HIDING FROM HISTORY? THE GOVERNMENT'S 'GUIDANCE ON CONTESTED COMMEMORATIVE HERITAGE ASSETS IN ENGLAND'

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PART 1: INTRODUCTION

In October 2023 the UK government issued its long-awaited 'Guidance for custodians on how to deal with commemorative heritage assets that have become contested' ('the Guidance') in England.[1] Since (at least) the toppling of a statue of the 17th century slave trader Edward Colston in Bristol during the Black Lives Matter protests in June 2020, the controversial question of what to do with memorials to those involved in Britain's slave-trading and imperial past has become a prominent front in what are commonly termed 'culture wars'.[2] Such conflicts over memorialisation have been rife in very many parts of the

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We are grateful for the insightful comments of the editor an anonymous reviewer on an earlier draft. Errors and omissions remain our own.

[1] 'Guidance for custodians on how to deal with commemorative heritage assets that have become contested' DCMS (5 October 2023). Simon Stephens, 'Government finally publishes "retain and explain" guidance' *Museums Journal*, 5 October 2023. https://www.museumsassociation.org/museums-journal/news/2023/10/government-finally-publishes-retain-and-explain-guidance/ The Guidance applies only in England, heritage being a devolved matter. It does not apply to artefacts in museums, nor to Church of England ecclesiastical buildings, which are excused from listed buildings control and subject to the so called 'ecclesiastical exemption' on which see Planning (Listed Buildings and Conservation Areas) Act 1990, s 60 (1). See further 'Contested Heritage in Cathedrals and Churches' The Church Buildings Council and the Cathedrals Fabric Commission for England' (2021) https://www.churchofengland.org/sites/default/files/2021-06/Contested_Heritage_in_Cathedrals_and_Churches.pdf . The Guidance applies to 'custodians' who are owners or guardians of commemorative heritage assets and have primary responsibility for decisions in relation to them, 6. The term 'contested' refers to 'when the status/dominant narrative concerning a commemorative heritage asset is challenged', 5.

[2] Andrew Pilkington, 'Changing the Narrative on Race and Racism: The Sewell Report and Culture Wars in the UK' (2021) 11 *Advances in Applied Sociology* 384; Bobby Duffy, Kirstie Hewitt, George Murkin, Rebecca Benson, Rachel Hesketh, Ben Page, Gideon Skinner and Glenn Gottfried, 'Culture wars in the UK: how the public understand the debate' (King's Research Portal, 26 May 2021) at https://www.kcl.ac.uk/policy-institute/assets/culture-wars-in-the-uk-how-the-public-understand-the-debate.pdf; and David Olusoga, 'Historians have become soft targets in the culture wars. We should fight back', *The New Statesman*, 8 December 2021 https://www.newstatesman.com/culture/2021/12/historians-have-become-soft-targets-in-the-culture-wars-we-should-fight-back

world for several years.[3] One of the most oft-voiced arguments against the removal or relocation of such objects is that this would amount to an erasure of, or a hiding from, history.[4]

At present, in respect of such statues and monuments in England, the Guidance makes the default position in respect of commemorative heritage assets (CHAs) that are subject to calls for removal or relocation clear — *viz*, 'to keep them in situ; to retain them'.[5] However, in 'some cases', CHAs may be 'accompanied by a comprehensive explanation'.[6] The clearly stated underpinning rationale for this "'"retain" or "retain and explain"' position is that removal or relocation of such heritage assets would constitute 'hiding from history' — and this should not be permitted to shield us from aspects of our past that 'we might disapprove of today'.[7]

In this article we explore the underpinning rationale of this new Guidance, that retention is necessary to protect history. We suggest that this position reflects a problematic elision between different, though inter-connected, ways of 'knowing the past' — namely history and collective or shared memory. We argue that often CHAs might more properly be understood as carriers of the collective/shared *memory* of *parts* of the communities in which they are found, rather than as history. The Guidance's reliance on the 'argument from history' is used to justify the presumption that CHAs should not be removed, albeit accepting that, in some circumstances, explanations may be provided. A better approach might have been for the Guidance to have accepted that CHAs can be seen as carriers of the collective/shared memory of parts of the communities in which they stand, and thus important contributors to group identity. As such, they have a value. However, given the diverse nature of contemporary Britain, public space is frequently devoid of such 'carriers of memory' for some communities today in the UK. In what is a multi-cultural and multi-ethnic society this

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[3] On de-commemoration disputes generally see the excellent collection of essays in: Sarah Gensburger and Jenny Wüstenberg (eds) *De-commemoration: Removing statues and renaming places* (Berghan Books 2023).

[4] Boris Johnson, Twitter @Borisjohnson, 12 June 2020. See also, for example, Charles Moore, 'Why our statues need protecting', *The Spectator*, 19 July 2020, https://www.spectator.co.uk/article/why-our-statues-need-protecting. Others have made similar arguments, see for example, Mary Beard, 'Cecil Rhodes and Oriel College Oxford', *The Times Literary Supplement* 2015, https://www.the-tls.co.uk/articles/cecil-rhodes-and-oriel-college-oxford/

[5] Guidance, n 1, 7. Whilst admittedly inelegant, for the sake of consistency we shall, for the most part, use the term 'commemorative heritage asset', or its abbreviation CHA for statues, monuments and memorials in public space. For obvious reasons, the CHAs most likely to be 'contested' have tended *not* to include war memorials to the fallen from the World Wars.

[6] *Ibid*, 3

[7] *Ibid*.

is problematic, especially when members of those communities' forbears were often victims of those very men celebrated by the CHAs in question. However, despite voicing reservations about its underpinning rationale and the resultant policy conclusions, we nevertheless conclude that, subject to certain caveats, the Guidance has the *potential* to open the way to imaginative, inclusive and empathetic reinterpretations of contested monuments — reinterpretations that could give voice to a variety of collective memories.

This article adopts the following structure: Part 2 summarises the political and legal background and briefly sketches out the contents of the Guidance; Part 3 explores differing ways of 'knowing the past' that are relevant in these circumstances, namely history and collective or shared memory, and their inter-relationship as well as their relationship to CHAs; Part 4 critically evaluates the Guidance in the light of this material, and Part 5 concludes by arguing that, notwithstanding its limitations, the Guidance provides a framework for discussion of issues of increasing public concern.

PART 2. THE GUIDANCE AND ITS POLITICAL AND LEGAL BACKDROP

The Guidance opens with the proposition that 'history is an essential part' of our country's heritage, which public bodies play in important role in 'conserving, protecting and explaining'. CHA's 'bring our history to life, illustrating many great people and events of the past' and serve as a reminder 'of the human costs often linked with them'.[8] The Guidance goes on to say that:

> There are times when a commemorative heritage asset in a public space depicts people or events that we might disapprove of today. On some occasions, this disapproval may result in calls for the commemorative heritage asset to be removed or relocated. Government policy is that these commemorative heritage assets should remain in situ. We *should not hide from aspects of our history that we may deem unacceptable today.*[9]

However, whilst retaining an asset in situ 'often is sufficient and no "explanation" is needed', the Guidance introduces a caveat: that 'in some cases, retained commemorative heritage

[8] *Ibid*, 3

[9] *Ibid*, emphasis added.

assets could be accompanied by a comprehensive explanation that allows the whole story of the person, building or event to be told so that a fuller understanding of the historic context can be known and understood'.[10] That said, removal or relocation will only be justifiable in 'very few circumstances' — for example to make way for infrastructure projects or where there is risk of damage due natural hazards such erosion and subsidence.[11]

Political And Legal Context

The new retain and explain policy Guidance has its immediate origin in the reactions to the Black Lives Matter protests following the death of George Floyd in the summer of 2020.[12] In Bristol city centre the statue of the 17th century slave trader and philanthropist Edward Colston was toppled from its plinth by protestors, rolled and dragged through the streets, and dumped in the city's docks.[13] Four of the protestors were prosecuted for criminal damage but acquitted by a jury at Bristol Crown Court. This prompted the then Attorney General (Suella Braverman) to seek clarification on the question of whether a defence of freedom of expression was available to protestors in such situations – and the Court of Appeal subsequently held that it was not.[14] The Colston toppling led to strong reactions on both sides of the statues debate.[15] It also led to a so-called 'reckoning' in which many other statues of figures from Britain's colonial and slave trading past were either removed or came under new scrutiny.[16] It was in this febrile climate that senior figures in the UK government not only condemned the use of violent means to remove the Colston statue, but also came out strongly

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[10] *Ibid*.

[11] *Ibid*, 8

[12] An earlier prominent campaign was 'Rhodes Must Fall' to remove the statue of Cecil Rhodes at Oriel College, Oxford, see Amit Chaudhuri, 'The real meaning of Rhodes Must Fall', *The Guardian*, (16 March 2016).

