A Law That Does Not Consider Generality is Not a Law: Lon Fuller's *Desiderata* Reevaluated

Augustine Terhide Maashin
Department of Philosophy,
Rev. Fr. Moses Orshio Adasu University, Makurdi
(Fomerly, Benue State University, Makurdi)
amaashin@bsum.edu.ng

&

Lubem Agishi
Department of Philosophy
Federal University of Lafia
lubemagishi@gmail.com

Abstract

This paper, titled *"*A Law That Does Not Consider Generality is Not a Law: Lon Fuller's Desiderata Reevaluated" critically examines the significance of generality within Lon Fuller's framework of the inner morality of law. Fuller posits that for a system of rules to qualify as law, it must satisfy eight moral criteria, known as the desiderata, including generality, publicity, clarity, non-contradiction, constancy, possibility of compliance, congruence between official action and declared rules, and prospectivity. Among these, this paper argues that generality is foundational, as it demands that laws apply equally to all persons in similar situations, thereby preventing arbitrariness and promoting fairness. This paper defends the thesis that a law lacking generality ceases to fulfill the essential characteristics of legality and becomes a tool of oppression or privilege. Adopting a critical-analytical methodology, the study interrogates Fuller's concept through philosophical reasoning and legal analysis, and assesses both historical and contemporary instances where laws have deviated from the principle of generality. The findings reveal that when laws are tailored to specific individuals or groups without justifiable legal grounds, they undermine the legitimacy and moral authority of the legal system. This paper concludes that

generality is not just one among equals in Fuller's desiderata but is central to the very definition of law. It recommends that lawmakers and legal institutions consistently uphold the principle of generality to ensure justice, prevent discrimination, and preserve the integrity of the legal order.

Keywords: Generality, Natural Law Theory, Inner Morality of law, Rule of Law, Legal Legitimacy

Introduction

The law serves as the backbone of any society, acting as a system of rules that governs behavior, protects rights, and ensures social order. It functions as both a prescriptive and a prohibitive mechanism providing standards of acceptable conduct and consequences for violations. The legal order, when rightly conceived, is instrumental in securing justice, promoting fairness, and deterring wrongdoing. Without law, societies would descend into anarchy, as there would be no agreed-upon mechanisms for resolving disputes or holding individuals accountable. As Thomas Hobbes aptly described in *Leviathan*, without law, life would be "solitary, poor, nasty, brutish, and short".[1] However, not every rule can be called law in the true sense of the term. Jurisprudence, as a discipline, has long sought to define what distinguishes law from mere commands or arbitrary dictates. Among the most influential voices in this endeavor is Lon L. Fuller, who developed a morally grounded theory of law known as the inner morality of law.

According to Fuller, law is not merely a tool of governance but a purposive enterprise that must be guided by specific principles to maintain legitimacy and moral authority. These principles are

1. Hobbes, Thomas. *Leviathan*. Edited by J.C.A. Gaskin. (Oxford: Oxford University Press, 1996), 76

encapsulated in his famous eight desiderata, which he articulates in *The Morality of Law* (Fuller 1969).Fuller's eight desiderata include: (1) generality, (2) promulgation, (3) clarity, (4) non-contradiction, (5) possibility of compliance, (6) constancy through time, (7) congruence between official actions and declared rules, and (8) prospectivity. These are not merely procedural conditions for legal systems; they represent moral standards that laws must meet to be valid and legitimate. In his words: "There is a kind of morality that is internal to law, and this morality is to be found in the principles that constitute the very structure of law itself".[2] Fuller's central claim is that a system of rules that systematically fails to meet these criteria cannot be called a legal system in the full sense of the term.

Among these eight principles, generality stands out as a foundational concept. Generality requires that laws be framed in terms that apply broadly to classes of persons and actions, not tailored to specific individuals or arbitrary situations. This ensures that the law serves the public good rather than particular interests. Fuller emphasizes that laws must not be ad hoc commands but general rules that provide guidance and predictability. As he notes, "The most obvious expression of a supposed legal obligation that fails to meet the test of legality is one that is not a rule at all but an order directed to a particular person".[3] Fuller's insistence on generality is not merely formal but deeply ethical. A law that lacks generality tends to be discriminatory, arbitrary, or self-serving. Such laws cannot claim legitimacy because they fail to respect the principle of equal treatment under the law, a cornerstone of justice.

2. Fuller, Lon L. *The Morality of Law*. Revised Edition. (New Haven: Yale University Press, 1969), 33
3. Fuller *The Morality of Law,* 46

For Fuller, to violate generality is to undermine the very enterprise of subjecting human conduct to the governance of rules. He writes: "To embark on the enterprise of subjecting human conduct to the governance of rules requires...that the rules be general".[4] Here, Fuller asserts that generality is not a secondary feature of law but a necessary condition for its very existence.

