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Understanding Sweden and China from a legal historical, political and economic perspective – a brief overview

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economic perspective – a brief overview*

Abstract

The purpose of this article is to give a brief background orientation to the legal histories, political structures and economies of Sweden and China. The topics under analysis are often used to explain identified similarities and differences in comparative research. In addition, the topics constitute parts of the legal culture of the two countries. Similarities and differences between the two countries are highlighted throughout the article. A major difference between the two countries is the underlying legal school of thoughts – the law-state thinking (rule of law) and Confucianism. A dogmatic and to some extent comparative method is used. The article can be used as a starting point for scholars who are interested in the two countries and who are interested in comparative research.

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1 Introduction – the topic, research gap and purpose*

When conducting comparative legal research¹ with the aim to explain or understand the legal system of a foreign jurisdiction, a few factors are often used to explain the identified similarities and differences. The most common are history, geography, the economic system, the political system, and ideologies and religion.² To these factors, I would like to add legal tradition and legal culture. These two concepts mean various things to various scholars.³ Legal traditions, on one hand, are often connected to the historical explanations or underpinnings of modern law.⁴ Legal culture, on the other hand, refers to factors that are mainly outside the formal legal system (surface layer) but still are closely connected to and influence the legal system (subsurface layer).⁵ Examples from the sub-surface layer are different legal principles and theories such as legitimacy, basic ideologies, infrastructure, the role of the lawyer, the ways to

* Financial support for this research has been granted by Torsten Söderberg Foundation (R13/18) and the research foundation Center of Tax Law in Uppsala.

¹ For an introduction see, for example, Konrad Zweigert and Heinz Kötz, *An Introduction to Comparative Law* (3rd edn, Oxford University Press 1998); Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (online publication Sept 2012); H. Patrick Glenn, *Legal Traditions of the World* (5th edn, Oxford University Press 2014); Jaakko Husa, *A New Introduction to Comparative Law* (Bloomsbury 2015). On the importance of the purpose of the study, see Kim Brooks, 'A Hitchhiker's Guide to Comparative Tax Scholarship' (2020) 24(1) Florida Tax Review.

² See, for example, Michael Bogdan, *Komparativ Rättskunskap* (Norstedts Juridik 2003) 64–7; Husa (n 1) 157–181.

³ Roger Cotterrell, 'Comparative Law and Legal Culture' in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (online publication Sept 2012) (n 1) 710–730; Michael A. Livingston, *Tax and Culture – Convergence, Divergence, and the Future of Tax Law* (Cambridge 2020).

⁴ Thomas Duve, 'Legal Traditions: A Dialogue Between Comparative Law and Comparative Legal History' (2018) 6(1) Comparative Legal History 15–33.

⁵ For an introduction see, for example, Konrad Zweigert and Heinz Kötz, *An Introduction to Comparative Law* (3rd edn, Oxford University Press 1998); Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (online publication Sept 2012); H. Patrick Glenn, *Legal Traditions of the World* (5th edn, Oxford University Press 2014); Jaakko Husa, *A New Introduction to Comparative Law* (Bloomsbury 2015). On the importance of the purpose of the study, see Kim Brooks, 'A Hitchhiker's Guide to Comparative Tax Scholarship' (2020) 24(1) Florida Tax Review.

solve conflicts and so forth.⁶ In a wider context, legal culture can also include legal history, economy, religion and politics.⁷ Legal traditions and legal culture can be seen as closely connected, since ‘the legal tradition relates the legal system to the culture of which it is a partial expression. It puts the legal system into cultural perspective’.⁸ Some scholars even see them as synonymous. In this article, the focus is on the wider parts of legal culture (legal history, politics and economy). Legal tradition is regarded as a part of legal history. In forthcoming publications the underlying principles, the infrastructure of the legal system and so on will be analysed.

The Kingdom of Sweden and the People’s Republic of China (PRC) are two very different countries, almost 6400 kilometres apart. Why would anyone study and compare these two countries from a legal perspective? In research from the 1970s it is even held that it is impossible to compare socialist law (China) to western law (Sweden), or in other words, to conduct cross-cultural comparisons.⁹ However, in recent years this view has changed.¹⁰ By selecting two countries from two different legal families, two different legal cultures will be analysed and to some extent (cross-culturally) compared.¹¹

Sweden’s legal relations with China date back to the eighteenth century. Still today, China is an important business and trading partner to Sweden,¹² which makes the choice of countries legitimate, since several different legal situations arise between the two countries. Moreover, China’s growing influence in the world pro-

⁶ Kjell Å. Modéer, ‘Optimala rättsliga kulturer?’ (1999/00) JT (1) 84–85.

⁷ Bogdan (n 2) 52–55; Mark van Hoecke and Mark Warrington ‘Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law’ (1999) 47 Int’l & Comp. L.Q. 495 at 513–516; Cotterrell (n 3).

⁸ Duve (n 4) 21, with reference to Merryman’s work. See Glenn (n 1) 3 ff. for another view.

⁹ van Hoecke and Warrington (n 7) 508; Bogdan (n 2) 60, with references.

¹⁰ Bogdan (n 2) 60–63; Husa (n 1) 162.

¹¹ In legal doctrine, different legal families have been identified. Regardless of the differences in names, China (Oriental, Asian) and Sweden (Western, Continental Europe, Nordic) end up in different families; see Zweigert and Kötz (n 1); van Hoecke and Warrington (n 7) 532–536; Glenn (n 1). Furthermore, Mattei has introduced legal patterns as a means for macro-comparisons instead of legal families. See Ugo Mattei, ‘Three Patterns of Law: Taxonomy and Change in the World’s Legal Systems’ (1997) 45 American Journal of Comparative Law, 16–44.

¹² China is the 6th most important country regarding export of goods from Sweden; see statistics at www.scb.se, ‘Export till våra 30 största handelspartner’ (27 Nov. 2020).

vides new opportunities and challenges. To enhance these, further knowledge about China has been requested, especially from a Swedish but also from an EU perspective.¹³

This article falls within the scope of a bigger project, *Income Taxes and Social Security Contributions in Cross-border Situations*, with the overall purpose to identify legal problems and propose solutions to the mismatches that exist within this area. To conduct comparative research, I found myself in need of the bigger picture and a better understanding. This article is the output of the basics of the explanatory factors chosen. The literature within the different fields (history, political science and economy) is extensive and in-depth.¹⁴ However, there is no brief overview – or shortcut – for students or researchers to get started. The objective of this article is to provide such starting point.¹⁵

The purpose of this article is to give a background orientation to the two countries and selected parts of their legal cultures. In this context, legal culture is seen as an integrated part of law, including history, politics and economy, and used as a way to achieve greater understanding.¹⁶

2 Setting the scene – perspectives, methods and outline

2.1 Perspectives and ethics

It is held that Chinese law very easily could be misunderstood, especially from the perspective of a western lawyer. Since one expects to find institutions such as courts, tax authorities and so

¹³ Swedish Government Communication 2019/20:18 ‘Approach to Matters Relating to China’ (2019). See also European Commission and HR/VP contribution to the European Council, ‘EU–China – A strategic outlook’, JOIN (2019) 5 final.

¹⁴ See footnotes below in this article.

¹⁵ van Hoecke and Warrington (n 7) 513.

¹⁶ Bryan Wagner, ‘Historical Method in the Study of Law And Culture’ in Markus D. Dubber and Christopher Tomlins (eds), *The Oxford Handbook of Legal History* (Oxford 2018).

forth, when one does, it is reasonable to believe that the comparison can be carried out. However, if using only a functional method (focusing on the statutes and institutions copied from the west), it is possible to reach wrong conclusions. Both Sweden and China are still influenced by historical traditions, and one has to search for elements that are quite different from one another.¹⁷

In addition, it is held, to be able to successfully conduct comparative studies it is necessary to grasp the entire legal system.¹⁸ This view prevents scholars from conducting comparative studies unless one has lived and worked in the other country (i.e. has been part of the legal practice, in this case). However, I believe comparisons can be carried out as long as one is transparent and aware of the depth of the study carried out. With an open mindset and a curiosity about ‘the Other’, one can systematize prior research and view it in a new context. Furthermore, a researcher can make epistemological preliminary analysis and conclusions resulting in a hermeneutical preliminary comprehension of the foreign culture and how it is perceived from a western perspective.¹⁹ This approach can best be described as from a distant (western) perspective gaining acquaintance with the Chinese legal culture (macro perspective).²⁰ My ambition to understand the legal culture of the two countries.²¹ This contribution is the first step on this journey.

The question of whether it is possible for a ‘western scholar’, to study Chinese law free of cultural bias has been discussed in literature. Ruskola identifies the problem of western scholars often being influenced by ‘legal orientalism’, that is, a negative perception of the practice of law in Chinese history and in contemporary China.²² This, of course, should be avoided as far as possible. However, he also recognizes the hermeneutics and the fact that one can

¹⁷ About China, see W.C. Jones, ‘Trying to Understand the Current Chinese Legal System’, in S. Hsu (ed) *Understanding China’s Legal System – Essays in Honor of Jerome A. Cohen* (New York University Press 2003) 2, 14–15. See also Jinfan Zhang, *The Tradition and Modern Transition of Chinese Law* (Springer 2014).

¹⁸ See, for example, Bogdan (n 2) 46–48.

¹⁹ Husa (n 1) 238.

²⁰ Ibid (n 1) 222.

²¹ Ibid (n 1) 18.

²² Teemu Ruskola, ‘Legal Orientalism’ (2002) 101(1) *Michigan Law Review*, 179–234 at 184; Albert H. Y. Chen, ‘China’s Long March towards Rule of Law or China’s Turn against Law?’ (2016) 4 *The Chinese Journal of Comparative Law*, 1–35 at 3 f.

never be completely free of bias or prejudice but may only manage rather than eliminate these. He suggests using ‘ethics of Orientalism’, for the purpose of comparative law.²³ In brief, the purpose is to avoid ethnocentrism.²⁴

Once again, one has to be careful with the conclusions. Peerenboom advocates a balanced approach to the study of contemporary Chinese law. This approach could consist of a broader historical and comparative perspective as well as the self-understanding of the Chinese people and a support for what they are trying to do.²⁵

2.2 Methods and sources

The dogmatic method used in this article is based on literature studies of the two countries, their histories, political structures and economic systems.²⁶ Plenty of tips for more in-depth reading are found in the footnotes. Furthermore, only literature in English and Swedish has been considered, due to language barriers of the author.

Some inspiration has been taken from the comparative method in addition to the dogmatic method. In essence, the comparative method can be divided into different phases: (1) introductory phase, (2) descriptive phase, (3) comparative phase and (4) explanatory phase.²⁷ A descriptive and comparative approach has been used throughout the different sections (3–5). Since, obviously, the

²³ Ruskola (n 22) 222–233; Jones (n 17) 14 ff.; Chen (n 22) 4–8.

