

Nooit Meer Auschwitz Lezing 2019

by Professor Philippe Sands

Amsterdam, 24 januari 2019

Ladies and Gentlemen,

It is a great happiness to be back in Amsterdam, and I express my deep thanks to the organisers for extending this invitation, the Dutch Auschwitz Committee, and to the NIOD Institute for War, Holocaust and Genocide Studies and the Social Insurance Bank (SVB). I express too my appreciation to those associated with the Annetje Fels-Kupferschmidt Award.

We join together today as a group, one that shares a singular commitment: 'Auschwitz Never Again'. Yet each of us is also here as an individual, and long ago, I came to understand that my own activities – teaching, writing, litigating – are engagements informed by my background, by baggage that was attached to me when I entered this world, a baggage is attached to each of us. A blank slate I was not, as indeed none of us are. In his fine autobiography *Interesting Times*, the historian Eric Hobsbawm recognised that complex connection between who we are and what we do, noting the “profound way in which the interweaving of one person’s life and times, and the observation of both, [help] to shape a historical analysis” (p. xiii). I am not a historian but a lawyer, one who focuses on matters international, my professional and academic interest being a desire to understand how the law functions: how rules come into being, how they are interpreted and applied, how they affect the behaviour of international actor, from individuals and groups to governments and states. My curiosity about a person’s life and times concerns the way it might inform the world, and the experiences of the past quarter of a century in my work – not least in the courtroom, appearing before international judges from so many different backgrounds - points to a rather clear conclusion: individual lives and personal histories matter and they make a difference.

My book – *East West Street: On the Origins of Genocide and Crimes against Humanity*¹ – was nearly seven years in the writing. It is not about the life of one person but four individuals. It seeks to understand how the particular circumstances of each contributed to the roads he took and, how the different roads thus travelled changed the system of international law that is my daily work.

As many of you will know, the book also touches a more personal theme: how these four, interweaving lives influenced the path I have taken, whether directly or indirectly. And below this path lurk some bigger questions, that touch each of us, and will be of interest to many in this room today, addressing central questions of identity: who am I, and how do I wish to be defined, as an individual or a member of one or more groups? How do we wish the law to protect us, as individuals, or as members of a group? Those questions are as pertinent today as they were when the legal concepts of 'crimes against humanity' and 'genocide' were coined, back in 1945 and in December 1948, when the Universal Declaration on Human Rights, and the Convention on the Prevention and Punishment of Genocide were signed at the Palais de Chaillot in Paris.

In a way *East West Street* came about by chance, as so much in life does. It was the spring of 2010, I was immersed in my world, of classrooms at UCL, of academic articles, of cases in The Hague. An invitation arrived from the Ukraine, an email from the law faculty of the university in the city that was called Lemberg during the Austro-Hungarian empire, until 1918, then Lwów during the Polish years until 1939, then Lviv after 1945. Would you visit and deliver a public lecture on your work on 'crimes against humanity' and 'genocide', the email inquired, about the cases in which you've been involved, about your academic work on the Nuremberg trial, about the trial's consequences for our modern world.

Yes, I replied, I would. I'd long been fascinated by the trial and the myths of Nuremberg, by the words, images, sounds. The trial was catalytic, a moment when our modern system of international justice crystallized into being. I was mesmerized by odd points of detail to be found in the lengthy transcripts, by the grim evidence, drawn to the books and memoirs and diaries that described in forensic detail the testimony that was laid before the judges, the love affairs that went on behind the scenes. I was drawn to movies like *Judgment at Nuremberg*, the 1961 Oscar winner made memorable by Spencer Tracy's

¹ Alfred A. Knopf/Weidenfeld & Nicolson

momentary, unexpected flirtation with Marlene Dietrich and the line from his closing judgment: "We stand for truth, justice and the value of a single human life". There was too a practical reason for my interest, because the trial's influence on my work had been profound: the Nuremberg judgment blew a powerful wind into the sails of a germinal human rights movement. Yes, there was a strong whiff of "victor's justice," yet there was no doubting that the case was catalytic, opening the possibility that the leaders of a country could be put on trial before an international court, something that had never happened before.

It must have been my work as a barrister, rather than my writings, that caused the invitation to be sent from Lviv. 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 that would have jurisdiction over 'genocide' and 'crimes against humanity', as well as two other crimes. The essential difference between the two concepts is on who is protected, and why. Assume 10,000 people are killed, murdered, exterminated. The systematic killing of such numbers of individuals will always be a 'crime against humanity', but will it be a 'genocide'? That depends on the intent of the killers, and the ability to prove it. To establish the crime of 'genocide' it is necessary to show that the act of killing is motivated by a special intent, namely the intent to destroy a group in whole or in part. If a criminal prosecutor cannot prove that a large number of people have been killed with such an intent, then the crime of 'genocide' under international law is not established. And so you have the two operating side by side, and overlapping: every 'genocide' will also be a 'crime against humanity' but not every 'crime against humanity' will be a 'genocide'.

