

The Uselessness of an Allo-Synthetic Concept: “Rule of Law” and “État de Droit” from a French Public Law Perspective

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Abstract. As a synthetic concept, the *État de droit* could designate those states guaranteeing predetermined principles corresponding to “the principles of the *État de droit*”. And even if not all principles are fully guaranteed, it is admissible anyway to consider either that a state is partially an *État de droit*, or an *État de droit* to a certain extent, or that a better guarantee of one of the principles could allow a lower guarantee of another one. The concept of *État de droit* would then have a material (and effective) existence and positivity in law. Unfortunately, neither the positive law nor the doctrine defines it precisely enough to make the identification of those “principles of the *État de droit*” easy. On the contrary, the positive law is either inexistent or contradictory and, in the latter case, it seems to make use of the notion not because of its content – whenever it has one – but because it appears like an expression summarizing the existence of other principles.

Keywords: Rule of law, *État de droit*, separation of powers, fundamental rights

1. INTRODUCTION

„Dagegen war es eine Illusion des Kolumbus, dass er einen neuen Seeweg nach Indien entdeckt habe. Der Anteil seines Wunsches an diesem Irrtum ist sehr deutlich.“¹

As Kelsen stated, the concept of “*État de droit*” – if this is indeed the translation of “*Rechtsstaat*” – might be a pleonasm.² To talk about “*État de droit*” could thus be a linguistic and legal mistake, because it refers to something that does not exist. Its use in legal doctrine or in positive legal statements could then represent an illusion: the desire to use a new word either for a new concept, which is actually an old one, or to define something apparently new (a legal category), but that actually already exists.

“Rule of law” and “*État de droit*” will be here studied only from and through a pure legal perspective and methodology. This means that the law is considered as “an order of human behaviour”,³ thus different from the other social orders (like the moral or religious ones) because of its coercive aspects.⁴ This implies some consequences like, first, the closure of the legal system: the law is a closed and organized system of norms, independent and different from other orders of rules.⁵ Second, the law regulates its own production, *i.e.* a norm is what another norm defines as a norm or, put differently, a norm is what fulfils the

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¹ Freud (1927): “It was an illusion for Columbus to think that he had discovered a new seaway to the Indies. The contribution of his desire to this mistake is very obvious.”

² Kelsen (1960) 314: “Considering the State as a legal order, each State is a Legal-State [Rechtsstaat], this word is a pleonasm”.

³ Kelsen (1949) 3.

⁴ On this point, see Kelsen (1949) 3–29 and Kelsen (1960) 25–71.

⁵ Kelsen (1960) 228–282.

conditions of validity set forth in another norm.⁶ Third, the study of legal concepts and rules implies such a study without any reference to external elements, *i.e.* phenomena not involved in a legal process. By using elements from other social orders, legal conclusions might be drawn from illegal premises, which is impossible because of the closure of the legal system.⁷

“Rule of law” and “*État de droit*” also have to be studied here from a French public law perspective. This could seem quite easy: in France, the concept should have a long history, given that it was introduced into the French legal system during the French Revolution in 1789 by the Declaration of Human and Citizen’s Rights’ article 16 (DHCR), stating that “Every society in which neither the guarantee of Rights is ensured, nor the separation of powers is determined, has no Constitution”. According to this article 16, a Constitution would thus have to, on the one hand, offer the citizens a guarantee of (fundamental) rights, ensuring that the actions of the State and its institutions are “ruled by the law” and, on the other hand, limit the powers thanks to the division of their exercise by different organs, which should offer, at least, a jurisdictional control. This article 16 being nowadays a full part of French positive constitutional law,⁸ we should conclude that the principle of the “Rule of law” is properly guaranteed and has been so for a long time in French law.

In any case, studying this concept and principle in French law, we face three difficulties: first, a paradox because the denial of the principle just after the French Revolution was based on the principle itself; second, the identification of the concept and the principle of “*État de droit*”; and third, its definition.

