

BOOK REVIEW

GETTING CLOSE TO H L A HART

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A Life of H L A Hart: The Nightmare and the Noble Dream by Nicola Lacey (Oxford: Oxford University Press, 2004) pages i–xxii, 1–422. Price A\$69.95 (hardcover). ISBN 0 19 927497 5.

[This review addresses a number of difficulties associated with the task of writing a biography of a legal academic whose family has granted the biographer special access to the subject's private papers. Nicola Lacey's *A Life of H L A Hart* faces the burdens of making the life of a legal academic interesting without being unduly affected by this special access. This can lead to the overt emphasising of information that might have some appeal as the source of gossip but is arguably of marginal value in a study of the ideas and career of a legal scholar. The review assesses how successfully Lacey surmounts those difficulties.]

Authorised biography can be a treacherous undertaking.¹ Biographies of academics can be deadly in their insularity.² Biographies of persons associated with the law bear a burden associated with the recondite aspects of that profession.³ Gossipy biographies, especially those of scholars, run the risk of being seen as gratuitous. Thus Nicola Lacey's *A Life of H L A Hart* might be said (to borrow from one of her own sports metaphors) to start with a four–nil deficit.⁴

How successfully does Lacey overcome the above difficulties? This review proceeds by describing and evaluating Lacey's strategy for overcoming them. It concludes by making an overall assessment of *A Life of H L A Hart*.

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¹ This is particularly so when the subject is a judge: see G Edward White, 'Authorized Judicial Biography: A Cautionary Tale' (2003) 7 *Green Bag 2d* 71.

² Notwithstanding the heroic efforts of competent biographers: see Donald Smith, *Zechariah Chafee Jr: Defender of Liberty and Law* (1986); Robert Summers, *Lon L Fuller* (1984).

³ Consider John Phillip Reid's remarkable biography of Charles Doe, a judge on the Supreme Court of New Hampshire in the late 19th century: John Phillip Reid, *Chief Justice: The Judicial World of Charles Doe* (1967). Reid's book remains indispensable for anyone interested in Doe's judicial career, particularly his years on the Supreme Court bench of New Hampshire. However, the book is so firmly rooted in the culture of lawyers and judges as to render it inaccessible to someone without legal training.

⁴ Lacey describes an academic debate between Cambridge and Oxford philosophers in the 1950s as 'probably best summarized as a goalless draw': Nicola Lacey, *A Life of H L A Hart: The Nightmare and the Noble Dream* (2004) 138. Although Lacey's documentation is extensive, she often draws on Hart's personal papers without directly citing them. Where she supports her statements with references to other sources, I have cited those sources.

I

Lacey met Herbert Lionel Adolphus Hart in 1979, when he was serving as a Research Fellow at University College, Oxford, having retired from its chair of jurisprudence 11 years earlier. Lacey was 21 and a graduate student in law; Hart was 72 at the time. Despite the difference in their ages, Lacey developed a close relationship with both Hart and his wife, the Oxford historian Jenifer Williams Hart.⁵ In 1992 Hart died, and in 1999, having published her own autobiography a year earlier,⁶ Jenifer made an offer to Lacey. She would give Lacey access to Hart's papers, and some of her own, help organise those papers, and generally cooperate with Lacey in the preparation of a biography of H L A Hart. Although Lacey states that *A Life of H L A Hart* is 'not an authorized biography', she means this 'in the sense that Jenifer Hart did not read it before publication.'⁷ A closer look at Lacey's sources suggests that the book has an authorised quality.

Not only did Lacey have the full cooperation of Jenifer in the compilation of the biography, but a draft of her book was also read by three of Hart's children. Her acknowledgements also include 'many of [Hart's] friends, colleagues, and students' whom she interviewed between March 2000 and December 2003.⁸ As she proceeded with her research, many friends, former colleagues and students of Hart supplied her with unpublished material, including diaries, student notes, letters, and interviews with Hart. Since the narrative of Lacey's book extends deep into the 20th century, many of the characters in that narrative — including Jenifer and the Hart children — are still alive, and Lacey profited considerably from their good auspices.⁹

One example can serve as an illustration. Professor A M (Tony) Honoré first moved into Hart's ambit after he became a law Fellow of Queens College, Oxford, in 1948 (Hart had left law practice to take a fellowship at University College three years earlier). Honoré was interested in legal philosophy and, together with the philosopher Anthony Woozley, introduced the first interdisciplinary seminar at Oxford, titled 'Philosophy and Legal Concepts', in the 1951–52 academic year.¹⁰ Hart gave a paper at the seminar, and he and

⁵ Lacey was initially welcomed by the Harts when the work of her husband, a musician, became a source of entertainment for Joshua, the Harts' mentally disabled son. Then, in the 1980s, Lacey took a fellowship at New College, Oxford, and was living with a University College colleague who was a close friend of the Harts. By the time of Hart's death in 1992, Lacey and the Harts were intimate friends, particularly Lacey and Jenifer Hart. See Lacey, above n 4, xvii–xviii.

⁶ Jenifer Hart, *Ask Me No More: An Autobiography* (1998).

⁷ Lacey, above n 4, viii.

⁸ People who were interviewed are listed in the book: see Lacey, above n 4, 403.

⁹ Lacey's acknowledgements are extensive, generous and detailed: see *ibid* ix–xii.

¹⁰ The reading list for the first year in which the seminar was given can be viewed online. See University of Oxford: Centre for Competition Law and Policy (1951) <<http://denning.law.ox.ac.uk/jurisprudence/1951.pdf>>. The seminar considered six topics: acts, negligence, cause, promises, meaning and interpretation, and identity and attribute, including personality. The reading was composed of philosophical and legal works, such as Gilbert Ryle, *The Concept of Mind* (1949), A J Ayer, *Language, Truth and Logic* (1936), Oliver Wendell Holmes, *The Common Law* (1881) and Albert Kocourek, *Jural Relations* (2nd ed, 1928). It also included the following cases: *Re Polemis* [1921] 3 KB 560 and *Palsgraf v Long Island Railroad*, 248 NY 339 (1928). The cases were primarily from the areas of criminal law, torts and contracts. I offer my thanks to Cora Diamond for calling my attention to the reading list.

Honoré began ‘to meet for casual conversations’ about law and philosophy.¹¹ This led to their collaboration, *Causation in the Law*.¹² Lacey characterises Hart and Honoré’s relationship as ‘an unarticulated intimacy founded on explicit intellectual connection and an implicit emotional affinity’, in which ‘[Hart] went to lengths beyond what was due from his professorial responsibility to smooth the path of his younger colleague’s career.’¹³ Honoré was among the first people Lacey interviewed after agreeing to do the biography. In her acknowledgments Lacey states that Honoré ‘provided unstinting support and important material on jurisprudence teaching at Oxford in the 1950s.’¹⁴

Biographers of subjects whose close friends and associates are still alive quickly learn the value of gaining the support of persons who knew the subject well and may have unpublished information to share. Perceptions of the biographer within those networks of associates can have a decisive effect on the biographer’s access to that information.¹⁵ Lacey was in the enviable position of beginning Hart’s biography with Jenifer Hart’s good auspices. Further, she herself possessed academic credentials that might well have impressed potential interviewees. Given this starting point, two tacit assumptions might be said to have framed Lacey’s research. One was that she could be expected to write a sympathetic biography of Hart; the second was that if she did not meet that expectation, her information — much of it from elderly sources — might dissipate.

