

How Judges Think First Edition

RICHARD A.
POSNER

HOW
JUDGES
THINK

How Judges Think

Kent Greenawalt



How Judges Think:

How Judges Think Richard A. Posner, 2010-05-01 A distinguished and experienced appellate court judge Posner offers in this new book a unique and to orthodox legal thinkers a startling perspective on how judges and justices decide cases

How Judges Think Richard A. Posner, 2010-05-01 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

How Judges Judge Brian M. Barry, 2020-11-26 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

Judges and Adjudication in Constitutional Democracies: A View from Legal Realism Pierluigi Chiassoni, Bojan Spaić, 2020-12-11 The book offers contributions to a philosophical and realistic approach to the place of adjudication in contemporary constitutional democracies Bringing together scholars from different legal and

philosophical backgrounds the book purports to cast light on the roles of judges and the function of judicial interpretation inside of constitutional states from the standpoint of legal realism as a revisited and sophisticated jurisprudential outlook In so doing the book also copes with a few major jurisprudential issues like e.g. determining the ideas that make up the core of legal realism exploring the relation between legal realism and legal positivism identifying the boundaries of judicial interpretation as they appear from a realist standpoint as well as considering some skeptical outlooks on the very claims of contemporary legal realism

Judicial Process in America Robert A. Carp, Kenneth L. Manning, Lisa M. Holmes, Jennifer Bowie, 2025-01-30 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

Statutory and Common Law

Interpretation Kent Greenawalt, 2013 Kent Greenawalt's second volume on aspects of legal interpretation analyzes statutory and common law interpretation suggesting that multiple factors are important for each and that the relation between them influences both The book argues against any simple textualism claiming that even reader understanding of statutes depends partly on perceived intent In respect to common law interpretation use of reasoning by analogy is defended and any simple dichotomy of holding and dictum is resisted

Methodology of Criminal Law Theory: Art, Politics or Science? Shin Matsuzawa, Kimmo Nuotio, 2021-05-27 In dem Band wird erörtert ob die Strafrechtstheorie bzw die allgemeine Rechtstheorie als ein Zweig der Wissenschaft angesehen werden kann Dabei werden folgende Fragen behandelt In welchem Sinne ist die Strafrechtslehre eine Form der Wissenschaft Kann es systemische Entwicklungen in der Strafrechtstheorie geben Die Frage nach dem Wesen der strafrechtlichen Erkenntnis ist eng verknüpft mit der Frage was Rechtswissenschaft im Allgemeinen ausmacht Eine Diskussion im Bereich des Strafrechts kann einen Beitrag zur allgemeinen Diskussion in der Rechtstheorie leisten und deutlich machen wo die Strafrechtstheorie steht wenn die juristische Forschung mit den Herausforderungen der Interdisziplinarität konfrontiert wird Mit Beiträgen von Petter Asp Thomas Elholm Liang Genlin Lu's Greco Eric Hilgendorf Jørn Jacobsen Heike Jung Massimiliano Lanzi Shin Matsuzawa Kimmo Nuotio und Michael Pawlik

'Discovery' in Legal

Decision-Making B. Anderson, 2013-03-14 This book deals with a central problem throughout the legal profession a solution to the problem is sought and reached in some basic form At the centre of this problematic is the question indicated by the title What is the nature of discovery in legal decision making In the final chapter that problem and the solution reached will be seen to have ramifications throughout the entire field of legal practice and theory However the focus of the argument is maintained first to specify adequately the particular manifestation of the problem in a variety of legal fields and secondly to arrive at a precise basic solution to this range of problems The presentation of the solution is not dictated by the norms of

clarity and coherence but by the dynamics of the struggle to reach the solution and by aspects of the problem available to various sub groups within the legal profession theorists judges arbitrators So I begin from a relatively familiar zone discussions of discovery in legal theory before moving to more unfamiliar territory This book is not a thorough survey of problems and writings on discovery Rather the strategic selection of problems and assessment of solutions across the first four chapters represents four aspects of the problem Those chapters invite the reader to rise to the sense of occurrence of a single problem in a variety of contexts Divergent Paths Richard A. Posner, 2016-01-04 Judges and legal scholars talk past one another if they have any conversation at all Academics criticize judicial decisions in theoretical terms which leads many judges to dismiss academic discourse as divorced from reality Richard Posner reflects on the causes and consequences of this widening gap and what can be done to close it **Migrants and the Courts** Geoffrey Care, 2016-04-22 Written in a lively and engaging style from the perspective of a leading immigration judge this book examines how states resolve disputes with migrants The chapters reflect on changes in the laws and rules of migration on an international and regional basis and the impact on the parties administration public and judiciary The book is a critical assessment of how the migration tribunal system has evolved over the last century the lessons which have been learnt and those which have not It includes additional comparative contributions by authors on international jurisdictions and is a valuable overview of the evolution and future of the immigration tribunal system which will be of interest to those involved in human rights migration transnational and international law Federal Judges Revealed William Domnarski, 2009 The power and influence of the federal judiciary has been widely discussed and understood And while there have been a fair number of institutional studies studies of individual district courts or courts of appeal there have been very few studies of the judiciary that emphasize the judges themselves Federal Judges Revealed considers approximately one hundred oral histories of Article Three judges extracting the most important information and organizing it around a series of presented topics such as How judges write their opinions and What judges believe make a good lawyer **Harvard Law Review: Volume 131, Number 5 - March 2018** Harvard Law Review, 2018-03-03 Cosmic Constitutional Theory J. Harvie Wilkinson III, 2012-03-09 American constitutional law has undergone a transformation Issues once left to the people have increasingly become the province of the courts Subjects as diverse as abortion rights and firearms regulations health care reform and counterterrorism efforts not to mention a millennial presidential election are more and more the domain of judges What sparked this development In this engaging volume Judge 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 Thinkers as diverse as Justices William Brennan and Antonin Scalia Professor John Hart Ely Judges Robert Bork and Richard Posner have all produced seminal interpretations of our Founding document but ones that promise to imbue courts with unprecedented powers While crediting the theorists for the sparkling quality of their thoughts Judge Wilkinson argues they will slowly erode the role of