²⁴ Katia Cejie, ‘Comparative Method(s) and Tax Law Research’ (2020) SvSkT 150.

²⁵ Randall Peerenboom, ‘The X-files: Past and Present Portrayals of China’s Alien Legal System’, (2003) 2 Wash. U. Global Stud. L. rev. 37, 60 ff.; Chen (n 22) 8–11. Peerenboom, in contrast to Clark, fancies the rule of law as a benchmark for comparative studies, Chen (n 22) 3. In some texts Ruskola tend to express that rule of law is a bad legal theory for research as well; see, for instance, Teemu Ruskola, ‘Law Without Law, or Is “Chinese Law” an Oxymoron?’ (2003) 11 Vm. & Mary Bill Rts. J. 655 at 656 ff. and 667.

²⁶ The references made to fiction are to give an implication of the everyday life of people during the historical times described.

²⁷ W. J. Kamba, ‘Comparative Law: A Theoretical Framework’ (1974) 23 Int’l & Comp., L.Q. 485, 511 f.; Zweigert and Kötz (n 1) 32 ff.; Gerhard Danneman, ‘Comparative Law: Study of Similarities or Differences?’ in Reimann and Zimmermann (eds) (n 1) 406 ff.; Husa (n 1) 96 ff.; Cejie (n 24), with further references.

two jurisdictions are very different, slightly more attention is given to identifying the similarities. However, this does not mean that differences will be disregarded.²⁸ Some attempts to explain the similarities and differences are found *ad hoc*. As mentioned in section 1, comparative studies show that the explanation for the similarities and differences found often are based on factors such as geography, history, politics, economy, religion and culture. In addition, it has been held that legal history goes hand in hand with comparative law, because ‘the past often explains what may otherwise be obscure in the present’.²⁹ Due to these prior findings, these aspects are discussed as main topics. The dual nature of these main topics and explanatory factors is also the reason for not going in-depth in the explanatory phase, since it tends to lead to circular arguments.

2.3 Outline

To fulfil the purpose and to create a starting point for other comparatists, the author of this article begins with a background orientation to Sweden’s and China’s histories, legal histories, politics and economies. Firstly, a historical starting point is taken, to facilitate an understanding of the two countries of today in the light of their respective histories and traditions (section 3). Additionally, in section 3 the main underlying legal schools of thought are identified and briefly described. When the history moves into the twenty-first century, more focus is given to the political systems of today (section 4). The politics and the economy of a state are two elements closely interrelated. In section 5, the economies are briefly described. In section 6, a few concluding comments are made with the objective to encourage others to continue to carry out comparative research within these different fields.

²⁸ See Esin Örüçü, *The Enigma of Comparative Law: Variations on a Theme for the Twenty-First Century* (Leiden 2004) 213, regarding the importance of looking for both similarities and differences.

²⁹ Jaakko Husa, ‘Seeking a Disciplinary Identity – The Case of Comparative Legal History’ (2020) *Comparative Legal History*, 4, with references.

3 History and legal history

3.1 Opening comments

To be able to understand the problems, similarities and differences that emerge when comparing and applying the law of different jurisdictions, one needs to understand the legal history of the systems.³⁰ However, several common mistakes arise when comparing systems. One such common mistake is to assume that the law of each jurisdiction forms a coherent system, rather than being the result of solutions developed over time.³¹ Another mistake often made is missing that certain philosophical ideas at a specific time influence and shape the law at that time.³² A third is the belief that the law of a state is an independent subject of study, with its own unity, and that it can be explained without looking elsewhere.³³ As mentioned in section 1, this article fits into a larger puzzle. In this context, the legal history is used in the service of comparative law to create an understanding that may help when trying to explain the differences and similarities between the two legal systems farther down the road.

In section 3, a brief historical recap is provided, including notes on the legal histories of the two countries. The purpose is not to go into detail but only to provide the background knowledge necessary to understand the legal traditions and cultures of today. A few notes on the history of taxation are also made.³⁴ Section 3 is divided into three time slots: (1) the beginning – the nineteenth century,

³⁰ In contrast, see William P. Alford, 'Law, Law, What Law?: Why Western Scholars of Chinese History and Society Have Not Had More to Say about Its Law' (1997) 23(4) *Modern China*, 398–419.

³¹ James Gordley, 'Comparative Law and Legal History' in Reimann and Zimmermann (eds.) (n 1) 9.

³² Gordley (n 31) 10–11.

³³ *Ibid* 11–13.

³⁴ On Swedish tax history, see Working paper by Katarina Fast Lappalainen, Peter Melz and Mauro Zamboni, 'History and Taxation 2021 EATLP Congress Antwerp' or the Swedish Tax Agency's webpage: <https://www.skatteverket.se/omoss/varverksamhet/statistikochhistorik/skatternasochfolkbokforingenshistoria/desvenskaskatternashistoria.4.22501d9e166a8cb399f1f7d.html> (accessed 8 December 2020).

(2) the first half of the twentieth century and (3) the second half of the twentieth century.

As mentioned above, philosophical ideas or schools of thought are also important. Throughout 2,500 years, Confucianism and Legalism have battled for supremacy as the dominant school of thought underlying the Chinese legal system.³⁵ One might say that both these schools have the same ultimate goal, that is, to establish social order. In section 3.2.2, an introduction to these thoughts is given. The Swedish legal system is influenced by the thin conception of rule of law,³⁶ below referred to as the law-state thinking. A brief summary of these thoughts is found in section 3.4.1.

3.2 The beginning

3.2.1 Sweden – the transfer of borders

Fourteen thousand years ago, Sweden was still covered by a thick ice cap. Eight to ten thousand years ago, people started to move to Sweden.³⁷ Three main factors influenced Sweden and the legal development during the Nordic Middle Ages (1050–1520 AD): the societal development (resembling the pyramid of the feudal society in Europe), the introduction of Christianity in the eleventh century and the impact of foreign law (Roman canon law³⁸ and European culture). The king was supported by the church and had a mission from God to rule and govern. The so-called taxes consisted of providing knights to the king (*ledning*) and support for his accommodation (*gästning*) when he and his men travelled through the country. The nobles and the church were tax-exempt (*frälse*).³⁹ The

³⁵ Two other important schools were Taoism and Mohism; see Katrin Blasek, *Rule of Law in China – A Comparative Approach* (Springer 2015) 38 f.

³⁶ For an introduction to different conceptions of rule of law see B. Z. Tamanaha, ‘A Concise Guide to the Rule of Law’ in N. Walker and G. Palombella (eds), *St. John’s Legal Studies Research paper No. 07-0082* (Hart 2007) 2, available at <https://ssrn.com/abstract=1012051>, Randall Peerenboom, ‘Varieties of Rule of Law – An Introduction and Provisional Conclusion’ in R. Peerenboom (ed), *Asian Discourses of Rule of Law* (Taylor & Francis Group 2004) 1; World Justice Project (WJP) ‘Rule of Law Index 2020’, ISBN 978-1-951330-35-4 (online).

³⁷ Herman Lindqvist, *Historien om Sverige – Från istid till framtid* (Albert Bonnier Förlag, 2020).

³⁸ Roman law was basically the legal law, and canon law was the law of the church.

³⁹ Göran Inger, *Svensk rättshistoria* (Liber 2011) 12–18.

country was divided into provinces, and provincial laws were enacted, *landskapslagarna*.⁴⁰ From the end of the fourteenth century until 1523, the three countries today known as Denmark, Norway and Sweden were united under one monarch in the Kalmar Union. The Stockholm Bloodbath in 1520 put an end to the union, and the Swedish nobleman, Gustav Vasa, became king of Sweden in 1523. In 1527, Sweden switched from being a Catholic country to a Protestant one. This reform made the king head of the church, which gave him access to the wealth of the churches. Since 1544, the crown has been inherited.

From a historical perspective, the seventeenth century is regarded as the Great Power Times of Sweden, and Sweden was involved in several wars in northern Europe. The nobles got wealthier; however, for most people these were hard times, leading to higher taxes and the loss of almost all men. Sweden got its first constitution in 1634, the Instrument of Government (*Regeringsformen*, referred to as IG). The power shifted back and forth between the nobles and the king, and for a period (1672–1718) Sweden could be regarded as an autocracy (under King Karl XI and his son King Karl XII). After the death of King Karl XII, power was transferred to the government and the Parliament (1720). During this period, Sweden got its first two political parties (*battar* and *mössor*).

During the eighteenth century, the IG was rewritten several times and the Riksdag Act (1723) was enacted, which means that one of the first parliamentary boards in the world was established. The two-party system led to political instability, and in 1772 Gustav III re-established the autocracy of the king.⁴¹ As king, he was very unpopular among the nobles. In 1792, he was shot at the Opera of Stockholm and died a few weeks later. During this period (referred to as the Enlightenment), new ideas arose in Europe, which questioned the ideas of the king, nobles and church. Important ideas came from Voltaire, Montesquieu and Rousseau. Revolutions in America (1776) and France (1789), and the Industrial Revolution in

⁴⁰ See, for example, *Upplandslagen* (the law of Uppland) from 1296. Göran Inger, 'Upplandslagen 700 år', in Åke Frändberg, Ulf Göranson and Torgny Hästad (eds), *Festskrift till Stig Strömholm* (Iustus 1997) 423–437.

⁴¹ Inger (n 39) 75–107, 151–171.

England, led to the start of a more modern political debate. Liberalism, conservatism and socialism were the three main ideologies. In addition, mixtures of these thoughts were important, for example, social liberalism. These ideas and schools of thought had impact in Sweden in the nineteenth century.

By losing Finland to Russia (1809), Sweden got the borders of today. The Swedish Parliament and Council were now strong enough to introduce a new constitution (IG)⁴² that abolished royal absolutism and split the power between the king and the Parliament. With inspiration from Montesquieu, power was divided five ways: legislative power (the Parliament and the king), the government (the Parliament and the king), the judges (judges; however, the king had two votes in the Supreme Court), the financial powers (the Parliament) and the control power (the Parliament). The Parliament consisted of two chambers. As the modern society grew, the question of equal treatment between the sexes became more important.

During the nineteenth century, the population in Sweden doubled to more than 5 million, despite 1.5 million Swedes having emigrated to North America due to poverty.⁴³ People also started to move to cities, where factories offered new opportunities.⁴⁴ The working conditions in the factories resulted in the establishment of working unions, still a key player in Swedish labour law.⁴⁵ Politically, two competing schools of thought were in majority, liberal ideas (Adam Smith) and the historical school (Savigny). However, socialism and social democratic thoughts were also present.⁴⁶ In 1889, the Social Democratic Party was established. The Liberal Party and the Conservatives established parties a few years later. In the end of the nineteenth century Sweden was a rather liberal, however pluralistic, society with strong beliefs in the individual (see section 3.4.1).

