THE PLACE AND USES OF JURISPRUDENCE IN THE LAW SCHOOL CURRICULUM *

LON L. FULLER†

MY REMARKS will fall into four subdivisions which carry, I fear, rather hackneyed headings. These are: What? How? When? and Why? First, *What?*—that is, what knowledge or insight should the course in Jurisprudence attempt to convey to the student? Second, *How?*—that is, what is the best method of instruction to follow in giving the course, and how should the course be organized and conducted? Third, *When?*—At what point in the student's studies should the course come; and more particularly, should it come in the first, second, or third year? Fourth, *Why?*—that is, why should there be a course in Jurisprudence at all? Are not all courses properly courses in jurisprudence, and if so, then why is a separate course needed?

WHAT?

The purpose of the course in Jurisprudence should be to uncover, and to subject to critical examination, the basic premises that underlie reasoning about legal problems. More accurately, the course should press the inquiry into basic premises a step further than is possible in other law school studies—for we should not delude ourselves into believing that we shall end with all mysteries purged and all contradictions resolved.

At the same time, we cannot in advance impose limits on the scope of our inquiry. If we start with the influence of historical forces on the law, we may be carried back to the problem of choosing among competing ways of interpreting history; this problem leads easily into epistemology, whence the step to metaphysics is tempting and perhaps unavoidable. Obviously, if the course in Jurisprudence is to retain usefulness for the average student it must stop somewhere short of involvement in those basic problems of the theory of knowledge and of reality that generations of philosophers have been unable to solve. By the same test of usefulness it must make a closer approach to these ultimate problems than the remainder of the law school curriculum. Just where the line is drawn will depend on the teacher, his students, and the interaction of their minds.

* This paper represents the revision of a talk given before the Round Table on Jurisprudence at the 1948 meeting of the Association of American Law Schools.

† Carter Professor of General Jurisprudence, Harvard Law School.

I share the opinion of Jerome Hall, evidenced in his excellent *Readings*,[1] that Jurisprudence should start with justice. I place this preference not on exhortatory grounds, but on a belief that until one has wrestled with the problem of justice one cannot truly understand the other issues of jurisprudence. Kelsen, for example, excludes justice from his studies because it is an "irrational ideal" and therefore "not subject to cognition." The whole structure of his theory derives from that exclusion. The meaning of his theory can therefore be understood only when we have subjected to critical scrutiny its keystone of negation.

To make my meaning clearer, I should like to quote and discuss at some length a short passage from one of Professor Kelsen's articles. I choose this passage for analysis not because the Pure Theory of Law has become in any sense an active issue in American legal thinking. Despite Kelsen's world-wide fame, his views are scarcely known among lawyers and law teachers in this country. But the curious truth of the matter is that his theory, despite its abstruse and recondite appearance, is only a development of the implications of views about law that are not only widely held, but actually commonplace. As Kelsen himself says, his theory "only raises to consciousness what all lawyers do, though often unconsciously, when in conceiving of the subject matter of their study they reject natural law (or in other words, restrict themselves to the positive law), and at the same time regard the thing they study, not as a phenomenon of power, but as law. . . ."[2] There are a good many more Kelsenites than there are readers of Professor Kelsen's books. If the Pure Theory seems unfamiliar, the reason is that men have not stopped to examine or elaborate the implications of their own beliefs.

In discussing the relation of his theory to that of Austin, Kelsen wrote in 1941:

Justice is an irrational ideal. The usual assertion that there is indeed such a thing as justice, but that it cannot be clearly defined, is in itself a contradiction. However indispensable [justice] may be for volition and action of men, it is not subject to cognition. Regarded from the point of view of rational cognition, there are only interests, and hence conflicts of interests. They can be solved by an order that either satisfies one interest at the expense of the other, or seeks to establish

[1] JEROME HALL, READINGS IN JURISPRUDENCE (1938).

[2] DIE PHILOSOPHISCHEN GRUNDLAGEN DER NATURRECHTSLEHRE UND DES RECHTSPOSITIVISMUS 12 (1928). In this passage Professor Kelsen is speaking of his concept of the "basic norm" rather than of his system as a whole. But since the basic norm is really the keystone of his theory, his observation may be applied to the implications contained in the basic norm as well as to the norm itself.

a compromise between the two. That only one of these two orders is "just" cannot be established by rational cognition. Such cognition can grasp only a positive order evidenced by objectively determinable acts. This order is the positive law. Only this can be an object of science.[3]

In this passage we have, pressed together like sardines in a box, a remarkable series of propositions about ethics, psychology, epistemology, and metaphysics, all of which deserve close study.

