

## Hart's Reasons

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Nicola Lacey. 2004. *A Life of H. L. A. Hart: The Nightmare and the Noble Dream*. Oxford: Oxford Univ. Press. 422 pp. + xxii. Illus.

**Henry** James, who apart from his genius in fiction also greatly contributed both as a critic and a writer to the field of biography, once said of the latter, “What a man thinks and what he feels are the history and the character of what he does.”<sup>1</sup> Leaving aside the arguable proposition implicit in this introduction that fiction and biography are separate genres, James struck at the heart of a central theoretical question in biography: when writing on a public figure who is well known for his or her public acts, how important is that figure’s private life? James thought it central, and his words imply that whatever truth is to be found in biography derives from a sound understanding of the subject’s psyche.

It is particularly appropriate to begin this review of Nicola Lacey’s biography of twentieth-century legal philosopher H. L. A. Hart with James since Hart remained an ardent fan and reader of the author throughout his life (Lacey 35, 38, 361). Furthermore, Lacey’s approach in *A Life of H. L. A. Hart: The Nightmare and the Noble Dream* indicates that, at least in some respects, she subscribes to the Jamesian view. Indeed, the major theme of the book is the contrast between how the jurisprudential world saw Hart—in Lacey’s words,

the “quintessential insider”—and how Hart saw himself—someone who, for a number of reasons, would always be an outsider (3).

Lacey’s Hart was a magnetic, if often reticent, genius whose confident exterior belied the self-conscious, insecure, sexually frustrated man within. It is a familiar theme, the philosophical equivalent of the tortured artist, but to Lacey’s credit, she does not over-dramatize Hart’s inner struggles at the expense of his towering professional accomplishments. Yet this strength is also the book’s greatest weakness; Lacey exposes a number of Hart’s “secrets,” but she falls short of fully analyzing the man who guarded those secrets so closely in life. While she does offer some penetrating psychoanalytic insight, particularly when Hart’s private moments reflect her thesis of an outsider on the inside, the overall effect is one of two separate books: a strong intellectual biography combined with an unsatisfying intimate one.

H. L. A. Hart was perhaps the most influential legal philosopher of the twentieth century, but he came to this position by a somewhat circuitous route. After studying philosophy at Oxford in the 1920s, a period of his life that Lacey recounts with vividness reminiscent of Evelyn Waugh’s *Brideshead Revisited*, Hart was unable to obtain a desired fellowship and began practicing law. He became a successful and prominent barrister, but he continued to pursue philosophy, devouring complicated treatises while commuting to work. He eventually married an intelligent, outspoken civil servant with Communist sympathies named Jenifer Williams, and during World War II, he worked at the British Intelligence Office, MI5, sharing an office at one point with notorious spy Anthony Blunt. Later in life, these connections would come back to haunt both Hart and his wife, precipitating a breakdown, but at the time they were of little consequence to him, who though liberal was far from radical.

After the war, Hart was offered a position at Oxford at the relatively old age of thirty-eight, chiefly on the strength of his still-remembered reputation as a formidable student. In 1952, he was appointed to the Chairmanship of Jurisprudence, an unlikely appointment considering his dearth of academic accomplishments to that date. He ultimately held the post for sixteen years, during which he almost single-handedly revolutionized jurisprudence. Hart was the chief resuscitator of a languishing English legal-theoretical tradition, bringing it back to life by infusing it with philosophy, particularly the then-exploding linguistic philosophy.

Lacey’s own background in legal and political theory—she is Professor of Criminal Law and Legal Theory at the London School

of Economics and Adjunct Professor of Social and Political Theory at the Research School of Social Sciences of the Australian National University as well as a Fellow of the British Academy—is evident in her treatment of Hart’s jurisprudential legacy, which takes up about a third of the book. Here, Lacey is nothing short of brilliant in elucidating complex philosophical concepts with precision and clarity. She is particularly adept, for example, in her discussion of the subtle yet essential distinctions between the early linguistic philosophy of Ludwig Wittgenstein and that of J. L. Austin, both of whom were Hart contemporaries and influences on his work.<sup>2</sup> Lacey speaks with enviable ease about most of the major English, American, and Continental theoretical and philosophical traditions of the nineteenth and twentieth centuries, from natural law theory<sup>3</sup> to postmodernism and shows how Hart’s own tradition, legal positivism, fits within and forms one of the central building blocks of this framework.