Elsewhere, I have argued that historical writing is a process in which the author is engaged by the subject for reasons that mainly concern the author’s current experience. Yet they must also seek to maintain detachment towards their subject if they are to avoid excessive projection or anachronistic descriptions of the past.¹⁶ An authorised (or even semi-authorised) biography of a historical figure raises particularly acute issues of detachment. Not only is the author being commissioned by someone particularly close to the subject of the biography, the commission itself presupposes that the author must be sympathetic not only to the subject but also to the people authorising the work.¹⁷

Many people believe that sympathy with the subject is a necessary prerequisite for a successful biographer. I think the matter is more complicated. Undoubtedly,

¹¹ See Lacey, above n 4, 165.

¹² H L A Hart and A M Honoré, *Causation in the Law* (1959).

¹³ Lacey, above n 4, 165. For Honoré’s assessment of Hart, see A M Honoré, ‘Herbert Lionel Adolphus Hart, 1907–1992’ (1994) 84 *Proceedings of the British Academy* 295.

¹⁴ Lacey, above n 4, x.

¹⁵ See, eg, G Edward White, *Earl Warren: A Public Life* (1982). Having been Warren’s law clerk during the 1971–72 academic year, I thought that my regular access to Warren during the clerkship would be an advantage in writing the biography. However, I was aware that Warren’s family members were very protective of his privacy and reputation and were unlikely to encourage efforts to detail Warren’s private life. As a result I made a decision to focus the book on Warren’s public career, using sources that were available in the public domain, including archival sources.

¹⁶ See G Edward White, *Intervention and Detachment* (1993).

¹⁷ The presupposition of sympathy does not always survive the writing of an authorised biography, but it would seem to be particularly important where, as in Lacey’s biography of Hart, the family of the subject has given the author exclusive access to unpublished information and is indirectly shaping the book by organising files and reading drafts.

if the biographer does not engage with their subject in some fashion, the result is likely to be tedious. However, antipathy can also be a form of engagement. Engagement can occur where a biographer greatly admires their subject, but also where they are appalled by the life of a subject: the biographer should feed off the energy created by that admiration or antipathy but not let that energy overwhelm their treatment — especially when the subject lived in a different time period.

In assessing how *A Life of H L A Hart* fares against this standard, one need ask how Lacey's special access to Hart and his circle of family, close friends and acquaintances affected her ability to balance engagement with detachment. This question must be central to any assessment of Lacey's work, for the implicit claim her book makes is that — given Lacey's special access — her portrait of Hart should be regarded as definitive.

If one places this burden of definitiveness upon Lacey — perhaps an unfair one because this status in biography is nearly impossible to attain — *A Life of H L A Hart* may be described as only partially meeting the burden. In some respects Lacey's special access merges with her strengths as a biographer to produce highly illuminating analyses of Hart's professional and personal experiences. As she puts it, her effort was to elucidate 'the different levels of meaning which might be given ... to his life',¹⁸ and at times she performs that task with lucidity and insight. At other times, however, her particular form of engagement with Hart and his family seems to push her in less fruitful directions. Though Lacey's book makes a strong case for a biography by persons with special access to the subject, it is not an overwhelming one.

II

The bare outline of Hart's life suggests that he would not be an ideal subject for a trade biography. He spent much of his adult life in a university setting, and was best known for his scholarship. That scholarship, although it touched upon issues of public policy — such as the law's response to homosexuality or to the punishment of crimes — featured close reasoning, precise language, and the sort of technical documentation associated with work primarily directed to academic audiences. In short, Hart's work, although exceptionally well-regarded by many academics, remained largely inaccessible to mainstream readers — even highly educated ones. Further, Hart's life outside his work was, on the whole, not overly dramatic. Lacey therefore takes advantage of Hart's diaries and personal letters to reveal some intimate details of Hart's private life. However, it seems fair to say that these details assume interest primarily because of Hart's great public stature as a scholar.

Assume that a largely unknown and unpublished Oxford don was concerned, despite a long marriage, that he might be homosexual. Furthermore, assume his wife had frequent affairs, including some with the don's oldest and closest male friends; that he was an ambivalent and somewhat detached father to his four

¹⁸ Lacey, above n 4, xix.

children; and that he had fathered one child who, through complications at birth, had significant brain damage. Would that person be the likely subject of a biography written for a general audience? The fact that the above information was true of H L A Hart, a world-class scholar, surely serves to expand the scope of Lacey's biography. But the rationale supporting a biography of Hart — unlike that for the hypothetical unknown don — is the subject's scholarly reputation. Thus the burden on Lacey is to convince her readers that, above all, Hart's life is worth writing about because of his scholarly fame. The private details, if handled skilfully, then become of added value.

Here Lacey does rather well, although I shall reserve comment on her rather extensive use of 'inside' stories about the private lives of Hart and his social circles. Lacey's most substantial contribution is to detail the evolution of Hart's scholarly ideas and place them in a historical context. She takes Hart from his years as a classics degree candidate at New College, Oxford, in the late 1920s, to his seven years as a practicing barrister in London. Lacey also describes Hart's wartime years doing military intelligence for MI5¹⁹ to his return to New College as a Fellow in Philosophy in 1945 and his appointment to the chair of Jurisprudence at University College, Oxford, in 1952, which signalled the launch of his career as an eminent scholar in legal philosophy. Lacey demonstrates how these stages in Hart's career were connected to one another, cumulatively preparing his path-breaking scholarship in the 1950s and 1960s. She also notes how Hart's distinctive contributions to legal philosophy were highly influenced by his surroundings and experiences. This includes the intellectual fashions of English philosophy from the 1930s to the 1950s, the moribund status of jurisprudence scholarship in English law faculties in the same era, and the searing effect of totalitarian ideologies and World War II upon English academics of that time.

Any summary of Lacey's accounts of Hart's rise to scholarly eminence, and of his 'golden years', 1953–68, in which he produced all of his major work, will fail to do justice to the lucidity and comprehensiveness of her presentation. Those portions of *A Life of H L A Hart* represent intellectual biography of a very high quality. In particular, two discoveries made in this part of the work enable Lacey to achieve her implicit objective of convincing readers that Hart's scholarly life is worth examining.

