

# Lemberg, Lwów, Lvov, Lviv, and a Parade of Historical Ironies

by [Samuel Hux](#) (September 2022)



*Victorious Battle*, Aristarkh Lentulov, 1914

**Lemberg, Austria. Lwów, Poland. Lvov, USSR. Lviv, Ukraine.** Same city, never moved. The world moved around it. Having grown up speaking English in Greenville, North Carolina, until I became a soldier boy at 19 years of age, I have no idea what it would have been like to be a citizen of the Austro-Hungarian Empire speaking German and then by that age, in the

middle of a war no less, wake up speaking a Slavic language and shivering in those terrible Russian winters. But then I had never read Philippe Sands' *East West Street* until recently.

Sands, a British lawyer and legal scholar of several descents—and languages to go with them—was invited several years ago to give a lecture at the university in Lviv, spent a summer researching and preparing, and in the process discovered several truths about legal history and about himself, which eventually led to a remarkable book too rich and deep for quick summary or even an adequate review ... which I am not even attempting. I simply urge the reader to read it him- or herself, never regretting it. Ever so lightly (but significantly) autobiographical, Sands' intellectual adventure in Lviv leads him to discoveries about his grandfather, who might have passed in the street here and there the two principal subjects most of us are unfamiliar with while not so of their highly consequential legal philosophies.

Hersch Lauterpacht and Rafael Lemkin. Heard of them?

Hersch Lauterpacht was born in 1897 in a Polish-language village near Lemberg, as Lviv was then, began his education at the local university before transferring to the University of Vienna—collecting languages along with degrees, adding to his Yiddish ... Polish, Ukrainian, German, French, Hebrew, Italian, and eventually English. It could have been—I don't know—Martin Buber, who taught him in Lemberg, who encouraged him to finish his education at The London School of Economics where he earned his final doctorate in Law. In 1937 he was made a distinguished Professor of International Law at Cambridge.

His distinction extended far beyond Cambridge. Long before Judge Robert Jackson became the American nabob at Nuremberg, he relied on Lauterpacht for advice on international law issues. Lauterpacht helped Jackson and Roosevelt with legal

justification for Lend-Lease from a neutral in time of war. Most important, when Jackson insisted upon the charge of "*Crimes Against Humanity*" at Nuremberg, the concept was Lauterpacht's: crimes not against a people, a group, but against *individuals* no matter how many, no matter by whom. Lauterpacht had long been teaching and writing that "The individual human being ... is the ultimate unit of all law." Furthermore, the opening British speech by Sir Hartley Shawcross was in part a draft written for him by Lauterpacht. The same can be said of Shawcross's closing speech.

Considering the above, it is inexplicable to me that there is no mention of Hersch Lauterpacht in Telford Taylor's *The Anatomy of the Nuremberg Trials*, the only flaw I can find in that magnificent tome. Taylor does make a brief mention of Lauterpacht's rival (so to speak), Rafael Lemkin, who invented the word "*Genocide*" –the intention to exterminate a group. I say "rival" because Lauterpacht argued that focusing on groups—tribal or racial, etc.—as *victims* ironically encourages group-thinking of groups as *perpetrators*: a logic I do not much appreciate.

Rafael Lemkin was born in 1900 on a Russian farm in what is now Belarus but was in Poland by the time he was a young adult—familiar story. No surprise: he was soon a student in Lwów. Where else!? He earned a doctorate in Law, his advisor the same professor who had been Lauterpacht's earlier. Who else!? So of course they met? Afraid not. Maybe they passed one another in the street. Who knows? Incidentally one might wonder, had they met, which of Lauterpacht's eight or Lemkin's nine tongues would they have chosen to converse in? (Lemkin was a phenomenal linguist, said to read 14 other languages.)

