
Between the 'Public' and the 'Private'

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Abstract

This review essay seeks to understand the link between Hersch Lauterpacht's biography and his scholarship by using the dichotomy of the 'private'/'public' divide. It argues that this dichotomy is a repeated motif in Hersch's life and work, and hence also in this biography. In the concluding section, the review shifts to discuss how this dichotomy is reflected in Elihu Lauterpacht's writing.

1 Introduction

Sir Elihu Lauterpacht dedicated this book to the life and work of his father, one of the most prominent 20th century international lawyers, Sir Hersch Zvi Lauterpacht (1897–1960). Although Lauterpacht's life story began in a small town called Zolkiev, located in Galicia, 15 miles from Lwów (Lemberg), he left traces in Vienna, England, Palestine/Israel, the United States, The Hague, and Geneva, where he became the Special Rapporteur on Treaties for the International Law Commission. It was Cambridge, England, that Lauterpacht made his home. It was also there that his son, Elihu Lauterpacht, followed in his footsteps and himself became an international lawyer, who devoted much of his time and energy to enshrining his father's contributions to international law. Apart

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from writing this biography, which complements the five volumes of *International Law – The Collected Papers of Hersch Lauterpacht* edited by him, Elihu also founded the Lauterpacht Centre for International Law.¹

Hersch Lauterpacht was a proponent of the ‘natural law’ tradition in international law who never tired of believing in human goodness and the ability of reason to find this goodness, even in the darkest moments of European history.² Although he opted for more ‘tradition’ and naturalism in international law,³ his version of what this meant relied on Western liberalism.⁴ Much of his legal approach, as evidenced also in this biography, was tied to Jewish cosmopolitanism.⁵ Lauterpacht’s legal approach was based on principles of legal normativism, legal completeness, and absolute justice. Because goodness was one single unit, the legal translation of what that meant had also to be ‘one’, a comprehensive whole.⁶ In other words, his understanding of the law and of justice was synthesized and synchronized. In fact, if legal justice is not universal and all-inclusive, it is denied. Thus, for Lauterpacht, international law was a translation of human decency, rationality, and universal values into the professional language.

Hersch’s legal contributions symbolize the generation that brought about the professionalization of international law. His premature death, at the age of 63 – while acting as a judge at the International Court of Justice – spared him from seeing the putative decline of the profession, which is discussed by international lawyers today.⁷

¹ Elihu Lauterpacht founded the Lauterpacht Centre for International Law in 1983. In 1996 the Centre was moved to the university and renamed in honour of both Sir Hersch and Sir Elihu Lauterpacht to mark their distinguished contribution to international law at Cambridge (see ‘Establishment and Development’ at http://www.lcil.cam.ac.uk/about_the_centre/establishment_and_development.php).

² Lauterpacht specified what natural law means to him in his article on ‘Spinoza and International Law’ (1927) and in his 1946 article, ‘The Grotian Tradition in International Law’, 8 *British Yrbk Int’l L* (1927) 89, in E. Lauterpacht (ed.), *International Law; Being the Collected Papers of Hersch Lauterpacht*, ii – The Law and Peace (1970/2004), at 307. See also Koskenniemi, ‘Hersch Lauterpacht (1897–1960)’, in B.J. and R. Zimmermann (eds), *Jurists Uprooted: German-Speaking Emigré Lawyers in Twentieth-Century Britain* (2004), at 565.

³ Without the “‘principles of universal jurisprudence” so frequently resorted to by international publicists [that] prove ultimately identical with general principles of private law, there is no justice’: H. Lauterpacht, *Private Law Sources and Analogies of International Law (with Special Reference to International Arbitration 1927* (1970), at 67–71.

⁴ *Ibid.*, at 657.

⁵ Because it is impossible to do justice to Jewish cosmopolitanism as a concept in this review essay, it must suffice to define it in the negative: due to the marginalization of Jews from European national-statism during the 19th and early 20th centuries, Jews were ‘forced’ to be both a political minority and cultural cosmopolitans. For more on this and on the Jewish background of Hersch Lauterpacht see R.Y. Paz, *Between a Distant God & a Cruel World: The Contribution of 20th Century Jewish German Speaking Scholars to International Law and International Relations* (forthcoming).

⁶ See more in *ibid.*

⁷ A telling example is Martti Koskenniemi’s book title: *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (2004) (emphasis added by the author). Significantly, the year of its designated fall is also the year Hersch Lauterpacht passed away.

