



H. L. A. HART

Herbert Lionel Adolphus Hart 1907–1992

HERBERT LIONEL ADOLPHUS HART, the outstanding British legal philosopher of the twentieth century, was known to his friends as Herbert, but published, as was usual in an earlier generation, under his initials: H. L. A. Hart. He came of a Jewish family and believed he had rabbinic forbears. The family was descended from Polish and German immigrants of the nineteenth century named Zadek, who worked in the clothing trade in the East End of London. His father, Simeon Hart, was a master tailor and furrier and his mother, Rose Samson, also helped in the business. In 1900 the family moved to Harrogate. They had three sons and a daughter. Herbert, born on 18 July 1907, was the youngest son.

The family was orthodox and wished their son to have a public school education suited to believing Jews. Few schools catered specially for Jews but Cheltenham College was one: a public boarding school with a separate house for Jewish boys. Hart went to school there in 1918 and stayed until 1921. These years he later described as the only unhappy period of his life. The school seemed to him stiff, formal, narrow and dull, class-ridden and obsessed by athletics. 'I endured it in a kind of stupefied misery in which I made no progress either intellectually or otherwise'. He disliked being thus labelled, though in later life he came to value his part in the Jewish cultural heritage. He was not attracted by the Jewish or other religions, and was very hostile to the enforcement of rules based on religious beliefs. Despite a gift for languages he found Hebrew, because of its scriptural associations,

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unpalatable. But the years at Cheltenham stood him in good stead socially, since when he went to New College, Oxford, the college was dominated by public schoolboys: only four out of eighty in his year were from other schools.

In 1921, at the age of thirteen, as Hart was contemplating running away from school, a family set-back came to the rescue. His father, whose business had gone downhill, wrote saying that he could no longer afford to keep his son at that wonderful school, Cheltenham. 'I was in ecstasy. It was as if heaven itself had answered an unspoken prayer'. The family moved and Herbert was sent to Bradford Grammar School, to which he travelled daily by train. In contrast with Cheltenham, he found the school exciting. Good teaching and friendly northern companionship stimulated a youthful expansion of thought and feeling, to which was added freedom to explore the town and the beautiful countryside on its borders. The Classics master, Goddard, an admirer of Spengler, widened his horizons, and introduced him to historical patterns and vast metaphysical systems. He absorbed from Goddard, along with attention to the minutiae of language, a taste for large generalisations, which helps to explain his later devotion to Bentham. In retrospect this period at Bradford (1921–6), where he became head boy, seemed the happiest of his life. It was at Bradford that he acquired a lifelong love of country walks. Hart's passionate but opposite reactions to life at the two schools was in character, for he responded strongly to people, ideas, places, events, discoveries. This quiet, thoughtful, learned, man could be carried away by feeling — fascination, astonishment, excited admiration, curiosity, contempt, indignation.

Gilbert Murray visited the school to talk to the sixth form and was impressed by Hart's translation from the Greek. At Murray's suggestion he tried in 1926 for an open classical scholarship at New College, Oxford. He was successful and became the top open scholar of the year in Classics. He found the college a place of ravishing beauty, a joy in which to study and, later, teach. He was fairly well-off, since his father, whose fortunes had revived, supplemented his scholarship with an allowance, so that he was able to entertain his friends and spend the vacations travelling abroad. With his fine intellectual features, rumpled clothes and awkward gait, his appearance, manner and way of life changed little over the years. Easy in conversation, his engaging intellectual vitality and humour lit up whatever topic the talk turned to. He made friends with several Wykehamists in the college, though not with the athletic types, for he was quite unathletic. He found no reason

to complain of snobbery nor, apart from one incident, of anti-Semitism. A term spent on Pass Moderations, including logic, enabled him to avoid the linguistic grind of Classical Moderations and go straight to ancient history and philosophy, the components of Greats. Douglas Jay, who followed the same path, met him after a lecture, noted his strong Yorkshire accent, later lost, and began a friendship that was to last for over sixty years. Hart found in H. W. B. Joseph a rigorous but stimulating tutor, who worshipped Plato and steered his mind towards a Platonic form of realism as interpreted by Cook Wilson. Hart, a favourite pupil, seemed to Joseph to combine sane good sense with exceptional philosophical acumen. H. A. L. Fisher, the Warden of New College, invited him for walks and gave him a glimpse of the great world by introducing him to such figures as Lloyd George, Virginia Woolf and Dean Inge. Others reading Greats at the college at the time included, apart from Jay, Richard Wilberforce and Richard Crossman, who came up with him in 1926, along with John Sparrow and William Hayter, who had come up in 1925. Crossman he hated, since he 'tried to foist his personality on one'. They went to lectures in a band, and some of them travelled abroad together in the vacations. They talked about history and philosophy; at times Hart's contemporaries got more from him than from their tutors, but with an eye to the examinations, in which he needed to prove his worth, he kept to himself a special notebook with secret nuggets of information. Others at the college at the time included Frank Pakenham, Kenneth Younger and Arnold Pilkington. At the Jowett Society, of which he became president, he met in Isaiah Berlin another young man doing Greats who, unlike him, rejected Joseph's ideas. This, too, was the start of a lifelong friendship. Berlin realised that he had met someone of high intellectual calibre, who spoke with clarity, penetration and, what was rare in someone of his gifts, complete honesty; for Hart was always ready to withdraw or modify his assertions in the face of what seemed valid objections. His politics were liberal. Of his near-contemporaries only Gaitskell, two years senior, joined the Labour Club and supported the strikers in the General Strike of May 1926, at a time when Hart, Wilberforce, Jay and Crossman were still at school.

In 1929 Hart obtained the best First Class of the year in Greats. He was invited to apply for an Ancient History Fellowship at Jesus College, but turned the invitation down. Before going to New College he had already made up his mind to become a barrister. But instead of taking an extra year to get a law degree at Oxford he studied

privately under the eccentric C. A. W. (Charles) Manning, who was then teaching at New College, and had an unsuccessful shot at the All Souls Prize Fellowship examination. In 1932 he was called to the Chancery Bar, and practised there until 1940. Wilberforce has described their time together at the Bar. 'We both went from New College to the Chancery Bar, together with two others — John Sparrow and Duff Dunbar. With the mature confidence of old age, I can venture to describe this as a brilliant quartet. We had all read Greats; we did not want to enter commerce, or the City, or academic life. The Chancery Bar, as the intellectual branch of the profession, and, coincidentally, the best rewarded, seemed to have attractions, added to by the presence of two very bright stars — Wilfred Greene and Cyril Radcliffe, both fellows of All Souls. Though in different chambers, we remained close; everyone who consulted any one of the four had the benefit of intensive discussion between all of us: we followed, supported and criticised each others' appearances in court. Herbert soon emerged as the front runner; the growth of his practice was continuous and increasing. It has become the fashion, perhaps, to say that his heart was not in practice, that he considered it banal, that he was always, at base, an academic, and that his return to Oxford after the war was preordained — a coming home. But I think this would do him an injustice. Like all four of us, he liked to maintain and improve his Oxford connections; he was indeed invited to return to New College in 1937 in place of Crossman then entering politics. He refused (and Berlin was elected instead). He was a successful practitioner with high quality cases, and he enjoyed success, the affluence which success brought and all that affluence could do for one in the 1930s. We forget how much that was: unsurpassed music, ballet, theatre, opera including Glyndebourne, books, foreign travel. He even took up fox-hunting, doing that in style — booted and bestocked; even (incredibly now) stag-hunting. I am not sure that hindsight ought to bring us to a judgment that, if war had not come, he would not have continued to silk and beyond. Twenty years later the clerk of his chambers in Lincoln's Inn remembered him: 'he would have been a judge by now'.

