

SYLLABUS: JURISPRUDENCE: UNIVERSITY OF ST. THOMAS SCHOOL OF LAW
Fall, 2010

Part I: What Is Law? The Three Major Responses: Positivism,
Natural Law, the Historical School:

A. Introduction: The Three Main Schools of Thought:

Class One: The Schools of Jurisprudence:

Readings:

(a) "What Is Law?" in Harold J. Berman,
William R. Greiner, and Samir N. Saliba, The Nature and Functions
of Law, 5th ed., 1996, pp. 15-23.

(b) Harold J. Berman, "Integrative
Jurisprudence," 76 California Law Review 779-801 (reprinted in Harold
J. Berman, Faith and Order, pp. 289-306).

Questions:

(a) What are the major schools of
jurisprudence?

(b) How do they interact? How are they
different?

B. Legal Positivism:

Class Two: The Origins of Legal Positivism: The Work
of John Austin:

Readings:

(a) Excerpts from Jethro Brown, The Austinian
Theory of Law: Being an Edition of Lectures One, Five, and Six of
Austin's Jurisprudence.

(b) City of Kenosha v. Bloom, 105 Wis. 2d 761,
1981 Wis. App. Lexis 3496 (1981).

Questions:

(a) Is law primarily habitual obedience to a
command backed by superior force?

- (b) Can there be a law without a sanction?
- (c) Is the reasoning in City of Kenosha v. Bloom defensible?

Class Three: The Utilitarianism and Positivist Thought of Jeremy Bentham:

Readings:

- (a) "Of the Principle of Utility" (from Jeremy Bentham, Principles of Morals and Legislation).
- (b) "Of Laws in General" (by Jeremy Bentham).

Questions:

- (a) Greatest good for the greatest number: What are its strengths and what are its weaknesses as an organizing principle?
- (b) What is Bentham's definition of law?
- (c) Is Bentham's pleasure/pain dichotomy sufficient for a workable theory of jurisprudence?

Class Four: Positivism Grounded on Social Theory: H.L.A. Hart:

Readings:

- (a) Neil MacCormick, "Hart's Conception of Law."
- (b) Neil MacCormick, "Social Rules."

Questions:

- (a) What are primary and secondary rules?
- (b) What is the rule of recognition?
- (c) What is the source of social rules? What is the relationship of social rules and legal systems?

Class Five: Ronald Dworkin's Criticism of Legal Positivism: Principles and Rules:

Readings:

(a) Ronald Dworkin, "The Model of Rules," 35 University of Chicago Law Review 14-46 (1967).

Questions:

- (a) What are principles? What are policies?
- (b) What are Ronald Dworkin's criticisms of positivist theory?
- (c) Can you remain a positivist after reading Dworkin? (consider the "pro" and "con" side of this question)

Class Six: A Case Study in Positivism and Its Discontents: Henningsen v. Bloomfield Motors, Inc., 32 N.J. 358, 161 A. 2d 69 (1960).

- (a) How many principles can you identify in Henningsen? How many policies?
- (b) What is holding? What is dicta? (We will return to this question in subsequent classes).
- (c) Consider the frequency with which words like "justice," "injustice," and their cognates are used: what does this consistent usage say about the separation of law and morality?

Class Seven: A Practising Positivist: Positivism and the Sovereign Will of the People in a Democracy: The Jurisprudence of Antonin Scalia:

Readings:

- (a) Antonin Scalia, "Originalism: The Lesser Evil," 57 University of Cincinnati Law Review 849 (1989), pp. 854-865.
- (b) Antonin Scalia, A Matter of Interpretation, pp. 9-13.
- (c) Antonin Scalia, "Of Democracy, Morality, and the Majority," Origins, June 27, 1996, pp. 86-90.
- (d) Excerpts from Troxel v. Granville, 530 U.S. 57 (2000), pp. 60-67, 91-93.
- (e) Gregory J. Sullivan, "Troxel was a Bad Law,

But Not an Unconstitutional One," New Jersey Law Journal, July 24, 2000.

Questions:

(a) How does the Constitution function as a Rule of Recognition? How does originalism serve the legitimacy of the process?

(b) What is the significance of the democratic process to Scalia's positivism?

(c) Can one separate law and morality the way Scalia wishes?

(d) Consider Troxel: Is it correct to say that natural-rights arguments are appropriate in the legislative context and not in the judicial context?

