Book Review Essay

H.L.A. Hart and the Methodology of Jurisprudence

A LIFE OF H.L.A. HART: THE NIGHTMARE AND THE NOBLE DREAM. By Nicola Lacey. Oxford University Press, 2004. Pp. xiii, 393. $35.00.

Reviewed by Ian P. Farrell*

I. Introduction

Nicola Lacey's biography, *A Life of H.L.A. Hart: The Nightmare and the Noble Dream*,[1] is a triumph of the highest order. Lacey takes to the role of biographer with aplomb, weaving thoughtful philosophical assessment into an intimate, richly detailed tapestry of Hart's life and character. Her sympathetic portrait of a man whose unparalleled external success in legal philosophy contrasted sharply with his life-long internal struggle with self-doubt is rewarding reading on several levels, and not just for aficionados of jurisprudence. Hart's life story is compelling in its own right, and Lacey's treatment of it holds the additional promise that biographical detail will lead to theoretical insight.

The book has something valuable to offer to the legal theory novice and expert alike. Lacey's goal is to produce an "intellectual biography,"[2] and the book contains substantial descriptions of Hart's theoretical work. Lacey is a formidable legal theorist in her own right, and she presents Hart's theories in a clear, straightforward, and accessible manner reminiscent of Hart himself. She achieves this (in the main) without sacrificing subtlety and accuracy, fleshing out her description with well-placed criticisms. For the jurisprudential novice, then, the biography provides a palatable entrée into contemporary legal theory.

Nor are those already familiar with Hart's work left wanting. Criticism of the philosophical method employed by legal positivists in general, and Hart in particular, has been at the center of jurisprudence in recent years, and Lacey makes several bold assertions about Hart's life and his philosophical methodology with which leading philosophers are already engaging.

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* Lecturer, Faculty of Law, University of Wollongong. My heartfelt thanks go to Brian Leiter, Les Green, and Laurel Boatright for support, encouragement, and invaluable critiques of drafts of this Essay. While I am sure they would each suggest more changes still, without their advice this Essay would be a pale shadow of its current form.

1. NICOLA LACEY, A LIFE OF H.L.A. HART: THE NIGHTMARE AND THE NOBLE DREAM (2004).
2. *Id.* at xix.

In this Review Essay, I address both the biographical and theoretical aspects of Lacey's book. In relation to the latter, which will make up the bulk of the Essay, I shall consider Hart's use of conceptual analysis in his seminal work, *The Concept of Law*.[3] Several of the critiques of Hart's methodology have focused on the role of conceptual analysis in Hart's theorizing and on the appeals to intuitions about law and associated concepts that accompany that analysis.[4] I shall argue that Lacey's biography of Hart contributes to this debate and adds weight to the view that Hart overstates his claim to have provided a general theory of the concept of law.

The body of this Essay has three parts. Following this introduction, I begin Part II with a sketch of Hart's life to give the reader a flavor of both the fullness of Hart's experiences and Lacey's mode of presenting them, which centers around the contrast between Hart's public and private personas. Lacey's inclusion of intimate details of Hart's personal life in her biography has been the subject of criticism,[5] and I respond to these criticisms at the end of Part II.

Part III of the Essay addresses two issues that demonstrate the theoretical relevance of the biography. Firstly, I shall argue that Hart's significant work in normative legal theory and law reform, which Lacey comprehensively recounts, helps to rebut the confused criticism that legal positivism excludes moral and political considerations from the philosophy of law. Secondly, I will consider Lacey's discussion of the philosophers who most influenced Hart's philosophy and outline the debate that has been sparked by Lacey's claim that Hart's work would have been more "empirical" (in the social science sense) had he been influenced more by Ludwig Wittgenstein and less by J.L. Austin.[6]

Part IV is the most substantial part of the Essay, in both length and argumentation. Whereas Part III outlines the "philosophical influences" debate that *A Life of H.L.A. Hart* has generated among other scholars, in Part IV I argue that those influences are relevant to understanding (and critiquing) Hart's method of conceptual analysis, a fundamental aspect of his work. To make this relevance clear, however, we must first distinguish between "modest" and "immodest" conceptual analysis and address the legitimacy of

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3. H.L.A. HART, THE CONCEPT OF LAW (Penelope A. Bullock & Joseph Raz eds., 2d ed. 1994) (1961).

4. For example, Brian Leiter argues that conceptual analysis is at best philosophically trivial and at worst theoretically untenable. *See* Brian Leiter, *Beyond the Hart/Dworkin Debate: The Methodological Problem in Jurisprudence*, 48 AM. J. JURIS. 17, 44–47 (2003) (distinguishing between so-called "modest" and "immodest" conceptual analysis and concluding that the former is nothing more than "glorified lexicography" and the latter makes claims it cannot support). Stephen Perry claims conceptual analysis involves moral evaluation, which is inconsistent with Hart's implicit claim of "methodological positivism." Stephen R. Perry, *Hart's Methodological Positivism*, *in* HART'S POSTSCRIPT: ESSAYS ON THE POSTSCRIPT TO THE CONCEPT OF LAW 311, 313 (Jules Coleman ed., 2001) [hereinafter HART'S POSTSCRIPT].

5. Thomas Nagel, *The Central Questions*, LONDON REV. BOOKS, Feb. 3, 2005, at 12.

6. *See* LACEY, *supra* note 1, at 140–43, 218–19.

each as a philosophical method. I will argue that while the form of conceptual analysis employed by Hart is *methodologically* legitimate, the nature of Hart's philosophical influences undermines the *substantive* conclusions he draws from this conceptual analysis. In particular, I suggest that Hart's claim to have produced a *general* theory of the concept of law, descriptive of all developed legal systems, should be treated with skepticism, as it is based upon the assumption that the educated subjects of all such legal systems share the intuitions of Hart and his homogenous Oxford colleagues.

II. The Public and Private Lives of H.L.A. Hart

The cornerstone of Lacey's biographical technique is the juxtaposition of Hart's public and private lives. Lacey takes her subtitle from one of Hart's essays[7] in which he described twentieth-century American jurisprudence as oscillating between the Legal Realist "nightmare," in which the law is seen as placing no restrictions on judicial discretion,[8] and the "noble dream" of "complete legal determinacy"[9] advocated by the likes of Ronald Dworkin.[10] Presumably, Lacey is suggesting a similar dichotomy applies to Hart himself: the "noble dream" of his outward success cloaking the "nightmare" of his internal struggles. This contrast drives Lacey's narrative and provides much of the book's dramatic tension.

A. The Noble Dream

Herbert Hart was born in 1907 in one of the smaller towns of England's industrial northeast, the third of four children, to moderately well-off Jewish tailors. His intellectual talents were noticed early and he was sent to the elite Cheltenham College. But Hart disliked the public school experience intensely, feeling "alienated, frustrated and miserable" due to the school's

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7. H.L.A. Hart, *American Jurisprudence Through English Eyes: The Nightmare and the Noble Dream*, 11 GA. L. REV. 969 (1977).

8. Hart's nightmarish characterization of Legal Realism is not entirely fair. As Leiter points out, the Legal Realists claimed merely that legal rules do not *completely* determine the outcome of cases, but rather allow for nonlegal factors to also influence outcomes to a significant degree. *See* Brian Leiter, *Legal Realism and Legal Positivism Reconsidered*, 111 ETHICS 278, 281, 299 (2001). Legal Realism does not entail "skepticism about whether judges are bound by law at all." LACEY, *supra* note 1, at 332.

9. LACEY, *supra* note 1, at 332.

10. Dworkin argues that explaining why "law is legitimate authority for coercion" requires "a conception of law that takes integrity to be fundamental." RONALD DWORKIN, LAW'S EMPIRE 192 (1986). A judge who applies the "interpretive ideal of integrity" decides cases "by trying to find, in some coherent set of principles about people's rights and duties, *the best* constructive interpretation of the political structure and legal doctrine of their community." *Id.* at 255 (emphasis added). Dworkin claims that one such interpretation will be *better* (from the perspective of substantial political morality) than any other possible interpretations. *See, e.g.*, *id.* at 77, 86, 248, 261. In other words, legal principles "dictate 'one right answer' waiting to be found by judges in virtually every case." LACEY, *supra* note 1, at 333.

snobbery, strictness, and segregation of its Jewish students.[11] He was pleased when a downturn in his parents' business caused by World War I meant they could no longer afford Cheltenham's fees. Hart moved to Bradford Grammar School and flourished, becoming that school's first student in over half a century to earn a scholarship to Oxford's New College.[12]

Hart "adored" college life.[13] The environment was socially and intellectually stimulating, with future leaders in politics, law, and academia among his contemporaries. These university associations were the foundations of many life-long friendships, perhaps most notably his enduring, if complicated, relationship with another future philosophical luminary, Isaiah Berlin.[14]

Early in his undergraduate career, Hart made a decision that would help change the face of legal philosophy, despite such considerations being far from the young scholar's mind. Hart "insisted on doing [his] preliminary examination in Law rather than Classics, because the Law 'Prelim' could be completed much more quickly" than the alternative.[15] But for this moment of adolescent practicality, English-language jurisprudence might have missed its renaissance.

