The Soul of the Fugue: An Essay on Reading Fuller

Peter Read Teachout

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Though he stands among the three or four great legal thinkers our country has produced, [he] has seldom been described, and never accurately, as the prophet of any particular “theory of law.” . . . His insight was too rich and varied, his method too flexible and too finely modulated to the task at hand, to make it possible for him to feel comfortable under the banner of any philosophic faction.

If his work lacked the sloganized kind of unity that would bring it under some familiar and inclusive rubric, this does not mean that it was not permeated by a deeper kind of coherence. The thread of connection in his philosophy is found not in theories or doctrines, but in a persistent effort to solve certain basic and recurring problems of the law.1

In a world in which new “mighty Revolutions in Philosophy”2 are announced almost daily, and “paradigm shifts”3 have
become as fashionable as shoulder knots and silver lace.\textsuperscript{4} Lon Fuller's jurisprudential writings stand out as islands of sanity and light. His essays, almost without exception, are classics. They are performances of thoughtfulness that transcend the rise and fall of passing jurisprudential fashions. Collectively, moreover, they give expression to an ethical vision of great and compelling integrity. It is hardly remarkable that Fuller has come to be regarded as one of the most influential jurisprudential writers of our time.\textsuperscript{5} Indeed, it would not be an exaggeration

\textsuperscript{4} The phrase "shoulder knots and silver lace" is an oblique reference to the way in which the three brothers in Swift's \textit{Tale of a Tub} succumbed to passing fashions in dress—to the new fads of "Shoulder-Knots," "Gold Lace," "flame Coloured Sattin," and "Silver Fringe"—in contravention of the plain directive in their father's will not to embellish in such a way upon the simple coats they inherited. \textit{J. Swift, supra} note 2, at 82-88.

\textsuperscript{5} Robert Summers's assessment is fairly representative:

[Fuller] is unquestionably the leading secular natural lawyer of the twentieth century in the English-speaking world. His work on legal processes and on the principles of legality qualify him as the greatest proceduralist in the history of legal theory. He was also one of the foremost theorists of means-end relations in legal ordering.
tion to say that he probably has had a greater impact on the shape and direction of contemporary legal thought than any other single modern writer.

It is puzzling then that, for all the apparent influence Fuller’s jurisprudence has had on contemporary legal thought, his essays themselves, as essays, remain on the whole so little appreciated and understood. They are so rarely taken seriously on their own terms. We still go to them expecting them to offer up some great internally coherent theoretical system, and still continue to come away disappointed when they do not. In our frustration then, we push and shove and manipulate in an effort to extract from the essays the comprehensive statement of a theory of law they themselves seem so reluctant to yield. And inevitably, whatever emerges is somehow not Fuller.

The problem seems to be that all along we have been reading Fuller’s essays in the wrong way. We have tended to regard Fuller primarily as a theorist. We have approached him as a great constructor of theoretical systems and have viewed his essays as forming building blocks within those systems. But it may be that if we want to understand his jurisprudence, we have to think of Fuller less as a theorist than as an ethical writer. We must learn to regard his essays not as works of theory but as ethical compositions—as writings designed to instruct not only at the level of surface argument but also by their own performance. Until we are prepared to view Fuller in this more complex light, we will be barred from entering the rich and difficult world to which his essays give such complete expression. Theory, to be sure, was one resource Fuller called upon in his jurisprudence, but it was only one, and until this is appreciated his jurisprudential endeavor and achievement can never be fully understood.

I. INTRODUCTION: FULLER’S SEARCH FOR “A DEEPER KIND OF COHERENCE”

Unlike many of his contemporaries, Fuller was deeply interested in the forms and traditions of continental legal and philosophical thought. He did not receive the continental learning passively, however, but brought to it an invigorating

6. See, for example, Fuller’s puzzlement over why “the American legal realist has displayed so little interest in European legal speculation” and his expression of the importance of paying attention to continental theory. Fuller, American Legal Realism, 82 U. PA. L. REV. 429, 438 (1934) [hereinafter cited as
practicality and worldliness that at once transformed the inherited categories of thought and, in doing so, breathed into them a new life. It was in many respects a classic encounter: on the one hand, the young American legal scholar with his pragmatic and down-to-earth sensibility—his concern for the workability of things—and his keen sense of justice and fair play; and, on the other hand, the disciplined intellectual forms of continental learning. And out of this encounter emerged in time a highly original approach to the traditional problems of jurisprudence, an approach that has fundamentally altered our understanding of the nature of the jurisprudential enterprise.

Everywhere Fuller went, it seems, new jurisprudential movements or schools developed. It is Fuller's jurisprudence, for example, that provides the intellectual and ethical foundations for what has subsequently emerged as a distinct "legal process" school of American jurisprudence. One can see the clear imprint of his thought in Hart and Sacks's classic materials on *The Legal Process*, and derivatively in the writings of other scholars who follow within that tradition. Fuller's jurisprudence is also an important source of inspiration for those who view themselves as carrying on the secular natural law tradition of legal philosophy. One thinks, for example, of Fuller's shaping influence upon the work of Ronald Dworkin, perhaps the leading contemporary scholar within the rights tradition.

Nor has the sphere of Fuller's influence been confined to the boundaries of this country. He has had a significant impact, to cite just a couple of examples, on the thought and writing of Patrick Atiyah, the English contracts scholar and perhaps the leading contracts scholar in the world today, and even on that of H.L.A. Hart, the great English positivist with whom Fuller

*Fuller, Legal Realism*. Fuller did not take a romantic view of "pristine pragmatism." See id. at 438 n.23.


8. Included within this group would have to be the late Alexander Bickel of Yale Law School and John Hart Ely now Dean of the Stanford Law School.


11. Fuller's impact here was admittedly of a different sort, since it pri-
engaged in famous debates over the relationship of morality and law.

But that is not all. Much of the current scholarly interest in alternative dispute resolution and in polycentric decision-making can be directly traced to Fuller’s creative pioneering work in these areas.\(^ {12} \) And this is to say nothing of his more specific but equally significant contributions to our understanding of contracts law\(^ {13} \) and to the reform of legal education.\(^ {14} \)

No matter where one finally comes out with respect to the ideological vision expressed in Fuller’s writings, one cannot fail to be impressed by the tremendous fertility of the man’s imagination—by his genius for proceeding to the heart of what he would call “the permanent problems” of the law\(^ {15} \) and for opening those problems up in a way that released them for productive future inquiry.

If Fuller’s jurisprudential career was characterized in part by great innovation, it was also marked by a pattern of resistance to what might be called extreme allegiances. Thus it is not at all uncharacteristic of Fuller that he should have been at once a leading force in the revolt against the radical conceptualism of Williston and others,\(^ {16} \) and at the same time one of the first to criticize the extravagances of the legal realists.\(^ {17} \) Fuller squarely rejected the formalist claim that law was a completely rational science,\(^ {18} \) and pressed insistently for recognition of the

\(^ {12} \) See R. Summers, supra note 5, at 98-100, 107; Fuller, Forms and Limits of Adjudication, 92 Harv. L. Rev. 353, 394-404 (1978); Fuller, Mediation—Its Forms and Functions, 44 S. Cal. L. Rev. 305 (1971).

\(^ {13} \) See R. Summers, supra note 5, at 123-36.

\(^ {14} \) See id. at 137-50.

\(^ {15} \) Fuller, Legal Realism, supra note 6, at 453.

\(^ {16} \) See Fuller, Williston on Contracts, 18 N.C.L. Rev. 1, 9-15 (1939) [hereinafter cited as Fuller, Williston].

\(^ {17} \) See Fuller, Legal Realism, supra note 6, at 432-62.

\(^ {18} \) Fuller notes:

The traditional theory supposed, or pretended to suppose, that the judge was influenced solely by a segment of his intellectual environment, that represented by “law” and legal theory. This view is no longer tenable. We now realize that rules are impotent to exercise any real control over the judicial process. Even when they seem to chart a definite course (which is seldom because of their vagueness) frequent judicial aberrations from the charted course remind us that there must be other, more significant factors in the judge’s environment.

*Id.* at 453; *see also id.* at 447 (describing legal science as “a science which has suffered for centuries from an unbridled pseudo-rationalism”); Fuller, *Willis-
inescapability of discretion and fiat in judicial decision—but he also believed passionately in the importance of reason in the law. He was convinced, as he once wrote, that "we shall find that reason has capacities we had not suspected in it." The same general pattern appears in the relationship he developed to the natural rights and positivist schools of legal philosophy. Fuller resisted the embrace of traditional natural law jurisprudence, in part because of its dependence on belief in the existence of a fixed set of universal principles, and in part out of an acute awareness of the abuses to which such jurisprudence historically had been put. But he rejected even more vehemently legal positivism, viewing it as a soulless and corrosive philosophy. His own philosophical journey was marked by a pattern of constant correction and recorrection of ethical course—by a continuing effort to discover and articulate "affirmations of the middle range." The most striking feature of Fuller's jurisprudence is the powerful transformation it works in our understanding of the nature of the troublesome antinomies with which legal philosophy has traditionally been concerned. Fuller's thought is a great master solvent of the classic antinomies of jurisprudence: law versus morality, reason versus fiat, formalism versus realism, logic versus policy, justice versus efficiency, substance versus procedure, means versus ends—all of these traditional oppositions are somehow mysteriously dissolved and just as mysteriously recombined in the liberating alchemy of his juris-

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18. See Fuller, Reason and Fiat, supra note 1, at 377-89.
19. See Fuller, Reply to Professor Hart, supra note 1, at 385-86.
21. See Fuller, Reason and Fiat, supra note 1, at 377-89 (criticizing Williston for rejecting as "freaks" those cases that do not fit into his formal system); id. at 9 (criticizing Williston for giving up "at the very outset" any attempt "to shape the law by direct reference to social interests").
22. See Fuller, Reply to Professor Hart, supra note 1, at 385-86.
prudence. This is not, of course, an accidental effect in Fuller's case, but a reflection—indeed, a deliberate consequence—of what he took to be his central jurisprudential task: to free us from the phony oppositions that shackle inherited language and thought.\(^2\)

At the heart of Fuller's endeavor is the attempt to forge out of the inherited materials of our legal culture an ethically integrated approach to language and experience. One can see this integrative impulse at work, for example, in Fuller's insistence that the "is" and "ought" of legal rules should be regarded, not as belonging to separate universes of discourse, but rather as aspects of "an integral reality."\(^2\)

It is reflected as well in his rejection of a mode of philosophical discourse that permitted "ends" to be considered in isolation from "means," and in his self-conscious effort to carve out a new critical vocabulary that would force recognition of the interconnectedness of the two—to forge a language that would more fully express the complex relationship of interdependency that exists between, on the one hand, the substantive vision we hold of the ends of the social order and, on the other, the procedures we develop and make available for the realization of those ends.\(^2\)

These are but two strands, moreover, of what eventually emerges in Fuller's writings as a deeply integrated ethical vision.

Fuller's effort in this respect is much like Plato's in the Gorgias.\(^2\)

The central and recurring thrust of his jurisprudence is to move us from a position in which we regard experience in terms of false or simplistic antitheses toward a perspective that allows us to see the underlying relationships in a more complex and integrated light. It is to lead us to view the contrary tendencies and impulses of experience as part of a larger "integral reality"—to force us to take, as he would say, "the whole view."\(^2\)

In pursuit of the establishment of such an integrated ethic, Fuller was prepared to push beyond the bounds of traditional

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\(^2\) An early example is Fuller's rejection of the opposition between logic and policy upon which Williston's conceptualism is based. Fuller, Williston, supra note 16, at 8-10. Fuller takes much the same approach, as we shall see, toward the other oppositions that constitute the classic antinomies of jurisprudence. See infra notes 119-185 and accompanying text.

\(^2\) L. Fuller, Quest, supra note 23, at 11.

\(^2\) See L. Fuller, Means and Ends, supra note 24, at 54-64.

\(^2\) See infra notes 92-103 and accompanying text.

\(^2\) Fuller, Reason and Fiat, supra note 1, at 391-92; see infra notes 90-103 and accompanying text and text following note 103.
theory—indeed, beyond those of theory itself. He was not a theory-dependent scholar, and certainly not the sort to spend his energies seeking to discover an ultimate theoretical fix for the problems of human existence. Fuller's intelligence operated in different, more complex realms. His essays reflect a keen awareness of the limitations of the language of theory, and a conscious effort to break through those limitations in order to give expression to what he calls "a deeper kind of coherence." 

One can see this reflected, among other places, in the curiously amphibious character of the critical mode we encounter in Fuller's essays: it is neither fish nor fowl, neither theory nor empiricism, but a mode of criticism that combines, in an almost perfect fusion, the spirit of contemplative inquiry we expect of a philosopher with a writer's deep fascination for the concrete. Fuller's jurisprudence forms, as it were, a constant motion between the general and the conceptual on the one hand, and the "hard and earthy reality" of ordinary experience on the other. Fuller was in this sense, it might be said, almost a poet.

This is not, however, to suggest that Fuller's writing is without ideological implication. Indeed, the particular fascination of Fuller's jurisprudence today lies in the fact that it forms a distinctly liberal jurisprudence at a time when the word "liberal" seems to have passed, at least temporarily, from academic favor. Fuller's jurisprudence is liberal in a double sense: not only does it give expression to a liberal ideological vision, and do so with great integrity, it also reflects in its deepest fabric what might be called a liberal temper. One encounters in Fuller's essays a kind of humility, decency, and openness to correction—a respect for the complexity of the enterprise—that sometimes seems lacking in the more recent, morally-assured,

30. See infra note 67.
31. Fuller invokes this phrase in describing Cardozo's jurisprudential approach. See Fuller, Reason and Fiat, supra note 1, at 376.
32. Id. at 379.
"grand theory" legal scholarship to which we have become accustomed. To many of the current generation of legal scholars, Fuller undoubtedly would appear as something of an old fuddydud, as the quintessential representative of the failed vision of "liberal legalism," and his legal scholarship, as the embodiment of a "decadent, bourgeois" perspective on law and the social order that no longer has anything to offer us. And to be fair, one does occasionally come across a slight scent of mustiness in his jurisprudence—the sense that here is a scholar wrestling with problems and issues that no longer centrally occupy us, nor ought they to.

Yet to read Fuller's essays themselves—to read them slowly and carefully and in their entirety—gives rise to an altogether different impression. What strikes one most is the exact opposite of what one might expect: it is the curious freshness and vitality of these essays, the sense that they are somehow deeply pertinent to the issues and problems with which we are today struggling to come to terms. But what is it about Fuller's essays that accounts for their continued vitality? What is it that holds them together? What sort of education—ethical edu-

34. The works cited supra note 2 are representative of the grand theory approach to legal scholarship.

It is noteworthy that Professor Bruce Ackerman, who views himself as carrying forward the liberal torch, dismisses the contributions of the "Harvard group" (of which Fuller was a member) as "simplistic" and obsolete:

Instead of building realistic, let alone rigorous, models of bureaucratic and legislative behavior, they were content with simplistic conceptions of these institutions. . .

An even more serious flaw becomes clear when we turn from legal process to legal substance. Here, the Harvard group simply had nothing to offer, other than a vague recognition that new forms of expertise were aborning somewhere in bureaucracy-land.

B. ACKERMAN, supra note 2, at 39-40. But see id. at 33 n.5 (Ackerman acknowledging his debt to Fuller).
cation—do these essays, some of which were written more than a half-century ago, hold for us?

This Essay is an effort, however preliminary and tentative, to formulate answers to these questions. I begin by asking why it is that those who seek from Fuller's jurisprudence some statement of systematic theory come away so consistently frustrated. What is it about Fuller's jurisprudence that seems to resist the "theory seeking" approach? I go on to suggest it is possible to develop an alternative critical approach that will provide better access to Fuller's jurisprudence. Essentially, the position I take is this: If we want to come to terms with Fuller's jurisprudence, we must give up reading it as if it were a form of systematic theory stamped in the mold of the nineteenth century, and learn to read it instead as we do the works of the great eighteenth century English ethical writers such as Swift, Johnson, Austen, and Burke. Once our critical perspective has been realigned in this way, everything else falls into place. What was once confusing and unclear now begins to make sense; what once seemed the reflection of an internally contradictory view of the world now takes on a remarkable unity.

The remainder of the Essay is devoted to an application of this alternative critical approach to Fuller's jurisprudence. I begin by setting forth in large terms Fuller's basic jurisprudential vision. Next I discuss the relationship between that large vision and what might be described as the organizing principle of his jurisprudence—"the principle of polarity." I then attempt to show how the principle of polarity serves as a crucial "compositional ethic" in Fuller's essays, shaping not only the structure of those essays but also their underlying meaning. Finally, I survey from a somewhat broader perspective the underlying unity of Fuller's jurisprudence. I conclude by offering some observations on how we ought to understand the nature of Fuller's jurisprudential achievement.

II. FULLER'S JURISPRUDENCE AS A SOURCE OF FRUSTRATION FOR THE THEORY-SEEKING READER: THE PROBLEM OF FALSE EXPECTATIONS

It is a common and recurring criticism among contemporary readers of Fuller that his jurisprudence lacks theoretical discipline. This complaint surfaces, for example, in Professor Kenneth Winston's criticism of Fuller's "almost casual manner
of argument," an observation which leads Winston to conclude that Fuller's insights into the relationship of law and morality, however potentially valid and important, need "to be restated in a more rigorous form." Much the same sentiment is reflected in Professor Robert Summers's recent study of Fuller's work. Summers finds "exasperating" Fuller's failure to provide anywhere a comprehensive statement of his theory of law—his failure to sit down to pull it all together into a single coherent theoretical package. This is such a "serious deficiency" in Summers's view, indeed, that it comes to form a central and dominating preoccupation of his treatment of Fuller. These statements are not just isolated criticisms, moreover, but reflections of a frustration experienced more generally by contemporary readers of Fuller who, like Winston and Summers, seek from Fuller's jurisprudence the statement of some form of internally-coherent theory.

Whether this perceived failure on Fuller's part is in fact a failure, or is instead a conscious and integral aspect of his jurisprudence and a source of its unique vitality, is a question to which we will return later. For the moment, I want to focus on the kinds of difficulties that arise when one brings to Fuller's jurisprudence the expectation that it will in one form or another yield a statement of systematic theory—when, in short, one tries to force Fuller's jurisprudence into a theoretical mold.

A good illustration of the problems that can arise is provided by Professor Summers's recent book on Fuller. Summers's book is significant in part because it represents the only comprehensive study of Fuller's thought that has been attempted to date, and thus might be taken by some as the definitive work on Fuller. For us, however, the primary significance of Summers's books lies in the fact that it is representative of what might be called the theory-seeking approach.

