FULLER'S *MORALITY OF LAW* REVISITED

Professor Fuller attempts to establish a relationship of law and morality.[1] He believes that law and morality are not only bedfellows but one entity with two faces. If law and morality are inseparable and their relationship is deep-seated, how do we prove it or convince the layman about this integral and inseparable relationship? Unlike a common approach to bring facts of both the phenomenon of law as well as of morality to coincide or match, Fuller adopts a new approach. He takes the example of a Rex who wanted to reform his laws. Rex failed to do so because he did not comply with one or the other of his eight desiderata. He enumerated these eight desiderata as follows (i) generality of law, (ii) promulgation, (iii) prospectivity of laws, (iv) clarity of laws (intelligibility of laws), (v) unself-contradictoriness, (vi) possibility of obedience, (vii) constancy of the law through time, and (viii) congruence between official action and declared rule. Fuller's thesis is that law which is brought into existence without complying with any one or more of the eight desiderata, will be lacking in its inner morality. The idea is conveyed that if law is imagined as a concrete object like an inkpot, then morality is contained inside. In other words morality resides in the law just as the soul is said to live in the human body. Fuller characterises these eight points as "a procedural version of natural law".[2]

The Idea of Two Moralities

Fuller holds that there is a distinction between the morality of aspiration and the morality of duty. He states that the morality of aspiration is exemplified in Greek philosophy. In brief, "the morality of aspiration is the morality of the good life, of excellence, of the fullest realization of human powers".[3]

[1]Fuller, Lon L., *The Morality of Law*, New Haven, (1964).
[2]*Op. cit.* 96-97.
[3]*Op. cit.* 5.

Fuller explains that every society has certain fundamental injunctions of morality. For instance the injunctions that state that we must not steal, we must not injure others, and we must not break our promises, are generally prevalent in every society and these had been in vogue since the hoary past. Fuller categorizes such injunctions under the morality of duty as every one is placed under duty to observe these injunctions. These are considered as very essential for the functioning and existence of society. In a modern society many additional injunctions would fall under this category. The modern society imposes a moral duty of general care, of not being negligent in respect of other's person or property. To put it positively, everyone is supposed to be careful, punctual and generally efficient in the performance of his or her daily affairs.

These are the minimum requirements of morality which Fuller prefers to put under the category of the morality of duty.

The morality of aspiration: Fuller divides morality into two parts: the morality of duty and the morality of aspiration. Fuller states that the morality of aspiration is the morality of excellent life, the good life. What he seems to say is that man does not live by bread alone. Man does want to lead as excellent a life as possible. The morality of duty touches the bare essential aspects of life; in other words, it does not concern with the life at the highest level. Fuller states that the Greeks used to have the idea of excellent life and they aspired for it. To them, a man was held in esteem if he had a noble life, a life of virtues. What mattered to them was the lofty ideals rather than anything else. Virtues like justice, courage, and truth were admired. According to Fuller this ideal of noble life represents the morality of aspiration. A person who desires to achieve great honours, virtues or heights of excellence in any field is fulfilling the morality of aspiration. It is to be noted that Fuller makes the division of morality into the morality of duty and the morality of aspiration for a purpose in mind. That purpose is to furnish a foundation for the view that his eight desiderata pertain to the sphere of morality, in particular, the morality of aspiration. But for this purpose, the whole discussion of the two moralities becomes irrelevant and redundant. To give a semblance of

credence to his idea of two moralities, he goes on to distinguish the two moralities. When we examine his distinctions, we find that he is on shaky foundations. Herein we examine some of the points of distinctions. Fuller says that the morality of duty begins at the bottom whereas the morality of aspiration starts at the top.

> Where the morality of aspiration starts at the top of human achievement, the morality of duty starts at the bottom. It lays down the basic rules without which an ordered society is impossible, or without which an ordered society directed toward certain specific goals must fail its mark. It is the morality of the Old Testament and the Ten Commandments. It speaks in terms of 'thou shall not' and less frequently, of 'thou shall'. It does not condemn men for failing to embrace opportunities for the fullest realization of their powers. Instead, it condemns them for failing to respect the basic requirements of social living.[4]

The morality of aspiration takes in the view of excellent life. Does excellent life mean high-mindedness alone? Does it not require the fulfilment of basic or ordinary duties like not injuring others or not stealing the property of others? In other words, can one think of excellence without the existence of basic or ordinary duties? Fuller also says that the morality of duty is very essential for society to exist. Does it not seem that the distinction is not as real as Fuller makes it. The morality of aspiration starts as much from the bottom as the morality of duty. If one really believes that there exists an excellence which one ought to attain, does it not follow that as soon as one realizes the existence of excellence and the desirability of attaining it, one is morally duty-bound to endeavour to attain it? The morality of duty would immediately usher in even at the top, at the level of excellence. It seems that the distinction is without a difference - just a verbal quibble without any substance in it.

