

How Do We Understand the Rule of Law?

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Over the years, significant financial, technical and intellectual resources have been spent in Georgia to transform the legal system and support democracy. A large number of international projects serve to support the rule of law and the formation of relevant state institutions. The main promises of politicians and the biggest political disappointments are usually pertain to the rule of law. Despite such importance, discussion about the complex nature of the rule of law is rare in Georgia. It falls into a kind of universal, unequivocal and uncontroversial category, which is in fact imprecise. The purpose of this article is to provide a critical review of the dominant view on the rule of law, discuss some of the difficulties and contradictions that accompany the work of rule of law reformers, and, through this discussion, contribute to the objectives and best solutions for law and justice reform.

1. The Rule of Law in a Critical Perspective

A uniform definition of the rule of law cannot be found in the literature.² It is interpreted in different ways: formally, i.e. narrowly, and substantively, more widely.³ In a narrow definition, everyone must obey the requirements of the law, which in turn must be public and accessible.⁴ The formal definition is silent about the content of the law.⁵ The narrow definition of the rule of law is associated with the eight procedural requirements formulated by the legal philosopher Lon Fuller, which he applied to the law and the law-making process, although he did not say anything about the substantive issues of the law.⁶ Fuller believed that laws should be general, publicly accessible, future-oriented and not retroactive, comprehensible and understandable to the public, non-contradictory, enforceable and stable, and the texts of the law and their enforcement should be consistent with each other.⁷ Some of the authors note that the Fuller's list does not stipulate the hierarchy of referred values, or the cases where these values themselves come into conflict with each other.⁸

A more complex, i.e., substantive definition of the rule of law is not limited to these elements, and it involves bringing into the discussion such concepts as democracy, justice, and etc.⁹

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² Mila Versteeg and Tom Ginsburg, *Measuring the Rule of Law: A Comparison of Indicators*, Law & Social Inquiry, 2017, p.6.

³ Brian Tamanaha, *A Concise Guide to the Rule of Law*, Legal Studies Research Paper Series, 2007, p.3.

⁴ Brian Tamanaha (n 2) p.3.

⁵ Brian Tamanaha (n 2) p.17.

⁶ Mila Versteeg and Tom Ginsburg (n 1) p.8.

⁷ Collen Murphy, *Lon Fuller and the moral value of the rule of law*, Law and Philosophy, 2005, p.240.

⁸ Mathew D. McCubbins, Daniel B. Rodriguez, Barry R. Weingast, *The Rule of Law Unplugged*, U of Texas Law, Public Law Research Paper, 2009, p.21.

⁹ Brian Tamanaha (n 2) p.3.

Conceptualizing the rule of law is difficult because its content is often equated with the "institutions and practices" of the countries where the rule of law is achieved.¹⁰ As Rodriguez and others point out, "The rule of law is an attractive ideal, though its appeal may derive from its vagueness, which allows us all to frame our views on ideal governance in this term."¹¹

Professor Brian Tamanaha develops an interesting view on the modification of the content of the rule of law and describes how this concept has changed under political liberalism. If, before, it mainly meant limiting the tyranny of the sovereign/ruler,¹² under liberalism its main purpose became the protection of individual freedom.¹³ The author talks about two objectives of the rule of law: first - to impose legal restrictions on the government, in particular, to demand from the representatives of the government to act in accordance with the existing legislation and to define certain limits for the law-making process.¹⁴ The second purpose of the rule of law is addressed to society, "to maintain order and coordinate behavior."¹⁵

Implicit limitations for the government, i.e. the first purpose of the rule of law, in turn, implies positive and negative aspects. On the one hand, the government's actions must have appropriate legal "authorization", and the negative aspect prohibits the government from acting contrary to established norms.¹⁶ In this discussion, it is worth to note the logical and practical contradictions vis-à-vis the self-restraining actions on the part of the authorities, in the process of law enforcement and protection, which require "institutionalization of the distribution of power".¹⁷ In an institutionalized political system, power is depersonalized and thus the difficulty of self-restrained action is largely dispelled.

In accordance with the rule of law, the restrictions maintained with regard to the law-making authority, which inhibit the government in adopting certain changes, are important to note. Such restrictions may be related to certain fundamental principles, which are manifested in rules recognized by the constitution, principles of natural law, international norms that establish human rights or religious norms.¹⁸ Accordingly, the political group in power, when fulfilling its political objectives, may be restricted by the foundations, it does not have the institutional ability to eliminate or change. It is in this context that Professor Tamanaha asks who should have the authority to interpret such a matter.¹⁹ As a rule, courts exercise the capacity to formulate interpretations that have political consequences. According to the author, this leads to the expansion of justice into politics (Judicialization).²⁰ In addition to this tendency, the author is also wary of the intrusion of law into all aspects of social, economic and political life (Juridification).²¹

¹⁰ Mila Versteeg and Tom Ginsburg (n 1) p.7.