A kind of paradox: based on the principle of separation of powers, guaranteed by Article 16 DHCR, this last principle was questioned just after the Revolution by the prohibition, for the judicial power, to judge the Administration.⁹ This led to the consequence that the Administration had to judge its own actions: there was no independent judge able to review the Administration and Executive’s actions. This could be considered as a negation of the principle of “*État de droit*”, of the “State governed or ruled by law”.¹⁰

Identification of the “*État de droit*”: this difficulty should actually be considered as twofold. Firstly, a study of the French positive law soon reveals that “*État de droit*” is quite entirely absent in the French legal norms. It is neither in the Constitution, nor in any decree

⁶ Kelsen (1960) 196–209.

⁷ This is the reason why Kelsen has called its theory a “pure theory of law”, Kelsen (1960) 1 and Kelsen (1937) 231–241.

⁸ The Preamble of the current Constitution (“of the 5th Republic”) expressly refers to it and the *Conseil constitutionnel* admitted in 1971 that this reference implies the DHCR has full constitutional value.

⁹ See two statutes: 16th and 24th August 1790: “the judicial functions are distinct and will remain separate from the administrative functions for ever” and 16 fructidor An III (revolutionary calendar, corresponding to 2 September 1795): “Reiterated prohibition is delivered against the tribunals to review acts of the administration of any nature”. See also Van Lang (2005) 1760, Truchet (2005) 1767, Caillosse (2005) 1781.

¹⁰ According to a “general meaning” of the doctrine of the rule of law, one of the meanings of the latter is that “disputes as to the legality of acts of government are to be decided by judges who are independent of the executive”, Wade, Forsyth (2004) 21.

or executive order. We can find it only in one Statute and in three articles of Codes¹¹ and in one decision of the *Conseil constitutionnel* (the French constitutional court),¹² four decisions of the *Conseil d'État* (the French supreme court for administrative matters)¹³ and five decisions of the *Cour de cassation* (the French supreme court for civil and criminal matters).¹⁴ Alternatively, does the expression “*État de droit*” correspond to “Rule of law” and, in other words, is “*État de droit*” the exact translation of “Rule of law”? This question of translation leads to the question of the definition of the concept of “*État de droit*” (and even of the definition of “Rule of law”), which is the third difficulty.

What does “*État de droit*” exactly mean? There is no definition in French positive law (cf. second difficulty) and there are a lot of doctrinal definitions, often different from each other.¹⁵

Facing those three difficulties, the analysis of the French legal concept of “*État de droit*” might be more complex than it initially seems. Even if the expression is missing, the concept could exist but it is then possible to identify it only thanks to a precise definition. And this is another difficulty inherent in this expression: a lack of a precise definition (cf. difficulty no. 3). The “*État de droit*” remains then only an “allo-synthetic” concept, *i.e.* a concept synthesizing other concepts but of a variable content.¹⁶ The analysis of such a concept requires, first, to identify its definition (1) in order to focus, second, on its use in French public law (2).

¹¹ Article 1, *Loi d'orientation et de programmation relative à la politique de développement et de solidarité internationale*, 2014-773, 7th July 2014, *JORF* 8th July 2014 p. 11242: the French democracy's and international solidarity's politics ensure “the promotion of the values of the democracy and of the *État de droit*”; Article L. 741-4, *Code de l'entrée et du séjour des étrangers et du droit d'asile*: “a country is considered as [a safe country] if it ensures the respect of the principles of liberty, of democracy and of the *État de droit*, such as human rights and fundamental freedoms”; Article R. 311-22 of the same Code: “The civic education mentioned in the article L. 311-9 includes the presentation of the French institutions and of the values of the Republic, especially concerning the equality between men and women, the secular principle, the *État de droit*, the fundamental freedoms [...]”; annex Article after Article D. 122-3, *Code de l'éducation*: “Scholars must learn how to distinguish between the universal principles (the human rights), the rules of the *État de droit* (the statute [*loi*]) and social practices (the civility)”.

¹² Decision n. 89-261 DC, 28th July 1989.

