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A tale of two cities: the just war tradition and cultural heritage in times of war

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ABSTRACT
This article explores the plight of cultural heritage within the just war tradition. It traces the fate of two cities seen through the eyes of just war thinkers across time: Corinth and Tenochtitlan. This provides a useful heuristic tool to explore some of the tensions related to cultural heritage in times of war: the necessity tension (the dilemmas that military planners and soldiers face when deciding whether to destroy or preserve cultural heritage sites to advance toward victory) and the civilizational paradox (who defines which sites are intrinsically valuable), but also the magnanimity principle – the positive effects that could ensue in choosing not to pursue the full range of acts the laws of war permit in times of necessity. The story developed here is largely chronological in nature, spanning ancient Rome to the eighteenth century, and is largely a jus in bello story. However, it follows two distinct streams of just war thought represented by the plight of Corinth and Tenochtitlan that converge with the idea of cultural heritage as we understand it today, articulated explicitly by Vattel in the eighteenth century. It concludes with lessons this genealogy can teach us about the perennial moral dilemmas.

I. Introduction

As the world clamoured in uproar at the destruction of precious historic sites and artifacts at the hands of the Islamic State group (also called ISIS), our thoughts naturally turned to imagining ways to protect these vestiges of the past for the sake of humanity’s future. One of these ways, potentially, is by waging a just war. What, one might ask, does the just war tradition have to say about the relationship between war and cultural heritage? How can the ideas and debates within this tradition shed light on contemporary dilemmas facing the international community?

In this essay, I trace the discussion about war and cultural heritage from the just war tradition’s ancient roots in Greek and Roman thought, through the Middle Ages, to early modern thinkers including Grotius and Vattel. The latter, in particular, were highly influential intellectual antecedents to contemporary treaties and international laws that delineate the normative and legal protections afforded to cultural heritage in times of war. These include the 1954 Convention for the Protection of Cultural Property...
in the Event of Armed Conflict, and the updated 1999 Second Protocol to the Hague Convention of 1954. As we will see, the discussions within the tradition revolved almost entirely around *jus in bello* concerns – namely the level of protection that ought to be afforded to cultural heritage sites in war, and under what conditions they might be destroyed. Some discussions did explore *jus post bellum* concerns, including the long-term effects on peace if certain objects or cultural sites were destroyed (or preserved) as well as the prospect for divine retribution if sacred sites were ravaged. But what is strikingly absent is a conclusive discussion of *jus ad bellum* concerns – just war thinkers have said little about protecting cultural heritage sites as a reason for going to war.

Before we begin, it is important to clarify a few key terms. By cultural heritage, I follow the definition provided by UNESCO: ‘The legacy of physical artifacts and intangible attributes of a group or society that are inherited from past generations, maintained in the present and bestowed for the benefit of future generations’.\(^1\) These include movable cultural heritage (paintings, sculptures, coins, manuscripts) and immovable cultural heritage (monuments, archaeological sites, buildings). Of course, what we mean by cultural heritage today may not necessarily apply in previous eras. For example, the protected status of a church from the ravages of war in the time of Vattel, writing in the eighteenth century, was not the same as that of religious sites in Cicero’s ancient Rome. The same might be said of religious texts or statues – what we might consider intrinsically valuable as a treasure of humanity’s diversity today (e.g. Mayan codices or pagan statues) did not have such value in the sixteenth century of the Spanish theologians of Salamanca. Moreover, there is a difference between recognizing the aesthetical value of objects, which is a matter of perspective, compared to esteeming their cultural worth, which requires a deeper recognition of those who produced them and the place these objects occupy within the fabric of their society. Thus, part of the story I want to tell involves understanding *when* and *why* such places and objects attained the status of protected cultural heritage in times of war, and *who* decided.

The just war tradition is a body of thought that addresses the rights and wrongs of warfare, spanning roughly the time period from Cicero (with antecedents in ancient Greece), through the classical period (Augustine to Aquinas via Gratian) to the early modern period (Vitoria, Grotius) to the period of secularization (Vattel). As Alex Bellamy describes it, the tradition ‘is fragmented, comprising many different sub-traditions … none of which permanently prevail over the others. In this sense, it is the conversation that is important’. These sub-traditions include ‘scholasticism, neo-scholasticism, canon law, chivalric code, holy war, secular natural law, positive law, various types of reformism, and realism’.\(^2\) They combine to form a body of thought, a set of tropes and themes, that addresses concerns of *jus ad bellum, jus in bello*, and *jus post bellum*. Importantly, and as is the case with cultural heritage, these recurrent themes have been subject to change as different streams of just war thought are adopted, discarded, and reemerge.\(^3\)

To explore the arguments about cultural heritage within the tradition, I look at the fate of two cities that animate the philosophical deliberations: Corinth and Tenochtitlan. Corinth, considered one of the jewels of the ancient world, was destroyed by the Romans, earning the rebuke of Cicero. Its unnecessary destruction was later to become a beacon in Vattel for moderation in war devised to protect cultural heritage. Tenochtitlan, the capital of the Aztec empire whose splendours were marvelled upon by the Spanish
conquistadors, was razed out of necessity to win the war, but this destruction also served the spread of Christianity by eliminating pagan idols and temples. While all modern just war thinkers lamented the cruelty of the Spanish conquest and massacre of indigenous populations in an unjust war, the fate of cultural heritage is more convoluted. Vitoria, for example, recognized the potential legitimacy of destroying temples to help the spread of Christianity. Vattel, on the other hand, suggested that the Aztecs, had they not been decimated, would have had the right to revolt against their Spanish conquerors and restore their liberty, presumably also retaining the right to rebuild their temples.

The fate of these two cities across the just war tradition is a useful heuristic tool to explore some of the tensions related to cultural heritage in times of war. In what follows, I argue that the ideas relating to war and cultural heritage sites highlight important tensions and ideals that frame ethical debates about war, both in the past and today. These include what I call the necessity tension (the dilemmas that military planners and soldiers face when deciding whether to destroy or preserve cultural heritage sites to advance toward victory) and the civilizational paradox (who defines which sites are intrinsically valuable), but also the magnanimity principle – the positive effects that could ensue in choosing not to pursue the full range of acts the laws of war permit in times of necessity.

