

## **UNTANGLING THE POPULIST KNOT: ADMINISTRATIVE LAW AND THE STRUGGLE FOR RULE OF LAW RESTORATION IN POLAND**

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### **Abstract**

This article explores the significant challenges of restoring the rule of law in Poland following a period of democratic backsliding in 2015-2023. It also analyzes how administrative law was distinctively well suited for instrumentalization by the populist government, facilitated by its standard features like enforcement privileges and policy discretion when constitutional checks were weakened. This strategic use of administrative tools, alongside attacks on judicial independence, created a deeply interwoven "populist knot" of legal and political changes.

Rule of law restoration in Poland is not just legal reversal, but a profound political struggle within a polarized society. It is constrained by institutional factors such as cohabitation with two consecutive Presidents, who are aligned with the previous ruling party, and the control of key bodies like the Constitutional Tribunal and the National Council of the Judiciary (KRS) by political appointees. While some progress is being made through actions not requiring legislation, reforming the administrative state and its legal framework to prevent future instrumentalization remains a huge challenge, especially in the light of the 2025 presidential elections, surprisingly won by a populist candidate opposing the government.

An important problem is also confronting the administrative law's own potential for authoritarian use and to ensure it serves its protective function for all. The article argues that understanding how

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administrative law is being instrumentalized and addressing its structural vulnerabilities is crucial for building a resilient rule of law system against future populist pressures.

**Keywords:** *rule of law restoration, Poland, democratic backsliding, administrative law, populism*

## 1. Introduction

In recent years, growing dissatisfaction with democratic institutions—accompanied by authoritarian trends and the rise of so-called “illiberal democracies”—has elevated populism into a central force of social and political transformation. This shift is deeply connected to administrative law, traditionally seen as a mechanism for protecting individuals from state overreach and thus serving the “populus”. Yet paradoxically, it has also become a valuable instrument for populist governments—what Schotel (2021) and Jakubek-Lalik (2023) refer to as “regimes in decaying democracies.”

Between 2015 and 2023, Poland experienced a deep erosion of the rule of law under the rule of the Law and Justice (PiS) party. Rather than pursuing formal constitutional change, PiS engaged in democratic backsliding by strategically weakening institutions and reshaping them for political purposes (Wójcik, 2025; Bignami, 2020; Canovan, 2002; Müller, 2016; Jakubek-Lalik, 2023). This incremental, often informal approach circumvented constitutional norms through ordinary legislation and administrative practices, gradually dismantling the checks and balances essential to a consolidated democracy.

Recent academic analyses have closely examined the constitutional crisis in Poland during and after the rule of the PiS party, with particular attention to developments between 2023 and 2025. Włoch and Serowaniec (2025) interpret the transformations of this period not as efforts to establish a new constitutional framework, but as a deliberate “deconstruction of the Constitution,” amounting to an “extra-systemic dissensus” that destabilized the legal order and significantly intensified Poland’s conflict with the European Union. Rather than replacing liberal-democratic institutions with an alternative model, this process gradually eroded their foundations. Central to this dynamic was the Constitutional Tribunal, once a key guardian of constitutional oversight, which was repurposed into an instrument of political power—particularly through its role in challenging the primacy of EU law.

This broader dismantling of democratic checks and balances was driven above all by the systematic capture of the judiciary. The Constitutional Tribunal was paralyzed and politicized through the appointment of loyal judges, effectively

eliminating its capacity for independent review. Similar pressures were exerted on the Supreme Court and the National Council of the Judiciary, consolidating political influence over the judicial branch. At the same time, civil society space was severely restricted: public consultations were abandoned, funding for NGOs was centralized through institutions like the National Freedom Institute, and independent media faced both legal harassment and delegitimization. State-controlled outlets portrayed opposition voices as “enemies of the nation,” contributing to a broader narrative of polarization and fear (Grabowska-Moroz & Śniadach, 2021).