Yet this renaissance was still some way in the future. In 1929, Hart graduated as one of Oxford's most exceptional students. Instead of entering academia, however, Hart chose to become a practicing lawyer. After leaving Oxford for London and the Bar, he quickly established himself as one of the city's leading junior barristers and garnered a wealth of practical legal knowledge which would later ground his theories. Hart retained an interest in philosophy, and in 1937 he was sorely tempted by the offer to return to

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11. LACEY, *supra* note 1, at 18. As Lacey points out, the segregation was by vicarious choice. Hart's parents aspired to social, but not religious, assimilation; Cheltenham at the time was one of only two public schools in England with a separate house for Jewish boarders. Hart's ambivalence about his Jewish identity—proud of his heritage yet desirous of acceptance by the English establishment—is a theme Lacey traces throughout Hart's life.

12. *Id.* at 20–21.

13. *Id.* at 24.

14. Isaiah Berlin (1909–1997) was a leading figure in both political philosophy and the history of ideas whose seminal essay, *Two Concepts of Liberty*, remains one of the most influential works in all of political theory. *See* Isaiah Berlin, *Two Concepts of Liberty*, *in* LIBERTY (Henry Hardy ed., 2002). Berlin is a recurring character in Lacey's book, and his complex relationship with Hart is fascinating, with the two men maintaining a deep and abiding friendship alongside competitiveness, mixed loyalties, and mutual criticism. *See, e.g.*, LACEY, *supra* note 1, at 177–78, 206–07, 237, 274, 344. It is a little annoying, it must be noted, that Berlin does not appear in the "Biographical Details of Figures Appearing in the Book" appended to the biography. Many other major players in Hart's life and career—Ronald Dworkin, J.L. Austin, and Joseph Raz to name just three—are similarly omitted, presumably on the grounds that the reader learns enough about them in the body of the biography. The result is that the only people for whom we are given a succinct biographical summary are those who are barely mentioned in the biography itself, rendering the appendix neither interesting nor informative.

15. LACEY, *supra* note 1, at 25.

Oxford as a philosophy fellow. He decided instead to continue as a lawyer, while also finding time to aid Jewish refugees of the Nazi regime.[16]

At the outbreak of World War II, Hart was recruited by MI5 and excelled in his new role.[17] The work suited his intellectual abilities, and he found its public service aspect satisfying. The war years also saw Hart marry the beautiful, brilliant Jenifer Williams; the complexities of their relationship, and Hart's feeling about it, compose much of the background of Lacey's book. At the close of the war, when Hart was again offered a philosophy fellowship at Oxford, he accepted. Thus, at the relatively advanced age of 38, the man who would become synonymous with legal philosophy finally began his academic career.

The Oxford philosophical community that Hart joined in 1946 was the discipline's dominant force in the Anglophone world.[18] Oxford philosophy was, in turn, dominated by "linguistic philosophy" and its prophets, Gilbert Ryle and J.L. Austin. Lacey is at her best describing this milieu, its influential characters, and the attitudes they engendered. She portrays Austin (Hart's primary philosophical influence) as a brilliant, witty, but formidable figure, "at once magnetic and alarming" who "exercised an extraordinary personal authority over the groups of philosophers admitted to his coterie."[19] Of the many anecdotes Lacey recounts which provide an illuminating and entertaining window onto this world (and demonstrate Lacey's own wry sense of humor), one in particular highlights Austin's domineering nature and the intellectual bloodsport philosophy could become:

> At a seminar of the Philosophical Society, a visiting American idealist philosopher castigated the Oxford linguistic philosophers for "chasing mice not tigers." A graduate student at the time (later to become Whites Professor of Moral Philosophy in the University), sitting behind Austin, watched as he "uncoiled himself, snake-like, from his chair" and suggested, in his "thin, inhuman voice," that the visiting professor might like to release a tiger and show the audience how to hunt it. With an unwise but endearing lack of caution, the visitor accepted the challenge, and duly let loose one of the most untameable philosophical tigers: the problem of free will. After five minutes of not entirely coherent analysis, he lapsed into an embarrassed silence,

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16. *Id.* at 57.

17. MI5 is the British Government department responsible for domestic security. Hart's role was concerned primarily with counter-espionage, and included helping to manage the department's tense relationship with MI6, which was responsible for international security and intelligence. *Id.* at 88, 92.

18. *Id.* at 132. Oxford's philosophical hegemony would be seriously challenged in the ensuing decade or two, for reasons not unrelated to the methodological issues dealt with in this article, by American institutions. The linguistic approach to philosophical questions gave way to more scientifically oriented methodologies, such as naturalism, developed by Quine at Harvard, and logical positivism, which, while developed primarily in Austria, found its greatest influence in New World universities. Thanks to Brian Leiter for pointing out this methodological connection.

19. LACEY, *supra* note 1, at 133.

into which Austin hissed in a stage whisper, "You won't catch mice that way."[20]

By 1952 Hart was himself a prominent and influential figure in this circle. He had published only a handful of articles (which was not unusual by the standards of the time) and had built a reputation for extreme intelligence through his contributions in seminars and other less formal settings. He was, moreover, beginning to forge a unique philosophical agenda from his "combination of legal experience and philosophical insight."[21] It is nonetheless a testament to the institutional power of the linguistic philosophers, and Hart's standing among them, that he was elected to the Law Faculty's Chair of Jurisprudence despite having had little contact with that Faculty while at Oxford. Hart's supporters believed that "only a 'real' philosopher could elevate the Chair to a level of any intellectual credibility."[22] Rarely have the best-laid plans turned out so well.

At the time of Hart's ascension to the Chair of Jurisprudence, English legal philosophy was enduring a period in the doldrums. This changed as Hart's star quickly rose in the next decade, which Lacey aptly describes as his "Golden Age."[23] Through a series of influential articles, books, and lectures, Hart established himself as the leading figure of legal theory, along the way reviving the legal positivist and utilitarian traditions of John Austin[24] and Jeremy Bentham. Hart breathed new life into a moribund discipline, much as John Rawls would to political philosophy a few years later,[25] and his central place in legal theory's resurgence is reflected by the manner in which the major "debates" of the field are described: the Hart–Fuller debate, the Hart–Devlin debate, the Hart–Dworkin debate, and so on.

Hart published prolifically during this period. In addition to his enduring masterpiece on the theoretical nature of law, *The Concept of Law*,[26] Hart also wrote *Causation in the Law*[27] with Tony Honoré; *Law, Liberty and Morality*,[28] his spirited defense of liberalism as the foundation of the modern legal system; and numerous articles and book reviews. While Hart expanded the reach of his academic influence with stints at Harvard and UCLA, he also made an impact in the wider community by participating in public debates on important topics of law reform such as the legal status of homosexuality.[29]

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20. *Id.* at 135–36.
21. *Id.* at 145.
22. *Id.* at 149.
23. *Id.* at 154.
24. John Austin is not to be confused with J.L. Austin, to whom he was not related.
25. For Rawls's seminal work, see JOHN RAWLS, A THEORY OF JUSTICE (1971).
26. HART, *supra* note 3.
27. H.L.A. HART & A. M. HONORÉ, CAUSATION IN THE LAW (1959).
28. H.L.A. HART, LAW, LIBERTY AND MORALITY (1963).
29. These issues are discussed in detail in Part III below.

By the time of Hart's early retirement from the Chair of Jurisprudence in 1968,[30] its status as the leading position in Anglophone jurisprudence was unquestioned. That the Chair would continue to enjoy such prestige was guaranteed by Hart actively recruiting his most challenging critic to succeed him in the Chair: Ronald Dworkin.[31] It was an inspired move. The thrust, parry, and counter-thrust between Hart's legal positivism and Dworkin's pseudo-natural law theory injected contemporary jurisprudence with much of the vibrancy, dynamism, and drama that it retains to this day.

Hart's retirement from Oxford signaled neither the end of his scholarly output nor of his affiliation with the University. He established a project organizing and publishing many of Jeremy Bentham's papers,[32] and accepted various appointments, including Principal of Oxford's Brasenose College. One of the last philosophical tasks Hart set for himself was to respond to the increasing criticisms of *The Concept of Law* spearheaded by Dworkin. But this endeavor was interrupted by tragic developments in Hart's personal life: Hart's wife, Jenifer, was wrongly accused of being a Soviet spy during the war. The accusation naturally implicated Hart as well, given his work with MI5, and this, coupled with other stresses, such as caring for the couple's intellectually disabled son, culminated in Hart having a nervous breakdown and enduring electro-convulsive therapy.[33]

According to Lacey, by the time Hart had recovered sufficiently to return to scholarly work, Dworkin's views had undergone such "a significant change of direction"[34] that Hart's old responses were now irrelevant.[35] As it happened, Hart was unable to complete his response to Dworkin's critique before his death, at the age of 85, in 1992.[36] Despite the many sadnesses of the latter part of his life, which Lacey treats with characteristic compassion, the tributes that poured in upon his death demonstrate the degree of continued respect and affection people held for Hart as both a scholar and a person. One of the obituaries recounted by Lacey eloquently captures Hart's

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30. *See* LACEY, *supra* note 1, at 297 (discussing Hart's retirement in 1968).

31. *Id.* at 292–93.

32. Bentham was a strikingly idiosyncratic character, and bringing his papers to publication was a more daunting task than it sounds. As Lacey points out, not only did Bentham have a "mania for detail and classification," but "in his utilitarian concern to avoid waste, Bentham tended to write not only horizontally along each sheet of paper, but then vertically as well." *Id.* at 300.

33. *Id.* at 345.

34. *Id.* at 349.

35. Lacey points to the publication of *Law's Empire* as the significant turning point in Dworkin's approach, but it is by no means clear that such a characterization is fair. Lacey is correct that the new book differed in ambition, scope, and detail from his earlier work. *Id.* But there is nonetheless substantial consistency and continuity between the various explications of Dworkin's theory. For a collection of Dworkin's earlier essays, see RONALD DWORKIN, TAKING RIGHTS SERIOUSLY (1977).

