

**BEYOND EAST WEST STREET**  
**PERSONAL STORIES AND POLITICAL DIRECTIONS**

**EDINBURGH INTERNATIONAL BOOK FESTIVAL**  
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I began to write *East West Street* late in 2010, after I first visited the city of Lviv. I travelled to the city in response to an invitation to deliver a lecture, on my work as an academic and as a barrister, on the law and cases of mass killing. This work touched on ‘genocide’ (concerned with the protection of groups) and ‘crimes against humanity’ (concerned with the protection of individuals).

I accepted the invitation because I hoped to find the house where my grandfather Leon Buchholz was born in 1904. I wanted to understand the recesses of an unspoken family history and recover my hinterland and sense of identity. I found a remarkable city and, eventually, Leon’s house.



The Polish poet Józef Wittlin describes the essence of the city, and ‘being a Lvovian’, in his wonderful, slim volume *Móý Lwów*, first issued in 1946 and last year published in English for the first time by Pushkin Press – with wonderful photographs by Diana Matar – as *City of Lions*. To be a Lvovian, he wrote, is ‘an extraordinary mixture of nobility and roguery, wisdom and imbecility, poetry and vulgarity.’ He reminds his readers that ‘nostalgia even likes to falsify flavours too, telling us to taste nothing but the sweetness of Lwów today . . . but I know people for whom Lwów was a cup of gall.’

*East West Street* was published six years later, in late May 2016, by which time I had come to understand why Lviv was a cup of gall for my grandfather, a place of which he never spoke to me. By then I had also discovered – or perhaps it would be more accurate to say accidentally stumbled across – a set of remarkable points of coincidence and connection, revolving around the ancient city of Lviv, which is also known as Lemberg to Germans and Austrians, as Lwów to Poles, as Lvov to Russians, and as Leopolis to Italians.

In preparing that lecture, back in the summer of 2010, I learned that Rafael Lemkin, the man who invented the term ‘genocide’ in 1944, was a student at the university and law faculty that had invited me to deliver the lecture, but those who invited me were unaware of the fact. Then I learned that Hersch Lauterpacht, the man who put the concept of ‘crimes against humanity’ into international law in the summer of 1945, was also a student at that university and law faculty, although not at the same time, but those who invited me were unaware of that fact too. How remarkable, I thought, that you can trace the origins of the modern system of international criminal justice to the same city, the same university, the same classroom, the same teacher.

A fourth man came into the story. Hans Frank, who arrived in Lviv in the summer of 1942 to announce the killing of tens of thousands of the city’s Jewish residents, including the families, friends and teachers of Leon, Lauterpacht and Lemkin. Having served as Adolf Hitler’s lawyer from 1928, Frank would serve as governor-general of Nazi-occupied Poland, including the district of Galicia and its capital, Lemberg: in November 1945 he was in the dock at Nuremberg, indicted for ‘genocide’ and ‘crimes against humanity’, being prosecuted by Lauterpacht and Lemkin. When the trial began they were not aware of his role in the fate of their families. By the end of the trial, they had learned of his role, but not the details. The details would wait another seven decades.

This was the story I found, researched and had written over six years. It was an intensely personal project – readers of *East West Street* will know of another strand, the one that explores the separate departures from Vienna of Leon, of my grandmother Rita, and of my mother, who

was only a year old when she was whisked to relative safety in 1939 by a person unknown. It seems that the stories I unearthed – in darkness and light – have resonated with a broader readership than I had imagined. This is a source of happiness and inspiration, illustrating the open-ended nature of larger historical narratives which link big historical moments with deeply personal elements, the consequences of which are far-reaching, unintended and continuing. What haunts, it seems, are not only the dead, or the gaps left within us by the secrets of others, but also the stories of those who follow them. *East West Street* is being published in many different languages, reinforcing a sense that the stories I came across touched on themes of universal interest – matters of identity, of family, of politics, of responsibility.

What might explain the level of interest? This is a question I have wondered about, settling on two elements. The first is that the stories – of individual human beings acting in ways magnificent or dastardly – resonate widely, especially if the focus touches on apparently small details. Such points of detail can, as I have to come to understand, perhaps from my practice as a courtroom lawyer, illuminate a larger truth. The second is that the book's central intellectual points of focus – the question of identity, of a community's relationship with the 'other' – is a matter of continuing (or renewed) relevance for many people in many parts of the world, in vogue as a wave of xenophobia and nationalism sweeps across Europe and the United States. The arrival of *East West Street* coincided with a moment in which the experiences of the 1930s were back with a vengeance: a few days after publication Britain voted (narrowly) for Brexit, and a few months later the US voted (sort of) for President Trump.