Lemkin was a practicing lawyer and peripatetic legal philosopher, only occasionally attached academically. Unlike Lauterpacht who was safe in England, he was more or less on the run when Central Europe became "the Bloodlands," managed to get to Sweden, taught himself Swedish quickly and well

enough to get an academic appointment at Stockholm University. He was widely known for his writings, such that he was invited to join the law faculty at Duke University, which of course he accepted.

The Carnegie Foundation published Lemkin's book, *Axis Rule in Occupied Europe*, in 1944, in which Lemkin took the Greek word *genos* (race or tribe) and the Latin *cide* (killing) to create the new word *Genocide*. Although *Genocide* was not mentioned in the fourth Nuremberg indictment "Crimes Against Humanity," where it might logically be thought to belong, it was included as one of the "War Crimes" in the third indictment. Disappointed that he did not become a principal of the Nuremberg team, Lemkin was pleased nonetheless by his contribution to international law. It remains confusing to me that given the fact of the Holocaust, *Genocide* played such a relatively minor role in the indictments: a source of frustration to Lemkin, and a mystery that Telford Taylor's massive volume never clarifies.

There is another name I'd like to place somewhere, and here is as good as any, although not a principal figure in Sands' book, merely mentioned. Jan Karski, a brave Polish soldier and diplomat, who was one of those who got messages of Nazi crimes to the West, was another graduate of the law faculty at the University of Lwów. Where else!?

Were this a review of Sands' book, I would spend more time on another major figure (as Sands does) with a significant connection to Lemberg-Lwów: Hans Frank, the head of that part of occupied Poland designated "the General Government," who would be hanged at Nuremberg. Frank spent a great deal of time in Lemberg when Galicia (*Distrikt Galizien*) was incorporated into the *Generalgouvernement*, ironically (inadequate word) when most of Lauterpacht's family and both of Lemkin's parents were being killed. Ironically (no other word possible) Sands becomes a good friend of Hans Frank's unforgiving son Niklas. As I have indicated earlier, *East West Street* is a fascinating

and constantly surprising book.

A couple of months after the end of the International Military Tribunal at Nuremberg the United Nations General Assembly met in upstate New York and established as international law two issues from the Tribunal. (1) It endorsed Hersch Lauterpacht's idea of Crimes against Humanity and, in Sands' words, "decided to find a place for the individual in the new international order." (2) It endorsed Rafael Lemkin's idea about genocide and affirmed, in the Assembly's words, that "genocide is a crime under international law."

Certain associations possess, so to speak, my mind, consequently:

Perhaps the most famous city in Ukraine now is Mariupol, ironically because it hardly exists anymore thanks to Vladimir Putin's war with Ukraine. Before that, practically everybody had heard of famous Odessa on the sea, and many people knew of the political capital Kiev before being instructed that in Ukrainian it is *Kyiv*. Lviv is now famous as a kind of second city (although not the second largest) because so many refugees have moved there for safety. Until recently it was often thought of as "second" for being a sort of cultural capital; as some have said, Kyiv is the heart of Ukraine and Lviv the soul. If that's the case, it is ironic that the soul of Ukraine has been Austrian, Polish, and briefly Russian before it ever became Ukrainian.

It is ironic—is it not?—that it was the son of the soul-city of Ukraine who was author of the law which became international law which Russia is now violating by committing armed aggression against Ukraine, Crimes against Humanity. It's also ironic that had Lviv remained Lwów—Lviv today would not be in the danger that Kyiv is in, because Lviv's host country would be in NATO, where I think it belongs.

The irony would not be lost on Harry Truman were he around to

observe things. Self-educated, he'd read more history than an Ivy League history department. I strongly doubt that any president since Truman has been as historically sophisticated, even the Ivy trained. Dwight Eisenhower, reader though he was, was probably not as well read as Harry, but being a well-versed *actor* on the stage of history, as he was, gave him a profound sense of history and its ironies. Besides, Ike would simply look around and know which country needed-deserved protection and why.