36. LACEY, *supra* note 1, at 359–61. Hart's notes were edited after his death and included as a postscript to the second edition of *The Concept of Law*, published in 1994, which has generated a lively scholarly debate in its own right. *See, e.g.*, HART'S POSTSCRIPT, *supra* note 4.

pivotal role in the revival of jurisprudence: "Then, there was only him. Now, a hundred flowers bloom. This is his lasting contribution."[37]

B. The Nightmare

Lacey does an excellent job of bringing to life Hart's environs, achievements, and acquaintances, describing them with panache and humor and revealing herself to be a natural storyteller. The book is worth reading on this score alone. What makes her biography uniquely compelling, however, is the further insight she provides into Hart's private existence, his internal thoughts and struggles. Lacey knew the Harts personally, and Hart's widow gave Lacey access to his diaries, letters, and other personal papers. These papers, at times brutally honest and far from self-serving, proved to be a biographer's treasure-trove, revealing intimate details of Hart's private turmoil that even his closest friends could not have fully appreciated.

The two most striking personal revelations that Lacey includes in the biography are, first, Hart's intense and abiding insecurities about his own intellectual abilities that served as a silent, turbulent counterpoint to his many successes and often threatened to manifest themselves as debilitating panic attacks. Second, Hart had deep uncertainties about his sexuality and capacity for intimacy, struggling to maintain a marriage in the face of the fact that he sometimes saw himself as homosexual.[38]

As John Gardner points out, Hart's tormented references to these issues can make uncomfortable reading,[39] and Lacey has been harshly criticized for exposing them. The philosopher Thomas Nagel, for example, chastises Lacey for her bad taste in failing to resist the temptation presented by Hart's diaries, for recounting information that is none of the reader's business, and for tearing off "the mask of respectability and self-possession" that Hart, with renowned discretion, kept firmly in place during his lifetime.[40]

While I understand the impetus for Nagel's criticisms, I cannot agree with him. Lacey's publication of this information is no sordid exposé. While not shying away from the vulnerabilities and complexities of Hart's psyche, she treats this material with respect and compassion. Lacey's warmth and affection for her subject shine through her writing, and the

37. LACEY, *supra* note 1, at 361 (quoting an obituary written by Zenon Bankowski).

38. *See id.* at 61–62, 204–05 (noting Hart's "sense of himself as a homosexual" and including excerpts from letters in which Hart discussed his wife and their sexual relationship).

39. John Gardner, *Review of A Life of H.L.A. Hart: The Nightmare and the Noble Dream*, 121 L.Q. REV. 329, 329 (2005).

40. Nagel, *supra* note 5, at 12. The criticisms contained in this review drew letters in response by Hart's daughter, Joanna Ryan, and philosophers Simon Blackburn and Jeremy Waldron. For these letters and Nagel's reply to them, see Joanna Ryan, Letter to the Editor, LONDON REV. BOOKS, Feb. 17, 2005, at 4; Simon Blackburn & Jeremy Waldron, Letter to the Editor, LONDON REV. BOOKS, Feb. 17, 2005, at 4; Thomas Nagel, Letter to the Editor, LONDON REV. BOOKS, Feb. 17, 2005, at 4 [hereinafter Nagel, Letter to the Editor].

version of Hart she presents, inner turmoil and all, is realistic, appealing, and accessible.

Hart's scholastic achievements seem all the more impressive—perhaps even inspirational—in light of his propensity for extreme self-doubt. It is reassuring to know that you're not alone in finding Wittgenstein's writing impenetrable (to take just one example!), and that the demons of doubt and insecurities that inevitably accompany life in the academy can be overcome, with their energies harnessed for constructive and creative purposes.

In the process of grappling with his intellectual angst, moreover, Hart often makes substantive criticisms of his own theories. An illuminating example of this is Hart's ongoing, deep concern about his pivotal theory of legal obligation.[41] To know that Hart perceived this to be a weak point in his theoretical framework, and why he felt this way, is instructive to later scholars studying his work.

Nor are the references to Hart's sexuality gratuitous. I agree with Nagel that decisions about what to include in a biography are largely a matter of taste.[42] But sexuality is a fundamental aspect of personal identity, making it (in my view) fair game for a biographer. In Hart's case, the information is also relevant to his public and intellectual stance on issues of law and morality. The claim by Lord Devlin that the state was justified in criminalizing some forms of private immorality,[43] to which Hart famously and forcefully responded,[44] focused upon the example of whether homosexual conduct should be criminalized. Hart's liberal position that such conduct should not be criminalized stands or falls, of course, purely on the merits of his supporting arguments. But surely Hart's sexuality played a part in the genesis of his views, if not in their justification. By arming us with this knowledge, Lacey allows us a richer understanding of Hart's position and gives the Hart–Devlin debate added resonance.

III. Biographical Detail and Theoretical Insight

I claimed in Part II that *A Life of H.L.A. Hart* allows us to place Hart's work within an appropriate context, thus enriching our appreciation of his theories. In the remainder of the Essay, I shall argue that some of the biographical detail is relevant more directly to our understanding of Hart's theories. In Part III, I shall use this biographical detail to rebut the claim that legal positivism effectively excludes moral and political considerations from

41. *See, e.g.*, LACEY, *supra* note 1, at 223, 335–36 (noting "the anxieties, broken nights, chaotic notebooks, and intimidating list of 'PLAIN ERRORS AND DIFFICULTIES TO BE MET'" that would prove essential for Hart's unique insights into the nature of legal obligation).

42. Nagel, Letter to the Editor, *supra* note 40, at 4 ("[T]he use of intimate material presents difficult issues, and . . . reasonable people can differ.").

43. PATRICK DEVLIN, THE ENFORCEMENT OF MORALS 1–25 (1965).

44. H.L.A. Hart, *Immorality and Treason*, LISTENER, July 30, 1959, at 162, 162–63.

legal philosophy, before briefly outlining the controversy generated by Lacey's claims about Hart's philosophical influences.

I move in Part IV to address the legitimacy of Hart's methodology. I shall first defend Hart's use of "modest" conceptual analysis from *methodological* attack and argue that the disagreement about the relative influence of Austin and Wittgenstein aids in this defense. Conversely, however, I shall then argue that Hart's reliance on modest conceptual analysis undermines his *substantive* conclusions about the concept of law and that the biographical detail Lacey sets out assists in this critique.

A. Legal Positivism and the Suppression of Moral Considerations

In *The Concept of Law*, Hart developed a descriptive theory of the nature of law that sits squarely within the tradition of legal positivism. The central tenet of legal positivism concerns the relationship between law and morality. It is the claim that law is a human construct, rather than inherent in nature or imposed by God, and therefore that the existence of law is determined by reference to social facts and not the law's moral status. This thesis has been formulated in several ways. John Austin framed positivism as the claim that the question, "What *is* law?" is different than the question, "What *ought* the law to be?",[45] whereas Hart described legal positivism as "the simple contention that it is in no sense a necessary truth that laws reproduce or satisfy certain demands of morality, though in fact they have often done so."[46]

This supposedly "simple conjecture," commonly referred to as the "Separability Thesis," has been the subject of much debate as to both its meaning and its accuracy as a description of the concept of law.[47] But at least one thing is clear: Hart did *not* mean to assert that morality is irrelevant to law.[48] Indeed, as Lacey points out, Hart believed that it was morally

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45. "The existence of law is one thing; its merit or demerit another. Whether it be or be not is one enquiry; whether it be or be not conformable to an assumed standard, is a different enquiry." JOHN AUSTIN, THE PROVINCE OF JURISPRUDENCE DETERMINED 157 (W.E. Rumble ed., Cambridge Univ. Press 1995) (1832).

46. HART, *supra* note 3, at 185–86.

47. Different versions of legal positivism have developed, referred to as "hard" and "soft" positivism or (more usefully) "inclusive" and "exclusive" positivism, that are based on different versions of the Separability Thesis. *See, e.g.*, Jules L. Coleman, *Negative and Positive Positivism*, 11 J. LEGAL STUD. 139 (1982) (critiquing the "hard-facts positivism" articulated—and criticized—by Dworkin for its reliance on a flawed interpretation of the Separability Thesis and proposing a more flexible, inclusive form of positivism that reconciles the "controversial nature of some legal reasoning" with the theory that law, in and of itself, is ultimately "conventional in nature").

48. To allow for the relevance of morality to law, the Separability Thesis is often paraphrased as the claim that there is no *necessary* connection between law and morality. But even this formulation has been persuasively criticized. *See* John Gardner, *Legal Positivism: 5 1/2 Myths*, 46 AM. J. JURIS. 199, 223 (2001) (recognizing that "there is a necessary connection between law and morality if law and morality are necessarily alike in any way"); Leslie Green, *Legal Positivism*, *in* STAN. ENCYCLOPEDIA PHIL., JAN. 3, 2003, § 4.2, http://plato.stanford.edu/archives/spr2003/entries/legal-positivism (noting in his discussion of the

preferable to maintain the distinction in legal theory between "what the law is" and "what the law ought to be":

> It is, according to him, morally preferable, more honest, to look clearly at the variety of reasons bearing on an ethically problematic decision rather than to close off debate by dismissing certain considerations as irrelevant: arguing that something never was the law because it ought not to have been the law.[49]

Despite this claim that legal positivism has moral value, the thesis has been criticized by critical legal theorists (among others) for excluding considerations of morality and politics from legal philosophy. To take a representative example, Margaret Davies, in her engaging text, *Asking the Law Question*, claims that positivists believe "the proper role for legal philosophy is not to speculate about morality, but to come to an understanding about the nature of legal systems."[50] Legal positivism, by focusing on formal structures, "keep[s] politics and morality out of it altogether" and "tries to close off legal analysis from other considerations,"[51] resulting in "[t]he exclusion, and effective suppression, of matters other than those which are determined to be 'legal'. . . ."[52]

This claim that legal positivism excludes and suppresses matters of politics and morality from legal philosophy cannot be sustained. The thesis that the existence of law is a separate question from the moral worth of law does not entail the conclusion that the latter question is not worth examining, or even that it is less important than the first. Indeed, as mentioned above, Hart believed that treating these questions separately *enhances* our ability to address the moral value of law, and of particular laws.

