

*A Life of H.L.A. Hart: The Nightmare and the Noble Dream.* By Nicola Lacey [Oxford: Oxford University Press. 2004. xxii+422pp. 16 plates. Hardback: £25]

Nicola Lacey's much-anticipated biography of H.L.A. Hart, Professor of Jurisprudence at Oxford from 1952 to 1968, is a stunning achievement of both story-telling and scholarship. The biography is authorized in the sense that Lacey, a longstanding friend of the Hart family who was on good terms with Hart himself, has had the family's blessing and support in writing it. She has therefore enjoyed generous access to Hart's personal papers and family memories as well as those of many of his friends, colleagues and students. But the biography is not authorized in the sense of having been screened in advance of publication by the family or any other guardians of the great man's memory. This delicate mode of accountability turns out to have been well-suited to the task. The result is a sympathetic and sensitive account of a man who was plagued by serious self-doubt in many areas of his very full and varied life. Hart's torments, many of them spelled out in his letters and diaries, sometimes make for uncomfortable reading, but Lacey has not sanitized their causes to spare the feelings of the living. And yet she has tackled even the most painful parts of Hart's story with an enviably humane and affectionate touch, which extends out beyond Hart himself to many of the other characters in the book. Hart's own warmth, even towards his rivals in love, never mind his rivals in jurisprudence, is made real by the similar disposition of his biographer. Likewise Hart's mischievous and *piquant* sense of humour, with which Lacey wittily conspires.

As well as this personal rapport with her subject, Lacey brings to the book her redoubtable professional competence as a legal theorist. She has a subtle and lively appreciation of Hart's intellectual aims and achievements, a world away from the sterile rendition found in many student textbooks. Nevertheless she presents the main ideas in a straightforward way that, without

infuriating the *cognoscenti*, will be accessible to an educated general readership. In the process, she displays much the same degree of warmth towards Hart the thinker as she does towards Hart the whole human being. She briskly and entertainingly swats the gadflies (mostly lawyers, not philosophers) who have doubted the originality and depth of *The Concept of Law*, and have attributed its standing mainly to institutional favouritism (pp. 232-3). She repeatedly destabilises familiar caricatures, stressing (for example) the extent to which Hart's more purely scholarly work on the nature of law complements and opens the door to his more polemical arguments against repressive and punitive social policies (pp. 256-7). And yet, with Hart's philosophy as with his life, Lacey does not resile from exposing the problematic and the absent. Sometimes, indeed, she has Hart's own assistance in doing so. For just as his letters and diaries are candid in their expressions of personal and professional self-doubt, so they are unflinching in their regime of philosophical self-criticism. Bemoaning his failure to solve philosophical problems to his own satisfaction, Hart often anticipates, and sometimes out-criticises, his later critics. Of his famous account of the nature of obligation in *The Concept of Law*, ch 5, s 2, Hart writes in his contemporaneous notebook: 'Perhaps all I need to convey is that the obligation is strictly *obligation*. i.e.: narrower than belief in moral goodness. But? there is a muddle (in me) I suspect here' (quoted by Lacey, p. 228).

Hart's habit of juxtaposing such philosophical musings with both intimate reflections on his relationships and acute observations on his social and professional environment might tempt a lesser biographer to tendentiousness. Lacey, however, resists the temptation, or perhaps (if we are to judge by the easy flow of her prose) doesn't even feel it. Her critical commentary on Hart's philosophical progress is woven almost seamlessly into the touching narrative of marriage, career, fatherhood, and friendship - but fortunately not by representing the former as a metaphor for or reflection of the latter. True, the subtitle of the

biography, borrowed from the title of one of Hart's articles, suggests a parallel between Hart's life (the outward multiple successes versus the inner multiple torments) and the content of his thoughts (the progressive idealist versus the hard-headed empiricist). But, barring the odd quotation from Hart's diaristic auto-analyses (e.g. p. 202), Lacey draws no parallels of this kind in the book. Indeed the links she forges between Hart's writings and his life are largely of a simple content-independent type: such-and-such a turn of events gave Hart the time, or the strength, or the incentive, to develop such-and-such a project.

The main exception, and it is an inevitable one, lies in Lacey's treatment of the question of philosophical influence. She expects and claims to find many traces of Hart's philosophical *milieu* and *côterie* inscribed in the pages of his books. This is particularly conspicuous when she comes to tackle the important period of Hart's career from 1957 to 1961. Lacey locates Hart's prodigious writings of this period in the mainstream of a movement known as 'Oxford linguistic philosophy', led by Hart's charismatic friend, co-teacher and mentor J.L. Austin. Both *Causation in the Law* (1959, co-written with Tony Honoré) and *The Concept of Law* (1961) are presented by Lacey as belonging squarely to the 'Austin school'. She contrasts this school with a rival Wittgensteinian school of 'linguistic philosophy' then dominant in Cambridge, and wonders, in her role as philosophical critic, how Hart's work might have been different, and indeed better, had he fallen under Wittgenstein's, as opposed to Austin's, philosophical spell (pp. 218, 229).

