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Book Review

TOWARDS A NEW THEORY OF ADJUDICATION: INTEGRATING THEORY AND PRACTICE[1]

by Andrew Phang

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1 The temptation to assume that every legal question admits of a single correct answer is one that is deeply ingrained in the legal imagination. Its seduction lies in its promise of order, coherence, and the comfort of inevitability. Yet, such an illusion dissolves the moment one confronts a genuinely difficult case, where doctrine is clear in the abstract, but in which life, with its many shades of grey, refuses to conform to abstraction.

2 Aristotle understood this long before modern-day jurisprudence afforded it somewhat more elaborate names.[2] Law, he observed, must speak in general terms; but human affairs unfold in particulars. When the general rule encounters the unexpected fact, strict application may defeat the very justice the rule was meant to secure. Equity[3] is not a departure from law, but its necessary refinement. It acknowledges that judgment cannot be reduced to a decision tree without, in some sense, ironically impoverishing the very enterprise it seeks to guide.

3 This insight lies at the heart of serious adjudication. The absence of a perfectly determinate theoretical framework[4] is not a weakness in the law, but one of its defining features. It is a recognition (or concession, depending on how one views it) that law is a structured, but ultimately human, enterprise.[5] What matters, therefore, is not a fantasy of mechanical

1 Hart Publishing, 2025.

2 See, as illustrations, Aristotle, *Nicomachean Ethics* and *Rhetoric*. The fact that this point has its genesis in early Greek philosophy is one the author also notes. See Andrew Phang, *Towards A New Theory of Adjudication: Integrating Theory and Practice* (Hart Publishing, 2025) at p 20.

3 Used in the Aristotelian sense of *epieikeia*, and not to the more-commonly known jurisdiction of equity within the common law.

4 Andrew Phang, *Towards A New Theory of Adjudication: Integrating Theory and Practice* (Hart Publishing, 2025) at p 4.

5 Indeed, one commentator opines that, for this reason, no theory of law can plausibly claim totality, for "every theory of law is built upon a set of presuppositions … about law as a normative enterprise." Claims to comprehensiveness therefore inevitably

(cont'd on the next page)

inevitability (as comforting as that thought might be for those who believe that cases always admit of a "right" answer[6]), but the presence of a principled account of how judges ought to reason when generality meets complexity.

4 It is precisely such an account that Senior Judge Andrew Phang offers in this book. Informed by what the author describes as the "two (approximately equal) halves"[7] of his professional life, initially as an academic for about two decades[8] and thereafter, followed by an equally long and distinguished career on the Bench (in which he "absolutely excelled in both"[9]), he brings to this work a rare doubleness of perspective.

5 Across its three carefully structured parts, the book weaves a compelling framework, and, indeed, a fresh theory, of adjudication that is at once rooted in tradition and alive to contemporary realities. In the first part of the book, the author offers the reader a lucid primer on the foundational concepts that undergird adjudication and judicial decision-making. With characteristic clarity, he navigates the oft-difficult tension between procedural and substantive justice,[10] rendering accessible what is often treated as an abstract and forbidding distinction. He then turns to what he aptly describes as the "perennial tension between the general and the particular",[11] a theme that, as the reviewer noted at the outset, runs quietly but insistently through the judicial enterprise. Equally illuminating is his discussion of the epistemic dimension of objectivity in decision-making, where he shows how such a mature understanding of objectivity ultimately permits decisions that are more faithful to both fact and justice.[12]

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presuppose prior normative commitments. See Tan Seow Hon, *Justice as Friendship: A Theory of Law* (Ashgate Publishing, 2015) at p 3.

6 A supposition that the Singapore courts has, at times, taken pains to dispel – see, *eg*, the comments in *ADF v Public Prosecutor* [2010] 1 SLR 874 at [169] (comments which Senior Judge Andrew Phang concurred with in [235] of the same decision).

7 Andrew Phang, *Towards A New Theory of Adjudication: Integrating Theory and Practice* (Hart Publishing, 2025) at p xiii.

8 Andrew Phang SJ was so highly regarded as an academic that he "broke new ground" in becoming the first ever appointee as Senior Counsel despite not having applied to be considered. See *Speeches and Judgments of Chief Justice Yong Pung How* vol 1 (SNP International, 2006) at p 524.

9 Sundaresh Menon, "Pursuing Justice and Justice Alone" in *Pursuing Justice and Justice Alone: The Heart and Humanity of Andrew Phang's Jurisprudence* (Academy Publishing, 2022) at p 4.

10 Andrew Phang, *Towards A New Theory of Adjudication: Integrating Theory and Practice* (Hart Publishing, 2025) at pp 16–18.

