

Nicola Lacey

At Home in Berlin



I was born in Liverpool in 1958. I took my first degree in law at University College London in 1979, followed by a B.C.L. at the University of Oxford in 1981. In 1981, I took up a lectureship in law at University College London, moving from there in 1984 to become Fellow in Law at New College, Oxford and C.U.F. Lecturer at Oxford University. In 1995, I was appointed to a Chair at Birkbeck College, University of London, and in 1998 I took up the Chair of Criminal Law at the London School of Economics. I work in the fields of legal and social theory, criminal law and criminal justice. My publications include *State Punishment: Political Principles and Community Values* (London, 1988); with Elizabeth Frazer, *The Politics of Community: A Feminist Critique of the Liberal-Communitarian Debate* (New York, London, 1993); with Celia Wells, *Reconstructing Criminal Law* (2nd ed., London, 1998); *Unspeakable Subjects: Feminist Essays in Legal and Social Theory* (Oxford, 1998). – Address: Law Department, London School of Economics and Political Science, Houghton Street, London WC2A 2AE, UK; E-Mail: n.lacey@lse.ac.uk.

Like any other Fellow, I looked forward to my year at the Wissenschaftskolleg as an exceptional privilege: time in which to pursue my own research without the usual distractions and in a particularly lovely environment. In my case, the invitation brought with it an unusual fringe benefit in the form of a temporary respite from a geographically challenged personal life: my husband, David Soskice, has been a Director at the Wissenschaftszentrum Berlin since 1990. Even these antecedents along with the encomiums provided by former Fellows of my acquaintance and in particular by my colleague Michael Power, could not, however, have prepared me for either the quality of the Kolleg's research facilities or the kindness of its staff. I want, therefore, to begin by acknowledging this and by expressing my very warm thanks to everyone – too numerous to mention by name and occupying every department of the Kolleg from the

Empfang onwards – who has contributed to the marvellous year that is now drawing to a close.

Apart from my strong Berlin connections, I suspect that I am also relatively unusual among Fellows at the Kolleg in that I came precisely intending *not* to write a book, or even part of a book, while I was here. Both the institutional environment of English universities, with its increasing pressure to publish books and articles, and the useful if irritating phenomenon of the deadline mean that getting things written is simply something one *has* to accomplish on a regular basis, with or without the luxury of sabbatical leave. Reading, however, is – at least in my experience – something different. In the interstices of teaching and administration, and with the image of the impending deadline firmly in mind, reading all too often becomes a frantic and entirely goal-oriented activity: one in which one has little time to reflect on or absorb what one is scanning, let alone to pursue something which is not of direct or immediately apparent relevance to what one is writing or teaching. My intention in coming to the Kolleg, then, was to make full use of the extraordinary library facilities by doing some systematic reading for a project that I had been formulating and researching in a preliminary way over the last three years.

This project explores the historical development of conceptions of responsibility in English criminal law from the early 19th century to the mid 20th century and their role in the resolution of criminal law's changing problems of co-ordination and legitimation. Most research in this field concentrates on one of three disciplinary frameworks: doctrinal legal scholarship, analytic philosophy, or the social sciences. My ambition, by contrast, is to produce a genuinely cross-disciplinary study that explores the relationship between the legal basis for criminal liability and the broader social ideas of responsibility generated by socio-economic and political changes and by the rapid expansion of the social sciences over the relevant period. So, during my year at the Kolleg, I have been reading not only about legal history but also about questions as diverse as the individual's changing relationship with the state, particularly during the nineteenth century; developing beliefs about the nature of the individual's interior/mental world and about whether it is susceptible to empirical or legal investigation; the (expanding) social functions of criminal law and their implications for ideas of judgment and responsibility. To my amazement and delight, the library staff were also able to lay their hands on a wide range of books on the history of English criminal procedure, and I have gradually been piecing together the transformation of the criminal process from a system largely based on local knowledge to one in which

factual and normative judgments pose quite different – and arguably far greater – problems of co-ordination and legitimation.

Like most Fellows (if earlier yearbooks are to be believed!), I have not got as far with the project as I would have liked, and the detailed research on samples of nineteenth-century cases will have to await my return to England. I am, however, leaving Berlin with a clear sense of the shape of a book; with a fund of notes; and, perhaps most important of all, feeling intellectually refreshed and (at least somewhat) less ignorant than when I arrived. I also leave in possession of a deeper grasp of my own working psychology: my resolution to read rather than write proved too much for my audit-oriented scholarly habitus (as my fellow Fellow Gadi Algazi might say), and I succumbed to the entirely self-induced pressure to do some writing towards the end of the year ...

The precious opportunity of a year of pure research also turned out to have another unexpected and happy side-effect. In January, I was asked if I would become the official biographer of H. L. A. Hart (1909–92). Hart was Professor of Jurisprudence in Oxford from 1952 until 1968 and is widely known for his work in legal philosophy – particularly *The Concept of Law* (1961) – and for his development of liberal political philosophy and his contributions to the analysis of legal and social policy – particularly *Law, Liberty and Morality* (1968). Before his return to academic life in 1945, he had a successful career as a barrister and, during the war, in counter-espionage in MI5. He was also an exceptionally interesting (and complicated) person, and he has left a large collection of diaries and letters reflecting upon not only his intellectual and professional but also his personal and social life.

