

Knowing Legal Lives: An Exercise on Minority Rights

Dr. Asma Bint Shafiq

Associate Professor, Department of Law, University of Chittagong

Abstract

Important ideas found in different disciplines have influenced the world of all ages. Proper utilization of past ideas could assist in both tackling present problems and avoiding similar situations in the future. However, the success of employing such a concept depends on how it is adopted within the current system. Legal life writing is a powerful method of contextualizing past legal ideas. Based on this argument, this paper presents an exercise on how research on minority rights protection could be conducted by exposing the lives of two Jewish lawyers. Since Raphael Lemkin and Jacob Robison contributed significantly to the arena of the protection of the rights of minorities, this study considers their life histories worthy of exploration. It reveals how future researchers could investigate the legal lives of these two past lawyers to provide a deeper analysis of the protection of minority rights.

1. Introduction

This paper explains why knowing about past lawyers, judges, legal academics, and similar professional is important. It also shows how the life and intellectual histories of these people should be explored. In doing so, this study presents an exercise on how a future study on a particular branch of human rights law: minority rights, could be conducted by exposing the life histories of two Jewish lawyers. Based on the life histories of Raphael Lemkin (1900 –1959) and Jacob Robinson (1889–1977), a researcher could reveal how the lessons learned from their lives and works could contribute to the protection of minority rights in today's world. It should be noted that a full thesis is already there on Lemkin.¹ However, there is a scope to investigate his work further from the perspective of minority rights. This is because the said thesis and other literature on Lemkin emphasize his pioneering role in initiating the Genocide Convention rather than explaining his work from the context of minority concerns. It could be argued from this that revisiting Lemkin's life and comparing his work with that of Robinson will enable a researcher to add a unique contribution to the field of legal research.

¹ Irvin-Erickson, 'The Life and Works of Raphael Lemkin: A Political History of Genocide in Theory and Law', PhD The State University of New Jersey (2014).

2. Why People Behind the Law should be Known?

Important ideas found in different disciplines change and influence the world at all ages.² Experience shows that proper utilization of past ideas assists in tackling present problems and avoiding similar situations in the future. Historian Paul Gordon Lauren observes, “[v]isions of prophets, philosophers, and activists were seen centuries ago in distant lands are still capable of capturing our imagination, inspiring our thoughts, and influencing our behavior today.”³ However, to engage past ideas and visions with a current challenge, they should be understood in accordance with their context. To quote Margaret Macmillan, “[t]he past can be used for almost anything you want to do in the present. We abuse it when we write histories that show only one perspective.”⁴

This affirms that the adoption of any concept without looking at the circumstances under which it was developed cannot bring an effective result. This is relevant to past legal ideas too. A legal biography or life history,⁵ also known as legal life writing, concentrates on general information provided by legal history in a traditional way as well as the socio-political, cultural, and personal circumstances of an individual.⁶ Accordingly, it can contextualize a past legal idea more meaningfully. Although life histories can potentially link the past with the present, they receive little attention. This is because the law usually places the people behind it and their surroundings in obscurity.⁷

The efforts of many lawyers, judges, and legal academics certainly contributed to developing various legal fields such as human rights law, environmental law, refugee law, and other branches of law. For example, regarding human rights law, it can be said that many human rights defenders played a significant role in raising human rights law in the 20th century. Eleanor Roosevelt, a well-known human rights advocate; John Humphrey, a Canadian lawyer, and human rights expert; and some other legal scholars are popularly known for their contributions in this regard. Although their works have been subjects of research in many ways, very few pieces of literature are found on them. Moreover, there are a few whose contribution is rarely remembered. For example, Mandelstam, a Russian advocate, and Frangulis, a Greek diplomat, had not been known before Jan Herman Burgers’ piece was published. Research on the life histories of people who played important roles in the legal developments at national, international, and regional levels is essential not only to know about them but also to design a framework for future legal development.

² Michael Kirby ‘HLA Hart, Julius Stone and the Struggle for the Soul of Law’ (2005) 27 *Sydney Law Review* 337.

³ Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (University of Pennsylvania Press, 2nd ed, 2003) 1.

⁴ Margaret MacMillan, *The Uses and Abuses of History* (London: Profile Book Limited 2010) Introduction.

⁵ Life history refers to placing the life story of a particular individual within his or her socio-legal and political context. Life story means telling the story about one's life. Fiona Cownie, ‘The United Kingdom's First Woman Law Professor: An Archerian Analysis’ (2015) 42(1) *Journal of Law and Society* 130.

⁶ David Sugarman, ‘From Legal Biography to Legal Life Writing: Broadening Conceptions of Legal History and Socio-legal Scholarship’ (2015) 42(1) *Journal of Law and Society*, 33.

⁷ Rosemary Auchmuty, ‘Recovering Lost Lives: Researching Women in Legal History’ (2015) 42(1) *Journal of Law and Society* 38.

To attain a proper guideline for the future, it is important to critically evaluate the works of an individual rather than merely celebrating their life. Accordingly, a researcher should be impartial in investigating one's contribution to the law, the legal academy, the judiciary, or a similar field. The following section draws an exercise on how future research on minority rights could be conducted by exploring the life histories of two great lawyers.

3. How Legal Lives should be Explored: An Exercise on Minority Rights

A particular group of people in a state with a unique identity, such as gender, race, caste, religious belief, ethnicity, place of origin, and being 'numerically inferior to the rest of the population' are traditionally known as minorities.⁸ They have been the victims of persecution and genocide since time immemorial. Indeed, minorities remain the prime target of repression in all ages. The contemporary period is no exception.⁹ But no measure to redress this concern has still been found today. The lesson learned from the minority experiences in the past might provide a practical guideline to protect the rights of minorities in the present and the future.

History shows that most progressive change happens from the bottom, and ideas developed in grassroots experiences have been more forceful. Accordingly, in guaranteeing minority rights, it might be useful to utilize such ideas in the present context. The experiences of the Jewish minority in Nazi Germany reveal the most extreme form of minority oppression in history.¹⁰ Therefore, employing Jewish experiences in protecting minorities might pave the way to ensure the rights of minority groups in an effective way. The lives and works of Raphael Lemkin and Jacob Robinson, the two lawyers, could provide important guidelines for protecting minorities in any part of the world. Research on them might help to construct a useful bridge between the past and present. This would help to build a strong framework for minority rights protection. In other words, the life histories of Lemkin and Robinson have the potential to offer a suitable guideline for the protection of minority rights. Therefore, the proposed study would consist of the life and intellectual histories of two Jewish lawyers, providing a deeper and richer analysis of the protection of minority rights at both international and national levels. In addition to providing greater insight into these figures, it would provide grounds for an argument that present international human rights law should emphasize the protection of minority rights in the same way as it does in respect of individual rights.

4. Introducing Raphael Lemkin Jacob Robinson

Raphael Lemkin was a Polish lawyer born in Belarus in 1900. He almost singlehandedly created the Convention on the Prevention and Punishment of the Crime of Genocide in 1948. Lemkin gave the world, for the first time, a word for describing the killing of a group of people. The Convention outlawed genocide internationally. A minority rights protection mechanism will remain incomplete unless the Convention and its creator are researched properly. The fact

⁸ Javaid Rehman, *The weakness in the international protection of minority rights* (Kluwer Law International, 2000) 14,15

⁹ Ibid, 3

¹⁰ Mark Mazower, 'Minorities and the League of Nations in Interwar Europe'(1997) 126(2), *Human Diversity*, 47,48.

that 'Lemkin was born and raised in a place where it was a matter of life and death for a Jew to anticipate the worst' largely influenced his work.¹¹ Although his work was shaped by Jews' fate, Lemkin's self-identification as a Jew was relatively weak. He was concerned with the protection of not only the Jews minority but also other groups.¹² This is why Lemkin never supported the idea of establishing a defensible nation-state for the Jews, which he viewed as a distraction.¹³ This indicates his belief in law and international identity.