The first of these is Lacey's demonstration that the distinctive feature of Hart's scholarship was its fusion of the insights of English 'ordinary language' philosophy, which had become highly influential among some Oxford academics

¹⁹ MI5 (the Security Service) was the agency of British intelligence responsible for gathering intelligence related to the protection of the interests of the United Kingdom and its citizens. MI6 (the Secret Intelligence Service) was responsible for gathering intelligence and performing counterintelligence functions outside the United Kingdom. In the late 1930s and early 1940s, the recruitment of persons for both agencies was remarkably casual. Hart received an offer to join MI5 in 1940 on the recommendation of Jenifer Williams, who was living with him. Jenifer was then the private secretary of the Home Office's Permanent Under Secretary of State, Alexander Maxwell. She had been a member of the Communist Party from 1935 until a year before she made the recommendation, and when she joined the Civil Service in the 1936, the Soviets had attempted to recruit her as an espionage agent.

in the 1930s, with his experience as a practicing barrister, which had trained him to make very close, precise, readings of legal rules and doctrines. Hart's first exposure to philosophy as an Oxford undergraduate had been to idealist versions. Although his mature scholarship would retain some normative dimension, the idealist precepts to which he had been exposed in the 1920s were largely obliterated by his contact with John Austin and his circle of linguistic philosophers that had emerged by the 1930s.²⁰

Austin and his fellow linguistic philosophers advocated an approach to philosophical questions that emphasised a focus on the meaning of words determined by their ordinary uses, taking into account the contexts of those uses. Their 'common sense' approach resonated with Hart's experience as a barrister, where he constantly had to apply the meaning of legal rules and doctrines to cases in which that application was uncertain and contested. Linguistic philosophy also seemed grounded in the real world in a way that idealist approaches had not; for Austin, Ryle, Hart and many other members of the Oxford faculty who were returning to academic life after extended service in the military during World War II, this was particularly persuasive.

Lacey demonstrates the way in which Hart gradually began to integrate his understanding of linguistic philosophy with his legal training. This increasingly became his focus, particularly after the emergence, in the early 1950s, of a critical mass of Oxford scholars who were interested in the philosophical underpinnings of legal issues. That focus would eventually result in Hart publishing two major books: his joint effort with Honoré, *Causation in the Law*,²¹ and *The Concept of Law*,²² an expansion of the jurisprudence lectures he had been giving at University College since 1953. As Hart identified himself as a jurisprudential scholar, he moved beyond Austinian versions of linguistic philosophy to develop his own perspective on legal theory, which captured the distinctive concerns of Anglo-American legal scholars in the 1950s and eventually assured Hart a worldwide reputation.

Lacey's second contribution is to show how Hart's mature scholarship, which appeared between 1961 and 1968 and further pursued ideas that had interested him in the early 1950s, addressed the normative issues raised by his earlier conceptual work. Lacey describes Hart's early work, as illustrated by *Causation in the Law*, as the careful unpacking of legal and philosophical concepts to demonstrate their contextual and professional use. Hart and Honoré argued that the concept of causation in law is neither purely 'scientific', as in physics, nor a

²⁰ John Austin was the dominant figure in a linguistic philosophy group that Hart joined after returning to Oxford in 1945. Although most of Austin's work was published posthumously (he died of cancer at the age of 48 in 1960), his lectures, *How To Do Things With Words*, which were delivered in 1955 and published in 1962, represented views he had been developing from the 1930s: John Austin, *How To Do Things With Words: The William James Lectures Delivered at Harvard University* (1962). The other major Oxford linguistic philosopher at this time was Gilbert Ryle: see, eg, Gilbert Ryle, *The Concept of Mind* (1949). For more on English philosophy in the late 1940s and 1950s, see further P M S Hacker, *Wittgenstein's Place in Twentieth-Century Analytic Philosophy* (1997) and Jonathan Ree, 'English Philosophy in the Fifties' (1995) 65 *Radical Philosophy* 3, upon both of which Lacey relies.

²¹ Hart and Honoré, above n 12.

²² H L A Hart, *The Concept of Law* (1961).

rubric whose purpose is to allocate legal responsibility on policy grounds. Instead, they contended it is a distinctive blend of legal doctrines informed by both scientific analogies and policy considerations. Its meaning can only be understood through application. The normative implications of this approach were to advance an intermediate position between those who believed that legal doctrines were open-ended and dictated by a combination of ideology, power, and policy-driven legal rules, and those who believed that legal actors were significantly constrained by the integrity of timeless principles of law. Despite this, the normative messages of *Causation in the Law* were muted.

By the time *The Concept of Law* was published, and in his subsequent work in the 1960s, Hart's position had become more developed. He had expanded his original concern from the curial application of legal doctrines in cases to the application of those doctrines by a variety of actors, ranging from Parliament and the judiciary to private citizens responding to the law's commands. At the same time he had increased the level of abstraction at which he analysed legal doctrines, moving from rule and doctrine to concept and principle. The result was that Hart's mature scholarship combined his distinctive close readings of judicial opinions, statutes and other legal texts with higher-level arguments in a way that had more significant normative implications.

Hart argued that law could not be understood simply as a set of coercive acts by officials holding power, nor as purely moral norms governing conduct. Law could more accurately be referred to as a type of complex social convention in which officials 'recognised' certain criteria in testing the validity of legal norms. The criteria ended up producing norms characteristic of the legal systems of largely secular, tolerant, anti-totalitarian and liberal communities. The road map of Hart's later jurisprudence was complicated and multifaceted, whilst at the same time being integrated and structured. It sought to rebuild a growing legal order pursuing democratic goals and facing the complexities of modern government.

Lacey patiently builds the edifice of Hart's mature jurisprudence, using the techniques of a legal philosopher and an intellectual historian. We are in debt to her for this effort. By the time Lacey completes her tour of Hart's 'golden years', stretching from the 1920s through to Hart's sudden retirement from his jurisprudence chair at University College in 1968, one understands the sources of Hart's scholarly eminence. Lacey uses Hart to help us understand the cultural and intellectual framework out of which his generation of scholars, for whom the social unrest of the 1930s and World War II were decisive events, developed their theories of law and society.

III

How important was the fact that Hart was a lawyer to his eventual eminence? Here one confronts a paradox that Lacey, in the end, fails to illuminate. To the extent that Hart's scholarship still plays an important role in academic and policy discussions, it is in legal circles. Hart's mature work was grounded in philosophy, but its central impact was on legal theory and jurisprudence. Hart could not have written *Causation in the Law*, *The Concept of Law*, nor any of the

other books he produced between 1961 and 1968 had he not been trained in the law, and each of those books were arguably shaped by his having been a practising barrister.²³ Yet Hart, by the time he launched his scholarly career, was far more interested in philosophy than in law. As Lacey puts it, his intellectual ambitions ‘stopped at the borderlines between legal philosophy and doctrinal legal scholarship’ and he ‘made little effort to get to know, let alone to engage intellectually with, the more influential ... lawyers’ at Oxford.²⁴

Understanding Hart’s decisions to go to the bar and enter legal practice, despite an opportunity to pursue a fellowship in philosophy, is an important step to understanding his life and work. However, in contrast to the considerable detail with which she traces Hart’s scholarly development, Lacey gives her readers little material connected with those decisions. Her treatment of Hart’s years at the bar makes use of three sets of evidence: recollections of his fellow barristers, who describe him as an excellent lawyer; Hart’s papers, which indicate that his work brought him into frequent contact with wealthy and socially prominent clients; and material in which he reflected upon the choice between remaining at the bar and studying philosophy at Oxford. Each of the sets is quite insubstantial, such that one hesitates before drawing conclusions from it.

There are several reasons why Hart’s time in practice did not — unlike his academic years — provide Lacey with an abundance of data. First, one could hardly expect Hart’s fellow barristers, even those who were his close friends, to have left many records of his performance. Indeed, few of Hart’s contemporaries were still alive when Lacey began her interviews. Further, successful junior barristers, in the 1930s as well as today, work very long hours and have little time for reflecting upon their professional lives. Finally, much of the data Lacey presents on Hart’s legal career is clustered among two time periods: 1936–37, when he first met Jenifer and was offered a philosophy fellowship at New College, and 1944–45, when, in the process of winding down his responsibilities with MI5, he again considered leaving the bar to study philosophy at Oxford. They are arguably unrepresentative in that they both involved periods in which Hart was considering *leaving* the bar, so that he might have more readily expressed his misgivings about legal practice.