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I did not expect the steady flow of communications, the daily letters, emails and tweets that followed publication, over two thousand in the past year. Some ask specific questions ('What do you mean by your final sentence?'), and a tiny few offer entertaining critique ('Though I have very great respect for Lauterpacht and Lemkin . . .' etc.). The great majority share a reminiscence or recollection, often personal, and others offer new information, sometimes of a captivating quality. I feel privileged to have received such communications. To have such a relationship with readers is a matter of considerable satisfaction.

## PLACES

People have written to me about places. Lviv, Lwów, Lemberg. The city seems to inspire powerful feelings in those who have passed through it, and not only a cup of gall. ‘Perhaps [the book] touched me because I was born in Lvov in 1947,’ writes an American. ‘In 1973–4 I served in Soviet Army, then in 1976 I emigrated to the USA and never went back to Lvov.’ Others who write describe a more direct connection with the times and places in the book. A professor of paediatrics – with whom I have now spent some good times in New York and London – writes without rancour of his ‘personal experience’ of the Lemberg ghetto and *die Grosse Aktion* of August 1942, when tens of thousands were murdered. ‘I was able to walk all around the city of Lwów, wearing my white armband with the Blue Star of David,’ he writes. He tells me that:

*on the events of the day when my family were taken, I went back to our apartment on Bonifratrów 2 which was in Lyczakow area of the city, very far from the original Jewish district and the one where the prospective Ghetto was being established. The Aktion took place all over the city.*

A lady born in the military hospital in the city’s same Łyczakow district, in 1935, was recognised as the ‘Daughter of the [14th] Regiment’ in which her father served. Now living in London, she sends extracts of her own, fine translation of the memoir of Countess Dr Karolina Lanckorońska (who taught art history at Lwów). The countess recalls being interrogated by SS-Hauptsturmführer Hans Krueger, in the course of which he admits responsibility for the massacre in July 1941 of Lwów professors and writers (including Lauterpacht and Lemkin’s teacher Roman Longchamps de Berier, along with his three sons). Many years later, in 1967, the countess appears as a witness against Krueger in criminal proceedings in Germany, but not for the Lwów killings:

*I then wrote to all branches of the German judiciary asking that they hear my evidence again, this time in a trial for the Lwów crime . . . I received no reply.*

A medical doctor in America who also lived through those events – a paediatrician – ‘remembers [very well] many of the landmarks that you describe.’ He refers me to his book, *Strangers in Many Lands*, which recounts what he lived through. He explains:

*I was born in Katowice in 1935 but spent the war years and the immediate postwar period in Lviv and its vicinity. My parents managed to hide me in 1942 in the monasteries of Metropolitan Andrej Sheptytski and I spent a good deal of time with Daniel Adam Rotfeld, whom you mention in your book. I arrived in England in 1946 and in the US in 1949.*

The city weaves a spell even over those who were not born there, or haven't even visited. A retired judge living in Edinburgh, whom I have known and admired for many years, writes unexpectedly: 'Curiously, I also have a Lwów connection.' He explains that it dates back many decades, to the time of the Second World War, when the largest contingent of Polish soldiers was stationed in Perth, his home town. Those present included 'the Polish Army Choir and the members of Lwowska Fala (Lwów's Merry Wave)' and a conductor whose name is recalled – Jerzy Kolaczowski – who was from Lwów. 'They recorded several Scottish songs with HMV', but as most of the choir didn't understand English the retired judge's father 'wrote out the words in some form of phonetic script'.

At book events around the world – from Montreal to Mexico City, from Los Angeles to Warsaw, from New York to Paris – I will often be approached by a descendant of the city's one-time inhabitants. There is, it seems, an amazing Lvivian diaspora. Some are close by, like the colleague from a different faculty at University College London where I teach, whose reputation I might be aware of but have never met. A brother of the author of a particularly generous review in *The Times* writes of his forebears, who shared the family name of my grandmother Rita, his own 'Landes "connection"':

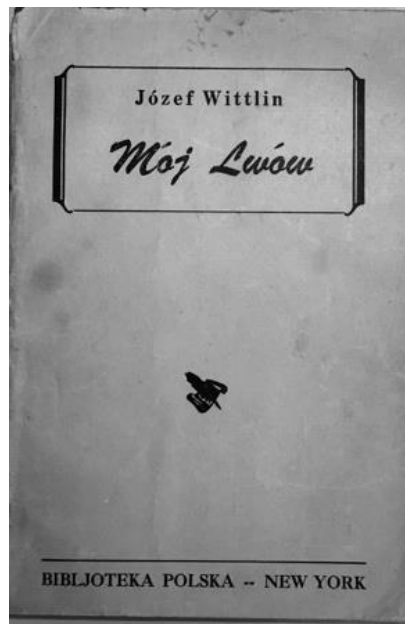
*All I know was the Lwów Landes family had very strong Viennese connections as a result of which my grandfather studied in and subsequently served in a Viennese regiment during WWI (considered an unusual thing).*

He sends a photograph of great-grandfather Melech.