C. Natural Law:

Class Eight: Classical Theories of Natural Law: Aristotle, Cicero, and the Naturalist Foundation of Roman Law:

Readings:

(a) Wayne Morrison, Jurisprudence: From the Greeks to the Post-Moderns (1997), pp. 41-49 (on Aristotle).

(b) Wayne Morrison, Jurisprudence: From the Greeks to the Post-Moderns (1997), pp. 51-56 (on Cicero).

(c) Edgar Bodenheimer, Jurisprudence: The Philosophy and Method of the Law, rev. ed. (1974), pp. 15-20 (on Roman Law).

(d) One paragraph excerpt from Swift v. Tyson, 41 U.S. 1, 19.

Questions:

(a) What is the Aristotelian conception of natural law? Of law in general?

(b) What is meant by teleology (purposive analysis)?

(c) What are the philosophical foundations of natural law?

(d) What does Swift v. Tyson say about the early Supreme Court's commitment to natural law?

Class Nine: Medieval Natural Law Thought: The Legal Philosophy of St. Thomas Aquinas:

Readings:

(a) Hans Meyer, The Philosophy of St. Thomas Aquinas, pp. 388-390; 393-394; 445-448; 455-463; 464-473; and 500-511.

(b) Thomas Aquinas, Summa Theologiae, 1a, 2ae, q. 90: "On the Essence of Law."

Questions:

(a) What is the importance of virtue to Thomas' theory of law?

(b) What is the significance of natural sociability? Of community? to Thomas' theory of law?

(c) What are the four divisions of law, according to Thomas? How do they interact?

Class Ten: The Procedural Natural Law of Lon Fuller:

Readings:

(a) Robert S. Summers, Lon L. Fuller, pp. 16-32.

(b) Hattie v. Shaheen, 37 Ohio App. 50, 174 N.E. 20 (1930).

(c) Jermene v. Forfar, 240 P. 2d 351 (Cal. App., 1952).

(d) The case of Cosmo Zinkow, Atlanta Journal/Constitution, December, 1997.

Questions:

(a) What does it mean to say that law is purposive? Value-laden?

(b) How does Lon Fuller compare to Aristotle?

(c) What role, if any, does purpose play in Hattie? In Jermane?

(d) Do you agree or disagree with the school's treatment of Cosmo Zinkow?

Class Eleven: The Religious Foundations of Personalist Jurisprudence:

Readings: Biblical and early theological writings on the Judeo-Christian tradition's regard for persons and the law. (Excerpts from projected Reid jurisprudence casebook).

Questions:

(a) What, if any, are the practical implications of belief that the human person was made in the image and likeness of God?

(b) Is human dignity enhanced by a belief that the human person is so exalted as to have received the promise of eternal life?

(c) Is this background useful to jurisprudence? How might it help shape the foundations of legal philosophy? Of your approach to law?

(d) What of divine mercy? Is divine mercy an appropriate model for human justice?

Class Twelve: Persons and Masks of the Law: The Natural-Law Jurisprudence of Judge John T. Noonan, Jr.

Readings (excerpts from the Reid casebook):

(a) Excerpts from: John T. Noonan, Jr., "The Masks of the Participants," in Persons and Masks of the Law, pp. 3-28.

(b) Lazo-Majano v. INS, 813 F. 2d 1432 (9th Cir., 1987).

(c) The Texas prison system; Abu Ghraib.

(d) Excerpts from the writings of Sister Helen Prejean.

Questions:

(a) Who is right in Lazo-Majano? Judge Noonan? The dissent? How are persons and rules reconciled in the majority opinion?

(b) Would a belief in the transcendent qualities of the human person alter state treatment of prisoners? Of the conditions of detention at Abu Ghraib? What of Sister Helen Prejean's opposition to the death penalty?

(c) How would you resolve the crisis in the Texas prison system? What principles would you use?

Class Thirteen: How Do We Judge Persons?

Readings:

(a) Martha Grace Duncan, "'So Young and So Untender:' Remorseless Children and the Expectations of the Law," 102 Columbia Law Review 1469 (2002).

(b) Commonwealth v. Kocher, 529 Pa. 303, 602 A. 2d 1308 (1992).

Questions:

(a) How do we judge the complete person? Can we judge the complete person?

(b) What criteria should we use in judging Cameron Kocher?

