

LECTURE

2021 DISTINGUISHED INTERNATIONAL LAW VISITOR LECTURE

EAST AND WEST, TO THE RATLINE, AND BEYOND: ON MEMORY AND IDENTITY

by
*Philippe Sands**

Some of you may have read my book *East West Street*,¹ although I suspect none of you have yet gone around to the sequel, *The Ratline*.² The two sets of stories they tell, like the cases in which I am involved in international courts, inevitably involve personal stories. I suppose what I've come to be really interested in is that special connection between the minutiae of personal stories and the larger canvas of the big political legal public story. That's what really interests me.

PART I: THE PROJECT

I think I can say that *East West Street* and *The Ratline* are part of a broader project helping make international law reach a broader audience. That's incredibly important right now, not least in the United Kingdom and the United States, two countries which have in a sense moved away from their commitment in 1945 to a rules-based global order.

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¹ PHILIPPE SANDS, *EAST WEST STREET: ON THE ORIGINS OF "GENOCIDE" AND "CRIMES AGAINST HUMANITY"* (2017) [hereinafter SANDS, *EAST WEST STREET*].

² PHILIPPE SANDS, *THE RATLINE: THE EXALTED LIFE AND MYSTERIOUS DEATH OF A NAZI FUGITIVE* (2021) [hereinafter SANDS, *THE RATLINE*].

In reaching out, I've met some extraordinary people. Two people that I've met in the past decade are the sons of two leading Nazis who were directly involved in the extermination of my grandfather's family: Niklas Frank, the son of Hans Frank who was Adolf Hitler's personal lawyer, and Horst Wächter, the son of Otto Wächter who was Frank's deputy governor of Kraków and of Galicia. I met them unexpectedly—I wasn't looking for their personal stories. The context was as follows.

If you go back to the 1960s, my brother and I would often visit our grandparents who lived in Paris, near the Gare du Nord. As children, we came to understand that, for our grandparents, the past was painful, and that we shouldn't ask too many questions. Their apartment was a place of silences, a place haunted by secrets.

I only really began to understand what had happened about those silences ten years ago, when I reached the age of 50. I got an invitation to deliver a public lecture in a city called Lviv³ in Ukraine, where I'd come and talk about the cases that I do before international courts and tribunals on crimes against humanity and genocide.

I went to Lviv, and one thing led to another. I looked for and found the house where my grandfather Leon was born in 1904. I learned of the terrible events that occurred there, unleashed by the words of Hans Frank, who was the governor general of Nazi-occupied Poland, spoken on a warm day in August 1942 to his deputy, Otto Wächter, who had recently transferred to Lemberg where he was the Governor of Galicia.⁴ It was Hans Frank's words that began the process that led to the extermination of my grandfather's entire family, and hundreds of thousands of other Jewish and Polish families. Hans Frank was charged with crimes against humanity and genocide. He was hanged in the courtyard of Nuremberg's Palace of Justice, exactly 75 years ago, for crimes against humanity.⁵

I did also learn that the man who put "crimes against humanity" into international law, renowned Professor Hersch Lauterpacht,⁶ happened to come from Lviv. Indeed, he had been a student at the university that invited me, although those who did invite me were blissfully unaware of the fact. And then I learned that the man

³ The Nazi occupiers renamed Lviv to Lemberg, a name used by the Austro-Hungarian rulers beginning in the late 18th Century. See *Brief History of the City of Lviv*, U.C. SANTA BARBARA ORAL HIST. PROJECT, http://holocaust.projects.history.ucsb.edu/Resources/history_of_lviv.htm (last visited July 29, 2021).

⁴ SANDS, *THE RATLINE*, *supra* note 2, at 93, 111.

⁵ Frank was hanged on October 16, 1946. SANDS, *EAST WEST STREET*, *supra* note 1, at 358–60.

⁶ Reut Yael Paz, *Making It Whole: Hersch Lauterpacht's Rabbinical Approach to International Law*, 4 GOETTINGEN J. INT'L L. 417, 422 (2012) ("It has been confirmed that the definitions that later came to be enshrined in Article 6 of the Nuremberg charter (crimes against peace, war crimes, and crimes against humanity) were in fact formulated by Lauterpacht . . .").

who invented the word “genocide,” Raphael Lemkin,⁷ also passed through Lviv, and was also a student at the same law faculty, although not at the same time as Lauterpacht. The folks who invited me did not know that either. And then I learned that at the Nuremberg trial, the famous trial, Lauterpacht and Lemkin actually prosecuted, on behalf of the British and the Americans, Hans Frank, for crimes against humanity and genocide.⁸ When the trial opened, on November 20, 1945, they did not know that the man they were prosecuting was also responsible for the deaths of their entire families. You really couldn’t invent it.

