

RULE OF LAW AND THE POLITICS OF THE JUDICIARY

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INTRODUCTION

In this short essay I propose to discuss some aspects of the rule of law ideal pertaining to a number of controversial legal decisions made by result oriented judges in politically sensitive race discrimination cases in the United Kingdom and in the United States. A closer examination of some of the landmark decisions made by the US Supreme Court, in watershed cases, such as *Dred Scot*, serves to illustrate the dynamic of the relationship between law and politics. My task here is to examine the concept of race equality in its wider context as a political right enshrined within the 'rule of law ideal' and to explore the ways in which the rule of law was applied in race discrimination cases affecting such rights of the citizens. With the help of Dworkin's earlier and later work on the subject, and other work of the jurists engaged in the current debate about "judicial politics", some general conclusions are drawn on the premise, that "The rule of law was always a convenient label seeking to reconcile divergent roles of the modern state in a form acceptable for public consumption".

Equality before the law is a formal concept, not a principle which entitles the courts to restrain the strong from oppressing the weak. Its symbolic representation is the figure of justice wearing a blindfold, promising a rational and predictable framework of adjudication within which competitive individualism can flourish. Such a system of law does not undermine existing inequalities of wealth and power, but rather confirms them; so that the oppressed groups seeking equal treatment on the basis of common law doctrines have frequently been disappointed.¹

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1 Gregory, J, *Sex, Race and the Law, Legislating for Equality*, Sage, 1987, ch.1. pp. 12, Schwartz, B, *A History of the Supreme Court*, pp. 106-125, the writer vividly illustrates the role of the judiciary in the development of the rule of law.
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