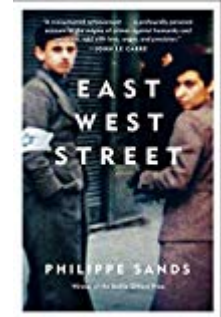


Philippe Sands. *East West Street: On the Origins of “Genocide” and “Crimes Against Humanity”*. New York, NY: Vintage, 2017. xx + 425 pages \$19.00, paper, ISBN 978-0-525-43372-9.



Reviewed by Kjell Anderson

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Commissioned by Ugur Ümit Üngör (NIOD: Institute for War, Holocaust, and Genocide Studies)

In *East West Street*, prominent human rights lawyer Philippe Sands examines the intersection of several lives in the city of Lviv. Lviv falls in what historian Timothy Snyder calls the “bloodlands,” a vast region of historical violence sandwiched between the authoritarian regimes of Hitler and Stalin. In the lead up to the Second World War, Lviv was a predominantly ethnically Polish city within the Habsburg Empire, before being annexed by the German Third Reich (and placed within the *Generalgouvernement*) in 1941, and then by the Soviet Union (within Ukraine) in 1946. This complicated history is reflected in the contested etymology of the city—it is known as Lviv in Ukrainian, Lwów in Polish, and Lemberg in German—as well as in the complicated biographies of many of its citizens, whose lives were turned upside down by war and genocide.

Sands’s book cleverly weaves together the stories of three of these individuals—his grandfather Leon Buchholz, and the famed jurists Raphael Lemkin and Hersch Lauterpacht. The book works on several levels—as a meditation on the intersec-

tion of the individual with history, as a genealogical detective story, and as an exploration of the development of international law. It is this later aspect of the book that I will focus on in this review, though it must be said that Sands’s book manages to explore the lives of Buchholz, Lemkin, and Lauterpacht through painstaking historical research, while also using these stories to illuminate broader insights. This is most apparent when, in the latter parts of the book, Sand explores the past through the perspectives of the descendants of both victim and perpetrator. There is a remarkable scene where, when faced with evidence of his father’s crimes, Horst Wächter, son of Kraków district (Nazi) governor Otto Wächter, declares, “I have to find some positive aspect” (p. 250).

Lauterpacht and Lemkin were both Jews from the Lviv (then Lemberg) area; they attended the same law school and were taught by some of the same professors. In many ways their formative experiences were similar. They also both fundamentally believed in the importance of the law

as an instrument to address persecution and violence, although they arrived at fundamentally different solutions.

Lauterpacht focused squarely on the rights of individuals, and his book *An International Bill on the Right of Man* (1945) was influential in the subsequent development of the Universal Declaration of Human Rights. Lemkin, on the other hand, was preoccupied by the state's persecution of groups. Lauterpacht was instrumental in the creation of the concept of crimes against humanity, while Lemkin coined the term "genocide" and lobbied inexhaustibly for the creation of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Both Lauterpacht and Lemkin were also involved in the Nuremberg tribunal, which tried senior Nazi leaders, including Hans Frank (also profiled in the book), a key figure in the decimation of the Lauterpacht, Buchholz, and Lemkin families as governor-general of the *Generalgouvernement*.

The difference between crimes against humanity and genocide centers on the identity of the victims. In crimes against humanity, victims are targeted as individuals (with the exceptions of the crimes against humanity of persecution and apartheid), whereas in genocide victims are targeted based on their membership in a racial, ethnic, national, or religious group. This tension between individual and group rights is something that has shaped human rights discourse to the present day, for example, through debates around minority rights and the challenge of imputing the intent to destroy a group (genocidal intent) to individual perpetrators, who may kill with only tenuous connections to ideological constructs (which often stigmatize whole populations as "the enemy"). Before proceeding to these pressing questions, however, we can ask whether there was "something in the water," so to speak, in Lviv that made two of its citizens instrumental in the development of international law.

One can certainly argue that both Lemkin and Lauterpacht developed an acute concern for human rights abuses partly due to the discrimination and pogroms they witnessed as Jews in Lemberg/Lviv. How could one defend the status quo international order when that status quo allowed governments to persecute their citizens at will?