Democratic presidents since Truman have not been, generally speaking, very Trumanesque. Certainly not Barack Obama. Certainly not Joseph Biden. Neither one, had he been in office, would have lifted an armed hand to rid the world of Saddam Hussein. Obama was so eager to get American troops out of harm's way that he even endangered the troops by letting the entire world, including Islamic enemies, know what our military plans were and were not. Biden was so eager to bring the boys home and out of harm's way that he turned the fate of Afghan women over to the Taliban. Possessed by the Democratic Party doctrine-in-effect that the purpose of the military is to provide youths with jobs and training, and not to be the profession of arms, he wishes to keep the boys safe at Bragg in North Carolina and Ramstein in Germany, and is willing to sacrifice the Ukrainian nation for that purpose. Do I put that too strongly? I suppose so. But there can be an essential truth in rhetorical exaggeration. I have said the following before in previous essays, but it is worth repeating.

The purpose of NATO is not to *start* war, but to *avoid* war by making it perfectly obvious to bad actors that it is willing to *go* to war if bad actors are foolish enough to act badly. The necessary assumption is that since if one NATO nation is invaded all NATO nations respond, Russia would not start a war in effect with 30 odd NATO members. Simplicity itself, assuming NATO is true to its doctrine.

Ukraine is not a NATO member and so is not protected from

Russian designs upon her. Ukraine asked to be accepted into NATO for perfectly obvious reasons: Putin was threatening invasion. The most powerful and controlling voice within NATO is The United States. President Joseph Biden's answer to Ukraine's needs was that Ukraine was "not yet ready" for NATO membership. And since the enlargement of NATO requires unanimous approval of NATO states, Biden's No means "forget about it." All readiness can mean is that Ukraine has a need and is willing to abide by NATO doctrine. All "not yet ready" can mean is that Joe Biden was not ready. And why was Joe Biden not "yet" ready? Because if Ukraine were in NATO and Putin were foolish enough to test NATO's resolve, then the U.S. would be honor and treaty bound to put American soldiers in harm's way. And Joe Biden, liberal Democrat that he is, does not wish to put the boys in danger. It is that bloody simple. And Biden can get away with it ... because who's going to object? Not the vast majority of the American people. And—irony of ironies—neither can the Ukrainians, because they need American non-military aid since there has been and will be no NATO boots on the ground nor pilots in the air. The Ukrainians are in no position to insult the American president who by saying No to Ukraine gave a green light to Vladimir Putin. It is disgusting that Biden—for extending American "humanitarian" largess to Kyiv—comes on so proudly as a friend of the brave Ukrainian people when he bears large, very large, responsibility for the Russian destruction of Ukraine. Needless to say, but I'll say it anyway, it is unbearably ironic as well.

It is also embarrassing (I think not only to me) ... and shameful. As I began composing this essay, the First Lady of Ukraine was visiting the U.S. I imagine that protocol demands that she be invited to the White House. Were she a guest, I am sure Madame Zelenska would be gracious enough not to speak directly what was on her mind. I am not at all sure that the occupants of the White House are smart enough to know what the beautiful lady might be thinking.

Meanwhile:

Lviv's location in northwest Ukraine close to Poland (naturally) has made it the center of a sort of safety zone for fleeing citizens ... so far. But as I write the Russian bombardment is getting closer, with the first few deaths. *Few?* When do *deaths* become just deaths? Can there be any real doubt that Putin desires that *Lviv* become once more *Lvov*.

Meanwhile extended:

The International Military Tribunal of post-World War Two, to which Lauterpacht and Lemkin made their signal contributions, is of course no more. Unfortunately, neither is its spirit, in so far as the United States has anything to do with it. Of course there is the International Criminal Court in The Hague. But the ICC is more or less ineffectual unless the criminal is turned in by his own nation, as Milosevich and his gang were turned in by Serbia 20 years ago or more. One purpose, whether officially so or not, of NATO was to avoid the necessity of The Tribunal, in the West at any rate.

