

**ABSTRACT: KEYNOTE ADDRESS BY PROF. DR. ANGELIKA NUßBERGER,
COLOGNE UNIVERSITY, ON THE DIFFERENCES BETWEEN THE GERMAN
TERM “RECHTSSTAAT” AND THE IDEA OF “RULE OF LAW”**

**How does the German term “Rechtsstaat” differ from the English term
“rule of law”?**

Both terms have to be read within their cultural and historical contexts, who have developed and shaped different understandings of the “rule of law”. The German term "Rechtsstaat" dates back to Robert von Mohl (1799-1875) and is closely linked to the idea, that the state and the law must form a unity. In his perception of the rule of law, the state is legally characterized and responsible to provide accurate law procedures and to ensure, that forms are followed to eventually lead to material justice. One could say, that in the 19th century, the term “rule of law” assumed that the right form of law would protect its content. This was called into question during the national socialist rule in Germany, when forms were filled with frightening contents. This is where the need for a correction of the understanding of the rule of law comes in. While the form of the rule of law was kept, it was hollowed out. After the end of World War II and with the founding of Constitutional Law, the idea of a substantive constitutional state was developed, for which fundamental rights, internal safeguards and human dignity are of central importance.

The genesis of the "rule of law" or common law is a different story, starting with the courts, which successively developed individual rules from one verdict and decision to the next. Hence, the idea of the rule of law is not associated with the state itself.

Different origins but shared values

Although the origins of the terms and their histories are different, the contents and values they represent are not, especially if compared in the present. Fundamental rights, the idea that human dignity, equality, and freedom are worth protecting, are convictions, that are equally contained in both concepts, just as the separation of powers in the state, access to justice, a fair trial and the independence of the judiciary.

The Venice Convention, which works to define European standards, has drafted a Rule of Law checklist, in which it sets out individual criteria for determining whether a state complies with the items on the list. Here it has found a compromise in terms of content that contains the independence of the judiciary and separation of powers, as well as the protection of fundamental rights.