The story I tell here is largely chronological in nature, but it follows two streams of just war thought that converge with the idea of cultural heritage as we understand it today, articulated explicitly by Vattel. This view emerges as a positive right placed on the just warrior to protect the cultural heritage of the enemy in times of war. One stream follows the fate of Corinth. It begins with Cicero, disappears in the Christian Middle Ages, only to resurface with Vattel. The eighteenth century Swiss thinker, greatly indebted to Roman ideals of the ius gentium, argued that cultural objects had a universal value for humanity as a whole, and were thus in general worthy of being preserved, even in the throes of war. The other stream has its origins in the emergence of Christian just war ideas in the Middle Ages, and follows the repudiation of arguments for holy war that came to light with Francisco de Vitoria, whose views articulated in the sixteenth century set the foundation for arguments about sovereignty that would coalesce with Vattel. Tracing how we arrived at Vattel’s viewpoint via these two streams of just war thought illuminates the challenges surrounding who defines what is deemed as cultural heritage, why, and what is excluded. While the theoretical route to Vattel’s argument was via a broader set of arguments about the ius gentium and avoiding harm to noncombatants that has roots in ancient Rome and the Christian Middle Ages, the fate of what we would refer to today as cultural heritage in war diverges at times from that of noncombatants. This makes it a different jus in bello story worthy of being told.

II. Corinth

The just war tradition has intellectual antecedents in the world of the ancients. ‘We can detect’, writes Cian O’Driscoll, ‘a whole lifeworld of ideas homologous to our understanding of just war in Ancient Greek and Roman society’. The ‘prehistory of the just war tradition’, as he calls it, provides an ‘exciting seam to mine’ for insight into the pressing challenges we face today. Margaret Miles writes that Cicero was the first thinker to discuss what should happen to social objects – for that is the essence of cultural heritage – in times of war. She argues that the Roman experience, with Cicero as the source of
authority, helped shape the historical genesis for our concepts of ‘cultural property’ and ‘cultural heritage’, and the associated laws of war. She also argues that Grotius, whose ideas deeply influenced Vattel, held ‘a pervasive cultural respect for Cicero as an authority, all the more authoritative because he was ancient and Roman. The cultural weight of classical antiquity, with Cicero as its primary spokesperson … helped create new views in European societies that remained receptive to classical ideals despite historical distance’. This is a considerable leap that misses important points about the development of *jus in bello* norms that I will cover below, but it does point to the clear point of departure of our story: Ancient Rome.

Cicero’s thought on just war needs to be understood in the broader context of international relations in antiquity, in which certain states were part of a community that ‘had a very conscious sense of dealing with one another as equals and within a system that regarded each as being ‘civilized’ and not barbaric’. The norms regarding warfare were part of this sense of mutual understanding, and permeated Roman military activities. However, Rome’s worldview that clearly distinguished between the civilized and the barbarians would impact how it fought its wars, and what respect was ultimately paid to the cultural heritage of its enemies. In others words, we find in Roman thought an ancient manifestation of what I term the civilizational paradox.

The unwritten rules of war were not always observed, and Cicero took a stab at embedding the ethics of war in a broader moral project based on duty. His ideas on just war were clearly articulated in his treatise on duties (*De Officiis*). While seeing war as an inevitable part of human relations, he recognized an inherent ‘limit to retribution and to punishment’, which meant that for a state ‘in its external relations, the rights of war must be strictly observed’. Cicero thus argued that one cannot resort to war unless all recourses to peaceful resolution have failed and a formal declaration has been given, and unless the reason for waging war was to live in peace unharmed. Moreover, certain rules must be followed during war, while enemies who have not acted barbarously must be treated well after the war’s conclusion:

> For instance, our forefathers actually admitted to full rights of citizenship the Tusculans, Aequians, Volscians, Sabines, and Hernicians, but they razed Carthage and Numantia to the ground. *I wish they had not destroyed Corinth; but I believe they had some special reason for what they did—its convenient situation, probably—and feared that its very location might some day furnish a temptation to renew the war.*

The disapproving reference to the sack of Corinth is important for it draws our attention to the plight of cultural heritage.

Corinth was defeated by Rome in 146 BC. As reported in Lucius Florus (inspired by Livy): ‘What a vast quantity of statues, garments and pictures was carried off, burnt, and thrown away!’ But, while plundering was a traditional part of Roman just war, the fact that Corinth was utterly and totally destroyed was a matter of ethical consternation. According to the Greek historian Diodorus Siculus:

> In more recent times the Romans, when they went in pursuit of world empire, brought it into being by the valour of their arms, then extended its influence far and wide by the kindest possible treatment of the vanquished. So far, indeed, did they abstain from cruelty and revenge on those subjected to them that they appeared to treat them not as enemies, but as if they were benefactors and friends … But once they held sway over virtually the whole
inhabited world, they confirmed their power by terrorism and by the destruction of the most
eminent cities. Corinth they razed to the ground, the Macedonians (Perseus for example)
they rooted out, they razed Carthage and the Celtiberian city of Numantia, and there were
many whom they cowed by terror.17

The change in practice did not escape Cicero, who bemoaned Corinth’s unnecessary
destruction: ‘Through a very specious appearance of expediency, wrong is very often com-
mitted in transactions between state and state, as by our own country in the destruction of
Corinth’.18

Here Cicero’s lament illustrates what I call the necessity tension – the jus in bello dilem-
as that military planners and soldiers face when deciding whether to destroy cultural
heritage to advance toward victory. Necessity implies that one cannot but act in a
certain way, in contrast with the concept of expediency – doing what is advantageous
at the moment based on military utility. The Romans, or at least the commanding
general Mummius, deemed it necessary not simply to plunder the city, kill the soldiers,
and enslave the women and children as per typical Roman practice, but also to destroy
its public buildings, which were an important expression of Corinth’s civic identity.19