The Soviet Union was a (somewhat cynical) signatory to the IMT in 1945-46. (Cynical because she committed some of the crimes Germany did, including the invasion of Poland in 1939.) Its successor, The Russian Federation of Vladimir Putin, has now violated all four IMT counts, "Crimes against the Peace" with its aggressive war against Ukraine, "Conspiracy to Commit International Crimes" including "Crimes against Humanity" and "War Crimes," excluding Genocide, since it is not killing Ukrainians for being Ukrainian but "only" for their refusal to surrender (what a nicety!). So, can or will Russia pay as Germany did? Of course not, as it seems unlikely to the extreme that Russian politicians are going to hand over Putin to the ICC! So what does this mean for the future, unless there is a radical refiguring of American foreign policy?

Vladimir Putin, assuming as one must assume unless there is a



Russian *coup-d'état*, will know that he can get away with what he wishes to get away with, knowledge that successful coupists would possess as well. And why? Because the U.S. will have earned the reputation of being a nation which, militarily speaking, walks the walk but does not carry a big stick, and cannot be trusted to honor its ideals, and NATO as well will be thought a paper tiger. The damage has been done, no matter the damage Ukraine ultimately suffers ... Unless. There is an unless.

We need to recognize that Putin's military is not the Red Army of 80-odd years ago. Were it, it would sweep through Ukraine as swiftly as it did through Poland in 1939, or Germany in 1945. Instead it is a poor outfit capable of bombing cities and terrorizing civilians, but incapable of withstanding concerted NATO tactics. Or forget about NATO itself. If Washington were to allow the American military to act like the tiger that it is in fact, the most proficient *profession of arms* that ever existed, the Russian forces would not stand a chance. I am perfectly aware of where this essay is heading:

Biden made a terrible mistake when he annulled any possibility of Ukraine being accepted into NATO. He made an equally terrible mistake when he did not even consider reversing himself when Putin moved with a green light across the border, did not say enough is enough, *genug ist genug, basta está basta*, and put American boots on the ground (even if other NATO nations could not, would not, understand his pronunciation of various tongues).

I am aware where this essay has, ironically, headed into fantasy. But we are going to pay heavily for not being at war in Ukraine right now, as I think we should be. And another irony: should Joe Biden summon the nerve to act as if he were Trumanesque he would pay heavily for it. He would be punished by the American people, as George H.W. Bush was for driving Saddam Hussein out of Kuwait. Woodrow Wilson would not have won a second term had the American people not believed him

that no American boys would be sent to Europe. If FDR had been thoroughly straight about Lend-Lease his popularity would have been compromised. And see Chapter 4, "FDR's Undeclared War," of Jerome M. O'Connor's *The Hidden Places of World War II*.

Had Roosevelt's plans for the Atlantic Fleet been common knowledge, many people, both Republican and Democratic, would have felt the 1940 election was a betrayal. It was a considerable time before the 1940s generation evolved into "The Greatest Generation."

The most excruciating and unbearable irony of all, which I hesitate to suggest ("suggest" suggesting my hesitation): It's a damned lucky thing that the Japanese bombed Pearl Harbor and three days later Hitler declared war on the U.S. so that America was *forced* into the most morally necessary war ever fought.

And now? Americans remain resistant to becoming belligerents on the world stage even when it is just to be so. But, ironically of course, while we think it imperative to avoid violence abroad, we have never been so violent at home since the Civil War. And I don't mean just the 1/6 insurrection. School children are not safe, and Democrats and Republicans are loathe to do anything effective about it. Political deliberation is replaced by scathing rhetoric, and loyal opposition is replaced by belligerency. Fears of electoral violence cannot be dismissed as paranoia or partisan point-making.

All things considered, I wish the best of luck to Lviv and the rest of Ukraine, while she fights World War III alone, as the U.S. and European allies avoid direct action afraid to trigger the World War III that has already in effect arrived.

In any case, the American citizenry in 2022 might well be called "The Least Generation."

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