I notice instantly that Melech has the same Habsburg jaw as my grandmother Rita. This causes me to wonder if we might be related. With a little more digging, it seems that we may be.

The son of a man born in Lwów in 1913 tells me that his father ‘always talked about his land and lost property, which included a house and flats in central Lwów.’ ‘Is there any chance’, he asks, ‘of a restitution of this property?’ Not long after, following a lecture I have given in Toronto, a smiling lady approaches me with outstretched arm which offers a different kind of restitution, a small book with a grey cover. A family heirloom, it’s a copy of the original 1946 edition of Józef Wittlin’s book *Móý Lwów*, in Polish, something I have long looked for. A singular act of kindness, she would like me to have this first edition of the book, having noted that it served as an early guide.



Another descendant of the city writes to let me know that he is the grandson of Adolf Pillar, the architect who built No. 6 Teatralna Street, where Lauterpacht lived as a student, and whose name is inscribed on white marble in the hallway of the building.



The grandson also tells me the fate of his father, the son of the man who designed the Lauterpacht family home in Lviv. He was ‘a member of the First Transport to Auschwitz on June 14, 1940, being assigned number 350.’

From Australia an email arrives. It contains an extract from the biography of one James Elroy Flecker, the first sentence of which reads: ‘James Elroy’s paternal grandfather, Issacher Flecker, was a Jew from Lwów who became a schoolmaster in Constantinople.’ The writer describes Elroy as ‘a minor English poet’, and explains that he had turned to the Flecker

biography as an ‘inconsequential’ work that would help him ‘to ease into sleep’ after reading *East West Street*, having ‘just learned all about Miss Tilney when it was time for bed.’ Regrettably, he added, the ‘first sentence [of the Flecker biography] meant sleep was no longer a consideration as I was once again on the journey from Lviv and immersed in Miss Tilney’s Christian vocation.’

Miss Tilney’s vocation prompts a significant number of inquiries. Among them, a German reader of a full page article in *Die Zeit* with the headline ‘Wer war Miss Tilney?’ feels a need to offload the burden of anxiety:

*I have had it on my heart for several days now to write to you. While reading the article I have become painfully aware on several occasions that I do not know what the Christian faith means to you and whether you have a personal relationship with Jesus Christ.*

A journalist, who writes after a book event at Shakespeare and Company in Paris, ends his email: ‘Thank God for Ms Tilney.’ The sentiment is shared by a barrister colleague, for whom ‘nothing beats the woman who saved your mum.’ I agree. And I could say the same for the first line of Chapter 10, verse 1 of Paul’s Letter to the Romans, a line to which it seems I owe my existence.

Readers will be aware that Miss Tilney saved many others, including a man called Sasha Krawec, whose later life remained a mystery. From Dublin, however, a clue arrives, in the form of a transcript of a January 1946 interrogation in Nuremburg of Miss Hildegard Kunze, sometime typist to Adolf Eichmann. Also present, the transcript records, apart from a court reporter and interpreter, was one ‘Sasha H. Krawec’. Whether the two Krawecs are the same I am not yet aware.

Descendants of Zólkiew, the small town near Lviv from where the Lauterpachts and Leon’s family came, also reach out. One writes of her grandfather, born in 1881 in the vicinity of Zólkiew’s east-west street, and of her uncle, a psychiatrist and psychoanalyst who turns out to have been a mentor of one of my sources. The grandfather suffered a depression, she writes, while on a visit to London. He went into analysis with Hanna Segal, the renowned psychoanalyst, who later wrote a paper that ‘deals with his life in Zólkiew and his fears of impending death.’ Writing this reminds me that I must try to find that paper.

Vienna too has its draw. An emeritus professor of physiology from Glasgow, who came to England on the Kindertransport in 1939, couples a sad recollection of his parents’ fate – a



cruel end in the small town of Yariczov Novy, near Lwów – with happier memories of food and Siegfried Ramler, the only surviving interpreter from the Nuremberg trial, whom I had the good fortune to find, meet and interview:

*Sigi . . . and I were playmates (‘Gassenbuben’, really) in Vienna . . . The Ramlers lived in a tenement nearer the bottom end of the road. Poor as they were, Sigi’s mother always contrived to have home-made raisin wine and beautifully baked Challot for the Shabbat.*

The director of an archive in Vienna writes out of the blue:

*You might not remember me . . . we met during a production of ‘La Cage aux Folles’ in what seems like a different life on a different planet. I was in Cambridge as a German language assistant and you were [in your second year]. We all went up to the Edinburgh fringe festival together . . .*

I respond with excitement, to share with him another coincidence, namely that his archive’s website threw up the crucial clue that helped me learn about my great-grandmother’s last days.

