The Meaning of Rule of Law

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“What then is truth? A mobile army of metaphors, metonyms, and anthropomorphisms -- in short, a sum of human relations, which have been enhanced, transposed, and embellished poetically and rhetorically, and which after long use seem firm, canonical, and obligatory to a people: truths are illusions about which one has forgotten that is what they are; metaphors which are worn out and without sensuous power; coins which have lost their pictures and now matter only as metal, no longer as coins.

We still do not know where the urge for truth comes from; for as yet we have heard only of the obligation imposed by society that it should exist: to be truthful means using the customary metaphors - in moral terms, the obligation to lie according to fixed convention, to lie herd-like in a style obligatory for all ...”.

Friedrich W. Nietzsche, *On truth and lie in an extra-moral sense*
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The Meaning of Rule of Law

An example of a Legal System a là Burke.

ALLAN

Rule of Law like: Substantial and Procedural Fairness; Natural Justice; Equality; Separation of Powers...

Separation of Power and English Legal System

Universal Suffrage

Equality

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RULE OF LAW LIKE PRINCIPLE OF FORMAL VALIDITY

Replying to the critics about this idea of Rule of Law

LAW’S MYSTIFICATION

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ABSTRACT

This book reports studies and researches done by the author when he was at University of Cambridge.

Even though the writer believes that:

1) a corpus of legal values should be written inside each Constitution;

2) and Judges, Lawyers and People, have the duty to defend those values against the tendency of Power to go beyond them; …

… the study affirms that the principium of Rule of Law (and/or Supremacy of Law) does not include a corpus of legal principles (and/or values) inside itself, as somebody affirmed.

The principium of Supremacy of Law means “only”: the SUPREMACY of LAW ABOVE the POWER.

It was a Revolution, when Power believed to be above the Law. It happened, exempli gratia, in France during the Ancient Regime. Sovereigns, Nobles and whoever had some kind of Power, believed to be above the Law. They were used to act above Law. Viola P. (1994) gave an example of this. He reported an anecdote happened between the Duke of Orleans and the King of France. When the Duke of Orleans said to the King: “Majesty, but it is illegal!”, the king answered: “No, It is legal because I will”.

The *principium* of Supremacy of the Law had the aim to end these kinds of Legal Systems. It states that *everyone* is under the Law. Sovereigns, Nobles, Bureaucrats, Banks and Financial Powers, are all under the Law. In other words, they have to comply with the Law. If they do not, they are an Arbitrary Power. The latter is a Power that: *either*, it is not given by a Law; *or*, it is used without following the right procedures, which bind the exercise of that power. As Power tends to go beyond its limitations, there is Arbitrary Power also inside our modern Legal Systems. The *principium* of Supremacy of Law, hence, is still frequently violated. It is proved by some recent events happened inside the European Union and Institutions. For example, when the President of Euro-group decided to exclude Greece, Varoufakis told him to be illegal (as the Duke of Orleans told to the King of France during the Ancient Regime). So, Varoufakis asked for a legal advice. The lawyers and bureaucrats of the European Union answered him that the President of Euro-group could act as he/she wants. This is as the Euro-group does not exist for the Law!! Hence, they argued: the Euro-group is above the Law!!!! In other words, the European Union answered like the King of France during the Ancient Regime. But, if the Euro-group does not exist, the Euro-group is not above the Law. Actually, all the Powers, Decisions and Acts, of the Euro-group are illegal, unlawful, illegitimate. This is told by the principium of Supremacy of Law. On the contrary, the European Union is a New Ancient Regime. Nothing more! Nothing less!
So, how is it possible that the *principium* of *Supremacy of Law* is still violated, nowadays?

This is as the *principium* of *Supremacy of Law* was reduced by *Power* to be a *simulacre a là* Bauderillard (1981). *Power* makes people forget its true meaning. It was done with a very easy game. A new *set* of meanings were put inside *Supremacy of Law*. All of them were *pleasant, agreeable and fashionable*, principles. But, they were also *void principles* as much as they were *pleasant*. At the end, people have forgotten the real meaning of *Supremacy of Law*. *Power* started again to act above the *Law a là Ancient Regime!!*
INTRODUCTION

Rule of Law’s True Meaning

The principle of Rule of Law is also called Supremacy of the Law. Rule of Law is a principle of Formal Validity. It states that Law is above the Power. In other words, it is the basic principle of any modern Legal System, after the French Ancient Regime!

The Supremacy of Law affirms that Kings (Presidents; Governments; Constitutional Bodies; Judges; Courts; Authorities; Committees; Groups; Bureaucrats; Financial Powers; Banks; etc…) are under the Law. Their actions and decisions are legitimate only, and only if: both, the Law gives them that kind of power; and, they use that power following the right procedures.

Otherwise, Power is unlawful, illicit and illegitimate.

Their commands should not be in force.

In this latter case, people are NOT bind by Power’s decisions. People have the RIGHT to resist and to fight against those illegalities, illegitimacies and unlawfulness.

Unfortunately, Power does NOT like to be bound. As a result, the principium of Supremacy of Law was reduced to be a simulacrum à la Baudrillard (1981).
The Meaning of Rule of Law

First of all, *Supremacy of Law* was called with a “less evocative” name: *Rule of Law*.

Then, *Rule of Law* was defined with new *pleasant* and *agreeable* principles. At the question: “what is the Rule of Law?”, *lawyers* started to give any possible answer. So, the clear, basic and simple, *principium* of *Supremacy of Law* became a *void* and *nebulous concept*.

At the end, People and lawyers started to forget its real meaning.

Meanwhile, *Power* started again to act above the *Law*.

For instance, the *writer* will give some examples that happened at the *University of Cambridge*. They are very useful to understand what it is happening nowadays. What people learn in the *Universities*, people do in the *World*!! Although the writer decided to speak about it with a *satirical* and *ironical* style, the *facts* are *true*.

*Rule of Law like Simulacre*

As we told *supra*¹, the *principle of Rule of Law* is the *principium of Supremacy of Law* above the *Power*. This is its *very Nature*. This is its DEEP REALITY.

However, *images*, in the *flow of the time*, tend to lose their *meanings*. Step by step, they become *void concepts* that: *either*, mask their *deep realities*; *or*, lose any relation with *them*.

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¹ *Supra* means *above* in Latin.
According to Bauderillard J. (1981), they become *Simulacres*. Once they are *Simulacres*, they are *void concepts* that can be filled with any arbitrary meaning, which *Power* wants. In this way, *Justice* is reduced to be nothing more than “the *interest of the most Powerful one*” *a là* Trasimacus.