The recently growing historical interest in international law may however symbolize the general commitment to keeping international law alive.⁸ Current commitments to the history of international law may demonstrate a sense of confusion contemporary international lawyers feel in the face of Lauterpacht's 'Nephilim' generation.⁹

Elihu's *The Life of Sir Hersch Lauterpacht*, though not at all an intellectual biography, is an important contribution to international legal history. It certainly helps with contextualizing and situating Lauterpacht's legal contributions.¹⁰ In the following pages I rely on Elihu's book in order to link Hersch's background to his scholarly contributions that coincide with the peak of the discipline's professionalization. Starting with Lauterpacht's upbringing, I look at his early political commitments to Zionism that seem to have been 'replaced' by his commitment to international law. Whereas the former appears to have been more of a 'private', emotional, and personal undertaking, the latter was a 'public', objective, and professional commitment. To be sure it is difficult to maintain a mutually exclusive divide, since the two concepts 'public' and 'private' constantly collapse into each other and thus each means very little on its own.¹¹ Lauterpacht, like most legal practitioners, was trapped in the liberal demand to reconcile the public (and objective) with the private (i.e., emotional) sphere.¹² However, his Jewish/East European condition enabled him to manage this dichotomy rather successfully by creating a cosmopolitan agenda suitable for the 20th century middle class majority. In other words, his 'Jewish situationality'¹³ implied an existential and almost habitual need to reconcile the social/political/religious particularity of being Jewish with the universality of being East European and later English.¹⁴ This situationality helped him navigate the discipline's internal public/private divide,

⁸ The turn to history in international law is by now a 'trend' that is hard to ignore. See for instance Kemmerer, 'The Turning Aside. On International Law and Its History', in R. Bratspies and M. Russell (eds), *Progress in International Law* (2008), at 71–94; and Craven, 'Introduction: International Law and Its Histories,' in M. Craven *et al.* (eds), *Time, History and International Law* (2007), at 1–27.

⁹ Nephilim, 'the fallen heroes' are mentioned twice in the Torah (Genesis 6:1–4 and in Numeri 13:32–33) and refer to a 'giant generation': 'mighty men that were of old, the men of renown'. (Gen 6:1–4).

¹⁰ As Outi Korhonen establishes, speaking of a legal scholar's *situationality* assumes that the social characteristics of the people involved in different cases determine their outcome at least as much as historically socially based legal principles, rules, doctrines, interpretations, etc.: 'the situation comprises the interplay between the social, biological, cultural, etc. constraints on the human freedom, the effort towards objective justice, and self expression, and the diverse potentials to manage the maximum amount of freedom from these constraints': O. Korhonen, *International Law Situated; An Analysis of the Lawyers Stance Towards Culture, History and Community* (2000), at 8.

¹¹ As Roberto M. Unger argues, the modern society is an artifact that is combined with the liberal goal of freeing society from structures of dependence and authority. Ergo, a modern society's aim is to also salvage a measure of subjectivity (Privacy) and intersubjectivity (Public) from rigid rules: see more on these dichotomies in Davis, 'Society and the Critic of Modernity', in R.W. Lovin and M.J. Perry (eds), *Critique and Construction: A Symposium on Roberto Unger's Politics* (1990).

¹² For more on how such structural dichotomies work within the law see Martti Koskenniemi's description of the legal profession as insoluble 'ascending/descending' liberal dyad structured between theory and practice, concreteness and normativity, law and politics, apology and utopia, public and private etc.: see M. Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (1989), at 46–47.

¹³ See more on Situationality in *supra* note 11.

¹⁴ For more on this see Paz, *supra* note 6.

which seems to be a repeated motif in his life, and hence of this biography. I discuss how this dichotomy affected Elihu's writing in the concluding section.