The importance of generality becomes especially clear when we consider legal systems that have violated it. Laws targeting specific racial, ethnic, or political groups, such as apartheid laws in South Africa or the Nuremberg Laws in Nazi Germany, demonstrate how the absence of generality results in legal regimes that are fundamentally unjust, even if they are procedurally consistent. Such systems may possess laws in a technical sense, but they lack the moral and conceptual integrity that Fuller argues is essential for a legal system.

This paper argues that generality is not merely one of the desiderata but is central to the very definition of law. Without generality, law becomes indistinguishable from arbitrary rule or tyranny. The essence of law lies in its capacity to provide stable, predictable, and universally applicable standards of behavior. When laws are crafted or applied in ways that exclude or target specific individuals or groups without justifiable reasons, they cease to be laws in the proper sense and become instruments of coercion. Generality, serves as a protective mechanism against tyranny. It constrains the lawmaker and ensures that no individual or group is above or below the reach of law. A general law cannot be crafted to benefit a single person or punish an isolated group

4. Fuller *The Morality of Law,* 46

without undermining the rule of law. As such, generality acts as both a moral and structural requirement of legality, ensuring that laws maintain both form and function in service of justice.

Legal positivists, particularly H.L.A. Hart, challenge Fuller's thesis by separating law from morality. In *The Concept of Law*, Hart insists that a legal system can exist even if it is morally reprehensible, as long as it meets criteria of social efficacy and institutional recognition.[5] However, Fuller retorts that such systems may function as commands or instruments of power but fail to fulfill the deeper, purposive enterprise of law: to guide conduct through rational, general rules.[6] It is against this backdrop that this paper, defends Fuller's claim by demonstrating that generality is a necessary condition for any normative legal order. A law that lacks generality cannot command respect or compliance because it fails to treat subjects as equal moral agents. Instead, it turns them into subjects of discretion and control, undermining the very idea of legality. The principle of generality thereby serves both a logical and moral function within Fuller's framework.

Lon Fuller's Concept of the Inner Morality of Law

Lon L. Fuller's legal philosophy presents a profound challenge to the legal positivist tradition by asserting that law is inherently a moral enterprise. In contrast to H.L.A. Hart and other positivists who distinguish between law and morality, Fuller argues that there is a necessary moral dimension to the structure and function of law. This internal morality, he contends, is found not in the content of laws per se, but in the procedural principles by which they are

5. Hart, H. L. A. *The Concept of Law*. 2nd ed. Edited by Penelope A. Bulloch and Joseph Raz. (Oxford: Clarendon Press, 1994), 107-110
6. Fuller *The Morality of Law*, 39

created and implemented. According to Fuller, law is not simply a set of commands backed by threats, but a purposive activity aimed at guiding human behavior through reasoned rules.[7] Fuller introduces his theory through the famous allegory of King Rex, a ruler who attempts to govern but fails in eight critical ways. King Rex's failures are not about unjust laws but about systemic breakdowns in the structure of legality. He either enacts no laws, creates retroactive laws, issues contradictory rules, or fails to publicize them, among other flaws. These failures illustrate that without certain procedural standards, law cannot function as a system of guidance. Fuller narrates:

> Rex first undertook to make known to his subjects a body of laws, but each time he tried he failed in one or another of the essential requirements of legality. He either issued rules that were unintelligible, contradictory, retroactive, or so unstable that no one could keep up with the changes.[8]

From King Rex's failures, Fuller derives eight principles or desiderata that constitute the inner morality of law. These are: (1) generality, laws must be general in form; (2) promulgation, laws must be publicly known; (3) clarity, laws must be intelligible; (4) non-contradiction, laws must not contradict each other; (5) possibility, laws must not demand the impossible; (6) constancy, laws must remain stable over time; (7) congruence, there must be alignment between the law as written and its enforcement; and (8) prospectivity, laws must apply to future actions, not past ones.[9]

These eight principles, Fuller argues, are not optional guidelines

7. Fuller,*The Morality of Law*, 96
8. Fuller,*The Morality of Law*, 38
9. Fuller,*The Morality of Law*, 39-41

but moral obligations inherent in the very idea of legality. To create and apply laws that systematically violate these principles is to create something other than law. He writes:"A total failure in any of these eight directions does not simply result in a bad system of law; it results in something that is not properly called a legal system at all".[10] Thus, law has a built-in morality and internal architecture that must be preserved if it is to function ethically and effectively. While all eight desiderata are essential, generality occupies a unique and foundational role in Fuller's framework. It is the very first principle he discusses, and with good reason: generality ensures that laws are not mere instruments of power or discretion. A general law applies to classes of persons or actions, not to individuals arbitrarily selected. This universality is what gives law its normative force, separating it from the dictates of a ruler.

