

Laudatio Philippe Sands

door Prof. dr. Emile Schrijver

“I am an international lawyer, not an historian.” During the preparation of this laudatory speech I have heard Professor Philippe Sands express these words more than once, during lectures and during many interviews and academic panels. It seems that he feels that he should apologize for the fact that he moved into the territory of professional historians, as if he were annexing that territory. You will not be surprised to hear that I do not subscribe to this. Philippe Sands’ contribution to history is more than substantial and it is particularly valuable because of his professional background, not in spite of it. But example is better than precept which is why I would like to stress, all the same, that I am certainly not a scholar of law, but rather an historian of sorts, as well as the director of the Jewish Cultural Quarter and the National Holocaust Museum of the Netherlands. So anything I have to say, I will say with that authority, and none other.

But there is higher authority than mine, namely that of our honoured speaker himself, and I am convinced that it is appropriate to quote that authority here. In a recent article Philippe Sands gave the following short review of his previous work: “In the summer of 1998, I had been peripherally involved in the negotiations in Rome that led to the creation of the International Criminal Court (ICC), a body with jurisdiction over ‘genocide’ and ‘crimes against humanity’, and other crimes. In the years that followed the gates of international justice slowly opened, and cases from the former Yugoslavia and Rwanda soon landed on my desk in London. Others relating to allegations in the Congo, Libya, Afghanistan, Chechnya, Iran, Syria, Lebanon, Sierra Leone, Guantánamo, and Iraq followed suit. The long and sad list reflected the failure of the good intentions aired in Courtroom 600 of Nuremberg’s Palace of Justice in 1945 and 1946. I became involved in too many cases that involved mass killings. Some raised claims of crimes against humanity, the killings of individuals on a large scale, and others gave rise to allegations of genocide and the destruction of groups.”¹

Within the framework of this ‘Nooit meer Auschwitz’ Lecture, Philippe Sands’ most important contribution to our area of scholarship certainly lies in his thorough analysis of the legal terminology used to describe, and prosecute, the atrocities of the Nazi regime. He has meticulously traced the introduction and development of terms and concepts that have become accepted or even canonized, ‘genocide’ and ‘crimes against humanity’ being the most important among these.

We will certainly hear more about the fascinating background of Sands’ 2016 book *East West Street: the Origins of Genocide and Crimes against Humanity*. It was translated into Dutch in 2018, as *Galicische Wetten: over de oorsprong van genocide en misdaden tegen de menselijkheid*. The main protagonists in the book are the ‘inventors’, so to speak, of both terms -- legal scholars and twentieth-

¹ ‘Genocide at 70: A Reflection on its Origins’, accessed online on 14 January 2019: http://discovery.ucl.ac.uk/10052396/1/Genocide%20at%2070_P.Sands.pdf

century Jews, Rafael Lemkin, who coined the term 'genocide', and Hersch Lauterpacht, who introduced the concept of 'crimes against humanity'. Both helped shape the Nuremberg trials, even 'masterminded' them, as it was put in a review by Robert Gerwarth in *The Irish Times* of 9 July 2016. The book was an enormous success, but not just because it discussed these admittedly important legal terms. Sands started studying the work of both men after a general invitation to lecture at Lviv University in 2010 and he found out, in the course of his work, that both had studied Law in Lviv (Lemberg, Lvov, now in Ukraine), the city where his own maternal grandfather, Leon Buchholz came from as well. It was a peculiar personal connection, a renowned legal scholar with a Jewish background, invited to lecture in the city of one his ancestors, on legal terms that had been introduced by two Jewish legal scholars that were trained in that same city.

There is a further protagonist in the book, Hans Frank. Hans Frank started off as Adolf Hitler's lawyer in the 1920s and 1930s, later to become the head of Nazi Germany's General Government in occupied Poland between 1939 and 1945. In this capacity Hans Frank oversaw the systematic murder of more than three million Polish Jews, including Galician Jews who had been forced into the Lviv ghetto before being deported to various killing sites. Sands' fascination for this notorious perpetrator is an important part of a 2015 BBC documentary film made by David Evans, entitled *What our fathers did: a Nazi legacy*. It features Philippe Sands and the son of Hans Frank, Niklas Frank, as well as Horst von Wächter, son of Otto Gustav von Wächter, an equally notorious Nazi leader, who oversaw the deportation and mass murder of, if not hundreds of thousands, at least tens of thousands of Jews in Galicia.

