

# LOYALTY AND GOOD FAITH IN THE IMPLEMENTATION OF PUBLIC POLICIES: THE BRAZILIAN CASE<sup>1</sup>

*Edna Raquel HOGEMANN*

*Professor – Universidade Federal do Estado do Rio de Janeiro*

## Abstract

*This paper explores the concepts of loyalty and good faith in the context of public policy implementation, focusing on the Brazilian scenario. Loyalty and good faith are crucial elements in fostering effective governance and ensuring the success of public policies. However, in the Brazilian context, various challenges such as corruption, political instability, and institutional weaknesses often hinder the faithful implementation of policies. Drawing on theoretical frameworks and empirical evidence, this paper discusses the importance of loyalty and good faith in policy implementation, analyzes the factors influencing their realization in Brazil, and suggests strategies to enhance their practice.*

**Keywords:** *Loyalty, Good Faith, Public Policies, Brazil*

## 1. Introduction

Public policies are essential tools for addressing societal challenges and promoting the common good. However, the successful implementation of these policies depends not only on their design but also on the commitment of actors involved in their execution. Loyalty and good faith play significant roles in this process, as they ensure that policymakers, public officials, and stakeholders act in accordance with the objectives and principles underlying the policies. In the Brazilian context, where issues such as corruption and political instability often undermine governance efforts, understanding the dynamics of loyalty and good faith in policy implementation is crucial.

## 2. Theoretical Framework

Loyalty and good faith are multifaceted concepts with roots in various disciplines, including law, ethics, and political science. Loyalty entails a sense of commitment,

---

<sup>1</sup> Paper presented at the XII th Edition of the International Conference of Law, European Studies and International Relations: „Bona fides in iure. Buna-credință ca fundament al echității juridice”, 16 May 2024, Bucharest, organized by the Faculty of Law of the Titu Maiorescu University – Faculty of Law.

allegiance, and dedication to a cause or relationship, while good faith refers to honesty, sincerity, and trustworthiness in one's actions. In the context of public policy implementation, loyalty involves adherence to the goals and objectives set forth by policymakers, as well as cooperation among stakeholders. Good faith, on the other hand, requires transparency, accountability, and integrity in decision-making processes and interactions.

Lon L. Fuller, a prominent legal theorist, posited that law has an inherent moral dimension and can serve as a vehicle for achieving justice and promoting the common good. In his seminal work "The Morality of Law," Fuller argues that legal systems should strive to fulfill certain moral principles, such as fairness, equality, and respect for individual autonomy. He contends that law can be evaluated not only in terms of its formal validity but also in relation to its substantive moral content. According to Fuller, the legitimacy of law hinges on its adherence to principles of procedural justice and the promotion of moral values within society.

"Good faith is not only a moral principle, but also an essential tool to safeguard equity in any legal system."-(Fuller, 1964). This quote by Lon L. Fuller underscores the fundamental importance of good faith not only as a moral value but also as an essential element to ensure equity and justice in any legal system. Fuller, a renowned jurist and legal philosopher, devoted much of his work to the study of the principles and values that underpin the legal order.

Fuller highlights that good faith plays a crucial role in promoting trust and cooperation among members of society, contributing to the stability and legitimacy of the legal system. He emphasizes that adherence to good faith not only strengthens the integrity of transactions and contracts but also fosters an environment of justice and mutual respect.

Moreover, Fuller argues that good faith is essential for filling gaps and resolving ambiguities in the law, providing a standard of ethical conduct that guides the decisions of individuals and institutions. He points out that the lack of good faith can undermine trust in the fairness and impartiality of the legal system, compromising its effectiveness and legitimacy.

In the realm of public policy, the concept of the possible morality of law is a subject of considerable debate and exploration. Legal scholars and philosophers have grappled with the question of whether law can embody moral principles and contribute to the realization of ethical objectives within the context of policymaking. Several key perspectives shed light on this issue.

Fuller's perspective aligns with the idea that law and morality are interconnected, with law serving as a means of enacting moral norms and values. This viewpoint finds support in the writings of legal philosopher John Rawls, who emphasizes the importance of justice as fairness in the design and implementation of public policies. Rawls argues that a just society is one in which individuals are treated equitably and

have equal access to basic rights and opportunities. He contends that laws and policies should be structured to benefit the least advantaged members of society and uphold principles of social justice.

