

What is the Rule of Law?

Toward a Perception-Based Definition of the Rule of Law

PAOLO **CAPRIATI**

University of Palermo, Italy.

E-mail: paolo.capriati@unipa.it

ABSTRACT

What is the Rule of Law? In order to define the Rule of Law, I suggest adopting a conceptual clarification based on the analysis of ordinary language. In this sense, I will assume that “what is meant by the Rule of Law” is equivalent to “what the Rule of Law is”. To test the uses of this expression, I will turn to the analysis of international Rule of Law indicators. This choice is motivated by the fact that their measurement of the Rule of Law is opinion-based. After presenting the classical definitions of the Rule of Law, I will describe the functioning of the different Rule of Law indicators that I will examine. The analysis of these indicators shows that the results of their measurements are largely identical. The convergence of these results suggests a hypothesis: the various Rule of Law indicators ultimately refer to the same underlying concept. The common core of these indices suggests that what Rule of Law indicators measure is the perception of government impartiality. In this sense, the analysis of Rule of Law indicators shows that the Rule of Law consists of two elements: (a) the expectation that there is a government; (b) that it acts impartially.

Che cos'è il Rule of Law? Per definire il Rule of Law suggerisco di adottare una chiarificazione concettuale basata sull'analisi del linguaggio ordinario. In questo senso, assumerò che “che cosa si intende per Rule of Law” sia equivalente a “che cosa è il Rule of Law”. Per mettere alla prova gli usi di questa espressione, mi rivolgerò all'analisi degli indicatori internazionali del Rule of Law. Questa scelta dipende dal fatto che la loro misurazione del Rule of Law è basata sulle opinioni. Dopo aver presentato le definizioni classiche del Rule of Law, mi occuperò di descrivere il funzionamento dei diversi indicatori del Rule of Law che prenderò in esame. Dall'analisi di tali indicatori emerge come i risultati delle loro misurazioni siano pressoché identici. La convergenza dei risultati suggerisce un'ipotesi: i diversi indicatori del Rule of Law rimandano, in ultima analisi, allo stesso concetto sottostante. Il nucleo comune dei vari indici suggerisce che ciò che gli indicatori del Rule of Law misurano è la percezione dell'imparzialità del governo. In questo senso, dall'analisi dei Rule of Law indicators emerge che il Rule of Law consiste di due elementi: (a) l'aspettativa che vi sia un governo; (b) che esso agisca in modo imparziale.

KEYWORDS

Rule of Law, government impartiality, Rule of Law indicators, quality of government, conceptual clarification

Rule of Law, imparzialità del governo, indicatori del Rule of Law, qualità del governo, chiarificazione concettuale

DIRITTO & QUESTIONI PUBBLICHE / CLEAR

Rule of Law: in Books, in Minds

Special Publication / February, 2026

© 2026, *Diritto e questioni pubbliche*, Palermo.

ISSN 1825-0173

Tutti i diritti sono riservati.

Questa Special Publication della rivista *Diritto & Questioni Pubbliche* è stata finanziata dall'Unione Europea – NextGenerationEU a valere sul Piano Nazionale di Ripresa e Resilienza (PNRR) – Missione 4 Istruzione e ricerca – Componente 2 Dalla ricerca all'impresa – Investimento 1.1, Avviso Prin 2022 indetto con DD N. 104 del 2/2/2022, dal titolo “Il concetto di Stato di diritto: prospettive analitiche ed empiriche (CLEAR)”, codice proposta 20225TJJSY – CUP J53D23005150006.



What is the Rule of Law?

Toward a Perception-Based Definition of the Rule of Law

PAOLO CAPRIATI

0. Introduction or About Method – 1. Defining the Rule of Law – 1.1 Formal and Substantive Definitions of the Rule of Law – 1.2 What Are International Rule of Law Indicators? – 1.2.1 The WJP Index – 2. The RoL Indicators to Clarify the Concept of the Rule of Law – 2.1 The Common Core of the RoL Indicators – 2.2 Government Impartiality and the Limits of the RoL Indicators – 3. Conclusions.

0. Introduction or About Method

What is the Rule of Law? Unfortunately, we lack a clear, sufficiently unambiguous, and widely shared definition of the Rule of Law. How can we circumvent this problem? One possibility is to adopt a specific point of view and examine how that perspective defines the Rule of Law. But which point of view should we adopt? It should be a widely shared perspective because defining a concept requires understanding how that concept is generally used. In this case, to understand the Rule of Law, we would need to analyze its usage in ordinary language. According to this definition of “definition”, there would be no distinction between “what x is” and “what is meant by x ”, and the Rule of Law would coincide with what is understood by the Rule of Law.

