WITHOUT FEAR OR FAVOUR: JUDICIAL INDEPENDENCE, PAST, PRESENT AND FUTURE

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Introduction

It is a great pleasure to be here this evening.

Many years ago, my family and I went abroad on a family holiday to Brazil. I had just been appointed to the High Court bench, and in an excess of zeal, or so my family thought, decided to visit the courthouse in a small city in the North East state of Maranhao. When those there discovered I was an English judge, there was great excitement. The local press were summonsed and photographs were taken of me shaking hands with the other judges, which to my embarrassment, not least because I was in shorts and a T-shirt, appeared on the front page of the local newspaper.

We shook hands not because we shared a job title. But because we were part of a judicial family: sharing values and aspirations and as it turned out, when I listened to their concerns, subject to similar pressures.

Lack of resources: too little time, too many cases to decide – and increasingly so some might say – subject to external pressures in relation to decisions that we make. The judicial path is certainly not one for those who want a quiet life or to be popular, because those pressures can come from all quarters: from the Executive branch of the State, from the Media, from the general public and of course from the litigants themselves. Depending on the decision made, we can be excoriated as "out of touch" or attacked as dangerously radical. Sometimes we are said to be both at the same time. The internet, and social media has been of considerable assistance to those who wish to take public issue with decisions they dislike, and keyboard warriors, as they are sometimes called, frequently express themselves in very strong terms, which can be picked up and amplified by those with particular agendas to pursue; or picked on by particular groups as confirming their own views – the information age has led to a proliferation of echo chambers, social media influencers and confirmation bias if you like.

However, judges up and down the land every day of the week make decisions they think are the right ones to make, in the light of the facts they find and the applicable law. Judges give their reasons for what they do, and open justice means this is visible to the litigants and to the public. Judges work under the spotlight. And there is good reason for this. "Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial as Jeremy Bentham put it as long

ago as 1790". [1] So, what judges do is visible. If judges get it wrong, the appellate system is there to put things right. And it is by that means that legal rights or wrongs are decided in this country. Legal disputes are not decided by the court of public opinion. Cases must be decided according to their merits – on the evidence presented in court, applying the relevant law laid down by Parliament and its elected representatives, without regard to the clamouring voices of interest groups be they ever so powerful or ever so low.

Such voices may be of legitimate interest to the media and politicians, and they may be effective in bringing about legislative change; but they cannot and should not affect the way judges make their individual decisions or approach the task of judging more generally.

Sometimes the voices are off stage. Sometimes, they can be more direct. In 2023 I heard an appeal against sentence by a woman who had pleaded guilty to administering poison with intent to procure her own miscarriage.[2] There is no doubt that the case was a controversial one and attracted strong public comments from different sides of the abortion debate. A group of leading medical practitioners and academics wrote to the judge before he passed sentence. They did not believe this aspect of the law on abortion was just. They asked him not to impose a custodial sentence for reasons they considered important and for an opportunity to address the court.

In the judgment, we reduced the sentence and suspended it, but this was for legal reasons, which are set out in the public judgment. As for the letter sent to the judge, we said the judge was right to say this form of special pleading was inappropriate. The same we said would have been true of a letter from a group campaigning for more restrictive laws on abortion, calling for a deterrent sentence in this case and asking for an opportunity to address the court too. We said it was disappointing and concerning that the authors, all eminent in their own professional fields, did not understand this. We went on to say this:

"Our democratic society of course allows for the open expression of different views on the merits of any sentence that is passed, and we do not doubt that the authors of the letter have the serious concerns to which they refer; but the duty of the independent judiciary, in accordance with their judicial oath, is to sentence according to the law and to apply the law to the facts of the individual case before them, rather than be swayed by the views of special interest groups, however eminent and well-intentioned they may be."[3]

Sentencing as we know is rightly a matter of public interest and can attract a great deal of attention, and comment: some of it well-informed, some less so. Judges are not robots (or at least not yet) nor are the people who appear in front of them. The law on sentencing is complex,

[1] Jeremy Bentham, *Draught for the Organization of Judicial Establishments, Compared with That of the National Assembly, with a Commentary on the Same* (1790).) See also *Scott v Scott* [1913] AC 417, at 477; *R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court* [2010] EWHC 3376 (Admin), at [1]).
[2] *R v Foster* [2023] EWCA Crim 1196.
[3] *Ibid*, [53].

and sentencing in individual cases can often be a difficult and challenging exercise. It is an art, not a science.

