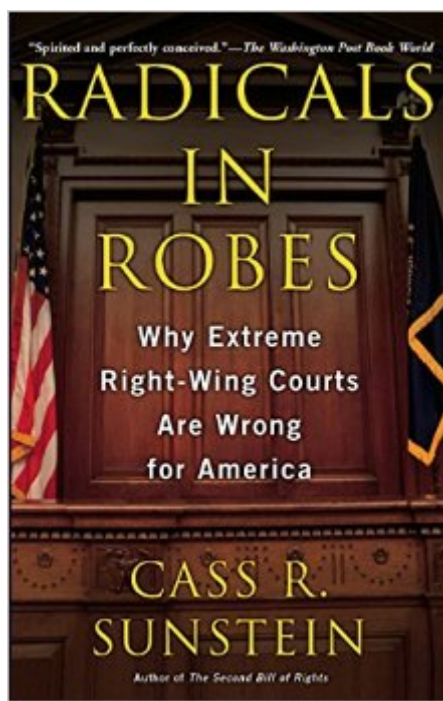


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# Radicals In Robes



## Synopsis

Praised as a must-have primer during the Roberts and Alito hearings, *Radicals in Robes* offers a rigorous yet accessible analysis of what's at stake in the judiciary choices made during these warring days of the Warren/Rehnquist legacy. *Radicals in Robes* pulls away the veil of rhetoric from a dangerous and radical movement and issues a strong and passionate warning about what conservatives really intend.

## Book Information

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## Customer Reviews

No more timely book concerning the American judicial system could have appeared at this time. As I write this review we are awaiting the confirmation of two new supreme court justices, a change that could transform the nation for decades to come, especially given the recent penchant for appointing young judges. Like many Americans, I'm extremely concerned about trends in the supreme and appeals courts of recent decades. Even many Republican legislators have grown increasingly concerned about a growing tendency of many Federalist Society justices on all levels to overturn federal legislation, in effect expanding the power of the courts and decreasing the power of our

elected officials. With increasing talk of a Constitution in Exile and a willingness of very conservative judges to overturn well-established legal precedent and bipartisan legislation, this truly is a critical point in American legal history. Cass Sunstein takes head on the predominant activist judicial philosophy in this clearly written study and tries to explain the reason why on legal grounds it is both highly suspect as an interpretative method and undesirable in its potential effects. He begins by insisting that "liberal" versus "conservative" is an extremely unhelpful distinction.

Professor Sunstein's book provides an easy-to-understand description of the major theories of constitutional interpretation at play in the Supreme Court. Although identifying four streams of thought, he focuses on the two most predominate on today's court, describing the two as "fundamentalism" and "minimalism." There are two things this book does particularly well. First, it points out the absurdities that would result from truly following a fundamentalist approach to constitutional interpretation. Second, it demonstrates that the fundamentalists currently on the bench are often "false fundamentalists," abandoning fundamentalism when the result is contrary to what those on the political right wing desire. Sunstein shows, for instance, that a fundamentalist (or originalist, or traditionalist) reading of the 14th Amendment would favor affirmative action programs, while those justices claiming loyalty to original intent ignore this to achieve the result the Republican party requires. Indeed, it appears that fundamentalists are "perfectionists" of the right: activist judges who are result-oriented under the guise of constitutional interpretation. This book argues for minimalism. But its defense of minimalism is not especially strong. It comes down to this: The only real choice today is between fundamentalism and minimalism and fundamentalism is awful; thus, minimalism is the way to go. While there is no doubt that fundamentalism is disastrous, not much is offered proactively in support of minimalism or to give strong reasons why majoritarianism or perfectionism should be rejected in its favor. To his credit, Sunstein is upfront that this book primarily argues in favor of minimalism as opposed to fundamentalism, but there is still a lot left out of the discussion.

This book's biggest failure is its assumption that its readers will share the author's own political views. Cass Sunstein is a well-known academic, whose articles have proven extremely illuminating and helpful to many. This book, however, has failed miserably to meet the lofty standards that Sunstein's prior works set. Though his articles on the regulatory state have changed the way I think about statutory interpretation, Sunstein failed to persuade me even slightly in this book. The author strongly criticizes "fundamentalism" (perhaps better known as "originalism"). He warns the reader

that because "originalism" is aligned so closely with conservatives'/Republican's political views, that it must be the case that the originalist view suffers from bias. The author does not anticipate that some readers, such as myself, are socially liberal, and yet find textualism and originalism appealing. His arguments thus failed to speak to me-- he tells the reader that originalism= conservatism, and yet i believe in originalism, but am socially liberal. What gives? He then takes cheap shots on originalism, which he should know better than to make. He marches out a parade of horrors that would result if originalism were accepted. For example, he argues that school segregation may be permissible, the EPA's authority may be proscribed, etc. etc. He does not take into account many originalists' view (including my own), that if it were not for the Court's legislating from the bench, that the political process (via Constitutional amendments) would prohibit discrimination, and expand the scope of agencies' powers. His myopic view is all the more startling when one reads his defense of "minimalism" (Sunstein's preferred view).

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