Furthermore, a "creeping" sectoral recentralization shifted powers and resources from local self- governments to the central administration, aligning with an illiberal agenda that views local autonomy as a limitation on central power (Sześciło, 2019; J. Jakubek-Lalik, 2019). These actions contributed to the emergence of a situation where administrative law, typically designed to protect citizens, was instrumentalized to serve the ruling party's political and ideological agenda and suppress opposition, leading to a "swift deterioration of Poland's democracy" in international rankings (Freedom House 2022).

Following the outcome of the 2023 elections, Poland has been facing the complex challenge of restoring the rule of law, and particularly judicial independence. This is both a complex legal and a political challenge, given Poland's deeply divided political landscape and society, and the strong resistance from those who benefited from the previous system, who seek to block or delay reforms through legal and extralegal means. The ongoing situation, where institutions may not recognize each other's authority, has prompted discussions about the actual existence of a dual legal system.

This article aims to thoroughly examine this "populist knot" by analyzing:

- How administrative law has been instrumentally used in the process of rule of law backsliding in Poland since 2015.
- The challenges and mechanisms associated with the restoration of the rule of law, with an emphasis on the role and resilience of public administration in this process.
- The lessons to be drawn from the Polish case for preventing democratic backsliding and addressing the challenges to the rule of law.

## 2. The "Dual State" and Instrumentalization of Administrative Law

A useful lens for analyzing the role of administrative law in decaying democracies is the concept of the "dual state." Originally developed by Ernst Fraenkel in his seminal 1941 work *The Dual State: A Contribution to the Theory of Dictatorship*, the concept was devised to examine the legal order of Nazi Germany between 1933 and 1938. Fraenkel's framework distinguishes between two parallel and coexisting spheres of governance within authoritarian regimes: the "normative state", governed by law and legal procedures, and the "prerogative state", in which discretionary power is exercised without constraint.

The "normative state" is headed by the (non-political) bureaucratic administration and is bound by positive law. Its function is to guarantee the proper functioning of the normal tasks of the state, such as criminal justice for non-political crimes, private law matters, and economic regulation. It aims to protect citizens from the abuse of power by ensuring proper standards of law-making and judicial review. Actions within the normative state are generally subject to judicial review by normal courts. The normative state is intended to govern and protect the lives of "true deserving citizens". It provides a veneer of legality and offers minimal procedural and output legitimacy, helping to keep an authoritarian regime in place, especially in contemporary contexts where outright repression might be less common.

On the contrary, the "prerogative state" is directly controlled by the political government and is aimed at realizing the ideology and political agenda of the ruling party. It is characterized by its unlimited arbitrariness and violence, meaning it is not bound by positive law. Actions taken under the prerogative state in Nazi Germany, such as arrests and detentions by the Gestapo, were generally not subject to review by ordinary courts. Its core purpose is the consolidation of power, the marginalization of opposition, and the strengthening of authoritarian tendencies. It operates outside of established legal norms, driven by the "pure - political or arbitrary - will of those in power".

The paradoxical nature of the dual state lies in the simultaneous coexistence and parallel functioning of these two contradictory legal orders. While distinct, they are deeply interconnected. Fraenkel's original analysis suggested an absolute hierarchy, where the prerogative state could intervene and take over any matter governed by the normative state. Although the normative state might offer temporary resistance, it ultimately serves the prerogative state's underlying ideological and political aims. This creates a "dual, even schizophrenic character of the state", where administrative law can be used to protect compliant citizens while at the same time being instrumentalized against opponents of the regime.