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37. Id.
38. R. SUMMERS, supra note 5.
39. Id. at 107.
40. Id.; see also id. at 108-09 (Summers's complaint about Fuller's failure to develop "a general theory of 'process values'"); id. at 120 (Summers's criticism of Fuller's failure to "work out a comprehensive theory of interpretation").
41. R. SUMMERS, supra note 5.
42. The only other extended discussion of Fuller's thought that is widely available is Winston, Introduction, supra note 36, at 11-44.
to Fuller's jurisprudence, and in this capacity offers a perfect illustration of what can go wrong when one tries to force Fuller's jurisprudence into the mold of systematic theory. Summers's study provides, in this sense, a textbook example of how not to read Fuller.43

Summers's approach is deeply colored by his view that Fuller's jurisprudence is a "problem" because of Fuller's failure to say what he had to say in a more disciplined theoretical way. As Summers sees it, then, the primary task for the expositor of Fuller's jurisprudence is to attempt to reconstruct Fuller's thought in the language of systematic theory. And that is what Summers sets out to do. His basic effort is to fill in or complete (or at least to suggest the direction that such completion might take) the theoretical system that Fuller left "unfinished." From the very outset, however, Summers begins to run into difficulties. The difficulties he encounters, moreover, are different in degree only, and not in kind, from those encountered by others in the course of similar efforts to reconstruct Fuller's jurisprudence in theoretical terms.44 These difficulties or problems break down into four basic types: the problem of substitute terminology, the problem of false categories, the problem of theoretical paraphrase, and the reconstruction fallacy. Each of these problems can be illustrated by calling upon specific examples from Summers's work.

A. THE PROBLEM OF SUBSTITUTE TERMINOLOGY

The first type of problem involves the distortions that flow from attempts to superimpose upon Fuller's jurisprudence an alien terminology imported from some external theoretical perspective.45 In Summers's work, this problem is manifested by

43. For the view that Summers's book on Fuller does not live up to the high standards of the Jurists: Profiles in Legal Theory series of which it represents the fourth volume, see Lebel, Blame This Messenger: Summers on Fuller, 83 Mich. L. Rev. 717, 724 (1985). Although I do not agree with Lebel in every particular, I share his assessment of Summers's contribution in this respect.

44. See, e.g., T. Benditt, Law As Rule and Principle 95-99 (1978); R. Sartorius, Individual Conduct and Social Norms 163-73 (1975). As Professor Winston has observed of these two efforts in particular: "Even philosophers who express sympathy with Fuller's general orientation attempt to reconstruct his account in ways that undo the original idea." Winston, The Ideal Element in a Definition of Law, Phil. & L. Newsletter Am. Phil. A., Summer 1985, at 3, 3.

45. The problem is akin to that described by Fuller in his review of Ogden's book Bentham's Theory of Fictions: "[I]n several instances . . . Ben-
Summers's tendency to put words into Fuller's mouth that are not Fuller's own and, in doing so, to ascribe to Fuller positions that in fact he never held. An example is Summers's assertion that Fuller "held that legal rules were complexes of 'is-ought' and in this way value-laden." The problem is that this is not what Fuller "held" at all, but rather one of Summers's reconstructions. In fact, Fuller rejects this "value-laden" form of description in favor of a critical vocabulary centered in the normative term "ought." More is involved here than a simple failure to convey accurately the way in which Fuller himself thought and talked about the world. As it turns out, Fuller rejects the "value-laden" way of thinking and talking about experience for reasons that are intimately tied to his deepest jurisprudential views. Fuller goes to great lengths to show how "value" talk of this sort carries with it disintegrative tendencies that he thought it extremely important to avoid. Summers's reworking of Bentham's thought into new nomenclature involves a genuine risk of perverting it. Fuller, Book Review, 47 HARV. L. REV. 367, 367 (1933). The difference is that here the risk of perversion arises not just from translation of Fuller's thought into another writer's particular terminology, although that risk is present too, but from translation into the language of theory itself.

For other instances of Summers's "reconstruction" activity, see id. at 26 (Summers offers his own reconstruction of Fuller's views); id. at 54 ("What follows is again my own systematization of Fuller's views. He did not himself draw his thoughts together precisely in this way."); id. at 72 ("Overall, Fuller's scattered remarks on the general obligation to obey the law align him more with the spirit of classical natural law."); id. at 101 ("The virtues and potential of Fuller's general theory of the main processes of socio-legal ordering are, in my view, numerous and beyond doubt. He never drew these together and summarized them, and that must now be done."); id. at 107 (after complaining that Fuller did not develop a comprehensive "general theory of legal process," Summers takes it upon himself to suggest how "one could formulate a comprehensive general theory in just these terms").

In his essay Means and Ends Fuller suggests that "value" talk of this sort leads to a technocratic and mistaken view of the task of social design. It is disintegrative in tendency because it leads to divorce of consideration of "means" (which would become a task for economic specialists) from consideration of "ends" or "end states" (which would remain a task for philosophers, theologians, statesmen, and public opinion). Fuller rejects this way of talking about experience because it implies an ethically disintegrated world of "end-setters" on the one hand and "means-specialists" on the other. Id. at 57-64.
substitution of his own "value-laden" terminology for Fuller's language of "ought" results, in other words, in a serious perversion of Fuller's thought. What is involved is not simply harmless error, but significant distortion—more than that, it is a form of betrayal.51

B. THE PROBLEM OF FALSE CATEGORIES

The second major problem has to do with the distortions that result from attempts to force Fuller's thought into the conventional categories of jurisprudential theory. Summers, for example, relies heavily upon the traditional categories of theory in attempting to explain Fuller's jurisprudence.52 He does

That is why Fuller preferred an ethical language that proceeded on what he terms an "attitude of expectancy," on the "sentiment of 'ought.'" Fuller, Legal Realism, supra note 6, at 458 (emphasis added).

51. Summers's substitution of his own terminology for Fuller's leads to other types of mischief. In this instance, for example, Summers's "value-laden" analysis leads him to launch upon discussion of the question of whether believing that law is value-laden necessarily means believing that the values with which a particular law is "laden" are good or moral ones. R. SUMMERS, supra note 5, at 34. Summers's answer, for what it is worth, is no. Id. This leads to yet further discussion of what Summers advances as a critically significant distinction between "value-laden" and "moral." Id. at 34-41.

The problem with this is that the underlying question is not one with which Fuller himself was, or was likely to be, terribly concerned. There is nothing about either the issue itself or the terms in which it is analyzed that bears Fuller's particular jurisprudential stamp. Indeed, if one approaches the question from the perspective of Fuller's normative "ought" rather than that of Summers's substitute term "value-laden," it arguably becomes something of a nonproblem. It does so because, read fairly in context, Fuller's "sentiment of ought," see supra note 50, is clearly a morally-infused notion and not a morally-neutral one. The same sort of moral vision informs Fuller's view of "ought" as informs his view that in interpreting legislation the judge should attribute, subject to explicit rebuttal, a just and reasonable purpose to the legislature. It is reflected as well in the fact that Fuller does not address us in his jurisprudence as scientifically-detached intellects but rather as whole persons and moral beings. Consider, for example, the ethical character of the audience implied by the following statement: "nearly all of us want a just social order, with an elimination of discriminations and privileges." L. FULLER, JURISPRU-
so, moreover, in the face of Fuller's explicit rejection of those very categories as unhelpful and misleading. Perhaps the best example of this is Summers's repeated insistence that, notwithstanding Fuller's own clear reluctance to being so located, Fuller really belongs in the natural law as opposed to the positivist camp. In a similar vein, Summers later attempts to characterize Fuller as a procedural rather than substantive legal philosopher, as a scholar so preoccupied with questions about the procedures we employ that he failed to pay adequately focused attention to the question of what the substantiated legal theorists into one (or more) of four categories: natural law theorists, legal positivists, historical jurists, and thinkers of the sociological or instrumentalist schools." R. SUMMERs, supra note 5, at 62. It is unclear why Summers should insist in relying upon these traditional categories of the "encyclopedists" in attempting to locate Fuller instead of drawing upon the quite different categories that Fuller himself developed. It is another instance of refusing to read Fuller on his own terms.

53. See Fuller, Reason and Fiat, supra note 1, at 377, 391.

54. Fuller explains very clearly his reasons for grounding his jurisprudence in "the principle of the common need" rather than in "natural justice," "natural law," and "the law of nature" in L. FULLER, JURISPRUDENCE, supra note 22, at 700-01. First, unlike the natural law approach, the principle of common need does not arrive at "any inclusive formula for stating just how social restraint and individual freedom shall be balanced against one another." Striking a Burkean posture, Fuller argues this is something that must be settled differently under different circumstances. Id. at 700. Second, Fuller distrusts the simplistic opposition between "rationalism" and "intuition" that underlies much natural law philosophy. Id. at 700-01. Third, he wants to avoid the "emotional connotations," either radical or conservative, that often attach to the natural law position. Id. Finally, Fuller rejects the view implicit in natural law philosophy that there is one "unchanging, external standard" which is the "same for all men at all times." No such implication is conveyed by the principle of common need. What that need is "depends not only on the environment in which men live, and on their physical and mental endowments, but also on their moral and intellectual attainments." Id. at 701; see also Fuller, Reason and Fiat, supra note 1, at 379-80 (courts, and therefore natural law theorists, must consider "prevailing conceptions of morality").

Fuller rejects the natural rights position clearly and unambiguously, in other words, and does so for much the same reasons that Burke does in his Reflections on the Revolution in France. E. BURKE, REFLECTIONS ON THE REVOLUTION IN FRANCE 70-72 (T. Mahoney, Library of Liberal Arts ed. 1955). It is unclear why Summers wants to ignore this Burkean aspect of Fuller's jurisprudence, especially in view of the fact that Fuller was clearly influenced by Burke's thought. See, e.g., infra text accompanying notes 223-226.

55. The following assertions by Summers are typical: "In regard to this core element, then, Fuller must be classed as in the natural law tradition," R. SUMMERs, supra note 5, at 65 (emphasis added); "[i]n these terms, Fuller again qualifies as a natural law theorist," id. at 68 (emphasis added); "[o]verall, Fuller's scattered remarks on the general obligation to obey the law align him more with the spirit of classical natural law," id. at 72 (emphasis added).
tive ends of the social order ought to be.\textsuperscript{56}

What is wrong with these characterizations is not that, viewed from a certain perspective, they do not have a limited validity. What is wrong—and the full significance of this can be made clear only later—is that they implicitly adopt a perspective that it was the central aim of Fuller's jurisprudence to reject.\textsuperscript{57} Summers's characterizations are based upon an antithetical organization of language and experience that Fuller clearly and explicitly rejects as false and misleading. When Summers suggests that Fuller adopts a natural law as opposed to a positivist approach to legal experience, or characterizes Fuller's jurisprudence as reflecting a procedural rather than a substantive view of the problems of the social order, he is exhibiting the very habits of mind that Fuller condemns in his jurisprudence as misleading and disintegrative. In Fuller's view, these are classic instances of the phony oppositions in inherited legal thought that have gotten us into so much trouble. To conceive the underlying relationships in terms of simplistic opposition—as fully expressible in phrases like "as opposed to" or "rather than"—is to present a false antithesis, a false alternative, a false choice. Indeed, the central and fundamental thrust of Fuller's jurisprudence is to disabuse us of the habit of thinking and talking about legal experience in this way.

C. THE PROBLEM OF THEORETICAL PARAPHRASE

Perhaps the most serious and pervasive problem, however, is the "platitudinization" of Fuller's thought that occurs whenever it is paraphrased in the language of abstract theory. There is a sort of Cinderella-in-reverse syndrome here in which the golden coach is turned into a pumpkin. When we encounter Fuller's thought in his essays themselves, our impression is that of being in the presence of a creative mind actively at work—of an ethical imagination in active and vital performance. When

\textsuperscript{56} Summers states: "To [Fuller], it was just as important, if not more important, to study the nature, provinces, and limits of the processes that order society (and their corresponding forms of law and other outcomes) as to study ultimate ends such as freedom, justice, security, and equality." \textit{Id.} at 76. While Summers seems to recognize conceptually the importance Fuller attaches to viewing ends and means in an integrated light, \textit{id.}, he continues to talk about Fuller's jurisprudence as if the two were separable. The contrast he adopts in the passage quoted above between "processes" and "ultimate ends," and the suggestion that Fuller attached "more" importance to the former than to the latter reflects this tendency.

\textsuperscript{57} See \textit{supra} note 54 and accompanying text.
that same "thought" is translated into the language of theory, however, it is inevitably transformed into a kind of lifeless platitude.

Consider, for example, Summers's attempt to summarize Fuller's critically important views on the relationship of law and morality: "In sum, then, genuine legal processes are value-laden. Moreover, certain values must necessarily be served if certain processes are to exist or to function genuinely as such processes. Further, since certain of these values are values of moral worth, morals are necessarily a part of such legal processes." Whatever else might be said about the world one encounters in this passage, the one thing that is certain is that it is not Fuller's world. The first sentence proceeds upon Summers's own "value-laden" terminology, invoking a language and opening upon a mode of analysis that Fuller himself did not embrace. The final sentence addresses a problem that Fuller did not address, nor is it one which he would necessarily have considered terribly significant. That leaves the second sentence which is so vague and abstract that it is difficult to say whether, in some remote sense, it is consistent with Fuller's jurisprudence or not. In any case, it is clearly not faithful to Fuller's jurisprudence. The "thought" we encounter in this passage is as lifeless and flat as a stale beer.

What we see reflected here, moreover, is typical of our experience generally in Summers's book. We wander though the dust and powder of Summers's paraphrase wondering increasingly what it was about Fuller's jurisprudence that caused such a stir in the first place. Nor is this platitudinization of Fuller's thought unique to Summers's work. The same sorts of difficulties have been encountered by others. Something about Fuller's particular approach to jurisprudence seems to resist translation into the language of theory. Indeed, the failures of the expositors of Fuller's text on this score have been so consistent and so complete that one wonders whether it is something that cannot be done.

58. R. Summers, supra note 5, at 41.
59. See supra notes 45-51 and accompanying text.
60. See supra note 51.
61. See, e.g., T. Benditt, supra note 44, at 95-99 (labelling Fuller a natural law thinker); R. Sartorius, supra note 44, at 164-73 (discussing various works by Fuller).
D. THE RECONSTRUCTION FALLACY

The real problem, one suspects, lies in the idea of reconstruction itself, in the curiously persistent notion that there is a theoretical system buried deep within Fuller's jurisprudence that, with sufficient imagination and discipline, can be rendered explicit and whole. Cutting against this view is the fact that efforts to reconstruct Fuller's jurisprudence in terms of systematic theory have so far been dismal failures. Summers's own effort is no exception. There is indeed something almost comic about the contortions to which he is driven in his attempt to tame Fuller's jurisprudence: to force from it a theoretical "system" that it does not seem to want to yield. In response to his mounting frustration, Summers resorts to a whole range of artificial reconstruction techniques: he develops a substitute terminology to replace Fuller's own way of thinking and talking about experience; when he cannot find anything in Fuller's own writings to support his thesis, he invokes arguments that, he weakly claims, are at least elaborated "faithfully" to Fuller's "evident intuitions;" he scrounges for hints in Fuller's writings to support the theoretical contentions that he thinks ought to be made; when all else fails, he is left to "fish out scattered passages and piece them together into a whole, and even, on occasion, read between the lines;" he extrapolates; he explains away; he lists; he categorizes; sometimes he even pushes Fuller to one side and assumes center stage himself. The great irony of all this is that the more Summers engages in these interventionist activities—the more he paraphrases, and reconstructs, and lists, and categorizes, and pushes and shoves—the more elusive Fuller's jurisprudence itself becomes. It is almost as if we were watching Fuller disintegrate before our very eyes. Indeed, there are stretches when he seems to disappear entirely from view.

The difficulties into which Summers gets himself are not unique but rather representative of the difficulties others have encountered in attempts to come to theoretical terms with

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62. See text accompanying supra notes 45-51.
63. See R. SUMMERS, supra note 5, at 42.
64. See id. at 39-40.
65. Id. at 107.
66. See, e.g., id. at 106 (reducing Fuller's argument to a short list of "maxims of process" that, Summers asserts, "Fuller might have developed"); id. at 39-40 (developing argument Fuller only "hinted at"); id. at 42-44 (elaborating thesis that Fuller "did not develop . . . as fully as he might have"); supra notes 45 and 47 and accompanying text.
Fuller's jurisprudence. The difference, if there is one, is only that these problems appear in Summers's work in perhaps exaggerated form. The problem lies not in Summers's particular approach to Fuller's jurisprudence, in other words, but in a shared misconception of the underlying nature of Fuller's thought and writing.

What Summers shares with others in this respect is the basic assumption that Fuller's jurisprudence falls within a tradition of theoretical scholarship that came into its own in the nineteenth century, a tradition which in recent years has enjoyed something of a revival of interest among legal scholars. He simply assumes without questioning that Fuller's primary aim was to give expression to some great, objective, internally-coherent theoretical system. Fuller's failure to live up to this expectation is then perceived by Summers and other theory-seeking readers as a failure. The perception is that Fuller tried to do theory but he simply was not good enough at it; he was not sufficiently disciplined to do it right.

This perception of Fuller and his jurisprudence has been, in my view, the source of countless and untoward mischiefs. It is this view that has justified—indeed, fueled—the various awkward and unsuccessful attempts that have been made to discover Fuller's "system" and to fill in aspects of that system that he presumably left "unfinished." This same perception also un-


For some reason, Summers and others have chosen simply to ignore the numerous hints in Fuller's writings which clearly indicate an intent to keep a critical distance on legal theory and on theory more generally. See, e.g., Fuller, Legal Realism, supra note 6, at 436 (criticizing the way legal theory, "far from producing certainty, destroyed a certainty and uniformity which was already present"); id. at 453 ("[T]he problem of the relation of law and society is not the sort of issue which can be 'solved' by some 'theory' and then passed over. It is, to use Radin's suggestive phrase, one of the 'permanent problems of the law.'"); Fuller, Reason and Fiat, supra note 1, at 376 (while praising Cardozo for giving expression to a "deeper kind of coherence," Fuller observes that "[t]he thread of connection in [Cardozo's] philosophy is found not in theories or doctrines, but in a persistent effort to solve certain basic and recurring problems of the law"); id. at 392-94 (asserting the superiority of the nontheoretical common law approach over the theory-based approach of civil law). This is enough to suggest that Fuller, like Burke, may have found theory, if not actually inconsistent with, at least not the key to the development of an integrated vision of experience. See infra text accompanying notes 78-89. For the view that theory as a mode of organizing language and experience may be incompatible with the development of an integrated approach to experience, see Teachout, supra, at 877-93.
derlies the destructive belief, so transparently reflected in Sum-
ners's own study, that Fuller's thought can somehow be torn
away from the language in which Fuller himself expressed it
and restated as part of an objective system of theory. The fun-
damental problem with all this, as suggested above, is that it
leads to a portrait of Fuller and his jurisprudence that ulti-
mately does not ring true.

Yet it is one thing to criticize the theory-seeking approach
that Summers exemplifies here, and quite another to suggest
an alternative approach that is likely to provide any better ac-
cess to Fuller's thought and writing, that will more adequately
reveal and convey its true nature. If Fuller's jurisprudential vi-
sion does not translate into the terms of an objective theoretical
system, then what is it we should be looking for in his essays?
If theory does not provide "the thread of connection" that ties
Fuller's essays together, what does? If, as suggested above, Fuller
seeks through his essays to give expression to "a deeper
kind of coherence," where do we find that "deeper" coherence,
and what form does it take?

III. TERMS OF ACCESS: OUTLINE OF AN
ALTERNATIVE CRITICAL APPROACH

It is here that I want to suggest a slight but important shift
in perspective. We will never understand Fuller, I want to ar-
gue, as long as we cling to the notion that his essays form the
building blocks of some great external theoretical system. To
get to the heart of his jurisprudence, we must regard his essays
rather as ethical performances that collectively give expression
to an integrated ethical vision. They do so, moreover, not sim-
ply by advocating that vision on the surface but by actually per-
forming certain important character-shaping capacities. We
must regard Fuller's essays as we would the ethical composi-
tions of the great writers of eighteenth century English litera-
ture—Swift, Johnson, Austen, and Burke—rather than as a
form of systematic theory of the sort that came into its own in
the nineteenth century.

