changed over time and whether the subsequent legislative interventions identified in Chapter 3, Part III, had addressed some of the issues she had identified.

Chapter 6 contains a useful discussion of the potential grounds for claim against the employer, the adviser and the product provider that may be brought by an employee who has been automatically enrolled and who has suffered loss. This chapter does not analyse, although it refers briefly to them, the additional claims that could arise where there is a trust based DC occupational pension scheme and where the scheme trustee has powers to exercise to choose, periodically review and change the default investment option. But, understandably, this reflects the author's focus on AE DC personal pension schemes.

In the context of legal risk management, Chapter 4 read with Chapter 6, sparked the question in the reviewer's mind as to whether, in designing choice architecture for trust based DC scheme member investment options, a trustee's prudent person duty would require analysis and management of the choice architecture to avoid behavioural biases which were not in the member's best interests. Such a point is one for consideration by those looking at legal risk management for the master trusts referred to in Chapter 2, Part III.D.

In Chapter 7, the author identifies a number of changes to the AE regime to improve outcomes; in particular to improve the active free choice option she advocates for individuals who are auto-enrolled.

In summary this book contains much interesting research and analysis on a number of different strands of legal and economic thought as applied to the complex field of AE pension provision. The author correctly identifies aspects of the AE regime, particularly for AE DC personal pension schemes, which would benefit from further consideration. However, the critique of the success of the AE regime would, perhaps, have been more powerful in its advocacy if not so firmly anchored to the author's benchmark of conscious free choice.

PHILIP BENNETT
DURHAM UNIVERSITY

The End of Law: How Law's Claims Relate to Law's Aims. By DAVID MCILROY. [Cheltenham: Edward Elgar Publishing, 2019. viii + 189 pp. Hardback £70.00. ISBN 978-1-78811-399-1.]

Georg Wilhelm Friedrich Hegel famously declared that "[t]he owl of Minerva spreads its wings only with the coming of the dusk" – meaning that a civilisation only acquires the ability to make sense of itself to itself when it is on the verge of decline. Hegel's claim came strongly to mind while reading, and re-reading, David McIlroy's amazingly rich and erudite discussion of the nature of law. When McIlroy entitled his discussion "The End of Law", he meant to refer to law's aim or aims. However, his discussion may also portend the end of the particular view of law that he so wonderfully expounds in his book.

McIlroy's view of law is aligned with that of thinkers such as Robert Alexy and Joseph Raz (and, following Raz, John Gardner). All see law as, of its very nature, making moral claims for itself. McIlroy argues that law, of its nature, claims to be just "a legal system that does not claim to be just is no legal system at all" (p. 12). Law's claims to be just are made at two levels. First, it claims to be just at a shallow level. This shallow justice involves "our rulers governing in accordance with the rules which have been laid down" (p. 23), with the result that rules are applied

https://doi.org/10.1017/S0008197321000751 Published online by Cambridge University Press

consistently, like cases are decided alike, and our rulers do not use violence against us but lawful force (p. 39). Second, law claims to be animated by a vision of deep justice, which McIlroy variously: (1) identifies with a "sense of how people deserve to be treated" (p. 30); (2) claims will include "an account of which persons or institutions have the right to make certain decisions" (p. 68); and (3) argues "concerns accounts of deserts, of what is due to different people" (p. 95).

Law cannot operate, McIlroy argues, without making claims to be just at both a shallow and deep level. It is vital that law claim to be just at a shallow level because "[t]he knowledge that force will not be used to interfere with one's actions if they are lawful and that force will be used to prevent others from interfering with one's lawful actions creates security, removes fear, promotes freedom and enables hope and planning for the future, all of which are key to be able to live a flourishing life" (p. 73). This knowledge is essential to law's being able to make a claim to the allegiance of its subjects, which claim to allegiance rests on law's being able to claim that its "rules are . . . of benefit to those who are subject to them" (p. 47). This claim to allegiance is an indispensable feature of law because "force alone cannot sustain a regime indefinitely once it has lost all legitimacy among its subjects" – widespread voluntary compliance with the law is essential for the law to function.

The need to secure such voluntary compliance accounts for why "rulers always claim that the rules they make are just" (p. 81) at a deep level, and why the conception of deep justice that they claim underlies the law almost always corresponds with the conception of deep justice that is already prevalent among the law's subjects. But McIlroy concedes that this is not always so, pointing to the case of imperialist legal systems, which seek to impose on a subject population a set of legal rules that are animated by a conception of deep justice that will be accepted by the rulers alien to their subjects. What is essential, then, to a system of rule qualifying as a legal system is not that it give effect to a conception of deep justice that is accepted by the ruled, but that it give effect to *some* conception of deep justice that enables the rulers to claim that their "rules are of benefit to those who are subject to them because they can be followed and will be followed by all those to whom they apply" (p. 83).