¹¹ Mathew D. McCubbins, Daniel B. Rodriguez, Barry R. Weingast (n 7) p.5.

¹² Brian Tamanaha, *The Rule of Law for Everyone?*, St. John's Legal Studies Research Paper, 2003, p.21.

¹³ *ibid*, p.21.

¹⁴ Brian Tamanaha (n 2) p.3.

¹⁵ *ibid*, p.6.

¹⁶ *Ibid*, p.3.

¹⁷ *Ibid*, p.4.

¹⁸ *ibid*.

¹⁹ *ibid*, p.6.

²⁰ *ibid*.

²¹ *ibid*, 18.

Naturally, the strengthening of the rule of law, certainly, legal security and other components of this institution can positively affect both horizontal (between citizens) and vertical relations (between citizens and the government).²² However, it is important that in both cases the rule of law requires basic knowledge of the law and prudence from the citizens, which is naturally not always the case.²³ Another issue that has been linked to the criticism of the widespread view of the rule of law from a critical perspective is discretion. More precisely, ensuring uniform enforcement of the law by limiting the scope of discretion. In some cases, when circumstances change, unconditional/unilateral enforcement of existing law may lead to "harmful, unjust or socially undesirable consequences".²⁴ Also, following/enforcing the law in a tradition that constantly "produces winners and losers" does not help eliminate the conflict and achieve harmony in society.²⁵ As Tamanaha points out, uniform enforcement of the law does not always have a positive connotation, especially in an environment of "substantial social inequality."²⁶ The author cites as an example the prohibition of sleeping on a bench in the square, which will affect the rich and the poor alike.²⁷ However, it is clear that this ban has a social dimension mainly only in the case of the poor.²⁸

The principle of "neutrality" (and not "impartiality") related to the concept of the rule of law should be noted here, as a necessary condition for judicial review in many legal systems. Some of the authors note that laws and court decisions, no matter how "neutrally" they are adopted, have a concrete, tangible, rights-related impact on people.²⁹ Thus, neutral in form/process obviously does not imply neutral in result and it is necessary to take this into account when forming the legal system.

When working on rule of law issues, it is important to consider the relationship of law in general with social and cultural norms, especially when the society is ethnically, culturally, religiously diverse and includes many groups, and the law "represents only one."³⁰ At such times, especially in post-colonial societies, the law can be alienating, which makes it difficult to achieve social order.³¹ Moreover, if the law is associated with one specific group, or if there is a general mistrust of the state or the legal profession, and if in a diverse society, the levers of law creation/enforcement are in the hands of only one social group, while others are ostracized, it becomes difficult to recognize the principle of the rule of law as a cultural value.³² Similarly, if there is high unacceptance of the legal profession in general, or if the profession and related positions are only available to certain

²² *ibid.*, p.8.

²³ *ibid.*

²⁴ *ibid.*, p.9.

²⁵ *ibid.*

²⁶ *ibid.*, p.12.

²⁷ *ibid.*, p.13.

²⁸ *ibid.*

²⁹ Mathew D. McCubbins, Daniel B. Rodriguez, Barry R. Weingast (n 7) p.51.

³⁰ Brian Tamanaha (n 2) p.11.

³¹ *ibid.*

³² *ibid.*, pp.13-14.

classes, this may also be reflected in the content of laws.³³ Such biases will obviously reduce acceptance of the rule of law or legal reforms.

The examples discussed in this chapter, which are usually not heard in the dominant discussions about the rule of law, demonstrate the complex and difficult nature of the rule of law. A formal understanding of the rule of law, by itself and always, does not imply the existence of a fair, equal and democratic legal system. The rule of law acquires form and content in a specific context, and thus, in addition to the legal environment, it is closely related to social factors, cultural, historical, political dimensions. Ignoring these relations can create strong opposition to worthwhile ideas in reforming the legal system, including the work of rule of law reformers.

2. The Rule of Law as an Industry

According to some authors, "the rule of law is a growing multinational industry."³⁴ Others call it a "mantra"³⁵ or, the most commonly used "slogan."³⁶ This indicates to the dominant and somehow "unquestionable" nature of the rule of law in the context of legal globalization.

