

New order: How the Nazi war trials changed the world

This year commemorates the 70th anniversary of the liberation of Auschwitz-Birkenau, as well as the first session of the Nuremberg Trials, where those responsible for the Nazi atrocities were made to answer for their crimes.

Rebecca Taylor asks human rights lawyer Philippe Sands what the legacy of those historic trials means for us today?

Behind the ancient churches and winding streets of the Ukrainian city of Lviv lie two versions of 20th-century history, both inextricably entwined. One offers a horrific vision of the world; the other a more hopeful one.

“The origins of the modern system of human rights can be traced back to Lviv,” says the human rights lawyer Philippe Sands, speaking in the study of his Hampstead home.

“In Lviv, you can trace the central role of a group of Jewish lawyers who were engaged in thinking about how the law could achieve better ends. The story of modern human rights is a very Jewish story – although that association has dangers, because it will be attacked by some as Jewish liberal cosmopolitanism.”

The lawyers Sands is referring to are Raphael Lemkin and Hersch Lauterpacht. Both studied at Lviv University (or Lwow, as it was known from 1919) under the same teachers. Lauterpacht went on to develop the concept of ‘crimes against humanity’: the protection of the individual, not the state; Lemkin was the first person to use the word ‘genocide’ to denote the destruction of groups. Both lobbied to have these concepts adopted at the groundbreaking trials held in the German town of Nuremberg after the war to bring Nazi criminals to justice.

Sands’ own career – he was involved in the prosecution of Senator Pinochet and war crime perpetrators in the former Yugoslavia and Sierra Leone – has its foundations in the work of both men. He also has his own Jewish connection to Lviv: Lauterpacht was born in a small town on the outskirts of the city, on the same street as Sands’ great-grandmother.

Many of the concepts developed by Lauterpacht and Lemkin were included in the trial of the leading Nazis at Nuremberg. Their ideas went on to become enshrined in radical, new legislation, such as the UN’s *Universal Declaration of Human Rights* in 1948, the Genocide Convention of 1948 and the European Convention on Human Rights of 1950. These paved the way for today’s International Criminal Court based in The Hague, which has tried and convicted leaders including Slobodan Milosevic and Charles Taylor.

“When you talk about international criminal justice today, all roads lead to Nuremberg. Before Nuremberg, leaders could harbour under the impression that they were immune from the law.” The concept of war crimes prior to the Trials only covered limited violations, such as the murder of prisoners.

But the Trials, held from 20 November 1945 until October 1946, could have turned out very differently. When Hermann Goering, the most senior Nazi to be captured, was handed the statement indicting him for war crimes, he scribbled on the margin: “The victor will always be the judge and the vanquished the accused.”

“In some respects Nuremberg was a form of victors’ justice,” says Sands. “It’s Britain, France, the United States and the Soviet Union ganging up on the Germans. Of course, the conduct of atrocities was not a one-way street. The German defendants often invoked the atrocities perpetrated by the Soviets [such as their annexation of Poland in 1939]; the Allied bombings of Dresden were also never considered. But none of the defendants took issue with the fairness of the procedures. It was not seen as a sham.”

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Nuremberg was pioneering in other areas too. It was the first time that simultaneous translation was used and the first trial to use film as evidence – most dramatically in December 1945, when the court watched footage of the liberated Bergen-Belsen concentration camp. “I’m told by people who were in the courtroom that the film of Belsen was horrific. But it was also a turning moment: it was impossible to escape the conclusion that terrible things had happened.”

Following the suicides of Hitler, Himmler and Goebbels, the only major politician to be charged was Goering. Other defendants were chosen from the government, military and business community to represent different organs of the Nazi apparatus. Of the 22 defendants, 11 were sentenced to death by hanging, three acquitted and the rest imprisoned.

