the threats are known, legal efforts may fail or existing protection be removed, as evidenced in cases such as these:

- On 2 November 2017 the Supreme Court of Canada ruled against the Ktunaxa Nation's efforts to prevent a ski resort being developed in an area of spiritual importance known as Qat'muk, where the Grizzly Bear Spirit resides. The court concluded that 'The charter protects the freedom to worship, but does not protect the spiritual focal point of worship'. Yet the Ktunaxa had asked the court to validate not their right to worship, but their right to continue essential traditional practices. They fear the Grizzly Bear Spirit will be driven away, further debilitating their connection to a living landscape.
- On 3 December 2017 Donald Trump signed two proclamations that will greatly reduce the size of Bears Ears and Grand Staircase-Escalante National Parks in Utah, opening two million acres of previously protected land to mining, logging and other uses. This move threatens the wellbeing of the Hopi, Navajo, Ute and Zuni peoples by endangering an immense number of heritage

sites, burials and sacred places (Doelle 2017). While all US federal lands require compliance with the National Historic Preservation Act and the National Environmental Policy Act, the oversight of these acts is not as stringent as the overarching cultural and environmental protection afforded to national monuments. Cultural harms are considered inevitable, including threats to the archaeological record of ancient habitation areas and activities across the landscape. But even more disturbing will be the weakening of protection of places of great historical or spiritual importance fundamental to the beliefs and world-view of the Hopi, Navajo, Ute and Zuni peoples.

- In Western Australia the extensive Murujuga petroglyphs of the Dampier Peninsula (estimated at about one million images), is under threat of destruction by the petrochemical industry, with about one-quarter already lost (Hirini 2018). Petroglyphs and pictographs are considered animate, the embodiment of the creator beings who formed the land, laws and customs of Aboriginal peoples. The damage comes from unauthorised visits, as well as vandalism and destruction. Efforts are underway to bolster protection, including an application to have Murujuga listed as a World Heritage site, but this would limit the Traditional Owners' control. In the Kimberley region the Wanjina-Wunggurr people find themselves challenged by the impact of cultural tourism on sacred rock art sites; they thus seek to prevent inappropriate viewing, hearing or reproduction of secret ceremonies, artwork, song cycles and sacred narratives (Graber 2009), all of which cause harm.
- Worldwide, the slow pace of repatriation and reburial – especially of ancestral remains – continues to be a source of great frustration to Indigenous peoples. While great strides have been made in Australia and Canada, the pace elsewhere has been slower. In Sweden, for example, the return of Sámi heritage and Sámi human remains in collections has progressed little in recent years (Ojala and Nordin 2015). In the United States the Native American Graves Protection and Repatriation Act is still the impetus for most repatriations, which means that many ancestral human remains fall outside its legal scope and thus require voluntary, not mandated, return.

Do the types of harms evident in these examples – denigration, destruction or cultural appropriation of heritage sites – constitute a form of violence? For the Ktunaxa, Qat'muk is not a 'place' or 'spiritual focal point' but a living presence; for the peoples of the Big Ears National

Park, that landscape is literally alive with their history. Such connections to the land, and their importance, are well documented. Yet economics continues to take precedence over heritage values. Today the salvage ethnography of nineteenth- and early twentieth-century colonial Australia, the Americas and elsewhere has been replaced by heritage management companies seeking to salvage (and sometimes preserve) the material record of past lifeways for posterity – although this is being countered by activist archaeology in aid of protecting the interests of living peoples.

Case studies

We identify three sectors where violence occurs in heritage contexts: objects, places and information. Each of these has been subject to appropriation, denigration or destruction of heritage that is a denial of Indigenous human rights and a source of significant trauma.

A. Objects

1. Mortuary items and ancestral human remains

The antiquities market has always been dependent on the looting of archaeological sites worldwide, most often burial grounds. The image of over 650 exposed burials at Slack Farm, Kentucky in 1987 remains etched into the memory of many North American archaeologists. Throughout the American Southwest, artefact hunting has often targeted burials as a source of highly desired (and saleable) ancient pottery (such as Mimbres) and other items, as is the case with tomb robbing elsewhere in the world.

Even more egregious has been the collection of body parts, whether as war trophies or ‘ethnographic specimens’, including the heads, skulls and scalps of Indigenous peoples from battlegrounds and burials – practices that cause severe harm to descendant communities (Colwell 2017). While especially common in the nineteenth century (for example, there was a considerable market in Maori *mokomakai* [tattooed heads]), it is only recently that eBay and other online markets have stopped such sales, though they still continue elsewhere (Cumback 2018).

In other contexts, Indigenous peoples consider blood, hair and other body elements, including DNA, to be no different from an individual. For example, in the Maori worldview, Durie (2014, 1141)

notes that ‘people are vulnerable if their body parts, including fluids, fall into malicious hands’. Underlying that fear is a widespread conviction that the mistreatment of body parts, including even a human shadow, can result in mental or physical harm to an individual. This contributes to concerns expressed by Indigenous peoples worldwide about bio-cultural research done by archaeologists, geneticists and others, and the consequences thereof (Kowal et al. 2013).

