THE THEORY OF THE RULE OF LAW, A GLOBAL RESPONSE TO THE CHALLENGES OF NATIONAL IDENTITIES

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Abstract: The evolution of the rule of law concept although not spectacular, but still successfull requires the systematic attempt to impose a stable belief in a rational order, legal and legitimate. Regardless it's variants French, German, English or American, the doctrine of the rule of law not only show differences in philosophies and views on the place and role of law in our society but highlight different legal and juridical consacrated and functional systems.
The powerfull rule of law's concept and „law's empire" also has a interesting journey passing through phases including an aura of myth and fetishism, claiming an absolute legal outfitt for any aspect of the social order.
The value of the rule of law doctrine comes from the need to justify the legitimacy of power legally-rational and it provides a powerful symbolic and ritual function, participating in democratic reform in almost every country.
However, despite differences in national identity and way of establishment and institutionalization of democratic order and the policies undertaken, the rule of law seems to be a consistent response, a sole criteria generally accepted for the global challenges of nowadays world.

Keywords: rule of law, principle of legality, legitimacy, rationality, democracy

For a long time the idea of legality was conceived in opposition with "anomia", a state characterised by no protection of law, in social disorder. For ancient Greeks, for instance, there were only too posibilities: slavery or protection of the law, like Aristotle noticed[1], showing that they are inextricably linked, the good law (the Constitution) and the education based on Constitutional spirit, values and procedures (Aristotel, *Politics*, V,9, 1310 a15). Then the law theory dynamic's mooved from the sacralization of law, with its own rigid and immutable shape to a sort of conventionalization (uncertain and changeable) but not giving it a limited charactert. This is the reason, believe Sartori, we chose the Roman legal tradition and not the Greek one. Even if Roman jurisprudence has innovated the concept of freedom, which remains tributary to Greeks, they managed to contribute significantly to the concept of legality, of the theoretical root of the Anglo-Saxon theory of "rule of law"). Regarding protection of laws, it was understood over the time in three different ways: 1. Greek model which provides a legal interpretation; 2. Roman model, closed to the manner which will became the English concept of "rule of law" and 3. Liberal model – the constitutionalism.

Thouh we still talking about the rational spirit referring to the action of Solon (Athenian archon and legislator) to reform society, transforming it into a society governed by law which has to balance it (Nay, 2008, p.43). Solon's reform linkses power principle, with the two complementary philosophical rules: *eunomia* (the stabilizer, the organizer, the balancer of the world) and *sōphrosyne* (the temperance, the prudence), following the general principle of authentic moral justice *dike*. The onset of rationalism canceles the bases of the old legitimists and traditionalists, making room for the new democratic ideal.

The Thirteen Century brings the „moral goals of the government" and the purpose of power but not its origin was the one that established legitimacy. It introduces and summarizes a new perspective on justice "power lacks legitimacy unless it is designed to furfill a moral goal, scored in the terrestrial life which is reported (on various forms) to find „the common

[1] *„But this is bad; for to live in conformity with the constitution ought not to be considered slavery but safety"* (Aristotle, 1944)

good"(Ibidem, pp.155-156). The consent of the people, not the divine will becomes "new cornerstone of government policy."

The link between governance and law becomes more closely in time. In all the works of many political thinkers emphasizes the legitimacy that caractherises the government based on law. Stable government is the one that is based on law also in the opinion of Montesquieu; same law that ensures respect for civil liberties. Leaders should be limited in their action, because of their tendency to abuse the power that was given to them[2].

It is to follow also the idea of using law as a tool to protect the individual and the society. It is to be found that the law as a „shield against despotism"; it „dispels bad habits" and gives birth to „new habits that respect human freedoms and liberties"(Rousseau, Social Contract, IV, 7). The law is a „powerful tool of social organization" and it is a „source of political moderation, a guarantee of social peace and especially a tool of justice and freedom"(Ibidem).

Law and government exceeds governants and times whimses, it has a prescriptive shape by keeping an equal distance to all; so law it is equal addressee. These ideas are mostly circumscribed to the initiation of the constitutionalist-rationalist movement of the Eighteenth Century.