⁴² In addition to the IG, three more acts were regarded as constitutions (see section 3.4.1).

⁴³ See, for instance, the four books by Vilhelm Moberg, *The Emigrants*, *Unto a Good Land*, *The Settlers* and *Last Letter Home* (Minnesota Historical Society Press, 1995).

⁴⁴ For a wonderful story, see Per Anders Fogelström, *Mina drömmars stad* and *Barn av sin stad*, about the life in Stockholm during 1860–1880 and 1880–1900.

⁴⁵ In 1869, the first collective agreement was signed by bricklayers.

⁴⁶ Inger (n 39) 201–237.

3.2.2 Imperial China – the dynasties

In contrast to the eight to ten thousand years that people have lived in Sweden, people have lived in China for more than 100,000 years.⁴⁷ A distinct characteristic in the history of China is the several dynasties and the emperors.⁴⁸ Beginning with the Xia (twenty-first century BCE) Dynasty and ending with the Qing Dynasty (1911 AD). The first laws date back to the days of the Xia Dynasty.⁴⁹ These were unwritten and unpublished.⁵⁰ During this long period, the belief in strong leaders with a *mandate from heaven* was of great importance. Change in emperors was often the result of revolutions and civil wars, since this was seen as a legitimate way to change power. If, for example, the crops failed, this was seen as a sign that the emperor had weakened and that the mandate from heaven was reduced.

The first statutory laws (*xing ding*) were written and published in 536 BCE.⁵¹ Written language made it possible for the dynasties to function as centralized governments and to levy taxes. All matters in Imperial China were dealt with from the point of view of the ruler. An order from the emperor was considered law,⁵² and the primary obligation of every Chinese person was to fulfil the duties assigned.⁵³ The law at the time was primarily intended to regulate the affairs of its own officials, for instance the magistrates.⁵⁴ The success in education of Chinese students can be traced back to this period.⁵⁵

During this period the thoughts of Confucius were introduced. Master Kong Zi (Confucius (551–479 BCE)) is sometimes held to

⁴⁷ Patricia Buckley Ebrey, *Cambridge Illustrated History of China* (2nd edn, Cambridge University Press 2010) 16.

⁴⁸ Björn Kjellgren, *Kinakunskap* (Studentlitteratur 2000) 29–61; Ebrey (n 47).

⁴⁹ Blasek (n 35) 37.

⁵⁰ Yujun Feng, 'Legal Culture in China: A Comparison to Western Law' (2016) 16 *Revue Juridique Polynésienne*, 115.

⁵¹ Feng (n 50) 115.

⁵² Per Sevastik, 'Folkrepubiken Kina' in Anna Jonsson Cornell (ed), *Komparativ konstitutionell rätt* (Iustus 2020) 302.

⁵³ Jones (n 17) 12–13.

⁵⁴ During the dynasties, the emperor's power was absolute and the lower ranking officials (district magistrates) were, in effect, small emperors, collecting taxes, conducting religious ceremonies, deciding lawsuits, etc. Jones (n 17) 8–9, 17; Glenn (n 1) 324–325.

⁵⁵ Klas Eklund, *Kina - Den nygamla supermakten* (SNS Förlag 2011) 9–21.

be the most important Chinese person ever, having had great impact on Chinese history as well legal culture. The main idea behind Confucianism is governance by education, persuasion and moral example. In the *Analects* of Confucius, it is held that:⁵⁶

“If the people be led by laws, and uniformity sought to be given them by punishment, they will try to avoid the punishment, but have no sense of shame. [...] If they be led by virtue, and uniformity sought to be given them by the rules of propriety, they will have the sense of shame, and moreover will become good.”⁵⁷

The quotation can be compared to the legalistic view. The legalists used the set of written rules, physical force and a uniform administrative apparatus to impose order.⁵⁸ Confucian legal tradition, on the other hand, is reluctant to root normativity in formal structures and sanctions. It is a tradition based on great and friendly persuasion rather than obligation.⁵⁹

Confucius did not like the law (*fa*), and believed it was better to keep it secret from the citizens, which made it possible for those who enforced it to use moral judgement and discretion. In addition, within Confucianism there are five constant virtues (*wu chang*). These are benevolence (*ren*), righteousness (*yi*), propriety (*li*), wisdom (*zhi*) and fidelity/trustworthiness (*xin*). These also apply to the ruler, and following these leads to a harmonious society. In addition, loyalty (*zhong*), indulgence (*rank*) and reverence (*xiao*) are important. Moreover, the Confucian ideology holds that people are born good and can improve themselves through learning (education).⁶⁰ Furthermore, Confucianism envisions a society based on hierarchy: the emperor is above the minion, men above women, fathers above sons and older above younger.⁶¹ According to Con-

⁵⁶ Confucius, *Analects of Confucius, Book II, Chapter III, by Wei Chang* (Sheba Blake, 2017).

⁵⁷ In other words, if he ruled with laws and punishment the people would, without conscience, try to avoid these. Therefore, uprightness and morality were the primary sources of law, and the written law was secondary.

⁵⁸ Chang Wang and Nathan H. Madson, *Inside China's Legal System* (Woodhead 2013) xxix.

⁵⁹ Glenn (n 1) 320.

⁶⁰ Wang and Madson (n 58) 27–30; Sevastik (n 52) 302–303.

⁶¹ Wang and Madson (n 58) 28. Furthermore, rituals are very important within Confucianism, since they create foreseeability and support the social hierarchy. Bell views them as a way to protect the interests of the disadvantaged party. See Daniel A Bell, *China's New Confucianism* (Princeton University Press 2008) 45–51. In the book, Bell

fucianism, every human being has a particular place in life, and the ability to obey and work hard is very important.

The emperor was to rule with virtue, wisdom and love. Furthermore, the emperor was above the law. Confucius's golden rule was based on reciprocity; what you do not want others to do to you, you should not do to them. A similar rule was later found in Christianity. The key intermediaries between the individual and the larger harmonious groupings are relations. The fulfilment of personal life is the fulfilment of a role. The Confucian *li* is flexible and interpreted to achieve harmony in society. For example, it is preferable to reinforce the norms mutually, rather than dispute their content.⁶²

In contrast to Confucianism, there was a long tradition of formal laws and sanctions.⁶³ One of the most important legalistic thinkers was Han Fei Zi. He focused on three qualities: law (*fa*), tactics (*shu*) and legitimacy (*shi*). Han believed that every subject was equal before the law, and the state should be ruled by the legal code, not individual rulers. Furthermore, the code should be published and understandable by the people in general. People should be rewarded (scarcely) for following the law and punished for breaking it. However, the tactics could be described as harsh punishments (execution or torture), not necessarily proportionate to the crime. According to the legalist ideology, people were born self-interested and evil, which explains the need for a system to impose order.⁶⁴

Somewhat simplified, it can be argued that Xunzi combined the rituals and norms (ethical values) (*li*) from Confucius⁶⁵ with legalistic law (*fa*). Similar to the legalist and in contrast to Confucius,

analyses how Confucianism influences the China of today in different areas such as migrant workers, sports, prostitution, etc. From a western layer perspective, the book gives an interesting insight into a different mindset.

⁶² Glenn (n 1) 328 f.; Feng (n 50) 120; Pär Cassel, 'East Asian Legal Traditions' (2015) International Encyclopedia of the Social and Behavioral Sciences, 2nd edn, vol 6.

⁶³ Glenn (n 1) 321.

⁶⁴ Wang and Madson (n 58) 34–36. The legalists have been described as rule by law rather than rule of law; see Randall Peerenboom, 'Competing Conceptions of Rule of Law' in Peerenboom (ed.) (n 36) 110; Glenn (n 1) 322.

⁶⁵ For a problematization of this and the fact that 200 years passed between the two thinkers, see M. Sato, 'Li as a Way to Order: The Intellectual Characteristics and Historical Role of Xun Zi's Theory of Li'(2014) 35(1) Social Sciences in China, 137. Xunzi's conception of *li* included nine different meanings, at 139.

Xunzi believed that the human was evil and driven by certain desires and inborn emotions, which led to contests and eventual social disorder. Xunzi saw *li* as a tool to control desires and emotions. Through education, one could control the evil, emotions and desire and attain justice (*liyi*). Xunzi turned *li* into an instrument of governance.⁶⁶ However, *fa* is subordinate to *li*, and the ruler has the monopoly on both *li* and *fa*.⁶⁷

The last dynasty was the Qing Dynasty run by the Manchus (1616–1911). During this period, trade was conducted with the west. When the Europeans started to conduct business⁶⁸ with China in the nineteenth century the Europeans did not want to be subject to Chinese law, since they regarded it ‘barbarous’. Instead, they insisted on having their own courts. This was called the principle of extra-territoriality and was used in cities with great harbours, such as Shanghai. Sweden (1847), among other countries, claimed such extra-territoriality.⁶⁹ There were also concessionary treaties (unequal treaties) in force. Both these arrangements were in force until the PRC was established in 1949.⁷⁰ During 1839–1949, referred to as the 100 years of humiliation,⁷¹ China was forced to implement legal reforms following the western model of law.⁷² However, at this time China was a highly advanced society and had developed on its own. This was hard for the westerners to take in, since they were used to cultural dominance as western missionaries.⁷³

Years of crop failures, corruption and high taxes led to poverty among farmers. Many farmers lived at the same standard as their ancestors had done a thousand years earlier. A military rebellion,

⁶⁶ See also M. Sato (n 65) 141 f. on the theory of *li* as a way to create order.

⁶⁷ The paragraph on Xunzi is primarily based on a lecture held by professor Matti Nojonen, 24 May 2021, Finnish China Law Center, with the title ‘Xunzi’s Practical Philosophy of Governance: Concepts of Rites (*li*), Law (*fa*) and Social Order and Contemporary Chinese Party State’.

⁶⁸ In some regards, the Europeans had to start wars to achieve their aim of conducting business with China, for example, the Opium Wars between Great Britain and China in 1839–1842 and 1856–1860; see Jones (n 17) 18; Sevastik (n 52) 306 f.

⁶⁹ Jones (n 17) 18 f.

⁷⁰ Sevastik (n 52) 306 f.; Jonas Grimheden, ‘Kinas konstitution – rättsliga rötter, dagens och morgondagens debatter’ in Anders Mellbourn (ed), *Författningskulturer: Konstitutioner och politiska system i Europa, USA och Asien* (Sekel 2009) 158–159.

⁷¹ The Opium Wars, the loss of territories to Russian, France, Great Britain, Germany and Japan, The Boxer Rebellion, etc.; see Wang and Madson (n 58) 45–66.

⁷² Feng (n 50) 116.

