

Violence, Destruction and International Law

An interview with Andrew Herscher Christian Ernten and Malkit Shoshan

Christian Ernten: 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 architecture 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 ownership 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 globalisation 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 reconstruction. 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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