Conversely, legal positivists such as H.L.A. Hart maintain that law and morality are distinct and separate domains, with law being based on social conventions and institutional authority rather than moral considerations. According to Hart, the validity of law depends on its formal recognition by legal institutions and adherence to established legal procedures, rather than its moral content. From this perspective, the role of law in policymaking is to provide a framework for regulating social behavior and resolving disputes, rather than promoting specific moral objectives.

Despite these differing perspectives, there is a recognition that law can influence moral outcomes and shape societal values through its impact on behavior and social norms. Legal scholar Martha Nussbaum, for instance, argues for the incorporation of moral considerations into legal decision-making processes, particularly in the realm of social and economic policy. She contends that laws and policies should be evaluated not only for their legal validity but also for their moral implications and effects on human well-being.

While debates persist regarding the relationship between law and morality in the context of public policy, there is a growing acknowledgment of the potential for law to embody and promote moral values within society. Whether through the pursuit of justice and fairness, the protection of individual rights, or the promotion of human flourishing, law can play a significant role in advancing moral objectives in policymaking. As legal systems continue to evolve, the quest for a morally just legal order remains a central concern for policymakers, scholars, and society.

### **3. Factors Influencing Loyalty and Good Faith in Policy Implementation**

Several factors influence the realization of loyalty and good faith in the implementation of public policies, both at the individual and institutional levels. In Brazil, these factors include our historical institutional weaknesses because Brazil's complex bureaucratic structure and weak institutional frameworks often create opportunities for inefficiency, corruption, and non-compliance with policies. Also includes other factors as our political instability, just because frequent changes in government leadership and partisan interests can disrupt policy continuity and undermine trust in the implementation process.

Other important factors to point out are corruption and Cronyism. Corruption practices and the influence of stakes undermine the integrity and fidelity of policy implementation efforts in Brazil. Corruption is an endemic phenomenon that compromises the effectiveness of public policies, eroding citizens' trust in governmental

institutions. Nepotism and favoritism toward private interests often distort the decision-making process, resulting in policies that benefit a few at the expense of collective well-being. These practices harm democratic governance, undermining justice, and social equity, and perpetuate a cycle of inequality and injustice in the country.

Lack of Accountability is another real problem. Weak mechanisms for monitoring and evaluating policy implementation contribute to a culture of impunity and diminish incentives for loyalty and good faith.

Finally, we must underline socioeconomic disparities. Social inequalities and marginalization exacerbate challenges in ensuring equitable and inclusive policy implementation, leading to distrust and resistance among affected communities.

#### 4. Case Studies

Several case studies illustrate the challenges and opportunities related to loyalty and good faith in the implementation of public policies in Brazil:

##### ***a) Bolsa Família Program:***

The Bolsa Família program, translated as "Family Allowance" in English, is a social welfare program implemented by the Brazilian government. It was created in October 2003 during the first administration of President Luiz Inácio Lula da Silva as a consolidation of several existing cash transfer programs. The primary objectives of the Bolsa Família program are to alleviate poverty, reduce inequality, and promote social inclusion among low-income families in Brazil.

The program operates through a system of conditional cash transfers, wherein eligible families receive financial assistance from the government on the condition that they fulfill certain requirements related to education and healthcare. Beneficiary families are selected based on criteria such as income level, family composition, and socio-economic vulnerability.

The Bolsa Família program aims to achieve several key goals. One of them is poverty reduction. By providing direct financial assistance to low-income families, the program seeks to alleviate poverty and improve living standards among the most vulnerable segments of society.

**Social Inclusion:** The program aims to promote social inclusion by ensuring that all citizens have access to basic resources and opportunities, regardless of their socio-economic background.

**Education Promotion:** Through conditional cash transfers, the program incentivizes families to enroll their children in school and ensure regular attendance, thereby promoting educational attainment and breaking the cycle of intergenerational poverty.

Healthcare Access: The Bolsa Família program also encourages families to access essential healthcare services, such as vaccinations and prenatal care, by linking cash transfers to compliance with health-related requirements.

Overall, the Bolsa Família program represents a comprehensive approach to poverty alleviation and social development, addressing multiple dimensions of disadvantage and inequality. Since its inception, the program has been recognized both nationally and internationally for its effectiveness in reducing poverty and improving social outcomes among marginalized populations in Brazil.

