

Rule of Law: a Fundamental Concept Without a Coherent Meaning

Analysis of the Swedish and Chinese Understandings

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Abstract

The concept “rule of law” is used worldwide. However, the meaning of the concept varies, depending on several factors such as geography and history. This article provides a brief overview of how the concept is understood in the Swedish and Chinese legal contexts, by defining its different characteristics. The research confirms that the concept, which originates from the West, is used and perceived quite differently in the two countries. In fact, the use of different terminology, law-state thinking and socialist rule of law with Chinese characteristics, confirm the differences in understanding.

Keywords

rule of law – law-state thinking – Sweden – China – characteristics – legal culture – understanding – concept

1 Introduction

1.1 *Opening Comments*

The concept rule of law is a fundamental part of most modern legal systems. However, the meaning of the concept varies across countries, depending on

several factors.¹ It is probably impossible to define the meaning of rule of law outside the historical and geographical context of a specific jurisdiction. While it may be well defined within one jurisdiction, the concept carries different connotations across countries, and even more so, across legal cultures and traditions. Accordingly, it seems impossible to find a universal meaning of the concept rule of law.²

The main purpose of this article is to identify the characteristics³ of the concept rule of law in the People's Republic of China (hereafter, China) and Sweden. By identifying the characteristics, the understanding of the concept, i.e. the meaning (content) of it will become clearer. This understanding is important when conducting comparative studies, since rule of law is a fundamental part of the legal culture of a country.⁴

1.2 *Methodology and Perspective*

1.2.1 Choice of Jurisdictions and a Note on Methodology

Previous research using comparative approaches has established that the systems in Sweden and China belong to different legal families,⁵ and different legal

1 See, for instance, T. Bingham, *The Rule of Law* (Penguin Books, 2011); B.Z. Tamanaha, *On the Rule of Law – History, Politics, Theory* (Cambridge, 2004); B.Z. Tamanaha, 'A concise guide to the rule of law', in: N. Walker, G. Palombella (eds) *St. John's Legal Studies Research paper No. 07-0082* (Hart Publishing, 2007) 2, available at: <https://ssrn.com/abstract=1012051>; K. Blasek, *Rule of Law in China: A Comparative Approach* (Springer, 2015) 9; R. 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; J. Husa, 'Developing legal system, legal transplants, and path dependence: Reflections on the rule of law', *The Chinese Journal of Comparative Law* 6(2) (2018); World Justice Project (WJP) Rule of Law Index 2020, (online), (referred to as WJP 2020) 9 f.; M. Salter, 'The liberal rule-of-law as a critical yardstick for China? Explaining some contradictions', *Global Journal of Comparative Law* 5 (2016) 5–44; UN, 'Resolution adopted by the General Assembly on 24 September 2012 Distr: general 30 Nov 2012, A/RES/67/1; and P. Pistone et al., *Fundamentals of Taxation: An Introduction to Tax Policy, Tax Law and Tax Administration* (IBFD, 2019) 28. For an overview of rule of law and different organisations, as well as differences in the conception of different countries (the British, American, German and French conceptions), see E.O. Wennerström, *The Rule of Law and the European Union* (Iustus, 2007) 22–76.

2 See, for a similar position, B.Z. Tamanaha (n 1) (2004). For an overview of different conceptions of rule of law in different countries, see O. Petersson, *Rättsstaten, Frihet, rättssäkerhet och maktdelning i dagens politik* (Norstedts Juridik, 2005) 15–21, and S. Hua, *Chinese Legal Culture and Constitutional Order* (Routledge, 2019) 8, on the relationship between rule of law and legal culture.

3 The terms characteristics and elements are used as synonyms in this article.

4 E.O. Wennerström (n 1) 48.

5 René David would have referred them to civil law and socialist law family, and Zweigert and Kötz would have referred them to the Nordic legal family and the family of the Far East; see K. Zweigert and H. Kötz, *An Introduction to Comparative Law* (3rd ed., Oxford, 1998).

traditions,⁶ and demonstrate different patterns of law.⁷ This is consistent with the significant differences in the historical, political and economic dimensions that have previously been identified by the author of this contribution.⁸

Yet, the two countries do share a history dating back to the 18th century. As China has emerged as a leading economy at the global level, the contacts have developed into significant trading and several large business ventures.⁹ From a Swedish perspective, the activities represent a relatively large number of Swedish companies investing in the Chinese market, resulting in turn in a significant number of employees being posted to China. The actual consequences, mismatches and legal problems facing these posted workers concerning income taxes and social security contributions will be analysed in a forthcoming publication. To be able to apply the relevant laws and identify the problems, the legal cultures and the rule of law of these two “radically”¹⁰ different countries need to be understood. The purpose of this contribution is to provide such understanding.

This basic understanding is essential for analysing any part of the legal system of Sweden or China or both countries. A dogmatic method, including some comparative elements, is used to fulfil the purpose. Rather than comparative, this study should be considered a juxtaposition of previous research on the understanding of the concept of rule of law in the two jurisdictions, as interpreted by the author. While this study is not intended to be comparative in its own right, it may be a useful starting point for future comparative studies.¹¹ For this reason, some aspects that are particularly interesting from a comparative perspective are identified in the text.

6 H.P. Glenn, *Legal Traditions of the World* (Oxford University Press, 2014) on civil law tradition and Confucian legal tradition.

7 U. Mattei, ‘Three Patterns of Law: Taxonomy and Change in the World’s Legal Systems’, *American Journal of Comparative Law* 45 (1997) 16–44. See below.

8 See K. Cejic, ‘Understanding Sweden and China from a legal historical, political and economic perspective – a brief overview’, Uppsala Faculty of Law, WP 2021:4.

9 The allocation of global influence is changing, and the rise of China has to be considered. M.A. Livingston, *Tax and Culture: Convergence, Divergence, and the Future of Tax Law* (Cambridge, 2020) 10.

10 U. Mattei (n 7) 7. On “radically” different legal systems and the concept of understanding, see S. Seppänen, ‘After difference: A meta-comparative study of Chinese encounters with foreign comparative law’, *American Journal of Comparative Law* 68 (2020) 186–221.

11 On comparative tax scholarship and the purpose of such, see K. Brooks, ‘A Hitchhiker’s Guide To Comparative Tax Scholarship’, *Florida Tax Review*, 24(1) (2020). This contribution would fall into Brooks’s first taxonomy, doctrinal comparative (tax) scholarship.

1.2.2 Conceptual Analysis

A semiotic triangle may be used to analyse *concepts*.¹² The triangle illustrates in a rather clear way the different parts of a concept and the differences in these parts. Various authors have published different versions of the triangle.¹³ For the purpose of this study, however, it will suffice to establish that a concept consists of three parts: a *term* (word), which refers to an *object* (referent) through the *meaning* (content) given (Fig. 1). If different terms refer to the same object with the same meaning, they are synonyms.¹⁴

To apply this triangle to legal concepts may prove challenging. The reason is that many legal concepts do not exist in the real world (unlike a house or a boat), that is, there is no real object. Rather, concepts are the output of our minds and can be regarded as social constructions. This means that the concept and the object sometimes are blurred and mixed, leading to circular argumentation.¹⁵ Some legal scholars disregard the object and focus on the concept, the term and the meaning (definition, content).¹⁶ Likewise, in this article the author will study the concept rule of law with the focus on understanding the meaning of it, from a Swedish and Chinese perspective. By identifying the characteristics of the concept, the meaning will become clearer.¹⁷ The question of terminology (the term) will be discussed in Section 5 of the article.

12 C.K. Ogden and I.A. Richards, *The Meaning of Meaning: A Study of the Influence of Language upon Thought and the Science of Symbolism* (Art, 1985); J.I. Saeed, *Semantics* (John Wiley & Sons, 2016); P. Kroeger, *Analyzing Meaning: An Introduction to Semantics and Pragmatics* (Language Science Press, 2018); K. Cejje, *Inkomstskatter och socialavgifter – två metoder att beskatta löneinkomster* (Norstedts Juridik, 2020); S. Olsson, 'Relationen mellan rättsvetenskapliga termer och begrepp' in: N. Dimitrievski et al. (eds) *Vänbok till Åsa Bergenheim* (Jure, 2020) 109–164.

13 P. Kroeger (n 12) 16, mind-language-world; C.K. Ogden and I.A. Richards (n 12) 11, symbol-thought on reference-referent; M. Alvesson and K. Sköldbberg, *Tolkning och reflection – vetenskapsfilosofi och kvalitativ metod* (Studentlitteratur, 2017) 278, term/word-meaning-referent/object; B. Baldersten, *Normativ metod. Att studera det önskvärda* (Studentlitteratur, 2006) 83–93.

14 C.K. Ogden and I.A. Richards, second canon (n 12) 92 ff.

15 K. Cejje (n 12) 261 f.; S. Olsson (n 12) 141 ff.

16 C. Sandgren, 'Om teoribildning i rättsvetenskap', *JT* (2004/05) 301.

17 A distinction between characteristics and definitions is sometimes made in doctrine. Definitions are regarded as delimiting the meaning of a concept, whereas characteristics require that a meaning already exist, however, help to identify it. See S. Olsson (n 12) 120 with reference to S. Eng, *U/enighetsanalyse – med saerlig sikte på jus og allmenn rettsteori*, (Oslo, 1998).