In the thirties, however, war clouds were gathering. 'We shared more than our pleasures: we shared the overwhelming feeling of horror at what Germany was doing and a sense of coming disaster which [Hart] knew would destroy our way of life. In 1938 we were together, with some lawyers and clerks, when the news came that Mr Chamberlain was returning with "Peace for our time". There was applause;

there was talk of going to the airport to cheer him home. We just looked at each other with tears in our eyes — it was unnecessary to speak’.

By then Hart had met Jennifer Fischer Williams, the third of five daughters of Sir John Fischer Williams (1870–1947), another New College man and an international lawyer who had worked in the Home Office in the First World War and was later a member of the British panel on the Permanent Court of Arbitration at the Hague. Herself a civil servant in the Home Office, she married Hart in 1941. Like his parents, they had a daughter and three sons, all of whom survive. In 1939 he joined the Officers Emergency Reserve, but was refused for military service owing to a mitral murmur. At a loss to know how best to help the war effort, he was recommended to the head of MI5, which he joined in 1940 and in which his clarity and good sense were much appreciated. He worked on the Ultra material and made an important contribution to the D-Day disinformation plan in 1944, without which the Normandy landings might not have succeeded. During lulls when there was nothing to decipher he made buttons in a factory. His devotion to the work of MI5 was absolute. Even with his closest friends no whisper of wartime secrets, or of what he was doing, escaped him. The activities of Philby and Blunt, when it finally emerged what they had done, he held in utter contempt.

During the war Hart and Jay were for a time living in the same house, and he also saw, in connection with his work, a good deal of the philosophers Gilbert Ryle and Stuart Hampshire. His interest in philosophy, kept alive before the war by discussions with friends such as Berlin who were now professional philosophers, was rekindled. The logical positivism popularised by A. J. Ayer did not attract him; he rejected the view that meaningful statements must be capable of verification. At the same time Hart’s political views moved to the left. He came to feel that his life would not be best spent in practice at the Bar minimising the tax liability of the rich. His wife, more radical than he, had at one time, before he joined MI5, been a member of the Communist Party, a fact seized on by the press to wound him, quite unjustly, in old age. He became a Labour Party supporter — a democratic socialist with liberal leanings, not a Marxist — and remained one for the rest of his life. Though not on the whole politically active, he was a supportive member of the Oxford Committee for Racial Integration in the sixties and a regular attender at their meetings.

These influences and the evolution of his intellectual interests led

Hart in 1945 to accept what he had previously rejected, the offer of a Philosophy Fellowship at New College. The offer came from the Warden of the college, A. H. Smith, without advertisement. Hart spent his first two years as a philosophy tutor commuting between Oxford and his home in London. The family then settled in Oxford and Hart's wife left the Civil Service. She taught modern history and politics as a Fellow of St. Anne's College. To some Hart seemed in returning to Oxford to have given up a promising career to pursue an abstract ideal. 'Still worrying about the truth, I suppose' said Crossman, to needle him. 'I'm sure *you're* not', replied Hart.

Himself a philosopher, Warden Smith had engineered Hart's Fellowship because he saw in him a bulwark against the then fashionable radical empiricism. But by now Hart had abandoned neo-Platonic realism and no longer believed in a suprasensible world. Instead he came to accept the view, in tune with Wittgenstein's later period, that linguistic analysis was of central importance in philosophy. He was influenced particularly by J. L. Austin, the leader of the school of linguistic analysis, and Friedrich Waismann, then settled in Oxford, one of the Vienna Circle of philosophers. Hart was a founder member of the discussion group led by Austin that met on Saturday mornings. They were interested, among other topics, in the analysis of rules. Though Hart was a strong advocate of linguistic philosophy his approach was less dogmatic, more Aristotelian, than that of some other members of the group.

Hart taught philosophy at New College for the seven years 1945–52, for some years in tandem with Hampshire. He believed, generously but mistakenly, that his special gift was for smoothing the path of weaker students. The truth behind this modest self-assessment was that he valued clarity as the chief intellectual virtue and was notably patient with pupils, whatever their ability. He spurned jargon and mystification. An excellent teacher, his method was to rub the noses of his pupils in the two questions 'How do you know?' and 'What do you mean?' He did not, however, enjoy lecturing; and the quest for perfection made him slow to commit his views to print. In these seven years he published only three papers, one each on logic and epistemology, besides two book reviews. But his first paper, given at the Aristotelian Society meeting in 1949, foreshadowed his later concern with legal philosophy. It was on 'The Ascription of Responsibility and Rights' and introduced to philosophers the legal notion of defeasibility, a word which 'with some hesitation I borrow and extend'. Though he later came to think

that the paper contained errors, and did not include it in his collections of essays, it struck a chord both in Britain and the United States and was applauded by David Ross, the philosopher Provost of Oriel College. Indeed the idea that there is an ascriptive use of language distinct from its descriptive and performative uses is undoubtedly correct; nor can the value of defeasibility as a tool of analysis be denied. In 1951 Hart attended the seminars on philosophy and legal concepts given by A. D. (Tony) Woozley and myself, at one of which he gave a luminous talk on intention, his notes, such as they were, scribbled on the back of an envelope.

To those who knew him it was not totally unexpected that in 1952, at the urging of George Paul and J. L. Austin, he was persuaded to think of himself as a possible successor to Arthur Goodhart as Professor of Jurisprudence. He was not sure that he was good enough as a pure philosopher. Modesty was, indeed, ingrained in his temperament. The admiration and fame that came later, though it pleased him, did not still his doubts about the correctness of his arguments or reassure him that his writings were of lasting value. This self-critical spirit accounted for the corrections and re-corrections, scrawled-over notes and bundles of paper held together by clips that cluttered his rooms.

But by 1952 Hart had come to see that many philosophical distinctions could be applied to law with profit and that, given his years in practice at the Bar, he was qualified to undertake the task. This was pre-eminently true of the idea, dominant in linguistic philosophy, that the same forms of expression and the same grammatical structures might refer to very different phenomena between which there were complex relationships. Conversely the law provided a wealth of examples that could suggest new paths for philosophy to explore. Philosophy and law could thus cross-fertilise one another. From his successful practice at the Bar, Hart had a great fountain of instances and ideas that needed clarification according to the philosophical methods of analysis that J. L. Austin above all communicated. This did not deter some academics from asserting that, having no law degree, he was not really a lawyer.