To do so requires something of a shift in the nature of the

68. See supra notes 1, 16-35 and accompanying text.
69. For a recent and extremely thoughtful treatment of the writings of
Swift, Johnson, Austen, and Burke from the perspective of what they have to
offer in the way of an ethical education for the modern lawyer, see J. White,
WHEN WORDS LOSE THEIR MEANING 114-230 (1984), reviewed in Teachout,
supra note 67.
questions that we bring to bear upon Fuller’s essays. Instead of seeking to discover Fuller’s “theory,” we should seek to discover “the vision” toward which Fuller’s jurisprudence aspires. Similarly, rather than asking questions aimed at revealing Fuller’s “system,” we should ask about “the characteristic mode of his intelligence” as it is brought to bear upon experience. This is the sort of approach we would employ, after all, if we were seeking to come to terms with the ethical vision expressed, for example, in Johnson’s essays, or in Austen’s novels, or in Burke’s great integrative compositions.⁷⁰ Of course we could seek to discover Johnson’s system—or Austen’s, or Burke’s—but such an inquiry would not carry us very far toward an understanding of the ethical vision expressed in their respective works. So we have to develop a critical approach that will somehow open up doors that remain closed to an inquiry predisposed to finding answers in terms of theory or system. And focusing on the vision toward which Fuller’s jurisprudence aspires, and on the characteristic mode of the intelligence we see at work, provides at least a starting point.

The crucial thing to realize is that Fuller addresses us in his jurisprudence not simply as theorists but as whole persons, and that this requires, at least for those trained in theory, a special kind of reading. Responding to Fuller simply as a fellow theorist, as Summers for the most part seems to do, is not enough because such a perspective leaves out the heart of what Fuller has to say. Therefore we must put aside the theorist in us, at least for the moment, and approach Fuller’s jurisprudence as would that more complex and integrated character, “the intelligent reader.” We must bring to bear on our reading, that is to say, all the sentiments and attitudes that we bring to bear on experience as we actually live it; we must bring to bear, as Burke would insist, all our “prejudices.”⁷¹ Our central effort should be to reveal the world of expectation and value in Fuller’s writings, not in some artificially abstracted form, but as it is actually expressed. We must learn to read Fuller, in short, on his own terms.

We must regard Fuller’s essays, to carry this approach a step further, as complete works, as compositions whose meaning is to be found not simply at the level of rational argument but in all those elements that together constitute their essential

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⁷⁰ See J. White, supra note 69, at 138-230.
⁷¹ E. Burke, supra note 54, at 98-110. On Burke’s use of the word “prejudices” as an integrative term, see J. White, supra note 69, at 212-13.
"imaginative design." 72 To what extent, we should ask, is the meaning of Fuller's jurisprudence shaped by the underlying pattern and movement of his essays? by the way passages and sentences and words are put together? by the particular use that is made of imagery and metaphor? by what literary critics call voice and tone? What is it that contributes to our sense of the integrity of the vision to which Fuller's essays cumulatively give expression? What sort of relationships are established between theme and structure? between the values explicitly advocated at the level of surface argument and the ethical capacities—the particular capacities of mind and character—actually performed in his essays? These questions could go on, but this should suffice to indicate the essentially literary nature of the inquiry in which we must engage if we want to come to terms with the ethical vision expressed in Fuller's jurisprudence and to grasp what it is that contributes to our sense of the underlying integrity of that vision.

It may turn out in the end, of course, that taking such an approach will get us no closer to the heart of Fuller's jurisprudence than does Summers's own frustrated effort. The very attempt to substitute this literary approach for Summers's theory-seeking one may represent a classic case of overcorrection—a classic instance, to call upon one of Fuller's favorite metaphors, of rushing too precipitously to "the light side of a tipping boat." 73 But the experiment is worth the try. The most we can attempt to do here in any event is to suggest the form that such an alternative reading of Fuller's jurisprudence might take.

IV. THE ESSENTIAL THRUST OF FULLER'S JURISPRUDENCE: TOWARD THE EXPRESSION OF AN "INTEGRAL REALITY"

Before turning to an examination of the substance of Fuller's jurisprudence, two preliminary observations need to be made: first, when we deal with Fuller's jurisprudence, we are dealing with a jurisprudence that embraces truly complex aspirations; and second, those aspirations are expressed not only in terms of some set of explicitly stated ends but structurally as well. The first of these observations ought not to trouble us

72. For a thoughtful treatment of the way in which the "imaginative design" of a work shapes its ultimate meaning, see R. Brower, The Fields of Light: An Experiment in Critical Reading 31-41 (1951).
73. L. Fuller, Jurisprudence, supra note 22, at 717.
greatly because we too, after all, are creatures of complex aspiration, and so is the culture that we have inherited and, indeed, our vision of what we want that culture to be. But we are so accustomed to philosophical theories or systems that posit, often in some neat hierarchical fashion, a single ultimate end around which everything else dutifully organizes that we are initially bewildered by a jurisprudence such as Fuller's that aspires simultaneously to a complex of ultimate ends. Thus it is quite accurate, indeed, necessary, to assert that the ultimate aspiration of Fuller's jurisprudence is to establish a jurisprudence responsive to the "complex and moving reality that actually exists"—that is, a truly honest jurisprudence; and to establish an ethically integrated approach to language and experience; and to elaborate the conditions essential for the establishment of a "good social order." To Fuller, these several ends are not separate and distinct, but all intimately interconnected, the achievement of one impossible without the simultaneous achievement of the others. Our initial effort, accordingly, must be to develop a critical approach capable of recognizing the complex character of the vision to which Fuller's jurisprudence aspires.

The second point is best understood by analogizing the problem of approaching Fuller's jurisprudence to that involved in approaching the task of social design. The central and most difficult challenge is finding a way to keep the whole complex constantly in view. And the great pitfall to be avoided is giving in to the tendency to consider explicitly stated ends in isolation from the means by which they are achieved. Fuller puts it this way in the context of a discussion of how to think responsibly about what is involved in the design of a good social order:

Any social goal, to be meaningful, must be conceived in structural terms, not simply as something that happens to people when their social ordering is rightly directed. In individual morality . . . the life worthy of emulation is one that forms a coherent pattern, not one that is manipulated to bring about a series of desirable states of mind and body. So I believe it is with society.

So it is in Fuller's jurisprudence. The vision to which it ultimately gives expression is not one that can be described solely in terms of a set of "desirable states." We must focus attention

74. Id. For a discussion of Fuller's openness to experience, see infra text accompanying notes 78-89.
75. See infra text accompanying notes 90-103 and text following note 103.
76. See infra text accompanying notes 149-150 and text following note 150.
77. L. FULLER, Means and Ends, supra note 24, at 57.
as well on the "coherent pattern" of dealing with experience that is revealed in his essays, for it is in that pattern—in Fuller's characteristic mode of approach—that we may ultimately find what is most "worthy of emulation" in his jurisprudence. It is in this aspect of his essays, it may turn out in the end, that the real and important ethical education they have to offer primarily lies. To get to the heart of Fuller's jurisprudence, consequently, we must approach it in a circular fashion, moving back and forth between explicitly embraced aspirations and their expression "in structural terms."

A. **OPENNESS TO EXPERIENCE: DEVELOPING A JURISPRUDENCE RESPONSIVE TO A "COMPLEX AND MOVING REALITY"**

But if the reality we confront is difficult and dangerous, nothing can be gained by obscuring its true nature.78

If we begin with the question, What can be said about the characteristic mode of Fuller's intelligence as it is brought to bear upon experience? the first and most striking thing to be noticed is Fuller's extraordinary openness to experience. That Fuller was not interested in the construction of closed theoretical systems is evident from the statements he left us about what he saw to be the basic nature and purpose of the philosophical enterprise. "What should be sought" from philosophy, Fuller believed, "is not a principle that will exclude and render irrelevant the disturbing parts of reality, but an enlargement of view, an opening up of areas of meaning that have been lost from sight."79 Again and again in Fuller's essays, we find the expression of the same concern, the same awareness of how systematic theory, whatever its potential value, often tends to close off and limit our ability to see experience in all its complexity. In his Problems of Jurisprudence,80 for instance, Fuller warns against the "distortions" that are created "by our penchant for patterns, that makes us see neat diagrams instead of the complex and moving reality that actually exists."81 This phrase, perhaps better than any other, captures the commitment Fuller makes in his own jurisprudence to deal with com-

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80. L. FULLER, JURISPRUDENCE, supra note 22.

81. Id. at 717.
plex experience honestly. It is a commitment that lies at the very foundation of his jurisprudential endeavor: to discover and develop a critical mode capable of expressing "the complex and moving reality that actually exists."

This helps explain what is so wrongheaded about the complaint that, because Fuller never got around to setting down a complete statement of his theoretical system, his jurisprudence is a problem. It also explains why attempts to complete the system that he left "unfinished" are not just ill-advised but almost certainly doomed to failure. Given Fuller's view of the nature of the philosophical enterprise, it makes no more sense to complain about Fuller's not having completed his "system" than it does to complain about Samuel Johnson's not having completed his. In both cases the complaint is based upon the assumption that it was the writer's aim to reduce "the complex and moving reality" with which he was dealing to the terms of a theoretical system, an assumption in many respects as widely off the mark in the one case as it is in the other. To say that neither of these writers aspired to discover a universal theoretical fix for our problems, however, is not to say that neither expressed an ethical vision. Indeed, the opposite is the case. In the same way it can be said of Johnson's essays, it can be said of Fuller's: they give expression to an ethical vision of great integrity.

To free Fuller's jurisprudence from the requirement that it give expression to a theoretical system that is coherent and capable of being completed, is to allow us to see Fuller's jurisprudence as it really is. Yet, in releasing that particular expectation, it is important not to stray too far in the opposite direction. It is important not to think of Fuller's jurisprudence as consisting of nothing more than a bundle of ad hoc propositions or utterly particularized insights. Reading Fuller presents us with the same sort of problem in this respect that reading Burke does, and what has been said about Burke in this regard applies as well to Fuller. As Professor Gerald Chapman has observed, efforts to abstract a "system" from Burke's writings universally have failed to capture that elusive but distinctive quality that we call "Burke's sense." They have consistently yielded something "bleached of the full meaning and value of the context." Yet at the same time it would be foolish not to recognize the underlying unity and integrity of the vision to which Burke gives expression. In an illuminating passage,
Chapman suggests the nature of the approach one must take if one wants to come to meaningful terms with Burke:

One must search his particular judgments, then, not for a system, but for a characteristic activity, of which they are ad hoc expressions. The unity in Burke's thought would seem to lie in the character of his intelligence as it operates upon the life of his time. It is a mode of imaginative practicality which has appeared in English culture within many very different and often cross theoretical positions—a peculiar fusion of poetic conception and literary brilliance, ethical awareness and religious reverence, preference for concrete inquiry and compromise, common sense and sense of duty, and what Fox called a "reverse of selfishness."\(^{84}\)

I do not mean to suggest that all of these epithets apply with the same force to Fuller as to Burke—although on the whole they are strikingly applicable. What I do want to suggest, however, is that this represents the sort of approach one must take to Fuller's jurisprudence, and to the "problem" of its incompleteness as theory—or the virtue of its openness—if one is to come to fair terms with its particular character. What one must look for in reading Fuller, as in reading Burke, is not a "system," but "a mode of imaginative practicality" that assumes this complex form.

To view Fuller's jurisprudential essays in this more complex light reveals an aspect of their character that under a systems approach would go unappreciated: the fact that their very openness, their refusal to tend toward a closed theoretical system, forms an essential aspect of their underlying integrity. The similarity between the way Fuller's essays work as a body of ethical literature and the way Johnson's essays work in this respect is an intriguing one. As one critic has said of Johnson:

Johnson's tendency to think by recognizing and including contraries is at work not only within each of the essays but across them as well. One essay will often respond to a conclusion reached in another, placing it in a slightly different light . . . .

This is not a defect in Johnson's work but a consequence of its essential character: the conclusions reached are themselves subject to reexamination and complication, to a further process of thought; they are not offered as building blocks of a theoretical system. His conclusions are in this sense open-ended or presumptive in character, structurally tentative. Not that a particular conclusion is not firm, but it must be understood for what it is, as inextricably part of a larger system of expression. It is firm only in the context that gives it life and meaning and renders it a principle rather than a commonplace.\(^{85}\)

So it is in Fuller's jurisprudence. It is part of the integrity of

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84. Id. at 12.
85. J. White, supra note 69, at 152-53.
his essays that they are in this sense "structurally tentative"—performing in the relationship that they establish one to the other, and to what has not yet been said or observed, an openness not just to experience, but to the kind of correction and complication that may come from viewing that experience "in a slightly different light."

For the moment the important thing to see is the way in which this openness to experience on Fuller's part, and this special receptivity to the tensions and contradictions of experience,86 are central aspects of his search for a coherence deeper than that offered by theory. Underlying Fuller's jurisprudence is a perspective very similar in this respect to that which underlies Burke's distinction between that which is "metaphysically [or theoretically] true" and that which is "morally and politically" so.87 Fuller's great effort, like Burke's, is to develop a ju-

86. This special receptivity is reflected, among other places, in Fuller's insistence that "it is better to accept frankly a state of unresolved conflict or tension in our reasoning than to purchase consistency at the cost of needed premises." Fuller, *Reason and Fiat*, supra note 1, at 377. Fuller's insistence upon seeing the contrary and inconsistent tendencies of human experience, not as problems to be eliminated, but rather as forming the very essence of that experience, forms yet another major strand of Fuller's larger jurisprudential vision, one to which we will return later. See infra text accompanying notes 194-216.

87. In a famous passage, Burke says:

> The nature of man is intricate; the objects of society are of the greatest possible complexity; and, therefore, no simple disposition or direction of power can be suitable either to man's nature or to the quality of his affairs. When I hear the simplicity of contrivance aimed at and boasted of in any new political constitutions, I am at no loss to decide that the artificers are grossly ignorant of their trade or totally negligent of their duty. The simple governments are fundamentally defective, to say no worse of them. If you were to contemplate society in but one point of view, all these simple modes of polity are infinitely captivating. In effect each would answer its single and much more perfectly than the more complex is able to attain all its complex purposes. But it is better that the whole should be imperfectly and anomalously answered than that, while some parts are provided for with great exactness, others might be totally neglected or perhaps materially injured by the overcare of a favorite member.

> The pretended rights of these theorists are all extremes; and in proportion as they are metaphysically true, they are morally and politically false. The rights of men are in a sort of *middle*, incapable of definition, but not impossible to be discerned. The rights of men in governments are their advantages; and these are often in balances between differences of good, in compromises sometimes between good and evil, and sometimes between evil and evil. Political reason is a computing principle: adding, subtracting, multiplying, and dividing, morally and not metaphysically, or mathematically, true moral denominations.

E. BURKE, *supra* note 54, at 70-71 (emphasis in original).
risprudence that is responsive to a reality in which "the nature of man is intricate" and "the objects of society are of the greatest possible complexity." It is to develop a jurisprudence that is, in the Burkean sense, not just "metaphysically," but "morally and politically" true.

B. THE DEVELOPMENT OF AN ETHICALLY INTEGRATED JURISPRUDENCE

It was not enough, however, for Fuller to develop a jurisprudence capable of dealing with the complex reality honestly; it was also critically important to him to give expression to an ethically integrated view of experience. To understand why this assumed such central importance to Fuller, it is necessary first to identify and explain the central problem to which his jurisprudence was in large part intended as a response. That problem, in brief, was the ethical disintegration of language, a disintegration which, as Fuller saw it, threatened the underlying integrity of the culture itself. The great and ultimate task Fuller sets for himself in his jurisprudence, accordingly, is the reconstitution of the inherited language in ethically integrated terms. His central aim and struggle is to develop a jurisprudential language capable of giving expression to "an integral reality."

This preoccupation with the ethical character of the language we use was not an idle preoccupation on Fuller's part, unrelated to the great problems of constituting a decent and just social order with which jurisprudence has traditionally been concerned. For, in Fuller's view, the ethical reconstitution of language was an essential precondition to the establishment of a "good social order." Without integrity of the one, there

88. Id. at 70.
89. In this and other respects, Fuller's jurisprudence shares a great deal in common with Alexander Bickel's. For an excellent discussion of the Burkean underpinnings of Bickel's jurisprudence, see Kronman, Alexander Bickel's Philosophy of Prudence, 94 YALE L.J. 1567, 1605 (1985).
90. The phrase is taken from the following sentence: "In the field of purposive human activity . . . value and being are not two different things, but two aspects of an integral reality." L. FULLER, QUEST, supra note 23, at 11. Although Fuller uses the phrase in the particular context of an effort to develop and give expression to an integrated view of "value" and "being," the idea of giving expression to an "integral reality" is not so confined in his jurisprudence.
91. The phrase "good social order" is one that Fuller used. L. FULLER, Means and Ends, supra note 24, at 49. The interrelationship between Fuller's efforts to reconstitute language (toward the end of creating a complex ethical
could be no integrity of the other. That is why in Fuller’s jurisprudence the two activities often appear as simultaneous pursuits: the development of an ethically integrated approach to language and experience, and the elaboration of conditions essential to the maintenance or creation of a good social order. Fuller’s jurisprudence opens upon a world in which language and culture are inextricably interconnected, the character of one reciprocally dependent upon the character of the other. Thus a great deal turns upon the outcome of the struggle to reconstitute language in more complex and integrated terms. If character is fate, as Heraclitus said, then the very fate of our culture hangs in the balance.

Fuller’s jurisprudence falls, then, within a classic tradition which goes back to Plato’s time and perhaps earlier. It is instructive in this regard to compare the basic predicament in which Fuller found himself with that which Plato inherited. For even though these two writers are separated in time by more than two thousand years—between them, indeed, lie the rise and fall of entire civilizations—fascinating parallels exist in the nature of the problems with which each had to deal and in the character of the response that each developed to those problems.

For Plato the problem lay in the fact that the inherited Greek language was not ethically integrated. It was a language in which terms of excellence were unconnected to terms of virtue. Thus it was quite possible to talk, as the sophists in fact did, about the pursuit of excellence as something quite separate and apart from the pursuit of the good, the just, and the true. This way of thinking and talking about experience, in Plato’s view, had disintegrative consequences for self and culture. It represented a destructive force that threatened the integrity of the self and precluded the establishment of the conditions essential for the creation of a truly stable and vital community. That is why in the Gorgias Plato takes the so-

language of “combination”) and his attempt to establish the conditions that would make possible the realization of a good social order (based upon a substantive ethic of “combination”) is discussed infra text accompanying notes 126-185. As that discussion demonstrates, Fuller’s views concerning the constitution of language and his views relating to the constitution of a good social order were both governed by the same underlying ethic.

92. For an illuminating discussion of the essentially literary character of the problem with which Plato was faced, see J. White, supra note 69, at 93-113.

phistic rhetoricians to task for perpetuating a disintegrative way of thinking and talking about experience. That is also why his own effort took the form that it did: the reconstitution of Greek language in ethically integrated terms. It was because of his deeply held view that the development of an ethically integrated approach to language and experience was a crucial precondition to the establishment of a just and stable social order.