Six years after that first visit to Lviv, I published *East West Street: On the Origins of Genocide and Crimes against Humanity*,⁹ which isn’t about the life of one individual, but four. It seeks to understand how the particular circumstances each of the four—my grandfather, Lauterpacht, Lemkin, Frank—contributed to the roads they took, and how the different roads they travelled changed the system of international law that is my daily work, and the daily work of so many others. Those of you who’ve read the book will know that it also touches on a more personal theme: how these four, interweaving lives influenced the path that I have taken, directly and indirectly. Below my path, and your paths, lurk some bigger questions—questions that touch each of us. They address central questions of identity, which is very relevant right now in the United States and in Europe: Who am I? And how do I want to be defined in law, as an individual or as a member of one or more groups? How do I want the law to protect me, as an individual, or as a member of a group?

It may 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, and two other crimes.¹⁰ The essential difference between the two concepts centers on who is protected, and why. If 10,000 people are killed,

⁷ RAPHAEL LEMKIN, AXIS RULE IN OCCUPIED EUROPE: LAWS OF OCCUPATION, ANALYSIS OF GOVERNMENT, PROPOSALS FOR REDRESS 79 (1944) (“By ‘genocide’ we mean the destruction of a nation or of an ethnic group. This new word, coined by the author to denote an old practice in its modern development, is made from the ancient Greek word *genos* (race, tribe) and the Latin *cide* (killing). . .”).

⁸ See Philippe Sands, *East West Street: Personal Stories about Life and Law*, 16 WASH. U. GLOBAL STUD. L. REV. 439 (2017); see also SANDS, *EAST WEST STREET*, *supra* note 1, at 270–72. The lives of Lemkin and Lauterpacht are discussed in greater depth in Philippe Sands, *A Memory of Justice: The Unexpected Place of Lviv in International Law—A Personal History*, 43 CASE W. RES. J. INT’L L. 739 (2011).

⁹ SANDS, *EAST WEST STREET*, *supra* note 1.

¹⁰ Tuiloma Neroni Slade & Roger S. Clark, *Preamble and Final Clauses*, in THE INTERNATIONAL CRIMINAL COURT: THE MAKING OF THE ROME STATUTE 421, 422–23 (Roy S. Lee ed., 1999); *How the Court Works*, INTERNATIONAL CRIMINAL COURT, <https://www.icc-pi.int/about/how-the-court-works> (last visited July 29, 2021).

murdered, exterminated, their systematic killing will always be a crime against humanity, but will it be a genocide? That depends on the intention of the killers, and the ability of prosecutors to prove that intention. To establish the crime of genocide, you have to prove that the act of killing is motivated by a special intent—the intent to destroy a group in whole or in part.¹¹ If a criminal prosecutor can't prove that a large number of people have been killed with *that* intent, then the crime of genocide is not established under international law. Basically, you've got these two crimes operating side by side, and overlapping: every genocide is also a crime against humanity, but not every crime against humanity is a genocide.

A few months after the two crimes were inscribed into the ICC Statute, Senator Augusto Pinochet was arrested in London, on charges of genocide and crimes against humanity laid against him by a Spanish prosecutor.¹² The House of Lords ruled that, even as a former president of Chile, he was not entitled to claim immunity from the English courts.¹³ That was a novel, if not revolutionary, judgment.

In the years that followed after 1998, the gates of international justice slowly creaked open after five decades of quiet during the Cold War chill that descended after Nuremberg.

Cases from the former Yugoslavia and Rwanda soon landed on my desk in London. Others followed on allegations in the Congo, Libya, Chechnya, Iran, Syria, Lebanon, Sierra Leone, Guantánamo, Palestine, Israel, Iraq, and so the list goes on. They were always based on the rules that came into being after 1945—an American invention, a revolutionary moment in the making of modern international law, a moment that began in Courtroom 600 of Nuremberg's Palace of Justice, when it was recognized for the first time that the rights of the sovereign over its people are not unlimited. The long and sad list of cases that reached me reflected the failure of good intentions aired by Robert Jackson in Courtroom 600.¹⁴

¹¹ Patricia M. Wald, *Genocide and Crimes Against Humanity*, 6 WASH. U. GLOBAL STUD. L. REV. 621, 623–24 (2007).

¹² *Pinochet Arrested in London*, BBC NEWS (Oct. 17, 1998, 4:02 PM), <http://news.bbc.co.uk/2/hi/europe/195413.stm>. From 1974–90, Augusto Pinochet was the head of the military government in Chile. During his reign, thousands of persons were tortured, and many were “disappeared”—kidnapped and presumably killed. See *Augusto Pinochet: President of Chile*, BRITANNICA, <https://www.britannica.com/biography/Augusto-Pinochet> (last visited July 29, 2021); see also Martin Bernetti & Paulina Abramovich, *‘Where Are They?’: Families Search for Chile’s Disappeared Prisoners*, GUARDIAN (Aug. 14, 2019, 2:00 AM), <https://www.theguardian.com/world/2019/aug/14/where-are-they-families-search-for-chile-disappeared-prisoners>.

¹³ *R v. Bartle and the Commissioner of Police for the Metropolis and Others Ex Parte Pinochet*, [1999] 1 AC (HL) 595 (appeal taken from QB).

