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THE LANGUAGE OF LEGAL POPULISM –
A PHILOSOPHICAL AND LEGAL PERSPECTIVE

ABSTRACT

Populism researchers draw attention to the vital role of language in the implementation of Popularist agenda. This role is discernible in propaganda practices, in attempts to redefine pre-existing notions, and in changing social – but also – linguistic conventions.

The recent wave of populism (2010–2021) touches upon law and the rule of law in a special way, and thus phenomena such as propaganda, redefinition of notions and change of convention are often implemented in the field of the language of law. This elaboration is an attempt to analyse the mechanism of changes in the linguistic conventions governing the language of the law and legal language caused by populism, while the tool for this analysis is the philosophy of law applying the achievements of the philosophy of language.

Using the concepts and theories proposed by E. Laclau, N. Lacey, R.G. Millikan and F. Recanati, in this study, I explain what the change of legal culture – being conducted by populists – is, defined as a set of linguistic and behavioural conventions relevant to the law.

The predominant thesis of the research paper in this area is the claim that the populist change of legal culture consists in turning concepts that are vital for law into empty or constantly floating signifiers, and in destroying legal conventions by 1) ceasing to reproduce behaviours that

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have so far constituted linguistic and behavioural conventions in the field of law, or 2) initiating the reproduction of new behaviours. In both cases, the modification of the convention entails the loss of their ability to perform functions that are appropriate within the meaning of R.G. Millikan, and thus causes a decline or loss of social usefulness. The analysis carried out enables to draw conclusions as to how the populist change of legal culture can be counteracted.

Keywords: populism, language of law, cultural convention, philosophy of language, legal culture

1. Introduction

Populism researchers draw attention to the vital role of language in the implementation of Populist agenda. This role is discernible in propaganda practices, in attempts to redefine pre-existing notions, and in changing social – but also – linguistic conventions.

The recent wave of populism (2010–2021) touches upon law and the rule of law in a special way, and thus phenomena such as propaganda, redefinition of notions and change of convention are often implemented in the field of the language of law, especially constitutional law. This elaboration is an attempt to analyse the mechanism of changes in the linguistic conventions governing the language of the law and legal language caused by populism, while the tool for this analysis is the philosophy of law applying the achievements of the philosophy of language.

Using four theoretical concepts, in this paper, I explain what the change of legal culture – being conducted by populists – is, defined as a set of linguistic and behavioural conventions relevant to the law. The elementary tools used in the study are:

a) the concept of populism as a discourse, proposed by E. Laclau, in particular, the concept of "*empty signifiers*" and "*floating signifiers*",[2] related to the language of the law and legal language, notably, to the concepts of the rule of law and judicial independence used in populist communication practice,

b) the concept of "*convention-trashing*" proposed by N. Lacey,[3] used to describe the practice of populism, consisting in changing conventional linguistic behaviours in the field of law, as well as other conventions that are relevant for law, including constitutional customs,

c) the concept of R.G. Millikan's convention, in which conventions are historically shaped sequences of reproduced behaviours, having the so-called *proper function*, i.e. the social usefulness that in the past caused the reproduction of these behaviours,[4]

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[2] E. Laclau, *Populism: What's in a Name?*, [in:] Francisco Panizza ed., Populism and the mirror of democracy, Verso 2005. The translation of the term "signifier" ("significant") as a "sign" does not correspond to the original use of the term by F. De Saussure, in whose works *signifier* was only one of the elements of a sign (next to the element *signified*). Nevertheless, due to the clarity of the message and the fact that for the considerations conducted here, a distinction is made between *signified* and *signifier* is not of key importance, a simpler terminological convention has been selected.

[3] N. Lacey, *Populism and the Rule of Law*, Working paper 28, January 2019, LSE International Inequalities Institute.

[4] R.G. Millikan, *Language, Thought and Other Biological Categories*, MIT Press 1984.

d) the concept of semantic potential by F. Recanati, which deviates from the criterion concept of the notion, in favour of a paradigmatic concept, i.e. based on a comprehensive comparison of new situations of using the notion with previous situations of its use.[5]

The predominant thesis of the research paper is the claim that the populist change of legal culture consists in turning concepts that are vital for law into empty or floating signifiers, and in destroying legal conventions by 1) ceasing to reproduce behaviours that have so far constituted linguistic and behavioural conventions in the field of law, or 2) initiating the reproduction of new behaviours. In both cases, the modification of the convention entails the loss of their ability to perform a function, which is appropriate within the meaning of the R.G. Millikan, and thus causes a decline or loss of social usefulness. The analysis carried out enables to draw conclusions as to how the populist change of legal culture can be counteracted.

2. Populism vs. legal concepts

A characteristic feature of populist governments is the desire to introduce changes within the area of the concepts that are important to public life. The tendency of populism to redefine the language used by society is noticed and presented in studies reporting historical events, such as Victor Klemperer's LTI[6] or "Newspeak in Polish" by Michał Głowiński.[7] No less influential analyses for comprehending this issue are provided by fiction, drawing pictures of dystopian authoritarianisms, the best example of which is George Orwell's *1984* and the well-known postulate of a complete change of meaning of concepts, visible in the slogan: "War is peace. Freedom is slavery. Ignorance is strength".[8]

The last stage of populism – flooding the world within 2010–2021, and covering both Europe, in particular, not only the so-called post-communist countries, such as Hungary and Poland, but also the Anglo-Saxon world, especially the United Kingdom in the pre- and post-Brexit era, as well as the United States of America under Donald Trump – is not also free from the strive to introducing conceptual changes. Attempts at redefinition of the concept concern notions such as democracy, and the discussion in this area focuses on whether this concept can be supplemented – without harm to itself – with adjectives, for instance, such as "illiberal".[9] The debate over the content of concepts and the need to change their content also applies to *strictly* legal concepts, including one of the most important for the proper functioning of society, i.e. the concept of the rule of

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5 F. Recanati, *Literal Meaning*, Cambridge University Press, Cambridge 2004.

6 V. Klemperer, *LTI. A Philology's Notebook*, Wydawnictwo Literackie [Literary Publishing House], Krakow–Wrocław 1983.

7 M. Głowiński, *Nowomowa po polsku* [*Newspeak in Polish*], Pen, Warszawa 1990.

8 G. Orwell, *Rok 1984* [*Year 1984*], przeł. D. Konowrocka-Sawa, W.A.B. 2021.

9 M. Krygier, *Illiberalism and the Rule of Law,* [in:] *Routledge Handbook of Illiberalism,* ed. A. Sajo. R. Uitz, and S. Holmes, Routledge 2021, pp. 533–553.

law. It can even be stated that the concept has become a semantic battle for meaning, in which both attackers (populists) and defenders (legal community) adopt different strategies.