As it happens, I had been nurturing the ambition to write a biography for some time. I always like to run my theoretical projects in parallel with work directed to a broader audience, and biography struck me as a genre that raises fascinating questions of social theory as well as providing an outlet for both research skills and a more imaginative form of writing than is generally welcomed in law journals. However, had it not been for the fact that I was in the middle of my Fellowship, I doubt that I would have felt able to accept the family's invitation to take on the Hart project. For various reasons, it was imperative that work should begin quickly, and had I been in the middle of a normal academic year, I would not have been able to contemplate a start for several months, and perhaps longer. I am therefore particularly grateful to the Kolleg for having given me the space to be flexible about how my research developed and for having enabled me to take on this new challenge. I would also like to make special mention of Elissa Linke's exceptional kindness in helping me to sort and copy everything from love letters to instructions on identifying spies ...

A year at the Kolleg is not, of course, all work; and mine was certainly not spent entirely in the leafy cloisters of the Grunewald. David and I have indulged ourselves in trips to the opera at a rate which would have bankrupted us in London. Quite apart from the range of performances on offer and the reasonable price of the tickets, we have particularly enjoyed the ability to decide to go to an opera or concert at the last minute – a spontaneity which finally turned my hesitant taste for Wagner into a fully fledged appetite. The galleries and museums have provided their usual measure of aesthetic sustenance, and the many new buildings and renovations around the city a spur to my interest in architecture (as well as an endlessly controversial topic of conversation around the dinner table!). On a less elevated note, I shall also remember the start-of-year boat trip, warmed in equal measure by brilliant autumn sunshine and *Glühwein*; trips to the KaDeWe with ace retail therapist Teri Reynolds; candlelit celebrations courtesy of Bettina Neufeger in the lovely gardens at Villa Walther; Hans-Jürgen and Monika Wagener's idyllic *Landpartie*; Saturday morning trips to our local street market in Wilmersdorf followed by the quiet lunches that came to symbolise for me the pleasures of a life without international commuting. It was, of course, a special thing to be in Berlin in the year in which it was reinvented as the capital of Germany and in which the tenth anniversary of the fall of the Wall was celebrated. (November 9th, that most significant and multivalent of dates in the history of Berlin, also happened to be the date of my colloquium ...) If I had to pick out a couple of images of my extra-Kolleg year, they would be the extraordinary evening of 9th November at the Brandenburg Gate with Britta and Tom Cusack; and the sight of the scaffolding finally being removed following the long renovation of one of my favourite buildings in the world: the former Shell (now, according to violent neon signs, GASAG) building on the Reichpietschufer.

This account of my year in Berlin should, however, focus on the Kolleg itself, and I would like to mention some of the experiences within the Kolleg, the memory of which I shall savour. The unimaginable luxury of being able to have in my office some exquisite old books has given me enormous pleasure. Particularly memorable was a beautiful first edition of Leslie Stephen's biography of his brother James Fitzjames – at one level a formal, elegant piece of late Victorian prose, but one that shifted frequently, and unexpectedly, to moments of penetrating wit, touching fraternal intimacy and even flights of imaginative fancy which brought me face to face with the father of Virginia Woolf. The great good fortune to share language group B with Ray Jackendoff, my dear neighbour Franco Moretti and Colette Pratt made the slow and occasionally humiliating process of improving my German a real pleasure. Eva Hund's inexhaust-

ible good humour in the face of our remarkably successful efforts to recreate ourselves as naughty and lackadaisical school-children has earned my enduring admiration and gratitude ... I shall also remember Thursday evenings – the delicious and inventive food, the warmth of the dining room staff, and the conviviality of these occasions among an exceptionally congenial group of colleagues. Particularly happy were the balmy summer evenings out on the terrace under the watchful, and appropriately envious, eye of Humphrey the cat. And I shall smile as I think about setting up the Christmas tree with Dieter Sadowski and Candy Shweder, amid Frau Klöhn and her colleagues' wonderful decorations, and with Charlotte Shoell-Glass' beautiful red apples and popcorn streamers; the sound of Andre Laks' piano playing drifting on the warm summer breeze; Hans-Georg Lindenberg's heroic struggles with recalcitrant technology, without which no public lecture would have been complete ...

I shall also take with me some lasting memories of the common academic life of the Kolleg in the form of the weekly Colloquium. It has, of course, been fascinating to have a taste of the nature of scholarly endeavour in such a wide range of fields. This very variety, however, can pose a problem in terms of discovering shared interests and common themes. In this context, I have particularly appreciated Jürgen Kocka's incisive contributions to Colloquium discussions, which often illuminated threads of intellectual continuity across our diverse interests: in his role as Acting Rector, he set the tone for a year of co-operative yet vigorous exchanges of ideas. I would also like to thank Fania Oz-Salzberger for her elegant and generous chairing of my presentation; Elizabeth Dunn for doing me the honour of inviting me to chair hers (and, more generally, for laughing at even my worst jokes ...); and Wolf Lepenies, for listening so carefully to the "waiting to speak" story.

Finally, I want to mention the lawyers and economists group, which met in the kitchen of the Villa Jaffé about once a month during the year and which provided for me a sense of intellectual community that might otherwise have been lacking. Our discussions were enchanted by Marie Theres Fögen's warm hospitality and excellent cuisine; emboldened by liberal quantities of wine; and enlivened by Marcello De Cecco's unforgettable asides. I shall treasure the memory of these occasions: of Larry (cyberspace wizard and undisputed master of the one-word e-mail) Lessig's fascinating commentary on the Microsoft decision; Eli (surely one of the best honorary Fellows the Kolleg will ever have) Salzberger's perceptive paper on intellectual property; Dieter Grimm's blend of highest judicial experience with a keen interest in social theory; and the touching effort of lawyers and economists to speak each other's language (a process that, the systems theorists constantly told us, was quite impossible). I

would like, in closing, particularly to say how much the group members' interest in, enthusiasm for and – in the case of Eli and Larry – practical assistance with the Hart biography meant to me in the early stages of the research.