

## **Book Review – Deconstructing Hart: A Review of Lacey’s *A Life of H.L.A. Hart* (2004)**

By *Samantha Besson\**

[Nicola Lacey, *A Life of H.L.A. Hart. The Nightmare and the Noble Dream*, Oxford University Press 2004, ISBN 0-19-927497-5, pp. 328, \$35.00]

### **A. Introduction**

Herbert Lionel Adolphus Hart, mostly known as H.L.A. Hart, is one of the twentieth century’s greatest legal philosophers. His approach to legal philosophy uniquely combines both simplicity and conciseness, on the one hand, while aiming at elucidating a concept of law of relevance to all forms of law wherever or whenever they arise, on the other. Hart’s bestselling book *The Concept of Law* claims to provide a general, descriptive theory of law, i.e. an account of the actual as opposed to the ideal nature of law. In a nutshell, Hart’s theory is that law is a system of primary and secondary social rules structurally similar to the rules of a game. *The Concept of Law* has been commented upon and interpreted for more than fifty years now and there is no shortage of contributions in what one may call “Hartology.” This has, of course, been epitomized by the so-called Hart-Dworkin debate, but the controversy stirred by Hart’s legal philosophy extends far outside the *chasse-gardées* of Oxford or even American jurisprudence.

One knew little, however, of the man himself until Nicola Lacey’s recent biography. *A Life of H.L.A. Hart. The Nightmare and the Noble Dream*<sup>1</sup> draws on Herbert Hart’s previously unpublished diaries and letters to reveal a complex inner life and the constant tension throughout his lifetime between an externally successful private

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<sup>1</sup> NICOLA LACEY, *A LIFE OF H.L.A. HART. THE NIGHTMARE AND THE NOBLE DREAM* (2004).

and public existence and deep internal doubts about his intellectual abilities, his Jewish identity, his sexual identity and his capacity to form close relationships. By unravelling a life the intensity and gravity of which no one, not even his wife and colleagues,<sup>2</sup> had imagined, and in view of the impression which Hart gave to those who had met him, i.e. that of “a mildly intellectually abstracted elder statesman,”<sup>3</sup> Lacey’s biography sheds new light on the origins and the depth of Hart’s work.

*A Life of H.L.A. Hart* is a concise and extremely well organized biography in spite of being a very rich and full one. It starts with an interesting Note on the biographer’s approach and sources. In the Introduction, Lacey captures in just a few pages the essence of Hart’s life and sets the tone for the book, explaining its *leitmotiv*, i.e. what one may understand as Hart’s nightmare and his noble dream. In Lacey’s own words,

Notwithstanding Hart’s extraordinary success, his personal papers reveal that he was tormented by doubts about his own intellectual abilities, about his ability to manage his high-profile job, and about his capacity to form close relationships. Such anxieties are, perhaps, a relatively normal feature of life for most high achievers. But what is particularly intriguing about Hart’s interior life is that, though he would widely be regarded as a quintessential “insider,” the fact he felt himself to be very much an outsider. This contrast between his public and private worlds raises fascinating questions not only about Hart’s background and personality but also about the nature of his intellectual creativity and about the quality of the social world, with its various intersecting hierarchies, in which he lived. These contrasts between external success and internal perplexities, between being an insider but feeling like an outsider, constituted dynamic tensions which shaped almost all Hart’s work and relationships, and they provide *the themes around which this book will explore Hart’s life and scholarship*.<sup>4</sup>

The biography entails four parts. These four parts follow a chronological order, but do so switching the focus of attention each time. The first part “North to South” provides an account of Herbert Hart’s childhood in Yorkshire in a second-generation Jewish immigrant family at the turn of the twentieth century, his “going up to Oxford” in 1926 and his years practising at the London Bar from 1932 to 1940.

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<sup>2</sup> See, e.g., *id.* at 129 (Jennifer Hart); 353 (Ronald Dworkin).

<sup>3</sup> *Id.* at 1.

<sup>4</sup> *Id.* at 3 (emphasis added).