2 The Interwar Years: Anti-Semitism/Zionism and Other Forms of Discrimination

For Lauterpacht the Jewish faith went together with respect for study and learning.¹⁵ This combination was typical in *Ostjuden* (East European Jewish) communities. *Ostjuden* – a racially burdened term that combines Jews with Eastern Europe – describes, as Hersch Lauterpacht's history reflects, an ambiguous condition in terms of geography, nationality, and cultural boundaries.¹⁶ The atmosphere in Eastern European Jewish communities prompted a strong attachment to Judaism and Zionism on the one hand, and a multi-lingual and multi-national awareness and sensitivity on the other hand.¹⁷ In Lauterpacht's case Zionism also produced a strong sense for injustices: he was 'angered by social inequalities, opposed to chauvinism'.¹⁸ Although his parents were Orthodox and Yiddish was the language spoken at home, Lauterpacht assumed the habits of a 'new Jew'.¹⁹ He belonged to *Zeirei Zion* and was educated, modern, enlightened, secular, and Zionist.²⁰

Evidently, Elihu is uneasy with his father's Zionist political convictions and feels compelled to distance his father's politics from contemporary Zionism.²¹ Considering, however, the history of East European Jewry, Lauterpacht's political commitment to 'early' Zionism offered psychological and even physical security in face of prevalent alternatives such as Hasidic Judaism and/or assimilation attempts.²² Moreover, his wide range of Jewish/Zionist activities and intellectual interests seems to have been of

¹⁵ *Ibid.*

¹⁶ The term *Ostjuden* presumably goes back to the Austrian writer and publicist Nathan Birenbaum at the turn of the 20th century; see R.S. Levy, *Antisemitism: a Historical Encyclopedia of Prejudice and Persecution* (2005), i at 522. Significantly, Eastern Galicia moved from being a part of the Austro-Hungarian Empire into Poland and to Ukraine/Soviet Union only in the course of Hersch Lauterpacht's life.

¹⁷ Lauterpacht grew up in an environment that resembled rather an authentic national minority than that of a context of mixed identities, as experienced by western Jews. For more on these differences see I. Berlin, *Personal Impressions* (1981), at 38–62. And see also Paz *supra* note 6.

¹⁸ *The Life of Sir Hersch Lauterpacht*, at 7.

¹⁹ Anita Shapira distinguishes between four modalities for the 'new Jew'. The first two were stemming from the spiritual world of enlightenment; one is the humble epitome of Ahad Ha'am, reflected in people like Martin Buber, Chaim Wizmann, Gershom Scholem, and Earnst Simon. The second is based on the 'Herzlian' model, which eventually was taken up by 'Beitar' (right political movement). The third stems from Nietzschean influences in Jewish enlightenment, characterized by Micha Josef Berdevski, and the fourth originated from socialism's effects on Judaism (the two latter ones are attributed to David Ben-Gurion's vision of the 'new Jew'). Lauterpacht's version falls within the first category. For more on the differences between 'new' and 'old' Jews see A. Shapira, *New Jews Old Jews* (1998), at 155–174.

²⁰ *Zeiri Zion* literally means 'young men of Zion'. As Elihu defines in his book, it 'was a Zionist and modern socialist labour movement dating from 1903. It supported practical, constructive Zionism based on personal fulfillment through *aliyah* (immigration to Israel)'. See *The Life of Sir Hersch Lauterpacht*, at 10.

²¹ *Ibid.*, at 10 and 428.

²² See Paz, *supra* note 6.

great personal relief, both in Lemberg and later in Vienna.²³ After all, at the University of Lwów Hersch was barred from his final university exam because he was a Jew from Eastern Galicia.²⁴ Also in Vienna, as his supervisor Hans Kelsen described it, he was discriminated against due to the 'unmistakable accent of his origin . . . [so that] in spite of his profound knowledge in all the subject matters taught at the Law School, [he] received the degree of Doctor of Law by no more than a passing mark from the majority of examining professors'.²⁵ Zionism for Lauterpacht also enhanced his affinity to Rachel (née Steinberg) his life-long companion. Rachel, who was a Palestinian Jewish woman with a similar Eastern European background, was impressed by Lauterpacht's 'manners, his talk, so quiet, so gentle – not a movement of a hand – so unlike the other students of Eastern Europe'.²⁶ Lauterpacht seems to have been, among other things, attracted by her *Sabra* (native-born Palestinian) background.