2. Sacred Items

The procurement and sale of sacred objects is no less harmful. In Australia, sacred items such as tjuringa, cyclons and bullroarers are readily found in online auctions and other venues. Despite protests, there continues to be a market for these, facilitated by internet sales. What is less apparent is that some anthropologists and scholars have caused harm by collecting such items, with or without permission. For example, Theodore Strehlow, who grew up among the Arrernte in central Australia, was entrusted with the songs and ceremonies associated with particular Dreaming locales, and with sacred objects associated with them. He later felt that the elders no longer possessed the requisite knowledge and refused to return these items to those who, in his view, had become the outsiders to Arrernte culture (Cox 2018; Morton 2018).

In the American Southwest, the Hopi have pursued the return of their *katsina* through the French courts (Liljeblad 2017), while the Zuni have sought to procure the return of *Ahayu:da* (Merrill et al. 1993). These wooden effigies are sacred objects of great significance, and the embodiment of spiritual beings. For the Sto:lo of British Columbia, carved stone figurines such as *T’xwelâtse* (‘Man Turned to Stone’) are treated as actual beings, not as representations: ‘T’Xwelâtse is a man. He was turned to stone, but he is still alive’ (Sto:lo Nation 2012, 15). Most archaeologists and heritage managers have little experience with what is literally (in this case) ‘living heritage’, and are thus unaware of its effects on health and wellbeing. The inappropriate use of Indigenous cultural patrimony, such as wearing a T-shirt bearing an ancient rock art image (the embodiment of a spiritual being), may not only be harmful to that society – it may also be considered dangerous, since a spiritual being may be present in that image and harm the wearer.

Some archaeologists refuse to acknowledge claims that some ancient items may have religious significance to contemporary communities. This is still the case in California, where there are significantly

different interpretations of bifurcated sticks found in caches in certain caves. In a recent presentation (McArthur and Robinson 2017), archaeologists contended that these pieces of wood were ‘multi-purpose sticks used in variety of ways’, contrary to the contention of the local Native American tribe that these were ‘spirit sticks’ and thus religious artefacts. The denial of the veracity of the religious beliefs of a person or group causes consternation; so does the position that proof is needed to verify a claim that an object has a religious rather than a utilitarian purpose.

B. Places

Denigration can also occur through a failure to treat important sites and places with the respect and dignity that is accorded comparable sites and places in the wider society, as these three examples indicate.

1. Standing Rock, South Dakota, United States

In 2016 the Standing Rock Sioux tribe led the resistance to the Dakota Access Pipeline. Their concerns were over the path of the pipeline, which desecrated burial grounds, and, more generally, a lack of adequate consultation regarding sites and a failure to recognise the pipeline’s impact on the cultural, spiritual and environmental dimensions of the land and water. Water is an often overlooked aspect of heritage; it not only connects the stories, plants and places, but literally flows through and between all aspects of people’s lives and lands, past and present. Equally concerning was the decision to relocate the pipeline closer to the Native community, but further away from a non-Native community who would not have to bear the future consequences of its construction.

For their part, the archaeological community also highlighted shortcomings in the process. The Society for American Archaeology pointed to potential ‘violations of the Archaeological Resources Protection Act, as well as North Dakota State Law 23–06–27 (the “Protection of Human Burial Sites, Human Remains, and Burial Goods” section of “Care and Custody of the Dead”)’ and to the US Army Corps of Engineers’ ‘past errors in dealing with cultural heritage, human remains, and sacred traditional cultural properties’ (Gifford-Gonzalez 2017). The SAA’s concern was primarily concerned with the impact of the pipeline on tangible heritage and the effect of inadequate mitigation on the archaeological record.

2. Nibutani Dam, Hokkaido, Japan

In northern Japan the construction of the Nibutani Dam in 1973, and the subsequent inundation of a large portion of the Saru river valley severely challenged the livelihood and cultural traditions of the Indigenous Ainu (Maruyama 2012). The Ainu are dependent on the deeply spiritual relationship they have with their land; flooding effectively destroyed some of their burial grounds, *chashi* ('sacred places') and other locales of importance. The expropriation of Ainu land was simply a continuation of centuries of disenfranchisement and assimilation of a people whose traditional territory, Ainu Mosir, once extended far beyond Hokkaido.

In 1997 a court ruling found that the expropriation was illegal, and the cultural and religious significance of the valley had not been considered. The illegality of this massive construction project speaks strongly of the dismissive treatment accorded to the Ainu at that time. In his memoir of Ainu life, Kayana Shigeru writes that 'In the space of a mere 100 years, they [the Japanese state] nearly decimated the Ainu culture and language that had taken tens of thousands of years to come to being on this earth' (Shigeru 1994, 153).

Somewhat ironically, the events at Nibutani ultimately led to the Japanese Diet officially recognising the Ainu as the Indigenous people of Japan in 2008. Today, after centuries of oppression, the Japanese government is supporting Ainu cultural preservation. Yet there is no denying the violence they have endured through discrimination and disenfranchisement, coupled with the loss of heritage sites.

