PART ONE

RULES OF LAW
CHAPTER ONE

THE RULE OF LAW AS AN INSTITUTIONAL IDEAL

Gianluigi Palombella

The rule of law is an institutional ideal concerning the law. Owing to its normative nature, in fact it has been held to mean different things at different times and in different contexts. Its complexity and contestability is due to many causes, including the interweaving of conceptual, historical, philosophical meanings. There is also the fact that the concept belongs in multiple domains, from law to political morality.

Thus, a general reconsideration, sensitive to such complexity, can emerge from pursuing historical, comparative, philosophical analyses and their interrelations. The issue can be addressed through various avenues: one of them is semantic, where rule of law is traditionally contrasted with the “rule of men” through its differentia specifica. Although it may seem rather abstract, by initially following a similar path taking choices at the crossroads we can set the scene. We can approach the significance and deeper implications of general questions associated with an expression such as “Rule of Law.”

However, an investigation on the rule of law aimed at making sense of its potentialities in the twenty-first century needs to move on to a historically oriented recognition, focusing on institutional and comparative analysis. Through the latter the rationale of different conceptions can be more intelligibly recognised. Thus, the normative meaning of the “rule of law” can be identified by tracing it back to its distinctive (English) institutional setting, one that can be better understood by contrasting it with other similar experiences (on the European continent, mainly, the pre-constitutional Rechtsstaat).

The normative meaning can be subsequently discussed and elaborated on through some of the theoretical issues that it raises in the

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1 Starting with Aristotle 1984:III 16 1287 a–b.