¹³ CE 10th October 2014, n. 375474, T.; CE 4th march 2013, n. 356490; CE 16th July 2014, n. 360665; CE *Référé* 9th December 2005 n. 287777.

¹⁴ CCass Crim 26th November 2014, n. 13-81851; Crim. 11th March 2008, n. 07-82.484; Civ. 2^{ème} 21st April 2005, n. 04 10.953 and 17th February 2005, n. 03-20.679; Crim. 4th September 2002, n. 01-81.481. *Nota bene*: in this statistic study, all the decisions referring to the “*État de droit*” because they are quoting either the arguments of the parties or provision of positive law (such as the above-mentioned codified articles) have not been taken into account.

¹⁵ See Jouanjan (2003) 649–653.

¹⁶ With this neologism a “synthetic” concept is understood, *i.e.* a concept of which the content corresponds to a plurality of “things” (here: of normative principles), to their combination (*e.g.* the concept C corresponds to the combination of the principles X, Y and Z or $C = X + Y + Z$), and a concept of which the content is variable, *i.e.* it is not always referring to the same combination (*e.g.* the concept C corresponds to the combination of the principles X, Y and Z or to the combination of the principles V, W and Z or to the combination of the principles V, W and Y or even to the combination of the principles V, W, X, Y and Z: $C = X + Y + Z = V + W + Z = V + W + Y = V + W + X + Y + Z$). “Allo”, a word of ancient Greek origin, means “other” and thus suggests the idea of (a possibility of) “another synthesis”, *i.e.* a synthesis of a variable content.

2. THE IDENTIFICATION OF THE CONCEPT OF “*ÉTAT DE DROIT*”

The concept of “*État de droit*” is here studied from a French public law perspective because we have assumed that it is the translation of the one of “Rule of law”. This consideration remains however a presupposition, which needs to be verified, especially because the English concept is not always translated in the same way into French. Therefore, by the identification of the concept as it could be perceived in French positive law and by the French legal doctrine, we might be confronted with a double difficulty: its translation (2.1) as well as its definition (2.2).

2.1. The Translation of the Concept: “Rule of Law” and “*État de Droit*”

The concept of “Rule of law” could be considered as an abbreviated form of the expression of “a state ruled by (the) law”. Understood as such, it could, and even should, be translated into French as “*règne du droit*”, literally “the reign of the law”.¹⁷ Albert Venn Dicey was talking about “the rule or supremacy of law” understood as “the security given under the English constitution to the rights of individuals looked at from various points of view”.¹⁸ It has to be noted here that, in the traditional English expression, there is no use of the term “state”, like in the French or the German ones (and many others, all being actually a translation of the German term “*Rechtsstaat*”).¹⁹

Despite this, many official texts, such as international conventions written down officially in both languages, are translating “*État de droit*” into “Rule of law” and *vice versa*. One of the well-known examples is the European Union law: the Preamble and articles 2 and 21 of the Treaty on European Union and the Preamble of the Charter of Fundamental Rights refer to the “*État de droit*” in the French version whereas the “Rule of law” in the English one. The same is true of the United Nations.²⁰

There is however one notable exception: the Council of Europe and the European Convention for the Protection of Human Rights and Fundamental Freedoms. In the Preamble of the latter, the English expression “rule of law” is translated into French by “*prééminence du droit*” (literally, “pre-eminence – or supremacy – of the law”).²¹ According to this, use of the expression of “Rule of law” in the decisions of the European Court on Human Rights is translated by “*prééminence du droit*” when “*État de droit*” is translated either by “law-governed State” or by “State based on the rule of law” or by “state subject to the rule of law”.²²

¹⁷ Heuschling (2002) 165–175 and Heuschling (2009); see also Souvignet (2012).

¹⁸ Dicey (1959) 184. Dicey considered the rule of law as a characteristic of the English constitution through three meanings, Dicey (1959) 187–203.

¹⁹ Luc Heuschling (2009) 44.

²⁰ See the Report of the Secretary-General on the Rule of law and Transitional Justice in Conflict and Post-Conflict societies, S/2004/616: “for the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards”, where “rule of law” is translated into “*État de droit*” in the French official version.