Ought the building have been spared? Or did their destruction serve a military purpose?
The surviving works of ancient writers (such as Pausanias, Livy, Strabo, and Cassius
Dio) point to two explanations: to deprive the Greeks of a geographic stronghold in
future wars and to act as a deterrent by striking terror into other cities and subsequent
generations. As one modern scholar opined: ‘The ruins of the ancient, prestigious, and
hitherto rich city will have served as a lasting memento, standing beside the most-traveled
routes in Greece, of what wrath disobedience to Roman commands could provoke’.20

There is some debate in the historical record as to when the decision to totally destroy
Corinth actually took place – whether in the heat of battle or as a punitive afterthought. To
gain insight into the ethical deliberations that might have accompanied the necessity
tension in the heat of the moment, we can turn to another infamous example in the
annals of Roman war – Josephus’s account of the siege of Jerusalem in 70 CE. Josephus,
a soldier eyewitness, recounts in De bello judaico the ethical dilemmas facing military
leaders besieging the city. As the siege wore on, Titus brought together his generals to
discuss the impending onslaught and what should be done with the sacred Temple
built by Herod:

Now, some of these thought it would be the best way to act according to the rules of war [and
demolish it]; because the Jews would never leave off rebelling while that house was standing
… Others of them were of the opinion, that in case the Jews would leave it, and none of them
would lay their arms up in it, he might save it; but that in case they got upon it, and fought
any more, he might burn it; because it must then be looked upon not as a holy house, but as a
citadel; and that the impiety of burning it would then belong to those that forced this to be
done, and not to them. But Titus said, that “although the Jews should get upon that holy
house, and fight us thence, yet ought we not to revenge ourselves on things that are inani-
mate, instead of the men themselves;” and that he was not in any case for burning down
so vast a work as that was … 21

Despite these ethical concerns, the Temple was, in the end, destroyed (by accident accord-
ing to Josephus, although other accounts lend more intentionality to Titus’s actions). But
questions remain: Should one attack soldiers using religious sites as a place of fortification,
even if the laws of war permit it? What are the long-term consequences in terms of
reputation if one destroys sacred sites even out of military necessity? And what effect does destroying the cultural heritage of one’s enemy have on one’s own values?

There is definitely a compelling element to the argument of military necessity, but this is often an abused principle, as Cicero observed. To the question of whether one can destroy the cultural heritage of the enemy in a just war if this was the only way to achieve victory, Roman tradition offered two schools of thought: show magnanimity to extinguish the desire for revenge, or show no mercy to crush one’s enemy.22 Cicero himself was torn. On the one hand, Cicero rejected the fate of Corinth, perhaps because he believed a lasting peace could have been made given Corinth, as a Greek city–state, shared a cultural affinity that favoured incorporation into the Roman Empire. In a passage from his Republic that survives via a quotation by Augustine, Cicero opined: ‘The annihilation of a republic is not natural … when a city … is destroyed, wiped out, and extinguished, it is as if … this entire world perished and dissolved’.23 And regarding restraint during war, Cicero’s praise of Scipio Africanus (the elder), who led the Romans to victory against Hannibal’s Carthage in the Second Punic war, also offers a telling example. Scipio showed restraint in this particular victory, refusing to desecrate the temples, leaving much of the city intact, and repatriating art that the Carthaginians had plundered in previous conflicts to their original owners (instead of claiming it as Roman war booty).24 On the other hand, he seemed to accept the ultimate fate of Carthage. While the passage above shows his lament for the fate of Corinth, he showed no such remorse for Rome’s eternal enemy on the African coast. Razing the city after the Third Punic war was perhaps the only way to defeat an enemy that had long threatened Rome.

Cicero’s apparent change of heart with regards to Carthage – his praise of restraint during the Second Punic War followed by silence after the city’s razing in the Third Punic War – is indicative of the civilizational paradox. Cicero clearly had a greater cultural affinity for the Greek city–state of Corinth than the barbarian city–state Carthage, which was portrayed in Roman literature as foreign, effeminate, and cruel.25 While he viewed the Carthage of the past as a rival that Rome battled with for supremacy as opposed to an enemy it fought for survival, Cicero also observed that Carthage broke treaties and was cruel.26 These were the traits of barbarians, whose cultural heritage, ultimately, was not to be afforded any special protection. The fate of Carthage’s cultural heritage, it must be said, was not an isolated plight when it came to Rome’s treatment of barbarians. Witness Caesar’s wanton ravaging of the sacred groves of the druids throughout Gaul and Briton, as recounted by Lucan.27

The Greek historian Polybius – in a passage cited later by Grotius – was more direct in advocating restraint in warfare. In his Histories, written in the tradition of history as ‘education and training for a life of active politics’, he was critical of wanton destruction in war.28 While recognizing that the destruction of the enemy’s resources was legitimate, he also intimated that the unrestrained destruction of cultural heritage was ultimately counterproductive:

But to do wanton damage to temples, statues and all such works with absolutely no prospect of any resulting advantage in the war to our own cause or detriment to that of the enemy must be characterized as the work of a frenzied mind at the height of its fury. For good men should not make war on wrong-doers with the object of destroying and exterminating them, but with that of correcting and reforming their errors, nor should they involve the
guiltless in the fate of the guilty, but rather extend to those whom they think guilty the mercy and deliverance they offer to the innocent.  

The quoted passage refers to Philip V of Macedon’s destruction of a Greek shrine, but, assuming Polybius recounted the incident for the purpose of learning from the calamities of others, we can infer that his condemnation extends beyond the Hellenistic past. Indeed, he arguably rejected such behaviour in the Roman period as well. Thus, in his discussion of the Roman victory over Hannibal, he too lauded Scipio, who recognized the importance of such restraint. Quoting the Roman general: ‘But for our own sake … and in consideration of the fortune of war and of the common condition of man we have decided to be clement and magnanimous’.  

Cicero (albeit with underlying caveats when it comes to barbarians) and Polybius articulate the magnanimity principle – the positive effects that could ensue in choosing not to pursue the full range of acts the laws of war permit in times of necessity. For both, the advantage of restraint was found in the prospect of peace that followed, as the vanquished would, it was presumed, be less resentful if moderation was shown in battle. One can almost sense Cicero’s lament for the fate of Corinth – if only Mummius had been magnanimous.

