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Advising the Law: Academic Advising in Law-Generating Institutions of Higher Education

William E. Smith III, Indiana University Bloomington

Academic advisors occupy an ethically fraught position in institutions of higher education and frequently have to traverse complex curricular issues. Legal theorist Lon L. Fuller's work provides advisors with new resources to ply some of these troubled curricular issues. By focusing on understanding colleges and universities as law-generating institutions, advisors can reshape how they think about the nature of their work so that, in a lawyer-like fashion, they can then subject the rules created by these institutions to Fuller's ethical standards. Analyzing such rules via Fuller's standards can help advisors to navigate better their often ethically fraught institutional position and aid them in advocating for rules that are fair to students and that maintain the integrity of institutional rules and decisions.

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Academic advisors have to traverse legal terrain with regularity in their work and benefit from various primers aimed at helping them to do so in responsible ways (e.g., Becker, 2000; Richard, 2008; Rust, 2015). In the context of the United States, advising scholars commonly point toward the Family Educational Rights and Privacy Act (FERPA), the Americans with Disabilities Act (ADA), and other laws and legal principles to discuss how federal legislation and judicial decisions bear upon academic advisors' work with students. By turning our attention to the branch of legal studies known as the Law, Culture, and the Humanities movement, academic advisors can expand further on the legal studies work undertaken in academic advising scholarship so far in order to provide new resources with which to do advising.

In particular, I want to turn advisors' attention to Fuller (1969), one of this movement's luminaries, and his seminal theory on the nature of law. Academic advisors face many ethically fraught questions in the course of their jobs, as Lowenstein and Bloom (2016) have recently reminded advisors. Those scholars provide a model showing how certain ethical principles can aid advisors in making good decisions in these cases (Lowenstein & Bloom, 2016, pp. 127–130). Fuller (1969) provides additional resources to help advisors better navigate some of these troubled waters, especially when it comes to curricular issues. Fuller's analysis of the ethical grounds of law reveals that ethics, at least in specific forms, is internal to the law. Arming advisors with Fuller's approach toward the morality of law and its core principles provides advisors with tools with which to better advocate for rules that are fair to students and maintain the integrity of institutional rules and decisions.

Thinking about law and the curriculum from Fuller's perspective augments the extant legal studies in the advising literature. In 1982, Young wrote an essay covering the contractual element of the student-school relationship, student privacy, privileged communication, and academic due process. A decade and a half later, Showell (1998) analyzed a longer list of U.S. federal and state laws—covering defamation, negligence, privacy, the ADA, and more—that relate to academic advising. People have continued building on this early work, expanding on the topics covered, explicating them with more nuance, addressing institutional policies that schools establish to stay in conformity with these laws, and where applicable, providing updates in light of new court rulings and other developments (Becker, 2000; Richard, 2008; Robinson, 2004; Rust, 2014, 2015, 2016; Stone, 2002).

From these studies, academic advisors know that state-generated law, such as that emerging from legislatures, courts (i.e., case law and common law), and administrative agencies (e.g., Department of Education regulations), clearly shapes advising, from the forms advisors have students fill out (e.g., a release of information

form) to what they report to various officials on campus (e.g., Title IX coordinators). Through their work, these scholars also help academic advisors to recognize the value of legal studies in understanding the work of academic advising and how to do that work well. Fuller's work complements these studies by shifting the way people regularly conceive of law.

Understanding why Fuller's account applies to academic advising requires advisors to take a wider view of law than is customary. In particular, they need to view law through the lens of legal pluralism. The concept of legal pluralism emerged from the socio-legal branch of legal studies (e.g., Ehrlich, 1962; Merry, 1988). Legal pluralism is a perspective that sees many institutions and multiple normative orders in any given society as generating law, rather than just seeing law as something emerging from formal governmental institutions (e.g., Merry, 1988; Tamanaha, 2011). People working in colleges and universities have to wrestle with norms emerging from multiple sources, including the schools themselves, accreditation organizations, and the state, to name but a few major examples. These multiple governing bodies, as understood from the perspective of legal pluralism, are all sources of law. For the purposes of this essay, I focus on how colleges and universities serve as law-generating institutions. Understanding colleges and universities to be law-generating institutions holds the possibility of reshaping how academic advisors think about the nature of their work. It also allows them, in a lawyer-like fashion, to subject the rules created in these institutions to Fuller's ethical standards. Analyzing these rules via Fuller's standards, I contend, can help academic advisors better navigate their often ethically fraught position in colleges and universities.