A British television director and producer writes:

*I am reading your remarkable book . . . and last night I read the final pages about the Man in The Bow Tie. When I read where he had lived in Vienna in 1941, I found myself almost shivering – I stayed at 4 Brahmsplatz just last week and know the garden to the left of the block.*

Readers will be aware that it was in this garden, I think, that my grandmother was photographed in 1941, with her lover, after her daughter and husband had left for Paris. She continues:

*The person whose flat I stayed in has lived there since 1938 – her father was an Austrian who held some position or other (she is not so very forthcoming about it) and the family took over the flat of a very rich Jewish [. . .] Our hostess is on the one hand a bit embarrassed by it all and, on the other, bends over backwards to embrace all things Jewish, somehow hoping to make up for her father’s actions and her own good fortune in inheriting the flat he seized.*

I hope to visit the flat, and the garden, in December, when I am next in Vienna.

## PEOPLE

Each of my four principal characters generates responses.

An envelope arrives at my barrister's chambers. It is scanned and sent on to me, as I am working abroad, with a note, 'you will want to see this.' It's a gentle, handwritten letter from a lady in New York, a relative who has emerged from out of the blue.

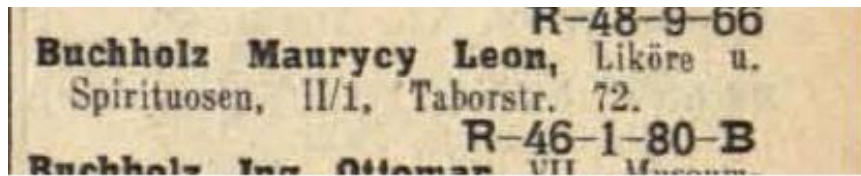
*I thought you might want to hear from someone like me who remembers [your grandfather Leon] fondly for his kindness, wisdom, and incisive gentleness.*

Susanne explains that she was born in Vienna in 1932, that she is the daughter of my grandmother's brother Bernhard, that Leon was her uncle. This is the first time I have had any connection with this side of the family.

From another side of the family, in Tel Aviv, a niece of my grandfather, whose existence I only came to know of in writing the book, has been shown a copy and the pages in which she features. The son of Herta Gruber offers an account:

*I read to her the beginning but after a few lines she took the book and continued reading it. First loud, then quiet to herself. From time to time she stopped to wipe her tears. When finished she gave me back the book and swung her hand as if trying to wave away the memories.*

A resident of Innsbruck in Austria – a stranger – is prompted to engage in research of his own. He uncovers a Viennese telephone directory dating to 1938. 'I found your grandfather with the following main telefon-number at page 73, row four,' he writes. He is kind enough to enclose an image.



A historian from Nuremberg takes particular interest in the original German documents that I have reproduced, including the order expelling Leon from the Reich, ‘a perfect example of the blurred lines between party and state authorities in the Nazi regime.’ He may also have uncovered the sad fate of ‘the mysterious Seelenarzt [soul doctor] Steiner,’ the man who wrote the letter in February 1939 that contained the clue as to the disharmony in my grandparents’ relationship. He has located a death certificate for one Leon Steiner from Vienna, issued in Theresienstadt in 1942. Herr Steiner’s profession is marked as ‘Privatier’, an old-fashioned term, he explains, for ‘people who live from their private patrimony without dedicating themselves to daily work, which would leave time for studying or being a Seelenarzt.’

Rafael Lemkin excites much attention. One correspondent, a regular visitor to the Cincinnati Library in Ohio, is prompted by the passage in the book about Lemkin inscribing a copy of his book *Axis Rule* to Dr Robert Kempner, a prosecutor at Nuremberg. ‘I thought you might be interested to know of another copy,’ she writes, ‘inscribed by Dr Lemkin to our late Senator Robert A. Taft.’ The copy was in general circulation when she first came across it, but it has since been relocated to the Rare Books collection. ‘It seems this copy was donated to the Library by the Taft family,’ she notes, adding wistfully that the Senator ‘did not live long enough to see US ratification of the Genocide Convention.’

An eighty-eight-year-old lady – a fine artist, judging by the copies of her own work that she encloses – writes from Los Angeles. She says she has been particularly interested in the sections of the book relating to Lemkin:

*You see, he was my cousin. My mother’s maiden name was Rachel Pomerantz and she was Bela’s sister – the mother of Raphael . . . I was very young when I met Raphael when he visited my family in Chicago a few times during his many travels. I didn’t realize the full extent of his work or his struggles and hardships. I knew however what an incredible kind and loving man he was . . . he would arrive at our simple third floor apartment in Chicago and would knock on our door – without any warning – and there he was! He would refuse the comfort of one of our bedrooms as he felt he would be intruding and slept on a fairly worn couch. He loved my mother’s great cooking and*

*when he was ready to leave we packed his bag with delicious morsels for his long journey to I never knew where.*

