

Leaders in SHAPE: Philippe Sands



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**Speaker: Professor Philippe Sands**

**Chair: Professor Conor Gearty FBA**

*As part of the Leaders in SHAPE series, award-winning author, academic and barrister Philippe Sands joins Conor Gearty to discuss his life and career.*

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*The following transcript was developed using speech recognition software and human transcribers. Although all care has been taken to check, proofread and correct the transcript, it may contain errors. The transcript deals with sensitive topics including genocide.*

Professor Conor Gearty FBA [00:01:16] Hello and welcome to the British Academy's *Leaders in SHAPE* series. My name is Conor Gearty. I'm a professor of human rights law at LSE, but here, at the British Academy, I'm Vice President for social sciences.

What we're trying to do with this series is look at people who are leaders in their field, and within their field and beyond it. And the fields are social sciences, humanities and arts – "SHAPE". It's a new idea, and we're exploring the way in which we can bring these disciplines together in a cross-cutting kind of way.

So we're looking for the leaders, and it gives me real pleasure to have here this afternoon Philippe Sands. Philippe Sands is an award-winning author, most recently of *The Ratline*, and previously *East West Street* and *Lawless World*, but is also an academic. I will be one of the few of his interviewees who's read his environmental work, and he's a barrister at Matrix Chambers. I think it's appropriate for me to declare that I too am a barrister at Matrix Chambers so we're not hiding any particular conspiracy here. It's just an accident of our professional interests.

Philippe's just been involved in a big case, the Chagos Isles, and so we're going to talk to him about these various parts of his life. We will have a question and answer tab for you who are watching this live, and we certainly hope that you'll be able to produce questions for Philippe. Get cracking now. They'll be fed through to me.

We won't be asking you yourself to speak, but I'll be certainly doing my best to integrate them both in my session and in the 15 or so minutes that follow after my questions and answers from Philippe. So it's broadly, this event, about 45 minutes long, 30 minutes and 15 minutes, questions and answers at the other side.

Philippe Sands, I'm interested in how you class yourself. What are you, Philippe? Are you a lawyer? Are you a novelist? A cultural anthropologist? Mega interviewer? User of multimedia? This is about humanities, social sciences – SHAPE. Which bit of that world do you belong in, or do you see yourself as belonging in far more than just one or two, or even three?

Professor Philippe Sands [00:03:49] So first, Conor Gearty, it's really terrific to do this. And I commend you and the Academy. What a fabulous initiative. I'm really pleased to be part of this and really pleased to be doing it with you. It's a question I think I probably, like other people, ask myself a lot, you know, involved in various activities, but perhaps master of none. They all interact, I think.

I started off life as an academic, without ever intending to be an academic, in my mid-twenties, when I was mentored by one of my teachers at university, Elihu Lauterpacht, and he invited me to work with him as a research fellow. And so I opened that door first, and I think because that door was the first to be opened, it's the one that is so central.

But I always knew that I was interested in how ideas, whether they're in the classroom or on the page, influenced the real world. My world is international law. I teach at UCL and I bring the other activities that I've got into that academic world. So the academic world followed the legal world, and that was simply because Elihu Lauterpacht said, "As an academic in international law, you have to be involved in practice to see how it actually works."

Then I came to realise that, actually later on, the real influences were not in the courtroom, it was actually the power of words and ideas. And I went back to writing, but I wanted to reach a bigger audience. And so the three lives, academic, lawyer, writer are, I think, very closely interconnected.

Professor Conor Gearty FBA [00:05:38] I think that's absolutely right. I see, however, a very strong dimension of the lawyer in your work. There was a little point in the latest book, *The Ratline*, where you said something like, "I got all the chronology. I'm going to do this like a lawyer". And I had a vision there of you with, as it were, those, not metaphorical in law, lever arch files, and this intimidating, if I might say, array of material.

You've got you, and you've got the team, undoubtedly, but you're sorting it all out as though you were putting a case to a court. Do you think the lawyer's skills of organisation, respect for data, have been kind of your calling card as a writer of, broadly speaking, non-legal stuff?

Professor Philippe Sands [00:06:25] In a sense, yes, but I take it one step further, because what I came to understand very early on was that there was a disconnect between the world of international law that was recounted in the fabulous treatises that I used, the books by Bowett and Brownlee, the people we knew and admired and still do admire so much, and what happened, as I got into the courtroom.