⁷³ Jones (n 17) 8.

started in Wuhan on 10 October 1911, led to the fall of the empire in February 1912.⁷⁴ Finally, it should be mentioned that during this period efforts were made to draft laws reflecting western influences. Chinese citizens went abroad to study law, among other subjects. In theory, the influence of the west increased during the first half of the twentieth century.⁷⁵

3.3 The first fifty years of the twentieth century

3.3.1 Sweden

During the first fifty years of the twentieth century, two World Wars took place. Sweden did not, however, take any ‘active’ part in any of these.⁷⁶ Regardless, the everyday lives of people were affected during the times of war. In the late nineteenth century and the beginning of the twentieth century, industry developed rapidly, and Sweden became one of Europe’s leading industrial nations after World War II.⁷⁷

In 1917, a new government was established, and universal suffrage (men and women) was used for the first time in 1921. This is also mentioned as the year that Sweden became a democracy.⁷⁸ The Great Depression affected Sweden, as it did most parts of the world. The democratic society was unstable, and several minority governments took turns in leading the country. The situation stabilized to some extent when Per Albin Hansson, a Social Democrat, was prime minister in 1932–1946. He started to establish the welfare state of Sweden known as ‘folkhemmet’, inspired by President Roosevelt in the United States. The Social Democrats have been described as embodying a Swedish variety of socialism.⁷⁹ Several

⁷⁴ Kjellgren (n 48) 62–63, 67; Eklund (n 55) 22–31.

⁷⁵ Jones (n 17) 19–22; Wang and Madson (n 58) 45–66.

⁷⁶ Sweden has not been at war since August of 1814, when the union between Sweden and Norway was concluded. This union was dissolved peacefully in 1905.

⁷⁷ See Per Anders Fogelström, *Minns du den stad* and *I en förvandlad stad*, two books about life in Stockholm during the periods 1900–1925 and 1925–1945.

⁷⁸ The government webpage: [Demokratins 100 år - Regeringen.se](https://www.regeringen.se/2020/12/09/demokratins-100-arsdag) (accessed 9 December 2020).

⁷⁹ Inger (n 39) 307.

reforms were carried out and even more were planned but postponed due to the world wars. The reforms carried out were intended to contribute to a safer and more equal society. A two-week vacation for everyone and payments for motherhood were introduced. Another important aspect during this period was secularization, that is, allowing people the freedom of religion (1951).

3.3.2 The Republic of China

Among the main forces behind the fall of the Qing Dynasty and the establishment of the Republic of China (1912–1949) were Sun Yat-sen (*Sun Zhongshan*) and the Nationalists (Kuomintang, KMT).⁸⁰ The former Qing general Yuán Shikai was the first president of the Republic. He died in 1916 and after his death several different warlords and six presidents ruled the country. In this period, which was rather chaotic, there were political struggles between the KMT (now led by Chiang Kai-shek) and the Communists in addition to the war with Japan. Japan and the Communists were seen as the greatest threat to China's sovereignty.⁸¹ There was also great economic inflation during this period.⁸² The KMT imposed legal reforms, including a temporary constitution (1912)⁸³ modelled on the US constitution, however modified by Sun Yat-sen to reflect China's needs and traditions.

In 1937–1945, the Communists and the KMT joined forces against Japan. However, after defeating Japan the civil war continued between the two groups. After almost hundred years of misery, most people found that the only way out was to support the Communists (which even non-communists did), and Chiang, his family and approximately one million Chinese fled to Taiwan. In addition, China did support the west in the war against Germany (World War I), with the purpose of regaining land (Shandong). However, this land was given to Japan, and China never signed the treaty in

⁸⁰ See also Jung Chang, *Big Sister, Little Sister, Red Sister – Three Women at the Heart of Twentieth-Century China* (Jonathan Cape 2019) regarding the three sisters Soong, of whom two married Sun Yat-sen and Chiang Kai-shek.

⁸¹ Ebrey (n 47) 282–286; Kjellgren (n 48) 67.

⁸² Ebrey (n 47) 262–291. A daughter could be sold for 10 kilos of rice; see Jung Chang, *Wild Swans: Three Daughters of China* (William Collins 2016) 104.

⁸³ Feng (n 50) 116.

Versailles. This led to large protests known as the May Fourth Movement.⁸⁴

However, there were a few positive changes in this period as well, such as progress in liberating women: the foot binding custom was abolished,⁸⁵ and schools for girls were introduced.⁸⁶ As mentioned above, regarding laws, the western influence continued in theory, although these forms clashed with the traditional Chinese methods of law.⁸⁷

3.4 The last fifty years of the twentieth Century

3.4.1 Sweden and its four constitutions

After World War II and the establishment of the United Nations (UN) people had high hopes for peace, freedom and well-being. However, the Cold War started between the United States and Western Europe on one side and Soviet Union and the Eastern bloc countries on the other side. NATO and the Warsaw Pact were established, as was the Iron Curtain. Sweden did not join either of the two blocs, but followed the discussions closely.

During this period Sweden became a welfare state, and social benefits were distributed to all. The social reforms carried out were mainly financed through taxes.⁸⁸ The biggest conflict in domestic politics in the 1950s concerned pensions. After a referendum in 1959, the general additional pension (ATP) was introduced. Economic growth was good during the 1950s and 1960s.⁸⁹ The need for housing was enormous, and in the 1970s 100,000 new homes were built every year.

⁸⁴ 4 May 1919; see Ebrey (n 47) 271. (This is not to be confused with the land reforms issued by the CCP on 4 May 1946); Jones (n 17) 29.

⁸⁵ Ebrey (n 47) 279 ff.

⁸⁶ Ibid; Chang (n 82) 87.

⁸⁷ See footnote 75 for references; Peerenboom (n 64) 111 f.

⁸⁸ The tax code of today emanates from 1928.

⁸⁹ See Per Anders Fogelström, *Stad i världen* about the life in Stockholm during 1945–1968.

In the 1970s an increase of different political ideologies occurred. Several gender equality reforms were enacted, such as the abolition of joint taxation to encourage married women to work. The maternal insurance scheme was changed in 1974 to include all parents. Furthermore, a referendum about nuclear power was held. Another big conflict in the 1980s concerned employee funds (*löntagarfonder*). The Social Democratic leader Olof Palme was the prime minister twice (1969–1976 and 1982–1986). On 28 February 1986, he was assassinated in Stockholm.⁹⁰ During the economic crises in the early 1990s, the Moderate Party was in government, led by prime minister Carl Bildt. The party wanted lower taxes and cuts in the public spending and public welfare. More focus was given to the choice of the individual (the blue wave). In 1995, Sweden joined the EU. Around this time, the personal computer entered many homes in Sweden.

The four constitutions are primarily from this period:⁹¹

- *Regeringsformen* (1974:152), the Instrument of Government (IG)
- *Tryckfrihetsförordningen* (1949:105), the Freedom of Press Act (FPA)
- *Yttrandefrihetsgrundlagen* (1991:1469), the Fundamental Law on Freedom of Expression (FLFE)
- *Successionförordning* (1810:0926), the Act of Succession (AS).

As mentioned above, there has been an IG dating back to 1634. However, the foundation of today's IG was laid in 1840–1844. Ad-

⁹⁰ This was in fact the first assassination of a political leader in Sweden since 1792. However, in September 2003 another Social Democratic leader, Anna Lindh, was assassinated. The search for the murderer of Olof Palme was long a mystery and an 'open wound' in Sweden. As of 10 June 2020, the investigation was closed and the prosecutors hold as true that the killer was the so-called Skandia-man (Stig Engström). See also T. Pettersson, *Den osannolika mördaren: Skandiamannen och mordet på Olof Palme* (Offside Press 2018). Since Stig Engström is dead, the more than 34 years-long investigation was closed. See <https://www.bbc.com/news/world-europe-52991406> (accessed 15 September 2020).

⁹¹ Prior to 1974, *Riksdagsordningen* (2014:810), the Riksdag Act, was a constitution. Nowadays is merely an act.

ditions and changes have been made since; however, from a comparative perspective it is interesting to notice that none of these changes was made due to foreign or domestic crises.⁹² The IG was fully reviewed in 2010.⁹³ To safeguard democracy, changing the Constitution requires two identical decisions made by Parliament. Additionally, there has to be a parliamentary election between these two decisions.

All public power in Sweden emanates from the people and is exercised according to the laws (Chapter 1 § 1 IG). The Parliament is the main representative of the people and holds the legislative power (Chapter 1 § 4 IG); the king or queen is the head of Sweden, however holds no power (Chapter 1 § 5 IG). The government holds the executive power (Chapter 1 § 6 IG), and adjudication is done by courts (Chapter 1 § 8 IG). In addition to this, the Parliament is responsible for the state finances. Furthermore, there are several different functions (regulated in the constitution) to make sure that the Parliament and government are acting according to their powers (state finance and control). With the IG of 1974, the separation of powers according to Montesquieu (present in the IG of 1809) was transitioned to the principle of people's sovereignty. This principle is connected to the principle of separation of functions, rather than powers.⁹⁴

Since 1980, royal succession has included women, in accordance with the AS. The present King Carl XVI Gustaf's oldest daughter Victoria is next in line to inherit the crown.⁹⁵ Carl XVI Gustaf is the longest reigning monarch. Since 1999, the Republican Association has argued that Sweden ought to abandon the monarchy and become a republic. The association has about 10,000 members⁹⁶

⁹² Fredrik Sterzel, 'Sverige' in Johnsson Cornell (n 52) 73–74.

⁹³ Government bill (prop.) 2009/10:80.

⁹⁴ Government bill (prop.) 1973:90 p. 91; Wiweka Warnling Conradson and others, *Statsrättens grunder* (Stockholm 2018) 42 ff.; T. Bull, *Fundamental fragment – ett konstitutionellt lapptäcke*, (Iustus 2013) 23 ff.

⁹⁵ The introduction of the absolute primogeniture (with effect of 1 January 1980) was the first law of this kind in European history (SOU 1977:5, 16).

⁹⁶ <https://www.republikanskaforeningen.se/republikanska-foreningens-historia/> (accessed 9 November 2020).

and illustrates an important principle – the freedom to establish an association, acknowledged in the FLFE.

Finally, a few comments concerning the underlying schools of thought that constitute law-state thinking will be made. In Swedish legal doctrine, four basic law-state values are highlighted: *legal equality*, *legal certainty*, *legal accessibility* and *legal security*.⁹⁷ To realize these four values, legality must be upheld.⁹⁸ *Legality* (lawfulness, the rule of law) means that the law-applying organs and public powers comply⁹⁹ with the legal rules in force. In addition, legal power ought to be exercised under legal rules (*subordination*).¹⁰⁰

The core idea of law-state thinking is ‘that the individual enjoys legal protection against violations caused by the exercise of power on the part of the state (the Government, the public power)’.¹⁰¹ Furthermore, two value-based ideas are of importance in Swedish legal culture, *individualism* and *humanism*. In legal jurisprudence, it has even been held that the law-state would not mean anything without these two value-based ideas.¹⁰² In addition to all these values, the importance of independent legal institutions and the separation of functions mentioned above is not to be forgotten.