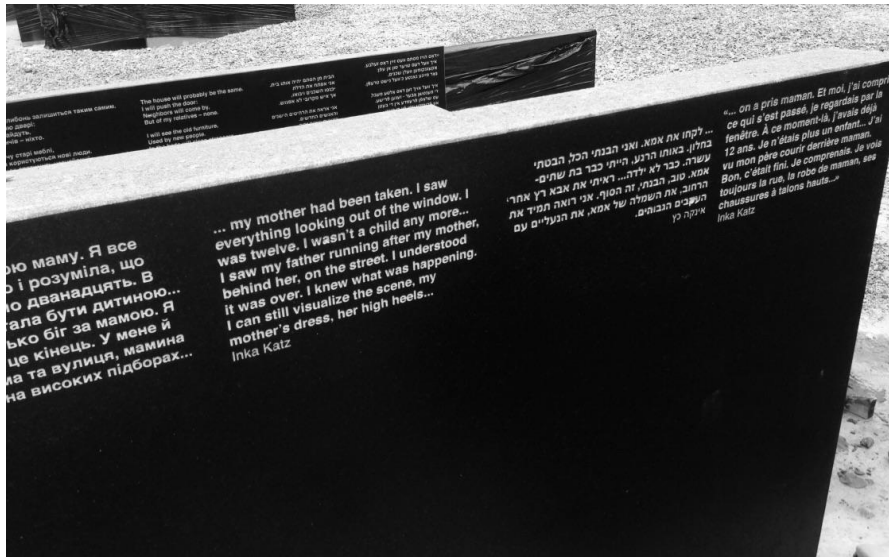
Lauterpacht too is remembered. From Grantchester, the widow of the university professor who delivered the first lecture on international law I ever attended writes:

*I knew Hersch Lauterpacht in his last years, when he and [my husband] had quite a close relationship. We knew of his appalling loss: he would never again set foot in Germany after the Nuremburg trials. But the dramatic links between his family, Lemkin's and your own (as well as Hans Frank) add even more poignancy to the story.*

From Australia, a lady with a doctorate in holocaust and exile studies has listened to my selection of music choices on the Margaret Throsby radio programme. Her father-in-law was interned in Lviv in 1939, then disappeared. She adds:

*Sir Hersch saved my grandmother, my mother and her two sisters, who were desperate to leave Munich after my grandfather was interned in Dachau (the day after the Kristallnacht) and died two weeks later. [He] came to their rescue by issuing an affidavit for my grandmother and her three daughters to come to England and work in domestic service. My mother and my grandmother, were employed in Sir Hersch's household. My mother vividly remembers their son Eli as a young boy.*

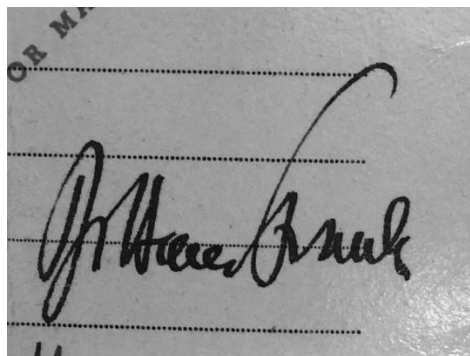
From Lviv a friend sends a photograph of the new memorial opened in September 2016 on the site of the Golden Rose Synagogue. Granite slates record the words of former residents of the city. Among them stands one on which are now engraved the words spoken to me in Paris, as we drank black tea, by Lauterpacht's niece Inka, and which are recorded in the book. I have passed Inka's words on to the city, and they are now set in stone.



Hans Frank too generates reactions. The day after a book event at the Holocaust Museum in Washington DC, which I attended with Frank's son Niklas, who has donated certain family artefacts, a renowned current-day Nazi hunter writes:

*As I was walking Niklas back to his hotel he exclaimed: 'If only my father would see this!' I replied, 'If only my father would see this!' and we shared a good laugh. History certainly takes surprising paths.*

From further south of Washington DC, a man in Georgia writes to say that his father was a guard in Courtroom 600 at the Nuremburg Trial. Occasionally he would speak to the family 'of his interactions with the accused, including Dr Hans Frank.' He passes on three of his father's photographs. One is of 'Dr Frank's autograph, that my father collected.'



Other characters also attract interest. After speaking at a book fair at Charleston in Sussex, a lady stands first in line at the book signing. ‘Your book interested me,’ she says, ‘touched me personally.’

I express interest. ‘Anything in particular?’

‘Actually, Hartley Shawcross was my father,’ she says modestly. ‘And you weren’t very nice about him,’ she adds with a lovely smile.

‘Only reporting what others said,’ I manage to reply.

A few days ago I received an email expressing gratitude for the book, ‘all the more because you mentioned my late father-in-law Israel Zangwill – I thought everyone had forgotten him.’ The next day came another: ‘I was pleased to see reference to my grandfather, R W Cooper, and his book on Nuremberg. In particular, I was interested to see your reference to him being a route for Lemkin to influence on recognition of the crime of genocide.’

The long arm not only of the law, but of family, it might be said.

