

DRAFT (27 May 2016, 12h40)

ERIC HOBSBAWM LECTURE

HAY FESTIVAL

29 MAY 2016

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UNIVERSITY COLLEGE LONDON & MATRIX CHAMBERS

**EMBARGOED UNTIL 230 PM, SUNDAY 29 MAY 2016**

**CHECK AGAINST DELIVERY**

Ladies and Gentlemen, Marlene, Julia,

It is a great privilege to deliver the 2016 Eric Hobsbawm Lecture at the Hay Festival. I was fortunate to know Eric over many years, and to spend time with him and his wonderful, special family, in London, where he was a neighbour, and here at Hay. He was a familiar figure, actively conversing, energetic, sceptical, holding court in the green room, a special presence. Eric came into my life when I was a university student in the 1980's – we were referred to his *Age of Revolution: 1789-1848* in a class on constitutional law (as students of law, very occasionally we were invited to think, not merely regurgitate). Later I came to know *Age of Empire*, which took his reflections up to 1914, and – most pertinently for today's lecture – *Age of Extremes*, which covers the period I address today, 1914 onward. Legal and constitutional matters were not at the forefront of Eric's thinking, at least not overtly: the Nuremberg trial, which lies at the heart of my new book, gets no mention in *Age of Extremes*, although the

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Nuremberg rallies do (which, I wonder, had the more lasting impact?). Nevertheless, the idea of justice – as an ideal – is a theme that runs through much of his work.

As significant as his intellectual contribution to my world was Eric's personal contribution. He produced a daughter, Julia, who is with us today, an individual who strides the globe as a colossus of networking. I can attest to her match-making skills, for it was she who introduced me to a New Yorker who became my wife and the mother of my children. Thus is the Hobsbawm synonymous for the linking of the personal and the intellectual – which happens to be the subject of this lecture.

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I have come 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, as baggage is attached to each of us. A blank slate I was not, and indeed none of us are. In his fine autobiography *Interesting Times*, Eric 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 who focuses on matters international, my 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 points to a clear conclusion: individual lives and personal histories matter and they make a difference.

My new book – *East West Street: On the Origins of Genocide and Crimes against Humanity*<sup>2</sup> – has been nearly seven years in the writing. It is not about the life of one person but four. It

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<sup>2</sup> Alfred A. Knopf/Weidenfeld & Nicolson

seeks to understand how their particular circumstances contributed to the roads they took and, how the roads thus travelled changed the system of international law that is my daily work. The book also touches a more personal theme: how these four, interweaving lives influenced the path I have taken, whether directly or indirectly. Below this lurks a bigger question, one that touches us all: who am I, individual or member of a group?

The book 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 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 an intent to destroy the group of which those people are a member, then ‘genocide’ 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’. The difference gives rise to a pecking order, with ‘genocide’ seen by many as the “crime of crimes”, more serious than any other.

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, after five decades of quiescence during the Cold War chill that followed Nuremberg.

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. The long and sad list 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 truthful. [IMAGE 1 LEON ON] 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 which will be 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.”

So was the city for my grandfather, buried deep, part of a hidden hinterland of which he never spoke to me. His 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. [IMAGE 1 OFF]

“What haunts are ... the gaps left within us by the secrets of others”, the psychologist Nicolas Abraham wrote. 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. [IMAGE 2 – 1933 EXPULSION ORDER ON]. 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. [IMAGE OFF]

I had always assumed he had left 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. He left Vienna and made his way to Paris on his own. Only now, having access for the first time to his personal papers, 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?

These and other questions hung in the air. I returned to the documents found amongst his papers, looking for clues. As a litigator – a sort of lesser, amateur historian – you learn that

every scrap of paper or photograph is capable of hiding information that may not be immediately accessible. 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. Nothing is ever only what it seems.

Two items stood out.

[IMAGE 3 ON - SCRAP] 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.” [IMAGE 3 OFF]

[IMAGE 4 ON MAN IN BOW TIE] 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 wears a pin-striped suit, with a white handkerchief neatly folded into the breast pocket, and a white shirt. His polka-dot bow tie emphasizes a slightly mischievous air. On the back of the photograph, in blue ink, is written: “Herzlichste Grüsse aus Wien, September 1949” - “Warmest wishes from Vienna”, and there is a signature. It is firm, and it is indecipherable. [IMAGE 4 OFF]

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 I 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 family detour, but you will recall that the lecture I was to deliver 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.

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, then travelled 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 give individuals rights under international law, 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”.

