

How Judges Think

Richard A. Posner

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How Judges Think Richard A Posner

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Cosmic Constitutional Theory J. Harvie Wilkinson, 2012-03-12 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 *Vom Spätsozialismus zur Privatrechtsordnung* Bruno Schönfelder, 2012-01-01

Hauptbeschreibung Gemäß einer landläufigen Vorstellung lässt sich eine Marktwirtschaft nur ertragen wenn sie durch einen rechtlichen und regulatorischen Rahmen kultiviert wird den die Politik zu schaffen habe Tatsächlich ist dieser Rahmen aber selbst nur als Ergebnis einer langwierigen und berraschungsreichen Evolution zu haben die sich nicht durch politische Entscheidungen ersetzen und auch nur begrenzt beeinflussen lässt Deswegen wird hier die Gegenthese vertreten dass die Freigabe der Wirtschaft von politischer Bevormundung recht oft überhaupt erst die Voraussetzungen dafür schafft dass das Rechtssystem eine Entwicklung nehmen kann die wirtschaftliche Hochleistungen ermöglicht Gezeigt wird dies am Beispiel von vier postkommunistischen Ländern Bulgarien Kroatien Slowakei und Tschechien Das theoretische Instrumentarium wird insbesondere von der Luhmannschen Rechtssoziologie bezogen ferner von der Freiburger Schule und der Posnerschen Rechtsökonomik Das Buch wendet sich vor allem an Sozial und Wirtschaftswissenschaftler aber auch an Juristen und Zeithistoriker *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

The Judge Ronald K. L. Collins, David M. Skover, 2017 Employing the great Florentine theorist as its guide *The Judge* describes what judges often do not what they ought to do Book jacket **The Army Lawyer**, 2009 **Was sich nicht sagen lässt** Joachim Bromand, 2010-10-06 Die Welt ist alles was wir in unseren naturwissenschaftlichen Theorien

beschreiben können so eine weit verbreitete Überzeugung die seit den Tagen des Positivismus unser Weltbild bestimmt Aber reicht das tatsächlich schon aus Wer sich am Ideal der wissenschaftlichen Erkenntnis orientiert neigt dazu viele nicht begriffliche Erfahrungsformen zu unterschlagen die uns aus dem Alltag vertraut sind Symbolsysteme wie Musik Literatur oder Bilder Instanzen der unmittelbaren Erfahrung wie Anschauung Wahrnehmung oder Gefühl und den Bereich des praktischen Könnens In der Regel sind wir nicht in der Lage den Gehalt dieser Phänomene vollständig begrifflich wiederzugeben Dennoch ist das weite Feld des Nichtbegrifflichen eine unverzichtbare Voraussetzung unserer Sätze und Gedanken Ohne Kunst Wahrnehmung und Handeln gibt es kein Denken keine Wissenschaft keine Philosophie Der Band geht der Vielfalt des Nicht Begrifflichen in ästhetischen symboltheoretischen und semantischen Untersuchungen nach Aus ihnen ergibt sich ein umfassender systematischer Überblick über eines der spannendsten und offensten Problemfelder der aktuellen philosophischen Debatte Mit Beiträgen von Andreas Bartels Uwe Baumann Volker Beeh Gottfried Boehm Olaf Breidbach Joachim Bromand Gottfried Gabriel Markus Gabriel Ernest Wolf Gazo Annemarie Gethmann Siefert Jürgen Goldstein Jens Halfwassen Thomas Sören Hoffmann Wolfgang Harms Jochen Horisch Peter Janich Guilherme F R Kisteumacher Jakub Kloc Konkolowicz Imi Knoebel Theo Kobusch Klaus M Kodalle Sibylle Kramer Guido Kreis Wolfgang Kubin Sonke Lorenz Antonio Cota Marcal Aliasghar Mosleh Theodoros Penolidis Dominik Perler Hans Joachim Pieper Andrzej Przylebski Birgit Sandkaulen Matthias Schmoeckel Oswald Schwemmer Josef Simon Pirmin Stekeler Weithofer Dieter Teichert Kai Vogeley Gottfried Willems und Gereon Wolters **Beyond the Formalist-Realist Divide** Brian Z.

Tamanaha, 2009-10-26 According to conventional wisdom in American legal culture the 1870s to 1920s was the age of legal formalism when judges believed that the law was autonomous and logically ordered and that they mechanically deduced right answers in cases In the 1920s and 1930s the story continues the legal realists discredited this view by demonstrating that the law is marked by gaps and contradictions arguing that judges construct legal justifications to support desired outcomes This often repeated historical account is virtually taken for granted today and continues to shape understandings about judging In this groundbreaking book esteemed legal theorist Brian Tamanaha thoroughly debunks the formalist realist divide Drawing from extensive research into the writings of judges and scholars Tamanaha shows how over the past century and a half jurists have regularly expressed a balanced view of judging that acknowledges the limitations of law and of judges yet recognizes that judges can and do render rule bound decisions He reveals how the story about the formalist age was an invention of politically motivated critics of the courts and how it has led to significant misunderstandings about legal realism Beyond the Formalist Realist Divide traces how this false tale has distorted studies of judging by political scientists and debates among legal theorists Recovering a balanced realism about judging this book fundamentally rewrites legal history and offers a fresh perspective for theorists judges and practitioners of law The Decision-Making Process of Investor-State Arbitration Tribunals Mary Mitsi, 2018-12-28 In the course of a single investor state dispute an arbitrator may make