A few months after both crimes were inscribed into the Statute of the ICC, Senator Pinochet was arrested in London, on charges of 'genocide' and 'crimes against humanity' laid against him by a Spanish prosecutor. The House of Lords ruled that even as a former president of Chile he was not entitled to claim immunity from the English courts, a novel, revolutionary judgment.

In the years that followed, the gates of international justice creaked open, following five decades of relative quiescence, during the Cold War chill that came after the Nuremberg trial.

Cases from the former Yugoslavia and Rwanda soon landed on my desk in London. Others followed, relating to allegations in the Congo, Libya, Afghanistan, Chechnya, Iran, Syria and Lebanon, Sierra Leone, Guantánamo, and Iraq. These were based on the new rules that came into being after 1945, a revolutionary moment in the making of modern international law, when it was recognised that the rights of the sovereign over its people were no longer unlimited. The long and sad list of cases that reached me reflected the failure of good intentions aired in Courtroom 600 of Nuremberg's Palace of Justice. I became involved in several 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, the destruction of groups.

These two distinct crimes, with their different emphases on the individual and the group, grew side by side, although over time genocide seems to have emerged, in the eyes of many, as the crime of crimes, a hierarchy that left a suggestion that the killing of large numbers of people as individuals was somehow less terrible. Occasionally, I would pick up hints about the origins and purposes of the two terms and the connection to arguments first made in courtroom 600. Yet I never did inquire too deeply as to what exactly had happened at Nuremberg. I knew generally how these new crimes had come into being, and how they subsequently developed, but little about the personal stories behind them, or how they were argued at Nuremberg. The invitation from Lviv gave me a chance to do the research to explore that history.

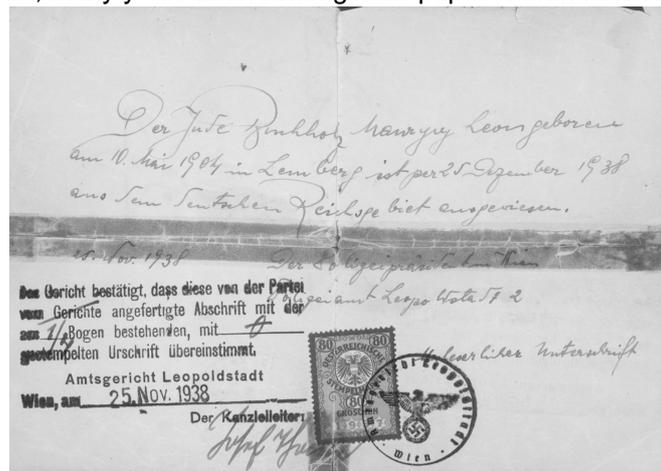
I could say that I made the trip to give a lecture, but that would not be accurate.



I travelled for another reason, namely that my grandfather was born in the city, in 1904. Leon Buchholz called it Lemberg when he spoke in German, Lwów in Polish. In his wonderful slim volume *Moy Lwow*, written in 1946 and has been published by Pushkin Press for the first time in English translation this autumn as *The City of Lions*, the Polish poet Josef Wittlin describes the “essence of being a Lvovian” as “an extraordinary mixture of nobility and roguery, wisdom and imbecility, poetry and vulgarity”. “Nostalgia even likes to falsify flavours too, telling us to taste nothing but the sweetness of Lwów today”, Wittlin, writes, “but I know people for whom Lwów was a cup of gall.”

My grandfather was one of those for whom the city was a cup of gall, buried deep, part of a hidden hinterland of which he never spoke to me. Leon’s silence barely covered the wounds of a family that he left behind in 1914, when he moved to Vienna, then lost forever after 1939. Yet the moment I first set foot in the city, in the autumn of 2010, it felt familiar, like a long-lost relative. That dark city was part of my DNA, I had missed it and now I felt comfortable there.

Why I had that reaction caused me to explore psychoanalytic writings that address the relationship between grandparent and grandchild, and I was directed to the work of Maria Torok and Nicolas Abraham, two Hungarians. “What haunts are ... the gaps left within us by the secrets of others”, they wrote, the words with which the book opens. Leon’s secret was that he came from a huge family, one centred in Lemberg and its environs, literally dozens of uncles, aunts, cousins, nephews and distant relatives. The family grew until 1939, when war came again to the city. Within six years, by the spring of 1945, he was the last member of that family still alive, the only survivor from the city and Galicia. In 1939 he was banished from Vienna, defined by religious affiliation. He went to Paris, which was where he lived when I knew him, many years later. Amongst his papers I found the expulsion order.



Translated into English it says: “*The Jew Buchholz Maurice Leon is required to leave the territory of the German Reich by December 25, 1938*”). He could be expelled because he had been made stateless. That is one of the reasons, no doubt, that I feel as strongly as I do about the current fad, in some countries, including the UK, to strip certain people of their nationality. One thing leads to another.

I had always assumed Leon had left Vienna with his wife Rita, my grandmother, and his one-year-old daughter Ruth, my mother. But in the course of my research I learned that this was not the case, and it was this central fact, I think, which lay deep, which touched my family and my childhood.