[13] Tim Cole, 'After the fall, where?: Relocating the Colston statue in Bristol, from 2020 to imaginary futures' (2023) 82 *Journal of Historical Geography*, 156-168; Saima Nasar, 'Remembering Edward Colston: histories of slavery, memory and black globality' (2020) 29(7) *Women's History Review* 1218-1225; Andrew Wells, 'Introduction – is it wise to decolonise?' (2021) 54(5) *Patterns of Prejudice: Remembering Wrongs in Public Space: A forum on the toppling of Edward Colston in Bristol, June 2020* 473-483. For the story of the campaign to remove the statue, and the resistance to it, see: Tristan Cork, 'How the city failed to remove Edward Colston's statue for years', *Bristol Post* (10 June 2020); Antonia Layard, 'Edward Colston: Listing Controversy', *University of Bristol Law School Blog*, 15 June 2020, https://legalresearch.blogs.bris.ac.uk/2020/06/edward-colston-listing-controversy/

[14] *Attorney General's Reference (No 1 of 2022)* [2022] EWCA Crim 1259. The Court of Appeal held that such violent destruction could not constitute expression for the purposes of the ECHR.

[15] Charles Moore, 'Why our statues need protecting', *The Spectator* (19 July 2020); Matthew Parris, 'In praise of Statue Toppling', *The Spectator* (13 June 2020).

[16] Aamna Mohdin and Rhi Storer, 'The reckoning: the toppling of monuments to slavery in the UK', *The Guardian* (29 January 2021).

against the removal of problematic statues and monuments more generally, citing the preservation of 'history', and the need to avoid 'lying about our history', as key factors in assuming their stance. The (then) Prime Minster Boris Johnson tweeted that:

> We cannot now try to edit or censor our past. We cannot pretend to have a different history. The statues in our cities and towns were put up by previous generations. They had different perspectives, different understandings of right and wrong. But those statues teach us about our past, with all its faults. To tear them down would be to lie about our history, and impoverish the education of generations to come.[17]

The (then) Local Government Minister Robert Jenrick introduced changes to planning regulations so as to require planning permission to remove unlisted statues, plaques or memorials.[18] In an article in *The Sunday Telegraph*, the Minster criticised 'the flash mob' and 'town hall militants or woke worthies who are attempting to 'censor our past or pretend we have a different history to the one we have'.[19]

The government amended the National Planning Framework so as to embody a 'retain and explain' policy whereby upon applications to 'remove or alter a historic statue, plaque, memorial or monument (whether listed or not), local planning authorities should have regard to the importance of their retention in situ and, where appropriate, of explaining their historic and social context rather than removal'.[20] In January 2021 the statutory regime was amended to 'protect England's cultural and historic heritage … strengthening the measures protecting statues, plaques, memorials and monuments which have been in place for at least 10 years'.[21] Thus, whereas previously the demolition or alteration of listed statues, memorials, plaques and monuments did require listed buildings consent or (usually) planning permission —

[17] Boris Johnson, Twitter @Borisjohnson, 12 June 2020.

[18] HC Deb vol 687, col 35, 18 January 2021. See, Town and Country Planning (Demolition – Description of Buildings) Direction 2021, Background Note. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/979413/Demolition_Direction_2021.pdf For a detailed overview of the planning law issues in relation to these issues, see Richard Harwood, Catherine Dobson and David Sawtell, *Contested Heritage: Removing art from land and historic buildings* (Law Brief Publishing 2022).

[19] Robert Jenrick 'We will save our history from woke militants', *The Sunday Telegraph* (17 January 2021) https://www.telegraph.co.uk/news/2021/01/16/will-save-britains-statues-woke-militants-want-censor-past/

[20] National Planning Policy Framework 2021, at para 198. This is at para 204 in the 2023 issue of the NPPF available here: https://assets.publishing.service.gov.uk/media/65a11af7e8f5ec000f1f8c46/NPPF_December_2023.pdf

[21] Guidance, n 1, 17.

under the so called 'small structure exemption' — unlisted ones did not. This exemption was removed in early 2021 meaning that planning permission is now required 'for the demolition or partial demolition of unlisted statues, memorials and monuments which have been in place for at least 10 years'.[22] Furthermore, if Local Planning Authorities had been minded to grant permission to demolish or partially demolish relevant memorials they are required now to consult the Secretary of State for Levelling Up, Housing and Communities on planning applications, and the Minister is now able 'call in' the decision and make the determination themselves.[23]

In the criminal law sphere, the government took the opportunity of the passage of what was to become the Police, Crime, Sentencing and Courts Act 2022 to change the maximum penalty for damage to a memorial, irrespective of the value of that damage, increasing it from 3 months to 10 years imprisonment.[24] This change addressed a perceived 'concern … voiced in Parliament and society that the law focuse[d] too heavily on the monetary value of the damage with insufficient consideration given to the emotional or wider distress caused by this type of offending …'.[25] As a consequence of this provision, all such matters are now potentially triable in the Crown Court.

With these legal and policy changes, the UK government made its stance very clear: monuments, memorials and statues — even of highly controversial and divisive figures — should be kept in place and retained. It was against this legal and political backdrop that the (then) Secretary of State for Digital Culture Media and Sport, Oliver Dowden, announced that new guidelines 'would be drawn up, commissioning a Heritage Advisory Board of academics and heritage professionals to advise on the new policy.[26] The resulting Guidance

[22] The Town and Country Planning (Demolition – Description of Buildings) Direction 2021. Further, the Town and Country Planning (General Permitted Development etc) (England) (Amendment) Order 2021 now excludes from the existing permitted development right, the demolition of unlisted statues, memorials, and monuments which have been in place for at least 10 years. These developments are summarised in Appendix A to the Guidance.

[23] The Town and Country Planning (Consultation) (England) Direction 2021.

[24] Section 50.

[25] See Policy Paper, *Criminal Damage to Memorials: Police, Crime, Sentencing and Courts Act 2022 Factsheet*, 27 May 2022. Previously, where the damage value was less than £5000, the case had to be tried summarily, and attracted a penalty of 3 months imprisonment or a fine of up to £2500.

[26] A Heritage Advisory Board was established by the Secretary of State to advise on the development of the Guidance. The Board members are: Anna Keay, Mukesh Sharma, Laurie Magnus, Trevor Phillips, Robert Tombs, Martha Lytton-Cobbold, Samir Shah, at https://www.gov.uk/guidance/the-heritage-advisory-board

also draws inspiration from a series of case studies exploring ways of dealing with contested heritage assets in the UK and abroad, produced by Historic England.[27]

The 'Guidance for custodians on how to deal with commemorative heritage assets that have become contested' is the natural corollary of the above developments and attitudes. It is summarised as follows: 'Government policy is clear: it opposes the removal of commemorative heritage assets. Custodians must in the first instance seek to retain and, if necessary, explain any commemorative heritage assets which have become contested before considering any application for removal'.[28]

What The Guidance Says

After its opening injunction that we must not hide from history, the Guidance goes on to state the retain and explain philosophy that decisions must not be based on a partial view of history but 'attempt to understand it, and encourage people to learn from it'.[29] Thus, where there are calls to remove or relocate a CHA in a public space because it 'depicts people or events that we might disapprove of today' 'government policy is that [they] should remain in situ'. Whilst retention 'in situ is *often* sufficient and no "explanation" is needed', 'in *some cases*, retained commemorative heritage assets could be accompanied by a comprehensive explanation that allows the whole story of the person, building or event to be told so that a fuller understanding of the historic context can be known and understood'.[30] The purpose of such explanation is to provide a 'fuller understanding of the history of the commemorative heritage asset than was previously the case'.[31]

If a decision is made by the custodian to add an explanation to a commemorative heritage asset this must be 'based on a rigorous, balanced and comprehensive interpretation of the past',[32] and should be taken after 'wide consultation' with 'community and stakeholders'.[33] But the outcome of consultations will only be one part of the evidence and, interestingly,

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[27] Historic England, the government's advisor on the historic environment, was also consulted and developed a set of case studies where reinterpretation of commemorative heritage assets has occurred: 'Reinterpreting Contested Heritage (5 October 2023) at https://historicengland.org.uk/advice/planning/contested-heritage/reinterpreting-heritage/#aab0af62

[28] Guidance n 1, 15.

[29] *Ibid*.

[30] *Ibid*.

[31] *Ibid*, 14

[32] *Ibid*, 3 and 10-11

[33] *Ibid*, 12.

'weighing up this evidence, custodians should be mindful of those who cannot be consulted including past and future generations.'[34]

Where it is ultimately determined that an explanation is required on a commemorative heritage asset that has become contested, this 'does not have to be purely textual'. A range of explanation options are encouraged, such as artistic re-interpretations, counter-memorials and cultural events. But whatever explanation is chosen it must be 'rigorous and balanced'.