Fuller also found himself confronted with forces of disintegration, but in his case the problem did not lie in the state or character of inherited cultural language. It lay rather in the rise of positivism, and in the positivists' insistence upon dividing the universe of discourse into two separate and distinct languages: a language of "is" (or "fact" or "being") on the one hand, and a language of "ought" (or "value") on the other. The rise of positivism represented to Fuller a potentially destructive force, one which threatened to undo the integrated cultural perspective which Plato and others down through the ages had labored so mightily to establish, perpetuate, and refine. What the sophists were to Plato, in other words, the positivists—and, to the extent they picked up on positivist tendencies, the legal realists94—were to Fuller.

There were important differences, of course, between the positivists and the legal realists. The chief vice of the former, as Fuller saw it, lay in their radical embrace of "rationalism," a rationalism cut off from the "sentiments and attitudes" that give life and meaning to a culture.95 This was in essence the

94. See generally Fuller, Legal Realism, supra note 6. Fuller criticized the tendency on the part of some of the legal realists to assume that "neutral observation of official behavior constitutes the whole of legal science," id. at 429 n.3, and particularly criticized what he viewed as the sterile and essentially conservative behaviorism of Underhill Moore:

The realist condemns the traditional method for its mistaken assumption that you can limit the influence of facts to those tagged as legally relevant, and for the corollary assumption that it is profitable to discuss the solution of controversies on the basis of textbook outlines of the facts. Yet precisely the same fallacy . . . is contained in Moore's approach.

Id. at 456. The chief failing of the legal realists, as Fuller saw it, was that in their preoccupation with describing the law as it really operates (often not very accurately because of their behaviorist blinders) and with developing a conception of law that conforms to the reality, they tended to ignore the potential shaping force of the law. "The law has always to weigh against the advantages of conforming to life, the advantages of reshaping and clarifying life, bearing always in mind that its attempts to reshape life may miscarry, or may cost more than they achieve." Id. at 460 (emphasis in original).

95. Id. at 457 n.69. These "sentiments and attitudes" play the same sort of community-establishing role in Fuller's world that "prejudices" do in Burke's
basis of Fuller’s quarrel with the great English legal positivist, H.L.A. Hart, over the relationship of law and morality. Fuller was convinced that radical separation of the two, as Hart seemed to advocate, would ultimately lead to the disintegration of culture. And there was much in the experience that led up to World War II, one has to admit in retrospect, to lend support to Fuller’s position. Indeed, one could view Fuller’s jurisprudence as forming a kind of continuing objection to what Burke called “the dissolving acids of rationalism.”

Yet if Fuller was critical of the positivists’ radical embrace of a soulless rationalism, he was equally critical of those who rushed to embrace the opposite extreme—those legal realists, for example, who utterly dismissed the legitimacy and importance of “reason” in law and culture, and advanced the cynical and destructive view that in the end it all comes down to mere “intuition,” “fiat,” “power,” or some form of arbitrary preference. If the radical embrace of “rationalism” divorced from the constraints and aspirations of cultural tradition was disintegrative in tendency, so also, and perhaps even more so, was the radical rejection of the role of reason in law and culture.

What both the positivists and the legal realists shared in common, in other words, was a view of the world and a language
grounded in the radical separation of "reason" from "intuition," "fact" from "value," and "is" from "ought."

That is why Fuller's primary jurisprudential effort took the form that it did. Much like Plato's in the Gorgias, Fuller's basic effort was to establish—in part to preserve, in part to create—a truly integrated approach to the organization of language and experience. Initially, this effort took the form of an insistence that the "is" and "ought" of legal rules should be regarded, not as belonging to separate universes of discourse, but as aspects of an "integral reality." But as Fuller's jurisprudence developed, this initial impulse spread to embrace the opposed terms of the other classic antinomies with which jurisprudence had traditionally been concerned, such as justice and efficiency, form and substance, means and ends, principle and practicality, excellence and virtue, and "the principle of shared commitment" and "the principle of legality." The ultimate aim was to develop a way of thinking and talking about experience by which all of these traditionally opposed terms could come to be understood as forming an "integral reality." It was to create a complex language capable of expressing the underlying relationships in terms other than those of mere opposition—a language of real integrative force.

Fuller's jurisprudence and Plato's philosophy share a great deal then. Both efforts proceed upon an appreciation of the essential interconnectedness of language, individual character, and culture; both are based in the recognition that the way we use words powerfully shapes the character not only of ourselves as individuals but also of the culture of which we are a part. That is why at the very heart of both Fuller's jurisprudence and Plato's philosophy is that common struggle to give expression to an ethically integrated view of the world.

Moreover, both proceed in the classic pattern of dialectic. Fuller's essays and Plato's dialogues characteristically begin with an inherited and disintegrative way of thinking and talking about experience, and move, through an intermediate step of complication and perplexity and paradox, toward the ultimate reconstitution of language in ethically integrated terms. Finally, both Fuller's essays and Plato's dialogues have the same large end: not simply to move the reader to a more complex and integrated understanding of experience, but also to cultivate in the reader those capacities of mind and character

102. See supra note 90.
103. See supra note 90.
that are necessary to undertake such a continuing endeavor on his own. These are aspects of Fuller's jurisprudence to which we will turn shortly. Before doing so, however, it is first necessary to recognize that in Fuller's jurisprudence the dialectical impulse assumes a very special form.

V. THE CENTRAL ROLE OF POLARITY IN FULLER'S JURISPRUDENCE: CARVING OUT A "MIDDLE WAY"

When we speak of the "middle way" we are apt to think of the safe and easy way, the way that dodges the responsibilities of a clear-cut, logical position. For [the classical Greek mind], the middle way was not the soft way, but the hard way, the way that took skill and competence and from which the clumsy and ill-favored were most likely to fall.104

If there is any single impulse that gives shape and meaning to Fuller's jurisprudence, it is that embodied in what he referred to as "the principle of polarity."105 This impulse shapes

104. L. FULLER, JURISPRUDENCE, supra note 22, at 31. In this passage Fuller is referring specifically to Aristotle, but his description of Aristotle's approach also serves perfectly to describe the classical Greek approach to experience with its central emphasis upon achievement of what the Roman poet Horace called "the golden mean."

It is fair to ask in this respect whether, in this essay, I have not given too much attention to similarities between Fuller's and Plato's approaches and, conversely, paid too little attention to Fuller's clear reliance in his jurisprudence upon Aristotle. It has been said that we are all either Platonists or Aristotelians. If that is true, then may not Fuller be more accurately described as an Aristotelian than as a Platonist—especially in view of the fact that Fuller gives the lead-off position in his Problems of Jurisprudence not to Plato, but to Aristotle?

My response here must take the form of confession and avoidance. It is true that in some respects Fuller was more of an Aristotelian than a Platonist. It is fairly clear, for example, that he would have shared Aristotle's criticism of Plato for failing to distinguish between the methods to be applied to philosophy and those to be applied to the practical art of government and life. See ARISTOTLE, THE POLITICS OF ARISTOTLE ch. II, v, §§ 16-28, at 52-55 (E. Barker trans. reprint 1974). But with respect to the aspects of Fuller's jurisprudence with which we are particularly concerned here—that is, with his central effort to develop an integrated approach to the organization of language and experience—any opposition that otherwise might exist between Plato and Aristotle falls away. Such an integrative effort lies at the heart of both Plato's Gorgias, see supra notes 92-93 and accompanying text, and Aristotle's Nichomachean Ethics, see L. FULLER, JURISPRUDENCE, supra note 22, at 31. Nor should this surprise us, because carving out a "middle way" as Fuller describes it here was not unique to either Plato or Aristotle, but a central defining characteristic of the classical Greek mind.

105. Fuller, Reason and Fiat, supra note 1, at 381. One of the great defects of Summers's book, in my view, is his failure to make anything of this central shaping notion in his analysis of Fuller's jurisprudence. Cf. Winston, supra
the essential features of Fuller's jurisprudence much as the genetic structure of the parental chromosomes shapes the features of the infant, child, and mature adult. Fuller got the idea of polarity from Morris Cohen, although it is perhaps more accurate to say that Cohen's notion struck in him a deeply responsive chord. It gave expression to a mode of approaching experience that was at least already latent in Fuller's view of the world, if not already partially realized.

To appreciate what Fuller understood by polarity, it is instructive to observe how he invokes the concept in his classic essay *Reason and Fiat in Case Law*. In this essay Fuller argues that the problem with the conventional approach to the question of whether judicial decision should be seen as a product of "reason" or "fiat" is the tendency to take an "either-or" position. The question as it traditionally has been posed—is judicial decision the product of reason or fiat (or subjective preference or political inclination)—is, in Fuller's view, a false dilemma. To respond to the "antinomy of reason and fiat" by seizing upon one branch of the antinomy to the exclusion of the other is inadequate. What is required is a more complex way of viewing the underlying relationships:

Men have never been very ready to acknowledge that their thinking contains anything like an unresolved state of tension. They have never been happy with what Morris Cohen calls "the principle of polarity," according to which notions apparently contradictory form indispensable complements for one another. In dealing with the antinomy of reason and fiat, the main effort of the various schools of legal philosophy has been to obliterate one of its branches.

Fuller then goes on to show how an intelligent appreciation of the way judicial decision is actually done, and how it functions at its best, must embrace both elements, must recognize that both elements form "indispensable complements" of any sound process of judgment.

To Fuller, then, "polarity" is shorthand for the way "notions apparently contradictory form indispensable complements for one another." It is a perspective-transforming concept in the sense that it moves us from a perspective from which we regard the contrary tendencies that form human experience in

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108. *Id.* at 381.
109. *Id.*
terms of simplistic opposition toward an alternative perspective from which we can see the same tendencies in terms of more complex relationships of opposition and interdependency. Polarity in this sense bears a great affinity to Keats's notion of "negative capability": the capability (uniquely manifested, as Keats saw it, in Shakespeare's genius) of holding two conflicting ideas in the mind at the same time without an undue striving after one or the other. The comparison is a particularly helpful one because it underscores the fact that what is involved is not an idea, a method, or a system, but a critical and creative capacity. It is very much what Coleridge had in mind when he commented on the unique capacity of the poetic imagination for effecting a "reconciliation of opposite or discordant qualities."

So conceived, polarity is not something new with Fuller, or with Cohen before him, but rather expressive of an imaginative and ethical capacity performed and reflected in many of the great works of classic literature. If we confine our attention solely to its manifestation in works of eighteenth century English literature, we can find it reflected in many different contexts and forms. It is represented, for example, in Swift's brilliant demonstration in his Tale of a Tub of the pitfalls that attend us when we organize thought and language in terms of false or simplistic antitheses; it is reflected in the remarkable capacity that Johnson demonstrates in his classic Rambler essays for holding before us two contrary impulses, both in full force, without rushing to embrace the one or the other; the same impulse lies at the heart of our education in Austen's classic novel, *Emma,* as we move with Austen's heroine from a sentimental toward a critical appreciation of language and exp-

110. Keats put it this way:
[S]everal things dove-tailed in my mind, and at once it struck me what quality went to form a Man of Achievement, especially in Literature, and which Shakespeare possessed so enormously—I mean Negative Capability, that is, when a man is capable of being in uncertainties, mysteries, doubts, without any irritable reaching after fact and reason.


111. 2 S. COLERIDGE, BIOGRAPHIA LITERARIA 12 (J. Shawcross ed. 1907).


perience; and it is performed again and again at every level of Burke's great constitutional composition, *Reflections on the Revolution in France* (hereinafter referred to as *Reflections*), among other places in his insistence upon seeing values not in the abstract, nor in terms of simplistic opposition, but in "combination." It is in this broad and classic sense that polarity is embraced and performed by Fuller in his jurisprudential essays. At bottom what is involved is a complex double impulse: on the one hand, the rejection of an inherited (or emerging) mode of organizing thought and language that allows or encourages us to view experience in terms of false or simplistic oppositions; on the other hand, the creation of an alternative critical approach that leads us to see that experience in terms of more complex and dynamic relationships of opposition and interdependency. This fundamental impulse, whatever one calls it and however it is described, lies at the very heart of Fuller's jurisprudence. It supplies the elemental force and design for what eventually emerges as a deeply integrative ethic.

We can see the polarity ethic reflected in many different forms and at many different levels in Fuller's jurisprudence. It is reflected, for example, in Fuller's praise of Cardozo for having found a way to embrace, rather than to evade, the antinomies that in large part constitute legal experience. The same impulse underlies Fuller's view that the argument over whether judicial decision is governed by "logic" or "policy" is in large part based upon a phony opposition. It is implicit as well in his impatience with those who worry too much about whether legal judgment is a product of "rationalism" or of "intuition" (not a distinction that long "bothers people busy solving problems"). The same basic perspective is reflected in


116. For a discussion of Burke's achievement in developing a complex language of "combination," see J. WHITE, supra note 69, at 200-02.

117. Fuller says:

For Cardozo the law embraced many antinomies, but one of the greatest and most pervasive of these was that of reason and fiat. . . . His view rejected neither branch of the antinomy of reason and fiat. For him law was by its limitations fiat, by its aspirations reason, and the whole view of it involved a recognition of both its limitations and its aspirations.

Fuller, *Reason and Fiat*, supra note 1, at 376-77.


Fuller's view that the relationship between "law" and "society" is not that of simple subservience of one to the other but describable rather in terms of "mutual action and reaction."\footnote{120}{Fuller, Legal Realism, supra note 6, at 452. “Though we are under the necessity of opposing them to one another we must recognize that each implies the other.” \textit{Id}.}

The polarity impulse finds expression not simply at the level of rational argument in Fuller's jurisprudence, moreover, but in its deepest metaphorical fabric as well. This contributes to our sense of the underlying integrity of his vision of the world. To give an illustration, in describing the opposition between Austin's positivist view of law and Savigny's custom-based view, Fuller likens the underlying relationship to that which exists between the "two blades of a pair of scissors."\footnote{121}{\textit{Id}.} The difference is that "Savigny kept his eye on the Society blade . . . . Austin . . . on the Law blade."\footnote{122}{\textit{Id}.} This in large part explains the "confusion" that Blackstone makes out of these two views of law in his \textit{Commentaries}. Fuller notes that:

Blackstone shifted his eye from one blade to the other and gave us the confused account in which, on the one hand, he bases the common law on custom, and, on the other, informs us that the authoritative statement of this custom is to be found only in court decisions. As if to add to the confusion, he then lays down rules for determining when a custom should be recognized by the law. We avoid all these difficulties by the simple expedient of recognizing that both blades cut, and that neither can cut without the other.\footnote{123}{\textit{Id}.}

The nice thing about the scissors imagery, of course, quite apart from the fact that it helpfully describes the dynamic relationship of reciprocity that exists between law and society, is that it perfectly captures the complex relationship of opposition and interdependency that the polarity perspective requires. While the blades of the scissors in one sense stand in opposition to one another, "both blades cut, and . . . neither can cut without the other."

The scissors imagery is not the only such imagery we encounter in Fuller's essays. At another point, in insisting upon the importance of not rushing to embrace one branch as opposed to the other of the classic antinomies that form the heart of legal experience, Fuller invites us to imagine "a magnet with only one pole" or an "electric battery that produces only a positive current."\footnote{124}{Fuller, Reason and Fiat, supra note 1, at 385.} These metaphors are not simply sugarcoating
on the pill. They capture by negative implication the more complex relationship of polarity that Fuller is seeking to estab-

lish. If we are to come to meaningful terms with experience, Fuller insists, we must leave behind a language of simplistic or radical opposition and instead begin to think in terms of rela-
tionships that simultaneously involve both opposition and inter-
dependency—relationships metaphorically embodied by the magnet with two poles or by the battery with both a positive and a negative charge.125

Underlying Fuller's embrace of polarity is the effort to de-
velop a jurisprudential perspective that embraces rather than
denies the complexities and contradictions of human experi-
ence. And the very heart of this effort, as the recurring im-
agery of Fuller's jurisprudence makes clear, is the fundamental and civilizing impulse to achieve and express a balanced view.

VI. DESIGN AND MEANING: POLARITY AS A COMPOSITIONAL ETHIC IN FULLER'S JURISPRUDENCE

One cannot appreciate the full impact of polarity upon Fuller's jurisprudence, however, until one comes to see how it shapes the structure and movement of his essays and, in doing so, profoundly affects their underlying meaning. This touches upon what in my view is the greatest shortcoming of the traditional theory-seeking approach to Fuller's jurisprudence: its failure to take account of the way the meaning of Fuller's es-

says is influenced by their underlying imaginative design. Under the traditional approach, almost no attention has been paid to Fuller's essays as essays. The tendency, rather, has been to treat Fuller's essays as the more-or-less accidental con-
tainers of his thought, as something to go rummaging about in for stray evidences of his theoretical system. My purpose here is to attempt to turn this around. It is to show how polarity serves as an important compositional ethic in Fuller's jurispru-
dence and, more generally, to direct attention to the way the structure and movement of Fuller's essays affects their ulti-

125. Another manifestation of the same art and impulse is Fuller's re-
course, in describing the tendency of one jurisprudential school to overreact to the errors of another, to the metaphorical image of a person rushing precipi-
tously "to place his weight on the light side of a tipping boat." L. FULLER, JURISPRUDENCE, supra note 22, at 717. What is so appropriate, and so repre-
sentative, about the use of this particular imagery is that while it calls atten-
tion to the imbalance created by the overreaction, it also recognizes how alto-
gither human it is to overreact in this way.
mate meaning. By developing a better understanding of the internal operation of Fuller's essays as essays, I hope to show, one can gain important insights into Fuller's larger jurisprudential purposes.

Fuller's essays generally fall into the classic pattern of dialectic. This means that it is possible to discern within Fuller's essays, often if not invariably, the three basic steps or phases of dialectic: first, a statement of the conventional wisdom set forth in an inherited language which often proceeds in terms of simplistic or radical opposition; second, a refutation of the original way of thinking and talking about experience by exposing its inadequacies; and third, an attempted reconstitution of the original language in more integrated and stable terms. The underlying thrust of Fuller's essays is dialectic in that their central aim is the permanent reconstitution of language along such lines. Their purpose is to change the way we think and talk about experience so as to enable us to view and comprehend the world around us in a more complex and integrated light.

This dialectical purpose is reflected in what might be described as the characteristic movement of Fuller's essays. In general, it is a movement from a disintegrative way of thinking and talking about the world toward the discovery and development of a more integrative way of doing so. Often this is accompanied by a parallel movement: from the unstable discourse of platitude and simplistic opposition toward the expression of more complex and stable truths. Readers of Johnson's *Rambler* essays will recognize this pattern as a familiar one. Indeed, as suggested elsewhere, the experience offered by Fuller's essays is very much like that offered by Johnson's works. Moreover, Fuller's essays often turn upon a pivotal movement—a critical movement of insight toward which polarity impels—when we suddenly come to see how things "apparently contradictory" in fact form "indispensable complements for one another."

Let me illustrate by discussing three of Fuller's essays, each of which offers a distinctive example of Fuller's character-

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126. For a discussion of classic dialectic as it is performed by Plato in the *Gorgias*, see J. White, *supra* note 69, at 93-113. White condenses the three steps into a refutation and a reconstitution phase. See id.