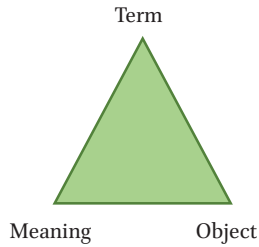


FIGURE 1 The semiotic triangle of concepts

1.2.3 Perspective

The author of this contribution is Swedish, and has never set foot in China. Because of the fundamental differences in history and culture between Sweden and China, and because of the elusive nature of the rule of law concept, it is justified to question whether such author can understand the rule of law of China at all.

This kind of challenge is common in most forms of comparative studies, and may be dealt with in different ways. The author of this article would argue that this kind of assessment is valid, as long as the author recognises the challenge and maintains transparency about her background, context and objectives. Also, perhaps most importantly, it is crucial to maintain an open mindset with an honest *curiosity* about *the other*.

The ambition with this article is to search for, and try to understand, the rule of law concept as it presents itself in the two countries, by systematising prior research and applying it to a new context. The author does not claim to present *the* correct understanding of the rule of law in China, Sweden or any other country or jurisdiction, but rather, how it is perceived and understood from the perspective of a European scholar. In addition, studying Swedish rule of law has made clear just how variable and dynamic the concept is, resulting in a greater consciousness and shaping the lens of her glasses. The ambition is to search for and try to understand the rule of law of the two countries.

Due to language barriers, only sources published in English and Swedish have been used. The reader is asked to keep these perspectives and limitations in mind when reading this contribution. Material published prior to November 2021 has been regarded.

1.3 *Outline*

In Section 2, the concept rule of law from a more overall perspective is presented, with the purpose of showing how this concept has been explained in prior research, and defined and used by different organisations. The material used in Section 2 is primarily of Western origin, since the concept itself is of

such origin, dating back to the classical Greek thoughts of Plato and Aristotle.¹⁸ However, in recent years the concept has been endorsed by governments also in, for example, Asia. In Sections 3 and 4, the characteristics of rule of law in Sweden and China are identified; that is, the meaning (understanding) of the concept is identified in these sections. In Section 5, the question of terminology is addressed, since both the *meaning* and the *term* are fundamental parts of the semiotic triangle (see Fig. 1, sec. 1.2.2).

Finally, it should be noted that the purpose of this article is not to discuss rule of law in detail or to analyse whether the two countries fulfil the rule of law and its prerequisites – if these exists. This has (more or less) been done in previous research.¹⁹ However, in Section 5 an example is given and a few concluding comments are made in regard to the importance of which perspective one chooses when measuring and comparing different outputs. The main purpose of this article is to create an understanding, since rule of law can be seen as part of the legal culture of a country.

2 Rule of Law – a Western Concept Without a Coherent Definition

2.1 *Opening Comments – An Overall Approach*

Rule of law is often held to be good for everyone. In Western states, it is even an orthodox belief. It is held to enhance liberty and economic development.²⁰ When analysing the rule of law, Tamanaha makes distinctions between (1) definitions, (2) elements, (3) functions and (4) benefits.²¹ The focus in this article is on the meaning of rule of law, that is, the elements. To show the diversity of how the concept is used as well as its meaning, a brief overview of a few different Western definitions are made in Section 2.2.²² From these definitions some core characteristics (elements) of the Western rule of law are identified and elaborated on in Section 2.3. In Section 2.4, a few concluding comments are made. The terms characteristics and elements are used as synonyms in this article.²³ As a starting point, the Oxford English Dictionary defines rule of law as:²⁴

18 On the history of rule of law, see B.Z. Tamanaha (n 1) (2004) 1–31.

19 For such studies, see, for instance, R. Peerenboom (n 1), WJP (n 1), K. Blasek (n 1). The example in § 5.3 is based on the WJP Index.

20 B.Z. Tamanaha (n 1) (2004) 1–2.

21 B.Z. Tamanaha (n 1) (2007).

22 Definition in this context is seen as a synonym for meaning, content and characteristics.

23 See (n 3).

24 Oxford English Dictionary, online, retrieved 24 August 2021 through the Uppsala University Library, rule of law, n.: Oxford English Dictionary (uu.se).

The authority and influence of law in society, esp. when viewed as a constraint on individual and institutional behaviour; (hence) the principle whereby all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes.

This definition tells us that the law is used as a tool to constrain not only individuals but also institutions and governments. Everyone is considered equal before the law, and codes and legal processes are to be publicly disclosed.

2.2 *Different Definitions of the “Western” Rule of Law*

2.2.1 Introduction

Even though the rule of law is held to be a Western concept,²⁵ the meaning of the concept varies within the West. In this section, a few examples illustrate this variety by identifying different definitions. First, I present a brief overview on how rule of law has been defined in legal doctrine, and second, how the concept is defined by the World Justice Project (WJP). The WJP is an independent multidisciplinary organisation working to advance the rule of law worldwide.²⁶ Third, how rule of law is defined by the United Nations (UN), and finally, how it is referred to within the Treaty of the European Union (TEU). The two latter organisations are chosen, as Sweden is a Member State of the EU, while Sweden and China are both members of the UN.

2.2.2 Legal Doctrine Definitions

In legal doctrine, a distinction is commonly made between the narrow and broad definitions, also referred to as the thin and thick conceptions, of rule of law.²⁷ The narrow definition emphasises the formal and instrumental aspects, meaning that the content of the law is not relevant. For example, the narrow definition does not require democracy or the protection of human rights. Hence, the rule of law is necessary but not sufficient for a fair and just legal system.²⁸

25 See, for example, P. Nobel, 'Rättsstaten. En essä', in: Stiftelsen Rättsstatens vänner, *Rättsstaten, Idé och verklighet* (Iustus, 2015) 21. On the differences of different Western approaches to the conception of rule of law, see E.O. Wennerström (n 1) 61–76 or. O. Petersson (n 2).

26 See World Justice Project | Advancing the rule of law worldwide.

27 B.Z. Tamanaha (n 1) (2007) 2–3. In other literature a formal and substantive conception of rule of law is described; see, for example, B.Z. Tamanaha (n 1) (2004) 91–113, and E.O. Wennerström (n 1) 76–84.

28 B.Z. Tamanaha (n 1) (2007) 8.

In brief, the elements of the narrow definition (thin conception) include that the law must be:²⁹

- prospective (set forth in advance),
- public and readily accessible,
- generally applicable,
- clear,
- stable and certain,
- consistent,
- enforced and
- applied to everyone according to its terms (transparency and equality).

The broader definition (thick conception) contains elements of political morality such as certain form of governments, certain economic systems or conceptions of fundamental rights.³⁰ This definition includes substantive aspects and can be seen as a broader social and political philosophy, addressing issues beyond the legal system as such.

2.2.3 The World Justice Project's Definition

The World Justice Project (WJP), defines the rule of law as a durable system of laws, institutions, norms and community commitments that delivers:³¹

- accountability: meaning the government as well as private actors are accountable under the law;
- just laws: meaning the laws are clear, publicised, and stable; are applied evenly; and protect fundamental rights, including the security of persons and contracts, property and human rights;
- open government: meaning the process by which the laws are enacted, administered and enforced is accessible, fair and efficient; and
- accessible and impartial dispute resolution: meaning that justice is delivered in a timely manner by competent, ethical and independent representatives who are accessible, have adequate resources and reflect the makeup of the communities they serve.

These four deliverables, referred to by the WJP as universal principles of rule of law, are developed into eight different factors of law: constraints on

²⁹ See R. Peerenboom, 'Competing conceptions of rule of law in China', in: R. Peerenboom (ed.) (n 1) 109 with further references; B.Z. Tamanaha (n 1) (2007) 3; and M. Salter (n 1).

³⁰ B.Z. Tamanaha (n 1) (2007) 3; K. Blasek (n 1) 10, for a comparison on protection of human rights at 44–52; R. Peerenboom (n 1) 2. He also identifies four different thick conceptions of rule of law in China: Static Socialism, Neo-Authoritarian, Communitarian and Liberal Democratic conceptions (n 29) 109–141.

³¹ WJP 2020 (n 1) 10.

government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice and criminal justice.³²

The WJP places China in 88th place in a global ranking, with an overall score of 0.48, and Sweden in 4th place, with an overall score of 0.86.³³ However, it is important to note that the scores in the WJP index are not followed by any explanation or analysis, making it hard to base any real conclusions on them. I will return to this index in Section 5.3, with the purpose of illustrating the difficulties of comparison when a Western perspective is taken as a starting point of comparison. To be able to illustrate this difficulty, the elements of not only the Western understanding of rule of law but also the Chinese understanding must be established. This will be done in Sections 2.4, 3 and 4.

2.2.4 The United Nations' Definition

In 2012, the UN had its first high-level meeting on the rule of law.³⁴ At the time of writing, the rule of law is an integrated part in the three pillars of the UN: to support rule of law in domestic settings to establish peace and security, to secure human rights and to enforce sustainable development.³⁵ The UN defines the rule of law as:³⁶

a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.

32 Furthermore, these eight factors are divided into 44 sub-factors in the WJP Rule of Law Index.

33 WJP 2020 (n 1) 58, 143.

34 UN (n 1). On rule of law and the UN, see also E.O. Wennerström (n 1) 23–28.

35 The Three Pillars – United Nations and the Rule of Law (retrieved 14 July 2021).

36 What is the Rule of Law – United Nations and the Rule of Law (retrieved 14 July 2021). According to A. Ramberg, 'The Rule of Law – a Luxury paradigm in Decline?', in: M. Dahlberg (ed.) *Law and Society – Contributions by the Honorary Doctors* (Iustus, 2019) 334; the quote is by Mr. Kofi Annan.