Let us take up another point of distinction which Fuller makes. He says that the morality of duty normally requires forbearance while the morality of aspiration is in some sense affirmative. Is this distinction valid? One can look at the injunction of not injuring or stealing as negative or a for-

[4] *Op. cit.* 5-6.

bearance but one can also see that the injunction really means the respect for one's personality or property. Therefore, it is positive as well as negative. Similarly, what Fuller calls the morality of aspiration or excellent life would involve both positive as well as negative aspects. Suppose one finds the excellence of life in promoting welfare of others, either of human beings or animals or plants or even inanimate objects, will it not carry an element of forbearance? For example, one who regards the excellence of life in promoting the welfare of animals may stop eating meat and that amounts to a forbearance. Thus every activity of excellence would carry a negative and a positive aspect. Fuller's morality of aspiration is in some sense negative, that is, having forbearance. And so is the case with the morality of duty which is affirmative in some sense and negative in others.

It becomes obvious that affirmative and negative aspects of action are inseparably mixed and to see only one and not the other is myopic.

Fuller attempts to distinguish the two moralities on the ground that the morality of duty can be (more or less) enforced by law whereas the morality of aspiration cannot be enforced by law.[5] The question which arises is why the morality of aspiration cannot be enforced by law? May be it is the aspiration of an individual which is not shared by the majority of the community and therefore there is no law enacted to give effect to it. But if the aspiration is such as is shared by the community at large, is there any particular reason why it cannot be enacted into a law? Supposing a society appreciates those who sacrifice their comfort or risk their lives for the sake of others, cannot it enact a statute to give some reward or appreciation to them? Or does Fuller take the position of natural lawyers that as soon as a law, though enacted due to natural law influence, is written down, it is no longer natural law but positive law? On the other hand, it is also not true that what Fuller considers as the morality of duty is generally written into law. It is trite knowledge that many demands or duties remain outside the

[5]*Op. cit.* 9.

sphere of law. Do we enforce the duty of the mother to take care of her child by law? And yet the mother does take care of her child. No one would disagree with the view that it falls under the category of morality of duty. Thus the distinction is not only thin but artificial.

Fuller says further that moral duties are 'sticky' and inflexible while the morality of aspiration is pliable and responsive to changing conditions.

> It may be suggested that a certain quality of stickiness is inherent in all duties, whether they may be moral and legal and whether they arise out of an exchange or from some other relation. At the same time it is in the nature of all human aspirations toward perfection, including that which seeks maximum economic efficiency, to be pliable and responsive to changing conditions.[6]

He has not elaborated in what sense moral duties are 'sticky' or inflexible. Is it because these have been enforced by law? Firstly, moral duties remain moral duties irrespective of whether these are enforced by law or not. Even if a law is enacted to enforce moral duties - some moral duties are enforceable by law - it makes no difference in the nature of duties as such. The morality of aspiration, if translated into specifics, may assume an inflexible character. By using the word 'duty' for moral duties and 'aspiration' for the other duties, no clear distinction emerges.

Again Fuller says that marginal utility is crucial to the morality of aspiration but not so to the morality of duty.[7] In Economics, the theory of marginal utility is that our happiness goes on decreasing as we consume a commodity until a point is reached where we do not derive any happiness at all. For example, we derive the maximum happiness by eating the first apple but as we go on eating the second, third apples and so on, our happiness starts decreasing. Fuller asserts that marginal utility is more important to the morality of aspiration than to the morality of duty. It is submitted that this distinction again is not sound. Do we not weigh and balance pros and cons when we decide a

[6] *Op. cit.* 28-29.
[7] *Op. cit.* 15 - 18.

question of moral duty? Do not steal, is an injunction which falls under the morality of duty. To prevent stealing from happening is also a moral duty. In Britain, the local authorities used to employ staff in libraries to do checking as books were stolen. But the experience showed that the cost of employing staff to check library users was more than the cost of books stolen. So the local authorities abandoned the idea of employing extra staff for the purpose. Is it not an instance of the consideration of marginal utility in the sphere of the morality of duty? The claim that marginal utility is very crucial to the morality of aspiration but not to the morality of duty is unsubstantiated. It seems that marginal utility is equally applicable to both.