Destroying an enemy’s cultural heritage, as a final act to seal total victory, potentially had a societal cost. Such victories left, according to some, a scar that ultimately marred the legacy of the victors and negatively impacted their society. Even total victory could not efface such scars. We already saw what Cicero thought of Corinth’s destruction. The destruction of the city, and the buildings and art that adorned it, effectively extinguished that peoples’ memory. So wrote the Greek historian Diodorus Sicilus:

> Of Corinth the poets had sung in earlier time— “Corinth, bright star of Hellas”. This was the city that, to the dismay of later ages, was now wiped out by her conquerors. Nor was it only at the time of her downfall that Corinth evoked great compassion from those that saw her; even in later times, when they saw the city leveled to the ground, all who looked upon her were moved to pity.  

Some Roman writers even drew a link – specious perhaps – between embracing such destructive tactics and the moral decline of Rome. Josephus described the lay soldiers as exhibiting such a hate for the Jews that they neglected to follow orders to stop the fire that destroyed the Temple. Sallust cited in his *Conspiracy of Catiline* that the sack of Carthage was the turning point in the decline of Rome’s moral values. Following this line of argument, embracing warfare that did not carve out an ethical space for the protection of the enemy’s cultural heritage negatively affected civic attitudes of tolerance, respect, humility, and honour, all of which were important traits for the just prosecution of war and victory.

The above discussion reveals both an ancient version of the civilizational paradox, as well as calls to safeguard the cultural objects important to certain enemies from the ravages of war. These ideas would resurface in the seventeenth century with Grotius’s return to the wisdom of the ancients for insights into the ethics of war, and take more explicit form in Vattel who was deeply indebted to the idea of the *ius gentium* he inherited from the Romans. While the civilization paradox may have determined whether Romans believed an enemy’s cultural heritage was worthy of protection, the call for restraint and the narrative of Corith, as we will see below, came to be emphasized in later thinkers such
as Grotius and Vattel. However, before this occurs, an alternative stream of just war thinking flows from Cicero, via his incorporation into Christian deliberations about just war.

III. Tenochtitlan

Cicero proved to be an important influence on Augustine, who some (shortsightedly) cite as the father of just war thinking. Augustine was, in turn, a key figure in Gratian’s compilation and analysis of just war thought in the 12th century, which became the reference point on just war for centuries to come. Gratian then figured importantly in Aquinas’s just war reflections, with these three figures becoming the cornerstones of Christian medieval just war thinking. As this body of thought developed across the centuries, the stream of Cicero and the world of the ancients flowed underground, with a new view of just war set in the context of Christian universalism taking centre stage. This Christian stream of just war thinking brought a new version of the civilizational paradox to the forefront of just war thinking. As we will see below, the fate of Tenochtitlan is symbolic of this paradox as it relates to cultural heritage.

The canonical figures mentioned above contributed to the coalescence of the ethical principles that have come to permeate discussions about the rights and wrongs of war. That said, they had little to say directly about the fate of cultural heritage in war, and much more to say about *jus ad bellum* concerns such as just cause, right intention, and legitimate authority. One could point to the Peace of God and the Truce of God as instances when there were movements that called for the protection of churches and relics (in addition to certain classes of peoples). However, I want to consider a different historical thread that highlights the tension between the universalist scope of Christian morality and the ethics of conflict with non-Christians, with a particular focus on the fate of the cultural heritage of non-Christians. To do so requires, first, a deeper exploration of holy war, where the clearest arguments for just war to protect cultural heritage are found.

Christian thinkers grappled deeply with the legitimacy of holy war, and arguments for and against such wars were a central part of the texts that have animated the just war tradition. The key figures mentioned above did not directly advocate for holy war, but the perceived need to reject the holy war idea would be a key component of the arguments about sovereignty that emerged with the Spanish scholastics. These arguments, however, couched a Christian version of the civilizational paradox that would determine how the cultural heritage of certain enemies was to be regarded.

The justifications for the crusades developed during the Middle Ages purported that Christians could wage a just war to take back the holy land from the infidels who unjustly occupied it. The central issue was to respond to a violation of justice, as the Muslims (the Rashidun Caliphate) had wrongly taken the holy land from the Byzantines. As a justification to take up arms, waging war to recover and protect Christian cultural heritage was also broached. In the 1080s, Bishop Benzo of Alba thought about organizing a military march to Jerusalem to take back the Church of the Holy Sepulcher (where Christ was thought to have been initially buried). This idea soon materialized when Urban II called for the first crusade in 1095. Although there were many elements to Urban II’s justification, liberating Jerusalem and restoring Christian Holy sites to all Christians was, according to some existing versions of his speech, a key part of the argument. Advocates
of such an expedition exploited some of Augustine’s arguments against the Donatists and Manicheans to legitimize force for the sake of religious exigency, but little reference was made to his just war authority, and the term *bellum justum* was rarely used. Indeed, this call to arms was perhaps better described as an armed pilgrimage rather than a holy or just war. Later, Johannes de Deo, writing in the mid-thirteenth century, argued it was just to wage war to defend Christian property, including in the holy land. In a similar vein, Pope Innocent IV famously argued any Christian prince could wage a war in defense of the holy land (which belonged to all Christians) because the Saracen occupation was an offence to Christians and Christ. This just cause applied only to Christians, and not to other peoples who sought to protect or reclaim their own cultural heritage from unjust occupiers.

The arguments about holy war, however, came to be repudiated as Christian notions of just war thinking evolved. In the sixteenth century, Francisco de Vitoria and the Spanish Scholastics rejected the notion of holy war as a just cause for war. The context for this shift was the debates about whether the conquest of New World was a just war. Some argued that the pope was the temporal and spiritual ruler of the world, a view that essentially allowed the pope (or Christian kings fighting in his name) to wage war on unbelievers to take control of their lands to spread Christianity. The Portuguese had followed this line of argument in their conquest of North Africa and beyond. In Spain, this view was explicitly rejected by Vitoria. As one scholar succinctly puts it, Vitoria’s contribution to the just war tradition was the rejection of ‘three potential just causes: religious differences, claims of universal jurisdiction, and personal ambitions of sovereigns…. Vitoria only permitted war in self-defense and to protect the innocent.’