Of course, the dispute over the rule of law has a number of dimensions other than the semantic one. Yet, it seems that at certain level it is taking place in connection with an attempt to redefine the concept of the rule of law, or rather hollow it out of its content, as its existing content is an obstacle to populist activities. Fortunately, it turns out that the autonomy of language may form a certain barrier to changes, including changes in the legal and non-legal culture.

In order to undermine this autonomy, attempts are sometimes made to show that the concept of the rule of law is empty. Examples of such an approach are the statements of the British adviser to Prime Minister Boris Johnson, who said that the rule of law is a 'weasel-word', which can be roughly translated as 'a word fitting into multiple contexts'. It means:

> an informal term for words and phrases aimed at creating an impression that something specific and meaningful has been said, when in fact only a vague or ambiguous claim has been communicated (…) Using weasel words may allow one to later deny any specific meaning if the statement is challenged, because the statement was never specific in the first place.[10]

As indicated, weasel-words can be a form of tergiveration, which is understood to mean "the act of avoiding a clear way of acting or speaking, by intentionally being ambiguous".[11]

The foregoing means that Prime Minister Johnson's advisor finds the notion of the 'rule of law' empty and manipulative, and therefore devoid of any enduring and generally accepted content. This approach is also evident in the statements of Polish politicians. The Polish Minister of Justice, Zbigniew Ziobro, in a statement quoted in Gazeta Wyborcza daily newspaper, said: "Anything can be the rule of law. In fact, the dispute is about power and sovereignty".[12] This statement also suggests that the rule of law as an empty concept can be filled with any sort of content. In a sense, the above statements of British and Polish politicians show traces of post-modern thought. They could repeat after the post-modernists – there is nothing 'signified', there are only 'signifiers' – there is no single meaning, and trying to impose it is tantamount to violence and oppression. Accordingly, each individual has the right to understand the rule of law in their own way, and sometimes it can even be an indicator of their freedom.

I contend that the major tool of populists, who attack and destabilize the rule of law, is the destabilization of language, leading to the conviction of the public that the concepts that are fundamental to the state are devoid of content. It is a specific process of hollowing out concepts from the existing content in order to obtain the right to fill them with one's own – politically convenient – content. Such an approach, dangerous for the

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[10] Source: Wikipedia..

[11] *Ibidem*

[12] "Ziobro sues the "money for the rule of law" mechanism. Constitutional Tribunal published the motion", "Gazeta Wyborcza", January 15, 2022.

rule of law, is possible only if one adopts a vision of language in which meaning is defined as a set of criteria. Such a vision of language, derived from Ferdinand De Sassure and Gotlob Frege, is characteristic of structuralism and logical positivism, and is treated by many as the only scientific concept of language. In this vision, language is apparently stable because words seem to be strictly defined by specifying the conditions of their application, and the language itself is treated as a synchronous structure (langue), not as a living practice that has a specific, vital function for the society (parole).[13] This vision of language has been criticized by post-modernism, and contemporary populism utilizes post-modern arguments for political purposes.

I oppose this seemingly stable version of the language with the teleological vision originating from the pragmatism of C.S. Peirce and R.G. Millikan's tele-semantics, in which language is considered as a historically shaped practice. This practice is continued because it brings a specific benefit to the society (it implements its 'proper function'[14]). Contrary to the claims of post-modernists and populists, this function stabilizes the language and prevents it from being arbitrarily redefined. I postulate that the tradition-based use of language, resulting from earlier uses, is a hindrance to its manipulation, which means that a populist who wants to destabilize a language has to question or manipulate this tradition – and only then is s/he able to extract concepts from their content.

3. Two visions of language

There are two approaches to concepts in the philosophy of language, i.e. definitional and paradigmatic. In the definitional approach, concepts are a predetermined set of criteria that apply to reality. Moreover, criteria precede application. In a competitive approach based on paradigms, criteria can only be discovered *ex post*, after developing the practice of their application. The criteria-based approach is static, and the criteria set is relatively constant. The paradigm-based approach is open to change as practice itself changes.

The difference between these two approaches is explained by F. Recanati, distinguishing between the 'Fregean approach to concepts', in which words are associated with abstract 'conditions of use', and the approach in which words, as linguistic types, are associated with their specific applications.[15] This distinction presupposes that in the use of language, no intermediate step is needed that is based on abstracting common features that are common to previous uses of the word.[16] The paradigmatic concept:

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13 F. de Saussure, *Kurs językoznawstwa ogólnego* [*General Linguistics Course*], trans. by K. Kasprzyk, Wydawnictwo Naukowe PWN, Warszawa 2002.

14 R.G. Millikan, *Language, Thought…*, p. 4.

15 F. Recanati, *Literal Meaning…*, pp. 147–148.

16 Recanati makes it clear that this distinction is characteristic of J.L.'s philosophy Austina (F. Recanati, *Literal Meaning…*, p. 141), who preferred the applicative approach to concepts.

(…) eliminates abstract meanings for kinds, in favour of specific applications. The contextual meaning of a word in a particular use depends on the relationship of similarity between that use of the word (in the 'target situation') and previous uses of the same word (in 'source situations').[17]

These considerations can be transferred to the law. Source situations are all previous cases in which a given fragment of reality was considered 'falling' under a given concept – for example, situations in which a given institutional system was considered 'lawful'. The target situation in Recanati's terminology is a new case – the current institutional set-up that is questionable as to whether it can be defined as 'the rule of law'. The application of the concept consists in relating the term 'rule of law' to the element of reality, which is the institutional system and its functioning. The phrase 'this is the rule of law' has, according to Recanati's theory, 'semantic potential', which is "a set of justified situations of application",[18] or:

a set of past uses, based on which the similarities between the source situations (i.e. the situations that those uses relate to) and the target situation (the situation that they currently relate to) can be identified.[19]

As Recanati notes, the set of features common to the source and target situations, and therefore the conditions of use (for example, the predicate 'X meets the rule of law', where X is a given institutional system), will not be the same for all applications;[20] these features will depend on the target situation.[21] The question arises – why they cannot be stable, and in fact the same.[22] To clarify this, Recanati uses the concept of Waismann's

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17 *Ibidem*, p. 151.

