unconscious, even the prejudices which judges share with their fellow-men [and women, we might add]."

So, without doubt, we must hope for good judgment. At the same time, the last word here should not be from Holmes or RFRA but from a source both less and more authoritative. Consider that a broad theme of my lecture has been that people are wrong to think that the Supreme Court has protected religious liberty for the past two centuries. In fact, it has done rather little in that regard—and even less by way of protecting *religious* liberty separate and apart from "liberty" more generally. And so, in closing this Pallium Lecture, I am reminded of the wisdom of Psalm 146: "Put not your trust in princes . . . ."

"Put not your trust in princes." I confess that the admonition is taken out of context, but is this not the right attitude for citizens of a democracy to cultivate? Princes in black robes are no more to be trusted to protect our freedoms than are any others. In the end, it is only the hard work of influencing elected representatives to pass laws (such as RFRA, perhaps) and of electing executives who truly cherish religious liberty themselves that will give its proponents a fighting chance.

I thank Archbishop Listecki for his confidence in inviting me to deliver this year's Pallium Lecture. And I thank all of you for your kind attention to the lecture. I hope that you have found something of value in it. ■

Nicola Lacey

Barrock Lecture: Criminal Responsibility and the Purposes of Criminalization

Nicola Lacey is School Professor of Law, Gender and Social Policy at the London School of Economics. Lacey delivered Marquette Law School's annual George and Margaret Barrock Lecture on Criminal Law this past academic year. Her Barrock Lecture was published as an article in the spring 2016 issue of the *Marquette Law Review*: "Socializing the Subject of Criminal Law? Criminal Responsibility and the Purposes of Criminalization." This excerpt is from the introduction to that article.

Most accounts of criminal responsibility depend on the claim—in somewhat different guises—that the paradigm subject of criminal law is an individual with rational agency. In other words, she is a subject whose conscious acts, or whose actions expressing her constitutive psychology or settled traits, attitudes, or dispositions, in some sense express her rational self. Moreover, these standard accounts of what it is to be a subject of criminal law assume that these features of agency can be clearly distinguished from features of a subject's situation, environment, history, or circumstances. Circumstances of poverty or of wealth; our experiences of privilege or of disadvantages such as racism, violence, or sexual abuse; the quality of our parenting and education: all of these undoubtedly shape our lives in fundamental ways. But, while operating causally on us in various ways, these external factors do not, it is argued, define us as agents—as subjects of criminal law.

In this article, I will argue that this distinction between environment and agency is in fact more problematic than it first appears. Cases in which environment or socialization fundamentally affects the judgment and reasoning of the individual subject pose, I shall argue, a real challenge to the basis for the practices of responsibility attribution on which legal judgment depends. Such cases also put in question the standard assumption that questions of responsibility can be analytically separated from questions of criminalization. The clue to meeting this challenge, I will argue, is to recognize that the criteria for criminal responsibility must be articulated with an understanding of the role and functions of criminal law. And this in turn, I shall suggest, underlines an important

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distinction between the contours of responsibility in legal and in moral contexts. It also has significant implications for method in criminal law scholarship.

In what follows, I shall set out a standard model of what it is to be criminally responsible, encompassing the engagement of standard powers of self-control and understanding. I shall then go on to consider the ways in which external factors may affect the extent to which these volitional and cognitive conditions are met. In relation to the volitional condition of responsibility, I shall consider criminal law's difficulties with the defenses of duress of circumstances and of necessity as threatening to a model of individual responsibility which is functional to law's regulatory ambitions: to admit a defense which in effect allows the defendant to rely on her own interpretation of what is required may seem to run counter to the very rationale of criminal law. I shall then go on to consider external factors which shape the cognitive rather than the volitional conditions for responsibility. While probably the standard example here is that of ignorance of law, I consider a broader set of cases in which "implicit bias" or "miscognition" potentially undermines the cognitive basis for criminal responsibility. These biases themselves proceed from deeply embedded aspects of experience or education, and they have the power to shape the subject's reasoning process in such a way as to call into question whether she genuinely enjoyed a fair opportunity to conform her conduct to the precepts of the criminal law. In each of these contexts, I conclude that external conditions indeed pose real challenges—challenges moreover which derive from our social practices of mutual interpretation—to the capacity of the concept of criminal responsibility to fulfill its standard role in legitimating and coordinating the imposition of criminalizing power. Further, they call into question the idea that there is a clear definitional line between the individual subject of criminal law and her social environment.

In the final part of the article, I will move on to consider ways in which the resulting challenge to criminal law's legitimacy might be met. To many criminal law theorists, the issue is essentially one of moral philosophy: responsible agency being a moral category, the task of the criminal law theorist is simply to delineate the conditions of responsibility and to come to the best judgment possible about whether they have been met. By contrast, I shall argue that the normative question whether the conditions of criminal responsibility have been met cannot be answered in the abstract. Rather, our deliberations here must proceed in the light of the meaning and social functions of criminalization as a complex social practice, itself located within a broader set of understandings about the proper relationship between individual and state. This relationship—like the institutions through which it is realized and implemented and the interests which shape its development—changes over time. And this implies that the question of where we should draw the line around responsibility is itself historically contingent. This is not to say that, within modern western legal systems, there has been no core understanding of responsibility. But it is to insist that the question of where responsible agency for the purposes of criminal law begins and ends in difficult cases such as those already canvassed is a matter for social evaluation. It is, at root, a decision which depends on a judgment about the proper purposes of criminal law and about the broader obligations of the state, rather than a question which can be determined by an ahistorical metaphysics or, to be sure, by sciences such as psychology or neuroscience. In conclusion, I shall draw out the implications of this analysis for the methodology of criminal law theory and for how we should conceive the relationship between criminal law scholarship and historical and social scientific work on the criminal process more generally. ■