Leon left Vienna and made his way to Paris on his own. Only now, gaining access for the first time to his personal papers, as I prepared the lecture I was to give in Lviv, did I learn that his daughter had travelled to Paris a few months later, and that his wife remained in Vienna for three more years. From this I formed a sense that something else had intervened in their lives before the three separated in January 1939.

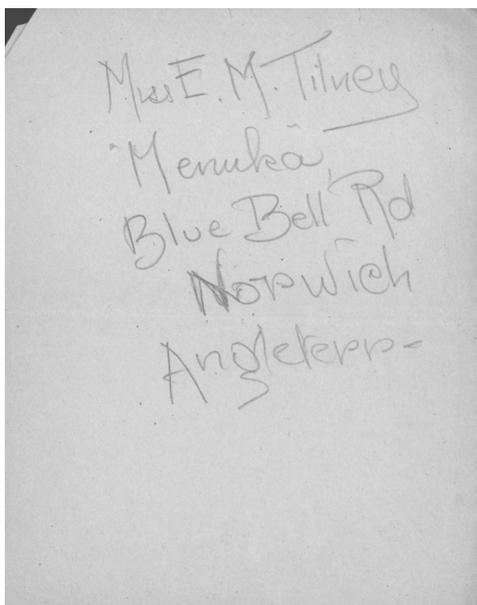
Why did Leon leave Vienna on his own?

How did my mother Ruth get to Paris, an infant of less than a year?

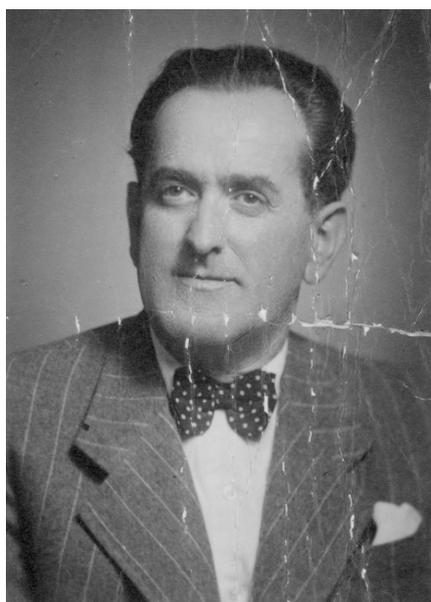
Why did Rita remain in Vienna, allowing herself to be separated from her only child?

These and others questions were big ones, and they hung in the air, as such questions tend to do. I returned to the documents found amongst Leon's papers, looking for clues. As a litigator – a sort of lesser, amateur historian-cum-psychiatrist– you learn that every scrap of paper or photograph is capable of hiding information that may not be immediately knowable. This is the muck of evidence that I have come to love. Look carefully, keep an open mind, attend to the unexpected, find the dots, try to join them, persist. Nothing is ever only what it seems.

Two items stood out.



The first was a small scrap of thin yellow paper. It was folded in half. One side was blank, the other bore a name and address written firmly in pencil. The writing was angular and strong. "Miss E. M. Tilney, Norwich, Angleterre."



The second item was a small black-and-white photograph, taken in 1949, not quite square. It showed a middle-aged man staring intently into the camera. A faint smile across the lips, he wore a pin-striped suit, with a white handkerchief neatly folded into the breast pocket, and a white shirt. His polka-dot bow tie emphasized a slightly mischievous air. On the back of the photograph, in blue ink, was written: “Herzlichste Grüße aus Wien, September 1949” - “Warmest wishes from Vienna”, and there is a signature. The writing was as firm as it was indecipherable.

When I first saw these items my mother told me she didn’t know who Miss Tilney was, or the identity of the man in the bow tie. Yet these scraps were retained. Might they shed some light on what had happened to my grandfather in 1939? I pinned them on the wall above my desk - where they would remain for three years – and turned to the lecture I had to write.

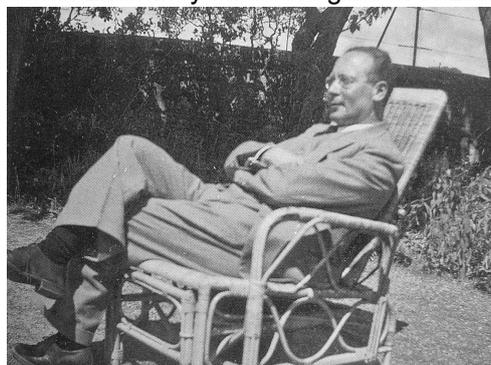
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I have taken you off on a little personal detour, but you will recall that the lecture I was to deliver in Lviv was on the subject of crimes and against humanity and genocide.

Let me take you then to the first of several ‘coincidences’. In preparing the lecture, back in the summer of 2010, I was surprised to learn that the man who put ‘crimes against humanity’ into international law came from Lviv. Indeed, he was a student at the very university that had invited me to deliver the lecture, although they were not aware of the fact.