The second part moves on to what is assumed to be the crucial moment in Hart’s life: his return from the Inns of Court, after the war and after a passage through MI5 from 1940 to 1945, back to a Philosophy Fellowship in New College, Oxford and, in parallel, his meeting his future wife, Jenifer Williams (a high-ranking civil servant, later an accomplished Oxford academic), their marriage and the novelty of fatherhood. This second part is significantly entitled “Change and Continuity” in reference to the biographer’s thesis that Hart was all his life an “outsider on the inside,”<sup>5</sup> i.e. someone who moved into many new circles in his life, and unusually changed his life dramatically at 38 by leaving the Bar and going back to Oxford academia after a very long gap,<sup>6</sup> but always felt the same anguish internally and thus constantly felt excluded. In its third part, “The Golden Age,” the biographer narrates Hart’s *débuts* in the Oxford Law Faculty as a new Professor of Jurisprudence and the genealogy of Hart’s major works in jurisprudence, oscillating between periods of intense writing in Oxford and crucial academic stays in Harvard, California and Israel. The last part of the book, “After the Chair,” retraces the last years of a retired Professor of Jurisprudence after 1968, busier than ever both socially as Principal of Brasenose College, Oxford and academically in the context of a Leverhulme research project on Bentham, but also deeply anguished and depressed by the task he had set himself of publishing a reply to his critics. More generally, the book also throws light on the philosophical and jurisprudential Oxford of the 1950s, 1960s and 1970s and the circle of legal philosophers, both colleagues and students, with whom Hart forged his ideas. In spite of its dense content, the biography’s prose is clear and fluent throughout, in a style of which Hart would have approved,<sup>7</sup> and this makes it extremely enjoyable to read.<sup>8</sup> Additionally, the biography is complemented with interesting illustrations, mostly pictures of Herbert Hart, his family and friends.

Setting about reviewing a biography is a difficult task. Reviewing Lacey’s biography is an even more daunting one. It cannot indeed be reviewed like a legal or jurisprudential argument. In contrast, for instance, with Neil MacCormick’s *HLA*

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<sup>5</sup> *Id.* at 1.

<sup>6</sup> *See id.* at 122.

<sup>7</sup> *See id.* at xxii. “Since my ambition was to write a book which could be read as a complete narrative, and following Herbert Hart’s own example in *The Concept of Law*, [...]”

<sup>8</sup> There are now and then a few repetitions, but they are mostly an implication of the literary genre that implies recursive narrative processes.

*Hart*,<sup>9</sup> it was not Lacey's aim to produce a new interpretation of Hart's work. She did not intend "to write an extended analysis of Hart's scholarly legacy," but "an intellectual biography."<sup>10</sup> True, *A Life of H.L.A. Hart* is not purely about Hart's private life either, but is concerned with what it is like to be a philosopher and the complex emotional structures that sustained Hart's pursuit of philosophical knowledge. As Waldron and Blackburn observe, "Lacey's book is philosophically illuminating, but it is also about philosophy and what it is like to do philosophy (as a particular form of life in a particular social context). It is a biography, not a textbook."<sup>11</sup> This makes it a quixotic choice for a reviewer writing for a legal journal to do justice in a single article to Lacey's complex and fully integrated account of Hart's "life and work."

Much has already been said about this book's revelations on Hart's work and life and its in-depth use of intimate material,<sup>12</sup> on the one hand, and its reconstruction of Hart's philosophical contribution in light of his personal doubts and concerns on the other.<sup>13</sup> Little attention has been paid so far, however, to the biography's approach and method in spite of the biographer's own awareness of its specificity.<sup>14</sup> It is, in other words, the biography itself which will be reviewed here, and not only its object. Lacey's book may indeed, I would like to argue, be classified as a special genre of biography: jurisprudential biography or even biographical jurisprudence. It combines an acute philosophical understanding of Hart's legacy in legal philosophy, possible only because of the jurisprudential background of the

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<sup>9</sup> NEIL MACCORMICK, *HLA HART* (1981).

<sup>10</sup> LACEY, *supra* note 1, at xxii.

<sup>11</sup> Simon Blackburn and Jeremy Waldron, "Letter" In Reply to Thomas Nagel's Review of Nicola Lacey's Book, 27 LONDON REVIEW OF BOOKS No. 4 (2005), available at <http://www.lrb.co.uk/v27/n04/letters.html>.

