

ARE JUDGES NEUTRAL?

The other way in which judges may be political is through their own biases or prejudices; in other words, they may lack **neutrality**. Judicial neutrality implies, strictly speaking, that judges have no political sympathies or ideological leanings. Neutral judges are therefore political eunuchs. In practice, however, neutrality in this sense is perhaps impossible to achieve – all people have their own views and opinions; no one is capable of being completely impartial and objective. As a result, like other public officials (such as civil servants, the police and the military) judges are meant to be neutral in the sense that they are able to ensure that their own views and beliefs do not affect their professional behaviour. Personal preferences and beliefs must, if you like, be left at the court door. If internal bias does not intrude, judges will be able to act on the basis of legal considerations alone. How is judicial neutrality maintained? And how effective is it in practice?

Judicial neutrality is maintained in a number of ways:

- **Political restrictions.** Judges are not supposed to engage in open political activity. Although magistrates may be members of political parties, this would not be acceptable for judges. Similarly, judges are expected not to express open support for pressure groups or protest movements.
- **Legal training.** The extensive process of legal training (senior judges have usually worked as barristers or junior judges for between 20 and 30 years) is designed to enable judges to focus entirely on legal considerations. Their ability to act impartially and objectively is strengthened by the requirement that court proceedings are conducted fairly and that judgements are based on evidence.
- **Accountability.** A further factor that strengthens objectivity is that senior judges must explain their rulings, highlighting, in the process, the points of law that have affected them. **Accountability** is also upheld by the existence of appeals and, therefore, by the knowledge that cases can be reheard by higher courts. In recent years, accountability has been strengthened, the JAC and other bodies, and regular accounts given by the Lord Chief Justice and other judges to parliamentary committees.
- **Not public figures.** Judges have traditionally been discouraged from speaking out on political matters and from becoming involved in public controversy. The 'Kilmuir rules', issued in the mid-1950s, forbade judges from participating in public debates about policy matters in order to preserve their neutrality. However, as will be seen, these restrictions have been relaxed since the late 1980s.

Neutrality: The absence of any form of partisanship or commitment; a refusal to 'take sides'.

Accountability: Either giving an account of something (explanatory accountability) or being held to account (culpable or sacrificial accountability).

The main attacks on judicial neutrality have traditionally come from the political left. In his classic study of the politics of the judiciary, Griffiths (2010) argued that a conservative bias tends to operate within the senior judiciary, which stems from the fact that judges are predominantly male, white, upper-middle-class and public-school and 'Oxbridge' educated. Similar arguments have been used to suggest that judges are biased against women, ethnic minorities and, indeed, any group poorly represented within the ranks of the senior judiciary. Such concerns were particularly prominent during the 1980s, linked to the rulings made by Lord Denning and Lord Donaldson, who was a former Conservative councillor and public critic of trade union power. Although the views and preferences of senior UK judges have become both more diverse and more liberal in recent years, this has yet to be reflected in a diversity of backgrounds, especially among senior judges. For example, in 2014:

- Of the 12 judges on the Supreme Court, 11 were white men and the other was a white woman.
- In the Court of Appeal, only 7 of the 38 judges were women.
- There was not a single black, Asian or minority ethnic (BAME) judge on either the Supreme Court or the Court of Appeal.
- 71 per cent of senior judges had attended private schools, and 75 per cent had attended Oxford or Cambridge university.

Other concerns about judicial neutrality have arisen from a growing trend for senior judges in the UK to take a public stand on policy issues. This has occurred, in part, because of the removal in the late 1980s of restrictions on judges engaging in public debate, in the belief that their expertise and experience would assist the policy process. By writing articles and delivering speeches, and sometimes through their written judgements, senior judges in recent years have demonstrated growing support for human rights and **civil liberties**, notably in relation to anti-terrorism measures. Recent Lord Chief Justices have also, at times, launched outspoken attacks on government policy, although public clashes have become less common since 2008:

- Lord Bingham, Lord Chief Justice 1996–2000, called for the rule of law to be understood to include protection for fundamental human rights and to require that states comply with their obligations under **international law**.
- Lord Woolf, Lord Chief Justice 2000–05, spoke out against some of the provisions of the Constitutional Reform Act and severely criticized the government's handling of the constitutional reform process.

Civil liberties: A range of rights and freedoms that belong to the citizen and mark out a 'private' realm which government should leave alone (see p. 303).

International law: The rules that define the behaviour of, and relationship between, states; the UN is the main source of international law.

What is ... CIVIL LIBERTY



Civil liberty marks out a 'private' sphere of existence that belongs to the citizen, not the state. Civil liberties therefore encompass a range of rights and freedoms that are 'negative' in the sense that they demand non-interference on the part of government. Civil liberties often overlap with, and may be based on, human rights; but the two ideas are different. Whereas civil liberties are rights that are based on citizenship and are therefore specific to particular states, human rights, by definition, belong to all people in all societies. The classic civil liberties are usually thought to include:

- Freedom of speech
- Freedom of the press
- Freedom of religion
- Freedom of association.

Civil liberties are often confused with civil rights. The former are freedoms from government; the latter are generally 'positive' rights, rights of participation and access to power. Civil rights campaigns typically call for a widening of voting and political rights, and for an end to discrimination, as in the case of the US civil rights movement in the 1960s.

- Lord Phillips, Lord Chief Justice 2005–08 (and the first to be head of the English and Welsh judiciary), criticized the wider use of mandatory sentences and, in 2007, strongly condemned proposals for the creation of a Ministry of Justice.

Although such interventions demonstrate the robust independence of the senior judiciary in the UK, they also highlight the extent to which judges have become public figures whose views can no longer be said to be 'above' politics.

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