11 Andrew Phang, *Towards A New Theory of Adjudication: Integrating Theory and Practice* (Hart Publishing, 2025) at p 20.

12 Andrew Phang, *Towards A New Theory of Adjudication: Integrating Theory and Practice* (Hart Publishing, 2025) at p 33.

6 All of this furnishes a firm and carefully prepared foundation for the more sustained engagement that follows in Part II of the book. There, the author turns to the major theories of adjudication, engaging them not through filtered summaries or secondary materials, but through their primary texts. The author both explicates and dissects the principal schools of thought, including legal positivism,[13] natural law[14] and the Dworkinian account of adjudication (the last of which the author dedicates a significant part of Part II to, spanning three in-depth chapters).[15] The author also devotes the final chapter in Part II to the sceptical traditions of adjudication, *ie*, strands of thought that question, or even disavow, the very possibility of articulating any overarching theory of law, such as the American Realist and Critical Legal Studies movements, treating them with the seriousness they deserve. Yet, as he observes, these movements often lack internal coherence, are insufficiently anchored in the institutional realities of adjudication, and risk an undue scepticism[16] toward the normative, non-empirical values that inevitably inform legal reasoning.

7 In the reviewer's view, what truly distinguishes Part II from other commentaries in this area (for which there are many, as the author observes[17]) is the vantage point from which it is written. The author does not approach these theories as a detached commentator surveying intellectual terrain from afar. He writes as one who has very much stood at the coalface of adjudication, one required to give concrete answers to disputes that resist neat theoretical classification. That lived experience clothes his analysis with a rare authority: he is able to perceive, with clarity and candour, both the explanatory power and the practical limitations of each of the existing schools of thought. This perspective is sharpened by the institutional context in which such a perspective had been forged. The Singapore courts, most notably the Court of Appeal, have in recent decades stood at the forefront of significant developments

13 Andrew Phang, *Towards A New Theory of Adjudication: Integrating Theory and Practice* (Hart Publishing, 2025) at ch 4.

14 Andrew Phang, *Towards A New Theory of Adjudication: Integrating Theory and Practice* (Hart Publishing, 2025) at ch 5.

15 Andrew Phang, *Towards A New Theory of Adjudication: Integrating Theory and Practice* (Hart Publishing, 2025) at chs 6–8.

16 As one of the key proponents of the Critical Legal Studies movement puts it, judicial decision-making is, in part at least, "best described as ideological choice carried on in a discourse with a strong convention denying choice, and carried on by actors many of whom are in bad faith". See Duncan Kennedy, *A Critique of Adjudication* (Harvard University Press, 1997) at p 4. It would be interesting to have been privy to Andrew Phang SJ's views of whether, and if so, how, the sceptical theories are informed by the broader context (*ie*, primarily American) in which they operate.

17 Andrew Phang, *Towards A New Theory of Adjudication: Integrating Theory and Practice* (Hart Publishing, 2025) at p xvi.

within the common law world, shaping doctrine in ways that have resonated across the Commonwealth. The author was no peripheral observer of this movement, but a central participant.[18] His reflections therefore emerge not merely from theoretical engagement, but from active involvement in the crafting and refinement of modern common law doctrine. There are many examples of this from the book, but nowhere is this more vividly illustrated than in his careful discussion of *ACB v Thomson Medical Pte Ltd*,[19] where he demonstrates how that case, which he authored, exposed the inherent limitations of a purely Dworkinian, doctrine-centred approach.[20] As he notes, the resolution of such a value-laden dispute simply could not lie in fidelity to a single theoretical lens. Rather, it required a careful and disciplined synthesis or *mélange* of approaches, drawing upon the structural certainty associated with legal positivism, while retaining the moral seriousness and interpretive depth characteristic of Dworkin's account. In doing so, the author makes clear that adjudication, at its most demanding, is neither doctrinal monologue nor theoretical abstraction, but a principled blending of insights calibrated to the demands of the case before the court.

8 All of this finds its natural culmination in Part III, where the author advances his own proposed theory of adjudication.[21] The theory unfolds in two carefully integrated movements. The first is attitudinal in character: it speaks to the orientation of the judicial mind, grounded in a constellation of institutional values (such as good faith, wisdom and humility[22]) that give shape and moral direction to the judicial office and that in many ways, animate its very core. These values are not abstract ideals hovering above doctrine, but the animating commitments that confer legitimacy upon the exercise of judicial power. The second movement turns to application. It explores the array of practical and theoretical considerations that breathe life into those institutional values when they encounter the concrete realities of litigation. The resulting account is both a reflective and pragmatic one, where the author offers not merely a commentary on adjudication, but a compelling vision of how it ought to be undertaken.