The history of the rule of law and, with it, global legal reforms and international projects largely commenced in the 1990s. In the transitional democratic countries, under the development paradigm, international organizations started working precisely with the rule of law projects. Before that, for example, in American academic and political circles, it was considered that economics and political sciences played a leading role in developmentalism.³⁷ However, economists have begun to think about the "potential economic function" of legal institutions,³⁸ and political scientists have begun to think about the role of law and courts in matters of political organization.³⁹ It was these views that formed a kind of consensus about the interrelationship of the legal system and development, which gave rise to the spending of large financial resources on the issues of the rule of law in developing countries.⁴⁰ In addition, establishing the rule of law became a prerequisite for receiving grants from international financial institutions.⁴¹ This has given the project target countries an incentive to work on "universally" recognized rule of law reforms.

Large-scale rule of law reform projects rest on several key assumptions. There is an opinion that in a market economy, the rule of law promotes economic development because of the sense of certainty and security promoted by thereof.⁴² However, it is debatable whether legal systems and institutions really have independent importance for economic development. Some authors deny the existence of such a direct connection and rely on the opinion according to which the contrary

³³ *ibid*, p.16.

³⁴ Mila Versteeg and Tom Ginsburg (n 1) p.2.; Mathew D. McCubbins, Daniel B. Rodriguez, Barry R. Weingast (n 7) p.2.

³⁵ Julio Rios-Figueroa and Jeffrey K. Staton, *Unpacking the Rule of Law: a review of judicial independence measures*, CELS 2009 4th Annual Conference on Empirical Legal Studies Paper, 2009, p.2.

³⁶ Brian Tamanaha (n 11) p.7.

³⁷ Kevin E. Davis, *What Can the Rule of Law Variable Tell Us About Rule of Law Reforms?*, *Michigan Journal of International Law*, 2004, p. 142.

³⁸ *ibid*.

³⁹ *ibid*.

⁴⁰ *ibid*, p. 143.

⁴¹ Brian Tamanaha (n 11) p.3.

⁴² Brian Tamanaha (n 2) p.11.

is true – the economic development itself determines the legal policy in the countries.⁴³ And some authors bring into this discussion an even more noteworthy aspect, not the growth of the economy, *per se*, but even in the presence of such growth, the problem of income distribution, which is an insignificant topic for the rule of law.⁴⁴

Rule of law reformers also base their work on the universality of the rule of law and the recognition that it is common to all political and cultural environments.⁴⁵ The second assumption is that the rule of law requires specific institutional and governance compliance from states.⁴⁶ Third – the rule of law is equated with democracy and, therefore, with an alternative to authoritarianism.⁴⁷ Fourth – it is believed that it is possible to measure the rule of law.⁴⁸ This last assumption points to the idea that the rule of law is a one-sided, homogeneous concept, not a complex, multifaceted phenomenon.⁴⁹ It is this kind of implicit "uniformity" that makes the rule of law a measurable phenomenon.

For the establishment of the rule of law, the existence of several systemic elements is considered necessary, such as: constitutional arrangement and established scope of powers, function of revision of legislation/constitutional justice, separation of powers, existence of an independent judiciary.⁵⁰ Some of the authors consider three main directions in the broad concept of rule of law: institutional, individual and social dimensions.⁵¹ The independence of the court is a component of the institutional dimension.⁵² An institutionalized, independent court has a special role in achieving the rule of law.⁵³ Judges, individually and collectively, must be motivated to apply the law without bias or influence.⁵⁴

As the independence of the judiciary is one of the key elements of the rule of law, it is the topic of institutional transformation of the judiciary that attracts the greatest attention of international and local reformists. This is related to the opinion that trust in the law and judiciary increases certainty, which is necessary for effective economic activity.⁵⁵ This dominant view is familiar to the countries of transition democracies, including the post-Soviet space, where "legal and justice reforms [...] are still perceived as a concomitant/auxiliary means of economic sector liberalization."⁵⁶

Some of the authors note that in the transition countries, law and court reforms were carried out under the conditions of intense "international pressure".⁵⁷ Related to this is working on law reforms

⁴³ Kevin E. Davis (n 36) p. 143.

⁴⁴ David M. Trubek, The „Rule of Law“ in Development Assistance: Past, Present and Future, 2003, p.16. (available at: <https://bit.ly/3NFk88a>).

⁴⁵ Mathew D. McCubbins, Daniel B. Rodriguez, Barry R. Weingast (n 7) p.11.

