

Contents

Acknowledgments vii

Introduction i

PART ONE: Veiled Majoritarianism

- 1 The Traditional Model of Judicial Review 9
 - The Traditional Model 10
 - Formal Safeguards 14
 - Operational Safeguards 17
- 2 The Majoritarian Court 19
 - The Socialized Judiciary 20
 - Inadequacy of the Formal Safeguards 23
 - Inadequacy of the Operational Safeguards 26
- 3 Infiltration of Principles 27
 - Incorporation of Majoritarian Preferences 27
 - Incorporation through Deference 31
- 4 Selection of Principles 36
 - Intent v. Effects 37
 - State Action v. Private Autonomy 41
 - Discrimination v. Discretion 50
- 5 Application of Principles 58
 - Intent 60
 - State Action 66
 - Discrimination 70

VI CONTENTS

PART TWO: Perpetuating Subordination

6	The Political Alternative	85
	Pure Politics	86
	Minority Influence in Pluralist Politics	89
	Minority Frustrations in the Supreme Court	94
	A Political Model of the Supreme Court	99
7	Dependency	104
	<i>Brown</i> and the Political Model	105
	The Danger of Dependency	110
8	Centralization	119
	The Statistical Nature of Affirmative Action	120
	The Centralization of Affirmative Action	124
	The Concrete Dangers of Centralization	130
	The Subtle Dangers of Centralization	136
9	Legitimation	150
	Majoritarian Legitimation	151
	The Danger of Legitimation	159
10	Summary and Conclusion	161
	Summary of Part I	162
	Summary of Part II	165
	Conclusion	169
	Notes	173
	Bibliography	231
	Table of Legal Authorities	245
	Index	253