Because law claims to be just at both a shallow and deep level, and even though that claim may not be made sincerely (p. 89), law always stands to be judged by what McIlroy calls "true justice". Where the law fails to do what is truly just, it stands in need of correction and in that sense (and in McIlroy's terminology), law "defers" to justice. But law also "differs" from justice in that it is impossible for the law to be perfectly just: "the agony of the law is that the tools of the law cannot do justice to justice" (p. 146). But the fact that true justice is "an end beyond our grasp" does not make it "a practically useless ideal but rather a standard against which all legal systems are to be measured" and which guides "our struggles against injustice" (p. 155). The relationship between law and justice should be seen as symbiotic: "Law is not itself without reference to justice, and justice is not itself without being given expression in law" (p. 35).

McIlroy's book amounts to a wonderful conspectus, and synthesis, of centuries of thought about law, all packed into just less than 200 closely argued pages. But the paradox – though it is a paradox that vindicates Hegel's dictum – is that McIlroy's book arrives at a time when the ideal of law that he celebrates has never been under greater threat.

It is entirely possible that within the next few years what we have known as the rule of law will be thrown over in favour of rule by a self-serving elite that will make no claim to allegiance by their subjects – and no claim that their rule is in the interests of those subjects – but will instead rule through orders backed by threats of loss of access to essential goods and services in the event of non-compliance. Already,

with the benefit of the experience of the past year and a half and elementary foresight of what might come in the next few years, some of the claims McIlroy makes (at pp. 76–77) about the need for rulers to persuade the ruled to comply *voluntarily* with the rules laid down by the rulers seem naïve. What need is there to worry about where the hearts and minds of one's subjects are when you can control their bodies through making their access to an income, shelter and even food dependent on a decent social credit score maintained on a unique digital id issued to each subject?

It is to McIlroy's credit that he does not shy away from considering what the fate of law is under a tyrannical government, which we can define – following the Ancient Greeks in this regard – as one where the rulers do not even pretend to govern in the interests of the ruled but instead govern in their own interests and simply compel the ruled to go along with their plans by some means or other. McIlroy bites the bullet of saying that law does not exist at all under such a system of government, at least so far as those who are compelled to comply with the tyrant's dictates are concerned (p. 51):

> a legal system does not exist if the claim that the rules are of benefit to those who are subject to them because they can be followed and will be followed by all those to whom they apply is wholly falsified. This is because, in such a situation, the regime is not a system of law but rather the gunman situation writ large.

So he argues that "while a slave-owning system is a valid legal system from the perspective of the slave-owners, it is not a legal system but only a predatory order from the perspective of the slaves" (pp. 49–50) and that in Nazi Germany, from *Kristallnacht* onwards "although a legal system may have existed under Nazi rule for Aryans, it did not for Jews" (p. 53).

A more moderate position would be that while a tyranny may be described as governing through law, it is not law as *we* know it, because law as we know it comes along making the kinds of claims for itself that are set out in McIlroy's book. A position at the opposite extreme to McIlroy's would say that tyrannical law is just as much law as the kind of law we are accustomed to, with the result that it is simply not true to say that law *necessarily* makes the kind of moral claims that thinkers like McIlroy see it as making. I incline towards the moderate position. McIlroy's position means that we have to come up with a whole new set of (non-legal) terms to describe what is going on under a tyrannical system of government, when our vocabulary is not so well-stocked and it might actually be in the tyrant's interests to encourage us into taking the Wittgensteinian position "[t]hat whereof we cannot speak, thereof we must remain silent". The position at the other extreme to McIlroy's seems to miss all the realities of our experience of living under law that McIlroy points to in his book, or at least dismisses those realities as only a contingent feature of law when they are not experienced by us as contingent features but essential to our conception of what it is to live under the rule of law.

If the moderate position is right, we may at this time be living through a transitional period, one in which we are going to have to get used to thinking about law in ways that are quite alien to the sort of ways of thinking about law so brilliantly summed up by McIlroy in his book. But should it be that government of the people, by the people, *for the people* shall perish from the earth in the next few years, McIlroy's book is not a bad epitaph for it, and will serve as a decent reminder in years to come of all that we lost, and may – in time – have again.

Nicholas J. McBride
Pembroke College

https://doi.org/10.1017/S0008197321000751 Published online by Cambridge University Press