3. Unregistered Graves, Northern Territory, Australia

In the Northern Territory the graves of Aboriginal people in remote communities are not recorded in any register, while those in settler townships are. This traverses the human right for Indigenous peoples to be treated with equality, respect and dignity in regard to the treatment of their dead. Virtually every member of every remote Aboriginal community in the Northern Territory has a relative lying in an unmarked grave in the local cemetery, but they do not know exactly where. The consequences are complex. While the inability to care properly for deceased family members feeds into a general sense of disempowerment, there is also a perception – in a situation where people are continuously and structurally disempowered – that their children are being denied their human rights.

The failure to register the graves of Aboriginal people in remote communities is part of the wider problem of structural racism in the Northern Territory, Australia. Like the infamous Northern Territory National Emergency Response of 2007, which could only be enacted through the suspension of the Racial Discrimination Act 1975, race-based discrimination is enacted through geography. The communities targeted are those in which Aboriginal people reside. While such legislative Acts were acts of commission well into the twentieth century, the failure to register the graves of Aboriginal people in remote communities was an act of omission. Both are a failure to recognise and protect human rights in Australia.

This is a Territory-wide problem: we estimate that there are around 5000 unmarked Aboriginal graves across the Territory. While some remote communities are tiny and/or recent, others have been around for more than a century. Larger communities could have hundreds of unmarked graves. While new cemeteries legislation is being drafted that will likely have similar requirements for urban and regional cemeteries, this will be relevant only in terms of future graves. So far the Northern Territory government has refused to allocate resources to the recording of existing graves.

C. Information/Intellectual Property

The right to ‘maintain, control, protect and develop their intellectual property over their cultural heritage’ is enshrined in Article 31 of United Nation’s (2007) Declaration on the Rights of Indigenous People. These rights can be threatened or traversed, however, when Indigenous cultural knowledge is improperly disseminated or used.

1. Australia

Moorcroft and Byrne have pointed out that ‘the mass of documentation on Indigenous people in libraries and archives has been collected, analysed and discussed by government officers, anthropologists, historians and others but sometimes not even seen by the indigenous people it covers’ (Moorcroft and Byrne 1996, 87). In 1989 Henrietta Fourmile, a Yidinjdji woman and researcher, lamented that ‘The information collected about us is simply not owned by us’ (Fourmile 1989, 4). Today many researchers work on the basis of informal agreements, and appropriate protocols for collecting and

sharing Indigenous knowledge have been developed for a number of contexts (for example, Jackson and Smith 2005). The approach advocated emerges from a number of polemical disputes.

In the past, Indigenous knowledge collected by a researcher was distributed at the researcher's discretion, without seeking approval from the Indigenous people concerned. This led to several acrimonious disputes concerning the publication of photographs of secret-sacred ceremonies of Aboriginal people in Central Australia. The best-known controversy was the publication of photographs taken by anthropologist Ted Strehlow. This prompted a call for the return of ceremonial objects given into his care by Elders many years earlier (Morton 2018). Likewise, Charles Mountford's book *Nomads of the Australian Desert* (1976) contained detailed information on secret-sacred men's ceremonies, as well as photographs that should not have been viewed by women, children or uninitiated boys. If viewed by the wrong people, the traditional punishment was death.

This latter case engendered a legal dispute that would change the ethical parameters of archaeology and anthropology in Australia. In *Foster v Mountford and Rigby Ltd* (1976), members of the Pitjantjatjara Council used a breach of confidence action successfully to obtain an injunction preventing *Nomads of the Australian Desert* from being distributed in the Northern Territory, on the grounds that it contained information that could only have been shown or revealed to the author in confidence. Furthermore, the plaintiffs successfully argued that the 'revelation of the secrets contained in the book to their women, children, and uninitiated men may undermine the social and religious stability of their hard-pressed community' (Australian Government's Attorney General Department 1994). Further publication of this book was prevented on the grounds that the author had breached confidentiality (Moorcroft and Byrne 1996, 91).

2. Ancient DNA

Today, genomics challenges long-held understandings of individual and group identity. Issues of identity are of particular importance for Indigenous peoples, for whom scientific pronouncements about identity claims may have profound social, cultural, political and economic consequences. While new genetic information yields new insights into population origins, movements and admixtures

to address archaeological – or, increasingly, community-raised questions – it is often provided without context (Pullman and Nicholas 2012). There is also a long and unfortunate history of scientific and medical studies conducted on Indigenous populations without free, prior and informed consent (see TallBear 2013 for one review). Participation in such studies, whether self-initiated or not, makes an individual's genetic profile (usually anonymised) available to others. In addition, a person's decision to go ahead with DNA testing might bring others into the conversation, whether they want to be present or not.

