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Socio-Legal Significance of Lon Fuller's Theory of 'Inner Morality of Law'

EASHAN NAKRA¹

ABSTRACT

Lon L. Fuller was an eminent legal philosopher and professor who attracted a lot of attention for his ideas in his 1964 work, 'The Morality of Law'. His work came at a time when the intellectual discourse on jurisprudence was sharply divided between natural law theorists and positivists. Lon Fuller proposed his theory as a possible reconciliation between the conflicting natural school of law and the positivist school. One of his central arguments was the "inner morality of law" – procedural guidelines on legality that were inherent to and important for any law to achieve its goals. In part, the paper shall review and reaffirm the value of Fuller's ideas on legality in the face of popular criticisms. More importantly, however, the objective of the following paper is to elucidate how Fuller's theory promotes dissent, legislative accountability, public agency, discourse, and even a foundation of "moral law". In order to do this, I will summarize the relevant arguments made by Fuller, introduce the primary criticism of his theory, and argue the value of his principles in advancing a desirable system of law.

Keywords: Lon Fuller, Inner Morality of Law, Accountability

I. INTRODUCTION

In his seminal work, *The Morality of Law*, Lon Fuller put forth ideas to advance the understanding of the complex nexus of law and morality. While he admitted that several substantive and moral aims depended upon the content of the law, he rejected the positivist claim that law was an amoral vessel of instruction that took on whatever moral content was filled in it. He argued that law had an "inner morality"² that was important as well. His ideas allow for the observance of law's inherent values that exist in addition to whatever objective they fulfil. His theory reframed the debate between the natural and positivist school of law and also created a niche for him as a substantive natural law theorist. However, his ideas did not go uncontested. Several theorists regarded his ideas as false and inconsequential. Fuller's ideas, the criticisms forwarded, and the merits of his theories shall be discussed in the succeeding

¹ Author is a student at Campus Law Centre, Faculty of Law, University of Delhi, India.

² LON FULLER, *THE MORALITY OF LAW*, 39 (Yale University Press 1963)

sections.

II. THE EIGHT PRINCIPLES OF INNER MORALITY

Fuller delineated the eight principles of law's "inner morality" or legality as follows: First, the laws must be sufficiently general in their application so that they may be applied to various cases based on such generalized patterns and principles. Second, the laws must be promulgated and made available to the public or concerned parties so that they may observe the laws they have been instructed to follow. Third, there must not be an abuse of retrospective legislation, for it is unjust for a law to demand compliance on a date on which it was not in existence. Fourth, laws must be clear and understandable, and thus, must not be ridden with ambiguity or obscurity. Fifth, there should not be any enactment of contradictory laws, as it would make it impossible to determine which law to follow and which to enforce. Sixth, laws must demand what are within the powers of those affected; they must not demand the impossible. Seventh, laws must be stable and not frequently changing so as to allow those concerned to orient their actions in accordance with the law in a timely and effective manner. Eighth, there should be a nexus between the laws and the code or principles they seek to enforce.

III. MORAL OR NEUTRAL, THAT IS THE QUESTION

One of the most renowned critics of Fuller's theory was the celebrated thinker of the positivist school of law – H.L.A Hart. Hart and Fuller engaged in a fascinating academic debate, also published in the *Harvard Law Review*³. Hart undermined the value of Fuller's theory, dismissing the connection of Fuller's principles with any sort of morality. He asserted that immoral laws were equally coherent with legality, and thus, Fuller exaggerated the linkage between moral laws and legality. In doing so, Hart contended that Fuller's guidelines were value-neutral and were merely procedural principles devoid of any moral element. Several of Fuller's critics from the positivist school characterized his eight principles of legality as neutral tools to guide the instruction of law with no bearing on its substantive goals – the sharpening of an amoral instrument. They argued that a law that follows Fuller's principles might be used for ends – moral or immoral – and this 'inner morality did not safeguard the misuse of these laws in any manner.

