tive which once allowed the state to stand above the law, also encouraged judicial assertiveness. The establishment of a Supreme Court in 2009 reinforced the notion of judicial autonomy (previously the Law Lords, as they were called, sat as part of Parliament’s upper chamber, the House of Lords).

Formal statements of rights have also encouraged judicial expansion in other English-speaking countries. In Canada, a Charter of Rights and Freedoms was appended to the constitution in 1982, giving judges a more prominent role in defending individual rights. Similarly, New Zealand introduced a bill of rights in 1990, protecting ‘the life and security of the person’ and also confirming traditional, but previously uncodified, democratic and civil rights.

Judicial independence and recruitment

Given the growing political authority of the judiciary, the question of maintaining its independence gains in importance. Liberal democracies accept judicial autonomy as fundamental to the rule of law, but how is this independence to be achieved in practice?

Security of tenure is, of course, important. In Britain, as in the American federal judiciary, judges hold office for life during ‘good behaviour’. America’s constitution is not the only one to stipulate that judges’ pay ‘shall not be diminished during their Continuance in Office’. Although the justices of Europe’s constitutional courts are usually limited to a single term of between seven and nine years, their position remains secure during this period.

But judicial autonomy depends on recruitment as well as on security of tenure. Were the selection of judges on the highest court to be controlled by politicians who appointed their own placemen, the judiciary would simply reinforce partisan authority, providing an integration (rather than a separation) of powers. This danger is particularly acute when judicial tenure is short, limiting the period in which judges can develop their own perspective on the cases before them. Political systems have developed varying solutions to the issue of judicial selection; the main methods are shown in Figure 13.2.

At one extreme comes democratic election. This method is practised in some American states; it is certainly responsive, perhaps excessively so, to popular concerns (Bonneau and Hall, 2009). At the other extreme, co-option by judges already in post offers the surest guarantee of independence but can lead to a self-perpetuating elite. The danger is that the existing judges will seek out new recruits with an outlook resembling their own.

In between these extremes come the more conventional methods: appointment by the assembly, by the executive, and by independent panels. The British government, for example, recently ceded power of appointment to an independent commission, a decision justified by the relevant minister in the following way:

In a modern democratic society, it is no longer acceptable for judicial appointments to be entirely in the hands of a government minister. For example the judiciary is often involved in adjudicating on the lawfulness of actions of the executive. And so the appointments system must be, and must be seen to be, independent of government. (Falconer, 2006)

In practice, many countries now combine these orthodox methods, with the government choosing from a pool of candidates prepared by a professional body. In South Africa, for instance, the President of the Republic appoints senior judges after consulting