This is the method I suggest using: a conceptual clarification based on the analysis of ordinary language. In this sense, I will assume that: “what is meant by the Rule of Law” is equivalent to “what the Rule of Law is”: the correctness of a concept’s definition depends on how the linguistic expression designating that concept is used. In this case, it is correct to define the Rule of Law as x if x is what is meant by the Rule of Law.

Now, we must ask who the subjects are entitled to define, through the use of a specific linguistic expression, a certain concept. We lack a criterion for determining which subject has the authority to establish this definition; however, this problem can be bypassed. To do so, we must examine how the concept is usually understood: if we find a sufficiently shared definition, it will mean we have a provisional definition of the Rule of Law – its foundation lies in the usage of this expression. But how can we know how the expression “the Rule of Law” is used? There are actors that, through interviews (with experts and non-experts), compile rankings measuring the level of the Rule of Law in a country. These are the international Rule of Law indicators. The indicators – typically opinion-based – provide a good basis for gauging how the concept of the Rule of Law is commonly understood.

In summary, the goal I have set is to determine a sufficiently solid definition of the Rule of Law. If by “definition” we mean a conceptual clarification based on the ordinary-language usage of a certain expression, we must examine how the expression “the Rule of Law” is used: this usage is reviewed by the international Rule of Law indicators. Before analyzing these indicators, a brief and summary overview of the most prominent definitions of the Rule of Law is necessary.

1. Defining the Rule of Law

1.1 Formal and Substantive Definitions of the Rule of Law

Many have attempted to define the “Rule of Law”. Definitions can be distinguished as formal (or thin) and substantive (thick).

Formal definitions see the Rule of Law as a set of formal requirements that the law must satisfy. The most famous elaboration is by Lon Fuller (FULLER 1964), who identifies eight formal

principles: generality, publicity, prospectivity, intelligibility, consistency, practicability, stability, and congruence. These are formal principles because they concern not the content of norms but the formal characteristics a norm must possess. Alongside formal principles, procedural principles have also been identified. According to these principles, we might argue that no individual should face penalties, stigma, or significant adverse consequences imposed by the state unless such outcomes result from procedural safeguards, including the following (TASHIMA 2008, 264):

- a hearing before an impartial and independent tribunal, bound to adjudicate based on existing legal norms, with judgments grounded in formally presented evidence and legal argumentation;
- the right to legal representation during such proceedings;
- the right to participate in person, including the ability to confront witnesses, challenge testimony, and present legal arguments regarding the evidence and applicable laws;
- the right to a reasoned decision, wherein the tribunal provides explanations addressing the evidence and arguments submitted.

These principles carry greater weight in the ordinary person's understanding of the Rule of Law than the formal criteria outlined earlier (WALDRON 2016). Procedural principles are, therefore, nothing more than a specification of formal principles and their application concerning individual freedom.

The other family of definitions is the substantive one. Substantive theories do not deny that the Rule of Law consists of formal elements but argue that, alongside these elements, there is also a substantive dimension. According to these authors, it cannot be said that a state has the Rule of Law if, for example, fundamental human rights are not respected. In this sense, the Rule of Law is inseparable from certain substantive requirements.

An example of a substantive definition of the Rule of Law is that proposed by Tom Bingham (BINGHAM 2010, 67):

«I would roundly reject it (“thin” definition) in favor of a “thick” definition, embracing the protection of human rights within its scope. A state which savagely represses or persecutes sections of its people cannot in my view be regarded as observing the rule of law, even if the transport of the persecuted minority to the concentration camp or the compulsory exposure of female children on the mountainside is the subject of detailed laws duly enacted and scrupulously observed».

Against substantive theories, Raz (RAZ 1979, 211) argues that «the Rule of Law is just one of the virtues which a legal system may possess and by which it is to be judged», and that for analytical clarity, the Rule of Law must be distinguished from democracy, human rights, and social justice. By conflating it with other concepts, substantive theories would burden the concept of the Rule of Law with moral content, thereby transforming the Rule of Law into the Rule of Good Law¹.