What I came to understand was that what the treatises did not fully accommodate was the intervention of the individual human being – the judge, the counsel, the witness, the court usher, whoever it may be.

So I would say it's not so much the organisational skills of being the lawyer, the ability to digest vast amounts of material, working with wonderful teams of younger lawyers often, and academics – actually, most of my research assistants are from UCL and they're extraordinary PhD students, LLM students – but it's being in the courtroom and seeing the reality of how the law functions in practice.

That's what I've taken up in the writing of the book. It's the attention to minute detail, which I've come to understand allows us to understand a greater truth. You're in court. You're arguing some arcane point of international law, and the judge, who you have identified as the most important of the 15 judges, raises an eyebrow at a particular moment. And you notice it, and it causes you to take a different direction. That's what I'm fascinated by.

Professor Conor Gearty FBA [00:08:11] There is a really interesting tension in law, and you've alluded to it, between the power of the personal narrative and the underlying legal principles. And when as an advocate, you try and win a case, you try and locate the personal in the minds of the judges and guide them to the principle. I agree.

In your books, most recently, I think *The Ratline*, but also *East West Street*. Is there a kind of bargain going on here, which you might call almost a Faustian bargain, between telling a gripping story and losing some of the analysis, because the stories are so good? You think, “Crikey, this is John le Carre, which happens to be true,” rather than “What are the more general points he’s making?”

Are you conscious of a kind of deal you’re making with yourself where you’re trying to keep principles and analysis, but you’re aware the personal is so good you might allow it to occasionally swallow the principle?

Professor Philippe Sands [00:09:06] You’re very astute, Conor. I mean, I’m juggling different audiences. When I started with *East West Street*, my wonderful then Dean at UCL, Hazel Genn, said “Philippe, make sure there are plenty of footnotes because we want to be able to put it in for the REF”. And I said, “Don’t worry, Hazel. The legal scholarly audience is very important for me. I want my peers to treat this with respect.”

Of course the publisher says, “Oh no, you can’t have any footnotes because there’s empirical evidence which shows that footnotes reduce book sales by about 50 per cent or more.” So we settled on endnotes, but there are hundreds, if not thousands of endnotes in both *East West Street* and *The Ratline*.

That is a reflection not only of being under the cosh of my Dean, and the support of UCL for this kind of writing has been absolutely wonderful and I want to record that. I’m deeply grateful to my colleagues for letting me off the leash slightly. But it’s also incredibly important for me that the international law community, they may disagree with aspects of it, so I’m writing for a double audience.

I’m writing for my legal academic peers and other academic peers, but I’m also part of a project which is to reach a broader audience because legal academics, frankly, live in a ghetto. International law academics, let me be narrow about it. We speak to each other and we don’t communicate very well with people in other departments. I’ve noticed that at SOAS and at UCL and we’re even worse at communicating with the public.

One of the things that I noticed, it was actually on the march against the Iraq war back in 2003. Hundreds of thousands of people walking with banners, carrying the words of the United Nations charter, and one of our young children said, “What does that mean? What do those words mean?” And it was fascinating to me to see the way in which international law had jumped into public discourse, and I wanted to connect to that bigger audience.

Professor Conor Gearty FBA [00:11:29] You’re not quite not admitting that sometimes it comes at a price. This is not to put you on the line, but at the end you say, “Oh, I’m not so sure about this genocide thing. I’m not so sure about it. Maybe it’s going too far.” And then the reader thinks, “Crikey, I didn’t expect that.” It’s as though there’s the sort of scholar-intellectual breaking through with the kind of sociological distance at the end of a story which has a kind of Hollywood grip to it, you know. Do you feel that as well?

Professor Philippe Sands [00:12:00] Absolutely. And what I've come to understand is that sometimes in the writing about ideas, less is more, and you don't need to get off the fence. So you've absolutely picked up that *East West Street* is also a reflection of an internal struggle. Here are two ideas. Hersch Lauterpacht, the primacy of the individual, human rights of the individual, and crimes against humanity on the one hand. On the other hand, Raphael Lemkin, no, people get killed not because of what they've done but because of who they happen to be, so we must protect the group.

