



Divergent Paths: The Academy and the Judiciary

By Richard A. Posner

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Judges and legal scholars talk past one another, if they have any conversation at all. Academics couch their criticisms of judicial decisions in theoretical terms, which leads many judges—at the risk of intellectual stagnation?to dismiss most academic discourse as opaque and divorced from reality. In *Divergent Paths*, Richard Posner turns his attention to this widening gap within the legal profession, reflecting on its causes and consequences and asking what can be done to close or at least narrow it.

The shortcomings of academic legal analysis are real, but they cannot disguise the fact that the modern judiciary has several serious deficiencies that academic research and teaching could help to solve or alleviate. In U.S. federal courts, which is the focus of Posner’s analysis of the judicial path, judges confront ever more difficult cases, many involving complex and arcane scientific and technological distinctions, yet continue to be wedded to legal traditions sometimes centuries old. Posner asks how legal education can be made less theory-driven and more compatible with the present and future demands of judging and lawyering.

Law schools, he points out, have great potential to promote much-needed improvements in the judiciary, but doing so will require significant changes in curriculum, hiring policy, and methods of educating future judges. If law schools start to focus more on practical problems facing the American legal system rather than on debating its theoretical failures, the gulf separating the academy and the judiciary will narrow.

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Editorial Review

Review

[Posner's] caustic wit and brutal candidness are on fine display in [his] latest book, a trenchant dissection of both the academy and the judiciary's flaws...Equal parts edifying and entertaining, *Divergent Paths* is surely the funniest book you will ever read by a sitting federal judge. (Mark Joseph Stern *Slate* 2016-01-14)

The great strength of *Divergent Paths*?and the principal reason it should command the attention of readers?is Posner's candid, compelling and accessible assault on legal formalism (and its kissing cousins, originalism, textualism, literalism, and canons of construction), the dominant method used by federal judges. (Glenn C. Altschuler *Huffington Post* 2016-01-14)

Divergent Paths should certainly be of considerable interest to anyone interested in public policy and academic issues. And anyone interested in the American legal system, at any and all its levels (but especially that of the federal courts), should find themselves very entertained and hopefully helpfully provoked by Posner's book. (M. A. Orthofer *Complete Review* 2015-12-25)

Divergent Paths is a valuable contribution to debates over the future of federal courts and law schools alike...Posner is, as always, uniformly sensible and frequently brilliant. (Kermit Roosevelt *New York Times Book Review* 2016-01-29)

About the Author

Richard A. Posner is Circuit Judge, the United States Court of Appeals for the Seventh Circuit, and a senior lecturer at the University of Chicago Law School.

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