**Practicing Lawyers and Philosophers: Mutually Supporting Perspectives on Legal Ethics**

**Introduction**

* I will argue that **practical legal reasoning and philosophical reasoning are mutually supporting** in providing insights about law and legal ethics, in particular, because of the **varied expertise, applied and theoretical**, of lawyers and philosophers.
* Been thinking about presenting these ideas at **two different kinds of forums**, one directed at the **legal community** and the other directed at the **philosophy community**.
* Also been considering **which legal communities**. **Many** of the people attending **this conference will already have the benefit** of the considerations that I’ll be raising.
* **Main goal today: encourage you to engage** with the field of philosophy, to **discuss an important obstacle** to you doing so, and to **propose a fruitful way** of engaging with philosophy.
* To narrow my focus, I will argue that our understanding of the ethical stakes of the adversarial model of adjudication is enriched by considering both forms of reasoning.
	+ **Legal community:** At the same time, **lawyers can enrich their knowledge** of the value and purpose of their work in the adversarial model by engaging in **philosophical contemplation** and even by reading **technical philosophical literature**.
	+ **Philosophical community: The practical realities of representing a client in a legal dispute provide unique insights** about the legal and ethical aspects of the adversarial model for which **philosophical reasoning about law must account**.

**Two main suggestions for today: (1) encouragement towards philosophical contemplation about the work that lawyers do and (2) encouragement to engage in reading technical philosophical literature.**

**Part 1**

1. **Philosophical Contemplation**

**Fuller, “Philosophy for the Practicing Lawyer” in *The Principles of Social Order******[[1]](#footnote-1)***

**Value for the Lawyer in Engaging with Philosophy/The Philosopher’s Perspective**

Kenneth I. Winston summarizes the focus of this piece in the following way: “**A** **philosophical perspective focuses on processes of law and purposeful human activities and keeps the lawyer from adopting an overly formalistic approach to legal issues”**. [[2]](#footnote-2)

“[Need to become aware of, and **reflective about, the ends of law and government, and need to relate specific rules of private and public law to those ends**”.

**Philosophical Contemplation: “Imaginative exercise of standing off and looking at yourself and what you are doing with eyes as completely disinterested and candid as you can make them”. [[3]](#footnote-3)**

Fuller imagines a **young lawyer engaged in private practice**. [[4]](#footnote-4) When he was in law school, he was worried about **advocating for causes that were different from his own view**, but becoming increasingly comfortable with doing so. Indeed, the young lawyer finds this adversarial practice invigorating and enjoyable. **Enjoys** the degree to which his experience of law practice involves a **competition**, of either a good natured or perhaps not so good natured sort.

This young lawyer has one **ethical concern, “that he may allow himself to become too completely identified with his client’s interests**”. **Fuller suggests** that the lawyer approach the question from the **detached point of view** explained earlier and provides a p**rincipled account of the justification of the adversarial system.** Notes especially issues around motivation and expertise in **“digging up facts, thinking of arguments, tracing out the full implications of proposed solutions”.**

Simple **example of insight** that might be obtained by philosophical contemplation, insight from the perspective of the study of knowledge generation and knowledge usage.

**Fuller’s** account of philosophical **contemplation needs some more detail**. **How do we acquire the tools** to engage in philosophical contemplation?

**One important aspect: reading technical philosophical literature (Hart, Fuller, Dworkin, and Fuller mentions: Plato, St. Thomas Aquinas, Hegel, etc.). [[5]](#footnote-5)**

**Part 2**

1. **Technical Philosophical Literature**

Dealing with a **major obstacle to obtaining the tools** to engage in **sophisticated philosophical contemplation.**

An important source is technical philosophical literature. However, **technical philosophical literature has some important frustrating aspects that may not exist in other fields. One** is the problem that many **perceive philosophy to be a field that does not make any, or much, progress**. It certainly seems to be at a loss when compared to fields such as the natural sciences, social sciences and even other humanities.

Because I’m talking about the mutually supporting perspectives of the people working in the fields, I want to address an obstacle that pertains to the **application of this difficulty as it relates to people working in the field.** Specifically, I want to raise the issue of **why the considerations around expertise might discourage reading of technical philosophical literature** and how Fuller’s proposal for lawyers and legal philosophy can address this issue.

**Alvin Goldman**[[6]](#footnote-6)

**Objective Experts:** individuals who “have more **beliefs (or high degrees of beliefs) in true propositions** and/or fewer beliefs in false propositions within that domain that most people do (or better than the vast majority of people do)”. “Possess **a substantial body of truths in the target domain**”. “**A capacity or disposition to deploy or exploit this fund of information** to form beliefs in **true answers to new questions”.**

**Reputational Expert:** “someone **widely believed** to be an expert (in the objective sense), whether or not he really is one”.

It may be **debateable whether there even are objective experts in the field of philosophy**. There are clearly experts about what has been said in philosophy. But that is not generally what is meant by objective expertise. **Objective expertise means expertise about the subject matter**. It is exceedingly **difficult to verify that such expertise exists in philosophy**. The lack of expertise, and thus authority, about the subject matter may well discourage someone unfamiliar with philosophy from engaging with the field.

**An Answer from Fuller**

Fuller distinguishes between **two approaches to doing philosophy[[7]](#footnote-7)**:

1. **Philosophy as “position-taking”** or having **formulas or “ready-made attitudes”[[8]](#footnote-8)** by which one can judge life, accepting part of it as good and rejecting part of it as bad. [[9]](#footnote-9)
2. **Doing philosophy as approach to life** where we come with our **guard down**, attempting to **discern some truth in all contentions**, absorbing **reversals of fortune gracefully** and going down in defeat without screaming recriminations. An approach that is “tolerant, broad, and disinclined toward any sort of prejudgment”. [[10]](#footnote-10)

How does Fuller suggest going about taking this approach?

* **Reading technical philosophical literature: mistake to “search** these writings **for some principle or formula that may be applied directly to solve the problems that confront a lawyer** in his practice and in planning his life. What should be sought is **not a principle...but an enlargement of view,** and opening up of areas of meaning that have been lost from sight”. [[11]](#footnote-11)

**Conclusion**

How does this **relate to my own theory of Fullerian lawyering?**

It gives us **realistic expectations for its usage.**

1. Lon L. Fuller, *The Principles of Social Order: Selected Essays of Lon L. Fuller*, rev. ed. by Kenneth I. Winston (Oxford: Hart Publishing, 2001) [Fuller, *Social Order*]. [↑](#footnote-ref-1)
2. *Ibid*. at 305. [↑](#footnote-ref-2)
3. *Ibid*. at 310. [↑](#footnote-ref-3)
4. Quotes and summary drawn from *ibid*. at 310-313. [↑](#footnote-ref-4)
5. *Ibid*. at 309. [↑](#footnote-ref-5)
6. Alvin I. Goldman, “Experts: Which Ones Should You Trust” (2001) 63 Philosophy and Phenomenological Research 85 at 91. [↑](#footnote-ref-6)
7. Fuller, *Social Order*, *supra* note 1 at 306-310. [↑](#footnote-ref-7)
8. *Ibid*. at 306. [↑](#footnote-ref-8)
9. *Ibid*. at 308. [↑](#footnote-ref-9)
10. *Ibid*. [↑](#footnote-ref-10)
11. *Ibid*. at 309. [↑](#footnote-ref-11)