Hersch Lauterpacht was born in the small town of Zolkiew, about 15 miles north of Lviv. He moved to the city when he was 14, in 1911, and enrolled at the University law faculty four years later. In 1919 he moved to Vienna, where he spent four more years studying with the renowned jurist Hans Kelsen. He came to London in 1923, with his new wife, to study. He became a renowned academic, first at the LSE, then at Cambridge. In 1945 he published a book that laid a foundation for the modern system of human rights. Titled *An International Bill of the Rights of Man*, it offered a revolutionary idea: to recognise that every human being on the planet had rights under international law, as an individual, something that did not then exist. He prepared twenty draft articles, which covered much that was new, but was by no means exhaustive: by more contemporary standards, notable omissions included any reference to a prohibition on torture or cruel treatment, or any obligation not to discriminate against women. Equally striking was his approach to the situation of non-whites in South Africa and “the thorny problem of actual disenfranchisement of large sections of the Negro population in some States of the United States”, as he put it, both a brutal recognition of the realpolitik necessary to allow those two countries to engage with an International Bill. In any event the draft Bill gave effect to his credo, that “The individual human being ... is the ultimate unit of all law”. I suspect those words might have a particular resonance in this room.

In April 1945, after the war in Europe ends, Churchill, Roosevelt and Stalin agreed that there would be a criminal trial for senior Nazi leaders. The British hired Lauterpacht to assist in the prosecution, to work with Robert Jackson, the chief prosecutor. In July 1945 Jackson travelled to London to draft the Charter of the Nuremberg Tribunal. The four powers – America, Britain, France and the Soviet Union - disagreed about the crimes over which the Tribunal will exercise jurisdiction. Jackson turns to Lauterpacht for help. On July 29th Jackson left his room at Claridges Hotel in Mayfair and was driven up to Cambridge to have lunch with the Lauterpachts. Later they sat in the garden of Lauterpacht’s home and had tea.



The two men discussed the problem of the list of crimes. Lauterpacht suggested it might be a good idea to insert titles, to help public understanding and add legitimacy. Jackson reacted positively, so

Lauterpacht offered another idea, in respect of atrocities committed against civilians, a matter on which the Soviets and Americans were deeply divided. Lauterpacht had a longstanding academic interest on this subject, and there was also a personal interest – he has no news about his family in Lemberg, a matter of which, as an emerging Englishman, he said nothing to Jackson.

Why not refer to the atrocities against civilians as 'Crimes against Humanity', Lauterpacht suggested?

The image shows the words "crimes against humanity" written in a fluid, cursive script. The letters are connected, and the overall style is elegant and personal, consistent with the text being attributed to Lauterpacht in the following paragraph.

Here we see the words in his own hand. The term would cover atrocities against individuals on a large scale – torture, murder, disappearance - and introduce the new concept into international law. Never before had a legal instrument used the term. Jackson likes Lauterpacht's idea and takes it back to London. A few days later, on 8 August, 'Crimes against Humanity' was incorporated into the Nuremberg Charter, as Article 6(c) of the Statute. 'Crimes against Humanity' "is clearly an innovation", Lauterpacht told the Foreign Office in London, one that reflected an "enlightened conception of the true purposes of the law of nations", a part of the "law of mankind", signifying that those who broke international law "cannot shield themselves behind the law of their State."

* * *

Preparing the Lviv lecture required me to focus also on 'genocide', and this brings me to a second surprise: the man who invented that word – in 1944 – also passed through Lviv, and studied at the same law school as Lauterpacht. His name was Rafael Lemkin. He arrived at Lwów university in 1921, a couple of years after Lauterpacht left, and remained there until 1926 when he obtained his doctorate in criminal law. The folks who invited to Lviv me were also unaware of his connection to the university. He was actually born five hundred kilometres to the north, on a farm near a hamlet called Azaryska, in what is now Belarus.

After law school he became a public prosecutor in Warsaw. In 1933 he wrote a paper for a League of Nations meeting in Madrid, proposing new international crimes, to combat 'barbarity' and 'vandalism' against people. His focus was not on the protection of individuals, like Lauterpacht, but rather on the protection of groups, sometimes referred to as 'minorities'. His ideas bounced around, but nothing comes of them: the timing was hardly ideal, with Hitler having just taken power in Germany.

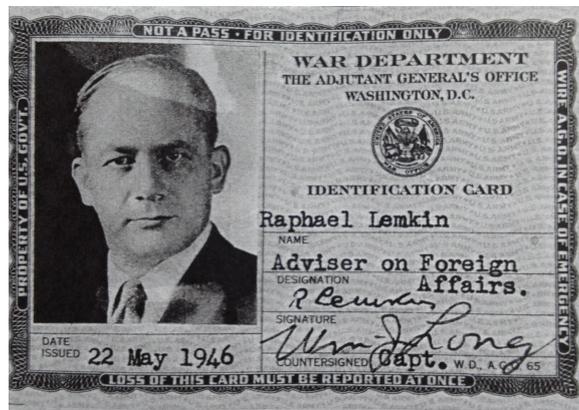
In 1939, when Germany invades Poland, Lemkin is in Warsaw. He escaped, made his way to Sweden, via his parents' town of Wolkowysk, under Soviet control. In 1941 he left Stockholm for America. As Europe was closed, he travels the long route, across the whole of Russia, to Japan, by boat to Seattle, then train to Durham, North Carolina, where he had been offered a place of academic refuge.

