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Book Review of Constitutional Personae

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is to demonstrate to readers that even in a strict state like New York, the process of gun ownership is not unduly burdensome.

¶113 This book makes for a nice addition to any law library as a reference work easily approached by members of the public, students, and faculty. Admittedly, the trade-off for its readable nature is that it does not have the depth of treatment on a specific aspect of gun control that one may find in a more focused work. Also, readers should bear in mind that the author approaches the work as a proponent for gun control. For students or faculty researching gun control, this book will prove useful, particularly the endnotes and the appendix of state gun laws.

Sunstein, Cass R. *Constitutional Personae*. New York: Oxford University Press, 2015. 171p. \$24.95.

*Reviewed by Michael N. Umberger**

¶114 In *Constitutional Personae*, Cass R. Sunstein identifies four distinct roles that U.S. Supreme Court Justices adopt in interpreting the Constitution: the Hero, the Soldier, the Minimalist, and the Mute. These constitutional personae are defined as “judicial roles and self-presentations that sharply separate judges as well as those who comment on their work” (p.1). Sunstein theorizes that Court watchers are attracted to particular approaches to constitutional interpretation not because of underlying reasons but because of the characters they require Justices to assume. These judicial personae evoke immediate attraction or aversion as though they were literary heroes or villains; indeed, Sunstein overtly draws attention to the literary nature of these types by naming them personae, as though they formed the cast of a play.

¶115 The book is divided into four chapters loosely united through the concept of judicial personae. The first chapter details the personae, using actual Supreme Court cases and Justices to illustrate how the personae are defined and how they interact. Judicial Heroes are characterized by their devotion to causes and their willingness to render sweeping change. Chief Justice Earl Warren is the paragon of a judicial Hero and *Brown v. Board of Education* the paradigmatic example of a Heroic decision. In contrast, Soldiers prefer to follow established order and precedent and respect the authority of the political branches whenever possible. Justice Oliver Wendell Holmes was the typical judicial Soldier, frequently deferring to the legislature, although he also exhibited a strong Heroic streak with respect to freedom of speech.

¶116 The Minimalist favors actions that result in incremental change; as Sunstein’s preferred persona, the Minimalist is the exclusive subject of the third chapter of the book. Finally, the Mute, a rare player in the Supreme Court’s drama, is silent when others speak, preferring inaction in the face of difficult constitutional questions. Sunstein is clear to assert that no one Justice embodies any of these personae wholly or at all times. Instead, Justices gravitate toward certain roles based on their personalities or preferred theories of interpretation and strategically assume them when appropriate.

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¶117 In the second chapter, Sunstein moves on to the heart of his analysis, revealing that even though the four personae are what immediately attract people to certain figures on the Court, judicial personae often emerge as a consequence of the various methods of interpretation. Identification of the right theory of interpretation is more important from a legal perspective, and the best judicial persona will be the one that naturally arises from the best method of interpreting the Constitution. In Sunstein's terms, the best theory of interpretation is the one that manages to make the constitutional system better by minimizing the costs of making decisions and of committing errors.

¶118 On this point, in the third chapter Sunstein turns to the Minimalist persona, specifically Burkean Minimalism, an approach that emphasizes respect for established tradition and avoidance of destabilizing independent moral or political argument. It makes intuitive sense that in areas requiring stability, such as separation of powers, Burkean Minimalism is most appropriate. On the other hand, Sunstein recognizes that other areas, such as equal protection, are better suited to a related approach known as Rationalist Minimalism, which values traditions but only when supported by sufficient reason. Sunstein advocates a Minimalist approach to constitutional interpretation because it produces opinions that minimize decision and error costs without dividing people who fundamentally disagree.