As already observed, Fraenkel's conceptual framework emerged from his analysis of the legal and political dynamics of Nazi Germany's totalitarian rule. However, some of its elements are valid for modern, neo-authoritarian countries. In contemporary regimes of democratic decay, as adapted by Jens Meierhenrich (2018), the normative and prerogative states are viewed as more "coeval regimes," where legality becomes a crucial instrument of authoritarian rule, allowing the regime to claim adherence to the rule of law while effectively marginalizing opposition. In this version, unlike Fraenkel's original analysis of Nazi Germany, there is no absolute hierarchy between the prerogative and normative states. For Meierhenrich, the normative state is an essential component for any successful authoritarian regime, as it helps to maintain the regime's stability. It achieves this by providing minimal legitimacy to the majority of the population, ensuring a basic effectiveness of normal administrative tasks (output legitimacy), and upholding legality as a minimal form of the rule of law (procedural legitimacy). Thus, in contemporary regimes characterized by democratic backsliding, where they are neither totalitarian nor overtly repressive, legality serves as a crucial instrument of authoritarian rule.

This theoretical lens has recently been applied to Poland's judiciary under populist rule. Drawing on Fraenkel's dual state framework, Karolewski and Sata (2025) analyze how illiberal regimes produce a "dynamic of capture and resistance" between politically subordinated and independent segments of the judicial system. Within this configuration, a "normative state" — in which courts adhere to legal standards and resist political interference — coexists with a "prerogative state," where law is instrumentalized to serve the regime's objectives. According to the authors, this dual structure took root in both Hungary and Poland, described as the "infamous leaders of democratic backsliding in the European Union."

In Poland, by the end of the PiS government's tenure (2015–2023), the judiciary had become deeply divided: some judges aligned with the normative tradition and upheld the rule of law, while others operated within the prerogative logic, advancing the ruling party's political agenda. Crucially, Karolewski and Sata contrast this with Hungary, where the independent judiciary had become "almost extinct" after more than a decade of Fidesz rule. In Poland, however, the change of government in 2023 opened a fragile window of opportunity: while "the new government has embarked on dismantling the prerogative state of the judiciary," this remains "a complex process that might take longer than expected."

The concept of the "dual state" is particularly applicable to administrative law, whose structural features — including the universal availability of judicial review (however burdensome in practice), the presumption of legality, and the administration's privileged power of enforcement — make it uniquely

conducive to sustaining dual legal orders. These mechanisms, designed to uphold legality and protect individual rights, can paradoxically enable the coexistence of a normative legal framework alongside a prerogative sphere shaped by political discretion.

This means that while administrative law in a democratic country is structurally designed to protect citizens, it can be very well used instrumentally by populist and authoritarian regimes if they succeed in undermining rule of law principles. The instrumentalization of administrative law as a tool for marginalizing opposition and political adversaries has become increasingly widespread, often proving more effective than more formalized mechanisms of criminal or civil law (Schotel, 2021; Jakubek-Lalik, 2023). This dynamic will be examined in greater detail in the following sections.

### **3. Democratic Backsliding and Institutional Instrumentalization (2015-2023)**

Democratic backsliding is defined as the "incremental degradation of the structures and substance of liberal constitutional democracy" (Daly, 2019). This degradation impacts democratic institutions, political parties, media, and non-governmental organizations (NGOs). This phenomenon is closely linked to the concept of "illiberal democracy", a term first used by Fareed Zakaria in the 1990s, which describes political systems that retain elements of democratic governance, such as free elections, but actively curb civil liberties and undermine limitations on central government power (Zakaria, 1997). In Hungary, "illiberal democracy" has even become an official state doctrine, with Prime Minister Viktor Orbán famously stating that "a democracy is not necessarily liberal" (Orban, 2014; Antoszewski, 2018).

In the scholarly discourse, political developments in Poland under the PiS government (2015–2023) have increasingly been examined through the lens of democratic backsliding (Bill & Stanley, 2025). As Włoch and Serowaniec (2025) observe, scholars have described these dynamics using terms such as "populist authoritarianism" and "illiberal constitutionalism", both of which describe regimes that operate within formal constitutional frameworks while systematically undermining liberal-democratic principles. This conceptual approach is useful for understanding how elected governments can consolidate power without overtly breaking constitutional rules.