²¹ The same is true of the Preamble of the Statute of the Council of Europe.

²² Report by Erik Jurgens, *L’expression “principle of Rule of law”*, 2nd July 2007, doc. 11343, Parliamentary Assembly, Council of Europe, Annex I; on those questions, see also Souvignet (2012).

A convergence or a divergence of translations can only be established thanks to the conceptual definition of the translated expression. This might then be quite difficult because of a lack of convergence on the conceptual definitions of both “*État de droit*” and “Rule of law”.²³ In any case, if we agree on a “basic core notion” of the latter, meaning that “all persons must be subject to law, and government must take place according to law”,²⁴ the conceptual definition of “*État de droit*” we can find should permit a correspondence between the French and the English expressions.

2.2. The Search for a Useful Definition of the Concept: a Synthetic Concept

According to the scholarship here joined, the one of the “normativism”, the conceptualization of a specific concept of “*État de droit*” should be impossible: it is a pleonasm. Indeed, if we agree with the definition of the State as a legal order, there is then no place for a dualism between law and State. This definition is given by Kelsen for a theoretical reason: “a number of individuals form a community only because a normative order regulates their mutual behaviour. The community [...] consists in nothing but the normative order regulating the mutual behaviour of the individuals. The term ‘community’ designates only the fact that the mutual behaviour of certain individuals is regulated by a normative order. [...] Since we have no reason to assume that there exist two different normative orders, the order of the State and its legal order, we must admit that the community we call ‘State’ is ‘its’ legal order”.²⁵

The State is thus a legal order, which would imply that the public authorities (the authorities of the State, its “organs”) exist only through a normative statement: an authority has no “sociological” existence but only a normative one, and it “exists” only through these norms stating which are its competences, *i.e.* what kind of norms this authority can enact, according to which procedure. Any authority, any State is so ruled by the law, any State is an “*État de droit*”.

This is the reason why this concept has to be considered as a pleonasm. Nevertheless, a pleonasm can either be a grammatical and then, in this case, a conceptual mistake, or constitute an insistence. Considered as a grammatical and conceptual mistake, the concept is useless: the State (“*État*”) is nothing else but the law (“*droit*”) and the concept of “*État*” exactly corresponds to the one of “*État de droit*”. But considered as an insistence, the concept may have another significance. This leads to the distinction between the formal and the material definition of the concept: when the first corresponds to the idea of the legal regulation of any public action and is then useless, corresponding to the concept of “*État*”, the second implies “something more” because it suggests that some States could be something other than an “*État de droit*”.²⁶ *The pleonastic concept considered as an insistence would then imply that there is a category of States which we can qualify as “États de droit”, assuming some material characteristics, distinguishing it from other categories of States without these characteristics.*²⁷

We then have to identify these characteristics. The doctrine agrees on a plurality of principles, which might be included in the concept of “*État de droit*”: the concept should

²³ Concerning the “Rule of law”, see Pollard, Parpworth, Hughes, (2007) 42–43.

²⁴ Pollard, Parpworth, Hughes, (2007) 42–43.

²⁵ Kelsen (1949) 182.

²⁶ On this distinction, see Jouanjan (2003) 649–653; Pfersmann (2001) 66–78.

²⁷ Pfersmann (2001) 59–61.

then be considered as a synthetic one, corresponding to the synthesis of others. Some authors maintain that “*État de droit*” refers to a certain conception of the State including the separation of powers and the legal limitation of public action, democratic legitimacy, the guarantee of fundamental rights and freedoms, the judicial and the constitutional review.²⁸ Others protest that it also includes the principles of legality, proportionality, predictability, some procedural guarantees, the right to a fair trial, *etc.*²⁹

So considered, the concept could be useful: a State could be qualified as an “État de droit” if pre-determined characteristics are present. If they are, the State is an “État de droit”; if they are not, it is not. But things are not so simple because, as soon as a concept refers to a plurality of others and is defined as the synthesis of them, we could then imagine that not all, but only some, of those pre-determined characteristics are effectively guaranteed.³⁰ Does this imply that the concept itself is then lacking? Or, on the contrary, that its content is variable? Its use in positive law can offer us the answer.