There is this struggle, and frankly, throughout *East West Street* I am with Lauterpacht intellectually, and that becomes very clear to the reader, except right at the end of the book. I find myself in a place, a mass grave at which there are Lauterpacht's family still today and my grandfather's family. And I'm suddenly overwhelmed, not in an intellectual way, but in an instinctual way by the power of Lemkin's idea, There's this sort of epiphany.

Of course, Lemkin was on to something, but the tension between the two men, between the two ideas, and the inattention that I have, is not one that I have to resolve and not one I have to turn into a thesis. It's for others, I think, to run with it. My job is to identify how the law becomes an instrument for articulating points of tension between two extraordinary ideas.

Professor Conor Gearty FBA [00:13:35] On the situation of people, again, we have a question from Keith Meyer. Chilling is the word that Keith uses about Frank and Wächter, in your book. That they were so intelligent and cultured men, and it certainly comes through extraordinarily in the books. But what I'm asking is something different. Is it just the accident of birth, upbringing, family background, political affiliation that distinguishes a Lauterpacht from a Frank, or are there inner cores in people that can turn you in one direction and never in another?

Professor Philippe Sands [00:14:14] How long have you got, Conor? I mean, it's the big question. Why? What happens? What causes two extraordinarily intelligent individuals, highly cultured, highly educated. In the case of Otto Wächter, who enters the University of Vienna Law School on the same day as Hersch Lauterpacht in 1919 and 25 years later, will exterminate his classmate's entire family, and in the course of doing that will turn on his own teachers and remove them from their positions as professors at the University of Vienna, fire them, remove their pension rights, and consign them to Buchenwald and to Theresienstadt.

How does that happen? Now, that is a question that a lawyer cannot answer. A lawyer can lay out the kinds of factors that come into play. But I'm not a psychologist. I'm not a psychoanalyst. I'm not a sociologist. I'm not an anthropologist. My job is to lay out, coming back to an earlier question, the evidentiary basis. We are we're not perhaps good for so much as lawyers, but we are good at digesting the material and identifying the factors that could have come into play that would have caused Otto Wächter to cross lines at a particular moment.

I'm very inspired by a great Austrian writer called Stefan Zweig. If there is one book to read right now for our times, it's his memoir published posthumously, *The World of Yesterday*, in English, which was published after his suicide and which deals with what happened in Europe in the 1930s. And the style of Zweig, who was also an extraordinary historian, is not to impose his conclusions on the reader. And there is a tension between Philippe the



academic, Philippe the lawyer, Philippe the writer, and I hold back. I've got my views, I've got my ideas, but I want to leave it to the reader to form their own view.

Professor Conor Gearty FBA [00:16:26] However, Philippe, picking up a term that you've just used, you do impose this story on a living family. So it's not a novel. It's, as you call it, a sort of Nazi love story. But there are people out there, and there is obviously this person with whom you've worked, as people will see in the book, Horst. But there's a lot of other people there, it was, I thought poignant was where one of them asks you, "could you not publish this in Austria? I don't want my family to know."

Now, what I'm interested in is, firstly, whether there was a lot of pressure under the surface from members of the family, whether threatening legal action or not, I don't need to know, concerned to stop it, because one of the themes of the book is the divisions within the family. Divisions is too strong, a differing point of view about the book. And secondly, relatedly, do we all as children, have obligations to know about the conduct of our parents, or is this unique situation the Holocaust?

Professor Philippe Sands [00:17:23] There was a lot of private interaction with family members, which is obviously not set out in the book. I did just write a piece on the online version of *The New Yorker* magazine, which tells a particular story, which is very poignant. We don't need to get into it now. I mean, coming back, I'm really enjoying your questions because they're causing me to dig deep in thinking.

My primary relationship was with this man, Horst Wächter, born in 1939, who is not responsible for his father's actions or his mother's actions, and yet is in a state of denial about them. What is my function as an interlocutor? And in this, I think my academic training becomes very important. I feel I have a responsibility to treat him fairly, I promise him, and I undertake to ensure, that his ideas are reflected in the text.

I think, rightly, a couple of people have criticised *The Ratline* as being a tad too repetitive, but that's because, when you're in touch with someone for 10 years, the same themes keep emerging. I owe it to him. So to come to your central question, I have tried to treat fairly those with whom I disagree, and respectfully. Some people, for example, are hinted at, but not named because it's plain they would not wish their names to be in the book and to put their names in the book would have consequences for them.

