Consider a situation in which James Smith was sentenced in 2004 for armed robbery. It is now 2006 and legislators are concerned with increases in the number of armed robberies, especially those carried out by individuals who have previously served time for armed robbery. So the legislature decides to increase the sentences for armed robbery and to apply these increases retroactively. James Smith, who was originally sentenced to 15 years, will now be forced to serve 25 years. Is this illegitimate because unjust? Wherein lies the injustice? How would a traditional natural law theorist approach this issue?

Fuller’s response: Norms of justice (moral norms) are built into our legal procedures. There are procedural principles, but (according to Fuller) they are not merely procedural—they do have a moral aspect. Fuller argues that there is not a sharp conceptual separation between law and morality. In doing so, he articulated a form of NLT that is very different from traditional versions of that theory.

Like traditional NLTs, Fuller proposes that a so-called law must pass a moral test if it is to be a law in the fullest sense (a genuine law). But Fuller’s test is functional. A rule or set of rules that doesn’t perform this function does not count as law (just as an object that looks like an ax but completely fails to perform the function of an ax really isn’t an ax at all).

The function that a set of rules must play is revealed in Fuller’s definition of law:

**law (defined by Fuller):** a particular way of achieving social order by guiding human behavior according to rules.

He attempts to identify what he calls the **internal morality** of a system of legal rules. This morality is constituted by **universal procedural norms**.

These are eight “principles of legality” – the degree to which a system meets these requirements is the degree to which it counts as a system of law. He describes these principles at pp.65-66 of your textbook. They are summarized in the following list:

1. laws should be general;
2. they should be promulgated, that citizens might know the standards to which they are being held;
3. retroactive rule-making and application should be minimized;
4. laws should be understandable;
5. they should not be contradictory;
6. laws should not require conduct beyond the abilities of those affected;
7. they should remain relatively constant through time; and
8. there should be a congruence between the laws as announced and their actual administration.

**Objection:** it is possible for a regime to meet all eight of Fuller’s legal requirements, yet still be wicked, e.g. by meticulously following a system of laws the contents of which are wicked.

**Response:** This misses Fuller’s point. He does not claim that any system that includes these procedures is thereby perfectly moral. Rather, his view is that the procedures embodied in a legal system are **morally important** and determine whether a set of rules really count as a legal system.