that, with one common aspiration, two impulses arise, and both are viable but mutually exclusive alternatives. As the author notes, given that they are mutually exclusive, both "cannot be equally successful at the very same locus and moment of legal argument". We must choose. Helpfully, "[s]uccess of either suffices to sustain legality". The author does not, however, determine the precise relation between the two modes. There are suggestions that formalisation is the base and idealisation grows on it, but it is left unclear why both processes can take place if either of them is sufficient to achieve legality. It must follow that neither process is sufficient to achieve legality, otherwise one would be preferred over the other. If that is so, then liberal legality is unachievable; and that is a troubling result.

There are a few points in the book where the reader is left with more questions than answers; for example on the connection between equal liberty and the nomological commitment, the characterisation of the rule of law as both formal and ideal, and the role of omnibus scepticism in law. At these points, the arguments are made without detailed exposition, and for those unfamiliar with the complexity of the domain, will be misleading in their simplicity. But readers should not wave these off as oversights or assumptions on the author's part, as the footnotes evince an intimate knowledge of this complexity. It is likely that the author has kept the exposition short to keep the length of the book manageable, and detailed treatment is likely to be given in other works which are to follow.

There are many things that are remarkable about this book. The most outstanding is the originality of the ideas packed within. The author does not seek to place himself within the debates that rage on. He divorces himself from the terminology of legal positivism, interpretivism, critical jurisprudence – even the rule of law – and instead opts for his own: nomological, law-like, liberal. Getting a grip on the nomenclature that is distinctively Sargentich's is likely to be the most difficult job for readers. But once that is mastered, the read is smooth. The organisation and methodology of the book are testament to the author's meticulous nature. Each chapter builds on what has come before seamlessly and, it seems, effortlessly. It is inadvisable to start the book anywhere other than the first page. Reading the last chapter, it also becomes clear that the author has more that he wants to say on liberal legality and the dual impulses. The author admits that this book is only concerned about how law "gets going and moves forward", not how it "ends up". Having had the privilege of reading the manuscript of the author's next work, *On Law's Formality: A Critique*, I can say with confidence that the author will leave his mark on the development of legal theory for years to come.

Azfer A. Khan
Singapore Police Force

Obligation and Commitment in Family Law. By Gillian Douglas. [Oxford: Hart Publishing, 2018. xxiv + 274 pp. Hardback £65.00. ISBN 978-17-82258-52-0.]

Family law has experienced profound change since the inception of the modern family justice system in the mid-nineteenth century. Gillian Douglas traces the historical understandings of obligation and commitment in family law that were once overwhelmingly shaped by socially conservative mores on kinship and morality. This is in sharp contrast to the prevailing views of contemporary British society, which are grounded on autonomy and eudemonistic liberal beliefs. The themes of obligation and commitment are at the heart of the book and are used to explore

both the legal history and contemporary understandings of family law in the UK. The state has moved away from trying to impose a form of religiously influenced morality onto individuals towards recognising the pursuit of emotional fulfilment and self-autonomy in the forms of private bargain ordering and the clean break principle in regards to relationship property. Yet the state has imposed more obligations on both parents to share responsibility for their children.

The book is divided into eight chapters and begins with a preface outlining the aims of the book, namely to research the legal consequences of the recognition of family obligations rather than explain the legal recognition of relationships *per se*. The book seeks to argue that the idea of commitment in a relationship has shifted from burden and obligation to dedication and allegiance. This reflects a contemporary liberal view of respecting individual autonomy and pursuing personal happiness. Each chapter begins with a quotation or two from cases, legal treatises or academic writings that neatly introduces some key ideas of the chapter. Although the chapter titles could have been clearer in identifying the content of each chapter, there is a logical order and structure to the book. Douglas provides a critical understanding of the development of family law in both its legal historical and contemporary contexts. The book is comparable to other scholarship in this field, such as John Eekelaar's *Family Law and Personal Life* (2006).