As it happened the offence we dealt with in the case I have just mentioned, did not have a sentencing guideline.

Many offences do, however. In that context it is worth mentioning something about the general approach to sentencing in this jurisdiction that is less well understood than it should be.

The Sentencing Council for England and Wales was established by Parliament in April 2010 to promote greater transparency and consistency in sentencing, while maintaining the independence of the judiciary. It is an independent, non-departmental public body accountable to Parliament for fulfilling its statutory duties (and its members bring a range of expertise in the Criminal Justice System to what they do). The primary role of the Sentencing Council is to issue guidelines on sentencing, which the courts must follow unless satisfied in a particular case that it would be contrary to the interests of justice to do so. The Council has a statutory responsibility amongst other things, to develop sentencing guidelines and monitor their use; to consider the impact on victims of sentencing decisions; to monitor the application of the guidelines; and when developing guidelines, to promote understanding of, and (it is to be noted) public confidence in, sentencing and the criminal justice system.[4]

When developing a new guideline, the Sentencing Council carefully considers the principal factors by which the seriousness of a particular type of offence should be assessed. It publishes a draft in which it sets a range of sentences which appropriately reflect the range of seriousness of individual examples of that offence. It engages in widespread public consultation on that draft, and where appropriate makes amendments in the light of the responses to the consultation.

The definitive guideline which is then brought into effect is published on the Council's website and so is available to any interested member of the public or member of parliament of course who wishes to understand the approach which sentencers are required to follow. That is a transparent process. It provides members of the public with the information which enables them to understand the guidelines issued by the body which Parliament has created for that purpose, and to have confidence in sentencing. Public confidence about sentencing in accordance with such guidelines is to be distinguished from public concern about a particular sentence, which may sometimes be based on a misunderstanding of the circumstances of the case in question, or of the reasons for the sentence.

[4] Coroners and Justice Act 2009, s 120(11)(b)–(d)

The judicial system is of course an essential part of a functioning democracy; I have always thought of it as the backbone of the skeleton which supports the body of the state; and judicial independence is absolutely central to what judges do.

The judicial oath or affirmation that judges take is laid down in statute. Its roots are deep. Bracton recorded that medieval justices were required to swear to do right justice to rich and poor alike. The words "without fear or favour" appeared in English constitutional materials by the seventeenth century and found their settled home in the Promissory Oaths Act 1868. The language of the oath is suitably archaic. But the meaning and importance of it is clear.

"I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will. "

I last saw the oath taken a few days ago when I attended the swearing in of the newest member of the Supreme Court. Before the ceremony Lord Reid reminded those present that the judicial oath was etched above the door of the court, and of its two essential components judicial impartiality and judicial independence. These concepts are connected.

"The reason why judicial independence is of such public importance is that a free society exists only so long as it is governed by the rule of law. The rule which binds the governors and the governed, administered impartially and treating equally all those who seek its remedies or against whom its remedies are sought. However vaguely it may be perceived, however unarticulated the thought, there is an aspiration in the hearts of all men and women for the rule of law. That aspiration depends for its fulfilment on the competent and impartial application of the law by judges. In order to discharge that responsibility it is essential that judges be, and be seen to be independent. We have become accustomed to the notion that judicial independence includes independence from the dictates of Executive Government…But modern decisions are so varied and important that independence must be predicated of any influence that might tend, or be thought reasonably to tend to a want of impartiality in decision-making. Independence of the Executive Government is central to the notion, but it is no longer the only independence that is relevant. "

These words were spoken by the Chief Justice of Australia 30 years ago and they have a special significance over and above their admirable qualities as prose. They are cited in the commentary to the Bangalore Principles of Judicial Conduct. The Bangalore Principles of 2003 are one of a number of international resolutions addressed to the issue of judicial independence, judicial ethics and judicial integrity, intended to complement the UN's Basic Principles on the Independence of the Judiciary which was endorsed by the UN General Assembly in 1985 and 1990. These encapsulate the aspirations of judges, and it is fair to say that some of the key principles they contain are derived from the milestones along the path to judicial independence in this jurisdiction.