(c) Do you agree or disagree with Martha Duncan's analysis? Is she realistic?

Class Fourteen: The Higher Law and the United States Constitution:

Readings:

(a) Suzanna Sherry, "Independent Judges and Independent Justice," 61 Law and Contemporary Problems 15 (1998).

(b) Jackson v. Bulloch, 12 Conn. 38 (1837) (excerpts).

(c) Edward Corwin, "The Debt of American Constitutional Law to Natural Law Concepts," 25 Notre Dame Lawyer 258-284 (1949/50).

(d) Gardner v. Trustees of the Village of Newburgh, 2 Johns. Ch. 162 (N.Y. Chan., 1816).

Questions:

(a) What are Suzannah Sherry's justifications for an expanded understanding of judicial review?

(b) Compare Jackson v. Bolloch to the positivists we have read: Is Jackson correct in its reasoning?

(c) What are the historical foundations of judicial review? What are the two types of judicial review Corwin identifies?

(d) What are the sources of law used by Chancellor Kent to justify an award of compensation in Gardner?

D. Historical Jurisprudence: The Philosophy of the Common Law:

Class Fifteen: The Philosophical Foundations of Historical Jurisprudence:

Readings:

(a) David Carr, Time, Narrative, and History, pp. 153-168.

(b) Compassion in Dying v. State of Washington, 49 F. 3d 586 (9th Cir., 1995); 79 F. 3d 790 (9th Cir., 1996) (en banc), pp. 793-795; and pp. 798-810 (focus on pp. 806-810).

(c) State of Washington v. Glucksberg, 521 U.S. 702, pp. 710-719 (1997).

Questions:

(a) Regarding Carr: What is a community? How does memory constitute a community? What role does law play in the constitution of a temporally-based community (a community existing over time)?

(b) What is the historical community, according to the Ninth Circuit?

(c) What is the historical community, according to the U.S. Supreme Court?

Class Sixteen: The Origins of Historical Jurisprudence:

Readings:

(a) Harold J. Berman, "The Origins of Historical Jurisprudence: Coke, Selden, Hale," 103 Yale Law Journal 1651, 1667-1700 (1993).

Questions:

(a) What is the relationship of historical jurisprudence to the political community?

(b) How does Sir Edward Coke distinguish among the various meanings of "law," of "king," and of "reason?"

(c) What are the premises of Selden's theory of evolutionary historical jurisprudence? Of historical jurisprudence adapted to different places and times?

Class Seventeen: Historical Jurisprudence and the Origins of the Doctrine of Precedent:

Readings:

(a) Harold J. Berman and Charles J. Reid, Jr., "The Transformation of English Legal Science: From Hale to Blackstone," 45 Emory Law Journal 437, pp. 444-451; 509-516.

(b) Anastasoff v. United States, 223 F. 3d 898 (8th Cir., 2000) (Anastasoff I).

(c) Anastasoff v. United States, 235 F. 3d 1054 (8th Cir., 2000) (Anastasoff II).

(d) Hart v. Massanari, 266 F. 3d 1155 (9th Cir., 2001).

Questions:

(a) What is the origin of the "traditional" doctrine of precedent? What is its relationship to the subsequent "strict doctrine of precedent?"

(b) What is the relationship of precedent to judicial power in the experience of the American founding? In the nineteenth century?

(c) Which judicial opinion is right? Anastasoff I? Anastasoff II? Hart v. Massanari?

(d) Do you favor retention of the doctrine of precedent? Would you prefer a European-style approach to judicial decision-making?

Class Eighteen: Precedent and Judicial Reasoning in the Anglo-American Tradition:

Readings:

(a) Edward Levi, An Introduction to Legal Reasoning, pp. 1-27.

Questions:

(a) According to Levi, how is reasoning from precedent a creative process?

(b) According to Levi, what is the relationship of law and society presupposed by a system of reasoning from precedent? What is the model of historical development?

(c) Explain the development of the law of product liability as reflective judicial reasoning about the past.

(d) Do you believe that courts should exercise this kind of expansive common-law power? What are the arguments, for and against? What is the relationship of these powers to the demands of justice?

Class Nineteen: Understanding the Promise and the Limits of Historical Jurisprudence:

Readings:

(a) Charles A. Miller, The Supreme Court and the Uses of History, pp. 8-27; 36-38.