They are a “*mobile army of metaphors*” ready to prostituting itself to any *pro tempore* Power. As *History* and *Social Sciences* teach, the *Winners* and the *Establishment* (Lyotard, 1983) decide what it is *true* and *false*. This is as *Power* and *Knowledge* are the “two faces of the same coin” (Foucault). *Changes* into *Power’s relations* become *changes into Paradigm’s beliefs*. *Changes into Paradigm’s beliefs* become *changes into Power’s relations*.

Thus, we should keep in mind this *basic truth*, when we study any *Social Sciences’ constructs*. Actually, it does not matter if they are about: Law; Psychology; Economy; Finance; etc… .

*Law and Sensemaking*

As the *principium* of *Supremacy of Law* was reduced to be a *simulacre*, *Power* can use it like a *Horse of Troy* to *put in* and *put out* from the *Legal System* whatever it wants.

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2 *Power* is used *a là* Foucault.
This makes Law be applied in a very discriminative way. Law will have different meanings for different people. For the majority of people, Law will be an instrument of “slavery” in Power’s hands. For a small elitist group, Law will be always a Declaration of Rights in defense of their own liberties and interests.

English Legal History, behind what propaganda says, it is not an exception. Whereas at Bentham’s time, the common law was used to defend the privilege of aristocracy above common people; nowadays, Law is used to defend the interests of financial powers above Peoples and Nations.

Thus, the writings of Bentham should be still considered a current issue.

According to the Bentham, English tradition is committed to “save the appearance” with a lot of rites and false beliefs. Lawyers’ writings, instead of reviling those trickeries, mask them³.

Whereas English Lawyers / Judges claim to apply simply “neutral” Law (Universal Principles; Acts of the Parliament; etc…), they make always arbitrary (discretional and political) choices. They use their power to defend the privilege of the Establishment against common people.

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³ Exempli gratia, Bentham wrote this about Blackstone’s books (one of his “masters”).
The American Realism clarified that Judges do NOT apply neutrally the Law. Judges create and change the Law in each case. They do (always) political choices. Also Perelman demonstrated this. He gave some good historical examples of how, the same Law got very different interpretations and applications. The latters followed the pro tempore political ideas. This is possible for different reasons. But, an army of Troy’s Horses makes it far much easier.

The allegories of the Classical Literature are still very useful for understanding the present time. A Horse of Troy does not need to be necessary physical!! It could be everything, even a theoretical concept.

Thanks to them, the Establishment can use Law (as well as: Psychology; Economics; etc…) to lead people: both, to do; and, to believe; … what they want. Weick’s studies about sensemaking and enactment are very useful for understanding these dynamics. They should not be limited for approaching the working contexts inside the Companies.

All in all

There are two wrong views. The first one, nothing can be known (Post-modernism). The second one, everything is true. Both of them reduce Truth and Justice to be whatever Power wants. They allow Power to control people with sensemaking. But,
sensemaking has nothing to do with Truth and/or Justice. Sensemaking is just Power’s manifestation.

This is what it is happening inside the Social Sciences (Legal System; Psychological constructs; Finance; etc…).

As Nietzsche wrote: “This world is the will to power — and nothing besides! And you yourselves are also this will to power — and nothing besides!” (Nietzsche, Will to Power).
The Meaning of Rule of Law

RULE OF LAW

Rule of Law “is an ambiguous expression” that can have different meanings for different writers (Hood Phillips O. and Jackson P., 1987).

Hence, a clarification of the concept (advised by analytical jurisprudence and philosophy) is indispensable, at the present tense.

In absence, we could just enhance entropy. Everyone will speak about different things, using same words.

At the present time, there is no agreement among lawyers about the nature of Rule of Law. Lawyers, Judges and Academics, defined Rule of Law differently. Moreover, Rule of Law presents different conceptualizations: both, among legal Traditions and Systems; and, inside each legal Tradition and System (such as: English Common Law; Canadian Legal System\(^4\); etc…).

For instance, according to American constitutionalism: “the rule of law promises predictability in social life by placing constitutional limits on the kinds of power that governments may legitimately exercise, as well as on the extent of those

\(^4\) Exempli gratia, Rule of Law has received three different approaches in Canadian Constitutionalism: rule of law like impartial administration of rule; rule of law like procedural fairness; rule of law like substantive justice (Conklin W. E. 1989).
governmental powers” (Shapiro I., 1994). Otherwise, this cannot be true for Countries such as: Australia. Australian Constitution simply regulates the exercise of the sovereignty. It does not state any legal principle and/or value able to lead and to bind the Power. Hence, Rule of Law is a mere principle of formal validity (like Hart’s rules of recognition) for those Nations with an “amoral constitution”. Everything is valid, if the Power acted under the Law.

American conceptualization of Rule of Law has its foundation in a written constitution. This is ontologically constituted by two corpora (parts). The first corpus gathers the regulations about the exercise of sovereignty (exempli gratia, the relation among the Constitutional Bodies). The second corpus gathers a set of political and legal principles that bind the actions of Sovereignty. This latter was the hard core of the Social Contract. So, if the Sovereignty acts against those values, each Judge can refuse to apply those Acts and/or commands.

Law rules Nations only, and only if, each person (it does not matter his/her social strata) can “win” the Sovereignty each time the Sovereignty acts above the Law. But, this must happen in a substantial way. It is not enough that it exists only theoretically speaking.

Rule of Law has also another aim: to prevent any kind of despotism, also that one of the pro tempore Majority above the Minorities. But, this could happen only, and only if, Nations are ruled by constitutional principles (Schwartz B. 1955).
Allan (1993) considered this point inside *English Discourse*. He recognized that “…the problem lies (in) the difficulty of articulating a coherent doctrine which resists a purely formal conception of legality – according to which even brutal decrees of a dictator, if formally “valid”, meet the requirements of the rule of law – without instead propounding a complete political and social philosophy”. Allan (1993) confirmed that Rule of Law, inside *English constitutionalism*, looked like a *secondary rule* of Hart, as: “rule of law is able to distinguish between commands of a legitimate government from those of anyone else”.

Allan (1993) stated that it is “very doubtful whether it is possible to formulate a theory of rule of law of universal validity”.

On the contrary, the present writer affirms that it is possible. It is enough to exit from the Babel Tower. It is enough to go back to the original and real meaning of *Rule of Law*: *Supremacy of Law* above the *Power*.

Nevertheless, Allan (1993) affirmed that Rule of Law is a living part of the *English Constitution*. It is able: *both*, to bear some legal moral values and principles; *and*, to bind the sovereignty of the parliament. But, Allan is hugely wrong. According to *English Constitutionalism*, Westminster Parliament has no limit (Barendt,1998). In other words, “there is no legal limit to what the “Queen – in – Parliament” can enact in a statute” (Wilson, 1979).
This is historically well proved.