The couple's exchange of letters – throughout their 37 years of marriage – comprises most of this book. While it unravels Hersch's own intellectual development, it also familiarizes the reader with Rachel's role as a diligent professor's wife.²⁷ Apart from deciding on his wife's hair style and nail polish,²⁸ Hersch also felt obliged to finance the family alone, urging Rachel to stop any work, even during the war years when the family's financial situation was ailing.²⁹ The paradox is that Hersch accepted – around the same time – an invitation from the Wellesley College, Massachusetts, to become visiting professor to teach *girls* international law and international politics.³⁰ Besides revealing traditional gender structures of a bourgeois marriage of the first half of the 20th century, his relationship with his wife also reflects Lauterpacht's internalized public/private political/unpolitical divide, so characteristic of classic liberalism.³¹ Given the fragility of the private/public divide it is no wonder that there were no clear lines between Lauterpacht's navigation of the public/private dichotomy

²³ From very early on in his childhood Hersch attended the 'Shahei', a group of Zionist school pupils that met almost daily to study the geography of Israel, the history of the Jewish people, and Hebrew (*The Life of Sir Hersch Lauterpacht*, at 11). In Vienna he became a representative of Jewish schoolchildren and students in dealing with the education authorities. He was also busy setting up the World Federation of Jewish Students, of which Albert Einstein acted as the Honorary president (*ibid.*, at 22–24.)

²⁴ *The Life of Sir Hersch Lauterpacht*, at 15.

²⁵ Kelsen. 'Tribute to Sir Hersch Lauterpacht', 8 *EJIL* (1997) 309 quoted also in *The Life of Sir Hersch Lauterpacht*, at 26–27.

²⁶ *The Life of Sir Hersch Lauterpacht*, at 30.

²⁷ For instance Hersch 'was very insistent on punctuality and would expect to be summoned to meals by the sound of a brass gong': *ibid.*, at 426.

²⁸ *Ibid.*, at 36–37 and 167.

²⁹ In 1941 Hersch writes to Rachel: 'There is no special reason for you to work which even if you get it will make of you a nervous wreck and a slave': *The Life of Sir Hersch Lauterpacht*, at 155, 186.

³⁰ *Ibid.*, at 148.

³¹ See more on this in N. Lacey, *Unspeakable Subjects: Feminists Essays in Legal and Social Theory* (1998), especially at 71–97. And S. Benhabib and D. Cornell (eds), *Feminism as Critique: Essays on the Politics of Gender in Late Capitalist Societies* (1987). For more on how the private/public divide and feminism is connected to international law see K. Engle, 'After the Collapse of the Public/Private Distinction: Strategizing Women's Rights', in D.G. Dallmeyer (ed.), *Reconceiving Reality: Women and International Law* (1993), at 143.

behind the ‘closed doors’ of his home and his professional commitments. As Philip Jessup’s review of Lauterpacht’s book, *An International Bill of Rights of Man*,³² published in 1945, argued, it was ‘Hersch’s omission of any attempt to redress the legal inferiority of women and the inequalities of aliens’ that was ‘the greatest weakness’ of the book.³³ This ‘Achilles’ heel’ is also evident in Lauterpacht’s problematic approach to colonialism, which also seems to reflect the impossibility of the separation between public and private.³⁴ Moreover, these examples show that a person who experienced direct discrimination could not, at times, avoid reproducing it. This is all the more so if his/her very existence depends on the ability to assimilate and integrate into prevailing political structures. Such complexities and underlining drives can still be found in international law’s professional style to this day.³⁵

3 The Professionalization of International law

It was not a conscious decision for Hersch Lauterpacht to ‘go west’ and settle in England in 1923: Hersch still hoped, at least until he was fully established in England, to emigrate to Palestine.³⁶ Considering Lauterpacht’s politics and his experiences with anti-Semitism, however, not staying in continental Europe was the natural choice.³⁷ Moreover, among the ‘new Jews’ England was typically perceived as the personification of independence, freedom, dignity, and style.³⁸

This perception, in Lauterpacht’s case, was more true than false. Whilst he most contributed to the development of international law in general, it was in England,

³² Significantly, the American Jewish Committee, one of the most important American Jewish organizations, commissioned Hersch’s writing of this book. Fearing that the international law of human rights would be addressed only by the American Law Institute and the American Bar Association, the AJC invited Lauterpacht to write a book as early as in Apr. 1942: *The Life of Sir Hersch Lauterpacht*, at 251.

³³ *Ibid.*, at 255.