The rejection of holy war, developments in natural law thinking, and emerging conceptions of state sovereignty found in the intellectual musings of the Spanish Scholastics mark a turning point in just war thinking. According to the popular view, these Scholastic thinkers posited that all nations – even barbarians – had equal rights, meaning that difference in religion was not a just cause for war, nor was the violation of the law of nations through abominable practices. Yet, this rich period in just war thinking amplifies the civilizational paradox – the challenges associated with discerning who has the authority to define what cultural heritage is and whether it should be valued and protected in war. The writings of Vitoria are a case in point: Despite lamenting the massacre of native populations and rejecting Spanish claims that the conquest was just, Vitoria ultimately, albeit laced with caveats, legitimized the destruction of their temples if this was necessary to spread Christianity under just circumstances.

The imperial voyages to the New World brought the Spanish face to face with societies that were considered barbaric because they practiced human sacrifice and cannibalism. In the case of the Aztecs, elaborate rituals and ornate temples helped to structure society and dictate social norms according to a polytheist worldview. Should these temples have been worthy of special protection in times of war, as if they had an innate value of their own? The answer, as illustrated by the fate of Tenochtitlan, was a caveat-laden ‘no’.

The destruction of Tenochtitlan offers a window into the interplay between the necessity tension, the civilizational paradox inherent to Christian just war thinking, and emerging notions of sovereignty. Before laying siege to the city, the conquistador Hernán Cortés seems to have recognized the beauty of the grand Aztec temple ‘whose great size and magnificence no human tongue could describe’; however, in his mind, it was still a
symbol of paganism that did not have intrinsic value. Cortés was by no means a just war thinker, but his assumptions about the worth of the cultural heritage of barbarians track with the views of prominent Christian just war thinkers, notably Vitoria. Cortés was bent on eliminating the pagan symbols and replacing them with Christian symbols even before the war began in earnest:

The most important of these idols, and the ones in whom they have the most faith, I had taken from their places and thrown down the steps; and I had those chapels where they were cleaned, for they were full of the blood of sacrifices; and I had images of Our Lady and of other saints put there.  

What Cortés’s actions suggest is that these objects and sites were not part of the necessity tension described above, for he believed they did not require any special protection even outside of war. They were, rather, an impediment to the spread of Christianity that had to be removed – a harbinger of the civilizational paradox seen in Vitoria.

As for the city itself, including houses, buildings, markets, causeways, gardens, palaces, and the temples themselves, they did factor into the necessity tension. In his third letter to the King, Cortés’s captured the essence of the necessity tension when he explained the military logic behind destroying the city:

When I saw how determined they were to die in their defense I deduced ... that they gave us cause, and indeed obliged us, to destroy them utterly. On this last I dwelt with more sorrow, for it weighed heavily on my soul, and thus I sought to find a way whereby I might frighten them and cause them to recognize their error and the hard they would receive from us, so for this reason I burnt and tore down their towers and idols and their houses.

For Cortés, even if he wanted to preserve the city as the jewel of the conquest, its destruction was necessary to both break the back of Aztec resistance by showing the Spanish destructive force and also to eliminate tactical advantages of the fighters – houses from which they fought were razed and the debris used to fill the water causeways which were difficult to navigate. Cortés was, of course, arguing from the controversial perspective that he was waging a legitimate war.

While Cortés showed some remorse in destroying what he described as ‘the strange and marvelous things of this great city’, this destruction was not what his more morally minded contemporaries would criticize. Vitoria also recognized the right to destroy things in war out of necessity, but his views on pagan religious symbols and sites raises a set of moral concerns indelibly linked to imposing Christian values. The fate of pagan cultural heritage was thus not solely tied to military victory, but also to spiritual victory and the spread of Christian society to non-believers. Because Christianity was a monotheist and universalist religion, barbarian symbols and sites could not co-exist in a world in which the law of nations was synonymous with Christian divine law.

The legacy of Vitoria, as one contemporary scholar argues, is that the ‘central feature of the just war tradition is a claim to universality that takes itself seriously’. However, this claim to universality was predicated on a view of natural law that ‘functioned as a vehicle of cultural domination’. While Vitoria rejected going to war because barbarians violated the natural law, his view of just war had important implications for the fate of cultural heritage during and after war. Vitoria held no true respect for the religion and cultural heritage of the New World peoples. In *De Indis*, he argued that
the Spanish may prohibit the barbarians from practicing any nefarious custom or rite … if they refuse [to stop these practices] war maybe declared upon them and the laws of war enforced upon them, and if there is no other means of putting an end to these sacrilegious rites, their masters may be changed and new princes set up.50

Vitoria did not explicitly talk about the fate of the temples and idols essential to these customs. However, in his On the Law of War, he allowed for the sacking of cities ‘if necessity decrees’51 as well as the ‘wholesale destruction of the enemy’, especially in the case of ‘the infidel, from whom peace can never be hoped for on any terms’.52

For Vitoria, some objects and spaces held to be sacred by pagans could eventually be dismantled to help spread Christianity. When discussing the Spanish right to evangelize in his commentary on Thomas Aquinas’s Summa Theologica, Vitoria argued that although it was unlawful to convert them by violence, ‘it is lawful, because it does them no harm or wrong’ to ‘smash down the idols of these barbarians once the faith has been preached to them and they have refused to accept it’. However, he added that

this ought not to be done on every occasion primarily because it may provoke their fierce indignation and destroy any kind feelings towards us which they may happen to have. Among peoples where the majority have been converted, however, or where it is hoped to be that they may be converted by such actions, it will be quite lawful. I say the same of their temples; they should not be thrown down, because this is an injury (injuria) to their rights, and because even after they are thrown down, they will rebuild them.53

But, one would also assume, tearing down temples was also lawful in instances when the majority was converted, or there was hope that they would be converted.