representative institutions in America and leave our children bereft of democratic liberty The loser in all the theoretical fireworks is the old and honorable tradition of judicial restraint The judicial modesty once practiced by Learned Hand John Harlan and Oliver Wendell Holmes has given way to competing schools of liberal and conservative activism seeking sanctuary in Living Constitutionalism Originalism Process Theory or the supposedly anti theoretical creed of Pragmatism Each of these seemingly disparate theories promises their followers an intellectually respectable route to congenial political outcomes from the bench Judge Wilkinson calls for a plainer simpler self disciplined commitment to judicial restraint and democratic governance a course that alas may be impossible so long as the cosmic constitutionalists so dominate contemporary legal thought

Philosophical Foundations of Precedent Timothy Endicott, Hafsteinn Dan Kristjánsson, Sebastian Lewis, 2023-03-27 *Philosophical Foundations of Precedent* offers a broad deep and diverse range of philosophical investigations of the role of precedent in law adjudication and morality The forty chapters present the work of a large and inclusive group of authors which comprises of well established leaders in the discipline and new voices in legal philosophy The magnitude of the resulting project is extraordinary presenting a diverse array of innovative and creative philosophical investigations of the practice of adhering to past decisions in law and allied fields of practical reasoning And by the same token the contributions elucidate the reasons that courts and other decision makers may have for departing from what has been done before The phenomena under investigation include the law and practice of common law and civil jurisdictions around the world In addition to its fundamental relevance to common law jurisdictions this work will be of broad and significant interest to theoretically minded audiences in continental Europe Latin America and Asia because it involves an extensive study of practices of precedent in civil law systems as well as common law systems

Reflections on Judging Richard A. Posner, 2013-10-07 For Richard Posner legal formalism and formalist judges notably Antonin Scalia present the main obstacles to coping with the dizzying pace of technological advance Posner calls for legal realism gathering facts considering context and reaching a sensible conclusion that inflicts little collateral damage on other areas of the law

Judging Civil Justice Hazel G. Genn, Hazel Genn, 2010 A trenchant critique of developments in civil justice that questions modern orthodoxy and points to a downgrading of civil justice

The Army Lawyer, 2009 *Commitment and Cooperation on High Courts* Benjamin Alarie, Andrew J. Green, 2017-07-25 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

From the Bottom Up Kent Greenawalt, 2016-05-02 Kent Greenawalt's *From the Bottom Up* constitutes a collection of articles and essays written over the last five decades of his career They cover a wide range of topics many of which address ties between political and moral philosophy and what the law does and should provide A broad general theme is that in all these domains what really is the wisest approach to difficult circumstances often depends on the particular issues involved and their context Both judges and scholars too often rely on abstract general formulations to provide answers A notable example in political philosophy was the suggestion of the great and careful scholar John Rawls that laws should be based exclusively on public reason The essays explain that given uncertainty of what people perceive as the line between public reason and their religion convictions the inability of public reason to resolve some difficulty questions such as what we owe to higher animals and the feeling of many that their religious understanding should count urging exclusive reliance on public reason is not a viable approach Other essays show similar problems with asserted bases for legal interpretations and the content of provisions such as the First Amendment

How Judges Sentence Geraldine Mackenzie, 2005 How do judges sentence This question is frequently asked but infrequently explored What factors are taken into account How do judges see their role How do they apply the aims and purposes of sentencing How are factors such as public opinion taken into account *How Judges Sentence* explores these questions through interviews with Queensland judges The judges explain how they come to their decisions when sentencing how they view judicial discretion and how they exercise it The book carefully examines their comments within the legislative and theoretical contexts of sentencing The analysis yields valuable insights into judicial methodologies perceptions and attitudes towards the sentencing process *How Judges Sentence* provides a major contribution to debates on sentencing

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