In a book of over 350 pages, Lacey devotes only 13 to the nine years that Hart spent practising law. She cites three sources that are purported to characterise Hart as a lawyer. One is Richard Wilberforce, his close friend at Oxford, who came to the bar at the same time as Hart. He described Hart as ‘loving the

²³ Hart also published the following books between 1961 and 1968: H L A Hart, *Law, Liberty and Morality* (1963); *The Morality of the Criminal Law* (1965); *Punishment and Responsibility* (1968). These were each attempts to apply philosophically-grounded moral reasoning to legal issues. The first two were versions of lectures Hart had given to audiences primarily constituting members of the legal profession at Stanford University and The Hebrew University of Jerusalem. Lacey characterises the third, a reworking of essays on criminal law and punishment, as ‘an account of the conceptual structure of criminal law, its principles of responsibility, excuse and mitigation, and an argument for the justification of punishment’: above n 4, 279. A feature common to all Hart’s work is the elucidation of logical structure in the application of principles of law and public policy to contested legal and moral issues. Such exercises constitute the barrister’s art.

²⁴ Lacey, above n 4, 158.

intellectual demands', being 'strongly competitive', 'enjoying new prosperity'²⁵ and 'making his way into new circles.'²⁶ Another is Isaiah Berlin, who in 1936 described Hart as 'one of [his] most prosperous friends'.²⁷ The third is a 'famous barrister' who, on encountering the philosopher Stuart Hampshire, expressed that Hart had been 'by far the most talented man at the Chancery Bar' and that his eventual decision to leave the bar for academic life was 'a tragic loss to the profession', indeed, 'a betrayal.'²⁸ From these sources Lacey concludes that '[i]t is generally acknowledged that [Hart] was the most gifted' of his Oxford contemporaries at the Bar and that he had an 'outstanding talent for ... legal analysis and advocacy.'²⁹ Hart may well have been an outstanding barrister, but one second-hand assessment from an unnamed source in the late 1940s hardly provides much authority for Lacey's conclusion.³⁰

More importantly, Lacey does not give the reader much basis for speculating about what Hart may have learned in legal practice that aided him as a legal scholar, or why in 1937 he turned down the opportunity to leave the bar for a philosophy fellowship but then accepted the identical fellowship seven years later. She quotes two long letters Hart wrote to friends about Oxford and the bar on both occasions. Although the letters, to Christopher Cox and Isaiah Berlin, were written seven years apart, they evinced similar sentiments. As Hart put it to Cox, '[a]t the bar one just feels quasi-dead with overwork or plain bored'; on the other hand he feared being 'melancholy in the insidious sapping Oxford way' should he take up a fellowship.³¹ By 1944 he was still concerned and told Berlin that if he returned to law practice after the war 'the volume of my work would submerge all other intellectual interests, narrow the understanding and corrupt my life', and that 'at the end of a life as a successful or unsuccessful barrister I shall be unable to look back on it without disgust.'³²

According to Lacey, the factors that resolved Hart's decision to accept a philosophy fellowship at New College in 1945 were the fact that he and Jenifer had now married — so that his earlier anxieties about their future had been somewhat resolved —³³ and his conviction, after years of reading philosophy, that the subject was his 'only permanent intellectual interest': his mind 'return[ed] to the subject whenever [he was] not doing anything else'.³⁴ Jenifer reluctantly agreed with him, and from 1945 to 1947 Hart commuted to London from Oxford, while Jenifer and their first two children (who had been born in

²⁵ Richard Wilberforce, *Reflections on My Life* (2003) 30.

²⁶ *Ibid* 105.

²⁷ Quoted in Lacey, above n 4, 47.

²⁸ Quoted in *ibid* 46.

²⁹ *Ibid*.

³⁰ In fairness to Lacey, the tradition of the British bar emphasises oral advocacy, with solicitors writing the briefs. Thus, there would be little documentary evidence of Hart's or any barrister's proficiency.

³¹ Lacey, above n 4, 52.

³² *Ibid* 112.

³³ Some remained, including the fact that Jenifer, who was enjoying her Home Office work, refused to give it up to go to Oxford: *ibid*.

³⁴ Hart expressed these sentiments in a letter to Jenifer in 1944: *ibid* 114.

1942 and 1944) remained, along with several other families, in a house owned by Hart's Oxford contemporary Douglas Jay. In 1947, Jenifer agreed to look for a job in Oxford, and when she found one with the Delegacy of Extra-Mural Studies (the Oxford department concerned with adult education), the Harts took up permanent residence in Oxford.³⁵

Although Hart would be named an honorary Queen's Counsel in 1983, his acceptance of the New College fellowship ended his associations with the bar. His scholarship between the late 1940s and 1953 would be exclusively in philosophy, although by the time Honoré and Wozzley started their law and philosophy seminar, Hart had become interested in the intersections between philosophy and legal subjects. Despite Hart's regular engagement in intensive analysis of legal doctrines, his work was sufficiently abstract to place it beyond the interests of most practising barristers. Indeed, Hart deplored the approach to jurisprudence exemplified by his predecessor in the University College chair, Arthur Goodhart, who was Master of the College when Hart assumed that chair in 1952.³⁶

Lacey is well aware that once Hart established himself as a major contributor to legal philosophy and jurisprudence in the 1950s and 1960s, he settled into a method of scholarly inquiry that, although he called it 'descriptive sociology', did not pursue full-scale sociological or historical analyses of the legal concepts and institutions he examined. Once he had introduced jurisprudential concepts such as the 'rule of recognition', and analysed legal doctrine to illustrate those concepts, Hart largely stopped there. His work thus involved a masterful ability to apply techniques of linguistic philosophy to legal doctrines, but he chose to operate almost exclusively in that realm.

If we knew more about the intellectual dimensions of Hart's work as a barrister — if, for example, he had left more written evidence of his performance in cases — the connections between Hart's legal and philosophical analytics might have warranted greater analysis. Lacey's successful exploration of the philosophical dimensions of Hart's scholarship might well have been accompanied by a comparable study of its legal dimensions. However, Lacey was either disadvantaged by a paucity of evidence about Hart's career at the bar, uninterested in the details of that career, or both. The result is a missed opportunity. Notwithstanding the fact that Hart ultimately may have found being a barrister intellectually stultifying and even corrupting, his scholarship profited from the experience. It would have been useful to know to what extent. At one point Lacey says that Hart's 'years of experience as a Chancery barrister, his detailed knowledge of the subtle texture of legal reasoning, provided him with a

³⁵ For Jenifer's account of her search for employment and subsequent move to Oxford, see Jenifer Hart, above n 6, 120–1.