On Ross' urging he was elected to the chair by a slender majority and on what was by any standards a thin contribution to jurisprudence: one article and a book review. His election owed something to the intellectual climate, which, on the prevailing view of Wittgenstein's writings, was hostile to large generalisations but welcomed the sort of case-by-case or point-by-point analysis that English lawyers have

traditionally employed. The electors' decision was not universally approved, at least at first. 'It's Goodhart', ran the quip, 'without the good'. But the choice was inspired and proved a brilliant success. During his sixteen-year tenure of the chair (1952–68) Hart rescued British Jurisprudence from its long decline and restored it, alongside its American and German counterparts, to a central position in twentieth-century legal and political philosophy. He revitalised the positivist tradition, stemming from David Hume and Jeremy Bentham, and his writings, combining clarity with eloquence, provoked fresh, more sophisticated statements of other currents of opinion. For example, Ronald Dworkin was moved to rationalise the eighteenth-century philosophy of rights that underlay the United States Constitution, John Finnis the still earlier natural law tradition. Along with positivism in legal theory went a measured liberalism in political philosophy. Refurbishing John Stuart Mill, Hart called in question the right of the state to force the individual to conform even to the most strongly held moral views of a majority merely because they were strongly held.

In 1952 all this lay in the future. Hart, who was forty-five, lectured with reluctance and had published little. The election to the Chair of Jurisprudence forced him to change his ways. Indeed in his mature years the intellectual vigour and polemical force of his talks could electrify an audience. One listener was 'converted to Jurisprudence' by a lecture on abortion in 1968: 'I had heard nothing like it — the clarity, the conviction, the straight-speaking'. It did not seem to matter, indeed it may have helped, that his notes might have been jotted on the back of a cheque book during a train journey. In the long vacation of 1952 at the family house in Cornwall the new professor scribbled the first draft of the lectures that came out in 1961 as *The Concept of Law*. They were at first conceived as a series on various definitions of law, especially John Austin's view, published in 1832, that a law was the command of a sovereign habitually obeyed. Hart thought that his predecessor, Goodhart, an able lawyer who eschewed contact with philosophy or political theory, had not done justice to Austin. Reflection on Austin led him to mistrust 'the growth of theory on the back of definition', and prompted his inaugural lecture on 30 May 1953, entitled 'Definition and Theory in Jurisprudence'. He argued that the common mode of definition by genus and species was ill-adapted to the law, both because of the range of cases to which legal notions like 'law', 'right' and 'corporation' apply and because these notions do not have straightforward counterparts in the world of fact. Instead

(adapting hints in Bentham) such words could be elucidated by specifying the conditions under which sentences in which they occur are true, and by showing how they are then used to draw conclusions of law. Hart later came to think that this lecture was mistaken in two respects: it neglected the distinction between the meaning and use of words and overlooked the fact that statements about, say, rights did not necessarily draw conclusions of law. But even if the ideas in it need to be refined, it remains true that it swept away much futile debate. Hardly anything has been heard since, for example, of the question whether corporations are real or fictitious entities or collective names.

In his first year as a professor, Hart also lectured on legal rights and duties and on the mental elements that are prominent in the law such as intention, motive, and will. The lectures on rights he was to give over many years. They were crowded and heard with rapt attention, though, as Joseph Raz records, with some apprehension, as the audience saw the lecturer shuffle from distance to reading glasses, wipe them each time with a long white handkerchief, mislay them and rediscover their whereabouts, all the while expounding a complex argument, elegantly presented, that taxed the power of the audience to follow its drift. Hart was never willing to publish his lectures on rights. While he rejected the view of Austin and Bentham that only law could create rights, he was not satisfied with Mill's attempt to put moral rights on a utilitarian foundation and did not see how to provide an alternative. So, while dismissive of Dworkin's free-wheeling use of the notion of moral right, he was uncertain what to substitute. The lectures on mental concepts generated ideas that were later incorporated in Hart's writings on criminal responsibility and punishment.

Another project that began in 1952–3 was the study of causation. To take this concept, so important outside the law, and so central a category in philosophy, and see how it looked within the law, was the sort of enterprise that had attracted Hart to the Chair of Jurisprudence. He and I, a young lawyer with a keen feeling for the nuances of language, who had also been at New College, gave seminars on causation in this and the next year and wrote a book over the years 1953–8, which came out in 1959 as *Causation in the Law*. Over these years, apart from Hart's time in the United States in 1956–7, we met weekly. Each wrote separate chapters, but we mulled over one another's drafts until we could reach agreement on each sentence and indeed, each word. It was an agreeable and, to me, educative collaboration. But the strenuous sessions, which might go on all day, could bring the junior

partner to the point of exhaustion. In contrast the stamina, patience, and determination of the senior to get even the smallest point exactly right seemed inexhaustible, though a certain impatience with the minutiae of scholarship made him unreliable about references. Our technique was to take, on the one hand, the philosophical analysis of cause by Hume and Mill, and, on the other, hundreds of law cases in which causation was in issue in different branches of the law and different jurisdictions, and then to see whether the two could be fitted into a coherent pattern. The framework adopted owed a good deal to J. L. Austin, who urged Hart to study the principles on which in extra-legal contexts causes are picked out from mere conditions. Here voluntary action and what was abnormal in the context emerged as the leading criteria. The role of legal policy in decisions about cause we reassessed after Hart's visit to America, so that the book was redrafted in 1957–8 to take account of the views of American realists and other sceptics. In the end the work takes the form of an analysis of the concept of cause that defends common sense causal distinctions inside and outside the law against both the philosophical reproach of being unscientific and the causal scepticism of some lawyers. As in Walter Wheeler Cook's *Logical and Legal Bases of the Conflict of Laws* (1942), a model, the main themes recur in different contexts. What the book lacked, though the second edition of 1985 made some attempt to remedy the defect, was a discussion of the ultimate rationale for treating causation as a basis of responsibility. The climate of linguistic philosophy, along with Hart's reluctance to embark on any intellectual enterprise without thrashing out every aspect of it, told against extending the scope of the work in this way. *Causation*, though a joint enterprise, was Hart's first and largest book and, in retrospect, the most substantial volume to emerge from linguistic philosophy, though much of it was directed to discussing what was morally fair and legally politic. It was a work to set, in a different philosophical tradition, alongside the *Zurechnungslehren* of German jurists and the pragmatic analyses of 'proximate cause' by American lawyers such as Leon Green. Such value as it may possess owes something to the principle, inherent in the rule of law, that legal responsibility should depend on criteria which ordinary people can apply, even if they cannot explain the principles on which they do so.