Despite being one of Brazil's flagship social welfare programs, the Bolsa Família program has faced challenges related to corruption, mismanagement, and political interference, which have undermined its effectiveness in reaching vulnerable populations.

The Bolsa Família program, a flagship social welfare initiative in Brazil, has faced numerous challenges over the years, including instances of corruption and mismanagement. Under the government of Jair Bolsonaro, allegations of corruption within the Bolsa Família program have surfaced, raising concerns about the integrity and effectiveness of the program. This article provides an overview of the corruption cases related to the Bolsa Família program during the Bolsonaro administration, examining their implications and potential consequences.

During the Bolsonaro government, several allegations of corruption and irregularities in the administration of the Bolsa Família program have emerged. These allegations include:

There have been reports of embezzlement of funds allocated to the Bolsa Família program, with individuals within the program's administration allegedly diverting funds for personal gain.

There have been accusations of political interference in the selection and distribution of beneficiaries under the Bolsa Família program, with allegations that certain politicians have used their influence to favor specific individuals or groups for electoral purposes.

Critics have pointed to instances of mismanagement and a lack of oversight in the administration of the Bolsa Família program, leading to inefficiencies, delays, and discrepancies in the distribution of benefits.

The allegations of corruption within the Bolsa Família program during the Bolsonaro government (2018-2022) have several implications and consequences:

The allegations undermine public trust in the government's ability to administer social welfare programs effectively and transparently, leading to skepticism and disillusionment among beneficiaries and the general public.

Corruption and mismanagement in the Bolsa Família program can have detrimental effects on vulnerable populations, including delays in benefit payments, exclusion of eligible beneficiaries, and diversion of resources intended for poverty alleviation.

The allegations of corruption within the Bolsa Família program may have political repercussions, affecting the government's credibility and electoral prospects, particularly if perceived as a failure to fulfill promises of tackling corruption and promoting good governance.

In response to the allegations of corruption, the Bolsonaro government has pledged to investigate and address any instances of wrongdoing within the Bolsa Família program. However, critics have raised concerns about the government's commitment to transparency and accountability, citing a lack of concrete actions to combat corruption and ensure the integrity of social welfare programs.

The allegations of corruption within the Bolsa Família program during the government of Jair Bolsonaro underscore the challenges of ensuring transparency, accountability, and integrity in the administration of social welfare initiatives. Addressing these challenges requires a concerted effort to strengthen oversight mechanisms, enhance transparency, and hold perpetrators of corruption accountable. By addressing the root causes of corruption and promoting good governance practices, Brazil can safeguard the effectiveness and credibility of programs like Bolsa Família, ultimately contributing to poverty reduction and social inclusion.

#### Environmental Policies:

Efforts to combat deforestation and promote environmental conservation in the Amazon region have been hampered by illegal logging, land grabbing, and inadequate enforcement mechanisms, highlighting the importance of loyalty and good faith in protecting natural resources.

## 5. Strategies for Enhancing Loyalty and Good Faith

Addressing the challenges to loyalty and good faith in policy implementation requires a comprehensive approach that addresses institutional, political, and societal factors. Strategies include: strengthening institutional capacity and transparency through reforms aimed at enhancing accountability and reducing bureaucratic hurdles; promoting ethical leadership and fostering a culture of integrity and public service among policymakers, public officials, and civil society; enhancing citizen participation and oversight mechanisms to ensure greater accountability and responsiveness in policy implementation processes, and investing in education, training, and capacity building to equip stakeholders with the knowledge and skills necessary for effective policy implementation.

## Conclusion

Loyalty and good faith are essential principles for the successful implementation of public policies, contributing to effective governance, trust-building, and social

cohesion in any society. In the Brazilian context, overcoming challenges related to corruption, political instability, and institutional weaknesses is crucial for fostering a culture of loyalty and good faith in policy implementation. The Bolsa Família program, which went through a turbulent period of misuse and questionable use of public resources, stands out today as a notable example in this regard. By providing financial assistance to millions of low-income families successfully, while minimizing opportunities for corruption through rigorous monitoring and evaluation mechanisms. By addressing these challenges and adopting strategies to enhance accountability, transparency, and citizen participation, Brazil can improve the quality and impact of its public policies, contributing to the well-being and prosperity of its citizens. However, much remains to be done, as corruption and nepotism unfortunately still remain part of the Brazilian reality.