(b) John T. Noonan, Jr., "The Alliance of Law and History," in Persons and Masks of the Law, pp. 152-167.

(c) Ronald Dworkin, "Law as Interpretation," 60 Texas Law Review, pp. 540-546.

Questions:

(a) What are the different types of history Miller identifies? How do these different historical types constrain courts? Enhance judicial discretion?

(b) How does Noonan explain development of doctrine in the context of law?

(c) Consider MacPherson as discussed by Levi: Is this opinion an example of development of doctrine? Was Cardozo faithful to the historical record? To the intentions of the past? Was he being unduly creative?

(d) Does the doctrine of precedent operate like a chain novel?

Part: II: Other Movements in Jurisprudence:

A. Pragmatism: A Distinctively American Contribution to Jurisprudence:

Class Twenty: The Philosophical Foundations of Pragmatism and Its Application to Legal Analysis:

Readings:

(a) Daniel J. Morrissey, "Pragmatism and the Politics of Meaning," 43 Drake Law Review 615-649 (1995).

Questions:

(a) Does pragmatism have a foundation? Does it have a future?

(b) Discuss Morrissey's treatment of Richard Rorty?

(c) Is Cornel West, as discussed by Morrissey, correct in looking to the Judaeo-Christian tradition as a source of moral guidance?

Class Twenty-One: Pragmatism at Work:

Readings:

(a) Oliver Wendell Holmes, "The Path of the Law," 10 Harvard Law Review 457, pp. 457-461.

(b) Buck v. Bell, 274 U.S. 200 (1927).

(c) Blankenship v. General Motors Corporation, 406 S.W. 2d 781 (W. Va., 1991).

Questions:

(a) Who is Holmes' bad man? Is he really bad? Or does he simply wish to drive a hard bargain? What does this say about Holmes' effort to purge moral content from the law?

(b) Is law nothing more than prediction? Do you agree or disagree?

(c) Is Buck v. Bell the product of pragmatic reasoning?

(d) Does the reasoning in Blankenship work? Or is it mere self-interest masquerading as judicial opinion?

B. Legal Realism:

Class Twenty-Two: What Judges Really Do and How They Do It:

Readings:

(a) Joseph C. Hutcheson, "The Judgment Intuitive: The Function of the Hunch in Judicial Decision," 14 Cornell Law Quarterly 274-288 (1928/1929).

(b) Jerome Frank, Law and the Modern Mind (excerpts published in George C. Christie, ed., Jurisprudence: Text and Readings on the Philosophy of Law) (1973 ed.) pp. 709-719.

Questions:

(a) What is the role of the "hunch" in judicial decision-making?

(b) What is the role of judicial personality in judicial decision-making?

(c) Is judicial discretion a necessary corollary to judicial individuality?

(d) Is judicial discretion a net social good?

C. Law and Economics:

Class Twenty-Three: The Morality and Legality of the Marketplace:

Reading:

(a) Jerry Z. Muller, "Introduction: Back to Adam," in Muller, Adam Smith in his Time and Ours: Designing the Decent Society, pp. 1-10.

(b) David D. Friedman, "Efficiency and All That," in Law's Order: What Economics Has to Do With Law and Why It Matters, pp. 18-26.

(c) John McMillan, "The Only Natural Economy," in Reinventing the Bazaar: A Natural History of Markets, pp. 3-14.

Questions:

(a) According to Adam Smith, is there a morality to the marketplace?

(b) Does the marketplace work best if left alone? What does Friedman say?

(c) What does McMillan say?

Class Twenty-Four: Criticisms of Law and Economics:

Readings:

(a) Pope John Paul II, Centesimus Annus, chapter four: "Private Property and the 'Universal Destination' of Material Goods," secs. 30-35.

(b) Elizabeth Warren and Amelia Warren Tyagi, The Two-Income Trap: Why Middle-Class Mothers and Fathers Are Going Broke (excerpts).

(c) Williams v. Walker-Thomas Furniture Store, 350 F. 2d 445 (DC Cir., 1965).

Questions:

(a) According to Pope John Paul II, what is the moral foundation of property?

(b) What are the special economic stresses experienced by mothers? By parents? What would you do to resolve this stress?

(c) According to Judge Skelly Wright, what is the essence of free bargaining power? Does efficiency equal equality? Should it?