Lauterpacht took his first course in international law in 1918 during a period of great flux in Europe. In the dying days of the First World War, borders were being realigned, and empires were collapsing in favor of new or resurgent nations. In signing the Treaty of Versailles Poland was required to accede to a separate agreement protecting its minorities. Lauterpacht left Lemberg and was awarded his degree in Vienna in June of 1921. As Sands argues, Lauterpacht had already distinguished himself as a keen intellect, yet he was not awarded his degree with distinction, likely due to his status as an *Ostjude*—"a serious handicap in 1920's Vienna" (p. 77). When Hitler rose to power in Germany in 1933, he did so having "explicitly denied" in *Mein Kampf* the "value of the individual among men" (quoted, p. 84). This surely intensified Lauterpacht's conviction that "the individual human being ... is the fundamental unit of all laws" (quoted, p. 57).

Lemkin's epiphany on the importance of protecting groups from persecution came about through a conversation with one of his professors in the aftermath of the 1921 Tehlirian trial. Soghomon Tehlirian was a young Armenian who had lost eighty-five family members in the Armenian Genocide; he was brought to trial for the murder, on March 15, 1915, in Berlin, of Talât Pasha, one of the principal architects of the genocide.[1] Tehlirian was acquitted on the grounds that he was suffering "inner turmoil" (p. 149).[2] In discussing the matter with his professors, Lemkin expressed shock that there appeared to be no international law under which to arrest perpetrators like Talât Pasha. When his professor invoked state sovereignty, Lemkin retorted, "so

it's a crime for Tehlirian to strike down one man, but not a crime for that man to have struck down one million men?" The (likely) professor in this conversation was a formative influence on Lemkin, writing the forward for one of his books, although he is said to have considered national minorities to be "dangerous" (p. 151).

Both Lauterpacht and Lemkin found themselves at the heart of international law in Nuremberg in 1945. But they were quite different figures. Lauterpacht was a cautious and deliberate jurist who built his reputation through the strength of his legal analysis. Lemkin, on the other hand, threw himself into his work body and soul, and his dogged advocacy alienated his colleagues. Lauterpacht drafted portions of British advocate Sir Hartley Shawcross's closing arguments, while Lemkin was effectively isolated within the American prosecution team. Lemkin was profoundly disappointed that genocide was not among the list of charges at Nuremberg, though he succeeded in the long run in making genocide one of today's "core international crimes."

Lauterpacht saw Lemkin as somewhat of a zealot and worried that his idea of genocide was impracticable and that his focus on groups would weaken the protection of individual rights, while also perpetuating the groupism/nationalism that was at the center of so many international ills (pp. 107, 361). Although they were both legally trained, Lemkin was effectively interdisciplinary, with a wide-ranging, comparative feel to his work. Unlike Lauterpacht (who had three doctorates), Lemkin also largely eschewed academia in favor of advocacy. Lauterpacht viewed Lemkin as "more of a compiler than a thinker" (p. 107) and an idealist.

In the juxtaposition of these two formative figures in international justice, it is hard not to see parallels with present-day intellectual debates between genocide studies (with its normativity and sociohistorical approach) and international

criminal law (with its inherent conservatism as shaped by legal rationalism). This difference in approach is often, but certainly not always, one between the engaged scholars of genocide studies and the technicians of law. This is reflected, for example, in genocide scholars' frequent demand for the reinterpretation or revision of the Genocide Convention to recognize new classes of victims (such as political and social groups), in the face of lawyers' reluctance to reconsider or reopen the jurisprudentially established definition of genocide.

Who is right in this debate? Was it Lauterpacht, with his pragmatism and emphasis on individual rights, or was it Lemkin, with his advocacy and focus on the protection of groups? This is, of course, an impossible question to answer. Sands posits that Lauterpacht derived his approach from a rejection of tribalism, of one group turning against another, while Lemkin may have found Lauterpacht's approach naïve, in seemingly not accepting the reality of group-based persecution (p. 291). Ultimately both men offered invaluable perspectives on the protection of human rights and the law as an instrument that could, at its best, make the world a safer and more just place for individual and group alike. *East West Street* manages to tell this story in a compelling fashion.

Notes

[1]. Soghomon Tehlirian, [Recollections] (Cairo: Husaper, 1956), 8.

[2]. A similar trial caught Lemkin's attention a few weeks after his university graduation in 1926. Samuel Schwartzbad, a Jewish watchmaker, was tried in France for the murder of General Symon Petliura on the streets of Paris. Petliura was acting in revenge for Peliura's alleged murder of Jews in Ukraine. Schwartzbad was acquitted on the grounds that he lacked premeditation (pp. 155-56).

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