Poland has often been compared with Hungary as twin cases of democratic backsliding in the EU. Petrov (2024) provides a concrete example from Hungary's recent past. He examines a 2018 plan to overhaul Hungary's administrative courts, noting that "Hungary was chosen as a backsliding regime" to illustrate the subtleties of "abusive constitutionalism". The

Hungarian government justified its court reform with technical and historical arguments, but critics warned it was essentially a court-packing scheme to tighten the regime’s grip on power. The legalistic and incremental tactics used by the Hungarian government – changes packaged as ordinary reforms – are the key challenges in detecting such authoritarian legal moves early on. Hungary’s example shows that Poland’s populist tactics are not unique: they align with a broader pattern in which incumbents in the region systematically undermine judicial independence under the guise of reform.

In Poland, unlike Fidesz in Hungary, the “illiberal” PiS government did not possess the supermajority required to formally amend the 1997 Constitution. Instead, it pursued its agenda by violating and circumventing the Constitution through ordinary legislation and both formal and informal practices, effectively steering the country away from consolidated democracy (Wójcik, 2025; Jakubek-Lalik 2023). This transition has been characterized by a concerted effort to consolidate power and undermine independent institutions through not only legislative, but predominantly administrative measures. This approach aligns with the concept that administrative law, despite its design to protect individuals from state abuse, can become a particularly useful tool for use by populist governments or 'regimes in decaying democracies', as described above.

The table below details the administrative and legislative measures employed by the PiS government and their observed impacts:

<b>Area of Control / Institution Targeted</b>	<b>Administrative / Legislative Measures Employed</b>	<b>Impact Consequences</b>
<b>Judicial Independence</b>	<ul style="list-style-type: none"> <li>• Paralyzing and controlling the Constitutional Tribunal: the government took steps to paralyze the tribunal's operations and gain political control through appointing loyalists from 2015.</li> <li>• Taking over of higher courts: Systematically filled constitutional and higher courts with regime-loyal judges to endorse government platforms.</li> <li>• Arbitrary dismissals and appointments: Ministry of Justice implemented reforms involving arbitrary dismissals and appointments</li> </ul>	<ul style="list-style-type: none"> <li>• Effectively turned the Constitutional Tribunal into a body that legitimizes the ruling majority's legislative amendments, rather than independently verifying their constitutionality.</li> <li>• Created incentives that facilitated judicial activism supportive of the government's agenda.</li> <li>• Undermined the independence of the judiciary through political interference in</li> </ul>

	<p>of court presidents and used disciplinary systems against judges upholding the rule of law.</p> <ul style="list-style-type: none"> <li>• Challenging EU/ECHR standards: The partisan Constitutional Tribunal ruled that EU and ECHR interpretations of judicial independence were incompatible with the Polish Constitution.</li> </ul>	<p>appointments and disciplinary actions against judges critical of the government.</p> <ul style="list-style-type: none"> <li>• Challenged the supremacy of EU law and international human rights standards, attempting to isolate the Polish legal system from European norms.</li> <li>• Populist dismissal of judicial independence as "judiciocracy" ("sędziokracja") enabled public attacks on judges and their decisions.</li> </ul>
<b>Media Control</b>	<ul style="list-style-type: none"> <li>• Using administrative acts to control and marginalize independent media, including threats to revoke the license of a TV station critical of the government.</li> <li>• Turning public media into party tools: Public media was used to disseminate biased political messages, conduct smear campaigns against civil society organizations, and limit opposition parties' media access.</li> <li>• Restricting journalistic work: New regulations were introduced to impose restrictions on journalists. i.a. restricting access to the Parliament.</li> </ul>	<ul style="list-style-type: none"> <li>• Deteriorated media pluralism and freedom, also by creating a "chilling effect".</li> <li>• Ensured public media served as a propaganda arm for the ruling party, shaping public discourse and suppressing dissenting voices.</li> </ul>
<b>Civil Society &amp; Public Participation</b>	<ul style="list-style-type: none"> <li>• Marginalizing social organizations: Administrative decisions were used to marginalize CSOs, including restricting or withdrawing funding and</li> </ul>	<ul style="list-style-type: none"> <li>• Weakened the independence and operational capacity of civil society organizations.</li> </ul>