The expressly stated underpinning rationale for the Guidance is clear, and in a direct line of development with the political rhetoric and legal developments that followed the toppling of the Colston statue in June 2020, namely the protection of 'our history', and the view that to remove or relocate such monuments is to hide from it. Moreover, education about the past is emphasised so that any decisions regarding CHAs should facilitate exploration and understanding of the past and encourage people to learn from it.[35] There is much that is indisputably encouraging about aspects of the Guidance, but the emphasis of not hiding from our history is, we argue, problematic. It is to this aspect we now turn.

PART 3. WE MUST NOT HIDE FROM OUR HISTORY

In relation to controversial statues and monuments, the 'argument from history' — that to remove them would constitute and an erasure or a censorship of, or a hiding-from our past — are commonly voiced. For example in the United States' context, Donald Trump tweeted about campaigns to remove the statue of the Confederate General Robert E Lee in Charlottesville Virginia: 'Sad to see the history and culture of our great country being ripped apart with the removal of our beautiful statues and monuments'.[36] A version of this sentiment was formulated by former US Secretary of State Condoleeza Rice, that monuments should be preserved to help present and future generations understand the complexities of the past:

> Nobody is alive today who remembers the [American] Civil War, but by looking at [a Confederate monument] you can trigger what it meant and what it was like. You don't

[34] *Ibid*, 7. How the views of the deceased and those yet-to-be born are to be taken into account is not explained.
[35] *Ibid*, 3.
[36] "X" @realDonaldTrump, 17 August 2017, https://twitter.com/realDonaldTrump/status/898169407213645824

need to honor the purposes of people [who] were on the other side of history, but you are better able to remind people.[37]

The justificatory conceptual and political hook of 'not hiding from our history where it makes us uncomfortable' carries the assumption that such monuments somehow are themselves history, and that if they were not in the places they are this history would be irretrievably lost or at least left unknown. We would argue, however, that the 'mustn't hide from history' justification tends to run-together and confuse two distinct — albeit overlapping — 'ways of knowing the past', [38] namely history on the one hand, and collective or shared memory on the other.[39] Whereas both have value, and both have necessary social functions, they are fundamentally different in kind, and perform *different* roles. Further, we argue, to justify the CHA Guidance in the name of history is problematic and misleading. In order to explain this point, we must first briefly consider these concepts of history and collective memory.

History

The question what is 'history' has been the subject to intense debate for centuries, especially in relation to the vexed question of whether the historian *doing* history has the obligation or even possibility of striving for objectivity.[40] Hegel distinguished between things that happened (*res gestate*) and the narration of things that happened (*historia rerum gestarum*) – acknowledging the difference between actual events that have happened in the world, and their later retelling.[41]

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[37] Cameron Smith, 'Condoleezza Rice Talks Religion, Confederate Monuments and Energy Policy, Youtube video, May 2017, cited in Travis Timmermans, 'A case for removing Confederate statues' in Bob Fischer (ed) *Ethics of Left and Right: The moral issues that divide us* (OUP 2019), 518. This argument is commonly associated with the philosopher George Santayana, *The Life of Reason: Or the Phases of Human Progress, vol 1: Reason in Common Sense* (Charles Scribner's Sons 1920), 284. Michael Herr responded with the 'little history joke' that 'those who remember the past are condemned to repeat it too' cited in David Rieff, *In Praise of Forgetting: Historical Memory and its Ironies* (Yale University Press 2016), 58.
[38] David Lowenthal, *The Past is a Foreign Country – Revisited* (Cambridge University Press 2015), 303-378.
[39] There is by no means a consensus on the terminology of collective memory, with scholars using, in addition and *inter alia*, 'shared memory', 'historical memory', 'cultural memory' and 'public memory', see Geoffrey Cubitt, *History and Memory* (Manchester University Press 2007), 9-10.
[40] See Daniel Little, 'Philosophy of History', *The Stanford Encyclopaedia of Philosophy* (Winter 2020 Edition), Edward N Zalta (ed) at https://plato.stanford.edu/archives/win2020/entries/history/
See the 1960s debate between of EH Carr, *What is History?* (Penguin 2018) and GR Elton, *The Practice of History* (Blackwell 2001). See further Richard Evans, *In Defence of History* (Granta 2018); and Helen Carr and Suzannah Lipscomb (eds), *What is History Now?* (Weidenfeld and Nicholson 2021).
[41] Georg Wilhelm Friedrich Hegel, *The Philosophy of History* (2004 Dover Philosophical Classics).

Very often today the term ‘history’ is used in a loose, vague, all-encompassing way to meant the past, the ‘olden days’.[42] But in the 19th century a prevalent purpose of history was to help in the creation of the national story, to inculcate national unity, a sense of identity, and patriotism.[43] A crucial aspect of this national story creation could even be a degree of wilful misrepresentation in order to help cement a shared national identity. Thus, for example, in his classic 1882 essay, ‘What is a Nation?’ the eminent French historian Ernest Renan argued that the very idea of nationhood required a certain collective amnesia, even at the expense of the pursuit of historical truth:

> Forgetting, I would even say historical error, is an essential factor in the creation of a nation and it is for this reason that the progress of historical studies often poses a threat to nationality … the essence of a nation is that all of its individual members have a great deal in common and also that they have forgotten many things.[44]

Similarly, today, in a number of places — especially in relation to education in schools and public/governmental pronouncements — ‘history’ may have several functions. For example, in some states, ‘history’ is frequently considered a tool for the telling of national narratives and accomplishments, in addition to the inculcation of patriotism and national identity, as well as the furthering or bolstering of current political objectives. Such state-sponsored official history can be seen, for example in contemporary Russia,[45] where Vladimir Putin’s use of this kind of nationalist history to justify policies such as the invasion of Ukraine is well documented.[46]

The use of the ‘not hiding from history’ justification as the basis for the contested heritage Guidance *could* have in mind this kind of conception of history — the nation-building,

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[42] See for example ‘Ian Hislop’s The Olden Days’: https://www.bbc.co.uk/programmes/b040tm16

[43] Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso 2016); Eric Hobsbawn and Terence Ranger (eds) *The Invention of Tradition* (Cambridge University Press 1983); Stiina Löytömäki, *Law and the Politics of Memory* (Routledge 2014), 130.

[44] Ernest Renan, ‘What is a Nation?’ in HK Bhaba (ed) *Nation and Narration* (Routledge 1990), 11. Löytömäki, *ibid*, 130; A Funkenstein ‘Collective Memory and Historical Consciousness’ (1989) 1(1) *History and Memory* 5.

[45] See for example Julie Fedor, ‘“Historical Falsification” as a Master Trope in the Official Discourse on History Education in Putin’s Russia’ (2021)13(1) *Journal of Educational Media Memory and Society* 107. See further, Farida Shaheed ‘On the writing and teaching of history’ Report of the Special Rapporteur in the field of cultural rights, General Assembly, UNGA A/HRC/68/296, 9 August 2013, Part III.

[46] Ido Vock, ‘Tucker Carlson interview: Fact-checking Putin’s “nonsense” history’, BBC News Website, February 2024, available here https://www.bbc.co.uk/news/world-europe-68255302

patriotic story of the past to build national identity. Indeed, in the US debates, this kind of argument — the importance of building the national myth, for instance in relation to US Civil War memorials — has been explored by the philosopher Dan Demitriou.[47] There is certainly value in this kind of narration of the past in terms of fostering identity and a national story. But this conception is not readily consistent with the notion of history as an academic discipline in a modern liberal democracy. True objectivity may indeed be impossible in historical endeavour — at the very least, for example, because of the actual choices historians make about what to study in the first place.[48] However, in its current sense, in modern liberal democracies at least, it is nevertheless the case that history is a *discipline* in which, as Jeffrey Blustein says, the pursuit of truth is the '*regulative ideal*', and wherein the 'accuracy in what is said about the past is the primary criterion for assessing the quality of historical research and the achievements of historical enquiry'.[49] As the author of the Stamford Encyclopaedia entry on the *Philosophy of History*, Daniel Little puts it:

> Historians themselves have obligations of truthfulness and objectivity in the accounts they provide of the past. This topic has occupied much of the discussion of history and ethics in the past few years. Much of this discussion has centered on the intellectual virtues to which historians need to aspire, such as truthfulness, objectivity, and persistence. Perhaps more generally, we might argue that historians have an obligation to deliberately and actively include those aspects of the past for further research that are the most morally troublesome….[50]

Whilst there may have been heated debate over the possibility or achievability of objectivity in the production of any history, there nevertheless exists a core requirement of academic *discipline*. Indeed the former Special Rapporteur in the field of cultural rights, Farida Shaheed, in her report on the teaching and writing of history has strongly cautioned against history education that is designed to foster patriotism and national identity or mould the

