DAVIES & DAVIES

Davies & Davies Associates Ltd
Solicitors & Chartered Surveyors

31 Pearce Drive Faringdon Oxfordshire SN7 7ND
0800 840 4025 enquiries@dda.law **www.dda.law**

December 27, 2025

Beyond the Dogmas of the Quiet Past: Fairness, Perception, and Judgment in Modern Adjudication

**"The dogmas of the quiet past are inadequate to the stormy present.
The occasion is piled high with difficulty and we must rise with the occasion."
— Abraham Lincoln**, Second Annual Message to Congress, December 1862

There are few sentences in political history that manage, in the space of two lines, to diagnose a crisis, expose institutional complacency, and quietly rebuke anyone hoping that yesterday's solutions might somehow stretch to meet today's problems. Lincoln's remark does all three. It was not rhetoric for its own sake. It was a statement of intellectual necessity.

When Lincoln wrote those words in December 1862, the United States was halfway through a civil war that was already bloodier, longer and more morally complex than most had imagined. The Union had suffered catastrophic losses. Public confidence was fragile. Congress was fractious. The Emancipation Proclamation—issued only weeks earlier—had transformed the war from a constitutional struggle over secession into a moral reckoning with slavery. The old compromises, the comfortable orthodoxies, the procedural habits of a peacetime republic were no longer merely insufficient; they were actively obstructive.

Lincoln's warning was therefore stark but subtle: **do not mistake precedent for wisdom** or stability for adequacy. Institutions that cling too tightly to inherited dogma in moments of crisis do not preserve order; they merely preserve form while legitimacy quietly drains away.

It is difficult to read those words today without sensing their relevance far beyond the battlefields of the American Civil War. In particular, they speak—almost uncomfortably well—to modern adjudication and to the fragile ecology of perceptions of fairness that sustains it.

They also resonate far beyond the law altogether. Across institutions, professions, and public life more generally, there is a growing sense that inherited frameworks—once stabilising, now strained—are being asked to perform under conditions for which they were never designed. Economic uncertainty, institutional distrust, information overload and heightened expectations of legitimacy have combined to create a world in which decisions are scrutinised not merely for correctness but for credibility. The result is a shared condition: unprecedented pressure.

The quiet past of adjudication

Adjudication, especially in its statutory and contractual forms, is often defended by reference to its virtues: speed, decisiveness, enforceability and procedural economy. These are not trivial

achievements. They have allowed disputes to be resolved where litigation would be intolerably slow or ruinously expensive. They have kept projects moving, cash flowing and commercial relationships—if not warm—at least functional.

Over time, however, these virtues harden into assumptions. Speed becomes synonymous with fairness. Neutrality becomes synonymous with passivity. Procedural compliance becomes a proxy for substantive justice. The adjudicator's role is narrowly framed: to receive submissions, apply the law, issue a decision and avoid intervention lest one be accused of bias.

These assumptions belong to what Lincoln might have called the quiet past: a world in which disputes are reasonably framed, parties behave proportionately, evidential burdens are manageable and the adjudicator's cognitive load is demanding but tolerable.

That world still exists—occasionally. But it is no longer the world in which many adjudicators actually operate.

The stormy present

The modern adjudication landscape reflects a broader condition familiar well beyond dispute resolution: systems under strain, asked to deliver certainty, legitimacy and speed simultaneously. Within that context, adjudication is defined less by tidy disputes than by compressed timelines colliding with maximalist advocacy. Submissions arrive bloated rather than focused. Documents are deployed tactically rather than clarificatory. Parties are acutely aware of perception, positioning themselves not only for the adjudicator but for potential enforcement proceedings downstream.

At the same time, adjudicators are asked to make binding decisions under conditions that cognitive psychologists would politely describe as "suboptimal": time pressure, informational asymmetry, emotional undertones and the constant background awareness that any misstep may be scrutinised line by line in court.

This is decision-making under uncertainty in its purest applied form. The adjudicator is not merely applying rules to facts; they are **managing epistemic risk**. What can be known? What cannot? What must be inferred? What can safely be ignored? And perhaps most importantly: how will this process be experienced by the parties who lose?

Because fairness, inconveniently, is not judged solely by outcomes.

Fairness as perception, not checkbox

One of the most persistent myths in dispute resolution is that fairness is an objective property of procedure. Follow the rules, respect the timetable, give each side the same formal opportunities, and fairness will emerge as a natural by-product. This belief is deeply comforting—and profoundly wrong.

Decades of research on procedural justice show that people assess fairness primarily by **how a process feels**, not simply by how it conforms to formal criteria. Were they heard? Were their arguments genuinely engaged with? Was the decision-maker alert, curious, and even-handed? Or did the process feel rushed, opaque or performative?

This heightened sensitivity to fairness is not confined to adjudication. It mirrors a broader societal shift in how authority is evaluated. Across institutions, legitimacy is increasingly earned through transparency, engagement and demonstrated reasoning rather than assumed by position alone. Decision-makers are no longer judged solely on what they decide but on how visibly and intelligibly they arrive there.

In adjudication, this creates a tension that cannot be resolved by dogma. Excessive rigidity may protect the adjudicator from accusations of bias but it can simultaneously erode parties' sense that the process was meaningful. Conversely, thoughtful intervention—asking clarifying questions, managing disproportionate submissions, structuring issues more transparently—may enhance perceived fairness even if it departs from the most cautious interpretation of neutrality.

