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THE MARCH OF THE BRUTES. REMARKS ON AGENTIAL CAUSES OF THE CRISIS OF LIBERAL DEMOCRACY IN POLAND

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SUMMARY: 1. The key idea of the paper; 2. The standard explanations for the crisis; 3. Agents as limits of the law; 4. Beyond revolution: “brutes”; 5. The origin of “brutes”; 6. Beyond control; 7. A broader perspective; 8. Conclusion.

ABSTRACT: In this short essay, we propose an alternative explanation for the current crisis of Western liberal democracies. Instead of focusing on economic factors, historical circumstances, or political narratives, we highlight the general attitudes of agents towards the law and the act of obeying legal rules. We argue that, at least in Poland, the decline of democratic institutions can be attributed to the emergence of a new, distinct type of public actors that are more aligned with the post-politics and post-truth era. We believe that our explanation can provide practical recommendations for those seeking effective solutions to the crisis.

KEYWORDS: post-politics, post-truth, post-law, populism, crisis of democracy, public actors

1. THE KEY IDEA OF THE PAPER

The key idea of this paper is to propose a new explanation for the current crisis of liberal democracy¹ in the West (henceforth: *the crisis*). This crisis usually means the demise of democratic institutions, democratic control over governments, and the ineffectiveness of constitutional protection

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1 As a liberal democracy, we understand a political system that serves such values as respect for human dignity and human rights, freedom, equality, the rule of law, pluralism, tolerance, justice, and solidarity (see such a catalogue in Art. 2 of the Treaty of Lisbon) and thus limits and restrains a political majority. We assume the concept of liberal democracy to be that presented by Sartori 1987, according to whom liberalism is a necessary part of democracy.

of civic and human rights, resulting in the consolidation of power in one political group and increasing the primacy of politics over the law. All of those are especially prominent in Turkey and Eastern Europe, *i.e.*, in Poland and Hungary, but also to some extent in the Czech Republic and Slovakia.²

Since democracy, its values, standards, and institutions are embodied in certain laws (regulations), one can reduce the question of the causes of the crisis to the problem of the actual ineffectiveness of those laws or regulations. However, this immediately raises the issue of explaining why those laws have appeared to be effective for so many years, resulting in healthy and successful liberal democracies. Therefore, we believe that the crisis is not merely a problem with the effectiveness of specific regulations, no matter how fundamental or crucial they may be, but rather a problem with the effectiveness of the law as a whole. This leads us to the idea that, in order to explain the crisis, one should examine not only the content of legal rules but also those who are expected to adhere to them – public and political actors. Ultimately, their attitudes toward the law in general limit its overall effectiveness.

Keeping this in mind, in the following paragraphs, we will demonstrate how a particular characteristic of the actors dominating the current political class in Poland may be held responsible for the backsliding of liberal democracy

2 We listed countries that are parts of the EU or NATO and have been recently under scrutiny as problematic for democratic standards (see Polyakova et al. 2019). According to the International Institute for Democracy and Electoral Assistance (2020), the state of democracy in Poland has significantly deteriorated since 2015 (in 2015 the Law and Justice party and its candidate for the President, Andrzej Duda, won both the parliamentary and the presidential elections). In 2020, Poland had 0,74 points in “Representative Government” category (0,86 in 2014), 0,64 in “Fundamental Rights” (0,81 in 2014), 0,57 in “Checks on Government” (0,83 in 2014), 0,62 in “Impartial Administration” (0,67 in 2014) – with 1,00 as a maximum possible rate in each category. From among numerous other world rankings on democracy, rule of law and human rights protection, showing the situation in Poland rapidly worsening, see in particular V-Dem Institute’s Liberal Democracy Index (LDI). According to it, between 1992 and 2015 situation in Poland was very stable – oscillating between 0,80 and 0,83 points (maximum possible rate 1,00) – but suddenly started to decline in 2016 (0,80 in 2015, then 0,61 in 2016, 0,55 in 2017 as well as in 2018, 0,53 in 2019, 0,49 in 2020); previously classified as “Liberal Democracy”, nowadays Poland is an “Electoral Democracy” only. What is more, according to V-Dem Poland is the country that declined the most during the decade 2010-2020, among all the countries in the world (from 0,83 to 0,49 in LDI). See https://www.v-dem.net/data_analysis/VariableGraph and Alizada et al. 2021, p. 19.

there.³ While this paper serves as a preliminary exploration of the problem, based on limited observations and requiring further analysis and grounding, we believe that this perspective has been systematically overlooked in the literature and, therefore, deserves attention from readers.

2. THE STANDARD EXPLANATIONS FOR THE CRISIS

Several different explanations for the crisis in Poland and Central Europe have been so far proposed in the literature. One of the most prominent, especially from the perspective of the Western reader, is *the copycat hypothesis*, which was authored by Ivan Krastev and Stephen Holmes (2019). In order to achieve the freedoms and prosperity of Western democracies, Eastern European countries imitate the institutions and values of the West. And this has turned out to be emotionally taxing for Eastern societies since it has led to disappointments driven by constant comparisons between the original and its imperfect copies.⁴ This, along with emigration from Eastern Europe, opened doors to the rise of nationalistic politics observed in Poland and Hungary, and fuelled by xenophobic and demographic fears. Krastev and Holmes seem to accept the idea that it was failures in economic development that finally stood behind resentments against the liberal West. But their explanation calls for broad political or social processes manifested at the international level (*e.g.*, globalization, westernization, brain draining) on the one hand, and the psychology of national politics on the other.