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[47] Dan Demitriou, 'The Ashes of our Fathers: Racist Monuments and the Tribal Right' in Bob Fischer (ed) *Ethics, Left and Right: the Moral Issues that Divide Us (*OUP 2020) 523–545.
[48] Lowenthal n 38, 336-8.
[49] Jeffrey Blustein, *The Moral Demands of Memory* (Cambridge University Press,2008), 178 (emphasis added) whilst conceding that there are 'difficult and important questions about what historical truth consists in' at 191.
[50] Daniel Little, 'Philosophy of History', *The Stanford Encyclopedia of Philosophy* (Winter 2020 Edition), Edward N. Zalta (ed.) (references omitted) URL = <https://plato.stanford.edu/archives/win2020/entries/history/>.

young in line with official ideology. Rather, she stresses, '[h]istory is an academic discipline based on rigorous and systematic research of historical sources using confirmed methods and providing ascertainable results',[51] whilst history *teaching* 'should promote critical thinking and adopt a multi-perspective approach…'.[52]

Such conceptions of history, albeit caveated with cautions about the impossibility of objectivity, do not sit readily with the proposition that commemorative heritage assets — monolithic, monotone, celebratory, imposing glorifications of powerful men — *are themselves* 'history'. We shall return to this point below, but before doing so we now turn to an alternative way of 'knowing the past' that is in-play here: that of collective or shared memory.

Collective/Shared Memory

In recent years there has been a huge growth in the study of what is most commonly referred to as 'collective memory' and its relationship to individual and group identity.[53] And this scholarship is sometimes itself seen as part of what some have termed a 'memory boom' — the seemingly insatiable interest in the past, manifested in a fascination with, *inter alia*, personal ancestry, ancient buildings, films, novels, documentaries *et cetera*.[54] However, the term 'collective memory' itself was first coined in the early 20th century by the French sociologist Maurice Halbwachs, whose key insight was that memory cannot be a purely individual phenomenon since personal recollections can only exist and are localized in the past by linking up with the memories of others: one remembers only as a member of a social group.[55] We are not here talking of a mysterious 'group mind' — only individuals can

[51] Farida Shaheed n 45, at para 5.
[52] *Ibid*, at para 7.
[53] See for example Blustein, n 49, 182-239; Aleida Assmann, 'Re-framing memory: Between individual forms and collective forms of constructing the past' in Karin Tilmans, Frank van Vree and Jay Winter (eds.) *Performing the Past: Memory, History and Identity in Modern Europe* (Amsterdam University Press 2010); and Jeffrey K Olick, Vared Vinitzky-Seroussi and Daniel Levy (eds) *The Collective Memory Reader* (Oxford University Press 2011) especially Part II.
[54] Jay Winter, 'The Generation of Memory: Reflections on the "Memory Boom" in Contemporary Historical Studies' (2007) 1 *Archives & Social Studies: A Journal of Interdisciplinary Research* 363; Olick *et al*, *ibid*, 3.
[55] Maurice Halbwachs, *On Collective Memory* (first published in 1925 as *Les cadres sociaux de la mémoire*, Lewis Coser tr and ed, University of Chicago Press, 1992); Joseph R Llobera, 'Halbwachs, Nora and "history" vs "collective memory:" a research note' (1995) *Durkheimian Studies*, 37, 37.

actually remember — but rather that, since individuals are 'located in a specific group context', they 'draw on that context to remember or recreate the past'.[56]

The historian of memory, Patrick Hutton, explains Halbwachs' position:

> [m]emory is only able to endure within sustaining social contexts. Individual images of the past are provisional. They are 'remembered' only when they are located within conceptual structures that are defined by communities at large. Without the life-support system of group confirmation, individual memories wither away … In recollection we do not retrieve images of the past as they were originally perceived but rather as they fit into our present conceptions, which are shaped by the social forces that act on us.[57]

Collective memory is possessed by groups, and each group has its own collective memory, constructed over a specific period of time depending on the nature of the group. Since as individuals we live our lives as members of social groups, our memories and our transmission of those memories to others contributes to the processes by which groups develop a sense of collective identity extending over time.[58]

A clear explanation of this rather elusive concept is given by the philosopher Avishai Margalit in his book *The Ethics of Memory.* [59] Margalit draws the distinction between what he calls 'common memory' and 'shared memory'.[60] The former is an aggregate of all the memories of people who remember a particular event, or series of events, that each of them experienced individually and, when a certain proportion of people in a given group have the same memory of an episode, we can call it a 'common memory'. 'Shared memory', on the other hand, is not a simple aggregation but occurs where there is communication leading to different individuals' perspectives being integrated and calibrated into a single version; and this element of communication means that those who did not witness the episode at the time

[56] Llobera, *ibid*, 37.

[57] Patrick Hutton, *History as an Art of Memory* (University of New England Press 1993), 6-7. Similarly, Michael Schudson holds that in an important sense there can be no such thing as *individual* memory, which in reality merely 'piggybacks' on the social and cultural practices of memory that a person's society has developed, M Schudson, 'Dynamics of distortion in collective memory' in D Schacter (ed), *Memory Distortion: How Minds, Brains, and Societies Reconstruct the Past* (Harvard University Press, 1995), 346.

[58] Geoffrey Cubitt, *History and Memory* (Manchester University Press 2007), 155.

[59] Avishai Margalit, *The Ethics of Memory* (Harvard University Press 2004), 50-51. See also Aleida Assmann, n 53, 35.

[60] *Ibid*, Margalit, 50-51.

with their own senses may nevertheless be 'plugged into the experience … through channels of description rather than by direct experience'. Importantly, this 'division of mnemonic labour'[61] need not be confined to memories of a single point in time, but can take place diachronically, *over time*, *across generations*.[62] As Margalit says:

> As a member of a certain community of memory, I am related to the memory of people from a previous generation. They in turn are related to the memory of people from the generation that preceded them, and so on, until we reach that generation which remembers the event in question first-hand.[63]

Thus, for Margalit, the 'shared memory' of an event that no living person actually experienced becomes a "memory of memory" of what others have told future generations about their past.[64] And that may be a memory which, through the division of 'diachronic labour', does not end up as an event that actually occurred.[65] Hence, whilst the individual sense of the term *remember* is akin to *know,* collective memory is closer to *believe.* But this certainly does not necessarily diminish its importance for group identity, indeed far from it. As Margalit says in relation to one of the foundational shared memories of the Jewish people, the Exodus from Egypt, '[e]ven if it is true that we have such a memory, it does not follow that that dramatic event ever occurred'.[66] Moreover, such collective/shared memory that traverses generations may not simply be of an original 'event' — in Margalit's Exodus sense — but may carry intergenerational trauma whose ripples impact upon the descendants of those subjected to the original damaging 'event' in ways that evolve and change, for example in relation to the harms suffered by First Nations peoples in North America.[67]

In relation to the nexus between shared/collective memory and group identity, the sociologist Barbara Misztal explains that the former is the 'representation of the past, both that shared by a group and that which is collectively commemorated', and this 'gives substance to the group's identity, its present conditions and its vision of the future'.[68] This

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[61] *Ibid*, 52.
[62] *Ibid*, 51-55.
[63] *Ibid*, 59.
[64] *Ibid*, 58. See also Mark Osiel, *Mass Atrocity, Collective Memory and the Law* (Routledge 1999).
[65] *Ibid,* 58-59.
[66] *Ibid*, 58-59.
[67] Amy Bombay, Kim Matheson and Hymie Anisman, 'Intergenerational Trauma: Convergence of Multiple Processes among First Nations Peoples in Canada' (2009)5(3) *International Journal of Indigenous Health*, 6.
[68] Barbera A Misztal, *Theories of Social Remembering* (Open University Press 2003), 7.

collective imagined past provides an 'anchor' and 'stability' for the group,[69] acting as a kind of 'glue' that allows identity to form and to subsist over time.[70]

For this shared/collective memory to survive over time, across generations in the way described by Margalit, Misztal and others, it must be embodied in 'durable carriers'.[71] These carriers can come in multiple forms — rites, ceremonies, poetry, songs, and rituals. But such carriers also come in the form of monuments and memorials in public space, providing visible, tangible reminders of people or events in the group's past, and hence also of the group's own continuous existence and identity.[72] In the late 20th century the French historian, Pierre Nora, identified the growth of what he called these *lieux de mémoire,* sites or places 'where memory crystallizes and secretes itself', defining them as 'any significant entity … which by dint of human will or the work of time has become a symbolic element of the memorial heritage of any community'.[73] They have great importance, Nora argued, since they 'help to create and sustain narratives about the past, and help to hold communities together'.[74]

Clearly, if we accept the above description of collective/shared memory, we can see that CHAs — statutes and monuments commemorating past figures and events — can be seen exactly as *lieux de mémoire*, durable carriers of collective memory and anchors of identity for those (or parts of those) communities in which they stand. But before we explore the Guidance itself in the light of these points, we first need to understand the relationship between history and shared/collective memory, and it is to this issue we now turn.