Fuller fails to create a distinction between the two moralities even in the next point: judging a man to have conformed to moral aspiration is an essentially subjective and intuitive process whereas judging a man to have done his duty is not. We agree with Fuller that we can judge a man whether he has done his moral duty by some objective criterion. This is so because the objective of the morality of duty is clear to the members of society whereas the objective of the morality of aspiration depends on the individual. But this distinction does not seem to be so fundamental because the morality of aspiration, if it is appreciated and approved, by the society would be specified and concretized and as soon as this is done there would appear no such distinction.

Another point made by Fuller to distinguish the morality of aspiration from the morality of duty is that he states that there is an affinity between the morality of duty and the economics of exchange or the principle of reciprocity.

He says:

> Whenever an appeal to duty seeks to justify itself, it does so always in terms of something like the principle of reciprocity. So in urging a reluctant voter to the polls it is almost certain that at some point we shall ask him, "How would you like it if everyone acted as you propose to do?"[8]

[8] *Op. cit.* 20.

But Fuller himself realizes that this distinction is not universally tenable as not every duty arises out of a face-to-face relationship of bargain.[9] Anthropological studies[10] are replete with observations which show that there had been simple societies having the bond of social obligation. It seems that reciprocity as an element of moral duty developed with the growth of trade and commerce. It is not difficult to see that morality did not depend upon reciprocity before the advent of trade and commerce.

Moreover, if we admit the existence of the two moralities of duty and aspiration, why should we stop at that? Why should we not add to these, the morality of education, the morality of economics, the morality of culture and of what not. As we understand that morality is a code of conduct that is accepted and approved by a society, there does not seem to be much sense in dividing morality into two parts. It is submitted that Fuller resorted to the division of morality only to justify that his eight desiderata fall under the morality of aspiration. But this purpose could be very well served by widening the scope of morality rather than dividing it into the two divisions.

The Pointer That Fails to Point

Fuller asserts that the two moralities are distinguished but the boundary line of the two is blurred. In his words:

> In speaking of the relation of the two moralities, I suggested the figure of an ascending scale, starting at the bottom with the conditions obviously essential to social life and ending at the top with the loftiest strivings towards human excellence. The lower rungs of this scale represent the morality of duty; its higher reaches, the morality of aspiration. Separating the two is a fluctuating line of division, difficult to locate precisely, yet vitally important.[11]

[9] *Ibid.*
[10] See V.F. Calverton (ed.), *The Making of Man - An outline of Anthropology;* Wallace, Authony F.C. (ed.) *Men and Cultures;* Boas, Franz, (ed.) *General Anthropology;* Sylvester A.Sieber and Franz H. Mueller, *The Social life of Primitive Man;* Nama Denis Fustel De Coulanges, *The Ancient City.*
[11] *Op. cit.* 27.

Since the boundary line moves to and fro and there may be a large area of overlap, this shows clearly that the distinction between the two moralities is very hazy, probably pointing to only one morality and not two.

Fuller himself realizes this result when he cites Plato and other philosophers who took the view that in order to judge what is bad in human conduct we must know what is perfectly good.[12] In other words, moral duties cannot be known or ascertained without having a picture of morality of aspiration. If so, it points to the correctness of Plato's view. Since the morality of duty depends upon the morality of aspiration as regards its scope and standards, it is not realistic to draw a line between the so called two moralities. Fuller made an attempt to overcome this view by taking the example of a hammer which can be used for various purposes but not for all purposes.

He says:

> If a working companion asks me for a hammer, or a nearest thing to it available to me, I know at once, without knowing precisely what operation he is undertaking, that many tools will be useless to him. I do not pass him a screwdriver or a length of rope. I can, in short know the bad on the basis of very imperfect notions of what would be good to perfection. So I believe it is with social rules and institutions. We can, for example, know what is plainly unjust without committing ourselves to declare with finality what perfect justice would be like.[13]

But Fuller does not drive conviction for his view from the above example. In fact he supports Plato's view as Plato can argue that he could decide upon what is good in the situation because he knows what good can be done with a hammer. If the question is raised, how can we know what is plainly unjust without knowing what is perfect justice, Fuller would find it difficult to answer. The idea of injustice is inseparably integrated with the idea of justice; one cannot know the one without knowing the other.