In April 1945, after the war in Europe ends, Churchill, Roosevelt and Stalin agree that there will be a criminal trial for senior Nazi leaders. The British hire Lauterpacht to assist in the prosecution, to work with Robert Jackson, the chief prosecutor. In July 1945 Jackson travels to London to draft the Charter of the Nuremberg Tribunal. The four powers – America, Britain, France and the Soviet Union - disagree about the crimes over which the Tribunal will exercise

jurisdiction. Jackson turns to Lauterpacht for help. On July 29<sup>th</sup> Jackson leaves his room at Claridges Hotel in Mayfair and drives up to Cambridge to have lunch with the Lauterpachts. Later they sit in the garden of Lauterpacht's home and have tea. **[IMAGE 5 ON - LAUTERPACHT IN THE GARDEN AT HIS HOUSE, 1945]** The two men discuss the problem of the list of crimes. Lauterpacht suggests it might be a good idea to insert titles, to help public understanding and add legitimacy. Jackson reacts positively, so Lauterpacht offers another idea, in respect of atrocities committed against civilians, a matter on which the Soviets and Americans are deeply divided. Lauterpacht has a longstanding academic interest on this subject, and there is also a personal interest – he has no news about his family in Lemberg, a matter of which, as an emerging Englishman, he says nothing to Jackson. **[IMAGE 5 OFF]**

Why not refer to the atrocities against civilians as 'Crimes against Humanity', Lauterpacht suggests? **[IMAGE 6 ON - CaH WRITING]** 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 has 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' is incorporated into the Nuremberg Charter, as Article 6(c) of the Statute. 'Crimes against Humanity' "is clearly an innovation", Lauterpacht tells the Foreign Office in London, one that reflects an "enlightened conception of the true purposes of the law of nations", a part of the "law of mankind", signifying that those who break it "cannot shield themselves behind the law of their State." **[IMAGE 6 OFF]**

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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. 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 a new international crime, to combat what he called '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 escapes, makes his way to Sweden, via his parents' town of Wolkowysk, under Soviet control. In 1941 he leaves Stockholm for America. As Europe is 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 has been offered a place of academic refuge.

On this journey he travels with little money and almost no personal belongings, yet there is a great deal of luggage. Lemkin's luggage is filled with paper, thousands of decrees promulgated by the Nazis in the countries they have occupied. He has gathered these materials, which he now carts around the world. In America he analyses the decrees, and in 1942 he is offered a contract to write a book that will describe the patterns of behaviour he has found, indicia of an underlying master plan. The book is published in November 1944, called *Axis Rule of Occupied Europe*. [IMAGE 7 ON – GENO WRITING] Chapter IX is entitled 'Genocide'. Lemkin has 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. [IMAGE 7 OFF]

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

[IMAGE 8 ON– LEMKIN WAR DEPARTMENT ID] He pushes 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 – is 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 is disappointed that it includes 'Crimes against Humanity' – the killing of individuals - but makes no mention of genocide and is silent about the destruction of groups. Lemkin believes – with great passion - that the Nuremberg Statute should have mentioned 'genocide'. Still, all is not lost, as the definition is wide enough to encompass genocide. The next step in the process will be the Indictment of the defendants, and this offers an opportunity to push his ideas. Lemkin flies to London, where the Indictment is being crafted. He fights his corner, as Jackson's team prepares the Indictment of the defendants, working with British, French and Russian counterparts. He is persistent, constantly presses for 'genocide' to be included. There is 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 makes it into the draft Indictment. He describes himself as "greatly pleased". Then in early October the Four Powers agree the final text of the Indictment. Lemkin wanted Genocide to be included in Count Four, as a 'Crime against Humanity', but it's not there. Instead, it is included in Count Three, on 'War Crimes'. This includes the ill-treatment and murder of civilians in occupied territories, including Lemberg and Wolkowysk, where his parents live (although like Lauterpacht, he has no news of his family's fate). The Indictment alleges that the Nazis "conducted deliberate and systematic genocide". This is the first time the word is used in an international legal instrument, and it

comes with an agreed definition, the “extermination of racial and religious groups”. The Indictment mentions “Jews, Poles, Gypsies and others”.

On October 18 the Indictment is 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 writes. [IMAGE 8 OFF]

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

[IMAGE 9 ON – FRANK IN DOCK] One of the twenty-two men in the dock is Hans Frank, the fourth man in my story. He too is 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 becomes Bavarian Minister of Justice, and a couple of years later sets 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 thunders to much applause. In his case such precedence leads to mass killing. In October 1939 he becomes Governor General of Nazi occupied Poland, and in August 1942 he visits Lemberg and Galicia, recently incorporated into his territory. He hosts a concert which finishes with Beethoven’s 9<sup>th</sup> symphony, and gives a series of speeches in which he announces the elimination of the city’s Jewish population. Amongst those who will be caught up in the horrors that follow in the days after Frank’s visit are the families and friends and teachers of Lauterpacht and Lemkin, as well as my grandfather’s family. For each family there will only be a single survivor. Frank does not seem unduly perturbed by such actions, more bothered by other mundanities. He stays at the home of his deputy, Otto von Wachter, Governor of Galicia, whose son shows me the diary of his other. Frau von Wächter writes that

day. “I won two times, after that [Frank] angrily went to bed. Then he came back and drove away immediately”. [IMAGE 9 OFF]