In a similar fashion, Katarzyna Pełczyńska-Nałęcz (2018), the sociologist and the former Polish ambassador to Russia, as to the causes of the alleged crisis of the EU, indicates mass migration, which ignites nationalism and

3 A number of authors studied the case of Poland and the lasting crisis, the most comprehensive works are: Sadurski 2018, and its extended version – Sadurski 2019.

4 It is similar to the concept of isomorphic mimicry, as developed by Andrews, Pritchett and Woolcock (2017), who state that “isomorphic mimicry is a key ‘technique of successful failure’ that perpetuates capability traps in development”. In the context of their study “isomorphic mimicry is the tendency of governments to mimic other governments’ successes, replicating processes, systems, and even products of the ‘best practice’ examples. This mimicry often conflates form and function: leading to a situation where ‘looks like’ substitutes for ‘does’; i.e., governments look capable after the mimicry but are not actually more capable.” (p. 30); however, this concept may have an explanatory potential for political and legal studies as well.

xenophobia, and social media, which dismantles the traditional authorities and institutions involved in the information market.

Nicholas Mulder (2021), in turn, criticizing the explanation given by Krastev and Holmes as inaccurate, stresses the role of the process of purifying the state's institutions and society from the contaminants of the communist era – the process that was proposed as a solution to state and the economy weaknesses by the very politicians who are now in charge of Poland and Hungary. Such purification has been a promise for years, but a promise unfulfilled thanks to liberal, democratic standards and the resistance of international institutions and the domestic judicial system. This explains why current political leaders dislike democracy, portraying it as weak and ineffective, unable to repair (purify) itself, or even immoral.⁵

Ewa Łętowska (2017), the first Polish Commissioner for Human Rights (ombudsman) and former judge of the Constitutional Tribunal, points out the role of a lack of proper promotion and understanding of the liberal project and the concept of the rule of law even also among social elites. Polish society, “haunted” in the 19th and the 20th century, first by political messianism and then communism, was unable on its own to develop a deeper sense of the liberal and democratic values as conditions required for personal freedoms and nation building. The insufficient realization of the principles of social justice and the social commitments of the state were other reasons for the crisis.

Other diagnoses focus on the cultural change in younger generations. These generations – consisting of people born into free, liberal societies, perceive liberal standards and democratic institutions as given and stable. But at the same time, these standards and institutions are responsible for unstable work environments, poor social protection, and bad perspectives on retirement (privatized in the name of the liberal economy and justified by the language of democratic individualism). As such, it may be understandable that younger generations tend to care more about work regulations and their social security – the risk that they feel in their own skin – than abstract

⁵ For example, in 2011, Jarosław Kaczyński, the leader of *Law and Justice* – the party that has practically ruled Poland since 2015, in his book *Polska naszych marzeń* (*Poland of our dreams*), stated: “We are facing the incredible mongrelization of the political and cultural establishment. These are people that came out of communism with various deeply hidden complexes of their own faults [...]. Our miserable peripheral, imitative, monkey elites think that one should not use moral arguments”.

dangers for the constitution or liberal standards, especially if those haven't worked for them so far (Kuisz 2018).

Some authors propose explaining the crisis and the rise of populist movements in the EU through the improper content of the notion of *political community*. Because the publicly accessible notion of community does not include the values and aspirations sought by members of society, that society is prone to illiberalism and the populism of the right. Thus, the duty of responsible politicians in the first place is to appropriately create the notions that are essential for society. Those notions, including or expressing appropriate historical content, emotions, ambitions, and values, have the power to safeguard society from deterioration and illiberal populism (Smoczyński 2019).

A number of authors, instead of concepts and notions, prefer to speak about narratives – language or comprehensive stories that are told publicly and used by politicians to reinforce their agenda. According to this perspective, people are the narrators of stories, narrative rationality depends on the consistency and credibility of their stories, and the social world is a set of stories, among which its participants choose their own and become the creators of their own lives (Wasilewski 2012, p. 22). A particular type of such narratives are those about history – generated, supported, and enhanced by public institutions (schools, historical institutes, government-controlled media), also named by the term *politics of history*, which encompass all cases of extorting political influence on knowledge about history and historical topics. The *politics of history* may be especially effective in creating a community, society, or nation where historical, hence easy-to-grab and understand examples, are used to communicate values that should be shared by everyone.

Some Polish thinkers argue that the lack of politics of history and any narrative that underscores pride and the nation's greatness, besides coarse nationalism, are crucial factors explaining the fall of democratic values and social trust in democratic institutions observed in Poland. Such trust is possible only within a community, and history-oriented narratives are necessary for building it (Jażdżewski 2018). Others propose seeing the crisis as a direct effect of the employment in politics of certain historical narratives.

