After Macpherson, Legal and Policy Implications

Dr. Habashi FRSA
"More than ever before men now live in the shadow of the state. What they want to achieve, individually or in groups, now mainly depends on the state’s sanction and support. But since that sanction and support are not bestowed indiscriminately, they must, ever more directly, seek to influence and shape the state’s power and purpose, or try and appropriate it altogether. It is for the state’s attention, or for its control, that men compete; and it is against the state that beat the waves of social conflict. It is to an ever greater degree the state which men encounter as they confront other men. This is why, as social beings, they are also political beings, whether they know it or not. It is possible not to be interested in what the state does; but it is not possible to be unaffected by it”.

(Milliband 1969:3)
State Power

“It is these institutions in which ‘state power’ lies, and it is through them that this power is wielded in its different manifestations by the people who occupy the leading positions in each of these institutions—presidents, prime ministers and their Ministerial colleagues; high civil servants and other state administrators; . These are the people who constitute what may be described as the state elite”.

(Miliband 1969:40)
State Power

‘High civil servants in the countries of advanced capitalism may generally be expected to play a conservative role in the councils of the state, to reinforce the conservative propensities of governments in which these propensities are already well developed, and to serve as an inhibiting element in regard to governments in which they are less pronounced’.

(Milliband 1969:87)
Absorption and Insulation

**Absorption**
Demands, which pose a threat to the racial order, and as such, before they are accepted they must be revised to become something more moderate.

**Insulation**
Demands which are dealt with in ways that are either symbolic, or not essential to the continuation of the racial order.
‘Race’ as a problem

Also available as a printed book
see title verso for ISBN details
Race’ as a Problem

“At the same time it must be recognised that the presence on this country of nearly one million immigrants from the commonwealth with different social and cultural backgrounds raises a number of problems and creates various social tensions in those areas where they have concentrated. (Immigration from the Commonwealth, 1965:10:32 First Report – Cmnd.2119)
“Opposition of the Police Federation to the amendment of the code was intense and deep-seated; and the Police Advisory Board, representing both the Police service and the police authorities, were unanimous in advising him not to proceed with the amendment”.

CAB 128/43 (1968) Conclusions of a meeting of the Cabinet held at 10 Downing Street, SW1, on Tuesday, 12 November, 1968 at 11am. pp 10-11.
"I do not believe we should go down the road of affirmative action or job quotas. There is growing concern in America about the way in which such progress here affected employment prospects for whites and a belief that it is more important to look at more basic issues [...] rather than to the purely civil rights aspects. PREM 19/484, Raison 1981:1
"The law and especially court decisions are used to an extent which would be inconceivable in this country in securing changes. I do not think we need new law [...] we should encourage it [CRE] to concentrate its efforts on law enforcement and investigations rather than on promotion". PREM 19/484, Raison 1981:1.
"I recognise the existence of a legitimate and understandable fear on the part of both public and private institutions that programmes which recognise and cater for the special needs of minority groups will stimulate a backlash from the majority. I suspect that this fear, rather than institutional racism, is the primary factor inhibiting the necessary development of such programmes". Scarman 1981:6.32.
United Nations International Convention for the Elimination of Racial Discrimination (ICERD)

The convention was adopted and opened for signature by the United Nations General Assembly on 21 December 1965, and came into force on 4 January 1969.
International Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

The Convention was adopted and opened for signatures on 18 December 1979. It came into force on 3 September 1981.
The International Convention on the Rights of Persons with Disabilities (ICRPD)

The Convention was adopted and opened for signatures on 13 December 2006. It came into force on 3 May 2008.
Article 14 (ICERD)

Parties can recognise the competence of UNCERD and enable it to consider complaints from individuals or groups who claim their rights under the convention have been violated. Complainants must have exhausted all domestic remedies, and anonymous complaints and complaints that refer to events that occurred before the country concerned joined the Optional Protocol are not permitted.
United Nations Office for the High Commissioner

- **Race**: 177 member states have ratified CERD with 57 of those states ratifying the Optional Protocol (individual complaints mechanism).

- **Women**: 189 member states have ratified CEDAW with 102 of those states ratifying the Optional Protocol (individual complaints mechanism).

- **Disability**: 159 member states have ratified CRPD with 86 of those states ratifying the Optional Protocol (individual complaints mechanism).
44. We strongly support the development of increasingly effective domestic remedies for race discrimination. The role of individual petition to the CERD committee would be to provide an authoritative opinion on particularly difficult or controversial aspects of anti-discrimination law or policy, and to allow individuals not to obtain redress (since no remedies can be awarded under the Article 14 procedure) but to vindicate their human rights in those cases where gaps in the national legal framework have left them without recourse.
46. Mr David Lammy MP, the Minister responsible for human rights at the DCA. Mr David Lammy MP told us that the government was content that the reporting process was sufficient to uphold the UK’s obligations under CERD and other UN Conventions, without individual petition. *For present purposes, we record our view that the failure to accept rights of individual petition under Article 14 of CERD [...] has severely hampered the ability of people from vulnerable ethnic groups to secure some aspects of their right to equality*.

Emphasis in the original
Ratification of Optional Protocols – Race, Gender and Disability

**Race:** The United Kingdom Government signed ICERD on the **11th October 1966. It ratified ICERD on 7th March 1969.** The United Kingdom Government has not ratified the Optional Protocol (Article 14).

**Women:** The United Kingdom Government signed ICEDAW on **17th December 2004. It ratified the Optional Protocol on 17th December 2004.**

**Disability:** The United Kingdom Government signed ICRPD on **30th March 2007. It ratified the Convention on 8th June 2009. It ratified the Optional Protocol on 7th August 2009.**
Trevor Phillips
“Integration not Litigation”
The Law and Developments in Courts

- Statutory Questionnaire abolished
- Unfair Dismissal qualifying period raised from 1 to 2 years
- Introduction of fees in Employment Tribunals – and then revoked!
- Employment Judges allowed to strike claims at any stage
- De-regulation Act 2015 to stop employment tribunals from making wider recommendations
Thank You