2.2.5 The Concept Used Within the EU Legal Framework

In addition, the rule of law is also mentioned, however, not defined, in Article 2 of the TEU:³⁷

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

In recent literature, it is held that the EU strives to create a common rule-of-law culture. The Commission suggests focus on (1) legality, legal certainty, and equality before the law and separation of powers, (2) prohibition of arbitrariness and penalties for corruption and (3) effective judicial protection by independent courts.³⁸ In his doctoral thesis, Wennerström (2007) summarises the conception of rule of law inside the EU as including supremacy of law, separation of powers, judicial review and fundamental rights.³⁹

2.3 Core Characteristics of “the Western” Rule of Law

If one studies the narrow definition⁴⁰ made in previous Western legal research and the definitions used by different Western organisations, three core characteristics are identified by Tamanaha:⁴¹

1. the principle that the law does rule and should rule,⁴²
2. the importance of an independent judiciary, and
3. a robust legal profession and legal tradition.

37 For an analysis of the rule of law in the EU and how the EU should protect the rule of law, see M. Kmezic and F. Bieber, *Protecting the rule of law in EU Member States and Candidate Countries*, SIEPS (October 2020) 12, available at www.sieps.se.

38 M. Kmezic and F. Bieber (n 37) 8.

39 E.O. Wennerström (n 1) 154–160.

40 In contrast, if using the broad definition of rule of law, moral aspects can be included (see more on morality, Section 3.2.2).

41 See also B.Z. Tamanaha (n 1) (2007) 13–16.

42 The first element is more or less based on the cultural belief that the law is to be something good. However, in societies where this cultural belief is missing, perhaps due to a long history of enforcing authoritarian regimes, where legal officials are corrupt and rules held to be applied – however not applied equal to everyone – this is problematic. To change culture and to create general trust takes time. Similarly, the law can state discriminatory or unjust treatment. However, several of the narrow definitions also include equality as an important aspect.

In addition to these three core characteristics, this author would add a fourth:

4. equality before the law.⁴³

The first core characteristic is also connected to the principle of legality and the principle of legal subordination. In brief, the principle of legality⁴⁴ holds that the law-applying organs and public powers themselves comply with the legal rules in force. This meaning of legality is sometimes referred to as supremacy of laws.⁴⁵ The principle of legal subordination holds that the law is applicable to everyone, including that public power ought to be exercised under legal rules. With other words but with similar content, Aristotle is said to have held: "It is more proper that law should govern than any one of the citizens."⁴⁶

The second core characteristic is the requirement for an independent judiciary. If the judiciary is dependent on, or controlled by, politicians or others, it may treat government officials or others differently. A vital part of the independent judiciary is that government officials, and others, respect and comply with court rulings and similar legal actions. If a strong cultural belief in law (and the first characteristic) is established, it is possibly easier to achieve this second one. In addition, if the third core characteristic is upheld, it will contribute to this second, indicating that the three or four characteristics are closely interconnected. The principle of subordination can be connected to this second characteristic as well as to the first one. A fair trial and non-discretion or arbitrariness are important, meaning that the law should be applicable to everyone.

The third core characteristic, a robust legal profession and legal tradition, is important when committing to and upholding the rule of law. It will make it easier to achieve predictability and certainty in the law.⁴⁷ If one looks at the elements mentioned in relation to the narrow definition of the rule of law,⁴⁸ several of these can be connected to legal certainty as well. Similarly to the other two core characteristics, the third one can be connected to the principle of subordination. Hence, when one has robust legal professions and legal traditions, it is easier to apply the law equally to everyone, which once again illustrates that the core characteristics are interdependent.

43 Cf. Section 2.2.2–2.2.5.

44 See Section 3.2.3 below for a slightly different meaning of legality and Lon Fuller's eight principles.

45 E.O. Wennerström (n 1) 79.

46 For a brief historical overview of the references to the concept rule of law (or similar) from King Solomon, Magna Carta, Lord Denning and Fuller, etc., see A. Ramberg (n 37) or T. Bingham (n 1) 10–33.

47 B.Z. Tamanaha (n 1) (2007) 13–16.

48 See Section 2.2.2.

A fourth characteristic identified above, equality before the law, is also connected to the three characteristics mentioned and can to some extent be interpreted to be included in these already. However, this author finds the characteristic too often mentioned as well as too important not to be considered a core characteristic in itself.

All four characteristics are interrelated and very much connected to the principles of legality and legal subordination as well as to the legal culture of the society. If these characteristics are lacking, it will probably take generations to establish them. However, when established, it is held that the fact that they are interconnected makes the rule of law more resilient.⁴⁹ In conclusion, all the different criteria found in the different definitions (Section 2.2) can be connected to these four characteristics and the principles of legality and of subordination. Furthermore, the core characteristics of the Western understanding of rule of law are interdependent and reinforce each other when seen as a union.

2.4 *Concluding Comments*

In Section 2.2 a variety of different definitions of the Western rule of law have been outlined. In Section 2.3 four core characteristics shared by these different conceptions of the rule of law were identified. More important, however, is that countries have developed the rule of law independently and reached different levels in regard to the different characteristics identified. This can be explained by the emphasis different countries put on the different characteristics. Perhaps some characteristics are of less importance, especially if one takes a non-Western approach and gives the concept rule of law a different meaning. To be able to understand different legal cultures and legal systems, it is important to also understand these differences in the understanding of the fundamental concept rule of law. In Sections 3 and 4, the purpose is to identify the core characteristics, that is, the meaning, of rule of law in Sweden and China.

3 The Swedish Understanding of Rule of Law

3.1 *Historical Background*

To summarise previous research,⁵⁰ Swedish law has been influenced by foreign law since the Nordic Middle Ages (1050–1520 CE). Written laws were enacted

⁴⁹ B.Z.Tamanaha (n 1) (2007) 13–16.

⁵⁰ This section is based on K. Cejje (n 8).

at this time. Sweden got its first constitution in 1634. One of the first parliamentary boards in the world was established in Sweden in 1723. A mixture of different schools of thought were represented. Social liberalism was particularly important in the 19th century. At this time the separation of powers was introduced. In 1921, universal suffrage (men and women) was used for the first time, and Sweden became a modern democracy, by Western standards.

Rule of law as a concept is not widely discussed in Swedish legal doctrine; rather, welfare state, state governed by law⁵¹ and legal security⁵² are.⁵³ The discussion on welfare state took its starting point in the early 20th century. The introduction of a welfare state called for several reforms, and the purpose was to make the country safer and more equal. As part of being a welfare state, social benefits were distributed to everyone. Under the leadership of different political parties, different aspects of rule of law have been emphasised. For example, during the leadership of the Moderate Party, more focus was given to the choice of the individual. During other periods, when the Social Democrats were in majority, more emphasis was placed on social benefits for everyone.⁵⁴

3.2 *The Western Rule of Law with Swedish Characteristics*

3.2.1 Opening Comments – Terminology Used in Sweden

The term rule of law does not have a clear translation into Swedish, which may explain the lack of discussion in legal doctrine. Rather, according to the Swedish/English Glossary published by the Swedish National Courts Administration, there are several legal terms in Swedish.⁵⁵ According to the glossary “rule of law” is translated into Swedish as *rättsregel*, *rättssäkerhet* and *rättsstatens principer*. If one looks at the reversed translations one can see that:

- *rättsregel* means “legal rule”,
- *rättssäkerhet* is translated as “legally secure, in compliance with the rule of law” and
- *rättsstatens principer* is translated as “rule of law”.

In other law-related dictionaries, the term “rule of law” does not even exist.⁵⁶ In legal doctrine the term law-state, compared to the German concept *Rechtsstaat*,

51 See, for example, R. Sannerholm, *Rättsstaten Sverige – skandaler, kriser, politik* (Timbro, 2020).

52 See, for example, A. Peczenik, *Vad är rätt? Om demokrati, rättssäkerhet, etik och juridisk argumentation* (Norstedts Juridik, 1995) 43–100.

53 See Section 3.2.1 on the translation issue.

54 See, in brief, K. Cejje (n 8) with further references.

55 Domstolsverket, *Svensk/engelsk ordlista, Swedish/English Glossary* (AJ E-print AB, 2019). See also A. Ramberg (n 37) 331.

56 See, for example, *FARs Engelska ordbok* (FAR Förlag, 2001).

has been used.⁵⁷ Law-state (*rättsstat*) could probably best be described as a state governed by law. In conclusion, there is no single term used in Swedish that corresponds to the English “rule of law”. Rather, similar concepts can be seen as sets of laws and principles governing the state, probably best translated into *rättsstatens principer* in Swedish, or as professor Frändberg calls it in English, “law-state thinking”. 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).”⁵⁸ In this section, a brief overview of Frändberg’s conclusions on law-state thinking will be presented as representative of the Swedish understanding of rule of law. In addition to Frändberg, readings are suggested in the footnotes. However, in contrast to Frändberg, most of these are in Swedish.

3.2.2 Law-State Thinking and the Principles of Legality and Legal Subordination

Frändberg has identified four values as important in law-state thinking: legal equality, legal certainty, legal accessibility and legal security (see Sections 3.2.3–3.2.6).⁵⁹ However, a fundamental prerequisite for being able to realise these four values is legality. *Legality* (lawfulness, in some jurisdictions referred to as the rule of law) means that the law-applying organs and public powers comply⁶⁰ with the legal rules in force. Sometimes legality is used as a synonym for supremacy of laws.⁶¹ It is held that if legality is not upheld it erodes all the four values mentioned above. As such, it is seen as a condition for the realisation of the basic law-state values.⁶² In addition, legal power ought to be exercised under legal rules (*legal subordination*).⁶³ Legal subordination also includes constitutionalism and nomocracy.⁶⁴ With this view, power restriction is the most important purpose of a constitution.