But the question Nuremberg has never satisfactorily answered is: why do people commit such crimes? “There are some, such as Alfred Rosenberg [the theorist behind Hitler’s racial policies], whom you would label pure evil. For others it’s more complex – and troubling,” says Sands. “Albert Speer, Hitler’s architect, and Hans Frank, the Governor General of occupied Poland, on first impression don’t appear as evil. They were highly educated and cultured. How did they fall into this?”

Frank, who was hanged for his role in the murder of three million Jews, is the third part



**Robert Jackson,
the chief US
prosecutor at
Nuremberg, in
the Nuremberg
courtroom, 1946**

of the Lviv story. In July 1942 he arrived in the city to give the green light to emptying its ghetto, sending its 133,000 occupants to death camps. Lauterpacht's family was caught up in the roundup and murdered – he was teaching in Cambridge then. Lemkin was in the US when another ghetto, in Wolkowysk, was emptied and he lost his family there. Both men were in the team that prepared the prosecution for Frank's trial.

Sands refutes philosopher Hannah Arendt's concept of the "banality of evil", which suggests that the perpetrators had lost the ability to think critically. "I interviewed a wonderful man called Siegfried Ramler, a Nuremberg interpreter. He told me, 'I sat with Frank, I looked him in the face and I knew that this was a man who knew he had done wrong.'

"At the heart of this kind of horror is the role of tribalism. That's why Lauterpacht is so important. By focusing on the protection of the individual he strips out group identity, whether by nationality,

ethnicity or religion." The concept of genocide is significant, but may be problematic: "The word reinforces the sense of 'them and us'. That's potentially dangerous."

Sands reaches for a book on his desk – the first edition of *Axis Control*, published in 1944 by Lemkin. "In chapter nine Lemkin used the word 'genocide' – the first time it was ever used. Within a month of publication he received a letter from an Austrian immigrant in America, Leopold Kohr [the political scientist who was one of those who inspired the 'small is beautiful' movement], who applauded his book but didn't like chapter nine and the word 'genocide', which he thought adopted the same biological path as Hitler. I can't get that letter out of my mind. These issues pose a central question: Who are we under the law: individuals, or members of a group?"

And there are other human rights issues that have not been resolved, such as the accusation that the process is one-sided. Noam Chomsky

THE PASSION

Sands found another link between Hans Frank, Hersch Lauterpacht and Raphael Lemkin. They appreciated classical music – in particular Johann Sebastian Bach's *St Matthew Passion*. "In July 1946, whilst Lauterpacht was writing the closing arguments for Frank's prosecution team and having discovered that his family had been wiped out, he found solace listening to the *Passion*; Frank told his US army psychologist that he found comfort by imagining that he was listening to the *Passion*. How could Frank derive joy from listening to such music and the next day order mass killings?" says Sands, who explored this dichotomy in a show with Vanessa Redgrave and singer Laurent Naouri last November at London's Southbank Centre.

famously wrote that if the laws that emerged from Nuremberg had been properly applied to cases of international aggression post-1945, every US president would have been indicted.

"I'm not starry-eyed about it – we know there are many people who should face justice who don't. If you go to the International Criminal Court website you will see that every person who is presently indicted is black or African. Blacks and Africans do not have a monopoly on international crime."

But can the legacy of Nuremberg have any real clout post 9/11 and the invasion of Iraq? "Iraq is a stain on our ability to preach justice in relation to others," says Sands, whose book *Lawless World* detailed the illegality of the Iraq war. "The recent Senate report on CIA torture – for which there have been no charges – reflects the scale of the challenge. But it's much easier to criticise democracies that don't comply with the rule of law than totalitarian regimes. In many countries people who do what I do are locked up within days." And to those UK politicians, mostly Conservative, who are calling for a withdrawal from the European Convention of Human Rights, he has this to say: "Britain was at the heart of the drafting of the European Convention. For it to say, almost 70 years later, that it now turns its back on that is nothing short of shocking." ■

Philippe Sands' film of the Lviv story by Wildgaze and BBC Storyville will be shown later this year; his book on the subject will be published in 2016.