⁴⁶ *ibid*, p.12.

⁴⁷ *ibid*.

⁴⁸ *ibid*.

⁴⁹ *ibid*.

⁵⁰ *ibid*, pp. 24-30.

⁵¹ Julio Rios-Figueroa and Jeffrey K. Staton (n 34) p.4.

⁵² *ibid*.

⁵³ Brian Tamanaha (n 2) p.14.

⁵⁴ *ibid*.

⁵⁵ Boaventura de Sousa Santos, The Gatt of Law and Democracy:(Mis)Trusting the Global Reform of Courts, 1999, p.56.

⁵⁶ "Who is asking for court reform and on what basis?", 2021 (available at:<https://bit.ly/3E9G8VF>).

⁵⁷ Boaventura de Sousa Santos (n 54) p.57.

in isolation from local experiences, political context and social environment, which is often accompanied by attempts to integrate institutional settings considered best practices into the legal systems of specific countries. However, such a one-size-fits-all strategy is flawed, and even the best practices themselves can become "illusory" if the local context is neglected.⁵⁸

An example of this is the "standard packages of judicial reform", which were distributed as universal solutions by international development projects in post-Soviet countries. It should be said that widespread approaches to judicial independence are often based on standards developed by the judicial community itself.⁵⁹ In addition to some of these standards leaning towards judicial corporatism, they wrongly emphasize on the existence of external influences on judges and leave without due attention the issues of influence and pressure coming from within the system,⁶⁰ as well as the issue of excessive autonomy, which can turn the court itself into a political player ("juristocracy").⁶¹ Nevertheless, standardized reform packages are still actively used in global legal reform projects.

The authors focus on the close relationship of the rule of law and legal reforms with the general legal and institutional system and political environment.⁶² Conversely, often reformist resources are spent on developing the rule of law in settings where political or legal systems remain unchanged or resistant to such innovations. Therefore, attempts to introduce the rule of law are accompanied by a number of unintended consequences.⁶³ Such results can lead to skepticism not only towards legal systems, but also towards democracy itself.⁶⁴ This danger exists when the topic of the rule of law and legal reforms is considered in isolation from the specific political, economic, social, legal environment.⁶⁵ No government and power system works unilaterally and linearly. As discussed in the previous chapter, the rule of law, as a part of a larger process, is influenced by a number of circumstances and is formed in interaction with these circumstances. Thus, transferring any "standard" legal mechanism from one political context to another, without proper measurement and evaluation of the new environment, can be not only futile, but also counterproductive.

3. How the Rule of Law is Measured

The expansion of the rule of law "industry" has increased interest in methods and indicators for measuring the rule of law.⁶⁶ Today, many organizations measure the state of the rule of law in different countries. However, as a rule, international indices mainly measure different aspects of this concept.⁶⁷ The methods of obtaining and processing data are also different, as some rely only

⁵⁸ Tom Ginsburg, Pitfalls of Measuring the Rule of Law, *Hague Journal on the Rule of Law*, 2011, p.272.

⁵⁹ David Kosar and Samuel Spac, Conceptualization(s) of Judicial Independence and Judicial Accountability by the European Network of Councils for the Judiciary: Two Steps Forward, One Step Back, *International Journal for Court Administration*, 2018, p.38.

⁶⁰ *ibid.*, p.39.

⁶¹ Tom Ginsburg (n 57) p.273.

⁶² Mathew D. McCubbins, Daniel B. Rodriguez, Barry R. Weingast (n 7) p.23.

⁶³ *ibid.*, p.45.

⁶⁴ *ibid.*

⁶⁵ *ibid.*

⁶⁶ Mila Versteeg and Tom Ginsburg (n 1) p.2.

⁶⁷ *ibid.*, p.4.

on the assessments of experts in a particular country, while others rely on information from citizens, experts and other sources.⁶⁸ Some of the analysis prepared in the field of governance may be based on the views of international investors about the environment in the country.⁶⁹ The latter is considered particularly problematic, as foreign investors may not have a comprehensive understanding of the country's legal system, their views may be determined by subjective motives. For example, they may not consider it favorable for business and negatively assess the environmental protection and labor regulatory legislation in the country.⁷⁰ For these and other reasons, as Tom Ginsburg points out, business-led research may not provide particularly reliable data.⁷¹