57 Å. Frändberg, *From Rechtsstaat to Universal Law-State: An Essay in Philosophical Jurisprudence*, (Springer, 2014).

58 Å. Frändberg (n 57) 43.

59 Å. Frändberg (n 57) 45, and Å. Frändberg, 'Begreppet rättsstat', in: F. Sterzel (ed.) *Rättsstaten – rätt, politik och moral* (Iustus, 1996) 21, 24. See also O. Petersson (n 2) 19–24 on equal treatment, legal certainty, independent courts and separation of power, as well as protection of human rights.

60 Å. Frändberg (n 57) 63–75.

61 E.O. Wennerström (n 1) 79.

62 Å. Frändberg (n 57) 45, 54–93. On legality, see P. Pistone et al. (n 1) 36–38.

63 Å. Frändberg (n 57) 45, 93–96, on legal subordination, constitutionalism and nomocracy.

64 In England, Magna Carta subordinated the kings under the law, and was regarded as “the greatest constitutional document of all times – the foundation of the freedom of the

According to the Swedish constitutions, (Ch. 1, § 1, Instrument of Governance, 1G, *Regeringsformen* (1974:152)), all public power emanates from the people and is exercised according to the law, which constitutes a clear connection to the principle of legality and legal subordination. Furthermore, law-state thinking requires legal organisations or legal institutions representing different functions such as law making, conflict solving, breach-of-rule handling, executing (administering), controlling, etc. Important principles are the separation of functions (or separation of powers), the independence of the different authorities or judicial institutions, the possibility to appeal a decision or get a judicial review, transparency etc.⁶⁵ Chapter 1 of the 1G states how the separation of functions is effected. The separation of functions is connected to the principle of people's sovereignty.⁶⁶ The observant reader notices the similarities with the characteristics of the Western rule of law mentioned in Section 2.3. In addition to 1G, Sweden has three additional constitutions.⁶⁷ In one of these, the Freedom of Press Act (*Tryckfrihetsförordningen* (1949:105)), another important principle is mentioned: the principle of public access to information.⁶⁸

Furthermore, two value-based ideas are of importance in Swedish legal culture, *individualism* and *humanism*. Individualism, as opposed to collectivism, is said to see individual freedom, individual success, individual welfare, etc. as important. Furthermore, individualism provides the basis for humanism. In legal jurisprudence, it has even been held that the law-state would not mean anything without these two value-based ideas.⁶⁹

3.2.3 Legal Equality

Legal equality is held to be one of the very most important principles in the Swedish law-state thinking. What is more, as Einstein once said:⁷⁰ "Not everything that counts can be counted, and not everything that can be counted, counts."⁷¹ Undue discrimination is when the life of human dignity is violated,

individual against the arbitrary authority of the despot". See D. Danziger and J. Gillingham, *1215: the Year of Magna Carta* (Atria Books, 2005) and B.Z. Tamanaha (n 1) (2007) 26.

65 Å. Frändberg (n 57) 174–185. See also a forthcoming publication on legal culture.

66 Government bill 1973:90, 91.

67 For an overview, see K. Cejic (n 8) 19–22.

68 O. Petersson, (n 2) 19.

69 See Å. Frändberg (n 57), 52–56. See also, O. Petersson (n 2) 99, where it is held that the law-state and the welfare state are interconnected.

70 R. Sannerholm (n 51) 56.

71 WJP 2020 (n 1) para. 4.1; Å. Frändberg (n 57) 97–112. In addition, the principle of universal legal subjectivity, meaning that every human being shall be treated as a legal subject (having legal rights and duties) is connected to the principle of legal equality.

by treating similar cases differently or different cases alike. Discrimination can be direct or indirect. Direct discrimination exists when the law contains prerequisites that are discriminatory and lead to inequality. Indirect discrimination is connected to the application of the law. That is, the law does not contain a discriminatory criterion; however, when being applied it results in discriminatory treatment. This is, for example, common when it comes to direct taxation issues and EU law and the TFEU.⁷²

Equality comes in different forms and shapes,⁷³ before the law,⁷⁴ in the law and through the law. The first two forms are part of the law-state thinking. The first form, equality before the law, means that no person is given advantages not allowed by the law, that is, no one is “above the law”. It means uniform application of the law, whereby similar cases are treated similarly. The principle of equality before the law is found in the Swedish constitution (Ch. 1, § 9, 1G) and targets all courts and public authorities. Notably, the principle is not applicable to the Swedish legislating activity, which is rather unique in Western Europe. However, previous research shows that the difference is not as large in practice as could have been the case.⁷⁵

In another perspective, one side of the equal treatment principle is the treatment of the subject (individual); however, on the other side, it can also be connected to the performer (the state, judge or government official). Courts, authorities, police officers and other officials must be free from political control. This means, for example, that government regulations are applied and enforced without improper influence. Responsibility to maintain legal equality lies with legal functionaries, for example, legislators and law appliers.⁷⁶ If one connects this to the separation of functions mentioned above (Section 3.1), it can once again be stressed that from a Swedish perspective it is very important that politicians cannot interfere in individual cases, etc. In fact, such actions would be in conflict with the constitution and the separation of functions found therein.⁷⁷

72 See in more general terms, M. Berglund and K. Cejje, *Basics of International Taxation, From a Methodological Point of View* (Iustus, 2018) 79–134, Å. Frändberg (n 57) 103.

73 Å. Frändberg (n 57) 105–106.

74 B.Z. Tamanaha (n 1) (2007) 12.

75 See, R. Pålsson, ‘Principer eller regler? Legalitet och likabehandling i beskattningen’, *SN* (2014) 559, and R. Pålsson, *Likhet inför skattelag*, (Iustus 2007) 63–73. In the same research, the conclusion is made that the principle of equality and legality are legal principles and not norms, regardless that they are found in the constitution and in written EU law.

76 Å. Frändberg (n 57), 98, 106 f.

77 See K. Cejje (n 8) 31. For an example, please see Trump: I have had “a very good call with Stefan Löfven” | SVT Nyheter (retrieved 23 August 2021).

The second form, equality in the law, also aims at preventing undue discrimination. Frändberg holds that this is harder to achieve, since there are sometimes reasons to discriminate between different categories of people in order to organise social life etc.⁷⁸ A connection to EU law and the fundamental freedoms can illustrate this point. A domestic rule might be discriminatory to non-residents, but there might be a ground of justification for this discriminatory rule, which also might be proportionate.⁷⁹ The third form, equality through the law, is a means to attain a certain level of equality in the society in general and is not held to be part of the law-state value.⁸⁰

3.2.4 Legal Certainty

According to Adam Smith, “The tax which each individual is bound to pay ought to be certain, and not arbitrary.”⁸¹ Legal certainty and predictability (foreseeability) are principles closely connected, if not the same. From a law-state thinking, legal certainty is very important.⁸² However, what is meant by legal certainty is debated.

A well-known debate is between the Swedish scholars Peczenik, Lindblom, Jareborg and Frändberg and deals with the question whether (and how) good ethics, morality and predictability are prerequisites for legal certainty or not.⁸³ I will neither get into debate nor refer this debate, but rather conclude that if one uses the narrow definition of rule of law, predictability is of great importance, while ethical issues and morality can be excluded.⁸⁴ Notably, choosing this meaning of legal certainty may result in a legally certain system even if it is immoral and in breach of human rights.⁸⁵ If one uses the broad definition, moral and ethical dimensions need to be included (*see* Section 2.2.2).

78 Å. Frändberg (n 57) 105. See in Swedish: A. Peczenik (n 52) 52–52.

79 See, for example, M. Berglund and K. Cejje (n 72).

80 Å. Frändberg (n 57) 106.

81 A. Smith, *The Wealth of Nations* (1776, reprinted Wordsworth 2012).

82 Å. Frändberg (n 57) 113 ff.

83 Å. Frändberg, 'Om rättssäkerhet', *Juridisk Tidskrift* (2000–2001) 269–274; A. Peczenik (n 52) 89–100; P-H. Lindblom, 'Tvekamp eller inkvisition', *SvJT* (1999) 649; and N. Jareborg, *Straffrättsideologiska fragment* (Iustus, 1992) 90. P. Pistone et al. also include predictability in the concept of certainty (n 1) 35. A. Peczenik, 'Rätt och moral i olika juristroller' in: F. Sterzel (n 59) 42–63.

84 However, if one uses the thick conception, moral issues may very well be included.

85 In this context, references are often made to rules in Nazi Germany. See, for example, A. Peczenik (n 52) 97–98.

If one accepts predictability as a core part of the principle of legal certainty, a legal system is legally certain if it provides clear, concise and reliable answers to questions of a legal nature. For legal certainty (with the prescribed meaning) to prevail, three necessary conditions must be met:⁸⁶

1. clear and adequate rules exist,
2. the rules are published and easily available and
3. the law-enforcing authorities are loyal and apply the rules correctly (reliability) according to the terms of the law.