Three years later, in May 1945, Frank is caught by the American Army, near his home in Munich. With him are 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 [IMAGE 10 ON – CECILIA GALLERANI] The painting hung in Frank’s private office in the Wawel Castle in Krakow, and 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 is in the dock, an accused. He is charged on three counts, including ‘Crimes against Humanity’ and ‘Genocide’. [IMAGE 10 OFF]

On that first day of the trial, the Soviet prosecutor takes the judges to what happened in Lviv. He describes the murders and tortures and other ill-treatment at concentration camps and other establishments in the Eastern Countries. He calls them acts of ‘genocide’, evoking the events in Lemberg in August 1942, in the days that followed Frank’s visit. Over 133,000 persons tortured and shot in Lemberg in that period, he tells the Tribunal. Eight thousand children killed in just two months in the Janovska camp, right at the heart of the city. As the words are spoken, Lauterpacht and Lemkin do not know whether the victims include their families. Indeed, they are not yet aware that the man they are prosecuting, Hans Frank, may be 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’ are used in open court. I know Lauterpacht and Frank to be in the same room on this day, and I wonder if there is a photograph. Lauterpacht’s son tells me there is none, but I persist in the hunt. A friend introduces me to the archive of Getty Images, the largest collection of images from that

day in court, where I spend 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: **[IMAGE 11**

**ON - NUREMBERG COURT ROOM ON 20 NOV 1945]**

Lauterpacht sits 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. **[IMAGE 11 OFF]**

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The trial lasts for a full year, and judgment is handed down over two days, on September 30 and October 1, 1946. The seventieth anniversary approaches, and will be marked in a few months' time in Courtroom 600 of Nuremberg's Palace of Justice, which is still a working courtroom as well as a museum, a place well worth visiting.

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 Antony Beevor has 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. When Mark Mazower wrote in his generous review in last weekend's Saturday FT that "Much of the most compelling material in this book is personal", I imagine the line may not have been intended to be entirely complimentary. Yet that is how I take it, for he elegantly makes the point I seek to make.

The concepts of ‘crimes against humanity’ and ‘genocide’ have entered our world, and to many it seems they were always there. They were not: both are the product of creative and inventive minds, of 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. [IMAGE 12 ON - ROOM AT THE LAW FACULTY] Professor Makarewicz was something of a nationalist, and not a fan of individual rights, or of the Treaty for the Protection of Minorities that was imposed upon Poland as the price of independence and statehood in Versailles, in June 1919. 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. [IMAGE 12 - OFF]

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.

[IMAGE 13 ON] Yet along the way, on the path of my double quest in search of personal history and intellectual history, I did manage to discover who Miss Tilney was, and what she did. In this way I have come to understand why my mother – and I - 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. [IMAGE 13 OFF]

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. [IMAGE 14 ON] 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.

Such efforts took several years, and involved the assistance of a range of remarkable individuals, including an American expert in DNA. Such are the requirements of an adventure in personal archaeological enterprises. [IMAGE 14 OFF]

Perhaps even more remarkably, and entirely unexpectedly, I learned of the more direct connections between my family and the Lauterpachts and Lemkins. I was astonished to learn that my great-grandmother, Amalia Buchholz, was born and lived in the small town of Zolkiew, where Hersch Lauterpacht was born. [IMAGE 15 ON - LEMBERGERSTRASSE] Indeed, both were born and lived on the same street, only a few hundred yards apart. It was called Lembergersterstrasse back then. Lauterpacht's son Eli was my first teacher of international law and my mentor, but three decades passed before we shared a connection to the same street that the writer Joseph Roth liked to 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. [IMAGE 15 – OFF]

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[IMAGE 14 ON – WRITING g & CaH]

How does one begin to understand these points of connection?

I start with 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 seem 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, 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, as I wrote an article for the Financial Times magazine, a profile of Dr Jan Kizilhan, the German doctor 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.<sup>3</sup> He identifies a connection between the possibility of justice and the future wellbeing of victims. Characterising such atrocities as a genocide is a 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, and five decades passed before 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.

Today once more a poison of xenophobia and nationalism is coursing its way through the veins of Europe, even before this most recent of refugiac catastrophes. I see it on my journeys to the central and eastern parts of the continent – to Hungary, to Poland, 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. It is impossible not

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

to have gone through the experience of writing *East West Street*, 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. Last week's presidential election in Austria sends a clear signal of our trajectory.

Closer to home too, it is possible to smell a change in the air, a move to identity politics. One former London Mayor offensively evokes Adolf Hitler as a supporter of Zionism, another suggests that the EU and Adolf Hitler somehow share common aims. A mayoral candidate uses overtly racial and identity politics to gain election – this time at least, he is rebuffed.

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.

And that is where I end *East West Street*, in a long ago place 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, understanding too the pull of tribal loyalty.

Thank you for your kind attention.