Perhaps the decisive step involving rule of law was made by liberalism. Liberalism developed in British and American constitutionalism practice and procedures, and also in the theory of the state based on law (the Rechstaat theory) has added an important value to the idea of individual freedom, though isn't sit at the origin of it, has not generated the idea of freedom before the law but „invented how to institutionalize the balance between government by law and governance through individuals" (Sartori, 1999 , p.278) , coming out of the dillema of choosing between „legislators rule" versus „rule of judges". Liberal constitutionalism inclined to rule in favour of legislators but with two limitations: the method of drafting laws, verified by a severe *iter legis*, and its overall is restricted by a superior law, in order not to violate fundamental rights and freedoms. We often can notice even an overlap between constitutional systems and liberal systems. Even the concept of „human freedom" is „a conquest, not a product of democracy", because the legality is the guarantee of liberty and legality has the function of limiting and restricting. The idea of jurists (Kelsen and others) is that a democracy „without self-limitation represented by the principle of legality destroys itself" (apud Sartori, 1999, p.280).

The Roman concept of *ius* is indestructible linked to the ome of *iustitia*, so the law is a rule with a special shape, legal content and with the quality, the chararactristic of justice, meaning that the law is to be fair. *Rechstaat* idea eludes formally the possibility of an unjust or unfair law.

There is a danger to overlap governing and legislation not only becouse of the sepparation of powers, but becouse we assist to a trend ehere we have to face to a processus of deregulation, of transformation of countless small laws in administrative regulations. Parliaments would not be designed like machines of making laws. „As far as the *iurisdictio* becomes *gubernaculum* and legality replaces legitimacy, „freedom *against*" couldn't be regarded as a guarantee and is becoming again a matter of concern" (Sartori, 1999, p.294).

[2] "*La démocratie et l'aristocratie ne sont point des États libres par leur nature. La liberté politique ne se trouve que dans les gouvernements modérés. Mais elle n'est pas toujours dans les États modérés; elle n'y est que lorsqu'on n'abuse pas du pouvoir; mais c'est une expérience éternelle que tout homme qui a du pouvoir est porté à en abuser; il va jusqu'à ce qu'il trouve des limites. Qui le dirait! la vertu même a besoin de limites. Pour qu'on ne puisse abuser du pouvoir, il faut que, par la disposition des choses, le pouvoir arrête le pouvoir. Une constitution peut être telle que personne ne sera contraint de faire les choses auxquelles la loi ne l'oblige pas, et à ne point faire celles que la loi lui permet.*" (Montesquieu, 1995, XI, IV).

Modernity itself it is defined by the way in which modern man, unlike the traditional one, is related to the law. Huntington thought that for the traditional man the law is a limitation, a prescription or a restriction on which it has a limited control. „Man discovers the law, but he did not make the law" (Huntington, 1999, p.92). Midlle Ages used concepts as „divine law", „natural law", the „law of reason", „common law", „custom". The relationship between law and human activity are external and limitating. Therefore comes absolutist epithets from the "big Chartes" occures, such as „fundamental", „unchanging", „eternal", „perpetual", regarding to the caracther of the proviosions of the law. Therefore Montesquieu believed that defending freedom it is very close linked to the law, meaning that freedoms are linked to the organization of the state and its institutions. But Immanuel Kant and the German philosophy, far from sympathizing with the French Revolution and its republican ideals and deeply saddened by it's violence, maintained themselves in an area of promotion of requirements of morality and right in politics. The ideal of freedom is the only legitimate purpose of social life and the law becomes the tool of reconciliation the natural selfishness of individuals, unable to coexist in harmony. Influenced by natural law theory , Kant believes in the existence of a „legal reason" (see Metaphysics of Morals, Part I), according to which the order principle should prevail over the freedom one. We can find here a strong support of the principle of legality becouse the phillosopher thought that is no legitimate resistance from the people acceptable against the supreme legislator of the state, because there is no legal status possible only due obedience to the will of laws for all. Kant makes an important distinction between „moral actions" and „legal actions" for a perfect legal existence of the society, as a moral ideal, where civil laws are respected, of course in a „republican state", which fundamental objective is to protect human freedom.

But modernity has moved unchanging authority of law at the human level, no matter if it is about individual or common detention of authority and in the end we have to conclude that the "rule of law implies the ability to distinguesh at least roughly between what is it legal and what is it not" (Peerenboom, 2002, p.128).

