



One Case at a Time: Judicial Minimalism on the Supreme Court

By Cass R. Sunstein

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Abortion, affirmative action, the "right to die," pornography and free speech, homosexuality and sex discrimination: as eagerly as the Supreme Court's rulings on these hot issues are awaited and as intently as they're studied, they never seem to settle anything once and for all. But something is settled in the process--in the incremental approach--as Cass Sunstein shows us in this instructive book.

One of America's preeminent constitutional scholars, Sunstein mounts a defense of the most striking characteristic of modern constitutional law: the inclination to decide one case at a time. Examining various controversies, he shows how--and why--the Court has avoided broad rulings on issues from the legitimacy of affirmative action to the "right to die," and in doing so has fostered rather than foreclosed public debate on these difficult topics. He offers an original perspective on the right of free speech and the many novel questions raised by Congress's efforts to regulate violent and sexual materials on new media such as the Internet and cable television. And on the relationship between the Constitution and homosexuality and sex discrimination, he reveals how the Court has tried to ensure against second-class citizenship--and the public expression of contempt for anyone--while leaving a degree of flexibility to the political process.

One Case at a Time also lays out, and celebrates, the remarkable constellation of rights--involving both liberty and equality--that now commands a consensus in American law. An authoritative guide to the Supreme Court, the book offers a new understanding of the American Constitution, and of the relationship between democracy and constitutionalism, and between rights and self-government.

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Editorial Review

From Publishers Weekly

Digging much deeper than the limiting liberal/conservative dichotomy through which the Supreme Court is habitually viewed, constitutional scholar Sunstein (*The Cost of Rights*, with Stephen Holmes, Forecasts, Jan. 11) gives readers a thoughtful analysis and defense of the Court's institutional caution. He uses the term "minimalism" to define the Court's preference for deciding individual cases while leaving "fundamental issues undecided." According to Sunstein, judicial minimalism is desirable both on prudential grounds (because the Court lacks the long-range vision to anticipate the consequences of many decisions) and on political grounds (because the Court leaves fundamental issues for the democratic process to resolve). On the former point, Sunstein offers some compelling insights into the limits of lawyers' and judges' predictive abilities. On the latter point, he will not convince all readers to share his confidence in democratic procedures: some will argue that resolving questions of constitutional rights (e.g., abortion, privacy, the gradations of free speech) exclusively through majoritarian processes may undermine the protection of such rights. Sunstein views this danger as one of the many tensions of our constitutional system (along with those between liberty and equality, negative and positive rights). An able writer who makes complex judicial issues accessible, Sunstein offers provocative and informative reading for general readers seriously interested in the life and work of the Supreme Court.

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Review

With his new book, Sunstein joins a distinguished line of liberal constitutional theorists who have defended the democratic value of judicial modesty...[*One Case at a Time* is] uniquely well-suited to an age that has lost its constitutional faith...No other scholar has captured the temper of the current majority as neatly as Sunstein, nor has anyone else attempted to provide a theoretical justification for what other observers took to be ad-hockery or improvisation. For these reasons, Sunstein's book deserves close attention. (Jeffrey Rosen *New Republic*)

Sunstein is among this country's most respected legal scholars [and] *One Case at a Time* reflects [his] mastery of Supreme Court law, of constitutional theory and of political science...*One Case at a Time* presents a fascinating argument: that there is a hidden majority of [judicial minimalist] Justices, that it is right in what it is doing and that it is adjudicating in a way that moves beyond the recent ideological stalemate about the Supreme Court's role...[Sunstein's] book demonstrates what a shame it is that the Clinton White House hasn't picked him to serve as a Federal judge. The Reagan and Bush Administrations put accomplished legal theorists on the bench to turn their conservative vision into legal reality. But the Clinton team has failed to follow the Reagan-Bush lead... *One Case at a Time* makes that reluctance look like a significant lost opportunity. Respectful of the political branches, mindful of the role of the Supreme Court in the whole of American government, this admirable book makes a judicious case for a philosophy of judging as a humble, difficult, essential art. The book also demonstrates that Sunstein would practice that art well. (Lincoln Caplan *New York Times Book Review*)

In a lucid examination of specific cases, Mr. Sunstein demonstrates how [judicial minimalism] should be done and achieves what has so far been elusive, a genuine theory of judicial minimalism, which many judges strive for but often have difficulty describing or justifying. (*The Economist*)

With *One Case at a Time*, Cass Sunstein may well become known as the Nathan Detroit of constitutional

law. For this is a shrewd and clever book. (Gary McDowell *Washington Times*)

In *One Case at a Time*, Sunstein describes the current Supreme Court's 'judicial minimalism'--deciding cases as narrowly as possible, without widely applicable rules. This position, he urges, can support deliberative democracy, particularly if the issues involved are complex and no citizen consensus has emerged. Sunstein outlines his arguments and applies it in analyzing recent decisions on 'affirmative action, discrimination on the basis of sex and sexual orientation, the right to die, and new issues of free speech raised by...communications technologies.' He then addresses alternatives to minimalism, mainly Justice Scalia's 'democratic formalism' and the complaint that minimalist decisions lack theoretical depth as well as breadth, concluding by summarizing his view of the place of judicial minimalism in a democracy. (Mary Carroll *Booklist*)

Review

Labeling and 'bean counting' of the Supreme Court and its Justices are frequently all that Americans get by way of description of the activities of the highest court in our system. Even the legal profession finds it is easier to label than to analyze. That is why Cass Sunstein's book is just what the country needs--an understandable analysis of how this Supreme Court goes about its decision making. If it seems to make the 'conservatives' the 'activists' and the 'liberals' the 'strict constructionists,' that only proves that those labels are not very useful and more often than not reflect the eye of the beholder. Nor can Professor Sunstein's use of the word minimalism be dismissed as just another pretty label. The term aptly describes what has been the very touchstone of both the common law and constitutional theory in America for a long, long time. The book represents Sunstein at his best. (Abner J. Mikva, former Chief Judge, U.S. Court of Appeals for the D.C. Circuit)

Users Review

From reader reviews:

Christopher Clarke:

This *One Case at a Time: Judicial Minimalism on the Supreme Court* are usually reliable for you who want to be described as a successful person, why. The main reason of this *One Case at a Time: Judicial Minimalism on the Supreme Court* can be on the list of great books you must have is definitely giving you more than just simple looking at food but feed you with information that perhaps will shock your preceding knowledge. This book is definitely handy, you can bring it almost everywhere and whenever your conditions at e-book and printed ones. Beside that this *One Case at a Time: Judicial Minimalism on the Supreme Court* giving you an enormous of experience for instance rich vocabulary, giving you test of critical thinking that we realize it useful in your day exercise. So , let's have it and enjoy reading.

Michael Colburn:

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