3.4.2 The People’s Republic of China and the constitution of 1982

Even though the Communists, after the Long March, were weaker in military and in number, they defeated the KMT in 1949, with help of non-communists who saw the Communists as the only way out of misery.¹⁰³ When the Chinese Communist Party (CCP) and its leader Mao Zedong¹⁰⁴ took over and the PRC was established, a Common Program entered into force, soon replaced by a constitu-

⁹⁷ Åke Frändberg, *From Rechtsstaat to Universal Law-State; An Essay in Philosophical Jurisprudence* (Springer 2014) 45.

⁹⁸ *Ibid* 45 and chapter 4.

⁹⁹ *Ibid* 63–75.

¹⁰⁰ *Ibid* 45 and 93–96 on legal subordination, constitutionalism and nomocracy.

¹⁰¹ *Ibid* 43.

¹⁰² *Ibid* 52–56.

¹⁰³ Kjellgren (n 48) 72–73; Ebrey (n 47) 286 ff.; Chang (n 82) 75–160.

¹⁰⁴ See also Jung Chang and Jon Halliday, *Mao – The Unknown Story* (Vintage Books 2006); Timothy Cheek, ‘Mao and Maoism’ in Stephen A Smith (ed.) *The Oxford Handbook of the History of Communism* (Online publication 2013).

tion in 1954.¹⁰⁵ All laws of the Republic of China were repealed.¹⁰⁶ The aim of the CCP was to reorganize China according to the model of the Soviet Union. In contrast, the CCP tried to include the people in a united front of the ‘people’s democratic dictatorship’. However, in reality the real power remained with the CCP and its branch party committees.¹⁰⁷ It may also be noticed that in contrast to the KMT, Mao did not adhere to the doctrine of Confucius.¹⁰⁸ Sweden recognized the PRC in 1950 and was the first western country to establish diplomatic relations with the PRC.¹⁰⁹

From the start, there were two legal traditions in Mao’s China. Firstly, law was regarded as an aspect of government of a centralized bureaucratic autocracy, using techniques of mass mobilization and thought control.¹¹⁰ Secondly, in theory, the western concept of law as a system based on individual rights and impartial professional courts separated from the administration could be identified. However, the Communists openly rejected this second tradition. It is held that they adopted the definition of the system while rejecting the system itself. If I understand this correctly, the institutions were there, yet they did not function in a western way.¹¹¹

After supporting the Communists in the Korean War, China became even more isolated. This led to a trade boycott of China. Several catastrophes and miscalculations followed, due to the campaigns led by the Communists. For example, the campaign ‘Let a hundred flowers bloom’ in 1957 encouraged lawyers to criticize the system, but later punished them after the campaign ended. Other examples are the Great Leap Forward (1956–1961), leading to the starvation of 20–40 million people; the split with the Soviet Union in 1960; and the Cultural Revolution in 1966–1976, to mention the most famous. Overall, these efforts led to chaos and curtailed personal freedoms. During the Cultural Revolution the legal system

¹⁰⁵ Sevastik (n 52) 309.

¹⁰⁶ Jones (n 17) 22.

¹⁰⁷ Ebrey (n 47) 294 ff.

¹⁰⁸ Wang and Madson (n 58) 32–33.

¹⁰⁹ Government Communication (n 13) 10.

¹¹⁰ Jones (n 17) 22–35.

¹¹¹ In criminal cases, the trial was rather a formality – a proceeding to announce the sentence or to educate the groups, Jones (n 17) 35–38.

was obliterated, legal institutions (e.g. the Ministry of Justice) were abolished and schools and universities were closed.¹¹² However, courts still functioned to deal with major counter-revolutionary criminals.¹¹³ Some of these events explain aspects of the culture of China today. For example, one has to be careful in raising criticism, since it is not possible to know whether the openness and request for honest criticism is for real – or a way to expose opposition.

Not everything led to disasters during this period. In the beginning, the everyday lives of people, especially in the cities, improved. Inexpensive health care, schools, jobs in factories and pensions were introduced. In contrast, similar improvements were not made in the countryside. During the Cultural Revolution, millions of young people were sent from cities to the countryside to learn from the farmers, since farmers were the true revolutionary class, according to Mao. The countryside was reorganized, and agricultural collectivization was achieved through various land reforms. The purpose of the legal reforms was to strengthen the state.¹¹⁴ However, with collectivization, families no longer owned their property and could not pass it on to the next generation. This weakened the hold of fathers over their sons and was in conflict with the Confucianism.¹¹⁵

It is said that if Mao had died in 1956, his deeds would have been regarded as immortal. If he had died in 1966, he would still have been considered a great man. Ultimately, he died in 1976, and while one might say that he was a great military strategist and a key figure in establishing the PRC, no emperor in the history of the world has caused the death of so many of his own people as Mao.¹¹⁶

¹¹² Blasek (n 35) 38; Kjellgren (n 48) 76–79; Ebrey (n 47) 305–321; Eklund (n 55) 43–57; Wang and Madson (n 58) 45–66; Chang and Halliday (n 104) 507–535, 727–740. From the 1950s until the mid-1960s law schools in China were strongly influenced by teachers and western-trained legal scholars educated in the Soviet models.

¹¹³ Jones (n 17) 38–39; Grimheden (n 70) 160.

¹¹⁴ Peerenboom (n 64) 111.

¹¹⁵ Ebrey (n 47) 321–327.

¹¹⁶ Eklund (n 55) 56–57; Ebrey (n 47) 329.

*Understanding Sweden and China from a legal historical, political and
economic perspective – a brief overview*

After the death of Mao,¹¹⁷ several economic reforms were made, primarily by Deng Xiaoping (1978–1997),¹¹⁸ which opened up China to the rest of the world.¹¹⁹ The people of China wanted and needed stability and peace. These changes required a legal framework that reassured foreigners' safety when interacting with China. The legal framework was strongly influenced by civil law systems of the west.¹²⁰ Deng emphasized the importance of the rule of law¹²¹ and enacted several hundreds of laws and thousands of local regulations.¹²² One could say that Deng introduced the market economy to the socialist country, all in contrast to the purpose of Mao's Cultural Revolution.¹²³ However, Deng did not have a blueprint for how to reform China; rather, he took one step at a time and tried the ideas on a small (local) scale before implementing them at full scale.¹²⁴ He modernized agriculture, industry, science, technology and defence. Foreign teachers were brought to China to teach English, and students were allowed to study abroad. More power was given to local authorities and encouragement to private ownership and economic initiatives were undertaken; it became possible to start companies, the exchange with foreign countries increased, and the law and justice were formalized. However, Deng denied that China had become a capitalist country. He adhered to the Four Cardinal Principles.¹²⁵

In the end of the 1980s, the economy slowed down and inflation increased. People started to ask for reforms that were more democratic and stated that this was necessary if the CCP were to main-

¹¹⁷ In between Mao and Deng, Hua Guofeng was the highest ranked leader of China (1976–1978). Mao's wife and three of her associates, also known as 'The Gang of Four', were blamed for the Cultural Revolution and imprisoned.

¹¹⁸ Deng was never president, but one of the prominent figures of the Party.

¹¹⁹ Ebrey (n 47) 332–350; Kjellgren (n 48) 81 f.

¹²⁰ Feng (n 50) 116.

¹²¹ The decision made by the CCP at its 15th National Congress, in 1997, to make the rule of law the country's fundamental governing strategy can be seen as the transition of China from being a country ruled by law to one that is governed by law, i.e. a new stage of socialist country; see Peerenboom (n 6436) 111–114.

¹²² Jones (n 17) 39–40; Blasek (n 35) 38.

¹²³ Li Wang, *The Road to Privatization in Higher Education in China – A New Cultural Revolution?* (Springer 2014) 1.

¹²⁴ Eklund (n 55) 59–72.

¹²⁵ The Four Cardinal Principles were to uphold (1) the socialist path, (2) the people's democratic dictatorship, (3) the Communist Party and (4) Marxist–Leninist–Maoist thoughts.

tain the mandate from heaven. Many evoked the ideas of the May Fourth Movement.¹²⁶ Corruption was another reason for the dissatisfaction. After a visit by Gorbachev, the CCP lost face¹²⁷ and decided to eliminate the demonstrations, culminating in the event at Tiananmen Square in 1989, where demonstrating students were killed and imprisoned.¹²⁸ The incident sent a clear political signal: economic liberalization but hard one-party politics. However, to be able to keep the mandate from heaven, the living standard of the people had to increase. Deng launched the dictum that if everyone was to be rich, someone had to start, and that it was okay to become rich.¹²⁹ Between 1981 and 2004, 500 million Chinese were lifted out of absolute poverty.¹³⁰ During this period, there was also a building boom. Similarly, cars became available to buy for private use (cf. in 1978, when there was not a single privately owned car in China).¹³¹

In 1954 the first constitution of the PRC had been enacted. This constitution was strongly influenced by the cooperation with the Soviet Union.¹³² In 1982, a new constitution was implemented, the Constitution of the People's Republic of China (CC). Since 1982, the constitution has been amended five times: in 1988 private ownership was made possible; in 1993 socialism and the market economy were enforced; in 1999 the market economy and rule of law were emphasized; and in 2004 private ownership was guaranteed, and representatives from Hong Kong and Macao were admitted to the National People's Congress (NPC). Furthermore, in 2004 an article was included stipulating that the state should respect and protect human rights.¹³³ In 2018, Xi made another change in the constitution, removing term limits for the positions of president and vice-president. Previously, it was only possible to serve for two

¹²⁶ See at footnote 84.

¹²⁷ Losing face is another important aspect in Chinese legal culture.

¹²⁸ Ebrey (n 47) 341 f.

¹²⁹ Eklund (n 55) 59–72; Ebrey (n 47) 343.

¹³⁰ Eklund (n 55). In 2020, the total is about 850 million people.

¹³¹ At this time, there were more than 75 million cars in Europe.

¹³² The Constitution was replaced in 1975 and in 1978. In 1975, the thoughts of Mao were central. In 1978, the legal institutions were again incorporated, and in 1979–80, a few more changes were made to make the governance more effective, etc. See Sevastik (n 52) 309–310; Grimheden (n 70) 159 f.

¹³³ How this is done per se is debated; see Grimheden (n 70) 165 f.

consecutive terms (ten years).¹³⁴ The ‘thoughts of Mao’, the ‘theories of Deng’ and the ‘thoughts on socialism with Chinese characteristics for a New Era to uphold the people’s democratic dictatorship by Xi’ are included in the preamble of the new constitution as well.