Legal positivism, first propounded by nineteenth-century Utilitarian philosophers Jeremy Bentham and John Austin, rejected natural law theory in favor of a humanistic approach. According to Lacey, “Bentham and Austin argued that law is an essentially human artifact: it is a command issued by a political superior or sovereign, to whom the populace is in a habit of obedience” (224). Hart revived this idea, then transformed it by incorporating the linguistic theories of Austin and Wittgenstein, among others, most famously in his second book, *The Concept of Law*. Lacey’s description of Hart’s contribution is straightforward, accurate, and concise:

The nub of Herbert’s (Hart’s first name) theory is the startlingly simple idea that law is a system of rules structurally similar, in both form and function, to the rules of games such as chess or cricket. The rules are of different kinds, with complementary functions. Some—“primary rules”—directly govern behaviour. But a system made up solely of primary rules would [. . .] lead to a world of uncertainty, inefficiency, and stasis. Hence “secondary rules” of recognition, adjudication, and change emerge, providing for the identification, application, and alteration of the primary rules. The most obvious example of primary rules would be criminal laws; examples of secondary rules range from constitutional laws to laws governing the creation of contracts, marriages, or wills. (225)

Lacey explains that Hart’s aim was to create a “general, descriptive theory of law” (225). In part, this meant a theory of law entirely separate from morality, though the two occasionally overlapped, a characteristic that would later be the point of departure for Hart’s

most successful critic and his handpicked successor in the Oxford Chair of Jurisprudence, Ronald Dworkin. Lacey goes on to explain in more concrete detail how Hart used linguistic philosophy to develop his ideas:

As in *Causation* [*Causation in the Law*, an earlier work co-authored by Hart], he builds up his argument by paying close attention to linguistic practices [. . .]. For example, he explores the distinction between habitual behaviour (going to the pub on Sunday lunch time) and rule-governed behaviour (going to church on Sunday morning). (226)

Lacey analyzes Hart's other major works<sup>4</sup> with equal clarity and insight so that even a reader unversed in legal theory or linguistic philosophy can follow her discussion and understand the importance of Hart's thinking.

Unfortunately, Lacey's skill as a biographer of intimate life does not match her philosophical acumen. Though her descriptions of Hart's intellectual insecurities are often both poignant and credible, when she ventures into more personal and fundamental issues of his identity—his reaction to his Jewishness, his homoerotic feelings, his complicated relationships with both his wife and certain colleagues—one gets the feeling that Lacey is hedging even as she holds many of Hart's most private moments up for scrutiny.

Lacey reveals a possible reason for this in the preface, entitled "Biographer's Note on Approach and Sources" (xvii). Here, Lacey not only describes her methodology, one of careful and close readings of Hart's private and professional works as well as dozens of interviews with friends, family and colleagues, but also her relationship to her subject and his wife, Jenifer. As it turns out, this relationship was not merely a professional one. Lacey knew both Harts on social terms and reveals a particular admiration for Jenifer Hart, who died in 2005 but who was still alive when *The Nightmare and the Noble Dream* was published. The book is, in fact, dedicated to Jenifer Hart, and Lacey notes that, "One of my greatest challenges was to write a biography of Herbert Hart while doing justice to Jenifer's vivid personality and substantial achievements" (xviii). As a result, Lacey's sometimes effusive and almost exclusively positive portrayal of Jenifer (she refers to Jenifer as "one of the most extraordinary women of her generation") often does not ring true (2).

Jenifer is described as a beautiful, dynamic, and fascinating woman whose chief flaw seems to have been occasional bouts of

indiscretion. Lacey glosses over her multiple extramarital affairs, often icy attitude toward her husband, and sometimes controlling personality. This is a woman who, it could be argued, convinced a man of self-confessed homosexual persuasions to marry her by sheer force of will (80–81). Hart's many diary entries and pieces of correspondence referring to difficulties with his wife give the lie to Lacey's overly admiring portrayal, and this sense of dissembling ultimately makes Jenifer Hart less sympathetic than she likely was in real life. Though there is no reason to credit insinuations that Jenifer Hart somehow dictated the content of any part of the biography—accusations which Hart's daughter publicly and emphatically denied<sup>5</sup>—it is plausible that Lacey's self-proclaimed affection for Jenifer and her knowledge that she owed to his wife her access to H. L. A. Hart's most private papers, and thus her ability to write the book, colored Lacey's portrayal of her.

Yet if a too-generous account of Jenifer Hart were the only flaw in Lacey's biography, it would be a minor one. More problematic is that this same reverential, overly forgiving attitude comes out in her portrayal of Hart himself, albeit to a lesser degree, but with the same effect of inauthenticity. To be sure, "Herbert," as Lacey insists on referring to him throughout the book, can do wrong. It is simply that when he does, Lacey nearly always sees an adequate justification for it. For example, Lacey recounts a story told to her by one of Hart's former students:

I told him that long before Hume, the Buddhists had not only commended the bundle theory of the self but, unlike Hume, they had also worked out the ethical and practical consequences of it. "How quaint," he said. Some years later, I asked him what was happening in Oxford philosophy. He said, "We have a brilliant young philosopher called Derek Parfit. He is working on the ethical implications of the bundle theory of the self." I don't know why, but I restrained myself from reminding him of our earlier conversation. (160)

Lacey's restrained commentary on this exchange, which has an underlying tone of colonialism and possibly even racism, is almost complementary: "But Herbert's occasional insider's arrogance was overshadowed by his fundamentally generous approach to supervision" (160).