	<p>refusing to register assemblies and demonstrations.</p> <ul style="list-style-type: none"> <li>• <b>Centralizing CSO funding:</b> The government aimed to create a "new civil society" by centralizing funding decisions for CSOs through institutions like the National Freedom Institute – Centre for Civil Society Development, seen as a move towards stronger political supervision of the voluntary sector.</li> <li>• <b>Limiting public consultations:</b> Public consultations on draft legislation were frequently limited or bypassed by submitting bills as private MP bills (exempt from consultation), leading to hasty law-making without proper public input.</li> <li>• <b>Denying access to parliamentary committees:</b> CSOs were often denied access to parliamentary committees, deviating from previous good practice.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Reduced public scrutiny and input in the legislative process,</b> leading to less transparent and hastily passed laws.</li> <li>• <b>Shifted control over civil society towards government-aligned entities,</b> impacting the diversity and independence of the third sector.</li> </ul>
<p><b>State Economic Influence</b></p>	<ul style="list-style-type: none"> <li>• <b>Expanding state ownership:</b> Engaged in increasing state ownership in selected markets, particularly the banking sector, in the process of so-called "repolonization". This included efforts to compel private banks to sell to the state.</li> <li>• <b>Creating new government agencies:</b> Established numerous new state agencies and institutions to manage state property, water</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Increased direct state control over key economic sectors and assets,</b> potentially reducing market competition and private sector autonomy.</li> <li>• <b>Enabled the ruling party to leverage state resources for political gain,</b> creating an uneven playing field in elections.</li> </ul>

	<p>infrastructure, or act as investment funds, expanding the state's direct economic presence.</p> <ul style="list-style-type: none"> <li>• Instrumentalizing state apparatus: The state apparatus, including public media and state-owned companies, was used instrumentally to favour the ruling party during election campaigns.</li> </ul>	
<p><b>Local Government &amp; Decentralisation</b></p>	<ul style="list-style-type: none"> <li>• Creeping recentralization: Gradually shifted powers and resources from autonomous local and regional governments to central government agencies.</li> <li>• De-communisation Law: Obligated local governments to change street names and public utility names under threat of a substitute order from the voivode, establishing new names without local government input or effective challenge.</li> <li>• Education system reform: Implemented a comprehensive restructuring of the local government education system without genuine consultations or consideration of local government's critical opinions.</li> <li>• Metropolitan Unions Law repeal: Replaced a nationwide law on metropolitan unions (which provided local governments with increased PIT revenue for metropolitan tasks) with a specific law only for Silesia.</li> <li>• Marginalizing regional environmental funds:</li> </ul>	<ul style="list-style-type: none"> <li>• Challenged the independence of local government, a fundamental democratic feature.</li> <li>• Reduced local autonomy and increased central government's influence over local affairs, bypassing local democratic processes.</li> <li>• Limited the financial and operational independence of local and regional authorities, making them more dependent on central government decisions.</li> </ul>

	<p>Formally maintained the status of provincial environmental protection and water management funds as local government legal entities, but significantly reduced local government participation in their governing bodies.</p> <ul style="list-style-type: none"> <li>• Attempted expansion of control over local finances: Proposed expanding the supervisory powers of regional audit chambers over local government's own tasks, introducing criteria of reliability and economy for loans and debt instruments (vetoed by the President).</li> </ul>	
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Through this series of administrative and legislative actions, the PiS government constructed what Schotel (2021) describes as a “legality bonus”: a façade of legal compliance that enabled the regime to claim adherence to the rule of law while systematically marginalizing political opponents. Administrative law, in particular, proved to be a crucial tool in this process. Unlike criminal or civil law—which often involves complex procedures or triggers public scrutiny—administrative measures were perceived as less severe, yet they proved equally, if not more, effective in subordinating individuals and controlling dissent (Schotel, 2021).