Parties that represent the right wing of the political spectrum promote and employ the view of nationhood as a constant struggle for independence, using historical metaphors and symbols. This helps them gain support and mobilize voters, but it also incites distrust among their supporters towards international institutions and organizations perceived as the new instantiations or reincarnations of enemies trying to subdue the nation or occupy the country. It just so happens that the EU is the most visible international organization that could play such an enemy role, and liberal standards are presented as measures by which subjugation could be achieved. The narrative of the struggle for independence simply requires the presence of an enemy to work, and liberal values and the EU fit that narrative neatly. (Wolff-Powęska 2018).⁶

As we see, various factors from social psychology, politics, economy and history are called upon to give explanations for the crisis. Thinkers and writers seek to describe it in terms like culture clash, backlash, globalization, and populism. All of those explanations refer to rather broad social, political, or economic processes – involving economic interest, generational experiences, or narratives dominating the public discourse. But the crisis could also be viewed as the failure of certain regulations to effectively regulate the behaviour of actors – rulers and ruled alike. Thus, the problem of democracy in Eastern Europe may be reduced to the fact that, at some point, certain regulations turned out to be *legal failures*. As soon as we realize that legal agents themselves (*i.e.*, individuals creating, implementing, or adhering to legal regulations) are also part of the equation when considering legal failures, we may gain a possibility for explaining the crisis by looking in a quite different direction than proposed in the literature so far.

In the following paragraphs, we will argue that the focus on agents and their attitudes toward the law is an idea worth exploring, and by shifting our

6 One of the examples of such a narrative are these words of Marek Suski, a prominent politician from the *Law and Justice* party: “Poland was fighting during the II World War with one occupier, was fighting with the Soviet occupier, and we will be fighting with the Brussels occupier. Brussels sends us intendants who are supposed to set Poland to rights, bring us to our knees, in order to make Poland a German land, and not the proud state of free Poles.” (“Marek Suski: Będziemy walczyć z okupantem brukselskim”, 2021). Another example are the words of the Polish Prime Minister, Mateusz Morawiecki, accusing the EU of making demands with a “gun to our head” (see Foy and Fleming 2021).

focus to the attitudes and actions of legal agents, we may be able to develop more effective solutions to the current crisis.

3. AGENTS AS LIMITS OF THE LAW

As a part of every consideration on the effectiveness of the law, there are some *tacit* suppositions regarding agents, usually taken for granted. Some of these *agental presuppositions* are quite obvious; for instance, agents are rational to a certain extent, capable of knowing and understanding regulations, and so on. However, there are also more debatable claims, such as the assumption that all agents share the same general values. The most important claim, though, is that all agents share the same stance or attitude toward the law, namely that they would *generally* prefer to conform to the rules and treat the law seriously. This observation is not only sociological.

It is true that legal agents generally comply with the law; otherwise, it would be impossible for the law to exist as a normative and regulatory system. However, this claim also has a psychological dimension. Agents perceive the law as a set of binding regulations that they treat with a certain level of seriousness, and they assume that those regulations will effectively regulate behaviour, both their own and others'. In our opinion, this very assumption – *that the law is something serious and needs to be treated as such* – is currently being contested. But let's start with a brief investigation of the possible types of individual attitudes toward the law.

Conformism is the most obvious stance that individuals take when confronted with legal rules. Widely discussed empirical studies conducted in the area of behavioural economics have shown that, as a species, we employ various social or even neuronal mechanisms that promote cooperation.⁷ As a result, obeying social rules, including the law, becomes a *default mode* for members of our society.⁸

On the other side of the spectrum, there is rebellion against the law. Rebellion is usually understood as a contradiction to the present legal or

7 The literature on this subject is vast, but one may start with the overview paper by Fehr and Gintis 2007.

8 See Gladwell 2019 as the latest example of this claim.

political state. Hence, it is often seen as a conflict with the law. However, this is not entirely true, as rebellion is more accurately a conflict with the particular content of the law – specific regulations and their effects – rather than a conflict with the idea of the law as a system of binding rules. Rebelling against the law does not imply questioning the entire legal system. Instead, it questions specific laws, acts, or articles as unjust, unfair, unsuccessful in achieving their stated goals, or inefficient in some other way. A rebel does not oppose the idea of regulating a social world through the rules of law, which are enforced by the members of a society. If we view society as a game and the law as the rules of that game, rebellion questions the actual rules of the game, not the concept of the game itself. In other words, rebellion is not against the authority of the rules of the game but rather against their content.

This highlights another important distinction concerning legal agency: the difference between accepting the authority of the law and accepting its content. The authority of the law should be understood as impersonal and not reducible to the mere authority of legal institutions. In a democracy, the law is an institution in itself. According to this distinction, conformists are agents who accept the content of the current law, while rebels, on the contrary, reject that content. However, both conformists and rebels accept the authority of the law, that is, its nature as a system of binding rules.

In fact, those who rebel against existing regulations play a vital role for the law; they help preserve its authority in the long run. Rebels contribute to the law maintaining its power and the perception of its binding nature. Rebelling against the law is a kind of tradition and *a part of the game*. Rebels initiate discussions on the content of specific laws, expressing social concerns and revealing tensions within the legal system that might otherwise remain unseen and unnoticed, thus acting as *game-changers*. By facilitating changes in the law and its response to social conflicts, rebels (often unconsciously) help the system of law remain in power and retain its authority. Furthermore, rebels, despite the tension encapsulated in the term, usually act within the boundaries of the law, taking legally valid actions to bring about changes in the content of actual legal rules. Every legal system includes rules for change – instructions on how to alter the content of any regulation from within the system. And rebels play by those rules.