¹⁴ Robert H. Jackson, Opening Statement Before the International Military Tribunal, in *Nuremberg, Germany* (Nov. 21, 1945), <https://www.roberthjackson.org/speech-and-writing/opening-statement-before-the-international-military-tribunal/>. Associate Supreme Court Justice Jackson served as chief prosecutor for the United States at the Nuremberg Trial.

I became involved in many cases of mass killings. I have seen many mass graves. Some of the cases were crimes against humanity, the killings of individuals on a large scale; others were about 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 leaves a suggestion that the killing of large numbers of people as individuals, rather than as a group, is somehow less terrible.

One of the major characters in *East West Street* is Hans Frank’s son, Niklas. He is a very fine journalist and a writer, and he despises his father. The first time I met him, he said to me, “You know Philippe, I am against the death penalty in all cases, except in the case of my father.” After a few months, he introduced me to Horst Arthur Wächter, the son of his father’s deputy, Otto Wächter, an Austrian and also a cultured and highly educated lawyer, who would become Governor of Kraków and then of Galicia, based in Lviv.

Wächter, the father, was indicted for the mass murder of more than 100,000 Poles and Jews—but unlike Frank he was never caught.¹⁵ He died in Rome in 1949, in the arms of a Vatican bishop in mysterious and unexpected circumstances.¹⁶ Nicholas said to me, “Philippe, you will like Horst, although he is different from me: he loves his father.”

In the spring of 2012, I make the first of many visits to Horst, to the dilapidated ancient 12th-century castle in the tiny village of Haggenberg, north of Vienna. Horst, who is in his early 70s, is genial and chatty; he wears a pink shirt and Birkenstocks. We talk, we eat, we drink. He speaks of his parents’ Nazi beliefs, his love for his mother Charlotte (“she was a Nazi until the day she died,” Horst’s wife, Jacqueline, will whisper into my ear), and his childhood of plenty. Horst says of himself, “I was a Nazi child. I was named in honour of the ‘Horst Wessel Song’¹⁷ and Arthur Seyss-Inquart, who ran Austria briefly after the Anschluss, and then became governor of German-occupied Holland until 1945.” He was Horst’s godfather; Horst has a photograph of him hanged at Nuremberg, just after Frank, next to his bed. And Horst will say, “You know what, Philippe, I hardly knew my father, but it’s my duty as a son to find the good in him.”

¹⁵ See SANDS, *THE RATLINE*, *supra* note 2, at 145.

¹⁶ *Id.* at 3–6.

¹⁷ Horst Wessel was a member of the Nazi party murdered in 1930. Nazi party propagandists claimed he was murdered by Communists and made him a martyr in the early Nazi party’s struggle with their Communist opponents. The propagandists adapted a poem Wessel had written into a marching song which later became the unofficial national anthem of Germany during the Nazi era. *The Horst Wessel Song*, JEWISH VIRTUAL LIBRARY: A PROJECT OF AICE, <https://www.jewishvirtuallibrary.org/the-horst-wessel-song> (last visited July 29, 2021).

On that first visit, Horst shares with me family albums filled with black and white photos from the 1930s and 1940s: there are images of family holidays on lakes and mountains, interspersed with the occasional swastika, or a picture of Adolf Hitler, a haunting photograph of a child taken in the Warsaw ghetto. The albums make it clear that the Wächters sat at the top Nazi table. There is also an extensive collection of his parents' diaries and letters, and Charlotte's reminiscences, but I will only see these much later. I leave at the end of that first visit over a couple of days totally intrigued by Horst and his family papers. And the thing is, I like him, as Niklas said I would.

A year passes. I write a profile of Horst for the *Financial Times* newspaper.¹⁸ He doesn't like it, severs relations, then comes back. The article catalyzes a commission for a BBC documentary, *What Our Fathers Did: A Nazi Legacy*,¹⁹ which traces my relationship with Niklas and Horst, and takes us together to the city of Lemberg (Lviv). Horst doesn't like the film either, severs relations, again, and then returns, again. But one scene in the film really irritates him—in Lviv, in the archives, Niklas Frank wonders aloud whether Horst might be one of those “new kinds of Nazis.” (He retracts that charge later on, but it sticks.) Horst wants to counter the claim. “I don't think of you as a Nazi,” I say to him, “you are not a Holocaust denier, you are not an anti-Semite.” “How can I prove that I am not a Nazi?” he asks. I take a bit of time to reflect on this interesting question. Many of you will know that proving a negative is never easy. “Why not give all the family material to a museum,” I suggest, “so that scholars and others who are interested in your family can review it?” It does, after all, seem to be a unique collection, one that traces the life of a leading Nazi couple from the moment they met in 1929 to the moment Otto died, two decades later, in Rome. Horst agrees. He offers the material to the United States Holocaust Memorial Museum in Washington, DC, where it is digitized and made public.²⁰ Just two weeks ago, it was made available on the Museum's website, so any of you can dip in and take a look. It's an astonishing collection.