The central thrust, to come into your second question in relation to this, is that Horst will say, "My duty as a son is to honour my father." And that, of course, is a wholly respectable position. If Horst were a Nazi or an anti-Semite or a Holocaust denier I wouldn't engage with him, but he's none of those things. He is a man who has been damaged in another way by the events of 1933 to 1945. And he's different from the man who introduced me to him.

He's different from Niklas Frank. The first time I meet Niklas Frank, the son of Hans Frank, who'd been Adolf Hitler's personal lawyer from 1928 to 1933, Niklas says to me, "You know what, Philippe? I'm against the death penalty in all cases, except in the case of my father. I hate my father," and Horst doesn't like that. And so there is a tension.

Perhaps, as I'm speaking with you, what's emerging is that what I'm attracted to is tensions of an intellectual kind between ideas, tensions of an emotional kind and tensions of an

instinctual kind. That is something that comes from the classroom where we often like to have people posit different views and then arbitrate between them, or in the courtroom. Maybe a common theme between the three parts of my being is the juxtaposition of instincts and ideas that pull in opposite directions.

Professor Conor Gearty FBA [00:20:32] I'm from a culture which has, I'm following this up and I'm tying it down a little bit, a shocking 20<sup>th</sup>-century record of brutality toward lost children, literally dying, dumped, in homes. Have I an obligation if I form a view about an aunt, or a grandfather, or a father, or a priest whom I knew very well, that were complicit in it. Have I an obligation to know that? How far does this obligation to educate oneself go? Or does one draw the line and say what's over is over?

Professor Philippe Sands [00:21:08] Let me take that in a different direction, but relatedly, I have only realised in the last 15 or 20 years the extent of my own country's complicity with horrors of the past. I frankly had never thought about colonialism and racism with a degree of depth that I think it justified.

What the conversations with Niklas and Horst have thrown up for me is the way in which individuals, and families, and towns, and entire countries, deal with their past. There's no cookie cutter, one size fits all. What's very striking for me is how Germany and Austria, and how German and Austrian families, have dealt differently with these pasts. And neither is more right than the other.

The failure to engage with that past, I think is one of the themes that emerges from both books, has consequences. In other words, pushing these matters under the carpet doesn't make them go away, and that has led me to a position where I think increasingly I've come to the point of understanding that's true with Britain's colonial construction and indeed even an entity like the British Academy with its name, the British Academy.

You remember when I was on the Commission on a British Bill of Rights created by the 2010-2015 government, I'd arrive in Belfast and in Edinburgh, and they'd say, "No, no, no, we won't have British in the name." That is a reflection of a colonial construct. And we have not, in the United Kingdom, engaged as for example, Germany has with its past. I've come to understand we're paying a price for that.

Brexit, our political situation now, these kinds of things are intimately connected to matters that we have not, within our own families, within our own communities, within our own towns, within our own country, engaged with. And I think for Ireland, you're describing the same thing. It's probably one of the reasons I feel so comfortable in Ireland, because although it's not addressed, what is very explicit is that it hasn't been addressed.

Professor Conor Gearty FBA [00:23:29] Interesting, because I'm wondering whether the power of memories is related to cultural power. So we've been able, in Great Britain, to control our unpleasant memories of the past by really concentrating on bits we think are great, the Second World War and so on and so forth. And there's quite a push back now within the culture in which we both live and work against memory.

Don't go too far. Don't knock that statue. Let's stop going on and on about colonialisation. And there are lots of academic outrages who will support that. Equally, some famines are completely forgotten. But the first one isn't because the Irish were able to turn it into a culturally powerful event. Lots in Africa, forgotten, just like the colonial exploitation was often of marginalised peoples.

Do you think in a way, referring back to your own books, and your success, that you're picking up an arena that is already familiar to people that has been successfully recalled and that that adds power to the narrative and that there are forgotten disasters that remain forgotten because of the lack of power to articulate the concerns underlying them?

Professor Philippe Sands [00:24:40] Absolutely. So my writing project right now, a series of five lectures that I'm delivering next year in The Hague on Chagos and Decolonisation, a story I knew nothing about growing up.