18 *Ibidem*, p. 148.

19 *Ibidem*, p. 152.

20 F. Recanati, *Literal Meaning…*, p. 148.

21 "One target situation may be similar to the source situations in some respects and another target situation may be similar to them in other respects" (Recanati, p. 148). The variety of new target situations, i.e. new cases to which legal language has to be applied, is an inseparable part of judicial practice, which makes Recanati's approach particularly attractive to jurisprudence. As S. Soames argues, "courts were created precisely to mediate between the enormous variety of possible behaviours, on the one hand, and the legally codified general principles that are to regulate it, on the other" – S. Soames, *What Vagueness and Inconsistency Tell Us About Interpretation*, [in:] *Philosophical Foundations of Language in the Law*, ed. A. Marmor and S. Soames, OUP 2011, p. 45.

22 The instability of the application criteria does not imply the instability of the linguistic meaning: "Not only do words have relatively stable conditions of application, in various uses; there is also interpersonal stability: language speakers converge in their judgements about application conditions or truth conditions" – F. Recanati, *Literal Meaning…*, p. 152. R. Millikan puts forward a convincing argument on how a linguistic practice leads to the emergence of the so-called "stabilizing function" of a given linguistic device (for example, a predicate). As the author writes: "The normalizing and stabilizing function of the linguistic apparatus should not be thought of as an invariant or average function, but as a function that corresponds to a critical mass of actual use cases, forming a centre of gravity to which stray speakers and listeners tend to return after departing from it. This is due to the fact that the linguistic apparatus has such a stabilizing and normalizing specific function which it fulfils in such a critical mass of real cases that it can survive cases in which this stabilizing function is not fulfilled without extinction or change of function" – R. Millikan, *Language, Thought…*, p. 4.

'open texture'.[23] According to Waismann, it is impossible to provide a full definition of the concept, "a mental model that predicts and decides once and for all every possible issue of use".[24] Such a model would have to describe all the potential elements of the type of situation in which the concept is to be applied, and this is impossible.

Therefore, the definitions contain only the most important features common to all source situations ('tip of the iceberg'), while in fact the source situations are similar in many other respects ('background').[25] Whether a similarity relation between the source situation and the target situation will relate to the feature mentioned in the definition or belonging to the 'background' depends on the target situation.[26] If the target situation is typical, then it is similar in terms of the characteristics specified in the definition, and we are dealing with an easy case. However, if the target situation is atypical, its similarity to the source situation is assessed holistically: the similarity regarding background characteristics is also assessed.

An example would be using the predicate: 'This is a validly passed law'. When referring the phrase to a non-controversial law passed by a parliamentary majority, assessing whether that reference is correct includes checking whether the situation meets the conditions set out in the definition (e.g. whether the law was properly notified under a legislative initiative, whether it passed the appropriate parliamentary procedure, or was signed by the president and promulgated). These features constitute the 'tip of the iceberg', i.e. the minimum, typical set of features that a situation must have in order to fall under a given concept. Nevertheless, when the situation is controversial (e.g. a parliamentary vote was held under the threat of the use of weapons by soldiers of the military junta), it turns out that such an atypical target situation must be assessed holistically, and thus also in terms of similarity to previous situations of use to the characteristics of 'background'. One of the features that was present in earlier situations when an important law was passed was the lack of coercion.[27] This feature did not fall into the narrow set of typical criteria (the 'tip of the iceberg', and only the unusual target situation showed us that it is relevant. Since the feature of the target situation (voting under the threat of using a weapon) is coercion, and the previous situations of using the predicate 'this is a validly passed law' did not contain

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23 F. Waismann, *Verifiability*, [in:] *Logic and Language*, ed. A. Flew, 1st series, Blackwell 1951, pp. 121–123.

24 *Ibidem*.

25 "The applicability of the term to new situations depends on their similarity to the source situations, i.e. to situations with which the term has associated its meaning. For the term to be (clearly) applied, the target situation must be similar to the source situation not only in respect of those features that easily come to mind and constitute an "explicit" definition of the term ("tip" to use the iceberg metaphor), but also in terms of the hidden background. If the two situations differ significantly from the latter, it is unclear whether the term will apply even if the explicit conditions for meeting it are met" – F. Recanati, *Literal Meaning…*, p. 143.

26 As Recanati claims: "In Waismann's perspective, words are associated with situations of use, and that is all. To apply a word to or in a new situation, the situation must be similar to the source situations; yet, we cannot examine in advance all the possible dimensions of the similarity between source situations and possible target situations: an open texture reappears again" – F. Recanati, *Literal Meaning…*, p. 145. Moreover, "The dimension of similarity is not in itself given, but conditioned by context" – *Ibidem*, p. 146.

27 *Ibidem*, p. 144.

this element, it cannot be concluded that the target situation is completely similar to the source situations, and thus that it falls under the concept of 'validly passed law'.

The conclusion that can be drawn here is that the application of concepts is not the application of a predetermined, narrow set of definition criteria to a given case, but rather a global comparison of the target situation with the full semantic potential of the words, concepts and predicates applied.[28] According to Recanati:

> the predicate may be applied even when the target situation differs significantly from the source situation – as long as in the context, and, taking into account the set of contrasts, the similarities are more significant than the differences,[29]

and:

> even if the target situation has all the foreground features that appear to be part of the 'definition' of the P predicate, it is enough to suspend a number of background features to jeopardize the application of P to the target situation.[30]

Recanati states that the idea of semantic potential is not based on the assumption of Fregean semantics that the set of conditions for the application of a concept is determined once and for all, but on the assumption that meaning is a set of source situations so that the concept applies to a target situation "if, and only if it is substantially similar to the source situations".[31] Summing up, Recanati proposes not to draw out any definitive sets of features from past uses of the concept, in other words, not to draw out application criteria. Instead, he postulates:

> *to abandon the intermediate stage* (linguistic meaning) and directly determining what contextual meaning a given expression takes in a given use case, based on the contextual meanings that the expression had in previous use cases – without abstracting or having to abstract the "linguistic" meaning of the expression type.[32]

This proposal means that the criterial approach has a serious competitor in terms of thinking about the concepts and in their application. Which of these approaches is more appropriate should be decided by comparing how both approaches to language – criterial and paradigmatic – enable to solve practical problems. One such is the problem of manipulating concepts that are perpetrated by populism, and to which this study is devoted. Now let us see how this process looks in detail and how both concept approaches deal with it. To that end, we will discuss the concept of Laclau's empty and

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28 Recanati speaks of "the global nature of the similarity between the target situation and the source situation" – *Ibidem*, p. 150.

