

minister and the Lord Chancellor, and so long as the Lord Chancellor's office 'fused' the roles of head of the judiciary and cabinet minister, judicial independence always appeared to be a constitutional fiction. This concern has substantially been addressed through the establishment of the Judicial Appointments Commission. Despite this, some judges have expressed concerns about the changing role of the Lord Chancellor, and the fact that some recent appointees have had limited or no legal background and therefore little ability to speak with authority on legal and judicial matters in cabinet or elsewhere.

A second concern about judicial independence stems from a growing willingness of ministers publicly to criticize the courts. This has particularly applied in the case of successive home secretaries. Examples of this include:

- In 2003, David Blunkett condemned the release of the nine Afghan hijackers.
- In 2005, Charles Clarke criticized the release of terrorist suspects from Belmarsh Prison.
- In 2007, John Reid attacked the decision not to deport the murderer of the London headmaster, Phillip Lawrence.
- In 2010, Theresa May criticized the refusal to deport two terrorist suspects to Pakistan, despite it having been acknowledged that they had links to al-Qaeda.
- In 2013, May accused judges of making the UK more dangerous by ignoring rules aimed at deporting more foreign criminals.

In being increasingly willing to make public statements about how the courts should address issues related to public order and civil liberties, and in expressing disappointment at the stance that judges have taken, the principle of judicial independence has been tested to its limits. On the other hand, there is little evidence that judges have been covered by this public criticism. If anything, evidence of greater **judicial activism** in recent years suggests a determination on the part of judges to develop their own view of the 'proper' application of law. For example, Lord Neuberger, the President of the Supreme Court, attacked Theresa May in 2013 for criticizing judges over their failure to deport foreign criminals, saying that her views were 'inappropriate, unhelpful and wrong'. Increasingly common public clashes between ministers and judges therefore provide evidence of the health of judicial independence. After all, beyond public criticism, ministers have few other ways in which they can influence judicial decision-making except through the introduction of new Acts of Parliament. Nevertheless, the reality is that judges operate in a more politically charged environment than ever before.

Judicial activism: The willingness of judges to arbitrate in political disputes, as opposed to merely declaring the 'letter of the law'.

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