Magna Carta, the great Charter of 1215, pronounced that even Kings are subject to the law. Another great milestone in our legal history was the Act of Settlement in 1701. This laid down

for the first time what is still a fundamental feature of judicial independence, that judges should have security of tenure: it provided that they should hold office during good behaviour and could only be removed by address of both Houses of Parliament. The protection remains in place for the senior judiciary, to this day.

The Act of Settlement was passed, not for the benefit of the judges but in the public interest. The Bill of Rights of 1689 was another immensely important constitutional enactment in the development of the Rule of Law, and for the protection of individual rights in this country. It was well understood by the Committee that drafted it that those rights were of no value unless the judges who enforced the law were protected from intimidation and victimisation.

The history of English judicial independence is in large part, a history of separation: of the slow separation of adjudication from administration; of law from prerogative; and of court from council. It is also a history of money. Early judges were poorly paid, and corruption was a real concern. In 1289, Edward I commissioned an inquiry into judicial corruption which led to the removal of judges. In 1346 judges were required to swear that they would not accept gifts or rewards from parties before them. It is sometimes said that high constitutional principle begins in low practical necessity. Judicial independence is no exception. A judge who depends on favour for livelihood is not well placed to decide without favour.

Returning to the present however, the passage of time has not diminished the need for protection. Indeed the need might be thought to be even greater now than it was in the past having regard to the expansive nature of government, the scope for judicial review of that power through the courts and the outcry that can arise from many sources depending on the way in which courts adjudicate on matters which attract the headlines of the day.

The truth is that judges are inevitably targets, often attracting the enmity of the people they encounter. It goes with the territory some might say. But if their independence is to be preserved, they must be protected from external pressure to decide cases for reasons which have nothing to do with the merits. It is not or should I say not merely because of the risk that some might succumb – there is also the risk that in the ever-increasing din of complaints encouraged by the notion that they might have some effect, something precious will be lost. When people rise when judges come into court and bow, that is not a personal matter. It is a visible demonstration of the respect that everyone must pay to the law. Diminishing respect for the law and of those whom society entrusts to dispense it is a dangerous and slippery path, ultimately corrosive to the rule of law and the protection it affords to democracy and the freedoms it is our privilege to take for granted, but which should be treasured.

Sydney Kentridge KC put the matter precisely in my view.[5]

"There are some aspects of the rule of law on which, among ourselves, we take different views…But one aspect of the rule of law on which we would certainly agree is the

[5] Sir Sydney Kentridge, 'The Rule of Law: Ideals and Realities', *Free Country* (Hart Publishing 2014) 155–56.

independence of the judiciary. It is secured in part by laws which give the judges security of tenure and in part by ensuring that as far as possible they are persons of integrity, appointed on merit rather than by reason of political connection. Independence here means more than independence from government direction. It means also that judges in making their decisions should as far as humanly possible not be influenced by public opinion, or by any sense of obligation to the government or to any individual, party, or pressure group. There is a particular threat to judicial independence which should concern us: that is, the growing tendency for politicians and the press to attack in intemperate and even vituperative terms judges who have given decisions with which they disagree. Newspapers all too often respond to an unpopular decision with personal attacks on the judges concerned. Judges must accept strong criticism, even unfounded criticism. Lord Atkin's statement that justice is not a cloistered virtue has become a legal cliché. As Lord Judge, the Lord Chief Justice of England and Wales, has recently said, one of the attributes we expect of an independent judge is the moral courage to make decisions which will be unpopular with politicians or the media or the public.