The University as Law-Generating Institution

Understanding the nature of the institutions where academic advisors labor is crucial for advising professionals to determine how best to do their jobs. Fuller's (1969) theory on the nature of law helps academic advisors to see universities and colleges in a different light—namely, as law-generating institutions.

Fuller was keen to demonstrate not only that morality and law were inseparable in nature, but also that morality provided essential, foundational sources for law. Fuller formulated his theory of law as a corrective to more positivist conceptions of law, especially that proposed by Hart (1963/2012). Fuller (1969, pp. 108–110) rejected the centrality of force and coercion, in particular that wielded by the state, as a necessary condition for law. Instead, Fuller (1969) argued that "law is the enterprise of subjecting human conduct to the governance of rules" (p. 106). Although he did not use this terminology, what Fuller was directing readers' attention to is the existence of legal pluralism. Legal pluralism is the concept that there are multiple legal systems in operation at the same time in a given area, only some of which are state-based. Or as Fuller (1969) wrote, in relation to his theory of law, "it must follow that there are in this country alone 'systems of law' numbering in the hundreds of thousands" (p. 125). The case study Fuller employed to showcase the truth of his position is that of a (generic) college. By utilizing an institution of higher education, Fuller helps advising scholars to realize that colleges and universities are law-generating institutions.

Fuller zeroed in on university and college governance of student life to illustrate his point. Fuller (1969) painted for the reader a picture:

> A college enacts and administers a set of parietal rules governing the conduct of students in its dormitories. A student or faculty council is entrusted with the task of passing on infractions and when it is established that a violation has occurred, the council is understood to have the power to impose disciplinary measures, which in serious cases may include the organizational equivalent of capital punishment, that is, expulsion (p. 125).

Fuller then asked the reader to imagine a situation where a student files suit against the school over a decision regarding the student's alleged violation of said parietal rules that led to the student's expulsion. In such cases, Fuller (1969) pointed out that the court will, in most instances, defer to the rules set by the school as governing the case as long as they respect what Fuller called "the internal morality of law" (p. 126). Recently legal scholars Kaplin and Lee, in their discussion of contract theory and higher education, have reaffirmed Fuller's basic assessment of courts' deferential stance, even while not engaging with Fuller per se (Kaplin & Lee, 2013, p. 845).

The court will only defer to the school's legal code for student conduct, according to Fuller, if it adheres to the internal morality of law—barring rare instances of "grossly unfair" (Fuller, 1969, p. 126) rules established by the school or the existence of superseding applicable state or federal law. Granting this general deference, what then are these moral elements of law? Fuller (1969) walked the reader through a series of questions a court would ask to reveal what these elements would be:

> Did the school in creating and administering its parietal rules respect the internal morality of law? Were the rules promulgated?—a question in this case expressed by asking whether the student was given proper notice of them. Were they reasonably clear in meaning, so as to let the student know what actions on his part would constitute an infraction? Was the finding of the council in accordance with the rules? Were the procedures of inquiry so conducted as to insure that the result would be grounded in the published rules and based on an accurate knowledge of the relevant facts? (p. 126)

If the school's rules do not run afoul of the moral principles (detailed with specificity in this essay's final section) animating these questions, they hold the force of law per Fuller's analysis. A particular decision by the appropriate council or school official would, if also morally upright under these terms, be affirmed by a court. Thus Fuller (1969) argues, "Once we accept the parietal rules as establishing the law of the case, binding both on the college authorities and the courts, the situation is not essentially different from that in which an appellate court reviews the decision of a trial judge" (p. 126). In short, universities are law-generating institutions and "these rules are plainly given the force of law in judicial decisions" (Fuller, 1969, p. 127).