When Lacey is unable to justify Hart's sometimes disturbing behavior, she simply avoids exploring it in depth. She calls an

inappropriate comment he made to his daughter about his and Jenifer's sex life "a curious failure to draw normal parental barriers" (236). In championing a reluctant Ronald Dworkin for the Oxford Chair of Jurisprudence, his professional betrayal of his longtime friend, colleague, coauthor, and would-be successor in the post, A. M. "Tony" Honoré, was simply "a bold and decisive intervention in the search for a new professor, and one which was to put a new distance between him and Honoré" (291). His consistent failure to stand up to anti-Semitism, even during World War II,<sup>6</sup> is written off to his unresolved issues with his own Jewish identity, his failures as a husband and father, and his unresolved homosexual feelings. Yet the likely connection between these failures and the somewhat formalistic and amoral legal positivism that he championed is never fully drawn.

A more complex issue, and one more pertinent to biographical theory,<sup>7</sup> is whether Lacey should have discussed some of Hart's most private thoughts and moments at all, particularly those regarding his sexuality. This is a complex question for any biographer; James himself, that great believer in the relation of the private to the public, also believed that biographical method ought, to some degree, to be dictated by the subject. According to one scholar,

Reviewing William C. Gannett's memoir of his father, the Unitarian minister Ezra Stiles Gannett, James questioned whether the author's use of the methods of "intimate biography" did not violate the character of the subject, a man so little given to public display that there seemed to be a "certain irreverence" in exposing all his customs and habits.<sup>8</sup>

Like Gannett, and by Lacey's own account, Hart was "an intensely private man whose primary emotional contacts were often explored through discussions of the literature, music, or landscapes which he loved" (xvii–xviii). Lacey recognized the ethical dilemmas posed by publicizing information gleaned from private diaries and notebooks and tried to find a satisfactory solution without diminishing the usefulness of the biography. "My rule of thumb," she explained, "was to use only the personal material which sheds light on the development of his ideas and the course of his career" (xix). Yet this self-imposed restraint was of little practical effect since, "this, it turned out, was usually the case, because Herbert Hart himself moved seamlessly back and forth in his diaries between personal and professional preoccupations, and sought increasingly to draw links

between the two” (xx). Yet Hart’s self-analysis is of arguable relevance, and in light of Lacey’s less-than-developed analysis of the meaning of these private thoughts and emotions, it seems regrettable that she chose to invade his privacy in this manner. More convincingly drawn connections of how Hart’s innermost thoughts shaped his philosophical outlook might have justified the invasion, but it is precisely in drawing these connections that Lacey is weakest.

Ultimately, Lacey has fallen into that most conventional of biographical traps—being too close to one’s subject. Where she was able to separate her loyalty as a friend from her duties as a biographer—most notably in her exploration of Hart’s intellectual achievements and self-doubts—*The Nightmare and the Noble Dream* is masterful. Where she was not, she damns both Harts with false praise; the work loses its credibility and the private revelations their justification.

## Notes

1. Elsa Nettels. “Henry James and the Art of Biography.” *South Atlantic Bulletin* 43, 4 (1978): 109.

2. Wittgenstein and J. L. Austin (no relationship to Utilitarian John Austin) had significantly different takes on linguistic philosophy. An explication of those differences is beyond the scope of this review; however, it should be noted that though Hart was influenced by Wittgenstein, he found Austin significantly more compelling and his understanding of linguistic philosophy would be much more properly characterized as Austinian than Wittgensteinian (Lacey, 215–19).

3. The theory that law can and must be derived from objective moral standards.

4. E.g., *Causation in the Law* (with A. M. Honoré). (Oxford: Clarendon Press, 1959); *Law, Liberty and Morality*. (London: Oxford Univ. Press, 1963); and *Punishment and Responsibility*. (Oxford: Clarendon Press 1968).

5. See the 2005 exchange between Thomas Nagel and Joanna Ryan in “Letters.” *London Review of Books* 27 (4). Available at <http://www.lrb.co.uk/v27/n04/letters.html#1>.

6. Curiously, there is no mention of the Holocaust or Hart’s reaction to it in spite of the fact that he was a British Jew working for military intelligence during World War II.

7. See, e.g., David McCoey. 2005. Review of *Understanding Ourselves: The Dangerous Art of Biography*.” *Biography* 28, 4 (2005); 677–80.

8. Nettels. “Henry James and the Art of Biography,” 108.