"Justice is an irrational ideal. The usual assertion that there is indeed such a thing as justice, but that it cannot be clearly defined, is in itself a contradiction." Does this assertion imply that when men have difficulty in defining a thing, this is proof that it has no existence? What then of Truth, the standard by which Kelsen tries Justice and finds it wanting? (A wholesome exercise for the skeptic who asserts that nothing demonstrably true can be asserted about justice is to look up in a good philosophic dictionary the definition of the word "true.") Does it follow from Kelsen's reasoning that since physicians have difficulty in defining health, and argue about its meaning, it is nonexistent, and there is no difference between a sick man and a well man? If this is a false analogy, what makes it false? (I do not say, of course, that the analogy is exact; I only suggest examining it candidly.)

"However indispensable [justice] may be for volition and action of men, it is not subject to cognition." Wars may be waged, men hanged, and governments founded on an "irrational ideal," but it is forbidden to write books about it. What is the source of this taboo? On what undisclosed wisdom does it rest? If men can draw the premises for their action from their bones, why are they not free to take the premises for their reasoning from the same source? (I do not recommend the procedure; I only raise the issue of the justification, on its own premises, for this view of Kelsen's, which is in fact so commonly held as to be almost trite.)

"Regarded from the point of view of rational cognition, there are only interests, and hence conflicts of interests. [These conflicts] can be solved by an order that either satisfies one interest at the expense of the other or seeks to establish a compromise between the two." This is the familiar modern notion that every conflict in society is the sympton of a struggle for power, the outcome of which can only be the victory of one side over the other, or some kind of splitting of the difference. This assertion contradicts what is known by every lawyer with any experience in negotiating contracts or drafting statutes, namely, that it is often possible to remove a clash of interests by a rearrangement of

[3] *The Pure Theory of Law and Analytical Jurisprudence*, 55 HARV.L.REV. 44, 48–49 (1941).

men's relations that will let both parties have substantially what they want. In discussing this view of Kelsen's my colleague Henry Hart and I have come to call it "the fallacy of the static pie." It assumes that the law has to do with slicing up an existing pie of fixed dimensions; it forgets that the way in which society is ordered by law helps to bring the pie into existence, and determines in part how big it will be. There are rules of law that tend toward big pies, and rules that tend toward little pies. Some of the rules that on the surface seem merely to decide whether *A* or *B* gets the bigger slice may in the end really be determining the size of the common pie.

"[*Rational*] *cognition can grasp only a positive order evidenced by objectively determinable acts. This order is the positive law. Only this can be an object of science . . .*" Is this "positive law" that is an "object of science" a fact that exists, or is it something brought into being by the somewhat overwrought cognition of Kelsen? If it exists, does it exist, as Kelsen assumes, independently of the purposes it serves, or is it something that can be understood (in Kelsen's language, "become an object of cognition") only when viewed in the light of what it is trying to do? Can anyone take a living rule of law and say, "Here is exactly the point where the rule itself leaves off, and here is the point where men's ideas of what the rule ought to be begin?" If this is not possible, then must we not re-examine this conception that "positive law" is something clean-cut and definite, an "independent object of cognition"? If we aim at fidelity to established law, may we not achieve that aim more effectively if we see established law itself as an ideal, as a striving?

These are, in brief summary, some of the issues with which the course in Jurisprudence should, in my opinion, begin. I would not attack these issues with the notion that a simple and inclusive answer could result. On the contrary, I should anticipate that no such answer would in the nature of things be forthcoming. I should seek, rather, to recreate in the student's mind some appreciation of the premises rejected or accepted when men make certain commonplace observations about justice and its relation to law.

I believe our present climate of opinion stands very much in need of a fresh approach to the problem of justice. As some evidence of this assertion, I should like to offer in proof the first chapter of the widely used *Materials for Legal Method,* edited by Professors Dowling, Patterson, and Powell.[4]

[4] NOEL T. DOWLING, EDWIN W. PATTERSON AND RICHARD R. POWELL, MATERIALS FOR LEGAL METHOD (1946). The Preface states that Professor Patterson is primarily responsible for Chapter I.