In Fuller's view, without generality, the legal system degenerates into a set of personal decrees and loses its legitimacy. He emphasizes this point when he writes:

> "The most obvious expression of a supposed legal obligation that fails to meet the test of legality is one that is not a rule at all but an order directed to a particular person. When this happens... the very idea of law has been abandoned".[11]

Thus, generality is not just one of the desiderata, it is the condition of possibility for all the others. If law is not general, it cannot be coherent, stable, or justly enforced. Fuller contrasts this idea with arbitrary governance, where laws are crafted to suit private

10. Fuller, *The Morality of Law*, 39
11. Fuller *The Morality of Law*, 46

interests or to punish specific individuals. Such legal systems may maintain the appearance of legality through courts, statutes, and officials, but they lack the moral structure that gives law its identity. In such systems, law is no longer a guide to conduct but a tool of domination. This insight is critical in understanding the moral dimension of legality. For Fuller, law is not a neutral instrument; it carries an ethical responsibility to treat all subjects as equals. Generality is what anchors this responsibility, ensuring that rules do not descend into personal commands. As Fuller writes:"The inner morality of law is violated when statutes are passed ex post facto, or designed to entrap citizens, or enforced in a way inconsistent with their announced purpose".[12] All of these violations are ultimately breaches of generality and fairness. This also highlights the dynamic relationship between generality and justice. A general law is not necessarily just in content, but it provides the conditions under which justice becomes possible. It allows for equal treatment, predictability, and accountability. When law loses its generality, it creates classes of persons, those to whom the law applies and those who are exempt or targeted.

Legal history is replete with examples where the principle of generality was subverted. In apartheid South Africa, the laws were written in ways that explicitly targeted racial groups, applying different rules to different people. Although these laws had formal structure, they failed the moral test of generality and therefore, according to Fuller's theory, failed to qualify as true law. Similarly, the Nuremberg Laws in Nazi Germany violated generality by stripping Jews of citizenship and legal protections afforded to others. These laws were clear, prospective, and even publicly

12. Fuller, *The Morality of Law*, 42

promulgated, but they were not general. They applied only to a targeted group, thereby undermining the very essence of legality. These examples illustrate how generality is not merely a procedural virtue but a moral constraint on the power of lawmakers. Without it, the legal system becomes a façade, a set of rules that serve the ruler, not the ruled. Fuller argues that when generality collapses, so too does the public's fidelity to law, which he considers the ultimate foundation of legal legitimacy.[13]

Fuller also links generality with the reciprocity between ruler and subject. In choosing to rule through law, the sovereign commits to treating subjects as responsible agents capable of understanding and complying with rules. Generality ensures that this relationship remains one of mutual respect, rather than control or subjugation. He notes: "Law is the enterprise of subjecting human conduct to the governance of rules. To embark on this enterprise is to accept the constraints of generality, clarity, and stability".[14] Therefore, generality is the precondition for the other desiderata. A law can only be clear, public, and non-contradictory if it is first general. Once generality is abandoned, the law becomes erratic and personal. This disrupts not only the administration of justice but the very identity of law itself.

Lon Fuller's concept of the inner morality of law therefore, is built upon the eight desiderata, but at the core of this framework lies generality, the idea that law must apply equally and impartially. This principle serves both a logical and ethical function, forming the basis upon which legality rests. A law that lacks generality not only violates justice, it ceases to be law in the true sense Fuller

13. Fuller, *The Morality of Law*, 39-40
14. Fuller, *The Morality of Law*, 122

articulates.

The Meaning and Importance of Generality in Law

Generality in law refers to the idea that legal rules must apply to all persons equally in similar situations, without targeting individuals or groups for special treatment. This principle is foundational to the concept of law as an objective system for regulating behavior. Lon Fuller argues that the essence of a legal system lies in its ability to apply universally and impartially, ensuring that laws function as neutral guides to behavior, rather than tools of discrimination or oppression.[15] The principle of generality ensures that law operates through rules rather than commands. Rules, by definition, are general in their application; they set out conditions under which certain behaviors are prohibited or required, and these conditions apply to anyone who meets the relevant criteria. Fuller emphasizes that the generality of law is essential for maintaining legal legitimacy when he writes:"A rule must have a general character if it is to guide conduct. If the law becomes a mere set of commands issued on an ad hoc basis, it ceases to be law and becomes an instrument of control".[16] This distinction between rules and commands underscores the importance of generality as the foundation of the rule of law.

In practice, generality in law prevents arbitrary rule by ensuring that laws are not tailored to the interests of particular individuals or groups. A legal system that operates on ad hoc commands would enable those in power to use the law as a tool for personal advantage. Generality, therefore, serves as a safeguard against tyranny, limiting the ability of lawmakers to manipulate legal rules

15. Fuller,*The Morality of Law*, 46
16. Fuller,*The Morality of Law*, 46

for their own ends .Arbitrary rule however, is a form of governance where legal norms are subject to the whims of those in power. When laws are applied unequally or selectively, they lose their moral authority and no longer serve as neutral standards of behavior. Legal scholars like Fuller argue that arbitrary rule erodes public trust in the legal system and leads to a breakdown of social order. Generality, by contrast, promotes fairness and equality, ensuring that laws bind everyone in the same way, regardless of their status or position in society.[17]

The rule of law itself depends on the principle of generality. At its core, the rule of law means that all individuals, regardless of their position, are subject to the same set of legal rules. This idea dates back to the classical notion of isonomia, or equality before the law, which was central to the development of democracy in ancient Greece. The philosopher Aristotle expressed this principle when he wrote,"The rule of law is preferable to that of any individual, for the law is reason free from passion".[18] Here, Aristotle highlights the idea that laws, when general and impersonal, represent reasoned principles rather than the arbitrary will of rulers.