Judges, it has also been said, must have broad backs, and usually they have. The real mischief of unwarranted attacks on the motives or integrity of the judges, however, is not any hurt to the judge's feelings; it is that they undermine that respect for the judiciary without which, as I have suggested, the foundations of the rule of law are undermined. "

This was not a form of special pleading, because Sir Sydney was not a full time judge. He had however practiced in South Africa at the time of apartheid and knew of what he spoke.

Lord Atkin's famous observation that justice is not a cloistered virtue remains as true now as when it was uttered and no sensible judge seeks immunity from criticism. Open justice invites scrutiny. Appellate review invites correction. Academic commentary can improve the law. The press performs a vital constitutional function in explaining and criticising what courts do.

But there is an important distinction between criticism and abuse; between disagreement with a decision and an attack on the integrity or motives of the judge; between saying "this judgment is wrong" and saying, "this judge is corrupt, disloyal, partisan, or an enemy of the people." Lord Hodge made that distinction in his 2018 lecture on judicial independence.

In an age of populism, it is a distinction worth making – repeatedly.

As Lord Hodge pointed out, the Divisional Court's decision in *Miller No 1* concerned a legal question about the relationship between prerogative power and statute.

The reaction in some quarters was not confined to criticism of the court's reasoning. It included personal attacks on the judges and suggestions that they were acting politically. The press attacks on the Divisional Court, and the inadequate initial response by the then Lord Chancellor, caused the level of concern that they did. including amongst the judiciary because the comments were calculated to suggest that the judges had allowed their private views on Brexit to influence their legal judgment.

Attacks on judges of course are nothing new. In the anxious present, it is important to keep a sense of perspective. Whilst there may be a powerful temptation to imagine a golden age in which judges were treated with respect, honoured and left in peace to get on with their job, we do not have to go back as far as the Middle Ages, to know that is not the case.

Justice Michael Kirby described in 1998 what he called a universal phenomenon: the decline of deference and the growth of attacks by politicians, the media, public commentators, academics and even members of the legal profession. Reading about some of those attacks, including on judges in this jurisdiction, is a necessary corrective to the notion that the past was always a better country.

Perspective is not a synonym for sanguinity however.

The modern environment has changed the scale, speed and texture of the public conversation. A misunderstanding can be repeated many thousands of times before the judgment has been read. A false allegation can acquire authority by velocity. A judge who cannot answer back can become a convenient screen onto which anger may be projected.

Social media compresses the space between criticism and intimidation, and rewards heat rather than accuracy. It allows anonymous hostility to appear as public opinion. And where online campaigns are conducted to put pressure on judges trying cases (whether before or after their decisions have been reached) and which target judges by name, photograph, address, family, ethnicity, religion or gender the problem ceases to be merely reputational. It becomes a problem of personal security and a threat to the administration of justice. We mustn't be naïve either about the fact that hostile states actors use bots and social media to sow discord through the spread of malicious disinformation.

The problem is not confined to these shores. The European Network of Councils for the Judiciary conducted a survey last year, in which judges from this jurisdiction, took part. It found that judges in many jurisdictions feel inappropriate pressure from media and social media at the individual case level, and many do not feel their independence is respected on social media. The survey also considered intimidation, threats and attacks on judges. In half of the judiciaries surveyed more than ten per cent of judges had experienced intimidation or threats.[6] These are not therefore theoretical concerns.

These concerns are not confined to what is said on social media or anonymous online abuse. In 2025, the Attorney General described political attacks on judges as "dangerous" and as "a huge threat to the rule of law and the independence of the judiciary", after criticism of judges had moved from social media onto the floor of the House of Commons. The Lady Chief Justice has publicly expressed her concern about these matters in her evidence to the Constitution Committee and the Justice Select Committee.

[6] European Network of Councils for the Judiciary (ENCJ), *Survey among Judges on Judicial Independence 2025*.

This brings me to another point which is sometimes misunderstood.