Nor can the criticism be saved by framing it as the claim that the practical effect of legal positivism has been the exclusion and suppression of moral and political considerations from legal philosophy. Legal philosophers

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Separability Thesis that "there are many necessary 'connections,' trivial and non-trivial, between law and morality").

49. LACEY, *supra* note 1, at 198. Lacey makes these comments in relation to the Holmes Lecture that Hart gave at Harvard in 1957, later to become the Hart side of the Hart–Fuller debate. The lecture crystallized around the legitimacy of the Nuremberg trials and the example of a woman who had denounced her husband as a political dissident, in conformity with Nazi laws in force at the time. Hart claimed that, as the woman had violated no positive law at the time, she could now be convicted of a crime only by passing retroactive legislation. The question then becomes whether retroactive criminalization is a lesser evil than allowing the woman to go unpunished for a grossly immoral act. For both sides of the debate, see H.L.A. Hart, *Positivism and the Separation of Law and Morals*, 71 HARV. L. REV. 593 (1958), and Lon L. Fuller, *Positivism and Fidelity to Law—A Reply to Professor Hart*, 71 HARV. L. REV. 630 (1958).

50. MARGARET DAVIES, ASKING THE LAW QUESTION: THE DISSOLUTION OF LEGAL THEORY 90 (2d ed. 2002). Davies immediately adds the following caveat: "This is not to say that morality is not important, but that it is not a necessary element of the concept of law, and can be excluded from the analytical study of law." *Id.* It is not clear, however, what Davies means by the "analytical study of law"; this caveat must be understood in light of her other statements to which I refer below.

51. *Id.* at 92.

52. *Id.* at 106.

have continued to address questions of morality and politics, and their relevance to law, including the leading legal positivists themselves. One cannot read Lacey's biography of Hart without realizing that he saw these "other considerations" to be vitally important. He wrote extensively on normative theoretical topics such as the proper political basis of a legal system[53] and the moral justification of criminal law and punishment,[54] and he actively advocated for the legalization of abortion[55] and the abolition of capital punishment[56] in public broadcasts and lecture tours.

In short, as Lacey's biography demonstrates, far from suppressing and excluding moral and political matters from legal philosophy, this leading legal positivist contributed enormously to the consideration of these issues in both academic and public discourse about law.[57]

B. Philosophical Influences and Hart's Methodology

As a biography, Lacey's book is predominantly *about a philosopher*, rather than a book *of philosophy*. The bulk of the book's content naturally consists of describing events in Hart's life, his character, and the character of those with whom he interacted. Inevitably, of course, the book also addresses Hart's theories. Despite some criticisms to the contrary,[58] Lacey demonstrates that she is up to the philosophical side of her task, putting her theoretical skills and experience to good effect in providing clear and accessible (if not comprehensive) synopses of Hart's major works.[59] She also

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53. H.L.A. HART, LAW, LIBERTY, MORALITY (1963) (arguing for a liberal utilitarian theory of governance).

54. H.L.A. HART, PUNISHMENT AND RESPONSIBILITY (1968) (a collection of nine essays on criminal law and punishment).

55. LACEY, *supra* note 1, at 302.

56. *Id.* at 273.

57. The broader thrust of the critical legal studies critique of legal positivism is that it is impossible to produce a value-neutral description of the nature of law. On this view, law cannot be distinguished from politics, and the decision to separate the descriptive and prescriptive aspects of legal analysis is itself political. *See* DAVIES, *supra* note 50, at 106 (arguing that the positivist "claim to objectivity has simply been an exceptionally powerful way of centralising a certain style of theory"). The critique amounts to a claim that the positivists are mistaken as to the nature of law (in their belief that law *has* a distinct nature). But while this is a dismissal of the purported objectivity of positivist legal theory, even if this criticism is correct it does not support the conclusion that legal positivists have suppressed and excluded moral concerns from the philosophical analysis of law. This conclusion would only follow if the *only* question addressed by legal positivists was the (supposedly mistaken) descriptive question, and Hart's career contradicts such a claim.

58. Thomas Nagel, for instance, suggests that Lacey "is not equipped . . . to deal with the philosophical background," citing her comments about the "paradox of analysis" and the differences between J.L. Austin and Ludwig Wittgenstein as evidence that she is "lost." Nagel, *supra* note 5, at 13. Simon Blackburn and Jeremy Waldron have disagreed, claiming that "[o]n each point, Lacey is right and Nagel wrong." Blackburn & Waldron, *supra* note 40, at 4.

59. *See, e.g.*, LACEY, *supra* note 1, at 223–33 (presenting the main features of *The Concept of Law*), 211–13 (*Causation in the Law*), and 256–60 (*Law, Liberty, Morality*).

undertakes the more "intellectually ambitious"[60] task of tracing the specific effect, on Hart's scholarship, of the philosophers who influenced him.

Lacey argues that the fingerprints of J.L. Austin and the "Oxford linguistic philosophy" movement can clearly be seen on Hart's methodology, and she speculates that Hart's method would have been more empirical (in the sense of being more in line with "historical and social study of the institutions and power relations"[61] of law) had he paid more heed to Wittgenstein's quite different approach to language.[62] These claims have proven to be controversial, provoking a flurry of varied responses. Blackburn and Waldron have written in defense of Lacey's propositions,[63] whereas Nagel denies that "Wittgenstein's method encourages a more empirical approach than Austin's,"[64] and Gardner persuasively refutes Lacey's claim that Austin was the greater influence, declaring Hart's work "impeccably late-Wittgensteinian."[65] Much printer toner has already been spilled on this issue, so I propose to take a slightly different tack. Rather than weigh in on the specific question of Austin-versus-Wittgenstein, I will concentrate on the significance of Hart's philosophical influences to his use of conceptual analysis in *The Concept of Law*.

The role of conceptual analysis is closely related to the debate about Hart's influences and the degree to which Hart's approach is empirical or non-empirical, as well as being a topic of philosophical controversy in its own right. Frederick Schauer notes that the "tricky issue" of the empirical extent of Hart's methodology "is a subject of continuing jurisprudential debate (and one connected to a larger debate in philosophy about conceptual analysis generally)."[66] Schauer states that "[c]onceptual analysis, as Hart must surely have recognized, inevitably rests at least in part on empirical observation."[67] This empirical suggestion, Schauer suggests, goes some way towards explaining Hart's claim to be doing "descriptive sociology,"[68] while also suggesting that skepticism of conceptual analysis is a consequence of

60. Gardner, *supra* note 39, at 330.

61. LACEY, *supra* note 1, at 219.

62. *Id.* at 218, 229. Wittgenstein, in his later work, argued that language is dependent on the "form of life" of the utterer. This idea is encapsulated in the famous declaration: "If a lion could talk, we could not understand him." LUDWIG WITTGENSTEIN, PHILOSOPHICAL INVESTIGATIONS 223 (G.E.M. Anscombe trans., 3d ed. 1972).

63. Blackburn & Waldron, *supra* note 40, at 4.

64. Nagel, *supra* note 5, at 13.

65. Gardner, *supra* note 39, at 332. *See also* Schauer, *supra* note 48, at 861 n.26 (arguing that Lacey "seems mistaken in attributing Hart's resistance to Wittgenstein to the empirical implications of a Wittgensteinian approach").

66. Frederick Schauer, *(Re)Taking Hart*, 119 HARV. L. REV. 852, 860 n.23 (2006).

67. *Id.* at 860.

68. *Id.*

"the traditional tension between philosophical method and empirical inquiry."[69]

IV. Hart's Methodology and Conceptual Analysis

Lacey's discussion of Hart's philosophical influences—and the critiques this discussion has attracted—are relevant to an evaluation of the method of conceptual analysis. Drawing on this material, I shall argue, *contra* Leiter and Perry, that conceptual analysis of the kind employed by Hart is methodologically sound. I will also argue, however, that this material challenges Hart's substantive claim to have described our general concept of law. But before we can embark on that journey, we must first take a substantial detour to clarify precisely what is meant by conceptual analysis and why some commentators consider it problematic. This in turn requires distinguishing between different forms of conceptual analysis. The following sections are relatively abstract, and I ask for the reader's patience: only once these issues are addressed can we return to Hart's use of conceptual analysis in *The Concept of Law* and evaluate it in light of Lacey's biography.