Waldron (WALDRON 2016, sec. 5.3) also highlights the dangers of adopting a substantive theory of the Rule of Law:

«Once we open up the possibility of the Rule of Law's having a substantive dimension, we inaugurate a sort of competition in which everyone clamors to have their favorite political ideal incorporated as a substantive dimension of the Rule of Law. Those who favor property rights and market economy will scramble to privilege their favorite values in this regard. But so will those who favor human rights, or those who favor democratic participation, or those who favor civil liberties or social justice. The result is likely to be a general decline in political articulacy, as people struggle to use the same term to express disparate ideals».

¹ On this matter, see again Raz (RAZ 1979, 211), who states: «If the rule of law is the rule of the good law, then to explain its nature is to propound a complete social philosophy. But if so, the term lacks any useful function. We have no need to be converted to the rule of law just in order to discover that to believe in it is to believe that good should triumph».

Which of these two conceptions of the Rule of Law should we adopt? I have already mentioned that, lacking a clear, sufficiently unambiguous, and widely shared definition of the Rule of Law, I will try to define the Rule of Law based on what is usually understood by it. For this reason, I suggested looking at the RoL international indicators. To determine which of these two conceptions these indicators favor, it is first necessary to clarify what the RoL indicators are.

1.2 What Are International Rule of Law Indicators?

There are several international RoL indicators. These indicators, based on certain parameters and following a specific methodology, compile rankings that measure the level of the Rule of Law in a state. They have proven very useful, for example, in identifying countries where investments are safer: the higher the level of the Rule of Law in a country, the safer investments are considered to be.

The RoL indicators have faced criticism on multiple fronts, both individually and collectively (DAVIS 2004; DAVIS 2014; MØLLER, SKAANING 2014). Versteeg and Ginsburg (VERSTEEG, GINSBURG 2017, 101) observe:

«Indicators inherently reduce complex social phenomena to simple measures and thus may mislead. Some indicators measure formal institutions, others measure behavior, while yet others measure beliefs. These differences are not always transparent».

Additionally, the indicators encounter various technical issues related to aggregation and endogeneity, which may not always be evident (GINSBURG 2011).

Since each indicator uses different parameters to identify the level of the Rule of Law, we can conclude that each RoL indicator has a particular conception of the Rule of Law. These conceptions, although all substantive, share different values.

Beyond differing in their conceptualizations of the Rule of Law, these indicators also utilize distinct coding methodologies. The Heritage Foundation and Freedom House both derive their indicators from evaluations conducted by country experts. On the other hand, the World Governance Indicators (WGI) project compiles a comprehensive RoL index by aggregating various pre-existing variables. The World Justice Project (WJP) is unique in its approach, as it integrates expert assessments with the perspectives of ordinary citizens, collected through nationally representative surveys.

In summary, each RoL indicator has its own definition of the Rule of Law (always substantive or thick) and uses its own methodology to measure it. Consider, for example, the WGI, which is regarded as the most well-known and widely used RoL index in social science research (KAUFMANN et al. 2010). The definition this index gives of the Rule of Law is as follows:

«Rule of law captures perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence»².

The WGI's method is to: «compile and summarize information from over 30 existing data sources that report the views and experiences of citizens, entrepreneurs, and experts in the public, private and NGO sectors from around the world, on the quality of various aspects of governance»³.

For our purposes, the most interesting index in terms of methodology is that of the World Justice Project. It is founded exclusively on personal opinions (both from experts and non-experts)

² Available at: <https://www.worldbank.org/content/dam/sites/govindicators/doc/rl.pdf> (accessed on 10/08/2025).

³ Available at: <https://www.worldbank.org/en/publication/worldwide-governance-indicators/documentation#2> (accessed on 10/08/2025).

and, in this sense, is likely to fulfill the mission of conceptual clarification I have set, that is, to define a concept based on the uses of a certain expression.

1.2.1 *The WJP Index*

First, what is the WJP? The World Justice Project (WJP) is defined as an independent, multi-disciplinary organization working to create knowledge, build awareness, and stimulate action to advance the Rule of Law worldwide⁴.

But what is the Rule of Law for WJP? WJP defines the Rule of Law as a durable system of laws, institutions, norms, and community commitment that aims to ensure four universal principles:

- accountability: the government as well as private actors are accountable under the law;
- just law: the law is clear, publicized, and stable and is applied evenly. It ensures human rights as well as property, contract, and procedural rights;
- open government: the processes by which the law is adopted, administered, adjudicated, and enforced are accessible, fair, and efficient;
- accessible and impartial justice: justice is delivered timely by competent, ethical, and independent representatives and neutrals who are accessible, have adequate resources, and reflect the makeup of the communities they serve.