Measuring the rule of law is often related to the state of economic development in a country.⁷² It is noteworthy that some authors criticize both the content of "development" itself and the principle of calculating per capita income in connection with it, as well as critically assess the criteria used by organizations to prepare assessments.⁷³ For example, when researching the state of law and order in some countries, subject of criticism is relying solely on the crime-related indicators, which, in turn, is not only a legally noteworthy phenomenon and is not enough to characterize the country's legal system;⁷⁴ Also, when assessing the state of law enforcement, the reference to illegal strikes that relate to the violation of the existing legislation in the field of health and safety protection in the country is criticized.⁷⁵

It should be said that some evaluations focus on the origin of the legal system of the country being evaluated.⁷⁶ This is related to the widespread opinion among some authors that continental and common law systems affect performance differently, and common law structures are superior compared to continental ones.⁷⁷ Tom Ginsburg's response to this evaluation system is interesting, indicating that the differences in the status of the countries under study are not caused by the origin of the legal system itself, but by different colonial policies in relation to these countries.⁷⁸

According to the authors, who examined the interrelationship of several widely used indices, despite the existing methodological differences, they mainly reflect similar phenomena.⁷⁹ The authors believe that despite the methodological differences between the indices, the homogeneity in the results may be due to the fact that the rule of law indices convey public trust in the government in general.⁸⁰

⁶⁸ *ibid.*

⁶⁹ Tom Ginsburg (n 57) p.275.

⁷⁰ *ibid.*

⁷¹ *ibid.*

⁷² Kevin E. Davis (n 36) p. 148.

⁷³ *ibid.*, p. 146.

⁷⁴ *ibid.*, p. 150.

⁷⁵ *ibid.* p. 151.

⁷⁶ Tom Ginsburg (n 57) p.276.

⁷⁷ *ibid.*

⁷⁸ *ibid.*, p.277.

⁷⁹ Mila Versteeg and Tom Ginsburg (n 1) p.5.

⁸⁰ *ibid.*, p.6.

One of the most widely used and oldest rating systems is the World Bank Index, which began evaluating the rule of law in the 1990s to fulfill its primary objective (promoting capital, investment, and economic growth).⁸¹ This decision echoed the notion that under the rule of law an investment environment and economic activity is encouraged and facilitated. Global governance indicators cover six areas, including the rule of law.⁸² The World Bank's concept of the rule of law includes the enforcement of contracts, property rights, police and courts, and the likelihood of violence and crime.⁸³

Also interesting is the index of economic freedom of the conservative American organization Heritage Foundation, which, taking into account the values of the organization, focuses on private property and corruption.⁸⁴ According to the 2022 index, 184 countries are evaluated according to the 4 pillars of economic freedom:⁸⁵

- The rule of law, in which the organization considers: the right to property, the integrity of the government, the effectiveness of the court;
- Government size, more specifically government spending and tax burden;
- Regulatory framework of business, labor and monetary policy;
- Market openness, investment, financial and trade freedom.

The methodology of the Economic Freedom Index does not recognize a separate definition of the rule of law, and it begins directly with the display of the three sub-categories that make up this column.⁸⁶ The methodology of one of these sub-categories - judicial effectiveness - indicates that it is evaluated in three categories, namely: judicial independence, the quality of the judicial process, and perceptions of the quality of public services.⁸⁷ Regarding the sources, to evaluate the effectiveness of the court, the index relies on data from the World Bank and Freedom House.⁸⁸ In the 2022 index, Singapore was named the country with the freest economy. Among all 4 pillars and all sub-categories of these pillars, Singapore has the lowest score in the judicial efficiency section (58.3) and it is only 2 units ahead of Georgia (56.4) in the judicial efficiency index.⁸⁹

As for another American organization, Freedom House, based on its mission, the content of the rule of law is largely interpreted on the basis of human rights.⁹⁰ More specifically, the organization studies the state of political and civil liberties in different countries.⁹¹ This focus is linked to the organization's claim that "the best way to achieve human freedom is in a liberal democratic society."

⁸¹ *ibid*, p.12.

⁸² Worldwide Governance Indicators (available at: <https://bit.ly/3zLXd1R>).

⁸³ *ibid*.

⁸⁴ Mila Versteeg and Tom Ginsburg (n 1) p.13.

⁸⁵ About the Index, 2022 Index of Economic Freedom, Heritage Foundation, (available at: <https://herit.ag/2EZxRWV>).

⁸⁶ Methodology, Heritage Foundation, p.455 (available at: <https://herit.ag/3hiwt66>).

⁸⁷ *ibid*, p.456.

⁸⁸ *ibid*.