³⁶ Hart's work at Oxford between 1945 and 1952 allowed him to work with philosophers and the handful of law faculty staff who were interested in the issues of legal philosophy. Goodhart's work, at that time, primarily consisted of editing the *Law Quarterly Review* and synthesising judicial decisions. Lacey characterises Hart's and Goodhart's relationship as 'complicated' and Goodhart's scholarship as 'non-philosophical'. Hart, she suggests, saw Goodhart as 'an intellectual lightweight'. Nonetheless, the two men 'maintained an outwardly respectful relationship': Lacey, above n 4, 170–1.

fund of examples ripe for philosophical analysis'.³⁷ Lacey further states that the originality of Hart's contributions to legal philosophy came from his 'combination of legal experience and philosophical insight'.³⁸ Some illustrative examples might have assisted in understanding an important part of Hart's scholarship.

IV

Any biographer, especially one with access to private papers, encounters the massive detritus of a human life and has to be selective about the data to be emphasised in a narrative of that life. One choice Lacey made was to de-emphasise Hart's years in legal practice in order to concentrate on an exposition and critique of his scholarship. Another was to expose the tensions in his marriage. I have suggested that the first choice raises some difficulties, but one could argue that Hart's professional life was, after all, mainly that of a scholar, and that we should not quibble about Lacey's comparative neglect of Hart's years in practice in light of her comprehensive and illuminating treatment of his work. The second choice, however, seems in need of greater justification.

In her biographer's note, Lacey states that she faced a 'dilemma' about what to do with 'the very personal nature of some of [Hart's] letters and diaries' that Jenifer had made available to her.³⁹ She concluded that her 'rule of thumb was to use only the personal material which sheds light on the development of his ideas and the course of his career'.⁴⁰ Her definition of 'the course of his career', however, is quite broad. She considers that because Hart 'moved seamlessly back and forth in his diaries between personal and professional preoccupations, and sought increasingly to draw links between the two', material 'relating to his feelings about his sexuality and his marriage was essential to any interpretation of him as a whole person'.⁴¹

Pursuant to this argument, Lacey gives considerable attention to two 'personal preoccupations' of Hart: his feelings about his sexuality and his marriage. One is manifested in an awkward interaction, over the course of the Harts' relationship, between Jenifer's strong sexual appetites (and her relative unconcern with conventional sexual mores) and Hart's concern that his core sexual preferences might be homosexual rather than heterosexual. The other is the cumulative nervous tension that Jenifer's public and private activities engendered in Hart, which only increased as Jenifer moved from the civil service to become a don at Oxford. This tension reached a climax in 1983, when Jenifer was identified as having been a Soviet agent in the 1930s, and Hart, in the wake of countering that charge through a defamation suit, was hospitalised due to a nervous breakdown.

Lacey's use of material relevant to these topics is complicated by her special access to the Hart circle. In her biographical note, Lacey indicates that '[w]ith

³⁷ Ibid 144.

³⁸ Ibid 145.

³⁹ Ibid xix.

⁴⁰ Ibid.

⁴¹ Ibid xix–xx.

Jenifer Hart, my relationship has always been warm' and admits to telling her 'that I felt I ought to be writing her life rather than his, since I found her much easier to understand.'⁴² Lacey notes that '[o]ne of my greatest challenges was to write a biography of Herbert Hart while doing justice to Jenifer's vivid personality and substantial achievements'.⁴³ Lacey worked on her book alongside Jenifer, as it were, and three of Jenifer's children read her manuscript in draft. It is unsurprising, then, that Jenifer Hart's personality and career occupies a large portion of *A Life of H L A Hart*.

Readers will surely disagree on the effects of that focus. We learn that Jenifer was a brilliant and striking-looking undergraduate who was 'exceptionally attractive to men';⁴⁴ that she partially rebelled against her upper-middle class, politically liberal, background; that her politics 'gradually took a more radically pacifist and egalitarian turn' in the early 1930s,⁴⁵ when she matriculated at Oxford; that she developed a 'predilection for seducing intellectually powerful men';⁴⁶ that at the time she joined the Communist Party she had a 'taste for personal experimentation and [a] contempt for conventional sexual mores'; and that although she initially 'acted out her political commitment in all areas of her life, ... engaging in lively criticism of herself and others for all petit-bourgeois tastes ... and embarking on an affair with an unemployed milkman', her 'communist activism ... involved a degree of semi-conscious role-playing'.⁴⁷

We also learn about Jenifer's recruitment by the Soviets after 1935; her continued membership of the Communist Party until 1939; her growing intimacy with Hart and his initial reluctance to commit himself to marriage because of fears that he was a suppressed homosexual; her decision to marry Hart and to have a child in the midst of World War II; the ambivalence with which she approached Hart's decision to leave legal practice for Oxford; her acquiescence in Hart's reluctant approach to fatherhood during the war years; their two extended separations accompanying the birth of their first two children; and her determination not to leave London for Oxford, after the war, until she had secured a job.

In particular, we learn about the growing tensions in the Harts' marriage, accentuated by the demands of two careers and the complications at birth that resulted in Jacob Hart's severe brain damage.⁴⁸ By the time of Jacob's birth in

⁴² Ibid xviii.

⁴³ Ibid.

⁴⁴ Ibid 64.

⁴⁵ Ibid 65.

⁴⁶ Ibid 64.

⁴⁷ Ibid 65–6.

⁴⁸ Jacob was born in 1959, when Jenifer was 45. The umbilical cord was wrapped around his neck during delivery, cutting off his oxygen supply. The result was severe brain damage, eventually resulting in behaviour that sometimes resembled autism and at other times hyperactivity and severe mood swings. Over the next 23 years, the Harts tried a number of programmes to improve Jacob's condition, including hiring a full-time caretaker for him, and had some success. Jacob was eventually housed in a residential facility near Oxford in 1982. For details of the Harts' response to Jacob's condition, see *ibid* 237–42; Jenifer Hart, above n 6, 181–92; Karen Armstrong, *The Spiral Staircase: My Climb Out of Darkness* (2004) 78–90, 95–104, 110–19, 150–2. The last book is an autobiography in which Armstrong describes her leaving a convent in

1959, Jenifer had established a fulfilling, if somewhat marginal, academic career. After publishing a book in 1951 on the history and contemporary status of the British police, drawing on her work with the Home Office,⁴⁹ she secured a research fellowship at Nuffield College, which was created to bridge the gap between Oxford and the public professions, and in 1952 successfully applied for a tutorship in modern history at St Anne's College, at that time one of the five all-female colleges of Oxford. St Anne's at the time was not a self-governing institution, had no dining hall, little endowment, and little stature within Oxford University. Thanks, however, to an exceptional Principal, Mary Helen Ogilvie, St Anne's rapidly established itself financially and academically in the period between 1953 and 1966, and Jenifer prospered as well, becoming a tutor in the Philosophy, Politics, and Economics programme in addition to her History duties.⁵⁰

From the outset of her marriage, Jenifer had made it clear that children and domestic responsibilities would remain secondary to her career. After the birth of the Harts' first child, she retained Edith Thomas as a nanny. Thomas would manage the Hart household for the next 36 years.⁵¹ In the late 1940s, Jenifer worked at her job with the Delegacy of Extra-Mural Studies, then went to libraries to work on her book on the British police. 'I have never been able to concentrate on intellectual work', she wrote in her autobiography, 'if I was also responsible for domestic affairs.'⁵² Hart himself was not enamoured of domesticity. He initially resisted having a second child when Jenifer proposed it in 1943, and had, Jenifer felt, a 'deep almost neurotic antipathy towards babies and all that they involved.' She recalled him as being 'self-contained, uninvolved with the inevitable ingredients of marital and family life'.⁵³ Hart also 'complained about [Jenifer's] insatiable and in his view indiscriminate love of parties and social life.' In her view he 'insulated himself against the tedious aspects of family life,' and, in particular, 'avoided getting worried about [Jenifer's] tendency to have romantic liaisons with other men by ignoring such situations.'⁵⁴