On the surface, this appears to have little to do with just war. However, one must recall that Vitoria argued in De Indis that the Spanish had a right to preach the faith, and that if the Indians blocked them, they could wage war to attain this right. One can surmise that the Indians would not have been too pleased with having their temples destroyed, and likely resist. Would Vitoria then legitimize a just war in response? He did not commit to an answer, but he likely would have sided with the Spanish right to prosecute the right to evangelize via just war, as opposed to the Aztec right to legitimate defense. This marked the limits of his novel view of sovereignty, based in a community’s right to use force in self-preservation.54 Embedded in these caveats was a tension-laden moral ethic: One can destroy the temples of barbarians if doing so will help impose universalist (Christian) customs. The upshot, then, is that not all cultural heritage was deemed equally valuable to humanity. And perhaps more importantly, some objects – the temples of Tenochtitlan for example – were even seen as a detriment to the spread of Christian civilization.

Vitoria’s view on Aztec temples and idols arguably represents the common view of the intrinsic worth of Aztec cultural heritage at the time. We see this play out in an early description of the new city of Mexico, which Cortés built on the rubble of Tenochtitlan. Even if prone to exaggeration, the account demonstrates the reconstruction of the city according to the Spanish style of buildings, embellishment, and religious spaces:

The work was accomplished with such arder, that in the space of less than a month, around 100,000 houses, much prettier and in better order than the old ones, were born. The Spanish built them according to the traditions of Spain … Finally, little time after the conquest, Mexico was the most beautiful city of the Indies … she became, according to the accounts of all travellers, one of the richest and most magnificent cities of the world.55
By 1625, the city is said to ‘have more than 50 churches’. By 1697, the main cathedral, still under construction, caught the eye of one traveller:

Some believe that its construction was begun by Cortés, on debris of the grand temple of the Mexicans; but others prove, by way of certain ancient paintings, that the Temple was situated where the College of St. Alfonse is today.

What is striking about this passage is the implicit disregard for the intrinsic value of Aztec temples, which were never rebuilt. Rather, we see the replacement of one heritage – its symbols, objects and places – by another at war’s end. Yet, this attitude towards cultural heritage was about to change as the just war tradition entered a new phase marked by a return to the ancient past.

**IV. Towards universal protection of cultural heritage**

To return to the metaphor of streams of just war thought: Cicero’s ideas make a profound statement about preserving the cultural heritage of civilized enemies in times of war, illuminating the necessity tension and offering the magnanimity principle as a response. Corinth is the symbol of the slippery slope of the necessity tension, and the importance of magnanimity. This stream of thought goes underground as Christian just war thought emerges. Cicero’s views on just war for the sake of peace and showing mercy to the defeated would be incorporated into Augustine’s ideas, but the universalist elements of Christianity would come to dominate. Arguments for and against holy war animated moral discussions about war, ultimately resulting in a rejection of holy war and early arguments for universal sovereignty taking form with the Spanish Scholastics. And yet, as we see with Vitoria, despite the right to sovereignty, the cultural heritage of non-Christians was not respected for its intrinsic value. Tenochtitlan is symbolic of a Christian version of the civilizational paradox. With Grotius and Vattel these two streams meet again, ultimately combining restraint in war to protect the cultural heritage of all enemies with arguments for state sovereignty, to set the foundation for modern day norms and international law.

The fate of cultural heritage in times of war underwent a major shift in the work of Hugo Grotius. Educated in the tradition of the humanists but also very familiar with the texts to the scholastics, Grotius has been described as seeking to define a middle position between raw realism and the idealism of the natural law tradition. As one scholar contends, his *De Jure Belli ac Pacis* (1625) was

> an ambitious attempt to forge a theoretical system that can account for [the natural law and the law of nations] and define their relationship. This system exhibits sufficient flexibility to take account of historically variable state practice, reflected in the law of nations, while retaining a grounding in the unchanging moral principles of natural law.

Key to Grotius’s views on war was the ‘concept of permission’ – the authority for humans to suspend the operation of natural law by agreement among themselves. Stated differently, the law of nations could permit things that the natural law would proscribe. The result was ‘nothing less than the sanctioning of injustice, often great injustice, in the conduct of war’. And yet, despite the centrality of these permissions to his account of war, Grotius’s arguments for moderation in war also mark a key development in *jus in bello* norms. While initially setting wide boundaries to what may be done in war, Grotius then narrowed them ‘by reference to criteria from nature, *jus gentium*, and...
One of the consequences of this restricted view of *jus in bello* was greater protection of cultural heritage from the ravages of war.

Grotius’s reflections built from ideas on plunder and destruction from the Classical period and the Bible. In typical Grotian fashion, he cited classical and religious sources to initially support the claim that under the law of nations, sacred places were not exempt from ‘the insults of war’. Quoting the Roman jurist Paulus, who recognized ‘the Sepulchers of our Enemies are not religious to us, and therefore we may take the Stones thereof, and put them to any Use’, Grotius concluded ‘the Goods of our Enemies may be taken away from them, not only by plain Force, but by the Law of Nations’.

While this seems to be a justification for destroying cultural sites, Grotius then argued for more restraint. If the destruction of these artifacts does not in some way contribute to victory, such acts were barbaric and cruel. Referencing Polybius, he wrote it would be an ‘act of extreme madness to destroy those things, which by being destroyer do not weaken the enemy nor advantage the destroyed. Such are temples, porticos, statues, and the like’. He then quoted Cicero’s favourable opinion of Marcellus, who spared the buildings of Syracuse during its conquest, and concluded that while armies waging a just war have the right to destroy anything that will bring them victory, ‘if no danger can arise from the preserving of such buildings, and their appurtenances, the reverence due to holy things may be a sufficient plea, especially with those who worship the same God according to the same law’. The phrasing here is important – the question is not whether certain military gains can be had by destroying such things, but whether danger arises from not destroying them. In an accompanying note supplied by Jean Barbeyrac in his edition of the work, the reader finds examples of when holy places were spared destruction – by the Greeks, Romans, Persian, Moors, and Christians. This plurality of examples suggests, at least from Barbeyrac’s reading, that there existed a universalist norm to spare the cultural heritage of one’s enemy from the ravages of war. This view glosses over the civilizational paradox found in both Roman and Christian thought.