The genetic and biological information derived from archaeological and related studies may also challenge Indigenous peoples' identity and claims, the repatriation of ancestral human remains, band enrollment and attaining federal recognition as an Indigenous group (Walker et al. 2016). Increasingly, Indigenous peoples are partnering in research projects that can yield information of importance to them, including revealing connections to ancestral populations. Perhaps the best known controversy is that of the Ancient One, also known as Kennewick Man, whose remains were found on the banks of the Columbia river in Washington State, USA, in 1996. For almost two decades, the skeletal remains of this 9000-year old individual were the focus of a battle for custody by a coalition of Native American tribes from that region and archaeologists largely based at the Smithsonian Institution's National Museum for Natural History (Watkins 2004; Burke et al. 2008). Although the legal resolution of this long-standing debate was dependent upon the aDNA analysis, which verified the claims of the Colville-Umatilla Confederacy, considerable harm was done to the claimants, and more generally to Indigenous peoples, when pressed to validate their claims.

Examples of the problematic use of aDNA in scientific studies and its (potential) harm for Indigenous peoples are outlined by Walker et al. (2016). In eastern Canada, the identity of the historic (and extinct) Beothuk and relationship to both earlier archaeological populations and contemporary First Nations has been questioned (for example, Duggan et al. 2017). This is more than an academic issue, as it has complicated requests by the Mi'kmaq to have Beothuk and other remains repatriated. Bolnick notes that 'because Western understandings of relatedness are largely biogenetic in nature, we give DNA substantial power to adjudicate questions

about anything associated with relatedness' (Bolnick 2016, 13). This can result in biological indicators being used to deny culturally defined affinity and to upset long-held religious beliefs or oral traditions.

Writing of the Beothuk identity, Pullman argues that the common narrative of colonial oppression, which all Indigenous peoples share, should figure prominently in particular discussions about repatriation – whether or not a definitive biological or cultural link or unbroken lineal descent can be established to specific remains (Pullman 2017, 18). Accordingly, we would argue that Chief Mi'sel Joe has the moral authority to speak on behalf of the Beothuk based on this shared historical narrative and on his current role as an Indigenous leader in the continuing story of the Aboriginal presence in Newfoundland. Biology and culture are not irrelevant to this discussion, but neither are they determinative.

Respecting Indigenous rights

How do notions of heritage protection change when we shift to a human rights-based model that also acknowledges Indigenous conceptions of responsibility? What can be done with, by and for Indigenous peoples to give them increased control and support in reclaiming their heritage and traditional practices? Developing practical and achievable strategies for protecting Indigenous heritage needs to be pursued via three specific goals:

1. Developing a fuller, less Western-centric understanding of 'heritage' that will enable more informed and equitable decision-making in the protection of objects, places and information of value to descendant communities and public understanding thereof
2. Assessing the limitations of existing heritage protection policies in Canada in order to make recommendations for their revision and more effective implementation
3. Working with Indigenous community leaders, heritage management professionals and government representatives to: (a) identify alternate models of heritage preservation and protection that acknowledge and incorporate community-based heritage values and protect Indigenous rights; (b) consider the viability of a national action plan for this.

Indigenous rights and national interests

In Canada recent developments in constitutional and international human rights law have set the stage for a much-needed reassessment and reformulation of ineffective heritage laws and policies. The shift from thinking about heritage as property to viewing heritage as an essential aspect of human rights in international law is supported by the findings of Canada's Truth and Reconciliation Commission and the UN's Declaration on the Rights of Indigenous Peoples (UNDRIP), which includes the right to self-determination. While governments are being challenged for their ineffective and unequitable heritage protection policies, scholars and practitioners from many sectors can provide the intellectual leadership and evidence base to support this shift. At the same time, the government's support for Indigenous rights continues to be uneven in the face of government-supported economic initiatives (for example, Coastal GasLink Pipeline [Temper 2018]). Similar seemingly contradictory government and/or legislative challenges continue to play out in the United States (Bears Ears National Park), Sweden (MacNeil 2017) and elsewhere, as well as the legal standing of Traditional Knowledge.

It is also a one-step-forward and one-step-back situation in Australia. Positive developments include an increased recognition of the role of Indigenous peoples in managing heritage and greater acceptance of the nexus between cultural and environmental heritage, including widespread recognition of the cultural values of water. In Victoria the use of traditional fire knowledge as a land management tool is being developed in a partnership between land care groups and traditional custodians – in part a response to devastating bushfires in recent years. A major development in shared responsibility is the Kungun Ngarrindjeri Yunnan (Listening to Ngarrindjeri People Talking) Agreement between the South Australian Government and the Ngarrindjeri Regional Authority. This ensures that the Ngarrindjeri have an active role in caring for lands and waters, and benefit from the management of parks and reserves within their native title claim.

Overall, however, heritage legislation in Australia is seriously defective, due to both state and federal governments prioritising development. Across Australia developers are able to seek ministerial consent to 'disturb' any Aboriginal site in the state and have the right to appeal such ministerial decisions, while the traditional custodians and/or native title holders have no such right. There have been some notable backward steps as well: the once world-leading Australian Heritage Commission was replaced in 2003 by the Australian Heritage Council, with severely curtailed powers

and minimal budget. More recently the Western Australian government have changed the criteria for classifying heritage sites so that they have to show current 'religious activity' to qualify for listing. This has resulted in the delisting of many sites, and a dramatic reduction in the number of eligible sites in the face of expedited development.