On this journey he travelled with little money and almost no personal belongings, yet there is a great deal of luggage. Lemkin's luggage was filled with paper, thousands of decrees promulgated by the Nazis in the countries they had occupied. He had gathered these materials, which he now carted around the world. In America he analysed the decrees, and in 1942 was offered a contract to write a book that would describe the patterns of behaviour he had found, indicia of an underlying master plan. The book was published in November 1944, called *Axis Rule of Occupied Europe*.

genocide

Chapter IX is entitled 'Genocide'. Lemkin had invented a new word: the crime of the destruction of groups, the Nazi master plan, an amalgam of the Greek word *genos* (tribe or race) and the Latin word *cide* (killing). Here you see it in his hand.

In the summer of 1945, Lemkin was hired by the US Government to work on war crimes, and began to work with Robert Jackson and his team, although separately from Lauterpacht.



He pushed his idea of genocide, a crime for which he wants the senior Nazis to be indicted. In his view, the destruction of groups – Poles, Jews, Roma – was a matter for the Nuremberg Tribunal, the greatest of crimes.

In August 1945, when the Nuremberg Charter is adopted after Jackson's visit to Lauterpacht in Cambridge, Lemkin was greatly disappointed that it included 'Crimes against Humanity' – the killing of individuals - but made no mention of genocide, and was silent about the destruction of groups.

Lemkin believed – with great passion - that the Nuremberg Statute should have mentioned 'genocide'. Still, all was not lost, as the approach was broad enough to encompass genocide. The next step in the process was the Indictment of the defendants, and this offered an opportunity to push his ideas. Lemkin flew to London, where the Indictment was being crafted. He fought his corner, as Jackson's team prepared the Indictment of the defendants, working with British, French and Russian counterparts. He was persistent, pressed actively for 'genocide' to be included. There was strong opposition to 'genocide', from Jackson's office, under pressure from Southern senators concerned about discrimination against African-Americans, and from the British, concerned about a colonial legacy.

Nevertheless, against the odds, Lemkin's word made it into the draft Indictment. He described himself as "greatly pleased". In early October the Four Powers agreed the final text of the Indictment. Genocide was included not in Count Four, as a 'Crime against Humanity', as Lemkin wanted, but in Count Three, on 'War Crimes'. It included the ill-treatment and murder of civilians in occupied territories, including Lemberg and Wolkowysk, where his parents lived (although like Lauterpacht, he had no news of his family's fate). The Indictment alleged that the Nazis "conducted deliberate and systematic genocide". This was the first time the word was used in an international legal instrument, and it came with an agreed definition, the "extermination of racial and religious groups". The Indictment mentioned "Jews, Poles, Gypsies and others".

On October 18 the Indictment was filed at the Tribunal. "I went to London and succeeded in having inscribed the charge of Genocide against the Nazi war criminals in Nuremberg," Lemkin would claim.

* * *

The Nuremberg trial opened on November 20, 1945. Lauterpacht was present in the courtroom, with the British team, pushing for the protection of individuals. Lemkin was back in Washington, with the American team, pushing for the protection of groups.



One of the twenty-two men in the dock was Hans Frank, the fourth man in my story. He too was a lawyer, and from the late 1920's served as Adolf Hitler's personal lawyer, an early supporter of the Nazi party. In 1933 he became Bavarian Minister of Justice, and a couple of years later set out his credo at a conference of lawyers in Berlin: "Community takes precedence over the individualistic liberalistic atomizing tendencies of the egoism of the individual". The words generated thunderous applause. In his case such precedence led to mass killing. In October 1939 he became Governor General of Nazi occupied Poland, and in August 1942 he visited Lemberg and Galicia, recently incorporated into his territory. He hosted a concert which finishes with Beethoven's 9th symphony, and gave a series of speeches in which he announced the elimination of the city's Jewish population. Amongst those who would be caught up in the horrors that followed in the days after Frank's visit were the families and friends and teachers of Lauterpacht and Lemkin, as well as my grandfather's family. For each family there would be only a single survivor.

Frank did not seem unduly perturbed by such actions, more bothered by other mundanities. He lodged at the home of his deputy, Otto von Wächter, Governor of Galicia, who is the principle character in the BBC radio and podcast series I have recently made, *The Ratline*, which will be published in 2020 as a companion book to *East West Street*. Wächter's son Horst shared with me his mother's diary. Frau von Wächter wrote that she played chess with Frank that day. "I won two times, after that [Frank] angrily went to bed", she wrote. "Then he came back and drove away immediately".

Three years later, in May 1945, Frank was caught by the American Army, near his home in Munich. With him were his diaries, forty-two volumes, and a remarkable collection of artwork, including the portrait of Cecilia Gallerani, the Lady with Ermine, painted by Leonardo da Vinci in about 1489



The painting hung in Frank's private office in the Wawel Castle in Krakow. Some of you may have seen it, as I did, when it was hung in London a few years back, the centre piece of the Leonardo Exhibition

at the National Gallery in London. It is now back at the Wawel Castle. Frank's son Niklas tells me that as a young boy his father made him stand before the painting and slick down his hair, like Cecilia. Now Frank was in the dock, an accused. He was charged on three counts, including 'Crimes against Humanity' and 'Genocide'.