*Rule of Law like Universal Principle of any Legal System*

The present writer disagrees with Allan. He believes that it is possible to formulate a theory of Rule of Law of Universal Validity. It is enough to remember its original and deep meaning. Rule of Law is the principium of Supremacy of Law. This principium states the SUPREMACY of LAW ABOVE the POWER.

It was a Revolution when Power believed to be above Law. It happened, exempli gratia, in France during the Ancient Regime. Sovereigns, Nobles and whoever had some kind of Power, believed to be above Law. They were used to act above Law. Viola P. (1994) gave an example of this. He reported an anecdote happened between the Duke of Orleans and the King of France. When the Duke of Orleans said to the King: “Majesty, but it is illegal!”, the king answered: “No, It is legal because I will”.

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Legal Systems. The principium of Supremacy of Law, hence, is still frequently violated. It is proved by some recent events happened inside the European Union and Institutions. For example, when the President of Euro-group decided to exclude Greece, Varoufakis told him to be illegal (as the Duke of Orleans told to the King of France during the Ancient Regime). So, Varoufakis asked for a legal advice. The lawyers and bureaucrats of the European Union answered him that the President of Euro-group could act as he/she wants. This is as the Euro-group does not exist for the Law!! Hence, they argued the Euro-group is above the Law!!!!! In other words, the European Union answered like the King of France during the Ancient Regime. But, if the Euro-group does not exist, it does not mean that it is above the Law!! Actually, it means that all the Powers, Decisions and Acts, of the Euro-group are illegal, unlawful, illegitimate. This is told by the principium of Supremacy of Law. On the contrary, the European Union is a New Ancient Regime. Nothing more! Nothing less!

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were also *void principles* as much as they were *pleasant*. At the end, we have arrived to the present time. *Lawyers* are lost inside *nebulous concepts*. *Power* has started again to act *a lè Ancient Regime*.

*English constitutionalism* is used like example for understanding how it has happened.
RULE OF LAW AND ENGLISH LEGAL SYSTEM

According to: Dicey (1902); Heuston (1964); the Report of the Committee on Ministers’ Powers (1932); … the Principium of the Supremacy of Law born in the Middle Ages. Then, it was challenged and questioned only during the Stuart time. Some evidences, which are usually used, are:

1) According to M. Allen et al. (1994), the Bracton principle: “quod Rex non debet esse sub homine sed sub Deo et Lege” quoted by the King in the Prohibitions del Roy (1607);

2) the Petition of Right (1628);

3) the abolition of the: Court of the Star Chamber; and Privy Council’s jurisdiction in England (1641);

4) the Glorious Revolution (1688);

5) the Dicey’s Doctrine on Rule of Law (1885);

6) and, the Report of the Committee on Ministers’ Powers (1932).

The work of Dicey has strongly been influential. Indeed, Dicey represents the final highest peak of the conceptualization of Rule of Law.

On the contrary, the Report of the Committee on Ministers’ Powers (1932) is an “Official Recognition”. The Report states: “The supremacy or rule of law of the Land
is a recognised principle of the English Constitution”. According to the Report, it has always been a living part of English Law since the Middle Age.

Although Rule of Law have been recognized a characteristic of English Politics and Legal System since the Norman Conquest (Dicey, 1902)\(^5\), Rule of Law has always been a nebulous concept, at the end.

On one hand, everybody agrees that Rule of Law has been a fundamental principle of English Legal System. On the other hand, nobody knows what Rule of Law means!! Actually, it should be a very useful principle!!

Hence, our first Quest is to answer at the question: “What does Rule of Law mean?”

For answering at the question, the Dicey’s work should be examined.

**DICEY**

Dicey (1902) affirmed Rule of Law to include three different principia:

1) the Absolute Supremacy of the Regular Law as opposed to Arbitrary Power;

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\(^5\) The other English Legal System’s characteristic was: the principle of Supremacy of the “Central Government”.

Until the Glorious Revolution, the Central Government was represented by the Crown.

From the Glorious Revolution to now, the Central Government was represented the Parliament (Loveland I., 1996).

This latter is composed by three organs: the Crown; the House of Lords; the House of Commons.
2) The *Equality of every man* in front of the *Law*. This principle includes two aspects: a) everyone has to obey to the *Law*; b) everyone is subordinated at *ordinary tribunals’ jurisdiction*;

3) The *belief* that: “the law of the constitution … are not the source but the consequence of the rights of individuals, as defined and enforced by courts”.

Whereas these three *principia* seem “reasonable” at a first consideration, they hide plenty of trickeries and practical problems. The latters make them be: *void concepts*. At the end, they drop to be *political slogan, propaganda* and *marketing*! Nothing more! Nothing less! Indeed, they have been used in very different manners as History proved.

**First Principle**

According to Dicey, the first principle affirms: “… no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary Courts of land. In this sense the rule of law is contrasted with every system of government based on the exercise by persons in authority of wide, arbitrary, or discretionary powers of constraint”.

This principle seems to be affirmed by Courts in different times. For instance, in Black – Clawson LTD v. Papierwerke waldhof aschaffenburg AC (1975), Diplock
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stated: “The acceptance of rule of law as a constitutional principle requires that a citizen, before committing himself to any course of action, should be able to know in advance what are the legal consequences that will flow from it”\(^6\).

Although this principle appears to be \textit{plain} in the \textit{English constitutionalism}, it is not as \textit{plain} as it can appear. Indeed, it is not possible to define \textit{clear boundaries} between an \textit{arbitrary} use of power \textbf{and} “what” it is not!

Although Dicey (1902) stated this principle to be able to limit the \textit{arbitrary power}, Heuston (1964) gave contrary evidences. Heuston (1964) wrote that it is “difficult to distinguish between regular law and arbitrary power”. For instance, \textit{Law} can give \textit{arbitrary power} to someone. In this case, the two dimensions overlap!! Heuston (1964) presented two historical \textit{leading cases}. The first one happened in 1627. The \textit{Court of King’s Bench}, in Darnel’s Case, granted the King of a common law legal power to imprison \textit{anyone} on suspicion without cause shown!! The second one happened in 1941. The House of Lords, in Liversidge v. Anderson, recognized the legitimacy of statutory legal power (similar to the previous) granted by the Parliament to the Home Secretary!!