It seems that the idea of two moralities is unconvincing. Morality is one. It should always remain one. Morality of course, is never a static concept. Its scope or specificity does

[12] *Op. cit.* 9.
[13] *Op. cit.* 12.

change as the society changes. It may be understood in a narrow or in a wide sense. But the domain of morality is one; it does not consist of different moralities as Fuller proposes in his two moralities. What emerges out of Fuller's view is that there is an area of morality which is under development and which has not been fully occupied by it. The one who asserts that it should be part and parcel of morality makes out a case for its inclusion. Fuller has argued his case for including the eight desiderata into the current morality. He may succeed in carrying the world with him or he may not. After all, morality like religion has been extended by thinkers and prophets from time to time. Fuller is one of such prophets who wants morality to embrace the procedure for law-making and law enforcement. If he is not honoured as a prophet of new morality today, he may get his honour tomorrow or he may fail to get it. Only time will tell whether he succeeds or not. So far as Fuller is concerned he has put forward a proposal which needs to be accepted or rejected by others.

If we proceed historically, it becomes obvious that morality has been expanding in its scope. Mankind had been debating throughout the ages whether adultery, usury, slavery, private property, distinctions of class, creed, race and others were or were not in consonance with morality. Even in our times, apartheid, homosexuality, racial discrimination, abortion, suicide and numerous other issues are being examined in relation to morality. Are the eight desiderata principles of legality or morality?

Principles of Legality or Morality

Summers in his article[14] asserts that Fuller's eight desiderata are principles of legality and not principles of morality. Some of the requirements of law-making which have been accepted as necessary and provided for by statute are legal requirements. For instance, the requirement of promulgation.

[14]R.S. Summers, *More Essays in Legal Philosophy*, (1971), 101.

It is generally provided by law that laws should be publicized. But not all of Fuller's desiderata have taken legal form. For example, the desideratum that possibility of obedience be considered by law-makers is nowhere provided by law. In any case, how are we to determine whether a law is capable of being obeyed or otherwise? On what grounds do we form our opinion? There is no law which requires law-makers to consider the possibility of obedience for a law they are contemplating to put on the statute book.

Since Fuller leaves out the consideration of external morality, he points out that philosophers in the past devoted time to external morality but very little was said about the procedural matters he mentions in the eight desiderata because the procedural aspect was so obvious.

Fuller's Desiderata and Morality

We have already observed that Fuller's eight desiderata may become principles of morality in the future, near or distant, depending upon requisite conditions. Here we consider whether these desiderata give birth to morality in some invisible or imperceptible way. If they do, there would be some merit in Fuller's claim to characterise them as creating internal morality of law.

One thing seems to underline Fuller's scheme. The law maker is made conscious of the subject, that is, persons or people who are being subjected to the governance of rules. Before any law is made the legislator would, by the procedural desiderata, be compelled or impelled to consider the position of the people; whether they would be able to obey the law, whether it is highly improper and iniquitous to make retroactive laws, whether the law is to be promulgated in a journal and whether the law so enacted is consistent with the body of the laws which already exists. Besides, he would be concerned with the behaviour of those who have to implement it. The whole psychological makeup of the legislator makes him fulfil the requirement of morality - probably his moral obligation towards those for whom he wants to make the law.

Secondly, there seems to be a somewhat invisible connection between the demands of openness, publicity and clarity on the one hand and the demand of morality on the other.

Secret, clandestine activities are inimical to honesty and fairness. Generally evil things are done under the cover of darkness or false pretense. In other words, if one is advised or required to do a thing in an open manner, one is inhibited thereby not to do evil things, though it is not difficult to come across lawmakers who make a law with a whole lot of false publicity about it. It is a practical question whether there is a correlation between moral behaviour of the legislator and the compliance with the eight desiderata. Hart denies any such correlation as he says that a genocide order can be made after fully complying with Fuller's eight desiderata.[15] But in reality, is it true? Supposing a genocide order is passed, would the lawmaker not think of the possibility of its being disobeyed? The executive may refuse to implement the law if it is inhuman in its import. It is common experience that if the law lays down severe penalties for an offence, for example, death penalty, judges take longer time to dispose of cases; stricter proof is made necessary and judicial interpretation of the legal provisions tends to lean somewhat towards leniency for the accused. In brief, it appears that there may be some correlation between morality and the implementation of Fuller's desiderata.