Did we know that between 1968 and 1973, the British government or successive British governments removed more than 2000 human beings from their homes in a place called the Chagos Archipelago in the Indian Ocean, and consigned them to the four corners of the world, to Mauritius, to Seychelles, and to a place called Crawley next to Gatwick Airport. And there they cast them aside and those folk want to go home, and the British government, now, still, today, having lost a series of court cases, does not want them to go home.

That has caused me to dig very deep into my own education. I went back and found my copy of my history book. Geoffrey Trease, *This is Your Century*. I don't know if you ever came across that, but it is staggering to read it. You know, I'm 12 years old reading this in 1972, and it's all about the glories of empire. And there are the little vignettes of this troublesome little man, Mahatma Gandhi, causing difficulties in India. Looked a bit like a monkey with glasses. That's in the book. I mean, it is astonishing. And I'm a reflection. And in a sense, it is the opening of these stories that have caused me to revisit my own assumption, my own prejudices, racial, colonial and other. And I find that very exciting.

Professor Conor Gearty FBA [00:26:24] Actually, it's very interesting because we're back where we began, because it's been law that has driven the Chagos Islands centre stage in this case, and there's been succession of cases. We don't need to say to people defeat here, defeat there. So sometimes even the process is successful and a great one which kicked off this whole thing was Pinochet, which brought home to people the possibility of punishment.

Now there's a question here, which isn't just about the success of law, it's whether what's happened is that human rights has become all about punishment. I'm focusing on Pinochet. I'm focusing on the International Criminal Court (ICC). But human rights seems to be about protecting people. And indeed, in the Chagos Islands it remains so.

Actually a large part of it is about crime, it's about punishment. And often human rights advocates, you hear them now say, "oh, that person didn't get sentenced to long enough or that person didn't suffer enough or that person got acquitted". Is that something that you notice and confirm, or am I wrong?



Professor Philippe Sands [00:27:19] You know, it's very funny that you focus on that. We haven't prepared at all. For the audience, just to let you know, I said to Conor, I didn't want to know in advance what he was going to raise because it makes it much more authentic. It makes it much more real. So I've just had an exchange. So essentially, there'll be a third book in the *East West Street*, *The Ratline* series, and it brings us more to recent times.

It's the Pinochet case, because extraordinarily, just as *East West Street* was on the origins of crimes against humanity and genocide, it is forgotten that Pinochet was indicted originally for crimes against humanity and genocide. It changed subsequently, but that was what it started with.

So I've begun the process of researching that, and one of the people that I wanted to talk to was a former Home Secretary who was in charge of matters at that particular moment in time, and I'm very delighted that we are now engaging in a conversation. And in that conversation, one of the things that I said that I think in a sense reassured the former Home Secretary was that actually, to my mind, the significance of that episode was that it lasted two years and it didn't matter too much that Pinochet, in the end, to my view, wasn't sent off to Spain. What was catalysed was a narrative, a form of storytelling through law in which facts emerged entered public consciousness and catalysed consequences.

It was only when Pinochet returned on that very bogus claim. He couldn't face trial. It couldn't possibly send him to Spain. He was too ill. It was a nonsense. It was obviously a concoction. He arrives back in Chile and the events in London and Madrid have catalysed a reckoning and then justice begins to work.

So for me, the justice ideal is not about punishment, it is about telling stories. Coming back to what we've been discussing, I'm increasingly of the view that the formal mechanisms, courts, institutions, legislators are not the end in themselves. They are a means to another end, and that ultimately we need to find ways in the law and in the social sciences to reach other places, and the central place is the family, which brings us back to the Wächters.

Professor Conor Gearty FBA [00:29:50] If I'm going to keep away from them for a minute, if I may. I was going to ask you something about whether or not if you were the chief prosecutor at the ICC, an English person has been appointed, would you say, "right, I'm going to make law part of communication. I'm going to go after Bolsonaro, I'm going to go for ecocide. I know it won't work, but my goodness, it'll make waves. The Pinochet thing, in the end, he got back, but goodness, everything changed. I've been reading Philippe Sands. He says it's not the result that matters. It's the consciousness raising." How far should a lawyer push a system in pursuit of what the law calls justice without the system breaking?

Professor Philippe Sands [00:30:25] Well, that's a very big question. Your question is premised on an assumption that the ICC is a sound, well-functioning institution, and it's not. It faces tremendous challenges.