127. For an insightful discussion of Johnson's essays, see J. White, *supra* note 69, at 141-53.

128. See *supra* text accompanying note 85 and text following note 85; *infra* text accompanying notes 242-244.
istic mode of dealing with experience. It is not insignificant that each of these essays proceeds from an initial statement of some fundamental opposition: in the first, it is between means and ends; in the second, between the natural law and the positivist perspectives on legal experience; in the third, between a world centered in the language of efficiency and one centered in the language of distributive justice. Fuller's recurring effort in these essays is to press through the barriers established by these traditional oppositions or antinomies to discover and explore the world of complexity and difficulty that lies beyond.

A. MEANS AND ENDS: TOWARD A MORE COMPLEX APPRECIATION OF EXPERIENCE

Fuller begins his classic essay Means and Ends\textsuperscript{129} by placing in juxtaposition two statements of conventional wisdom regarding the relationship that exists between means and ends in the context of social design. In the first of these statements, Isaiah Berlin contends that if there is going to be disagreement it is likely to be over the great ends of society, and that, once these large ends have been agreed upon, the question of means will take care of itself.\textsuperscript{130} In the second, Aldous Huxley takes the exact opposite position, arguing that the great ends of society are really not that controversial, rather it is over the means to be employed in their realization that substantial disagreement is likely to occur.\textsuperscript{131} Each of these schools of thought, Fuller observes, has its adherents. On the one hand, there are the "absolutists" who "consider that until the question of ultimate values is resolved no meaningful judgment can be passed on particular ways of ordering men's relations with one another."\textsuperscript{132} On the other hand, there are the "ethical skeptics," or "anarchists," who insist "that any judgment expressing a preference for one state of affairs over another must be emotionally grounded and hence not properly a judgment at all."\textsuperscript{133} Fuller's own impulse is to seek a more complex middle
In thinking about the relationship that exists between means and ends in the context of social design, Fuller suggests, we should approach our task much as an architect would do.\textsuperscript{135} We should begin by recognizing that our ultimate vision is necessarily shaped by the limitations and possibilities of the materials with which we have to work. Fuller rejects the view that one can talk meaningfully about ends without at the same time considering the limitations and possibilities of available means.\textsuperscript{136} But then in a characteristic move, Fuller cautions us against the temptation of embracing the opposite extreme. The opposite of a false or erroneous position, he points out, may also be false. "[B]ecause it is a mistake to assign an unconditional primacy to ends over means in thinking about creative human effort," Fuller argues, "it does not follow that the mistake can be corrected by a turn of a hundred and eighty degrees."\textsuperscript{137} In other words, it makes no sense to canvass exhaustively the materials potentially available until we have some idea of an ultimate vision. The activity of social design is one that in the end must necessarily proceed in terms of a complex reciprocal movement involving "circles of interaction."\textsuperscript{138}

\textsuperscript{134} By "middle position" or "middle way," Fuller did not intend some mushyheaded middle position, uncritically attained, one that might be described as conveniently halfway between polar position A and opposite polar position B. What he intended, rather, was pursuit of a much more difficult and complex set of relationships. One way to express it is to say the middle ground to Fuller is like the ground occupied by "courage" in relation to "foolhardiness" on the one hand and "timidity" on the other. It represents a mean in the classic Greek sense. Indeed, Fuller's entire effort to carve out a "middle way," to seek "affirmations of the middle range," see supra text accompanying note 24, was modeled on Aristotle's ethical notion of "mean" in the *Nicomachean Ethics*. See L. FULLER, JURISPRUDENCE, supra note 22, at 31.

\textsuperscript{135} See L. FULLER, Means and Ends, supra note 24, at 50.

\textsuperscript{136} See id. at 50-51.

\textsuperscript{137} Id. at 51-52. Fuller goes on: "[I]t does not follow that [a false or erroneous argument] can be corrected by reversing every assertion in it. Some vague conception of architectural ends at the outset is essential to define the range of means worthy of consideration for architectural purposes." Id. at 52. It should be noted that Fuller's approach to language and experience is very similar to that which underlies Swift's performance in *A Tale of a Tub*, see J. SWIFT, supra note 2; J. WHITE, supra note 69, at 114-37. In both cases, the heart of one's education lies in coming to see that the opposite of a false position is often also false.

\textsuperscript{138} L. FULLER, Means and Ends, supra note 24, at 54. Fuller puts it in the following Burkean terms:

"[W]e must recognize] the plain fact that human aims and impulses do not arrange themselves in a neat row of desired "end states." Instead they move in circles of interaction. . . . We should not conceive of an
Complicating our understanding of the nature of the undertaking still further, Fuller goes on to suggest that the limitations of the medium with which we must work are not, properly viewed, simply negative constraints, but often, as in music, an important source of creative inspiration. “Some limitation of means is essential,” he argues, “to liberate the creative spirit.” The same holds true for “problems of social design,” Fuller insists, where limitations of means must also be regarded as “liberating limitations.” The remainder of his essay is then devoted to exploring the implications of this paradoxical observation.

One can begin to see at this point what is meant when it is said that the polarity ethic shapes the underlying structure and movement—and meaning—of Fuller’s essays. In this essay, for example, we begin with the conventional and polarized understanding of the relationship between means and ends, a relationship expressed primarily in terms of radical subordination of means to ends, or vice versa. The world in which we initially find ourselves is one in which the “absolutist” argument (i.e., the real controversy is over ends not means) is pitched in simplistic opposition to the argument of the “ethical skeptics” (i.e., the real controversy is over means not ends). One side contends that it makes no sense to talk about means until we have settled upon ends; the other counters that it makes no sense to talk about ends in the abstract. We begin, in other words, with a way of thinking and talking about experience that is simplistically or radically antithetical and, consequently, disintegrative in tendency. In the course of Fuller’s essay, however, we are first brought to see the inadequacies of this language of simplistic opposition, and eventually forced to develop a more complex language to describe the complex reality. We move, in essence, from a world in which means are opposed to ends to one in

institution as a kind of conduit directing human energies toward some single destination... Instead we have to see an institution as an active thing, projecting itself into a field of interacting forces, reshaping those forces in diverse ways and in varying degrees.

Id. The question is not whether the institution serves certain prespecified ends well. “Instead we have to ask a question at once more vague and more complicated—something like this: Does this institution, in a context of other institutions, create a pattern of living that is satisfying and worthy of man’s capacities?” Id. at 55.

139. See id. at 51-52.
140. Id. at 51.
141. Id. at 52.
142. See id. at 52-64.
which they coexist in a relationship of "circles of interaction."\textsuperscript{143} We have entered the world of polarity: a world in which "notions apparently contradictory form indispensable complements for one another."\textsuperscript{144}

What is most striking, and most characteristic, about the basic structure and movement of Fuller's essay in this respect is its integrative force—a force that derives from the way the essay moves us from a disintegrative mode of organizing language and experience toward a more integrative one. This occurs at many levels. It takes place most obviously at the level of explicit argument outlined above: in our movement from a world in which means are pitted against ends to one in which the relationship between the two must be described in terms of "circles of interaction." But one can sense the integrative force at work in other ways as well. It is present, for example, in the way Fuller weaves in analogies from architecture and music until in the end those activities appear together with the activities of law and social design as distinct but interrelated manifestations of a single creative human endeavor. And it is present, more generally, in the way Fuller's essay proceeds upon the language of ordinary experience rather than that of abstract theory,\textsuperscript{145} forming in this way an indissoluble connection between the particular activities of law and social design he is describing and the rest of experience as we know it.

The integrative force of Fuller's essay derives as well from the essential integrity of the piece, from the sense one gets that the same vision that informs the large pattern and movement of the essay informs as well the composition of individual paragraph and sentence and phrase. For example, Fuller's caution against assuming that a "mistake can be corrected by a turn of a hundred and eighty degrees"\textsuperscript{146} reflects and reinforces at the level of individual statement the larger thrust of his essay,

\textsuperscript{143} Id. at 54.
\textsuperscript{144} Fuller, \textit{Reason and Fiat}, supra note 1, at 381.
\textsuperscript{145} Fuller's choice of the language of ordinary experience over the language of theory as the language in which he wished his jurisprudence to proceed was both self-conscious and explicit. As he once said, "there is indeed a lot of tacit and subtle wisdom concealed in the interstices of everyday speech." L. FULLER, \textit{MORALITY OF LAW}, supra note 23, at 196. The task of the philosopher was not to develop a separate theoretically-disciplined language but rather to improve upon language, in part by clarifying distinctions implicit in ordinary language. Fuller saw his task, in other words, very much as Samuel Johnson saw his. For a discussion of Johnson's approach to language, see J. \textit{WHITE}, supra note 69, at 138-62.
\textsuperscript{146} L. FULLER, \textit{Means and Ends}, supra note 24, at 52.
which in essence is to help us keep from falling into the habit of thinking and talking about experience in terms of simplistic antitheses.

If we descend to the level of individual phrase, moreover, we find the same basic impulse reflected. Consider for example the internal operation of Fuller's phrase "liberating limitations."\(^{147}\) Implicit in this phrase is the rejection of an understanding of the word "limitations" that would place it in a relationship of simplistic opposition to "freedom" or "creativity." Fuller's phrase invites us rather into a more complex world, one in which constraints and limitations continue to operate in part in opposition to freedom and creativity, but at the same time represent conditions that give freedom meaning and make creativity possible. We have moved from a simple language of opposition and antithesis to a complex and difficult language of "combination."\(^{148}\)

The embrace of an ethic of combination is not unique to this essay, moreover, but is a characteristic aspect of Fuller's jurisprudence more generally. We can see the same thing reflected, for example, in Fuller's view of the task of designing and realizing a "good social order."\(^{149}\) Not surprisingly, Fuller's conception of what is involved in this difficult undertaking is also a complex and integrative one. As he once said: "[W]e are not interested merely in order—the order, say, of a concentration camp—but in an order that is just, fair, workable, effective, and respectful of human dignity."\(^{150}\) This statement nicely captures the complex aspirations of Fuller's jurisprudence in so far as design of a good social order is concerned—"complex" because to Fuller the establishment of a good social order involved more than simply lining things up harmoniously at the level of theory, it meant bringing into workable combination the disparate and often competing tendencies inherent in the effort to achieve a social order that is at once "just" and "fair" and "workable" and "effective" and "respectful of human dignity." What is required for such a task, once more, is not a language constructed out of simplistic or radical antitheses, but a complex language of combination.

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147. \textit{Id.}
148. Fuller shares a great deal in common with Burke in this respect. See \textit{supra} note 116 and accompanying text.
149. L. FULLER, \textit{Means and Ends, supra} note 24, at 48 (emphasis in original).
150. \textit{Id.} at 47 (emphasis added).
B. REASON AND FIAT: THE “DEEPER” COHERENCE OF THE COMMON LAW APPROACH

A second illustration of how the polarity impulse shapes the essential design and meaning of Fuller's jurisprudence is provided by his famous essay *Reason and Fiat in Case Law*. Fuller opens this essay in characteristic fashion by observing that in continental jurisprudence “the schism between the philosophers of natural law and the legal positivists has been deep and largely unbridged for decades.”

He starts out with one of those troublesome oppositions that in his view contributes to a disintegrated understanding of legal and cultural experience. In this case, that opposition is represented by the “schism” that exists in continental theory between the positive law approach which holds that law is the expression of the will or command of the sovereign without regard to its compatibility with customs or ethical codes, and the natural law approach which takes the view that law is the reflection of eternal principles which exist above and apart from whatever the state or the sovereign may choose to do.

To continental jurists, Fuller goes on to observe, “the failure of Anglo-American legal scholars to accept the implications” of this basic division of the jurisprudential world has been a source of constant frustration and “perplexity.” The continental reaction for the most part, however, has been simply to write off this Anglo-American refusal to deal with what theory seems to require as yet another manifestation of the perverse English habit of “muddling through” or of its American counterpart of “pragmatism.” To the mind trained in continental theory, logic compels the embrace of either the natural law or the positivist view. One cannot—at least not responsibly—seek to have it both ways.

We come at this point to a crucial moment in Fuller's jurisprudence. For what the continental approach stands for here is not just another theoretical problem, but rather the problem of theory itself. It is as if Fuller found his way suddenly blocked by a great cyclone fence posted with a NO TRESPASSING sign. It is a fence that stands for the limitations of rationalist theory. On this side of the fence lies the territory of theory; on the other, a largely unexplored world. It is clear that Fuller

152. *Id.* at 391.
153. *Id.*
154. *Id.*
can turn sharply to the right and pursue a path called positivist theory, or sharply to the left to pursue the path of natural law theory, but neither option strikes him as wholly satisfactory; both seem limited and artificial. This is the predicament in which Fuller finds himself, the predicament into which rationalist theory leads.

Appreciating what Fuller does next is of crucial importance to an understanding of his larger jurisprudence. Fuller turns neither to the left nor to the right but walks straight through the cyclone fence of rationalist theory into the strange and forbidden world that lies beyond. Understanding how and why he does so provides a critical insight into the nature of his basic view of the jurisprudential enterprise.

Fuller begins by conceding that there is a coherence to the continental approach that is lacking in the Anglo-American one: the internal coherence of theory. But he then goes on to wonder if the Anglo-American refusal to surrender completely to rationalist theory may not in the end reflect a deeper kind of coherence. He states: "Yet I think the stubborn refusal to take either horn of this dilemma, the apparently illogical acceptance of both branches of the antinomy, that has characterized Anglo-American thinking, represents a greater insight, and a better logic, than that which has produced such sharp divisions on the Continent." Fuller then invokes a conception of the peculiarly English character of mind that comes very close to the Keatsian notion of "negative capability." He quotes the following passage from a writer on scientific history—a crucial passage because it holds the key to escape from the limitations of theory:

"[The] English tendency to hold simultaneously beliefs which, in the knowledge of the time, seem incompatible, is a constant surprise to continental minds. It probably arises from an instinctive apprehension among a political people that there is usually much to be said for both sides of a question, and that further knowledge may reconcile the seeming incompatibles. In abler minds it discloses a truly scientific power of following two lines of useful thought, while suspending judgment on their deeper implications and correlations for the examination of which there is not yet evidence available."

What the Anglo-American refusal to adhere strictly to rationalist theory represents, in other words, is not a vice—not ignorance nor superficiality nor inconsistency—but a very special

155. Id. (emphasis added).
156. Id. (quoting W. DAMPIER-WHETHAM, A HISTORY OF SCIENCE 214 (1930)).
kind of virtue. It reflects a deep cultural awareness that "'there is usually much to be said for both sides of a question.'"¹⁵⁷ Unlike continental jurisprudence which adopts a logically consistent but experientially false and ultimately disintegrative approach to legal experience, Fuller argues, the Anglo-American approach embodies at its heart "the spirit of give and take,"¹⁵⁸ which is "one of civilization's most precious and enduring gifts."¹⁵⁹

There is an intimate connection, Fuller continues, between the establishment of the "integrative" case law approach to legal experience and the relative stability of the political culture of common-law countries. Continental jurisprudence is based upon a radical division of labor between the role of "authority," represented by statutory law, and that of "reason," represented by the learned treatises.¹⁶⁰ In the Anglo-American tradition, by contrast, these two roles or functions are combined in the person of the creative common-law judge.¹⁶¹ So, in this sense as well, the Anglo-American approach to legal experience is integrative in a way that the continental approach is not.

The integration of these functions in a single institutional figure has "some causal connection," moreover, to the "relative stability of political institutions in common-law countries."¹⁶² Fuller goes on to speculate that perhaps we are "a better political animal"¹⁶³ because we do not depend entirely upon rationalist theory in the governance of our affairs. We are a problem-solving people.¹⁶⁴ The special genius of the common-law approach lies in its unique capacity for combining the "rational" with the "practical." It is a genius, as Fuller puts it, for keeping constantly in focus "the whole view."¹⁶⁵

Notice how the structure and movement of this essay falls

¹⁵⁷. Id.
¹⁵⁸. Id. at 394.
¹⁵⁹. Id.
¹⁶⁰. See id. at 392.
¹⁶¹. See id.
¹⁶². Id.
¹⁶³. Id.
¹⁶⁴. Id. at 392-94. The same view is expressed in Fuller, Williston, supra note 16, at 14, where Fuller invokes with sympathy "Maine's observation that the Greeks were too philosophic to be good lawyers, and that it took something of the practical and incurious temper of the Romans to build a great legal system." Id. at 14 (footnote omitted). Fuller's basic argument is that too much rationality and logic in a legal system can be destructive, and that it is "all the little covert tolerances and inconsistencies which have made [ours] a workable system in the past." Id.
¹⁶⁵. Id. at 391.
into a characteristic pattern. In this case, we move from the disintegrative world of continental theory, a world characterized by "schisms" and "sharp division," into the integrative world of the common law, with its unique capacity for taking "the whole view." At the same time, and as part of the same transition, we leave behind the brittle and unaccommodating language of rationalist theory and, drawing upon the traditions of the common law, gradually begin to develop a more complex and difficult language of combination, a language, in this instance, that can better accommodate the competing demands of the "rational" and the "practical." In the course of this essay, our basic approach to legal experience is fundamentally transformed. When we emerge, we have left the world of rationalist theory behind.

C. THE LANGUAGE OF EFFICIENCY AND THE LANGUAGE OF DISTRIBUTIONAL JUSTICE: FROM THE UNSTABLE DISCOURSE OF PLATITUDE TOWARD THE EXPRESSION OF MORE "STABLE" TRUTHS

A final illustration of the way polarity influences the shape and meaning of Fuller's essays is found in his essay entitled Some Reflections on Legal and Economic Freedom—A Review of Robert L. Hale's "Freedom Through Law." Of the three essays considered here, this is perhaps the most openly ideological in thrust. In it Fuller addresses the difficult, and, today, still extremely divisive, question of how to think and talk about freedom and efficiency and distributive justice in the modern world. That is not the primary reason for including it here, however. Rather, I include it because it serves to illustrate a common and recurring pattern in Fuller's essays: the movement from an unstable discourse of platitude toward a language capable of expressing more complex and stable truths.