³⁴ As Martti Koskenniemi terms it, ‘On the one hand, Lauterpacht regards the nationalist, exploitative face of imperialism as “the most ruthless economic exploitation of native peoples, maintained by the despotic rule of military administration”. On the other hand, he admires the “liberal tradition in British foreign policy” that abolished slavery and the Congo Free State and led to treaties to protect the natives. Lauterpacht saw these activities as marking a progressive turn in the doctrine of the subjects of international law which became concrete in the League’s Mandates system’: see Koskenniemi, ‘The Victorian Tradition in International Law’, 8 *EJIL* (1997) 2, at 130, also available at: <http://207.57.19.226/journal/Vol8/No2/art1.html>. But obviously one cannot endorse the ‘public’ face of the liberal tradition in British foreign policy whilst condemning economic exploitation because these are the two sides of the same coin.

³⁵ See more in Paz, *supra* note 6.

³⁶ In 1925, when attending the opening ceremony of the Hebrew University in Palestine, Lauterpacht had expressed his wish to settle in Palestine. Since, however, the young university could only offer a part time lectureship, Lauterpacht remained permanently in England. See *The Life of Sir Hersch Lauterpacht*, at 39, and Bendoitsh, ‘Ser Hersch Lauterpacht Z’al’, in N. Feinberg, *Kovets Mechkarim Bamishpat Habin Leumi Lezecher Ser Hersch Lauterpacht* (1965), at 68.

³⁷ For more on anti-Semitism as the reason to reach England see *The Life of Sir Hersch Lauterpacht*, at 38–39, 49–50.

³⁸ See Berlin, *supra* note 18, at 53. This may also explain his desire to work for the Zionist Executive office in London as early as 1920, only a year into his law studies in Vienna: see his letter of request to the London Zionist Executive in *The Life of Sir Hersch Lauterpacht*, at 15–16.

where he excelled incredibly fast, that he made his particular input.³⁹ His successful career path was not at all trivial, especially because of his professional insistence on integrating principles of natural law into the body of international law, an aspect of much significance considering the homogeneity of English society during the first three decades of the 20th century.⁴⁰ His achievements are also impressive because Hersch Lauterpacht never concealed his Jewishness, although he did move away from public Zionism. His withdrawal from politics coincides with his arrival in London; from this moment on, Lauterpacht's Zionism takes a private turn and his international law work takes a more public/professional turn.⁴¹ The latter had much to do with his meeting Lord McNair, which 'was probably the most important event in Hersch's career'.⁴²

McNair took Lauterpacht 'under his wing' wholeheartedly. He delegated much needed work his way; read and corrected his contributions; gave endless advice with respect to Lauterpacht's career choices; and most significantly he protected Lauterpacht, to the best of his abilities, from contemporary competition and financial difficulties.⁴³ Elihu's description of Lord McNair's relationship with Lauterpacht reveals an essential aspect of scholarly life to this day: academic success very much depends on dedicated mentors. Interestingly, the McNair/Lauterpacht power-relationship did not go unnoticed and was tagged 'McLauterpacht'.⁴⁴ Appreciating McNair's dedication, Lauterpacht reciprocated by dedicating to him *The Function of Law in the International Community* (1933). This was not only Hersch's most important book; it is, as Martti Koskenniemi argues, also 'the most important English-language book on international law in the 20th century'.⁴⁵

³⁹ As Elihu describes it, within 14 years of his arrival to England from Eastern Europe, without having English as his mother tongue, Hersch was elected to one of the two principal chairs of international law in the UK. Three years later and without stopping to produce some of the most important international legal texts in the 20th century, he was representing England at the ICJ: *ibid.*, at 6.

⁴⁰ England did see some social strife during this time. After all the first Communist Party of Great Britain (CPGB) was established in 1920 and Lloyd George laid the foundation for the Welfare State (for instance, the Education Act, 1918 and the Housing and Town Planning Act 1919). This however can only be relativized in comparison to the rest of Europe. Franz Neumann (1900–1954) – a member of the Frankfurt School who later came to the London School of Economics – was probably right to describe English society as one that 'was too homogeneous and too solid, her opportunities (particularly under conditions of unemployment) too narrow, her politics not too agreeable. One could, so I felt, never quite become an Englishman': quoted by M. Jay, *The Dialectical Imagination: A History of the Frankfurt School and the Institute of Social Research (1923–1950)* (1996), at 144.

⁴¹ This is also evidenced from his later private and 'secretive' assistance to Israel (e.g., his draft version of the Declaration of Independence): see *The Life of Sir Hersch Lauterpacht*, at 305–306.

⁴² *Ibid.*, at 41.