<sup>12</sup> See the exchange between Thomas Nagel, Jeremy Waldron and Simon Blackburn. Letters, 27 LONDON REVIEW OF BOOKS No. 4 (2005), available at <http://www.lrb.co.uk/v27/n04/letters.html>. See also Thomas Nagel, "The Central Questions" – Review of Nicola Lacey's *A Life of H.L.A. Hart*, 27 LONDON REVIEW OF BOOKS No. 3 (2005), available at [http://www.lrb.co.uk/v27/n03/nage01\\_.html](http://www.lrb.co.uk/v27/n03/nage01_.html).

<sup>13</sup> See the same exchange between Nagel, Waldron and Blackburn, *supra* note 12. See also Nagel, *supra* note 12.

<sup>14</sup> See the *Biographer's Note on Approach and Sources* at the beginning of the book.

biographer, with the deep empathy and “living with someone aspect”<sup>15</sup> that are necessary to a good biography. In doing so, Lacey succeeds in capturing both the intense and successful intellectual endeavour in Hart’s public life and the simultaneous disarray and turmoil that characterized his inner life. Albeit specific, this kind of philosophical biography is not entirely new. In fact, Hart himself read and was puzzled by Brian McGuinness’ biography of Wittgenstein.<sup>16</sup> What is new in Lacey’s biography, however, is the kind of feminist jurisprudence that underlies her jurisprudential biography of Hart. As a consequence, the present review will, first of all, expand a little on the *approach* of Lacey’s biography, before looking more closely at two particular themes of the book revealed by Lacey’s specific biographical approach:<sup>17</sup> firstly, *the different layers in Hart’s social identity* and, secondly, *Hart’s self-destructive creativity*.

## B. From Feminist Jurisprudence to Jurisprudential Biography

Lacey is not a professional biographer, but a legal philosopher. As such, her biography is not an orthodox biography, if such biographies exist. Lacey is, however, a feminist legal philosopher and she confesses that her jurisprudential perspective influences her interpretation of Hart’s work in the book.<sup>18</sup> She is, in other words, a woman and a feminist jurist writing the biography of a man and an icon of jurisprudence. Lacey is conscious of the unprecedented nature of her

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<sup>15</sup> LACEY, *supra* note 1, at xviii.

<sup>16</sup> *See id.* at 357.

<sup>17</sup> On these two central questions, *see id.* at 3. “This contrast between his public and private worlds raises fascinating questions not only about Hart’s background and personality but also about the nature of his *intellectual creativity* and about the *quality of the social world*, with its various intersecting hierarchies, in which he lived.” (emphasis added).

<sup>18</sup> *Id.* at xix. *See, e.g.*, NICOLA LACEY, UNSPEAKABLE SUBJECTS (1998); Nicola Lacey, *Feminist Perspectives on Ethical Positivism*, in JUDICIAL POWER, DEMOCRACY AND LEGAL POSITIVISM (T. Campbell and J. Goldsworthy eds. 2000); Nicola Lacey, *Philosophical Foundations of the Common Law: Social not Metaphysical*, in OXFORD ESSAYS IN JURISPRUDENCE (J. Horder ed. 2000); Nicola Lacey and E. Jackson, *Introducing Feminist Legal Theory*, in JURISPRUDENCE AND LEGAL THEORY: COMMENTARY AND MATERIALS (J. Penner, D. Schiff and R. Nobles eds. 2002); Nicola Lacey, *Feminist Legal Theories and the Rights of Women*, in GENDER AND HUMAN RIGHTS (Karen Knopp ed. 2004).

approach, as she starts the book with a six-page Note on her approach and sources. At the outset of that Note, she observes, in a very jurisprudential manner:

Biography is not a genre distinguished by any one methodology. But the reader of a biography is entitled to know not only the details of the biographer's sources, but also something of the biographer's approach and relationship with her subject.<sup>19</sup>