Grotius’s argument for restraint raised questions about the *necessity tension* already seen in Roman times. He implied that by targeting what was symbolically central to the enemy’s identity may actually harden the enemy to fight longer, thus undoing any temporary military advantage that might have been gained. Thus citing Livy, he termed such acts ‘vile and insolent’, ‘madness and a series of crimes’. Not even the ‘law of retaliation’, opined Grotius, was a sufficient reason to undertake such acts. Grotius thus offered another way of thinking about the magnanimity principle. By choosing not to exercise one’s full rights in war, the chances the enemy will fall into total desperation were reduced, which ought to make victory easier in the long-run.

Grotius was clearly an important influence on Vattel – the point of convergence of just war streams in our story. But so too was Cicero. And arguably the nascent ideas of sovereignty developed by Vitoria as well. Scholars have offered alternative interpretations of Vattel’s views on just war – as permitting international adventurism and exploitation or as building from classical just war thinking to moderate the act of war based on adherence to the necessary and voluntary law of nations. While his views of *jus ad bellum*, and especially preventive war, stoked the fires of controversy, his views on *jus in bello* continued the trend of humanizing war seen in Grotius. In his *Le droit des gens ou principes de la loi naturelle* (1758) Vattel echoed much of what Grotius had to say on the matter of
protecting cultural heritage, but added one important element, namely the notion that the
cultural monuments to be protected were not simply important to a specific society, but to
humanity as a whole. In Vattel’s words:

For whatever cause a country is ravaged, we ought to spare those edifices which do honor to
human society, and do not contribute to increase the enemy’s strength—such as temples,
tombs, public buildings, and all works of remarkable beauty. What advantage is obtained
by destroying them? It is declaring one’s self an enemy to mankind, thus wantonly to
deprive them of these monuments of art and models of taste.67

Wayne Sandholtz argues that Vattel, by connecting art and architecture to humankind in
general, ‘prefigures the notion of common heritage of mankind’. Because these artifacts
were not property in the regular sense of the word, ‘the path was open for arguing that
other special protections should apply to cultural treasures’.68 In doing so, Vattel arguably
circumvented the civilizational paradox discussed earlier by declaring that all cultural
monuments were to be valued. That being said, this was in itself a judgment that excluded
religious cultures that would view these edifices as idolatrous and intolerable. Vattel was
ultimately torn between two points. As one scholar writes:

Recognizing the common humanity even of one’s enemy is essential to Vattel’s just war
because it reflects the reciprocal duty nations owe to each other. These “sentiments of
humanity” form the essence of the law of nations and the prospect of peace.69

And yet, against those who reject the sentiments of humanity, ‘all nations have a right to
join in a confederacy for the purpose of punishing and even exterminating those savage
nations’.70

Vattel made it clear that under normal circumstances, restraint in war was the measure
of the day, and cultural monuments should be afforded special protection: ‘The wanton
destruction of public monuments, temples, tombs, statues, paintings, &c is absolutely con-
demned, even by the voluntary law of nations, as never being conducive to the lawful
object of war’.71 By employing the term wanton, Vattel engaged the necessity tension. He conceded the ‘right’ of states to takes the necessary steps to defeat an enemy if there are ‘cogent reasons’ and condemned the objects destroyed to the dustbin of collateral
damage. Thus, ‘If any beautiful production of art be thereby destroyed, it is an accident,
and unhappy consequence of the war’. However, such instances of military necessity
were, ‘cases of the last extremity’ and ‘good princes’ should undertake such measures
‘with reluctance’.72 While occasions to do so were rare, one possible example Vattel
cited might be to punish ‘enormous offences of the law of nations’.73 But even in such
cases, showing restraint was the best course to follow because destroying the cultural trea-
ures of one’s enemy was an act of barbarism that can never be forgotten or forgiven. Such
actions may, he suggested, lead to eternal hatred: ‘We still detest those barbarians who
destroyed so many wonders, when they over ran the Roman empire’.74

Despite the above caveats, the protection of cultural heritage holds, for Vattel, the hall-
marks of a positive right insofar as just princes and warriors have a duty to pursue victory
in a way that spares the objects and buildings that do honour to human society. The rules
of restraint provide the voice of moderation that curbs military fervour and diminishes the
risk of excess in the fog of battle. In a statement echoing the magnanimity principle found
in Cicero, Vattel exclaimed: ‘It is glorious to listen to the voice of humanity and clemency,
when rigor is not absolutely necessary. Cicero condemns the conduct of his countrymen in destroying Corinth ... because ... such extreme rigor’ was not militarily required.\textsuperscript{75}

The reference to Cicero and the destruction of Corinth brings us full circle to where we began, inviting the reader to ask: What lessons does the history of the just war tradition covered in this essay teach us about the relationship between war and cultural heritage? And how can these lessons shed light on contemporary dilemmas? The key, as I will argue in the conclusion, is to understand the place of Corinth and Tenochtitlan in this story.

\textbf{V. Conclusion}

The title of this article references a tale of two cities – Corinth and Tenochtitlan. The fate of Corinth permeates one stream of the just war tradition. From Cicero to Vattel, Corinth is the symbol of a failure to respect the cultural heritage of one’s enemy. And this lack of respect is to be lamented, which implies that more respect should be given in times of war. Corinth reminds us that the protection of cultural sites is embedded within the tradition. One might expect that as interest in \textit{jus in bello} concerns gained greater traction with Grotius and Vattel, that cultural heritage would fall under the call for more moderation. This is indeed the case, but the precedent for protection dates back to ancient times, and is not universal across key just war thinkers. Grotius especially turns to ancient sources to find support for claiming warring parties should show moderation when it comes to sparing cultural heritage. And the ignominy of the sack of Corinth still looms large for Vattel, who drew much of his thought from an ancients-inspired Grotius. The arguments for modern day protection of cultural heritage have roots in this stream of just war thinking. The intrinsic, aesthetic value of each people’s cultural heritage attests to the diversity of human capabilities, and contributes to the whole of human possibility in times of peace. Thus when peace breaks down, this must be preserved even beyond the tenets of military necessity if the magnanimity principle is imitated. But, there is a different stream that we need to think about, for which the fate of Tenochtitlan is symbolic.