Horst said to me back then, would I like a set? “Yes,” I said, I would. A few days later, a single USB stick dropped through my letterbox in a tatty old envelope: 13 gigabytes of digital images, 8,677 pages of letters, postcards, diaries, photographs, newspaper clippings, and official documents. The collection is indeed remarkable. It includes Charlotte's *Erinnerungen* (Memoirs), written for Horst and the couple's five other children after the war. Reminiscences are grouped by period: 1938–1942, 1942–1945, etc. Unbelievably there are also old sound recordings, those old cassette

¹⁸ Philippe Sands, *My Father, the Good Nazi*, FINANCIAL TIMES (May 3, 2013) <https://www.ft.com/content/7d6214f2-b2be-11e2-8540-00144feabdc0>.

¹⁹ WHAT OUR FATHERS DID: A NAZI LEGACY (Oscilloscope 2015).

²⁰ *Horst von Wächter Collection*, U.S. HOLOCAUST MEMORIAL MUSEUM, <https://collections.ushmm.org/search/catalog/irn722775> (last visited July 29, 2021).

tapes digitized, so I can actually listen to Charlotte in her German cadence, methodical and rhythmic, high-pitched, anxious; not a warm voice, I feel.

This amazing material allows me to see the private side of Governor Wächter's terrible work in occupied Poland, in Kraków and Lemberg, from 1939 to 1944. What did Wächter do? Why did he travel to Rome in the spring of 1949, and what killed him there, at a relatively young age of 48? And how much did Charlotte actually know about what he did, and how much did she, as a spouse, provide by the way of support? In fact, what was their relationship like?

The material is voluminous and much of it is handwritten and it's all in German. It lingers for many weeks, until one day my colleague, the wonderful late historian Lisa Jardine, intercedes. She had recently delivered an inaugural lecture at University College London, where I teach, with a wonderful title, "Temptation in the Archives."²¹ I love archival material, and so does she. How do you assess archival material of a personal nature? That's her question. What is the historical value of personal documents? Lisa has terminal cancer, but she summons a few of us to her flat in the shadow of the British Museum in the heart of London. "Bring a few documents," she says. I do. She is interested in personal correspondence, the diaries. She is struck by the sheer number of letters written in the last months of Otto's life, while he was on the run, a hunted man. She asks a question, "Why would a husband and wife write to each other so often, at such length and detail?" "I don't know," I say, "because they loved each other?"

"No," Lisa replies. "There's more there. They are sharing things they don't want others to see." The letters from the last years, after the war, when Otto was on the run, are coded; there are no names. Focus on the last year of Otto's life, Lisa suggests, and the nature of Charlotte's role.

So begins another research project, one that lasts many years, an exploration of what lay between the lines and behind the words. I stumble into a world of escape and of espionage, of double dealing and duplicity, of exhumations and reburials; traveling from the Vatican to Syria and South America, even to Albuquerque, New Mexico, into monasteries, over lakes, across mountains, and, finally, I arrive at the world of the "ratline"—the "Reich migratory route," as it was called, the escape path used by Nazis to make their way from Italy to Argentina and other places in South America. What I will learn is barely imaginable.

This is a story of love and lies and justice and injustice, a couple fleeing from the prospect of discovery and arrest, of charge and of trial, of sentencing and the noose. At the heart of the story is a relationship, one that survived, the wife Charlotte believed, "because our love had no limits and went even beyond death." Those are her words.

²¹ Lisa Jardine, Professor of Renaissance Studies, University College London, Inaugural Lecture at University College London: *Temptation in the Archives* (January 2013).

Charlotte is fascinating and repugnant. She was born into a wealthy family of steelmakers, in a small Styrian town of Mürzzuschlag, and she was, on her own account, a very difficult and highly rebellious child; intelligent, but not intellectual. She enrolled as a student at the Vienna Women's Academy and School for Free and Applied Art, and developed a fine artistic eye, helped by wonderful teachers such as Josef Hoffmann of the *Wiener Werkstätte*. Her career blossomed; she designs fabrics, sold with great success in Germany and Britain.

She's also a fine sportswoman, and in the spring of 1929, she travels to the local Schneeberg ski resort, and shares a train compartment with a stranger, a strikingly handsome young lawyer. "My new 'Baron' was tall, slender, athletic, with delicate features, very beautiful hands. He wore a diamond ring on the little finger of his right hand and had a noble appearance, one that any girl would notice." On April 6, 1929, she writes: "I fell in love with good-looking, cheerful Otto."

They courted for three years and then they married because she became pregnant. He starts to practice as a lawyer, and he becomes increasingly active in the Austrian chapter of the Nazi party. She supports and encourages his politics. In the summer of 1934, Otto Wächter led the unsuccessful coup attempt on the government of Austrian Chancellor Engelbert Dollfuss.²² The coup attempt fails, rather like the insurrection on January 6, 2021.²³ He flees to Berlin and joins the criminal division of the SD, the Sicherheitsdienst, the intelligence service of the Schutzstaffel, the SS. He works in the same building as Adolf Eichmann. He enters the orbit of Heinrich Himmler, who becomes his patron. Charlotte joins him in Berlin in 1936, with Horst's two oldest siblings.