## **POLITICS AND MORE**

The book’s historical and political implications also inspire reactions. A number of schoolteachers in the UK write about the need to improve teaching of the matters addressed, as do GCSE and A Level students. A professor of epidemiology and public health is ‘intrigued by the challenge between “crimes against humanity” being about individuals, and “genocide” about groups.’ His research on inequalities in health focuses on groups (‘socioeconomic, ethnic, gender, geographic’), and clinicians want to know how his work relates to individuals. ‘The challenge,’ he writes, ‘is to show how public health and concern for individuals should not be opposed.’

Others – in rather considerable numbers – write about parallels between the period of which I have written and current events, especially in Britain and the US, but also across Europe, and elsewhere. A seventy-one-year-old social worker sees ‘parallels in what you describe happening in the thirties in Poland and Germany and what is happening in Palestine now.’ A New York-based editor, who recently re-published Lemkin’s book *Axis Rule*, in which the word ‘genocide’ appeared for the first time in November 1944, writes to say that *East West Street* speaks ‘to an anxiety enveloping our time . . . and the fear that we may be heading for a turn somehow akin to the transformation in the interwar years.’ This is a frequent theme. He

wonders whether the assassination in December 2016 of the Russian ambassador to Turkey, Andrei Karlov, might offer a parallel with the Berlin killing of Talaat Pasha.

A Scotsman who explains that he is ‘instinctively distrustful of all nationalism’ asks:

*Now that we in Britain are faced with a resurgent right, and live in a place where judges are called scum by neo-fascists and ‘enemies of the people’ by a newspaper which sells massively, what should be done?*

Having voted for the Union in the 2014 referendum on Scottish independence, the book prompts him to wonder:

*Do I, in any second Scottish independence referendum, vote for what appears to be the inclusive civic nationalism of the ‘Yes’ campaign, rather than the continuation of the Union and the xenophobia which has enveloped it?*

That question surely has a continuing – and broad – resonance.

A retired British diplomat, with decades of personal, high-level experience on matters European and international, writes in the very short period between the book’s publication and the UK referendum on EU membership:

*It should be read by every voter before 23 June as a wake-up call about the fragility of the structures of peace and stability we have created over 70 years and the carelessness with which we seem prepared to disregard them.*

Disregard the structures of peace and stability we did, by the narrow margin of 52 per cent to 48 per cent (although not in Scotland or Northern Ireland or London). Was this abject carelessness?

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The personal stories in *East West Street* offer a fragment of a larger picture, a world that came together in 1945 to establish a new set of institutions and rules to place constraints on the actions of governments, a world in which individuals and groups would have rights and where the power of the sovereign – and sovereignty itself – would not be absolute. The Nuremberg

trial was part of a remarkable moment, one that led from the Charter of the United Nations to the General Agreement on Tariffs and Trade, from the Refugees Convention to the European Convention on Human Rights and the European Economic Community. It was a moment premised on ideas about individual rights and economic integration, intended to create a new politics in which the horrors of the 1930s and 1940s would not be repeated, in which limits would be placed on the sovereignty and freedom of states.

The world then created was imperfect, yet it helped Europe achieve a period of relative peace and prosperity. Today that world seems under threat, with a risk of the 1945 settlement unravelling but with no sense or vision as to what might replace it. Has there been a loss of collective historical memory, with calls in the UK to ‘take back control’, and in the US to ‘Make America Great Again’? Does taking back control, or wishing the possibility to make ourselves great again, mean the right to treat citizens and others as a state wishes, unconstrained by international laws and other commitments?

Once again a poison of xenophobia and nationalism is coursing its way through the veins of Europe and many other parts of the world, including the United States. I see this on my journeys to the central and eastern parts of the European continent – to Hungary, to Poland, to the Ukraine. Those who have seen my BBC Storyville film *My Nazi Legacy* – directed by David Evans, with whom I am now making a sequel on the meaning of justice and the fate of two young Yazidi women who were abducted, enslaved and raped – will have seen me standing in a faraway field in the Ukraine talking to people dressed in SS uniforms, men celebrating the creation in 1943 of the Waffen-SS Galicia Division.

I see the poison of xenophobia and nationalism here in Britain, in some of the votes for Brexit, and in related political developments. I see it in the views of a Prime Minister who recently expressed the hope that she wanted the UK to leave the European Convention on Human Rights, and who felt able to tell her party conference, in October 2016, that ‘If you believe you are a citizen of the world, you are a citizen of nowhere.’ Her words reminded me of a passage in Stefan Zweig’s magnificent book *The World of Yesterday* – required reading for our times – which was published posthumously in 1942, after Zweig committed suicide. ‘For almost half a century,’ he wrote, ‘I trained my heart to beat as the heart of a citizen of the world. On the day I lost my Austrian passport I discovered that when you lose your native land you are losing more than a patch of territory within set borders.’