The themes of obligation and commitment in the context of family law are introduced at the beginning of the book (ch. 1). The public/private divide, often identified as a recurring tension in family law scholarship, is flagged as a major issue at the outset. The conflict relates to the role of the state in attempting to regulate the formation and dissolution of private relationships, as well as the responsibilities owed to other family members. Douglas astutely dissects the varied meanings of obligation and commitment. Obligation as a social concept is a duty that is imposed upon a person and provides instruction on normative behaviour, regardless of whether it is willingly accepted, based on beneficence and discretion rather than because of any legal positivist notion. As a legal concept, an obligation is the correlative of a right to the provision of a remedy that can be used to correct or deter harmful behaviour within the family context.

Commitments are voluntary and involve the mutual reciprocity between each of the parties. Whereas historically commitments were closely tied with ideas of legal burden and obligation, nowadays commitments are commonly associated with the emotional fulfilment of promises and dedications. This is reflected in the rise of private order bargaining in family law and changes in terminology, such as caring about, rather than taking care of, another person. Society often perceives women as having structural commitments to the family (such as serving as homemaker), whereas men are seen as only having personal commitments that manifest themselves in promises rather than caring about others. Douglas sees this as a double standard that stereotypes women and thereby puts them at a disadvantage before the law.

Douglas provides an insightful overview of the changes in family demography and their impact on family law, which presents a good snapshot of the radical transformation to social life in the UK (ch. 2). There are fewer marriages, more informal cohabitations, more single parents and more women delaying childbirth. These social changes have had an indelible effect on family law in the areas of relationship status, care of children and relationship property. Douglas attributes the demographic changes to the rise of individualism in early modern England basing her argument on the scholarship of Lawrence Stone. Although she acknowledges that Stone's scholarship has received historiographical criticism for making sweeping generalisations, it is debatable whether eudemonistic individualism in contemporary British

society can really be traced to the antediluvian morality of the early modern period as Douglas suggests. It would have been beneficial if further explanation was offered beyond some generalisations that the Enlightenment incited the women's rights movement in the nineteenth century and has subsequently shaped contemporary understandings of individualism.

The legal history of the concepts of cohabitation and consortium, particularly the restitution of conjugal rights, is explored in detail (ch. 3). There is a lacuna in this area of legal history scholarship. Restitution of conjugal rights initially existed in order to provide a remedy to the petitioning spouse for the preservation of the *consortium vitae* in the marriage by compelling the respondent spouse to return to the matrimonial home. However, over time restitution suits were primarily initiated to enforce money demands. This distortion of the intended public policy of the law is not uncommon in family law. Douglas creatively uses *causes célèbres* to illustrate the changing ideas of cohabitation in order to conclude that the idea of cohabitation in a marriage as a legal and social duty eventually shifted to a negotiable contract.

The clean break principle is an important concept in family law. Douglas makes an incisive observation that the position of the dependent spouse seeking financial maintenance nowadays has reverted to the system that existed prior to 1878, whereby wealthy couples would enter into private separation agreements to resolve financial disputes (ch. 4). The Matrimonial Causes Act 1878 allowed a magistrate to order the husband to pay the wife on making a non-cohabitation order in cases involving aggravated assault. The family justice system eventually developed formulas for determining private maintenance, such as the one-third rule, minimal loss principle and the clean break principle. However, the system of private maintenance has largely been ineffective due to difficulties of enforcement. Wealthy parties are nowadays encouraged to privately bargain, whereas the poorer are provided welfare benefits by the state.