numerous decisions from interpreting the treaty or national laws to taking into account case law customs and policies In practice this process raises important issues regarding the consistency of decisions and the predictability and legitimacy of the decision making process in general Investment arbitration tribunals have developed a specialised process of legal decision making adapted to the interpretational needs that arise in the context of an investor state dispute and to the transnational characteristics of the investment arbitration framework This is the first book to offer an in depth analysis of the transnational characteristics of investment arbitration and to analyse the interpretive arguments of investment tribunals and the way they use treaties precedent policies general principles of law and customary law in their decision making process Drawing on publicly available arbitral case law supplemented with personal interviews with investment arbitrators the author touches on such concepts and practices as the following an overview of various decision making genres of arbitral tribunals attitudinal economic strategic and legal the legal argumentation triptych of language rhetoric dialogue the specific language arbitrators have developed when interpreting the law how arbitrators use the concepts standards rules principles and rights the importance of the legal reasoning of arbitral awards and the role of rhetoric therein concepts of acceptability audience and legitimacy limitations of the public international law interpretive methodology enshrined in the Vienna Convention interpretation of precedents customary law general principles of law and policies the way national and international legal orders interact in the context of interpretation and how decision making is connected to the issues of predictability consistency and the rule of law The core of the book proposes a novel full edged dialogical network theory for analysing the interpretation process As an exemplary demonstration of developing theory to keep up with practice this unique book provides a deeply engaged means for enhancing the practice of international arbitration Its introduction of a new field of interdisciplinary analysis employing legal argumentation theories is sure to provide inestimable guidance for institutions and policymakers especially in light of recent proposals for the creation of a permanent investment arbitration court Given that unveiling the legal decision making process is critical for the well being of the whole dispute resolution procedure and that being aware of how arbitrators interpret the law can constitute a roadmap for counsel s arguments and approaches when dealing with cross border disputes the topic of this book is relevant for both academics and practitioners and its significance can only grow as recourse to investor state arbitration continues to expand

The Lawyer-Judge Bias in the American Legal System Benjamin H. Barton, 2010-12-31 Virtually all American judges are former lawyers This book argues that these lawyer judges instinctively favor the legal profession in their decisions and that this bias has far reaching and deleterious effects on American law There are many reasons for this bias some obvious and some subtle Fundamentally it occurs because regardless of political affiliation race or gender every American judge shares a single characteristic a career as a lawyer This shared background results in the lawyer judge bias The book begins with a theoretical explanation of why judges naturally favor the interests of the legal profession and follows with case law examples from diverse areas including

legal ethics criminal procedure constitutional law torts evidence and the business of law The book closes with a case study of the Enron fiasco an argument that the lawyer judge bias has contributed to the overweening complexity of American law and suggests some possible solutions

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The Hollow Core of Constitutional Theory Donald L. Drakeman, 2021-04-08 The first major scholarly defense of the centrality of the Framers intentions in constitutional interpretation to appear in years

Comparative Privacy and Defamation András Koltay, Paul Wragg, 2020-07-31 Providing comparative analysis that examines both Western and non Western legal systems this wide ranging Handbook expands and enriches the existing privacy and defamation law literature and addresses the fundamental issues facing today s scholars and practitioners Comparative Privacy and Defamation provides insightful commentary on issues of theory and doctrine including the challenges of General Data Protection Regulations GDPR and the impact of new technologies on the law

Human Choice in International Law Anna Spain Bradley, 2021-07-22 Human Choice in International Law is an exploration of human choice in international legal and political decision making This book investigates the neurobiology of how people choose and the history of how personal choice has affected decisions about international peace and security It charts important decision moments in international law about genocide intervention into armed conflict and nuclear weapons at the central institutions of the international legal order Professor Spain Bradley analyzes the role that particular individuals serving as international judges or Security Council representatives play in shaping decision outcomes and then applies insights from neuroscience to assert the importance of analyzing how cognitive processes such as empathy emotion and bias can influence such decisionmakers Drawing upon historical accounts and personal interviews this book reveals the beauty and struggle of human influences that shape the creation and practice of international law

Europäische Gerichtsbarkeit auf dem Gebiet des Zivilrechts Hannes Rösler, 2012 Hannes Rösler nimmt die Belastung des Gerichtshofs der Europäischen Union und die wachsende Kritik der Privatrechtswissenschaft an dessen Rechtsprechung zum Anlass der Zusammenarbeit zwischen mitgliedstaatlichen und europäischen Gerichten mitsamt ihren institutionellen rechtsstaatlichen und föderalen Strukturprinzipien erstmals eine breit angelegte Arbeit zu widmen Dazu werden Erkenntnisse aus Politikwissenschaft Soziologie und Ökonomie fruchtbar gemacht und die Nutzung des Vorabentscheidungsverfahrens durch die nationalen Gerichte empirisch ausgewertet Hannes Rösler spricht sich für den Ausbau und für eine Spezialisierung der Unionsgerichtsbarkeit aus Außerdem analysiert er den Einfluss der nationalen Prozessrechts und Justizordnungen auf die Anwendung des Unionsrechts in den Mitgliedstaaten die Anforderungen an die

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