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The Rule of Law in the Context of Anglo-American Jurisprudence

In my paper I would like to focus on a question of interpretation of the concept of the Rule of Law. I would like to present and critically assess views and theories raised by Anglo-American jurists like Richard Epstein, Joseph Raz, Robert Barro – and especially of Jeremy Waldron. It seems that the jurisprudence of common law tradition perceives the notion of Rule of Law differently than how the notion of *Rechtstaat* (perhaps translatable as “legal state”) is perceived in civil law tradition. Rule of Law is usually argued in connection to protection of property rights in opposition to the state regulation. There is, therefore, a substantive economical aspect in thinking about the Rule of Law in Anglo-American jurisprudence. In continental legal thinking *Rechtstaat* definitely manifests in the protection of property, but it is more of a consequence of application of the principles of *Rechtstaat* rather than being a characteristic of the *Rechtstaat*.

My paper will be a critical evaluation and comparison of both concepts. I want to bring the concept of *Rechtstaat* to contrast with the term Rule of Law. To do so, I will introduce defining points of *Rechtstaat*, explained on the view held by Gustav Radbruch. The merit of my paper will be a guideline on how to use those two terms. I want to answer a question of what are the commonalities and what are the differences. I also want to provide historical reasons for why the two notions are different. I think that those reasons can be explained by the different functioning and priorities of common law and the civil law systems.