Do we see shades of Germany in the 1930s when a widely read British newspaper – the *Daily Mail* – runs a front page story with the pictures of three senior judges, charged with interpreting and applying English law and the constitutional requirements of Article 50 of the



Treaty on European Union, describing them as ‘Enemies of the People’?

Where are we heading?

One former London mayor – Ken Livingstone – offensively evokes Adolf Hitler as a supporter of Zionism; another suggests that the EU and Hitler somehow share common aims. Boris Johnson also has no compunction (in the course of the Brexit referendum campaign) in referring to Barack Obama as ‘part Kenyan’ to explain the US president’s perceived anti-British tendency. Several years ago, in writing about Africa, he somehow felt able to refer to ‘flag-waving piccaninnies’ and ‘tribal warriors’ with ‘watermelon smiles’. How remarkable that this man is now Britain’s foreign secretary.

Where are we heading?

The United States elects Donald Trump as president. He rails against the media and ‘fake news’ (more shades of Germany in the 1930s?). One of his first acts is to sign an executive order which would – but for the actions of the federal courts – with immediate effect ban entire categories of individuals and groups from entering the United States simply because they happen to hold a particular nationality. The executive order he signed on 27 January 2017 was titled ‘Protecting the Nation from Foreign Terrorist Entry into the United States’. It sought, among other matters, to bar nationals of seven countries – Iran, Iraq, Syria, Yemen, Somalia, Sudan and Libya – from entering the United States for a period of ninety days.

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. My family knows to where such a beginning can lead. Researching my book, I came across the order expelling my grandfather from the German Reich, in November 1938.



Translated into English it says: ‘The Jew Buchholz Maurice Leon is required to leave the territory of the German Reich by 25 December 1938’. My grandfather posed no threat to anyone. He could be expelled because he had been made stateless. He was then expelled because of his religion.

How ironic, seven decades on, that the two countries that did more than any other to put in place the rules that prohibited actions of such a kind, creating rights under international law for individuals, and for the protection of groups, have fallen off their perches. How ironic, seven decades after the opening of the Nuremberg trial, with its British and American prosecutors and twenty-two Germans in the dock, that many now look to Germany as the bastion of liberal democracy, as a protector of the rule of law, of the rights of refugees, of the European Convention on Human Rights, of international rules more generally.

Where are we heading?

I worry less about the United States, with its robust constitution, having seen first-hand the forces of opposition that have come together to engage actively to protect the basic rights of all people. Mr Trump may turn out to be a four-year blip.

Brexit, on the other hand, if it actually happens, would not be a mere four-year interlude. The consequences of the vote to leave are far greater – in social, political and economic terms – and possibly even existential for the United Kingdom. Writing *East West Street* I was struck by the remarkable efforts – of politicians and civil servants – to prepare for all eventualities in the course of the war. By 1942, committees had been established to prepare for any number of possibilities, criminal proceedings already in preparation against senior Nazis. By contrast, today seems very different: we now know that in the run-up to the referendum no work was done in advance to deal with preparations following a vote to leave. And I know – because my daily life is the negotiating, adopting and applying of international agreements – that preparations for a post-Brexit world are wholly inadequate, a mix of hope and delusion about Britain's place and power in the world, a desire to roll the clock back to the great days of empire. Yet a few days after the Brexit vote I attended a meeting at the Foreign Office. During a break I asked the permanent secretary how many trade negotiators were currently employed by the UK government. He looked at me, smiled wistfully, held out his right arm, and touched his index finger to his thumb to shape a zero.

We are woefully unprepared for what is coming. Our politicians dissemble, our government lies, as we are repeatedly told how straightforward and speedy it will be to enter into trade agreements on our own account, once freed from the shackles of the customs union. It will not be as straightforward or as speedy as we are constantly told, especially if the trade agreements are to be meaningful in their scope: for the UK, in which manufacturing and export of goods is limited, the need to encompass services – in particular financial services – is likely to raise far more complex issues, and added complexity means added time. I know from personal experience that international negotiations take time, and once international agreements are concluded they have to be approved by national legislatures. There will be trade agreements, but will they be meaningful trade agreements?

We are repeatedly told that the jurisdiction of the European Court of Justice will not be acceptable for any disputes involving our ongoing relations with the EU. What is the alternative? The government's Brexit White Paper, published in February 2017, had little to say on this matter, beyond suggesting that arbitration might be the way forward. I sit regularly as an arbitrator on panels of the kind identified in the White Paper, and for many years before that I was counsel in such cases. My experience is clear: proceedings are slow and costly to the parties, and they are manifestly uncertain in their outcomes, dependent on who happens to be sitting on the panel. As one arbitral panel cannot bind another, there is no precedent. The idea that arbitrating disputes that involve the rights of companies, workers and citizens is an

improvement on existing arrangements, or even a viable alternative, is simply delusional. The White Paper seems to recognise that, noting rather hopefully that ‘we should not be constrained by precedent.’ A year after Brexit, Article 50 has been triggered, the clock is running, and the period until March 2019 winding down. I have not heard a single idea as to other options for resolving disputes.