Political thought of the end of the Twentieth century even refuses the call to a single principle of the authority according with the state has long been identified with the nation. Contemporary thinkers have been abandoned „total explanations" that worked right up until the first part of the Twentieth century and they are dedicated to a new form of reflection on the „best possible organization of liberal democracy" (Nay, 2008 , p.581). Therefore, contemporary thinking often takes the form of a „procedural philosophy", that finds its limits in those formulas and procedures for deliberation satisfactory for the coexistence of opinions and democratic settlement of disputes and pluralistic peacekeeping, without continuing searching for „the best of all the possible worlds". Legitimacy of authority, aware of the relativity of values, finds support in procedural rigor.

We are thus witnessing a return to the reflection on the positive law as a form of escape from the traps of ideological philosophy . The doctrine of „rule of law" that our contemporaries likes so much to talk about and which is called to justify, at least procedurally, contemporary democracies, originated in Germany on the Rechstaat law school of the end of the Nineteenth century, transposed by Hans Kelsen in Austria and by De Malberg in France. Even if there are some differences in vision, the common core it is represented in the promotion of the „law" as a techinique ensuring stability of the legal normes and framing state's activity and on the other side it reppresened a promotion of the „rights", as a set of human freedoms attached to the human being essence. A prouve of this trend is Habermas, with his reflections on the procedural-deliberative philosophy, as is the philosophy of social justice of Rawls and Nozik, testing for the second part of the allegation. Habermas aims is to reconcile reason and democracy, in contrast to postmodern philosophy. Habermas doesn't superpose the state over the individuals, becouse he is aware of the constraining role of the

procedures and he believes that the power of law can not be legitimate than as theory, as a product of the citizens and not above the democratic game.

And again we are witnessing the increasing role of law which aims not only to guarantee freedoms and legitimate state structures and institutions, but also to regulate trade in any kind of society, which leads, paradoxically, not to a social peacification but to a increasing of conflicts, to an intensification of the struggle. And this is not a society of justice, but of judgment and the courts, where everyone sues everyone. Alasdair MacIntyre draw attention to this danger, so criticizing Rawls proceduralismul involve benefits. MacItyre believes that „freedom is not restricted to protect a private space against violations of society" (apud Nay, 2008, p.613).

There is a tendency in instrumentalising law, sometimes with paradoxical consequences: "the rule of law virtues can be regarded as instrumental tools that are suitable to the achievement of sound ends, so much so that they become almost ends in themselves. In light of their ubiquitous role and critical functionality, it is worth looking at them in some greater detail, starting with the judiciary, and then working backward to the other branches of government" (Epstein, 2011, p.18). When the rule of law has transformed from tool in purpose can not be relevant, but it remains to study it's functional character in our modern society.

In the recent years we assist more and more to the assesment of the idea of a rule of law able legitimize a certain social order, giving a desirable legal tenure to the civilization. The various theories of the rule of law promotes the idea that the law legitimizes power, to the extent and under the condition that the state organs to act only „under a legal empowerment condition: any use of force ls must be based on a legal standard of the law; exercising authority becomes a competency established and assigned by law" (Chevallier, 2012 , p.12) . Of course for the law and the rules of law to induce the character of legality and to legitimate authorities which are subordinates in a formal sense, the law must have certain intrinsic qualities like generality, publicity, non-retroactivity, clarity and brevity, consistency, coherence , stability and especially predictability. So whatever the nature and vision of the rule of law (German theory of Rechtsstaat, or French l'État de droit, British Rule of Law, American Due Process of Law), mainly formalistic or not, thebasic idea is that not only organs but state itself to be governed by the law (ibidem, p.13).

Rechtsstaat's doctrine of the rule of law implies that government must be legitimized by a „legal empowerment" in all its actions and it's not empowered to act against the law (*contra legem)*, and mostly not to impose legal obligations on individuals, but to limit the application of executive law and legal rules. Kant is a precursor of the liberal conception of the *Rechtsstaat*'s, believing in a legal form *a priori* founded on the reason. In addition to this it occures the self-limitation hypothesis, according to which the sovereign state, in the French formula, can not be restricted only by rules that he himself created, so the state is bound to respect and to obbey the law and the law legitimises the state and keeps him alive.