The cumulative effect of these policies contributed to a rapid deterioration of democratic standards. Poland experienced significant setbacks in areas such as media freedom, electoral integrity, and institutional checks on executive power. This decline was reflected in international rankings; for instance, Freedom House (2022) noted a marked regression in Poland’s democratic performance. Scholars have also drawn attention to the economic repercussions of populist governance. Democratic erosion, institutional instability, and legal uncertainty can weaken investor confidence and slow down innovation-driven growth.

Poland’s internal democratic backsliding also triggered external consequences, notably escalating tensions with the European Union. Włoch and Serowaniec (2025) describe the PiS-era constitutional dismantling as an “extra-systemic dissensus” that fundamentally disrupted Poland’s relationship with the EU. The Constitutional Tribunal—reengineered as a political instrument—played a

central role by asserting the primacy of the Polish Constitution over EU law, directly challenging the EU's legal order. Moreover, judicial reforms and disciplinary actions against independent judges cast serious doubt on Poland's compliance with EU principles regarding judicial independence. As in Hungary under Viktor Orbán, Poland's confrontational stance prompted the European Union to respond with legal proceedings and financial measures, including the suspension—and eventual conditional release—of EU funds tied to rule-of-law benchmarks.

The challenges posed by the abuse of administrative law, the emergence of “dual states,” and the erosion of democratic checks are not limited to Poland or even Central and Eastern Europe. These phenomena are part of a broader global pattern of democratic backsliding, visible across political and legal cultures. In Turkey, Erdoğan's regime strategically exploited administrative and emergency legal frameworks to dismantle oversight institutions and punish dissent. Special courts designed ostensibly to democratize the judiciary were reconfigured into tools of repression, legitimizing purges and silencing opposition actors under a formal veneer of legality (Över et al., 2025). In India, Modi's government has retained democratic appearance while relying on colonial-era sedition laws and administrative restrictions to marginalize NGOs and persecute critics — what scholars call the “fully legal harassment” of the opposition (Tudor, 2023; Över et al., 2025). Comparable dynamics have also emerged in Serbia, where executive authorities routinely override judicial oversight, and in the United States, where recent waves of executive overreach and politicization of administrative agencies have raised concerns about the fragility of legal-institutional norms. Together, these examples point to a transnational pattern in which populist or illiberal leaders weaponize the machinery of administrative law to erode democratic guardrails without formally dismantling the rule of law.

#### **4. Consequences and the 2023 Elections**

The 2023 Polish parliamentary elections, which resulted in the defeat of the illiberal PiS government by a coalition of opposition parties, renewed hopes for rebuilding the rule of law in Poland. The outcome marked a clear victory for the former opposition, which succeeded in forming a new governing coalition. A record-high voter turnout of 74.4% played a crucial role in ending the rule of the right-wing bloc. Although PiS formally received the highest vote share as a single party, the combined support for opposition forces translated into a decisive parliamentary majority—enough to build a stable government and initiate democratic restoration.

This new government, led by Donald Tusk, has identified the restoration of the rule of law—particularly the reestablishment of judicial independence—as a central electoral commitment and policy priority. Nevertheless, from the outset, it has faced a highly constrained institutional environment, shaped by the continued influence of officials appointed during the previous administration. As Bendyk, Czapliński, and Kosiewski (2024) note, this configuration ‘hinders the liberal-democratic transition by forcing the new majority to play on the edge of the law, and sometimes beyond it.’ Several key state institutions—including the Constitutional Tribunal, the Supreme Court, and the National Council of the Judiciary (KRS)—remain under the control of PiS-affiliated appointees occupying long-term positions. This has resulted in persistent institutional resistance and competing claims to legal legitimacy, giving rise to concerns about the emergence of a ‘dual legal system’ in which state organs no longer uniformly acknowledge each other’s authority.