Also in 1952–3 Hart began a discussion group for lawyers in Rupert Cross' rooms in Magdalen College. The group ran for many years and helped awaken new habits of thought among members of the law

faculty. Indeed in his first year as a professor, Hart laid the foundations for all his later work on the logical and mental aspects of jurisprudence and legal philosophy. His contribution to their moral dimensions came later. If this burst of creative activity seems astonishing, Hart's insatiable curiosity and his powerful, omnivorous intellect, nourished by more than twenty years intense discussion of philosophical and legal issues, help to explain it. There was another factor. As Alan Ryan put it, 'reviving the moribund discipline of analytical jurisprudence was not only a matter of logic, imagination and an acuteness about the point and nature of law that few have matched. Sleeping Beauty in the fairy tale has to be woken with a kiss, and Herbert surely brought passion to his subject matter'.

In 1954 Hart published an edition of John Austin's *Province of Jurisprudence Determined*. In the Introduction he sought to build on Austin by insisting on the central place of rules in the law. 'A legal system is a system of rules within rules; and to say that a legal system exists entails not that there is a general habit of obedience to determinate persons but that there is a general acceptance of a constitutional rule, simple or complex, defining the manner in which the ordinary rules of the system are to be identified'. Here we see the germ of two seminal (and accurate) ideas about the structure of legal systems: the existence of two sorts of rule, ordinary and second-order; and the need for accepted criteria for recognising the rules that belong to a legal system, for which he was later to coin the phrase 'rule of recognition'.

In 1955 Hart gave a paper 'Are there any natural rights?' that excited interest, though he later rejected the main argument as mistaken. The thesis was that, if there are any moral rights, there is at least one natural right, the equal right of all men to be free. Other rights were conceived as restrictions of this basic right, morally justified because freely consented to or necessary to preserve the basic right. But, he later concluded, the argument fails, since there are rights that cannot be accounted for in this way, or dismissed as belonging to a different area of moral discourse; and freedom as a value, however important, does not possess the sort of priority he then supposed. This he was later to argue in an important paper, published in 1973, in which he criticised Rawls' attempt to give liberty a priority over other political values.

A landmark in Hart's career was his first visit to the United States in 1956–7. At the prompting of J. L. Austin, Harvard invited him for the year. He was welcomed equally by lawyers and philosophers, who

in the past had had little contact. 'The philosophers thought I was a marvellous lawyer and the lawyers thought I was a marvellous philosopher'. Never bored, he was able to draw profit and amusement from almost any experience. Even so, America was special. The teeming, noisy, unregulated life of cities; the students — unburnt-out, unblasé, with a vast desire for knowledge; the disdain of Americans for privacy and precision of language; their passionate desire to take part in decision-making; these and other aspects of life in the New World relaxed his neuroses, as he put it. Certainly, from now on, publications flowed steadily from his scratchy pen, each starting life as a barely legible scrawl. Five papers stemmed from his US visit. The most important was the Oliver Wendell Holmes lecture, given at Harvard in April 1957, on 'Positivism and the Separation of Law and Morals', which enjoyed a *succès de scandale*. Recognised at once by Lon Fuller as 'an enduring contribution to the literature of legal philosophy', it drew from Fuller a prompt critical response; the two were published together in the *Harvard Law Review* in 1958. Hart called himself a positivist, and so in a sense he was, but F. A. Hayek was not wrong to describe his work as 'in most regards one of the most effective criticisms of legal positivism'. Hayek had in mind two doctrines. One was the theory, common to Hobbes, Bentham and Austin, that sees in law a product of human will, in modern times a legislative act. The other was the view, no part of the utilitarian tradition, that is sceptical of the existence of objective moral values, and justice in particular, and hence finds no rational basis for moral criticism of the law. Hart rejected these doctrines, the first explicitly and the second by implication, but embraced positivism in the more limited sense in which it involves 'the simple contention that it is in no sense a necessary truth that laws reproduce or satisfy certain demands of morality'. He therefore thought it essential, in the interests of clarity, to distinguish between law as it is and as it ought to be. 'We must preserve the sense that the certification of something as legally valid is not conclusive of the question of obedience and that, however great the aura of majesty or authority which the official system may have, its demands must in the end be submitted to a moral scrutiny'. If sceptical or non-cognitive theories of morality are rejected, nothing, he argues, follows as regards the soundness of this distinction. Demonstrably iniquitous laws are still laws, though the demonstration may encourage people to disobey them if they can. Nor should the distinction between is and ought to be blurred merely because when judges adjudicate in doubtful cases we are sometimes

unsure whether they are making law or recognising what, given the purpose of the norm, is in a sense the law already. Hart could have stressed the danger of 'immoral morality' more strongly than he did, since Hitler justified bypassing law (in the technical sense) on the ground that in the Third Reich there was no difference between morality and law. But Fuller pointed to an 'inner morality' of law, to which it typically conforms, so that laws that violate this morality, though technically valid, are plausibly said not to be fully law. The debate on this point continued in Fuller's *The Morality of Law* (1964) and Hart's review of it in the 1965 *Harvard Law Review*. Fuller contended that the perceived need of all societies to subject human conduct to the explicit control of rules imposes demands that must be met by (Fuller's) inner logic or morality, Hart that Fuller's inner morality consisted merely of principles of good craftsmanship or efficiency, which applied as much to nefarious enterprises such as poisoning as to the law.

In 1959 Hart was elected President of the Aristotelian Society, a startling honour for a law professor, and one which showed how widespread was the influence of his personality and the few but luminous papers he had written. In this year, too, *Causation in the Law* was published, and two other intellectual enterprises launched. In September 1957 the Wolfenden Committee had recommended that homosexual practices between consenting adults should cease to be criminal. Patrick Devlin, a judge of unusual eloquence and subtlety, gave the second Maccabaeian Lecture in Jurisprudence in 1958. In it, though favouring a limited measure of reform in this particular area, he widened the debate by attacking the Committee's view that there was a realm of private conduct that was not the law's business. It was not possible to set theoretical limits to the power of the state to legislate against immorality. The morality of a community bound it together and it had the right and indeed duty to defend this morality against attempts to undermine it, especially those that aroused widespread indignation or disgust. Hart counter-attacked with a talk on the BBC, published in *The Listener* for 30 July. He reformulated Mill's argument that the only purpose for which power could rightfully be exercised over a member of a civilised community was to prevent harm to others. Harm might indeed include the offence caused to others by an act done in public which would be unobjectionable if performed in private. But the crucial question was whether an action, wherever done, should be regarded as the business of the state merely because it offended conventional morality and provoked hostility. The morality of a

community should not be regarded as a seamless web, violation of which was akin to treason, but should be scrutinised item by item in order to discover whether the enforcement of this or that item could be justified in a liberal society.

Thus was launched a wide-ranging debate about the proper limits of criminal and civil law. The debate has by no means run its course, though no one taking part in it has since attained the level of eloquence shown by the protagonists. Hart's views, effectively confined to the criminal law, were developed in two short books, *Law, Liberty and Morality*, delivered as the Harry Camp Lectures at Stanford in 1962 and published in 1963; and *The Morality of the Criminal Law*, given as the Lionel Cohen Lectures in Jerusalem in 1964 and published in 1965. In these books Hart modifies Mill's unqualified liberalism, for he accepts that the policy of protecting people against their own unwise choices — paternalism — can justify such measures as restrictions on the sale of drugs and the refusal of the criminal law to accept consent as a defence to homicide or serious assaults. It would indeed have been difficult for a democratic socialist such as Hart not to endorse a degree of state paternalism. But he denied that this extension, beyond what Mill approved, of the right of the state to intervene justified the enforcement of conventional morality as such.