One way that the law-generating nature of institutions of higher education reveals itself is in how courts often recognize colleges and universities as having an interpretative privilege over the rules they create. While the court may, at times, "give the meaning to the contract terms that it thinks a student would give to those terms" (Richard, 2008, p. 57), students are not privileged with the same interpretive authority over the rules governing their conduct and academics that school officials are generally recognized as having. This asymmetrical relationship to the rules is distinctive. As Fuller (1969) pointed out, "When parties quarrel about what a contract means we do not ordinarily defer to the interpretation made by either of them but judge between the two impartially" (p. 128; see also Kaplin & Lee, 2013, p. 842). Yet this interpretative privilege is granted to appropriate school authorities (Fuller, 1969, p. 128). This practice has continued in the decades since Fuller published his work. Recently Kaplin and Lee (2013) reported that "courts have accorded institutions considerable latitude to select and interpret their own contract terms and to change the terms to which students are subjected as they progress through the institution" (p. 842). The two parties have an unequal relationship vis-à-vis the academic rules since the school gets to establish the rules, change the rules, and interpret the rules, while students cannot. Thus, we can go beyond Becker's point that the academic contract is a source of law (Becker, 2000, p. 58), and recognize colleges and universities as law-generating institutions in their own right.

For public institutions at least, some of this latitude may be waning. Several state governments (e.g., Indiana, Texas, Florida) in recent years have imposed certain broad curricular constraints on public institutions of higher education, such as stipulating that bachelor's degrees must be obtainable in four years and that students are to be advised on how to graduate in that time frame (Rust, 2015, p. 166). Such developments may empower students to succeed with certain educational malpractice suits at court (Rust 2015, p. 166). That said, curricular rules and, more importantly for the current discussion, their interpretations still largely reside in the hands of empowered officials at colleges and universities (Kaplin & Lee, 2013, p. 842).

At this point, a person might contend that these respective scholars are talking about two different things: parietal rules on the one side, academics and degree requirements on the other. Both, however, are law in Fuller's reasoning, even if Fuller only utilizes parietal rules to illustrate his larger point. When a school establishes a curriculum leading to a degree, such as a bachelor of arts in economics or a bachelor of science in informatics, it is concurrently establishing rules for achieving the degree in question. If a student successfully completes the outlined requirements, the student will earn the degree. In other words, this curriculum and the school that administers it

create an "enterprise of subjecting human conduct to the governance of rules" (Fuller, 1969, p. 106), which constitutes law and lawmaking in Fuller's account.

While that summary is true, professionals who work with students pursuing degrees readily recognize that things are more complicated than that description of degree attainment would indicate. There are often various factors to navigate during the course of completing a degree: changing course offerings; courses carrying different required credits in different semesters; courses that do not currently automatically count toward a part of the curriculum but might—after a review—appropriately do so either on a one-time exception or as an ongoing option; the intersection of different rules (e.g., between those established by a department and a school); and so on.

Universities have various legislative bodies that establish the basic rules and bodies that play a judicial role in interpreting the rules when questions such as those just outlined need to be resolved. Depending on the nature of the issue in question, the appropriate judicial decision maker—the person(s) interpreting the rules—may be at the departmental, school, or campus-wide level, or decision makers at several levels may be involved. All of which is to say that the curriculum and the efforts students and school officials, faculty, and relevant staff alike, undertake to navigate it fit Fuller's definition of law as "purposive activity" (Fuller, 1969, p. 117) that subjects people's behavior to the "governance of rules" (Fuller, 1969, p. 106).

The Advisor as Lawyer

Advisors' work routinely entails helping students subject their behavior to a school's internally generated system of rules. By focusing on this feature of academic advising, an aspect of the advisor's role in the law-generating university emerges. The advisor, in that specific role, does not make curricular decisions at most institutions of higher education. The advisor, qua advisor, is not usually empowered to legislate degree requirements nor to render judicial interpretations when questions related to those rules emerge in the academic life of students. Granted, professional academic advisors at some schools serve as ex officio members of curriculum committees at various levels, thus granting them a voice, even if not a vote, on curricular matters. Faculty advisors, by virtue of being faculty, may be able to serve as voting members on curriculum committees. Where then does this leave the average advisor in the world of the law-generating university? The advisor's role, at least in part, is akin to that of the lawyer.