18 This reviewer discusses Andrew Phang SJ's influence on this front elsewhere. See Mohamed Faizal Mohamed Abdul Kadir, "An Insight into the Heart and Mind of One of the Leading Jurists of Our Time", *Singapore Law Gazette* (January 2023).

19 [2017] 1 SLR 918.

20 See Andrew Phang, *Towards A New Theory of Adjudication: Integrating Theory and Practice* (Hart Publishing, 2025) at pp 167–177.

21 Andrew Phang, *Towards A New Theory of Adjudication: Integrating Theory and Practice* (Hart Publishing, 2025) at ch 10.

22 Many of these virtues are of course understood to constitute the indispensable conditions of a judicial system that seeks to command authority and trust. See, *eg*, Ross Cranston, *Judging* (Oxford University Press, 2025) at chs 1–3.

9 In some sense, this book represents the culmination of the author's long and distinguished journey to reconcile law in theory with law in practice. It reflects a sustained effort to bridge the conceptual and the concrete, the scholar's search for coherence with the judge's responsibility for decision. Such a search has been an unyielding one – going back decades: a leading academic recently recalled elsewhere the author's attempts in the late 1980s to give voice to the "ideal judge", one who "is seeking 'fit' (consistency with precedent) and 'substance' (arriving at the right answer), so as to create a seamless and perfect legal order".[23] In many respects, this book gives systematic expression to that aspiration. In doing so, the book is, in a very real sense, groundbreaking, an ambitious and deeply informed attempt to provide a coherent conspectus of the adjudicative enterprise. Yet, if the reviewer may suggest, it is groundbreaking without grandiosity. The author is careful to acknowledge that the factors he identifies to be central to this new proposed theory are not themselves writ in stone, nor do they operate in isolation.[24] They exist in dynamic interaction, shaping and tempering one another in response to the demands of particular cases. The framework, in that sense, does not promise inevitability, nor does it assume that the work of adjudication can be mechanised into predetermined conclusions. In this respect, his theory mirrors the law itself. It is not a rigid architecture imposed upon reality, but a living framework that takes its shape not in abstraction, but in the presence of the dispute before it.

10 It may perhaps be asked how the author's framework will travel across jurisdictions marked by different intellectual and institutional trajectories. In the US, sceptical traditions have developed seemingly in response to a distinct constitutional and political culture, often casting adjudication in terms more overtly ideological than institutional. In the UK, by contrast, interpretivist reasoning of a broadly Dworkinian nature has exerted a significant influence. The author's synthesis, grounded as it is in an institutional account of judicial responsibility, invites reflection on how it might engage with, and perhaps mediate between, these differing and complex traditions. To be clear, that such questions arise is less a challenge to the framework than a testament to its ambition and generative potential.

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23 Yeo Tiong Min SC, "Landmarks and Signposts" in *Pursuing Justice and Justice Alone: The Heart and Humanity of Andrew Phang's Jurisprudence* (Academy Publishing, 2022) at p 182.

24 Andrew Phang, *Towards A New Theory of Adjudication: Integrating Theory and Practice* (Hart Publishing, 2025) at p 232.

11 It would be accurate, in some sense, to describe this as a book on jurisprudence. Yet to characterise it in that way alone may be to miss its deeper significance. It is jurisprudence in conversation with adjudication itself, structure that has been brought to bear upon, and stress-tested with, the resistant materials of real disputes. The author has produced a work that speaks with equal force to scholars, practitioners, and judges: to those who interrogate doctrine, those who deploy it, and those who must ultimately give it authoritative form.

12 In his seminal treatise, Benjamin Cardozo observed that: "The work of a judge is in one sense enduring and in another sense ephemeral. What is good in it endures. What is erroneous is sure to perish. The good remains the foundation on which new structures will be built."[25] The reviewer would suggest the study of jurisprudence, much like jurisprudence itself, works largely the same way. The great doctrines of jurisprudence, be it legal positivism, natural law, interpretivism, and, indeed, to a lesser extent, their sceptical counterparts, have long formed part of that enduring foundation. The author's framework does not seek to displace them. Indeed, it cannot for "in the law, nothing is (ever really) the work of one court or one man".[26] But what he does, very laudably, is that he builds upon them with care and intellectual honesty, proposing a structure that is at once rooted and forward-looking. Modest in tone yet ambitious in scope, grounded in experience yet animated by principle, it is a structure fashioned not for momentary acclaim but, this reviewer is confident, for lasting use. If Cardozo was right, then this is a work whose foundations are secure and whose superstructure may well stand for some time to come.

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25 Benjamin N Cardozo, *The Nature of the Judicial Process* (Yale University Press, 1921) at p 178.

26 See Tom Bingham, *The Business of Judging: Selected Essays and Speeches* (Oxford University Press, 2000) at p 34.