effective way of presenting his case, his autonomy is respected. Assy's argument gains significant support from European jurisdictions that mandate legal representation and from the jurisprudence of the European Court of Human Rights that has upheld those laws as being consistent with the right to fair trial.

This brings me back to where I began this review and the practical problem of access to justice. While the empirical evidence appears to be weak, many LIPs come before the court unrepresented not because they want to be there without a lawyer, but because they cannot afford one. For these LIPs, the right of self-representation is the only way the law pretends to satisfy the fundamental right of access to justice. And, as Assy fully accepts, it would be inconceivable to deny the right of self-representation without taking steps to reduce legal costs and enhance legal aid in order to ensure that all litigants have access to justice. This is supported by the Strasbourg jurisprudence that holds countries mandating legal representation to an enhanced obligation to provide adequate legal aid. Assy explores some of the ways courts might control the problem of legal costs but this is a complex political issue and there is no obvious answer in sight. In the competition for public funds, legal aid has been faring badly.

Even if the problems of excessive legal costs and inadequate legal aid were solved, mandatory representation would still leave residual access to justice concerns. Manageable meritorious low value claims may not justify the cost of legal representation. Some considerations would have to be given to LIPs named as defendants and not in the system by choice. Mandatory representation would also interpose lawyers to screen unmeritorious claims. While that would have a positive systemic effect, it might nevertheless be necessary to maintain a residual discretion to permit self-representation if the LIP can satisfy a judge that the claim has merit. Assy accommodates these concerns by proposing a presumptive rule prohibiting self-representation but allowing LIPs to apply for permission to proceed in person.

I find Assy's arguments for curtailing the right of self-representation compelling but, until we unlock the problems of legal costs and legal aid, I see little hope for change. My pessimism should not, however, detract from the importance of this readable and engaging book. Assy demonstrates a masterful command of the principles of civil procedure and their theoretical underpinnings. He skilfully dissects the arguments favouring the right of self-representation and exposes the hopeless plight in which we leave LIPs. In the end, he demonstrates that the right of self-representation is hollow for the LIP and harmful to others. Fair and effective adjudication of rights depends upon the active participation of trained lawyers to promote the interests of the litigants. *Injustice in Person* reveals the right to self-representation to be an unsatisfactory response to the demand of ensuring access to justice for all.

ROBERT J. SHARPE
COURT OF APPEAL FOR ONTARIO

The Politics of Judicial Independence in the United Kingdom's Changing Constitution. By GRAHAM GEE, ROBERT HAZELL, KATE MALLESON and PATRICK O'BRIEN [Cambridge: Cambridge University Press, 2015. xi + 293 pp. Hardback £65. ISBN 978-1-107-06695-3.]

Many international and domestic foundational texts set out the core conditions required for judicial independence to exist. A recurrent concern is that the fixed

conditions of judicial independence – such as guaranteed tenure, among many other conditions – should not be permitted to become the sole measures of judicial independence and thereby to obscure actual practice. So how do we, or how should we, take the measure of a court's independence? Gee, Hazell, Malleson and O'Brien suggest that issues such as budgets and working conditions have as much, if not greater, practical importance to judicial independence as formal rules or constitutional guarantees. There is much value in *The Politics of Judicial Independence in the United Kingdom's Changing Constitution*, as it shows how the judiciary today is an integral part of a complex governmental apparatus, on matters relating to the organisation and administration of the courts. Readers may however query the authors' decision to leave aside a principled discussion of judicial independence. Without a normative inquiry, it is hard to say whether any particular practice relating to judicial administration is appropriate; and certain assumptions, such as the desirability of greater involvement of politicians in judicial appointments, are apt to be made too easily.

The authors make the argument that judicial independence is contextual and in practice contestable. The task then is to investigate rather how politicians, judges and officials constantly negotiate what they call "the practical requirements of judicial independence", thus engaging in the "politics of judicial independence". The authors' emphasis on the identification and understanding of a complex set of *political* practices belongs to an established scholarship in the field of judicial studies. The book's inquiry is deeply informed by interviews with senior judges, politicians, officials and academics. A deliberate focus on the negotiation of a range of judiciary-related issues, from judicial pensions to judicial discipline, makes the book all the more readable.

The authors explore in particular depth two aspects of the politics of judicial independence in the UK. The first is that the "politics" of judicial independence consists of the distribution and exercise of institutional power between the different branches of government. The authors are keen to emphasise the influence that senior judges wield in areas such as judicial selection. The judicial selection processes are so complex as to make it difficult, the authors argue, for any layperson or parliamentary select committee to challenge meaningfully the views of the senior judges. In parallel, the new-style Lord Chancellor's responsibility has been reduced in judicial selection. The authors connect a "disproportionate" level of judicial influence with "a real risk that new appointments will continue to clone the existing judiciary, and that progress on diversity will continue to be relatively slow". But any call for greater diversity in judicial profiles requires further elaboration. Is it because the authors believe in some possible connections between patterns of judicial decision-making and the ideological dispositions of judges? They exclude such discussions from the scope of the study, but the impression is that some such link may well be assumed, and a quite controversial one at that.

The finding of an "excessive" judicial advance leads the authors to identify a general discrepancy between the greater institutional autonomy of the judiciary and the way judges are being held accountable today. As the authors recognise, any form of parliamentary scrutiny hearing is not only resisted by almost all senior judges, but it has also been rejected by Parliament. They, however, cannot resist the call for an appointment system in which "engaged and well-informed politicians play a more equal part". Indeed, the authors conclude that "the greatest threat to judicial independence in the future may not be from the actions of politicians but rather from their disengagement and disinterest". Not everyone will agree with that. It is doubtful that engagement and information create by themselves a shared and considered understanding of judicial independence and how it should be protected. External

factors such as the media – once described as the fourth branch of government – do influence the executive and Parliament's willingness to engage meaningfully. We only need to consider the media's and the executive's public criticisms of some decisions taken in application of the Human Rights Act 1998. There is no shortage of examples where the executive has shown both great interest in the outcome of judicial decisions with corresponding disinterest in the reasons behind the decision; it is hard to see how any criticism in such cases can be made that the judges have not "engaged" others in their reasoning.