29 *Ibidem*, p. 151.

30 *Ibidem*.

31 *Ibidem*.

32 *Ibidem*, p. 147 (underlined in original).

floating signifiers that are characteristic of populist narratives, in particular, with regard to the rule of law.

4. Ernesto Laclau and the concept of empty and floating signifiers

In this paper, I assume that two approaches to legal concepts – criterial and paradigmatic – can be scrutinized from the point of view of their resistance to being applied for the purposes of populist manipulation, notably to blur the content of these concepts, or even deprive them of their content. These issues – blurring and hollowing out the content – are a fundamental element of E. Laclau's approach to the language of populism – such as his concept of 'empty signifiers' and 'floating signifiers'.[33]

According to E. Laclau, populism is first and foremost the logic of articulation – it is therefore a method of communication that makes specific changes in concepts that are part of public discourse.[34] As Laclau writes, populism not so much expresses the nature of social entities as constitutes them through articulation:[35]

> a given movement is not populist because in its politics or ideology, it presents real content that can be described as populist, but because it exhibits a special logic of articulating this content – whatever it may be.[36]

Laclau's main thesis is that populism is not an ontic, but an ontological category, i.e. its meaning should not be sought in its content, but in a particular way of articulation that brings about 'structuring effects' at the 'level of representation ways'.[37]

Laclau accentuates that the populist narrative always takes place in the relationship between the requesting party and the system; most often the system of power. Especially when it comes to demands, the narrative is not based on specifics, since specific, precise demands could be satisfied, which would exhaust the main fuel of populism, i.e. social frustration. Hence, demands must be expressed in general language (example: 'Decommunization of the courts') so that it would not be possible to fully satisfy them, or even that it would not be possible to determine what such satisfaction would consist of. Laclau calls this phenomenon 'poverty of populist symbols',[38] which is best implemented by the so-called 'empty signifiers'. As he writes:

> the construction of popular subjectivity is possible only on the basis of discursively produced, biased empty signifiers. The so-called 'poverty' of populist symbols is a condition for their political effectiveness – since their function is to lead to an equivalent homogeneity in a highly

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33 E. Laclau, *Populism…*

34 *Ibidem*, p. 33.

35 *Ibidem*.

36 *Ibidem*.

37 E. Laclau, *Populism…*, p. 34.

38 E. Laclau, *Populism…*, p. 39.

heterogeneous reality, they can only do so by minimizing their particularistic content. On the verge of this process, it comes to the point where the homogenizing function is fulfilled by a pure name: the name of the leader.[39]

However, signifier dilution works not only on the demand side, but also on the system description side. – on the side of the 'pole of power'.[40] If populism attacks the 'judicial caste' or 'the rule of law', then these signifiers are watered down, too.

A special feature of the concepts used by populism is their instability, which is visible in their smooth enrichment and impoverishment – depending on the need. There is no longer a clear 'one signifier-one signified' relationship. There is conceptual destabilization both with regard to the 'people' and their demands, and with regard to the 'system' that the 'people' want to change. As Laclau highlights, all this causes a fundamental instability of concepts,[41] and the populist articulation is variable and depends on the context, owing to which it can be freely conceptually extended or narrowed. The key feature of populism is the contestation and redefinition of concepts, carried out on both sides of the 'people-power' dichotomy, which is crucial for populism.[42]

As a result, the central signifiers of discourse become empty, which means that:

they weaken their old connections with certain specific content – the content becomes perfectly open to a variety of equivalent rearticulations. It is enough for empty popular signifiers to retain their radicalism – that is, the ability to divide society into two camps.[43]

In addition to empty characters, Laclau also distinguishes 'floating signifiers' – which also destabilize communication driven by populism:

To address this ambiguity of popular signifiers and the demands they articulate, we will talk about floating signifiers. The type of structural relationship that constitutes them differs from that which we found in the case of the empty signifiers: while the latter depend on a fully developed inner boundary resulting from the chain of equivalences, the floating signifiers are an expression of the ambiguity inherent in all boundaries and their inability to obtain ultimate stability.[44]

5. Nicola Lacey and destroying the convention

Laclau's analyses must be supplemented by the remarks of N. Lacey, who relates the destabilizing actions of populism directly to the rule of law. Thus, she clarifies the area that

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[39] *Ibidem*, p. 39–40. Interestingly, on the side of the enemies of populism, the signifiers are also reduced to the level of surnames (Broniar, Michniki, etc.).

[40] *Ibidem*, p. 40.

[41] *Ibidem*, p. 40.

[42] *Ibidem*, p. 40–41.

[43] *Ibidem*, p. 42.

[44] *Ibidem*, p. 43.

is attacking the 'people', the area of the 'system', which in this case is the system of legal fuses, generally referred to as 'the rule of law'. Lacey analyses:

> the ways in which contemporary populist discourse undermines the rule of law through various mechanisms – notably through agenda-setting, policy influence, influencing discretionary decisions and destroying conventions – taking into account institutional and social conditions that favour the strengthening or weakening of these mechanisms in specific contexts.[45]

The phenomenon of populism attacking the rule of law is almost global. Lacey emphasizes that it is discernible in countries such as the United States, the United Kingdom, France, Germany, Austria, the Netherlands, Sweden, Greece, Italy, and especially in Hungary and Poland.[46] In all of these places, an attack against the 'system' in the form of the judiciary authority is evident. An example of such an attack was, inter alia, the reaction of the media and politicians to the decision of the English High Court (Miller [2016] EWHC 2768; concerning Art. 50 of the Treaty on European Union and its application to the process of leaving the EU by the United Kingdom. The headline describing the judges as "enemies of the people" became the symbol of this reaction.[47]

In the US under President Trump, we could also notice slandering of the courts, as well as attempts to put pressure on the justice system, which, according to Lacey, prove that populism (in general) is a peculiar threat to constitutionalism, and (notably) to the courts.[48]

Lacey's primary objective is to discern how populism threatens the rule of law. To reach this target, it is necessary to define the rule of law, and here Lacey faces the dilemma of whether to do it on a criterial or paradigmatic basis. The equivalent of the first approach will be formal visions of the rule of law. An example of the second will be the functional approach to the rule of law, represented, inter alia, by M. Krygier,[49] in particular, his teleological approach to the rule of law as a set of ideals and findings aimed at limiting power.[50] As Lacey writes:

> The distinguishing feature of these groups of approaches is their contextualism: in a functional approach it is obvious that, although in fact it represents an ideal and recognizes the moral value of the rule of law as 'a way of association' between people (…), its content, what the rule of law ideally requires, and the institutional arrangements needed to make them binding, will change over time and space and will be shaped by a range of cultural, institutional and political conditions (…). These approaches, like content-based approaches, are sensitive to the danger that the rule of law may take a superficial form rather than being fully embedded in internal conventions and attitudes. Therefore, they resist any dichotomies of

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45 N. Lacey, *Populism and the Rule of Law*, "Annual Review of Law and Social Science" 2019, Vol. 15 (abstract).