The analysis of child support highlights the wider themes of obligation and commitment between parents and children, and helps explain the transformation of child support regulations (ch. 5). In the Victorian period, a duty to the child was seen as a moral obligation rather than as a legal one. Moreover, child support was focused on promoting the interests of the mother rather than the child. As a result of the United Nations Convention on the Rights of the Child 1989 and the emergence of the paramountcy principle, child support has shifted its focus to providing a legal safeguard in order to promote the best interests of the child. Although fault-based factors depending on the misconduct and misbehaviour of one parent towards the other during the breakdown of the marriage were no longer relevant factors in assessing child support, many non-resident parents treated child support as a bargaining chip that could be exchanged for spending more time with the child. Douglas's analysis of the gender dynamics helpfully provides the reasons for the largely unsuccessful enforcement of child support in the 1990s. Whereas the mother may regard liability of the father to pay child support as absolute, the father who is often the non-resident parent may see payment as contingent on the amount of contact he is entitled to with the child.

Although the clean break principle has been judicially accepted in regards to relationship property, parenthood remains indissoluble in the eyes of the law. Douglas details the ongoing obligation parents have towards their children (ch. 6). The historical contextualisation of the issues present a nuanced understanding of the contemporary challenges that the courts face in deciding care of children matters. The "empire of the father" over the guardianship of children was assailed in the nineteenth century. Initially the aim was to provide a legal remedy for the mother. During the twentieth century child welfare became increasingly recognised in the tender years doctrine, which promoted the belief that young children should

receive the nurturing care of their mother. The emergence of the paramountcy principle in the 1990s has shifted attention away from the wishes of the parents to respecting the child's views and best interests. This is reflected in the changing discourse from parenting rights to parenting responsibilities and a presumption in favour of shared parenting, except in cases where the child's safety is at serious risk. Douglas recognises the limitations of the law as it cannot force a parent to care about a child, but that the law can impose an obligation on both parents to mutually care for the child's welfare.

The comparative analysis between British and Australian legal recognition of care-giving relationships provides a critical insight into exploring how far the law should go in recognising obligation and commitment in cases where parties are not in a formally recognised legal relationship (ch. 7). Care is among the obligations typically seen as a gendered obligation with women assumed to have responsibility for care work, while the obligations of men are more contingent. Douglas argues that the non-financial contributions of women should be given adequate legal recognition, because the relief reduces the burden of the state to provide for individual family members. In regards of care-giving outside of formally recognised relationships, Douglas argues that the UK needs a more certain statutory regime than the equitable doctrines of proprietary estoppel and constructive trust, and points to the statutory regimes in various Australian states and territories as potential examples. However, she carefully recognises that different forms of relationships outside of de facto partnerships should not be treated as analogous to a marriage due to a lack of cultural and social recognition of those platonic caring relationships.

Douglas concludes that family law must be understood as a form of obligation and commitment (ch. 8). She argues that gender neutrality in the law has not been sufficient in remedying structural inequalities experienced by women and that there was never a golden age in family law. The failure of the family justice system to enforce obligations for family members to support and care for each other explains the failure of the child support scheme, the ready acceptance of the clean break principle despite arguably disadvantaging married women, and the acrimony of parenting disputes over the care of children. Overall, the book is clearly presented and well written. It is essential reading for family law scholars.

Henry Kha
Macquarie University

Building Trust in Taxation. Edited by Bruno Peeters, Hans Gribnau and Jo Badisco. [Cambridge: Intersentia, 2017. xvi + 376 pp. Hardback €175.00. ISBN 978-17-80684-26-0.]

As the title suggests, this is a book about the role of trust in tax systems. The topic is remarkably ambitious, and abstract, for a tax book. It is not about black-letter tax law, nor yet about compliance with that law, but about the conditions under which compliance can thrive. Things are made more difficult still by the fact that trust is not easily measured, verified or even defined. In effect, the editors are throwing down a challenge in the face of more conventional explanations of taxation: trust may be difficult to pinpoint, but tax systems cannot be fully understood without an account of it.

This task is unpacked by the editors into four main elements, being the respective relationships of trust with tax theory, tax ethics, economic globalisation and behavioural science. Each of these headings compasses a wide range of subject matter