Another type of legal actors differs from rebels precisely in that they do not adhere to the existing rules of changing the content of legal provisions. That type of agents come into play when rebels are unsuccessful in resolving societal tensions. Those *revolutionaries* do not care about legal ways of changing the law. They don't care about the system as a whole because they come to act when the legal and internal means to improve a particular legal system have already been unsuccessful. Hence, this kind of agents seems to be created and motivated by tensions unresolved by rebels. Revolutionaries change legal rules without paying attention to the legal system's internal regulations on how to do this legally, because those regulations are also part of what they usually see as unjust. It is a revolution!

One could argue that revolutionaries not only rebel against the specific content of the law but also question the authority of a particular legal system. While this is true, they do not question the authority of the more fundamental kind – *the notion that the law is a serious and binding entity*. In fact, revolutionaries reject the authority of the existing rules, particularly those that dictate how the law can be changed, only to ascribe authority to the rules of the system they create. They take the rules of law seriously, at least the ones they propose.

Therefore, conformists obey the rules, rebels legally alter them, and revolutionaries change them illegally. However, all of these are legal actors who recognize the authority of the law itself. Now, let us introduce another type of agents whose emergence may add an interesting twist to the story.

4. BEYOND REVOLUTION: “BRUTES”

If we assume that the attitudes agents have towards legal rules are among the key factors determining the effectiveness of the law and recognize that the crisis can be understood as a problem with the effectiveness of certain regulations (specifically those expressing standards of liberal democracy), it becomes important to focus on the general stances agents take when confronted with legal rules. As shown in the previous paragraphs, this perspective is often overlooked in debates concerning the causes of the crisis. While this omission

may be understandable from the standpoint of legal or political philosophy, where global trends in economics or culture are more interesting subjects of analysis, it is quite surprising in more practical contexts.

As we have personally witnessed the rise and spread of a new type of attitude towards the law, which has accompanied the decline in the rule of law standards in Poland for several years, we have chosen to refer to the agents who embody this distinct stance towards the law as “brutes”. Unlike conformists, rebels, and revolutionaries, “brutes” do not necessarily aim to change the law, but they also do not consider the law to be binding at all, even the one they enacted themselves.

The term “brutes” may sound a bit harsh, especially when taken in the context of Joseph Conrad’s *Heart of Darkness* (Kurtz: *Exterminate all the brutes!*) (1988, p. 51) or Sven Lindquist’s *Exterminate all the brutes* (2018), but we believe that it captures the nature of the relation of this emerging class of actors to the law and its authority well. The term may also sound accurate if one refers to the concept of law as a means to communicate and cooperate between people, and to the term “barbarian” – one of the synonyms for “brute” – as derived from the Greek *bárbaros* (Latin *barbarus*), principally characterizing a foreigner unable to communicate (in Greek).⁹

“Brutes” are perfect products of populism and its expected results. One of the main characteristics of this phenomenon, as defined by Mudde (2004) in his widely discussed paper, is the expectation that politicians will effectively fulfil *the general will of the people*. As a politician seeking support from the electorate, it is not difficult to realize that rejecting attachment to the authority of legal rules is a way to distinguish oneself from the ordinary political class. Society, particularly its populist segment, demands effectiveness from politicians. However, what if the law itself is the obstacle preventing the fulfilment of *the general will*? What if one recognizes that being a successful politician involves meeting populist expectations by dispelling the conventional illusion of binding legal rules?

⁹ The term only later acquired its negative meaning of a primitive, uncivilized, savage, uneducated, bearish, ill-mannered, or ignorant man (see, e.g., Kostuch 2012). Latin *brutus* is also translated (besides “brute”, or “brutish”) as “dull”, “stupid”, “insensible”, “unreasonable”.

We observe that this line of thinking about the role of politicians underlies the crisis in Poland. Such expectations, for example, included the purification of society from the remnants of the communist past or the restoration of national dignity. These expectations were evoked by the populist party Law and Justice and were met by abandoning European legal standards or dismantling democratic institutions.¹⁰

Populist politicians often assert that they are the true defenders of democracy and represent the true values of society. As a part of this comes the idea that to represent the *general will*, one must throw away procedures and rules that only pose to serve values. According to populists, the fiction of the authority of the law in fact harms society. And rule-following is a concept created by elites (European elites or simply Germans, to use Polish politicians' phrases) to justify the harm caused to the people.¹¹ Therefore, "brutes", by challenging the idea of the authority of the law, position themselves as defenders of authentic democratic values – the actual interests and needs of the people. As a result, "brutes" not only justify their disregard for the law based on social needs and expectations, but they can also deflect accusations of breaking the law. They simply distinguish between the literal meaning of laws and their *true spirit*, placing themselves in the position of the defenders of the latter. So, after all, not a single legal rule is broken by them, as long as the literal meaning and authority of the law are not deemed important.¹² Consequently, "brutes" do not care about the law itself; they only care about *being able*.¹³

10 This is in accordance with the conclusions formulated by Mulder 2021.

11 See, e.g., the statement of Kornel Morawiecki, a late member of the Polish Sejm (and the father of the Prime Minister from Law and Justice party): "The law is an important thing, but the law is not a sacred thing. [...] There is the interest of the people over the law. If the law deranges that good, we must not assess it as something that we cannot breach, cannot change. [...] The law is to serve us. The law that does not serve the nation is lawlessness" ("Sprawozdanie Stenograficzne..." 2015, p. 78).

12 One may also pay attention to the very name of the "Law and Justice" (*Prawo i Sprawiedliwość*) party, not only because of the fact that it can be seen as an example of Orwell's double speak, but also with regard to the role of the law, subordinate to justice, as supposed by this name.