The Link Between Collective/Shared Memory And History

Collective/shared memory and history are linked and overlapping, like circles in a Venn diagram. Charles Maier has said that memory tends to motivate historians because 'historical research utilizes memory in the sources it uses' and historians 'bring their own memories to

[69]*Ibid*, 126.
[70] Sharon McDonald *Memory Lands: Heritage and Identity in Europe Today* (Routledge 2013) 11-12. See also Daniel Abrahams, 'The Importance of History to the Erasing-History Defence', (2022) 39(5) *Journal of Applied Philosophy* 745, 749-51, who draws on Benedict Anderson, n 43.
[71] Aleida Assmann, n 53; Arno Meyer, 'Memory and History: On the Poverty of Remembering and Forgetting the Judeocide' (1993) 56(5) *Radical History Review*, 12.
[72] Margalit n 58, 54; Assman *ibid*.
[73] Pierre Nora, 'From *Lieux de Mémoire* to Realms of Memory: Preface to the English-language edition' in Lawrence D Kritzman, (ed.) *Realms of Memory: the Construction of the French Past*, *vol 1: Conflict and Divisions* (Arthur Goldhammer tr, Columbia University Press 1996), xv, xvii.
[74] *Ibid*.

bear' on the value judgments they make about human actions in the past.[75] Nevertheless, many scholars accept that memory and history are fundamentally different in kind. Jay Winter puts it thus:

> History is memory seen through and criticised with the aid of documents of many kinds—written, aural, visual. Memory is history seen through affect. And since affect is subjective, it is difficult to examine the claims of memory in the same way as we examine the claims of history. History is a discipline. We learn and teach its rules and its limits. Memory is a faculty. We live with it, and at times are sustained by it.[76]

With the 'doing' of 'critical history' the historian makes an ontological commitment to securing the event which the memory is about' which is not the case with collective or shared memory.[77] Moreover, history 'must be reflective and inevitably discordant and plural' — historians 'must at least presuppose different life situations, and 'assume that individuals and groups bring limited perspectives to any conflict'. The historian will reconstruct 'causal sequences' and 'tell stories of before and after and explain events by their antecedents'. In contrast, the

> retriever of memory does not have the same responsibility to establish causal sequencing. Triumphs, traumas, national catastrophes make their presence felt precisely by their re-presence or representation. Memories are to be retrieved and relived, not explained.[78]

Echoing Hegel's distinction between *res gestate* and *historia rerum gestarum*, whilst the past can never be retrieved unaltered, historians 'still strive for impartial, checkable accuracy, minimizing bias as inescapable but deplorable'.[79] On the other hand those invoking memory 'use the past to find roots, to affirm identities, to claim legacies, to celebrate collective bonds,

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[75] Charles Maier, 'A Surfeit of Memory? Reflections on History, Melancholy and Denial' (1993) 5(2) *History and Memory* 136-152 at 143.
[76] Winter, n 52, 12. Arno Meyer, n 70, 13; Shaheed, n 45.
[77] Margalit n 58, 61.
[78] Maier n 74, 143. See also Blustein, n 49, ch 4. Stiina Löytömaki, *Law and Politics of Memory* (Routledge 2014) 6-7; Lowenthal, n 37, 292; Jay Winter, Historical Remembrance in the Twenty-First Century' (2008) 617 *The Politics of History in Comparative Perspective* 6-13, 12.
[79] Lowenthal 'History and Memory' (1997) 19(2) *The Public Historian* 30, 32.

and to traduce rivals'.[80] Whilst 'authentic rethinking and re-inquiry are the historian's noblest and most exacting tasks', by contrast, memory 'privileges piety and consensus over freethinking and criticism. It tends to foreclose discussion rather than to free and encourage it'. [81]

Aleida Assmann, drawing on the work of the German historian Reinhart Kosselek, maps the watershed between memory and history on to subjective and objective conceptualisations of truth. Subjective truth can be claimed by a person who 'owns his specific distinctive and authentic memories' and the truth of these memories 'arises from the indisputable evidence of unmediated experience'. In contrast objective truth can be 'claimed by the professional historian who reconstructs past experience in an impartial way' comparing sources, weighing arguments and engaging in an 'open-ended discourse of experts who in continuously correcting each other aspire to come closer and closer to the truth'.[82]

Because of the characteristics outlined above, history has no subjects that are beyond-the-pale, no subject is sacrosanct, whereas memory focuses on certain tropes from the past. As Yerushalmi explains in his study of Jewish history and memory, the historian 'seeks ultimately to recover a total past … [n]o subject is potentially unworthy of his interest, no document, no artefact, beneath his attention'. On the other hand, collective memory is 'drastically selective … [c]ertain memories live on; the rest are winnowed out, repressed or simply discarded by a process of natural selection which the historian, uninvited, disturbs and reverses'.[83]

The conception of collective/shared memory sketched out above may have a great deal of overlap with the 19th century national-identity building conception of history associated with Ernest Renan,[84] or today, with Vladimir Putin. But we can see that whilst there are links, it is wholly different in kind from the *critical* history described in Part 3 above: it is partial, selective, emotional. As Pierra Nora colourfully put it, memory is:

> affective and magical … only accommodate[ing] those facts that suit it; it nourishes recollections that may be out of focus or telescopic, global or detached, particular or

[80] *Ibid*.
[81] Arno Meyer, 'Memory and History: On the Poverty of Remembering and Forgetting the Judeocide' (1993) 56(5) *Radical History Review*, 7.
[82] Assmann, n 53, 38.
[83] Yosef Hayim Yerushalmi, *Zakhor, Jewish History and Jewish Memory* (University of Washington Press 1989), 94-5.
[84] See above, n 44.

symbolic... [it] is blind to all but the group it binds — which is to say … that there are as many memories as there are groups….[85]

Mindful of the aforementioned distinction between critical history and collective/shared memory, the following section will address the new Guidance on how to deal with contested CHAs, with its underpinning rationale that we must not 'hide' from history.

PART 4. THE GUIDANCE AND THE HISTORY/MEMORY DISTINCTION

Having regard to the above, it is strongly arguable that CHAs can better be seen as 'durable carriers of memory' rather than as 'critical history'. It seems reasonably clear that it is this critical sense of the word history that the Guidance has in mind when it uses it as the justification for the policy — as opposed to the 19th century patriotic, national myth-building Ernest Renan (or Vladimir Putin) conception of history. It will be recalled from Part 1 above that at the very core of the Guidance — when setting out the kind of explanations that may be permitted to be added to existing CHAs — is a view of 'history' that is rigorous and academically disciplined and, importantly, contributes to public education about the past. Thus, the Guidance states (at risk of repetition), that:

> Decisions made about our heritage must *not be based on a partial or partisan view of our history*, but should seek to explore our past fully, attempt to understand it, and encourage people to learn from it. [86]

And

> Removing commemorative heritage assets diminishes our *understanding* of the past. Moreover, removing CHAs risks suppressing our ability to *understand and learn* from aspects of our history, including past actions which may not be considered acceptable today.
>
> …

[85] Pierre Nora, 'Between Memory and History: *Les Lieux de Mèmoire'* (1989) 26 *Representations* 7-24. Yerushalmi, n 83, says 'Memory and modern historiography stand, by their very nature, in radically different relations to the past', 94.
[86] Guidance, n 1, 3 emphasis added.

If … custodians decide to add further explanation to a commemorative heritage asset, it must be in a *balanced* way, which enables the public to *learn* about it in its entirety and to make up their own mind. Explaining out heritage should be based on a *rigorous, balanced and comprehensive* interpretation of the past.

..

The historical evidence provided to assist custodians in deciding a course of action should be rooted in *academic rigour'*.[87]

It is therefore clear that the Guidance has in mind a sense of the discipline of academic history, eschewing 'partisan and partial' views of history and encouraging exploration, learning, understanding, balance and academic rigour.

More fundamentally, however, it is also clear the majority of contested CHAs *are not and cannot constitute the kind of critical history described above*. For the most part they were erected to promote drastically selective and overwhelmingly dominant narratives about the past.[88] Their ostensible and obvious message is one-dimensional and uncritical, namely the celebration of a particular figure from, and a particular single version of, the past. As the former Archbishop of Canterbury, Rowan Williams has put it:

'A statue is a very distinct sort of image: it freezes someone in a timeless moment: it literally fixes their position and so in a sense fixes their place in a system of influence and relationships and public mythology.[89]

…

The statue of a slave trader, with an inscription about his exceptional virtues, isn't something you can argue with: it's *meant* to express solid public approval, the power of social agreement. It's there to help fix or freeze the way a society works and the values it endorses.