The second aspect of the "politics" of judicial independence is the emphasis on negotiations between judges and various politicians, civil servants and other stakeholders. Thus, the authors fully document how judges conducted negotiations shortly before and after the office of the Lord Chancellor was changed in the Constitutional Reform Act 2005. This reform marked a constitutional shift from the "old" to the "new" politics of judicial independence. The "old" politics were secretive, informal, flexible and centred on the Lord Chancellor, who was historically seen as an effective guardian of judicial independence. The "old-style" Lord Chancellor, by virtue of his institutional role, spent time with both his ministerial and judicial colleagues, allowing for some shared understanding to develop between the legal and political spheres. By comparison, the "new" politics is constrained by the principle of separation of powers between the judicial and political branches of government, formally introduced in the Constitutional Reform Act 2005. The "new-style" Lord Chancellor is not expected to be immersed in the legal and judicial culture in the way he used to be. It falls upon senior judges, and the Lord Chief Justice in particular, to nurture a political understanding of the proper boundaries between the Government and the judges. In that respect, the recent greater engagement of judges with a wide range of select committees in Parliament, both in the House of Commons and in the House of Lords, has proven constructive and, for the judges, an effective channel to voice their concerns.

The authors are most persuasive when they suggest that the formal divide between the political and legal cultures of judicial independence is further exacerbated by the "fragmentation" of the shared responsibilities between the judiciary and the executive. The formal partnership established upon the commencement of the 2005 Act in 2006 breaks into many distinct areas, from designing, funding and supervising the appointment system, the court system and the judicial complaints and discipline, to the deployment of judges and their appointments to the most senior leadership posts. The main point is that a wide range of actors beyond senior judges and the executive are also involved, such as the Judicial Appointments Commission or the Judicial Conduct Investigation Office. This increases the opportunities for tension, contest and compromise. The authors expose well the frustration of senior judges with the current partnership model of court administration. Both the prisons estate and the probation service fall under the umbrella of the Minister of Justice, and the new-style Lord Chancellors have shown more interest in them than in the court system. Similarly, most of the tension between the UK Supreme Court and the Ministry of Justice has tended to be bureaucratic rather than political – "a by-product of officials treating the Court as if it were a run-of-the-mill executive agency subject to close oversight by the Ministry" on financial and administrative matters. The analysis is insightful, and the authors duly acknowledge that the judges are not seemingly in an equal position to negotiate their various concerns. The judiciary appears to lack leverage where its concerns are ignored. In light of the latter observation, one would have liked more discussion as to whether it is healthy for so much to be down to negotiation.

The authors' main contention throughout the book is that judicial independence is necessarily a product of the political realm; its place is, they say, defined and

protected through interactions between judges, politicians and officials. A bolder claim as a consequence is that new understandings of how the principle of judicial independence *should* play out in practice are forged through negotiations. Does this mean that we should extract a normative definition of judicial independence from its mere political practice and actual implementation? Apparently so. On the contrary, one might suggest, it is perfectly plausible and desirable to conceive judicial independence and accountability as being the joint product of purposive legal and political arrangements. This conception would equally require a considered judgment about the social and political goals supporting, for example, greater diversity in the composition of the judiciary as a collective. It would provide a normative core to the notion of judicial independence and, in our case, compel the authors to explain their criticism of having influential judges in selection panels or their call for greater parliamentary scrutiny.

The book's emphasis on "small particulars" over the grand and vague pronouncement of judicial independence is often compelling, and it offers an excellent snapshot of how politicians, judges and officials negotiate the structure and operation of the courts in a period of constitutional change. Both legal and political audiences should read this book with great attention, although their views might still not wholly coincide.

Sophie Turenne
Murray Edwards College, Cambridge

Law and Life in Common. By Timothy Macklem [Oxford: Oxford University Press, 2015. 240 pp. Hardback £50. ISBN 978-0-19-873581-60.]

Macklem argues in his book, *Law and Life in Common*, that law and legal systems arise from the interplay between *reason*, *will* and *imagination*. He aims to show that critical theories of law, which construe law as will or power, have an element of truth since their focus on the idea of will or power sheds light on the contingent, open and plural features of the law. He aims to unify (1) Raz's service conception of authority, which is grounded on reason, (2) critical theories of law, which focus on will (or power), and (3) Dworkin's constructive theory of law, which is built around the idea of imagination. Macklem tells us that unification is possible if we admit that each of these theories is incomplete and if we subsequently use this incompleteness to consider the respective notions each theory is grounded in, namely reason, will and imagination, to show how a complete and satisfactory picture of law as social practice can emerge.

In the first chapter, Macklem sets out the problem of law. Law is the instrument of governance and plays an active role in shaping our life in common. In addition, in pursuing their individual life projects, individuals are meant to draw from a minimal form of life in common (p. 3). Macklem asks the question "What is the connection between law and action, in one life or in many?" (p. 4). The answer to this important question might partly be given by identifying the law in question (p. 4) that contains or consists of a reason that defeats other reasons for actions that citizens might have. According to Macklem, Raz's service conception of authority, which establishes that legal directives give us exclusionary reasons for actions, namely reasons that exclude our first-order deliberations, and apply to us because we can be more successful in complying with the relevant and appropriate reasons if we follow the law, only shows us that submission to law's authority *may be* reasonable. Raz's theory