As a result, Heuston (1964) affirmed that the \textit{supremacy of law} simply requires that everyone (in any position) “must be prepared to justify his acts by reference to some

statutory or common law power which authorises him to act precisely in the way in which he claims he can act”. Therefore, *Rule of Law* does NOT limit any *arbitrary power*\(^7\). It means only that power should be given by Law. Nevertheless, even this is not so plain\(^8\)!! As I told *supra* (above), a *nebulous concept* allows to be applied in very different manners from *case* to *case*. At the end, a “different” *Legal System* exists for *everyone*! But, this is *nothing*, really *nothing*, if You compare: *Law*; with *Psychology*. Whereas the *former* is still bound by *facts*, the *latter* is just *pure fantasy* of the Psychologists!! Nowadays, the *huge abuses* are done, indeed, with *Psychology*.

\(^7\) *Exempli gratia*, *Entick versus Carrington* (1765).

Entick sued two king’s messengers (armed with *warrant* of the *Secretary of State* for arresting him) for: having trespassed into his house and goods; and, illegitimacy of the *warrant*. The *Secretary of the State* was *not* able to justify the *warrant’s legitimacy* within any *specific law*. He argued that those warrants had always been issued and none complained for them!!!!!

Camden C. J. declared: “This power, so claimed by the Secretary of the State, is not supported by one single citation from any law book extant… If it is law, it will be found in our books. If it is not to be found there, it is not law” (*Entick versus Carrington*, 1765).

The *act* of the *Secretary of State* was “unlawful” as: it did not comply with the *principle of Formal Validity*.

\(^8\) *Exempli gratia*, in *Malone versus Metropolitan Police Commissioner* (1979), Robert Megarry V-C states: “… England, it may be said, is not a country where everything is forbidden except what is expressly permitted: it is a country where everything is permitted except what it is expressly forbidden”. In this case, the tapping of telephone was lawful as “simply … there is nothing to make it unlawful”. In other words, the *discretion of power* was affirmed above *Role of Law*. This happened as: no *corpora of moral values* exist inside *English Constitution*. Thus, an *arbitrary* use of Power is not prevented.

The decision was appealed to the *European Court of Human Right*. The *Court* affirmed that: UK violated the *article 8* of the ECHR (*Malone versus United Kingdom*, 1984).
On the contrary, Dicey affirmed that *supremacy of law* “excludes the existence even of wide discretionary authority on the part of the government”. But, *English Legal History* proved this to be untrue!!

According to Jennings (1943), Dicey’s ideas derived from the *doctrine of laissez – faire*. In other words, Dicey described *his political choices* rather than *empirical facts* about *English Constitution*. Jennings (1943) observed that Dicey neglected completely: **both**, the existing wide *Discretional Powers* of the *Public Authorities* and *Government*; and, **and**, the *Unlimited Power* of the *Parliament*.

“Parliament … can pass what legislation it pleases. It is not limited by any written constitution. Its powers are not only wide, but unlimited.” (Jennings I., 1943).

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**Sovereignty of the Parliament versus Rule of Law**

The *principium* of *Sovereignty of the Parliament* prevails onto *Rule of Law* as there are not any *substantial principles* and/or *values* able to limit the former. All the attempts, which were made⁹, failed.

According to Heuston (1964), the *principium* of *Sovereignty of the Parliament* was developed “almost entirely by the work of Oxford men” such as: Hobbes; 

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⁹ *Exempli gratia*: Dicey (1902); Raz (1977); Allan (1993).
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Blackstone; Dicey. This *principium* states that: “what the parliament doth, no power on earth can undo” (Dicey, 1902).

Although Wilson (1979) recognized that *Rule of Law* does not limit the *Sovereignty of the Parliament*, he attempted to justify some limitations to Executive’s powers. But, Wilson (1979) failed in his attempt. *Exempli gratia*, the arguments are; contradictory; nebulous; rhetorical games. For instance, Wilson (1979) argued that the “arbitrary power … (of) the Executive is in the hands of the Parliament … If it clearly grants the Executive wide arbitrary power then the Executive has wide arbitrary power. … the principle of rule of law … justifies the principles developed by the courts that powers should only be used for the purpose for which they have been granted”\(^{10}\).

What does all this mean?

It means simply: *Executive* should comply with the *principle of formal validity*; and, *Courts* can verify if it happened. Nothing more! Nothing less!

\(^{10}\) Some of these principles quoted by Wilson (1979) are: “The power should be used for the purpose for which they were given”; “The power should be exercised by the person or body by whom they were intended to be exercised”; “The authority must be free to make a genuine exercise of any discretion which has been given to it”; “The authority in exercising its power should observe any procedures which have been expressly laid down in the statute or which the courts will imply into it”.

The Meaning of Rule of Law

This is as *English Law* lacks a *corpus* of *legal values* and *moral principles* able to bind the *arbitrary use* of Power.

*English Legal System*, indeed, is quite different from *Italian Legal System*. In the latter, the *Parliament* and the *Government* have not arbitrary *Powers*. Their Powers are limited by a *corpus* of *moral values* written in the *Constitution*. The *Constitutional Court* can *annul*, *invalidate* and *cancel*, all those *legal norms* that do not comply with *those constitutional principles*.

In U.S.A., on the contrary, each *Judge* can deny application to *norms* (*Acts* and *Statutes*) that are in contrast with *Constitution*\(^\text{11}\).

Only in these latters Nations, *Rule of Law* can limit the *arbitrary use* of *Power*. Indeed, *Power* cannot go beyond some *moral limitations* written in the *constitution*. This is as: first, *Rule of Law* affirms the *Supremacy of Law above the Power*; second, a *constitutional corpus* of *legal values* and *principles* binds *Power*.

This is not possible inside *English Legal System*. Although *Rule of Law* affirms the *Supremacy of Law above Power*, at the end, there is not any *constitutional corpus* of *legal values* and *principles* able to limit *Power*!!

\(^{11}\) The difference is: *Italian Constitutional Court* eliminates the unconstitutional *norm* from the *Legal System*; *American Judges* (USA) can ONLY *deny application* to *norms* (*Acts* and *Statutes*) that are unconstitutional for a singular case. But, they continue to exist inside the *Legal System*. 
Power can be limited only, and only if:

1) a corpus of moral values is written inside the Constitution (in other words, in the Social Contract);

2) Courts and Jurists (lawyers) are brave and able enough to defend those values against Power’s tendency to go beyond them;

3) There is a real division of Powers. Powers should be able to balance and limit each other.

English Legal System lacks all of them, as it is shown infra (below).