In March 1938, Germany seizes Austria²⁴ and they're able to return home. "Every Nazi felt such joy about this miracle," Charlotte records. Four years after the failed coup, he's back, triumphant. She drives to Vienna to pave the way for her husband's return. "There he was, in the doorway of my parents' flat in Vienna, a Brigadeführer, in his black SS coat with white lapels and uniform," she recalled. "In spite of the strain and the fatigue, he looked absolutely splendid."

They made their way to the Hofburg palace, through huge crowds overcome with, as she puts it, "a spontaneous and heartfelt outburst of joy." "Seyss-Inquart and his wife and a number of others came with the Führer, who slowly climbed the stairs of the Hofburg, up to the balcony. And there he was—the Führer—standing a meter in front of me. I could see and hear him so well." At the bottom of those

²² See SANDS, THE RATLINE, *supra* note 2, at 46.

²³ See Lauren Leatherby, Arielle Ray, Anjali Singhvi, Christiaan Triebert, Derek Watkins & Haley Willis, *How a Presidential Rally Turned Into a Capitol Rampage*, N.Y. TIMES (Jan. 12, 2021), <https://www.nytimes.com/interactive/2021/01/12/us/capitol-mob-timeline.html>.

²⁴ SANDS, THE RATLINE, *supra* note 2 at 54–55. This event is also known as the Anschluss. See *Austria Declares Union with Germany*, GUARDIAN (Mar. 14, 1938), <https://www.theguardian.com/news/1938/mar/14/leadersandreply.mainsection>.

stairs, after the joyous event, she tells Otto he should accept Seyss-Inquart's offer of a job in the new Nazi government. "Don't go back to ordinary life as a lawyer." That moment, that decision will have huge consequences—it changes their lives, as well as the lives of their children and grandchildren.

Charlotte's diaries pass in silence on the substance of Otto's new position. As a state secretary, his function is to remove Jews and other undesirables from public office, from the federal chancellery at the top, to the postal service at the bottom. He axed thousands and thousands of individuals, including, unbelievably, two of his own university teachers, Professor Josef Hupka and Professor Stephan Brassloff.²⁵ Removed from their university positions in the summer of 1938, both are stripped of their pension rights. Both will then be deported, and both will die.

As Otto crosses lines, Charlotte offers unstinting support. She loves the perks, the Mercedes, cocktail parties, the concerts at the Salzburg festival and Bayreuth, in the presence of the Führer and Himmler. And she loves the new homes, freshly emptied and stolen. In Vienna, they are given a large villa with its own park. Later, on Zell am See (Lake Zell), they acquire a "small summer house," just 16 hectares, previously owned by the governor of Salzburg, who ends up at Ravensbrück concentration camp.²⁶ The arrival of war in September 1939 propels Otto's career to even greater heights and horrors. Seyss-Inquart procures a new position for Otto. He becomes governor of Kraków in western Poland, newly occupied by Germany, working under Hans Frank.²⁷

Charlotte was fully aware of what he was up to, as he wrote about it in letters sent home. Otto wrote on December 17, 1939: "Dear *Hümmchen*, Many thanks for your lovely letter. There's a lot going on here. On the one hand, we've had some lovely things in the last few days: Schirach, Generalarbeitsführer Polenz, R.M. Funk, and the philharmonic was a great success—and so also a great success for me. Frank was very impressed. On the other hand, not such nice things: sabotage, a nasty business, car accidents, ultimately an attempt on the life of the Governor General. Tomorrow I have to have another 50 Poles shot."²⁸

This act of killing was notorious; it was the first act of reprisal personally ordered by Hitler in occupied Poland.²⁹ And it was Otto who signed off on it and

²⁵ SANDS, *THE RATLINE*, *supra* note 2 at 75.

²⁶ *Id.* at 82.

²⁷ *Id.* at 80.

²⁸ This excerpt and others like it are read aloud on *The Ratline*, a podcast produced by the BBC. Actors Stephen Fry and Laura Linney read the letters of Hans and Charlotte, respectively. *Intrigue: The Ratline*, BBC RADIO (Dec. 27, 2019), <https://www.bbc.co.uk/programmes/m000cn22>.

²⁹ SANDS, *THE RATLINE*, *supra* note 2, at 81.

supervised it. He also signed off on acts against the city's Jews and Polish intellectuals, and it was he who ordered and oversaw the construction of the Kraków ghetto.³⁰ For these and other acts he would be indicted by the Americans for mass murder, crimes against humanity, and genocide.

I looked for a hint of regret in Charlotte's papers. 8,677 pages. Not a single sign. Three years later, the Kraków job completed, Charlotte celebrates when Hitler appoints Otto to Lemberg, to clean up Distrikt Galizien (Galacia District), recently occupied by Germany.³¹ Otto keeps her abreast of developments. "There was so much to do in Lemberg after you left," he writes. "The harvest was gathered. We sent Polish workers to the labour camps, more than 250,000 already in the last few weeks, and the current large Jewish operations (the *Judenaktionen*) have been implemented. Lots of love, forever," he signs off. Himmler visits, offering him a position in Vienna if he doesn't want to stay in Lemberg. But you know, he decides to stay. "I was almost embarrassed about how positively [Himmler] talks about me," Otto reports to Charlotte. But life isn't perfect. Manual labor proves to be difficult to find, because, as he writes home to her, "the Jews are being deported in increasing numbers, and it's so awfully hard to get powder for the tennis court." As the deportations and exterminations proceed, Charlotte writes of picnics and concerts. It is this disconnect—between horror and beauty—that makes so compelling and disconcerting a read in these diaries and letters.