As for Britain’s place in the world, I can also speak from first-hand experience. For many years I have acted as counsel for Mauritius in a long-running matter concerning the question of whether the process of decolonisation of Mauritius was lawfully completed in 1968, when the country achieved independence after a century and a half of British rule. In granting independence, however, the UK dismembered its former colony, violating international rules on self-determination, holding onto a group of islands known as the Chagos Archipelago. The local residents – about 1,800 in number, known as Chagossians – were then removed, their dogs were gassed, and one of the islands – Diego Garcia – then leased to the US as a military base. Last December the lease to the Americans was extended for another twenty years, until 2036. Mauritius, which has no problem with the US base but wants those Chagossians who wish to return to be allowed back, turned to the United Nations General Assembly. In June, just a few weeks ago, a vote was held on whether to refer to the International Court of Justice in The Hague the question of whether decolonisation had been completed in the 1960s, and if not, what the consequences were for today. The UK and the US lobbied strongly against such a vote. Ninety-three countries supported Mauritius, only fourteen backed Britain. Of the EU members, twenty-two members abstained, including, as the *Economist* put it, ‘usually reliable allies France, Germany, Italy, the Netherlands and Spain.’ Members of the Commonwealth supported Mauritius by a large margin.

This is the reality of Britain in the world today. I have seen it and I have smelled it. That reality – political, economic, social – is slowly dawning on some of those who told us it would be so easy. Brexit is a long game. In the end, whether we stay or leave, I suspect that much will remain familiar. There are many ways to leave. The most likely outcome is a Norway-type solution, in which we remain associated in some form both with the single market and the customs union, but with no role in making new EU legislation, no judge in the European Court of Justice and continuing to pay bills. Quite why this would be an improvement is hard to fathom. *Plus ça change, plus c’est la même chose*. Except that the country’s reputation is diminished, its global role further declined, and the sense of drift and dissolution palpable.

Beyond that, Brexit is likely to hasten the possibility that the United Kingdom will dissolve. Northern Ireland will surely be the first to go, a consequence of the requirements of

the Good Friday Agreement, hastened by an ill-conceived arrangement between the Conservative government and the DUP. Whether or not Scotland follows, the sense of wellbeing, of being bonded by shared values and concerns of the kind that brought the country together seven decades ago, seems a world away.

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As the overt use of racial and identity politics returns to centre stage, the experience of writing *East West Street*, with its immersion in the world of the years between 1914 and 1945, makes it difficult not to feel an acute sense of anxiety about what is stirring. I continue to oscillate between the views of Lauterpacht and Lemkin, 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. That tension will not soon be resolved, or disappear, as international law continues to offer the hope of a collective embrace of both ideas.

In the meantime, as I embark on a sequel to *East West Street*, tracing a story of escape after the war of another character in the book – Otto von Wächter, deputy to Hans Frank, indicted as former Nazi governor of Krakow and Galicia for international crimes, who makes his way to the Vatican, en route for Argentina, only to get caught up in the world of Cold War espionage and double dealing – there are grounds for optimism. Experience teaches that the ideas of Lauterpacht and Lemkin – with their remarkable sense of humanity and hope, with their endearing attachment to the possibility of international rules and justice – will not soon disappear. The city of Lviv has embraced its remarkable sons: in November they will be honoured for the first time, with a weekend of festivities and memorials being placed on the walls of the buildings that were once their homes, at 6 Teatralna Street (for Hersch Lauterpacht), and at 21 Zamarstynivska Street (for Rafael Lemkin).

The power of memory and imagination – and their shadows and consequences – is not easily cast aside. The legacy of 1945 remains and will not, I suspect, be easily undone.



Philippe Sands, London, July 2017

Philippe Sands's next book *A Death in the Vatican*, a historical detective story that sets out to uncover the truth behind what happened to leading Nazi Otto von Wächter, indicted in 1946 for 'mass murder', will be published by Weidenfeld & Nicolson in 2019.

#### Photo Acknowledgements

pp. 1 and 22    Diana Matar  
p. 6             Professor Anthony Finkelstein  
p. 13 (top)     Olha Zarechnyuk

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When Philippe Sands QC completed the Baillie Gifford prize-winning *East West Street* last year, he didn't anticipate the extraordinary public reaction that his book would generate. Nor could he have imagined the subsequent international political events that would unfold. In this new essay, Sands draws on the themes from his bestselling memoir, exploring connections between identity and the potential unravelling of the 1945 post-war settlement that included the emergence of 'genocide' and 'crimes against humanity' as part of a new legal order. Powerful and unflinching, this explosive update to Sands's influential book casts an intellectual hand-grenade into the debate around Britain as it negotiates its departure from the European Union.