The concept of protecting minorities as groups fundamentally shaped Lemkin's works. He preferred group rights to individual rights, holding that minorities required protection from persecution by the state. For Lemkin, the religious, ethnic, and other minority groups were the bearer of the individual's language and culture. In contrast to the principle of modern international human rights law, he believed that the destruction of the group means the destruction of an individual.¹⁴

Jacob Robinson was a minority rights activist, specialist in international law, and politician. He was born in 1889 in Lithuania. Robinson studied law at the Warsaw University. Unlike Lemkin, Jacob Robinson was a proponent of the Jewish national state. However, in his early life, he was dedicated to the protection of national minorities. He was deeply committed to minority rights throughout the interwar years. He was also actively engaged with the League of Nations as a representative of the European Congress of Nationalities (ECN) and a mediator.¹⁵ His dedication to minority rights continued until early 1943.

Robinson's deviation from his earlier view was evidenced by a 1943 memo submitted to the Peace Planning Committee of the World Jews Congress in June, where he suggested abandoning the concept of minority rights developed in the interwar period. In another memo, he insisted on establishing a Jewish commonwealth in Palestine and mass immigration of all Jews from Europe to Palestine after the war.¹⁶ Although Robinson's move to Zionism in the 1940s shows his deviation from the lifetime commitments and thought, his long political, legal, and academic works deserve special attention in minority rights discourse. These works are relevant not only for the Jews minorities but also for all minorities around the globe.¹⁷ An exploration of his life will reveal the reasons behind the shift of his ideas regarding the

¹¹ The New Republic, 'Lemkin's Word' (2001), available at <https://newrepublic.com/article/62613/lemkins-word>, last accessed on 10.05.2023.

¹² Michael Ignatieff, 'The unsung hero who coined the term genocide' (2013), available at <https://newrepublic.com/article/114424/raphael-lemkin-unsung-hero-who-coined-genocide>, last accessed on 10.05.2023.

¹³ The New Republic (n 11).

¹⁴ Ignatieff, (n 12).

¹⁵ Omry Kaplan-Feuereisen, 'In the Service of the Jewish People Jacob Robinson and International Law' (2008) 157, available at <https://www.zeitschrift-osteuropa.de/site/assets/files/4010/oe081010.pdf>, last accessed on 11.05.2023.

¹⁶ Gil Rubin, *The End of Minority Rights: Jacob Robinson and the Jewish Question in world war II* (2012) 55, available at https://www.academia.edu/6282963/The_End_of_Minority_Rights_Jacob_Robinson_and_the_Jewish_Question_in_World_War_II, last accessed on 12.05.2023.

¹⁷ Feuereisen, (n 15).

protection of minority rights. This might provide a new means of interpreting the law and its history.

The proposed study could investigate how Lemkin and Robinson contributed to the field of the protection of minority rights, why they did so, how effective their efforts were, and similar research questions. Undeniably Lemkin and Robinson's feelings and prejudices as a minority primarily motivated their works. The research on them would identify all motivating factors behind their struggle for the protection of minority rights, with a particular emphasis on their minority identity. It could also investigate the origin of their ideas. Answering these research questions would provide a new direction for the protection of minority rights. Accordingly, exploring the legal lives of Lemkin and Robinson could suggest how their works would be relevant in the present context and how the lesson learned from these lives would help effectively resolve contemporary minority problems.

5. Challenges of Writing Life Histories and Way Forward

Although writing legal lives has become an important area of legal research in the developed world, Bangladesh and similarly situated countries lag far behind in developing such a research field. The fundamental reason behind this is the lack of records on past works. The absence of similar research also discourages people from exploring this area. Despite the lack of records on past works, it is not impossible to write life histories. It could be done by interviewing people familiar with the lives and works of the persons researched.

Moreover, research materials could be found from the personal collection of many people who could be interviewees or others. A researcher interested in writing legal lives could avail of these opportunities. Being aware of challenges, a future researcher, particularly an insider researcher, could adopt new techniques in collecting data. A study conducted this way will open a new area of legal research in Bangladesh. At the same time, it will create a bridge between the past and the future.