3. THE USE OF THE CONCEPT OF “*ÉTAT DE DROIT*” IN FRENCH (PUBLIC) LAW

As noted above, French positive law does not mention the “*État de droit*”, but a lack of the term does not necessarily mean a lack of the concept. In any case, an analysis of the Constitutional Council’s decisions reveals that the concept is not guaranteed at the constitutional level either. Nevertheless, this (non-)use in positive law (3.1) is counterbalanced by abuse of it by the authors and (3.2), revealing the lack of clarity of the conceptual meaning of this concept.

3.1. The (Non-)Use in Positive Law

Even if there are only four legal positive norms and ten decisions of the Supreme Courts³¹ mentioning the “*État de droit*”,³² *the concept itself or its content might be guaranteed without the presence of the terms. This is the case, for example, in Article 20 of the German Basic Law, where there is no mention of any “Rechtsstaat”, although the Constitutional Court holds that “many principles are listed in article 20 BL, though not the ‘principle of the Rechtsstaat’, but only some precise elements of this principle of Rechtsstaat”.*³³ This is also the case with the principle of human dignity, which the French Constitution does not expressly mention at all, but the Constitutional Council considered to be implicitly listed in the Preamble of the 1946 Constitution to which the current 1958 Constitution is referring.³⁴

²⁸ On these points, see Chevallier (2010) especially 51–58, 77–84, 96–110.

²⁹ Jouanjan (2003) 649, 650. In German law, Katharina Sobota has identified 25 possible significations of the *Rechtsstaat*, Sobota (1997) 27–253, themselves sub-divided into 142 possible elements.

³⁰ Pfersmann (2001) 60.

³¹ By “Supreme Courts” we understand the *Conseil constitutionnel*, *Cour de cassation* and *Conseil d’État*; on their competences: see above, Introduction. In this statistic, the decisions referring to “*État de droit*” through a quotation of one of the three legal positive norms or of one the litigants’ arguments are excluded.

³² See above, Introduction, difficulty No. 2.

³³ 15 December 1970, 2 BvF 1/69, 2 BvR 629/68 et 308/69, BVerfGE 30, 1 [24].

³⁴ Decision No. 94-343/344 DC, 27 July 1994.

But this is not the case with the “*État de droit*”. The Constitutional Council seems to refuse to make it correspond to any constitutional principles, like those guaranteed in Article 16 DHCR (on this article: see above, Introduction: the guarantee of (fundamental) rights and the principle of the separation of powers).³⁵ If, for example, the right to a fair trial derives from this article,³⁶ the Council considered that, when the plaintiffs were arguing, a statute would be “the negation of the *État de droit*” and of some of the principles it implies, and that such arguments are not based on the violation of constitutional principles. This should then mean that those principles corresponding to the *État de droit* are not constitutional ones.

Alternatively, the judicial or administrative judge refers to the notion of “*État de droit*” only in order to argue that this “*État de droit*” implies something “more” or, in other words, because France is actually such an “*État de droit*”, some rights have to be guaranteed. The criminal judge thus states that, in an *État de droit*, the rights of the defence and some minimal procedural guarantees have to be preserved, from which statement we could infer that the *État de droit* implies the guarantee of those principles.³⁷ But in that case, the principles of the *État de droit* should then be constitutional ones – because those rights of the defence and minimal procedural guarantees are on a constitutional level³⁸ – which they are not, according to the Constitutional Council’s decision mentioned above. This is very confusing and not really helpful for the definition of the concept of *État de droit* and the determination of its possible content.

We should then finally ask: does the use of the notion and the existence of the concept imply the existence of those other principles or does the existence of those principles imply the use of the notion? This is an important question because, in the first case, the concept of the *État de droit* would have a real content and an effective positivity in law; in the second case, it is nothing except what it refers to and is, eventually, just an expression. Its use by the doctrine could help us to find an answer.