A historical example of the absence of generality in law can be found in monarchical systems of government, where rulers had the power to issue decrees that applied to specific individuals or groups. Under such systems, the distinction between law and command was often blurred, as monarchs could tailor legal rules to serve their own interests. This lack of generality made the law an instrument of personal power rather than a framework for public

17. Fuller,*The Morality of Law*, 41
18. Aristotle. *Politics*. Translated by Benjamin Jowett. (Oxford: Clarendon Press, 1885), 1287a

governance. One of the most striking examples of this can be seen in the reign of Louis XIV of France, who famously declared, “I am the state” (*L'état, c'estmoi*). Under Louis XIV's rule, the legal system was heavily centralized, and laws were often issued at the king's discretion. The absence of generality in these laws allowed the monarch to consolidate power and govern without accountability, leading to widespread abuses of authority and undermining the rule of law.

In contemporary times, legal systems that lack generality can also be seen in authoritarian regimes, where laws are often used as tools of repression. In such systems, laws may be applied unequally, targeting political dissidents or marginalized groups while exempting the ruling class from the same standards. This selective application of legal rules undermines the very concept of law as a general and impartial institution. One such contemporary example is North Korea, where the legal system is highly centralized, and laws are applied selectively to maintain control over the population. In North Korea, the absence of generality in law is evident in the way that the regime targets political opponents, while the ruling elite remains largely immune to legal accountability. This selective application of law erodes public trust and reinforces the perception that the legal system is simply a tool of the regime.

By contrast, legal systems that adhere to the principle of generality are more likely to promote justice and fairness. In democratic societies, generality ensures that all individuals are treated equally under the law, regardless of their social or political status. The United States Constitution, for example, enshrines the principle of equal protection under the law in its Fourteenth Amendment,

which states that no state shall "deny to any person within its jurisdiction the equal protection of the laws".[19] This commitment to generality is a cornerstone of the American legal system.The principle of equality before the law is also central to international human rights law. The Universal Declaration of Human Rights (UDHR) asserts in Article 7 that "all are equal before the law and are entitled without any discrimination to equal protection of the law".[20] This provision reflects the global consensus that laws must apply to all persons equally, regardless of their nationality, ethnicity, or social status.

The absence of generality in law not only leads to injustice but also undermines the legitimacy of the legal system itself. When laws are applied arbitrarily or selectively, they lose their normative force and are seen as instruments of oppression rather than frameworks for justice. Fuller argues that legal systems must adhere to principles of generality in order to maintain public trust and ensure the fidelity to law.[21] In legal systems where generality is respected, the law serves as a neutral framework for resolving disputes and maintaining social order. This neutrality is essential to the rule of law, as it ensures that individuals can plan their actions with confidence that they will be treated fairly and equally. As Fuller observes:

> "Without generality, the law loses its guiding function. It becomes a mere tool of power, used to control rather than to guide. Generality is therefore the most fundamental of all the

19. United States Constitution. *Constitution of the United States*, Amendment XIV, § 1
20. United Nations. "Universal Declaration of Human Rights." Adopted by the General Assembly of the United Nations on 10 December 1948. https://www.un.org/en/about-us/universal-declaration-of-human-rights
21. Fuller,*The Morality of Law*, 39

principles of legality".[22]

Generality also plays a crucial role in promoting accountability within the legal system. When laws apply equally to all individuals, those in positions of power are held to the same standards as ordinary citizens. This prevents the abuse of power and ensures that government officials are subject to the rule of law, rather than being above it. The absence of generality, on the other hand, creates legal hierarchies, where some individuals are above the law while others are unfairly targeted.

When a Law Lacks Generality: Implications for Legitimacy and Justice

The legitimacy of any legal system rests on its capacity to treat individuals equally under the law. When laws are crafted or applied in ways that exclude certain persons or groups, they cease to function as neutral guides to conduct. According to Lon Fuller, the internal morality of law requires that rules be general, public, and congruent with official action.[23] Any deviation from generality undermines the law's moral authority and creates a platform for injustice.

Historically, the apartheid regime in South Africa provides a clear illustration of laws that lacked generality. Under the apartheid system (1948-1994), a series of legislative acts including the Population Registration Act of 1950 and the Group Areas Act of 1950segregated the population based on race. These laws were designed to apply differently to white South Africans and non-white citizens, institutionalizing a form of legalized

22. Fuller,*The Morality of Law*, 49
23. Fuller,*The Morality of Law*, 39

discrimination. As John Dugard observed,"The apartheid laws did not pretend to be general in application; they were openly and proudly discriminatory, and thus failed to meet the basic standards of legality".[24] Similarly, in the United States, Jim Crow laws enforced racial segregation from the late 19th century into the mid-20th century. These laws were inherently non-general because they created separate legal standards for whites and African Americans. For instance, laws mandating separate schools, buses, and public facilities entrenched inequality. These violations of generality had deep implications for justice, as they institutionalized racial hierarchy under the guise of legality.