Worldwide, assessment and development decisions continue to engender the cumulative, incremental destruction of Indigenous cultural heritage. It is difficult to determine the overall impact as there is no nationally co-ordinated data about the condition and integrity of Indigenous heritage places. Situations such as this are contrary to a key provision in the UN Declaration on the Rights of Indigenous Peoples – the requirement that governments obtain Indigenous Peoples' 'free, prior, and informed consent' before embarking on any development project or action that affects territory.

Indigenous rights and academic institutions

Responsibility has to be borne by institutions as well as researchers. All too often, research focusing on Indigenous peoples is seen by them as yet another form of colonialism – a mining of their culture, their knowledge. Their heritage is often viewed as public domain, free for the taking or the researching of, especially in archaeological contexts. Today universities require ethics approval for research involving living peoples, which is an important development. Yet university-based Indigenous research seldom adequately addresses the significant power inequalities that exist between researchers and communities, especially in terms of providing fair and equitable benefit flows and of data ownership.

One of the clearest examples of an institution denigrating the rights of Indigenous people is the dispute between the University of Western Australia and Aboriginal groups in relation to the field notes of anthropologist Ronald Berndt, which are under a 30-year embargo. This embargo includes interviews with a senior Ngadjuri man, Barney Warria, collected by Berndt between 1939 and 1944 (Berndt 1987, 15; see also Gray 2014). The Ngadjuri have attempted to gain access to the field notes since the early twenty-first century. They argue that there is no legal basis for the current embargo as the field notes are rightfully the shared intellectual property of both Berndt and Warria. However, Barney Warria's biological grandson, Ngadjuri Elder Vince Copley, contends that the field notes could not have been produced by either Berndt or Warria by himself. This is shared intellectual property since one shared his specialist

knowledge while the other recorded it (see Smith et al. 2018). Moreover, much of Barney Warria's knowledge was recorded 'verbatim' in Berndt's field notes (Berndt 1987, 27).

Today the University of Western Australia is the responsible body, but it takes the position that it is required by law to maintain the integrity of Catherine Berndt's will. The University has rejected numerous and repeated attempts by Aboriginal groups to access the field notes, other than on two occasions when directed by court order in relation to native title claims. As it stands, the embargoed material – held in the Berndt Museum at the university – will not be accessible until 2024. One of the most confounding aspects of this is that the situation has not changed since the lament of Henrietta Fourmile in 1989 (p. 144) and the observation of Colin Tatz in 1979: 'For Aborigines the ultimate indignity is the sovereignty of those who control the gathering and dissemination of the written and spoken word concerning their situation' (Tatz 1979, 86).

Conclusions

We have both worked with and for Indigenous communities for decades in aid of heritage protection, sometimes as facilitators, sometimes as conduits. Our approach is grounded in the rights of Indigenous peoples to control their cultural and intellectual property (see Nicholas and Banister 2004; Smith and Jackson 2008), and also our sometimes-activist stance. One statement we have frequently encountered is 'We are tired of talking; we want action'. To many Indigenous people, the loss of heritage objects and places is not a matter of academic discourse about 'the loss to science', or 'how our understanding of the human past is diminished'. It is, instead, the destruction of burial grounds and sacred places. For them, the appropriation and misuse of intangible Indigenous heritage constitutes a form of violence and an abuse of human rights that directly and detrimentally affects their wellbeing and identity. It is death, or at least serious damage, by a thousand cuts.

At a global level, there is some recognition that heritage loss affects more than just objects. In 2017 the UN Security Council unanimously approved a resolution condemning the destruction of cultural heritage. Irina Bokova, head of UNESCO, stated: 'Heritage is identity – it is belonging,' she told the Council after the vote. 'The deliberate destruction of heritage is a war crime – it has become a tactic of war, in a global strategy of cultural cleansing.' Bokova went on to explain that this is why defending cultural heritage 'is a security imperative, inseparable from that of

defending human lives' (Lederer, *Times of Israel*, 25 March 2017). As with UNDRIP, action is needed, not just words.

But real action requires real commitment on the ground. We urge researchers to undertake their responsibilities in such a way that they comply with human rights principles and, where possible, place major human rights issues on political and public agendas:

One cannot help but exert an agenda-setting effect simply by calling attention to under-served categories of people and contrasting their circumstances to the allegedly universal standards to which human rights advocates claim to subscribe. In this sense, my methodology was inevitably political.

(Carpenter 2012, 377)

Acknowledgements

We thank Veysel Apaydin for his kind invitation to contribute to this volume and Carl-Gosta Ojala for his assistance. Catherine Bradley provided thoughtful copy-editing. We thank the Elders and communities who we have worked with over the years for their teachings, and the students who contributed to our fieldwork.

Note

1. Our focus in this chapter is on Western contexts, but we are well aware of comparable tensions in Asian (i.e. Eastern) contexts with Indigenous Ainu, Taiwanese, Hmong-Mien, Uyghurs and others.