Jenifer's liaisons, and the Harts' marital tendency to act as ships passing in the night, each receive ample treatment from Lacey. She is especially interested in linking the regular periods of estrangement in the Harts' marriage — on the two occasions Hart made extensive academic visits to the United States, in 1956–57 at Harvard and in 1961–62 to the University of California at Los Angeles, Jenifer accompanied him for only very short portions — to Hart's concern about his

1969 to study English literature at St Anne's College, where Jenifer Hart was on the faculty. In 1970, the Harts hired Armstrong to be a caretaker for Jacob while pursuing her graduate studies, and she remained with the Harts until 1972, when she had a nervous breakdown.

⁴⁹ The book was J M Hart, *The British Police* (1951). Jenifer stated in her autobiography that she deliberately used initials 'not to reveal that the author was a woman, as I thought that to do so would diminish the readership and the book's influence': Jenifer Hart, above n 6, 124.

⁵⁰ Jenifer Hart, above n 6, 124–37.

⁵¹ *Ibid.*

⁵² *Ibid.* 115.

⁵³ *Ibid.* 163.

⁵⁴ *Ibid.* 163–4.

sexual identity. She quotes from a letter Hart wrote to Christopher Cox in 1937, while in the course of debating whether to leave the bar for Oxford, in which he said that he ‘would become more ... homosexual and less suppressed’ in an Oxford position.⁵⁵ Lacey also quotes from a conversation Hart had with Jenifer that same year, and a subsequent letter he wrote her, in which he said that he was ‘useless to [her] at this stage as a lover’ because ‘I’ve so long suppressed the physical expression of my feelings (because I thought all my feelings were homosexual) that my whole faculty for expression has atrophied and is only gradually coming to life.’⁵⁶

Hart may have had homoerotic urges, he may well have resented Jenifer’s tendency to enter into intimate relationships with other men and he undoubtedly dealt with domestic tensions in his life by adopting a stance of passivity and withdrawal. All of this may have contributed to deep tensions between the Harts. However, it is hard to see how the domestic and sexual dynamics of the Hart household had an effect on the development of Hart’s ideas and the course of his career. After a period of uncertainty in his first years in the New College philosophy fellowship, Hart began to develop a modicum of comfort and competence as a teacher and scholar. By the mid-1950s, he had begun to publish some original philosophical work and had begun the collaboration with Honoré that would result in *Causation and the Law*. He had been appointed to a chaired professorship at Oxford. It was clear that he was going to be a successful and visible scholar, and that, for all his intense self-criticism, he would find this role fulfilling.

In the same period, Jenifer Hart was launching her own academic career, and continuing her pattern of seducing intellectually powerful men. In her autobiography she identifies several academics with whom she had affairs, and Lacey adds some more, including Hart’s lifelong intimate friend, Isaiah Berlin.⁵⁷ In commenting on Hart’s reaction to her ‘tendency to have romantic liaisons with other men’, Jenifer suggested that ‘he was content to see us leading what he called “parallel lives”’, and speculated that ‘[t]his willingness to leave me an unusual degree of freedom was mainly due to the high value he attached to tolerance and liberty.’⁵⁸ Although Jenifer’s comments barely seem to scratch the dynamics of the Harts’ relationship — Lacey does far better on that topic —⁵⁹ the question remains whether *anything* about the Harts’ marriage, or their experience as parents, or their abundant social life, or their employing a

⁵⁵ Lacey, above n 4, 61.

⁵⁶ *Ibid* 74.

⁵⁷ Lacey states that Jenifer’s affair with Berlin had begun by ‘the late 1940s’: *ibid* 177. Lacey also retrieves a 1944 letter that Berlin had written Henry Price, a professor of philosophy at New College, about Hart’s candidacy for the philosophy fellowship. Berlin’s endorsement of Hart was lukewarm. He described Hart as ‘a slender bread-knife’ and predicted that ‘any work he produces will [be] pedestrian ... and will not provide glimpses of something new and exciting’: see Isaiah Berlin, *Flourishing: Letters 1928–1946* (2004) 511. At the same time Berlin was encouraging Hart to accept the fellowship if it was offered: Lacey, above n 4, 116–17. Lacey’s portrait of Berlin, in general, gives him some very large-sized feet of clay.

⁵⁸ Jenifer Hart, above n 6, 164.

⁵⁹ See Lacey, above n 4, 81–2, for a notable exploration of the psychological dynamics of the Harts’ relationship.

nanny for 36 years, or their hiring Karen Armstrong to serve as a caretaker to Joshua between 1970 and 1972,⁶⁰ shaped the development of H L A Hart's career. These factors certainly affected Hart's private life, and they may well have had deep consequences for his psychological wellbeing. But Hart had a tendency to be a highly self-critical, perfectionist, ambitious scholar, well before he met Jenifer Williams. Indeed he remained so from his undergraduate days, until the last years of his life. His marriage to Jenifer may have been unfortunate or it may have been fulfilling, but — even with Lacey's exposition — it is hard to see how, and to what extent, it shaped his academic work.

Lacey is on stronger ground in emphasising the direct impact on Hart of Jenifer's having been a Communist in the 1930s. However, she misses some opportunities along the way. For example, Jenifer Hart's autobiography gives an account of her initial contact with communism and the British Communist Party, which indicates that very soon after she joined the party in 1935, its officials, noting her interest in joining the civil service, asked her to become a secret member. She agreed, and remained an active communist for the next four years, during which she made surreptitious contact with a 'handler', first an Englishman and then someone of foreign extraction who 'went to great lengths to ensure that [they] were not followed.'⁶¹ When Jenifer was subsequently interviewed by MI5 in 1962, considerable effort was made to identify the foreign handler, but she was 'completely unable to identify him' even after being shown several photographs.⁶²

Jenifer states that the Soviets never asked her to reveal secret information to them, and there are reasons to treat that claim as accurate. Although her Communist Party supervisors were apparently delighted that she was placed with the Home Office, her initial work was with the Children's Branch, a division

⁶⁰ Armstrong described the Hart household in the early 1970s as having 'no family life as such', and being 'a household of separate individuals, who shared a house cooperatively': Armstrong, above n 48, 88. During the day, she recalls, 'Herbert and Jenifer lunched and often dined in their respective colleges. If she was at home, Jenifer's suppers were as perfunctory as my own, whereas Herbert enjoyed preparing experimental little messes for himself': at 88.