Hart's view is not free from difficulty, given, as he himself put it, our 'increased awareness of a great range of factors which diminish the significance to be attached to an apparently free choice' in modern times and the shifting notions of harm that mark off what societies from time to time regard as unacceptable. But he was moved by an intense dislike of cruelty masquerading as moral rectitude, and this led him to be specially severe on attempts to enforce sexual morality, which may demand the suppression of powerful instincts that affect the individual's emotional life, happiness and personality — a view that struck a powerful chord with the young. Hart was unduly pessimistic about the prospects in the late fifties and early sixties for reform of the law of abortion and homosexuality. He later came to feel that the beneficial effects of enlarging the area of personal choice had not in general been as great as he had hoped.

The controversy with Devlin made Hart something of a public figure in Britain. Each was well equipped to fight his corner; and their contest has become a classic. But Hart never sought publicity and he eschewed public honours apart from those honorary degrees traditionally conferred on eminent scholars. In public and private debate he

was tenacious, but his manner was always courteous and impersonal. He excelled in a demanding skill, notably lacking in some of his more prominent critics, that of presenting another person's argument with as much cogency as possible ('doing the best for Jones'), whether or not he agreed with it. He disdained mere debating points. Bernard Williams mentions his experience in his oral examination at Oxford: 'Herbert took my part in disagreeing with some suggestions of Urmson's, expressed what I was trying to say properly, and then had an argument with Urmson for most of the time, so that I didn't have to do much'. Hart seemed indeed to regard the fact that he disagreed with someone's argument as a spur to putting it better than the proponent: a beacon of open-mindedness. Like J. S. Mill he was 'always eager to recognize the merits of an antagonist'. The same quality made him a good research supervisor. Not only did he read and reread his pupils' drafts with close attention but, despite dozens of critical comments and suggestions, he was able to seize on and foster the promise inherent in their line of thought. Indeed his point of view was consistently that of the pupil, irrespective of his own intellectual interests. Ruth Gavison had worked for nearly a year on a topic of her choice which was close to Hart's interests and to which he devoted much time and effort. She then decided that a different topic, of which Hart knew nothing, would suit her better. 'Is that what you really want to do?' he asked. On being assured that it was, Hart, without a backward glance, set to work to make himself proficient in the new area, and helped her write a successful thesis, which was later published. Another consequence of his intellectual detachment was that Hart's pupils, though deeply influenced by their contact with him, never formed a school. Including such names as A. E. Gotlieb (1953–4), the earliest, H. Morris, I. Tammelo, B. M. Barry, V. N. Haksar, W. L. Weinstein, G. D. MacCormack, J. M. Finnis, D. H. Hodgson, R. S. Summers, P. M. S. Hacker, J. Raz, V. B. Bogdanor, G. Gilson, G. R. Carrio, R. E. Gavison and W. J. Waluchow (1978–80), the last, they displayed an engaging spectrum of views, ranging from John Finnis' *Natural Law and Natural Rights* (1980) to Wilfrid Waluchow's *Inclusive Legal Positivism* (1993). His was a soil in which a hundred flowers could bloom. By the same token, he did not intrude on the private lives of his students. His concern for them was deep, but, to borrow Ryle's telling term, unadhesive.

It was also in 1959 that Hart's 'Prolegomenon to the Principles of Punishment', was published. This was his most important paper on criminal justice, though not his first, since two of those delivered in

1956–7 in the United States concerned criminal law. The paper drew an analogy between punishment and property. Just as we must distinguish the definition of property from the means by which title to property is acquired and from questions about the value of the institution and how much property individuals should be allowed to acquire, so we should distinguish the parallel questions about punishment. We must treat separately the definition of punishment, its general justifying aim, its distribution (who might rightly be punished) and its quantum (how much). The general justification of punishment was, Hart thought, utilitarian: the prevention of harmful conduct or its reduction to a tolerable level. But he did not adopt Bentham's utilitarian views without qualification. The pursuit of the general aim should be subject to the requirements that only offenders might be punished ('retribution in distribution') and then only if they had had a fair opportunity to choose between keeping the law and paying the penalty. This served to explain the principle that the definition of crimes should include a mental element, such as intention or knowledge, and that the offender should be punished only if at the time he or she possessed certain powers of understanding and control. Reform, on the other hand, could not be an aim of punishment. It could have a place only as a way of exploiting the opportunities presented by the conviction and compulsory detention of offenders.

Hart wrote several more papers on criminal responsibility in the sixties. In 1968 eight of them, with a postscript, were collected and published in a volume entitled *Punishment and Responsibility: Essays in the Philosophy of Law*. In these masterly essays Hart dealt with the specific psychological conditions of responsibility (acts of will, intention, negligence) and the justification of theories that restricted punishment by reference to these conditions or, on the contrary, proposed to dispense with them, and so to 'eliminate responsibility'. His treatment, clear and rigorous, shows what he meant by saying that 'if there is some philosophical point that can clarify or settle issues which non-philosophers have found problematic, it is always possible simultaneously to expound for them the philosophical point and to use it for that purpose'. But the details of criminal law and evidence, which Hart had hardly met in practice, he absorbed from his friend Rupert Cross, in whose rooms at Magdalen College the discussion group of lawyers had met, and who became Vinerian Professor of English Law (1964–79). Cross, with his energetic mind and buoyant character, his gusto and brio, was his closest colleague among lawyers. Hart wrote a

long memoir of his friend for the *Proceedings* of this Academy (vol. 70 (1984), pp. 405–37). They gave classes together on the psychological conditions of criminal responsibility. Raz, who was present as a graduate student, has described ‘the fascinating seminars which he, Rupert Cross and Nigel Walker [the criminologist] held jointly. The not too large Hovenden room [in All Souls College] was overflowing with excitement as the brave competed for seats at the round table and the timid sought obscurity in the corners. Every week one of them would introduce a topic on which we were given a detailed reading list, and a set of questions for discussion. The seminar proceeded in that order, with Herbert, when it was his turn, raising one question after another, taking views from the audience, presenting some of his own ideas, debating them with his colleagues and with the audience. He was a most incisive polemicist; the robust common sense of Cross and the wealth of empirical information mastered by Walker were no match for his orderly mind and quicksilver intelligence. Like all fans we enjoyed the contest, eager for our hero to triumph over all comers, as we knew he would, yet agog with excitement to see it happen and retiring after it was all over to the pubs to celebrate his victory in the retelling’. Hart’s own account of these seminars appears at *Proceedings of the British Academy*, vol. 70 (1984), pp. 432–3. It reveals the meticulous preparations, for which the credit went to Cross, that had preceded them: ‘I learned more from these often exhilarating discussions [the night before the class] than I had succeeded in picking up from many books and articles’. At the seminars themselves, Hart confirms, he and Cross pulled no punches. That Hart’s contributions to criminal law retain their vitality is shown by the publication in 1993 of a volume of essays, *Action and Value in Criminal Law*, edited by Stephen Shute, John Gardner and Jeremy Horder and dedicated to the memorialist in Hart’s memory.

