being too politically responsive (p. 267). The courts have a role in ensuring that matters which should not be employed to political ends are not used by ministers to their personal advantage (p. 217). As for democratic accountability, Thomas notes that there was no reference to the hostile environment policy, which gave rise to the Windrush scandal, in the 2010 Conservative manifesto (p. 57). The department can be secretive about data, which Thomas presumes is because the information would be embarrassing if released (pp. 95–96).

Thomas's book is not overwhelmingly negative and he wishes to avoid fatalism (p. 256). He does give credit when he finds it due, for instance in terms of improvements to the department's approach to reviews of decisions (p. 165). As to his recommendations, other than making casework independent of ministerial control, his suggestions include an annual plan for immigration policy which is to be laid before Parliament (pp. 272–73); setting policy by reference to what is achievable in terms of administrative capacity (p. 274); codifying the primary immigration legislation into a comprehensive statute (p. 276); and introducing an external agency to provide additional oversight (pp. 277–78).

Administrative Law in Action is an impressive achievement and it deserves to be read widely by public law scholars. It now being out in paperback (the hardback having been published in 2022) means that it is available at a lower cost. It provides benefit not only in informing us about its specific subject matter, but in showing the importance of us being informed about specific subject matter.

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Reclaiming the Public. By Avihay Dorfman and Alon Harel. [Cambridge University Press, 2024. x + 197 pp. Hardback £90.00. ISBN 978-1-00932-716-9.]

Reclaiming the Public is a seminal work that rigorously examines the concept of "the public", defining it in non-instrumental terms. The authors argue that institutions and officials qualify as public not merely by advancing our interests or acting on our behalf, but by "speaking in our name". This perspective, they contend, aligns state authority with the principles of freedom and equality, thereby affirming the legitimacy of political power and enhancing public autonomy.

Chapter 1 provides an account of political authority, critically assessing traditional theories of legitimacy and proposing an alternative grounded in specific mechanisms of representation. The authors contend that genuine legitimacy emerges when public institutions mirror the perspective of those they serve and operate non-hierarchically, by speaking on their behalf. Chapter 2 critiques legal positivism and natural rights theories for anchoring the normativity of law in its content. The authors propose an alternative approach that emphasises the authority of lawmaking agents, shifting the focus from *what* law is to *who* proclaims it. They argue that the moral difference law makes is one of "standing, agency, identity, or status" (p. 11) and ground the normativity of law in the public characteristics of the lawmaking agents. Chapter 3 explores some of the concrete institutional manifestations of this conceptualisation. The authors use the differences between constitutional and statutory rights, as well as between statutory rights and those derived from

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common law, as illustrative examples for how multiple lawmaking institutions can create diverse methods to appropriately recognise the status and foundations of legal norms. Chapter 4 is dedicated to translating the proposed concepts of political authority and normativity of law to legal doctrine and political action. The authors contend that certain goods, which they term "inherently public", must be administered publicly to maintain their value and core nature. Examples include criminal punishment and waging war. Chapter 5 shifts the focus from privatisation of specific functions to the enterprise of privatisation, writ large. It challenges the instrumental approach underlying the prevailing privatisation debate, arguing that privatisation's fallacy is rooted in the erosion of political engagement. Chapter 6 explores the institution of public property. The authors contend that the shaping of public spaces allows individuals to engage in collective self-governance and in the expression of shared community values. Chapter 7 applies the normative framework of the book to the pressing challenge of artificial intelligence (AI), a non-human system of governance. The central claim of the chapter is that AI decisions cannot qualify as public even if they serve the public interest.

My comment will centre on the book's most essential aspect – namely, its characterisation of "the public". I will offer a critical view of the authors' reductive conflation of "the public" with "the state" and explore the broader implications for the legitimacy of political authority. The concept of the "public sphere" dates back to the Hellenistic period, where "the Agora" served as a hub for market transactions, interpersonal interactions and communal activities. Since then, the concept has appeared in various contexts across the writings of Aristotle, Hannah Arendt, Nancy Fraser, Charles Taylor and others. However, it is most closely associated with Jürgen Habermas, the progenitor of Public Sphere Theory. In his influential work, *The Structural Transformation of the Public Sphere* (New York 1989), Habermas examines the emergence during the eighteenth and nineteenth centuries of spaces within bourgeois European salons and coffeehouses, where societal issues are addressed collectively and political action is catalysed. Habermas refers to these spaces as "the public sphere" – a realm characterised by deliberative engagement and public reason that is distinct from familial, economic and governmental spheres. In his words (J. Habermas, S. Lennox and F. Lennox, "The Public Sphere: An Encyclopedia Article" (1974) 3 New German Critique 492):

> By "the public sphere" we mean, first of all, a realm of our social life in which something approaching public opinion can be formed... A portion of the public sphere comes into being in every conversation in which private individuals assemble to form a public body. They then behave neither like business or professional people transacting private affairs, nor like members of a constitutional order subject to the legal constraints of a state bureaucracy.

