Obligations: Law and Language. By MARTIN HOGG. [Cambridge University Press, 2017. xxxiv + 332 pp. Hardback £92.00. ISBN 978-11-07087-95-8.]

Martin Hogg's *Obligations: Law and Language* is an impressive scholarly work. It offers an overview and analysis of legal terms central to discussions of legal obligations, combining careful historical study with a methodical overview of current usage across English-language legal systems. In tone and content, *Obligations* is more reference work than monograph, but Hogg remains a clear presenter and guide throughout.

The author's focus is on a short-list of central terms relating to private-law obligations: "obligation", "liability", "condition(al)", "contingent", "unilateral", "bilateral", "gratuitous", "onerous", "mutual", "reciprocal", "voluntary" and "consent" (there are also discussions of other terms, including "duty", "obediential" and "synallagmatic" – for all my years teaching and writing in private law in both the UK and the US, I had never come across the last two before reading this text). In every case, Hogg gives us the etymology, how the term was used (if at all) in Roman Law, its presence (if any) in mediaeval and early modern English and Scottish sources, and the way the term is used in contemporary case law, legislation and model laws in England, Scotland, scattered Commonwealth jurisdictions, the US and, on occasion, the EU. The focus on English-language sources means that the jurisdictions surveyed are mostly common law jurisdictions, with a handful of "mixed" systems (systems with elements of both common law and civil law) – Scotland, Louisiana and Quebec. Contemporary civil law systems make only brief cameo appearances, but obviously it would have complicated the project significantly if the author had been required to incorporate foreign-language analogues in his list of English terms.

As with Wesley Hohfeld's early twentieth-century work on rights, *Obligations* reports to us on the imprecise and ambiguous way that judges, legislators and legal commentators use much of the basic terminology of private law. (Hohfeld's work is discussed at some length (pp. 21–27), and it does not entirely escape criticism.) Just as a sample: the book locates four different senses of "obligation", six different senses of "liability", six different senses of "condition(al)", and four different senses of "gratuitous". An example in greater detail: "Obligation" can mean (1) "A legal tie or bond by which A is bound to a performance in favour of B"; (2) "The duty (of performance) arising under the legal tie or bond"; (3) "The nominate class of one of the sorts of relationships commonly recognized as giving rise to obligations"; and (4) "Any legal duty arising in law" (p. 306). Most of the book is like this, with the addition of summaries and quotations from cases and treatises to support claims of how terms were understood.

To be clear, *Obligations* is not a narrative of how we have fallen relative to some prior Golden Age. Bracton and Blackstone are shown to have been no more precise in their usage than Anson and Treitel (and often significantly less). Also, there is no favouritism on the side of legislators: those who draft legislation, even model legislation, are regularly shown to be no more careful in defining their terms than judges developing the common law.

The book's prescriptive conclusions are straightforward: those who draft contracts, legislation, or court opinions should choose their words carefully, and define their terms if there is any danger of ambiguity. Additionally, by the end of the book Hogg has compiled a list of suggestions: that certain usages of terms should be favoured, others avoided, and certain terms perhaps no longer used at all (because other terms do the work better and with less confusion) (pp. 312–15). For example: "The term *debt* should probably be avoided altogether, given

that is has been used in so many conflicting senses. If it is to be used, its use should be restricted to describing an obligation to pay a fixed amount of money due under a contract (or a unilateral promise) and the related action to enforce such an obligation" (p. 313). At the same time, the author is aware that calls for reasonable reforms in the way judges and lawyers use legal terms are likely to be ignored (pp. 71, 305). This does not leave *Obligations* as a Quixotic task: it remain a highly valuable resource for those drafting or interpreting contracts, statutes and other legal texts.

There is one interesting argument that arises in passing in the text. Hogg questions the growing tendency in some jurisdictions to give priority to the intentions of the legislators or the contracting parties, or to focus on purposes (pp. 9–11). The difficulty is, that the more terms mean whatever the statutes' or contracts' drafters intended them to mean, however idiosyncratic those intentions, the more it will undermine any precise *shared* meaning for the terms in question, making effective communication in and through legal documents that much harder. Hogg notes the compromise path some courts take, trying to maintain objective meaning despite subjective forms of interpretation, when the courts declare that parties should be held to have intended the *usual* understanding of a term, unless there is good evidence to the contrary (p. 112).

While the book is an argument for shared and consistent meaning, Hogg seems to sympathise with judges who stretch the meaning of statutory terms in response to legislative purpose, in those cases where the immediate point is to prevent harm and injustice. Hogg gives the example of a court's interpretation of subordinate legislation that transferred "all property and liabilities vesting in or attaching to" a local authority from it to its successor (p. 116). Only a broad – arguably, unjustifiably broad – reading of "liabilities" would have allowed recovery in a case where the prior local authority had been negligent but the injury had not yet manifested itself, but a narrower reading would have resulted in "the injustice [of] … mere local government reorganization depriving the plaintiff of a claim which he would otherwise have had" (p. 117). And such deprivation could not have been the lawmakers' purpose. At the same time, Hogg notes, again with apparent approval, a court's contrary *narrow* reading of "liability" (*excluding* contingent liability), where the ultimate effect was to ensure a higher rate of payment on workers' compensation claims (pp. 121–22).

The scope and erudition of *Obligations* is imposing. One finds only occasional, minor misstatements in the work, an amazing accuracy rate for a work that ranges so far across jurisdictions, doctrinal topics and historical periods. Those in the business of drafting or interpreting legal documents are well-advised to refer to the book regularly.

Brian Bix
University of Minnesota

Administrative Law from the Inside Out: Essays on Themes in the Work of Jerry L. Mashaw. Edited by Nicholas R. Parrillo [New York: Cambridge University Press, 2017. 544 pp. Hardback: £110.00. Paperback £29.99. ISBN 978-11-07159-51-8 (hb), 978-13-16612-29-3 (pb).]

Administrative law aficionados often find themselves asking existential questions. Should administrative lawyers focus on judicial review – the control by the ordinary courts of administrative action – or should they focus on the internal workings of the