13 It is worth mentioning that at least since 2005, J. Kaczyński has been repeatedly using the term "impossibility of authority" (*imposybilizm władzy*), which was an euphemistic critique of the separation of powers (see Smolar 2015). However, in 2019, he announced: "We have ripped Poland from the embrace of impossibility, that worst of diseases, which was imputed to us, and the rejection of which 25 years ago would have given today's Poland really very good, noticeable results. But better late than never." (see Żółciak and Osiecki 2020).

As mentioned earlier, “brutes” do not necessarily seek to change any specific legal rules because they do not require it. They simply dismiss rules (and their authority) that hinder their objectives, even if they themselves created those rules. For them, the law is merely a tool for achieving political goals. Consequently, the content of any particular legal rule, in the hands of “brutes”, is subject to a broad, goal-oriented interpretation that may contradict its literal sense. Thus, a new form of twisted *conditional normativity* emerges: the law applies only until it becomes necessary to break it in order to be effective in achieving the objectives important for the community.

For “brutes”, the law is not taken seriously. They selectively utilize specific regulations when it serves their convenience and disregard them when it does not. Does their approach contradict legal theory and doctrine? Does it go against tradition and standards? They do not care, as long as they can demonstrate their disregard for the law to their electorate as a fulfilment of the will of that very electorate.

One of the authors of this paper, Mateusz Klinowski, has observed “brutes” in action since 2010, when he was elected for the first time to the local council of his hometown, Wadowice, located in the south of Poland near the well-known city of Krakow. He was immediately astonished by how little impact legal regulations had on the actions of local politicians. It was not anarchy, but rather something much more troubling – a true spectacle of *the general will* triumphing over the authority of the law. Here are some actual statements from debates over public policies in the local council that he noted during his initial encounters with “brutes”:

No lawyer will tell us what to do. We are elected to rule!

This is a mere lawyer’s opinion, but we (members of the council) have our own.

We created those procedures, so we decide when we use them or ignore them.

With those words members of the local council justified why they did not take laws seriously, did not see them as binding, and did not

ascribe any authority to them. They, and not the laws, rule – to put it succinctly.¹⁴

Let's cite one of the candidates of the xenophobic party Confederation (*Konfederacja*) in the 2019 Polish parliamentary elections. Joanna Niciejewska presented herself with the following postulate:

The profession of lawyer should be banned as socially harmful. If people of other professions were thinking in such a stupid manner as lawyers do, nothing would be functioning, houses would be collapsing, cars would not be running, and computers would not exist! (“Chcesz mieć posłankę łebską”, 2019)¹⁵

That contemporary electoral advertisement may remind us of the famous passage (somewhat depicting electoral campaigns as well) of Shakespeare's *Henry VI* (Part 2, Act IV, Scene 2; 1968, p. 83):

Jack Cade. I thank you, good people – there shall be no money; all shall eat and drink on my score; and I will apparel them all in one livery, that they may agree like brothers, and worship me their lord.

Dick the Butcher [*shouts*]. The first thing we do, let's kill all the lawyers.

Jack Cade. Nay, that I mean to do. Is not this a lamentable thing, that of the skin of an innocent lamb should be made parchment? That parchment, being scribbled o'er, should undo a man? Some say the bee stings: but I say 'tis the bee's wax; for I did but seal once to a thing, and I was never mine own man since.

A discerning reader may now recognize the progress made over the centuries regarding proposals put forth by “brutes” on how to treat lawyers.

14 M. Klinowski described the functioning of his community and its political elites at length on his personal blog at: <http://mateuszklinowski.pl/category/politics/polityka-lokalna>

15 Although J. Niciejewska received only 234 votes, her party secured significant representation in the Polish parliament.

5. THE ORIGIN OF “BRUTES”

Often, local politics serves as a training ground for newly elected politicians, which may further propagate the brutish behaviour described above. This proliferation is to be expected, as all political parties use local politicians as candidates for national elections. Thus, the enduring constitutional crisis witnessed in Poland since the 2015 elections may be caused, among other factors, by the significant influx of political leaders with a brute attitude towards the law, originating from the local level of politics and extending to the national level. How can we substantiate this hypothesis?

At first glance, the proliferation of “brutes” can be readily observed by examining the declining standards of parliamentary debate, the legislative process, and governmental communication.¹⁶ However, a more systematic approach can also be employed.

For instance, in 2015, four out of the five elected members from the ruling party’s (Law and Justice) list in voting circuit number 12 had a long history in local politics. Similar ratios can be expected in other voting circuits, given that local politicians are natural candidates for parliamentary elections due to their familiarity with their communities and their political campaign experience. While inspecting all 41 voting circuits in Poland to prove this point would be time-consuming, we propose an alternative approach by focusing on key figures – politicians who have exerted the greatest influence on democracy in Poland in recent years.

Our brief survey reveals that almost all prominent members of the Polish government or parliament have, at some point in their careers, served as local politicians, including members of local or regional councils and elected mayors. We have summarized the gathered information in the table below, selecting names based on their significance to the political process in the parliament and government, as well as their responsibility for upholding the rule of law standards.