In 1960 Hart received his first honorary degree in Stockholm, an enjoyable occasion that included a salute of canons as the honorands sailed into harbour, and a royal banquet. This early recognition of his distinction therefore preceded the publication of *The Concept of Law*. It was to be followed by twelve other doctorates, including two in Israel, three in the United States and one in Mexico. In 1960 Hart also became a delegate of the Oxford University Press, which he remained until 1974. Here his most important act was to set up, and commission authors for, a new series of law books, the Clarendon Law Series. He was struck by the lack of works that introduced students simply and in untechnical language to the wider problems of the subjects they

were to study. The series was a success. Many books in it, for example Patrick Atiyah's *Introduction to the Law of Contract* and Barry Nicholas's *Introduction to Roman Law*, both highly regarded, would not have been written but for Hart's initiative. Hart took great trouble with the manuscripts submitted, and would suggest dozens or even hundreds of corrections and additions. This hidden aspect of Hart's work was not the least of his contributions to legal scholarship.

The same impulse that led Hart to found the Clarendon Series induced him to publish in 1961 the general course of lectures he had been giving for the last eight years under the title *The Concept of Law*. The aim was to give beginners in jurisprudence a book that was more than a catalogue of great names spiced with superficial comments on their theories — a genre of which W. Friedmann's *Legal Theory* (4th ed., 1960) was by no means the least reputable example. Instead they would be introduced to the vital issues in the subject, of which two stood out: the relation of law to brute force on the one hand and to morality on the other. The intellectual history of legal philosophy Hart relegated to footnotes at the end of the book.

Judged by the pragmatic test of its sales *The Concept of Law* has proved a brilliant success. More than 150,000 copies have been sold in thirty-three years, surely a record for jurisprudence, and the book's place as *the* classic work of philosophical jurisprudence in the English language is secure. There had been nothing to compare with it as a contribution to the philosophy of law since Hobbes' *Leviathan* and Bentham's *Of Laws in General*, which, though written in 1782, became available in a coherent form only with the edition by Burns and Hart in 1970. Nor is *Concept* only to the Anglo-American taste, for Hart's work aroused interest in many countries: Scandinavia, Italy, Germany, Japan, Argentina, Belgium, Israel. It has been translated into several languages, including Japanese; in Japan, says Mishima Yoshiomi, 'no one daring to do work in legal theory can proceed without understanding Hart's theory and thoughts'. Its influence in reviving the subject was extraordinary, and stretched to people who were not specially interested in law. For clarity, elegance and candour it has not so far been matched, and may never be. But the critical literature about it is vast, indeed *unübersehbar*. Criticism of Hart at once replaced that of John Austin as the starting point for jurisprudential writing. In the theories of Fuller, Dworkin, Finnis and Raz, for example, Hart's work is a principal target. In due course studies of his work by doctoral students began to appear, the earliest being Horst Eckmann's

Rechtspositivismus und analytische Philosophie. Der Begriff des Rechts in der Rechtslehre H. L. A. Harts' (1969), a perceptive monograph.

Hart calls *The Concept of Law* an essay in analytical jurisprudence or, viewed from another standpoint, in descriptive sociology. But it does not analyse groups or societies. Rather it falls into Austin's genre of 'general jurisprudence' in that it seeks to lay bare the structure of modern legal systems and to show what it is that separates them from other modes of social control such as morality or terrorism (orders backed by threats). As explained, Hart takes as central to his description the concept of a rule, not those of command, sovereign or habitual obedience. His idea of a rule is factual and independent of content. Rules exist when those who observe or violate them or react to their observance or violation by others have certain attitudes to what they are doing. (Hart later conceded that this account applies only to social or customary rules.) Rules therefore have internal and external aspects. There are primary rules requiring or enabling ordinary people to do this or that and secondary rules (rules about rules) concerned with the recognition, making, application, interpretation, enforcement and abrogation of the primary rules. Some rules are mandatory; others, such as the rules about making contracts or wills, provide facilities of which people may take advantage if they choose. The rule (or complex of rules) of recognition is a secondary rule of great importance, since, though it may have a penumbra of vagueness, it provides a test by which other laws can generally be recognised. For a legal system to exist the people or officials of the society must, for whatever motives, accept more or less the same rule of recognition. The feature that marks off legal systems from other rule systems, such as morality, etiquette and social convention, is the union of primary and secondary rules. To some extent the union is a matter of degree, the secondary rules being less developed, for example, in international than in municipal law. In contrast, morality lacks secondary rules. One cannot legislate or abrogate morality. There is no necessary connection between law and morality, though there is an overlap between them; and it can be argued that, physical and human nature being what it is, some basic aspects of morality (the minimum content of natural law), for example some restraints on the use of violence, must be enforced in a systematic way and hence by law, if a society is to survive.

Contrary to what some have thought, *Concept* (unlike *Causation*) is in no sense a work of linguistic philosophy. Nothing in it turns on how words such as 'law', 'rule' and 'system' are ordinarily used. It

concentrates on non-linguistic behaviour: attitudes towards rules and their violation. Critics argue, however, that a purely descriptive account of a legal system cannot be adequate. Even if wicked laws are laws, it remains true that laws aim and purport to be, and for the most part actually are, morally binding. Nor is this an accident. The language of rights, duties and obligations is shared by law and morals and means the same in both. Hart disagreed. Though he dissented from some of Kelsen's views about the relation between law and morality, he agreed with him that legal duties and obligations are duties and obligations only for those who view them from the standpoint of the legal system.

Another criticism of *Concept* is that to treat law as a set of rules, however complex and structured, is to take too narrow a view. It is to treat adjudication as if it consisted in applying existing or making new rules, whereas it is in reality guided not only by these, but by a set of principles that require courts to adjust rules so that they conform not merely to what has been laid down in the past but to the moral and political ideals of a society and its changing needs. Hart, like Bentham, preferred to see this aspect of judicial decision-making as a type of legislation, but, unlike Bentham, he regarded it as an indispensable part of a legal system. He thought that judicial legislation operated in a fairly narrow area, whereas his opponents, notably Dworkin, saw appeal to principles that might overturn an existing rule as a standing possibility, even when the case seemed at first sight plainly to fall within some settled rule. Hart supported his narrow view, so far as interpretation of statutes and other texts was concerned, with a semantic theory that distinguished between the core meaning of a word and its penumbra. His critics took either a more contextual view of interpretation or one that sought to see it against a background of moral and political principle.