This part of Lacey's book is intellectually ambitious, and given the short space available to defend its thesis, inevitably raises some eyebrows. To be sure, Hart once held out high hopes for the jurisprudential significance of Austin's thinking. In his 1953 inaugural lecture, as well as in a 1949 paper on rights and responsibility, the philosophical debt to Austin is patent. What is less clear is how much of the same influence works its way into either *Causation in the Law* or *The Concept of Law*. It is easy to get

sidetracked here by questions of style and presentation. Both Austin and Hart, together with Ryle, Grice, and many of their Oxford colleagues, believed that their claims and arguments should not only be respectively true and valid, but also clearly stated (although Austin's whimsical chatter fails the test more often than Hart's workmanlike prose). Some people think that there are truths that cannot be clearly stated – they require poetry or sculpture or some other non-propositional form to convey them – and hence that the demand for clear statement of one's philosophical position is already a philosophical position. If this thought is sound then maybe it puts some philosophical distance between Austin and Hart on the one hand and Wittgenstein, seen by Hart as 'scandalously obscure' (p. 218), on the other. But this contrast does not locate either Austin or Hart in a distinctive school of 'Oxford linguistic philosophy', since their ideal of clearly stated claims and arguments is one they shared with most other Anglophone philosophers of the modern age, and indeed with most other Western philosophers since Aristotle.

What else might locate Hart's 1957-1961 work in a distinctive school of 'Oxford linguistic philosophy'? Austin's remark that 'a sharpened awareness of words [may] sharpen our perception of ... the phenomena' is quoted with approval in the preface to *The Concept of Law*, and the quotation is held up by Lacey (p. 215) as a useful encapsulation of the Oxford school's credo, so long as 'words' is taken to mean 'the use of words'. But is it a useful encapsulation of the credo of *Causation in the Law* and *The Concept of Law*? In neither work, as I read them, do verbal questions, including questions of verbal usage, take centre stage. Words play a supporting, mainly illustrative, role. In *Causation in the Law*, the lead role is taken by 'common sense', which, according to Hart and Honoré, is often but not always echoed in word-use. 'Common sense' here does not have its popular Forrest Gump overtones. It has a technical oppositional meaning specific to philosophers. It signals rejection of the reductionist thesis that there is a secret 'real' nature of things

lurking behind our understanding of their nature, such that the main job of philosophy is not to put our understanding in focus, but to see through the smokescreen of our understanding to the hidden reality behind. According to the approach of *Causation in the Law*, by contrast, the world is irreducibly carved up as we already carve it up. True, there is causation in the objects, out there in nature, and it would be so even if there were no people to conceive of it. Scientists can help us detect it and explain its patterns. But *its being causation* is neither settled by nature nor amenable to empirical study. Its being causation is settled by the classificatory machinery of human thought and amenable only to philosophical (Hart would never have said 'metaphysical') reflection. Much the same anti-reductivist themes, in my view, dominate *The Concept of Law*. Both books are located firmly in the Aristotelian tradition of 'respect for appearances', which are rightly held up by Hart as partly constitutive of realities. But neither book shows much sign of a particular respect for the appearances that are conjured up specifically by *words and their use*. More distinctive is their resistance to the Quinean reduction of the conceptual to the empirical, for which the comically self-styled 'realists' of American law schools are the muscular henchmen. (Comical because, in Hart's Aristotelian perspective, American Legal Realism stands to reality much as the German Democratic Republic stands to democracy.)

No wonder, then, that Hart was unhappy (p. 143) to find himself among the targets of Ernest Gellner's 1959 attack on 'Oxford ordinary language philosophy'. He might plausibly have gone further - to judge by what is left of the correspondence with Gellner, he possibly did go further - by denying the existence of any such school of thought, and reinterpreting Gellner's work as a veiled personal attack on a mere social clique. There is certainly a decent case to be made for Grice's later assessment that '[t]here was no "School"; there were no dogmas that united us' (Grice, 'Reply to Richards' in R.E. Grandy and R. Warner (eds), *Philosophical Grounds of Rationality* (1986), at p.