46 *Ibidem*, p. 4.

47 *Ibidem*, pp. 4–5.

48 *Ibidem*, p. 5.

49 M. Krygier, *The Rule of Law: Legality, Teleology, Sociology. In Relocating the Rule of Law*, ed. G. Palombella, N. Walker, Hart Publishing, Oxford 2009, s. 45–69.

50 *Ibidem*, p. 7.

'idealism/realism' (…) and emphasize that the values to which the rule of law aspires can only be achieved through a thorough understanding of how particular social and political systems function.[51]

Lacey gives a number of examples showing that the rule of law does not have strictly defined criterial content, but is variable in time and space (example of Myanmar and early modern England).[52] Nonetheless, this does not mean that their content is unstable, as the function performed by the rule of law remains stable. Lacey defines populism as follows:

> Essentially, populism is a highly moralizing approach to politics that juxtaposes homogeneous 'us, humans', often understood in ethnic or national terms, embodied in a leader who speaks on behalf of this undifferentiated collectivity and expresses its will against the supposedly 'corrupt' – hence, tendency towards conspiracy theories in this genre of political discourse – 'elite' (as well as against various minorities of 'outsiders'). Populism is an ideology (…) that considers society as ultimately divided into two homogeneous and antagonistic camps, 'pure people' and 'corrupt elites', and which argues that politics should be an expression of the volonté générale (universal will) of the people (…).[53]

Populism understood in this way influences the 'interpretive frame' or 'mental map'[54] used by social actors, and, of course, concepts are an indispensable element of this framework and this map. Such an approach to populism by Lacey is possible because, like Laclau, she recognizes populism as 'discourse' and it is an 'ambivalent discourse'.[55] By influencing the interpretive framework of democracy, the discourse of populism 'distorts' it. This distortion can certainly be applied also to the concept of the rule of law.

An example of distortion of the rule of law is the concept of 'discriminatory legalism', which is used to repress civil society.[56] Despite the fact that it is based on an apparent respect for the law, it is contrary to the rule of law understood in a functional perspective, i.e. perceived from the perspective of its outcomes.

Lacey emphasizes that the purely formal concept of the rule of law enables such 'militant' legalism, and is therefore dangerous.[57] The above process leads, as Lacey believes, to the distortion of the rule of law – to the replacement of the idea of the 'rule of law' with the idea of the 'rule by law':

> Not only for supporters of the material concepts of the rule of law, but also for those who take a functional view of the rule of law as inherent in limiting power (…), this is a corruption of the rule of law: something we can call the rule by law and not the rule of law, although the specific form this upheaval takes will vary with time and place.[58]

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[51] *Ibidem*, p. 7.

[52] *Ibidem*, p. 8.

[53] *Ibidem*, p. 9.

[54] *Ibidem*, p. 10.

[55] *Ibidem*, p. 13.

[56] *Ibidem*.

[57] *Ibidem*, p. 13–14.

[58] *Ibidem*, p. 14.

6. R.G. Millikan and conventions as lineages

Lacey's considerations on destroying conventions should be compared with the treatment of conventions as traditionally shaped lineages of R.G. Millikan. Law philosophers generally believe that Millikan's contribution to convention theory is limited to two works in which she criticizes David Lewis's approach.[59] However, in order to fully appreciate her contribution to the analysis of the convention, it is necessary to take into account the broad philosophical background of her work.[60]

Millikan developed an original, naturalistic theory of language and mind – 'biosemantics' – based on evolutionary biology.[61] This theory explains the key concepts of the philosophy of mind and language, including concepts such as beliefs, intentions, mental representations and reasons, by relating to their ultimate biological functions and their dependence on biological and cultural evolution.[62]

According to Millikan, language is a survival tool that helps to navigate in a complex world, facilitating the collection, storage and transmission of information about it (descriptive language), and expressing ideas for its improvement (normative language). Millikan notes that "language is merely a very large set of extant (token) precedents of usage".[63] Indeed, linguistic signs spread by copying and creating 'lineages'.[64]

The concepts of the proper function and survival value[65] are central to Millikan's theory. She defines proper function as:

> an own function of things, called this way because it was this function that was chosen or retained in the course of the development of a species, individual or culture, and therefore a function whose performance by ancestors explains its existence.[66]

Since behaviours copied by people bring the desired effects (i.e. fulfil their proper function), and thus improve their situation, they also have a survival value, i.e. increase the efficiency of the organism and/or the group. The word 'function' in the phrase 'proper function' means the causal role ascribed to a particular object or pattern of behaviour,

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59 See: R.G. Millikan, *Language Conventions Made Simple*, [in:] *Language: A Biological Model*, MIT 2005; and R.G. Millikan, *A Difference of Some Consequence Between Conventions and Rules,* 27 Topoi 2008, pp. 87–99.

60 This background can be found in her ground-breaking *Language, Thought…*, as well as in later works, incl. *Beyond Concepts. Unicepts, Language, and Natural Information*, Oxford 2017.

61 R.G. Millikan, *Biosemantics*, "Journal of Philosophy" 1989, vol. 86, pp. 281–97.

62 R.G. Millikan, *Language, Thought…*, pp. 93–94.

63 R.G. Millikan, *A Difference…*, p. 92.

64 R.G. Millikan, *Language: A Biological Mode,* Oxford 2005, p. 38.

65 The concept of survival value should definitely not be understood in the narrow sense of the biological survival of an individual. The proper use of linguistic conventions is an adaptation to the (social) environment that increases the fitness of the individual, the fitness of other individuals in the group, and the fitness of the group to which they belong. An evolutionary approach to conventions is sometimes seen as reducing sophisticated human achievement to brutal materialism and a biological struggle for survival. Yet, the theory of evolution can help explain seemingly unnatural phenomena such as altruism and justice (B. Skyrms, *Evolution of the Social Contract*, Cambridge University Press, Cambridge 2014).

