

Richard Posner How Judges Think

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a distinguished and experienced appellate court judge richard a posner offers in this new book a unique and to orthodox legal thinkers a startling perspective on how judges and justices decide cases when conventional legal materials enable judges to ascertain the true facts of a case and

apply clear pre existing legal rules to them posner argues they do so straightforwardly that is the domain of legalist reasoning however in non routine cases the conventional materials run out and judges are on their own navigating uncharted seas with equipment consisting of experience emotions and often unconscious beliefs in doing so they take on a legislative role though one that is confined by internal and external constraints such as professional ethics opinions of respected colleagues and limitations imposed by other branches of government on freewheeling judicial discretion occasional legislators judges are motivated by political considerations in a broad and sometimes a narrow sense of that term in that open area most american judges are legal pragmatists legal pragmatism is forward looking and policy based it focuses on the consequences of a decision in both the short and the long term rather than on its antecedent logic legal pragmatism so understood is really just a form of ordinary practical reasoning rather than some special kind of legal reasoning supreme court justices are uniquely free from the constraints on ordinary judges and uniquely tempted to engage in legislative forms of adjudication more than any other court the supreme court is best understood as a political court

a judge s role is to make decisions this book is about how judges undertake this task it is about forces on the judicial role and their consequences about empirical research from a variety of academic disciplines that observes and verifies how factors can affect how judges judge on the one hand judges decide by interpreting and applying the law but much more affects judicial decision making psychological effects group dynamics numerical reasoning biases court processes influences from political and other institutions and technological advancement all can have a bearing on judicial outcomes in how judges judge empirical insights into judicial decision making brian m barry explores how these factors beyond the law affect judges in their role case examples judicial rulings judges own self reflections on their role and accounts from legal history complement this analysis to contextualise the research make it more accessible and enrich the reader s understanding and appreciation of judicial decision making offering research based insights into how judges make the decisions that can impact daily life and societies around the globe this book will be of interest to practising and training judges litigation lawyers and those studying law and related disciplines

what underlies this development in this concise and highly engaging work federal appeals court judge and noted author from brown to bakke j harvie wilkinson argues that america s most brilliant legal minds have launched a set of cosmic constitutional theories that for all their value are undermining self governance

in constitutionalism executive power and the spirit of moderation contributors ranging from scholars to practitioners in the federal executive and judicial branches blend philosophical and political modes of analysis to examine a variety of constitutional legal and philosophical topics part 1 the

role of courts in constitutional democracy analyzes the proper functions and limits of the judiciary and judicial decision making in constitutional government part 2 law and executive authority reflects on the tensions between constitutionalism and presidential leadership in both domestic and international arenas part 3 liberal education constitutionalism and philosophic moderation shifts the focus to the relationship between constitutionalism and political philosophy and especially to the modern modes of philosophy that most directly influenced the american founders a valuable resource for specialists the book also will be of use in political science and law school classes

judicial process in america thirteenth edition by robert carp kenneth manning lisa holmes and jennifer bowie is a market leading and comprehensive textbook for both academic and general audiences the book explains the link between the courts public policy and the political environment considering the courts from every level the authors cover judges lawyers litigants and the variables at play in the judicial decision making process the impact of those decisions on american citizens and what the consequences are for the united states today

judicial decision making may ideally be impartial but in reality it is influenced by many different factors including institutional context ideological commitment fellow justices on a panel and personal preference empirical literature in this area increasingly analyzes this complex collection of factors in isolation when a larger sample size of comparative institutional contexts can help assess the impact of the procedures norms and rules on key institutional decisions such as how appeals are decided four basic institutional questions from a comparative perspective help address these studies regardless of institutional context or government framework who decides or how is a justice appointed how does an appeal reach the court what processes occur who is before the court or how do the characteristics of the litigants and third parties affect judicial decision making how does the court decide the appeal or what institutional norms and strategic behaviors do the judges perform to obtain their preferred outcome this book explains how the answers to these institutional questions largely determine the influence of political preferences of individual judges and the degree of cooperation among judges at a given point in time the authors apply these four fundamental institutional questions to empirical work on the supreme courts of the us uk canada india and the high court of australia the ultimate purpose of this book is to promote a deeper understanding of how institutional differences affect judicial decision making using empirical studies of supreme courts in countries with similar basic structures but with sufficient differences to enable meaningful comparison

an introduction to and meditation on the key concepts history evolution complexities and importance of law in our nation s 233 year existence

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