French conception of the rule of law represented by Léon Duguit, Maurice Hauriou, Léon Michoud, have been adapting the german concept especially via an intensive dialogue between the French and German jurists in 1870-1918 period with mutual benefits. However there is an important distinction between the „legal state" and the „rule of law": „the law is not only the limit of the administrative activity, but also its condition" (ibidem , p.29).

A necessary condition for the existence of Rule of law is the need to have legal personality, to be endowed with sovereignty. Here comes the theory of self-limitation, which, paradoxically, doesn't limiting, according to Duguit. His theory actually devotes states' omnipotence, because „the State is not subject to law than that so he wants, when he wants and as far as he wants" (ibidem, p.34). Duguit is building the idea of an „institutional rule of law" while Hariout promotes a „social state of law". Also in France, George Burdeau will

develop another idea, the idea of a state restricted, limited by law because and insofar as legal authority is linked to the idea of law which legitimates it. So he reconfirm the idea that the law is the source legitimizing the state. The state in Burdeau's vision is no more than a „enterprise in the service of an idea", propelled by the will to form a community around the perception of a „common image of the collective future". The limitation of the state is a inherited caractheristic.

Of course these theories of rule of law won't remain beyond any critcism. This won't be a source of facile theoretical satisfaction but a touchstone for the rule of law's theorists. Hans Kelsen, for instance, made a strong criticism of the theory of rule of law showing that the theory furfilles „a tremendous ideological function" allowing legitimation for a state „conceived as a subject of will and action" and strengthening its authority. He reduces the rule of law to a „hierarchical legal order", the state and the law having the same order of constraint people.

On the opposite perspective, promoting an idealistic perspective of the Rule of law, there are some theorists referring to the governosrs as „ordinary citizens" held also bu legal rules in force, placed not above the law, but under the law like everyone else, performing a fully framed and by norms activity". This idea has interesting consequences because its creating an aura of legality, a „symbolic dimension of the rule of law" conferring a „passport of the sacred" (P. Legendre) in favour of the government , a „vector to legitimize their authority". „The theory of the rule of law is thus an ideological construction that rests on a firmly anchored system of representation and which reactivates a mythical force" (Chevallier, op.cit., p.60).

The mythic dimension leads on to a trully cult of law that configures an absolute citizen's trust in the power of law. After all, the rule of law is nothing but a „fetishism of the rule" and confidence in law transcends the rational character of the law, gaining a mystical aura , invested with a sacred dimension. That's the reason why rule of law conception oscillates between a rational construction or a formal scheme and a mythical dimension, supported by an affective foundation, guaranteeing its power and efficiency of constraint. Cult of law is an old one, but powered by Middle Age's dogmatic theory, reinforced by capitalism in order to the cover and dissimulate the economical relation of exploitation, becoming not only an essential mediator, but establishing a principle of modern legitimation: „modern systems of legitimisation largely been developed using it and relying on strong juridical concepts" (idem, p.61). The Rule of law theory began with the establishment of *normativism* and tends toward a *legal perfectionism* and also to a permanent self-exploitation and self-expanding, incessantly expanding the field of application of law theory. We shoud ask with some entitled dismay if there is still remaining some space not only public but also private beyond the law, out of norms.

The idea of complying with the law principles is nowadays valued of the many branches of the legal system: constitutional law, public administration, civil law. Not accidentally the legislators created a really endeavor not only in sanctioning, but including both with the need to „re-enter legally!" Legality form an area, a fenced yard privileged where to stay because the guards are armed out of state coercion . However sacralization of the law depends also on the separation between the field of law and the politic's field. Legal rule obliterate its political genesis roots which are considered not very hourable, in order to be able to maintain the symbolic appearance of the sacred. The anonymous legislator's legal discours by all its whole range of impersonalism „it is to be done", „you have to ..." and by an entire area of abstract imperatives, its allways adressed to an abstract citizen and is completely different from the political discourse which is poignant addressee, contextualized by the the parliamentarian addressing to a specific citizen, to a poor man, to his „brother". This closeness targeted by the politician is avoided by the legislator, who is looking for an

objectification of the rule of law, purged of any political dimension, tended to become a guarantee for its regulatory authority. The the rule of law itself its based on the „utopia of a government of wise man, the jurists would have a special place due to their own competencies" (idem, p.62) and the law attempts to ensure the only legite form of knowledge and the real instrument managing the state.