Lawyers help clients navigate the legal system, advising them about laws, policy, and how specific actions might intersect—negatively or positively—with the legal system. Lawyers, as lawyers, do not write the laws or make judicial interpretations of legal cases. Lawyers routinely work with clients on issues that may never come before a judge, such as those involved in drafting wills or contracts. Similarly, advisors often aid students in plying a university's curriculum in the course of seeking a degree or pursuing other academic objectives without any special cases emerging from a given student's academic trajectory. But lawyers also can and do advocate on their clients' behalf, in and out of courts, which advisors can do as well in the academic setting.

Yet this advocacy work highlights a way in which the university as a law-generating institution—and the advisor's role in it—differs significantly from that of the adversarial legal system employed in the United States. The lawyer represents the client's interests and is explicitly positioned on the side of the client, albeit hedged in by certain legal and ethical standards. The advisor, in contrast, is usually forced to maintain split loyalties from the start. NACADA points toward these concurrent obligations for advisors by making a "commitment" to "students, colleagues, institutions, and the profession" part of the profession's core values (NACADA: The Global Community for Academic Advising, 2017). The advisor, then, needs to be on the side of the university, the student, and perhaps other units (e.g., a department) simultaneously, a position that cannot always be managed easily and may, at times, demand privileging one of these constituencies over another.

Consider how the advisor is an agent of the university and, in this role, may be enjoined to promote and maintain a school's decision even if the advisor does not think it is entirely just for the affected students. The institution, importantly, may constrain an advisor in terms of how much the advisor is permitted to help the student craft an appeal to a ruling or otherwise challenge the school's legal system. For example, the school may limit the advisor to only detailing the formal steps of submitting an appeal while not permitting

the advisor to identify possible grounds for the appeal. The institution, in these types of situations, may permit the advisor to advocate more forcefully on the student's behalf behind the scenes, but the student is often none the wiser for it. The advisor, in short, is often not afforded the independence of a lawyer to take the client's (or student's) side fully in the university's legal system, especially when it comes to making judicial decisions on curricular matters.

The fraught ethical position advisors often occupy in the law-generating university may be interminable. Depending on the case, it may well be appropriate for the advisor to privilege—or be forced to privilege—the institution of higher education over the student. But the advisor needs as much guidance as possible in how to navigate these divided loyalties. Advisors, like lawyers, can utilize arguments to the powers that be in a given situation—be it to defend the integrity of a degree or to advocate for fair rules for students—in order to attempt to secure good decisions. Advisors, again like lawyers, might not always persuade these empowered persons, but advisors do their due diligence by making the effort. As the next section shows, thinking of institutions of higher education as law-generating entities and using Fuller's ethical rules for making law helps to meet this need by giving advisors guidance on thinking through a decision's ethical implications, even if it does not fundamentally resolve the underlying problematic ethical ground advisors occupy in the course of their work.

Academic Advising in the Law-Generating University

If it is correct that the curriculum and the institutional structures around it constitute a legal apparatus, then academic advisors are necessarily a part of that legal system in their lawyerly role. Fuller's analysis of the morality of law provides advisors with analytical tools to think through the legitimacy of curricular issues that may arise during their work with students. These curricular issues could cover a variety of matters, such as if a key course is not offered and thus effects time to degree, whether or not students are "grandfathered" into "old" requirements when requirements change (e.g., for a major or general education), and the decision-making process around such matters. In this section, Fuller's eight moral principles for the failure of law are spelled out with related examples of what they might look like in action at colleges and universities. Following that are two thought experiments set at an imaginary school called the University of the Mind, or UM for short, to illustrate how Fuller's ideas can serve as a resource for advisors in these types of situations.

Early in *The Morality of Law*, Fuller (1969) identified eight key ways law can, morally and thus functionally, fail as law. These situations, along with some notes on how they might apply to institutions of higher education, are as follows (Fuller, 1969, p. 39):

1) "a failure to achieve rules at all, so that every issue must be decided on an ad hoc basis"

Example: A minor has no established course lists, depending instead on the decision of a faculty person or academic advisor to approve each course individually in every case.