References

- Anderson, C., ed. 1995. *Politics of the Secret*. Sydney: Oceania Monograph 45, University of Sydney.
- Anderson, J. and Geismar, H., eds. 2017. *The Routledge Companion to Cultural Property*. London; New York: Routledge.
- Antons, C. and Logan, W., eds. 2018. *Intellectual Property, Cultural Property and Intangible Cultural Property*. London; New York: Routledge.
- Atleo, E. R. 2011. *Principles of Tsawalk: An Indigenous Approach to Global Crisis*. Vancouver: UBC Press.
- Australian Government's Attorney General Department 1994. 'Stopping the Rip Offs. Intellectual Property Protection for Aboriginal and Torres Strait Islander Peoples', Issues paper. <http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=E0259612EB4D632C4A8E8E8DBA6E-4DC9?doi=10.1.1.525.1789&rep=rep1&type=pdf>.
- Baird, M. 2014. 'Heritage, Human Rights, and Social Justice', *Heritage & Society* 7(2): 139–55.
- Barker, A. W. 2018. 'Looting, the Antiquities Trade, and Competing Valuations of the Past', *Annual Review of Anthropology* 47, 455–74.
- Bernbeck, R. 2008. 'Structural Violence in Archaeology', *Archaeologies* 4:3, 390–412.

- Berndt, R. 1987. 'Panaramittee Magic', *Records of the South Australian Museum* 20, 15–28.
- Bolnick, Deborah. 2016. 'The Risks and Benefits of Inferring Relatedness, Identity, and Cultural Affiliation from Ancient DNA', in A. Walker, B. Egan and G. Nicholas, eds, *The Changing Role of Genetics in Indigenous Rights, Tribal Belonging, and Repatriation: Symposium Proceedings*, IPinCH Project. Burnaby, BC: Simon Fraser University, 13–18. https://www.sfu.ca/ipinch/sites/default/files/resources/reports/dna_symposiumproceedings_2016.pdfh.
- Borrows, J. 2017. 'Policy Paper: Implementing Indigenous Self-Determination through Legislation in Canada.' <http://www.afn.ca/wp-content/uploads/2018/09/2017-04-20-Implementing-Indigenous-self-determination-through-policy-legislation.pdf>.
- Burke, H., Smith, C., Lippert, D., Watkins, J. and Zimmerman, L., eds. 2008. *Kennewick: Perspectives on the Ancient One*. Walnut Creek, CA: Left Coast Press.
- Carpenter, C. 2012. "'You Talk of Terrible Things So Matter-of-Factly in This Language of Science': Constructing Human Rights in the Academy', *Perspectives on Politics* 10:2, 363–83.
- Colwell, C. 2017. *Plundered Skulls and Stolen Spirits. Inside the Fight to Reclaim Native American Culture*. Chicago: University of Chicago Press.
- Cox, J. L. 2018. *Restoring the Chain of Memory: T. G. H. Strehlow and the Repatriation of Australian Indigenous Knowledge*. Sheffield and Bristol: Equinox.
- Cumback, K. 2018. 'A Bone to Pick with International Law: The Ghoulish Trade in Human Remains', *Michigan State International Law Review* 26:2, 335–71.
- Doelle, W. H. 2017. *Bears Ears Archaeological Experts Gathering: Assessing and Looking Ahead*. Archaeology Southwest. https://www.archaeologysouthwest.org/pdf/Bears_Ears_Report.pdf.
- Duggan, A. T. et al. 2017. 'Genetic Discontinuity between the Maritime Archaic and Beothuk Populations in Newfoundland, Canada', *Current Biology* 27, 3149–56.
- Durie, M. 2004. 'Understanding Health and Illness: Research at the Interface between Science and Indigenous Knowledge', *International Journal of Epidemiology* 2004:33, 1138–43.
- Fourmile, H. 1989. 'Who Owns the Past? Aborigines as Captives of the Archives', *Aboriginal History* 13:1, 1–8.
- Gifford-Gonzalez, D. 2017. 'Letter to Lieutenant General Todd Semonite on behalf of the Society for American Archaeology.' Government Affairs and International Government Affairs Update to SAA Members, September 2017.
- Gould, R. J. 1969. *Yiwarra. Foragers of the Australian Desert*. New York, NY: Charles Scribner's Sons.
- Graber, C. B. 2009. 'Aboriginal Self-Determination vs. the Propertisation of Traditional Culture: The Case of sacred Wanjina Sites', *Australian Indigenous Law Review* 13:2, 18–34.
- Gray, G. 2014. "'He has not followed the usual sequence": Ronald M. Berndt's Secrets', *Journal of Historical Biography* 16, 61–92.
- Hamilakis, Y. 2003. 'Iraq, Stewardship and "The Record": An Ethical Crisis for Archaeology', *Public Archaeology* 3, 104–11.
- Hardy, S. A. 2016. 'Illicit trafficking, provenance research and due diligence: the state of the art', http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Hardy_2016_UNESCO_antiquities_trafficking_review_materia.pdf
- Harrison, R. 2010. 'The Politics of Heritage', in R. Harrison, ed., *Understanding the Politics of Heritage*. Manchester: Manchester University Press, 154–96.
- Hirini, R. 2018. 'The world's largest rock art collection could be destroyed this century', <https://www.sbs.com.au/nitv/nitv-news/article/2018/03/23/worlds-largest-rock-art-collection-could-be-destroyed-within-century>.
- Hollowell, J. and Nicholas, G., eds. 2009. 'Decoding Implications of the Genographic Project for Archaeology and Cultural Heritage', *International Journal of Cultural Property* 16:2, 103–220.
- Hunt, J. and Ellsmore, S. 2016. 'Navigating A Path Through Delays and Destruction: Aboriginal Cultural Heritage Protection in New South Wales Using Native Title and Land Rights', in P. McGrath, ed., *The Right to Protect Sites: Indigenous Heritage Management in the era of Native Title*. Canberra: Australian Institute of Aboriginal and Torres Strait Islander Studies, 77–111.
- Isaac, J. C. 2012. 'New Approaches to the Study of Violence', *Perspectives on Politics* 20:2, 235–41.
- Jackson, G. and Smith, C. 2005. 'Living and Learning on Aboriginal Lands: Decolonising Archaeology in Practice', in C. Smith and H. M. Wobst, eds, *Indigenous Archaeologies: Decolonising Theory and Practice*. London; New York: Routledge, 326–49.
- Kapchan, D. 2014. *Cultural Heritage in Transit: Intangible Rights as Human Rights*. Philadelphia: University of Pennsylvania Press.