66 R.G. Millikan, *Beyond Concepts…*, p. 223.

and relies on the outcome likely to be achieved by it. The survival value is also a function, but it is better understood as a factor that increases overall 'fitness' or 'adaptation'. A single convention performs a specific function. Nevertheless, whether the system as a whole performs a global function, and hence increases the survival value as a whole, depends on the combined effect of proper functions produced in relation to the fitness (adaptation) of an individual or group.[67]

Proper function and survival value together form the mechanism underlying the spread of language: descriptive language (when true) makes people better adapted to the conditions in which they function, because they can form accurate beliefs about the world and base their actions on them. An effective cultural convention operating in a given community can bring it and its members a survival value. Adaptations, the adoption of which increases the chances of survival of the community and its members, are, for instance, better coordination (e.g. thanks to road traffic rules) or the avoidance of conflicts (e.g. thanks to linguistic conventions enabling mediation).[68]

Millikan's theory is based on strong anti-psychological and anti-descriptionist assumptions, including the assumption that a criterial-based approach to language is not optimal. She argues that interpersonal interactions, and especially linguistic interactions, do not require a great deal of knowledge about the minds of others, including their mental states (beliefs, intentions, etc.). Her anti-psychologism is evident in her devastating criticism of H.P. Grice[69] and in her criticism of the 'rationalism of meanings',[70] which is an element of semantic internalism, and thus of the criterial approach. Millikan is radically different from Grice in his belief in the importance of intention in human communication – he thinks that intention is not needed to describe the mechanism of creating meaning, like other mental states, including beliefs about a set of criteria determining the content of concepts.

Within this broad conception of mind, language, and meaning, Millikan presents her theory of convention. As she notes, conventionality consists of two related features: First, natural conventions consist of patterns that are 'reproduced' (…). Second, the fact that these patterns spread partially results from the importance of the precedent and not, for example, from their inherently superior capacity to perform certain functions.[71] Conventional patterns reproduced in time create 'lineages' (e.g. the lineage of the shout "Something's on fire!" is the history of all its uses – the application of shout tokens in specific life situations). The reason why behaviours are reproduced over time is their proven effectiveness in achieving the results desired by the cooperating partners (e.g. escape from the source of fire).

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67 See: A.G. Wouters, *Explanation Without a Cause*, "Quaestiones Infinitae" XXIX, Zeno 1999, p. 30.

68 See: S. Bowles, J.-K. Choi, A. Hopfensitz, *The Co-evolution of Individual Behaviors and Social Institutions*, "Journal of Theoretical Biology" 2003, vol. 223, pp. 135–147..

69 R.G. Millikan, *Language, Thought…*, p. 52.

70 *Ibidem,* p. 326.

71 R.G. Millikan, *Language Conventions…*, p. 2. For Millikan, a precedent is an action from the past that can be repeated to solve a similar problem: instilling good belief by reusing a descriptive mark, or bringing things to the desired state by reissuing the directive (R.G. Millikan, *A Difference…*, p. 88).

7. Rule of law – criterial or paradigmatic?

Our ideas and concepts help us to cope with reality – at least this is how their function is understood in a pragmatic philosophy of culture, which draws inspiration from the theory of evolution and treats the products of the human mind as adaptations to the world around us. If this is the case, the quality of our concepts, and therefore the quality of what we think about reality through these concepts, is critical to our functioning in the world. If our ideas and concepts are imperfect, erroneous or impractical, we should act towards their improvement, because only in this way can we increase the scope of implementation and proper function, and thus increase the degree of our adaptation to the environment.

In this article, I pose a question about the adaptive quality of our notion of a concept, and in particular which approach to the nature of concepts – criterial or paradigmatic – serves us better as the users of concepts. Just as a bad theory can cause blindness (*theory-induced blindness*), such a bad, imperfect notion of a concept can cause clumsiness in dealing with the world. I put forward the thesis that this is the case with the criterial approach to concepts – this approach is more susceptible to populist manipulation of concepts important to us, such as the rule of law, and therefore should be replaced by a paradigmatic approach that is more resistant to such manipulation.

What arguments can be presented in support of the above thesis? Firstly, in an increasingly divided society, it is very difficult to defend the belief that its members share criteria that make it possible to jointly identify the elements of reality that should be covered by a given concept. If a concept is a community-shared set of criteria, whether understood as a set of necessary and sufficient conditions (Frege), or as a bundle of descriptions (Searle), the application of this approach to concepts requires a certain level of agreement on the sets of criteria x_1, x_2 i x_3 making up a given concept – only then does the element of reality that meet these criteria 'fall' under the given concept.

But still, as mentioned above, societies are becoming more and more divided and it is very difficult to state who decides on the criteria to be shared by them. In the light of the subject of this article, it should also be emphasized that one of the objectives of populism is to deepen social divisions and to use differences in defining concepts as arguments for the fact that concepts are in fact empty (this, as indicated, is the attempt by populists to extract the notion of the rule of law from the content). Such is easy to accomplish because the criterial approach has to be based on a certain level of abstraction – the abstraction of typical features-criteria from a set of instances is, after all, the theoretical basis of this approach. The higher the level of abstraction, the easier it is to manipulate, because the more the abstract concept moves away from tangible reality and the effects of a given conception on our functioning in the world.

From this perspective, the paradigmatic approach seems much better because it is less abstract and based on general criteria that must be covered by social consent. As indicated above, in the paradigmatic approach, the most important issue is the conventional history of applying a concept to the world, thanks to which the concepts relate more to external reality than to the ideas in our heads. A key element of the paradigmatic approach is the focus on the proper function of concepts, and therefore on

the beneficial effects that their application brings. This reference to reality and function makes the paradigmatic approach more tangible and verifiable.

In order to show how the paradigmatic approach to concepts is superior to the criterial approach, at least in terms of counteracting the processes that populism tries to cause (destabilization of concepts, hollowing them out of the content), let us first analyse the well-known philosophical and legal case of the ruling in the case of Riggs v. Palmer, by applying the paradigmatic approach to concepts. Subsequently, using the experience gained in the background of this case, let us analyse – in a paradigmatic perspective – the dispute over the concept of the rule of law that has been going on in recent years in Europe, including Poland.