Several threats to these three conditions have been identified in legal doctrine. The first condition is not fulfilled if the legal system does not contain rules related to the problem concerned (incapability) or if the rules are vague, obscure, or ambiguous, or have built-in conflicts with one another. The second condition is impeded if the legal rules are unpublished or difficult to acquire (unobtainable).⁸⁷ The third condition is not met if the authorities cannot maintain the efficiency of the legal order or if the authorities do not take the legal order seriously; that is, they apply it *ad hoc* or with discretion.⁸⁸ Retroactive legislation,⁸⁹ constantly changing legislation, changes at short notice (or with no notice at all) and instances when the *res judicata* principle is not upheld are other threats to legal certainty.⁹⁰

The principle of certainty described in this section, based on the Swedish scholar Frändberg, can be compared with Lon Fuller's eight principles of legality illustrating the utopia of an excellent legal system. The eight principles identified are that the rule should be general, promulgated and made public; be prospective; fulfil a minimum level of clarity; be free from contradictions; be consistent; not require the impossible; have constancy through time; and be congruent between the written rule and its application.⁹¹ In comparison to how the principle of legality has been described above (Section 3.2.2), this author sees Fuller's eight principles as criteria for "good legislation." Comparing Fuller and Frändberg, there are several similarities, and to some extent overlaps, between the content given and these principles; however, Fuller regards these

86 Å. Frändberg (n 83) 274–275, and a bit more elaborated and modified, Å. Frändberg, (n 57) 113–128.

87 Compare above and the principle of public access to information found in the constitution, at (n 68).

88 Å. Frändberg (n 83) 275–280 and Å. Frändberg (n 57) 113–128. Legal interpretation free from discretion is also emphasised by P. Pistone et al. (n 1) 35.

89 The prohibition of retroactive legislation in criminal and tax law cases is found in the Swedish constitution, Ch. 2, § 10, 1G.

90 Å. Frändberg (n 57) 117–124.

91 Lon L. Fuller, *The Morality of Law*, rev. ed. (Yale University Press, 1969) 41, 46–82.

eight principles as reflecting the inner morality of law and legality. Frändberg, on the other hand, sees them as values of legal certainty.⁹² Furthermore, Fuller, in contrast to Frändberg, sees morality as part of the legal system.

3.2.5 Legal Accessibility to Organisations

Legal accessibility is not to be mixed up with availability (*see* prior section), even though they are closely connected. Accessibility aims at ensuring people access to legal bodies (courts, authorities, etc.). In addition, there needs to be access to legal remedies. Legal remedies are tools to ensure that people can realise their legal claims, for example, court proceedings, right to damages, claims for compensation, etc.⁹³

As a tax law scholar, it is interesting to notice that the Swedish Tax Agency is the most popular agency in Sweden out of approximately 200 Swedish authorities. One of the reasons is that it is very easily accessible; another is that their employees are competent.⁹⁴

3.2.6 Legal Security

The ideas of legal security and legal safety are directed against abuses of the legal order (the laws) with respect to the very handling or use of it, for example, by the police or prosecutors. In legal doctrine, it has been explained as meaning that violent measures are only permitted if there are very strong social or humanitarian reasons for them. The conditions and forms for using these measures must be regulated in a precise manner in statutory provisions, and exposed to severe and close examination and control.⁹⁵

3.3 *Concluding Comments*

In brief, the understanding of rule of law (law-state thinking) from a Swedish perspective is built on several important characteristics and principles.⁹⁶ The separation of functions is of great importance. The different functions (public powers) are to comply with the legal rules in force, and the powers are to be exercised under legal rules, that is, the principles of legality and legal subordination. In addition, the public powers (authorities) are independent. The independence can be identified at several levels. For example, politicians are not allowed to interfere in individual cases of the courts. It is also important that

92 See further, Å. Frändberg (n 57) 117–124.

93 For a detailed analysis of remedies, please see Å. Frändberg (n 57) 130–133.

94 Skatteverket modernaste myndigheten | Publikt (retrieved 10 February 2021).

95 Å. Frändberg (n 57) 143 f.

96 See, for similar approach, R. Sannerholm (n 51) 31.

the authorities (public powers/legal bodies) are easily accessible to the individual and that there are remedies. Furthermore, legal security is important – meaning that if violent measures are used these have to be strictly regulated in a precise manner in statutory provisions.

The law-state thinking favours individualism and humanism. An example of this is the principle of equality. Legal equality and the prevention of undue discrimination are held to be very important in Sweden. Finally, certainty and predictability in legal matters are held high. As an example, laws are to be published in advance, are to be easily available and are to be clear and free from contradictions. The application of the law should be made according to its terms (congruence in application). Retroactive legislation is forbidden in most cases. Several of the Swedish characteristics identified in this section are also found in the Western rule of law described in Section 2.3.

4 The Chinese Understanding of Rule of Law

4.1 *Historical Background*

In this section, a brief historical overview of the development and implications of rule of law in China will be made. The first legal rules in China date back to the Xia Dynasty (2070–1600 BCE). These were unwritten and unpublished. However, the concept of rule of law was introduced in China much later. Officially, the concept of rule of law was rejected in the beginning of the establishment of the People's Republic of China. Chairman Mao stated that China should “depend on the rule of man, not the rule of law”, and courts were regarded as “bastions of bourgeois justice”; furthermore, “lawlessness” was seen as good for society.⁹⁷ However, the discussion on rule of law in China re-emerged in the late 1970s, when Deng Xiaoping launched the reform Opening Up China (1978).

During the past 40 years, an uninterrupted development towards administration by law and preparation for legal governance has taken place. Thousands of laws have been enacted concerning governance, law making, judiciary, etc. as well as in all kinds of legal areas.⁹⁸ In retro perspective, legislation and the building of institutions was a focus in the 1980s. In 1982, a new constitution was approved. It was regarded as a milestone in the course of China's legal

97 A.H.Y. Chen, ‘Towards a legal enlightenment: Discussion in contemporary China on the rule of law’, *UCLA Pacific Basin Law Journal* 17 (1999) 125, 126 f., and M. Salter (n 1) 6.

98 L. Lin et al., ‘Comprehensive development of rule of law in China. On the 30th anniversary of reform and opening’, *China Legal Dev YB* 4 (2010) 1, 8–35.

reforms. In the early 1990s, focus shifted to quantity and quality of laws and legal reforms. The opening-up reform included the introduction of a socialist market economy and socialist policies.⁹⁹ In the mid-1990s the rule of law was a central topic in politics, and the official policy was to rule the country according to law and to establish a socialist rule-of-law state.¹⁰⁰ The rule of law was incorporated in the constitution in 1999. In Article 5, paragraph 1, of the constitution (1999) an addition was made, which today reads as follows:¹⁰¹ “The People’s Republic of China shall practice law-based governance and build a socialist state under the rule of law.”¹⁰²

The rule of law was motivated by dissatisfaction with the government’s interference in the work of the judiciary and the decisions made earlier (Big Leap Forward, Cultural Revolution) resulting in problems for the citizens. Moreover, the Chinese Communist Party (CCP) wanted to improve living standards for the people, strengthen the economy of the country and benefit from the effects of globalisation as well as joining the WTO. These were all driving forces to implement the rule of law in China.¹⁰³

In 2004, President Hu Jintao introduced a new governing strategy with the purpose of fostering scientific progress and fostering human-oriented, harmonious society by emphasising “unifying Party leadership, popular sovereignty, and administration by law to construct a socialist democratic regime”.¹⁰⁴ At the same time, human rights were introduced into the constitution. Which rights and how these in fact work in practice are debated.¹⁰⁵

99 L. Li et al., L. Lin, et. al., (n 98) 1 f.

100 R. Peerenboom (n 1) 16.

101 Constitution of the People’s Republic of China (npc.gov.cn) (retrieved 27 January 2021).

102 Earlier translations can be found in literature, K. Blasek (n 1) 15: “The People’s Republic of China practices ruling the country in accordance with the law and building a socialist country of law.” For slightly different translations, see A.H.Y. Chen (n 97) 128, and M. Salter (n 1) 8.

103 K. Blasek (n 1) 15; R. Peerenboom (n 110) 37. However, it has also been held that the state’s interest in holding on to power was one driving force; see M.E. Gallagher, *Contagious Capitalism, Globalization and the Politics of Labor in China* (Princeton, 2004) 101.

104 L. Lin et al. (n 98) 6.

105 An order was issued a while after the constitution had been amended in 2004, stating that it was time to stop debating constitutional issues and changes, since the rulers had had enough input; see J. Grimheden “Kinas konstituion – rättsliga rötter, dagens oc morgondagens debatter, in: A. Mellbourn (ed.) *Författningskulturer – Konstituion och politiska system i Europa, USA och Asien*, (Sekel bokförlag, 2009) 165. See also, in regard to China and human rights, Vienna Convention on the law of treaties, etc. P. Sevastik, ‘Folkrepubliken Kina’, in: A. Jonsson Cornell, *Komparativ konstitutionell rätt* (Iustus, 2020) 331–342. In the White Paper (2008) a specific chapter is devoted to Legal Systems of Respecting and Safeguarding Human Rights (111).