In the Nigerian context, the military era was marked by numerous decrees that flouted the principle of generality. During General Sani Abacha's rule (1993-1998), several decrees granted absolute powers to the head of state and targeted specific individuals or groups. One notorious example is Decree No. 2 of 1984, which allowed detention without trial for up to three months. This decree was selectively applied, mostly against political opponents and critics. As Nwabueze noted:"The decrees of the military government were essentially personal commands masquerading as laws. They lacked generality and were enforced with authoritarian precision".[25] In Benue State, discriminatory policies have also emerged, particularly concerning land allocation and political appointments. The Benue State Open Grazing Prohibition and Ranches Establishment Law of 2017 was primarily aimed at addressing herder-farmer conflicts. However, critics argue that its application often lacked generality and disproportionately

24. Dugard, John. *Human Rights and the South African Legal Order*. Princeton: Princeton University Press, 1978), 113
25. Nwabueze, B. O. *Military Rule and Constitutionalism*. (Ibadan: Spectrum Books, 1993), 57

affected Fulani herders, many of whom were not given a legal avenue for compliance. According to Amnesty International:"The law's enforcement has at times veered into ethnic profiling and collective punishment, leading to displacements and heightened tensions".[26]

Laws that lack generality invariably result in discrimination. When specific populations are targeted, marginalized, or exempted from legal obligations or protections, it creates a hierarchy of citizenship. This undermines the principle of equality before the law. Fuller argues:"Where the law is used to single out and oppress, it is no longer law in the moral sense. It may retain the outer form of legality but lacks its inner substance".[27] Injustice is a natural consequence of non-general laws. When laws are crafted to favor one group over another, those who are excluded face systemic disadvantages. For example, during the apartheid era, black South Africans were denied access to quality education and healthcare, purely on the basis of race. These injustices, though legally codified, violated the universal moral standard of fairness.

Legal instability also arises when laws lack generality. Laws that target specific individuals or groups are often met with resistance, creating social unrest and undermining the rule of law. In Nigeria, the Selective Anti-Corruption Campaigns under successive administrations have been criticized for targeting opposition politicians while shielding allies. This selective enforcement erodes public trust in the justice system. Non-general laws violate

26. Amnesty International. *Harvest of Death: Three Years of Bloody Clashes Between Farmers and Herders in Nigeria*. (London: Amnesty International, 2018), 34
27. Fuller,*The Morality of Law*, 42

the principle of predictability, which is essential for legal guidance. A predictable legal system allows individuals to plan their conduct, knowing that the law applies equally. When laws are unpredictably or selectively applied, they lose their guiding function. Fuller warns:"If the citizen cannot count on the law being applied generally and consistently, then he cannot know what is expected of him. The law becomes an ambush".[28]

The principle of fairness is also compromised by non-general laws. Fairness demands that like cases be treated alike. A law that applies only to certain persons fails this test. For instance, if a government enacts tax laws that exempt its officials but burdens the general populace, it undermines the very essence of justice. Non-general laws often serve as tools of repression. In dictatorial systems, rulers frequently use legal instruments to silence dissent. Under Nigeria's past military regimes, journalists and activists were detained through decrees that lacked judicial oversight. These laws, though "legal" in form, were deeply unjust in substance and undermined democratic norms.

Another example from Benue State involves political zoning and rotation arrangements, which though unofficial, sometimes receive legislative backing. These arrangements can exclude competent individuals from leadership based solely on ethnic origin or geographic location. When encoded into legal structures, such practices violate the generality principle and may fuel ethnic tension. The effects of such non-general laws are visible in the form of alienation and marginalization. Those affected by discriminatory laws often feel excluded from the social contract, weakening their sense of belonging. The absence of generality in

28. Fuller,*The Morality of Law*, 51

law therefore, leads to discrimination, injustice, unpredictability, and the erosion of legal legitimacy. From apartheid South Africa to military Nigeria and modern Benue State, history shows that non-general laws are incompatible with the rule of law. As Lon Fuller powerfully asserts, a system that dispenses with generality may still wear the "garb of legality," but it has lost its moral essence.[29] For any legal system to be just, generality must remain its cornerstone.

Revisiting Fuller: Can Law Exist Without Generality?