⁴³ A telling example of McNair's advice comes from his proof reading of Hersch Lauterpacht's private Law Sources: '[m]ust you use the word "norms", which strikes the ordinary British philistine as very high-brow?': *ibid.*, at 49.

⁴⁴ McNair mentions this in an undated letter to Lauterpacht in the following terms: 'I heard you referred to as McLauterpacht by someone who seems to think that 'Mc' is a patronymic appurtenant to the Whewell Chair': *The Life of Sir Hersch Lauterpacht*, at 359.

⁴⁵ See Koskenniemi, 'The Function of Law in the International Community: 75 Years After', Lauterpacht Centre for International Law 25th Anniversary Symposium, 11 and 12 July 2008, Cambridge, UK, available at: http://www.lcil.cam.ac.uk/Media/25_anniversary/Koskenniemi_paper.pdf.

Even with McNair's help, anti-Semitic incidents against Lauterpacht could not be prevented. Neither were Lauterpacht's own attempts to minimize his own political commitments entirely useful in dodging personal anti-Semitic attacks.⁴⁶ In 1946, only a year after assisting in the preparation of the US indictment at the London Charter (1945) and the drafting of the UK presentations at the Nuremberg Trials,⁴⁷ he was excluded from selection as a British representative to the UN Human Rights Commission because of anti-Semitic sentiments.⁴⁸ The tragedy is that 'Hersch was the only person who had up till then surveyed British constitutional law and practice in terms of human rights'.⁴⁹ His Jewishness came up, as a handicap, on several other occasions throughout his career.⁵⁰

The lack of direct reference to his feelings, both regarding the Nazi atrocities that wiped out Hersch's family almost entirely⁵¹ and the more 'low-key' anti-Semitism which he confronted professionally, remain central, perhaps because of their suppression.⁵² It can only be assumed that his public professional commitments – that contain the discriminatory complexities of liberal politics – are, *inter alia*, expressions of his sublimated private feelings.⁵³ The impossible dichotomies of liberalism are not easy to reconcile. But Lauterpacht never 'let up! For him life was an unending series of mountain ranges; no sooner was one scaled than others, higher, appeared on the horizon,

⁴⁶ Except for withdrawing from Zionism, Lauterpacht – following Phillip C. Jessup's advice – avoided explicit political discussions during his academic trips to the United States at the beginning of the 1940s, although political involvement was part of his assignment. Elihu writes about these long visits to the US: '[o]stensibly, they were to give lectures, but actually they were intended to garner support in the American academic community for the British position, especially in the period before the United States entered the war': *The Life of Sir Hersch Lauterpacht*, at 100. For more on Jessup's warning see *ibid.*, at 132.) This is striking because however sensitive the legal-political mission that Lauterpacht undertook here in close cooperation with the English Foreign Office (and close contact with American Anti-Isolationists such as Robert Jackson), at this point Lauterpacht has been made aware of his family's grim fate in Lwów. His ability to put up with diplomatic requests in public while suffering his family's loss at the hands of the Nazis in private is worthy of note.

⁴⁷ See *ibid.*, at 274–277 and 413–414.

⁴⁸ Beckett, the then Legal Advisor to the Foreign Office, opposed Hersch's appointment on the basis of the following claims: 'Professor Lauterpacht, though a distinguished and industrious international lawyer, is, when all is said and done, a Jew recently come from Vienna. Empathetically, I think that the representative of HMG on human rights must be a very English Englishman imbued throughout his life and hereditary [*sic*] to the real meaning of human rights as we understand this in this country': *The Life of Sir Hersch Lauterpacht*, at 258.

⁴⁹ *Ibid.*, at 258.

⁵⁰ The two incidents Elihu exposes in his book happened in 1952, while Hersch acted at the Law Commission (see *ibid.*, at 358) and while revising the *British Manual of Military Law* (see *ibid.*, at 360–362).

⁵¹ *Ibid.*

⁵² One of the only two references by Hersch to his family in Poland that Elihu is aware of is a letter from Hersch to his wife that dates back to 1941 and in which he writes: 'You know all about Lwów, I do not like to express my sentiments, but the thing is constantly with me like a nightmare. It is astonishing how a human being can split his personality! I am perfectly normal in my intercourse with people. I did, for instance, my job very well in helping the other night the Vice Master and Robbins to entertain in Trinity two generals and two colonels': *ibid.*, at 175.