Fuller begins this essay in characteristic fashion by setting forth the opposition that exists in the popular mind between the two primary languages used for talking about legal and economic freedom: the language of the market, which has as its purported goal the pursuit of efficiency, and the language of government planning and control, which has as its purported goal the pursuit of distributive justice. The apparent antagonism that exists between these two languages, Fuller suggests, represents a disintegrative force within the culture; thus, the

166. Fuller, Legal and Economic Freedoms, supra note 78.
167. Id. at 70-73.
task is to see whether some sort of reconciliation can be worked out.\textsuperscript{168}

The starting point is to recognize that freedom conceived solely in terms of market language is often an illusory freedom—indeed, for many in the society, it may not be meaningful freedom at all.\textsuperscript{169} In this respect, Fuller suggests, radical embrace of market language is both inadequate and deceptive.\textsuperscript{170} That does not mean that the opposite is true, however. Getting rid of market language entirely and substituting in its place the language of collective planning and control would not necessarily represent an improvement. Fuller is greatly critical of the platitudinous sociology\textsuperscript{171} that posits a radical dichotomy between a world governed by the "blind and uncontrolled economic forces"\textsuperscript{172} of the market on the one hand, and a world in which these forces are replaced by "intelligent human direction and planning" on the other hand.\textsuperscript{173} Such a view is reflected, for example, in the often repeated sentiment that "[t]o be truly free man must liberate himself from the control of the market."\textsuperscript{174} The problem with this perspective, Fuller suggests, is that it rests on an essentially schizophrenic view of the universe. It leads to the radical division of the universe into two diametrically opposed spheres,\textsuperscript{175} and in this sense is disintegra-

\begin{itemize}
\item \textsuperscript{168} Id. at 72-73.
\item \textsuperscript{169} "[W]hat does it profit a man to be legally and politically free if he is hungry and ill-clad so that he cannot enjoy his freedom? A man cannot be truly free unless he is economically free, that is, unless he enjoys a certain state of economic well-being." \textit{Id.} at 74.
\item \textsuperscript{170} Fuller rejects, for example, the language of maximization—in this case, Robert Hale's statement that "whether [a] particular change will bring about a net enlargement or a net diminution of individual liberty"—as a valid language for testing the legitimacy or soundness of legislative policy. \textit{Id.} at 71 (quoting R. \textsc{Hale}, \textsc{Freedom Through Law} ix (1952)).
\item \textsuperscript{171} Fuller, \textit{Legal and Economic Freedoms, supra} note 78, at 75 n.5.
\item \textsuperscript{172} \textit{Id.} at 75.
\item \textsuperscript{173} \textit{Id.}
\item \textsuperscript{174} \textit{Id.}
\item \textsuperscript{175} See infra note 218. It should be noted that this particular way of organizing language and experience is not unique to the literature of Fuller's day. A great deal of contemporary jurisprudential literature proceeds upon uncritical embrace of the same sort of radical dichotomy: upon the claim, for instance, that one must either radically embrace or radically reject the language of the market, \textit{see}, e.g., Tushnet, \textit{Book Review}, \textit{78} \textsc{Mich. L. Rev.} 694, 696 (1980) (The "central issue in political philosophy today" is "which socio-economic system, capitalism or socialism, justice demands"); or upon the division of the universe into two radically opposed spheres: on the one side, efficiency, on the other, justice; on the one side, slavery to the market, on the other, meaningful freedom; on the one side, all that is evil and destructive, on the other, the promise of salvation. For a classic example of this internally-di-
It is at this point in Fuller’s essay that the polarity impulse comes into play, provoking a critical shift in perspective that transforms what initially appears as an impasse created by two radically-opposed views into an opening for further inquiry and understanding. In this instance, Fuller finds his initial purchase in Hale’s provocative assertion that “[t]he law gives sanction to economic inequalities and is therefore justified in removing them.” Fuller is troubled by this assertion, but not because he finds it somehow too radically egalitarian in thrust. Indeed, Hale’s conclusions do not disturb him. The problem lies, rather, in putting things this way. It does so because in Fuller’s view, it “directs attention away from the thing that most needs attention, namely, the modes, forms, and purposes of legal and economic restraints.” What is “badly neglected” by Hale, Fuller argues, is “the important truth that you cannot intelligently discuss economic freedom in isolation from the specific mechanisms or procedures by which that freedom is determined, or, as I should prefer to say, by which freedom to choose is allocated and conflicting choices are reciprocally adjusted.” If we are going to work for a genuine reconstitution of the legal and social order, one that will provide for meaningful participation by ordinary citizens in decisions that vitally affect their lives, then the questions to be asked are those that address


176. Fuller, Legal and Economic Freedoms, supra note 78, at 80 (discussing R. Hale, Freedom Through Law 3-37 (1952)); see also id. at 71 (Fuller concluding that Hale’s thesis “amounts to saying that since the rich man could not hold his own against the mob without the aid of the law, the law, having been particeps criminis to an economic inequality, may properly salve its conscience by taking something from the rich and giving it to the poor”).

177. See id. at 80.

178. Id.

179. Id.

180. See id. at 77. Fuller anticipates here Professor Paul Brest’s recent call for a “genuine reconstitution of society—perhaps one in which the concept of freedom includes citizen participation in the community’s public discourse and responsibility to shape its values and structure.” Brest, The Fundamental Rights Controversy: The Essential Contradictions of Normative Constitutional Scholarship, 90 YALE L.J. 1063, 1109 (1981). Brest may have meant to exclude from the scope of “citizen participation” the vital economic decisions that Fuller lists here, but that seems unlikely.
how the citizen can effectively participate in the following vital decisions: What shall be produced? How shall the goods that are produced be priced in relation to one another? What resources of society shall be drawn into production and how shall they be organized and allotted among the various productive enterprises? Who shall work where and at what jobs?\textsuperscript{181}

The crucial thing to note about this passage is the character of the language in which it proceeds. By shifting the perspective slightly, as he has done, Fuller has carried us into a world where the seeming opposition between considerations of efficiency and considerations of distributive justice has disappeared. Consider, for example, how the questions in this passage elude simple characterization. In this context, clearly, it would not be fair to say that they are just efficiency questions. But neither would it be accurate to insist that they are concerned simply with distributive justice. Nor, to take a third possibility, can they be fairly characterized as concerned solely with participatory democracy. The fact is—and this is a measure of Fuller's achievement—these questions are centrally concerned with all three. Fuller has carried us into a world where the language of efficiency, the language of distributive justice, and the language of participatory democracy have all begun to merge into one.

It is in such an integrated language that Fuller continues. It “is not a question,” he argues, “of whether government should concern itself with [the] problem [of distributive justice]”\textsuperscript{182}—such is and ought to be a central concern of any civilized order—“[r]ather it is where, how, by what procedures, and with what objectives it should act.”\textsuperscript{183} The important caution, if experience is to be our guide, is that in acting, government should “do one thing at a time and by methods appropriate to the job at hand.”\textsuperscript{184} Fuller ends up, in other words, with a way

\textsuperscript{181} Fuller, Legal and Economic Freedoms, supra note 78, at 77.
\textsuperscript{182} Id. at 82 (emphasis in original).
\textsuperscript{183} Id.
\textsuperscript{184} Id. at 81-82. This opens upon a major and important strand of Fuller's jurisprudence which, because of space limitations, we cannot adequately develop here. It has to do with Fuller's development of an understanding of the interconnectedness of the various institutions within the overall legal process, and with his sense that each has its own particular genius, that each is particularly equipped to do certain kinds of things in the overall division of labor. Thus, Fuller would argue that we cannot simply eliminate, as a matter of principle or ideological conviction, the institution of contract or private ordering without potentially overburdening some other institution. It is not just a question of what each institution is capable of doing, or of what each “principle is capable of yielding,” but, more important,
of thinking and talking that combines the language of justice with the language of efficiency, that proceeds upon simultaneous consideration of distributional ends and effective means. It is a way of thinking and talking, significantly, that does not offer an easy solution to our problems, but opens upon real difficulties. Eliminating difficulties is not Fuller's effort, however; rather, it is to establish the terms upon which further inquiry—indeed, disagreement—can responsibly proceed.

This essay is representative of Fuller's jurisprudence in a number of important respects. It is so, first, in the way it moves us from a world in which the language of efficiency is radically opposed to the language of distributional justice into one where the two are brought to coexist in a more complex relationship of opposition and reciprocity. It is representative as well in the way it moves from the language of platitude toward the expression of more complex and stable truths. Nor should it disappoint us that the truths toward which Fuller's essay moves in this case take the form, not of assertions about what a good social order should ultimately look like, but of questions that serve at once to complicate our sense of the endeavor and at the same time to keep things open. For the transformation from platitudinous assertion to complicating question itself represents in this context a stabilizing and civilizing force. It is not accidental in this respect but a reflection of the essential character of his larger jurisprudence that Fuller's essay should "end" as it does: not by seeking to close off further conversation but by opening upon the shared endeavor of future inquiry. The important achievement is the development of a critical language that will allow the inquiry to proceed in more

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what strains its removal from a particular field of regulation would throw upon the other principles [or institutions]. Thus, if a socialist state takes as its goal destroying contract and the legitimated power of ownership as the principal factors organizing the economy, we must frankly face the task of describing what principles of order can be substituted and whether they are capable of carrying the burden that would be shifted to them.

L. FULLER, JURISPRUDENCE, supra note 22, at 719.

Fuller's view of the interconnectedness of the institutions and principles by which we order our affairs is intimately related to his appreciation of the intricacy of the internal workings of the social and economic order. His view is very similar to Burke's in this respect, especially in the shared sensitivity to "the problem of absorbing reform." Fuller Letter, supra note 20, at 297. These Burkean themes—first, the appreciation of the interconnectedness and intricacy of the inherited order; and, second, the importance attached to proceeding by incremental adjustment rather than by radical change—form essential strands of Fuller's larger jurisprudential vision. See infra text accompanying notes 225-226.
complex and integrated terms, that will encourage consideration of the problem of freedom in the context of other important goals of a social order—distributive justice, efficiency, democratic participation—and of the range of available means for their combined realization. Fuller’s achievement in this essay is representative in this sense of the achievement of his jurisprudence more generally. It is so in that what is performed here is the development of complex language of combination that allows and encourages us to take “the whole view.”

D. Summary

It is important to keep in mind that these three essays are representative only—they form but three individual strands of a complex compositional web—and hence shed, at best, only partial light on what eventually emerges in Fuller’s jurisprudence as a deeply integrated vision of the world. Yet in their underlying structure and movement they fairly reflect the larger thrust of Fuller’s jurisprudence: from the disintegrative approach of continental (or rationalist) theory toward the more integrative common-law approach; from the unstable language of platitude toward a more complex and stable language of combination; from a perspective grounded in phony oppositions toward the development of a capacity for embracing “the whole view.” One should now be in a position to appreciate the kind of integrative work that Fuller’s essays do: the way that each cuts through the underbrush of platitude, false antithesis, and bad philosophy to let us see the world as it really is, and in doing so serves in some small measure to expand the frontiers of our comprehension. It is through such a process that, cumulatively, Fuller’s essays carry us into a new dimension of understanding.

It should be possible by now, moreover, to see what is meant when it is said that polarity provides the compositional ethic that shapes both the structure and the meaning of Fuller’s essays. For if they do nothing else, these essays serve to demonstrate how “notions apparently contradictory in fact form indispensable complements for one another.”185 They represent in this sense performances of the art and discipline of polarity: the art and discipline of making sense out of a complex reality, of reversing the centrifugal spin of disintegrative

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185. Fuller, Reason and Fiat, supra note 1, at 381.
ways of thinking and talking about experience, of putting things back together.

VII. THE SOUL OF THE FUGUE: THE ORGANIC UNITY OF FULLER'S JURISPRUDENCE

fugue: . . . a contrapuntal musical composition in which one or two melodic themes are repeated or imitated by the successively entering voices and developed in a continuous interweaving of voice parts into a well-defined single structure.186

The art of putting things back together finds its ultimate expression in the deep integrity of Fuller's jurisprudential vision. Yet there is a difficulty in describing that integrity of vision in conventional terms because, whatever form it takes, it is not the internal coherence of theory. What we encounter, rather, is a coherence of a deeper and more complex sort—a compositional integrity. It is the sort of thing that holds the world of Burke's Reflections together, a complex interweaving of theme and structure.187 However, the unifying pattern in Fuller's jurisprudence is a distinctive one.

One way to talk about the unity of Fuller's jurisprudence is to turn to the perspective of literary criticism and to observe that what is most distinctive about relationships in Fuller's world is their underlying dramatic quality. Fuller's world is clearly a dramatic rather than a utopian one, and once one is alerted to this fact it is possible to see the essentially dramatic character of relationships at every point and level. It is perhaps most obvious at the level of large cultural vision. Unlike utopian jurisprudence, Fuller's jurisprudence does not hold out the prospect of a future world in which one day all our conflicts will be over, and, bound together by some wonderful harmony of purpose, we will be able to live happily ever after.188 In Fuller's world, rather, our future existence, at least in essential character, will not be radically different from that which we have always known. It will still be a world composed at its core of tensions and contradictions and complexities.

That is not to say Fuller does not hold out the vision of a world in important respects more decent and just than our own, because he does. Indeed, his central effort lies precisely

186. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 918 (1971).
187. For a discussion of the role of compositional integrity in Burke's Reflections, see J. WHITE, supra note 69, at 192-230.
188. Radical communitarian literature embraces this sort of utopian vision. See Teachout, Book Review, supra note 175, at 275 n.118.
here: it is to help establish the conditions that will make the realization of such a world more possible. What it does mean, rather, is that, unlike utopian jurisprudence which embraces the vision of a future world radically different—and in this respect cut off and apart—from the one we know, Fuller advances a vision in which present experience is essentially continuous with future experience. And what provides the critical element of continuity is the permanently "dramatic" character of human experience.

Fuller views the tensions and contradictions and complexities of experience as we know it, in short, as an inescapable condition of human existence. More than that: he views such tensions as forming the very heart of human experience. We should regard them not as a negative or destructive force, he insists, but rather as a positive source of energy and growth and life. This basic idea not only shapes the large cultural vision to which Fuller gives expression in his jurisprudence, but informs his underlying approach to experience at every possible level. In doing so, it provides a powerful unifying force in his jurisprudence.

Fuller's embrace of polarity, it should be apparent, is a reflection of this same dramatic ethic since the complex relationship of opposition and interdependency that the polarity impulse embodies is itself an internally dramatic one. Polarity introduces, however, an added and complicating dimension. For although it embraces the dramatic character of experience, it also, simultaneously, exerts a constant pressure toward achievement of some form of reconciliation of the dramatically opposed elements. Polarity embodies within itself, in other words, both centrifugal and centripetal tendencies, both the

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189. See infra text accompanying notes 219-221. In stressing the dramatic character of Fuller's jurisprudence, and in opposing the "dramatic" to the "utopian," it is important not to be carried too far in that direction. Although Fuller clearly adopted the view that the tensions and contradictions within a culture serve as a positive source of energy and life, his position was not that of a sentimentalist or romantic anarchist. Indeed, Fuller was quite critical of Jerome Frank's posturing in this regard. He takes Frank to task for his silly raptures about how an "enlightened and normal person takes a 'positive delight in the hazardous, incalculable character of life,' and regards 'life's very insecurity' as its 'most inviting aspect'" for "the person free from psychic repression." Fuller, Legal Realism, supra note 6, at 433 (quoting J. Frank, Law and the Modern Mind 17 (1930)). The attraction of the dramatic model to Fuller lay not just in its capacity for embracing those tensions and contradictions that form the life of the mind and of the larger culture, but in its ability to do so in a way that led toward a more complex and stable appreciation of the underlying relationships.
forces of opposition and those of integration and interdependency.

The analogy to dramatic literature is helpful as far as it goes, but, as the discussion of polarity suggests, it does not go far enough. To discover the unifying pattern underlying Fuller's jurisprudence, one must finally turn to the even more complex patterns of music. The most attractive analogy here is to the classical fugue, for in the basic patterns of the fugue one finds embodied the two most prominent features of Fuller's jurisprudence: the dramatic organization of experience and the constant movement toward the establishment of an integrated perspective. Indeed one could do far worse in looking for a description of the underlying architecture of Fuller's jurisprudence than to turn to the traditional definition of the fugue: "[a] contrapuntal musical composition" in which one or more themes are "repeated or imitated" in a wide variety of forms and contexts, and "developed in a continuous interweaving . . . into a well-defined single structure."\footnote{190. See supra note 186 and accompanying text.}

The analogy is not a perfect one of course; among other things, it fails to express adequately the powerful ethical aspirations of Fuller's jurisprudence.\footnote{191. See infra text accompanying notes 227-233.} But consider how perfectly in other respects this definition captures the essence of the underlying pattern of Fuller's jurisprudence. It does so in part because, like the classical fugue, Fuller's jurisprudence proceeds centrally upon the "contrapuntal" or dramatic organization of experience. But even more helpful is the way in which the fugue analogy captures the characteristic mode of Fuller's jurisprudence: the way it builds upon itself through a process of repetition or imitation of a dominant theme (here the polarity theme) in a wide range of contexts. There could be no better description of how Fuller's jurisprudence moves toward a single unified vision of experience than in the description of how, in the classical fugue, certain recurring themes are developed through a process of "continuous interweaving" into "a well-defined single structure."

So it is in Fuller's world that relationships are not static, they do not remain suspended in a state of tension or opposition but rather constantly undergo active transformation. The dramatic oppositions are there to be sure, and they form a central and continuing aspect of our experience. But it is as if upon entering the world of Fuller's essays, those oppositions enter into
an active field of force—as if they are caught up in a countermovement which propels them constantly toward a form of complex reconciliation, toward a single integrated vision. In its internally complex underlying patterns, in other words, the classical fugue offers a remarkably simple and accessible model for the complex patterns of opposition and integration which give shape and meaning to Fuller’s jurisprudence.

It is important to stress in this respect that what is involved is not simply structure. In Fuller’s world, it will be recalled, structure and substantive vision—form and substance—are not separate and isolated entities but inextricably interconnected.¹⁹² “Though we are under the necessity of opposing them to one another,” Fuller would say, “we must recognize that each implies the other.”¹⁹³ So it is here that the fugue-like structure of Fuller’s jurisprudence “implies” a substantive vision of experience. The contrapuntal structure of Fuller’s jurisprudence carries with it, for example, a centrally-shaping substantive contrapuntal or dramatic ethic. In a similar fashion, the dominant structural activity in Fuller’s jurisprudence—the “continuous interweaving . . . into a well-defined single structure”—reflects a substantive commitment to the development of a single integrated view of the world. In other words, the fugue-like structure of Fuller’s jurisprudence has its own “inner morality,”¹⁹⁴ its own “soul.” It is the reflection “in structural terms”¹⁹⁵ of a deeply-held substantive ethic. It is in this sense, it can be said, that one finds at the very heart of Fuller’s jurisprudence the soul of the classical fugue.

The purpose of the discussion that follows is to demonstrate the underlying unity of Fuller’s universe. My effort is to show how relationships of every type and at every level are governed by the same fundamental vision of experience. It does not matter whether one is talking about the contract relationship, or the internal psychological makeup of the individual, or the adversary process, or the larger social order, or the

¹⁹². See supra text accompanying note 77.

¹⁹³. Fuller, Legal Realism, supra note 6, at 452. Fuller employed this descriptive sentence in the context of his discussion of the opposition between law and society, but the underlying relationship—the polarity relationship—cuts across every sector of experience in Fuller’s world. See supra text accompanying notes 104-125.

¹⁹⁴. The reference is to Fuller’s highly original and illuminating notion of “the inner morality of law,” which is developed in L. Fuller, Morality of Law, supra note 23, at 33-94. See infra note 216.

¹⁹⁵. See supra note 77 and accompanying text.
pursuit of truth. In Fuller's universe these all proceed, as Burke would say, "in the same course and order."\(^{196}\)

A. THE DRAMATIC OR CONTRAPUNTAL ETHIC AS A SOURCE OF UNITY

There is no better place to begin than with an understanding of Fuller's conception of the contract or exchange relationship. The contract relationship is particularly significant in Fuller's jurisprudence for two reasons: it represents human encounter and engagement at the most atomistic level of social and economic interaction; and it plays a central role in Fuller's view of the optimal functioning of the social and economic order. Indeed, there is a sense in which it can be said the contract relationship provides a paradigm for relationships at every other level in Fuller's universe.

Because he places such importance upon the contract relationship in his jurisprudence, one might be tempted to typecast Fuller as simply another doctrinaire contractarian, or to dismiss him out-of-hand as yet another exponent of traditional market ideology. Before doing so, however, it is important to take a closer look at what Fuller's view of the essence of the contract relationship actually is. It is not, significantly, a relationship ultimately expressed, or even expressible, in the language of market ideology. What Fuller turns to, rather, when he wants to talk about the essence of the contract relationship is the language of polarity.