On the first day of the trial, the Soviet prosecutors took the judges to the events in Lviv following Frank's visit. They described the acts of murder and torture and other ill-treatment, describing them as acts of 'genocide'. 130,000 or more people killed in that period, including eight thousand children murdered in just two months in the Janovska camp, at the heart of the city. As the words were spoken, Lauterpacht and Lemkin do not know whether the victims include their families. Indeed, they were not yet aware that the man they were prosecuting, Hans Frank, was directly implicated in the unknown fate of their own families.

On this day, for the first time ever, the terms 'genocide' and 'crimes against humanity' were used in open court. I knew Lauterpacht and Frank to be in the same room on this day, and I wonder if there is a photograph. Lauterpacht's son told me there was none, but I persisted in the hunt. A friend introduced me to the archive of Getty Images, the largest collection of images from that day in court, where I spent a day going through hundreds of old glass plate images, each to be taken out of its protective paper sleeve. Finally, after several hours, I find this:



There is Lauterpacht, at the end of the British table, the second on the left, elbows on the table, hands clenched under the chin. He is attentive, directly behind counsel's lectern, at which a Russian counsel speaks. In the lower right hand corner, you can see the large figure of Goering, in an oversized light-colored suit. Moving along the bench to his left, six along and just before the image was cut by the protruding balcony, is the semi-bowed head of Frank.

Divided by no more than a few tables and chairs, Lauterpacht and Frank are together in the same room.

* * *

The trial lasted for a full year, and judgment was handed down over two days, on September 30 and October 1, 1946. I hope you might understand my reluctance to avoid revealing what transpired over the course of that remarkable year, as the lives of those three men became increasingly intertwined. Suffice it to say that the connections were unexpected, a series of happenings which, as historian Antony Beevor has generously put it, "no novel could possibly match". The point I make is that those personal journeys coincided in ways that produced an outcome to change the course of legal history, and then history itself. The ideas and endeavours of Lauterpacht and Lemkin influenced politics, history, culture, my life and yours.

The concepts of 'crimes against humanity' and 'genocide' have entered our world, although many are under the impression that they have existed since time immemorial. They have not: both are the product of creative and inventive minds, two men driven by their own experiences forged on the anvil of a single city. Quite why Lauterpacht opted for the protection of the individual, and what caused Lemkin to embrace the protection of the group, is a matter of speculation. Their backgrounds were similar, they studied at the same university, had the same teachers. If you want to trace the origins of these crimes, you can trace them to Lemberg, to events at the end of the Great War, to the law faculty. Indeed, you can trace the origins to a teacher the two men had in common – Julius Makarewicz, a Polish professor

of criminal law. You can follow the line to a particular building, and even to the very room where Makarewicz shared his ideas on the treatment of minorities, as I have done.



There is something else that strikes me as remarkable: despite their common origins, interests and journeys, and the fact that I have been able to locate them in the same city on the same day – although not Nuremberg or Courtroom 600, where they kept missing each other, sometimes by only a day - it seems that Lauterpacht and Lemkin never actually met.

The concepts they put into international law - 'crimes against humanity' and 'genocide' inform my working life. I have frequently wondered how it could be that I ended up doing the work I do. My quest to understand Lauterpacht and Lemkin was surely driven by my personal history, and by stories that had been buried away in family crypts, no doubt for protective reasons.

During that quest I conducted a bit more family detective work: I did manage to discover who Miss Tilney was, and what she did, and now understand why my mother – and I, and my brother - have reason to be deeply grateful to a remarkable and courageous woman who did missionary work on behalf of the Surrey Chapel in Norwich into which she was born, motivated by the sermons of her pastor, David Panton, and Chapter 10, verse 1 of Paul's Letter to the Roman: this single line, it seems, motivated her to travel to Vienna and save my mother's life in the summer of 1939.



I also uncovered the identity of the man in the bow tie, a journey that took me first towards the east and then towards the west, across rivers and an ocean, with the help of a pile of old Austrian telephone directories, a private detective in Vienna, and Facebook, ending up in an attic in Massapequa, Long Island in New York.



Here a photograph would emerge that offered a key to unlocking another family mystery, a single image taken in a garden in Vienna, in the spring of 1941, of my grandmother with two men in white socks, one of whom was the man in the bow tie, her lover, one discovery that catalyzed another, the identity of the man who may have been my grandfather's true love, his closest friend Max.

Such efforts took several years, and involved the assistance of a range of remarkable individuals. Such are the requirements of an exercise in personal archaeological enterprise.

Perhaps even more remarkably, and entirely unexpectedly, I learned of the more direct connections between my family and the Lauterpachts and Lemkins. I was surprised to learn that my great-grandmother, Amalia Buchholz, was born and lived in the small town of Zolkiew, where Hersch Lauterpacht was born.



Indeed, both were born and lived on the same street, only a few hundred yards apart. It was called Lembergersterstrasse back then. Coincidentally, or perhaps not, Lauterpacht's son and only child, Eli, was my first teacher of international law, in 1982, and later my my mentor. We worked together closely for three decades – at the university, and on cases – but only in 2014 did we learn that we shared a connection to the same street that the writer Joseph Roth would call *East West Street*.