Habermas's theory stands at the heart of the book's public autonomy arguments. The authors embrace his conceptualisation of public autonomy, stressing their departure from Habermas in matters concerning consent and the interplay between public autonomy and democratic legitimacy (fn. 1 on p. 2; fn. 48 on p. 162). However, these are not the only points where their thesis departs from Habermas's theory. Habermas distinguishes between the public space and the state sphere (despite the interrelations between them), a distinction that is overlooked by the authors, who conflate "the public" with "the state".

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In Habermas's framework, the public sphere encompasses a variety of venues including labour unions, religious and cultural communities, NGOs, homeowners' associations, university senates and even Facebook groups. The dialectical interaction among individuals within these sites generates public voices and opinions that could feed into policymaking at the state level. Habermas argues that effective governance requires attentive ears from state authorities to the discourse unfolding in these public spaces. There is room to claim that the necessity of such public spheres – which are distinct from the state political arena but exert influence over it – stems from the inadequacy of the mechanisms of replication and representation, outlined by Dorfman and Harel, to facilitate meaningful political participation in public affairs. Bridging between "our voice" and that of the legislator requires intermediation of substate collectives operating within the public sphere.

Hannah Arendt's writing reflects a similar sentiment – namely, that participation in the state's political apparatus is too limited and that effective political participation requires mediation by non-state, public entities. In her words ("What Remains? The Language Remains: A Conversation with Günter Gaus" in *The Last Interview and Other Conversations* (Brooklyn 2013), 104):

> The booth in which we deposit our ballots is unquestionably too small, for this booth has room for only one. The parties are completely unsuitable; there we are, most of us, nothing but the manipulated electorate. But if only ten of us are sitting around a table, each expressing his opinion, each hearing the opinions of others, then a rational formation of opinion can take place through the exchange of opinions.

Arendt contends that for citizens to form well-rounded opinions on political matters, they must personally engage in public debate. To facilitate such personal engagement, she advocates for a system of "council democracy", comprising numerous public spaces or "elementary republics" distributed across the country. This hierarchy of councils would mediate between the citizens and policy-makers at the parliamentary level. Her model has been criticised for its utopian nature and for raising a host of representation issues of its own. But the crucial point is that, like Habermas, Arendt too defends the position that within a sphere as broad and rich with diverse viewpoints as the state's political realm, the mechanisms turning institutional decisions into those made "in our name" depend on the mediation of substate public collectives.

This leads to a broader argument: restricting political participation to the state level undermines public autonomy not only within the state sphere but also in non-state public spheres. This is due to the jurispathic effect of state action. Robert Cover ("The Supreme Court, 1982 Term – Foreword: Nomos and Narrative" (1983) 97 Harv LR 4) reveals how state legal institutions shape collective narratives, marginalising dissenting perspectives while reinforcing dominant ones. The action of state institutions – specifically legal institutions – may dilute rival perspectives and normative commitments, including those articulated within competing public spaces. The threat posed by the state's jurispathic capacities to the expression of public sentiments and the exercise of autonomy in alternative, substate public spaces, challenges the book's foundational assumptions, particularly regarding the cumulative effects of privatisation. In Chapter 5, the authors advocate for universal restrictions on privatisation, beyond inherently public domains (like warfare or incarceration), asserting this is essential to maximise opportunities for

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exercising public autonomy. Contrarily, I contend, that due to the jurispathic nature of state action, reducing state involvement could actually bolster public autonomy in substate spheres.

Shifting from public to private autonomy reveals even deeper challenges within the book's framework. Habermas, a leading proponent of public autonomy, argued that private autonomy should take precedence over public autonomy due to the fact that the former is contingent upon the latter. The threat to private autonomy under Dorfman and Harel's thesis differs qualitatively from merely prioritising collective interests and values over those of individuals. It is rooted in the diminishing capacity of individuals to maintain a separateness from state action. Private autonomy encompasses an individual's ability to express themselves and shape their public representation. This control is influenced not only by what one chooses to express but also by what one rejects or wishes to disassociate from. When state legislative decisions are attributed to and made in the name of the represented public, as described by the authors, effective control and disassociation are significantly compromised. In other words, within the parameters of the book, state action serves not only as an external imposition but also as an internal constraint, thereby further jeopardising private autonomy.