Some benefits would also be attributable to the Rule of Law. According to the WJP team, research shows that the Rule of Law correlates to higher economic growth, greater peace, more education, and improved health outcomes.

The WJP has been compiling the Rule of Law ranking for several years. This measurement is done through questionnaires that are provided to both subject matter experts and non-experts in each country. There were 143 countries covered in the 2025 ranking. Each country is then given a score ranging from 0 to 1. In 2025, the country with the lowest score is Venezuela with 0,26; while the one with the highest score is Denmark with a score of 0,90. This score is calculated by averaging the scores assigned to each factor. What is relevant at this stage is the evaluation of the factors under consideration. There are 8 factors and 44 sub-factors, which are presented below.

⁴ Available at: <https://worldjusticeproject.org/about-us> (accessed on 10/08/2025).

<i>Factors</i>	<i>Sub-factors</i>
1 Constraints on government powers	1.1 Government powers are effectively limited by the legislature 1.2 Government powers are effectively limited by the judiciary 1.3 Government powers are effectively limited by independent auditing and review 1.4 Government officials are sanctioned for misconduct 1.5 Government powers are subject to non-governmental checks 1.6 Transition of power is subject to the law
2 Absence of corruption	2.1 Government officials in the executive branch do not use public office for private gain 2.2 Government officials in the judicial branch do not use public office for private gain 2.3 Government officials in the police and the military do not use public office for private gain 2.4 Government officials in the legislative branch do not use public office for private gain
3 Open government	3.1 Publicized laws and government data 3.2 Right to information 3.3 Civic participation 3.4 Complaint mechanisms
4 Fundamental rights	4.1 Equal treatment and absence of discrimination 4.2 The right to life and security of the person is effectively guaranteed 4.3 Due process of the law and rights of the accused 4.4 Freedom of opinion and expression is effectively guaranteed 4.5 Freedom of belief and religion is effectively guaranteed 4.6 Freedom from arbitrary interference with privacy is effectively guaranteed 4.7 Freedom of assembly and association is effectively guaranteed 4.8 Fundamental labor rights are effectively guaranteed
5 Order and security	5.1 Crime is effectively controlled 5.2 Civil conflict is effectively limited 5.3 People do not resort to violence to redress personal grievances

6 Regulatory enforcement	6.1 Government regulations are effectively enforced 6.2 Government regulations are applied and enforced without improper influence 6.3 Administrative proceedings are conducted without unreasonable delay 6.4 Due process is respected in administrative proceedings 6.5 The government does not expropriate without lawful process and adequate compensation
7 Civil justice	7.1 People can access and afford civil justice 7.2 Civil justice is free of discrimination 7.3 Civil justice is free of corruption 7.4 Civil justice is free of improper government influence 7.5 Civil justice is not subject to unreasonable delay 7.6 Civil justice is effectively enforced 7.7 Alternative dispute resolution mechanisms are accessible, impartial, and effective
8 Criminal justice	8.1 Criminal investigation system is effective 8.2 Criminal adjudication system is timely and effective 8.3 Correctional system is effective in reducing criminal behavior 8.4 Criminal system is impartial 8.5 Criminal system is free of corruption 8.6 Criminal system is free of improper government influence 8.7 Due process of the law and rights of the accused ⁵

2. The RoL Indicators to Clarify the Concept of the Rule of Law

I started with the RoL indicators to find a sufficiently solid definition of the Rule of Law. As we shall see, although the various RoL indicators measure the level of the Rule of Law according to different parameters, due to the convergence of results in those measurements, it has been suggested (VERSTEEG, GINSBURG 2017) that they end up measuring the same thing and, therefore, share a common understanding of what the Rule of Law is. Starting from the RoL indicators, however, presents at least two limitations:

- the personal opinions collected by the RoL indicators do not pertain to the definition of the Rule of Law, but solely to its measurement, as the definitions are established beforehand;
- each RoL indicator has its own particular substantive definition of the Rule of Law.

For this reason, it is appropriate to ask how useful the RoL indicators are for clarifying the uses of the expression “the Rule of Law”.

⁵ Available at: <https://worldjusticeproject.org/rule-of-law-index/factors/2024> (accessed on 10/08/2025).