The crux of Lon Fuller's argument is that generality is not merely an ideal of law but its foundational criterion. Without generality, Fuller asserts, law ceases to be law in the moral sense. But can law still exist in a technical or institutional sense without satisfying this requirement? This section revisits that question critically by exploring whether exceptions exist where non-general laws retain legal validity, drawing from critiques, especially from H.L.A. Hart and legal positivist scholars. Fuller's inner morality of law, particularly the requirement of generality, insists that laws must apply to all alike unless there is a morally justifiable distinction. To reiterate Fuller's own words:

> When one speaks of the internal morality of law, he is referring not to a morality that a law may have by virtue of its substantive aims, but to the morality that consists in the ways law is made, administered, and obeyed. Among these is the requirement of generality, the idea that laws must be rules, not commands directed at particular individuals.[30]

29. Fuller, *The Morality of Law,* 210
30. Fuller, *The Morality of Law*, 106

However, legal positivists such as H.L.A. Hart challenge the notion that legality must include moral content such as generality. Hart argues that a law can exist without being just or moral. He maintains that the validity of law rests on its derivation from recognized legal rules, not on its conformity with moral standards. Hart writes:

> A legal system may be deplorably unjust and yet still be a legal system. Law is not thereby rendered invalid merely because it fails to meet certain moral ideals. The connection between law and morality is not necessary but contingent.[31]

This brings us to the essential debate: can a non-general law, such as a decree targeted at an individual, still be considered law in the legal positivist sense? Hart would say yes. Fuller, by contrast, would argue such a decree is a violation of the internal morality of law and therefore defective as law. He writes:"A total failure in any one of these eight directions does not simply result in a bad system of law; it results in something that is not properly called a legal system at all".[32] This fundamental disagreement illustrates that Fuller's position is deeply tied to a moral vision of legality, while Hart's is grounded in the institutional validity of legal norms. According to Hart, even laws that are particular, discriminatory, or morally abhorrent are still law if they arise from accepted legal procedures. In his critique of Fuller, Hart comments:

> "Fuller's desiderata... are principles of good legal craftsmanship. But they are not conditions for the existence of a legal system. A system can fail in these respects and still function as a legal order".[33]

31. Hart, *The Concept of Law*, 268
32. Fuller,*The Morality of Law*, 39
33. Hart, *The Concept of Law*, 206

The practical implication of Hart's view is evident in historical examples such as Nazi Germany. Hart famously debated this issue with Gustav Radbruch, who argued that extremely unjust laws should not be regarded as valid law. Hart responded:"The remedy for unjust laws is not to deny their status as law, but to change them through legal or political processes. To do otherwise would create uncertainty in legal interpretation".[34] Yet even Hart concedes that legal systems that persistently produce morally repugnant laws risk losing legitimacy. He acknowledges that:"There comes a point where the minimum content of natural law, a modicum of justice, fairness, and rationality, must be present for a legal system to be sustainable".[35]

This brings us back to Fuller's position. He insists that generality is not merely an aspiration but an ontological requirement of law. Selective application or individual-specific commands undermine the very rule-of-law framework. In *The Morality of Law*, Fuller presents the story of King Rex to illustrate what happens when the principles of legality, including generality, are abandoned:

> Rex began his reign with a great burst of lawmaking. Yet he failed at every turn. He could not make rules that were general. He changed them daily. He contradicted himself. He punished people under retroactive laws. His failure was not in his morality,[36] but in the structure of his law itself.

General applicability ensures predictability, guides behavior, and restrains arbitrary power. A non-general law is arbitrary by nature,

34. Hart, *The Concept of Law*, 272
35. Hart, *The Concept of Law*, 199
36. Fuller,*The Morality of Law*, 33

it targets specific persons or groups without universal reason. Ronald Dworkin, another critic of legal positivism, shares Fuller's concern, writing:

> Law must treat like cases alike. The denial of generality creates a regime where individual rights are not secured, and power becomes indistinguishable from whim. Law must aspire to integrity, which generality guarantees.[37]

Some scholars try to bridge the gap between Fuller and Hart by suggesting that generality is context-dependent. Paul Craig and Gráinne de Búrca argue:

> While generality is a key feature of legality, its strict application must be balanced with the law's substantive goals. In areas such as taxation or immigration, particularized rules may be permissible if they serve broader legal coherence.[38]

This raises a further question: can selective application be justified if the law is general in form? That is, does unequal enforcement invalidate the law itself? Fuller would likely argue yes, since congruence between law and its administration is also part of his eight principles. Selective enforcement, especially on political or ethnic grounds, undermines both generality and congruence. Consider anti-corruption laws in Nigeria. While these laws are general in wording, they are often applied selectively against opposition figures. The failure to apply them uniformly undermines their legitimacy. As Oyewo observes:"When laws are enforced selectively, they cease to function as instruments of

37. Dworkin, Ronald. *Law's Empire*. (Cambridge, MA: Harvard University Press, 1986), 218
38. Craig, Paul, and Gráinne de Búrca. *EU Law: Text, Cases, and Materials*. 6th ed. (Oxford: Oxford University Press, 2015), 123

justice. They become tools of power politics. This compromises legality and breeds public cynicism".[39]

Selective application thus transforms law into an instrument of domination, not governance. It corrodes trust and alienates the governed. Even Hart admits that law must meet a minimum threshold of fairness and consistency to retain its function as a social guide.[40] Fuller's point here gains traction: without generality, there is no genuine legality, only coercion masked as law. Therefore, the debate is not about whether rules lacking generality can be enforced, they clearly can. The real question is whether such rules deserve the name "law." Fuller emphatically denies this, while Hart tolerates it for the sake of legal continuity. But in democratic and pluralistic societies, generality is indispensable for justice, equality, and the rule of law.

