



How Judges Think (Pims - Polity Immigration and Society Series)

By Richard A. Posner

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Richard A. Posner

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.

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Editorial Review

From Publishers Weekly

Posner is unique in the world of American jurisprudence, a highly regarded U.S. appellate judge and a prolific and controversial writer on legal philosophy (*The Little Book of Plagiarism*). Opinionated, sarcastic and argumentative as ever, Posner is happy to weigh in not only on how judges think, but how he thinks they should think. When sticking to explaining the nine intellectual approaches to judging that he identifies, and to the gap between legal academics and judges, and his well-formulated pragmatic approach to judging, Posner is insightful, accessible, often funny and a model of clarity. When he charges off into longstanding arguments with fellow legal theorists (liberal commentator Ronald Dworkin, for one) or examines doctrinal discrepancies in the opinions of Supreme Court justices, he writes for a far more limited audience. For the record, although Justice Scalia is a favorite target, none of the Supreme Court nine escapes Posner's lethally sharp pen. Posner's two major points—that to a great extent judges make decisions based not on theory but on who they are, their gender, education, class and experiences, and that the Supreme Court is a political court regardless of what theory of constitutional interpretation justices claim—are well worthwhile and deeply rooted in common sense and experience. (Apr.)

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Review

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Posner's latest book, *How Judges Think*, is important, if only because it's Posner looking at his own profession from the inside. Two of the chapters, "Judges Are Not Law Professors" and "Is Pragmatic Adjudication Inescapable?", are worth the price of admission by themselves. The book can be read as one long screed against the jurisprudence of Supreme Court Justice Antonin Scalia, and stands as a refutation to those who believe the category of conservative can lazily be applied to a mind as independent as Posner's. (Barry Gewen *New York Times online* 2008-07-09)

A prolific and brilliant writer, Posner's *How Judges Think* is perhaps his most illuminating work for its profound, and sometimes polemical, insights into the judicial process...Judge Posner's examination of the issues is thorough, scholarly and riveting. He has written an important book--a must read not just for lawyers, but also for anyone who wants to understand how the inscrutable, and sometimes oracular, process of judging really works. (James D. Zirin *Forbes.com* 2010-06-08)

From the Back Cover

From the book: Ivan Karamazov said that if God does not exist everything is permitted, and traditional legal thinkers are likely to say that if legalism (legal formalism, orthodox legal reasoning, a "government of laws not men," the "rule of law" as celebrated in the loftiest "Law Day" rhetoric, and so forth) does not exist everything is permitted to judges--so watch out! Legalism does exist, and so not everything is permitted. But its kingdom has shrunk and greyed to the point where today it is largely limited to routine cases, and so a great deal is permitted to judges. Just how much is permitted and how they use their freedom are the

principal concerns of this book. ... I am struck by how unrealistic are the conceptions of the judge held by most people, including practicing lawyers and eminent law professors, who have never been judges--and even by some judges. This unrealism is due to a variety of things, including the different perspectives of the different branches of the legal profession--including also a certain want of imagination. It is also due to the fact that most judges are cagey, even coy, in discussing what they do. They tend to parrot an official line about the judicial process (how rule-bound it is), and often to believe it, though it does not describe their actual practices. This book parts the curtain a bit.

Users Review

From reader reviews:

Mary Block:

Do you have favorite book? For those who have, what is your favorite's book? Reserve is very important thing for us to understand everything in the world. Each reserve has different aim or maybe goal; it means that book has different type. Some people feel enjoy to spend their time for you to read a book. They may be reading whatever they acquire because their hobby is usually reading a book. Think about the person who don't like looking at a book? Sometime, person feel need book once they found difficult problem or exercise. Well, probably you will want this How Judges Think (Pims - Polity Immigration and Society Series).

Aaron Tolleson:

Reading a guide tends to be new life style within this era globalization. With reading through you can get a lot of information which will give you benefit in your life. Along with book everyone in this world could share their idea. Publications can also inspire a lot of people. A great deal of author can inspire their particular reader with their story or maybe their experience. Not only the storyline that share in the textbooks. But also they write about the data about something that you need example. How to get the good score toefl, or how to teach your children, there are many kinds of book that you can get now. The authors nowadays always try to improve their talent in writing, they also doing some study before they write for their book. One of them is this How Judges Think (Pims - Polity Immigration and Society Series).

Zoe Harris:

Reading can called thoughts hangout, why? Because while you are reading a book particularly book entitled How Judges Think (Pims - Polity Immigration and Society Series) your thoughts will drift away trough every dimension, wandering in each and every aspect that maybe unidentified for but surely will become your mind friends. Imaging each word written in a reserve then become one form conclusion and explanation that maybe you never get ahead of. The How Judges Think (Pims - Polity Immigration and Society Series) giving you yet another experience more than blown away your brain but also giving you useful details for your better life within this era. So now let us present to you the relaxing pattern is your body and mind will likely be pleased when you are finished studying it, like winning a game. Do you want to try this extraordinary investing spare time activity?

Alice Ressler:

As a university student exactly feel bored for you to reading. If their teacher questioned them to go to the library or make summary for some publication, they are complained. Just small students that has reading's internal or real their pastime. They just do what the educator want, like asked to go to the library. They go to presently there but nothing reading really. Any students feel that reading is not important, boring and can't see colorful pictures on there. Yeah, it is to become complicated. Book is very important for yourself. As we know that on this period of time, many ways to get whatever you want. Likewise word says, ways to reach Chinese's country. Therefore this How Judges Think (Pims - Polity Immigration and Society Series) can make you sense more interested to read.

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