In Riggs v. Palmer, the court had to decide whether the grandson who was supposed to receive his grandfather's estate, and poisoned him because he feared that the testator might alter the will, may inherit it anyway. In the opinion of the majority of the judges, whose author was Judge Earl, it was stated that even if the legislator did not explicitly foresee such a case as the considered one, the general principles (e.g. the rule that no one should benefit from the evil that s/he had committed) prevented the grandson for the possession and use of the property, and therefore he should not inherit it. In a dissenting opinion, Judge Gray argued in a more formalistic manner that if a grandson who was punished for his criminal offence was deprived of inheritance, it would be punishing him twice for the same offence. According to Gray, such a penalty cannot be imposed without an express statutory provision, and the court has no power to impose it, even if such a decision is dictated by moral considerations.

The case of Riggs v. Palmer was analysed numerous times and in various ways, but let us try to approach it from the perspective of the notion of concepts compared in this article, i.e. criterial and paradigmatic. The dispute between the judges seems to be a clash between these two approaches. According to Judge Gray, when assessing the effectiveness of a will, the same set of criteria should be used that had been used in previous cases. Therefore, a will that met all the statutory criteria, and has not been revoked, should be considered effective. In other words, the copy of the will from which the grandson was to inherit 'falls' under the term 'effective will' because it meets the set of criteria that define an 'effective will'.

Judge Earl's approach can be perceived as more paradigmatic: whether the target situation (Palmer's will) was substantially similar to the source situations (previous wills) depended on more than meeting a rigid set of criteria. This case differed from previous cases related to wills in that the beneficiary had murdered the testator. The element that we can define as 'not killing the testator' was part of the previous source situations (previous effective wills), but did not fall under the definition of 'ability to inherit', or 'being a beneficiary of a will', perhaps due to the fact that it seemed obvious. To put it differently, this element was not covered by the 'tip of the iceberg' (a set of narrow criteria), but was an important fact that was part of the 'background'.

Therefore, the target situation (the case of Riggs v. Palmer), i.e. the new situation of applying the concepts of 'ability to inherit' or 'effective will', differs significantly from the previous situations of applying these concepts (source situations), because it is devoid of the element of 'not killing the testator' (includes the element of 'killing the testator').

This justifies the conclusions that differ from those in the source situations and rightly led the judges to conclude that the target situation (Palmer's will) should not be considered as falling under the terms of 'ability to inherit', or 'effective will'. A functional approach, characteristic of the paradigmatic approach, is also visible in this case, i.e. the rejection of formalism and focusing on whether in given circumstances the functions of the holistic practice of drawing up and executing wills are achieved.

A similar analysis can be carried out with regard to the concept of the rule of law, of course, with the proviso that this is an analysis conducted on a completely different level of generality and not related to a specific court decision, but rather to the way of argumentation adopted by the parties to a dispute over the rule of law. First of all, it must be emphasized that the approach to the concept of the rule of law, based on the criterion theory, favours the implementation of social goals of populism in the sense that it requires inter-subjective consent as to the content of the concepts. Since populism denies the existence of such consent (e.g. by arguing about a specific, local, Polish understanding of the rule of law, which is different from the understanding of 'European'), it is easy for it to bring out the Laclau's statement on empty signifiers, and thus fill in the concept of any content.

Moreover, populists in their narrative also try – although they do it in a partial and therefore manipulative manner – to use the paradigmatic approach. This strategy can be seen in the argumentation based on comparing the situation of the rule of law in Poland and other European countries (Spain, Germany), and then in the assertion that there are similarities between these paradigmatic cases (e.g. relating to the element of 'appointment of judges by politicians'). This similarity, in the understanding of populist narratives, fully justifies the application of the concept of the rule of law also to the Polish or Hungarian situation.

A defence against the above-mentioned populist strategy can only come about through the holistic application of a paradigmatic approach to the concept of the rule of law that is in line with the theoretical program proposed by Millikan and Recanati. According to this program, the legitimacy of applying the concept of the rule of law to a given target situation (e.g. the situation of the rule of law in Poland or Hungary) is determined by the WHOLE similarity to the previous situations that make up the lineage of the application of the term 'rule of law'. As with any lineage, source situations in which a given reality was referred to as 'rule of law' had a number of features. According to the populist narrative, there was no "PROHIBITION OF THE APPOINTMENT OF JUDGES BY POLITICIANS" among them – such references do occur in countries generally considered to be law-abiding. The target situation (constitutional crisis in Poland) has an element of appointing judges by politicians, and this fact is used to claim that the Polish situation does not meet the conditions of the 'rule of law'. It is easy for populism to deal with this argument, because it suffices to say that the criterion of 'not appointing judges by politicians' is not included in the set of criteria that make up the concept of the rule of law, or that the element of appointing judges by politicians is a component of some source situations in which this concept has been applied so far.

In order to show the manipulative nature of the populist narrative, it is necessary to apply the paradigmatic model as a whole, in particular, the distinction between the 'tip

of the iceberg' and the 'background', as well as the use of an externalist and functional approach that analyses the impact of the concept on external reality. For example, if we consider the functioning of judicial institutions that are institutionally separate from the legislature and the executive as the elements of the 'tip of the iceberg', i.e. the most typical features of the rule of law, then the state of the rule of law in Poland and Hungary meets this condition. At the same time, if the only allegation is that politicians have an influence on the appointment of judges in these two countries, it will not be a sufficient argument to conclude that the application of the term 'rule of law' to the situation in these countries was impossible. This is due to the fact that, as mentioned before, there are examples of countries where such appointments take place and this situation does not call into question the state of the rule of law.

Hence, in order to evaluate the possibility or impossibility of applying the concept of the rule of law, it is necessary to comprehensively compare the source situations with the target situations, notably in terms of the characteristics of the 'background'. A characteristic feature of the situation we encounter in Poland is that the vast majority of judges strongly oppose the actions of the legislature and the executive against the courts, while this type of behaviour does not take place in other countries, including those in which politicians are involved in the appointment of judges. Can this element of the present situation be relevant to the assessment of whether there is rule of law in Poland?