Interesting to notice, several obligations¹³⁵ can be found in the constitution, for example, (1) to work for the state, (2) to submit to the constitution and the laws, (3) to protect the security, honour and interests of China, (4) to defend China and (5) to pay tax. The constitution is regarded as the ‘highest’ law, followed by laws, regulations, administrative rules, informal rules and so on.¹³⁶ It is said that it is hard to know what de facto impact the constitution has in China. For a long time, the constitution has been seen as a declaratory programme for the Party, a political document.¹³⁷

3.5 Concluding comments

Sometimes remarks are made about the emperors and dynasties of China, about their violence and struggles affecting the people of the country. However, if one studies what happened in Sweden until the nineteenth century, the kings and nobles used similar struggles, violence and force. Both the emperors and the kings were believed to receive their power by mandate from heaven or God. Sweden was at some periods also an autocracy.

During the nineteenth and twentieth centuries, Sweden has evolved from a mostly agricultural society to what is commonly called a welfare state. Since 1723 Sweden has had a parliamentary system, and in the nineteenth century, several political parties were established. Since 1865, the municipalities have been to some extent self-governed. Social democratic ideas have influenced the country

¹³⁴ The ingress to the CC and art. 79 and art. 83 CC. An English version of the CC can be found at [Constitution of the People's Republic of China \(npc.gov.cn\)](http://www.npc.gov.cn) (accessed 10 December 2020).

¹³⁵ See footnote 53.

¹³⁶ Wei Cui, ‘What Is “Law” in Chinese Tax Administration?’ (2011) 19(1) *Asian Pacific Law Review*, 75–94.

¹³⁷ Sevastik (n 52) 323; Grimheden (n 70) 161.

for long periods. However, the importance of liberal ideas that put individual freedom at the centre as well as equal rights for individuals should not be forgotten. Legality, equality, certainty, security, humanism and individualism are all core concepts in the underlying schools of legal thought. Swedes, in general, also believe that the individual enjoys legal protection against violations caused by the exercise of power by the state.

In contrast to the democratization process in Sweden, China experienced turbulence as late as in the twentieth century. Since 1949, the CCP has had great impact in the PRC with its centralized bureaucracy. Still, for centuries China has struggled with its own identity, trying not to get too involved with western ideas. However, business with the west, along with economic and legal reforms, has made economic growth possible (see sections 4 and 5).

Other countries have also influenced the legal systems of the two countries. In the seventeenth century, Sweden was strongly influenced by French and later German law.¹³⁸ Today, Swedish law is strongly influenced by EU law. As mentioned above, China was largely influenced by western ideas and legal systems, with the result a feeling of humiliation. China's legal culture can be seen as a hybrid between western regulations (legal transplants), traditional Chinese legal culture (Confucianism) and a socialist system.¹³⁹

China had its first written law in 536 BCE; in Sweden, such laws can be traced back to the twelfth century CE.¹⁴⁰ Sweden had its first constitution in 1634, China in 1912. Both countries have constitutions stating that the power emanates from the people; however, the meaning of these expressions differs, which will be highlighted in the next section.

In conclusion, if one compares the legal and general histories of Sweden and China – not decade by decade or century by century but rather with an overall approach – one can find several similari-

¹³⁸ Modéer (n 6) 86.

¹³⁹ Husa (n 1) 140.

¹⁴⁰ See Mia Korpiola, 'High and Late Medieval Scandinavia: Codified Vernacular Law and Learned Legal Influences' in Heikki Pihlajamäki, Markus D. Dubber and Mark Godfrey (eds), *The Oxford Handbook of European Legal History*. (Online publication Aug 2018).

ties, namely, the autocracy, the conflicts and wars, the struggles for political power, the influence of foreign legal systems, the establishment of constitutions, the objective to make the countries better places for people to live and so forth. As of the last 40 years, China has been and is evolving and changing with a rapidity hardly ever noticed before; this will be elaborated on in the next sections.

4 Politics in the twenty-first century

4.1 Opening comments

The purpose of section 4 is to describe the political systems and the separation and concentration of power in the two countries. Each country is very briefly analysed in regard to democracy as a part of the state system. However, the focus of this section is to introduce the reader to the structures of political power (4.2–4.3), not to discuss democracy as such.¹⁴¹ A few concluding comments are found in section (4.4).

4.2 Sweden – a liberal democracy with a multi-party system

In 2018–2022, Sweden is celebrating 100 years as a democracy.¹⁴² In contrast to other European democracies, three main differences should be noted. First, even though Sweden is a kingdom with a monarch as head of state, unlike other monarchies, the Swedish monarch has only ceremonial and representative functions. Second,

¹⁴¹ Defining democracy is a topic in itself. Some characteristics of a democratic state often mentioned are regular elections, a multiparty system, rule of law and civil rights. See, for example, Yu Keping (ed.), *Democracy and the Rule of Law in China* (Brill 2010); Lin Li, *Building the Rule of Law in China* (Elsevier 2017) 24 and Economist Intelligence Unit (EIU), ‘Democracy Index 2019, A Year of Democratic Setbacks and Popular Protest’ (2020) 50–52; Zhao Suisheng (ed.) *Debating Political Reform in China: Rule of Law vs Democratization*, (Taylor & Francis Group 2006); Jessie Yeung, ‘Global Democracy Is in Crisis During the Coronavirus Pandemic, Report Finds’, CNN, updated 0934 GMT (October 2020).

¹⁴² [In English - Ja, må den leva! Demokratin uti hundrade år \(riksdagen.se\)](https://www.riksdagen.se/en/nyheter/2020/12/02/in-english-ja-ma-den-leval-demokratin-uti-hundrade-ar) (accessed 2 December 2020).

Sweden uses a parliamentary approach to democracy. Third, the municipalities in Sweden are accorded strong self-government.¹⁴³ Concerning power, the IG is the most important constitutional document.¹⁴⁴ The first paragraph of the IG states: ‘All public power is based on the people’. All Swedish citizens who are or have been residing in Sweden and are 18 years old or older have the constitutional right to vote. Moreover, over 80 per cent of them do in fact exercise this right at the general elections.

The power of the state in Sweden is divided between the Parliament (*Riksdagen*) and the government (*Regeringen*). Prior to 1974, the Swedish system was influenced by Montesquieu’s ideas of the separation of powers as (1) legislative authority, (2) executive authority and (3) judicial authority. According to Montesquieu, these powers need to be separated to prevent misconduct and to establish freedom of the citizens. In the preparatory work preceding changes in the IG, it was stated (1973) that the Swedish constitution, previously influenced by these thoughts, is now said to support the principle of sovereignty of the people with the Parliament as the centre of governance and legislator of laws.¹⁴⁵

General elections to Parliament (349 members), the municipal councils and the counties are held every fourth year. One can vote for either a political party or a person (a member representing one of the parties). For over 50 years, only five parties received enough votes to gain seats in Parliament.¹⁴⁶ Since 1988, there have been a few more parties representing the people in Parliament.

The government is the supreme executive authority and is accountable to the Parliament. It presents new proposals for legislation and amendments to existing legislation to the Parliament as well as implementing its decisions.¹⁴⁷ The government consists of the prime minister (currently Stefan Löfven) and 22 ministers.¹⁴⁸ At present,

¹⁴³ Sterzel (n 92) 73.

¹⁴⁴ See section 3.4.1.

¹⁴⁵ See footnote 94.

¹⁴⁶ A party need at least 4 per cent of the votes to be in Parliament. The parties were the Social Democrat Party, the Moderate Party, the Centre Party, the Liberal People’s Party and the Left Party. Since 1991, the Christian Democrats have been represented in Parliament as well.

¹⁴⁷ Chapter 1 § IG; Sterzel (n 92) 73.

¹⁴⁸ <https://www.government.se/government-of-sweden/> (accessed 6 April 2020).

there are 12 ministries within the government. One or several ministers lead each ministry. The ministers do not infringe in business assigned other authorities. This also means, for example, the prime minister cannot interfere in court proceedings, regardless of whether it is Mr. President of the United States calling or a mother of an accused person.¹⁴⁹ Another important principle in this regard is the principle of accessibility (*offentlighetsprincipen*). This principle is found in the FPA and states that all Swedish citizens are entitled to have free access to official documents, in order to encourage the free exchange of opinion and the availability of comprehensive information.

The Social Democrats have been in government for most of the time since World War II. In 2004, the four bourgeois parties joined forces¹⁵⁰ to co-operate in a coalition dubbed the Alliance. In the 2006 election, the Alliance won a majority, and Fredrik Reinfeldt was the prime minister. In 2010, they formed government again, however, this time in minority. Furthermore, in 2010 a new right-wing party, Sweden Democrats, got enough votes to be represented in Parliament. This party, which should not be confused with the Social Democrats, is seen as xenophobic. The party received even more votes in subsequent years, and in 2018 they grew even stronger. Since 2014, the prime minister has once again represented the Social Democrats (in minority).¹⁵¹ In 2018–2022, eight political parties are represented in Parliament.

Furthermore, Sweden is a member of the UN (1946), OECD (1961), WTO (1995) and EU (1995).

¹⁴⁹ [“Trump: I have had “a very good call with Stefan Löfven” | SVT Nyheter](#) (accessed 10 April 2020).

¹⁵⁰ The Moderate Party, the Centre Party, the Liberal People’s Party and the Christian Democrats.

¹⁵¹ The Social Democrats hold 100 of the 349 seats in Parliament. <https://www.riksdagen.se/en/members-and-parties/> (accessed 6 April 2020).

4.3 China – a socialist democracy with a one-party system

A highly debatable topic is whether China is a democracy or not.¹⁵² I will not go into this question in depth but only make a few observations. On one hand, the leaders of China do argue that the country is a socialist democracy.¹⁵³ They describe it as a system in which power is centralized in one authority – the CCP – that in turn acts in the interest of the people. In China's constitution and in Chinese leaders' speeches, expressions like 'people's democratic dictatorship', and 'a new democratic society to a socialist society' are put forward.¹⁵⁴ It is also held that China has several political parties; some are even represented in the NPC, however, vetted by the CCP.

On the other hand, and from a western standpoint, it is held that China is a one-party state without general and free elections.¹⁵⁵ China is considered an authoritarian regime, scoring 2.26 out of 10 on the Democracy Index, placing 153rd out of 167 countries (with North Korea in 167th place, Norway in first and Sweden in third).¹⁵⁶ China fell 23 places in 2019's ranking, primarily due to discrimination against minorities, especially in Xinjiang, and to intensified and digital surveillance of the population.

In addition to the question of democracy, one may ask whether western standards of democracy necessarily are the best for China. In a study of developing countries, it has been found that the large majority of people would trade their political freedom for social stability, development and economic growth. A similar outcome was found for China; twice as many Chinese felt that economic development was more important than democracy (2007). In addition, it is held that if China democratizes, it will not per se lead to changes and improvements in domestic economic, political, legal and social developments. The uncertainty of how and what a de-

¹⁵² See footnote 141.