Carefully read, Charlotte's diaries reveal other secrets. Working as a volunteer nurse at a hospital in Lviv, she records in an English that Otto cannot read that she has lost her heart to a young soldier. And in the spring of 1942, exactly as the Final Solution is being implemented, she actually falls in love with Otto's boss, Hans Frank. I send the pages to Frank's son, Niklas. "Sensational!" he writes back, mischievously, "perhaps Horst and I are brothers."

The letters trace the last bitter months and weeks of the war. Even at the most acute moments, as the Red Army approaches Lemberg and the end nears, Charlotte and Otto find time to write to each other, and to hope. She is ever the Anglophile. "The British are more nationalist than the Germans," she writes in 1932. Charlotte imagines a new ally in the struggle against the dreaded Soviets. "I so hope the English will be fed up and unite with us," she writes. But there is an impediment: the Jews, "[they're] always getting involved, contaminating everything."

On May 9, 1945, the war is over. Otto is indicted for mass murder and he just disappears. His name is in the papers. He is indicted, listed as a "wanted war criminal" with his friend Seyss-Inquart, who is caught, put on trial at Nuremberg, convicted, and executed.³² To survive, Otto now has to rely on Charlotte. The tables are turned. A new chapter opens. Evasion and escape require new friends and allies,

³⁰ *Id.* at 84.

³¹ *Id.* at 93.

³² *Id.* at 144–45.

in the Vatican and beyond. Charlotte's papers provide secret details of Otto's escape, including the time he spent hiding in the Austrian mountains with a young companion, a former SS soldier, Burkhardt Rathmann, known as Buko.

I ask Horst about Buko. What did he do during the war? What was he like? Why did he help your father? "You want to know about Buko?" Horst asks. I nod.

"Well, I can answer your questions and tell you everything about Buko," he continues. "Or we could just telephone him." Unbelievably, in 2017, Buko Rathmann was still alive, 92-years-old. And I did visit him. He told me all about how they escaped, hid in the mountains for three years, moving from hut to hut; how they followed every day of the Nuremberg trials from a great distance; how they read of the outcome, the convictions, the sentences of death, the hangings of all of Otto's friends and colleagues: Hans Frank, Seyss-Inquart, and Ernst Kaltenbrunner.

"How did Otto react to news of the hangings?" I inquired. "*Vae victis*," Buko said. To the victor the spoils. As Buko spoke to me, I had my eye on a small black and white photograph on the bookshelf behind him. It was a man, seated, pensive, with a swastika wrapped around his arm. It's a photograph of Adolf Hitler.

After Otto left Buko in the autumn of 1948, he made his way south to Salzburg, Innsbruck, across the Dolomites into Italy. The correspondence with Charlotte provides details: the friends and lovers who provide refuge and assistance, the dramatic arrival in Rome, greeted by senior Vatican figures, including a "very positive . . . religious gentleman" who has connections right to the very top. From this correspondence, which is all anonymized, we eventually work out who he met with and hung out with, what the Americans were up to in Rome, who their new friends and allies were, and how the new war—the Cold War—ensnared Otto, and what exactly the Americans knew about his whereabouts, and when. The path to the ratline comes into view, and it is a troubling one. So troubling, in fact, that I took counsel from my neighbour in North London, the writer of spy novels, John le Carré.³³ He invites me to tea. I come with six small cakes, a handful of Otto's letters, and some photographs. We sit in his living room, as the sun streams in across papers laid out on the sofa and a low table, and he says to me, "I was there in 1949." "I didn't know that," I said. "I was a young British soldier and my job was to interrogate Nazis." "For what purpose," I ask, "to prosecute them?" "No," he replies, "my job was to recruit them, and it was bewildering. I'd been brought up to hate Nazis and that stuff, and all of a sudden, I'm told that we've turned on a sixpence and the great new enemy is the Soviet Union, the Nazis are our friends; it was very perplexing."

³³ le Carré died in December 2020. Philippe Sands, *John le Carré: Writer, Spy, Neighbor, Friend*, N.Y. TIMES (Dec. 15, 2020), <https://www.nytimes.com/2020/12/15/opinion/john-le-carre-spy-novelist.html>.

That was just three years after the end of the Nuremberg trial, which offers a different sort of context.

PART II: FASCINATION

Why did I, an international lawyer, engage in this project? What is it about the Wächters that captured my imagination? There aren't simple answers to these questions, but it seems clear that it goes to the interrelationship of matters of memory and identity. That is the case for Horst—the memorialization and construction of an image of his parents—and it is the case for me, too, I suppose—a journey that has taken me back to the untold story of my grandfather, so that I can better understand who he was, and who I am.