IV. SETTING THE STAGE FOR DISSENT & ACCOUNTABILITY

However, I argue that Fuller's conditions of legality allow for the judgement of the public,

³ Lon L. Fuller. *Positivism and Fidelity to Law — A Reply to Professor Hart*. HARVARD L.R. 630, 630–642 (1958).

including the persecuted. The idea behind imposing conditions upon the law for its clear communication is to affect the observance of these rules. This observance is not simply a passive acceptance of instruction but can also be a space for active dissent. This point is further illustrated with the case of the German Reich's avoidance of public disclosure⁴. There was an absence of proper promulgation of laws because the lawmakers of the National Socialist German Workers' Party knew that very public legislation would receive mass criticism. Thus, while principles such as clear language and wide promulgation of laws do not explicitly enforce morality, they do create necessary conditions for the critique of immorality.

Moreover, even before the formal enactment of a law, Fuller's guidelines have a moral bearing on the process of drafting legislation. Lawmakers bound to clearly and publicly disclose the nature, aims, and consequences of each law are unlikely to enact an obviously immoral law⁵. When one is answerable, one is moderated. The fact that these principles discourage immoral laws is certainly a testament to their non-neutrality.

To further prove the link between morality and legality, Fuller defends an example of the racial laws enacted by the Union of South Africa to show that a digression from justice is coupled with a digression of legality. He observed how the absence of a uniform and clear definition was a symptom or cause of arbitrary and discriminatory application of laws⁶. Conversely, the imposition of clarity and generality creates uncondusive conditions for arbitrary legislation.

V. RECIPROCAL COMMUNICATION & HUMAN AGENCY

In addition, the inner morality of law embeds a view of human nature which is in no way neutral. Fuller's principles consider each individual as a "responsible agent"⁷. Instead of accepting the idea that the communication of law is defined by two points: dispatch of the law and impact of the law⁸, Fuller promotes the idea of law as a dialogue between lawmakers and followers. For example, even when programming a computer or machine to function a certain way, it is important that the language follows some guidelines: specific codes, clear commands, defined order, non-contradictory, and something within the computer's ability. Even while dealing with a subject without consciousness, the subject imposes conditions upon the language of the agent that guides its behaviour.

Similarly, even a despotic leader is constrained by his/her adherents. Such a leader would

⁴ FULLER, *supra* note 2, at 158

⁵ FULLER, *supra* note 2, at 159

⁶ FULLER, *supra* note 2, at 160

⁷ FULLER, *supra* note 2, at 162

⁸ FULLER, *supra* note 2, at 193

certainly wish for the easiest path to enforce his/her nefarious objectives: no care for promulgation, no burden of clarity, no restriction upon stability, and no requirement of congruence. But, he cannot choose this path because conditions of legality are imposed by the people upon the law they are expected to follow. There are negative consequences of a rejection of the principles of legality. As Fuller points out, a leader's subordinates may soon become impatient with injunctions that are unclear, constantly changing and incongruent. However, it is not simply a question of the legislators need for efficiency. Instead, the principles of legality are about the duties of such legislators themselves.

VI. A GUIDE TO APPLYING THE 'INNER MORALITY OF LAW'

Fuller's ideas are enforceable guidelines to better guide behaviour and further the moral content of the law. However, evaluating compliance with the guidelines cannot be binary. These guidelines describe qualities such as general application, wide promulgation, clear language, and congruence; therefore, they cannot be adjudged as a simple "yes or no". Rather, Fuller himself suggested that it would be burdensome to assign a formalized measure to each condition because of their variability.

Thus, degrees and abstractions are not only more accurate to apply his theory but also more desirable to the field than formal measures, which may misconstrue the analytical value of his principles. These principles are not meant to be rigid, indifferent to social contexts, and restrictive of varying applications. Additionally, absolute measures that are insensitive to the various cultural context may dangerously impose a certain culture's legal system as the sole standard - legitimizing certain countries and conversely delegitimizing another country's legal system.

VII. CONCLUSION

As argued above, there is great value in Fuller's principles of 'inner morality'. They offer a more nuanced understanding of the relationship between laws and morals, suggesting an inherent character of law itself. As the Article discusses, these are by no means value-neutral. The non-neutrality of Fuller's conception of inner morality is not to posit it as an exhaustive, all-inclusive means to each and every substantive aim. Rather, it is to highlight that the principles are a valuable part of the larger process of strengthening the moral fabric of laws. These principles provide distinct benefits in restricting immoral laws, creating the foundation for dissent, and promoting answerability. In addition, such guidelines are easier to discern compared to controversial ideas on what constitutes moral. Evaluating a law's degree of compliance with Fuller's principles may be a useful exercise in effectively bringing out the

law's inner morality.