The Information Office of the State Council¹⁰⁶ published a White Paper entitled *China's Efforts and Achievements in Promoting the Rule of Law* in February 2008.¹⁰⁷ In this White Paper on China's rule of law (2008) there is a Chapter (II) on "Legislation and Legal System with Chinese Characteristics", stating that the Chinese socialist legal system is open and developing. It also contains a Chapter (v) on "Administration by Law and Building Government under the Rule of Law", stressing changes that have been conducted to improving the rule of law. To illustrate the importance of the Chinese characteristics and the socialist system, Article 1, paragraph 2, of the Chinese Constitution (CC) states: "The socialist system is the fundamental system of the People's Republic of China. Leadership by the Communist Party of China is the defining feature of socialism with Chinese characteristics. It is prohibited for any organization or individual to damage the socialist system." In 2011, the same office published a White Paper on *The Socialist System of Laws with Chinese Characteristics*.¹⁰⁸ These two White Papers will be discussed in Section 4.2.

4.2 *The Socialist Rule of Law with Chinese Characteristics*

4.2.1 Opening Comments – White Papers and CCP Decision

When studying Chinese legal doctrine, different expressions including the words rule of law or similar expressions are used by scholars:¹⁰⁹ rule by man,

¹⁰⁶ For an overview of the state management in China, see K. Cejie (n 8) 32 ff. In brief, the State Council is the civil government and the highest executive and administrative body (state management) in China.

¹⁰⁷ White paper published on China's rule of law – china.org.cn (retrieved 25 January 2021). See also K. Blasek (n 1) 15 f.

¹⁰⁸ *The Socialist System of Laws with Chinese Characteristics* (www.gov.cn) (retrieved 14 July 2021).

¹⁰⁹ Extensive research has been carried out in regard to the rule of law and China; see, for example, L. Li, *Building the Rule of Law in China* (Elsevier, 2017); K.G. Turner et al. (eds) *The Limits of the Rule of Law in China* (University of Washington Press, 2015); L. Buyun, *Constitutionalism and China* (Law Press China, 2006); R. Peerenboom, *China's Long March toward Rule of Law* (Cambridge University Press, 2002); K. Blasek (n 1); A.H.Y. Chen, 'China's Long March towards Rule of Law or China's Turn against Law', *The Chinese Journal of Comparative Law* 4 (2016) 1–35, about whether China has a rule of law or not; R. Peerenboom, 'Fly High the Banner of Socialist Rule of Law with Chinese Characteristics!', *Hague Journal on the Rule of Law* 7 (2015) 49–74; A.H.Y. Chen (n 97), in which he describes the debate among Chinese legal scholars; R. Peerenboom, 'Competing conceptions of rule of law in China', in: R. Peerenboom (ed.) (n 1) 109–141; L. Lin et al. (n 98); I. Castelucci, 'Rule of Law with Chinese Characteristics' *Annual Survey of International & Comparative Law* (2007) 35–92; T. Ruskola, 'Law without law, or is 'Chinese law' an oxymoron?' *William & Mary Bill of Rights Journal* 11 (2003) 655; R. Ye, 'Shifting meanings of fazhi and China's journey towards socialist rule of law', *International Journal of Constitutional Law*, 09 (2021) 1–23.

rule by people, the socialist rule of law, rule by law, rule of law with Chinese characteristics, socialist rule of law with Chinese characteristics, etc.¹¹⁰ The preamble to the constitution includes the expression socialist rule of law.¹¹¹

As mentioned above, the rule of law has evolved to play a major role in political debates in China. Politically, China is governed by two parallel sets of management, the political management (CCP) and the state management (State Council).¹¹² In 2014, the CCP devoted its entire Central Committee Plenary session to discussing the rule of law, hereafter referred to as the Decision.¹¹³ This means that there are documents published both from the state management as well as the political party. Can these public documents, the White Papers (2008 and 2011) and the Decision tell us anything about rule of law with Chinese characteristics?

The White Paper (2008) is rather extensive and includes several important principles fundamental to governing the country by law. The White Paper includes a description of the Chinese people's protracted and unremitting struggle for democracy, freedom, equality and the building of a country under the rule of law. In conclusion, it is held in the White Paper that China was in a primary stage of socialism, admitting that the legal construction still was facing some problems. Examples of problems mentioned were a need for improvement in the legal framework, law not being enforced, some officials taking bribes and abusing their powers by overriding the law, as well as a need to strengthen education in the rule of law and enhance awareness among the public. Several important principles can be extracted from the White Paper, required if the country was to be ruled by law. In brief, these are¹¹⁴

1. adhering to the leadership of the CCP, the people as the masters and ruling the country by law;
2. focusing on both construction and the rule of law, continuously improving the legal system in the light of the objective needs of economic and social development and making legal construction serve economic and social development as well as the construction of a harmonious society;

110 R. Peerenboom (n 109) (2015) 49–74; J. Husa, *A New Introduction to Comparative Law* (Bloomsbury, 2015) 162; A.Y.H. Chen (n 109); R. Peerenboom (n 29) 109–141; L. Li (n 109).

111 Constitution of the People's Republic of China (npc.gov.cn) (retrieved 24 August 2021).
112 K. Cejje (n 8) 32 ff.

113 The Central Committee of the CCP usually meet once a year at the plenum. This was the 4th Plenum of the 18th Central Committee of the CCP (2014). For an analysis of the Decision, see R. Peerenboom (n 109) (2015). For an analysis of the Decision of the 3rd Plenum of the 18th Central Committee of the CCP on 12 November 2013, see R. Peerenboom, 'The Battle Over Legal Reforms in China: Has There Been a Turn Against Law?' *The Chinese Journal of Comparative Law* 2(2) (2014) 188–212.

114 White paper (2008), Concluding section.

3. striving to root the legal construction in the reality of Chinese society; and
4. basing legal construction on institution building and enhancing the public's awareness of the rule of law.

In addition, the will to improve the quality of legislation and strengthen the implementation of the constitution and law as well as the people's rights and interest and social justice is expressed.

These principles (2008) are to some extent to be reconciled with the general principles found in the White Paper (2011) and the Decision made by the Central Committee of the CCP in 2014. The White Paper (2011) can also be seen as a development of what had been stated in 2008. In the White Paper (2011), five elements of the socialist system of laws with Chinese characteristics are established; the system should¹¹⁵

1. embody the essential requirements of socialism with Chinese characteristics,
2. meet the demand of the reform Opening Up and socialist modernisation of the current times,
3. reflect the requirements of an inherently unified and structurally multi-level legal system,
4. meet the cultural demand of carrying forward the fine traditions of Chinese legal culture and drawing on the achievements of human legal civilisations and
5. reflect the development demand of being dynamic and open, and of advancing with the times.

The first element seems to stress the fundamental interest of the majority of people. The second element can be interpreted as taking credit for prior reforms. The third element can be interpreted as explaining and perhaps even defending the multilevel and pluralistic legal system in China, constituting the scientific, harmonious and unified whole of the system. The fourth stresses the cultural and historical traditions, however allows inspiration from legislative experience of other countries, while dismissing legal transplants. The fifth element can be interpreted as embracing self-improvement and development as well as the reform in law-making already made.¹¹⁶

115 White paper (n 108), Section III. For earlier analysis on the topic, see B. Xiaoqing, 'Ruling the Country by Law and Building Socialist State under Rule of Law', in: L. Buyun (n 109) 143–162.

116 Ibid.

At the 2014 plenum on rule of law the Committee established socialist rule of law with Chinese characteristics as the basis for all legal reforms and laid out five general principles in the Decision. The principles were:¹¹⁷

1. the leadership of the Party,
2. the dominant position of the people,
3. equality before the law,
4. the combining of rule of law with rule of virtue¹¹⁸ and
5. the need to chart China's own path.

The author of this contribution interprets these principles as the main meaning of the expression Chinese characteristics, further presented in Sections 4.2.2–4.2.4. In Section 4.2.5, a few features of the expression “socialist system of laws” will be mentioned.

4.2.2 The Three Supremes

The Three Supremes are (1) the supremacy of the Party, (2) the supremacy of the interest of the people and (3) the supremacy of the constitution and law.¹¹⁹ If one in the understanding of law also includes the principle of equality before the law, one could say that the Three Supremes correlate to the first three principles found in the Decision (2014). In older legal doctrine as well as in the White Paper (2008), similar principles were held important.¹²⁰

The Three Supremes can be compared to the traditional view of socialist law. The latter has been described as a tool available to the political authority for governmental policy (rule by law); that is, the law is dependent on political determinants. In principle, it is important to understand that politics is present at all levels in a socialist legal landscape, making the Western function of separation of power redundant.¹²¹ In addition, in a socialist legal system the constitution has a lesser legal value than in Western systems; it is

¹¹⁷ For an analysis of the decision from the session, see R. Peerenboom (n 109) (2015) 110, 58 ff.

¹¹⁸ The importance of virtue derives from Confucianism; see further, K. Cejic (n 8) 13 ff., and H.P. Glenn (n 6) 319–360.

¹¹⁹ The Three Supremes was introduced in December 2007 by President and Party Secretary General Hu, and led to a campaign in the end of 2008 and beginning of 2009. See, for example, See R. O'Brien, 'Comparative law and China's socialist legal system', *Journal of South African Law* 2014 (2014) 137.

¹²⁰ H. Lie, 'Essentials on the Implementation of the strategy of Governing the Country according to Law', in: L. Buyun (n 109) 163–170. From a western law perspective, the first two mentioned principles have been criticised and hard to reconcile. See, for instance, K. Blasek (n 1) 16.