In this chapter, which introduces the student generally to the law and his profession, the student learns that there are two "authoritative" sources of law: precedents and legislation. He is then told that back of these authoritative sources are certain "ultimate or non-authoritative" sources, sources that feed the authoritative sources, as it were, when law is being made. There are only two of these ultimate sources with which the first-year student should concern himself. They are: (1) "the prevailing customs, habits and attitudes of men," or more briefly, the *mores* of society; (2) the traditions and customs of the legal profession, supplemented by treatises and articles written by legal scholars.

Now what I miss in this exposition is the suggestion that an "ultimate or non-authoritative source of law" might lie in the simple fact that the rule proposed for adoption is the one that is *right* for the situation, that it reaches the result most consonant with the interests and desires of the generality of men, that it eliminates a source of friction and provides a formula by which men may work together in harmony to achieve a common goal, that it is the rule that will make for a bigger pie.

As Professor Patterson defines the "ultimate or non-authoritative" sources of law, these are the sources to which the state official (legislator or judge) has recourse in making law. A simple illustration will test the validity of his analysis. Let the reader suppose that he has been commissioned to draft a comprehensive statute for the regulation of automobile traffic. What would he be able to derive from these "non-authoritative sources" of Professor Patterson's? Certainly he would get little of value from legal treatises, or the customary attitudes of the legal profession. He would, of course, want to know something about the *mores* of drivers and back-seat drivers, for he would not want his regulations to act too disruptively on ingrained habits. Primarily, however, what he would seek would be a set of rules that would keep people from running into one another, which would, at the same time, not slow traffic unduly or create impossible burdens of administration for traffic officers and traffic courts. In other words, the sources of his law would lie in the necessities inherent in the problem with which he had to deal. Given a situation, and given certain generally felt and accepted human desires about that situation, his task would be to work out a way of effectuating those desires within the compulsions of the situation to which they relate.

In brief, it seems to me that this first chapter of Professor Patterson's loses sight of the ancient maxim *ex facto oritur jus*. This is not because he assumes the logical completeness of existing law, or a merely

mechanical application of law. He expressly warns the student that the "personal beliefs or prejudices of the judge, the jurors and witnesses . . . may affect the outcome of litigation in a way not predicted by legal norms." The law may be twisted by prejudice or idiosyncrasy, and the student should know that from the outset. But no warning is conveyed that the "outcome of litigation" may be something "not predicted by legal norms" simply because the judge wants desperately to do the right thing in the case before him. There is no suggestion that there can be such a thing as a tension between established law and the ideal of justice.

So far as I know, the only explicit recognition of rightness or justice as an independent source of law is found in a third "ultimate or non-authoritative source of law," which the first-year student is expressly advised to exclude from his studies:

> Finally, outside the body of professional traditions and treatises, and above the mores of a particular time and place, one finds a body of *philosophical* speculation about law, about the justification and ends of the state, about the ethics of human conduct. They influence the law over long periods of time, and with glacial speed. To detect their influence requires a comprehensive knowledge of the law, and hence the beginning law student, though he should be aware of the possibility, must defer the study of their significance.[5]

I personally do not believe that this is a true statement. I think that even the simplest problem of contract or tort law contains implicit within it issues concerning "the justification and ends of the state, about the ethics of human conduct." I do not believe that answers to these issues operate over centuries with glacial speed; on the contrary, I think they influence daily in divergent ways the disposition of litigation of the homeliest sort.

But the point I wish to drive home is not that the answers Professor Patterson gives to the problem of justice are wrong, but that he does not really open the problem for discussion at all. I have not quoted from his chapter because I regard the views expressed in it as unusual. On the contrary, I think they are shared by a considerable portion of the profession, an inference that the great popularity of the book tends to confirm. The fact that these views are so generally held makes it all the more important, as I see it, that the course in Jurisprudence begin by facing frankly the issue that Professor Patterson and his colleagues pass by in virtual silence.

[5] *Id.* at 14.

How?

So far as my own experience goes there are three general ways of organizing and conducting a course in Jurisprudence.

