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## **Justice as Friendship: A Theory of Law**

Seow Hon Tan

Ashgate, Farnham, 2015, xvii+188pp., ISBN: 978-1472429971

Aristotle famously made a connection between friendship and justice by claiming that ‘they have the same area of concern and are found in the same people’ (Aristotle 1159b25). Justice as Friendship (henceforth, JAF) is a sustained and detailed re-examination of this relationship under the contemporary conditions of pluralism and the need for a justification for law. JAF’s thesis is that friendship provides the model for understanding just relations in law. Importantly, three claims are advanced: first, that law needs to be justified by morality; second, that both friendship and the justice are concerned with how people ought to treat each other; and third, that friendship shows how we can have obligations to others simply as a result of being in relation to them. Thus, whilst JAF is intended to contribute to the theory of law, it will also be of interest to political theorists and those researching friendship.

The extent to which law can be founded on, and must take cognisance of, a particular conception of morality has significant overlap with discussions which have taken place in Anglo-American political theory. The root problem is one which theorists have grappled with since Rawls’ *A Theory of Justice*. Indeed the title of the JAF recalls the title of Rawls’ seminal contribution to political theory: justice as fairness. This problem takes the following form: given the fact of moral pluralism, what (if anything) can underpin politics (generally), and a theory of justice (specifically)? JAF discusses this problem in relation to the underpinnings of law in general, rejecting three possible approaches to this question. First, a purely descriptive approach to law such as Hart’s is rejected. Such accounts not only describe the mechanisms of making law, but in so doing they determine those who have legitimacy to do so. Their description slips into normativity. Second, the ‘the priority of the right over the good’ as proposed by Rawls is examined. This relies on a demarcation between the good and the right. Rawls’ approach is rejected as what is admitted as ‘reasonable’ in the thin overlapping consensus is regulated by a comprehensive liberal doctrine, a doctrine which itself is in need of justification. Thus, the right and the good are not demarcated, and Rawls’ is a political project. Finally, the approach of Critical Legal Studies is rejected. This approach ‘eschews attempts to justify the law’ endorsing the view that ‘conflict in principles and theories within law arise due to the existence of rival visions in law’ (p.20). JAF concedes that law can be used for political purposes, but maintains its justification is not political. The book seeks something more constructive, and this relies on ‘an external standard’. Having rejected these approaches which separate the law from morality the conclusion is that ‘an account of law must be a justificatory one. Further, law’s justification must be found in an extra-judicial morality’ (p.181). That foundation is friendship.

There are several features of friendship that recommend this relationship as a justification for law. First the phenomenon is universal. It is known by all people in all places (however imperfectly it is realised). Second, it sets up an ideal which is considered good, focuses on the intrinsic worth of the friend, is reciprocal, and is a school of virtue. Friendship is morally desirable. Third, friendship generates expectations and obligations for the friends as a result of their relation to each other. Whilst there is no formal contract between the friends they have reasonable expectations of how they should be treated. Friendship provides a justificatory theory of law which unifies law: in friendship (as in the law) the issue is how one should treat others, and how others should treat one. The relations in friendship and the law are therefore on the same moral continuum, and the former informs the latter. As such, ‘[Justice as friendship] contains at once the justification and explanation for law and legal justice, and an aspiration for their development’ (p. 184).

JAF goes a long way towards establishing the connection between friendship and justice. However, there are a few contentious elements to this book – an inevitability of a piece with such high ambitions. The

remainder of this review will focus on just one claim that the book itself presents as central: that friendship is universal. In respect to this claim the book responds to three objections. First objection: that friendship varies across civilizations. Response: in all cultures people seek others ‘whom they can trust and relate to deeply and genuinely’ (p. 67). Even the absence of ideal friendship does not make us give up on that ideal. Second objection: there are different kinds and degrees of friendship. Response: even friendships which fall short of the ideal aspire to it. In particular, they aspire to ‘maximum or equal reciprocity’ (p. 68). Third objection: JAF provides insufficient sociological, anthropological or philosophical evidence to support claims to universality. Response: readers are invited to ‘affirm’ the views about friendship presented in the book. Friendship ‘is something that we all know, which many of us have experienced, and which even the most cynical of us wish to have, but sometimes hold back from—not because we do not assent to the idea of friendship as a good and as a reciprocal relation admitting obligations, but precisely because we believe in this idea but have been disappointed time and again by our friends, by the way reality fails to meet our intuitive notion of the ideal. [...] And in our cynical refusal to settle for anything less, we implicitly continue to affirm the ideal of friendship’ (p. 69).

In its attempts to defend friendship as universal the book seems to tangle different sorts of claims. There is considerable slippage between philosophical ideals, anthropological facts, and psychological claims. This is regrettable as it makes harder work of the account of friendship than needs be. The book seems to be on firmer grounds when it proposes an ideal of what friendship is: it is this ideal view of friendship (how we ought to relate to each other) which is used to underpin the law. If it were a little more consistent in restricting itself to advocating an ideal type of friendship then this could have been defended not by what people happen to think or feel, but in terms of what they should aspire to. This can be defended through argument rather than to appeals to phenomenology which might struggle to move from an *is* to an *ought*.

So, why is universality so important? The answer to this question seems to go back to the rejection of Rawls’ position. The book grapples with the same problems: how to find a grounds for justice whilst overcoming the problem of pluralism. Rawls’ approach was rejected as it falls back on a liberal doctrine, a doctrine which itself is in need of justification. Indeed, in Rawls’ later work the liberal limitations of his theory are brought to the fore. The focus in JAF on the universality of friendship is an attempt to find a foundation for justice that can be recognised and agreed by all as a good. Yet, as JAF reveals, the kind of friendship that is needed for this argument is a particular kind of good: the ideal form of friendship is normative. This ideal maintains that people should treat each other as having intrinsic worth, as being free and equal, and as being obliged to show reciprocity. Whilst this is a model with which many would agree, it is far from clear that it would attain universal assent.

Is this a problem for the theory? Yes, but only if JAF wishes to maintain that it provides a grounding for law and overcome pluralism in some far-reaching way. If this is the claim, then more justification is needed for the ideal being proposed. However, by giving up the claim to universality, and instead defending the model of friendship presented here as being appropriate to the justification certain kinds of societies, the book’s theory would be on more defensible grounds. The model of friendship developed here is a kind of friendship which connects to a particular conception of how citizens should relate to each other: free, equal, showing reciprocity and concern, respecting each other’s intrinsic worth. This form of relating to others seems especially pertinent to liberal-democratic societies, based on rights, freedoms and the rule of law. In this way the theory as it stands can help us to understand something about these societies, and to provide a justification for law. This may be limited, but nevertheless it is still an achievement.

In summary, JAF is a useful and illuminating book and its theory is an original attempt to rethink the connection between friendship and justice in the conditions of pluralism. What is especially worthwhile about this is the attempt to show that the relationship of friendship generate duties and expectations.

Citizens, then, are a community of friends, even when they are in dispute. As friends there are certain ways that they ought to relate to each other – even if they fall short of this ideal. In this Justice as Friendship takes us back to what Aristotle has to say when he says that friendship is more important than justice; for in justice we aspire to treat each other as friends – or at least we ought to do so.