Lacey organizes her methodological remarks into two groups: her approach and her sources. With respect to her *approach*, Lacey gives as prime motivation for writing Hart's biography both her "knowledge of Herbert Hart and his work and a taste for biography."<sup>20</sup> She acknowledges that she then had no qualifications as a biographer other than the latter. What she adds, however, is how, like many legal academics of her generation, Hart's writings have been one of the primary catalysts of her work. While her early work was "a sympathetic analysis and revision of a position originally defended by Herbert Hart," her later work as a sociologist and feminist legal theorist has come to take a more critical view of his ideas, "and in particular of his vision of the distinctively philosophical boundaries of legal theory."<sup>21</sup> "These criticisms," she says, "have shaped my interpretation of his works in this book."<sup>22</sup> Later on, she adds that her use of intimate material was essential to any interpretation of Hart as a whole person.<sup>23</sup> This way of interpreting Hart's work and Hart as a person as a whole,<sup>24</sup> but also of insisting on interpreting Hart's whole person in both its public and most private dimensions, is characteristic of Lacey's feminist theory. Her approach is characterized indeed by a rejection of the public/private divide, on the one hand, and the tension between theory and practice, on the other.<sup>25</sup> Seen in this light, and in retrospect of what she found in Hart's diaries, she seemed the perfect person to take on his biography. This was in fact one of Lacey's aims, as she tried to "bring alive on the page the complicated,

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<sup>19</sup> LACEY, *supra* note 1, at xvii.

<sup>20</sup> *Id.* at xix.

<sup>21</sup> *Id.* at xviii-xix.

<sup>22</sup> *Id.* at xix.

<sup>23</sup> *Id.* at xx.

<sup>24</sup> *See id.* at 3 ("Life and Scholarship").

<sup>25</sup> *See, e.g.,* LACEY, UNSPEAKABLE SUBJECTS, *supra* note 18.

very human man whom so many readers of his academic work think of as the impersonal icon.”<sup>26</sup>

With respect to her *sources*, one should mention Lacey’s first-hand knowledge of Hart, her use of unpublished material and her extensive recourse to interviews. First, as regards her *personal knowledge* of Herbert Hart, Lacey met Hart as a graduate student at Oxford in 1979 and got to know him even better when she became a Law Fellow at New College in 1984. Lacey acknowledges that the fact that she had met Herbert Hart “was of tremendous help in writing her book.”<sup>27</sup> As a result, it came naturally to her to often refer to Herbert Hart as “Herbert” in the biography. Despite her first-hand knowledge of Hart, it is a quality of Lacey’s biography that she remains extremely discreet in the book and hence succeeds in remaining an “underlying interpreter” rather than a “visible actor.”<sup>28</sup> Interestingly, Lacey confesses that she went through very much the same feeling of discovery as the one she conveys to her readers; although knowing Hart and being “very fond of him,” she discovered a lot about him she did not expect in the process of unearthing his personal papers. Touchingly, she writes that her “greatest piece of luck has been that –leaving aside the inevitable moments of irritation or distaste which mark most human relationships– at the end of this voyage of discovery, she likes him as much as when she started.”<sup>29</sup> In this “living with someone aspect” of Lacey’s biography, with its good and bad moments, lies one of the secrets of the book’s vivid humanity.<sup>30</sup>

A strong presence in the whole book is Jenifer Hart. Lacey does not hide her “warm” relationship with her and her great admiration for her “inimitable style.”<sup>31</sup> This contributes to making Jenifer’s presence unmistakable throughout the book. Some critics have felt ambivalent about this and have sensed a kind of self-

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<sup>26</sup> LACEY, *supra* note 1, at xvii.

<sup>27</sup> *Id.* at xvii.

<sup>28</sup> *Id.* at xvii. One exception is on page 352 and even then it is a scientific contribution rather than a personal one.

<sup>29</sup> *Id.* at xviii.

<sup>30</sup> *Id.* at xvii.

<sup>31</sup> *Id.* at xviii.

justifying work in Lacey's enterprise.<sup>32</sup> Lacey herself concedes that she felt at some stage that she ought to be writing Jenifer Hart's life rather than Herbert's and that one of her "greatest challenges was to write a biography of Herbert Hart while doing justice to Jenifer's vivid personality and substantial achievements."<sup>33</sup> Here lies one of the key contributions of Lacey's biography: reconstituting the entirety of Hart's life as both a public philosopher and a private man whose wife was for self-evident reasons an important part in his life. It is not merely about saying that "behind every great man, there is a great woman," or vice-versa, but rather that most people have a life partner and that we cannot fully understand a person without understanding his or her relationship to this partner.

