

Artificial Intelligence, Constitutional Courts and Judicial Responsibility

Lord Sales, Deputy President of the Supreme Court of the United Kingdom

Presentation for the International Conference at the Constitutional Court of Montenegro, “On the Constitution, State, and Democracy”, Tivat, Montenegro, 2 October 2026.

Panel III : “The Use of AI Tools in Constitutional Adjudication: Support or Threat to Constitutional Court Independence – Perspectives, Risks, and Ethical Dilemmas”

It is a pleasure to be here in Montenegro at this conference organized by the Constitutional Court of Montenegro. My thanks to Madame President Armenko, the head of the Court, for the invitation to attend and speak at the conference.

Artificial intelligence has become one of the defining technologies of our age. It is already changing the way in which governments operate, businesses make decisions and professionals undertake their work. The legal profession is no exception. Across many jurisdictions AI tools are being employed to search legal materials, summarise documents, analyse large bodies of evidence and assist in legal research. There is every reason to suppose that these developments will continue.

For constitutional courts, however, the emergence of AI raises questions of a distinctive kind. Constitutional courts occupy a special position within the framework of the state. Although I come from the UK, which does not have a written constitution and does not have a constitutional court, for the purposes of this presentation here I have been asked to focus on the specific nature and role of a constitutional court in a state like Montenegro which does have a written constitution and does operate with such a court.

Constitutional courts are not merely adjudicators of disputes between private parties. They are institutions charged with maintaining the constitutional order, protecting fundamental rights and ensuring that public power remains subject to law. Because of those responsibilities, constitutional courts must approach technological innovation with both openness and caution.

My purpose today is not to discuss the technical aspects of artificial intelligence. Rather, it is to consider this question: how should constitutional courts respond to the opportunities and challenges presented by AI? What uses of AI are compatible with the judicial function? What risks arise from its deployment? And what does the emergence of AI tell us about the enduring role of constitutional courts in democratic societies?

I wish to make three main points.

First, AI offers significant opportunities to improve the work of constitutional courts.

Secondly, these opportunities are accompanied by serious risks which must be carefully managed.

Thirdly, and most fundamentally, the rise of AI throws into sharper relief the nature of the judicial function itself, particularly in constitutional adjudication.

The Distinctive Position of Constitutional Courts

It is useful to begin with the distinctive position occupied by constitutional courts.

Every court exists to resolve disputes according to law. But constitutional courts perform an additional function. They maintain and interpret the constitutional framework within which political life occurs. They determine disputes about the powers of government, the validity of legislation, the conduct of public authorities and the protection of fundamental rights.

A constitution is not merely a legal text. It is a framework for the distribution and exercise of public power. It establishes institutions, allocates responsibilities among them and prescribes limits upon governmental authority. Constitutional adjudication therefore concerns not merely the application of law within an existing framework but the maintenance of the framework itself.

This point is important because it explains why constitutional courts differ from many other legal institutions. Their decisions often have consequences extending well beyond the immediate parties. They may affect public policy, alter governmental action or influence the future development of constitutional principles. For that reason constitutional courts occupy a position at the intersection of law and public power.

The emergence of AI must therefore be considered against this constitutional background. The relevant question is not simply whether AI can make certain judicial tasks more efficient. The question is whether its use is compatible with the particular responsibilities of a constitutional court.

The Opportunities Presented by AI

There are good reasons why constitutional courts should engage constructively with developments in AI.

The first relates to the increasing volume of information with which courts must deal.

Modern constitutional litigation often involves vast quantities of material. Constitutional cases may require consideration of legislative history, comparative

jurisprudence, scholarly writing, expert evidence and extensive documentary records. Judges and their assistants are frequently required to assimilate large amounts of information within limited periods of time.

AI has obvious potential to assist in this regard. Properly deployed, it may help identify relevant materials, organise information, summarise documents and draw attention to potentially significant authorities. These functions do not involve judicial decision-making. Rather, they assist judges in managing information which they must nevertheless evaluate for themselves.

A second opportunity concerns accessibility.