My interest in the Wächters is surely a consequence of the connection with my own family from Vienna and Lemberg. Wächter was directly involved in actions that contributed to the extermination of my grandfather's family. My desire to excavate the memories of others is intended to fill gaps and replace silences, and that of course is motivated in part by matters of identity.

There is too the implication of Otto Wächter's story for our conceptions of justice and for the present. Wächter died alone in the Vatican-run Santo Spirito hospital. He was charged, but he was never tried and convicted,³⁴ and that fact creates an important space, one that was occupied by his son Horst. "All the guilty ones have been judged," he once said to me. As far as he was concerned, the names of those responsible for crimes were fully documented, and since none of the lists of those tried and convicted included his father's name, it followed that he must be an innocent man. Everything else was pure imagination. And that's the untold story of Nuremberg, and the untold story of every other expression of formalized international criminal justice: Rwanda, Yugoslavia, Argentina, Chile, Kosovo, and so on and so forth. One of the unintended consequences of more or less every legislative or judicial act—*inclusio unius est exclusio alterius*, to include one is to exclude the other. By memorializing certain facts in the Nuremberg judgment, you inadvertently memorialize the acts of others by silencing them and this allowed Charlotte to live the rest of her life on the constructed and imagined artifice that her husband was actually a very decent man, and that was a "reality" she passed on to her son. As you will discover, however, in *The Ratline*, the baton of innocence is not passed on endlessly to all the future generations.

There is, too—to explain my interest in the Wächters—the connection with my own work, the cases that I do before international courts and tribunals. A year ago, I pondered these matters. I was sitting in the International Court of Justice in The Hague. I was the lead counsel for The Gambia in the case against Myanmar on the Rohingya. You will have been reading about it in the last few days, especially

³⁴ See SANDS, *THE RATLINE*, *supra* note 2, at 3.

because of events in Myanmar and the latest coup.³⁵ In court, I sat literally a few feet from Aung San Suu Kyi, the Nobel Peace laureate, as she tried to persuade the judges that the Myanmar military's actions against the Rohingya community might be excessive—the odd war crime here and there, perhaps, she acknowledged somewhat grudgingly—but they were most definitely not acts of genocide. Not one of the 17 judges was persuaded.³⁶ How was it, I asked myself, that she could not see the facts as others did? Some who know her believe the reason may lie in matters of family, arising from her relationship with her father, who was the architect of Burmese independence, the founder of the Tatmadaw (Myanmar's armed forces), and was assassinated six months before independence.³⁷ As she addressed the court, just a few feet from me, looking impeccable with flowers in her hair, speaking so fluently, I thought of Horst and Charlotte.

What about my interest in the Wächters as individuals? I suppose in some way that interest is also connected to the legal issues of crimes against humanity and genocide, the former about individuals, the latter about groups. And, if we're on the subject of groups, what group is more important than family?

As regards Otto, I begin *The Ratline* with a quote from the wonderful Spanish writer Javier Cercas: "It is more important to understand the butcher than the victim."³⁸ Why did Otto do what he did? And this is perhaps the big question that I and so many others are chasing: how is it that a highly intelligent, educated, cultured human being could become embroiled in acts of mass murder? Frankly, we are asking ourselves that question now in relation to the things that are going on in our world, as we watched the storming of the U.S. Capitol on January 6. Why people do things are not questions for the judges, who are concerned only with what he did and did not do. But can we who are so interested in the formalized delivery of criminal justice also not ask what is surely the bigger question: why, *warum, pourquoi?*

The answers to such questions do not reside in the judgments of courts. They live in the personal archives, in letters and diaries, in poems and notes. In the personal correspondence we can find clues. My own conclusion is that Wächter crossed lines. One of the big lessons I draw from the book is that once you cross one line, it become much easier to cross the next. He was ideological, he was ambitious, he was

³⁵ See, e.g., *Myanmar Coup: Aung San Suu Kyi Detained as Military Seizes Control*, BBC NEWS (Feb. 1, 2021), <https://www.bbc.com/news/world-asia-55882489>; Bill Chappell & Jaclyn Diaz, *Myanmar Coup: With Aung San Suu Kyi Detained, Military Takes Over Government*, NPR (Feb. 1, 2021, 11:34 AM), <https://www.npr.org/2021/02/01/962758188/myanmar-coup-military-detains-aung-san-suu-kyi-plans-new-election-in-2022>.

³⁶ Application of Convention on Prevention and Punishment of Crime of Genocide (Gam. v. Myan.), Order, 2020 I.C.J. 25 (Jan. 23).

³⁷ See MAUNG, A TRIAL IN BURMA: THE ASSASSINATION OF AUNG SAN 1 (1962); Hannah Beech, *Inside Myanmar's Army: 'They See Protesters as Criminals'*, N.Y. TIMES (May 29, 2021), <https://www.nytimes.com/2021/03/28/world/asia/myanmar-army-protests.html>.

³⁸ SANDS, *THE RATLINE*, *supra* note 2, at xiii.

weak—that is a toxic combination. He was narcissistic. You will be familiar with that. There's another conclusion: his evil is not the "banality of evil," to take Hannah Arendt's words:³⁹ Otto Wächter knew exactly what he was doing, and he embraced the horrors. The silence of the family documents is testament to their own awareness.