The authors attempt to reconcile private autonomy with political authority by insisting on the non-hierarchical nature of authority under their mechanisms of representation. Yet, even under ideal conditions of political theory, there is room to question the feasibility of moulding a multitude of individual choices into a single, cohesive and collective voice. These concerns are particularly salient in today's deeply divided societies. In this context, any attempt to utilise the book's mechanisms of representation as a bridge between political authority and self-governance or autonomy lacks persuasive force. Consent-based justifications of political and legal authority may fare better: in Chapter 3, Dorfman and Harel address this possibility and contrast their political authority account with consent-based theories. They highlight the fact that theirs is a content-based account, whereas consent theories emphasise agreement to the institutional structure of the decision-making process. But privatisation can potentially carve out a space for a consent-based *and* content-based type of normativity or political authority. In the worlds of Alternative Dispute Resolution and private ordering, for example, norms and policies ultimately crystallise as the result of the direct willingness of individuals to subordinate themselves to them. In the broad sense of the matter, all legal issues become reducible to the law of contracts. In the narrower sense, property, torts and other legal transactions are regulated in diverse manners translating individual choice directly into normative content. This and other forms of privatisation invoke the political theory associated with contractarianism and are illustrative of the capacity for basing the state's authority on execution of direct and explicit agreements relating to normative content.

In conclusion, even within the book's central assumption – that the legitimacy of political authority and state action stems from specific modes of representation rather than considerations of utility or justice – one could argue that the ultimate implication is a push towards greater privatisation and the erosion of the "publicness" of functions and actions. As the state retreats, individuals can create domains of consensual governance that more directly reflect self-government. Moreover, even within a collectivist framework that seeks to enhance both private and public autonomy, the case for privatisation remains compelling. Privatising to more intimate substate communities and public spaces, which enable personal

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engagement with politics, fosters a genuine collective identity and strengthens representation mechanisms. Both forms of privatisation – whether towards individualistic agents or non-state cultural communities – challenge the book's central thesis regarding the legitimacy of political authority and state action.

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Litigants in Person in the Civil Justice System: In Their Own Words. By KATE LEADER. [Oxford: Hart Publishing, 2024. viii + 173 pp. Hardback £85.00. ISBN 978-1-50994-832-1.]

The impact of Litigants in Person (LiPs) on the civil justice system is significant, yet under-researched. The value of qualitative empirical research, specifically through interviews with people to find out the "lived experience" of the legal system, cannot be overstated. I was therefore absolutely delighted to see these two important issues come together in Leader's new book *Litigants in Person in the Civil Justice System: In Their Own Words*. Providing an insight into the civil justice system, its strengths, faults and peculiarities, through the lens of people trying to advocate their rights in the system, is so novel, yet so worthy. As outlined by Leader herself (p. 17, emphasis in original):

> For LiPs to genuinely have better experiences when going to law, an explicit commitment needs to be made both to understand them more and to think about how they can navigate legal proceedings *without* legal professionals. Ultimately, that is why we need the stories in this book: because we need to bring LiPs into focus outside of the limiting lens of how legal professionals see them.

I could not agree more. Despite being well-researched and academically written, the book is structured in a way that made it a joy to read; engaging, informative and grounded in the stories of the 15 LiPs at the centre of the analysis. It contains the backgrounds, hopes and struggles of the people interviewed, making the reader go beyond the "claimant" or "defendant" status and instead seeing the human being behind the legal system. This is a powerful framing and the reader is automatically engaged in the outcome of the claim in a way that would not be achieved by reading through cases.

The book is divided into three parts – "Before Litigation", "During Litigation" and "After Litigation". Originally, I thought that Part I ("Before Litigation") was strangely structured. The first two substantive chapters focus on (1) "How the Law Sees the Litigant in Person" and (2) "Creating the Litigant in Person", before moving onto (3) "Who are Litigants in Person?". My initial thought would be that we need to consider who are LiPs before addressing how the law sees them or how they are "created". However, reading through the initial chapters, particularly the important political developments (such as the Legal Aid Sentencing and Punishment of Offenders Act 2012), provides much needed depth and context to the discussion of who are LiPs. Before providing an overview of the variety of backgrounds and stories, it is crucial to see how this situation has

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