Second, as regards her *previously unpublished sources*, one of the biography's novelties lies in the sources Lacey has been able to access and use to construct her narrative. Besides an extensive scholarly work, such as using the vast number of articles and books concerned with Hart's contribution to legal and political philosophy, Lacey's most valuable source in constructing her account of Hart's life and work has been the collection of *private papers*, mostly diaries and letters, gathered together by Jenifer Hart after his death. During his whole life, Hart regularly used notebooks and diaries in which he mixed comments on his work and inner life. Rich and varied, this collection presented the problem of being somewhat disorganized and hard to decipher. As a result, Lacey felt drawn into Hart's "gloriously chaotic working habits," which she often refers to in the book, and lacked confidence that her efforts "would bring forth the sort of crystal prose and clear structure which miraculously emerged from Hart's own hailstorm of notes and annotations."<sup>34</sup>

This is a dimension in Lacey's approach which some have questioned. If her specific feminist and very personal approach makes for a successful bridging of the internal and the external in Hart's life, some have objected to the use of intimate material without the subject's express or implied consent, until a substantial time after his death.<sup>35</sup> True, it has now become part of the *air du temps* to expose much more of one's private life and biographies make no exception to that trend. Although it might be interesting to explore the pros and cons of that evolution,

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<sup>32</sup> See Nagel, *supra* note 12.

<sup>33</sup> LACEY, *supra* note 1, at xviii.

<sup>34</sup> *Id.* at xx.

<sup>35</sup> See Nagel, *supra* note 12.



scope precludes addressing the issue here. Interestingly, however, one may draw attention to Lacey's concern to circumvent such critiques. She signals in the first pages of the bibliography that, although hers is not an "authorized biography" and that Jenifer Hart had not read it before publication, Jenifer had been the one to offer her the opportunity to write this biography and gave indispensable assistance all along.<sup>36</sup> Moreover, Lacey also emphasizes that Hart's children had read and commented on a draft of the book.<sup>37</sup> In fact, Lacey acknowledges that one of her dilemmas "had to do with the very personal nature of some of Hart's letters and diaries."<sup>38</sup> As a result, she had to develop a criterion and 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."<sup>39</sup> "This turned out," she says, to be the case most of the time, "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."<sup>40</sup> Thus, Lacey insists on her overall method being one of "interpretation" rather than "discovery"<sup>41</sup> by reference to the famous Hart-Dworkin debate on the scope of judicial discretion and gaps in the law; she has tried "to write about Herbert Hart in a way which opens up the different levels of meaning which might be given -indeed which, at different moments, he gave - to his life, without in the process being irritatingly tentative"<sup>42</sup>

Finally, Lacey also conducted *interviews* with many colleagues, students and friends of Herbert Hart and these proved to be a fascinating source of information. She also received "dozens of letters and emails from Herbert Hart's friends, colleagues and students" who responded to her inquiries, answered her advertisements, or heard

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<sup>36</sup> LACEY, *supra* note 1, at xix.

<sup>37</sup> *Id.* at ix. See J. RYAN, "Letter" In Reply to Nagel's Review of Nicola Lacey's Book, 27 LONDON REVIEW OF BOOKS No. 4 (2005), available at <http://www.lrb.co.uk/v27/n04/letters.html>.

<sup>38</sup> LACEY, *supra* note 1, at xix.

<sup>39</sup> *Id.* at xix.

<sup>40</sup> *Id.* at xix-xx.

<sup>41</sup> *Id.* at xix. Contra: *id.* at xviii ("Voyage of Discovery").

<sup>42</sup> *Id.* at xix.

from other sources that she was working on Hart's biography.<sup>43</sup> This is not surprising to anyone who knows Oxford and the amount of gossip that its mode of functioning generates, thus accumulating over the years a significant form of oral history. In fact, a striking effect of Lacey's biography has been the extraordinary mobilization it has prompted in the Oxford jurisprudential community around Hart's legacy, which has become a central element of shared identity among different scholars. For those who were there, one may even speak of a certain *catharsis* through confession and interposed discussion about the past in this very small microcosm.