⁸⁹ Explore the Data, 2022 Index of Economic Freedom, Heritage Foundation (available at: <https://herit.ag/2xswoTD>).

⁹⁰ Mila Versteeg and Tom Ginsburg (n 1) p.14.

⁹¹ Introduction, Freedom House (available at: <https://bit.ly/3FSQ4UK>).

⁹² Although Freedom House's ranking is one of the most common mechanisms for evaluating democracy, the organization's core concept is actually about freedom, not democracy.⁹³

Under the rule of law pillar, the organization considers categories such as:⁹⁴

- Independence of the judiciary (non-interference in court activities, appointment of judges, enforcement of decisions)
- Ensuring the right to a fair trial (access to justice, legal aid, presumption of innocence, etc.)
- Protection from physical violence (police detention practices, prison conditions, violent crimes)
- Equal treatment of different groups (vulnerable groups and discrimination)

As for the sources used by Freedom House, analysts of the organization rely on news articles, academic materials, reports of non-governmental organizations, professional contacts and field research in preparing the ratings.⁹⁵ According to the organization's 2022 assessment, Georgia is on the list of partially free countries (with 58 points) and has the lowest ratings, along with several other components, in the category of rule of law.⁹⁶

A fourth, large-scale and relatively new initiative is the World Justice Project's Rule of Law Index, which uses a particularly broad content of the rule of law compared to all other indices.⁹⁷ Along with defeating corruption, the organization also considers general injustices, poverty, disease and etc., as targets of the rule of law.⁹⁸ The WJP uses both broad community and elite group studies to prepare its assessment, which Ginsburg believes was a response to the challenge that surveying only the views of businesses might be biased or incomplete.⁹⁹ As the organization itself notes, this is the only index that, along with the answers of qualified respondents, relies on the experiences and perceptions of ordinary citizens.¹⁰⁰ The Rule of Law Index measures eight factors: limitations on government power, corruption, open governance, fundamental rights, law and order, enforcement of regulations, and civil and criminal justice.¹⁰¹

The information presented in this chapter once again points to the necessary caution when using indexes. For example, when using different indices on the rule of law, it is necessary to take into account: who prepares the assessment and what purpose this assessment serves; What the assessment actually measures (for example, democracy or freedom); how the information was collected and whether there was a risk of bias or conflict of interest; How the evaluating organization interprets the rule of law or the effectiveness of the court. As the discussion presented here shows, being in the leading positions in the index does not in itself imply being guided by the

⁹² *ibid.*

⁹³ John Höglström, Does the Choice of Democracy Measure Matter? Comparisons between the Two Leading Democracy Indices, Freedom House and Polity IV. Government and Opposition, 2013, p.204.

⁹⁴ Freedom in the World Research Methodology, Freedom House (available at: <https://bit.ly/3t4s219>).

⁹⁵ Introduction, Freedom House (available at: <https://bit.ly/3NFCfuH>).

⁹⁶ Georgia, Freedom in the World, Freedom House (available at: <https://bit.ly/3UfwK8v>).

⁹⁷ Mila Versteeg and Tom Ginsburg (n 1) p.17.

⁹⁸ World Justice Project, Rule of Law Index 2021, p.13 (available at: <https://bit.ly/3TsvGgp>).

⁹⁹ Tom Ginsburg (n 57) p.275.

¹⁰⁰ World Justice Project, Rule of Law Index 2021, p.9 (available at: <https://bit.ly/3Tca3k4>).

¹⁰¹ *ibid.*

principles of institutionalized democracy or the best content of the rule of law in the country. For some indices, democracy, the rule of law and the independence of the judiciary have only an instrumental value and are perceived as a means to another end.

4. Summary

This article reviewed three important issues related to the rule of law: the concept and content of the rule of law from a critical perspective, the activities of the rule of law reformists and global legal reform projects, the methods of measuring the rule of law, and the features of commonly-used indices.

The issues discussed in the article once again indicate that the rule of law is a rather complex phenomenon. Contrary to popular misconceptions, the rule of law was associated with a number of contradictory and complex considerations. In response to widespread opinions about its uniformity and universality, the article discusses how important it is to contextualize work on the rule of law, taking into account social, cultural and historical factors. This is particularly true of rule of law reformers, who often ignore local contexts and attempt to transform complex political and legal systems with standardized reform packages. As for the measure of the rule of law, the information discussed in the article indicates that the widely distributed indices have a number of peculiarities, which must be taken into account when referring to these indices. It is important to clarify what a particular index means in the rule of law and what the evaluating organization actually measures.