Some of the criticisms of *Concept* are cogent, but there are points to be made in defence of Hart. As he himself emphasised, his enterprise was descriptive and did not cease to be so merely because what was being described had a normative aspect. 'Description may still be description even when what is described is an evaluation'. He was not seeking to advise how borderline or controversial cases should be decided but to elucidate the straightforward ones. Moreover there is at a certain level room for a descriptive analysis of legal systems, even if ultimately it needs to be supplemented by normative elements. Indeed, there will always be room for a positivist theory of law, because one aim of the law is to promote harmony by providing for

authoritative decisions on controversial matters, often embodied in texts which represent a compromise between conflicting views and interests. This aim is inconsistent with the law's being fully rational, or wholly consistent with a particular moral or political ideology. The structure and conditions of legal authority — which was the real subject-matter of Hart's *Concept* — therefore remain a central object of legal philosophy, though not the only one. Finally, *Concept* would not have survived and sold as it has unless a great deal of what it said was true. For example, the idea of a rule of recognition, which may refer not merely to formal criteria such as enactment by the legislature but to substantive requirements like conformity to values incorporated in a bill of rights, is of permanent value in understanding legal systems, once we jettison the illusion that it is meant to provide the key to the resolution of difficult cases.

In 1961–2 Hart spent a year at the University of California at Los Angeles and gave Harry Camp Lectures at Stanford. In November 1961 he met and debated with the octogenarian Hans Kelsen at Berkeley. They debated three topics chosen by Hart, including the question whether legal and moral norms can conflict in the sense that both can be valid at the same time. Kelsen was thought to have had the better of the debate, but Hart made some telling points. At one moment he was so startled by Kelsen's insistence, in stentorian tones, that norms were norms and not something else that he fell over backwards in his chair.

In 1964 Hart delivered the Lionel Cohen Lectures in Jerusalem. His first visit to Israel took place when he was at the height of his powers, a dominant figure in legal and political philosophy and the standard-bearer of moral liberalism. It was there that he met and was impressed by Raz, who was to become his research pupil and his successor as a legal philosopher in the positivist tradition, less lucid but in some ways more profound than his master. Hart made friends and liked many aspects of life in Israel. On this and later visits he came to appreciate the richness of its Jewish culture, and his former antipathy to the Hebrew tongue withered. He was captivated by Jerusalem: 'one of the four cities which have made our culture what it is', the others being Istanbul, Athens and Rome. Without them 'life for me at any rate would be a howling wilderness'. Intellectually, Hart was all his life anchored to the British empirical tradition. He was passionately attached to the English countryside and to England as a country, though, like so many Englishmen, he loved Greece and Italy

for their luminous, southern qualities. But his Jewishness shone through in his personal warmth, his wonderful sense of humour and a rich, earthy, unsnobbish view of the world.

During these years Hart's intellectual renown was at its height. He became Vice-President of the British Academy in 1966 and in 1967 was, at the suggestion of Douglas Jay, made a member of the Monopolies and Mergers Commission, whose remit the 1964 Labour government had considerably widened. He served on it until 1973 and was a member of the panel in eleven inquiries, including those on recommended resale prices (1967–8) and refusal to supply (1968–70), which are still referred to, on restrictive trade practices in professional services (1967–70), and on the proposed Glaxo mergers with Beecham and Boots (1972). He threw himself with enthusiasm into the work and his sharp intelligence and legal acumen were appreciated by his colleagues on the panels on which he served. Hart regretted his lack of training in economics, but filled the gap as best he could by reading. He was critical of businessmen, and would put searching, sometimes complex, questions to them when they appeared before the Commission. These could be disconcerting both for their incisiveness and from his habit of lowering his head as the question unfolded. He enjoyed the Commission's work and withdrew from it in 1973 only because it was difficult to combine membership with his duties as Principal of Brasenose College.

In 1968, to his surprise, he was asked by Oxford University to chair a commission of five on relations with junior members. Oliver Franks' commission on the university, reporting in 1966, had dismissed student affairs in three lines. Two years later students were in uproar throughout the Western World and even in Oxford there were sit-ins, though the enraged were neither particularly numerous nor able. Hart's left-wing views commended him to the student body, his intellectual rigour to the university authorities. He was unlikely to suggest ill-digested reforms of the sort that have bedevilled higher education in France and Germany. He turned the inquiry into a miniature Royal Commission. About thirty dons and, despite the slogan 'don't take it to Hart', over 200 students gave evidence. The Report, which took about a year, suggested reforms of the disciplinary system and the creation of standing joint committees of students and dons, the students to have access to but not membership of the decision-making bodies. Hart wrote a penetrating Appendix on student revolt, in itself a significant contribution to political theory. A sprinkling of dons launched a

virulent attack on the Report, but it was implemented with hardly any change. The Hart Report did much to bring students peacefully into the governance of Oxford, and new disciplinary procedures helped to head off trouble, though the unrest would largely have died down in any case, as it did almost everywhere.

By the time the commission reported in 1969 Hart had, in 1968, resigned from the Chair he had held for sixteen years partly in order to devote more time to editing the *Collected Works of Jeremy Bentham*. From 1969 to 1973 he was a fellow of University College, supported by a grant from the Nuffield Foundation. He had already, while a professor, begun work on the text of Bentham, poring over his predecessor's scrawl with an enormous magnifying glass that covered a whole page. He and J. H. Burns published in 1970 new editions of Bentham's *An Introduction to the Principles of Morals and Legislation* and *Of Laws in General*, both with an introduction and critical notes. Over the next twelve years, his intellectual effort was concentrated on Bentham, on whom he planned to write a big book. This did not come about, but in 1982 he published a volume of ten essays entitled *Essays on Bentham. Studies in Jurisprudence and Political Theory*. He wanted to make available to a wider public the work of his great predecessor, 'after that eminent philosopher has been washed, trimmed, shaved and forced into clean linen'. The edition of *Of Laws in General* was specially important, since that work, the greatest of Bentham's contributions to analytical jurisprudence, of which John Austin's writings on jurisprudence represent a simplified version, remained buried for 160 years. It was then identified by Charles Everett in 1945 as a continuation of the *Introduction to the Principles of Morals and Legislation* and published under the title *The Limits of Jurisprudence Defined*. The edition by Burns and Hart takes account of additional evidence and appears under the title chosen by Bentham. In the introduction and the fifth of his essays Hart explains the ways in which Bentham's notions of sovereignty and obedience were more flexible than Austin's and presents Bentham's original ideas about aspects of the will. Had this work been published in 1782 when it was written or within the next fifty years it, rather than Austin's work, would have guided English jurisprudence over the next century, much to its advantage. There is little doubt that Hart's own theories would have taken a somewhat different course had he worked on *Of Laws in General* earlier.

To some it seemed odd that Hart should be so devoted to the man whom Marx pilloried as the 'pedantic, leather-tongued oracle of the

ordinary bourgeois intelligence'. But he was fascinated by Bentham's early recognition of language as a source of mystification, his forays into what is now deontic logic, and his willingness to plunge into enormous, boring detail in order to promote a proper understanding of the Greatest Happiness Principle and apply it to every area of life, appropriate or not. They shared an inexhaustible curiosity; and Bentham's combination of 'a fly's eye for detail with an eagle's eye for illuminating generalisations' was well suited to the lawyer-philosopher whose mind as a schoolboy had been stirred as much by Spengler as by the Classics. Hart, who believed in the value and power of reason, liked Bentham for his impatience with nonsense, and forgave his psychological crudity for the sake of his dedication to human welfare.

