

Judicial Activism: A Critical Analysis of Its Role in the Development of Common Law

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Abstract:

Judicial activism is a concept that has been hotly debated in legal circles for decades. While some view it as a necessary tool for ensuring the development of common law in a rapidly changing society, others see it as an overreach of judicial power. This article provides a critical analysis of judicial activism and its role in the development of common law. It examines the history and evolution of the concept, the arguments for and against it, and its impact on the development of common law.

Introduction:

Judicial activism is a term used to describe the willingness of judges to engage in the creation or modification of law. The concept has been a topic of debate in legal circles for decades, with some viewing it as an essential tool for ensuring that the law keeps pace with societal changes, while others view it as an overreach of judicial power. This article provides a critical analysis of judicial activism and its role in the development of common law.

History and Evolution of Judicial Activism:

The concept of judicial activism dates back to the early days of the common law. In the 17th century, Sir Edward Coke, a prominent English jurist, famously declared that "the common law doth control acts of Parliament." This statement reflected a belief that the common law was superior to statutory law and that judges had a duty to interpret and apply the law in a way that was consistent with the principles of justice.

Over time, the concept of judicial activism has evolved. In the United States, for example, the term is often associated with the decisions of the Warren Court, which was known for its willingness to use judicial power to promote civil rights and individual liberties. In more recent years, judicial activism has been associated with decisions that seek to expand the scope of constitutional rights, such as the right to privacy.

Arguments for and Against Judicial Activism:

Proponents of judicial activism argue that it is necessary to ensure that the law remains relevant and responsive to changing societal needs. They argue that judges have a duty to interpret the law in a way that promotes justice and fairness, even if that means departing from established legal precedent.

Critics of judicial activism, on the other hand, argue that it represents an overreach of judicial power. They argue that judges should not create or modify law, but rather should apply the law as it is written. They also argue that judicial activism undermines the role of elected officials and the democratic process.

Impact of Judicial Activism on the Development of Common Law:

The impact of judicial activism on the development of common law has been significant. Proponents argue that it has helped to ensure that the law remains relevant and responsive to changing societal needs. Critics, however, argue that it has undermined the role of elected officials and the democratic process.

One of the most significant areas in which judicial activism has had an impact is in the area of civil rights. In cases such as *Brown v. Board of Education* and *Roe v. Wade*, the Supreme Court used judicial activism to promote civil rights and individual liberties. Similarly, in cases such as *Lawrence v. Texas* and *Obergefell v. Hodges*, the Court used judicial activism to expand the scope of constitutional rights.

Conclusion:

Judicial activism is a complex and controversial concept that has been the subject of debate in legal circles for decades. While proponents argue that it is necessary to ensure that the law remains relevant and responsive to changing societal needs, critics argue that it represents an overreach of judicial power. Regardless of one's position on the issue, it is clear that judicial activism has had a significant impact on the development of common law. As society continues to evolve, it is likely that the concept will continue to be debated and analyzed.