¹²¹ I. Castelucci (n 109) 37–51.

perceived as a declaratory programme for the Party, a political rather than a legal document.¹²²

4.2.3 The Combination of Rule of Law with Rule of Virtue

The combination of rule of law (*fazhi*) with rule of virtue (*dezhi*) was the fourth principle laid down in the Decision (2014). The relationship between law and morality is a complex topic. In the Decision it is stated that all legal actors need to follow the law. Emphasis is on the importance of strengthening the mechanisms for supervising the inevitable exercise of discretion by officials, judges, prosecutors and other state actors. This statement implies a will to strengthen rule-of-law culture.¹²³ Rule of virtue can, on the one hand, be linked to the Confucian tradition connecting to the developing of a socialist harmonious society.¹²⁴ On the other hand, arguments have been presented in the literature that rule of virtue, as defined by the CCP, diverges from Confucianism, embracing personal attributes, and should more properly be seen as the rule of man.¹²⁵

4.2.4 Dismissal of Legal Transplants

In the White Paper (2011), the idea of getting inspiration from foreign experience in the construction of the legal system is found. However, at an early stage it was held that this inspiration must be adjusted to the Chinese legal culture and society. Legal or political transplants were basically dismissed.¹²⁶ Similar conclusions can be made based on the need to chart China's own path (5) in the Decision (2014). Tentative, legal transplants are not desired per se, but rather to be used as inspiration and adjusted to the Chinese society and China's own path. This tentative conclusion is also grounded in previous research, that is, when legal transplants are involved, social order is not as easily preserved, since a clash between the legal and social norm often occurs.¹²⁷ To preserve the social order and Chinese legal culture seems important to the Chinese.

4.2.5 Features of the Socialist System of Laws

An attempt to identify the main Chinese characteristics of rule of law has been made in Sections 4.2.2–4.2.4. In all three sections reference has been made to

122 P. Sevastik (n 105) 323; J. Grimheden (n 105) 161.

123 R. Peerenboom (n 109) (2015) 60–61.

124 For a brief overview, see K. Cejje (n 50) with further references; J. Husa (n 110) 158–163; and more in depth, H.P. Glenn (n 6) 319–360.

125 R. Ye (n 109) 23.

126 See R. Peerenboom (n 109) (2015), (n 110) 58–62. See also White Paper (n 91) Section III.

127 B.Z. Tamanaha (n 1) (2007) 9–11.

socialist law and social harmony and to the Chinese society. In recent years, the debate in Chinese politics often refers to the socialist rule of law with Chinese characteristics. The purpose of this section is, in brief, to try to identify the features of socialism in the rule-of-law context. Does it add anything other than the Chinese characteristics, or is it an integrated part of the concept?

The Soviet legal system is sometimes used as a synonym for socialist law. O'Brien argues that traditional socialism (Soviet law¹²⁸), was a tool to avail the political authority for government and policy. This means that the law was dependent on the political determinants.¹²⁹ The Soviet legal system consisted of four features:¹³⁰

1. the one-party state which controls the entire political life of the society by a unified, disciplined elite;
2. the centrally planned economy;
3. the paternalistic character of law in educating the new Soviet man;
4. the distinctive concept of time, which makes a sharp division between time before and after the revolution.

Compared to the Soviet socialist law (rule by law) the Chinese socialist law is held to be based on a weak socialist legality, giving the officers a wide discretion (rule by men).¹³¹

Research published in 2014 holds that all four of these features are still present in China, however developed and modified (especially 2–4 have been developed).¹³² A tentative conclusion is that the socialist rule of law with Chinese characteristics implies the guiding role of the Party over the political and legal system as well as the prevalence of common interests over individual ones.¹³³ Furthermore, it seems hard to separate the socialist system of law from the Chinese characteristics. Such separation is probably meaningless, unless one is to compare it with other legal systems. The Chinese themselves often refer to socialist rule of law with Chinese characteristics. In addition, Chinese history is still important; whether it should be seen as part of socialism or part of the Chinese characteristics might be irrelevant. In political documents (the

128 See R. O'Brien (n 119) 130 ff. on how Soviet law has influenced Chinese law in history.

129 I. Castelucci (n 109) 37 with reference to Soviet law developments.

130 R. O'Brien (n 119) 132 with reference to Berman. W.E. Butler has a list of 16 characteristics; see 'Comparative law and socialist legal systems: Dilemmas of classification', in: M. Dahlberg (ed.) *Law and Society, Contributions by the Honorary Doctors* (Iustus, 2019) 88–89.

131 I. Castelucci (n 109) 40.

132 R. O'Brien (n 119) 132. The second has weakened the most. For an overview of China's economy, K. Cejie (n 8) 38–40.

133 I. Castelucci (n 109) 64.

constitution, etc.) Chinese history and the development of a legal system are often highlighted (*see* number 4 above).

The socialist part in the Chinese system can to some extent illustrate the dismissal of transplants mentioned in the prior section. The Chinese system has been influenced by Soviet socialism, however, implemented in its own way.

4.3 *Concluding Comments*

Section 4.2 is more or less a brief summary of some of the literature on the rule of law in China, that is, the socialist rule of law with Chinese characteristics. In this section, a few additional comments are made. The most outstanding characteristic from the perspective of a Western lawyer is the leading role of the Party. In addition, it is clear that ruling the country according to law is an important symbol to the Chinese leadership,¹³⁴ and that there is a continuous process of improving the legal system, as such, while maintaining the Chinese legal culture (China's own path). It also seems important that the legal system be dynamic, enabling it to adjust in a world that constantly is changing. The combination of rule of law (legalistic view) with rule of virtue/rule of man (Confucianism) can be seen as a way to end the thousands of years' long battle between the two schools of thoughts. However, the combination of the two schools can also be interpreted as ruling the country according to law being a way to legitimate the rule-of-man perspective.¹³⁵

In November 2021, a communiqué was released regarding a resolution passed by the sixth plenary session of the 19th CCP Central Committee. It is held that after the Party's 18th National Congress, socialism with Chinese characteristics entered a new era, referred to as Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era. These thoughts emphasise Marxism. In addition, it is held in the communiqué that the socialist rule of law with Chinese characteristics has constantly been improving, and a fundamental shift has been seen in the ideological domain. The living standards of people have improved, and the people's military has undergone an all-around revolutionary restructuring in preparation for the next stage, according to the communiqué.¹³⁶ This communiqué illustrates the ongoing process as well as the lack of explanation of what *de facto* is meant by different expressions.

134 B. Xiaoqing, 'Theoretical Basis and Significance of Ruling the Country by Law', in: L. Buyun (n 109) 113–126.

135 See R. Ye (n 109) 23.

136 CPC plenum passes landmark resolution (www.gov.cn) (retrieved 18 November 2021).

5 Concepts, Perspectives and Concluding Comments

5.1 *Opening Comments*

5.1.1 Concept of Analysis

The main purpose of this article was to identify the characteristics (meaning) of the concept rule of law in the Swedish and Chinese legal context. While the starting point was the concept of rule of law, further analysis shows that neither of the countries in fact uses the term rule of law, as such. Instead, the terms law-state thinking¹³⁷ and the socialist rule of law with Chinese characteristics are used. The meanings of these two concepts differ considerably (see Sections 3 and 4). Using the semiotic triangle in Section 1.2.2, it can be noted that the *meaning* of “rule of law” differs, as do the *terms* used by the two countries. This confirms that there is no universal meaning of the concept rule of law. The law-state thinking in Sweden is different from the socialist rule of law with Chinese characteristics, even though the analysis started in the concept rule of law. The *concept* is given different *meanings* and different *terms* in the two jurisdictions, even though the functions to some extent are similar.

5.1.2 A Note on Functions of Rule of Law

There are several functions of rule of law. In Section 2, it was mentioned that the UN adheres to the rule of law to establish peace and security, to secure human rights and to enforce sustainable development.

Two often mentioned main functions of rule of law, are (1) to impose restraints on government officials by ensuring compliance with the law and legal limitations on law-making power and (2) to maintain order and coordinate behaviour among citizens.¹³⁸

Previous analyses in legal doctrine show that the rule of law has different functions in the West and in China. On the one hand, in the West the rule of law is meant to ensure liberty and equality of people.¹³⁹ These functions are, for instance, found when studying the Swedish view, where individualism, humanism and equality are of great importance. However, stability and peace in society are also core ideas.¹⁴⁰ In China, the function of rule of law is

137 Whether this term de facto is used can be debated. However, it has been chosen in this context for the reasons stated in § 3.2.1.

138 B.Z. Tamanaha (n 1) (2007) 3–7, K. Blasek (n 1) 10; R. Peerenboom (n 29) 120–123. According to the WJP 2020 (n 1) 9, the rule of law is the foundation for communities of justice, opportunity and peace – underpinning development, accountable government and respect for fundamental rights.

139 B.Z. Tamanaha (n 1) (2007) 7 ff.

140 Å. Frändberg, *Rättsordningens idé: En antologi i allmän rättslära* (Iustus, 2005) 21 ff.

to accomplish a certain level of economic and social development as well as stability of the society (harmony).¹⁴¹

5.1.3 Outline

In Section 5, a few brief notes will be made. First, in Section 5.2 a note on the two concepts contrasted with respect to how the rule of law is described in legal research in general and how it is used by different organisations described in Section 2, will be made. This should, however, not be seen as a comparison as such, but rather a note to prove the point that the perspective chosen in doctrine or by organisations is the Western perspective.¹⁴² Second, in Section 5.3 this point will be illustrated by the output of the WJP Index on Rule of Law. In Section 5.4 a few concluding comments are made.

