Violence, Destruction and International Law

An interview with Andrew Herscher

Christian Ernst: What is the connection between the destruction of people and the destruction of buildings in legal terms?

Andrew Herscher: Violence against buildings is violence against the people who inhabit, use and identify with those buildings. This insight was recognized by the Hague Tribunal, which has prosecuted defendants for such things as the shelling of the Old City of Dubrovnik or, in the Milosevic trial, for the destruction of religious heritage in Kosovo. The Hague Tribunal prosecuted the destruction of buildings in several different forms, however: as the destruction of civic institutions dedicated to such things as religion or education, as the destruction of civilian property, and as the persecution of a people on religious grounds.

CE: How did buildings come to mean the same as people?

AH: I wouldn’t say that they mean the same; rather, there is an awareness that communities cannot remain intact if their architectural or urban setting is damaged or destroyed. This idea was already suggested in the Universal Declaration of Human Rights, in the article stating that all human beings have the right to participate in the cultural life of their community. With an awareness that cultural and other forms of life are physically situated, there is a blurring of the distinction between violence against people and violence against the buildings where vital parts of people’s lives take place. The Hague and Geneva Conventions deal specifically with violence against buildings. The Hague Tribunal’s statute refers to those conventions, but the Tribunal’s understanding of persecution is particularly interesting because persecution has previously been understood as directed against human bodies, as manifested in such things as discriminatory laws, forced deportation or mass murder. What emerged at the Hague Tribunal was that the destruction of religious buildings, as took place in Bosnia, Croatia and Kosovo, could also comprise a form of religious persecution.

Malkit Shoshan: I read a transcript of the Milosevic trial, and you described hundreds of examples of destruction. It seems the description of this destruction can function as a methodology which lays out the way how destruction is implemented. The trial profiled the way destruction was inflicted and linked the destruction of buildings to either NATO or the Yugoslav army’s warfare.

AH: What we were trying to do was show that the destruction of cultural and religious heritage during the Kosovo War was systematic and deliberate, and thus an important aspect of the violence inflicted on Kosovar Albanian communities. For example, we showed that in some municipalities Serb forces destroyed all Islamic buildings, and that in some villages and towns they destroyed only Islamic buildings; these kinds of testified to the of targeted violence that was directed against architecture associated with Kosovar Albanians. Milosevic argued that much of this architecture was destroyed by NATO, but we also showed that, although NATO’s bombing campaign against Serbia resulted in a great deal of destruction, only a tiny part of that destruction – a few buildings – was inflicted on Albanian religious or cultural heritage. At the same time, of course, that bombing campaign posed other sorts of humanitarian issues, but those issues were not taken up at the Hague Tribunal.

CE: I imagine international conventions frame cultural heritage in a Western way, right?

AH: I would say that the notion of cultural heritage as universal, as the property of ‘all mankind’, is a distinctly European notion. The legal instruments we are talking about are all based on such a notion and all make the problematic assumption that heritage, or what is usually termed ‘cultural property’, refers to a stable and universal set of objects. In fact, violence not only destroys existing heritage but also produces new heritage. The architectural targets of violence often are subsumed as heritage by the communities that identify with or claim those targets; they become evidence of a community’s victimization by a violent Other. In post-conflict settings this historicization of destruction is a focus of much cultural labor. For example, in Kosovo, in both Serbian and Albanian contexts, brochures and books about heritage are published that include buildings destroyed in the recent war or its aftermath, even though some of these buildings were built quite recently or were even under construction when they were destroyed.

MS: So violence produces cultural symbols?

AH: Yes, violence can render its target as a symbol or can transform the meanings with which an existing symbol is endowed. In this sense, it’s important to understand that violence against architecture often does not eliminate its target, but rather transforms it. This transformation is intended to be seen, to produce a new social text, a new cultural symbol; thus in Kosovo, for example, damaged or destroyed mosques or churches were often graffitied by those who inflicted that damage or destruction. This is an important indication that their destructive handiwork was meant to be visible. Of course, once there is a symbol there can also be negotiations about that symbol’s meaning. The perpetrators of destruction obviously interpret destruction very differently...
than do its victims; along with war crimes
tribunals, the post-war narration of topics like
cultural heritage allows victims to provide
counter-interpretations of the violence that was
inflicted on them.

**MS:** If the question of whether destruction
is criminal depends on cultural codes, then how
can we define human rights violations?