What of Charlotte? In many ways, she is the most fascinating of all the characters in the book. She is its beating heart, perhaps, of this family story of international criminality. It is crystal clear from the archive that she knew everything, that she was complicit, that she embraced everything. She loved her man through everything he did.

And what of Horst? He is in a state of absolute denial on that which is in the archive, and that which I have dug up. How can we understand the nature of his denial, of his fakery? Love blinds. Over time, it transforms perceptions of reality, and then reality itself becomes a new truth. Like me, Horst was born into a family of silences. When the war ended, he—as Charlotte's favorite—was chosen to be protected, nourished, loved, and he was told that his father was a fine and decent man: "I am so grateful that there are still people today who . . . have positive things to say about my husband." She made clear to her son, "I do not want my children to believe that he is a war criminal who murdered hundreds of Jews."

Today, Horst doesn't want to believe it either, even if he knows the facts point elsewhere. Together, he and I stood before a site of mass murder, near Lviv. There, the pain on his face was very plain. He doesn't deny what happened. He doesn't deny his father's connection to the horrors. He doesn't deny his mother's support of the father. He just wants to characterize them differently, as Charlotte did. It's a way of being able to live; it is a means of survival—hiding from the truth. "Tomorrow I have to have 50 Poles shot," Otto wrote to Charlotte. For Horst, unbelievably, that is proof of the opposite. You see, Horst said to me once, "It says 'I *have* to have them shot,' not 'I *want* to have them shot.' You have no proof that he was complicit." That is Horst's interpretation.

In the end, I did find the proof. It took three years, and I included three dreadful photographs at the end of the book, of Otto Wächter overseeing the act of killing 50 people. The first photo shows a group of 25 young men and boys, in the snow, waiting to be shot. The second shows the actual moment of shooting. The third shows Otto in charge, the commanding presence, in that fine, long black leather coat that Charlotte loved so much.

I can't share Horst's characterization of the facts, yet curiously I feel an affection for him, and I respect his open spirit, his willingness to engage in this project

³⁹ HANNAH ARENDT, EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL 252 (rev. and enlarged ed., 1964) ("It was as though in those last minutes he was summing up the lesson that this long course in human wickedness had taught us—the lesson of fearsome, word-and-thought-defying *banality of evil*.").

with me, to respond to suggestions that looted objects that his mother passed on to him should be returned to their rightful owners. I feel, also, anxiety for the price he has paid for sharing with me these personal papers, for allowing me to write this book, cutting himself off, as a consequence, from so much of the rest of his family. If I am able to be generous to him, he who protects the reputation of the father who was so deeply involved in the killing of my grandfather's family, it is because I constantly recall a scene early in a film we made together for the BBC, *My Nazi Legacy*.⁴⁰ When he talks about his sixth birthday, in April 1945, he starts to weep. He is a child who has been damaged. He is another victim of war.

The consequences go on. I opened *East West Street* with a quote from Nicolas Abraham and Mária Török, the Hungarian psychoanalysts concerned with the effects on the descendants of injury or catastrophe felt by parents.⁴¹ The last words in the book are spoken by Magdalena, the granddaughter of Otto and Charlotte, the only child of Horst. "My grandfather was a mass murderer,"⁴² Magdalena says to me and allows me to put the words in the book. For those six words, Horst has disinherited his daughter.

Horst and I are bonded by a sense of dislocation, and to events distant in time and place. We have different points of departure—we are opposite sides of a shared story, yet our paths crossed, and we've somehow arrived at an endpoint. It has been a most curious waltz. It's been a constant movement, a sort of double act, in which each seeks to lead and persuade the other. What emerges from the personal archive are the secrets, the lies, the love, and the absence of justice. What they mean, and what they do to memory and identity, is another matter, but it is another matter that is deeply relevant to what is going on in our countries today.

⁴⁰ WHAT OUR FATHERS DID: A NAZI LEGACY, *supra* note 19. In the United Kingdom, the film is titled "My Nazi Legacy." See Peter Bradshaw, *My Nazi Legacy Review—The Poison of the Past Lives On*, GUARDIAN (Nov. 19, 2015, 5:45 PM), <https://www.theguardian.com/film/2015/nov/19/my-nazi-legacy-review-the-poison-of-the-past-lives-on>.

⁴¹ "What haunts are not the dead, but the gaps left within us by the secrets of others." SANDS, *EAST WEST STREET*, *supra* note 1, at vii (quoting NICOLAS ABRAHAM & MÁRIA TÖRÖK, *Notes on the Phantom: A Complement to Freud's Metapsychology*, in *THE SHELL AND THE KERNEL: RENEWALS OF PSYCHOANALYSIS*, VOLUME 1, at 171, 171 (Nicolas T. Rand ed. trans. University of Chicago Press 1994) (*Notes on the Phantom* was originally published by Abraham as *Notules sur le Fantôme* in 1975)).

⁴² SANDS, *THE RATLINE*, *supra* note 2, at 348.