2) "a failure to publicize, or at least make available to the affected party, the rules he is expected to observe"

Example: Admission to a major requires a certain minimum cumulative GPA (e.g., a C+ average), but that requirement is not listed in any public resources available to a student.

3) "the abuse of retroactive legislation, which not only cannot itself guide action, but undercuts the integrity of rules prospective in effect, since it puts them under threat of retrospective change"

Example: A department dramatically overhauls its requirements for a major and wants to apply these new requirements to all current students, many of whom have not taken newly required courses and would have to delay graduation in order to fulfill these new requirements.

4) "a failure to make rules understandable"

Example: A department has a listed requirement that students take a 400-level "capstone" course but provides neither a course list nor criteria with which to identify qualifying "capstone" courses.

5) "the enactment of contradictory rules"

Example: A department requires that students complete 10 classes for a major and also requires that students study abroad but does not permit

any of those courses taken abroad to count toward the major, regardless of whether the content of the courses matches courses already located on approved lists for the required 10 classes, making it effectively impossible to actually do the major in only 10 classes.

6) "rules that require conduct beyond the powers of the affected party"

Example: A department requires students to take a specific class to graduate with a major but does not offer the class frequently enough for most students to take it in the normal two or four years for the degree.

7) "introducing such frequent changes in the rules that the subject cannot orient his action by them"

Example: A university adjusts which classes can and cannot be transferred from a community college in significant numbers each year, making it nearly impossible for transfer students from that community college and students at the university who wish to take a class at that community college (e.g., over the summer) to plan coursework to make degree progress at the university.

8) "a failure of congruence between the rules as announced and their actual administration"

Example: A school requires students to complete a basic writing composition course before taking a mandatory advanced writing class, but a dean, upon a student's plea, will let students take them concurrently.

While all of these moral principles relating to successful lawmaking activity apply to institutions of higher education, academic advisors might find that some of them cross their desks more frequently than others. Cases under consideration by an academic advisor might also involve more than one of Fuller's rules. The two thought experiments below illustrate how academic advisors might encounter and think through cases where more than one of Fuller's rules are applicable.

In the first example, consider a case where a student named Breon is working toward completing a language minor. For argument's sake, the language in question is Ukrainian. It is offered by an area studies department that permits students to fulfill the language minor by studying either Russian, Polish, or Ukrainian. Per the requirements for the minor, students need to complete the third-year language sequence (two 300-level courses) and complete at least nine credit hours at the 300 or 400 level in addition to accruing a minimum of 15 credit hours overall at the 200 level or higher. Breon has completed the second-year courses and is enrolled in the first half of the third-year sequence for the upcoming Fall, which is a four-credit-hour class called Ukrainian 301. She is also enrolled in an optional one-credit-hour supplemental course, Ukrainian 309, which is meant to be taken concurrently with Ukrainian 301. The student notices that Ukrainian 309 is not showing up under the minor in her electronic advisement report. Breon emails her academic advisor to determine whether this class will count toward the minor.

Sally, the student's advisor, has to determine what the nature of the problem is: Is it simply a coding issue (i.e., the course should be in the electronic advising report already but is not) as it does indeed count toward the minor? Is the course one that may be appropriate to be approved as an exception? Or is the course not appropriate for the minor at all? In thinking through this dilemma, Sally first refers to the academic bulletin for the student's degree requirements to see if it sheds any light. There she notes that, under the minor's 300-400 level hours requirement, it reads, "Remaining credit hours may be met by further study in the chosen language or related culture coursework from the department." Ukrainian 309 is coursework in the chosen language and has been listed under the department's master course list for years, and thus, on the face of it, should count toward the minor. Sally is cautious and decides to make sure that Ukrainian 309, which has not been offered since before the minor's last round of updates to the requirements, does truly count toward the minor. Sally refers the case to the department's director of undergraduate studies (DUS), who serves as the interpreter of these rules in ambiguous situations, a role that positions this professor as a judicial figure. Initially, the DUS tells Sally that the course cannot count toward the minor because it is not a three-credit-hour course. Later the DUS follows up this decision by noting that similar one-credit-hour courses are not available for students studying Polish and Russian.

