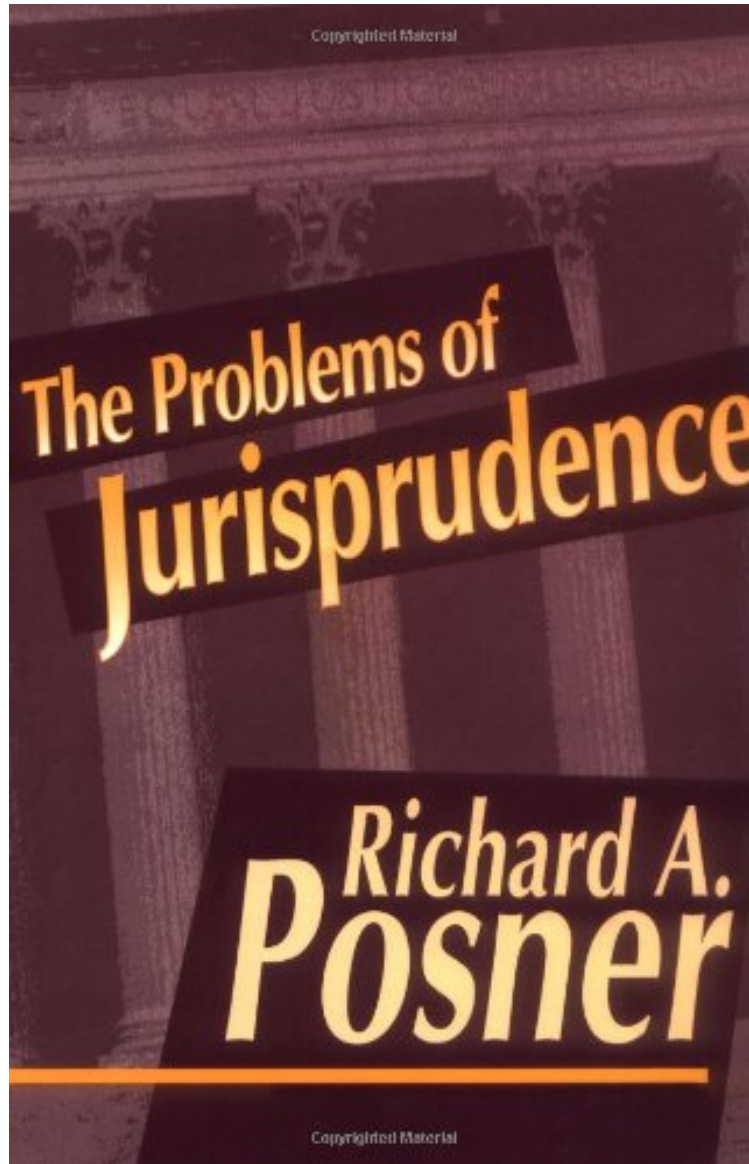


## The Problems of Jurisprudence

*Richard A. Posner*

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#945936 in Books 1993-03-15 1993-04-14 Original language: English PDF # 1 9.00 x 1.26 x 6.00l, 1.85 #File Name: 0674708768512 pages | File size: 27.Mb

**Richard A. Posner : The Problems of Jurisprudence** before purchasing it in order to gauge whether or not it would be worth my time, and all praised The Problems of Jurisprudence:

19 of 23 people found the following review helpful. An excellent overview By Dr. Lee D. Carlson For newcomers to the philosophy of law and for anyone interested in legal reasoning and the difficult problems of jurisprudence, this book gives an excellent overview. The author discusses the history of the subject as well as giving a thorough

discussion of modern developments. In addition, many references are given for readers who want to investigate the subject in more detail. The philosophy of law has become even more important in recent years due to the social tensions surrounding the Supreme Court of the United States as well as the difficult legal issues involved in nation building. The following questions, among many others, arose for this reviewer when reading the book, with some of them being answered in the book and some not:

1. What is the difference, if any, between standards and rules?
2. What is the difference, if any, between substantive justice and formal justice?
3. Does the granting of broad discretionary powers to legal officials encourage abuse?
4. When a legal rule ages, does it become less or more applicable to the activities it is supposed to refer to, i.e. will judges become more tempted to declare exceptions and extensions to it?
5. How important is the use of formal logic in legal deliberations?
6. Can most, or even all, legal argumentation/deliberation be given an algorithmic or formulaic definition?
7. Can statutes or constitutions, being forms of communication, be verified in the same way as scientific hypotheses can?
8. Does good legal judgment consist of caution, detachment, imagination, and common sense or must these be supplemented by other activities or modes of cognition?
9. Is law an autonomous discipline, with the designation "autonomous" given its usual intuitive meaning?
10. Can the complexity of legal deliberations/reasoning of a judge be modeled successfully using a language or framework that is clearly not being used by that judge?
11. Is the "test of time" a legitimate criterion for accepting certain legal practices?
12. What is the role of metaphors in legal reasoning?
13. What is the role of defeasible reasoning in legal deliberation/argumentation?
14. Are legal deliberations always inconclusive?
15. Is there any need, from the standpoint of rational legal deliberations, for the "trappings of the judicial process," i.e. the elaborate courtrooms with elevated benches and compelled etiquette on the part of the observers and litigants?
16. Is criminal law dependent on the notion of free will?
17. Assuming that certainty is unattainable in most legal deliberations, what is the role of probability theory in these deliberations?
18. Is the interpretation of legal texts deductive, and if not, what does it mean to interpret a legal text?
19. What is the difference between common law and statutory law?
20. Does agreement on the meaning of legal texts depend ultimately on the use of force?
21. How does one characterize an activist judge from a non-activist one?
22. When a legal text or document is examined, is it always important to acknowledge the intent of the individual(s) who wrote it?
23. Can interpretations of legal documents ever be politically neutral?
24. Can a legal system be constructed that would be free of errors?
25. How influential has feminist thought been in the philosophy of law in the last few decades?
26. What is the nature of "prudentialism" that is advocated by the author of the book?