A. Concepts and Conceptual Analysis

1. What Is a Concept?—Conceptual analysis obviously involves the analysis of concepts. It is therefore worthwhile to briefly address just what we mean by "concept."[70] Frank Jackson provides a useful framework. He describes the term "concept" as referring to "the possible situations covered

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69. *Id.* at 860–61. That there is some degree of tension between traditional philosophical method and empirical enquiry is an important insight. It is an over-simplification, however, to treat the two as antitheses. Both Lacey and Schauer occasionally exhibit a tendency towards characterizing these approaches as mutually exclusive. Lacey, for instance, proposes that employing a contextual and empirical approach "would have threatened Herbert's idea of himself as a philosopher." Lacey, *supra* note 1, at 219. Schauer also seems to suggest an overly sharp distinction between the empirical and the philosophical with his claim that "the Hart-Fuller debate . . . at its instrumentalist core was empirical and not philosophical." Schauer, *supra* note 66, at 865. The "instrumentalist core" to which Schauer refers is the question of whether people would be more likely to refuse to obey "morally odious official directives" (such as those promulgated by the Nazi regime) if they accepted the positivist distinction between "a directive's status as law" and "the citizen's (or official's) moral obligation to obey it." *Id.* This is certainly an empirical question, as Schauer claims. To conclude that it is therefore not a philosophical question, however, suggests an implausibly narrow conception of philosophy. Empirical concerns of this kind (considering which course of action would likely result in greater beneficial consequences) are always implicated, for instance, in utilitarian assessments of what one ought morally do. John Stuart Mill, Jeremy Bentham and countless other utilitarians would surely be surprised to learn that they were not, in fact, engaged in philosophy.

70. A full investigation of the meaning of "concept" is beyond the scope of this review essay. I do not intend to embark upon a technical discussion of concept as the term is used, for example, in the important philosophy-of-mind debate regarding the distinction between conceptual and non-conceptual content. I shall simply give a rough outline of what is meant by "concept" in the relatively loose sense the term is used in the context of conceptual analysis.

by the *words* we use to ask our questions."[71] The concept of X is the set of all possible situations $x_1, \ldots, x_n$ that are covered by the term "X." The concept of law, for example, is the set of all possible situations that can be correctly referred to by the term "law."

But just as we accept that different words (in different languages, say) may embody a single concept, so too a single word may be used to refer to several distinct concepts. "Law" is an example of this. Raz points out that we speak of scientific laws, mathematical laws, and divine laws.[72] It seems plausible that we would like our notion of "concept" to allow that these different usages refer to distinct concepts.

We can achieve this goal by making explicit a notion that is implicit whenever we treat a word as embodying a concept. When we take "X" to denote a concept X, we implicitly claim that there is a set of possible situations that constitute the concept that is *coherent* or structured in some way: that is, the members $x_1, \ldots, x_n$ of the set are related to each other in some deeper way than simply bearing the same label "X." We imply that some *sense* can be made of this set, that there is some degree of internal structure by which the particular instances are related. The most obvious relationship would be that the members $x_1, \ldots, x_n$ share a common property or set of properties by virtue of which each x_i is an X. To return to Raz's example, all instances of divine law are connected in some coherent way, perhaps by sharing a set of common properties that does not extend to instances of mathematical or scientific law. It is probably for this reason—the implicit claim to coherence—that Cummins equates concepts with "theories": "The majority view, I think, is that concepts are theories, either explicit, as in the case of technical scientific or legal concepts, or tacit, as in the case of 'ordinary' concepts."[73]

The targets of conceptual analysis are typically ordinary, or "folk," concepts rather than explicit concepts.[74] These concepts are by definition delineated by the situations to which "we"—the ordinary folk—take the word to refer.

2. What Is Conceptual Analysis?—In light of the above discussion, conceptual analysis can be seen as the task of unveiling or determining these

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71. FRANK JACKSON, FROM METAPHYSICS TO ETHICS: A DEFENCE OF CONCEPTUAL ANALYSIS 33 (1998). As Jackson points out, employing this general description of "concept" does not commit us either to the view that necessary coextension is the criterion of concept identity or to the paradigm-case argument. *Id.* at 34.

72. JOSEPH RAZ, ETHICS IN THE PUBLIC DOMAIN 180 (1994).

73. Robert Cummins, *Reflection on Reflective Equilibrium*, *in* RETHINKING INTUITION: THE PSYCHOLOGY OF INTUITION AND ITS ROLE IN PHILOSOPHICAL INQUIRY 121 (Michael R. DePaul & William Ramsey eds., 1998).

74. Cummins's reference to legal theories, along with scientific theories, as paradigm examples of explicit theories is interesting. As I will discuss below, Hart seems to treat the concept of law (correctly, in my view) as a tacit or ordinary concept.

underlying common properties (or other relationships) that provide the coherence implicit in use of the term "concept."

Jackson isolates two features of conceptual analysis:

(i) Conceptual analysis is "the very business of addressing when and whether a story told in one vocabulary is made true by one told in some allegedly more fundamental vocabulary."[75]

(ii) Conceptual analysis must "survive the method of possible cases": the methodology applied should produce an account of the concept that squares with our clear intuitions about the concept.[76]

The first of these features flows directly from my discussion of the nature of concepts. The description in the more fundamental vocabulary indicates the *relationship* between different situations covered by the concept *X*, the structure that underlies the concept. For example, the concept of law is described by John Austin in the (allegedly) more fundamental vocabulary of order, sovereign, and threat, and by Hart in the vocabulary of primary and secondary rules.[77] Ayer and Chisolm described the relatively complex concept of knowledge in the more basic vocabulary of belief, truth, and justification.[78] In general, conceptual analysis of *X* is an attempt to provide a theory about what "makes" something an *X*, by breaking the concept down into its more fundamental characteristics.

The second feature of conceptual analysis that Jackson describes is an inevitable consequence of Jackson's own definition of a concept. The concept *X*, according to Jackson, is the set of possible situations covered by the term. Any account of the concept *X* should therefore accommodate our understanding as to which situations the term applies, at least when that understanding is fairly certain or reliable. Our understanding of the appropriate application of words is determined, in the context of conceptual analysis, by recourse to our intuitions. As we shall see below, this appeal to intuitions is both the most prominent characteristic of conceptual analysis, and the root of the controversy regarding the legitimacy of this methodology.

Conceptual analysis is used primarily to sharpen our understanding of a concept. This improved understanding has two components. Firstly, by examining our intuitions about clear cases, the underlying structure of the concept is revealed: by making explicit what is tacit in ordinary usage of the term, conceptual analysts create a *theory* of *X*. Secondly, we are then able to apply this theory to attain answers in cases which were previously uncertain. As Cummins puts it, conceptual analysis allows us to create a theory that

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75. JACKSON, *supra* note 71, at 28.

76. *Id.*

77. *See* HART, *supra* note 3, at 18–25, 49–76 (discussing Austin's concepts of order, threat, and sovereign); *id.* at 77–96 (discussing Hart's concepts of primary and secondary rules).

78. A.J. AYER, THE PROBLEM OF KNOWLEDGE 34 (1956); RODERICK M. CHISOLM, PERCEIVING A PHILOSOPHICAL STUDY 16 (1957).

"constitutes a bridge that transfers our relative certainty about the clear cases to an unclear case."[79]

B. *The Legitimacy of Conceptual Analysis*

1. Modest and Immodest Conceptual Analysis.—Jackson distinguishes between two different species of conceptual analysis—or, perhaps more revealingly, two different categories of *conclusions* drawn from conceptual analysis—namely modest and immodest conceptual analysis. This distinction is vital, for I am claiming only that *modest* conceptual analysis is a legitimate methodology for jurisprudence.[80]

In its modest role, conceptual analysis restricts itself to drawing conclusions about what the *concept* is, illuminating the concept's underlying structure, and determining whether particular situations are covered by the concept. As mentioned earlier, this typically involves an exposition of the folk theory of the concept. Modest conceptual analysis goes no further. Specifically, conceptual analysis in its modest form makes no claims about the nature of the universe. It is merely descriptive, and descriptive of the *concept* and not of the *world* (which of course the concept purports to describe, or at least refer to).

Immodest conceptual analysis, by contrast, involves drawing conclusions about what the world is like from how we wield our concepts. In the case of folk theories, it is akin to presuming that the folk have gotten it right. Jackson defends only conceptual analysis in its modest role: immodest conceptual analysis "gives intuitions about possibilities too big a place in determining what the world is like."[81] Immodest conceptual analysis gives too much deference to what the ordinary folk think about the nature of things: just because the ordinary folk conception is that the nature of the universe is such-and-such, this does not in any way suggest that the nature of the universe *is* such-and-such rather than so-and-so.[82]

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79. Cummins, *supra* note 73, at 114.

80. Jackson's distinction between modest and immodest conceptual analysis should not be confused with Nicos Stavropoulos's subtly different categories of nonambitious and ambitious conceptual analysis. *See* Nicos Stavropoulos, *Hart's Semantics*, *in* HART'S POSTSCRIPT, *supra* note 4, at 59, 69–79. Stavropoulos describes conceptual analysis as *ambitious* when "it supposes that use alone determines the correct understanding of concepts." *Id.* at 71. This is not the same as Jackson's *immodest* conceptual analysis, which involves the claim that usage of words, and people's intuitions about what words mean, can tell us something about the correct understanding of *the world*. *See also* Veronica Rodriguez-Blanco, *A Defence of Hart's Semantics As Nonambitious Conceptual Analysis*, 9 LEGAL THEORY 99 (2003) (defending Hart from the "semantic sting" argument formulated by Ronald Dworkin and maintained by Stavropoulos).