The DUS's decision strikes Sally as unfair to the student, but she is initially unsure how to respond to the DUS. If Sally knows Fuller's eight rules for how law can fail, morally speaking, she

would recognize that there are, at a minimum, two ways the DUS's ruling constitutes a bad legal decision. Depending on what had transpired at the department's curriculum committee and departmental meetings where the minor's most recent requirements were formulated and adopted, the DUS's decision would be in violation of either Fuller's (1969) third or fourth rules: 3) "the abuse of retroactive legislation, which not only cannot itself guide action, but undercuts the integrity of rules prospective in effect, since it puts them under threat of retrospective change" and 4) "a failure to make rules understandable" (p. 39).

If the department's intention was for students to only be able to use three-credit-hour courses and ensure parity of opportunity across languages, then the department failed to make its requirements, which are rules for earning a minor, understandable per Fuller's fourth rule. Nothing in the minor's requirements, as published, reflect or even hint at these curricular objectives and limitations. Ethically speaking, in these circumstances the DUS should adjudicate the case in light of the rules as they are currently formulated, while also working with the rest of the department to change future versions of the requirements for new students to better reflect the curricular intent of the faculty for the minor. If, instead, the requirements as published accurately reflect the department's will for the minor when it was drafting these rules, then the DUS's decision is an instance of retroactive judicial legislation. This ad hoc legislation undermines the clarity of the existing published rules as well as sows confusion for the advisor and students alike as to what courses will count toward the minor in the future.

Additionally, Sally would recognize that the DUS's decision might violate Fuller's (1969) fifth rule—"the enactment of contradictory rules" (p. 39)—since the department routinely lets students count two-credit-hour courses at the 300-level from a popular study-abroad program toward the minor. If the DUS's decision stands, would the students currently abroad on this program have to be alerted to the fact that their planned courses no longer count toward the minor? If not, would students be operating under two different sets of requirements, functionally speaking, for the minor? Sally could advocate for the student and the integrity of the minor's requirements—as published in the bulletin—based on these reasons.

Now imagine another scenario at the fictional UM. A student at this imaginary university is pursuing majors in French and environmental sciences (ES). These majors are attached to two bachelor of arts (B.A.) degrees. Being parts of a B.A., they both require a number of minimum hours—set at 100 credit hours—that students must complete from their shared home school on campus, the School of Liberal Studies (SLS). The ES major permits certain classes from other schools at UM, which is a decentralized university, to count toward the major. The French major does not have this option.

The student and the French advisor meet and realize that the electronic advising report indicates two different counts toward the required 100 hours inside SLS. The student, John, and the advisor, Maria, determine that six hours from two non-SLS courses that count toward the ES major are being treated as inside SLS hours—via major hours—for the B.A.'s 100 inside hour requirement. Maria double-checks the academic bulletin for the student's requirement term. There she and John read that "at least 100 credit hours must be completed from coursework offered by the School of Liberal Studies." Reviewing the entry for the ES major provides no more clarity since it does not explicitly address the 100 inside hours rule as it relates to courses that count inside the ES major. Maria and John face a dilemma: If selected non-SLS courses count as inside SLS courses for the ES B.A. degree, why do they not do so also for the French B.A. degree since this is a shared requirement across the degrees? Would the student need to complete the hours per the French B.A.'s counting, or could the student depend on the ES B.A.'s counting to carry the day?