The three men traveled to Ukraine and visited the territory where their ancestors had been active, and, in the case of Sands, had been killed. It is a chilling documentary, especially since the two sons of Nazi leaders could not have been greater opposites. Niklas Frank has come to terms with the history of his father and speaks strikingly candidly and honestly about his father's role in the Nazi regime. Horst von Wächter, on the other hand, denies that his father was in any way a perpetrator and instead reminds Sands, and the viewers, of the fact that many have called his father a decent and cultured man, who was, more than anything else, the victim of difficult circumstances. Interestingly, Von Wächter does not deny any of the accusations, he simply does not acknowledge his father's guilt, or even assume any kind of responsibility. It is here that we are given a unique opportunity to understand Philippe Sands, to see the man behind the barrister, so to speak. We see him struggling to stay calm. He cannot believe that Von Wächter really believes what he is saying, in spite of all the evidence in front of him. It is the struggle, I think, of the international lawyer, convinced of the truth of evidence, and of the Jew who knows that the men under discussion were responsible for the murder of dozens of his family members. And I have to admit it, it is an uncomfortable struggle to watch.

Causing feelings of discomfort is not a disqualification for a documentary, not at all even. But watching the documentary made me think about our own work. In the development of our National Holocaust Museum, which is scheduled to open on a permanent basis in 2022, we often stress that we present

the persecution and subsequent murder of Dutch Jews within the larger framework of the Jewish Cultural Quarter. What does that mean? It is a matter of ownership, but it is also one of perspective. We take great effort to make clear to our audience that many of the information carriers that Holocaust museums worldwide typically present – documents, photographs, film footage – were produced by perpetrators and present a perpetrator's perspective on the events. We try to balance that by concentrating on the individual experiences of Jewish victims and survivors, as well as those of their children, and by presenting historical fact based on as many alternative sources as possible; in short, by presenting multiple perspectives, Jewish and non-Jewish.

But this raises an important ethical question. How neutral, or perhaps even how balanced is our point of view really? Is there such a thing as one definitive representation of the facts? To what extent is our approach biased by our own, if one wishes, 'inner-Jewish' perspective on things? This is an enormous struggle and it is one that in the documentary Philippe Sands struggles with as well. He presents the cold facts and someone simply denies them. 'Fake news, my father was not responsible; on the contrary, he was a nice man.'

I repeat my own question, inspired by Philippe Sands' struggle: to what extent is our approach biased by our own 'inner-Jewish' perspective on things? The Holocaust is present in all Dutch Jewish families, in all European Jewish families, in most Jewish families around the world, even though this presence is sometimes defined by painful absence. The Holocaust can lead to many different reactions even within one Jewish family. In cases in which parents and grandparents refuse to talk about the Holocaust, children or grandchildren may want to know everything. And conversely there are many youngsters who are sick and tired of what they consider the obsessive concentration of their parents and grandparents on the Second World War, and who turn away from it. Many Jews strongly object to the reduction of their identity to that of the historical victim, but even these Jews will time and again be asked for their opinion on anything directly related or not to the Holocaust, be that Gaza, Muslims, slavery, contemporary anti-Zionism and anti-Semitism, Holocaust denial, alt-right, Charlottesville, Pittsburgh, or even the president of the United States.

There is no final word on how to counter all these issues. But I have to have an answer to the question whether there is a role for contemporary Holocaust Museums. What can museums do to inform the contemporary debate? I believe museums are 'safe places for unsafe ideas', a notion I take from museologists John Reeve and Vicky Woollard.² Museums should do what they are good at, that is providing reliable information and preparing reliable curated interventions in the debate. It is the only weapon against unreliability that we have. Holocaust museums can do that through exhibitions, through educational programs, and, I believe, in particular by developing new contemporary modes to discuss the Holocaust. It is here, I think, that we can learn most from Philippe Sands. It is vital to relate

² 'Learning, education and public programs in museums and galleries', in: C. McCarthy, ed., *Museum Practice*, Chichester etc. 2015, p. 562.

and compare the mechanics of the Holocaust to the mechanics of contemporary conflicts, political developments, atrocities, crimes against humanity and genocides, without downplaying in any way the enormity and uniqueness of the murder of six million European Jews. The fact that it is extremely difficult does not mean that we should not do it.

Philippe Sands came from an opposite direction, moving from his work as a barrister and his life-long involvement in the legal settlement of contemporary international conflicts, through the careful study of two of its most important legal concepts, 'crimes against humanity' and 'genocide', towards the deeply human need to understand what has happened and why people behave the way they behave. I think we should mirror Philippe Sands' approach. We, at the National Holocaust Museum, at the Nederlands Auschwitz Comité, and at all the institutions that are represented here, should move from our deeply felt conviction that we have to show what people are capable of doing to other people, through a careful definition of our goals and well-informed, clearly defined and reliable representation of historical fact, towards an open discussion of the lessons we have to learn from the Holocaust in today's global society in turmoil. I cannot think of a reason why these opposite directions should exclude each other.