¹⁵³ Li (n 141) viii.

¹⁵⁴ See, for example, the Preamble to the Constitution.

¹⁵⁵ Government Communication (n 13) 4. See, for an explanation to the authoritarianism, Guanghua Yu, *The Roles of Law and Politics in China's Development* (Springer 2014) 125–144.

¹⁵⁶ EIU (n 141) measures five areas: electoral process and pluralism, civil liberties, the function of government, political participation and political culture.

mocratizing process would lead to is considered too great.¹⁵⁷ In other studies, several limitations or disadvantages of democracy from a Chinese perspective are highlighted.¹⁵⁸

Politically, the system in China has been described as a tripod consisting of

- the CCP¹⁵⁹,
- the state management and
- the People's Liberation Army (PLA).

Simply put, the CCP and the state management (public authority) can be seen as parallel organs. In addition to these, the PLA is of importance.¹⁶⁰

Firstly, the CCP holds its Party Congress every five years and makes a five-year political plan. The Party Congress is the highest decision-making political organ. The present general secretary of the CCP is Xi Jinping. The Party Congress appoints the Central Committee of the CCP, which appoints the Politburo of the CCP. Most of the power in China is concentrated in the Politburo's Standing Committee (PSC). The PSC has seven members and has in reality a great deal of power: its decisions are enforceable as law. The Politburo and its Standing Committee has a Central Secretariat of the CCP serving them, carrying out operations. Furthermore, the Party also has local party committees at the provincial, municipal and county levels.

¹⁵⁷ See Randall Peerenboom, *China Modernizes: Threat to the West or Model for the Rest?* (Oxford University Press 2007) 234–281.

¹⁵⁸ Li (n 141) 19–23.

¹⁵⁹ The CCP is the largest political party in the world, with almost 90 million members; however, this is only approximately 5 per cent of the inhabitants of China. Kerry Brown, *Nya Kina: Allt du behöver veta om världens mäktigaste land och dess ledare* (Pagina Group 2018) 53 (Swedish translation of the book *The World According to Xi: Everything you Need to Know About the New China* (I.B Tauris).

¹⁶⁰ This and the next paragraphs are based on Kjellgren (n 48) 88–93; Sevastik (n 52) 312–316; Grimheden (n 70) 157–173.

Secondly, the NPC governs the power of the state management. According to the Constitution, the NPC is the highest state organ in China.¹⁶¹ The members of the NPC are to a large extent also members of the CCP. However, a few other political parties are represented. The members of the NPC are elected for a five-year term and meet once a year for approximately two weeks in March.¹⁶² The NPC elects the head of state, that is, the president (currently Xi Jinping) and the premier (Li Kerqiang). The NPC has its own Standing Committee (NPCSC). These two bodies are the main legislators in China. The seven members of the PSC are represented in the NPCSC, which means that the CCP is represented there as well. Even though the power according to the constitution is given to the NPCSC, the real power is held by the PSC, since it supervises the government, the Central Military Commission (CMC), the Highest Courts and the Procuratorates.¹⁶³ The PSC is de facto the top decision-making body.

The premier is head of the government and the State Council as well as one of the members of the PSC. The State Council is the civil government and highest executive and administrative body.¹⁶⁴ Under the State Council, there are different ministries, for instance, the Ministry of Public Security (police), Ministry of Justice and Ministry of Finance.

Thirdly, the head of the PLA is the chairperson of the CMC, that is, Xi Jinping, which means that the army is controlled by the CCP. In conclusion, the tripod is heavily influenced by the general secretary of the CCP, the president of the PRC and the chairman of the CMC: all in all, the same man, Xi Jinping. Notably, the amendments to the constitution in 2018 can be seen as a basis for China's status as a one-party state and formally rendering any competitive multi-party system unconstitutional.

Since 2012, Xi Jinping has been the highest leader of China. When he came to power, China was a different country than that of Mao and Deng. Mao's China was a country of conflicts and wars. The

¹⁶¹ Article 57 of the Chinese Constitution (CC).

¹⁶² Grimheden (n 70) 164.

¹⁶³ Sevastik (n 52) 312–313.

¹⁶⁴ Art 85 CC.

economy was controlled by the state. Deng, however, opened up China and allowed foreign capital and entrepreneurs – a market economy arose, even though the government carefully supervised it (socialist market economy). The China that Xi took over was richer than ever and had started to become an actor in the global arena. So far, Xi has focused on consolidating the party and on making the country great and strong. The goal is to make China a country with middle-income status in 2021.¹⁶⁵ It is held that his values rest on four main constituents: ruling the party, maintaining rule by law, building a wealthy society and deepening the reforms.¹⁶⁶ Xi wants a modernized socialism with Chinese characteristics. Xi has been criticized for being the ‘Chairman of Everything’.¹⁶⁷ In a global context, Xi prioritizes foreign relations and travels a lot in comparison to earlier leaders. He has initiated the BRI (Belt and Road Initiative). Furthermore, several laws have been enacted to secure the ownership of homes. The purpose of the laws is to make the new middle class happy. In addition, reforms have been made to strengthen the institutions and foreseeability. Furthermore, China’s military is growing at the fastest rate of any nation.¹⁶⁸ In the literature, the authoritarian regime in China has been explained by a range of multivariable factors, including modernization theory, cultural variability (Confucianism) and geopolitical factors.¹⁶⁹

Today, China consists of mainland China and Taiwan, to which the special administrative regions of Hong Kong and Macau can be added. Furthermore, China is a member of the UN (1945), the WTO (2001) and a key partner to the OECD.

4.4 Concluding comments

Without going into depth on the question of democracy, one can notice that the concept is given different meaning in the two countries. From a Swedish perspective, democracy includes, among other things, free elections (universal adult suffrage) conducted

¹⁶⁵ Brown (n 159) 36.

¹⁶⁶ Ibid 59–67.

¹⁶⁷ Ibid 95–112.

¹⁶⁸ Ibid 77–94.

¹⁶⁹ Yu (n 155) 124–144

through secret ballots with the outcome based on majority rule, a competitive multi-party political system and the protection of basic human and civil rights.¹⁷⁰ If this meaning is used, previous surveys have shown that China is not a democracy. However, from a Chinese perspective the concepts of socialist democracy and democratic dictatorship are used, meaning that all power emanates from the people. In China compared to Sweden, deliberative democracy¹⁷¹ seems to have greater impact, even though it has been discussed in Sweden as well, as complementary to an electoral democracy.¹⁷² The story of Sweden as a welfare state and the illusion of '*folkhemmet*' in the 1930s to 1940s, do have some features in common with the ideal of a harmonious society in China in 2020.¹⁷³

From a western lawyer's perspective, it seems as if the power in Sweden comes from the bottom up, while the opposite can be said about China. As will be noticed in the next section, the Chinese economy has improved enormously over the past thirty years, though political reforms are lagging behind.¹⁷⁴ On one hand, the lack of political reforms is in the doctrine referred to as China's trapped transition. Three ways to get out of this trapped transition are presented: by reform, by a regime collapse or by devolution of power.¹⁷⁵ On the other hand, arguments have been put forward that political reform and democracy as a political system do not have any direct, positive, but rather only indirect, effects on economic development.¹⁷⁶

¹⁷⁰ See EIU (n 141) 50–52.

¹⁷¹ In brief, deliberative democracy means that communication is in focus and a consensus is reached. However, differences in the concept exist; see Amy Gutmann and Dennis F. Thompson, *Why Deliberative Democracy?* (Princeton University Press 2004).

¹⁷² About China, see Li (n 141) 59–83; Yu (n 155) 167–191, and for Sweden, see SOU 2000:1 *En uthållig demokrati! Politik för folkstyrelse på 2000-talet*, 22–23.

¹⁷³ Li (n 141) 43.

¹⁷⁴ Minxin Pei, *China's Trapped Transition: The Limits of Developmental Autocracy* (Harvard University Press 2006) 11.

¹⁷⁵ *Ibid* 210–211.

¹⁷⁶ Yu (n 155) 145–166, 193–195. It is held that the important parts are the right to property, investment and finance, the rule of law, and education and human capital.

5 Economy

5.1 Opening comments

In section 5, I briefly comment on the economy of the two countries. Economic development can be connected to both democracy¹⁷⁷ and the rule of law.¹⁷⁸ However, this section does not focus on the relevance or necessity of these two concepts, but rather presents a very brief overview of the economic systems as such.

5.2 Sweden – an open market economy

The Swedish economy is an open market (mixed) economy, with large tax-financed sectors and reallocation of income. Sweden can be described as a welfare state with one of the world's most extensive social security systems, dating back to the idea of *folkhemmet*.¹⁷⁹ Hence, the public sector is financed with a high tax burden on individuals and companies (almost 70 per cent of income is paid in tax).¹⁸⁰

Privately owned companies make most of the products in Sweden, though the state has a monopoly in some areas, such as the sale of alcohol. Sweden had a huge economic crisis in the 1990s, due to inflation. Sweden largely depends on export of goods and services, and China is an important trading partner.¹⁸¹ Steel and paper used to be important resources for export; however, today, export mostly consists of services.

Every year the OECD publishes surveys about the economy. In the OECD report of 2019 the main findings in relation to Sweden's macroeconomic policies were that: (1) inflation was close to the 2 per cent target and capacity utilization was high after several

¹⁷⁷ Yu (n 155) 145–165.

¹⁷⁸ Tamanaha (n 36) 11.

¹⁷⁹ For an overview of the development of the social security system in Sweden, see Ruth Mannelqvist, *Samband i Socialförsäkringen* (Iustus 2003) 64–92.

¹⁸⁰ Sakura Shiga, 'International Comparison of Taxation and Social Security Policies' (2010) March BFTT 188–189.

¹⁸¹ See (n 12).

years of strong growth, (2) public finance was healthy, supported by a strong fiscal framework.¹⁸² Additionally, the report notes that global uncertainties such as the intensification in global trade tensions, disorder of Brexit and stress in the European sovereign bond markets may affect the stability. However, this note was made prior the Coronavirus pandemic. Similar to many other countries, Sweden has taken several steps in dealing with the pandemic in relation to economic stability.¹⁸³

As mentioned in section 4.2, Sweden is a member of the EU; however, it has not joined the monetary union within the EU and therefore still uses the Swedish crown (SEK) as currency.

5.3 China – a socialist market economy

After the death of Mao, several economic reforms were made transforming a sideline economy into a legitimate, if not law-governed, private sector that was integrated into the system of the decentralized authoritarianism.¹⁸⁴ The economic reforms were part of the plan, primarily made by Deng.¹⁸⁵ To achieve the goal of integration into the world economy, legal reforms were needed, which facilitated the introduction of rule of law in China.¹⁸⁶ The people of China wanted and needed stability and peace. The policy of socialist market economy was established in 1993 and can to some extent be understood in the light of what happened at Tiananmen Square.¹⁸⁷ In the 1990s foreign trade increased rapidly, and during the first ten years in the 2000s it took a great leap forward. In addition, the foreign investors, an important player, have largely increased. China, having a huge manufacturing industry dependent on export, does, however, have its weakness, both in regard to en-

¹⁸² OECD, 'OECD Economic Surveys – Sweden' (March 2019) 4–6.