2.1 *The Common Core of the RoL Indicators*

As we have seen, the RoL indices have different definitions and use different methods and parameters to measure the Rule of Law. However, these indices end up reaching similar conclusions about the level of the Rule of Law: there are convergences in the measurement results. In other words, even though the parameters used for measurements and the conceptions of the Rule of Law differ, the RoL indicators arrive at the same result.

How is this possible? Some have suggested that, despite differences in definitions and methodologies, the indices ultimately refer to the same underlying concept. It is therefore necessary to clarify what this concept is. The convergence of results clearly emerges from a 2017 analysis by Versteeg and Ginsburg (VERSTEEG, GINSBURG 2017, 102):

«The indicators created by the WGI, the Heritage Foundation, and the WJP are almost identical, with their pair-wise correlations all exceeding 0,95. Freedom House's RoL indicator is the only one that produces slightly different values – its correlation with the other measures ranges from 0,79 (with the Heritage Foundation) to 0,83 (with the WJP). Moreover, using factor analysis, we show that a single underlying latent dimension explains 92 percent of the variation in the four RoL indicators».

As can be seen, in assessing the level of the Rule of Law in different countries, they differ very little from each other. It is possible that all three indicators in fact capture the essence of the Rule of Law, and that the similarities between the indicators confirm their validity as RoL indicators. If all indicators indeed capture the Rule of Law, it suggests that the Rule of Law has a common core. This conclusion seems unlikely. What is the common core of the Rule of Law? More importantly, why should indicators that use different definitions and methods to calculate the Rule of Law capture the common essence of the Rule of Law?

A second convergence can help us understand why the RoL indicators yield the same results. It has been observed (VERSTEEG, GINSBURG 2017) that the results of the Transparency International's corruption perceptions index are identical to the RoL indicators. In other words, there is an identity between the measurers of the Rule of Law and the measurer of the absence of corruption.

It has been suggested that what the RoL indicators (and the Transparency International's corruption perceptions index) capture is a more abstract concept that goes beyond both the concept of corruption and that of the Rule of Law:

«Specifically, the fact that three of the four RoL indices are almost identical to Transparency International's Corruption Perceptions Index suggests that the RoL indicators do not exactly capture the RoL but may instead capture a more abstract concept that the corruption perceptions index and RoL indicators share in common. The suspicion that the RoL indicators do not actually capture the RoL is further reinforced by the fact that the more technical explanations for why RoL measures converge do not explain the similarity between the WJP RoL index's and the others. Again, the WJP data is drawn wholly from in-country surveys among people who are most likely unaware of the other RoL indicators or even of outside perceptions of their country.

But if the RoL indicators capture a more abstract concept of the quality of governance, what does this concept entail? To answer this question, it is worth pointing out an important conceptual link between the RoL and corruption. While the classic discussions of the rule of law focus on the risk of government arbitrariness and oppression, they do not specify the motives that might prompt such pathologies. Corruption, meaning the misuse of public power for private gain, is surely one such motive. Both concepts, it has been noted, fit into a broader umbrella concept of impartiality (ROTHSTEIN 2014). The rule of law is one mechanism for the impartial exercise of public power; but impartiality may extend to many domains that are untouched by law, and these may be correlated with deeper causes» (VERSTEEG, GINSBURG 2017, 101 and 102).

So, the candidate concept for this has been identified as impartial government (ROTHSTEIN 2011; ROTHSTEIN 2014). According to this perspective, the concept of impartiality would encompass both corruption and the Rule of Law. This would be evident for two reasons. First, corruption, as well as various forms of particularism, are incompatible with impartial government (ROTHSTEIN 2011). «Second, government impartiality implies the presence of the Rule of Law»⁶ (VERSTEEG, GINSBURG 2017, 118). For these reasons, it has been hypothesized that the concept unifying all RoL indicators – and corruption indicators – is government impartiality (VERSTEEG, GINSBURG 2017, 118).

This hypothesis also finds support in an empirical study. Attempts were made to measure impartiality through online surveys of experts, specifically scholars of public administration (TEORELL et al. 2011). The responses to questions about impartiality show a high correlation with both the RoL indicators and the corruption measurer. In this sense, it seems plausible that the fundamental concept measured by these indicators is indeed impartiality.