In the course of research, I discovered that Amalia, whose life began in proximity to the Lauterpachts, ended in September 1942, in the kingdom of Hans Frank. The last street down which she walked was Himmelfahrtstrasse, the "street to heaven", the one that led from a railway platform to a gas chamber at a camp called Treblinka. A month later Lemkin's parents Bella and Josef walked down the same street and died in the same chamber.

Amalia's life was caught between the Lauterpachts and the Lemkins, as, it might be said, is mine, albeit in a rather different way.

* * *

Crimes against humanity genocide

How does one begin to understand these points of connection?

The starting point is the ideas of these two remarkable men, Lauterpacht and Lemkin, and the enduring relevance of their ideas today. The relationship between the individual and the group has been contested across the ages. I was reminded of this when I came across a letter written by Lauterpacht to his son Eli, as he was preparing a draft of the closing arguments to be delivered at Nuremberg by Sir Hartley Shawcross, in July 1946. Having recently learned that all but one member of his Lemberg family had been murdered – on the orders of Hans Frank, whom he was prosecuting – it must have been a time of intense anguish, of personal grief and professional challenge. To his son, he explained that he managed to find solace and strength in the strains of Johann Sebastian Bach's *St. Matthew Passion*. Remarkably, at that same moment, in the summer of '46, Hans Frank told the US Army psychologist attending to him, Dr Gustave Gilbert, that in these most trying of times, as the trial reached its climax, he took refuge in the imagined listening to the same piece of music ... the *Matthew Passion*.

How remarkable that two men, on opposite sides of the same courtroom, might find solace in the same piece of music. I have come to understand the work's resonance for Lauterpacht, who was fluent in German: the libretto reflected Bach's emphasis of the Pietist belief in the individual, with every aria but one is sung as *ich* – I - and the three landmark choruses sung in the first-person plural. In this way Bach signaled the by-passing of the Priest-celebrant and the church, the group, allowing the individual a direct connection with God. For Frank, with his scathing disregard of the integrity of the individual, the connection is more difficult to understand, not least given the work's scathing attack on the Catholic faith to which he had converted just a year earlier, following a failed suicide attempt.

Lauterpacht believed that we should concentrate on the protection of the individual, and would surely argue, even today, that Lemkin's invention of the concept of 'genocide' has been practically useless and politically dangerous, that it will tend to replacing the tyranny of the state with the tyranny of the group. In a way my own practical experience concurs with that view, having observed that by focusing on the protection of one group against another there is a tendency to reinforce the sense of "them" and "us", to amplify the power of group identity and association, a source both of sustenance and danger. How does this happen? In seeking to prove that a 'genocide' has occurred, in law you have to establish the existence and expression of an intent to destroy a group in whole or in part, and I have seen for myself how that process tends to reinforce both a sense of victimhood of the targeted group, and hatred towards the perpetrators as a mass.

Yet I also understand what Lemkin was trying to do. He was surely right to recognize a reality, that in most (if not all) cases mass atrocity is targeted not against individuals but against those who happen to be a member of a group. Lemkin would say, and it is a powerful argument, that the law must reflect that reality, that it must also recognise and give legitimacy to that feeling we all have, of association with one or more groups.

This profoundly strong sentiment was brought home to me very recently, writing an article for the Financial Times magazine, a profile of Dr Jan Kizilhan, the German psychologist who has established a programme to assist the Yazidi women and girls who have been enslaved, tortured and raped by individuals associated by ISIS, bringing 1100 of them to Germany for medical and psychological treatment.² In his work, Dr Kizilhan identifies a connection between the possibility of justice and the

² Philippe Sands, 'On Genocide and Trauma', Financial Times, 15 April 2016, <https://next.ft.com/content/2ce55dee-01c7-11e6-ac98-3c15a1aa2e62>

future wellbeing of victims. Characterising such atrocities as a genocide is, in his view, a vital first step, and he welcomed the use of the word by the European Parliament, the Obama administration and – eventually and in the face of opposition by the Her Majesty’s Government – the UK Parliament. “Calling it a genocide,” Dr Kizilhan told me, “recognises the group’s identity, what is being done to it, and its right to exist.” In this way, the implication is that ‘crimes against humanity’ is not enough.

Nevertheless, I am concerned about the hierarchy that seems to have emerged, one that puts ‘genocide’ atop the list of horrors, so that a mere ‘crime against humanity’ or ‘war crime’ is seen somehow as a lesser evil. Call something a genocide and it will be on page 1, call it a crime against humanity and it will only be on page 13. Such is the power of the word invented by Rafael Lemkin, and of our association with the protection of the group.

What, one might ask, is the enduring legacy of these two legal terms? After Nuremberg there was a period of quiescence. Five decades passed before the development of international criminal justice was catalysed by the events in the former Yugoslavia and in Rwanda, by the arrest of Senator Pinochet, by the creation of the ICC, by the events of 9/11 and the actions that followed, taking us through Afghanistan and Iraq and into the world of ISIS and the Yazidi women and girls of whom I have made mention.