Second Principle

According to Dicey (1902), Rule of Law affirms the equality of every man in front of the Law. “Every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals”. In other words, Dicey affirmed: a) the existence of identical rules for everyone; b) the absence of special privileges. Actually, this principle is quite controversial. Alder (1989) affirmed to be a “ridiculous proposition” as Dicey’s statement has always been untrue in every time. The existence of different conditions and special privileges among people has always been part of the Very Nature of Every Government.
Moreover, if we consider the difference between *formal equality* and *substantial equality*, Dicey’s idea will be far ... far ... far more *untrue*. The *formal equality* is a pleasant and agreeable *declaration*. But, it is *void* and *useless* as much as it is agreeable! The *substantial equality* is just a *Utopia*. It has never ever existed in the World\textsuperscript{12}. *Exempli gratia*, the *article 3* of *Italian Constitution* affirms the *formal* and *substantial equality* among *Italian Citizens*. The *Republic* had the duty to remove any obstacle to this. Well, it is clearly evident that *substantial equality* does NOT exist even in Italy. So ... ... .

Nonetheless, Alder (1989) believes even the *formal equality* difficult to be realized at full circle.

*Third Principle*

According to Dicey (1902), the third principle is the absence of general principles. It means “... the constitution is pervaded by the rule of law on the ground that the general principles of the constitution (as for example the right to personal liberty, or the right of public meeting) are with us the result of judicial decisions determinating the rights of private persons in particular cases brought before the Courts; whereas

\textsuperscript{12} Nietzsche copes with the difference between *substantial* and *formal equality* (Epis L., 2015, *Nietzsche on Rule of Law and Democracy*).
under many foreign constitutions the security (such as it is) given to the rights of individuals results, or appears to result, from the general principles of constitution”.

According to Dicey (1902), a corpus of fundamental moral principles does not exist inside English Legal System. They are only “the consequence of the rights of individuals, as defined and enforced by the courts”.

In other words: on one side, he created a vicious circle; on the other side, he did not say anything of useful.

On one hand, indeed, everything is enforced by the Courts is Law. As a result, Courts have to enforce those individual rights defined and enforced by them(selves)!!!! (Vicious circle).

On the other hand, Courts have to enforce any act of the Parliament. In this latter case, the rights of individuals are only “what” the pro tempore Majority of the Parliament chooses they are!! Indeed, “no Parliament can bind its successors or be bound by its predecessors” (A. Beale, 1994).

All in all

Behind Dicey’s pleasant words, Rule of Law is nothing more than a principle of Formal Validity. English Legal History is clear. Dicey has attempted simply to use Rule of Law like a Horse of Troy to put inside the Legal System his political ideas.

The reason could be noble, but he chose the wrong way. He made Rule of Law: a nebulous concept; a set of pleasant words that mask the reality. In this way, Role of Law started to be applied in different manners. It makes the Legal System to be applied differently from person to person!!

ALDER

John Alder (1989) criticized the Dicey’s doctrine of the Rule of Law. He wrote: “His rule of law could not therefore be regarded as a statement about what British law is necessary like. It could be either a political statement as to what the law should be like, or a statement about what the law happened to be like at the time”.

According to Adler (1989), Rule of Law is a political idea. “The majority of modern lawyers would regard the rule of law as essentially a political or moral idea, although none the less important for that, since it affects the way the law is developed and applied”.

So..., we should give a look at the *political ideas* of two influential English lawyers: Raz and Allan!
RAZ AND ALLAN (University of Oxford versus University of Cambridge)

Raz (1979) and Allan (1993) are two of the most influential Lawyers in England, at the present time. Hence, we should examine their political idea.

As Dicey did, they gave to Role of Law some different meanings. They attempted to “re-define” Rule of Law as a set of Moral and Legal Principles. But, their attempts have leaded to create a contradictory and nebulous concept, as I told supra (above).

It is not a case that: everyday legal practice has refuted what they affirmed.

Their different views are expression of the Historical Rivalry between the two Universities.

RAZ

Raz (1979) attempted to challenge the “skeptic” view.

According to Raz, “rule of law is a political ideal which a legal system may lack or may possess to a greater or lesser degree”. From this idea, some “substantial” principles can be derived by Intuition\(^{13}\).

But, Raz’s theory is in contradiction with English Legal History and Legal Practice.

\(^{13}\)Intuition seems to be a characteristic of the University of Oxford’s actual Jurisprudence. Also Finnis, indeed, based all his work about Natural Law and Natural Rights on Intuition!
“All law should be prospective”. Are you sure? Do you remember “Gold Standard”?

One of the principles, which Raz got by Intuition, was: “All law should be prospective …”. Whereas this principle appears to be true inside most of the Legal Traditions (exempli gratia, Italian one), it is false inside English Legal System!!

English Parliament, for example, violates this “principle” in 1931 with “gold standard”. The Government ordered to the Bank of England to not exchange Notes into Gold. Then, the Parliament: both, created an Act, which made “the paper currency inconvertible”; and, ratified all the illegal actions done by the Government and the Bank of England before the Act (Jennings I. 1959). In English Tradition, Banks and Financial Matters have always been above Law!!

Also at the University of Cambridge, this principle is not followed at all. An example is given in the Appendix\textsuperscript{14}:

\textsuperscript{14} See Appendix, Does “Rule of Law” mean that “All law should be prospective” a là Raz? NO, NO, NO, and still NO!

Rarely have I seen a desperate case as You are! ... But ... wait a moment. Who is Raz? Here at Cambridge, we have never ever heard about Him. Here at Cambridge, we do not say that name!
“Law must be capable of guiding the behaviour of its subjects” & its Logic Inferences!

Raz tried to infer some logical consequences from his basic Intuition: “law must be capable of guiding the behaviour of its subjects”. But, these deductions are: according to the Formal Logic, invalid; according to the Logic of Value, a rhetorical game, a sophism. Nothing more! Nothing less!

First, Raz confused the Principium of Supremacy of Law with a judgment about Law’s Nature and Aim.

Second, Raz put together some ideas that he gathered from different historical experiences. Then, he told them to be a logic consequence of his basic “Intuition”!!

Next, Raz pretended to have used Formal Logic for inferring them. But, he could not. Law is a normative language. Formal Logic can be used only within descriptive language. The Logic of Value, on the contrary, can be used with normative language. But, the latter is just Rhetoric, Sophists’ Art, for supporting some argumenta instead of some others. It does not allow inferring anything of true or valid!!

In other words, Raz forgot the Law of Hume. Yet, Hume was Scottish. So, it is normal that Oxford men do not like him!


**Law of Hume; Formal Logic and Logic of Values**

The *Law of Hume* is an important criterium of *demarcation* between *empirical facts* and *not empirical facts*. The *Law of Hume* defines the boundaries *between* the *Realm of Formal Logic* and the *Realm of Logic of Values*. Only in the former: *both*, the *statements* can be evaluated in terms of *true* and *false*; *and*, the *reasonings* in terms of *valid* and *invalid*. In the letter, none of them are possible.