- Kowal, E., Radin, J. and Reardon, J. 2013. 'Indigenous Body Parts, Mutating Temporalities, and the Half-lives of Postcolonial Technoscience', *Social Studies of Science* 43:4, 465–83.
- Langfield, M., Logan, M. and Craith, M. N., eds. 2010. *Cultural Diversity, Heritage and Human Rights. Intersections in Theory and Practice*. London; New York: Routledge.
- Lederer, E. 2017. 'UN warns destroying cultural heritage may be war crime', *Times of Israel*, 25 March 2017. <https://www.timesofisrael.com/un-warns-destroying-cultural-heritage-may-be-war-crime/>.
- Lenzerini, F. 2016a. 'Cultural Identity, Human Rights, and Repatriation of Cultural Heritage of Indigenous Peoples', *The Brown Journal of World Affairs* 23:1, 127–41.
- Lenzerini, F. 2016b. 'Terrorism, Conflicts, and the Responsibility to Protect Cultural Heritage', *The International Spectator* 51:2, 70–85.
- Liljeblad, J. 2017. 'The Hopi, the katsinam, and the French Courts: Looking Outside the Law in the Repatriation of Indigenous Cultural Heritage', *International Journal of Heritage Studies* 23:1, 41–51.
- McArthur, D. and Robinson, D. 2017. "'Cave Sticks'? An Investigation into the Use and Purpose of Bifurcated Sticks Found in Cache Caves.' Paper presented at the Society for American Archaeology, Vancouver.
- McLay, E., Bannister, K., Joe, L., Thom, B. and Nicholas, G. 2008. 'Al'hut tu tet Sul'hweentst "Respecting the Ancestors": Understanding Hul'qumi'num Heritage Laws and Concerns for Protection of Archaeological Heritage', in C. Bell and V. Napoleon, eds, *First Nations Cultural Heritage and Law: Cases Studies, Voices and Perspectives*. Vancouver: UBC Press, 158–202.
- MacNeil, K. S. 2017. *Extractive Violence on Indigenous Country: Sami and Aboriginal Views on Conflicts and Power Relations with Extractive Industries*. Umea: Centre for Sami Research, Umea University.
- Maruyama, H. 2012. 'Ainu Landowners' Struggle for Justice and the Illegitimacy of the Nibutani Dam Project in Hokkaido Japan', *International Community Law Review* 14, 63–80.
- Merrill, W. L., Ladd, E. and Ferguson, T. J. 1993. 'The Return of the Ahayu:da: Lessons for Repatriation from Zuni Pueblo and the Smithsonian Institute', *Current Anthropology* 34:5, 523–67.
- Moorcroft, H. and Byrne, A. 1996. 'Intellectual Property and Indigenous People's Information', *Australian Academic & Research Libraries* 27:2, 87–94. DOI: 10.1080/00048623.1996.10754962.
- Morton, J. 2018. 'The Strehlow collection of sacred objects.' <https://www.clc.org.au/index.php?/articles/info/strehlow/>.
- Mountford, C. 1976. *Nomads of the Australian Desert*. Adelaide: Rigby.
- Murphy, B. L., ed. 2016. *Museums, Ethics and Cultural Heritage*. London; New York: Routledge.
- Newson, P. and Young, R. 2018. 'Conflict, People, Heritage, and Archaeology', in P. Newson and R. Young, eds, *Post-Conflict Archaeology and Cultural Heritage: Rebuilding Knowledge, Memory and Community from War-Damaged Material Culture*. London; New York: Routledge, 3–19.
- Nicholas, G. 2017. 'Touching the Intangible: Situating Material Culture in the Realm of Indigenous Heritage Research', in J. Anderson and H. Geismar, eds, *The Routledge Companion to Cultural Property*. London; New York: Routledge, 212–31.
- Nicholas, G. and Bannister, K. 2004. 'Copyrighting the past?: Emerging intellectual property rights issues in archaeology', *Current Anthropology* 45:3, 327–50.
- Ojala, C.-G. and Nordin, J. M. 2015. 'Mining Sápmi: Colonial Histories, Sámi Archaeology, and the Exploitation of Natural Resources in Northern Sweden', *Arctic Anthropology* 52:2, 6–21.
- Pullman, Daryl. 2017. 'Bioarchaeology, Bioethics, and the Beothuk', *American Anthropologist* 120:1, 11–23.
- Pullman, D. and Nicholas, G. 2012. 'Intellectual Property and the Ethical/Legal Status of Human DNA: The (Ir)Relevance of Context', *Inuit Studies* 35:1 and 2, 146–64.
- Schmidt, Peter R. 1996. 'The Human Right to a Cultural Heritage African Applications', in Peter R. Schmidt and Roderick McIntosh, eds, *Plundering Africa's Past*. Bloomington: University of Indiana, 18–28.
- Shigeru, K. 1994. *Our Land was a Forest: An Ainu Memoir*. Boulder: Westview Press.
- Silverman, H. and Ruggles, D. F., eds. 2007. *Cultural Heritage and Human Rights*. New York: Springer.
- Smith, C. 2007. 'Visa Stories: Human Rights, Structural Violence and Ethical Globalization', *Archaeologies* 3:2, 179–85.
- Smith, C. and Jackson, G. 2008. 'The Ethics of Collaboration. Whose Culture? Whose Intellectual Property? Who Benefits?', in C. Colwell-Chanthaphonh and T. J. Ferguson, eds, *Collaboration in Archaeological Practice: Engaging Descendent Communities*. Walnut Creek, CA: AltaMira Press, 171–91.