This can be so only if we consider that the subject of comparison is not the individual features of the situation, but its overall character. A closer look reveals that the resistance of judges to the intervention of the legislature and the executive in the independence of courts (and thus in the rule of law) is caused by other features of the target situation, including: the fact of attacking judges for their sentences, mobbing judges and prosecutors, removing judges from pending cases, using disciplinary proceedings to influence the content of judgements, etc. These features of the target situation (i.e. the situation that takes place in Poland) differ from the source situations and at the same time this difference is noticeable only after comparing the background features. Additionally, the situation in Poland has elements of hollowing out of institutions, i.e. depriving them of their functions by appointing office holders faithful to politicians who cause the institution to cease its function.[72] What is more, the presence of these features means that the comprehensively assessed target situation differs significantly from the source situations, and thus does not allow the concept of the rule of law to be related to the target situation. In addition, according to Millikan's theory, the application of the concept of the rule of law to a situation that is fundamentally different from the previous situations that are part of the lineage, causes the concept to lose its proper function. Indeed, just as calling something inedible – 'edible' – wrecks the proper function of the term 'edible' (which is marking fragments of reality that can be eaten without harm to the health of the organism), then, likewise, calling 'the rule of law' something that is not lawful (because it is not relevantly similar to the previous situations of application of this concept) loses the proper function of the term 'rule of law'.

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[72] K. Scheppele, *Autocratic Realism*, "University of Chicago Law Review" 2018, vol. 85, Iss. 2, Article 2, p. 577.

The above considerations, although focused on semantics and the way of understanding concepts, are not detached from the real problems of the rule of law. An analysis of the writings of such authors as, for example, Martin Krygier, allows us to state that they distinguish two approaches to the issue of the rule of law, which, in a sense, seem to correspond to the distinction between the criterial and the paradigmatic approach, which – in particular, from Millikan's point of view – has the character of teleological, and thus assumes that the essence of phenomena such as the rule of law is not determined by their form, but rather by their function, which is understood as goal orientation (telos). As Krygier indicates, the latter, teleological approach is more appropriate and cannot be replaced by an approach based on a set of necessary and sufficient criteria:

> The proper manner to approach the rule of law is not to propose, as lawyers usually do, a list of the features of laws and legal institutions that are purportedly necessary, if not sufficient, for the rule of law to exist; let me call it the anatomical approach. Rather, we should start with teleology and end with sociology. That is, I propose that we start with the question of why we need the rule of law, by which I mean not the external goals that it can serve, such as economic growth or democracy, but something like its telos, sense of the enterprise, internal objectives that are immanent for this concept.[73]

The above argumentation confirms that in considering the rule of law, it is necessary to move from a criterial analysis, to an analysis of the function performed by elements of the phenomenon that we call 'the rule of law'. To make this possible, it is justified to depart from the Frageian approach to concepts in favour of the approach proposed, inter alia, by R.G. Millikan, and based on the analysis of how our concepts affect reality and what function they play in relation to it.

8. Rule of law – definition or tradition?

In the light of the previously cited considerations on the concepts of Millikan and Recanati, it is interesting that Lacey considers 'convention-trashing' to be one of the basic tools of populism and the impact on the exercise of discretionary power by judges, which has a particular influence on the exercise of its functions by law.[74] The very phenomenon of convention-trashing, which particularly threatens the rule of law, is presented by Lacey as an attack on this sphere of public life, called 'constitutionalism', which depends:

> on a set of attitudes and the method of association adopted, which cannot be captured or fully enforced by rules, no matter how sophisticated they are. This means that the internalization of the normative ideals of the rule of law by those who are in power is the key to their

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[73] M. Krygier, *The Rule of Law: Legality, Teleology, Sociology*, [in:] *Re-locating the Rule of Law*, ed. G. Palombella and N. Walker, Hart Publishers, Oxford, 2008.

[74] N. Lacey, *Populism…*, pp. 15–16.

sustainability. This is particularly evident in relation to the extensive conventions that accompany the functioning of each constitution.[75]

This conventional environment of institutions is under attack by populism, in that populism destroys conventions, which in turn causes them to no longer fulfil their function. Lacey provides examples of Trump's destruction of conventions; especially his disregard for long-standing conventions on conflict of interest and nepotism, and the decision to bring large parts of his family to the White House in positions of high executive power. This phenomenon of destroying conventions also occurs in Poland. As Lacey writes:

> It also covers the recent events in Hungary and Poland, that while respecting the rule of law is one of the conditions for accession to the EU, continued compliance is a convention in the sense that it depends on self-limitation, and the EU has only relatively weak tools to discipline countries that eliminate crucial aspects of the rule of law, in particular the independence of the judiciary.[76]

As this conventional tissue is more fragile and susceptible to violation than hard, established law, then attacking conventions is particularly dangerous for the rule of law and constitutionalism.

The fundamental thesis of this study is the claim that among the two types of thinking about legal concepts – criterial and paradigmatic – the latter shows us how to defend the stability of concepts used in the area of the state and law. Concepts understood in a criterial manner require agreement as to the criteria, and this cannot be achieved in a situation of permanent dispute fuelled by populism. At the same time, the psychological and internalist assumptions of the criterial notion of concepts enable a fairly easy process of questioning the set of criteria proposed by group X and replacing them with criteria proposed by group Y. It is also easier to hollow out concepts out of the content and turn them into *empty* or *floating signifiers*.

In the case of the paradigmatic notion of concepts, which is related to the concept of convention as lineages of repetitive behaviours that perform a specific proper function (Millikan), manipulating the content of the concepts is more difficult. Their stability is guarded by the tradition of using them and the similarity of target situations to source situations (Recanati), and the possibility of revealing that a change in the manner a concept is used, often in the form of convention-trashing (Lacey), causes the proper function to be lost. For the above reasons, any populism is in some sense based on the denial of a behavioural tradition, questioning it, and then manipulating history to justify the altered use of the concept. Since tradition upholds stability, in order to destabilize the system, tradition must be questioned. At the same time, referring to our key concepts such as the rule of law, their nature is not determined by definition but by tradition.

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[75] *Ibidem*, p. 16.

[76] *Ibidem*.

This idea is not new, and its veracity is not limited to the realm of legal concepts. 'Old Coalman' understood it, and in the emotionally evocative ending of one of the most penetrating Polish films says:

> Tradition cannot be ordered or established by a special resolution. (…) Tradition is an oak that has been growing for a thousand years. Let no one compare a little sprout with an oak! The tradition of our history is a fortified wall. (…) This is our forefather' speech, this is our history, which one will not change. And what is being re-created around us is our daily life in which we endure.

In the light of the analyses conducted in this study, it becomes apparent that upholding the tradition that has developed linguistic conventions, above all, the refusal to destroy them, as well as applying the holistic, paradigmatic approach to our concepts form a better defence strategy against the attack of populism on the stability of the crucial law concepts – with the notion of the rule of law being at the forefront.

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