Professor Conor Gearty FBA [00:30:42] That's the International Criminal Court.

Professor Philippe Sands [00:30:43] The International Criminal Court in The Hague. It needs a period of consolidation. It basically needs to deliver results. And I'll explain why. In my conversations with the new prosecutor, my line would be, forget about the big names. Get yourselves a few results. Go for the low-hanging fruit.

I'll give you an example. It doesn't come up with the current prosecutor. The new one, will have a different view. I got very involved off the back of *East West Street*, where I was approached by an extraordinary German psychologist, called Jan Kizilhan, who had created the programme to bring 1100 young Yazidi women from Syria and Iraq and camps back to Germany for post-trauma treatment.

They had been abducted by ISIS. They'd been serially raped, and he wanted help from an international lawyer. Why? He explained to me because part of the recovery process for these individuals was the belief that justice was possible and he needed help as to what justice meant. Genocide, crimes against humanity, whatever it was.

At his instigation, I went off to The Hague and met the prosecutor's office and said, "Look, they've caught some nationals from countries that are members of the International Criminal Court and therefore you've got jurisdiction over them. Some of the rapists are in camps. We know who they are. We know where they are. You've got jurisdiction over them."

I was told, "No, no, no, we're not going against the rapist. We want to go only against the people who ordered the rapists to rape. We only want to go against the main men or the main women, whoever it may be." And I think that was a structural mistake because you need to be able to tell stories, and stories include stories of success so you've got to start somewhere, and you start, if necessary, at the bottom of the pile and work your way up.

Of course, Nuremberg was the opposite. Nuremberg they started at the top, and the consequence of that was that people at the bottom generally got off scot-free, leading to the absurdity of the news today of the 100 year old, you know, frankly, irrelevant guard at some camp somewhere who's now been extradited from the United States to Germany for trial. Crazy situation.

Professor Conor Gearty FBA [00:33:11] Now I hear you. There's been a series of questions come in saying I think against you. They haven't heard this bit. Look, Bolsonaro, forget ecocide. What about taking him to the ICC International Court, for preventing a government from combating the spread of COVID, from obtaining and distributing vaccines? Now, you know, what we're talking about here is the credibility of law, aren't we? It's one thing to tactically go for the low hanging, the easy, the anonymous, the lost, but the public sometimes cry out for a Pinochet moment.

Professor Philippe Sands [00:33:40] Well, absolutely. And I'm often asked, what are the singularly significant moments in my professional academic life? And the Pinochet moment is always one that I mention. But you and I are not starry-eyed about the law, and we're certainly not starry-eyed about international law.

We overlapped a bit in our early days at Cambridge, and you will recall that one of our colleagues, a remarkable person, I think a member of your academy, Sir John Baker, and I

was a young research fellow at St Catherine's, and John would say, "Come and have lunch, Philippe, and tell me what you're up to". And of course it was wonderful to do that.

I would describe some obscure point of international law to him that I was engaged in, and he would pause and stroke his beard and say, "Yes, yes, Philippe We had a similar problem in English law, I think it was about 1472, and it took 218 years to sort that issue out." And that's where we are on international law. We're in the Middle Ages. We're not at the equivalent point to a domestic law today.

It is all well and good to talk about the Bolsonaro's or the Trumps or whoever you want to talk about. But the reality is it's a fragile developing system. I mean, after all, it is only 75 years ago that the idea that states were not omnipotent, the idea that the president or the emperor could not kill and maim his own citizens and subjects disappeared, with crimes against humanity and genocide and human rights being invented, only 75 years ago.

So fine. Yes. Let's dream about going for the top-notch characters. But the reality is it's a long game. And that is something also that the law books that I read and the classes that I took with my wonderful teachers back in the early eighties never really articulated to me. They never put the world of international law into that broader historical, sociological, anthropological, psychological, historical context. I think it's that reaching out in a much more multidisciplinary way in a sense that I'm struggling in my own way to do.

Professor Conor Gearty FBA [00:36:03] Right. I'm going to fire at you some of the questions. There have been a few from the audience. Here's one. It's somebody writing from Scotland. They prefer to remain anonymous, very topical, I think. And also, you're still with PEN, aren't you?