3.2. The (Ab)Use by the Doctrine

As a synthetic concept, the *État de droit* could be useful: it designates those states guaranteeing predetermined principles corresponding to “the principles of the *État de droit*”. And even if not all principles are fully guaranteed, it is admissible anyway to consider either that a state is partially an *État de droit*, or an *État de droit* to a certain extent, or that a better guarantee of one of the principles could allow a lower guarantee of another one. The concept of *État de droit* would then have a material (and effective) existence and positivity in law.

Unfortunately, neither the positive law – as shown above – nor the doctrine defines it precisely enough to make the identification of those “principles of the *État de droit*” easy. On the contrary, the positive law is either inexistent or contradictory and, in the latter case, it seems to make use of the notion not because of its content – whenever it has one – but because it appears like an expression summarizing the existence of other principles. But it

³⁵ Decision No. 89-261 DC, 28 July 1989.

³⁶ Decision No. 2004-510 DC, 20 January 2005.

³⁷ Crim. 4th September 2002, n. 01-81.481.

³⁸ Decisions No. 76-70 DC, 2 December 1976, 86-224, 23 January 1987, 93-325 DC, 12 and 13 August 1993.

is then difficult to build a coherent and useful definition of it, of its possible content and of its legal quality because it does not seem to refer always to the same specific content.

The situation is analogous concerning the use of the doctrine, not because of a non-use (or an insufficient and contradictive use), like in positive law, but because of an abuse: without giving any (precise) definition, many authors state that this principle confirms the existence of an *État de droit* in France or the guarantee of this other principle reinforces the guarantee of the *État de droit*, etc.³⁹ *It finally appears to be a (quite) impossible and useless task to summarize all the uses of the notion and all the principles it might contain. Some authors, who have done so, or at least tried, have stated that it is a concept of evolving outlines.⁴⁰ Its content is then not always the same and it varies from time to time: this is the reason why it as an allo-synthetic concept, a concept of a various and unstable content and, for this reason, a useless concept because of its imprecision.*

We should finally consider one last question: is it possible to reduce its content to those core principles that are absolutely necessary to qualify a legal order as an État de droit? These principles could then be (1) the legal limitation of any public action (and the conformity to the law), (2) the guarantee of the fundamental rights and (3) a certain degree of separation of powers implying in particular the existence of a separate and independent (judicial) control. Nevertheless, some arguments can be found against this.

First, it has already been shown that such a legal limitation of the public action only corresponds to the positivity of the law itself and its existence. Here, *État de droit* refers only to *État* or to *droit* because *État* and *droit* are identical. Second, the rare norms of French positive law mentioning the “*État de droit*” also mention the fundamental rights, implying that there should be a difference between those two elements.⁴¹ Third, the principle of the separation of powers and/or the existence of an independent judge has its own existence and does not need to be included in another one. The possible pedagogic argument that might be invoked to justify the use of *État de droit* as a synthetic concept is here unjustified because it is unnecessary.

To conclude, either “*État de droit*” is a synthetic concept with no real interesting content (because it is either imprecise or quite empty), or it is an allo-synthetic one, useless because of the imprecision and variability of its content. In any case, existing only through its variable and unidentified (or unidentifiable, as we should say) contents, such a concept remains what it originally was: just an illusion.

³⁹ There are so many bibliographical references that it would be both useless and impossible to report them all here. An interesting analysis has been done by Professor Chevallier, *État de droit*. Among others (ordered alphabetically), for an approach of the “*État de droit*” as a very diversified and variable concept, see also Chaltiel (2009) 3–8 (the cancellation of provisions without any link to the topic of a statute makes the latter more intelligible and guarantees the “*État de droit*”); Hanicotte (2010) 9–14 (no definition of “*État de droit*”, just a distinction between “*État de droit*” and “*État policier*”); Herrera (2009) 179–199 (existence of a “social *État de droit*”); Lafaille (2010) 771–787 (principle of secularity considered as an element of the “*État de droit*”); Nivard (2010) 7–12 (association of the principle of legal security to the “*État de droit*”). Articles on the introduction of the new procedure of “*question prioritaire de constitutionnalité*”, i.e. the new possibility for litigants to question the constitutionality of statutes, as a reinforcement of the “*État de droit*” has not been taken into account.

