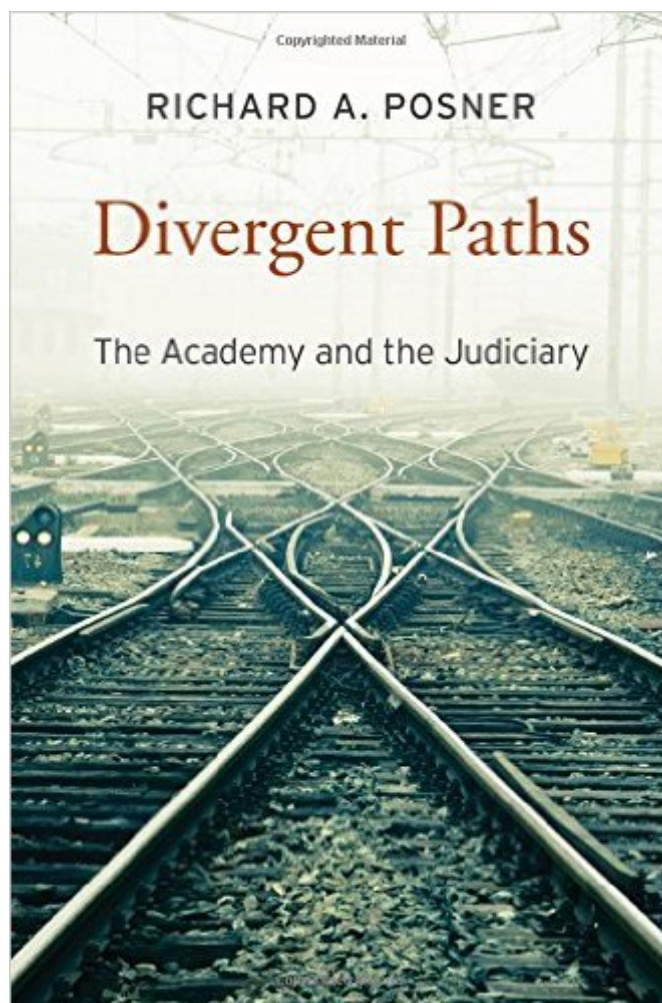


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Divergent Paths: The Academy And The Judiciary



Synopsis

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 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.

Book Information

Hardcover: 432 pages

Publisher: Harvard University Press; 1 edition (January 4, 2016)

Language: English

ISBN-10: 0674286030

ISBN-13: 978-0674286030

Product Dimensions: 6 x 1.3 x 8.4 inches

Shipping Weight: 1.4 pounds (View shipping rates and policies)

Average Customer Review: 4.8 out of 5 stars [See all reviews](#) (8 customer reviews)

Best Sellers Rank: #285,216 in Books (See Top 100 in Books) #48 in [Books > Law > Legal Theory & Systems > Judicial System](#) #112 in [Books > Politics & Social Sciences > Politics & Government > United States > Judicial Branch](#) #134 in [Books > Law > Rules & Procedures > Courts](#)

Customer Reviews

The occasion of a new book by Judge Posner is something to be welcomed--especially when the

topic is the deficiencies of the federal judiciary and whether law school academics can help remedy some of these shortcomings. Posner is uniquely qualified to address this topic, having sat on the Seventh Circuit Court of Appeals for some 34 years, and prior to that having been an academic at the law school of the University of Chicago, where he continues as a senior lecturer. This 406 page work is jammed full of dozens of criticisms, proposed remedies, and details regarding both the federal judiciary and current legal education. It is the distillation of decades of examination and analysis by Posner, supported by an incomparable familiarity with the literature on all these topics. While Posner's views are somewhat inflexible, this is probably the most stimulating and incisive recent book on the federal judiciary I have read. Posner begins with a brief preface and more extensive 50-page introduction in which he lays out many of the themes he later addresses in detail. The wisdom of his dual focus on courts and legal academics soon becomes obvious as he sees the two as linked together yet incapable of helping reform the other. By the time the reader has finished the intro, he is well primed for the vast number of more detailed arguments to come. One unique feature of this book is that Posner has inserted into the text several appendices, where he addresses individual topics (e.g., the changing face of the legal academy) in more expansive detail. This approach turns out to be more effective than placing the appendices at the end of the book.

Judge Posner's insights into the federal judiciary are always welcomed. I've become quite the follower of Judge Posner's works, and would recommend reading "How Judges Think" and "Reflections on Judging" before tackling this book. Although the learning curve is not steep, those books would give the reader a deeper understanding into what Judge Posner considers the flaws in the federal judiciary. I should start by making clear that I am not a federal judge, nor a federal practitioner— at least I do not practice in federal court, but I found Judge Posner's insights to be invaluable as they are still relatable to state courts as well (at least in my state). Also, I do not believe I am the target audience of this book, which is specifically geared towards law schools and their faculty. Although I do not specifically agree with all of Judge Posner's suggested changes, I did enjoy being able to critically think about the problems he attempts to provide solutions for. One example I would like to illustrate is Judge Posner's suggestion that more law clerkable students attend courses in judicial opinion writing. The specific problem he is attempting to fix relates to the poor writing seen in opinions, which he attributes to the vast majority of federal judges having first drafts written by their clerks. Although this solution would benefit the quality of judicial opinions, it all but precludes the idea of fixing the problem by encouraging federal judges to write their own opinions.

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