Lincoln would have recognised the dilemma instantly. He understood that legitimacy in crisis is not sustained by mechanical fidelity to inherited forms but by **adaptive judgment exercised openly and responsibly**.

Rising with the occasion

Importantly, this moment need not be read as a crisis of adjudication but as a test of its maturity. Systems that endure are not those that resist complexity, but those that learn to operate intelligently within it. In that sense, the pressures currently bearing down on adjudication are not merely constraints; they are invitations—to refine judgment, to articulate reasoning more clearly, and to reinforce legitimacy where it matters most. To "rise with the occasion" in adjudication does not mean abandoning the law, rewriting contracts, or indulging personal notions of justice. It means recognising that **judgment is not the enemy of fairness; it is its precondition**.

This requires adjudicators to accept several uncomfortable truths.

First, neutrality is not the absence of engagement. A disengaged decision-maker does not appear neutral; they seem indifferent or overwhelmed. Active case management, when exercised transparently and proportionately, can reduce cognitive noise and level the evidential playing field rather than distort it.

Second, speed is not an absolute virtue. While adjudication is designed to be rapid, excessive haste can undermine comprehension, the quality of reasoning and perceived legitimacy. The challenge is not to slow the process but to use limited time **intelligently rather than defensively**.

Third, uncertainty cannot be eliminated. Adjudicators must often decide with incomplete information, contested facts and imperfect evidence. The task is therefore not to achieve certainty but to **demonstrate rational, principled decision-making under uncertainty**—and to show one's workings clearly enough that the losing party understands why they lost, even if they disagree. This, ultimately, is what fairness looks like in stormy conditions.

The hidden warning

Lincoln's sentence carries a warning as well as an exhortation. Institutions that refuse to adapt in moments of strain may survive procedurally while failing substantively. They may continue to issue decisions, enforce rules and cite precedent—yet gradually lose the confidence of those they serve.

For adjudication, the risk is not collapse but corrosion: a growing sense among users that the process is formally correct but experientially hollow; legally robust but psychologically unsatisfying. When that happens, challenges increase, trust erodes and the system becomes brittle precisely when resilience is most needed.

Conclusion

Lincoln did not pretend that abandoning old dogmas would be comfortable. On the contrary, he observed—without sentiment—that the occasion was "piled high with difficulty". But he also understood that difficulty is not an argument for inertia. It is an argument for intellectual courage. Modern adjudication finds itself at a similar juncture: the pressures are different and the stakes

rather less existential, but the underlying challenge is familiar—how to exercise judgment responsibly when precedent no longer fits neatly, and when fairness must be felt as well as declared.

The dogmas of the quiet past served their purpose. But the stormy present asks for more than repetition and somewhat less nostalgia. It calls for decision-makers willing to rise—not above the process but into it—with clarity, humility and just enough confidence to accept that fairness, like leadership, is not static. It is something we must continually earn, even at the end of a long year when the temptation to rely on habit is at its strongest.

If that sounds modest, it is meant to. The most durable responses to uncertainty rarely arrive dressed as revolutions. More often, they take the form of people doing their work well under pressure: thinking clearly, judging openly and explaining carefully—even when time is short and the weather unhelpful. Lincoln understood that rising with the occasion did not require certainty about the outcome, only clarity about the responsibility. The same remains true now. We may not calm the storm before the year turns but we can ensure that, when decisions matter most, they are made in ways that still deserve confidence. And in uncertain times, that is a perfectly respectable note on which to end the year.

#Adjudication #DisputeResolution #ProceduralJustice #DecisionMaking #LegalPsychology #InstitutionalTrust #LeadershipInComplexity #BeyondDogma #ConstructionLaw #LegalUpdate #DDAlegal

Key Words:

Adjudication; Fairness Perception; Procedural Justice; Decision-Making Under Uncertainty; Judicial and Quasi-Judicial Judgment; Legitimacy and Authority; Cognitive Load and Epistemic Risk; Adaptive Judgment; Institutional Trust; Construction and Commercial Dispute Resolution

Nigel Davies BSc(Hons) (Q.Surv), PGCert.Psych, GDipLaw, PGDipLP, DipArb, MSc (Built Environment), LLM (Construction Law & Practice), MSc (Mechanical & Electrical), MSc (Psychology), FRICS, FCIOB, FCInstCES, FCIArb, CArb, GMBPsS, Panel Registered Adjudicator, Mediator, Mediation Advocate, Chartered Builder & Chartered Construction Manager, Chartered Surveyor & Civil Engineering Surveyor, Chartered Arbitrator, Author, and Solicitor-Advocate
Adjudicator Assessor and Re-Assessor for the ICE and the CIArb

Arbitrator Assessor for the CIArb
ICE DRC Member
ICE DRC CPD Committee Chairman
Adjudicator Exam Question Setter for the ICE
CIArb Adjudication Panel Member since 2006
CIArb Arbitration Panel Member since 2006
CIC Adjudication Panel Member since 2010
FIDIC Adjudication Panel Member since 2021
ICE Adjudication Panel Member since 2021
Law Society Panel Arbitrator
RIBA Adjudication Panel Member since 2018
RICS Adjudication Panel Member since 2006
RICS Dispute Board Registered since 2013
TECSA Adjudication Panel Member since 2012

guidance only. In the case of a specific problem, it is recommended that professional advice be sought.