Contemporary approach of the rule of law is a functionalist one. The rule of law is conceived as the foundation on which sits constitutional regime, containing and safeguarding the fundamental rights and liberties; the separation and balance of powers within the state; the existence of a genuine democracy. A special role is played by civil society in the achievement means of ensuring wathching on the regulatory mechanisms in the rule of law.

However, one of the most important functions of the rule of law remains the symbolic function. This is the reason why in this paper we insist so much on it. State law contains a special form of symbolic power which simultaneously can legitimaze and delegitimize power in a state. Its delegitimizing the government power, not conferring them priority and privileges but giving them equal rank. The principle of legality brings public authorities to the same level with other citizens. From a symbolic point of view, the rule of law delegitimizes power because it transforms it in a simple competence completely dominated by the law. According to W. Leisner the state, conceived as Rule of Law, „isn't the government of the people, is the government of the law normes (as cited Chevallier, 2012 , p.63). Power is nothing else but subordinate performance of the Executive, achieving what should be in accordance with the law. The ideal of the rule of law is to eliminate discretion power and create a compensation with accurate rules, clear , concise, precise, reasonably and detailed, so based on them the governors would act as mere performers they are.

Governors decreased legitimacy in this perspective has left a free space which was immediately occupied by individuals from the justice area. Governance power delegimitization propels the judge in the foreground. It is another discussion on the traps and danger of judges governments. But the Judge he exercises no power: while the governor executes the law, the judge applies it, he is a "Minister of Law", bound on it and kept in its commandment, dancing between the spirit and the letter of the law. Basic, law itself even if its the base of the rule of law pyramide doesn't have any power attributes and it is an reason act rather than an will act, while the author is only the very Nation working by its representatives. Yet the rule of law contributes in legitimizing power. The legal principles conferrs and projects legitimacy due the raportation to an abstract and objective order of the norms invested with authority. The capital of authority is thus projected on those entitled to speak in the name of the law, remembering the *skeptron*, the ancient instrument which, in a symbolic way conferrs the power of authority to the spiker detentor. Than we are assisting to the law, producing a phenomenon of contagion in the authority and legitimacy dinamic and also to mythological processus because the law sistem will be invested this way with sacred power, will benefit the same symbolic power. According to this perspective could Max Weber[3] considered that the rule of law is a way of a "legal-rational" legitimation. The authority of government and all organs of the state are based on a legal status.

It is interesting that although the doctrine of the rule of law is quite old , only in 1949 Germany scored for the first time in a constitutional text the term *Rechtsstaat* [4], stating that

[3] *„For the pucposes of legal reasoning it is essential to be able to decide whether a rule of law does or does not carry legal authority, hence whether a legal relationship does or does not "exist" This type of question is not, however, relevant to sociological problems"*- Max Weber, 1978), *Economy and Society,* translated by Fiscoff, Gerth, Parsons et all., Berkely: University of California Press, p.28.

[4] *„Die verfassungsmäßige Ordnung in den Ländern muß den Grundsätzen des republikanischen, demokratischen und sozialen Rechtsstaates im Sinne dieses Grundgesetzes entsprechen. In den Ländern, Kreisen und Gemeinden muß das Volk eine Vertretung haben, die aus allgemeinen, unmittelbaren, freien, gleichen und geheimen Wahlen*

the constitutional order of Länder must be conform to a state of law, a republic, democratic, and social, marking this way the transition from the rule of law as a theoretical principle to a control principle in the positive sistem of law. Rechtsstaat its a vocabula evoking not only the existence of a legal hierarchy, but also a set of rights and freedoms,assuming a certain „state of law" and tending to acquire a substantial character closed to the profile of the British theory on the Rule of Law. In the same logic, the Statute of the Council of Europe will impose at the European level the idea that „the rule of law" is inseparable from „the principle that every person should enjoy human rights and fundamental freedoms:

„ Every member of the Council of Europe must accept the principles of the rule of law and of the enjoiment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sicerely and effectively in the realistation of the aim od the Council as specified in Chapter I" (Article 3 of the Statute of the Council of Europe (May 5, 1949).

Looking to this dinamic of the concept, the rule of law theory and practice reveals a vision of a liberal position on the foundation of the state; the state is no longer treated in a restrictive manner as an instrument for power limitation, but becomes a basic foundation of civil liberties and democracy.