⁴⁰ Carpano (2005) 24; see also Chevallier (2010) 10, 116 and Heuschling (2009) 54–55.

⁴¹ Article L. 741-4 *Code de l'entrée et du séjour des étrangers et du droit d'asile*: see above.

LITERATURE

- Caillosse, J., 'Les justifications du maintien actuel du dualisme juridictionnel' (2005) 32 AJDA 1781–1786.
- Carpano, É., *État de droit et droits européens. L'évolution du modèle de l'État de droit dans le cadre de l'europeanisation des systèmes juridiques* (L'Harmattan 2005).
- Chaltiel, F., 'La censure des cavaliers législatifs par le Conseil constitutionnel' Les Petites Affiches 216 (2009) 3–8.
- Chevallier, J., *État de droit* (Lextenso 2010).
- Dicey, A. V., *Introduction to the study of the law of the Constitution* (Macmillan St. Martin's Press 1959).
- Freud, S., *Die Zukunft einer Illusion* (Internationaler Psychoanalytischer Verlag 1927).
- Hanicotte, R., 'Les apéros géants sont-ils solubles dans l'État de droit?' (2010) 161 Gazette du Palais 9–14.
- Herrera, C. M., 'La pensée constitutionnelle du social' (2009) 48 Droits 179–199.
- Heuschling, L., *État de droit, Rechtsstaat, Rule of Law* (Daloz 2002).
- Heuschling, L., 'Le regard d'un comparatiste: l'État de droit dans et au-delà des cultures juridiques nationales' in Société française de droit international (ed), *L'État de droit en droit international* (Pédone 2009) 41–55.
- Jouanjan, O., 'État de droit' in D Alland and S Rials (eds), *Dictionnaire de la culture juridique* (PUF 2003) 649–653.
- Jurgens, E., 'L'expression "principle of Rule of law"' (2007) 11343 Parliamentary Assembly, Council of Europe, Annex I.
- Kelsen, H., *General theory of law and state* (Harvard University Press 1949).
- Kelsen, H., *Reine Rechtslehre* (Deuticke 1960).
- Kelsen, H., 'The function of the pure theory of law' in *Law. A Century of Progress 1835-1935. Contributions in celebration of the 100th anniversary of the founding of the school of law of New York University* (New York University Press 1937) 231–241.
- Lafaille, F., 'L'identité catholique de l'Italie est-elle soluble dans l'État de droit constitutionnel (national et européen)?' (2010) 3 Revue du droit public 771–787.
- Nivard, C., 'L'ambivalence du traitement jurisprudentiel de la sécurité juridique' (2010) 2 Droit administratif 7–12.
- Pfersmann, O., 'Prolégomènes pour une théorie normativiste de l'État de droit' in O Jouanjan (ed), *Figures de l'État de droit. Le Rechtsstaat dans l'histoire intellectuelle et constitutionnelle de l'Allemagne* (Presses universitaires de Strasbourg 2001) 53–78.
- Pollard, D., Parpworth, N., Hughes, D., *Constitutional and Administrative Law. Text with materials* (Oxford University Press 2007).
- Sobota, K., *Das Prinzip Rechtsstaat* (Mohr Siebeck 1997).
- Souvignet, X., *La prééminence du droit dans le droit de la Convention européenne des droits de l'homme* (Bruylant 2012).
- Truchet, D., 'Plaidoyer pour une cause perdue: la fin du dualisme juridictionnel' (2005) 32 AJDA 1767–1769.
- Van Lang, A., 'Le dualisme juridictionnel en France: une question toujours d'actualité' (2005) 32 AJDA 1760–1766.
- Wade, H.W.R., Forsyth, C.F., *Administrative Law* (Oxford University Press 2004).