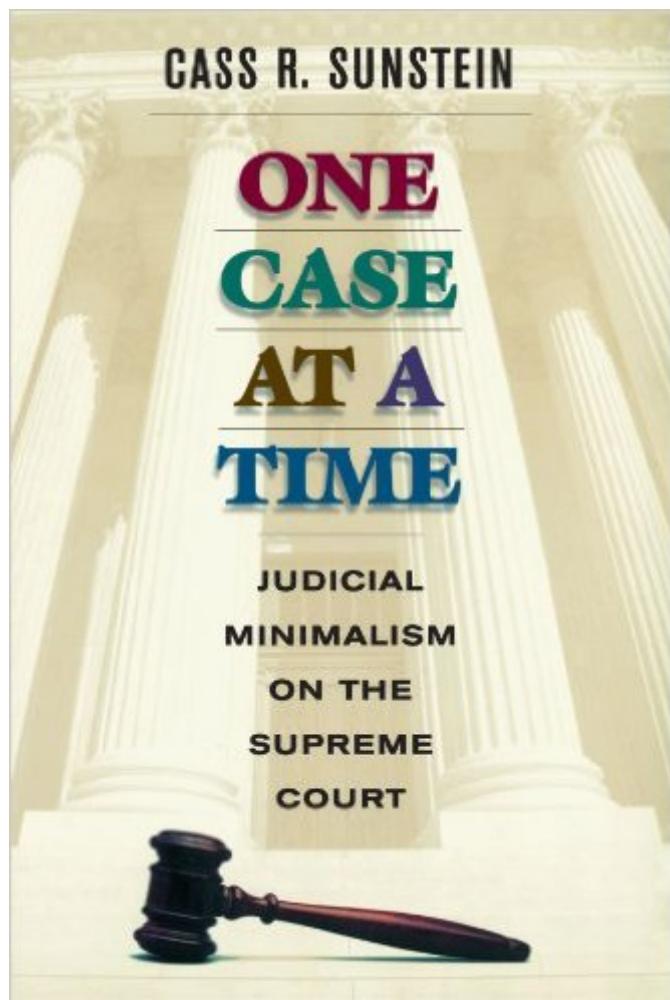


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One Case At A Time: Judicial Minimalism On The Supreme Court



Synopsis

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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Customer Reviews

Liberalism eats its intellectuals, cannibalizing their principles for the sake of political expediency. Professor Sunstein is a case in point. Last year, to defend President Clinton against impeachment, he argued that a President can't be impeached for any crime not related to his office. When pressed, he allowed that it would be a borderline case if the President murdered someone, but no lesser crime would merit impeachment. Professor Sunstein is not a stupid man, but this is a stupid argument. Since, like most legal experts, Mr. Sunstein also believes that a President cannot be prosecuted, Mr. Sunstein is arguing that if a President habitually raped women or blew up abortion clinics and bragged about his exploits in his State of the Union Address, the country would be powerless to take any action against him. I doubt that a man of Mr. Sunstein's intelligence believed that even as he spoke it, but nevertheless, he lent his prestige to a shabby argument for the political demands of the moment. There is something of the same thing going on in this book. This time, there is nothing objectionable in his thesis. Courts should not strip issues away from the democratic process. Indeed, if it weren't for Roe v. Wade (which Sunstein properly condemns), state legislatures would have legalized abortion anyway, but the pro-life forces would not be picketing clinics, let alone blowing them up. Vox populi, vox dei has a powerful ability to make people to accept what they oppose. Courts lack that power. Where Sunstein bows to political pressure is in his choice of examples of judicial overreach. For every example of Warren Court "maximalism" which he rightly condemns, he throws in a right-wing example, Justices Scalia and Thomas being particular targets.

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