10 of 12 people found the following review helpful. Pragmatism that's reasonable. By Kevin S. Currie

What is law? How exactly do judges reason out its kinks? Does it operate on presumptions of behaviourism or free-will? Why aren't lawyers or judges puzzled by these quandries? Posner seeks answers and ends up in a not-so-comforting place. This book starts small and ends big. From epistemology (how we gain legal knowledge) through ontology up through his concluding 'Pragmatist Manifesto' the book is quite philosophical and this may be offputting to some in the legal profession. As usual though, Posner tackles his subjects in a clear, fast-paced and exciting way. The task that Posner sets for himself is to forge a place in legal theory (or lack of?) between two radical extremes: On one hand, there is the view that law is a completely isolated profession and legal reasoning is completely internal to it. The other sees law as a clever guise for politics- it's 'methods' being a subterfuge for the judge to justify her political views. Through pragmatism, Posner sees both theories as gross exaggeration- the first, falsely denying law's susceptibility to outside non-legal techniques and the second's refusal to acknowledge the judiciary's independence from the legislature. As Posner acknowledges in the intro, Posner's view here is middle of the road and to many, it will be boring. He doesn't take sides, rather he creates a side: that of legal pragmatism. No matter what your persuasion philosophical, political or jurisprudential persuasion, there's nothing like a little Posner to get you thinking!

10 of 2 people found the following review helpful. i love it

By Jonathan Liljeblad

posner is a prominent legal scholar and his works are always thought-provoking. service was professional and prompt, and i have nothing to complain about.

In this book, one of our country's most distinguished scholar-judges shares with us his vision of the law. For the past two thousand years, the philosophy of law has been dominated by two rival doctrines. One contends that law is more than politics and yields, in the hands of skillful judges, correct answers to even the most difficult legal questions; the other contends that law is politics through and through and that judges wield essentially arbitrary powers. Rejecting these doctrines as too metaphysical in the first instance and too nihilistic in the second, Richard Posner argues for a pragmatic jurisprudence, one that eschews formalism in favor of the factual and the empirical. Laws, he argues, are not abstract, sacred entities, but socially determined goals for shaping behavior to conform with society's values. Examining how judges go about making difficult decisions, Posner argues that they cannot rely on either logic or science, but must fall back on a grab bag of informal methods of reasoning that owe less than one might think to legal training and experience. Indeed, he reminds us, the greatest figures in American law have transcended the traditional conceptions of the lawyer's craft. Robert Jackson did not attend law school and Benjamin Cardozo left before getting a degree. Holmes was neither the most successful of lawyers nor the most lawyerly of judges. Citing these examples, Posner makes a plea for a law that frees itself from excessive insularity and takes all knowledge,

practical and theoretical, as grist for its mill. The pragmatism that Posner espouses implies looking at problems concretely, experimentally, without illusions, with an emphasis on keeping diverse paths of inquiry open, and, above all, with the insistence that social thought and action be evaluated as instruments to desired human goals rather than as ends in themselves. In making his arguments, he discusses notable figures in jurisprudence from Antigone to Ronald Dworkin as well as recent movements ranging from law and economics to civic republicanism, and feminism to libertarianism. All are subjected to Posner's stringent analysis in a fresh and candid examination of some of the deepest problems presented by the enterprise of law.

Richard Posner is one of the nation's most influential thinkers...He spearheaded the law and economics movement that has, in the eyes of many, revolutionized the entire legal enterprise...The bulk of his book consists of close analyses...and crucial discussions...all of which are bolstered by an impressive array of references to the rich literature of contemporary law, philosophy, science and jurisprudence. (Calvin Woodward New York Times Book ) [Posner's] book will challenge everyone. All sides will likely draw upon the work, even as they differ with it and among themselves...[It is an] extraordinarily wide-ranging, intellectually stimulating book. (Robert A. Katzmann Christian Science Monitor) As one reads through this remarkable book, Posner's vision of law slowly builds to a climax that...is awesome...[He] tackles all the basic problems of legal thought and of moral and political philosophy since the time of Plato and Aristotle [and] enables us to see the richly textured fabric of our legal system in a more coherent manner than has anyone else. (Stephen B. Presser Chicago Tribune) In short, sophisticated legal types should certainly read Posner to learn that he now argues for "pragmatic jurisprudence" and "reasonable" answers in law against absolute "right answers"...Layman should read Posner for a more vital reason. Because a nation supposedly ruled by law, not men, should be literate enough in jurisprudence to tell the difference. (Carlin Romano Philadelphia Inquirer) It's hard to be in the presence of Richard Posner, or his writings, without learning. He says, in his book, many wise things about the ways of judges, and I am persuaded that, in his commentary on judges and their handling of several important issues in our politics, he has it, cannily, right ...If Posner could be elevated, by magic, to the Supreme Court, without the hazards of the confirmation process, that institution would no doubt become a more interesting, charged place. (Hadley Arkes Public Interest) From the Back Cover In this book, one of our country's most distinguished scholar judges shares with us his vision of the law. For the past thousand years, the philosophy of law has been dominated by two rival doctrines. One contends that the law is more than politics and yields, in the hands of skillful judges, correct answers to even the most difficult legal questions; the other maintains that law is politics through and through and that judges wield essentially arbitrary powers. 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.