⁵³ See Paz, *supra* note 6.

each to be conquered in its turn.⁵⁴ Such expectations were also addressed to his son Elihu who was almost 'made' to follow his father's public career.⁵⁵

4 Father–Son Quest: a 'Public' or 'Private' Affair?

Elihu Lauterpacht admits openly that writing this biography was not an easy decision to make. It is the lack of objectivity/detachment that he problematizes.⁵⁶ Indeed, a parent–child relationship might be an obstacle to objectivity: when authors write about their parents, the narration is bound to be different.⁵⁷ Especially given that writing a parent's biography involves an inescapable autobiographical quest, marked – however (un)consciously – in the structure and themes selected.⁵⁸ What is to be disclosed and what should remain sealed is in the hands of the biographer. Elihu, who chooses a chronological methodology to unravel Hersch's life,⁵⁹ limited himself to exposing letters written by Hersch, using those written by him or Rachel 'only where they provide detail relevant to the life of Hersch'.⁶⁰ Given that we learn much about people from their interaction and reaction to others, such decisions however reasonable, are also problematic.

Indeed, the writing of biographies exposes the general difficulty in writing about someone else. It involves hard judgements, difficult hypotheses, and at times projections. Perhaps, fortunately, biographies are also about the biographers.⁶¹ Writing about ourselves can, however, be just as problematic.⁶² Elihu's task was somewhat 'in

⁵⁴ *The Life of Sir Hersch Lauterpacht*, at 267.

⁵⁵ The book is full of examples illustrating Hersch's extremely high expectations of his son. For instance, Hersch writes to Elihu in 1942, when Elihu is only fourteen years old: '[y]ou will make us very happy – and you will serve your future in a worthy manner – if we get excellent reports about progress and if I get the conviction that my son is a scholar': *ibid.*, at 214. See also 278–279.

⁵⁶ As he confesses, 'I have reached not without much hesitation, the conclusion that I ought myself to attempt the task. There are, of course, many good reasons why a son should not write the life of his father. The principal difficulty lies, of course, in approaching the subject with a sufficient degree of detachment and objectivity. But there are certain countervailing considerations of which the most important is my first-hand recollection of much of Hersch's activity (but regrettably by no means all)': *The Life of Sir Hersch Lauterpacht*, at 5.

⁵⁷ For more on different writing styles of biographies/autobiographies see G. Gudmundsdóttir *Borderlines: Autobiography and Fiction in Postmodern Life Writing* (2003), at 190.

⁵⁸ *Ibid.*, at 207–208.

⁵⁹ The several parts include: early years in Eastern Europe from 1897 to 1923; England and the London School of Economics 1923–1927; World War Two years (divided in the book into three chapters); his academic endeavours, with a specific chapter that focuses on his dedication to human rights; the years of his practice and recognition; and his last five years at the International Court of Justice. The book culminates with a rather brief epilogue about 'The Man'.

⁶⁰ *The Life of Sir Hersch Lauterpacht*, at 2.

⁶¹ Lee, 'The Mirror of Biography: Henry James's Hawthorne' in E. David (ed.) *Imitating Art: New Essays in Biography* (1994), at 79.

⁶² As Barbara Johnson puts it: 'To be observed is to be dispossessed: our lives are precisely what we can never own. Knowledge of them is always already the other's. . . whoever owns the life, the biographer always seizes it transgressively. What this implies is that the biographer does indeed steal, but what is stolen is something not owned. This is perhaps why there is so much struggle around it': Johnson, 'Who's Life is It, Anyway?', in M. Rhiel and D. Suchoff (eds), *The Seduction of Biography*, (1996), at 120.

between'; this volume is about his father, which entails dealing with the indisputable gaps of information between a father and son,⁶³ but it is also about himself and/or his relationship with his father. This close affinity remains mostly helpful, though somewhat unexplored.⁶⁴

Elihu is open, straightforward, and modest in his intentions.⁶⁵ He admits that he lacks the skill and experience 'to write a text that by its presentation, ideas, imagination, vocabulary and general style can be called "literature" or, more precisely, "biography."' ⁶⁶ Although they are not neglected, Elihu avoids dealing with Hersch's academic contributions *per se*, directing the reader instead to others' works on the legal contributions of his father.⁶⁷ Apart from this 'constricted' framework, Elihu remains committed to the story that 'must be told – or at least material that must be represented to reveal the story'.⁶⁸