Armstrong gives the following description of life at Lamledra, the Harts' summer house in Cornwall, at the same time. One weekend, two of the Harts' sons, Adam and Charles, 'turned up, each with a large entourage of wives, girlfriends, and other members of their respective communes': at 151. She recalls that

it was a rather strange house party on that Cornish cliff, with distinguished Oxford academics living cheek by jowl with hippies and other members of the alternative society. But everybody coexisted amicably. On one evening, Herbert and Isaiah Berlin gave a spirited reading of Max Beerbohm's "'Savonarola'" Brown' in the drawing room, and had us weeping with laughter. In the hall, next door, the air was thick with marijuana, while the communards sat dreamily listening to [Charles'] guitar: at 152.

⁶¹ Jenifer Hart, above n 6, 71.

⁶² Ibid 71, 75. The handler may have been Arnold Deutsch, an agent of the Soviet government's principal civilian intelligence agency at the time, the NKVD (Narodny Kommissariat Vnutrennikh Del, or People's Commissariat of Internal Affairs). Deutsch was a resident 'illegal' living in London whose code name was 'Otto'. He may have been involved in the recruitment of Kim Philby, Donald MacClean, Guy Burgess, John Cairncross, and Anthony Blunt, the notorious 'Cambridge Five' spies who passed a significant amount of confidential information to the Soviets in the 1930s and 1940s. See Miranda Carter, *Anthony Blunt: His Lives* (2002) 153–6 for information about Lacey's conclusion that Deutsch was assigned to the 'handling' of Jenifer Hart.

‘which dealt with juvenile delinquency, approved schools, remand homes, juvenile courts, children committed to the care of local authorities, and adoption’ — wholly domestic subjects in which the Soviets would have had no interest.⁶³ She remained with the Children’s Branch for two and a half years.

The strategy of Soviet intelligence at the time was to encourage its agents who had secured government positions, both in the United Kingdom and the United States, to remain in place until they achieved sufficiently responsible positions to have access to confidential information that would benefit the Soviet Union.⁶⁴ Jenifer initially had no access to that sort of information. In the spring of 1939, however, Jenifer became the private secretary to Alexander Maxwell, the head of the Home Office. Suddenly she was at the very centre of Home Office operations at a time in which England, the Soviet Union, and Nazi Germany were making preparations for war. Moreover, the Soviets had initiated secret contacts with the Nazi regime that would result in the Nazi–Soviet pact of August 1939. Jenifer’s Soviet handlers surely would have been thrilled at the prospect of having such a highly placed agent in the Home Office, whose responsibilities were increasingly turning in the direction of civil defence.⁶⁵ But apparently Jenifer was no longer amenable to the Soviets. ‘Certainly by 1939 and indeed probably earlier’, she wrote in her autobiography, ‘I no longer regarded myself as a communist’.⁶⁶ Being a secret member of the party ‘did not suit me’, she noted, since it deprived her of the camaraderie among fellow communists that had attracted her to the party in the first place. She was also disturbed by the Soviet purge trials that began in 1936. In consequence, Jenifer ‘just petered out’ as a communist and potential Soviet agent, and ‘no one in the Party did anything about this.’⁶⁷

Lacey accepts Jenifer’s version of events,⁶⁸ and no evidence has surfaced that Jenifer remained a secret Communist after she became Maxwell’s secretary, let alone that she had any contact with Deutsch or any other Soviet intelligence officials. However, in 1962, MI5 asked to interview Jenifer, and she was interviewed again in 1966. She described the latter interview as a ‘long and rather nasty affair’ in which MI5 officials ‘produced a long list of people and asked me if I knew them.’ The interview was concerned about the infiltration of communists into the British civil service, and one consequence of the interview was that Jenifer was no longer asked to serve on the final selection board of review for civil service positions.⁶⁹

⁶³ Jenifer Hart, above n 6, 76.

⁶⁴ For an American example of a Soviet agent who was encouraged to remain in place after being recruited in the early 1930s, see G Edward White, *Alger Hiss’s Looking-Glass Wars* (2004) 40–6.

⁶⁵ ‘No papers could go to Maxwell except through me’, Jenifer recalled, ‘so I got an insight into the work of the whole Home Office’: Jenifer Hart, above n 6, 90.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.* 71–2.

⁶⁸ See Lacey, above n 4, 67–8.

⁶⁹ For more details on Jenifer Hart’s 1962 and 1966 interviews with MI5, in both of which the ‘spycatcher’ Peter Wright participated, see Jenifer Hart, above n 6, 75–6; Peter Wright, *Spycatcher: The Candid Autobiography of a Senior Intelligence Officer* (1987) 265–6.

In the early 1980s, with the Thatcher government in office, public reaction to persons who had previously been communists in the 1930s became more hostile. Anthony Blunt had been exposed as a Soviet spy in 1979 after many years of official indifference, partly because of his close connection to the British Royal family.⁷⁰ Jenifer Hart herself came under closer scrutiny. In 1981 a journalist, Chapman Pincher, published *Their Trade is Treachery*, an exposé of spies in government positions based in part on interviews Pincher had conducted with Peter Wright. Although Pincher did not mention Jenifer by name, he reported that an employee of the Home Office in the late 1930s had been subsequently interviewed by MI5, and that '[t]he security men were unconvinced' by the employee's disavowal of being a Soviet agent.⁷¹ The Pincher story was subsequently used in a book by the Conservative member of Parliament, Rupert Allason (writing under the name of Nigel West), in which Jenifer was mentioned by name.⁷² In addition, West included the information that Jenifer's husband worked for MI5 in World War II. Jenifer considered legal action against both Pincher and West, but did not proceed.⁷³

By 1983, the fact that Jenifer had been suspected of being a Soviet agent at the same time that Hart was working for MI5 had become a matter of general public knowledge. Jenifer was asked by Christopher Andrew, then a fellow of Corpus Christi College, Cambridge, to participate in a BBC programme on British intelligence and counterintelligence in the 1930s. Jenifer took this as an opportunity to address any suspicions Pincher and West might have raised and gave an interview with Andrew in which she described the attraction communism had had for many members of her generation. The BBC publicised the forthcoming programme, and her interview was sensationalised in press releases. On the basis of the releases and after a telephone conversation with Jenifer, the journalists Simon Freeman and Barry Penrose wrote an article, which appeared in *The Sunday Times* with the headline 'I Was a Russian Spy, Says MI5 Man's Wife'.⁷⁴ In Jenifer's phone conversation with Freeman, who had previously been a lodger at the Harts' house in Oxford, she described how important communist ideals had been for her in the 1930s, and made the comment, 'I mean one felt one wasn't a narrow patriot: I never felt much loyalty to my country, but don't say that'.⁷⁵ She believed that Freeman would use this

⁷⁰ Blunt was closely connected to the Royal family, particularly the Queen Mother, and although MI5 had evidence that he was a Soviet agent from 1964 on, it chose not to expose him until the Thatcher administration took office in May 1979. The revelation took place in November 1979: see Carter, above n 62, xiii, 443–54.

⁷¹ Chapman Pincher, *Their Trade is Treachery* (1981) 137.

⁷² Nigel West, *A Matter of Trust: MI5 1945–1972* (1982).

⁷³ Jenifer Hart, above n 6, 76. She gave as a reason for not filing a libel action that 'the people who knew me would have known that there was no truth in the allegation.'

⁷⁴ Lacey, above n 4, 338–9.