81. JACKSON, *supra* note 71, at 43–44.

82. Jackson's distinction between modest and immodest conceptual analysis, and his rejection of the latter, mirrors R.M. Hare's views on the use made of linguistic intuitions, on the one hand, and moral intuitions on the other. According to Hare, linguistic intuitions play a legitimate role in philosophical logic because native speakers of the language are authorities on how words are used and therefore on the meaning of words. Appeals to moral intuitions as the grounds for substantive

My purpose in invoking Jackson's distinction is not to argue that immodest conceptual analysis is illegitimate, but that modest conceptual analysis *is* legitimate. The criticism that conceptual analysis unduly privileges the way we use words, if correct, applies only to conceptual analysis in its immodest form. Such criticism is grounded upon the complaint that it is unsound to draw conclusions about the nature of the world from facts about how humans (or certain subsets of humans) use language. Modest conceptual analysis is immune to this criticism. Modest conceptual analysis restricts itself to drawing conclusions about the way humans use words (or, if you like, conclusions about how humans use concepts) from the way we use words. There is nothing illegitimate about drawing such conclusions from such premises.

2. Modest Conceptual Analysis and Glorified Lexicography.—The challenge faced by *modest* conceptual analysis comes from another direction: if conceptual analysis is modest in the Jacksonian sense, is it not *too* modest to be either interesting or worthwhile? As Leiter puts it, "Is philosophy, on this account, reduced to glorified lexicography?"[83]

Jackson's response, as Leiter notes, would be to point out that the conceptual analysis in its legitimate form, while modest, is nonetheless important:

> [T]he questions we ask when we do metaphysics are framed in a language, and thus we need to attend to what the users of the language mean by the words they employ to ask their questions. When bounty hunters go searching, they are searching for a person and not a handbill. But they will not get very far if they fail to attend to the representational properties of the handbill on the wanted person. These properties give them their target, or, if you like, define the subject of their search.[84]

This is not a particularly robust defense of modest conceptual analysis: the analogy with a bounty hunter's handbill is hardly flattering. It suggests that modest conceptual analysis does no more than identify the target, with the real philosophical detective work to be done by employing some other

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moral claims, however, unduly privileges the way we use language. Just because we use words a certain way tells us nothing about the way the world is, even if everyone agrees as to the usage of those words. Consensus does not necessarily lead to correctness: if the objective of the moral enquiry is to ascertain objective moral facts, even universal agreement of moral opinion does not provide us with the answers we seek. *See* R.M. HARE, MORAL THINKING: ITS LEVELS, METHOD, AND POINT 9–12 (1981).

83. Leiter, *supra* note 4, at 46. This charge of reducing philosophy to triviality mirrors the response many philosophers have had to J.L. Austin's linguistic philosophy. An example is Blackburn and Waldron's statement of the difference between Austin and Wittgenstein: "Whereas Wittgenstein is always, clearly, doing something of great importance, every student of philosophy is puzzled by the point of Austin's minute investigations of English usage." Blackburn & Waldron, *supra* note 40, at 4.

84. JACKSON, *supra* note 71, at 30 (emphasis omitted).

methodology. Nor does the retort satisfy Leiter: it does not sufficiently distinguish between conceptual analysis and lexicography, for "do not lexicographers attend 'to what users of the language mean by the words they employ' and then write up the results?"[85]

I suggest, however, that both Jackson and Leiter are giving short shrift to the nature and function of modest conceptual analysis. As I mentioned above, conceptual analysis does not merely record the usage of words by competent speakers of the language; it does not simply "aim to track statistically normal usage of words or concepts."[86] Conceptual analysis, even in its modest role, attempts to increase our *understanding* of how we use words. The methodology is employed to clarify and to systematize, to make sense of the way we employ certain important terms by making explicit an underlying, inchoate, but nonetheless coherent concept or theory. If we must use an analogy from criminal investigation, modest conceptual analysis would be better compared to image enhancement, whereby an out-of-focus photograph of the perpetrator is enhanced to the extent that the subject's face can be recognized.

This additional (some would say defining) characteristic of conceptual analysis demonstrates a significant difference between modest conceptual analysis and dictionary research. Firstly, lexicography does not even purport to provide an underlying theory that ties together apparently disparate usages of words (except to the extent that those usages can be explained etymologically). Secondly, without this underlying theory to provide a bridge between the clear cases and the unclear cases, the lexicographer cannot clarify whether a word can be consistently applied in situations where its usage is unclear. Consequently, the conceptual analyst can contribute far more to our understanding of the words we use—and therefore the *institutions* that we use these words to describe and delineate—than Leiter's glorified lexicographer. One need only compare the insights provided by Hart's *The Concept of Law* (which I will argue at length below is an example of modest conceptual analysis) to the *Oxford English Dictionary*'s entry on "law"[87] to see that modest conceptual analysis cannot simply be reduced to lexicography.[88]

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85. Leiter, *supra* note 4, at 46.

86. *Id.* at 45.

87. The Oxford English Dictionary defines law, in the relevant sense, as: "A rule of conduct imposed by authority . . . . The body of rules, whether proceeding from formal enactment or from custom, which a particular state or community recognizes as binding on its members or subjects." 8 THE OXFORD ENGLISH DICTIONARY 712 (2d ed. 1989).

88. I am not claiming here that modest conceptual analysis can deliver the "timeless or necessary truths" that Raz and Dickson see as the goal of jurisprudence. Leiter, *supra* note 4, at 46. However, as Leiter notes, such claims would also fall foul of Quine's damning criticisms of the analytic–synthetic distinctions—but this is true of *any* claims of timeless and necessary truths. *Id.* In other words, an inability to deliver necessary truths is not a criticism unique to modest conceptual analysis.

3. Hermeneutic Concepts.—At least with respect to concepts other than natural kinds, and especially in relation to hermeneutic concepts, conceptual analysis in its modest role is both unavoidable and non-trivial. Natural kind concepts are "concept[s] whose extension is fixed solely by whatever well-confirmed scientific (lawful) generalizations employ the concept."[89] In the case of natural kind concepts—such as gold, fish, or whale—even modest conceptual analysis appears to have no role to play. What ordinary folk have to say about the application of the concept should give way to contrary scientific usage,[90] as it clearly has in relation to gold, fish, and whale.

A hermeneutic concept, by contrast, is a concept with the following two characteristics:

(i) It has a hermeneutic function—that is, "it figures in how humans make themselves and their practices intelligible to themselves";[91] and

(ii) The hermeneutic function fixes the concept's extension.[92]

The extension of a hermeneutic concept, by definition, is determined by the role it plays in how we make ourselves and our practices intelligible. The extension of a hermeneutic concept is therefore determined in relation to what *we* understand the concept to be, how we employ the concept (or the term by which we refer to the concept) and how we make *sense* of the concept, in order to make better sense of ourselves and our practices. The methodology employed in modest conceptual analysis, whereby the extension of the concept is fixed by its usage, would seem to be the only appropriate means of determining the extension of a hermeneutic concept. What other authority could there be for the extension of a hermeneutic concept other than the way it is used and understood? Hermeneutic concepts are very different creatures than natural kind concepts such as fish and whales, or space and time. While there may be good arguments as to why

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89. *Id.* at 40.

90. As Stephen R. Munzer points out, scientific usage does not always trump other usages. In certain contexts and for certain purposes, nonscientific usage need not give way to scientific uses. For example, a Fisheries Act may regulate whaling, and even define "fish" for the purposes of the act as "including whales and dolphins." There is nothing scientifically objectionable about this. The natural sciences distinguish between fish and marine mammals because the distinction is *useful* for the goal of understanding the relationships between living things. In this endeavor, the differences between marine mammals and fish are more important than the similarities, namely that they each inhabit the oceans. For the purpose of regulating ocean harvesting, however, whether an organism has gills or lungs is less important than the fact that they each inhabit the ocean. *See* Stephen R. Munzer, *Realistic Limits on Realist Interpretation*, 58 S. CAL. L. REV. 459–75 (1985) (arguing that natural kind terms do not always need to give way to a purely scientific usage). My thanks to Leslie Green for suggesting this point.

In any event, little of consequence turns on this as far as my argument is concerned. What I wish to stress is not that ordinary usage (or, as in the example above, legal usage) must give way to scientific usage of natural kind terms, but rather that ordinary usage *need not* give way to scientific usage for *non*natural kind terms.

91. Leiter, *supra* note 4, at 40.

92. *Id.*

"we should give up on our intuitions about space and time,"[93] these arguments do not apply in the same manner to hermeneutic concepts such as law. Our intuitions about what counts as law are connected to the nature and extension of law in a more direct and fundamental way than the manner in which our intuitions about space and time are connected to the nature and extension of space and time. Unlike space and time, we created law and—more importantly—we determine its extension via its hermeneutic function, via the role it plays in our self-understanding. A theory of the concept of law must *account* for people's intuitions about law.

Moreover, modest conceptual analysis does not merely track usage (and therefore fix the concept's extension) but also illuminates—makes more intelligible—the usage of the concept under analysis. In doing this, modest conceptual analysis advances precisely the hermeneutic function of the hermeneutic concept in question. This is especially the case with a hermeneutic concept such as law: the concept of law describes a *social practice* of law, and so by making the practice of law more intelligible to us, modest conceptual analysis in jurisprudence performs *directly* the hermeneutic function.[94]

C. *Conceptual Analysis in* The Concept of Law

Having spent some time sharpening our understanding of conceptual analysis, we can now return to Hart and *The Concept of Law*. In this section I shall argue that Hart used conceptual analysis *modestly* to describe the folk concept of law.