While Hart turned his full attention to Bentham he was succeeded as Professor of Jurisprudence in Oxford by Ronald Dworkin, from Yale, whom he had taught and who proved a formidable successor and critic. Whereas Hart had aimed to give a general account of the structure and functioning of legal systems irrespective of the political regime to which they attached, Dworkin, concentrating on democratic societies and especially the United States, sought to show that the framework of a legal system was constituted by the moral and political rights that emerged from the background morality of the society in question. Adjudication was accordingly to be seen as the interpretation of these rights rather than, as in Hart's version, the interpretation of authoritative rules, supplemented where necessary by discretion. In an epilogue to *The Concept of Law* published in 1994 Hart argues that Dworkin has seriously misrepresented his version of legal positivism and that, once the distortions are corrected, the evaluative enterprise on which his rival is engaged, though different from, is not inconsistent with his own. The first point Hart demonstrates beyond doubt but the second argument is not wholly convincing. How exactly it is possible for a legal system to combine respect for authority with regard for the wider principles governing the life of society remains obscure. But the continued vitality of the positivist tradition is shown by the appearance in 1993 of *Inclusive Legal Positivism* by Wilfred Waluchow, a former pupil of Hart's.

A number of Oxford colleges made tentative approaches to find out whether Hart would consider presiding over their affairs. At one, Hertford College, he agreed on the understanding that he need not live in college. The college had not realised that it would have to change its statutes to enable him to live out, and when it emerged that

there might not be a sufficient majority for the change of statute, Hart resolved the difficulty by withdrawing. There was some feeling that he had not been well treated, and the Visitor, Harold Macmillan, was shocked at what appeared to him to be prejudice against Hart on the part of some fellows of the college who were opposed to the appointment.

In 1973 Hart accepted an offer from Brasenose College, of which he was Principal for the next five years. He greatly enjoyed the role, and threw himself with the energy of youth into the wide range of activities it called for. His brief reign made a deep impression on the college, the fellows of which were at the time rather demoralised. It was Hart who labelled them, 'Old Turks and Young Fogeys', now a commonplace. He was made uneasy by what, with his austere temperament, he saw as the 'Lucullan feasts' enjoyed by the fellows; but he liked talking to the students and was quick both to see their point of view and to insist on widening their intellectual horizons. His greatest contribution to the college was probably to tackle the misuse to which the Hulme Fund had been put, and to secure for the college its rightful income. He attracted to the college an important series of lectures. Supervising research by a relative of the Tanner family he had won the admiration of Obert C. Tanner of Salt Lake City, the founder of the Tanner Trust for Human Values. Tanner accordingly established an annual lectureship at Oxford to be attached to Brasenose College. At Hart's suggestion the lecturer had to deliver three lectures instead of the usual one. The series has been a success, and the distinguished figures who have given them, such as John Rawls, Saul Bellow and Van Zyl Slabbert, reflect the range of Hart's interests. He became a trustee of the Tanner Trust, and remained one until 1989, attending their annual meetings and exerting his influence in favour of sustained discussion of demanding topics.

After he retired from Brasenose in 1978 Hart resumed his association with University College, of which he was an Honorary Fellow, and where he had a room until his death. He lunched regularly in the college and enjoyed the intellectual atmosphere of its Fellowship. The eighties were for him a period of honour and reflection rather than innovation. The Tanner trustees now decided to establish at University College an annual lecture on jurisprudence and moral philosophy in his honour. The first was given in 1985 and he was able to attend eight of these occasions before he died, the lecturers being Richard Wollheim, John Rawls, Bernard Williams, Quentin Skinner, William J.

Brennan, Tim Scanlon, Joel Fineberg and Tony Honoré. The ninth was given by Neil MacCormick, whose *H. L. A. Hart*, published in 1981, is a sympathetic but critical study of his work.

A fuller discussion of Hart's work by Michael Martin of Boston University, entitled *The Legal Philosophy of H. L. A. Hart: A Critical Appraisal*, appeared in 1987. A series of essays in Hart's honour entitled *Law, Morality and Society*, edited by Peter Hacker and Joseph Raz, had been published for his seventieth birthday in 1977. In 1984 Ruth Gavison organised a conference at the Hebrew University of Jerusalem, which Hart attended, to discuss his work. The resulting volume, *Issues in Contemporary Legal Philosophy: The Influence of H. L. A. Hart*, was published in 1987. In 1983 seventeen of his essays, including one written as late as 1981, were collected and published under the title *Essays in Jurisprudence and Philosophy*. The second edition of *Causation in the Law* appeared in 1985. But by this time, though his mind remained alert and his critical powers undimmed, writing or giving talks had become an effort. Arthritis and injuries suffered in cycling and motoring accidents made him less mobile, and brought to an end the long country walks that had meant so much since his schooldays. He died peacefully on 19 December 1992 at the age of eighty-five.

Hart doubted the value of his contributions to legal and political philosophy, of which bibliographies are or will be available in the volumes by Gavison and by Hacker and Raz, in M. D. Bayles's *Hart's Legal Philosophy* (1992), and in a version currently being prepared by Stanley Paulson. Introduced at a gathering in the United States as an intellectual giant he told his audience 'I don't feel like an intellectual giant'. By the highest standards the doubts were justified. Hart's achievement was to develop the ideas of Hume, Bentham, Austin and J. S. Mill in original and ingenious ways. But his work was not as profound, nor its impact as powerful, as that of Bentham or Kelsen, the two legal philosophers whom he thought most worth studying. Yet in clarity he surpassed them both, and by any lesser standard he was a towering figure. No one in the English-speaking world has done more in this century to restore legal theory to a central place in the study of law and general philosophy. Those who came across him, whether as pupils, friends or colleagues, at lectures, in seminars, reading what he wrote or talking to him, might suddenly find their view of the world transformed. Almost to the end he retained an unflagging, boyish enthusiasm for new experiences. He liked people and their foibles,

natural beauty, biographies, Jane Austen, Henry James, Aldous Huxley, Nadine Gordimer, Primo Levi, Dante, Baudelaire, Yeats, classical and modern music. A man of the Enlightenment, his mind was firm and clear, unshakably hostile to intellectual muddle and the political oppression it fosters. With this uncompromising rigour went a generous temper and the gift of pure human goodness. The intellectual and moral qualities were inseparable. If there are secular saints, he, like J. S. Mill, had a touch of sanctity. There were of course weaknesses. Hart was naturally inaccurate; at times his enthusiasm for a person or idea led him and others astray. He was absent-minded beyond the professional norm. But these were the faults of a generous man, devoid of vanity and impatient with trivia. Some who knew him well thought him the most admirable person they had met, a great and good man. I am not convinced that they were wrong.

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