Such protection was not afforded to the religious sights of New World peoples by Vitoria, whose thought was torn between nascent views of sovereignty, the scope of \textit{jus in bello} protections, and the universalist tenets of Christianity that undercut these protections. While the fate Corinth was emphasized in a way by Vattel that glossed over the civilizational paradox inherent to Roman times, the plight of the Aztec capital smoulders as testimony to how the civilizational paradox is embedded in the way we think about cultural heritage and war. This should serve as a reminder to critically examine how we determine what does and does not count as cultural heritage worthy of being preserved, and especially who decides. That Vitoria’s universalist views couched in Christianity came, eventually, to be replaced by Vattel’s view of sovereignty, does not solve the civilizational paradox. While a sense of universal respect exists as a positive right, this requires a marked sense of tolerance and respect for the deities and customs of one’s enemies. Resolving the civilizational paradox – which Vattel seems to do by proffering the value of cultural artifacts for all of humanity – comes at the cost of potentially marginalizing those value systems that see the cultural heritage of others as idolatrous and intolerable. Vattel and Grotius (citing the Ancients) remark on the irrational and uncivilized nature of those who wantonly destroy cultural heritage. Thus, one may be tempted to argue that to the
extent preservation of cultural heritage has become a norm governing civilized warfare, then those who do not abide by these rules are considered barbarians, a term that has frequently been used to describe ISIS. If one chooses to take this course of argument, the just war tradition has much to say about just war against barbarians, and that story is less about the requirement for restraint as it is for total war, as Vattel duly remarks with regards to those who do not respect the sentiments of humanity.

To conclude, the place of cultural heritage in the just war tradition is very much a \textit{jus in bello} story that follows two streams of the tradition, converging with Vattel. The necessity and civilizational paradox illuminate the challenges related to the fate of cultural heritage in times of war. The magnanimity principle suggests that there are \textit{jus post bellum} concerns that ought to be considered, if one assumes that future peace is at the core of the tradition, which may not be the case for Vattel’s enemies of humanity. Absent, however, is a robust debate of cultural heritage in the context of \textit{jus ad bellum}. Apart from the crusades, there is no precedent for waging a war to protect or take back places of cultural or religious significance. One could imagine grafting elements of Innocent IV’s view that war to protect Christian sites was a war of self-defense with Vattel’s view that cultural heritage sites have a universal value to humanity, to furnish a \textit{jus ad bellum} argument to legitimize, say, waging war to protect Palmyra from ISIS. But that would be cutting against the grain of the tradition. Rather, the fate of cultural heritage is an \textit{jus in bello} story, and is best understood as a positive right bestowed upon the just warrior, albeit burdened by the necessity tension and the ultimately inescapable civilizational paradox.

\textbf{Notes}

4. Cortés, \textit{Letters from Mexico}, 101–06; see also De Solis, \textit{Histoire de la conquête du Mexique}, vol. 1, 504–16. De Solis’s account was originally published in 1684 in Spanish and was widely available in the eighteenth century, and cited by Vattel as a source.
5. On the historical development of \textit{jus in bello}, see Johnson, \textit{Ideology}, chapter 4; see also: Rengger, \textit{Jus in Bello} in Historical and Philosophical Perspective’.
6. O’Driscoll, ‘Rewriting the Just War Tradition’, 1. For a study on the deeper roots of just war, see Cox, ‘Expanding the History of Just War’.
8. Miles, \textit{Art as Plunder}, 2, 8.
9. Ibid., 286.
10. The idea of cultural heritage as we understand it today may be somewhat of an anachronism when discussing ancient Rome. One could equate buildings, art and statues with cultural heritage, for they formed an important part of the essence of city-state identity in the ancient world. However, these are not the same as temples (and the objects within), which were the property of the gods and allotted divine protection.
12. Ibid., 248.
15. For a discussion that draws from relevant ancient sources, see Kallet-Marx, \textit{Hegemony to Empire}, 84–96.
20. Ibid., 88.
24. Cicero, *Verrine Orations*, vol. 2, Book 2, 73–75; for a discussion, see Miles, *Art as Plunder*, 97–104. Compare, however, this example to Scipio’s decision to slaughter the civilian population, per Roman custom when a city did not surrender, in the attack on New Carthage in 209 BCE. The decision was made out of military necessity to achieve victory before reinforcements could arrive. For a discussion, see Raymond, ‘Greco-Roman Roots’, 14.
27. In Gaul, see Lucan, *Pharsalia*, 3, 399-500. Cicero praises, in *De Provinciis Consularibus*, Caeser’s wars in Gaul against a ‘savage’ and ‘barbarian’ enemy, but does not discuss the fate of the Gaul’s sacred groves; Book 13, 32–33.
37. Peters, *The First Crusade*; see specifically the version of Robert of Rheims, 27; also that of Guibert of Nogent, 34.
42. Bellamy, *Just Wars*, 52. In a more critical vein, Vitoria’s arguments have been painted as marking the colonial origins of international law; see Anghie, *Imperialism, Sovereignty and the Making of International Law*, chapter 1.
44. On Vitoria’s view of how to lead the Indians to Christianity, see Pagden, *Fall of Natural Man*, 99–104.
46. Later in life, Cortés apparently did lament that they were not preserved as ‘testimony to the Aztec culture’ of the past, as a kind of memorial or memory of a defeated and converted people. See Todorov, *Conquest of America*, 109.
48. Ibid., 101.
51. Ibid., 323.
52. Ibid., 321.
53. Ibid., 347.
56. Ibid., 196.
57. Ibid., 217.
62. Ibid., 1312.
63. Ibid., 1466.
64. Ibid., 1472.
68. Sandholtz, *Prohibiting Plunder*, 44.
71. Ibid., 575.
72. Ibid., 572.
73. Ibid., 575. It is clear that the Spanish wars in the New World, sometimes predicated on this idea, were not an example of what Vattel was talking about. Here Vattel follows Vitoria, but diverges from Grotius. See Vitoria, *Political Writings*, 272–5; Grotius, *Rights of War and Peace*, 1021.
75. Ibid., 575.

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