**AH:** I think we can define human rights
violations tactically. I think we can recognize
the fictive universality expressed and reproduced
in international conventions and treaties, but at
the same time we can use those conventions
and treaties in specific contexts to help us
withstand and respond to violence. The supposed
universality of human rights makes their violation
also universal, an issue that transcends the
state, and this creates a space for non-state
actors like NGOs to intervene in problems that
states create or ignore.

**MS:** I think those treaties generate a different
form of violence. You could see it in the warfare
in Lebanon – the way the attacks were organized
was like literal translations of the convention.

**AH:** Yes, conventions not only define what
violence is criminal, but also what violence is
appropriate. In so doing, they provide instruments
for states to legitimize the violence they inflict.
In Lebanon, the Israeli Defense Forces explained
how the destruction they inflicted was a ‘military
necessity,’ and thus legal according to the
relevant conventions. You could even take
extreme cases like Hiroshima and Nagasaki
or the Japanese and German cities that were
fire-bombed during the Second World War:
arguments were made for the legitimacy of
the destruction of all these cities according to
the laws of war in force at the time.

**MS:** If the conventions don’t work properly
in reality, is it possible to really reorganize the
typologies of destruction?

**AH:** I would say that the conventions do
perform work, although that work is significantly
limited, and that they can and are being
reorganized to work more effectively. The
Hague Tribunal, for example, included the first
prosecutions of rape as a war crime in the history
of international law, because rape was previously
understood to be a crime carried out merely
by individual soldiers. There were also the first
prosecutions, as I’ve said, of the destruction
of religious architecture as a war crime. These
reorganizations are making conventions, and the
indictments that follow from them, more relevant,
and more responsive to what is happening on
the ground during war.

**MS:** Do we need to add categories to the
convention to define, for example, the relation
between destruction and neoliberalism?

**AH:** Neoliberal economic programs and
policies certainly yield economic violence, such
as institutionalized poverty and underdevelopment.
And much of this violence takes place during
‘peace-time,’ when it is not regarded as violence
at all, but rather as an aspect of development,
modernization, or progress. Whether the
destructive forms of economic violence should
be included in conventions dealing with archi-
tecture is, I think, a strategic political question.
Does it make sense to expand crimes against
humanity, which economic violence could
certainly be, to peace-time, when we are still
unable to adequately respond to crimes against
humanity during war? Perhaps it does in certain
contexts, where war is not a pressing concern.

**CE:** Does cultural resource management, a
product of neoliberal capitalism, cause economic
violence?

**AH:** It certainly can. When something becomes
recognized as a ‘cultural resource’, for example,
as ‘heritage’, its meanings, functions and owner-
ship all radically shift. In the case of architecture,
when a building is termed heritage it can become
the responsibility of the state or an international
organization to protect that building, with
protection sometimes meaning that the building
cannot be used or can only be used in a limited
number of ways. ‘Protection’, in the context of
cultural resource management, often involves
wresting architecture away from local communities
and reserving it for the appreciation of local
elites and international audiences. When that
architecture is used by local communities
for their livelihood, its management as a cultural
resource can thus entail economic violence.

**CE:** Could we say that new forms of abstract
violence are emerging as a result of globalization
and new differences between local elites and
local communities?

**AH:** Yes, and not just abstract forms of violence.
With regard to heritage, local elites, local
communities and donors have uneven access
to globalized processes and resources, and
these inequities can yield the violent destruction
of heritage as much as its therapeutic recon-
struction. In Kosovo, for example, the interests of
international donors and aid organizations were
often at odds with those of local communities.
In some cases, aid organizations from the
Gulf States opted against the conservation or
reconstruction of war-damaged mosques
because those mosques were built according
to a form of Islam, characteristic of the Balkans,
which those organizations did not recognize.
In other cases, international donors opted for
the conservation and reconstruction of war-
damaged mosques because they were ‘cultural
heritage’, while the congregations of those
mosques saw in the damage an opportunity
to replace small and old-fashioned mosques with
larger and more modern ones. The problem,
in both of these sorts of cases, is the supposed
universality of a particular cultural form, whether
it is a concept of Islam or a concept of heritage.

**CE:** Can we think of aesthetic forms that can
have a certain social impact, which can enable
people to retrieve something that they lost?

**AH:** Aesthetic forms certainly have social
impacts, but those impacts emerge in complicated
and unpredictable ways. The relation between an aesthetic intention and a social impact is not linear or continuous; we do not always know what we are doing and others always regard what we do in other ways. For me this does not mean abandoning social aspirations and engagements, but trying to accommodate the open-ended way in which aesthetic forms work. Perhaps one way to understand the social capacity of aesthetic forms is to remember what the Russian Formalists taught: that life can imitate art just as much as art can imitate life.

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