However, while legal positivism may admit the existence of non-general laws, Fuller's internal morality rightly insists that such laws are deficient and morally corrupt. A law that lacks generality might function coercively, but it forfeits its claim to legitimac. As Fuller poignantly reminds us:

> There is a kind of inner morality in law, and it is not an external moral judgment imposed from outside. It is built into the very structure of what law must be, if it is to be more than a sword cloaked in words.[41]

Contemporary Legal Challenges and Generality

The modern legal landscape presents new challenges to the

39. Oyewo, Akin. "Constitutionalism and the Rule of Law: An African Perspective." *Nigerian Journal of Public Law* 5, no. 2 (2011): 78
40. Hart, *The Concept of Law*, 199
41. Fuller, *The Morality of Law*, 97

principle of generality. Among the most pressing are special legislations such as anti-terrorism and emergency laws, which often target specific individuals, groups, or situations. While these laws are often justified by national security needs, they frequently compromise the requirement that law must apply generally to all. As Bruce Ackerman observes:

> Emergency powers, though necessary, carry the risk of creating a dual legal order one for 'normal' times and one for crises. In the latter, legal standards often lose their universality, which undermines the foundational principles of liberal constitutionalism.[42]

Anti-terrorism legislation in countries such as the United States (e.g., the Patriot Act), Nigeria, and India has raised concerns about targeting particular ethnic or religious groups under the guise of national security. These laws often use vague language and grant discretionary power to law enforcement, violating Fuller's desideratum of clarity and generality. As David Dyzenhaus writes:"The rule of law is distorted when general norms are abandoned in favour of executive discretion. Exceptionalism becomes normalized, and legal integrity is compromised".[43]

In Nigeria, the Terrorism (Prevention) Act of 2011, though framed in general terms, has disproportionately impacted certain groups in the North-East, particularly in counter-insurgency operations. Legal scholars have argued that such applications compromise the ideal of generality. According to Ayo Ajomo: "The discretionary

42. Ackerman, Bruce. "The Emergency Constitution." *The Yale Law Journal* 113, no. 5 (2006):1020

43. Dyzenhaus, David. *The Constitution of Law: Legality in a Time of Emergency*. (Cambridge: Cambridge University Press, 2006), 54

powers given to security agencies to detain and prosecute persons suspected of terrorism without trial undermine the universality and fairness of the Nigerian legal system".[44] Another challenge to generality is the rise of artificial intelligence and algorithmic governance. AI systems are now used in predictive policing, sentencing recommendations, and even legislative drafting. While AI promises objectivity, it also risks encoding bias and reinforcing systemic inequalities, thus violating generality in application. As Frank Pasquale warns:"Algorithms may appear neutral, but they often replicate and amplify existing social hierarchies, applying different standards to different groups in ways that are opaque and unaccountable".[45]

Algorithmic decision-making raises the question of whether machines can understand or implement Fuller's inner morality of law, particularly generality and congruence. AI systems operate based on data, which may be inherently discriminatory or biased. This challenge complicates the assurance that laws apply equally to all and are administered predictably. Mireille Hildebrandt notes:"Law is not only a set of instructions but a normative framework requiring interpretation, contestation, and justification capacities AI does not possess".[46]

The judicial arm of government, particularly through judicial activism, also influences generality. Courts sometimes reinterpret or strike down laws to uphold justice or constitutional principles.

44. Ajomo, Ayo. "Terrorism and Human Rights in Nigeria." *Nigerian Journal of International Law* 14, no. 2 (2012): 88
45. Pasquale, Frank. *The Black Box Society: The Secret Algorithms That Control Money and Information*. Cambridge: Harvard University Press, 2015), 133
46. Hildebrandt, Mireille. "Law as Computation in the Era of Artificial Legal Intelligence." *Osgoode Hall Law Journal* 56, no. 1 (2018): 220

While this can expand protections, it can also blur the line between legislative and judicial roles, potentially introducing inconsistencies. Tushnet remarks:"Judicial activism may result in piecemeal legal doctrines that apply unevenly across similar cases, thereby threatening the systemic generality of law".[47] In Nigeria for example, judicial activism has occasionally challenged existing statutory law in favour of equitable outcomes. While such decisions can promote justice in individual cases, they may undermine consistency and predictability if not followed by legislative alignment. The tension between equity and generality thus becomes evident. According to Olakunle Orojo:"Judicial discretion, while useful, must be guided by the necessity of legal uniformity. Deviations without clear jurisprudential principles risk turning law into a matter of judicial whim".[48]

Nevertheless, some argue that special laws, algorithmic tools, and judicial innovation are responses to the complexity of modern societies and thus necessary for justice. But this line of thought risks normalizing exceptions, thereby diluting the essential characteristics of law. As Fuller maintains:

> Law cannot be merely a collection of disconnected edicts. It must embody a system of general rules, intelligibly formulated, and consistently applied. Otherwise, what we call law becomes indistinguishable from mere order.[49]

More importantly, while modern legal challenges necessitate

47. Tushnet, Mark. *Taking the Constitution Away from the Courts*. (Princeton: Princeton University Press, 2005), 230
48. Orojo, Olakunle. *Nigerian Legal System*. (Lagos: Spectrum Books, 2007), 57
49. Fuller *The Morality of Law*, 96

adaptive strategies, they must not override foundational principles like generality. Special circumstances must be addressed in ways that preserve the core morality of law. Selective application, opaque algorithms, and erratic judicial interventions all pose significant threats to the universality Fuller emphasized. As one scholar puts it:"The moral structure of law is tested most during crises, and it is then that generality must be most vigilantly preserved, not sacrificed".[50] While contemporary legal systems face unprecedented complexities, Fuller's call for generality remains critically relevant. Whether through legislation, algorithms, or courts, the law must resist fragmentation and maintain its commitment to equal application. Without generality, modern legal systems risk transforming into frameworks of control rather than justice.

Conclusion

Generality is not just a procedural feature of law but its foundational pillar. It ensures that the law does not target individuals arbitrarily, discriminate against particular groups, or serve as an instrument of oppression. When laws apply equally to all, irrespective of status, identity, or background, they reflect the principle of justice and uphold the dignity of every individual within the legal system. In this way, generality functions as a safeguard against tyranny and abuse, reinforcing the legitimacy of the legal order. A law that lacks generality forfeits its claim to legality. Such a law may be enforced by power, but it cannot command moral or rational respect. It becomes indistinguishable from an edict or decree that serves only the interests of a few. Without generality, the predictability and objectivity expected

50. Waldron, Jeremy. *Torture, Terror, and Trade-Offs: Philosophy for the White House*. (Oxford: Oxford University Press, 2008), 91

from the law dissolve, leading to arbitrary governance, social unrest, and a breakdown of public trust. Therefore, to retain its essence, law must be structured to embrace general principles that apply broadly and uniformly.

Bibliography

Ackerman, Bruce. "The Emergency Constitution." *The Yale Law Journal* 113, no. 5 (2006): 1029–1091.

Ajomo, Ayo. "Terrorism and Human Rights in Nigeria." *Nigerian Journal of International Law* 14, no. 2 (2012): 83–92.

Amnesty International. *Harvest of Death: Three Years of Bloody Clashes Between Farmers and Herders in Nigeria*. London: Amnesty International, 2018.

Aristotle. *Politics*. Translated by Benjamin Jowett. Oxford: Clarendon Press, 1885.

Craig, Paul, and Gráinne de Búrca. *EU Law: Text, Cases, and Materials*. 6th ed. Oxford: Oxford University Press, 2015.

Dugard, John. *Human Rights and the South African Legal Order*. Princeton: Princeton University Press, 1978.

Dworkin, Ronald. *Law's Empire*. Cambridge, MA: Harvard University Press, 1986.

Dyzenhaus, David. *The Constitution of Law: Legality in a Time of Emergency*. Cambridge: Cambridge University Press, 2006.

Fuller, Lon L. *The Morality of Law*. Revised Edition. New Haven: Yale University Press, 1969.

Hart, H.L.A. *The Concept of Law*. 3rd ed. Edited by Leslie Green, Joseph Raz, and Penelope A. Bulloch. Oxford: Oxford University Press, 2012.

Hildebrandt, Mireille. "Law as Computation in the Era of Artificial Legal Intelligence." *Osgoode Hall Law Journal* 56, no. 1 (2018): 119-169.

Hobbes, Thomas. *Leviathan*. Edited by J.C.A. Gaskin. Oxford: Oxford University Press, 1996.

Nwabueze, B. O. *Military Rule and Constitutionalism*. Ibadan: Spectrum Books, 1993.

Orojo, Olakunle. *Nigerian Legal System*. Lagos: Spectrum Books, 2007.

Oyewo, Akin. "Constitutionalism and the Rule of Law: An African

Perspective." *Nigerian Journal of Public Law* 5, no. 2 (2011): 65-89.

Pasquale, Frank. *The Black Box Society: The Secret Algorithms That Control Money and Information*. Cambridge: Harvard University Press, 2015.

Tushnet, Mark. *Taking the Constitution Away from the Courts*. Princeton: Princeton University Press, 2005.

United Nations. "Universal Declaration of Human Rights." 1948. https://www.un.org/en/about-us/universal-declaration-of-human-rights.

United Nations. "Universal Declaration of Human Rights." Adopted by the General Assembly of the United Nations on 10 December 1948. https://www.un.org/en/about-us/universal-declaration-of-human-rights.

United States Constitution. *Constitution of the United States*, Amendment XIV, Section 1.

Waldron, Jeremy. *Torture, Terror, and Trade-Offs: Philosophy for the White House*. Oxford: Oxford University Press, 2008.