First, the course may be organized as a general survey of jurisprudential thought. There may be a text (say, Paton, Stone, Friedmann, or Bodenheimer, or one of the older favorites, like Salmond or Gray). There may, in place of the text, or along with it, be a collection of readings that will attempt a comprehensive coverage of the field. In such a course, a good deal of attention is likely to be given to the question of allocating writers to the proper "schools." "Schools" will be emphasized because there will be too many writers to be remembered unless they are put together in convenient bunches. Students will, of course, be encouraged to go to the original sources, or at least to those that happen to attract them personally. The schedule of assigned readings (and perhaps writings) will be sufficiently heavy, however, so that for the most part students will be working with "secondary sources," which is a polite name for learning what *A* thought by the process of reading what *B* thought *A* thought. I shall call this type of course the *comprehensive survey course.*

The *second* type of course I should call the *one-man course.* This is a course, as it were, in teacher. The writings studied are the professor's writings. These may be supplemented by the works of a few thinkers who have significantly influenced the instructor's own thought. Typically, these writings will be in some field falling outside the usual boundaries of jurisprudence; they may, for example, be in the field of physics or anthropology. The students may also be asked to read certain published criticisms of their instructor's views, where these criticisms display misunderstandings that have pedagogical value. The boundaries of the course are, however, rather firmly fixed by the professor's own interests, and his writings are the main object of study. The late Professor Walter Wheeler Cook's course was an outstandingly successful example of this type.

The *third* type of course is founded on the reading and discussion of representative works or extensive selections from, say, ten to fifteen different authors. These authors are selected because they represent divergent points of view of fundamental significance. They need not be ancient, but may be. All students will read the same materials. Classes, so far as possible, will be conducted on the discussion basis. Each author will be studied closely to see what he has to say, without much reference to the "school" to which later scholars have assigned him, or to the views of predecessors that may have influenced him, or to

the things that may have happened to his theories in the hands of his disciples—the "neo's" will, in other words, be left out, or relegated to the footnotes. I shall call this kind of course the *reading-discussion course.*

Each of these ways of treating the subject has its virtues and its defects. The *survey course* tends easily to spread itself too thin. The student is likely to end up with the conception that jurisprudence consists of a series of bizarre views entertained by men who had no particular reason except the pressure of circumstance or personal whim for adopting them. He is like the student who has taken an introductory course in philosophy and who ends with the knowledge that there was one Greek who thought the whole world was fire, and another who was sure it was water, that Plato thought ideas floated around like ghosts, while a German with a long name believed the world was composed of "will and idea." What is most apt to be lacking in any survey course is a sense of the *problems* being attacked. This can usually be got only by a close, paragraph-by-paragraph study of a writer who is struggling with these problems. The virtues of the survey course lie naturally in its comprehensiveness. If it is well given, it counteracts dogmatism by reminding the student of the variety of views that may be entertained about certain fundamental issues, and it furnishes him a foundation for his later self-education.

The *one-man course* rests on the sound principle that there is no better integrative device or formula than a single human being. The students have the object of their study directly before them. If they have difficulty in understanding something assigned for reading, they can ask the writer what he meant, and in the process educate both themselves and him. As I see it, the difficulties with such a course are, first, that it takes an awfully good man; and good men, or men *that* good, are scarce. Secondly, can we realistically expect a fair and open class discussion of teacher's own views? What will the instructor say when a student speaks up in class and asks, "Didn't Professor Jones really score a good point in his criticism of your book, and haven't you failed to see what he was driving at?" At this point the instructor may, of course, lean forward in eager anticipation of an interesting discussion. But if we have any uncertainty about his reaction, may not the student share that uncertainty? If he does, is he not likely to suppress his question?

Every course tends inevitably to be a one-man course. There is no other way of arranging things. By and large the influence of the instructor over the course will increase with the intrinsic force of his own ideas. But if this is so, may the instructor not best make his own

distinctive contribution while he and his students are directing their minds toward the words of someone else—words that can serve as a foil for their own exchange of views?

The *reading-and-discussion course,* in comparison with the *survey course,* leaves gaps and may produce a distorted perspective, at least unless notes and commentaries correct this tendency. The student may end by thinking he knows all about jurisprudence, when he has had only a sampling. Another disadvantage lies in the fact that it is difficult to get a good discussion of philosophical readings by students who have become accustomed to the sharp drawing of issues characteristic of the case method. Such students are properly impatient with abstractions that have no implications for cases, but often lack the imagination to see the significance of what they read for the daily problems of the law.

After a good deal of experimentation, I am inclined to the third type of course—the course that centers about the reading and discussion of a few representative authors.[6] In order to stir up discussion, and

[6] At this point I feel it is desirable to ward off a possible misunderstanding, though I regret having to introduce what may be called an institutional note into these remarks. I have learned from experience, however, that there are "eyes that fix you in a formulated phrase," and that there are readers more interested in discovering some convenient clue that will assign the writer to his proper "school" than in the writer's actual thought.