Maria and John have identified a structural ambiguity in SLS's rules governing its degrees and how they relate to one another. At a minimum, the empowered dean would need to make a judicial decision as to how to interpret the rules in order to answer the question raised by the student's case, an ambiguity that could affect many students in SLS with similar major combinations. Maria, as John's advisor, could potentially advocate to the dean for the more lenient solution to this problem on the grounds of several of Fuller's legal ethical requirements: 2) "a failure to publicize, or at least make available to the affected party, the rules he is expected to observe"; 4) "a failure to make rules understandable"; and 5) "the enactment of contradictory rules" (p. 39). The idea that there would be different rules for counting the 100 inside SLS

hours rule had not been published in the bulletins to date. If the dean opted to rule that the student must complete both counts (i.e., fulfill the French B.A.'s higher threshold), then the decision would likely violate Fuller's second rule. The dean might counter that the 100 hours rule, at least implicitly in the bulletin, was meant to be per degree, thus opening the possibility for multiple and separate ways to calculate its fulfillment. If the dean made this argument, however, the advisor could counter that then the laws for SLS degrees, as written, violate Fuller's fourth rule since SLS's school-level curriculum committee "fail[ed] to make the rules understandable." Finally, the dean would need to face the fact that the stricter ruling would create a situation where there were "contradictory rules" since non-SLS courses would count as inside hours toward the same requirement for some degrees but not others. This arrangement would require certain students to achieve a higher threshold of inside hours than others, such as those who pursue a double major versus those pursuing only the ES B.A.

These two thought experiments showcase the value of thinking through advising questions related to the curriculum as legal problems in the law-generating university. Academic advisors familiar with Fuller's principles of the ethical grounding of law can use these resources for analyzing problematic areas in advising and thinking through potential decisions made by the powers that be at a particular institution of higher education. While advisors can control the line of questioning they employ, they cannot control the decisions other officials make, and therefore no decisions tied to these hypothetical situations are offered. It is entirely possible a dean, for example, will be unmoved by an advisor's line of reasoning. That said, if advisors utilize Fuller's framework, their analyses of curricular issues might lead to more just academic decisions for students and institutions of higher education alike.

Conclusion

Law and lawmaking is a phenomenon internal to institutions of higher education and something that is externally imposed upon colleges and universities by the state. Fuller's eight rules regarding the internal morality of the law provide academic advisors with a resource to advocate for fair standards and decisions. By assuming this lawyerly position, advisors do more than explain and guide students through the logic of the curriculum, to use Lowenstein's (2000) phrase. Advisors can also become defenders and users of the curriculum in the law-generating institutions of higher of education, working from within the system to make it a more just educational environment.

One of the implications of this position is that scholars of advising should not simply think of legal and ethical issues of advising as separate, if often clustered terms (e.g., NACADA Clearinghouse's topic "Legal and Ethical Issues" and the collection of essays collated under that heading). It is easy, and at times important, to think of law and ethics as distinct things. Lowenstein and Grites (1993) highlighted why it matters to think of these two issues separately, even while recognizing that they can overlap. They reminded advisors that "there are unjust laws" and "hence there are circumstances in which the law dictates a course of action that is ethically wrong" (Lowenstein & Grites, 1993, p. 59). Lowenstein and Grites (1993) continued, "*Legal* and *ethical* do not mean the same thing. Actions are legal or illegal because of the actions of legislators, public officials, and judges: they are ethical or unethical independent of any such action" (p. 59, emphasis in original). In their overall helpful analysis of how ethics can inform advising practice, Lowenstein and Grites made two claims that, in light of Fuller's work, are questionable. The first is the assumption that lawmaking is external to institutions of higher education, being the work of the aforementioned legislators, public officials, and judges. The second is that the laws are made by action without regard to ethics, even as ethical arguments might be used to pressure lawmakers into passing more just laws. Informed by Fuller's analysis of the nature of law, advisors can view lawmaking as internal to the work of colleges and universities and, just as importantly, a specific set of ethics as being central to the legitimacy of the laws and legal decisions generated in these institutions of higher education. Advisors can advocate, when armed with Fuller's eight principles, for curricular rules that meet these minimal but essential ethical standards for valid lawmaking.

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William E. Smith III is an assistant director of advising for the College of Arts and Sciences at Indiana University—Bloomington. Before his current position, he worked as an academic advisor for the college for six years. He also served two terms as the president of the campus-wide Bloomington Academic Advising Council. He holds a PhD in religious studies from Indiana University. He has previously published two advising-related essays in The Mentor *and* Academic Advising Today. *He can be reached at wsmithii@indiana.edu.*