¹⁶ On bad and deteriorating parliamentary legislation standards see the Polish Ombudsman for Human Rights Annual Report for 2020, according to which the legislative process “differs from the model specified in the Constitution, envisaging social dialogue and cooperation between the powers. The acts of law, particularly in the Sejm, are enacted in a hurry, sometimes even in one night, with no due reflection” (Rzecznik Praw Obywatelskich 2021, p. 11). On the declining standards of parliamentary and public debate as well as governmental communication see Nowicka-Franczak 2020.

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NAME OF THE MEMBER OF THE RULING PARTY	MEMBERSHIP OF LOCAL AUTHORITIES IN THE PAST	CURRENT POSITION IN THE NATIONAL AUTHORITY
Mariusz Błaszczak	<ul style="list-style-type: none"> ▪ Employed in local government administration in the city hall of Legionowo ▪ 2002-2004: deputy mayor of the district Wola of the Polish capital Warszawa ▪ 2004: mayor of the Śródmieście district of the Polish capital Warszawa 	<ul style="list-style-type: none"> ▪ 2015-2018: Minister of Internal Affairs ▪ From 2018 to now: Minister of Defence
Patryk Jaki	<ul style="list-style-type: none"> ▪ 2006: councillor in the city of Opole; 2010 re-elected 	<ul style="list-style-type: none"> ▪ 2015: Deputy Minister of Justice
Beata Szydło	<ul style="list-style-type: none"> ▪ 1998-2005: mayor of the city of Brzeszcze ▪ 1998-2002: councillor in the Oświęcim district 	<ul style="list-style-type: none"> ▪ 2017-2019: Vice-President of the Council of Ministers and Chairwoman of its Social Committee
Mateusz Morawiecki	<ul style="list-style-type: none"> ▪ 1998-2002: councillor in the Lesser Silesia voivodeship 	<ul style="list-style-type: none"> ▪ From 2017 to now: Prime Minister
Elżbieta Witek	<ul style="list-style-type: none"> ▪ 2002-2005: councillor in the city of Jawor 	<ul style="list-style-type: none"> ▪ From 2019 to now: Marshal of the Sejm
Beata Kempa	<ul style="list-style-type: none"> ▪ 1998-2005: councillor in the city of Syców 	<ul style="list-style-type: none"> ▪ 2015-2019: minister – member of the Council of Ministers
Andrzej Matuszewicz	<ul style="list-style-type: none"> ▪ 1998-2002: vice-chairman of the Podkarpackie voivodeship council 	<ul style="list-style-type: none"> ▪ From 2015 to now: Deputy Chairman of the Committee on Justice and Human Rights of the Sejm
Jacek Sasin	<ul style="list-style-type: none"> ▪ 2004-2006: deputy mayor of the district Śródmieście of the Polish capital Warszawa ▪ 2010: councillor in the Mazowieckie voivodeship 	<ul style="list-style-type: none"> ▪ From 2019 to now: Deputy Prime Minister ▪ From 2019 to now: Minister of State Assets
Kazimierz Smoliński	<ul style="list-style-type: none"> ▪ 1998-2002: chairman of the city council of Tczew; 2006 re-elected 	<ul style="list-style-type: none"> ▪ From 2019 to now: Chairman of the Regulations, Deputies' Affairs and Immunities Committee of the Sejm
Andrzej Duda	<ul style="list-style-type: none"> ▪ 2010-2011: councillor in the city of Krakow 	<ul style="list-style-type: none"> ▪ From 2015 to now: President of the Republic of Poland

Table 1. Members of the ruling right coalition and their positions in local authorities in the past.

Even relying on these limited observations, the presence of “brutes” as the explanation of the crisis in Poland seems to be at least a plausible hypothesis. If we have a growing number of politicians who do not recognize democratic regulations as valid, precisely because they don’t treat the law as something serious at all, we should expect a steady decline in liberal democratic standards, shouldn’t we?

6. BEYOND CONTROL

The proliferation of “brutes” in Poland originated at the local level, and this was not by chance. The primary reason for this lies in the lack of sufficient control over the quality of local politics and the laws produced within it. Local prosecutor offices are often personally connected to local politicians who also provide financial support to local police, fire brigades, and hospitals. As a result, local politicians often possess connections and social status that discourage potential prosecution and grant them immunity, particularly when their behaviour only poses a threat to abstract entities such as democratic standards or procedures. However, the issue of insufficient control is also a result of sheer numbers. In the Lesser Poland voivodeship alone, there are over 182 communities with their own councils and mayors, and this represents only the most basic level of local governments. The problem arises from the fact that there is virtually no institution capable of exerting a reasonable amount of control over their legislative activities and conduct.

In Poland, there are three distinct levels of local administration and legislation: communities (*gmina*), counties (*powiat*), and voivodeships. Each of these levels is responsible for the creation, application, and administration of laws. Quality control over the law-making process is carried out by a government-appointed governor known as *a voivode* and his office, which examines resolutions passed by local councils based on the criterion of legality.¹⁷ Unfortunately, the extent of the voivode’s control has not been adequately and clearly regulated by law. This has resulted

¹⁷ As stipulated in Art. 171 of the Constitution of the Republic of Poland.

in numerous discrepancies in the practice of local legislation and its supervision by voivode offices, as confirmed by the data collected by the Supreme Audit Office (2019) (hereafter referred to as SAO). However, from our perspective, what is even more significant is that the number of acts actually supervised represents only a fraction of the total number of acts issued at the local level. Figure 1 provides an illustration of this based on the data obtained by the SAO during the inspection of individual voivodeship offices.