Consider in this light Fuller's description of the conditions under which "explicit bargaining" can be expected to operate most effectively: "Explicit bargaining involves, then, an uneasy blend of collaboration and resistance. This explains why it does not fit readily into either extreme of the spectrum of human relationships running from intimacy to open hostility."\(^{197}\) In Fuller's view, significantly, the exchange relationship requires for its optimal functioning that same general capacity of mind and character that Keats was aiming at when he invoked the idea of "negative capability": the capacity for working and living in a world of unresolved tension between the tugs and pulls of competing tendencies. The internally dramatic quality of ex-

\(^{196}\) E. BURKE, supra note 54, at 38.
perience in Fuller's world is perfectly captured by his description here of the bargaining or contract relationship as "an uneasy blend of collaboration and resistance." 198

This conception of the basic exchange relationship leads Fuller to make one of those wonderfully illuminating insights into human nature that we encounter again and again in his jurisprudence, in this instance into the fundamental nature of the Marxian sensibility. Although Fuller's observation is aimed specifically at Marx's own curious antipathy to the exchange relationship, it also has clear application to those others who find themselves drawn to the Marxian view. It was, Fuller suggests, Marx's psychological aversion to the bargaining relationship that led him ultimately to divide the world as he did into

198 Fuller's world is not one in which those who engage in the activity of contract are perceived as narrowly pursuing selfish needs or arbitrary desires in utter disregard of the welfare of the larger community. His is not a world governed by either a radical utilitarianism or a narrow instrumentalism. Rather, Fuller's conception of the contract relationship and its place in the larger culture requires recognition of the bargaining individuals as at once competitive and communal beings, as simultaneously pursuing self-interest and enhancement of the larger community. Characteristically, Fuller refused to adopt a view of the world which would place the pursuit of self-interest in a position of simplistic opposition to the pursuit of communal interest. Rather he insisted, with Philip Wicksteed, that there is nothing inherently ignoble or, for that matter, inherently disintegrative in the pursuit of self-interest:

There is surely nothing degrading or revolting to our higher sense in this fact of our mutually furthering each other's purposes because we are interested in our own . . . . The economic nexus [that is, the nexus of exchange] indefinitely expands our freedom of combination and movement; for it enables us to form one set of groups linked by community of purpose, without having to find the "double coincidence" which would otherwise be necessary.

Id. at 186 (quoting 1 P. WICKSTEED, THE COMMON SENSE OF POLITICAL PHILOSOPHY 156, 179-80 (1933)). To Fuller the primary attraction of the exchange relationship was that it provided automatically, without cumbersome state intervention, the "double coincidence" of advancing self-interest at the same time it advanced a shared community of purpose. Cf. L. FULLER, Practicing Lawyer, supra note 79, at 290 ("[T]he zeal of advocacy is one of those tricks of nature by which a man is lured into serving the public interest without knowing it . . . .").

Fuller had no romantic or sentimental illusions about contract; he was deeply concerned with problems of distributional justice, see supra text accompanying notes 166-175, and keenly aware of the shortcomings of a social order based exclusively in a regime of contract. Yet, if he was aware of the limitations of contract, he was also aware of its possibilities. The reason that contract plays such a central role in Fuller's vision of the social order is not because of a romantic attachment to contract itself. Rather it derives from the belief that contract in the context of other established institutions provided a mechanism for dealing with the complex problems of autonomy, freedom, democratic participation, and distributional justice better than had any other institutional arrangement. See Fuller Letter, supra note 20, at 297.
two radically opposed spheres, one centered in community and concerned with things political, the other centered in the self and concerned with the activity of exchange.\textsuperscript{199} It was, in other words, Marx’s \textit{lack of “negative capability”}—his psychological inability to function in a world that required acceptance of a complex relationship of “collaboration and resistance”—that led him to embark upon this divisive course.\textsuperscript{200} Nor is it entirely inconceivable that scholars who find themselves attracted to Marx’s teachings also suffer to a greater or lesser extent from the same aversion or inability. Indeed, this may account in large part for the disintegrative organization of language and experience we encounter in their writings.\textsuperscript{201}

It is in this special sense then—as the embodiment of a complex reciprocal relationship of “collaboration and resistance”—that contract can be said to serve as a paradigm for other critical relationships in Fuller’s world. When we turn from Fuller’s view of contract to his view of the internal makeup of the individual mind and psyche, we can see the same essentially dramatic ethic at work. It manifests itself particularly in the central recognition Fuller gives to the role of “unresolved conflict”\textsuperscript{202} and “unresolved state of tension”\textsuperscript{203} in our thinking and psychological makeup. To Fuller, it is clear,

\begin{quote}
199. Fuller observes:

Karl Marx expressed in his writings a deep aversion for relations of explicit exchange . . . in the youthful “alienation theme.” In 1843 Marx wrote of a man as leading a double life; “a life in the \textit{political community} in which he recognizes himself as a \textit{communal being}, and a life in bourgeois society [that is, in a trading society] where he acts as a \textit{private person}, who regards others as means, reduces himself to the level of a means and becomes the plaything of alien forces.”


200. See id.

201. Notice for example how the world of Horwitz’s historiography constantly tends toward radical disintegration: with efficiency increasingly pitted against justice, law against morality, and the individual against the communal self. It is a world that resolves itself finally into a schizophrenic division between two polarized constellations of values. M. Horwitz, supra note 2; see Teachout, Book Review, \textit{supra} note 175, at 242 n.4.

202. Fuller says:

[It] is better to accept frankly a state of unresolved conflict or tension in our reasoning than to purchase consistency at the cost of needed premises, for it is, after all, scarcely to the credit of legal philosophy that it achieves harmony within its domain if this is accomplished only by barring its frontiers to every vital and fruitful idea that might disturb the internal order.

Fuller, \textit{Reason and Fiat}, \textit{supra} note 1, at 377.

203. See supra note 109 and accompanying text.
\end{quote}
such unresolved tensions and conflicts constitute, in a very real sense, the life of the mind and the self.

It is such a view of human nature that leads Fuller to reject the "mechanical behaviorism" that informed, as he saw it, the writings of the legal realists, and in particular those of Underhill Moore.204 One important consequence is that in Fuller's jurisprudence we do not find the kind of caricature-producing condescension that we find in the writings of those realist scholars who, for whatever reason, seek to create an unenlightened, often sinister, "them"—bankers, businessmen, lawyers, judges, traditional law professors, elitist professionals, and other establishment figures—to set off against an embattled and enlightened "us."205 In Fuller's world, rather, all individuals, even lowly bank tellers,206 are complex ethical beings, in essential motivation no different from the rest of us. Whatever their office or station, they are internally complex creatures whose experience is in large part characterized, as is ours, by dramatic "choice."207

The same dramatic or contrapuntal ethic is reflected in Fuller's view of the essential character of human associations. Underlying almost all forms of human association, Fuller maintains, is an internal tension between two fundamental principles: "the legal principle" and "the principle of shared commitment."208 This is true whether one is talking about the associations we form as children out on the playground, or about the associations we form later in life at the local level, or

204. See supra note 94; infra note 206.
205. This attitude is not infrequently expressed in Critical Legal Studies literature. See Johnson, Do You Sincerely Want to be Radical?, 36 STAN. L. REV. 247, 249 (1984).
206. Fuller was especially critical of Underhill Moore on this point. Moore's bank tellers, he observed, "remain mere habit complexes." Fuller, Legal Realism, supra note 6, at 457 n.69. In order to develop law truly responsive to reality, Fuller insisted, one must leave behind the kind of mechanical behaviorism that informs Moore's jurisprudence, and recognize that a bank-teller is motivated by the same forces that motivate the rest of us—including "his own imperfect notions of the law." Id. at 458. Similarly, other economic actors in Fuller's world are viewed as motivated by a "common emotional and intellectual source—for example, [by] current conceptions of business expediency and social justice." Id. (emphasis added). It is instructive in this respect to compare Fuller's sympathy-expanding view of bank tellers with the condescending view reflected in Gabel & Kennedy, Roll Over Beethoven, 36 STAN. L. REV. 1, 28-29 (1984).
207. See infra text accompanying notes 219-221.
about those that lie at the basis of social and institutional organization at the largest possible scale. The critical feature in each instance is the *relationship* that is established between the two principles. In any vital and stable form of association, Fuller insists, the two principles must necessarily coexist in a kind of perpetual tension. Fuller's description is a significant one: the relationship is one neither of simple opposition nor of perfect harmony; rather the two principles "fight and reinforce each other at the same time."

The "latent tensions and hidden antinomies between the two principles of judgment," according to Fuller, form a continuing and inescapable condition of human existence. The reconciliation of these two principles under particular circumstances, always tentative and requiring constant adjustment, is the essential task of wise governance. Indeed the art and challenge of government to a large extent lies in discovering which combination of the two principles is most appropriate for which particular human activities and relationships. The tension between the two principles, however, comes with the territory. It is the tensions and contradictions within any form of human association that ultimately serve to keep it from stagnating, that make it constantly possible to seek out and establish "a richer bond of union."

A similar perspective informs Fuller's treatment of the large question of what is involved in the pursuit of truth. It is an endeavor, as Fuller sees it, that requires the reconciliation of the competing tendencies of two great cultural traditions. The Western tradition places great emphasis upon rationality and "syllogistic reasoning." The Eastern tradition, by contrast, stresses "intuition that comes from study and virtuous living." But, as Fuller characteristically insists, "the whole truth can only be recovered by combining the teaching of both

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209. Id. at 73. Radical embrace of either principle to the exclusion of the other would lead, Fuller suggests, to a kind of instability. He expresses deep concern with what he perceives to be a tendency in our society toward excessive reliance upon the "legal principle"—for example upon "due process" and "rules of duty and entitlement" in areas of human association in which legalization of the underlying relationships could have destructive side-effects. Id. at 79. But radical embrace of the alternative principle, the principle of shared commitment, he stresses, could also have serious destabilizing consequences. Id. at 76-77.

210. Id. at 82.

211. Id. at 85.


213. Id.
And so it goes: wherever we enter Fuller’s jurisprudence, and from whatever direction, we find the same basic impulse or activity reflected—the same essentially poetic “reconciliation of opposite or discordant qualities.” It is just such a reconciliatory undertaking, for example, that leads Fuller to discover in the interstices between law and morality his highly original notion of the “inner morality” of the law. The same impulse lies behind Fuller’s effort to establish an entirely new field of “economics” devoted to the study of “good order and workable social arrangements.” For at bottom what that effort reflects is the imaginative exploration of the territory where form and substance meet. And we can see the same pattern reflected in the complex bond that Fuller forges in his jurisprudence be-

214. Id. (emphasis added).
215. 2 S. COLERIDGE, supra note 111, at 12.
216. L. FULLER, MORALITY OF LAW, supra note 23, at 41-44. Fuller’s notion of “the inner morality of law” can best be understood as a third-phase expedition in a more general exploration of the interdependencies of law and morality. The first phase addresses the ways in which law incorporates and implements the “external” substantive moral code or vision of a particular culture. The second involves recognition of how the procedures employed by the culture in realizing specifically defined social ends reflect and shape in fundamental ways the ethical character of that culture. The emphasis we give in our own culture to procedural due process and notions of fair play is a reflection of the recognition of the interconnectedness of procedure and substantive morality in this respect. As Fuller once put it, “If we do things the right way, we are likely to do the right thing.” Fuller, What the Law Schools Can Contribute to the Making of Lawyers, 1 J. LEGAL EDUC. 189, 204 (1948).

Fuller’s notion of the “inner morality of law” represents an effort to carry this exploration into the interdependencies of law and morality one step further. Quite apart from the substantive content of rules of law, and quite apart from procedures made available for their implementation, there are other factors, Fuller insists, that influence the claim any particular law might make for our respect. Those factors—preconditions to our willingness to respect a particular law—are elements of what Fuller calls “the inner morality of law.” For example, the law should take the form of a rule of general application; it should be publicly pronounced so that those affected would have fair notice of it; it should apply prospectively; it should be framed in clear and intelligible language, and be free of internal contradictions; it should be consistently adhered to and administered, and done so in a way that is not inconsistent with the language of the law as actually formulated. L. FULLER, MORALITY OF LAW, supra note 23, at 33-94. It is important to note how this basic notion of the “inner morality of law” is the product of an exploration into the interdependencies of law and morality—and, more generally, of form and substance—that is in a sense compelled, or at least inspired, by Fuller’s embrace of polarity.

between the language of fact and the language of value, between
the language of “what is” and the language of “what ought to
be.” In each case, the essence of the underlying activity lies
in venturing beyond a world of simple opposition into that rich
and complex and difficult alternative world, the world of polari-

B. THE ORGANIC PREMISE

All of this ultimately leads to the expression of a great or-

ganic vision of the social and natural universe. That vision is
expressed in part in the following passage:

It is often assumed that the existence of tensions, contradictions and
competing principles of order within a society is a sign of impending
dissolution and death. We assert, on the contrary, that the absence of
these tensions, contradictions, and competing principles is one of the
surest symptoms that a society is dying.

The living organism of any animal is itself a bundle of tensions
and “contradictions.” . . . One impulse pushes toward self-assertion
and exposure to new experiences, a contradictory impulse pushes to-
ward escape and the lost security of the “intrauterine darkness.” The

218. Against what he perceived to be the disintegrative approach of the
positivists, an approach based upon radical separation of the language of “is”
from the language of “ought,” Fuller threw the entire weight of his jurispru-
dence. See supra text accompanying notes 92-103. His effort principally took
the form of developing a jurisprudential language in which value and being
could be viewed as forming aspects of an “integral reality.” It was critically
important to Fuller in this respect that the language of jurisprudence be not
something separate and apart from, but continuous with, ordinary discourse,
see supra note 145, that it be a language infused with the “sentiments and atti-
dudes” that make us human. See Fuller, Legal Realism, supra note 6, at 457
n.69.

The primary challenge lay in developing a language of adequate complex-
ity: a language capable of recognizing “the fact of soul”—the fact of human
spirit and ideas—and “the soul of fact,” see B. WILLEY, NINETEENTH CENTURY
STUDIES 25 (1949) (“The business of the Imagination [is] not to generate chime-
as and fictions—the imaginary—but to ‘disimprison the soul of fact.’ ”), while
at the same time preserving legitimate and helpful distinctions between the
fact and value. Here, again, the polarity impulse came to the rescue, for, by
holding out the model of a complex relationship of opposition and interdepen-
dency, it gave definition to the underlying task. This ultimately led Fuller to
develop a jurisprudential language capable of recognizing the differences be-
tween “what is” and “what ought to be,” see, e.g., Fuller, Legal Realism, supra
note 6, at 461 (“Life resists our attempts to subject it to rules; the muddy flow
of Being sweeps contemptuously over the barriers of our Ought.”), while at
the same time capable of recognizing the critical interdependence of the two,
see, e.g., Fuller, Williston, supra note 16, at 15 (“In [the] study of forces which
operate across time, the illusory present instant will tend to disappear, and
with it, the law that merely is”) (emphasis added). For additional discussion of
Fuller’s effort on this score, see Winston, supra note 44, at 5-6.
two impulses balance one another and a complete triumph of either would mean the destruction or disintegration of the organism itself.\textsuperscript{219}

In much the same way, a vital and stable culture depends for its continued life and growth upon “a dynamic tension of opposing forces.”\textsuperscript{220} Fuller goes on:

This means that men must expect to be faced constantly with the necessity for choosing, for particular sectors of the economy or the body politic, among competing principles of order. The inevitable result is an appearance of “conflict” and “tensions.”

To wish an end to these “conflicts” and “tensions” is to wish that society should cease to grow, that the wants of its members should remain static, that the total physical, mental and moral environment in which it lives should become stagnant. Choosing is a part of life whether it be the life of an individual or a nation.\textsuperscript{221}

If polarity is the art of taking things apparently contradictory and forging out of them an “integral reality,” then this passage is an expression of the polarity impulse in its most ambitious and expansive form. Everything comes together here: the affirmation of the view that the tensions and contradictions of experience are not something to be shunned but a positive source of energy and life; the central recognition of the dramatic character of experience at every level of existence; the establishment of crucial linkages connecting our lower with our higher natures, our individual with our collective selves;\textsuperscript{222} and the central emphasis upon growth and choice, upon the capacity of both individuals and nations for self-renewal.

It is important to appreciate that the vision that Fuller embraces here is an organic one, that is, it is a vision that stresses the parallels that exist between the social order and the natural universe. In both worlds, tensions and internal contradictions and complexities represent an inescapable condition of existence. Moreover, in both worlds, the presence of such tensions and contradictions is clearly essential to the continued vitality and stability of the larger order.

But there is another parallel as well, and that has to do with the process by which the social order grows and develops. Fuller’s vision in this respect is much like Burke’s great organic

\begin{itemize}
\item \textsuperscript{219} L. Fuller, Jurisprudence, \textit{supra} note 22, at 717.
\item \textsuperscript{220} Id.
\item \textsuperscript{221} Id. at 718.
\item \textsuperscript{222} Notice how in this passage Fuller links the experience of “the living organism of any animal” with the experience of the “individual” self with in turn the experience and life of a “nation.”
\end{itemize}
vision of English constitutionalism in the *Reflections*, particularly in the emphasis that is placed on the cultural capacity for self-renewal. Fuller makes explicit the connection to Burke's organic view of the social order in the following passage in which he is discussing "the problem of absorbing reform."  

I think of society as an organism which can absorb and survive only so much surgery. I find congenial many parts of the philosophy of Burke, which conceives society to be founded on institutions and conventions which are not wholly rational and which conceives of progress as a gradual improvement of those institutions and conventions in the direction of greater rationality. This view emphasizes that our present state of society, however imperfect, represents an acquisition, an encroachment of reason on chaos . . . .  

In Fuller's world as in Burke's, the process by which civilization renews itself—by which our cultural heritage is preserved, transmitted, and improved—is one by which, through countless encounters with experience, the oppositions and tensions that exist at any particular moment in time are transformed into complex and more stable relationships of opposition and interdependency, and even as these "settle out" to a greater or lesser extent, they are endlessly replaced with new oppositions and tensions, preserving in this way the essentially dramatic character of human experience; and so, to borrow from Burke, "the whole, at one time, is never old or middle-aged or young, but, in a condition of unchangeable constancy, moves on through the varied tenor of perpetual decay, fall, renovation, and progression." And the moving force in all this—which is the source of energy that at once unsettles the established order and at the same time constantly propels it toward reconstitution in improved terms—is the fundamental human aspiration for a more just and coherent world.  

The process of self-renewal that Fuller envisions here is not one of radical departures and erratic shifts, but rather one which involves the continuous reconstitution of language, self, and culture. Its essence is not arrogant revolution but, as Fuller says so nicely, the gradual "encroachment of reason [upon] chaos."

223. E. BURKE, supra note 54, at 18-39.  
224. Fuller Letter, supra note 20, at 297 (original emphasis altered).  
225. Id. at 297-98.  
226. E. BURKE, supra note 54, at 38.
C. ESTABLISHING A LANGUAGE OF ETHICAL ASPIRATION

Fuller's organic view of the cultural order is based, as suggested above, on the idea that the propelling factor in advance of civilization is the irrepressible human aspiration for a more just and coherent social order. What remains to be considered is how Fuller took this idea and embodied it in the very texture of the language in which his jurisprudence proceeds. Fuller's jurisprudence is not a coldly scientific jurisprudence but a jurisprudence of human aspiration, of "soul." But where is it that the soul resides, and how is it expressed?