### C. Hart's Multi-layered Social Identity

Besides affecting the overall approach of the biography, Lacey's background in feminist legal theory leads to a specific analysis of Hart's identity. The latter is indeed deconstructed into the different layers of what Lacey refers to as the social world with its "various intersecting hierarchies"<sup>44</sup> in which Hart lived. Among these different strands of Hart's identity as a middle-class<sup>45</sup> Jewish man, unpacked by Lacey, one may mention most particularly his sexual identity, his Jewish identity and his masculine identity. All of them concur with others from the very beginning of Lacey's narrative to gradually constitute what emerges as the complex knot of Hart's inner struggles and lie at the origins of his constant feeling of exclusion and longing for belonging as an "outsider on the inside."<sup>46</sup> It is an interesting coincidence to see a sociological method, which is the result of years of critical legal theory, applied to the life of a thinker whose eminently philosophical approach to legal theory has contributed in part to reinforcing this critique.<sup>47</sup>

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<sup>43</sup> *Id.* at xxi.

<sup>44</sup> *Id.* at 3.

<sup>45</sup> *Id.* at 66 (Connecting the mutual attraction of Herbert and Jenifer Hart to their different social origins and their respective longing to belong to the opposite side).

<sup>46</sup> Interestingly, Lacey uses a "back and forth" narration technique in emphasizing elements in her story that allow her to attract attention on features which will be confirmed later on.

<sup>47</sup> See LACEY, *supra* note 1, at xviii. See also *id.* at 229-232. On this debate, see H.L.A. Hart, *American Jurisprudence through English Eyes: The Nightmare and the Noble Dream*, 11 *GEORGIA LAW REVIEW* 969 (1977).

### *I. Hart and Sexuality*

One of the most controversial dimensions of Hart’s identity unearthed by Lacey’s biography is undoubtedly his ambivalent sexual identity. Even though Lacey is clearly interested by this issue for the theoretical reasons I have alluded to before, and hence might sometimes exaggerate its meaning,<sup>48</sup> she assembles very conclusive elements in Hart’s biography in this respect. Lacey starts by revealing a significant confidence Hart made to Christopher Cox, an old College tutor and friend, regarding his reservations to returning to Oxford:

I am or have been a suppressed homosexual (I see you wince) and would become more so (I mean more homosexual and less suppressed) in Oxford.<sup>49</sup>

This ambivalence did not prevent Hart from falling in love at roughly the same time with Jenifer, marrying her and living with her for the rest of his life. It did, however, add a tension to their relationship from its very early days, as Lacey reconstructs from Hart’s diaries and letters.<sup>50</sup> From his early revelation of his “emotional atrophy” and suppressed homosexual feelings to his wife,<sup>51</sup> to their epistolary dialogue during his year at Harvard,<sup>52</sup> his doubts about his sexual identity and frustration due to his incapacity to please her constantly recurred in his diaries and underlay many of his moments of deep depression until the end of his life.

### *II. Hart and Judaism*

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<sup>48</sup> See, e.g., LACEY, *supra* note 1, at 61. “There is *no evidence* that Herbert had any significant sexual relationships during the first half of the decade. This *lack of* sexual relationships might be explained in terms of the amount of time he was devoting to work, and the emotional reserve which characterized most of his friendships was doubtless to some degree simply a product of the prevailing culture in the 1930s.” (emphasis added).

<sup>49</sup> *Id.* at 61.

<sup>50</sup> *Id.* at Chapter 4.

<sup>51</sup> *Id.* at 73-74.

<sup>52</sup> *Id.* at 203-208.

Born and raised in a practising Jewish family in Harrogate, Hart never introduced himself as such and very few people in his college years or later in life knew about his origins. He even felt uncomfortable being reminded of them.<sup>53</sup> This was a consequence of his liberal and individual approach to life and work. As Lacey captures well from the outset of her narrative, Hart's "sense of the need -indeed entitlement- to be judged as an individual rather than as a member of a group, his hatred of discrimination, sat in productive tension with a deep sense of wanting to belong, and with a failure ever entirely to feel he had achieved this."<sup>54</sup>