### **References**

Fuller, Lon L. (1964). *The Morality of Law*. Revised edition. New Haven: Yale University Press, p. 106.

Hart, H. L. A. (1994). *The concept of law*. 2. ed. Oxford: Clarendon Press,

Rawls, J. (2001). *Justice as fairness: a restatement*. Cambridge, Mass: Harvard University Press.

Brazil. (2004). Ministry of Social Development and Fight against Hunger (MDS). National Social Assistance Policy (PNAS). Brasília: MDS.

Rocha, Sonia.(2011) *The Bolsa Família Program: evolution and effects on poverty*. In: *Economy and Society*, vol. 20, n°1 (41), April, pp. 113-139.

# FOUNDATIONAL DOCTRINES OF INTERNATIONAL LAW: BALANCING SOVEREIGNTY, JUSTICE, AND GLOBAL ORDER.



*Ph.D. Harsh PATHAK*  
*Advocate, Supreme Court of India*

## Abstract

*This paper explores twelve foundational doctrines of international law, each playing a crucial role in shaping the global legal order. These doctrines—including sovereignty, non-intervention, recognition, and universal jurisdiction—balance the principles of state autonomy with the need for international cooperation and justice. By examining landmark case laws, such as ‘The Island of Palmas’ and ‘Nicaragua v. United States’, the paper illustrates how these doctrines are applied in practice. This analysis provides insight into the complex interplay between national interests and global governance, highlighting the evolving nature of international law.*

**Keywords:** *International Law, Sovereignty, Non-Intervention, Recognition, Universal Jurisdiction, Diplomatic Immunity, Humanitarian Intervention.*

## Introduction:

"International law is not a set of rules or norms detached from the real world; it is the very fabric of global coexistence."— Boutros Boutros-Ghali, former UN Secretary-General.

International law, with its intricate web of doctrines, serves as the guiding framework for the conduct of states and international entities on the global stage. These doctrines, rooted in centuries of legal thought and practice, address the fundamental issues of sovereignty, justice, and the rights and responsibilities of states. They are not merely theoretical constructs but practical tools that mediate the often competing interests of national autonomy and global governance.

This paper delves into twelve of the most pivotal doctrines that have shaped international law, providing a lens through which to understand the delicate balance between respecting state sovereignty and upholding universal principles of justice and human rights. Through the analysis of landmark case laws, this exploration underscores the dynamic and evolving nature of international law as it seeks to address contemporary challenges in an increasingly interconnected world.

## Most Popular Doctrines of International Law with Example Case Laws:

### **1. Doctrine of Sovereignty:**

Sovereignty is a core principle in international law, asserting that each state has authority over its territory and domestic affairs without external interference. The Montevideo Convention (1933) defines a state's sovereignty as comprising a permanent population, defined territory, government, and the capacity to enter into relations with other states.

Example Case Law: The Island of Palmas Case (1928) is a landmark ruling where the Permanent Court of Arbitration upheld the principle of territorial sovereignty. The dispute between the United States and the Netherlands over the Palmas Island in the Pacific hinged on sovereignty. The Court ruled in favor of the Netherlands, asserting that sovereignty is determined by continuous and peaceful display of state authority over the territory.

### **2. Doctrine of Non-Intervention:**

This doctrine prohibits states from intervening in the internal or external affairs of another sovereign state. It is rooted in the respect for territorial sovereignty and political independence.

Example Case Law: Nicaragua v. United States (1986), where the International Court of Justice (ICJ) ruled that the U.S. violated international law by supporting the Contras in Nicaragua and mining Nicaraguan harbors. The Court emphasized that non-intervention is a cornerstone of international relations.

### **3. Doctrine of Recognition:**

The Doctrine of Recognition pertains to the acknowledgment by one state of the existence of another state or government, which in turn influences international relations and diplomatic dealings.

Example Case Law: Tinoco Arbitration (1923) involved the recognition of the Costa Rican government established by the Tinoco regime. The UK challenged Costa Rica's annulment of concessions granted by the Tinoco government. The arbitrator, former U.S. President William Taft, ruled that despite non-recognition by other states, the Tinoco government was de facto in power, thus its acts were valid.