- Smith, C. and Wobst, H. M. 2005. 'Archaeology for Social Justice', in C. Smith and H. M. Wobst, eds, *Indigenous Archaeologies: Decolonising Theory and Practice*. London; New York: Routledge, 390–2.
- Smith, C., Copley Sr, V. and Jackson, G. 2018. 'Intellectual Soup: On the Reformulation and Repatriation of Indigenous Knowledge', in V. Apaydin, *Shared Knowledge, Shared Power. Engaging Local and Indigenous Heritage*. New York: Springer, 1–28.
- Smith, L. and Akagawa, N., eds. 2009. *Intangible Heritage*. London; New York: Routledge.
- Soderland, H. A. and Lilley, I. A. 2015. 'The Fusion of Law and Ethics in Cultural Heritage Management: The 21st Century Confronts Archaeology', *Journal of Field Archaeology* 40:5, 508–22.
- Sto:lo Nation and Sto:lo Research and Resource Management Centre. 2012. *Man Turned to Stone: T'swelátse*. Abbotsford, BC: The Reach Gallery.
- TallBear, K. 2013. *Native American DNA: Tribal Belonging and the False Promise of Genetic Science*. Minneapolis, MN; University of Minnesota Press.
- Tatz, C. M. 1979. *Race Politics in Australia: Aborigines, Politics and Law*. Armidale, N.S.W.: University of New England.
- Temper, L. 2018. 'Is the next Standing Rock looming in northern B.C.?', *The Conversation (Canada)*, 12 December 2018. <https://theconversation.com/is-the-next-standing-rock-looming-in-northern-b-c-108461>.
- United Nations. 2007. *Declaration on the Rights of Indigenous Peoples*. Available at: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>. Accessed 12 October 2019.
- United Nations. 2018. *Human Rights*, Available at: <http://www.un.org/en/sections/issues-depth/human-rights/>. Accessed 12 October 2019.
- Walker, A., Egan, B. and Nicholas, G., eds. 2016. 'DNA and Indigeneity: The Changing Role of Genetics in Indigenous Rights, Tribal Belonging, and Repatriation', *Symposium Proceedings*. Burnaby, BC: IPinCH Project, Simon Fraser University, https://www.sfu.ca/ipinch/sites/default/files/resources/reports/dna_symposiumproceedings_2016.pdf.
- Watkins, J. 2004. 'Becoming American or Becoming Human?', *Journal of Social Archaeology* 4:1, 60–80.
- Weiss, T. G. and Connelly, N. 2017. *Cultural Cleansing and Mass Atrocities. Protecting Cultural Heritage in Armed Conflict Zones*. J. Paul Getty Trust Occasional Papers in Cultural Heritage Policy 1. Los Angeles: J. Paul Getty Trust.
- Zimmerman, L. 1989. 'Made Radical by My Own: An Archaeologist Learns to Understand Reburial', in R. Layton, ed., *Conflict in the Archaeology of Living Traditions*. London: Unwin Hyman, 60–7.