



UNIVERSITY OF TORONTO
FACULTY OF LAW

LEGAL THEORY WORKSHOP SERIES

presents

Charles Barzun

University of Virginia Law School

Jerome Frank and Lon Fuller

Respondent:

Malcolm Thorburn, University of Toronto Faculty of Law

Friday, September 25, 2015

12:30 – 2:00

**Solarium (room FA2), Falconer Hall
84 Queen's Park**

Jerome Frank and Lon Fuller seem to stand at opposite poles of twentieth-century legal thought. Indeed, when H. L. A. Hart famously accused American jurisprudence of oscillating between two extreme views about adjudication, he explicitly mentioned Frank as one who adopted the “Nightmare” view (according to which judges never decide cases according to law), and he could have plausibly classed Lon Fuller among the “Noble Dreamers” (those who say that judges always decide cases according to law). Today Hart’s characterization still seems to fit. These days Frank is typically characterized as an “extreme” realist, who thought judges decided cases on the basis of irrational biases, whereas Fuller is most known for his defense of natural law and his association with the Legal Process school, which is itself seen as a response to precisely those excesses of realism that Frank is said to epitomize.

On closer inspection, however, the writings of Frank and Fuller contain various intriguing similarities, with respect to both their underlying philosophical outlooks and their views on adjudication. Early in their careers, for instance, both of them wrote about legal fictions, and both did so because they thought their use by courts reflected and vindicated a pragmatist account of the nature of truth. Furthermore, Frank and Fuller both emphasized throughout their careers that studying judicial decision-making could yield important lessons about the nature of human inquiry more generally. Of course, in adopting a broadly pragmatist philosophical outlook and in focusing their attention on adjudication, Fuller and Frank were typical of their time; nevertheless, by identifying the common threads that link their jurisprudential views, we can better understand not only why Frank came to endorse a natural-law position like Fuller’s later in life, but also why philosophical pragmatism has played such a large role in American legal thought.

A light lunch will be served.

For more information about this workshop, please contact Nadia Gulezko at n.gulezko@utoronto.ca.