¹⁸³ Katia Cejic, 'Taxes and Contributions on Cross-Border Employment Income – Before and During the COVID-19 Pandemic' (2020) 24(12) BFIT.

¹⁸⁴ Pierre F. Landry, *Decentralized Authoritarianism in China: The Communist Party's Control of Local Elites in the Post-Mao Era* (Cambridge University Press 2008).

¹⁸⁵ The reform was carried out in different steps. See Ebrey (n 47) 332–350, 403; Kjellgren (n 48) 29–87 esp. 81 ff.; Eklund (n 55) 132–133.

¹⁸⁶ Randall Peerenboom, *China's Long March Toward Rule of Law* (Cambridge University Press 2002) 450 ff.; Mary E. Gallagher, *Contagious Capitalism – Globalization and the Politics of Labor in China* (Princeton University Press 2004) 102; Mary Gallagher, "Reform and Openness" Why China's Economic Reforms Have Delayed Democracy' (2002) 54 World Politics 338–339.

¹⁸⁷ See section 3.4.2.

vironmental costs as well as vulnerability to changes in foreign demand.¹⁸⁸

The socialist market economy, seen from a western law perspective, is hard to grasp, since it seems to be a hybrid. However, the economic growth of China is unquestionable, and undoubtedly, a success. The economic growth has taken hundreds of millions of people out of poverty over the past three decades. The welfare of the majority of the people in China is rooted in Deng's thoughts on welfare socialism, that is, that the rich help the poor and provide examples to follow.¹⁸⁹ In comparison, the aggregated size of the Chinese economy in 2002 was more than eight times its size in 1978. Urbanization rose from 18 to 39 per cent, state-owned enterprises fell from 78 to 41 per cent and the share of the private sector rose from 0.2 to 41 per cent during this time.¹⁹⁰ Nonetheless, as often with China, there are two stories. Wolf argues that China has not grown as much as it ought to have.¹⁹¹

In previous research, it has been stated that communist reform of economies (socialist economies) has failed with the exception of China.¹⁹² The Chinese success is explained by the timing and sequencing of its foreign direct investment liberalization and the mode of integration into the global economy.¹⁹³ It is held that the Chinese state remains authoritarian, secretive and corrupt and that the economy is politicized. Furthermore, the Chinese market for foreign enterprises is restricted in a number of ways.¹⁹⁴

It is often stated that 'market economy is a rule of law economy', a slogan so often used that it helped China to become a member of

¹⁸⁸ Françoise Lemonie, 'China's Integration into the World Economy – Successes and New Challenges' in Eric Florence and Pierre Defraigne (eds) *Towards a New Development Paradigm in Twenty-First Century China: Economy, Society and Politics* (Routledge 2013) 11–27; Gallagher (n 186 (2004)) 2.

¹⁸⁹ Yu (n 155) 197.

¹⁹⁰ Pei (n 174) 2–3.

¹⁹¹ Martin Wolf, 'Why Is China Growing So Slowly?' (2009) *Foreign Policy* (21 October).

¹⁹² M. Harrison, 'Communism and Economic Modernization' in Smith (ed) (n 104) 387–406.

¹⁹³ Gallagher (n 186 (2002)) 338–339.

¹⁹⁴ Government Communication (n 13) 4–5.

the WTO.¹⁹⁵ The Party Congress in 2017 set as a goal that China should become a great modern socialist country by 2049.¹⁹⁶ However, in Chinese literature it has been highlighted that the deeply embedded structural problems in China's political system and partially reformed economy cast doubt as to whether China can sustain its dynamic economic modernization.¹⁹⁷

In the latest OECD report (2019), the OECD notes that the economy is slowing down and macroeconomic policy is becoming supportive. However, economic growth remains robust by international standards, and China is still regarded as a major driver of global growth. Still, enterprise debt is very high and local government finances are stretched. Furthermore, in many provinces, public debt totals annual revenues.¹⁹⁸ The OECD recommends that China unify product and labour markets across the country. Monetary policy rules appear to have attached a great weight to inflation in the past decade and a half.¹⁹⁹

5.4 Concluding comments

It is obvious that regardless of whether China qualifies as a developing country within the framework of the WTO, it has become one of the most important economies of the world. With regard to the economy, a brief note on corruption should be made. According to the investigation made by Transparency International, Sweden is considered the fourth least corrupt country out of 180 countries under investigation. China settled as the 80th least corrupt

¹⁹⁵ Peerenboom (n 36) 37. However, within the WTO framework China still consider itself to be a developing country, benefitting from different conditions under WTO agreements (see Government Communication (n 13) 5). The EU does not regard China as a developing country, but rather as a key actor and a strategic partner on the global arena; European Commission (n 13).

¹⁹⁶ Government Communication (n 13) 5.

¹⁹⁷ See Pei (n 174) in which the author shows the limits of a developmental autocracy, despite the awe-inspiring economic growth leading to a weakening of China's political party.

¹⁹⁸ Private debt is also considered high in China, and an estimation is made that China's overall debt (private and public) could amount to up to 300 per cent of its GDP. See Preface xi, in Silvo Beretta and others (eds.), *Understanding China Today: An Exploration of Politics, Economics, Society, and International Relations* (Springer 2017).

¹⁹⁹ OECD, *China's Economy at a Crossroads*, 2019 OECD Economic Survey of China, Beijing, April 2019.

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country.²⁰⁰ However, in relation to the Nordic countries, it may be noted that several scandals in 2019 showed that transnational corruption is facilitated, since integrity at home does not always mean integrity abroad.²⁰¹

The pandemic's impact on the economy in both states is yet to be seen. Indications in October 2020 are that the growth of GDP of both countries is decreasing and the unemployment rates are increasing during 2020 compared to 2019.²⁰²

Another way to compare the economies of different states is to study the GDP/capita. According to the World Bank Groups, the GDP/capita for China in 2018 was US\$9,770.8 and for Sweden US\$54,608.4.²⁰³ The overall GDP in per cent in comparison to the previous year shows that China had an increase of GDP of 5.8 per cent (with an inflation rate of 2.4 per cent)²⁰⁴ and Sweden an increase of 1.5 per cent (and an inflation rate of 1.5 per cent).²⁰⁵ From these figures, one can draw the conclusion that the economy of China is growing more rapidly than the Swedish economy.

However, if GDP/capita is seen as an indication of the living standard of the people in the country, this would indicate that Swedes have a higher living standard than the Chinese do. However, according to the Global Wealth Report of 2019 the wealth of the households in China has increased remarkably during the 21st century (more than 17 times). This is more than three times the rate of most other nations.²⁰⁶ Regardless of which story of China one choose to listen to, it has to be said that compared to other countries China has made a remarkably impressive recovery and

²⁰⁰ Transparency International, Corruption Perspective Index 2019 2. Sweden scored 85/100 and China scored 40/100, average is 43. A comparison can be made with 2015, when Sweden scored 89 and China 37, which indicates that China has improved in preventing corruption, and Sweden has not.

²⁰¹ Ibid 24–25.

²⁰² [People's Republic of China and the IMF](#) and [Sweden and the IMF](#) (accessed 2 December 2020).

²⁰³ https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?name_desc=false (accessed 7 April 2020).

²⁰⁴ <https://www.imf.org/en/Countries/CHN> (accessed 7 April 2020).

²⁰⁵ <https://www.imf.org/en/Countries/SWE> (accessed 7 April 2020).

²⁰⁶ Credit Suisse, 'Global Wealth Report' (2019) 45.

development compared to most African, Middle Eastern and Latin American countries (i.e. also rather undeveloped countries in the late 20th century).²⁰⁷

6 Concluding comments – the starting point for further research

The historical, economic and political development briefly described in this article goes hand in hand with the legal development of the two countries. A basic understanding of all these different aspects is important for the study of Swedish or Chinese legal culture, since they are all integrated parts of it. This article can serve as a starting point for other scholars who are interested in one or both countries under analysis.

Sweden is celebrating 100 years as a democracy in 2021. At the same time, China is celebrating 100 years of the CCP. Comparing what has happened in the two countries during this time, it can be noted that wars and conflicts with other countries have been more frequent for China than for Sweden. Both countries have evolved due to the industrial revolution and the Internet. However, political reforms and economic growth differ considerably. Whether the introduction of democracy in China would be of benefit or not has been mentioned, however not elaborated on, in this article.

Approaching Sweden in comparison to China is to meet with a rather homogeneous and peaceful story, which puts the individual in the centre. When approaching China, one is met with two different stories. The first is of a country that has taken several hundred million people out of poverty and transformed from a country with civil wars and starvation to one that recently has built a functional legal system, emerged as a powerful actor on the international stage and hosted the Olympics. The second story is about a brutal authoritarian country, where the CCP arrests political dissidents, imprisons courageous lawyers and reporters, is building the most powerful military army in the world, provides bad working condi-

²⁰⁷ Peerenboom (n 157) 20.

tions, contributes to major environmental pollution and still has a huge population living on less than US\$2 per day (in 2008).²⁰⁸

Furthermore, it must be kept in mind that China is a large country (comparable to the size of the EU), and what has been described in this article does not cover all of China. In the literature it is held that contemporary China is struggling between Confucianism,²⁰⁹ democracy and communism and that no foreign ideology can survive in China unless it has capability to harmonize itself with Confucianism.²¹⁰ Sweden today is struggling with blurred lines between the different political parties, leading to the lack of a majority in Parliament and government. Governing without a majority requires compromise between the political parties, which results in instability.

In forthcoming publications, the content of rule of law in the two countries, as well as their legal institutions as part of legal culture will be analysed. In a final project, the income tax and contribution laws will be applied to (Sweden–China) cross-border workers.

²⁰⁸ Ibid.

²⁰⁹ Confucianism has been resurgent within mainland China during the past 30 years. The Confucian thinking, that law alone is not sufficient to govern a country properly and that a great man is needed for good governance is still there, emphasizing hierarchical social roles (Blasek (n 35) 41). It fits well with the CCP official concept of harmonious society. Xi adheres to Confucianism as well. The importance of Confucianism can be noted in the establishment of Confucianism centres overseas; Wang and Madson (n 58) 32–34.

²¹⁰ Lihong Zhang, 'Confucianism, Communism and Democracy: A "Triangular" Struggle in China – Reflections on Italy's Historical Experience with Cultural Reform' in Beretta and others (eds.) (n 198) 313–325; Yu (n 155) 129–132.