Things changed with his trip to Jerusalem which brought his identity back to the surface of his consciousness and made him very uneasy as to how to reconcile his secular liberalism with his now fully conscious Jewish identity.<sup>55</sup> Later on in Oxford, he once made the comment to Ronald Dworkin, his successor in the Oxford Chair in Jurisprudence, that no English person had held the Chair for decades. Dworkin replied "But you are English." "No," Herbert retorted, "I'm Jewish."<sup>56</sup> In his last years, as Lacey gathers from Hart's different conversations with friends and colleagues, unresolved feelings about his Jewish identity led Hart to become deeply and unnecessarily anxious about anti-Semitism in Britain.<sup>57</sup>

### *III. Hart and Gender*

As a liberal, Hart rejected every form of group discrimination. This applied most clearly to any kind of gender discrimination. He met and married an extremely independent and accomplished woman, Jenifer Hart, who led a full career, first as a civil servant in London and then as an academic in Oxford. At first, and this was very unusual at that time when all academics and their families lived in Oxford, the couple decided upon Hart's return to Oxford that Jenifer would remain and work in London, while Hart would live in Oxford during the week, returning to the family in London at weekends.<sup>58</sup>

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<sup>53</sup> *See id.* at 33-35.

<sup>54</sup> *Id.* at 12.

<sup>55</sup> *See id.* at 269.

<sup>56</sup> *See id.* at 271.

<sup>57</sup> *Id.* at 342.

<sup>58</sup> *See id.* at 119.

True, Hart's engagement in favour of women's causes remained discrete and individual, as did most of his political engagements. Interestingly, however, Lacey emphasizes that in his last years, Hart became more overtly political. She gives the example of an incident related to an issue that has not yet entirely vanished from High Table jokes in Oxford, that of opening Oxford Fellowships to women.

Each summer vacation, University College and All Souls had a reciprocal dinner arrangement, and during the period in which All Souls Fellows were dining at University College, Sparrow [an alcoholic friend of Hart] had made his misogynistic views objectionably apparent in the hearing of one of the College's two women Fellows. Outraged by Sparrow's behaviour, a small group of University College Fellows decided to mount a quiet protest by dining in All Souls the following week accompanied in each case by a female guest. Jenifer had always had a taste for this kind of gesture: at one Oxford dinner, she had famously refused to withdraw with "the ladies" while "the gentlemen" took their port and cigars. But Herbert had always been reluctant to take part in such protests. Somewhat to his colleagues' surprise, he now agreed that he and Jenifer would join the group. At All Souls, this gathering lined up on one side of the table, confronting the entirely male All Souls team on the opposite side (the College had not a single female Fellow at the time).<sup>59</sup>

#### D. Hart's Self-destructive Creativity

A more general and recurrent feature of Hart's complex inner life, that possibly resulted from the complex layers of his social identity, was his profound insecurity and self-doubt. This led to great indecision about what to do at different stages of his life and to a constant longing for belonging. Lacey uses this permanent dimension of Hart's inner life as her narrative thread throughout the book. When faced with the decision of whether to return to academia and an Oxford Fellowship, for instance, Hart beat about the bush between the Bar and philosophy for years.<sup>60</sup> His indecision lay not only in his anxiety about returning to academic work after such a long gap, and this despite being often bored by legal practice at the Bar,<sup>61</sup> but also in deep psychological doubt:

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<sup>59</sup> *Id.* at 356.

<sup>60</sup> *See id.* at 51-57.

<sup>61</sup> *See, e.g., id.* at 112 ff.

Though intermittently happy I feel that I should be predominantly melancholy in Oxford and the Oxford atmosphere: At the bar one just feels quasi-dead and overworked or plain bored but not melancholy in the insidious sapping Oxford way [...].<sup>62</sup>

Hart's self-doubt extended not only to his feelings, but also to his appreciation of his own intellectual worth. Hart believed that he was never going to become a first rate philosopher. As he once put it, he could "sell just a little philosophy to the lawyers."<sup>63</sup> Earlier, when considering leaving the Bar to go back to Oxford, he had written to a friend that he felt in his bones that he was "not meant for an academic life though it is difficult for me to say why."<sup>64</sup> Even at the pinnacle of *The Concept of Law's* success, a residue of self-doubt diluted the pleasure and confidence he gained from the book's favourable reception.<sup>65</sup>