D. Compassion and the Law:

Class Twenty-Five: The Jurisprudence of Mary Ann Glendon:

Readings:

(a) Mary Ann Glendon, "The Missing Language of Responsibility," in Mary Ann Glendon, Rights Talk: The Impoverishment of Political Discourse, pp. 76-108 (this reading is required but because of copyright reasons must be obtained from the reserve desk).

(b) Yania v. Bigan, 397 Pa. 316, 155 A. ed 343 (1959).

(c) De Shaney v. Winnebago County Department of Social Services, 109 S. Ct. 998 (1989).

Questions:

(a) Why should responsibility matter in legal analysis? Should we care, legally or morally, about the welfare of others?

(b) How does Glendon's analysis fit with the notions of community we have discussed this semester?

(c) What if the Court in Yania imposed a duty to rescue? How can a workable rule be crafted?

(d) In De Shaney, who is right? Chief Justice Rehnquist? Justice Blackmun in dissent?

Part III: Conclusion: Law and Belief:

Class Twenty-Six: The Structural Relationship of Law and Religion:

Readings:

(a) Harold J. Berman, "The Religious Dimensions of Law," in Harold J. Berman, The Interaction of Law and Religion, pp. 21-47.

(b) M. Cathleen Kaveny, "Religious Claims and the Dynamics of Argument," 36 Wake Forest Law Review 423-448 (2001).

(c) Frederick Douglass, "What, to the Slave,

is the Fourth of July?"

(d) Charles J. Reid, Jr., "The Three Antinomies of Modern Legal Positivism and Their Resolution in Christian Legal Thought" (typescript).

Questions:

(a) Is law necessarily religious? In what ways?

(b) Is it permissible to use religion in legal argument? In political argument? Why or why not?

(c) How does Frederick Douglass use the language of liberty, of history, and of natural equality to make the case against slavery? What role does the Declaration of Independence play in his arguments?

(d) Is it possible to resolve the tensions of modern jurisprudence by reference to Christian principles as articulated by the modern papacy?

SYLLABUS, JURISPRUDENCE, Fall, 2010

(expectations and purposes)

Dr. Charles J. Reid, Jr.

PURPOSE OF COURSE: To explore the question: What is Law? We will examine this question primarily by examining the three schools of thought that have sought to answer this question over the long history of jurisprudential thought: the positivist school; the natural law school; and the historical school.

(1) We begin with the positivists because it is the prevailing school of thought in legal circles today. Jurisprudential writers from all perspectives tend to think of law in positivistic terms: as the commands of a sovereign authority capable of enforcing its rules through the infliction of penalties or the granting of rewards. Positivism shapes the opinions of Supreme Court justices and lawyers and legislators almost everywhere. Other considerations, such as abstract principles of morality or justice, are omitted from the analysis as "non-legal."

(2) We shall then consider the natural lawyers. Natural law thought was the prevailing mode of viewing the law from the ancient world to the end of the eighteenth century. It equates law and morality; law, in order to be law, must also be in conformity with certain basic principles of moral order. This view of law is reflected in the American legal tradition in the Due Process Clause and Equal Protection Clause of the United States Constitution and in many state constitutional provisions. It is used today also to defend many assertions about human rights. It is, at heart, the impulse to have the law conform to basic principles of justice.

(3) We shall finally consider the historical school. This school of thought stresses the connections of law with the historical experiences of the political community. This was a prevailing philosophical approach to the law in England during the nineteenth and twentieth centuries, and survives in American law in the strong fidelity of American legal reasoning to case-law and precedent. Case law, on this analysis, amounts to the judicial distillation of cultural assumptions and expectations that acquire normative significance over time.

In essence, we shall be studying the philosophical foundations of the common law method when we take up historical jurisprudence. Fidelity to the doctrine of precedent requires a philosophical justification. The historical school offers that

justification. In its own way, this undertaking will challenge commonly-held preconceptions of the common law which maintain that this system of thought really lacks distinctive philosophical foundations.

We shall proceed in this way in large measure because these are the schools of thought that have shaped and influenced American law. (Indeed, they are the modes of thought that have shaped reflections on the nature and function of law throughout the world).

Lawyers should know, in brief, the nature of positivist discourse; the relationship of moral and legal argument to each other; they should know that a basic doctrine of Anglo-American law, the doctrine of precedent, has a philosophical dimension and that other systems of law try to ensure predictability and consistency in other ways.