5.2 *The Swedish and the Chinese Understanding of Rule of Law in the Light of Different Definitions of Rule of Law*

The rule of law is from the start a Western concept.¹⁴³ Sweden is a Western country, and the law-state thinking in Sweden reflects several important principles also identified in the definitions of rule of law mentioned in Section 2. These principles (also referred to as characteristics) are legality, legal subordination, the importance of legal institutions, the separation of powers/functions, independence of different institutions, the possibility to appeal, transparency, individualism, humanism, legal equality, legal certainty, legal accessibility and legal security.¹⁴⁴ The above confers that the Swedish law-state thinking has several characteristics similar to those of the rule-of-law concept described in Section 2.

Concerning China, the terminology used when discussing rule of law varies. The author of this contribution has found the expression “socialist rule of law with Chinese characteristics” most appropriate. Similar terminology is often used in public documents by the People’s Republic of China.

The characteristics identified for this rule-of-law concept are ruling the country by law, the importance of the Party, the ambition to strengthen the

¹⁴¹ K. Blasek (n 1) 16; A.H.Y. Chen (n 97) 138 f. It has even been held that most Chinese people are more concerned about stability and economic growth than democracy and civil and political liberties. R. Peerenboom (n 29) 109.

¹⁴² The Western perspective can, of course, be problematised in itself, which is out of the scope of this contribution.

¹⁴³ See (n 25).

¹⁴⁴ See also F. Vanistendael, ‘Taxation, Tax Avoidance and the Rule of Law’, *Asia-Pacific Tax Bulletin* May/June (2010) 210–211, in regard to the Western rule of law.

inner morality of public officials (rule by virtue) and striving for its own path in legal development (dismissal of legal transplants). In addition to the Party, the Three Supremes include the supremacy of the interest of the people and the supremacy of the constitution.¹⁴⁵

A first reflection is the impressive speed with which China has established an entire legal system, with institutions and laws. This has mainly been done under the discourse of implementing rule of law. Another reflection when comparing the socialist rule of law with Chinese characteristics with the characteristics found in the Western concepts is that several similarities in regard to the words used have been found.¹⁴⁶ Examples of characteristics found in both concepts are governing the country by law, legal reform, equality before the law, supremacy of constitution and law, non-discretion, impartial judiciary, etc. However, several differences are also noted, such as the non-separation of powers doctrine, socialist law, the impact of the Party, rule by law and rule of virtue. The most important difference, according to the author of this article, is the importance of the Party. Prior research shows that the Party is represented also in all levels of state management and that the president of the CCP has great power.¹⁴⁷ Ye concludes that the amendment to the constitution in 2018 (the removal of a presidential term limit) enshrines the Party as the legitimate ruler of the country and creates a legal foundation for Party domination. According to Ye, the socialist rule of law is the rule of man.¹⁴⁸

Whether it is useful to analyse the Chinese legal system or law from a rule-of-law perspective has been discussed in legal jurisprudence, with a variety of outcomes.¹⁴⁹ In the next section an example of such analysis is highlighted, with the purpose of illustrating that the perspective chosen by the WJP Index is the Western one, and that this perspective influences the outcome of the comparison made.

145 How to reconcile the supremacy of the people with the de facto power of the Party is an often debated topic in legal doctrine.

146 K. Blasek (n 1).

147 K. Brown, *Nya Kina* (Pagina, 2018) 95–112. See also F. Vanistendael, (n 144) 211–212, about the rule of law in China.

148 R. Ye (n 109).

149 T. Ruskola, (n 109) 655; A.Y.H. Chen (n 109) 4. R. Peerenboom and K. Blasek, on the other hand, use the rule of law in comparative manners. In previous research, analysis of the thin conception of rule of law has been successful, especially when studying a country that is in the process of establishing a modern, functional legal system; see R. Peerenboom (n 1) 13.

5.3 *An Example of When One Meaning Is Given Preference Over Another – the WJP Index*

The WJP Index mentioned in Section 2.2.3 above measures 44 different aspects of the rule of law, summarised in eight factors. The aggregated scores for

TABLE 1 Summary of the WJP Index on Rule of Law (2020)

Factors	Sweden	China
1. Constraints on government powers	0.87 (4)	0.32 (123)
2. Absence of corruption	0.91 (4)	0.53 (51)
3. Open government	0.86 (3)	0.43 (92)
4. Fundamental rights	0.87 (4)	0.29 (126)
5. Order and security	0.92 (6)	0.78 (40)
6. Regulatory enforcement	0.84 (8)	0.49 (67)
7. Civil justice	0.82 (5)	0.53 (64)
8. Criminal justice	0.80 (4)	0.45 (62)

Sweden and China for the eight factors are summarised in the table below. The top score for each factor is 1.0. The numbers in parentheses are the rank out of 128 countries.

As mentioned in Section 2.2.3, the overall output of the WJP placed Sweden high and China low. Two notes will be made here. First, since the index is not explained in detail, it is hard to make any conclusions based on it. Second, the different aspects measured are based on a “Western” definition of the rule of law, not comparable to the characteristics identified in the Chinese concept. Using this approach, the definition used by WJP more closely resembles the meaning of the Swedish law-state thinking than the meaning of the socialist rule of law with Chinese characteristics. Measuring factors or characteristics that a country finds important ought to result in better output than measuring factors of no or less importance. The following example looks at equality.

In both Sweden and China, the principle *equality before the law* is found in the constitution (Ch. 1, § 9, 1G in Sweden¹⁵⁰ and Art. 33, para. 2, CC in China). However, equality before the law means different things in the two countries. In Sweden, it means that no person is given advantages not allowed by the law, and that the law is applied in a uniform way to everyone. From a Chinese

¹⁵⁰ It is also held that Ch. 1, § 9, 1G also includes the principle of objectivity; see R. Pålsson (n 75) (2007) 48.

perspective, it is held to be focused on equity in distribution and in legal procedure. For example, the plaintiff and the defendant are on equal terms regarding their status in legal procedures and the law applied.¹⁵¹

Legal equality can include government regulations being applied and enforced without improper influence. In both Sweden and China, the independence of different legal institutions is found in the constitutions.¹⁵² When WJP measured the lack of improper influence (para. 6.2 as part of regulatory enforcement), China scored 0.61 and Sweden 0.93. This can probably be explained by the CCP being strongly connected to all legal institutions in China. In another investigation made by Transparency International, in which Sweden was found to be the third least corrupt country, China was ranked 78th. Similarly, in the WJP Index absence of corruption was measured; Sweden scored 0.91 and China 0.53.¹⁵³ In the literature, it is held that corruption also includes the judicial branch in China.¹⁵⁴ From the understanding of the rule of law in China (Section 4) one can note that the country is aware of this shortcoming, as it is held that the enforcement of the law should be made more fair, without distortion due to external pressure, that is, by a supervision of public powers.

Another aspect measured by the WJP Index was the equal treatment and absence of discrimination (as part of fundamental rights, para. 4.1) – whether individuals were free from discrimination based on socio-economic status, gender, ethnicity, religion, national origin, sexual orientation or gender identity – with respect to public services, employment, court proceedings and the justice system; China scored 0.46 and Sweden 0.73.

The example illustrates that if one tries to draw comparisons, it is important to also reflect on the perspectives and starting points taken. From the perspective of this author, it is rather obvious that the WJP has a “Western” approach in defining rule of law. This example shows the importance of whose/which definition of rule of law is used. There is no universal rule of law, and the results in the WJP Index only show how a system qualifies in regard to its chosen definition. In addition, it is hard to comment on the index and the output, due to the lack of transparency. What is more, as Einstein once said:¹⁵⁵ “Not everything that counts can be counted, and not everything that can be counted, counts.”

151 H. Lie (n 120) 167.

152 In regard to the judiciary, see Ch. 11, § 3, 1G, and Art. 131, CC.

153 WJP 2020 (n 1), second factor at 11 and 23. For a problematisation in Swedish on corruption and Sweden, see R. Sannerholm (n 51) 233–256.

154 See further, R. Peerenboom (n 109) (2002) 295–298.

155 R. Sannerholm (n 51) 56.

Whereas, if one were to take the Chinese understanding of rule of law and measure how well Sweden and China do in such comparison, a completely different picture would be drawn. Take the leadership and influence of the Party, for example. In China, the Party has huge control and influence both in politics and in state management.¹⁵⁶ In China, politicians can interfere in the judiciary, which can be seen as having great influence. In contrast, Swedish politicians, including the prime minister, are prevented from interfering in cases between individuals and the state or a court.¹⁵⁷ If one uses a Chinese perspective, this can be interpreted as Swedish leaders and politicians having very little influence.

5.4 *Concluding Comments*

In conclusion, the rule of law is a vague concept and is still developing in theory and in practice. There is not *one* understanding of rule of law; there is not *one* universal meaning. This is illustrated in this article by the examples of Sweden and China. In this regard, two different concepts have been identified, with different meanings and different terms being used. To compare these is to some extent like comparing apples with bananas, which has been illustrated using the WJP index as an example. Hence, it is important to be aware of which perspective one uses, since it reflects the output of comparison.

To understand the meaning of rule of law in a jurisdiction is important if one wants to understand the legal system and the legal culture of a country. Hence, it is an important starting point in conducting comparative legal studies.

Acknowledgements

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¹⁵⁶ See, for an overview K. Cejje (n 8) 32–35.

¹⁵⁷ See, for an interesting example from recent years, 'Donald Trump rasar mot Stefan Löfven', 25 July 2019, retrieved 17 July 2021 Donald Trump rasar mot Stefan Löfven – om ASAP Rocky (aftonbladet.se).