Despite the extraordinary success of the theory of the rule of law, a nowadays criterion of the social progress and democracy, in the contemporary world still faces a number of difficulties. Problems faced by the ideal state in the shape of rule of law in many countries are circumscribed to the growth trend of executive authority, related to the legal emancipation process and also to the principle of legality crisis. As a counterbalance they tried, even if the report of the Executive with the law has been changed, whith no succesfull chance to stop the trend and to keep states shape and action under the rule and protection of the law sistem.

One of the solutions found to weaken the position of law sistem before the Executive upsurges in the modern world (twentieth century), is the establishment of judicial review developed in three directions: the Anglo-Saxon model, according to the precepts of the Rule of Law, entrusting control in the hand of the ordinary judge; French model - establishing in administrative litigation court a specialized jurisdiction intended for judicial review purpose and, finally, the German model which creates a specialized administrative jurisdiction for this purpose, a branch of the judicial sistem.

Constitutionality review, had have also a spectacular development after the Second World War and developed two main lines or judicial systems: the U.S. sistem, where control/review is exercised by way of exception through the ordinary courts and the European sistem of constitutional review, entrustsed to an organ specifically designed for this purpose, the Constitutional Court, the Constitutional Tribunal etc., first introduced in Austria (1920) and progressively covering all European countries: Italy – 1947, Germany – 1949, France – 1958, Turkey - 1961, Yugoslavia - 1963 Portugal – 1976, Spain – 1978, Greece-1979, Poland - 1982, Hungary - 1983, USSR - 1988, Romania – 1992.

In Romania, the constitutionality control of laws[5] was established on a judicial interpretation (pretorian way) since 1912. Then, following the European model of constitutional justice, the Constitutions of 1923 and 1938 provided that only the Court of Cassation and Justice, in united sections, have the right to judge the constitutionality of laws and declare them inapplicable in this case, thus enshrining control focused exercised supreme constitutional court. Constitutions of the Communist regime just created an appearance regarding the control on constitutionality of laws. Nowadays, the article 152 of the

hervorgegangen ist. Bei Wahlen in Kreisen und Gemeinden sind auch Personen, die die Staatsangehörigkeit eines Mitgliedstaates der Europäischen Gemeinschaft besitzen, nach Maßgabe von Recht der Europäischen Gemeinschaft wahlberechtigt und wählbar. In Gemeinden kann an die Stelle einer gewählten Körperschaft die Gemeindeversammlung treten" - Grundgesetz für die Bundesrepublik Deutschland – artikel 28 – 23.05.1949

[5] According to the official website of CCR - http://www.ccr.ro/Scurt-istoric

Constitution of 1991 provided that ”within six months of the entry into force of the Constitution, the Constitutional Court shall be established”. Thus, in June 1992 the first Constitutional Court judges were appointed, and the first Constitutional Court decisions were handed down on 30 June 1992. In 2003, after the revision of the Romanian Constitution, Article 142 (1) on *The Constitutional Court* has established the role of guarantor of the supremacy of the Constitution, giving to the Court new powers, which increases the importance of the institutional edifice of rule of law. This valorization of the Constitutional Court in Romania, which is almost a sort of referee in internal politics of the state, is part of a broader trend in a globalized world where the influence of constitutional courts has increased more and more, their methods giving means to lead a „genuine political jurisprudence”, how Chevallier named it. This was possible as far as strengthened collective perception that a country's constitution is legitimate and constitutional laws are binding us, both citizens and governors, under an agreement, a consent on this matters given by both of us, burdening on the civic conscience.

Also the principle of legality is strengthened by the increased control, improving control’s techniques by „widening reference standards”, enhancing judicial independence of the judges and also by increasing freedom of interpretation (rather free) on existing laws, which sometimes led to an abusive interpretation *contra legem*, like jurisprudence and caselaw, creating precedents and jurisprudential rules *praeter legem*, and not least, very general application principles (Chevallier, 2012 , p.73) . Therefore we can speak about a „broad conception of legality” as a counterweight to the expansionist tendencies of the Executive, and this in return will react putting new barriers over omnipotence of law, creating boundaries, as in France where, unlike in Germany, there are limitations in control and jurisdictional immunity, in an attempt of saving what once were called reason of state.

But we can notice new principles in law as is the principle of legal certainty, non-retroactivity and legitimate expectations.