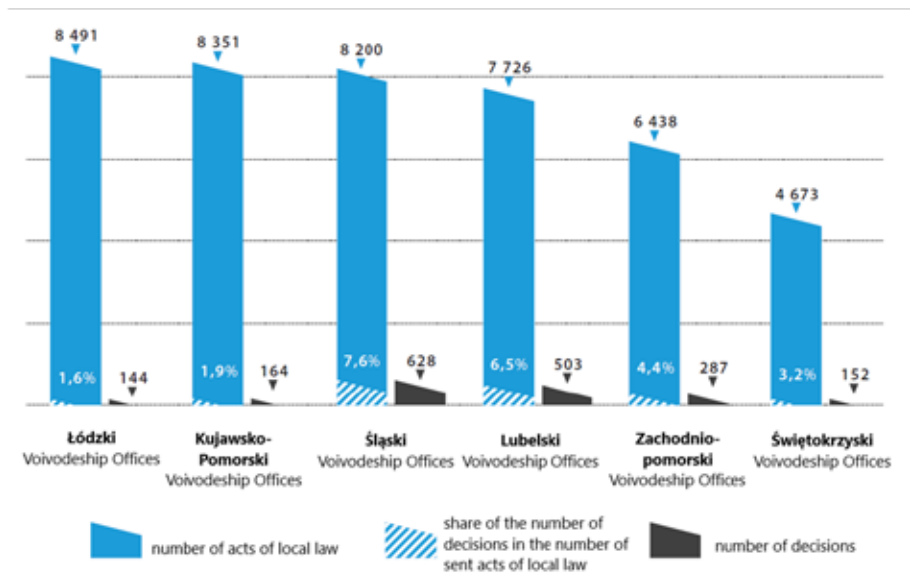


Fig. 1 Relation of the number of supervisory decisions declaring the invalidity of acts of local law to the number of acts of local law sent to voivodeship offices in 2017-2019. (Source: Supreme Audit Office 2019, p. 18)

During the period of 2017-2019, the voivodes inspected by the SAO conducted a total of 1,878 supervisory proceedings, which accounted for only 4.3% of the total number of legal acts issued by local councils. However, even more strikingly, the same report revealed significant variations in the assessments of the legality of local acts, not only between different voivodeship offices but also within the same offices. When examining

91 acts of local law that were not questioned by voivodes, it was found that 39 of them (42.8%) contained legal flaws that would classify them as illegal according to the same offices (SAO 2019, p. 9).

As pointed out by the SAO, both of these phenomena are primarily attributed to the insufficient number of employees in the voivodeship offices responsible for overseeing legal legislation. The figure depicting the number of acts of local law issued in 2017-2019 per employee in selected voivodeship offices is presented in Figure 2 (SAO 2019, p. 35).

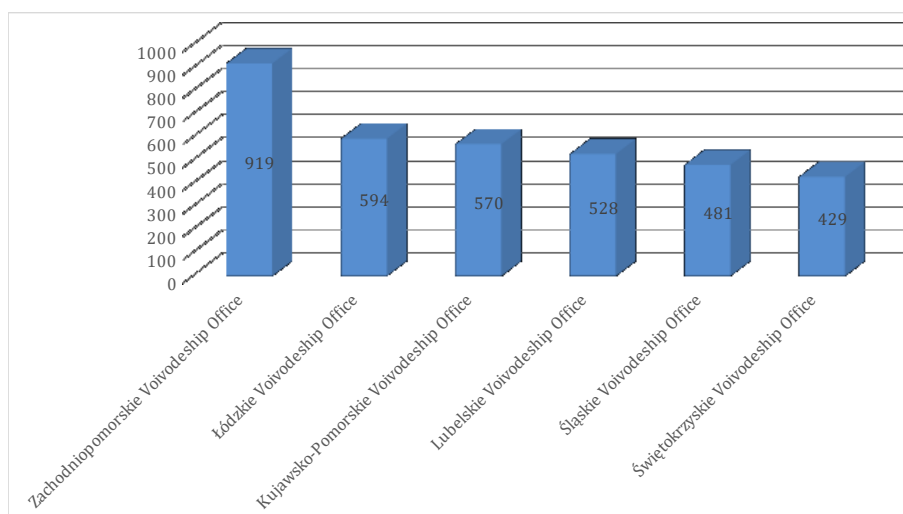


Fig. 2 Number of acts of local law issued for control per employee in selected voivodeship offices (2017-2019). (Source: SAO 2019, p. 35).

These significant disparities indicate that the concept of quality control is merely a facade in local legislation, allowing for the crossing of boundaries without limits.¹⁸ Local legislators, elected by the people in local elections,

¹⁸ It is worth mentioning that the financial aspects of local legislation (especially budgeting) are controlled by a separate office, the Regional Financial Audit Chambers (see aforementioned Art. 171 of the Constitution). But these bodies inherit the problems visible in the practice of voivode offices, and an insufficient number of employees in relation to the number of entities under control results in a lack of consistency in decisions between regions and insufficient attention to legislation under scrutiny. Control over local legislation is also in principle exercised by the prosecutor's office, but, again, due to other duties, prosecutor's interventions are rare.

view the law as an optional and tentative convention, sometimes seen as an obstacle to their own agendas.