The place to begin is by observing that in Fuller's jurisprudence we do not encounter the kind of schizophrenic voice that tends to characterize realist writing: the voice that talks in a negative, cynical, distrustful way about the world that "is" (a world of oppression, exploitation, and alienation) and in a romantic, almost sentimental, way about the world that one day "will be" (a world of solidarity, community, and love). The voice we encounter in Fuller's essays, rather, is a fully integrated one. It is a voice—an attitude, a perspective—that combines a realistic appreciation of our shortcomings with what can only be described as a self-conscious emphasis upon our possibilities. Fuller was keenly aware that terms of description are not simply terms of description, that they have subtle but important consequences for the way we regard and conduct ourselves. He realized that the words we use to describe ourselves not only reflect but also powerfully shape character. His great effort, accordingly, is to infuse the language of "is" with ethical aspiration. It is to develop a way of thinking and talking about experience that would incline us toward realization of our better selves.

That explains, at least in part, why we do not find in Fuller's jurisprudence the kind of self-deprecating view of lawyers, judges, and the activity of law that we so often encounter in the writings of the legal realists. What we find instead is the imaginative elaboration—the conscious holding out before us—of our possibilities. Consider, for instance, Fuller's view of the nature of the adversarial relationship, a relationship which lies at the very heart of our legal system. We are all familiar with the criticisms of the adversary system, with the complaints about how it pits one against another and tears away internally at the communal fabric. In some respects, Fuller fully admits,
these complaints have a basis; thus in designing an overall system for dispute resolution, the negative aspects of the adversarial relationship must always be kept in mind. We should not focus exclusively however on the negative side of the adversary process, he insists, but consider as well the underlying possibilities. What is ultimately determinative is not the adversarial encounter itself but the relationship we establish with it.

Properly understood, advocacy of the sort our system depends upon involves something more than "mere persuasion," something other than "a facile manipulation of legal doctrine." The spirit in which advocacy should be approached, rather, is that of seeking to assist a decisionmaker in arriving at "a full understanding" of an often complex reality. It should be regarded as part of a shared effort to ensure the judicial decisionmaker arrives at a fully informed and responsible decision. Here again, the polarity impulse is at work: in this case transforming what is often uncritically conceived in terms of simple and disintegrative opposition into a complex relationship of adversariness and shared endeavor.

It is for much the same reason that we do not find in Fuller's jurisprudence the distrustful and suspicious view of the judicial figure that tends to characterize realist literature, with the important consequence that we do not encounter in Fuller's writings that same debilitating preoccupation with controlling the judge's each and every move. The key difference is that in Fuller's jurisprudence the judge is regarded not as one of "them" but as one of "us"—as someone who is motivated in large part by the same complex ethical and practical considerations that motivate the rest of us. This leads to a critical shift in emphasis. Rather than concentrating exclusively on how to control the judge, Fuller insists, we should focus attention as well on how to provide adequate latitude to allow for sound judgment, honest explanation, reasonable certainty and uniformity. This is, moreover, another instance representative of the way Fuller's jurisprudence serves at once to demystify our understanding of the law and at the same time to expand

228. L. Fuller, Practicing Lawyer, supra note 79, at 290.
229. Id.
230. Id. (emphasis added).
231. A contemporary manifestation of this can be found in the preoccupation of Critical Legal Studies scholars with the determinacy and indeterminacy of judicial decision, see, e.g., Unger, supra note 33, at 657-60; Peller, Book Review, 98 HARV. L. REV. 863, 870 (1985).
232. See Fuller, Legal Realism, supra note 6, at 434-35.
our sense of possibilities.\footnote{233}

This explains why the paradigmatic legal figure in Fuller's jurisprudence is not some mean-minded, rule-bound authoritarian figure\footnote{234} but rather the figure of Justice Jackson at Nuremberg.\footnote{235} What impressed Fuller so greatly about Jackson's performance was the deeply creative ethical use to which he put the traditions of our common law.\footnote{236} Jackson's performance in effect epitomized on a global scale what Fuller saw to be the central activity of the lawyer: the creative reconstitution of the inherited materials of our culture toward the end of helping to realize a more just and decent world. It is in these several ways that Fuller's jurisprudence, with its central emphasis upon possibilities, serves to infuse our sense of what we are with a revitalized sense of what—if we were only good enough—we could be.

In the final analysis the ethical aspiration itself is the crucial thing. Fuller's jurisprudence is like Plato's philosophy in this respect. In both philosophies, what is most important is not the final attainment but the pursuit of what is just, good, and true. Both proceed, indeed, upon the recognition that that which is pursued or aspired to can probably never be perfectly achieved, at least not in this world. What matters is not the arrival at some perfectly virtuous end state, but the quality and character of the ethical struggle itself. That is why, in the end, Fuller's central effort takes the form that it does: not the attempt to develop a master blueprint for some idealized social order, but the elaboration of those capacities that are required by the pursuit of justice and truth. That is why the central emphasis in his jurisprudence is on the development of those capacities of mind and character that are, to recall Fuller's own phrase, "worthy of emulation."\footnote{237}

\footnote{233} For the expression of a similar perspective, this time on the liberating aspects of institutional constraints, see L. Fuller, Means and Ends, supra note 24, at 58.

\footnote{234} Or, even more characteristically in realist jurisprudence, a judicial figure who pretends to be bound by rules when in fact he is using his office to exercise his own arbitrary will and further his own selfish interests.

\footnote{235} See L. Fuller, Jurisprudence, supra note 22, at 718-19.

\footnote{236} "Justice Jackson had the insight to realize that the process of adjudication can itself be a moral force in men's lives and that this moral force is not necessarily derived from some other, higher principle, such as established law or government." \textit{Id.} at 719. For an excellent brief description of Jackson's performance at Nuremberg, and especially of his powerful opening statement, see Taylor, The Nuremberg Trials, 55 COLUM. L. REV. 488, 503-04 (1955).

\footnote{237} See supra note 77 and accompanying text. Fuller may have taken his cue on this point from Aristotle and the central emphasis given in Aristotle's
VIII. THE COMPLEX ACHIEVEMENT OF FULLER'S JURISPRUDENCE

Every truly great mind, Coleridge once wrote, is to be considered in two points of view, the first in that in which he may be said to exist universally, to act upon all men in all ages; and that is the grand idea which he first originates, the grand form and scheme of generalization. And the next is, when quitting the part of the architect, he himself becomes one of the labourers and one of the masons. There you will find in him the imperfections, of course, of every human individual; and while you give him every praise where he succeeds you will never permit it to detract from his merits where he fails.238

In this passage Coleridge suggests an approach that helps illuminate the nature of Fuller's jurisprudential achievement. In order to understand that achievement, the suggestion is, we should consider it as an initial matter "in two points of view." On the one hand, there is "the grand form and scheme" of Fuller's jurisprudence, represented by the great integrated vision of experience to which his essays collectively give expression.239 On the other, there is the detail work—the activity of mind—reflected in his individual essays. Yet while such a distinction is possible, the moment we begin to apply it we run into difficulty keeping the two activities—that of the "architect" and that of the "labourer"—separate and distinct. It is as if the one keeps constantly modulating into the other, then back again. In a sense this difficulty is a measure of Fuller's achievement itself. For it is a reflection of the underlying integrity of his jurisprudence that, in the final analysis, Fuller the "architect" and Fuller the "labourer" are not distinct personalities, but one and the same.

239. In giving the emphasis I have to Fuller's effort to develop an ethically integrated approach to experience, I have not devoted as much attention as I probably should have to the contributions Fuller makes to our understanding of the interconnectedness and intricacy of the overall legal process. See supra note 184. The reason for this neglect is not because I think these process aspects of Fuller's jurisprudence are unimportant. Quite the contrary, I see them as part and parcel of the larger integrative effort I have been attempting to describe. Their relative neglect here is simply a consequence of limitations of space and of the judgment that what is most needed is a view of Fuller's jurisprudence that will put his process contributions in perspective. My effort, in short, has not been to provide a complete picture of Fuller's jurisprudence (which would be impossible to do here) but rather to round out and, to a certain extent, correct the conventional understanding.
In considering the achievement of Fuller's jurisprudence, it is helpful to recall the question posed at the beginning of this essay: What sort of ethical education do Fuller's essays, some of which were written more than a half-century ago, hold for us? I am not sure I can answer that question in any complete or fully satisfactory way here, but let me attempt to suggest at least the form such an answer might take. The starting point is to recognize that the heart of that education lies not in some finalized vision of the social order that one might attempt to extract from his writings, but in something else. We can begin to shed light on what that "something else" is by recognizing that Fuller does not simply advocate the embrace of certain values in his essays, he actually performs them. So if we want to discover the education that his essays potentially offer, we must regard them not as statements of abstract theory, or as indifferent containers of thought, but as ethical performances.

What one critic has said about Johnson's essays in this regard applies with remarkable force to Fuller's:

"The activities of mind by which these essays move . . . comprise a steady pressure to correct and complicate; a constant openness to new facts or ideas; a repeated turning from system or theory to experience; and a hunger for balance, for the capaciousness of mind that can retain at once two opposing tendencies in their full force." It is difficult to imagine in some respects a more perfect description of the "activities of mind" by which Fuller's own essays "move." In Fuller's effort to develop a jurisprudence responsive to "a complex and moving reality," we encounter the same "steady pressure to correct and complicate," the same "openness to new facts or ideas," the same "repeated turning from system or theory to experience," the same deep honesty. Fuller's entire jurisprudence exerts a constant pressure on us to deal with experience, not in terms of stereotype or pat ideological formula, but fairly and honestly in all its troublesome complexity. In much the same way, we can see in Fuller's im-

240. See supra text accompanying note 35 and text following note 35.
241. Fuller explicitly rejected the value of trying to come up with such a finalized version. His jurisprudence is characterized on this score by a deep and genuine humility. He certainly was not locked into the existing scheme of things. In this respect Fuller shared Holmes's belief that "the world would be just as well off if it lived under laws that differed from ours in many ways . . . ." Fuller, Reason and Fia, supra note 1, at 389 n.13 (quoting O.W. Holmes, Law in Science and Science in Law, in COLLECTED LEGAL PAPERS 210, 239 (1920)).
242. J. WHITE, supra note 69, at 152.
243. See supra text accompanying notes 79-81.
imaginative employment of the notion of polarity the clear reflection of a Johnsonian "hunger for balance." In a way that cannot be said of the writings of any other modern jurisprudential figure, Fuller's jurisprudence embodies that special Johnsonian quality: "the capaciousness of mind that can retain at once two opposing tendencies in their full force."

The education offered by Fuller's essays is like that offered by Johnson's in a larger sense as well. It lies in the record they provide of the individual human struggle to make sense out of a complex reality, to see experience in a more complex and integrated light. It is the education that comes from watching Fuller at work in these essays forging connections between the opposed terms of the classic antinomes of jurisprudence, between law and morality, fact and value, means and ends, reason and intuition, justice and efficiency, the legal principle and the principle of shared commitment, the Western cultural tradition and the Eastern cultural tradition, carrying us at every point to greater levels of complexity and integration, and, through a process of cumulative insight, gradually establishing a truly integrated vision of experience. Fuller's essays exemplify in this sense the imaginative art of composing out of the inherited material of our culture "a richer bond of union."

Our education lies as well in what Fuller's essays have to teach us about integrity, in particular about how difficult it is to achieve real integrity, both in the way we live our lives and in the way we give expression to our most deeply-held views. The great virtue of Fuller's jurisprudence in this respect, and a central source of its educative value, it seems to me, derives from the fact that it is held together, not by the surface coherence of theory, but by a deeper—a compositional—integrity. Its dominant patterns are not the patterns of rationalist theory and logic, but the deeper and more complex patterns of music. In its grand outline, it is like the classical fugue: a contrapuntal musical composition that achieves its effect through the continuous interweaving of repeated voices and themes into a single final statement, a single integrated ethical vision.

The remarkable thing in this respect is the way in which diversity and unity are combined in Fuller's jurisprudence. On the one hand, Fuller's essays open upon a world of great and rich diversity. We encounter here the thick texture of human

244. See supra note 211 and accompanying text.
245. See supra text accompanying notes 190-192 and text following note 192.
experience in all its complexity. Yet this rich and diverse universe is also a deeply unified one. Somehow it all holds together. In Fuller’s world, human activity at every level reflects the same underlying ethic or impulse. Sometimes it is expressed in terms of a complex relationship of “collaboration and resistance;” at others, it takes the form of principles that “fight and reinforce each other at the same time;” at times it is put in terms of notions that we by necessity oppose but that in fact imply each other; and at yet other times, in terms of those “tensions, contradictions, and competing principles of order” that constitute the life of “an individual or a nation,” but, however variously manifested and expressed, the underlying relationship is in the end the same. Our contracts, our associations, our partnerships, our shared traditions and institutions, even the language we speak, all reflect the same deep underlying pattern, the same fundamental constitution.

Nor is that all: for the same ethic that gives shape and meaning to the world of external experience in Fuller’s jurisprudence informs as well the imaginative design of his essays. So in the end, there is this connection too—this ultimate merger of vision and performance. And what unites this great and various universe, supplying “the thread of connection” that ties it all together, is what we have called polarity: that capacity, that paradoxical art, of seeing and showing how things “apparently contradictory in fact form indispensable complements for one another.”

Yet, in placing the emphasis that we have on the role of polarity as a unifying force in Fuller’s jurisprudence, there are certain inherent dangers. Perhaps the greatest of these is that of lapsing into a mechanical fallacy, of coming to assume that there is an objective something out there called “polarity” and that all Fuller had to do was sit back and let polarity do the work. This of course is not the case. But to correct against a tendency in this direction, it is important to state here what probably ought to be obvious: that it is not the polarity impulse itself—not some objective external force operating in independent capacity—that does the integrative work in Fuller’s jurisprudence, but Fuller himself and the great creative use to which he puts the notion.

246. See supra text accompanying notes 197-201.
247. See supra text accompanying notes 208-211.
248. See supra text accompanying notes 117-125.
249. See supra text accompanying notes 219-221.
It is also important to stress that Fuller's employment of polarity as an integrative device is only one of a whole range of integrative activities in which Fuller engages in his essays, and it is those activities themselves that ultimately form the heart of our education. Our attention should therefore be not on polarity as an "idea" but on the actual integrative activity in which Fuller is engaged: making connections between "what is" and "what ought to be;" developing a mode of philosophical discourse that is not separate and apart from but continuous with ordinary language; expanding the perspective backwards and forward through time, so that the "illusory present instant" can be seen and understood in the context of the experience of those who have come before and of those who will follow; establishing correspondences which link our lower with our higher natures, our individual with our collective selves; carving out an ethically integrated language capable of recognizing once again "the fact of soul" and "the soul of fact;" and, in these ways and others, constantly forging anew out of the inherited materials of our culture and out of repeated encounters with experience (to borrow Joyce's evocative phrase) "the uncreated conscience of [our] race."

The most impressive part of our experience lies here finally: in the sense one gets when reading Fuller of being in the presence of a source of great creative self-generating energy. It is an energy that spills over into our own world. For in the end it is not the particular connections that Fuller makes that are most important (although they are not unimportant) but the impetus his essays create for us to make such connections ourselves. Fuller's essays establish a momentum that carries beyond the particular problems with which he was dealing, beyond in a sense the printed page itself, into our lives, changing the way that we view experience and the way that we read, pressing us at every point and at every level to seek out a "full understanding" of experience, to pursue with all our energies "the whole truth"—to embrace "the whole view."

250. See supra note 218 and accompanying text; supra text accompanying notes 227-237.
251. See supra text following note 141; supra note 218.
253. See, e.g., supra text accompanying notes 219-222.
254. See supra note 218.
256. L. FULLER, Practicing Lawyer; supra note 79, at 290 (emphasis added).
257. Fuller, Reason and Fiat, supra note 1, at 390 (emphasis added).
Yet even this, one cannot help but feel, does not reach the real heart of Fuller's jurisprudence. For the real heart lies at still another level, in something even more subtle and elusive, something that might be called attitude or tone. It lies in humanizing aspects of Fuller's jurisprudence that we have barely been able to touch upon here: in the genuine humility with which Fuller approaches experience, the generosity of spirit, the gentle humor, the civilizing force of his anecdotes and metaphors, and all the other countless ways in

258. *Id.* at 391 (emphasis added).
259. See, *e.g.*, *supra* note 241.
260. *See, e.g.*, Fuller's characterization of the overreactions on the part of Jeremy Bentham and Thomas Jefferson to the shortcomings of adjudication as a mode of social ordering: "Judged in the light of the times, and with the charity that should be extended to the man who runs purposely to place his weight on the light side of a tipping boat, these may not have been distortions at all." L. FULLER, JURISPRUDENCE, *supra* note 22, at 717.
262. It is illuminating in this respect to compare the metaphorical world of Fuller's writings with that of the new radical communitarian (or Critical Legal Studies) literature. Although the latter purports to be a literature of community and peace and love, the central metaphors upon which it proceeds, interestingly, are those of "trashing," disruption, revolution, and war; *see, e.g.*, R. UNGER, *Knowledge & Politics* 118 (1975) (military maneuver and insurgency: "Surrounded on all sides, my tactic, a recours of despair, is to retreat the better to advance"); Freeman, *Truth and Mystification in Legal Scholarship*, 90 YALE L.J. 1229, 1230 (1981) ("The goal of trashing . . . is not liberation into nihilist resignation . . . [but] . . . to expose possibilities more truly expressing reality . . ."); Kelman, *Trashing*, 36 STAN. L. REV. 293, 293 (1984); Boyle, *Book Review*, 98 HARV. L. REV. 1065, 1083 (1985) (describing Unger's book romantically as a "dispatch from the front"). The singlemost remarkable feature of this new literature of love and peace, indeed, is the extent to which it depends for its very life, at least at the metaphorical level, upon appeal to our violent natures.

When we compare the metaphorical world of Fuller's writings, what is most striking is the extent to which these characteristics are not present: neither the parading around in the metaphorical garb of guerilla warfare, nor the appeal to our violent natures. The central characteristic of the anecdotes and metaphors upon which Fuller's jurisprudence proceeds, by contrast, is their "domestic" quality. Fuller's world is by and large composed of the materials of ordinary experience: of music and architecture, *see supra* text accompanying notes 141-145, of school playgrounds, *see supra* text following note 208; and of scissors, batteries, magnets, and the world of domestic activities, *see supra* text accompanying notes 121-124. The appeal Fuller's writings makes to us, as a consequence, is of a very different sort than that made by the new literature. While it does not offer the same instantaneous "high," it has a more subtle civilizing effect. Fuller's jurisprudence offers the terms by which the world can be put together rather than those by which it might be torn apart.
which his jurisprudence forms a constant appeal to our better selves.

Of course the real heart of Fuller's jurisprudence lies in all these things: in the great ethically-integrated vision of experience to which his essays collectively give expression; in the integrative thrust of his essays, quite apart from the particular vision they embody; in the ethically inspired language in which his essays proceed; in the ethical capacities—capacities of mind and character—they reflect and perform; in the deep integrity of Fuller's jurisprudence viewed as a complete performance; and in the many other, often subtle ways his jurisprudence operates upon us as a civilizing force. These are all finally reflections of the same thing—like light reflected from a many-sided crystal goblet held up to the sun. They are all reflections, to borrow the words of another writer in the classic tradition, of "one single soul complete,/Alive, and sensitive, and self-aware." 263