Today, all artistic, symbolic, expressive forms of representation can convey — immediately or over time — a plurality of meanings, especially in relation to the "interplay between

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[87] Guidance, n 1, 7 emphasis added.

[88] Frederico Balentani and Mario Panico 'The meanings of monuments: toward a semiotic approach' (2016) *Punctum: International Journal of Semiotics* 28, 37.

[89] Rowan Williams, *Candles in the Dark* (SPCK, 2020), 41. Iain Hay, Andrew Hughes and Mark Tutton, 'Monuments, Memory and Marginalisation in Adelaide's Prince Henry Gardens, (2004) *Geografiska Annaler* 86 (B/3) 201-216, at 204.

designers' and users' interpretations"[90] As Ballentini and Panico argue in their semiotic approach, whatever the intentions of those powerful elites responsible for erecting them in the first place, 'once erected … [monuments and memorials] become social properties and users can reinterpret them in ways that are different or contrary to the intentions of the designers'.[91] However, such meanings may be difficult to discern, or hard to extract. Moreover, even if different interpretations can be derived from them, this does not render CHAs history. As the historian David Olushoga has said:

> …what they're not, is history. What they are, is validation and memorialisation. Why do we want to say that these were great men when we know in many cases they were not? … Which statue can we point to that tells us about a difficult part of our history? They cannot teach us history. They are always silent about the victims and they are put up by tiny members of a male elite to celebrate the lives of other members of that tiny male elite.

It is axiomatic that CHAs cherry-pick certain interpretations of past historical events/figures, while totally ignoring others. In terms of 'ways of knowing the past' it is hard to argue that they fit anything other than into the category of collective/shared memory and, as such, are contributors to group identity.

Arguments on the survival of, or the not-hiding-from history, as sketched out in the sections above — and in the sense that the Guidance itself embraces when considering how the 'explain' side of the 'retain and explain' policy is to be pursued — would seem to be fallacious. History cannot seriously be said to depend on the unalloyed presence of CHAs glorifying particular individuals (predominantly men of the 18th and 19th century) for their military, colonial and imperial exploits. The information they contain is monochrome — one sliver of a perspective on the past, presented by those who emerged from it wealthy and victorious, and in a position to ensure that it was only their side of 'the story' that was immortalised in stone and bronze. Such CHAs do not proffer enlightenment or context, or offer critique, or balance opposing views. Moreover, and obviously, these stories are *not*

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[90] Frederico Ballentini and Mario Panico n 88. The European Court of Human Rights has stressed in its right to freedom of expression case-law that symbols have 'multiple meanings'. See, for example, *Vajnai v Hungary*, Application no. 33629/06 (ECtHR, 8 November 2008) at para 51.
[91] Ballentini and Panico, *ibid*, 28.

solely available in these monolithic representations, but from a host of other sources.[92] Undoubtedly, if a monument is removed, this *changes* one narrow representation of the past in public places. But it is not a hiding from history in the way that is asserted in the Guidance.

Cleaving To History

In its use of the 'mustn't hide hide-from-history' justification the Guidance is apparently cleaving to the supposed objectivity, rigour, balance and universalistic credentials of critical 'history'. There are obvious tactical advantages to this approach. To claim the validation of history casts those who wish to remove such monuments as somehow attempting to subvert or distort the truth about the past. It firmly places the case for retention on the moral high ground, indeed, on the side of 'truth'. And it enables a stance to be adopted whereby the default position is one of *status quo*. The use of the 'mustn't hide …' argument enables a rebuttable presumption that things should stay the same, and that for them not do so is somehow being dishonest about the past. Consequently, the burden created by the Guidance falls squarely and heavily on those advocating for change.

Because the Guidance has as its justificatory rationale the eschewing of attempts to hide from history, when it comes to explanations which might 'in some cases' be proposed, the onus is on the advocates for change to be rigorous and scrupulously researched. This is of course justifiable in that it is concordant with the meaning of 'history' as a discipline, as sketched out above, with the pursuit of truth as its 'regulative ideal'. But those advocating for the *status quo* have *no such* presumption to overcome. And it raises questions about those CHAs that remain unexplained — namely, where is the vaunted balance and academic rigour in relation to them? They will still remain standing, still unexplained. The Guidance's injunction that '[d]ecisions made about our heritage must not be based on a partial or partisan view of our history, but should seek to explore our past fully, attempt to understand it, and encourage people to learn from it' manifestly does not apply to 'decisions' to leave monuments unencumbered by unnecessary or unwanted explanations. Indeed, the adherence to the virtues of rigour and balance bites only once the decision has been made to 'explain'. Consequently, there now exists something of a zero-sum-game in respect of the CHAs to which the Guidance applies. Where advocates for the installation of an explanation are successful, they are required to adhere to the highest standards of balance and academic

[92] Travis Timmerman, 'A case for removing confederate statues' in Bob Fischer (ed) *Ethics Left and Right: The Moral Issues that Divide Us* (OUP 2019), 518.

rigour. But CHAs where it is determined that no explanation should be added will remain obdurately unbalanced an un-rigorous, monolithic and monoglot, conveying no more than one side of any story.

More generally, in respect of *all* CHAs, it is arguable that there *has* been to date a hiding-from-history, since *other* sides of the stories have not been told. In other words, to maintain the *status quo* essentially constitutes 'hiding from history'. The Colston statute illustrates this very point. It stood on a prominent plinth in a busy part of the city of Bristol, adorned by bronze plaques illustrating his philanthropy, and the words "Erected by the citizens of Bristol as a memorial of one of the most virtuous and wise sons of their city".[93] Not a word was inscribed as to the methods by which he secured the wealth that enabled him to bestow his largesse upon the city, nor of those who suffered incalculable pain as a result of his actions.[94] Thus, it could strongly be argued that the unexplained CHA *itself* constituted a hiding-from-history. As one of the protestors acquitted in 2022 of criminal damage for toppling the Colston statue said, 'We didn't change history, they were whitewashing history by calling (Colston) a f…… virtuous man … We didn't change history, we rectified it'.[95]

Museums

If it were truly the preservation of history that was the aim of the Guidance, the possibility of relocation in museums where full historical context could be provided should surely be entertained.[96] This approach has been followed with the fallen Colston statue, relocated in the M Shed Museum in Bristol, lying prone, dents and graffiti and all, providing an educational opportunity for visitors to learn about the slave trade and resistance to it.[97] Another example

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[93] See Roger Ball, 'Myths within myths … Edward Colston and that statue' (Bristol Radical History Group, 2018) at https://www.brh.org.uk/site/articles/myths-within-myths/

[94] Madge Dresser, 'Colston Revisited' (History Workshop, 27 June 2020) at https://www.historyworkshop.org.uk/colston-revisited/. It is estimated that Colston, as Director of the Royal Africa Company, was responsible for the transportation of 84,500 Africans into slavery, and for the deaths of approximately 19,300 men, women and children, see Saima Nasar, 'Remembering Edward Colston: histories of slavery, memory and black globality' (2020) 29(7) *Women's History Review* 1218-1225, 1218.

[95] Chiara Giordano, 'Edward Colston statue trial: Four cleared of criminal damage for toppling memorial' *The Independent* 3 January 2022 https://www.independent.co.uk/news/uk/crime/edward-colston-statue-trial-latest-b1987356.html; See also Parris, n 15.

[96] Timmerman, n 92, 518.

[97] Tim Cole, n 13; Joanna Burch-Brown and Tim Cole, *The Colston Statue: What Next?* (Bristol History Commission, 2022), https://www.theguardian.com/uk-news/2024/mar/14/edward-colston-statue-placed-quiet-corner-bristol-museum
https://exhibitions.bristolmuseums.org.uk/the-colston-statue/wp-content/uploads/sites/22/2022/02/History_Commission_Short_Report_Final.pdf ; Steven Morris, 'Edward

can be seen in Berlin's Citadel Museum to which the monuments to Prussia's rulers have been transferred.[98] Such initiatives would address, full-on, the hiding-from-history defence. A full, balanced, rigorous context could be provided and an opportunity for education created about Britain's prominent role in the story of slavery and colonialism. In addition, it would go some way to re-inventing CHAs *as* history, and not simply as public glorifications and valorisations of particular powerful men. However, this avenue has been closed off by the near blanket prohibition on removal of commemorative heritage assets.