The crime of genocide, and the idea that each of us as individuals has rights under international law, were new in 1945. The moment of creation was significant, revolutionary even, an act of recognition, that the rights of sovereignty over human beings, and their exercise, are not unlimited. Yet the killings have not stopped.

Today once more a poison of xenophobia and nationalism is coursing its way through the veins of Europe, and many other parts of the world. The strong man as leader is back. I see it on my journeys to the central and eastern parts of the continent – to Hungary, to the Ukraine, where those who saw my film *My Nazi Legacy* will have seen me in a faraway field watching people dressed in SS uniforms celebrating the creation of the Waffen SS Galicia Division. I have seen it on my journeys too in making my recent BBC podcast series, *The Ratline*, the sequel to *East West Street*, which will also be published as a book in spring 2020, the story of Otto Wächter, one of Frank’s deputies, who disappeared on May 9th, 1945, an indicted man, and then turned up, four years later, in July 1949, dead in a Vatican hospital. There is here a real Dutch connection, as his son Horst Arthur Wächter, who I have come to know, is named after his godfather, Arthur Seyss Inquart, whose name will be familiar to many in this room.

Travelling across Europe, in Austria and Poland and other places, it is hard to avoid what seems to be stirring, and wondering to where this will lead. The generation that experienced the horrors of the 1930’s, that lived through the Second World War, that knows why States came together after 1945 to create a United Nations, to adopt in Paris in December 1948 a Universal Declaration of Human Rights and a Convention on the Prevention of Genocide, will soon be gone. Perhaps the disappearance of actual memory, of actual experience, allows our politicians to take for granted what occurred in 1945.

It is impossible not to have gone through the experience of writing *East West Street*, and the projects that have followed, an immersion in the world of the years between 1914 and 1945, and not feel an acute sense of anxiety as to what is stirring.

Two years ago Mr Trump called ‘for a total and complete shutdown for Muslims entering the United States.’ The idea of targeting people not because of their individual propensities but because they happen to be a member of a particular group has a long, dark history.

The writer Primo Levi, who spent a year as a resident of Auschwitz, put the point crisply in the Preface to his book *If This Is a Man*, published in 1947. He wrote:

Many people – many nations – can find themselves holding, more or less wittingly, that every stranger is an enemy.

When this happens, he continued:

when the unspoken dogma becomes the major premiss in a syllogism, then, at the end of the

chain, there is the [concentration camp].

One thing leads to another. Against this background, the idea of a travel ban based on a person's nationality, or religion, is troubling. Experience – recent experience – teaches us to know where such a beginning can lead, singling out people not for what they might have done but because they happened to be a member of a particular group. Many in this room will know to where such a beginning can lead.

Closer to home too, it is possible to smell a change in the air, a move to identity politics. Two years ago the Prime Minister of this country told her party Conference that “If you believe you are a citizen of the world, you are a citizen of nowhere”. She has indicated, too, that she would, if she could, take the United Kingdom out of the European Convention on Human Rights.

One former London Mayor –Ken Livingstone - offensively evokes Adolf Hitler as a supporter of Zionism, another – Boris Johnson- suggests that the EU and Adolf Hitler somehow share common aims. BREXIT and Trump are surely a reflection of a new direction.

This is the context in which I oscillate between the views of Lauterpacht and Lemkin, between the individual and the group, between the realism of Lemkin and the idealism of Lauterpacht. I can see the force of both arguments, and recognise the tension and the struggle between the individual and the group, between crimes against humanity and genocide, one that will not soon be resolved. International law today embraces both.

Yet we are at a dangerous moment. Many of our politicians seem not to be able to recognise how precious was the settlement of 1945, and how vulnerable is the *acquis* that was created, one that has offered a foundation to international relations in our time. We cannot take for granted what was achieved back then. The threat to the multilateral global order, and to the rights of individuals and groups, is a real one. That the challenge is led by its principal founder, the United States under the Administration of President Trump, is a matter of real concern. The United Kingdom chooses to remain mostly silent, devoured as it is by the short-term quest for possible future trade agreements in the aftermath of a likely – but not yet inevitable - BREXIT .

There are at least some positive developments. Efforts are underway, led by the United Nations' International Law Commission, to prepare a new Convention on the Prevention and Punishment of Crimes against Humanity, to fill a much needed gap alongside the Genocide Convention. There is new thinking on how we better enforce what we already have.

Last month, in Paris, on December 10th, the adoption, 70 years ago, of the Universal Declaration and the Genocide Convention, were celebrated. That offered an important moment.

This is the context, then, in which I closed *East West Street*, at a long ago site of mass killing, caught between poles, of head and heart, of intellect and instinct, recognizing the need to value the inherent worth of every human being, yet understanding too the pull of tribal loyalty, the essential truth of the notion that we are indeed haunted by “the gaps left within us by the secrets of others”, and the possibility that the discovery of such a haunting will not necessarily destroy us but may actually make us stronger, may actually permit us to proclaim, loud and clear, Auschwitz Never Again.

Thank you for your kind attention.