In this sense, the course is intended to give students a "usable" jurisprudence -- a foundation in analytical sources and devices that should assist you in becoming better and more self-aware lawyers.

We shall, in roughly the last third or quarter of the semester, consider other questions and approaches that themselves largely rest upon positivistic or naturalistic premises. Depending on available material and interests, I might supplement or substitute among some of the readings. I always hold out the possibility of adapting some parts of the course to the interests of the students, although with only 26 class sessions this semester, my flexibility is lessened. These readings will include law and economics and pragmatist materials. For good or ill, law and economics has become a powerful movement within the legal academy; and pragmatism is probably the most original American contribution to the field of jurisprudence.

Ancillary Purposes to the Course:

(a) Enhance the legal imagination. Complex cases and novel questions can be won or lost on the basis of the lawyers' imagination or lack of imagination. A major ancillary goal, which we shall be attending to this semester, is developing legal imagination.

(b) Develop fluency in the ways in which lawyers and judges have written, thought, and talked about the law. The acquisition of such fluency will prove helpful when you come to think about the law and when you need to prepare for the important cases that you will confront in practice.

(c) Engage in the critical examination of presuppositions: Presuppositions are "what we think before we begin to think." All lawyers and judges approach the law with certain presuppositions about it. It is better to be conscious of our presuppositions than not to be aware of them.

EXAMINATION POLICY: The final examination will be an open-ended exercise. You will be given a case (usually including dissenting as well as majority opinions) and asked to comment upon and evaluate the jurisprudential schools of thought represented in the opinions.

The examination will have two basic components to it: an evaluative component, where you evaluate the jurisprudential foundations of the opinions; and a "subjective" component, where you use the facts or opinions of the case to elucidate the main lines of your own jurisprudence.

PRESENTATIONS: In addition to the final examination, I would like to ask students to prepare and present short response papers to the particular questions found in the syllabus. This practice is used in lieu of calling on certain students to be "up" on a particular day. The presentations should be brief -- ten to fifteen minutes ordinarily is sufficient. I reserve the right to "bump" students up by half a grade, and I will use classroom performance, especially as evinced in the presentations, as the key to making these decisions.

My hope is to stimulate discussion much along the lines of a graduate seminar in the philosophy of law.

USE OF OUTLINES: Please be sure to check your e-mails and Blackboard regularly. I shall be providing outlines of course readings and materials as we go along this semester. These outlines are not intended to replace the readings. Rather, they are intended as supplements. We shall be reading some texts that are densely technical. The outlines will assist in that regard. But the outlines also do more than guide one through the assigned readings.

They are intended to provide important background information to the day's class. You should note that my basic approach to law and to philosophical inquiry is through historical analysis: that it is crucial to understand the context and historical background of the ideas we are considering. The outlines will provide this contextualization.

I should stress also: I modify these outlines from year to year. Hence, they are always in the process of being rewritten, sometimes substantially, sometimes slightly. I have had students in the past ask me to provide them substantially ahead of a particular class meeting. Please bear in mind: I will provide them when I believe that they are ready for general circulation, which may be the day before, or perhaps even the morning of, class.

ATTENDANCE POLICY: I expect regular attendance. I will not take attendance. But I would ask that students only miss class when they have a good reason. As a courtesy, I would like to receive an e-mail, phone call, or other communication from a student if it becomes

necessary to miss class. A basic theme of this course -- a basic theme of the jurisprudential materials we shall be covering -- is the achievement of personal responsibility through the proper exercise of personal freedom. My attendance policy reflects this philosophical tradition. I encourage and expect you to exercise your freedom wisely and well.

OFFICE AVAILABILITY: I maintain an open-door policy. Students are generally welcome if they have questions except for the hour or so before class. (I, like you, need some time to prepare for class). Please bear in mind that I am generally in the building during business hours.

WORDS OF ENCOURAGEMENT: I have encouraged all of my classes here at the University of St. Thomas: "do not worry." I really mean this. I do not want this material to feel intimidating. My hope is that we can have a good and enjoyable time as we explore the deeper dimensions of the law. My hope is to impart to all of you a fluency in the vocabulary of legal philosophy; a greater skill in reading cases and legislation; and the ability to answer for yourselves the most pressing of question of jurisprudence: "What is law?"