If the Guidance had referred to collective/shared memory, connected to the identity of which CHAs are durable carriers, it would have had less rhetorical force, appearing to favour the emotion and identity over rigour, balance and objectivity. Yet we argue that it would have been preferable had the Guidance acknowledged that public memorials are carriers of collective memory for many in those communities where such memorials are found. As such they have a value. And as Demitrou and Wingo point out, 'every people needs its heroes, and any people with a developed material culture will remember them with monuments'.[99] But, in a diverse, multi-cultural, multi-ethnic society like modern Britain, the unalloyed celebration of these 'heroes' by people in one community may be ineluctably at odds with the collective memories of those in other communities — especially those whose ancestors suffered at the hands of the transatlantic slave trade or British colonialism and imperialism. As such, the current state-of-affairs leaves many people without visible durable carriers of the collective memories linked to their heroes. Because the Guidance sets a presumption against change, and is in favour of the *status quo*, it rather sees things from one perspective — and it thereby displays a lack of empathy for the viewpoints of those with different collective memories. As the philosopher Daniel Abrahams observes, '… the key worry is not the preservation of some true history uniquely embodied in such commemorations, but the defence of some collective identity the commemoration supports'.[100]

The 'mustn't hide-from-history' justification is therefore, we argue, flawed, both in the Guidance's own terms — in that it asserts that history must be balanced and rigorous, and

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Colston statue placed in a quiet corner of Bristol museum' *The Guardian* (14 March 2024) https://www.theguardian.com/uk-news/2024/mar/14/edward-colston-statue-placed-quiet-corner-bristol-museum

[98] The Berlin Citadel Museum's permanent exhibition 'Unveiled – Berlin and its monuments' (opened 2016): https://www.zitadelle-berlin.de/en/museums/unveiled/

[99] Dan Demitriou and Ajume Wingo, 'The Ethics of Racist Monuments' in David Boonin (ed) *The Palgrave Handbook on Philosophy and Public Policy* (Springer 2018), 341, 350.

[100] Daniel Abrahams, 'The Importance of History to the Erasing-History Defence' (2022) 39(5) *Journal of Applied Philosophy* 745, 753.

CHAs are not and cannot be — and in terms of the substance of the issue, in that they are for the most part, not history but monumental durable carriers of memory and identity. However, notwithstanding these problems with the Guidance's underpinning rationale, and the presumptions of retaining the *status quo* that it creates, when it comes to the suggestions to custodians on the possibilities for explanation, there is more room for optimism. It is therefore to the 'explain' part of the retain and explain Guidance that we now turn.

Chinks Of Light

The Guidance creates a virtually irrebuttable presumption against the removal of CHAs (apart form in the narrowest range of circumstances related to factors other than what they represent). This is the 'retain' bit. However, it acknowledges that *sometimes* explanation will be necessary and suggests many possible ways in which such explanations might be proffered, subject to the caveats as to academic rigour, balance, wide consultation *et cetera* outlined above.

The term 'retain and explain' rather conjures-up an impression of textual information boards set beside CHAs, designed to place them within their historic context. Indeed, this is one of the options that the Guidance suggests is possible.[101] Perhaps the most famous example of such textual contextualisation is in relation to the controversial statue of the Cecil Rhodes, at Oriel College Oxford. In October 2021, an explanatory plaque was placed nearby, describing him as a 'committed British colonialist' who exploited the 'peoples of southern Africa', and that his activities 'caused great loss of life'.[102] This kind of textual information/explanation might, on our argument, go some way towards converting what are currently (we argue) carriers of collective/shared memory into something more akin to the kind of critical, rigorous, balanced, educative 'history' that the Guidance advocates. Indeed, this approach could be seen as a watered-down version of the (now ruled-out) move-them-to-museums strategy — but in the current climate of cash-strapped local authorities, and

[101] Of the ten examples in the 'list of reinterpretation case studies' published by Historic England and intended to 'complement' the Guidance, only three consisted of textual plaques. Of these, one records an African contingent in a Roman garrison ('Aballava Fort Contextual Plaque, St Michael's Church, Burgh-by-Sands, Cumberland') and one is a plaque outside a university library (as opposed to a 'monument' or CHA ('Commemorative Plaque, All Souls College Oxford'). The remaining one sits beneath a memorial in a church ('Reconciliation Rederos, St Stephen's Church, Bristol') which would not be covered by the Guidance since it does not apply to Church property, n 27.

[102] Jamie Grierson and Damien Gayle, 'Oxford college installs plaque calling Cecil Rhodes a "committed colonialist"' *The Guardian* (11 October 2021).

severely limited funding for the cultural and arts sectors, it might be seen as a more feasible option.[103]

This form of explanation is, however, subject to the major objection that it does nothing to mitigate or moderate the monumental, celebratory and eulogising character of many contested CHAs themselves. A bronze or stone monument, set on high plinth, is far more impactive on the senses than text on a board which, by its very nature, has to be deciphered, pored over, and read at close quarters. Furthermore, whilst the addition of historical contextualizing information to a CHA in situ may indeed provide historical education, it does not thereby 'transform it into a commemoration that *also* includes [the] victims'.[104] As the philosopher Chong-Ming Lim says, 'commemorations present their information in a primarily visual format', whereas information boards or contextualizing plaques do so in a far less impactful textual format, and '[t]hese differences in accessibility will affect the effectiveness of the contextualization in addressing the tainted commemoration'.[105]

The Guidance also suggests the use of QR codes to give access to digital accounts of the historical context, which would allow 'for a variety of viewpoints to be shared easily', or amendments 'to formal records, such as list descriptions or entries in the local Historic, Environment Record.[106] Whist having advantages of depth and breadth of coverage — and perhaps a move towards CHAs becoming key components of critical history — this approach would be subject to the same objections as information boards, in terms of relative prominence and strength of the stories told, and of the one-sided nature of the actual commemorations.

It is however important to bear in mind that the Guidance also contains proposals of more innovative, artistic and engaging approaches to reimagine CHAs — which might communicate not just bare historical contexts, but the complexity of differing and competing *collective memories*. These include 'cultural events which help to explain the context', the installation of complementary statues or other artwork to provide 'commentary or a counter-perspective', and the 'non-permanent, appropriate illumination of the heritage asset to draw

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[103] Dale Berning Sawa, 'Museums in the firing line as UK council funding crisis bites', *The Art Newspaper* (5 March 2024) at https://www.theartnewspaper.com/2024/03/05/museums-in-the-firing-line-as-council-funding-crisis-bites

[104] *Ibid*.

[105] Chong-Ming Lim, 'Vandalising Tainted Commemorations' (2020) 48(2) *Philosophy and Public Affairs*, 185, 204.

[106] Guidance, n 1, 14-15.

attention to the wider context'.[107] These artistic possibilities perhaps can be seen as utilising collective/shared memory itself, attempting to engage at an emotional rather than a rational level.[108] Examples of the kind of powerful interventions that might be possible can be seen in the subversive responses to the Edward Colston statue in the days before it was toppled. These 'guerrilla installations' were unsanctioned and consequently removed. But they provide vivid indicators of the possibilities to which the Guidance *possibly* gives licence. Thus, for example, in 2018, on Anti-Slavery Day, a series of concrete blocks were laid out on the pavement in front of the statue in the shape of ship's hull, enclosing 100 prone plaster figures in powerful evocation of the 1789 print of the Liverpool slave-ship, *The Brooks*, illustrating the most efficient (and hence profitable) method of storing human cargo in the hold.[109] Upon the concrete blocks were listed the jobs performed by victims of modern-day slavery.[110] On another occasion a ball-and-chain made of red wool was attached to the statue's ankle.[111] Such artistic endeavours could potentially have the role of helping to create and embody new, and more inclusive, collective memories. They are able to shed fresh light on the past, not through the recounting of historical facts, but rather by facilitating the ability to 'imagine the other'.[112]

Human Rights

One perspective that is conspicuous by its absence from the Guidance is that of human rights. Perhaps this is not surprising given the stance of the current Conservative government, with the Prime Minister (at the time of writing) hinting strongly about possible withdrawal from the European Convention on Human Rights.[113] Nevertheless we have argued elsewhere that, in some circumstances at least, glorifications in public space of slave traders and colonialists

[107] Guidance, n 1, 14-15.

[108] Lim, n 105, suggests that the 'vandalising' of statues might address such objections, pp. 207-208. Alicia Dixon examines the Roman practice of *damnation memoriae*, whereby statues of those who had committed crimes against the state would be removed or defaced so as to *enable* their dishonour and infamy to be remembered, see Alicia Dixon, 'Remembering to Forget: Correcting the False History of the Lost Cause in the American South Through *Damnatio Memoriae'* (2020) XXV(3) *Art, Antiquity and Law* 189.

