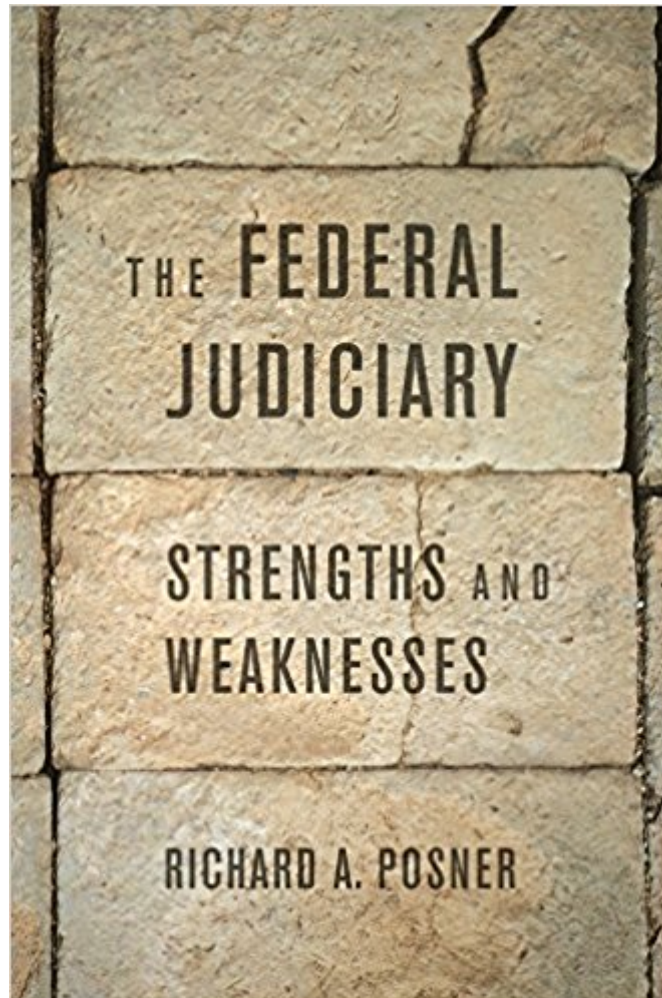




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The Federal Judiciary: Strengths And Weaknesses



Synopsis

No sitting federal judge has ever written so trenchant a critique of the federal judiciary as Richard A. Posner does in this, his most confrontational book. Skewering the politicization of the Supreme Court, the mismanagement of judicial staff, the overly complex system of appeals, the threat of originalism, outdated procedures, and the backward-looking traditions of law schools and the American judicial system, Posner has written a *cri de coeur* and a battle cry. With the prospect that the Supreme Court will soon be remade in substantial, potentially revanchist, ways, *The Federal Judiciary* exposes the American legal system's most troubling failures in order to instigate much-needed reforms. Posner presents excerpts from legal texts and arguments to expose their flaws, incorporating his own explanation and judgment to educate readers in the mechanics of judicial thinking. This rigorous intellectual work separates sound logic from artful rhetoric designed to subvert precedent and open the door to oblique interpretations of American constitutional law. In a rebuke of Justice Antonin Scalia's legacy, Posner shows how originalists have used these rhetorical strategies to advance a self-serving political agenda. Judicial culture adheres to an antiquated traditionalism, Posner argues, that inhibits progressive responses to threats from new technologies and other unforeseen challenges to society. With practical prescriptions for overhauling judicial practices and precedents, *The Federal Judiciary* offers an unequalled resource for understanding the institution designed by the founders to check congressional and presidential power and resist its abuse.

Book Information

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Customer Reviews

Posner's newest book is a delightfully iconoclastic critique of ideas many judges and academics hold dear, full of interesting, original, and wide-ranging claims for reform in the federal judiciary and law school teaching. (Victoria Nourse, author of *Misreading Law, Misreading Democracy*) In this book on the federal judiciary, Judge Posner takes aim at every sacred legal cow: the Supreme Court and its Justices; law schools; the existence, even desirability, of apolitical judges. His critique of the federal bench as dangerously enthralled to backward-looking judicial standpattism will be controversial, as will his proposals for reform, but they cannot be ignored. (William D. Popkin, Indiana University Maurer School of Law) Persuasive – Serious-minded readers who relish an intellectually challenging read – will appreciate Posner's reasoning. (Publishers Weekly 2017-06-12)

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.

Good overview of deficiencies of the judiciary. Little, really no, talk of strengths. Typical Posner style expanding on the subjects in his last book.

Richard Posner has served on the Seventh Circuit Court of Appeals for 36 years. In addition to teaching at the University of Chicago Law School since 1969, he has written by my account nearly 40 books and countless articles and judicial opinions. His books cover a wide range of topics, from Public Intellectuals, to the Clinton impeachment, and various technical topics such as antitrust law and law and economics. He is, by all measures, an extremely formidable intellect. Among his primary interests are reform and improvement of the federal judiciary; this book is the most recent manifestation of that interest. I believe in all he has written five books on this topic. He spares no mercy toward his judicial colleagues, including the Supreme Court of which he is currently quite critical. Think of this book as a severe and thorough working over of the federal courts by one of its own members who knows the many defects first hand, and is anything but shy about going public and naming names. Folks who have read any of Posner's most recent books on this topic--e.g., "Reflections on Judging" or "Divergent Paths"-- will find some overlap with this volume. But even on topics he has discussed before, Posner adds new arguments and wrinkles to his discussion. A word must be said about Posner's methodology. The book has individual chapters on district courts, courts of appeal and the Supreme Court, as well as a chapter on civil litigation. The very long

introduction lays out Posner's major points in a hefty 45 pages. When tackling a court, Posner writes as if he is engaged in free association. Topics just pop up in no particular order, as if an idea occurs to Posner so he writes a section on it. This can become challenging, especially in the 156 page chapter on the Supreme Court. But this format allows him to cover a vast number of individual topics in each chapter. As usual, Posner is dead-on for the most part in identifying the minor and significant defects he sees in the federal court system. Once again, he does irritate me on several points. Posner argues that relative to con law issues, judges should not look backward in interpreting constitutional provisions but instead recognize that these 1787 clauses cannot be pertinent to many issues today. This is part of his continuing attack, and quite a deadly one in my opinion, on Justice Scalia and originalism. Instead pragmatic interpretation should be undertaken. But he never recognizes that few judges are as equipped to undertake this process as is he. One person's speculative pragmatic solution might result in all manner of disastrous interpretations. Are we talking Platonic Guardians here? The other bone I have to pick with the good Judge is his contentions that appellate judges should feel free to invoke the internet to do supplemental factual research in passing on an appeal. In other words, unknown to counsel in the case, judges should rummage around in the internet to gather additional facts to incorporate in their decisions. One interesting section of the book invokes Posner's colleague, Judge Hamilton, who meticulously deconstructs a Posner opinion making this argument. Posner is a master at chewing up opinions and arguments with which he disagrees; for once, it is good to see him being on the receiving end. This book is 430 pages long; so it takes some time to review Posner's arguments. There is no question in my mind, after litigating in federal courts for 40 years or so, that this is an extremely valuable even essential book. The endless free association can become burdensome, but Posner is laying out extremely valuable ideas and suggestions. Only the chapter of civil litigation would I say can be avoided unless you are engaged in this process. Harvard University Press is to be commended for placing the notes where they belong--at the foot of each page. So, once again, a bull's eye for Judge Posner--sometimes a spicy brew to swallow, but an essential one to be sure.

A mishmash of half-baked ideas, a hasty copy-and-paste dump. Don't waste your time or money on this mess.

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Hearing Before the

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