It is obvious that what I have called the *reading-discussion course* might have been called a Great Books course. I shall also shortly mention Aristotle without overt manifestations of distaste. There seems to be a notion afloat that there exists a philosophy called "The Chicago School" and that anyone who has any traffic with Aristotle, or instruction by the Great Books method, must be an adherent of that philosophy. Now I do not know whether there is such a philosophy, or, if it exists, just what its tenets are. That being so, I can hardly consider myself an adherent of it. I do know that Professor Adler is attempting to reduce the world's wisdom to a hundred index headings, and that these headings include the word "angel," but no word that means anything like contract, exchange, bargain, deal, or compact. To me, as a teacher of Contracts, it seems incredible that the world's wisdom should relegate an idea so basic to a kind of subheading in order to make way for a concept like "angel."

I have been told that there is a certain pervasive animosity around Chicago toward American pragmatism. If so, I find myself definitely out of their camp on this issue. Indeed, I think we need the insights of James and Dewey more badly today than ever. It is only those insights that will enable us to see the fallacy that underlies Hans Kelsen's Pure Theory of Law, a fallacy once shared, I think, by most of our American realists. I refer to the notion that there is a kind of pure fact of law that can be an object of study independently of the purposes sought by judges and legislators. With Realism, this pure fact of law consists in certain alleged configurations called "the behavior patterns of judges" which are supposed to exist and be the objects of study by legal scholars. With Kelsen, this pure fact consists in the positive law itself, divorced from its objectives. I know of no better way of revealing the error in these assumptions than to go back to that aspect of the pragmatic philosophy which Stephen Pepper has called "contextualism," which demonstrates that when you are dealing with purposive human acts, a single part of the act cannot be given a meaning distinct from the whole act itself and the purpose it seeks to achieve. There is in reality no pure fact of law, and no pat-

bridge the gap between such a course and the other courses in the law school, I have been using two devices: (1) Notes which raise specific problems and relate the readings to litigated cases, or issues of obvious practical significance; (2) imaginary judicial decisions. These imaginary judicial decisions are used to introduce the student to certain chapters of the readings. In these cases, laid in a mythical jurisdiction, five judges bring to bear on the same controversy five different philosophical points of view. The facts of these cases are used as a kind of touchstone to bring out the significance of divergent conceptions of the ends of law and the state.

My own readings include Aristotle's chapter on Justice (with some comparison of Aristotle's discussion of the justice of reciprocation with what is called the Commodity Exchange Theory of Law in Soviet legal theory); selections from Austin, Gray, Holmes, and Beale; the first half of Maine's *Ancient Law;* some selections from Bentham, followed by Mill's *Essays on Utilitarianism* and *Liberty;* Corbin's exposition of the Hohfeldian analysis, followed by an article by Cook applying its concepts to specific cases; and finally a chapter called The Principles of Order, which is a concession to the one-man school, being written by myself. In addition there are three imaginary cases, with an additional one planned but as yet unwritten.[7]

WHEN?

In my opinion, Jurisprudence should come in the second year. If it comes in the first, inevitably during part of the time students will not really know what they are talking about. If it is postponed until the second year, a common fund of allusion will have become

---

tern of official behavior, that is separable from the objects sought by judges and legislators. The concept has about as much substance as the word "however" standing in the middle of a blank page.

My own conviction is that there exists at Chicago a great variety of points of view, and a climate of controversy and discussion that most universities might envy. In any event, none of these considerations has anything to do with the Great Books method, considered as a method of instruction. This way of teaching seems to me to be a capital contribution, that should not be rejected simply because it has acquired in some minds objectionable ideological connotations. I need not add that the principle I have adopted in selecting readings for study is not that they be "authoritative," but that they open up for discussion the most basic and recurring problems.