Judicial independence is not the opposite of accountability. It is a particular form of accountability. Judges are accountable through open hearings, reasoned judgments given in public, appellate review, ethical rules, disciplinary processes, and public scrutiny. Senior judges appear before parliamentary committees. Annual reports are published. Proceedings of the Supreme Court and the Court of Appeal can be broadcast. Broadcasting is shortly to be introduced into the Administrative Court. The public can see more of what courts do than at any time in our history.

But accountability in this respect does not mean control. There is a constitutional difference between requiring a judge to explain a decision and requiring a judge to answer politically or personally for the result; between discipline for misconduct and punishment for an unpopular judgment.

Judicial independence is often discussed as if it were concerned only with the individual judge: security of tenure, freedom from improper influence, and the duty to decide according to law. Those things are fundamental. But they are not enough. Constitutional principles do not live by doctrine alone. They depend upon institutions, conventions and, sometimes upon money.

The warning by Sir Sydney Kentridge against any measure which undermines judicial independence, included as I have said "appointments to the Bench for political reasons." Diversity, he said, is of real value, and merit may often be a matter of opinion, but the aim should be to make merit the sole criterion for judicial appointment. "A succession of political appointments," he warned, "undermines the respect for the judiciary as an institution."

That warning is not theoretical. In a number of jurisdictions, the capture of the courts has begun, not with soldiers at the courtroom door, but with changes to the way judges were appointed, promoted, disciplined, retired or replaced. Court-packing, forced retirement, politically controlled judicial councils, and appointments made on the basis of loyalty rather than merit are familiar methods by which constitutional democracy is weakened from within.

The creation of the Judicial Appointments Commission was one of the most significant changes effected by the Constitutional Reform Act. The Act requires the Judicial Appointments Commission to select candidates solely on merit; to select only people of good character; and to have regard to the need to encourage diversity in the range of persons available for judicial selection. The independent appointments process provided by the Judicial Appointments Commission, is not a piece of constitutional machinery, of interest only to those who administer competitions.

It is a safeguard to all those concerned in the administration of justice.

Appointment on merit does not of course mean a narrow reproduction of the familiar or appointing only those who look, sound, think and practise like judges of an earlier generation.

Were that the case I would not be standing here. Nor does merit stand in opposition to diversity. I hope I may be forgiven for saying "ditto". It means identifying those who possess the intellectual and personal qualities required to be a judge: independence, integrity, legal ability, fairness, courtesy and courage.

The Future

So, what of judicial independence in the future? There are some interesting issues or risks on the horizon, or perhaps they are already here. One, inevitably is the use of AI. Such issues may seem of a second order of significance when we are dealing with a judicial system which is significantly under resourced. However, developments in AI and Big Tech raise potentially existential questions about the proper functioning of justice systems in their current model and of the role of judges within them.

It is useful to begin with the technology itself. Modern large language models do not reason as lawyers or judges reason. They convert text into tokens; represent those tokens mathematically as embeddings; and use transformer architectures, including self-attention mechanisms, to weigh the relationships between words or sub-words in context. They are trained on immense datasets to predict the next token or sequence of tokens most statistically likely to follow. Further processes — fine-tuning, reinforcement learning from human feedback, system prompts, retrieval tools and safety filters — may shape the output. The result can be astonishingly and beguilingly fluent, but false. Fluency is not truth and coherence is not judgment.

An explanation generated after the event is not necessarily the reason for the original output.

There are it seems to me two ways of looking at the problem. Internal and external.

Starting with internal use, that is by the judges and by the system, the first risk is conceptual. A judge who treats AI as a source of "judicial reasoning" rather than a useful tool risks outsourcing part of the judicial function. Summarising material, translating text, locating authorities already known to exist, or managing large quantities of documents may be legitimate uses, provided confidentiality, accuracy and responsibility are preserved. But there is a qualitative difference between assistance and influence. The danger is not merely that an AI system will make a crude mistake. It is that it will produce an attractive formulation which subtly narrows the judge's own analysis.