[109] Royal Museums Greenwich, Plan and Sections of a Slave Ship https://www.rmg.co.uk/collections/objects/rmgc-object-254967

[110] 'Anti-Slavery Art Installation by Colston Statue in Bristol', *Inspiring City*, 22 October 2021 at https://inspiringcity.com/2018/10/22/anti-slavery-installation-appears-next-to-edward-colston-statue-in-bristol/

[111] Michael Young, 'Ball and chain attached to Edward Colston's statue in Bristol city centre', *Bristol Live*, 6 May 2018 at https://www.bristolpost.co.uk/news/bristol-news/ball-chain-attached-edward-colstons-1539315

[112] Farida Shaheed 'Memorialization Processes', Report of the Special Rapporteur in the Field of Cultural Rights, General Assembly, UNGA A/HRC/25/49, 23 January 2014, at para 66.

[113] Chris Smyth, 'Rishi Sunak ready to pull out of ECHR over Rwanda flights', *The Times* (23 April 2024).

from the past might engage the rights of those from communities who fell victim to such people and who continue to suffer structural inequalities into the present. Accordingly, decisions by public authorities as to how to deal with such monuments might entail a balance to be struck between competing rights in the ECHR, in particular the Article 10 free expression rights embodied in the monument (which includes the right to receive, as well as impart, information and ideas) and the Article 8 right to respect for private and family life which such CHAs might engage in those who are grievously offended by them.[114] If this is correct then governmental decisions on CHAs will have to be mindful of such considerations due to the Human Rights Act 1998, section 6 of which makes it unlawful for public authorities to act incompatibly with the ECHR, unless compelled to do so by primary legislation.

However, even if we leave aside the hard-edged principles of domestic human rights law, the principles of international human rights point in the direction of the kind of imaginative and innovative solutions for which the Guidance leaves the door (at least) ajar. Thus, for example, Farida Shaheed, the (former) UN Special Rapporteur on Cultural Rights in her report to the UN General Assembly on 'Memorialisation Processes', draws on the right to take part in cultural life under Article 15(1) of the International Covenant on Economic, Social and Cultural Rights (1966), in arguing that 'people's access to pluralistic memory [i]s a human right'.[115] She contends that this includes the right of all persons to 'access, participate in, enjoy and contribute to … cultural heritage, which encompasses both history and memory'.[116] For her, cultural rights require policies that promote 'cultural interaction and understanding between people and communities' and the 'sharing of perspectives about the past and the design of a cultural landscape is reflective of this cultural diversity.' [117] Moreover, in particular, in regard to memorials, Shaheed says that they constitute:

[114] Peter Cumper and Tom Lewis, 'The UK's "Statue Wars": Can Human Rights Law Assist in Their Resolution' (2023) XXVIII (2) *Art, Antiquity and Law*, 83.
[115] Shaheed, n 112, at para 61.
[116] *Ibid,* at para 48.
[117] *Ibid.* See also CESCR, General Comment 21, E/C12/GC/21, 21 December 2009, 'Right of everyone to take part in cultural life of the International Covenant on Economic, Social and Cultural Rights,' at paras 38 and 48-49. Shaheed cites the Joinet-Orentlichter and Van Boven-Bassioni Principles on transitional justice, which have been developed in the area of reparations and the fight against impunity, at para 27-32. See further Pok Yin S Chow, 'Culture as Collective Memories: An Emerging Concept in International Law and Discourse on Cultural Rights' (2014) *Human Rights Law Review*, 611.

> part of the symbolic-cultural landscape, [and] impact on people's perspectives and understanding of past events but equally of contemporary issues. Hence, they must be critically assessed. This is particularly important when people, including children, live under the shadow of numerous, repetitive images and symbols, such as murals and statues. [118]

Shaheed recommends, amongst other things, partnerships with artists which may be 'particularly beneficial, as [they] are often able to introduce elements that spark discussions'. Furthermore, 'positive processes of memorialisation encourage critical thinking around history' and 'memorials can use creative ways to catalyse this civic engagement by opening new opportunities for dialogue …'.[119]

Shaheed's successor as the Special Rapporteur on Cultural Rights, Karima Bennoune, has emphasised that cultural rights, to be meaningful, require access to 'adequate public spaces by all, without discrimination'.[120] She also urges that the 'question of public space be recognised as a human rights issue, and that a human rights approach which centres on cultural rights should be taken to decision-making in these areas'.[121]In particular she argues that since 'local authorities are often given the responsibility to guarantee the collective and participatory character of public spaces and should promote creation and regeneration of public spaces in conditions of quality, equality, inclusiveness, accessibility and universal design'.[122]

The above glimpse at the influential opinions of the UN Special Rapporteurs clearly supports the argument that public spaces, and the memorials and statues that inhabit them, should be inclusive and non-discriminatory. Moreover, the content of the public space should be arrived at through consultation and this provides important opportunities for education about the past, and the involvement of artists to reimagine the memorial landscape. All this is possible under the Guidance, even though it is erroneously rooted in the 'mustn't-hide-from-history' premise.

PART 5. CONCLUSION

[118] Shaheed, *ibid*, at para 64.

[119] *Ibid*.

[120] General Assembly, UNGA A/HRC/74/255, 30 July 2019, Report of the Special Rapporteur in the field of cultural rights, Karima Bennoune, 'The importance of public spaces for the exercise of cultural rights,' at para 1.

[121] *Ibid.*

[122] *Ibid,* at para 84.

In 1986 the socialist soul-punk band *The Redskins* sang: 'The first act of freedom all over the world is to topple the statues …'. [123] The 2023 'Guidance for custodians on how to deal with commemorative heritage assets that have become contested' emphatically does not follow this injunction. Constituting something of a 'curate's egg', it is part good and part bad. Its retain and explain policy is based on a false premise that it is to hide from history to remove or relocate statues and monuments. By cleaving to the balance and rigour of history, the policy seeks the moral high ground. But this is problematic, not least because it leads to a high burden being placed on those seeking change and imposes upon them the 'critical history' obligations of rigour and balance that those advocating for the *status quo* do not have to meet. It would perhaps have been more honest to have accepted that CHAs are carriers of shared/collective memory, and therefore have value for parts of the communities in which they stand.

There have been calls for the removal of statues of many of those traditionally regarded as being Britain's greatest heroes, such as Francis Drake,[124] Horatio Nelson,[125] Robert Peel,[126] William Gladstone,[127] and Winston Churchill.[128] As we argue above, to remove them would *not* be to hide from history. But these CHA's nevertheless often *do* have a great value in the shared/collective memory of the communities in which they stand, and indeed more widely. After all, even the name and statue of Edward Colston was held in evident affection by some Bristolians of a certain generation, with his name given to eight streets, two schools, a concert hall, a pub, a tower-block, and even a local current bun.[129]

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[123] *The Redskins*, 'Kick Down the Statues' on their album *Neither Washington Nor Moscow* (London Records/FLP1, 1986), available here: https://www.youtube.com/watch?v=yEZTZ3_cqHY

[124] Alex Green 'Petition calls for removal of Sir Francis Drake statue from Plymouth Hoe' *Plymouth Live* (9 June 2020) https://www.plymouthherald.co.uk/news/plymouth-news/petition-calls-removal-sir-francis-4204163

[125] Afua Hirsch, 'Toppling statues? Here's why Nelson's column should be next', *The Guardian* (22 August 2017) https://www.theguardian.com/commentisfree/2017/aug/22/toppling-statues-nelsons-column-should-be-next-slavery

[126] Sami Pinarbasi, 'The campaign to remove the statue of Robert Peel in Manchester', *London South Bank University Blog* (undated) https://www.lsbu.ac.uk/lsbu-research-blogs/blogs/lss/2021/the-campaign-to-remove-the-statue-of-robert-peel-in-manchester

[127] John Powell, 'William Gladstone, Slavery and Reparatory Truth' *History Reclaimed* (28 February 2024) https://historyreclaimed.co.uk/william-gladstone-slavery-and-reparatory-truth/

[128] Danny Gallagher, '"Bring down Winston Churchill's statue!" Black Lives Matter organiser calls for "offensive" statue to be removed and put in a museum' *Daily Mail Online* (13 June 2020) https://www.dailymail.co.uk/news/article-8417809/Black-Lives-Matter-organiser-wants-offensive-statue-Winston-Churchill-museum.html

[129] Antonia Layard, 'Edward Colston: Listing Controversy', *University of Bristol Law School Blog* (15 June 2020) https://legalresearch.blogs.bris.ac.uk/2020/06/edward-colston-listing-controversy/

To summarize, whilst the Guidance is founded on a false premise, it nevertheless provides a framework — albeit a less than perfect one — that may allow for greater education about the 'jagged complexity of history'.[130] Moreover, on an issue that has generated more heat than light in recent years, the Guidance provides a chink of light. If implemented by way of nuanced, artistic, and imaginative initiatives, it may potentially transform the memorial landscape from being partial and selective, to one more commensurate with a diverse British nation in the 21st century, in which a multitude of memories are capable of being carried.

[130] Cumper and Lewis, n 114, 113.