1. The Features of Conceptual Analysis.—That Hart employed conceptual analysis in some form cannot be doubted. (The book is called, after all, *The Concept of Law*.) The features of conceptual analysis discussed earlier are evident in the text proper, as well as Hart's comments about his methodology in both the original Preface and the Postscript to the second edition. First, Hart is attempting to make sense of law in terms of its relationship with other, more fundamental concepts such as "*duty-imposing rules*, *power-conferring rules*, *rules of recognition*, *rules of change*, *acceptance of rules*, *internal and external points of view*, *internal and external statements*, and *legal validity*."[95] This satisfies Jackson's first characteristic of conceptual analysis, namely that of "addressing when and whether a story told in one vocabulary is made true by one told in some allegedly more fundamental vocabulary."[96] As Hart explains in the Postscript:

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93. Cummins, *supra* note 73, at 116.

94. *See* Leiter, *supra* note 4, at 40–41; Joseph Raz, *Authority, Law and Morality*, 68 MONIST 295, 321–22 (1985).

95. HART, *supra* note 3, at 240.

96. JACKSON, *supra* note 71, at 28.

> These concepts focus attention on elements in terms of which a variety of legal institutions and legal practices may be illuminatingly analysed and answers may be given to questions, concerning the general nature of law, which reflection on these institutions and practices has prompted.[97]

Hart refers to the idea of translation from complex terms into more fundamental terms most explicitly in his discussion of the usefulness of definitions:

> [A] definition of a word . . . at one and the same time [can] make explicit the latent principle which guides our use of a word, and may exhibit relationships between the type of phenomena to which we apply the word and other phenomena . . . . A definition of this familiar type does two things at once. It simultaneously provides a code or formula translating the word into other well-understood terms and locates for us the kind of thing to which the word is used to refer, by indicating the features which it shares in common with a wider family of things and those which mark it off from others of the same family.[98]

Hart acknowledges that law is too complex a phenomenon to be captured by a simple family-and-differentiation definition such as we would use to define a triangle or elephant.[99] According to Hart, "nothing concise enough to be recognized as a definition could provide a satisfactory answer" to the question "What is law?"[100] Hart nonetheless believes that "law" denotes a concept: there are *relationships* that link the various instances to which the term refers so that "it is possible to isolate and characterize a central set of elements which form a common part of the answer"[101] to the persistent questions of jurisprudence. Hart's aim is not merely lexicographical, but rather focused upon increasing our understanding of law:

> [The book's] purpose is not to provide a definition of law, in the sense of a rule by reference to which the correctness of the use of the word will be tested; it is to advance legal theory by providing *an improved analysis of the distinctive structure* of a municipal legal system and a better understanding of the resemblances and differences between law, coercion, and morality, as types of social phenomena.[102]

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97. HART, *supra* note 3, at 240.

98. *Id.* at 14. The reader familiar with Hart's work will no doubt recognize that I have not included in this quotation adjacent text that is highly relevant to determining Hart's methodology. I am not attempting sleight of hand, but rather attempting to address each of the issues as separately as possible given the admittedly muddled exposition Hart gives of his own methodology. The issues raised by the adjacent text are addressed below.

99. *Id.* at 15.

100. *Id.* at 16.

101. *Id.*

102. *Id.* at 17 (emphasis added).

Hart believes this "distinctive structure" is latent in or underlying the concept as generally used and that he is uncovering this structure that is inherent in our understanding of law:

> [E]ven skilled lawyers have felt that, though they know the law, there is much about law and its relations to other things that they cannot explain and do not fully understand. *Like a man who can get from one point to another in a familiar town but cannot explain or show others how to do it*, those who press for a definition need a map exhibiting clearly the relationships dimly felt to exist between the law they know and other things.[103]

And:

> Many important distinctions, which are not immediately obvious, between types of social situation or relationships may best be brought to light by an examination of the standard uses of the relevant expressions and on the way in which these depend on a social context, itself often left unstated.[104]

The Concept of Law, as Hart understands it at least, is a classic example of conceptual analysis. The concept being analyzed is explained in terms of more fundamental notions, so as to bring to light the structure that is latent in the concept. Moreover, the second element of Jackson's description of conceptual analysis is also evident in *The Concept of Law*.[105] Hart applies the "method of possible cases" throughout the book, most explicitly in his direct criticisms of John Austin's theory of law. The idea that law is simply the order of a sovereign backed by threats should be discarded, Hart persuasively argues, because it does not capture many circumstances that we would all agree are law. Austin's theory does not extend to power-conferring rules,[106] for example, or rules of recognition, or customary rules;[107] nor does it explain the attitudes people have toward the law. In relation to the attitudes people have toward the law, Hart makes perhaps his most explicit appeal to people's intuitions about words and language, drawing a distinction between a person being "obliged" to obey a gunman and having an "obligation" to obey the law.[108]

2. Hart's Conceptual Analysis—Modest or Immodest?—It is clear not only that Hart employed conceptual analysis, but also that the object of his analysis was the *folk* concept of law. Hart takes as his starting point the knowledge "any educated man" has about municipal legal systems.[109] He

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103. *Id.* at 14 (emphasis added).
104. *Id.* at vi.
105. *See supra* text accompanying note 76.
106. HART, *supra* note 3, at 29.
107. *See, e.g.*, *id.* at 44–46.
108. *Id.* at 82–83.
109. *Id.* at 3, 240.

uses "our" common usage of words to demonstrate the inadequacies of other theories, most notably Austin's. The features he illuminates are features he believes to be inherent in "our" social practice of law.

What is less clear, however, is whether the role of conceptual analysis in Hart's work is modest or immodest. Much of the skepticism about Hart's appeals to our linguistic intuitions and usages stems from Hart's connection with (and references to) J.L. Austin's "natural language" approach to philosophy. Austin's approach has lost influence in part because it is characterized as drawing conclusions about the nature of the universe from the way we employ words—precisely because, to employ our Jacksonian vocabulary, it gives conceptual analysis an immodest role.

A number of remarks by Hart therefore suggest he too is drawing immodest conclusions from our intuitions about language. Hart repeatedly cites with approval Austin's core claim that by examining words we can "sharpen our awareness" of the phenomena—of the *realities*—that we use words to talk about.[110]

I believe it is a mistake, however, to interpret these comments as indicating that Hart is drawing immodest conclusions from his analysis of the concept of law. In terms of the vocabulary I have employed in this Essay, these comments are best understood as Hart's attempt to distinguish his methodology from "glorified lexicography," rather than as indicating that Hart's conceptual analysis is immodest.[111]

Hart is clearly arguing that inquiries into the meanings of words shed light on more than words. But the additional phenomena that these inquiries shed light on are the set of social practices that *we call law*. An inquiry into how we use words such as "law" illuminates not just the word itself, but the concept embodied by the social practices to which we apply the word "law." In other words, the "more than words" that the inquiries illuminate is precisely the *folk concept of law*. To describe and explain the *folk* concept of law is to use conceptual analysis modestly, not immodestly. It is perfectly legitimate to draw conclusions about the folk concept of law from the way the folk use words like "law."[112]

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110. *Id.* at vi, 14.

111. Indeed, these comments are worth keeping in mind when assessing the persuasiveness of Leiter's arguments that modest conceptual analysis is philosophically trivial.

112. Hart describes his book as an essay in "descriptive sociology." *Id.* at vi. By this he seems to mean that the book is concerned with describing certain social practices that we group together under the common label of law. These social practices are the additional phenomena on which light can be shed by how we use words. Nothing in Hart's work should be interpreted as making a claim of *necessity* about these social practices, about the things we call law and those we don't. Hart does not claim that we necessarily *had* to adopt a concept of law constituted of the union of primary and secondary rules, for instance, but rather that we have, as a matter of fact, adopted such a concept and called it "law." This point is familiar territory for all legal theorists, being the seed from which sprang the Hart–Dworkin debate about the connection between law and values. But Hart's intent, at least, is clear. As Hart states in the Postscript, his account "has no justificatory aims: it does not

3. Modest Conceptual Analysis and Hart's Influences.—The conclusion that Hart employed modest conceptual analysis to describe the folk concept of law is supported by Gardner's argument, mentioned briefly earlier, that Hart's methodology has more in common with Wittgenstein than Austin.[113] Gardner argues that Hart shared Wittgenstein's "anti-reductivist" theme. That is:

> [They rejected] the reductivist 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 beyond.[114]

By rejecting the reductivist thesis, Hart is rejecting the view that the main job of philosophy is to discover a hidden reality obscured by our understanding of nature and embracing the view that the main job of philosophy is to put this unclear understanding into sharper focus.

It is my contention that rejection of reductivism is akin to rejection of immodest conceptual analysis in favor of modest conceptual analysis. This contention is supported by Gardner's further explanation of the "common sense" aspect of Hart's approach to concepts, which suggests the target is what I have called the "folk concept":

> According to the approach of *Causation and 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. 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 of the same anti-reductivist themes, in my view, dominate *The Concept of Law*.[115]

In other words, Hart's approach in *The Concept of Law* is that whether something is "law" is settled by the way humans choose to classify things. Unlike natural kind terms such as "fish," we could not *all* be deeply wrong about what it means for something to be a law: there is no *true law* beyond our understanding and usage. Indeed, Gardner's comments would apply more strongly to the concept of law than to the concept of causation: in the former case, it is very doubtful that there would even *be* law "were there no people to conceive of it."[116]

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seek to justify or commend on moral or other grounds the forms and structures which appear in my general account of the law . . . ." *Id.* at 240.

113. *See supra* text accompanying note 65.

114. Gardner, *supra* note 39, at 331 (emphasis added).

115. *Id.* (emphasis added).

