BOOK REVIEWS

THE MORALITY OF LAW. By Lon L. Fuller.[1] New Haven and London: Yale University Press, 1964. Pp. viii, 202.

When a question is raised concerning the morality of any social institution, one tends to assume that the issue is whether, or to what extent, the institution measures up to moral standards. It is thus one would understand a reference to the morality of betting on horses, or of prostitution. Professor Fuller's title, however, is not to be construed in that manner. Rather it is as if the author had set out to compose a handbook of recommended procedures for bookmakers or prostitutes. For the thesis of his book is that law as a social institution, or rather as a human enterprise, has become associated with a special set of standards which he calls the "internal morality" of law. These standards generally govern the procedural as opposed to the substantive side of law, and Professor Fuller considers them under eight heads: law should be general, promulgated, clear and free from contradiction, constant through time, and congruent with the acts of officials; law should not be retroactive, or require the impossible. His long second chapter contains a careful discussion of each of these principles, with special emphasis on the many ways in which they must be limited and qualified.

These limitations and qualifications relate to the first of two major points articulated by Professor Fuller in evaluating the internal morality of law: namely, that it is a morality of aspiration, not of duty. The distinction between these two kinds of morality is very important for ethical theory in general, though much too frequently overlooked by writers in that field, and Professor Fuller devotes a very successful first chapter to its elucidation. Like the law, a morality of duty requires that people avoid certain forms of unacceptable behavior, and threatens punishment or disapproval when they don't. A morality of aspiration, on the other hand, challenges people to pursue various kinds of excellence by establishing ideals. In applying this general distinction to the inner morality of law, Professor Fuller argues convincingly that the principles he had discussed serve to define an ideal of legality to which a legal system

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may aspire, but cannot serve as rules rigidly controlling the acts of lawmakers.

The author's second assertion regarding the inner morality of law is even more important, and represents the central theme of the book. He contends that this morality is a kind of natural law; it lies, so to speak, in the nature of things since it flows from the very definition of law. This definition, which Professor Fuller defends at some length, is that law is "the enterprise of subjecting human conduct to the governance of rules."[2] The inner morality of law flows from this definition since no enterprise of this kind can possibly succeed unless the principles of that morality are observed, human nature and the facts of life being what they are.

Professor Fuller frequently analogizes the law and the practical arts, such as carpentry, and perhaps the point may be made in these instrumental terms. The law is a tool useful for many purposes. The inner morality of law is nothing more than the rules for the use of this tool, rules justified by the fact that if they are flouted the purposes for which the tool is designed cannot be achieved, and the tool itself will be damaged or destroyed. Once it has been settled how to use this tool, the question of what to do with it is a matter for the external morality of law.

So far, so good. Rules of this kind for the use of a tool no doubt do deserve the name of natural law, for they are justified by objective facts about the way the world operates. But it must always be remembered—and perhaps this is the point that Professor Fuller's positivistic opponents would wish most particularly to emphasize—that such rules can only give rise to a morality of hypothetical imperatives in the Kantian sense. They have nothing to say to the man who wants precisely those results that misuse of the tool will produce. Misuse of the instrument of the law may yield the abjectly submissive and terrorized citizenry that the tyrant desires.

Perhaps at this point Professor Fuller would object that law so misused is equivalent to an absence of law. Thus, he urges that the abuses of the Nazi regime produced not bad law, but no law at all, and he employs this observation to support his definition of law. But this is like saying that a hairpin used to pick a lock is not a hairpin but a key. While perhaps this may be an argnable recommendation for the use of words, no substantial point of theory

[2] FULLER, THE MORALITY OF LAW 96 (1964).

should turn on a semantic distinction. However, the author clearly demonstrates that such verbal distinctions may have practical significance, as in dealing with the problem of what to do with the man who has used the "law" of a Nazi-like regime for his own ends.

The book is an expanded version of the author's Storrs lectures on jurisprudence given at the Yale Law School in 1963, and this no doubt accounts for the pleasantly informal, yet lucid style in which the book is written. Professor Fuller is not one to define his topic with a pedantic narrowness, and this review cannot do justice to the many interesting results which the author achieves during his discussion of the ramifications and applications of his argument. It is a good book, whatever judgment must finally he made about the cogency of its arguments, and this reviewer's predominant feeling upon finishing it was one of regret that so fascinating a subject as philosophy of law has not been kept in the philosophy departments on an equal footing with philosophy of science.

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WILLS AND ADMINISTRATION OF ESTATES IN NORTH CAROLINA. By Norman Adrian Wiggins.[1] Atlanta: The Harrison Company, 1965. Two Vols., Pp. 1418.

Professor Wiggins has fulfilled a need of the legal profession, the court, the estate planner, trust officer, executor, administrator, and guardian in the publication of *Wills and Administration of Estates in North Carolina.* Although his subject does not lend itself to the writing style of an Ellery Queen, Professor Wiggins' concise and comprehensive presentation evidences his qualifications as an author in this field. As a bank trust officer, he received practical experience in those matters of which he writes. As a member of the faculty of the School of Law of Wake Forest College, he teaches courses in Wills, Estate Planning and Taxation. He served on a committee of the North Carolina General Statutes Commission to draft recommended legislation for the revision and improvement of the probate laws of the state. Because of his work on this Commission, Professor Wiggins' discussion of the Intestate Succession Act of 1959 will be especially helpful to North Carolina lawyers. Indeed, his treatment of the act constitutes a highlight of this work.

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