This is as *everything* is just: a *political choice*; a *game of rhetoric*; a *sophism*; a decision made to defend some *interests* against others. The *Logic of Value*, or *New Rhetoric a là* Perelman, does NOT permit any control on: *both*, validity; *and*, truth; … about what it is said.

So, Raz cannot apply the *formal logic* within the *normative language*\(^{15}\)!!

As a result, he put inside to *Rule of Law* his Political ideas.

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\(^{15}\) There is only one case where it is possible. The *structure* of the *sentence* is a *syllogism*. The *main assumption* is given by the *Legal Norms*. The *second assumption* is given by the *Facts*. The *conclusion* is given by the *logic consequence* between these two *assumptions*. **Yet, this syllogism tells only: the formal structure of the sentence is logic.** It does NOT tell *anything* (at all) about the *content* of the two *assumptions*. Both of them can be *false* and *untrue*. Thus, a *logic conclusion* can be made by *false/invalid* assumptions.
All in all

Raz made several mistakes. They were so huge that: if students had made them, they would not have passed their exams!!

Soooo …,

… why has Raz’s theory been so influential?

It was only because he was a Lecture of the University of Oxford. Indeed, everybody, who supported his theory, was used to say: “ipse dixit”!; “ipse dixit”!; “ipse dixit”!

Interlude: Obiter Dictum (Social Psychology; Rousseau; Hobbes)

Social Psychology is something of exhilarant. Social Psychology is one of the few disciplines that are worth to be studied in Psychology. Social Psychology shows how the Worst of Human Behaviours is not the outcome of individual dispositions and/or traits, but the results of psychosocial mechanisms such as: conformism; social pressure (Asch S. E., 1951, 1955 a, 1995 b, 1956); compliance to Authority (Milgram S., 1963, 1965, 1974; Hofling C. K. et al. 1966; Brief et al. 1991; Brief et al. 1995); groupthink (Esser J. K., 1998; Esser J. K. and Lindoerfer J. S., 1989; Moorhead G. et al. 1991); effect of mere exposition (Zajonc R., 1968); social norms (Sherif M., 1935,
1936, 1937); social identity (Zimbardo, P. G. 1972, Prison’s Experiment); etc…; etc….

Truly, each individual is a genius (a real GENIUS), and “endless” GOOD a là Rousseau (Emile), until he/she is NOT corrupted by society. Society “transmutes” its members in “stupid beasts” (a là Hobbes)!! If the group’s stupidity is increased, the person’s foolishness and brutality are also increased!! So …, both Rousseau and Hobbes are right. Human beings born “endless good” in their natural state as Rousseau stated. Then, society makes them become “stupid beasts” as Hobbes (and even Rousseau) argued. But, Hobbes was wrong when he suggested his Leviathan. A central power (which: decreases individual rights and liberties; and, enhances social control) creates and enhances only brutality. It will increase social conflict and violence as it produces a permanent captivity. The Global Panopticon makes this be even stronger. Indeed, Hobbes’ ideas\(^\text{16}\) were developed in England under a Central Power. Hobbes had never known human beings in their Natural State, but he knew English people educate at the University of Oxford!! The brutal and violent human beings, who he knew, were the result of that kind of society and education. Hobbes wanted to ingratiate himself with the existing Central Power, when he wrote the Leviathan.

\(^{16}\) Exempli gratia: Homo Homini Lupus est; Bellum omnium contra omnes; etc….
The groupthink, the conformism, the social pressure, the compliance to Authority, the social identity, leads people to act irrationally. Under those factors, people lose their natural and original ability to act like intelligent and moral beings.

Indeed, the Psychosocial Mechanisms tend to prevail onto Individual’s REASON and MORALITY\textsuperscript{17}. Rarely are individuals an exception! The Academic World, indeed, is moved by those mechanisms. The same psychologists, who pretend to know them, are determined more than others by them\textsuperscript{18}! Psychologists do not help individual freedom and determination, but social homologation. This is a fact. We should not be surprised that a recent experiment has found people to be more inclined to compliance to Authority than they were at Milgram’s time. But, this is very dangerous. As History taught and proved, all the Worst Things, which happened in the Human History, happened when the compliance to Authority prevailed onto individual reasoning and determination.

\textsuperscript{17} The present writer studied plenty of these phenomena mainly among: Psychologists; Legal and Academic Contexts; Neighbour’s relations; Group’s dynamics.

\textsuperscript{18} Actually, psychologists are the worst of all. They are so obsessed to appear normal, that they tend always to:

1) comply with Authority’s Requests (it does not matter how much they are illegitimate, illegal and/or amoral);

2) Homologate them(selves) to the groupthink;

3) Etc… .

They consider mentally ill, whoever acts outside their Normal Distributions. Thus, they enslave themselves inside the Normal Distributions they created. Then, they attempt to enslave all the rest of people inside their Normal Distributions!! At the end, they are both prisoners and gaoler of a New Tyranny: the theocracy of the idol Homologation. Like Procrustes, they cut out everything they believe to be outside the standards they give!
The Meaning of Rule of Law

At the end, the *psychosocial mechanisms* have to be considered for studying any *Social and Psychological Science* and *Construct*, as they work: *both, intra* the *experts’ group*; and, *infra* the *experts’ group*. *Psychosocial mechanisms* are the *deus ex machina*.

*An Example of Psychosocial Mechanisms in Legal Setting*

During a *Civil hearing*, a *Judge* invented a *regulation* that did not exist. He was not crazy. He wanted: *both*, to state his power; and, *to taste the ability of lawyers to defend legality*. He took the *Code of Civil Procedure* and he pretended to read a *regulation*. But, he invented one completely.

At the hearing, twenty *lawyers* (more or less) were present for different reasons. None of them recognized the mistake. Only one person (who was NOT a Lawyer, yet\(^{19}\)) was able to recognize that the *Judge* was inventing the *regulation*! He took the *Code* and started to read the *real one*, meanwhile all the rest of the lawyers continued to believe at the *inexistent regulation* that the *Judge* invented\(^{20}\)! It was extremely amazing to see them!! After the mistake was clarified, some of the *expert Lawyers*

\(^{19}\) And, then who chose to not become like them!

\(^{20}\) This shows how much strong *social mechanisms* and *Authority obedience* are.

People tend to follow *uncritically*: *Authority*; and *Majority!!!!!

But, … remember the *lemmings*! Remember the *lemmings*! Remember the *lemmings* before following the *Majority!!!!!
continued to believe in the inexistence regulation!! Outside the Court’s room, they argued that maybe it was not on the Code, but in some other Act!?!?!?