116. *Id.*

V. Conceptual Analysis, Intuitions, and Hart's General Theory of Law

Hart claims that his theory is not only a *descriptive* theory of the concept of law, but also a *general* theory of the concept of law. Hart claimed to be describing *the* concept of law, not *a* concept of law. Hart is not claiming he has discovered *the* concept of law in the sense of the concept of law we humans necessarily had to develop. Rather, he is claiming to describe the concept of law that is, as a matter of contingent fact, common to all developed legal systems:

> My aim in this book was to provide a theory of what law is which is both general and descriptive. It is *general* in the sense that it is not tied to any particular legal system or legal culture, but seeks to give an explanatory and clarifying account of law as a complex social and political institution with a rule-governed (and in that sense normative) aspect. This institution, in spite of many variations in different cultures and in different times, has taken the same general form and structure, though many misunderstandings and obscuring myths, calling for clarification, have clustered round it. The starting-point for this clarificatory task is the widespread common knowledge of the salient features of a modern municipal legal system which . . . I attribute to any educated man.[117]

This passage makes clear that Hart believes that the folk concept of law is *universal*—that is to say, that the concept of law he describes is *not* ethnographically relative (at least within the universe of cultures with modern legal systems). But in developing his theory of the concept of law, Hart makes numerous assertions regarding the intuitions of the educated man.[118] In doing so, he appears to simply assume that all educated persons share his intuitions. And not just all well-educated, English men: Hart's assertion of the generality of the concept of law entails that all members of any society with a modern legal system must share Hart's relevant linguistic intuitions. If Hart's views prove not to be representative to this extent, his generality claim would be directly rebutted.

We have reason to think that the intuitions upon which philosophers rely may not be as representative as the philosophical community believes. When Edmund Gettier published a paper challenging the then-dominant view

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117. HART, *supra* note 3, at 239–40.

118. There are many examples of intuition mining in *The Concept of Law*. Hart appeals to our linguistic intuitions by noting how "*being obliged*" differs from "*having an obligation*," *id.* at vi, 82–83, and how our use of "*ordering*" differs from "*giving an order*," *id.* at 19–20. He refers to the usual sense of "*command*," *id.*, and to the usual implications of "*obedience*," "*habit*," and "*rule*," *id.* at 51–52, 55–59, 75, 117, and he contrasts the ordinary usage of "*authority*" with "*power*," *id.* at 63, "*just*" with "*good*," *id.* at 158, "*nullity*" with "*violation*" and "*sanction*," *id.* at 28, and "*fine*" with "*tax*," *id.* at 39. Many of these distinctions play a substantial role in Hart's argument that the "internal point of view" has a central place in the theory of law.

that knowledge was equivalent to justified true belief,[119] his argument consisted of presenting a number of cases of justified true belief and simply declaring they were clearly not examples of knowledge. Because the philosophical community overwhelmingly shared Gettier's intuitions about the set of possible situations covered by the term "knowledge," he was taken to have emphatically dismantled the "justified true belief" model of knowledge. But when Nichols, Stich, and Weinberg recently presented a Gettier example to survey groups, the responses revealed an apparent statistically significant difference in intuitions among different classes of respondents.[120] The likelihood that a respondent agreed with Gettier (and the philosophical consensus) apparently depended significantly upon the respondent's ethnographic heritage and socio-economic status.

There is little reason to believe that similar results would not apply to other areas of philosophy. For example, the charge that the intuitions relied on by philosophers do not represent the intuitions of the general community has been leveled at Hilary Putnam's "Twin Earth" cases in theories of content.[121] And Leiter argues that the intuitions relied on in jurisprudence are more likely to diverge from the intuitions of the general folk than would be the case in many other branches of philosophy. He claims that Oxford University's (deserved) dominance of legal philosophy "is likely to have magnified any 'selection effect'"[122]—in the sense that only those who share the intuitions of the field's leading lights are "selected" to participate in the dialogue.

Lacey's evocative description of mid-century Oxford philosophy provides significant support for Leiter's claim of a selection effect. The fifty philosophers at Oxford in 1952 were overwhelmingly white males of upper-class or upper-middle-class origins, and "they employed techniques and a personal style which owed not a little to the military and other official experience and authority which the leading figures—Gilbert Ryle and J.L. Austin—had enjoyed during the war."[123] Austin's influence was due in part to his intimidating character; he did not suffer fools gladly, and the definition of fool apparently encompassed anyone who did not agree with him:

> At Saturday morning discussions or other seminars, Austin's manner is frequently described . . . as "austere" or even "bullying" and the regime of the time as "terrifying." He had the capacity utterly to silence and even to shatter the confidence of anyone who failed to understand, or to play by, the prevailing rules of

119. Edmund L. Gettier, *Is Justified True Belief Knowledge?*, 23 ANALYSIS 121, 121–23 (1963).

120. Jonathan M. Weinberg et al., *Normativity and Epistemic Intuitions*, 29 PHIL. TOPICS 429, 441–48 (2001). I will assume for the sake of argument that these results are robust.

121. Cummins, *supra* note 73, at 116; *see also* Leiter, *supra* note 4, at 48–49.

122. Leiter, *supra* note 4, at 48–49.

123. LACEY, *supra* note 1, at 132.

> engagement. . . . What Austin regarded as a stupid or evasive response would be dismissed as "not philosophy," while those (numerous) philosophers not within the linguistic circle would be spoken of as "not in touch with current trends in philosophy"—meaning, "don't waste your time on him."[124]

In such a context, and given that the focus of the discussions referred to was close linguistic analysis, it seems highly likely that anyone whose intuitions did not match those of the philosopher-kingmakers would have been banished to the philosophical wilderness.[125] It is at least plausible that those who flourished—and ruled the "philosophical world"[126]—had a narrower set of linguistic intuitions than even the social sub-class that produced them.

In light of this biographical information, I agree with Leiter's suggestion that the intuitions upon which Hart and other legal theorists rely are worth testing with surveys. We disagree, however, as to the ramifications of ethnographically relevant results. Leiter's view is that ethnographically relative results would demonstrate the impropriety of conceptual analysis as a methodology. I disagree, but I do believe that ethnographically relative results would contradict Hart's substantive claim that there is one general concept of law common to all "modern" legal cultures.[127] I also believe that a closer scrutiny of Hart's usage of linguistic intuitions (prompted by the possibility that a survey would produce ethnographically relative results) could reveal other, perhaps more important, fractures in Hart's theory of law.[128]

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124. *Id.* at 135.

125. In fact, in light of this atmosphere, Julius Stone's inability to secure tenure in England may have had as much to do with his nonconforming sociological bent than class snobbery or anti-Semitism. *See id.* at 150 (discussing the Oxford law faculty's reaction to Stone); Justice Michael Kirby, *H.L.A. Hart, Julius Stone and the Struggle for the Soul of Law*, 27 SYDNEY L. REV. 323, 325–26 (2005) (relating Stone's affinity for the sociology school of jurisprudence, which rejected the approach of Oxford's legal positivists, and the discrimination he faced in finding academic positions as a result of his Jewish heritage).

126. LACEY, *supra* note 1, at 132.

127. Leslie Green has suggested, in conversation, that there are two questions that we need to distinguish in order to assess Hart's claim of universality. First, does everyone share the same folk concept of law? Second, does our folk concept of law apply to all other cultures and legal systems? (In other words, do we think that our folk concept of law describes law, for everyone who has law?) I am not convinced, however, that these two questions could have different answers. Suppose the answer to the second question is "yes." Then the concept of law that applies in every legal system is accurately described by *our* folk concept of law, which Hart presents. As law is a hermeneutic concept, and Hart's concept of law includes the attitudes people have toward the law, that means our folk concept of law (as presented by Hart) correctly describes the attitudes of people in other cultures toward their law. But if so, surely it follows that they *share* that folk concept of law.

128. For example, the intuitions Hart relies on regarding the distinction between "being obliged" and "having an obligation" could prove to be relative to Hart's particular ethnography, which would affect Hart's position on the obligation to obey the law. *See supra* note 114. Of course, the precise role that these various intuitions play in Hart's various claims would have to be analyzed in substantial detail.

VI. Conclusion

H.L.A. Hart led an unusually interesting and full life, and Lacey's honest but compassionate rendering of it adds to, rather than detracts from, Hart's legacy. *A Life of H.L.A. Hart* is also a worthwhile addition to the corpus of scholarship about Hart's theories. The biographical material it contains helps rebut the claim that legal positivism excludes considerations of moral values from legal and political debate and provides a context that enriches our appreciation for Hart's role in law reform.

The biography also enriches the current debate surrounding the methodology of jurisprudence and conceptual analysis generally. On the one hand, Gardner's contribution to the Austin-versus-Wittgenstein debate can be conscripted to defend Hart's use of modest conceptual analysis. On the other hand, Lacey's evocative description of the narrow and homogenous set of influences to which Hart was exposed at Oxford suggests we should be skeptical of Hart's appeals to intuitions and doubtful in turn about his claim to have produced a general theory of the concept of law that applies to all developed legal systems. This skepticism may lead to renewed analysis of Hart's arguments in *The Concept of Law* and other major works.

In short, *A Life of H.L.A. Hart* adds to our understanding and appreciation of Hart as a man and a scholar, contextualizes Hart's position on important social issues, reinforces some criticisms of Hart's work and rebuts others, and suggests fruitful further avenues of research. Judged as an "intellectual biography," then, Lacey's *A Life of H.L.A. Hart* must be considered a major success.