⁷⁵ *Ibid* 340.

information to put the press releases in perspective, but instead he secretly taped the conversation and quoted liberally from it in the article.⁷⁶

Among other things, the article implied that Hart had known of his wife's connections to Soviet intelligence when he was working for MI5 in the 1940s. The Harts retained counsel and sued *The Sunday Times* for defamation. The suit was eventually settled when *The Sunday Times* issued a limited apology (in her autobiography Jenifer called it 'very brief and wholly inadequate')⁷⁷ and agreed to pay the Harts' legal costs. The newspaper declined to retract its statement that Jenifer had admitted to being a Russian spy.⁷⁸ Although Jenifer was 'outraged and defiant'⁷⁹ in respect of what she regarded as the inadequacy of the settlement, which took place in September 1983, Herbert Hart was initially relieved. However, by October he had a complete nervous breakdown and was admitted to a psychiatric hospital. His condition did not improve until early December, when he was given electroconvulsive shock therapy.

Lacey does not downplay Jenifer's communist connections nor the incidents involving Jenifer in the early 1980s that culminated in the allegations about the Harts in *The Sunday Times*.⁸⁰ However, she bases her accounts of Jenifer's involvement with the Communist Party and a Soviet 'handler' in the 1930s, of the difficulties Jenifer faced with MI5 in the 1960s, and of Jenifer's 'exposure' in the early 1980s almost exclusively on Jenifer's autobiography. She does not call attention to the implications of Jenifer's becoming private secretary to the head of the Home Office in early 1939, and Lacey's account of the MI5 interviews tracks Jenifer's in making no allusion to the significance of Jenifer's new position from the point of view of Soviet intelligence. Lacey also follows *Ask Me No More* in stating that Jenifer 'made it clear that ... she had by 1939 at the latest severed her connections with the Communist Party and lost her sympathy with the communist cause.'⁸¹ A letter Lacey quotes, however, reveals that Herbert Hart was worried that the defamation suit might reveal that he had been recommended to MI5 by Jenifer, and that he had not told the MI5 officials about her communist contacts, which he believed were 'over and done with by 1938.'⁸²

⁷⁶ Jenifer Hart, above n 6, 77; see also *ibid* 338–9. The comment Jenifer made to Freeman about her lack of loyalty to her country was reported by Hart in a letter to Isaiah Berlin in August, 1983, quoted in *ibid* 340.

⁷⁷ Jenifer Hart, above n 6, 77–8.

⁷⁸ Lacey, above n 4, 342. The crucial issue in negotiations between the Harts and *The Sunday Times* concerned whether the newspaper would withdraw the term 'spy' in describing Jenifer's characterisation of her activities. *The Sunday Times* argued that since Jenifer had admitted, in her telephone conversation with Freeman, that she had been a 'sleeper' or secret member, of the Communist Party, this gave Freeman and Penrose license to refer to her as a 'mole' or a 'spy'. The paper also argued that its references to Herbert Hart were justified because the fact that an employee of MI5 in the 1940s had a wife who was a former secret member of the Communist Party was a 'matter of utmost public interest'. In the end, the Harts lacked confidence in their ability to win a defamation suit and survive the ensuing legal costs. For some internal correspondence highlighting Herbert Hart's ambivalence to their lawsuit, see at 339–41.

⁷⁹ Lacey, above n 4, 342.

⁸⁰ Indeed, Lacey begins the introduction to her book with a brief account of *The Sunday Times* episode: see *ibid* 2–3.

⁸¹ *Ibid* 338.

⁸² *Ibid* 341.

It seems somewhat ambitious to claim that MI5 was correct in intimating that Jenifer had not been candid with them in describing her connections to the Soviets. The agency was under pressure when it interviewed Jenifer in the 1960s, and intelligence officers are in the business of being suspicious. Yet it does not seem too much to say that since Lacey chose to introduce *The Sunday Times* episode and Hart's subsequent nervous breakdown at the opening of her book, she might have looked a little more deeply into the possibility that the Soviets may have been a good deal more interested in Jenifer Hart than Jenifer suggested. Lacey's treatment of the fracas over Jenifer's communist past seems all the more puzzling because Lacey chooses to connect Hart's nervous breakdown not only to the strains caused by the BBC and *The Sunday Times*, but to Jenifer lying to him about a family matter that arose shortly after the settlement of the defamation suit. Jenifer had written a letter to the facility where the Harts housed Jacob, protesting the fact that after learning that Princess Anne planned to visit the facility, it spent money on redecorations. When Hart learned about the existence of the letter, Jenifer first denied writing it.⁸³ Was Hart concerned that she might also have lied to him about her activities in the 1940s? Lacey does not pursue this question.

The above incident represents the only instance in which Lacey is able to show that Hart's professional life was directly affected by Jennifer's conduct. The cumulatively wearing effect of Jenifer Hart's presence on the life of her husband was surely a major theme of Hart's life, but on the whole, Jenifer's effect on the development of Hart's ideas or his career seems to have been minimal. As Karen Armstrong and Hart himself suggested,⁸⁴ the Harts led parallel lives. In a sense, this is what permitted Hart to fully immerse himself in his academic work. However, only in that limited sense can Jenifer be said to have been an influence upon that work.

V

Despite its difficulties, the cumulative effect of *A Life of H L A Hart* is a positive one. Lacey's painstaking exposition and critique of Hart's scholarship would alone be worth the purchase price, and her discussions of Hart's personality are often germane to her analysis of his career as a scholar.⁸⁵ Lacey's writing is lucid (and occasionally sparkling) throughout, and her insights into the

⁸³ Ibid 343. Lacey suggests that the episode 'seems to have sparked off deep feelings of anxiety and vulnerability' in Hart, which 'connected with the similarly based psychological fall-out of the spy scandal'.

⁸⁴ See Armstrong, above n 48, 138.

⁸⁵ In addition to her discussions of Hart's scholarly career from the 1930s to the late 1960s, Lacey also gives a fascinating account of Hart's scholarly life after he suddenly retired from the jurisprudence chair at University College in 1968. This includes Hart's complicated and competitive relationship with his successor Ronald Dworkin, whom Hart convinced to take the chair: see Lacey, above n 4, 290–3, 328–38. Lacey takes her subtitle, 'The Nightmare and the Noble Dream' from an article Hart wrote in 1977, in which he attempted to come to terms with American jurisprudence and Dworkin's place in it. See H L A Hart, 'American Jurisprudence through English Eyes: The Nightmare and the Noble Dream' (1977) 11 *Georgia Law Review* 969.

personalities of various British academics are often keen and frequently amusing. Lacey remains shadowed, however, by the presence of Jenifer Hart and her at least semi-authorised status. One can feel Jenifer's influence not only explicitly, in the large amount of space she occupies, but implicitly in Lacey's occasional taste for academic and personal gossip, some of it not all that germane to her narrative. One can imagine Jenifer Hart's proposing a lively party, with good talk, banter, and perhaps the random flirtation, Herbert Hart's initially resisting the prospect, and Nicola Lacey's being highly enthusiastic, at least with respect to the talk and banter. If I am not quite as enthusiastic about *A Life of H L A Hart* as I imagine Lacey being about Jenifer Hart's proposed entertainment, I am nonetheless enthusiastic enough. An intellectual biography of a figure like Hart is no easy undertaking, and one written under the shadow of the Hart circle still more difficult. On the whole however, Lacey has coped well with her burdens.