Justice as Friendship—A Theory of Law BY **TAN** SEOW HON [Surrey: Ashgate, 2015. xvii + 184 pp. Hardcover: £70.00]

As explained in the preface, this book is the product of a research project started a decade or so ago. It is based on a doctoral thesis. The author has wisely avoided a rush to publication. Her efforts have resulted in an ambitious and intriguing theory of justice and law. It is founded on the notion of friendship as explicated principally through the work of Aristotle. There is little written on friendship in law although there is an emerging body of literature on the related topics of law and love, and law and virtue.

Part I of the book sets out the context by addressing some central problems in jurisprudence and by situating the thesis in the major debates. Can a (useful?) theory of law be purely descriptive or must it account for law's normative nature? What is the connection between law and morality? Is law merely politics? The author seems to deny that there can be a pure description of the law or, at least, she attempts to make a case for preferring a justificatory theory. Her book is said to offer a

non-minimalist and justificatory account of the law that rests not on politics but on the "extra-juridical" morality of friendship. Friendship presents a better vantage point, or model, for deciphering the relational claims of justice than interest-free heuristic devices such as those offered by Rawls and Habermas.

This sets the stage for Part II which contains a single chapter in which she sets out the essential features of friendship, advances the claim that friendship is a universal good and provides a methodology for working out norms of justice in relations between friends. The author contends that a key feature of friendship (in contradistinction to sacrificial love) is reciprocity and this feature generates legitimate expectations and obligations between the two persons in the relationship. A "reflective and dialogic" methodology is proposed, one which uses friendship phenomenologically as a means of ascertaining its norms in particular contexts. This involves placing ourselves alternately in the shoes of the two persons, "mov[ing] back and forth in some mental reflective position" on the legitimate expectation that one can have of the other (as well as the obligation that one has towards the other), until "we reach an equilibrium that we gauge to be reasonable" (at p 70). The key guiding principle, the "test for the legitimacy of expectations" (at p 92), is the golden rule "that we are to do unto others as we would have others do to us" (at p 71). It would seem that the capacity for empathy is crucial to this methodology. And since the capacity and resources for empathy vary from person to person, the equilibrium point may not be shared by all. This gives reason to doubt that the methodology is a cure for "the failure of standards in a pluralist world" (at p 75).

Part III moves the general discussion on friendship to the legal field. It contains three chapters. Chapter 4 attempts to show why "moral lessons" of friendship and the "methodology" for deciphering its norms are relevant to law (at p 75). The moral lessons comprise of two main principles: the principle of legitimate expectations and the principle of intrinsic worth (at p 89). Friends can legitimately expect certain behaviour from each other and friendship opens one's eyes to the intrinsic worth of the other. But law governs many types of relations that cannot plausibly be described as one of friendship. The response is that there is a "wide range of friendships of differing intensities" and "every human being is potentially a friend", deserving of recognition of his or her intrinsic worth, and can legitimately expect certain standards of treatment by others. While the humanistic sentiment is much to be admired and applauded, it is unclear how much work "friendship" does. For example, our recognition of the common humanity in the worst of criminals, of his or her intrinsic worth as a human being, prevents us—and the law prevents us—from torturing the person or killing him or her in the street, without a trial and due process. Do we need to acknowledge the person as friend or a "potential friend", or to draw upon the norms of friendship, to reach this conclusion? If we do, would we not be over-stretching the notion of friendship? Would the author's response be that it is (only?) through our experience of friendship that we can see the intrinsic worth of the person? (*Cf* at p 94)

Chapters 5 and 6 enter into details on "justice as friendship" as a theory of law. Parties to legal relations (for example, the relation between contracting parties or between tortfeasor and claimant) are typically not friends in any meaningful sense. But friendship provides moral lessons on how we should behave towards non-friends because in each non-friend is a "potential friend", and "we would not want to behave

in a manner which we regret when friendship materializes" (at p 93). However, the legitimate expectations and obligations between potential friends would be less demanding than those that exist between friends. This extended (and attenuated) morality—the morality of friendship that is extended to non-friends—is the morality that best justifies law.

Chapters 7 and 8, which are in the fourth and final part of the book, show how the theory "illuminates, reconciles, and justifies" aspects of contract law and the law on the tort of negligence. The author acknowledges that not all legal rules or doctrines are consistent with the theory. Conflicts can be found, as in the lack of an "existing tort duty to rescue a person in imminent danger" even when conducting the rescue would not cause us "much inconvenience". In such cases, the rule or doctrine would simply have to be dismissed as "mistakes" in the law (at p 116). While "justice as friendship" offers justification for parts of the law or for the underlying theory of liability or responsibility, it is also normative, calling for transformation of other parts.

It is certainly true that the law imposes various duties on us that require the giving of due consideration to the interests of others. The author's position appears to be that these legal duties, while weaker than those that exist between friends, are nevertheless modelled on friendship norms. But friends are special persons in our lives. Many (even if not everyone) would agree that they are persons to whom we may legitimately be partial. In our private spheres, we owe friends more than we owe strangers, and, we can legitimately expect more from them than from strangers. On the other hand, impartiality is a general virtue of and in law, and we expect officials to act impartially. A response to this might be that the law, and an official in discharging his or her role, should treat everyone equally as potential friends. But in rejecting partiality, is the law modelling its expectations and obligations on friendship after all?

That a theory raises questions does not detract from—indeed, it is often indicative of—its richness. Justice as friendship is a fascinating theory of law and a highly original contribution in the field of jurisprudence. The arguments in this book are thought-provoking and deserve serious and widespread attention.

Ho Hock Lai
Professor
Faculty of Law, National University of Singapore