But what is meant by government impartiality? Impartiality can be understood in at least two senses:

- in a narrow sense: the absence of conflicts of interest. For formal Rule of Law to exist, impartiality is necessary (though not sufficient). In this sense, impartiality is understood as one element of the formal Rule of Law;
- in a broad sense: a more complex virtue, ensured both by rules on conflicts of interest and by other requirements of the formal Rule of Law. For impartiality to exist, the Rule of Law is necessary (though not sufficient). In this sense, the formal Rule of Law is the means through which impartiality is secured.

It is not clear which sense of impartiality is being used in this context. I will therefore try to determine whether Rothstein's (ROTHSTEIN 2011; ROTHSTEIN 2014) definition of "impartiality", explicitly recalled by Versteeg and Ginsburg (VERSTEEG, GINSBURG 2017), helps to clarify which notion is at stake. With regard to impartiality, Rothstein states:

(a) «impartiality principle implies and encompasses the rule of law, while the opposite is not true» (ROTHSTEIN 2011, 25);

(b) «"impartiality in the exercise of public power" [...] is defined as follows: "When implementing laws and policies, government officials shall not take anything about the case/citizen into consideration that is not beforehand stipulated in the law or policy"» (ROTHSTEIN 2014, 738).

By "impartiality", Rothstein seems to refer to a value that can be achieved through the Rule of Law (since impartiality is what implies and encompasses the Rule of Law, rather than being merely one of its formal elements) – hence, to a broad notion of impartiality. The Rule of Law is therefore necessary for impartiality to exist. This begins to outline the relationship between the Rule of Law and impartiality. The (formal) Rule of Law is a means to achieve the end (impartiality): in Rothstein's reconstruction, it would seem to be a causal relationship.

From this reconstruction, however, I partly distance myself. Lacking sufficiently solid evidence to demonstrate a means-end relationship between the Rule of Law and impartiality, I limit myself to maintaining that there exists a phenomenal connection between them: the perception of impartiality suggests the presence of the Rule of Law. To use an analogy, government impartiality stands to the Rule of Law as moving leaves stand to the wind. Let me explain: the Rule of Law is associated with government impartiality for the same reason that, when we want to know whether there is wind, we look at the leaves on the trees. In other words, the perception of impartiality

⁶ For a more in-depth discussion of the relationship between the Rule of Law and impartiality, and more specifically of impartiality as a dimension of the Rule of Law, see KRAMER 2025.

is associated with the presence of the Rule of Law, just as the perception of moving leaves is associated with the presence of wind.

This does not mean that, if there is Rule of Law, there is necessarily impartiality – just as it does not mean that if there is wind, there are necessarily leaves moving (the leaves might be shielded by a barrier we do not see). Conversely, it is not necessarily the case that if there is impartiality, it is due to the Rule of Law – just as moving leaves are not always caused by the wind (someone could be blowing on them, or they might move because of an earthquake).

This means that relying on impartiality as an indicator of the Rule of Law is both over-inclusive and under-inclusive. Yet why rely on such an indicator? Because it remains a reliable one. If we want to know whether there is wind, we look at the leaves because we believe that if the leaves move, it is probably due to the wind, and if they do not move, it is probably because there is no wind.

In summary: is there a conceptual relationship between impartiality and the Rule of Law? No. A causal one? Yes – in the sense that the Rule of Law can be (and usually is) one of the factors that determine governmental impartiality. However, I believe that the adjective that best qualifies the relationship between impartiality and the Rule of Law is phenomenal: perception of impartiality is a good indicator of the presence of the Rule of Law. For this reason, surveys assessing the presence or absence of the Rule of Law often consider impartiality.

There remains one final issue to address: government impartiality is a concept usually associated with the judicial and administrative spheres – but does it also concern the legislative sphere? Isn't it contradictory to speak of impartiality with reference to the legislature? Isn't legislative activity always, in some sense, partial? If it is easy to imagine what impartiality means in the judicial and administrative contexts, legislative impartiality appears to be a slippery concept. I believe that impartiality can be an attribute of the legislature insofar as it ensures that legislators do not act in situations of conflict of interest (even though different rules on conflicts of interest apply to them) and, more generally, do not act primarily to serve their own personal gain. In this sense, the concept of impartiality and legislative activity are not irreconcilable. One can, in fact, legislate in a partisan way (due to one's political orientation and ideas) and at the same time not act primarily for one's own personal interest. In this sense, Cupit (CUPIT 2000) characterizes impartial action as action that is not influenced by considerations such as personal preferences or special personal relationships.

