

Ethical legal practice of Ion fuller philosophy essay



**ASSIGN
BUSTER**

Select the approach to ethical legal practice taken in any one (and only one) of the Selected Readings given from (1) Luban; (2) Kronman; (3) Fried; or (4) Mortensen. Reflect on and explain why you largely agree with the approach taken in that Selected Reading, and in doing so identify what values lead you to this conclusion.

Lawyers make the world go round. That I believe is one of the reasons why I am drawn to Luban and his interpretation of the writings of Lon Fuller and I largely agree with him in regards to the inner morality of legal practice.

Luban agrees largely with the writings of Fuller, but also mentions and analysis criticisms of his theory, keeping in mind that no theory is without its critics.

Inner morality of law is also a morality of law which gives rise to the natural law of ethics. There are eight cannons that a legal system must demonstrate if its rules are to be law. Generality: laws are general in their application and in their expression. Publicity: there are no secret laws. Prospectivity: best when apply to events of future and nothing is achieved if applied to past events. Clarity: laws must be clear. Consistency: must be constant through time. Possibility of compliance: must complied with easily and no contradictions in the law. Constancy: they must be constant. Faithful administration: congruence between rules as they are announced and their administration.[1]

It is an inner morality of legal practice and not inner morality of the concept of law. Morality cannot apply to law, morality needs moral agents which is a human being concept and applies only to human beings. When we speak of

the rule of law, we mean the rule of men and women, but more precisely a specific form of rule by men and women – by reference to norms that we describe as laws. Therefore laws are phenomena, only applied by people; need people.

I agree that morality is a human concept that cannot be given to a concept/ideal such as law. The only things that we can judge as moral are human beings. Law is incapable of another concept such as morality it is not capable of any concept – only people have the capability of conceptual based feels and recognitions. ‘ Law’ means the life work of the lawyer.[2]The rule of law is really “ a specific form of rule by men”[3]. Therefore the morality of law is really a morality for “ law-appliers”.[4]Furthermore, the lawyers are the law appliers/law makers[5].

The lawyer has a distinctive social function of law making and law applying and that is the life worth of a lawyer. The lawyer is an “ architect of social structure”.[6]Contracts are ways that we make a legal obligation and are ways to construct law ourselves.

A lawyer is a facilitator of strong relationships and a transaction between parties is only as strong as the Rule (i. e. Contract). The transactional lawyer is the most common kind of law-applier.[7]Natural-law lawyer “ reducing the relations of men to a reasoned harmony”.[8]I agree with this statement. Since 2004, starting out in a small commercial law firm and have since moved to two large firms, my experience has been in a commercial law sense which would influence my perspective. My values/personal beliefs in what law is and the role of the lawyer have been shaped from this

experience to be based around parties and their relationship and transactions to make business and life proceed and not at a stand still.

Without transactional lawyers the world would stop. If we were to focus on litigation, “ it would be like trying to understand an educator’s work by focusing on the process of disciplining classroom troublemakers, or trying to understand marriage by examining divorce”.^[9]That is trying to explain the law, when the law fails. The litigation lawyer is an unfortunate “ side project” to the true lawyer, for if a transactional lawyer does not create a strong foundation then there is communication breakdown or a breakdown in expectations because of weak negotiations/ drawing of contractual obligations etc, then unfortunately dispute resolution needs to be sought; forming the need for litigation lawyers.

Law is to coordinate relations between people. This concept emerged as early as Plato with the concept that justice and law are about relations between people. Consequently, transactional lawyers are conscious that the transactions developed will be conducted by others (not the lawyer) and construct and develop the framework of rules (contract, will, trust etc.). This is law-application, governance without supervision.^[10]The lawyer knows and understands that the client is the person who carries out the transaction. The client is the powerful part of in the interaction and the lawyer is the advisor and provides a service to the client. The client has the final decision to either follow the lawyer’s advice or not. The client is the one with the obligations. The lawyer understands that they are advising how the law applies to others and a lawyer tailors the advice for each individual client. The lawyer is the law applier. The transactional lawyer develops the rules by which people

relate (drafting of Contracts, Corporate Constitutions etc). The transactional lawyer creates the legal norms by which people interact: law application. Governance through general rules (generality) which requires a disbursed (socially and geographically) professional class to enable this to be done. The law is something which is largely self-enforced, self-monitored and can only happen with professional lawyers throughout the community.

Morality of aspiration brings together virtue and the eight cannons. The morality of the good life and excellence, of the fullest realisation of human powers[11]. Ludan says this is now what we call virtue ethics. Those aspirations of what we have become morals when they concern other people, and in particular when they concern other people as a consequence of a professional commitment. I totally agree that if that aspiration is missing then the professional commitment is missing. This also ties in with the special fiduciary relationship of lawyer and client, and the consequences of a lawyer not following the eight cannons, therefore not practicing true law at all. My strong agreement with morality of aspiration might stem from my strong personal belief in the virtue of integrity, which is very important to me – to do what is right even when no one is looking. Additionally, I strive to do my best in all that I do, no regrets, and my overachieving and competitive nature draws me to pursuits such as law and competitive sport like Roller Derby. To be satisfied with one's self and one's ways of achieving such goals. To strive always for excellence in everything you do, to be a value to society, to make your own fate – to gain rewards for hard work and to have pride are very important values I hold. Pride and drive are strong personal values which I see in Ludan's account of Fuller's theory. Because I see it as an

overall strive of legal excellence. As stated by Luban, a virtue to Fuller has the “ original sense of power, efficacy, skill and courage”.^[12]

Without morality of aspirations there is no law. Take the illustration, if a fly does not ever fly – can it still be a “ fly”? As Luban states the “ purposive concept – concepts that define objects by the functions they serve in fulfilling purposes”. Measure of identity of an object by its success or failure.^[13] I personally identify an object or a situation from its success or failure, analysing situations, judging them and looking for opportunities of improvement. I agree with Luban, “ If a lawyer is not doing any of the things a good lawyer does, she is not merely practicing law badly. She is not practising law at all. The virtues are functional excellences, and professional role is defined by its functions; take away enough of the professional virtues, and the result is simply not recognisable as the professional role”.^[14] The morality of how lawyers do their jobs.

In conclusion, Luban’s interpretation of Fuller’s theory is something tangible, giving morality and virtue to men not to concepts and far reaching theories. To give men and women human characteristics make more sense and speak more to me than giving the human trait of morality to a concept of law. But to also explain that human beings have flaws and that no theory, even Fuller’s theory that Luban largely agrees with is perfectly written and that “ lawyers are not that good” as Luban puts it^[15]. I, as Luban does love that finally Fuller has taken to explaining what law is by reference to the law appliers/law makers – lawyers. To finally discuss law on behalf of the lawyer.