The most striking feature of this self-doubt, however, was its secret nature, in contrast to the calm and authoritative public figure Hart incarnated. At moments when the public, external aspect of Hart's life was marked by success and apparent personal security, the internal aspect was much more ambivalent. This disjuncture between public self and inner feeling is highlighted by his own wife's ignorance of the depth of his depression and self-doubt.<sup>66</sup> Lacey concludes a variety of things from the fact that their correspondence showed continuing affection and dialogue between them when his intimate diaries expressed deep depression: "a capacity for concealment and repression on Herbert's part; a lack of confidence that Jenifer could help him; a use of the diary as repository for extremes of feeling which did not characterize the whole of his life."<sup>67</sup> By unpacking these different layers of Hart's complex identity, Lacey does not, however, mean to undermine Hart's authority as a public figure. On the contrary,

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<sup>62</sup> *Id.* at 52.

<sup>63</sup> *Id.* at 151.

<sup>64</sup> *Id.* at 53.

<sup>65</sup> *Id.* at 233.

<sup>66</sup> *Id.* at 129.

<sup>67</sup> *Id.* at 131.

This public story of Herbert Hart's life was, of course, true; its validity in no way compromised by the equally true story of his struggle to overcome depression, his incompletely resolved attitude to both his sexuality and his Jewish and class origins, his volatile shifts between intellectual confidence and insecurity, his unconquerable emotional reserve, and his long-standing sense of not really being what he actually was: an influential and respected insider in the social and professional worlds in which he moved. Rather, in the light of these complexities, his intellectual, institutional and personal achievements appear all the greater.<sup>68</sup>

Not only do Hart's achievements appear greater in the light of his personal issues, but he emerges as more humane. And this should be interpreted as a lesson for future jurisprudential interaction, where feelings should always be preserved and intellectual conflicts not degenerate into personal ones. Lacey emphasizes, for instance, the great sadness in the story of the writing of Hart's Postscript to *The Concept of Law*, both for himself and Ronald Dworkin.

The intensely sad story of its writing does, however, give real insights into the nature of Herbert's intellectual and emotional life, as well as some disturbing glimpses of the costs of exceptional professional success. There is sadness, too, in Dworkin's side of the story. When he read the "Postscript," he was shocked both to think how long Herbert had been working on it and by what he felt to be its occasionally angry tone: "It is written as if he had never met me. We could have talked about it." Dworkin found intensely depressing this evidence of the gulf which had opened up between him and the man whose work had been his original inspiration.<sup>69</sup>

In the wake of this analysis, Lacey repeatedly asks the same question: was self-destruction a necessary dimension of Hart's extraordinary creativity? If we were to justify, beyond its historical value, the use of intimate material in Lacey's biography, this justification could readily be found in her raising this question so central to so many academics' lives but so rarely addressed. Lacey concludes without any doubt: "however painful, Herbert's strikingly frank and self-critical interpretations of himself were perhaps one side of the dispositional coin which produced the avalanche of intellectual creativity."<sup>70</sup> Hart was clearly aware of it

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<sup>68</sup> *Id.* at 363.

<sup>69</sup> *Id.* at 353.

<sup>70</sup> *Id.* at 208.

and suffered from this state of affairs. Lacey quotes one of Bob Summer's last memories of Hart feeling that Wittgenstein, whose biography by Brian McGuiness he had just read, was "a person absolutely preoccupied with his own soul," a "most unattractive person –constantly turning life into *work*, yet interested in life [...] true life as only reading the great philosophers that interest you and getting on with philosophy –Incredible."<sup>71</sup>

Although *A Life of H.L.A. Hart* is very much a biography written by a legal philosopher about a legal philosopher and for an audience of legal philosophers, its success has quickly grown outside jurisprudence and for good reasons. The book's novelty not only lies in the new light it throws on the life and work of Hart thanks to previously unpublished letters and diaries, but also, and not least importantly, in its approach that I have referred to as feminist biographical jurisprudence. This fascinating and touching biography's secret lies in a unique intergenerational encounter that turned into a rich, albeit posthumous, human relationship between one of the twentieth century's most brilliant legal philosophers and a younger fellow jurist who is most probably one of the most perceptive feminist legal theorists of her generation.

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<sup>71</sup> *Id.* at 357.