2.2 *Government Impartiality and the Limits of the RoL Indicators*

At the beginning of this work, I expressed the need to find a sufficiently shared definition of the Rule of Law. I turned to the RoL indicators because many of these are opinion-based.

This method is problematic for two reasons:

- (1) the definitions of the Rule of Law (and the parameters used to measure it) adopted by the four private organizations differ from one another;
- (2) the parameters for measuring the Rule of Law are defined a priori by these organizations and are not constructed by the respondents themselves (they are therefore not opinion-based).

Before addressing (1) and (2), it should be made clear that my aim is not to reconstruct the ordinary use of the expression Rule of Law from the definitions provided by four private organizations, but rather from the results of the indicators produced by these organizations – which conduct surveys and use them to compile rankings.

As for (1), even though the definitions differ, convergence in the results might suggest that the indicators measure the same underlying phenomenon. How else could such convergence be explained? It might, of course, be a coincidence. However, empirical evidence – showing that data on belief in government impartiality coincide with data on belief in the presence of the Rule of Law (TEORELL et al. 2011) – seems to indicate that this is not a mere coincidence, but that there is a common element these indicators capture (as shown earlier, according to one thesis, that common element is impartiality (VERSTEEG, GINSBURG 2017)).

If the first limitation in accepting the RoL indicators as tools capable of providing a sufficiently shared definition of the Rule of Law was the diversity of all the conceptions of the Rule of Law behind each RoL indicator, the fact that a concept unifying all the indicators has been identified leads us to conclude that this limitation has been overcome.

(2) Seems harder to overcome. To speak of a sufficiently shared definition of the Rule of Law, it is necessary to be aware of what is usually meant by the expression “the Rule of Law”. To be aware of this, it initially seemed that the RoL indicators were perfect candidates because many of them are opinion-based (through interviews with experts and, in the case of the WJP, also with non-experts). However, the fact that the RoL indicators are opinion-based is misleading: interviews are not conducted to define the Rule of Law but to determine the level of the Rule of Law in a certain country. In this sense, the definitions of the Rule of Law are determined *a priori*, and there is nothing opinion-based in their definition. In other words, respondents’ opinions are used to calculate the level of the Rule of Law, not to determine what the Rule of Law actually is.

Is it possible to overcome this limitation, or was the idea of defining the Rule of Law through the RoL indicators just a mirage? Perhaps to move forward, it is useful to try to root the Rule of Law in something that allows us to know what the common perception is. We have seen how the RoL indicators work: they, after establishing what the elements characterizing the Rule of Law should be, conduct interviews – primarily with experts but also with non-experts. However, we are not interested in knowing how much Rule of Law there is in a state. Rather, we are interested in knowing what defines the Rule of Law. At the same time, we have seen that the RoL indicators, despite having different conceptions of the Rule of Law, end up converging in their results.

At this point, we can advance a hypothesis: regardless of what the various RoL indicators believe are the distinctive elements of the Rule of Law, the interviewed individuals end up attributing a higher score to states where they believe there is an impartial government, thereby demonstrating that what they believe to be the distinctive aspect of the Rule of Law is precisely impartiality. In this way, the RoL indicators regain the authority necessary to provide a good definition of the Rule of Law, if by “definition” we mean what is usually understood by a certain expression.

In summary, point (2) can also be addressed through the argument of result convergence: regardless of the specific parameters used by the Rule of Law indicators, and even though respondents answer questions referring to those particular parameters, what they actually have in mind when responding is impartiality.

In conclusion, this is a method that has its limitations, but it can nonetheless be usefully employed to indicate what people have in mind when they think about the Rule of Law.

3. Conclusions

Our starting point is the RoL indicators. We have seen that these indices are based on surveys, conducted primarily through interviews with experts. In this regard, it is useful to consider how the WJP Index is understood: the WJP explicitly acknowledges that its index is perception-based, since it relies partly on opinion-poll data; yet expert assessments are also perception-based, as the experts who evaluate the RoL have very few genuinely objective measures at their disposal. The same applies to corruption: Transparency International’s Corruption Perceptions Index openly states that it is a subjective indicator, not intended to measure corruption directly but to capture perceptions of corruption (VERSTEEG, GINSBURG 2017, 121).