There is also the risk of automation bias. Humans tend to defer to systems that appear technical, neutral and authoritative. In the judicial context, that tendency would be especially dangerous. Judicial independence requires not only freedom from direct pressure, but freedom from hidden dependencies that shape the answer before the judge has fully reasoned her way towards it.

Nor are AI systems value neutral. The datasets selected, the material excluded, the categories used in annotation, the reinforcement signals chosen, the safety policies imposed, the retrieval

sources connected, and the commercial incentives of the provider affect outputs. A model trained on historic legal material may reproduce historic inequities. A model optimised for speed and settlement may undervalue the need for a public hearing. A model procured by the executive may, without impropriety, reflect executive priorities.

This leads to what may be called system capture. If courts become dependent on a small number of proprietary systems, updated invisibly and controlled externally, the practical independence of judicial reasoning may be compromised. The danger is not a dramatic coup by machine. It is of a gradual drift: standardised prompts, standardised summaries, standardised risk scores, and eventually standardised dispositions. A court system may appear formally independent while its informational architecture has been captured by technology it cannot inspect, challenge or control.

We must be candid about the pressures on the justice system. The Crown Court open caseload reached 80,203 cases at the end of December 2025, more than double the 2019 figure; 21,002 cases had been open for a year or more; and median waiting times in jury cases remain at an unacceptable level. Delay is not merely administrative inconvenience; It undermines justice.

The Ministry of Justice is an unprotected department, and the figures tell their own story. Though there has, of course, been more money in recent years, the justice system has suffered for many years from chronic underfunding. The House of Lords Constitution Committee put the point starkly: in 2019–20, MoJ funding for HMCTS was 21 per cent lower in real terms than in 2010–11.[7]

Lack of resources places its own pressure on independence, in a way which is subtle, but real if the system creates conditions in which judges are constantly pressed to do less than justice requires. Individual independence is not removed, but the institutional setting in which independence is exercised is weakened.

Judicial independence in short requires practical support and in that context, it would be irresponsible not to use AI. It may assist in listing, in the triage of cases, in transcription, translation, case progression, disclosure review and the identification of issues. Used responsibly, AI may release judicial time for genuinely judicial work. The danger arises when AI is presented not as support for justice, but as a substitute for the public investment justice requires and which the Lord Chancellor by his or her oath or affirmation, promises to provide.[8]

No one could suggest that backlogs are simply an administrative inconvenience. They concern victims, defendants, families, witnesses, businesses and public authorities. A technological answer may be tempting because it promises visible throughput without for example, the cost of judges, courtrooms, staff, legal aid and physical infrastructure. But a justice system cannot

[7] House of Lords Constitution Committee. (2022, March 11). *Constitution Committee report: Covid-19 and the courts*. House of Lords Library.
[8] Under section 17 of the Constitutional Reform Act 2005, the Lord Chancellor swears to respect the rule of law, defend the independence of the judiciary, and discharge the duty to ensure the provision of resources for the efficient and effective support of the courts for which he or she is responsible.

be judged only by the number of cases it processes. The question is: processed how, by whom, according to what criteria, and with what opportunity for the parties to be heard? If AI is to be used to divert cases, rank urgency, propose settlement, identify "low complexity" claims, or recommend paper disposal, the criteria it uses to do so matter profoundly.

Judicial independence includes deciding cases according to law, rather than executive performance metrics. They matter but they are not the only thing that matters. If AI tools used in courts are designed, procured, funded and evaluated primarily as instruments of efficiency, the risk is that the constitutional function of the judiciary will be subordinated to managerial objectives.

I should say that HMCTS has recently stated that AI should support people, not replace final judicial determinations, and that responsible AI in the justice system must be lawful, proportionate, fair, reliable, secure, explainable, transparent, accountable and contestable. Those principles are important, and I look forward to seeing them put into practice.

The second way of looking at the problem is external, in other words, the use of AI by those who use the courts: litigants, witnesses, legal advisors and so on.