Certainly, the poor quality of legal culture and a disregard for the law are not solely attributable to the lack of control described above. The shortage of educated leaders, including at the local level, may also contribute to this issue. However, democratic elections do not automatically ensure the selection of the most qualified individuals, and many members of local councils are simply unskilled and unprepared for their roles. It is no wonder that they do not regard the law with great seriousness, as they have never been compelled to do so. Furthermore, local media outlets are also not sufficiently influential to enforce high standards on politicians. Public opinion apparently does not perceive democratic standards as essential, and in many cases, local media organizations are directly financed by local politicians. When someone determines your salary, you do not set standards for them.¹⁹

7. A BROADER PERSPECTIVE

The march of the brutes, characterized by a proliferation of contempt toward the authority of the law, appears to be a part of phenomena known as *post-politics* and *post-truth*.²⁰ The post-truth era can be seen as a direct outcome of post-politics, a period in which political elites sought to evade political conflicts, mistakenly believing that a lack of disagreement was the optimal approach to managing society. This gave rise to populism, a cultural backlash against that utopian notion, where the seriousness and truthfulness of one's claims are no longer highly regarded virtues.

The advent of social media has forever transformed the information landscape. Traditional media faced a crisis, and public debate soon became dominated by low-cost and low-quality journalism and commentary, which we may refer to as “commentarism” (Rogers and Niederer 2020).

19 See Goban-Klas 2013 or Jurga-Wosik 2019, p. 128-129.

20 The literature on the subject is vast, the reader may start with Mouffe 2005. See also *e.g.* Fridlund 2020.

Commentarism is characterized by the belief that comments hold more significance and impact than fact-based articles (Garrett 2019), and the widespread notion that everyone has a right to their own opinion on any subject, with all opinions being considered equal. However, if all opinions are deemed equal, the concept of truth loses its importance, as it becomes a means of discriminating between different propositions. Hence, according to proponents of *commentarism*, legitimate public debate should be independent from that concept, since it is just an elitist constraint. The concept of truth no longer holds as a necessary criterion for public discourse and debate.

As it turned out, in the post-truth era, a new breed of politicians has emerged, with former US President Donald Trump being the most prominent example. These politicians are more than just liars; they are *bullshitters*.²¹ A liar, as traditionally understood, treats his own lies seriously – he is aware of the truth and “design[s] his falsehood under the guidance of that truth” (Frankfurt, 2005, pp. 51-52), being prepared to defend them if necessary. In contrast, a bullshitter, the latest invention in the realm of politics, disregards the logical status of any statement, including their own lies. Consequently, we witness politicians making all sorts of statements without taking responsibility for them. These statements serve as mere tools to keep the attention of the media and the public and to achieve political goals. Bullshitters do not waste time defending their own claims against critics. They swiftly move on to the next piece of bullshit, and the cycle continues.²²

For the purpose of this paper, a bullshitter is defined as a political actor who makes statements without regard for their truthfulness or logical consistency. Unlike liars, who are concerned with the falsehoods they create and are prepared to defend them, bullshitters prioritize the immediate impact of their words over their veracity. Their primary objective is to manipulate public perception and media attention to achieve political ends. This behavior is characterized by a lack of accountability, as

21 The term and the distinction were for the first time proposed by Frankfurt 1986.

22 It is worth bearing in mind, however, that both behaviours – lying and bullshitting – can affect each other; according to Waldron (2024), “lying can also beget bullshit and help it become a dominant mode of discourse” (p. 44).

bullshitters quickly abandon their claims in favor of new ones, perpetuating a continuous cycle of misinformation and distraction.²³

The same disregard for truth applies to “brutes”. They do not care about laws, even the laws they themselves create. Similarly, bullshitters do not care about the veracity of their claims. For “brutes”, the law is seen as a system that should serve society as a whole, not just the elites (paralleling how bullshitters view “truth” as a concept that helps elites control the people). “Brutes” perceive themselves as the embodiment of society, reflecting its virtues and vices. Consequently, they undermine the authority and seriousness of the law and enact all sorts of legislation without *taking it seriously*. Thus, the post-truth era is ultimately the *post-law* era.

8. CONCLUSION

Since the constitutional crisis in Poland is part of the broader crisis of liberal democracy in the West, the concept of “brutes” can also provide an explanation for the developments in Europe. Analysing the evolving attitudes of agents towards the law, both its content and authority, can contribute valuable insights to the ongoing attempts to find a successful solution to this crisis. If our analysis is correct, part of any solution should involve promoting the authority and seriousness of the law as a universal standard, rather than merely a convention that can be followed or disregarded based on *the general will* of the electorate. However, this task won’t be easy. Firstly, because the *brute attitude* aligns with the prevailing *spirit of history* and caters to the populist desire for what is perceived as effective politics, free from the constraints of elitist regulations and standards.

As our social world becomes increasingly complex, finding adequate and timely responses to societal problems becomes more challenging. This generates a sentiment that fuels populism and encourages circumventing legal boundaries. Perhaps what we truly need is a different sentiment – a

²³ According to the Washington Post, which is fact-checking Trump, in his first thousand days in office, he made over 13,435 false or misleading claims. That’s an average of 13 falsehoods a day (Kessler, Rizzo and Kelly 2019).

longing for a system of law that carries genuine authority. This longing can only be ignited through a reinvention of our political community. It is easy to express this need, but it is incredibly difficult to achieve in practice.

Don't kill the "brutes", phase them out.

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