The increasing attention directed toward legal or juridical security in France, where this principle is considered to be a foundation of rule of law that involves a certain stability of the laws and situations which they define able to guarantee legal certainty for society. It’s criteia are: law accessibility, law intelligibility, increasing the rational quality of the laws and guarantees on the stability of the law . Therefore, the rule of law have to waive obscurity and improve itself meaning increasing equal access, so „better regulation” should be the goal.

Legitimate principle appeared in Switzerland in the 1930’s and refers to the idea that citizens are entitled to be protected against unpredictable changes of the existing legislation, which would result in a deterioration of their situation and this principle contribute to a complex legal structure of interpretation together with the principle of legality and proportionality, promoting the idea that „individuals are entitled to develop into a stable and predictable legal environment in which they can trust appears as a corollary of the rule of law” (Chevallier, 2012, p.104).

The Rule of of law as a state shape didn’t evolve in a straight line. After the World War II it left the purely theoretical frame to enroll in the positive law and lost its formal value in the favor of human rights edifice and of the idea of „social justice” that turned for a while rule of law in a just „legal accessory” mere „ritual reference” without symbolic and practical power. But by the early 1980’s the stakes will change again in favor of the rule of law. Rule of law is re-invested with important symbolic function, promoted and propelled in the public arena, invested with axiological value as a *sine qua non* criterion for any state building. This was possible through the escape of the concept of rule of law from the field of jurists in the public arena, being almost confiscated by the political and ideological environment, reinvested with equity stakes and transformed into genuin „mean of legitimation of power. By the 1990’s, the rule of law has become a again in top, a true myth, endowed with the power of

action , working towards social and political reality. Nowadays the rule of law is an axiological constraint, a mandatory reference „command any political legitimacy", „the rule of law provides a reading grid for the political order which seems to exhaust the universe of possibilities" (idem, p.118) and the hegemony of the rule of law was obtained by reviving the topic in The Western countries, by an international consecration and after this, a large dissemination thorugh Eastern and Southern former communist countries, eagers to prove and not only to develop their democracy. So, after 1970, European states will often use a formal reference to the rule of law (the Constitution of Portugal in 1976, Spain in 1978) and the rule of law will be included as a founding principle of the European construction. First at jurisdiction of the European Court of Justice and the European Court of Human Rights, in founding treaties (Amsterdam-1997, Nice-2001, Lisbon-2007), then at international level, Inter-american Democratic Charter (Lima , 2001), Copenhagen -1990, Charter of Paris – 1990, Vienna Conference on Human Rights of the United Nations – 1993, UN Resolutions (state of law will be translated as „rule of law") - 2000, 2005, 2006 and the doctrine of the rule of law became an internationalized and universalized topic and is to be used as a resource but also as a political weapon by the ideological liberalism against communism. Even international institutions like the World Bank, includes the concept of rule of law in terms of „good governance". Dissemination and import of the doctrine of rule of law has been massivelly achieved in Eastern European countries and in their constitutions including Russia and ex -soviet countries which are proclaming the rule of law and human rights. Of course competing versions occures in countries as China, promoting the „socialist rule of law" whose goal is a „government of the country not by people but by law"[6]. Acording to Peerenboom, "China is more likely to adopt a Statist Socialist, Neoauthoritarian, and Communitarian version of rule of law than it is to adopt a Liberal Democratic one" (2002, p.558).

Regardless the view on the topic of rule of law, there is a general agreement on the ideea that "a well ordered society is run through the rule of law" and it's also the key to "less corruption" together with an effective system of property rights" (Uslaner, 2008, p.39)

The legal excess we are witnessing in the contemporary era, the law language contagion of political discourse show a great confidence in the value of law and in its symbolic power and its ability to legitimize the political order. Also increasing of juridical guarantees and their influence at the expense of democracy do to decrease democratic elections legitimacy rate, relativizing this instrument. Democracy itself becomes a „legal democracy", its sources of legitimacy no longer being reduced to the elective processes and counterbalancing procedural conditions and criteria as citizen participation, pluralism, guarantee of rights, giving to the citizens as Habermas noticed, the right to be entitled to be themselves, and to perceive themseles as „authors of the legislation to which they are subject as addressees" (1975). The rule of law reforms the democracy.

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[6] Article 5 of the memorandum revised in 1999, apud Chevallier , 2012 , p.133

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