Constitutional courts derive much of their authority from public confidence. Public confidence is strengthened when judicial reasoning is accessible and understandable. AI may assist courts in producing summaries of judgments, explanatory materials and other communications which make complex constitutional issues easier for citizens to understand.

A third opportunity concerns institutional administration.

Like other public bodies, courts must undertake a variety of administrative functions. Resources are limited. If technology can reduce the burdens associated with routine administrative tasks, more resources may become available for core judicial work.

These benefits should not be dismissed. Constitutional courts have an obligation to use public resources responsibly. Where technology can assist in the performance of lawful and appropriate functions, there is no reason in principle why courts should not take advantage of it.

The Risks

The potential advantages of AI are accompanied by equally significant risks.

The most obvious is the problem of reliability.

AI systems do not reason in the way human beings reason. They are capable of producing answers which appear plausible but are nevertheless incorrect. They may generate inaccurate citations, misstate legal principles or present false information with considerable confidence.

For lawyers and judges this is not a merely technical problem. The authority of judicial decisions depends upon accuracy. Every proposition of law, every statement of fact and every citation must be capable of verification. The possibility of error means that AI outputs must always remain subject to scrutiny by human users.

A second concern is transparency.

One of the central features of judicial decision-making is that reasons are given. Courts explain why they have reached their conclusions. The giving of reasons promotes accountability and permits public criticism where criticism is justified.

Many AI systems operate in ways which are difficult for users fully to understand. This creates a potential tension. If decisions affecting rights or public power were significantly influenced by opaque algorithmic processes, important questions could arise concerning transparency and legitimacy.

A third concern is confidentiality.

Constitutional courts frequently deal with sensitive information. Cases may involve matters of national security, private personal information or commercially confidential material. The use of AI therefore requires careful attention to questions of security and confidentiality.

A fourth concern is institutional dependence.

The more capable AI becomes, the greater the temptation to rely upon it. Yet constitutional adjudication requires independent judgment. There is a risk that habitual reliance upon technological systems may encourage a form of intellectual passivity. Even where AI performs well, courts must guard against the gradual erosion of habits of critical reasoning.

The Political Dimension of Constitutional Adjudication

The significance of these concerns becomes even clearer when one considers the political dimension of the constitutional court's role.

At first sight, there may appear to be a tension between the judicial character of a constitutional court and the political significance of the matters with which it deals. It is sometimes suggested that courts should keep out of politics. Taken literally, however, that proposition cannot be correct. A constitutional court necessarily operates in a political environment and is frequently required to decide questions of the highest political importance. The real question is not whether constitutional adjudication has a political dimension, but how a court may perform a role which has political consequences while remaining faithful to its character as a court of law.

The political dimension derives principally from the nature of a constitution itself. A constitution structures public power. It determines the distribution of authority among state institutions and establishes the conditions under which political decisions are

made. A constitutional court therefore cannot avoid questions which bear directly upon political life.

This feature of constitutional adjudication was recognised by Hans Kelsen, whose theory played a foundational role in the development of specialised constitutional courts throughout Europe.

Kelsen understood that a constitution occupies a superior position within the legal order and that an institution must exist to ensure that ordinary exercises of governmental power remain consistent with constitutional requirements. The constitutional court performs that task.

Importantly, Kelsen did not regard constitutional review as a merely mechanical exercise. Constitutional provisions often contain broad principles and open-textured concepts whose application inevitably requires evaluation and judgment in relation to matters of political significance. Those broad principles and open-textured concepts have to be applied to a society which is constantly evolving. In this context it is often remarked that the constitution has to be interpreted as a living instrument.

But Kelsen's central insight was that political significance does not deprive constitutional adjudication of its legal character. On the contrary, in appropriate cases, the constitutional court transforms political conflict into legal controversy. Questions which might otherwise be resolved through the exercise of raw political power are instead subjected to legal procedures, legal standards and reasoned adjudication.

The function of constitutional adjudication is not to replace politics. It is to structure the political environment in certain ways.