Professor Philippe Sands [00:36:16] I am. I'm the president of English PEN, which I'm very proud of.

Professor Conor Gearty FBA [00:36:19] What about this current trend, I don't doubt it, actually, in democracies to legislate so as to erode freedom of speech? There's a big story at the moment about Navalny being withdrawn as a sort of prisoner of conscience, not mentioned by the contributor, on the basis of speech of which Amnesty disapproved, but the government in Scotland are on the point of passing a hates crime bill. This person says it looks more like a thoughts crime bill. There's been a lot of controversy, not least at UCL, about the whole question of anti-Semitism and so on. Where are you on free speech?

Professor Philippe Sands [00:36:53] I'm very, very extreme, I'm afraid. I mean, on many issues I'm quite conservative, but on free speech, I essentially take the First Amendment view that it's pretty much an absolute right. And short of catalysing immediate harm to human beings, I am generally against the criminalisation or regulation of speech. So it may surprise you I'm against Holocaust denial legislation. I think it simply makes the speech go underground and I prefer to have it aboveground.

I'm troubled by, for example, the bans on a President of the United States by private corporations. But I, of course, understand the argument that these are private spaces regulated by their own contractual arrangements rather than the public law.

Essentially, and this has come from being married to an American who was a litigator for 10 years on free speech for an organisation founded by Anthony Lester, Interights, I've come to the view that these apparently modest first level incursions are the thin end of a terrible wedge, and I'm a passionate believer in freedom of expression.

The line for me that must not be crossed is expression that incites physical harm to human beings, and reasonable people will put that line in different places, including, for example, the speech, you've probably looked at it also as I have, given by Donald Trump on the 6th of January.

Does that cross the line or is that protected political speech? Reasonable people can disagree about that, but I think we need to be very careful in Scotland, in England and elsewhere. I'm also very troubled by no platforming. I don't like it. May the ideas be out there, however unattractive they are.

On the definition of anti-Semitism, I was part of that group at UCL. I do not like the definition. I think it is perfectly legitimate to criticise Israel for violations of international laws and international humanitarian law and to criticise Israel is not in itself anti-Semitic any more than to criticise Britain or any other country is anti-white or anti this or anti that. So I'm quite hard line on free speech.

Professor Conor Gearty FBA [00:39:27] What about using trade bills to punish countries that are involved in what you say is genocide? Now we may have our doubts about genocide, Philippe, leave those aside. Maybe you want to bring them back, but horrible stuff's going on in the country of X. We know what we're talking about. And the British government decide under pressure from Parliament, Parliament tries to enact it and so on, supposing to don't trade with places who commit genocide.

Where do you stand on that kind of use of trade law to impose kind of universal standards? It's linked to another question, actually. Are there such things as universal human rights? Do they exist and are they common to every culture, both in principle?

Professor Philippe Sands [00:40:09] In principle, I recognise the vital importance of that linkage. And one of the problems that we have in our world of law is it's like separate, self-contained ghettos where you have international trade lawyers and then international human rights lawyers, international environmental lawyers, and they're not all talking to each other. So we need a lot more joined-up thinking about international law and other laws.

You will have noticed that I have perhaps little conspicuously stayed out of that debate – why? Here's why. I really value and appreciate and respect the initiative of David Alton and others who are pushing to get a foot in the door on linking trade with other issues. But I can't escape what you allude to, my concern by focusing on genocide.

You know, why is genocide worse than crimes against humanity? It's not. Srebrenica 8000 Bosnian Muslim men recognised by the Yugoslav tribunal a genocide. But around the same

time, three million people killed in the Democratic Republic of Congo. Just a crime against humanity. No recognition for that.

So my concern is that by, even assuming English judges or Scottish judges or Northern Irish judges could ever really form a view as to whether a genocide is happening in X or Y place, I feel for the judges. By linking it only to genocide you have the unintended consequences of saying, "Oh, if it's just a crime against humanity or a war crime, no problem, we're fine to trade with them." And the reality is war crimes and crimes against humanity are far more frequent than genocide, so I'm open to doing it. But if you're going to do it, you have to do it in a way that does not legitimate other forms of horrific behaviour. And that's my concern.