[7] Before they can be said to mark a significant advance toward the educational goals I have been describing in this article, the materials I am now using will have to be very considerably revised. One defect of the collection of readings as it now stands is that the imaginary decision with which it begins does not lead naturally into the chapter from Aristotle, and it is to fill that gap that I plan another imaginary decision. Though I am sure justice is the right place to begin, it is certainly a hard beginning, and the resignations from my course reach their high point about the time we get half-way through Aristotle's chapter.

available to instructor and student by which the course can be given points of concrete reference. Furthermore, I do not believe that the fundamental issues with which jurisprudence must deal can really be understood by one who has no technical knowledge of law, who has never seen the law in action. For example, those who fear disorder above every other evil will have a natural inclination to prefer a system of law by which judges adhere closely to established precedents and legislate at the most within very narrow limits. Yet how can this issue be understood unless one has seen precedent law in action, and has seen what stresses are set up, and what contradictions arise, when an attempt is made over a period of decades to build more or less mechanically on the precedents of the past? Jurisprudence should be philosophy, but it should be philosophy viewed through eyes that have seen how law looks when it comes to cases.

Jurisprudence should be taken before the third year so that the student will have a chance to apply the insights he has acquired while he is still in an academic atmosphere and has time to get up and stretch himself intellectually once in a while. A student who goes into the course in Conflicts with some understanding of Austin, and some grounding in problems of legal analysis, is inevitably going to get more out of the course than if he went into it without that background. He will also be better prepared to deal with the fundamental problems raised by some of the public law courses usually given in the third year; he will bring more to those problems and take more away from their study.

I have another and more insidious reason for wanting Jurisprudence to come in the second year. This lies in a hope that students who have had such a course may exercise a beneficial influence on the scope of the courses they take thereafter. They will have learned to see some of the unstated premises and tacit rejections that lie back of much legal reasoning; they will have acquired the courage to raise fundamental issues not mentioned by court, counsel, casebook editor, or teacher. They may occasionally suggest gently that the king doesn't have any clothes on, or that he is very scantily clad. They will not have a chance to make this disruptive contribution to legal education unless they have had Jurisprudence before the third year.

WHY?

As I have previously indicated, I mean chiefly to raise under this heading the question of the justification for a separate course in Jurisprudence.

The necessity for a separate course in Jurisprudence I can illustrate best by something that happened in my class in Contracts recently. We were discussing the question, Under what circumstances does silence in the face of an offer constitute acceptance? Some of the cases we had read made this question depend on another question, or on what was at least phrased as another question: that is, When does an offeree have a duty to speak? If he has a duty to speak, and remains silent, he accepts; if he has no duty to speak, then his silence cannot be counted against him. That was the way the cases talked, and the students had accepted that analysis and were discussing whether in the particular case before us there was properly a duty to speak. Arguments were made that under the circumstances of the case it was the fair and decent thing for the offeree to speak up if he did not wish to accept, and he therefore had a duty to speak. Whereupon one student said, "But before a duty can have any legal effect, it must be a legal duty. These gentlemen are talking about a moral duty."

How can one deal adequately with a question like that *interstitially,* as some want jurisprudence to be taught? I could have told the student that talk of rights and duties in judicial decisions is mere rationalization that has nothing to do with the results reached, but this would have been one of those facile and sophisticated distortions by which we escape the necessity for an examination of complex problems. I could have told him that legal rights and moral rights blend into one another, but this would not really have met his perplexity. I could tell him, as I did, that in the progress of the law things called moral duties are inevitably converted into things called legal duties, though the question before us did not involve necessarily the problem of extending existing rules. I tried to deal with this question by asking a few questions in turn. I tried not to block off the lines of inquiry he had opened up, suggesting that he was dipping into one of the deepest wells of the law.

Perhaps the reader may feel that I have made more of this innocent question than I should, and that it does not really have the profound implications I read into it. Yet in my own course in Jurisprudence I postpone until near the end the whole problem of legal analysis, and the function of concepts like "right," "duty," and "privilege" in legal thinking. To me these simple-sounding words are a kind of microcosm, reflecting in their varying usages most of the basic issues of legal philosophy. One of my imaginary decisions has been designed to bring this out.

Whether I am right about this or not, I should like to reassert the view I expressed at the outset, that the fundamental purpose of the course in Jurisprudence should be to create in the student's

mind an *awareness of problems,* rather than to inculcate in him a point of view. If I have any object of indoctrination it is, in the words of Reed Powell, to spread the gospel that there is no gospel that will save us from the pain of deciding at every step. Our greatest danger is that we will decide issues without knowing it, that we will act on the basis of what Mach called "unconscious metaphysics," that we will accept as truisms, beyond the reach of philosophy, propositions that are in fact loaded with philosophical preconceptions. If Jurisprudence can save a tithe of our students from these intellectual hazards, it will have justified itself.