**Back to Raz …**

To sum up, the success of Raz’s theory cannot be explained by legal reasons. But, it can be elucidated by those psychosocial mechanisms, I told supra (above). People believed in Raz’s theory as he was a Lecturer of the University of Oxford. It was enough for them. It was not a matter that his theory was nonsense inside the English Legal Tradition!!

**Paine versus Burke: General Will and Historical Experiences**

*English Legal System*, indeed, is not based: either, on ontological principles (a là Natural Law); or, General Will (a là Paine). It is based on historical rights (a là Burke). The latters have been created by, and reflect the, pro tempore relations of Power among people and social strata / classes.

The General Will a là Paine, indeed, requests a Social Contract. In other words, the Social Contract is the Written Constitution of a Nation. Whereas most of the Modern Legal Systems are based on a Written Constitution, English Legal System is NOT.

*English Legal System* is, in somehow, still based on Historical Rights a là Burke. This means people’s rights: both, do not come from any eternal ontological
principle; and, do not come from any social contract. But, people’s rights come from the pro tempore relations of power that are negotiated, continuously, inside the social conflict and dynamics.

For these reasons, the Westminster Parliament: both, has no limit; and, cannot be bound by its previous decisions.

It can enact what it pleases, as whatever it pleases to the Parliament represents and reflects the pro tempore rights and relations of power that have been determined by the eternal social conflict.

An example of a Legal System a là Burke.

An example of a Legal System a là Burke is given by the International Law.

After the Second World War, the International Tribunal of Nuremberg (1945) and Tokyo (1946) were created. They were an act of creation made by the Winners. These Tribunals did not comply: either, with the ongoing International Law; or, with existing eternal international principles. It was a mere act of creation, which was able to transmute the International Law: from, a Law for States a la’ Grotius; to, a Legal System that includes individuals like possible titular of rights and duties a la’ Kelsen. It was simply as: the pro tempore “most powerful” a là Trasimacus wanted it. Nothing more! Nothing less!
Before the International Tribunal of Nuremberg (1945) and Tokyo (1956), this has never happened.

For instance, after the First World War, this kind of proposal was considered impossible. France and England proposed the creation of a Tribunal for processing the German Imperator “… for supreme offence against international morality and sanctity of treaties” (Greppi E., 2001). But, according to the International Law, it was unmanageable as International Law refers only to States’ responsibilities. International law could not be applied to individuals (Orlando V., 1940).

Although the English Prime Minister Lloyd and his French colleague Clemenceau argued the existence of two legal precedencies (the cases of Luis XVI, in France; and Charles I, in England), the wisest and sagest Italian Prime Minister Orlando (an outstanding jurist) observed that both of them were a legal precedence only inside the National Law, but not inside the International Law.

They simply stated that a sovereign can be judged according to the National Law. But, they do not say that International Law can be applied directly onto individuals, even if they are organs of the State (such as: imperator).

**ALLAN**

Whereas Raz started from Intuition, Allan (1993) began from the “general living idea” (which English lawyers have about Rule of Law). According to Allan, English
Lawyers understand Rule of Law as “… an amalgam of standards, expectations, and aspirations”. Rule of Law “encompasses traditional ideas about individual liberty and natural justice, and, more generally, idea about the requirements of justice and fairness in relations between government and governed”.

Allan’s method was better than Raz’s method. As I explained supra (above), English Legal Tradition is not based onto ontological principles, but historical rights. Hence, Allan (who has been a finer lawyer than Raz) wanted to start from the pro tempore idea, which Lawyers had at that time, about Rule of Law.

Unfortunately, Rule of Law lost its deep meaning. What he found was a simulacre, as I explained supra (above).

*Rule of Law like: Substantial and Procedural Fairness; Natural Justice; Equality; Separation of Powers …*

According to Allan, Rule of Law expresses the: concept of Justice (substantial and procedural fairness); notion of Equality; Universal Suffrage; Separation of Power.

Actually, Allan failed to formulate a descriptive theory of the Rule of Law. Allan presented: either, his own Legal and Political idea about Rule of Law; or, the pro tempore more fashionable Legal and Political idea, which English Lawyers had about Rule of Law at that time.
But, Rule of Law is not what Allan said! The facts give opposite evidences.

For instance, Rule of Law does not include at all, the separation of Power.

**Separation of Power and English Legal System**

Rule of Law has nothing to do with Separation of Powers.

Separation of Power is a different “subject matter” (Conklin W. E., 1989). Moreover, it is NOT a principle of English constitutionalism.

Although one of the first philosophers, who formulated the doctrine of the Separation of Power, was John Locke in the 1690; the English Constitution has never ever recognized any real division of Powers, as it was done, exempli gratia, in France and/or in U.S.A. (Fenwick, 1993).

According to Fenwick (1993), the division of Powers inside the English Constitution does not exist. There is nothing of Montesquieu’s ideas.

The “judges can create law”.

“The ministers, who are member of executive, sit as members of the House of Commons which is a legislative body”.

“Lord Chancellor is a minister as well as head of the judiciary, and it is also a member of the House of Lords in its legislative capacity”.


“The executive can effectively determinate the legislative output of Parliament, theoretically a separate body”.

On the same advice, Schwartz B. (1955) stated “in Britain the doctrine of the separation of powers today means little more than an independent judiciary”.

*English constitutionalism* is based on the *fusion of Powers* rather than their separation (Barendt E., 1998). According to Bagehot W., “the efficient secret of English … constitution may be described as the close union, the nearly complete fusion, of the executive and legislative powers”.

This is confirmed by the *Report of the Committee on the Ministers’ Power* (1932): “In the English constitution there is not such thing as the absolute separation of legislative, executive, and juridical power; in practice it is inevitable that they should overlap”.

This is an *evidence* of how *everything, REAL EVERYTHING*, can be put inside a *simulacrum*!

**Universal Suffrage**

*Universal Suffrage* is not part of *Rule of Law* at all. It is a *political choice*, a *legal principle* and/or *value*, which is completely autonomous, independent, from *Rule of
Law. Otherwise, the same English Legal History has confuted Universal Suffrage to be an aspect of Rule of Law!!

Equality

I have already spoken about it, when I wrote about the second principle of Dicey.

Procedural and Substantial Fairness

Rule of Law does not include any procedural and substantial fairness as it is proved by English Legal History and Practice. On the contrary, it requests only the formal respect of the Law.

Indeed, when Rule of Law is not applied like Supremacy of the Law above Power, Rule of Law expresses the principle of Formal Validity. Nothing more! Nothing less!