¶119 In its final chapter, the book turns to the historical origins of the constitutional personae concept. Sunstein explains how the Court has shifted from a norm of consensus to its current state, which favors open dissent. Chief Justice John Marshall, a noted Hero, advocated early on for a norm of consensus with unanimous decisions. Statistical data verify the sudden rise of dissent at the Court in 1941 with the appointment of Chief Justice Harlan Fiske Stone, and the level of dissent remains high today. Divided rulings, much the norm today, run the risk of producing fragile precedent that is easily overturned, and they are susceptible to instability and uncertainty. The Minimalist persona tends to moderate these concerns because the rulings are narrow and shallow, but Sunstein also cautions that no persona, not even Minimalism, is a panacea.

¶120 The book ends, somewhat oddly, with a comparison of judicial personae to political types, comparing famous political leaders to their analogous judicial personae. These closing words seem out of character with the rest of the work, but they do, in that respect, reflect the entire work's structural deficiencies. The four chapters, each fine on its own, simply do not adequately follow from one another. Sunstein begins with a thorough analysis of judicial personae but then proceeds to graft this analysis onto chapters on theories of interpretation, Burkean constitutional interpretation, and unanimity and dissent at the Supreme Court. A note after the text in the acknowledgments explains why the work seems discordant: the book was constructed, à la Frankenstein's monster, from a number of Sunstein's preexisting articles, essays, and book chapters going back to 2006. The content has been updated, for certain, but the work does read as a succession of separate pieces that have been editorially conjoined.

¶121 This is not to suggest that the book is not important, but a reader should understand its composition when approaching the work. Despite its disjointedness, Sunstein's book has substantial relevance as a work of legal scholarship and is recommended for any academic collection. Sunstein's writing is clear, and his

arguments are set out in an orderly, logical manner. Many will find the discussion of judicial personae especially relevant in light of current political debate over the vacancy on the Supreme Court. Professors of constitutional law will be particularly interested in Sunstein's presentation of judicial personae and his appreciation for Burkean Minimalism, if only for insight into Sunstein's own views on constitutional interpretation.

Temm, Wanda M., and Julie M. Cheslik. *Missouri Legal Research, Third Edition*. Durham, N.C.: Carolina Academic Press, 2015. 218p. \$29.

*Reviewed by Sara E. Campbell**

¶122 *Missouri Legal Research, Third Edition*, was written by two University of Missouri–Kansas City professors to share their collective wisdom. The goal was to be a reference for students in clinics or clerkships after completing the first-year curriculum, a reference for practitioners as they hone the skills taught in law school, and a guide for paralegals, undergraduates in other disciplines, and the common person. No one researches the law without intending to create a written product from the fruits of research, so it follows that chapter 9 (on summarizing and organizing research) and appendix A (on legal citation) should focus heavily on legal writing.

¶123 With this being the goal of the book, I expected to find a well-rounded survey of resources that rural, public interest, corporate securities, and practitioners in the Eastern District of Missouri would find more tailored to their practice. Instead, I found the book to be heavily biased toward urban Kansas City practice, with a focus on Missouri bar materials, Fastcase, and Lexis Advance, but most heavily on Westlaw resources. Unfortunately, some of the resources mentioned now have changed ownership or names, which may confuse first-year law students, inexperienced paralegals, undergraduates, or the public. Chapter subsections are inconsistent as to whether they contain a summary at the end of the subsection, a feature that made the chapters with the summary more cohesive. I would like to have seen a summary at the end of every subsection for each chapter.

¶124 The legal research methodologies (known-authority, known-topic, and know-nothing or descriptive-word approaches) are applied with examples consistently throughout in a way that makes sense to all intended audience members. The authors use correct technical legal research terminology at all times. The layout and approach of *Missouri Legal Research* falls in line with the course outlines most Missouri law schools use. *Missouri Legal Research* is less verbose than Linda H. Edwards's *Legal Writing: Process, Analysis, and Organization, Sixth Edition* (2014), used in some programs, but not as cleanly worded nor with as many visuals as Amy E. Sloan's *Basic Legal Research: Tools and Strategies, Fifth Edition* (2012), also frequently used in Missouri law schools.

¶125 *Missouri Legal Research* takes a broad approach to the subject with nine chapters, an appendix on citations, a bibliography, and an index. While there is mention of primary and secondary authority, little or no discussion concerns

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