The most relevant point here is that the Rule of Law is not defined on the basis of objective data but on subjective perception. In this sense, a government is considered impartial if it is perceived as such. The scarcity of objective criteria for assessing impartiality does not imply that expert judgments are arbitrary.

Returning to the methodological framework I have adopted: to understand what the Rule of Law is, we must clarify what is ordinarily meant by the Rule of Law. According to both an initial

intuition and the opinion of experts, the Rule of Law corresponds to government impartiality. To measure government impartiality, we rely on opinions – primarily those of experts – and can therefore conclude that these opinions are grounded in subjective perception.

To summarize, in the attempt to formulate a perception-based definition of the Rule of Law, and assuming that the analysis of RoL indicators might help provide such a definition, it has been observed – on the basis of a convergence in results among the various indices that measure the Rule of Law, as well as with the Transparency International Index – that these indicators appear to measure a common variable. This variable has been identified as “government impartiality”, insofar as it captures the broader concept that encompasses both corruption and the risk of arbitrariness and oppression by public authorities, the latter being the central theme of classical discussions of the Rule of Law. Some empirical evidence (TEORELL et al. 2011) supports this intuition: when experts and non-experts are asked what the Rule of Law is, their responses converge with those they give when asked about government impartiality.

We can therefore conclude that the Rule of Law coincides with the perception of an impartial government. Believing that the government acts impartially means expecting that it does not pursue particular interests. Schematically, the Rule of Law, according to this elaboration, consists of two elements:

- (a) the expectation that there is a government;
- (b) that acts impartially.

The most significant result of this analysis is the identification of a perception-based definition of the Rule of Law. That the Rule of Law coincides with government impartiality is, of course, a controversial claim; this is the most problematic aspect of the entire argument. Yet, based on the correspondences observed among the different RoL indicators, it appears that expert evaluations ultimately converge on a key point: the Rule of Law is present when the government is perceived as impartial.

References

- BINGHAM T. 2010. *The Rule of Law*, Allen Lane.
- CUPIT G. (mns.) 2000. *When Does Justice Require Impartiality?*, paper presented at the 50th annual conference of the Political Studies Association, UK, April 10-13.
- DAVIS K.E. 2004. *What Can the Rule of Law Variable Tell Us About Rule of Law Reforms?*, in «Michigan Journal of International Law», 26, 2004, 141ff.
- DAVIS K.E. 2014. *Legal Indicators: The Power of Quantitative Measures of Law*, in «Annual Review of Law and Social Science», 10, 2014, 37 ff.
- FULLER L. 1964. *The Morality of Law*, Yale University Press.
- GINSBURG T. 2011. *Pitfalls of Measuring the Rule of Law*, in «Hague Journal on the Rule of Law», 3(2), 2011, 269 ff.
- KAUFMANN D., KRAAY A., MASTRUZZI M. 2010. *The Worldwide Governance Indicators: Methodology and Analytical Issues*, in «World Bank Policy Research Working Paper», 5430, 2010, 1 ff.
- KRAMER H.M. 2025. *Impartiality*, in BELLAMY R., KING J. (eds.), *The Cambridge Handbook of Constitutional Theory*, Cambridge University Press, 157 ff.
- MØLLER J., SKAANING S-E. 2014. *The Rule of Law: Definitions, Measures, Patterns and Causes*, Palgrave.
- RAZ J. 1979. *The Authority of Law: Essays on Law and Morality*, Oxford University Press.
- ROTHSTEIN B. 2011. *The Quality of Government: Corruption, Social Trust, and Inequality in International Perspective*, University of Chicago Press.
- ROTHSTEIN B. 2014. *What Is the Opposite of Corruption?*, in «Third World Quarterly», 35 (5), 2014, 737 ff.
- TASHIMA W. 2008. *The War on Terror and the Rule of Law*, in «Asian American Law Journal», 15, 2008, 245 ff.
- TEORELL J., DAHLSTRÖM C., DAHLBERG S. 2011. *The QoG Expert Survey Dataset*, University of Gothenburg: Quality of Government Institute.
- VERSTEEG M., GINSBURG T. 2017. *Measuring the Rule of Law: a Comparison of Indicators*, in «Law & Social Inquiry», 42 (1), 2017, 100 ff.
- WALDRON J. 2016. *The Rule of Law*, in ZALTA E.N., NODELMAN U. (eds.), *Stanford Encyclopedia of Philosophy (Fall 2023 Edition)*, Metaphysics Research Lab, Stanford University.