That insight remains highly relevant today. One often encounters the argument that because constitutional decisions have political consequences they must therefore be political decisions. But the conclusion does not follow.

There is a fundamental distinction between decisions that have political effects and decisions that are politically motivated.

A constitutional court inevitably produces decisions of the former kind. Its legitimacy depends upon avoiding the latter.

This helps explain a familiar tension within constitutional democracy. Constitutional courts are frequently required to review the legality of decisions taken by democratically elected institutions. Since judges are not elected, it may be asked on what basis they possess the authority to invalidate legislation or constrain executive action.

The answer lies in the dual character of constitutional democracy.

Constitutional democracy rests not only upon democratic self-government but also upon constitutionalism. Democratic institutions are entrusted with making choices with political significance. But they operate within a constitutional framework which imposes limits upon the exercise of public power and protects certain fundamental commitments.

Constitutional courts exist to uphold those commitments. In performing that function they do not stand outside the constitutional order. They form part of it.

For that reason the relationship between constitutional courts and political institutions is best regarded not as one of rivalry but as one of interaction within a common constitutional structure. Legislatures, governments and courts possess different forms of legitimacy and perform different constitutional functions.

The constitutional court's task is neither to govern nor to formulate public policy. Its task is to ensure that all public authorities act within constitutional limits.

Judging by interpreting the constitution as a living instrument requires a profound understanding of the context in which its open-textured rules have to be applied. It also requires small 'p' political judgment on the part of the judges in a constitutional court not to overstep the legitimate bounds of their role in a functioning democracy.

Artificial Intelligence and the Judicial Function

Reflection upon the political dimension of constitutional adjudication helps illuminate why AI presents distinctive challenges for constitutional courts.

Many tasks performed within a court may properly be assisted by AI. Research, document management and administrative organisation are obvious examples.

The core judicial function is different. Understanding the nuances of context and the development of sound judgment of the kind I have described are not the tasks for which AI appears to be well-suited, at any rate as it exists at the moment.

Constitutional adjudication is not simply the identification of legal sources. It is a context which, pre-eminently among all the fields of legal adjudication, requires the exercise of sound judgment so as to preserve and not upset the democratic nature of politics. Judges must determine the significance of constitutional principles, assess competing arguments, weigh institutional considerations and provide public reasons for their conclusions.

Moreover, constitutional courts do not derive authority from expertise alone. Their authority rests upon accountability. A judgment is accepted because identifiable

judges assume responsibility for it and because the reasoning is publicly exposed to criticism.

AI systems cannot bear constitutional responsibility.

They do not explain themselves in the manner expected of judges. They cannot be held accountable. They cannot participate in the constitutional dialogue which takes place among courts, legislatures, governments, scholars and citizens.

For this reason the notion that AI might itself undertake constitutional adjudication seems misconceived.

The issue is not simply one of technical competence. It is one of constitutional legitimacy.

The authority of constitutional adjudication depends upon the exercise of human judgment by independent judges acting according to law.

Technology may assist that process. It cannot replace it.

Conclusion

Constitutional courts should neither embrace technological innovation uncritically nor resist it reflexively. The proper approach is one of constitutional prudence.

AI offers genuine opportunities. At the same time, it raises important questions concerning reliability, transparency, confidentiality and institutional independence. It invites reflection upon the nature of the judicial function itself.

Hans Kelsen argued that the constitutional court serves to subject politics to law. That insight remains as valuable today as when it was first articulated. The legitimacy of a constitutional court derives from its commitment to legal reasoning, legal procedures and legal accountability.

The rise of artificial intelligence does not alter that fundamental truth.

If anything, it makes it more visible.

The essential task of the constitutional court remains what it has always been: to preserve the constitutional conditions under which democratic government and the rule of law may coexist.

Artificial intelligence may assist judges in performing that task.

But the responsibility for constitutional judgment must remain where a constitutional democracy requires it to remain: with independent human judges, publicly accountable for the reasons they give and the decisions they make.

It is far from clear that this responsibility cant be delegated to a machine.

Thank you.