But, it is more fashionable to tell people that English Legal Tradition overflow of Fairness (procedural and substantial fairness)! However, this is just political propaganda. They are empty words, behind which there is a simple principle of Formal Validity. That is all, Folks!!

Unfortunately, even this principle of Formal Validity is not respected most of the time. So, Rule of Law, at the end, loses all its meanings. Under the sermons about fairness, there is nothing.
The Meaning of Rule of Law

An example of this happened at the University of Cambridge, Faculty of Law. It happened where, the best Lawyers were. It is reported in the appendix.

It shows how Rule of Law is not applied: either, like formal validity; or, procedural and substantial fairness. But, it is applied as: both, Power can do whatever it pleases; and, Authority can and must use its powers to hide its own responsibilities.

Fairness is an “inexistent” reality. It exists as long as people are forced to be silent. It exists as long as all the abuses, unlawfulness and illegalities, are hidden.

RULE OF LAW LIKE PRINCIPLE OF FORMAL VALIDITY

To sum up, Rule of Law is the less evocative name of the principium of Supremacy of the Law above the Power.

It means two basic things.

First, it affirms that any Power to be legitimate have to be: both, given by Law; and, used complying with the procedures and porpoises that Law stated.

Second, for anyone in any position, it affirms a principle of formal validity. This principle requests people to obey and to apply Law.

In other words, Rule of Law is the basic command of a Legal System.
The \textit{principium} of the \textit{Sovereignty of the Parliament}, on the contrary, states that \textit{Parliament} is the only subject that it is above Law. This is why \textit{Parliament}: \textbf{both}, can create and change the \textit{Law}; \textbf{and}, cannot be bound by previous \textit{Law}.

These principles are not a \textit{tautology} as Raz (1977) affirmed. They are the two basic constituents of any \textit{modern Legal System}. Without them, the \textit{modern Legal Systems} cannot exist. Without them, only \textit{Ancient Regime} and \textit{despotism} exists.

I have to make a clarification. This principle makes a distinction between two situations. In the first one, a person has some kind of power onto other persons. In the second one, there is not the former condition. In the first case, it is allowed to do only what the Law allows to do. In the second case, it is allow doing everything, except what the Law denies.

\textbf{Replying to the critics about this idea of Rule of Law}

\textit{Rule of Law}, as I postulated, has been accused to be unable to distinguish \textbf{between} a \textit{despotic government} \textbf{and} a \textit{democratic one} (Turpin C., 1995; Raz 1977). These critics are unjustified and unfounded for the reasons I have explained \textit{supra} (above).

Actually, \textit{Rule of Law} can distinguish \textbf{between} a \textit{despotic government} \textbf{and} a \textit{democratic one}, \textbf{only, and only if}, it means \textit{Supremacy of the Law above Power}. Truly, the distinction \textbf{between} \textit{despotic governments} \textbf{and} \textit{democratic governments}
cannot be done by a concept of Rule of Law, which is reduced to be a nebulous and vague concept as some authors have done.

As I explained, it makes Rule of Law become a simulacre of its real meaning. It has two consequences: first, the attention is moved from Supremacy of Law above Power to something else; second, Rule of Law becomes a vague concept, an instrument of Legal Mystification a là Bentham. In the latter case, Rule of Law can be applied in different manners from case to case. At the end, a Despotic Government will be possible behind the appearance of a Democratic one!!

There is only one way to distinguish between despotic governments and democratic governments. The democratic governments need three elements:

1) Rule of Law applied like Supremacy of Law above Power;
2) a corpus of fundamental principles and values written inside a Constitution (Social Contract);
3) Judges, Lawyers and people, who are brave enough to defend those values against the tendency of Power to go beyond them.

Without these three conditions, there is only a despotic government. It could be more evident (overt) or more veiled (covert), but it remains a despotic government.

Although English constitution is “one of the first” (Boutmy E., 1891), it has not evolved into lex scripta. English Lawyers, instead of attempting to create a corpus of
legal values, have tried to put some of them inside Rule of Law. But, it was the wrong choice. It leads to create vague concepts as I have told.

On one hand, according to Jeffrey Jowell (2000), some authors attempted to transform Rule of Law in a principle of institutional morality, as it was the only instrument they had to: both, limit “the abuse of power”; and, force power to be fairly exercised.

On the other hand, English lawyers love ambiguous concepts, despite lex scripta\textsuperscript{21}. This is as: “Whoever hath an absolute authority to interpret any written or spoken laws, it is he who is truly the lawgiver, to all intents and purposes, and not the person who first spoke or wrote them” (Bishop Hoadly, 1717). Ambiguous concepts give Lawyers far more power to be free to interpret Law as they like. This allows Law to be applied in very different ways from case to case, as it was argued by Bentham. It is an instrument of Legal Mystification.

\textsuperscript{21} Latin for: written Law.
LAW’S MYSTIFICATION

Bentham described five instruments for mystifying Law. But, mystification is not only a legal issue. It is a common Social and Psychological Sciences affair.

Bentham’s five mystification instruments

The first instrument employs descriptive instead of normative statements. This allows full arbitrary power. Those statements become: for someone, compulsory commands; for someone else, not obligatory directives.

The second instrument uses wide and void concepts. They can be interpreted, from time to time, from person to person, as one likes.

The third instrument applies legal simulation. They make fiction become more important than facts.

The fourth instrument engages pseudo-descriptive statements. They are in their appearance descriptive, but they tend to lead people: conducts; and, beliefs.

The fifth instrument involves pseudo-technique language. It makes the discourse be incomprehensible for profane people.

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22 In particular, it is very common in Psychology. The present writer has studied plenty of cases of Mystification, which were done by Psychologists. Moreover, whereas Law is bound by facts, Psychology is not. Most of the things, psychologists say, are only their own fantasy! Psychology is only a game of interpretation. So, it is very easy for them to abuse of their power and position. See: Epis L. (2011/2015), De Nova Superstitione – Alcune Questioni sullo Status Epistemologico della Psicologia, Psicopatologia e Psicanalisi. Published in: www.lukae.it. See page “Psychology & Epistemology – Psicologia & Epistemologia”.
Rule of Law and Legal Mystification

Rule of Law had its own clear meaning. It expressed the principium of the Supremacy of the Law above the Power. Then, it was made a nebulous and void concept. In this way, its original meaning has been weakened. So, it has become an instrument of mystification since it began to be a nebulous concept.

Exempli gratia.

From one hand, people believe to live in a Legal System based on: procedural and substantial fairness; equality; and plenty of other noble principles.

On the other hand, they do not simply “exist”! They are NOT for everyone! They are applied in very different manners from case to case.
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