AI can certainly improve access to justice by helping people understand their rights, in drafting documents and navigating unfamiliar procedures. That is to be welcomed. Every jurisdiction including the courts for which I am responsible however, is experiencing a boom in lengthy applications from litigants in person, or sometimes less than well qualified legal advisors. Each of those applications requires careful judicial appraisal, and many I am afraid are rather less than legally sound. All of this puts a strain on a system that is already under resourced.

The courts are grappling too with the associated problem of false legal material. There are now many cases involving actual or suspected use of AI-generated legal arguments, false citations, false quotations and authorities that do not exist.

Dealing with such material is resource intensive. More importantly such material is capable of misleading opposing litigants and the court, thereby corroding trust in the administration of justice. The evidential risks are still more troubling. Deepfakes — synthetic or altered audio, images or video — can place a person somewhere they never were, make them appear to say something they never said, or fabricate an event that never occurred. Modern image systems often use diffusion techniques: noise is added during training, and the model learns to reverse that process, generating images by progressive denoising from randomness, often guided by text prompts. Voice cloning and video manipulation are also increasingly accessible.[9]

The courts are accustomed to testing evidence. They examine provenance, disclosure, metadata, expert evidence and consider inherent probabilities. But AI changes both scale and cost. Fabrication that once required specialist skill may now be available to an ordinary litigant with a smartphone. A forged email chain, a synthetic voicemail, a manipulated CCTV clip, a

[9] Police.uk, 'Deepfakes: What is a deepfake?'

fake social media exchange, or a false expert-looking report may be produced quickly and cheaply. As synthetic evidence becomes more familiar, genuine evidence may be dismissed as fake. A truthful recording may be attacked as AI-generated. A real photograph may be said to be synthetic. Improperly used, AI can create false evidence, and unchecked or unregulated, it can destabilise confidence in the entire process of judicial adjudication.

There are already important safeguards in place. The judiciary has issued guidance on AI for judicial office holders, for example. Professional obligations have now been put in place. At governmental level, the United Kingdom's AI regulatory approach identifies principles of safety, transparency, fairness, accountability, governance, contestability and redress. The Algorithmic Transparency Recording Standard has been made mandatory for central government departments and certain public bodies using algorithmic tools with significant public effect. Data protection law is also relevant. The Data (Use and Access) Act 2025 replaces the former Article 22 framework with provisions concerning significant decisions based solely on automated processing, including safeguards such as information to the data subject, rights to contest decisions, make representations and obtain human intervention. Internationally, the Council of Europe Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law is an important development. The EU AI Act, while not part of UK domestic law, is also instructive: it treats AI systems used to assist judicial authorities in researching and interpreting facts and law, and applying law to facts, as high-risk systems requiring safeguards, including human oversight.

More will be needed. The world, and not merely the judicial world is playing catch up with an accelerating technology.

Conclusion

I have spoken about AI at some length, because it will be that which will determine the future. Jensen Huang, the CEO of Nvidia said the other day that AI will not take your job, but your job will be taken by someone who uses AI.

The future of judicial independence will depend as much on such practical matters as on constitutional declarations; on what is done rather than what is said. Nevertheless, it needs constant explanation. In schools. In Parliament. In the press. Online. By the legal profession. By academics. By responsible journalists. And, where appropriate, by judges. A judiciary that cannot explain its constitutional role risks that role being defined by others. But explanation must be disciplined. Judges must not become political actors or enter the partisan arena. But we can explain why reasons matter, and why personal attacks on judges harm the public interest, not the judge alone. We should insist on institutional protection where protection is necessary. Responsible reporting of judgments is one of the practical safeguards of judicial independence as it enables informed criticism to take place. Judicial independence is, as Sir Henry Brooke described it many years ago, a fragile bastion; and one that it is in everyone's interests to protect.

“Without fear or favour” is a promise to the public that the case will be decided by law, by an independent and impartial judge. Challenges to it are nothing new. That independence is continually tested, and that will remain the case. Our answer must be constitutional steadiness. To judge without fear or favour is not to stand above society. It is to serve society in the particular way the constitution requires: by doing right according to law. That task remains difficult but indispensable.

Thank you.