### **4. Doctrine of Diplomatic Immunity:**

This doctrine protects diplomats from legal action in the host country to ensure peaceful international relations. It is codified in the Vienna Convention on Diplomatic Relations (1961).

Example Case Law: United States v. Iran (1980), commonly known as the Hostages Case, where the ICJ held that Iran violated diplomatic immunity by seizing the U.S. Embassy and holding American diplomats hostage. The Court underscored the importance of protecting diplomats even amidst conflict.

### ***5. Doctrine of State Responsibility:***

This doctrine holds that a state is responsible for its internationally wrongful acts and is liable to remedy the harm caused to other states or individuals.

Example Case Law: Trail Smelter Arbitration (1938-1941) between the United States and Canada. The case involved cross-border pollution from a Canadian smelter causing damage in the U.S. The tribunal held Canada responsible, establishing that states are liable for environmental harm caused to another state.

### ***6. Doctrine of Jus Cogens;***

Jus cogens are peremptory norms of international law that are binding on all states, such as the prohibition of genocide, slavery, and torture. These norms cannot be overridden by treaties or customary laws.

Example Case Law: Furundzija Case (1998), where the International Criminal Tribunal for the former Yugoslavia (ICTY) held that the prohibition of torture is a jus cogens norm. The Tribunal emphasized that no state may derogate from this obligation under any circumstances.

### ***7. Doctrine of State Immunity:***

Under this doctrine, a state cannot be sued in the courts of another state without its consent, protecting state sovereignty from foreign judicial interference. However, exceptions exist, such as in cases involving commercial activities.

Example Case Law: Pinochet Case (1999), where the House of Lords in the UK ruled that former Chilean dictator Augusto Pinochet did not enjoy immunity from prosecution for acts of torture committed during his regime. The case marked a significant development in limiting state immunity for international crimes.

### ***8. Doctrine of Universal Jurisdiction:***

Universal jurisdiction allows states to prosecute certain grave crimes, such as genocide, war crimes, and crimes against humanity, regardless of where they were committed or the nationality of the perpetrators or victims.

Example Case Law: Belgium v. Senegal (2012), where the ICJ ruled that Senegal must either prosecute or extradite former Chadian dictator Hissène Habré for alleged torture and crimes against humanity, affirming the principle of universal jurisdiction in international law.

### **9. Doctrine of Self-Determination:**

This doctrine asserts the right of peoples to determine their political status and freely pursue their economic, social, and cultural development. It is enshrined in the UN Charter and various international human rights instruments.

Example Case Law: Western Sahara Advisory Opinion (1975) by the ICJ, where the Court affirmed the right to self-determination of the people of Western Sahara, rejecting Morocco's and Mauritania's territorial claims over the region.

### **10. Doctrine of Pacta Sunt Servanda:**

This principle mandates that treaties and agreements are binding upon the parties and must be executed in good faith. It is a fundamental norm in treaty law.

Example Case Law: Gabcíkovo-Nagymaros Project (1997), where the ICJ held that Hungary and Slovakia were bound by their treaty obligations to complete a joint hydroelectric project, despite Hungary's subsequent refusal to continue. The Court emphasized that treaties must be honored unless legally terminated or suspended.

### **11. Doctrine of Non-Refoulement:**

Non-refoulement prohibits states from returning asylum seekers or refugees to territories where they face threats of persecution or torture. This principle is enshrined in the 1951 Refugee Convention.

Example Case Law: Soering v. United Kingdom (1989), where the European Court of Human Rights ruled that the UK could not extradite a German national to the U.S. where he faced the death penalty, as it would violate the principle of non-refoulement by exposing him to inhuman or degrading treatment.

### **12. Doctrine of Humanitarian Intervention:**

This doctrine allows for the use of force by states or international organizations to protect populations from mass atrocities, such as genocide or ethnic cleansing, when the host state is unwilling or unable to do so.

Example Case Law: Kosovo Intervention (1999), where NATO conducted military operations against the Federal Republic of Yugoslavia without UN Security Council authorization, to prevent ethnic cleansing in Kosovo. The intervention remains controversial but is often cited in discussions on the legitimacy of humanitarian intervention.

## **Conclusion**

The doctrines of international law are foundational principles that govern the conduct of states and international organizations. These doctrines, supported by case