50.) There is also little reason to think that any such 'school' as did exist was 'Austinian'. Austin fired his younger colleagues, including Hart, to think and write, and he set a certain intellectual tone, but his own philosophical contribution was shallow. As Tony Honoré has wryly observed, Austin's 'theory of speech-acts owed more to Hart than Hart owed to him' (unpublished paper held on file; cf Lacey, p.145). And there is equally little case for regarding whatever contemporary philosophical school Hart belonged to as distinctively 'Oxford'. Philosophically, albeit not stylistically, Hart's work is impeccably late-Wittgensteinian. The key theme of the *Philosophical Investigations* (best captured in §126-9) is the same anti-reductivist one that dominates Hart's work. It is doubtful whether, as Lacey suggests (p.218, p.229), a yet more Wittgensteinian outlook might have led Hart to pay more attention than he did to questions of *context*. Particular laws and legal systems have their contexts, to be sure, as do the words and sentences used by their participants, as do mentions of 'law', 'legality' and so forth. But law (the practice, the institution, the normative genre) is found in many different contexts. Understanding what law is means understanding this acontextual feature of it. The same is true of understanding the nature of causality. In both cases context-adaptability is part of the very thing to be understood, because it structures our understanding of that thing and helps to give it its place in what Wittgenstein called the 'grammar' of discourse (=the logical interconnection of ideas).

These issues of philosophical influence and allegiance are hard to adjudicate. They are largely matters of emphasis, as Lacey makes clear in an important endnote (p.383). One cannot look to Hart himself for an adjudication because most of Hart's work is philosophically unselfconscious. He works on the problems he works on, not on the further problem of how those problems are to be worked on or what kind of problems they are. He is the metaphysical monocyclist who, as soon as he begins to wonder how he stays upright, wobbles and risks falling off. His forays into

the investigation of his own philosophical outlook, with the possible exception of his rejection of a crudely lexicographical approach in his inaugural lecture, were not notably successful. The ambitious 1949 paper on responsibility and rights he later disowned. His remarks on the nature of his enterprise in the preface to *The Concept of Law* are distinctly wobbly, although (or because) suggestive of intriguing Quine-versus-Wittgenstein ambivalences lying unresolved. And the quality of Hart's posthumously-published postscript to the same work is, as Lacey says, 'uneven' (p.353). This is partly because unrelated troubles in Hart's life in the 1980s obstructed his ability to work on the postscript in a sustained way, so that his editors were left with fragments and annotated drafts of variable quality. But it is also partly because, by the late 1980s, his Oxford professorial successor and arch-critic Ronald Dworkin had drawn Hart back onto his least comfortable intellectual terrain.

In Hart's earlier rejoinders to Dworkin the topics were law, legal rules, legal obligations, and legal reasoning. On these topics Hart was fully at ease and confidently resisted Dworkin's attacks. Dworkin's characteristic reaction to such resistance, however, was not to persist with the same battles, but to take the war to a higher level. As Lacey puts it, Dworkin kept 'upping the ante' (p.349). By 1986, in *Law's Empire*, Dworkin was arguing that the classic debates in the philosophy of law were mainly to be resolved at the level of first philosophy, or metaphysics. They were not debates merely about the nature of law, legal rules, and so on, but about the nature of human understanding of such things as law and legal rules. By driving him up towards these high planes of first philosophy, Dworkin deprived Hart of his unselfconscious (but fully justified) confidence in his work as a philosopher of law, and made his final replies to Dworkin seem frail and defensive. To switch metaphors, Dworkin tempted Hart to worry about how he was staying upright, so that he wobbled dramatically. Many think that it would have been better for the philosophy of law had he ignored the distraction, and kept his

eye firmly on his original destination. In an almost unbearably sad final chapter, Lacey explains how not paying so much attention might also have improved Hart's quality of life in his last few years. 'Dutiful to the last', Lacey writes, 'he could not bring himself to give up the effort [of continued work on the postscript], but his energy was running out' (p. 352).

Dworkin got under Hart's skin. But only Hans Kelsen seriously challenges Hart's claim to be the most important legal philosopher of the twentieth century. Kelsen tackled more philosophical problems about law in more detail and with fewer ambivalences. Thesis for thesis, argument for argument, Kelsen's achievement may be greater still than Hart's. But Hart was less dogmatic and left more room for his successors to keep faith with the main thrust of his thinking, often dramatically at odds with Kelsen's, while excising or improving particular elements. That, coupled with the humane outlook so sympathetically explored by Lacey, explains why his intellectual legacy is so awesome. As Zenon Bankowski wrote immediately after Hart's death in 1992 (quoted by Lacey, p. 361): 'Then, there was only him. Now, a hundred flowers bloom. This is his lasting contribution.'