Nevertheless, these points do not detract from each work's impressiveness. Both books are interesting, thought provoking and extremely cogently argued. They are welcome additions to the stellar Oxford University Press tracing collection.

ANDREAS TELEVANTOS
LINCOLN COLLEGE, OXFORD

Liberal Legality: A Unified Theory of Our Law. By LEWIS D. SARGENTICH. [Cambridge University Press, 2018. xii + 176 pp. Hardback £85.00. ISBN: 978-11-08425-45-2.]

Jurisprudence is a fractured discipline, with ever-expanding interpretations of age-old disputes and stubbornly entrenched positions on increasingly fine distinctions. It is therefore refreshing to see work that goes back to basics, provides a new framework through which to view extant debates and aims to unify and not divide.

Professor Lewis D. Sargentich offers such work in his first publication on legal theory, *Liberal Legality: A Unified Theory of Our Law*. He begins by affirming that "[l]egality is our topic" and "toward unification" we go. The author is not, however, concerned about law in the abstract; rather he is focused on "our law": the law of America and of "kindred legal systems"; liberal law, law that is liberty-serving – "Nomological" law, "law-like law". The nomenclature is unfamiliar at first but, once grasped, rewarding. This is because it is not terminology that states a definition; it is terminology that encapsulates a specific prescriptive conception of law. This is law in a specific guise, and the author argues that this guise is identified by two features: the existence of an instituted legal practice coupled with the nomological commitment. The first quarter of the book is devoted to an examination of how an instituted discourse of law is set up, and the rest forms an argument for why and how the nomological commitment operates.

The author begins ch. 1 by defining "law-like", "nomological" and "liberal" law (where all these terms refer to the same thing) as a perfected condition sought by law, where legal entitlement and legal justice are achieved through legal rationality. In other words, law that takes the form of "general, coherent and impersonal" prescriptions that allow for rational resolution without reference to materials outside law, in order to secure entitlements under law and achieve justice through law. This type of legal system is guided by the aspiration to achieve the perfected condition of legality. It thus aspires to itself. Chapter 2 takes a step back from this abstraction and focuses on what argument looks like in our legal systems. The author notes that H.L.A. Hart's theory is incomplete since it leaves out the role of canons of argument within a legal system, and hence cannot account for the function of courts in a modern legal system. He further suggests that Dworkin fails to trace the enterprise of coherence-seeking to its roots since coherence-seeking must stem from the criteria of good legal argument. Chapter 3 builds on these two points to construct the general character of an instituted practice of law, something the author describes as an ongoing discourse within three zones. These three zones together form legal argument: primary arguments by the courts, derivative arguments by counsel and affiliated arguments that occur without the restraints of "institutional status".

There is little to criticise about this image; indeed readers will recognise it as a familiar picture of our legal system. Judges render decisions based on certain

https://doi.org/10.1017/S0008197318000569 Published online by Cambridge University Press

criteria – what they deem as criteria for rendering a good judgment – and counsel put forward legal arguments on behalf of their clients tailored to these criteria so that the judges might decide in their favour. There are then peripheral actors, like academics, who can put forth arguments free from institutional restraints, but only those that judges consider as falling within the criteria for good legal judgment will play a meaningful role in adjudication. In sum, this is a snapshot of a part of our legal system, what the author calls an instituted discourse of law. While the author gives an excellent characterisation of how the judiciary operates, he leaves out any significant discussion of legislative and executive bodies. It is also slightly misleading to characterise Hart as a formalist since he only sought to define and identify law, and never sought to explain legal argument. Nevertheless, within the broader context of the author's arguments, these minor points are beyond the scope of the author's inquiry.

The next three-quarters of the book are dedicated to showing why the criteria of good judgment and good argument are those that fulfil the prescriptions of the nomological commitment. In ch. 4 the author equates his "sought condition of law" – liberal legality – with the rule of law. Going a step further, the author argues that it is a "Weberian mistake" to identify the rule of law with formality and only formality; that ideal argument (argument based on principles, policies and purposes) can also be consistent and generalisable. Chapter 5 elaborates how the liberal conviction connects to equal liberty and how an aspiration to achieve equal liberty requires the nomological commitment. The author then goes on to show how acceptance of the nomological commitment gives rise to two modes (the author calls these "impulses") of argument: formal and ideal, both of which are fully nomological. In chs. 6 and 7, the author details formal law (reasoning based on rules) and ideal law (reasoning based on practical justifications behind rules) respectively. He concludes that both Hart and Dworkin are only half-right, each downplaying the other type of legal argument. The author argues that the right answer is brought out when we read Weber and Rawls together, that "formalization builds formal structure", where law's rules work in tandem with each other, and "idealization builds organizing ideals" which in turn structure law's doctrines.

The author goes on in ch. 8 to show how the nomological commitment generates two "perils" for law. These are two concrete fears of how legality might fail, and they bolster the impulses and drive legal argument. First, the fear of free ideals as a corollary of ideal argument (discussed in ch. 9) is inspired by Dworkin's work on disagreement; here the author suggests that law fears free moral decision because it defeats legal entitlement, since decision without reference to law is simply dependent on the will of authority. It causes "nomothetic arbitrariness", the situation where judgment is no longer dependent on extant law. Second, the fear of open form as a corollary of formal argument (discussed in ch. 10) is inspired by Hart's work on vagueness; here the author suggests that law fears the prospect of linguistic failure because it defeats legal justice, since judgment by artifice is unable to sustain like treatment of like cases. It causes "anomic arbitrariness", the situation where judgment is "unruly, disorderly, anomalous". Chapter 11 concludes by arguing that it is the fear of open form that pushes nomological law to either succeed in formalisation's structuring process or to have recourse to legal ideals; and that it is the fear of free ideals that pushes nomological law either to succeed in structuring by idealisation or to return to the shelter of formality. If both processes fail, "then legality fails".

In sum, the author has combined Rawls's conception of the rule of law in *A Theory of Justice* and Rawls's conception of the rule of law in *Political Liberalism*, and has sought to show why they can co-exist. It is a novel point

https://doi.org/10.1017/S0008197318000569 Published online by Cambridge University Press

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

https://doi.org/10.1017/S0008197318000569 Published online by Cambridge University Press