Fuller's Concept of Law

Fuller like Hart attempted to define law. The chapter on the concept of law is geared not to vindicate the thesis of his book but to advance further clarification. The clarification made nevertheless goes to reinforce the view he took in chapter II. Law, in Fuller's view, is the enterprise of subjecting human conduct to the governance of rules.

The first point is that he defines law in terms of a purpose or aim rather than what it is. Though this criticism made by Summers[16] is partly true as one can argue that by knowing the purpose of a thing, one can know what it is though one may not know it comprehensively.

[15]See, Hart's review of Fuller's *The Morality of Law* in 78 *Harvard Law Review* 1281.

[16]R.S. Summers, "Professor Fuller on Morality and Law" *Journal of Legal Education*, Vol. 18, No. 1, p. 1, at 14.

Fuller makes his position clear that he is not discussing the substantive question of morality.

He points out that the very purpose of law is to affect human conduct. Hence there must be thought devoted to its prerequisites.

Then he stresses upon the procedural aspect of law-making which is in his view very crucial.

Lawmakers must see to it that law is made clear in its import and meaning; technical terms should be defined and refined so that clarity is attained. Clarity is shown as a positive quality of law. Fuller's critic, Dworkin, questions whether there is any correlation between clarity and morality.[17]

Fuller takes up other theories of law, for example, realism, to search the relation between morality and law. Friedman's position that Nazi laws were as valid as the laws of any other state, is described by Fuller as a view which is completely at odds with his own analysis. On sanction, Fuller holds that force cannot be characterised as an identifying mark of law. He compares it with the apparatus of a scientist. The scientist uses some apparatus like a balance, measuring or weighing devices but the apparatus cannot be regarded as an identifying mark of science. Similarly, force is used in law but this cannot be regarded as an essential characteristic of law.. Then he considers parliamentary supremacy - a principle which apparently keeps parliament above law. Fuller says, "But, paradoxically it gains this position of being above the law only by subjecting itself to law - the law of its own internal procedures".[18]

This again emphasises on the procedural aspect of law. He defends his all-inclusive definition of law. Fuller's law encompasses not only the law enacted by legislatures but also by private bodies like clubs.

Fuller wants the judges' commitment to the internal morality of law, though he argues for their neutrality with regard to the external morality of law.

[17]Ronald Dworkin, "Philosophy, Morality and Law - observations prompted by Professor Fuller's Novel Claim" *University of Pennsylvania Law Review* Vol. 113, 668.

[18]Fuller, *Op. cit.* 115.

Fuller criticises Hart's concept of law in that he regards the distinction between rules which impose duties and the rules which confer power as skeptical.

On the rule of recognition, Fuller takes a different view: "There is no doubt that a legal system derives its ultimate support from a sense of its being right".[19] He gives the example of a mother who tells her baby sitter to teach a game to her baby and the baby sitter teaches the child to throw dice for money or to duel with kitchen knives. Fuller raises a question: must the mother ask the question whether the baby sitter has violated a tacit promise or has simply exceeded her authority? Fuller's answer is that she would not be concerned with that question. So the law-maker - even Parliament - should not, in order to make valid law, start making absurd laws. "And if the expectations and acceptances that underline a Parliament's power confine it to law-making, does not this tacitly entail further limitations?"[20] Fuller's criticism of Hart's rule of recognition is:

> But if the rule of recognition means that anything called law by the accredited law-giver counts as law, then the plight of the citizen is in some ways worse than that of the gunman's victim.[21]

Fuller even criticises Hart's comparison of the invention of secondary type of rules with the invention of the wheel. In his view it should be the procedure and not the grant of authority.

> And surely if one is going to speak of an invention comparable to that of the wheel or the airplane, it is appropriate to think of a procedure and not of a mere grant of authority.[22]

Hart on Fuller's *Morality of Law*

Professor Hart reviewed Fuller's *Morality of Law* in *Harvard Law Review*[23] and later on the same review was published in

[19] *Op. cit.* 118.
[20] *Op. cit.* 139.
[21] *Op. cit.* 139.
[22] *Op. cit.* 145.
[23] 78 *Harvard Law Review* 1281 - 96.