The ambivalence here is clear: while Elihu is not convinced he is the right person for the task, he feels obliged because his father's story is too important. Elihu's result is twofold: he expresses an assumption, that might be interpreted as a desire for this book not be the last word on Hersch's life,⁶⁹ while offering us this 'biography' which is actually a rather formal selection of letters intended to 'shed valuable light on the substantive topics covered that would not otherwise be available', with some extra 'detail about Hersch's family, friends, activities, and conditions of life.'⁷⁰ Besides

⁶³ According to John Worthen, 'As with all forms of knowledge we might roughly call "historical", biographical knowledge exists simultaneously with (and I believe should never be allowed to obscure) inescapable ignorance: what I call necessary ignorance': Worthen, 'The Necessary Ignorance of a Biographer', in J. Batchelor (ed.), *The Art of Literary Biography* (1995), at 227.

⁶⁴ Elihu intentionally leaves as many traces as possible of his own life, and also that of his mother, out of his father's biography. He explicitly exposes only those instances when their interactions 'provide detail relevant to the life of Hersch': *The Life of Sir Hersch Lauterpacht*, at 2. While this is a legitimate choice of narration, one does feel the lack of several important personal/professional details that could perhaps only be provided through Elihu, even if they were based on a certain measure of speculation, fiction, and/or intuition, which remain essential elements of biographies in any case. For more on autobiography and fiction see Gudmundsdóttir, *supra* note 58, at 1–11.

⁶⁵ As he writes at the very beginning, 'I have hesitated to call this work a "biography", as in some sections it is little more than a bare recitation of facts in the nature of almost a deposition'. Nevertheless because of the familial relationship, '[t]he pages that follow will, therefore, be more personal in form and content than would be those of a memoir written by another hand. Though not neglecting Hersch's substantive work, they will be less concerned with its content than would be an account penned by someone writing principally on the basis of his academic writing and judicial opinions': *The Life of Sir Hersch Lauterpacht*, at 3–5.

⁶⁶ *Ibid.*, at 5.

⁶⁷ Works written by Lord McNair, Dr. C.W. (Wilfred) Jenks, Sir Gerald Fitzmaurice, Ambassador Shabtai Rosenne, and Martti Koskenniemi. *ibid.*

⁶⁸ *Ibid.*, at 3.

⁶⁹ As he phrased it, 'I cannot assume that the present volume will be the last words on Hersch's life and that the material here presented will not be of value to others': *ibid.*, at 7.

⁷⁰ *The Life of Sir Hersch Lauterpacht*, at 5, 7. A telling example of Elihu's distant style is his focus on the scholarly method as an attempt to get away from his relationship to his father. This in turn is most sensed in his rhetorical device to use third-person narrative throughout most of the book (for more on such writing styles see Gudmundsdóttir, *supra* note 58, at 195).

this ambivalence, that seems to have determined the rather stiff form of the book, it does get easier after the reader develops sympathy for the author's struggle, which is 'against' both a public professional figure and a father. As Elihu argues, the singularity of Hersch Lauterpacht's life story and professional inheritance is of eternal value, especially for international lawyers and/or scholars. Namely, because he witnessed and experienced first hand, especially because he was a 20th century East European Jew, how public international law operates – or does not – in one's own specific reality. But there is more to it: Hersch's experience is also a private story 'of the absorption into British society of a person born and bred in an entirely different one'.⁷¹ His private letters to his son are moreover an 'illuminating guide to how a young man should be trained, though it was not an approach that would go down with children of later generations'.⁷²

While the appeal of Hersch Lauterpacht's story stems from his dedication to international law at a time when it was almost ineffectual, this book is fascinating because of the many ways it threads the public together with the private. Despite the fact that some of Hersch Lauterpacht's attempts are more successful than others, it is fascinating that his public/private belief in the law sustained his professional commitment and survived the scrupulous questioning of its very foundation. It is equally interesting to see how his son, also an international law scholar, copes with being left to tell this intricate story. But as Søren Kierkegaard phrased it, 'the one who is willing to work gives birth to his own father'.⁷³

⁷¹ *The Life of Sir Hersch Lauterpacht*, at 5.

⁷² *Ibid.*, at 1–7 and 425.

⁷³ S. Kierkegaard, *Fear and Trembling* (trans and ed. S. Evans and S. Walsh, 1992), at 21.