Professor Conor Gearty FBA [00:41:57] A question from Alex takes us back to something we were touching on earlier on, but it's specific question. Can international law be changed, the composition of its courts, its structure, to be able, in Alex's words – "redress the uneven distribution of power between former colonial powers and the global South?" Are there material ways it could be done?

Professor Philippe Sands [00:42:18] A big issue. To answer that question, I direct anyone who's on this webinar to go onto the website of the International Criminal Court and you will see things called preliminary examinations and investigations, and then you'll see cases. Click on cases. And what will you see on cases? On cases you will see there are 30 individuals indicted. And guess what? Every single one of them is Black, and every single one of them is African.

Blacks and Africans do not have a monopoly on international crime. Something has gone wrong. The justice system is indeed lopsided, and it takes its cue, frankly, from the justice system that was created in that Nuremberg moment when the decision was taken to prosecute, if you like, only on one side of the story.

I think the question that Alex has asked is a huge question, and I think we have to be honest about it. There is a colonial and racist hangover. Not only to the design of our institutions, but to the way in which the law operates, and I'm part of that. The way I teach it, the way I think about it, the way I get involved in it, and I don't know how you break that system.

I'm really beginning to agonise over the legitimacy of an order which, 23 years after the International Criminal Court was created, and with which I and Andrew Clapham were involved. We drafted the preamble. We were proud of what we were doing. We thought we were doing something that was positive. But it's not. It's an institution which tends to reinforce the impression that black people and African people are the repositories of criminal instincts, and I'm deeply troubled by that.

Professor Conor Gearty FBA [00:44:21] It's not obvious what should be done. You're not saying I've got this plan.

Professor Philippe Sands [00:44:26] Well, what you've got to do is so you begin to redress the balance by investigating, as this current prosecutor is doing, Afghanistan and torture at



Bagram or the British failure to deal with torture in Iraq, or the British failure to allow hundreds of Chagossians to return to their homes in the Chagos Archipelago in the Indian Ocean after two international courts have found they were unlawfully removed, and that Chagos is part of Mauritius. The failure to allow them to return is arguably a crime against humanity. Will a prosecutor go against the United Kingdom? You know, tough.

Professor Conor Gearty FBA [00:45:09] We're winding down. I love this question from Deirdre. In speaking of your many audiences and in altering your performance approach in the courtroom, do you feel you have to create persona to most compellingly present your case in each context, to which I add, which Philippe Sands is speaking to us tonight?

Professor Philippe Sands [00:45:29] The same one. You've not seen me at the International Court. The style is exactly the same in the classroom I taught this morning with my wonderful LMM students, actually, about Nuremberg and the Israel-Palestine decision taken by the ICC a few weeks ago on the 5th of February. I think they've melded and what I've begun to notice actually, is that my style of advocacy has begun to be infused by the style of the writing and vice versa.

I know that I take from the Peace Palace in The Hague and from my classroom in the style of writing, and it's happening also the other way around. I think it's pretty much the same person. I also have a tough partner who keeps my feet nailed very firmly to the ground, and that's a good thing.

Professor Conor Gearty FBA [00:46:27] Well, the last question is from me, it's going to be on that theme. Normally the team work up a brief which includes some deep criticisms of Philippe Sands, for example, or whoever it is. And I then repeat them and you deal with them. They could find nothing. If you were criticising yourself. Philippe Sands, what would you identify as the weak points in you that you would then probe where you were lawyer for the prosecution against Sands? Where are the weaknesses?

Professor Philippe Sands [00:46:57] Is he an impostor? Has he pulled the wool over everyone's eyes? And does he actually do nothing properly? Does he really do research? Does he really function as an advocate? Is he really a writer? I think that's a question worth probing.

Professor Conor Gearty FBA [00:47:20] There you are. Philippe Sands, that's been fascinating and interesting. And next time out on this series, we have Laura Bates' Everyday Sexism Project. Interesting work from Laura. We're looking forward to talking to her. That's on the 26th of April. For now, though, Philippe, thank you very, very much. The others can't applaud. They're too remote. Let me, on their behalf, say thank you for making the time to speak to us. And good luck with the next projects, plural. Thank you.

## Leaders in SHAPE: Philippe Sands

Professor Philippe Sands [00:47:51] It's a real pleasure, Conor. And thanks to you and the Academy and everyone who's come in these difficult times. Really appreciate it. Thank you so much.

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