Essays in Jurisprudence and Philosophy.[24] Hart considered Fuller's definition of law as inadequate as it fails to determine the outer boundaries of law. Fuller holds that law is a purposive enterprise of subjecting human conduct to the governance of rules. Hart thinks that this definition of law "admittedly and unashamedly" includes the rules of clubs, churches, schools and a hundred and one other forms of human association.[25] But Hart does not point out any harm resulting from it. He also criticises Fuller for not giving any account of what rules are. This sounds pointless as every author on law is not expected to analyse rules before he writes about them. Common understanding of rules is supposed to exist and Fuller seems to have proceeded on this basis, though one would agree with Hart that the notion of rule is not unambiguous or unproblematic. But the main attack launched on Fuller's morality of law is on Fuller's view that the efficacy of a law is to be distinguished from its morality. Fuller, in Hart's view, seems to have blurred this distinction. In other words, Hart thinks that these eight desiderata, if observed, would promote efficacy of the law but not necessarily morality as such. Hart says:

> But the author's insistence on classifying these principles of legality as 'morality' is a source of confusion both for him and his readers. The objection that the description of these principles as the, special morality of law is misleading because they are applicable not only to what lawyers think of as law but equally applicable to any rule-guided activity such as games (or at least those games which possess rule-making and rule-applying authorities) would no doubt be rejected by the author: he would simply appeal to his wide conception of law as including the rules of games. But the crucial objection to the designation of these principles of good legal craftmanship as morality, inspite of the qualification 'inner', is that it perpetrates a confusion between two notions that it is vital to hold apart: the notion of purposive activity and morality.[26]

As we have discussed in the earlier part of this article, Hart's objection so far as the distinction between efficacy of the law and its morality is concerned, is unassailable. But

[24]Hart, H.L.A., *Essays in Jurisprudence and Philosophy*, 343 - 363.
[25]*Ibid.*
[26]*Op. cit.* 349.

Fuller's view that these desiderata are involved in the procedure still stands firmly. In fact, it appears that there may not be any contradiction in the two views; those are simply separate aspects. Thus both Hart and Fuller seem to be right in their views of respective aspects. We have already discerned some hidden aspects of morality in Fuller's views. Of course both Hart and Fuller agree that the eight desiderata are of good legal craftmanship.

Hart also has attacked the distinction between the morality of duty and the morality of aspiration. Hart rightly points out that Fuller's characterization of his eight desiderata (excluding the peremptory principle of promulgation) as belonging to the morality of aspiration is absurd. We have gone into Fuller's analysis and reached a conclusion that the distinction is artificial and unconvincing on his own analysis. Hart attacks the distinction under his main objection:

> Only if the purpose of subjecting human conduct to the governance of rules, no matter what their content, were itself such an ultimate value, would there be any case for classing the principles of rule-making as a morality, and discussing whether it was a morality of duty or aspiration.[27]

Hart asserts that he could not find any cogent argument in support of the claim that the eight desiderata are not neutral as between good and evil substantive aims. Fuller believes that they are not neutral. In other words, there is some correlation between the eight desiderata and morality. Though Hart is right that Fuller has not buttressed his claim with reasons, it seems that Fuller is not wholly wrong. An attempt has been already made here in the foregoing part to support Fuller's observation.

An Assessment of Fuller's Thesis

The Morality of Law was written in the wake of the controversy whether the Nazi laws were valid, with the positivists saying that they were and the natural lawyers saying they were not. Fuller reinforced the natural lawyer's view by showing that law and morality were inseparable. Besides the

[27] *Op. cit.* 351.

inseparable relationship of law and morality, Fuller worked a novel thesis in *The Morality of Law* in that he attempted to show that procedural requirements in law-making which he called the eight desiderata were the internal morality of law in the absence of which law would not be law. In other words, Fuller supplied additional grounds to declare a law void in case it lacked one or more of the desiderata mentioned by him. It was a new justification for declaring that the Nazi laws were not laws as they lacked one or more of his eight desiderata. This becomes clear from the examples he furnished to illustrate his view. For instance, Fuller[28] comments on *Robinson* v. *California*[29] where the question was whether a statute might constitutionally make the state or condition of being a drug addict a crime punishable by six months' imprisonment. It was a scientific fact that such a condition might come about innocently. The Supreme Court held that the statute violated the Eighth Amendment because it imposed a "cruel and unusual punishment". To the possible objection that six months' jail would not normally be regarded as "cruel and unusual punishment", the court added that the nature of the offence for which it was imposed is a relevant factor to hold that it was "cruel and unusual punishment". Fuller suggested that the same result could be very well achieved by striking the statute down on the ground of clarity. He says:

> We have an express constitutional prohibition of *ex post facto* criminal laws and a well established rule of constitutional law that a statutory definition of crime must meet certain minimum standards of clarity. Both of these restraints on legislative freedom proceed on the assumption that the criminal law ought to be presented to the citizen in such a form that he can mould his conduct by it, that he can, in short, obey it. Being innocently in a state or condition of drug addiction cannot be construed as an act, and certainly not as an act of disobedience.[30]

While discussing the substantive aims of law in chapter IV of his book, Fuller gives the example of the racial laws of the Union of South Africa which lacked scientific basis of

[28]Fuller, *Op. cit.* 105.
[29]370 U.S. 660 (1962).
[30]*Op. cit.* 105.

race classification. He also referred to *Ozawa* v. *United States*[31] in which the court was called upon to interpret a provision restricting naturalization to white persons. The court held that the test afforded by the mere colour of the skin of each individual was impracticable. From these examples, Fuller demonstrated that his eight desiderata are capable of being pressed into service in such situations and the laws which lack in any one or more of these desiderata might be struck down. Similarly the Nazi laws which were not properly published or made known or denuded of some of the eight desiderata, could be declared as null and void.

Fuller might not be able to establish the case of two moralities, the morality of duty and the morality of aspiration. But the eight desiderata he presented are surely a new direction of enquiry. In fact, some of his desiderata are already being taken into account in law-making. Publication of laws is generally a legal requirement in most jurisdictions. With the passage of time, the pan of the desiderata may be expanded. It may be suggested that one more desideratum can be inequitable enforcement of laws. For instance, in the international law the world has witnessed the operation of 'Desert Storm' against Iraq. It was carried out under a resolution of the United Nations. Current sanctions against Iraq are also being applied under the United Nations resolution. Recently a resolution of the United Nations has been passed to force Libya to surrender two of her citizens allegedly involved in the blowing-up of a Pan American Plane at Lockerbie and also a French plane in Africa. But the world knows very well that Israel has disobeyed with impunity many United Nations resolutions and yet the world body shies away from taking any action against Israel. This raises a question: does this selective or inequitable enforcement of United Nations resolutions not deprive these resolutions of inner morality?

Fuller's *Morality of Law* has impressed Ronald Dworkin very deeply. Dworkin pointed out that the book forces us to attend to the criterial standards locked into law's vocabulary and analogous features of our morality which are indeed great virtues of the book. Then he observed that Fuller's

[31] 260 U.S. 178 (1922).

Morality of Law leads the lawyers to study ethics: "jurisprudence and ethics would each benefit from absorbing the insights and appreciating the failures of the other."[32] If the book has succeeded in showing a new direction to a talented jurist of our time, Fuller has been amply rewarded by his book.

It seems that Ronald Dworkin was so much influenced by Fuller's *Morality of Law* that he delved deep into the relationship of law and morality and argued in his three books, namely, *Taking Rights Seriously, A Matter of Principle* and *Law's Empire*, that law has inseparable and integral relation with morality. He criticised Hart's concept of 'rule' as it did not include non-law standards. His emphasis on applying principles, particularly, in a hard case, shows clearly that judges should base and develop law on morality.

Apart from Dworkin, there has been a host of thinkers who came up with works and articles to reinforce the view that law and morality are inseparable.[33]

Thus Fuller's book provided a stimulus to others to ponder over the issue of law and morality. What Fuller's book has achieved is great indeed.

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[32]Dworkin, Ronald, "Philosophy, Morality, and Law - Observations prompted by Professor Fuller's Novel Claim" *Univ. Penn. L.R.* Vol. 113, 668, 686.

[33]See, Samuel Stoljar, *Moral and Legal Reasoning* (1980); Detmold, M.J., *The Unity of Law and the Morality* (1984); Finnis, J.M., *Natural Law And Natural Rights;* Kent Greenwalt, *Conflicts of Law and Morality* (1987); Beyleveld and Brownsword, *Law As a Moral Judgment* (1986). For a survey of recent natural law theories, see Wang Shang Ying, "Four Contemporary Natural Law Theories" (1990) 32 *Malaya Law Review 254.*