The Constitutional Tribunal, whose members were appointed during PiS's parliamentary majority, has continued to advance PiS's agenda and to act as an obstacle to introduce judicial reforms. It has even issued interim measures (which it had no legal basis for) to block the Minister of Justice's actions, such as dismissing politically appointed court presidents. Notably, the authorities ignored this ruling from the Constitutional Tribunal in at least one instance. This act of ignoring a ruling from a politicized court could be seen as non-compliant with the existing, albeit contested, legal framework, but is arguably done in pursuit of restoring a true rule of law and judicial independence.

The PiS-aligned President Andrzej Duda retained the power to veto new laws, which hindered reforms related to the KRS and Constitutional Tribunal by referring them to the politicized Constitutional Tribunal. This forced the new government to seek alternative solutions without waiting for the presidential election to set the course; however, they were limited in their effectiveness. Also, the challenge of regulating the status of over 3,000 judges appointed or promoted through flawed procedures since 2018 remained significant. While the Minister of Justice has established a Rule of Law Restoration Team to discuss various models for this, the magnitude of the issue suggests that any comprehensive solution might require navigating legal ambiguities or pushing the boundaries of existing norms to rectify the systemic defects.

The EU's own mechanisms for addressing rule of law backsliding, such as Article 7 TEU, have been described as hard to satisfy and primarily political rather than judicial instruments. Their futile implementation in Hungary and slow progress in Poland highlight the difficulties of relying solely on external, conventional legal processes to compel a return to the rule of law when an illiberal government has deeply entrenched its influence. The "radical deterioration of constitutionalism on the ground in the backsliding states"

suggests that conventional, slow, and purely legalistic responses may not be sufficient to address the scale of the problem.

Poland's post-2023 trajectory illustrates the complexity and fragility of rule-of-law restoration in the aftermath of illiberal governance. Bill and Stanley (2025) characterize the dilemma faced by the new government as a 'post-illiberal trilemma.' The coalition led by Donald Tusk committed itself to restoring democratic institutions in a manner that would be rapid, effective, and fully compliant with legal norms. However, as the authors point out, in practice the government often found it possible to satisfy only two of these objectives at a time. It thus faced a persistent tension between inaction—risking the entrenchment of systemic damage and alienation of its electoral base—and assertive interventions that occasionally tested the limits of legal orthodoxy. Some reforms proved too incremental to reverse the legacy of the previous administration, while others—pursued through exceptional or contested procedures—risked echoing the *modus operandi* of the illiberal regime. As Bill and Stanley observe, the institutional architecture left by PiS included 'traps' that are difficult to neutralize without, paradoxically, adopting some of the very methods characteristic of populist rule. In this context, efforts at democratic restoration were at times criticized for reproducing rather than merely dismantling illiberal practices.

Despite the Tusk government's consistent declarations to restore the rule of law 'within the bounds of the law,' the enduring presence of illiberal institutional structures and the intensity of political opposition have created pressures that complicate strict adherence to this principle. For example, the decision to disregard rulings issued by a politically captured Constitutional Tribunal may be viewed as a legally contentious yet strategically necessary measure aimed at dismantling the remnants of what has been termed 'abusive constitutionalism' and re-establishing democratic constitutional order. Such actions raise a fundamental normative dilemma: whether the restoration of the rule of law can justify departures from the contested legal framework inherited from the illiberal regime. In effect, the government is often forced to navigate between legal formalism and democratic renewal, illustrating the ethical and constitutional paradox faced by reformist administrations in post-authoritarian settings. Nearly two years after the 2023 elections, it remains clear that the restoration of liberal democracy has progressed more in rhetorical terms than through substantive institutional transformation. As such, the Polish case reinforces the broader observation that rebuilding the rule of law is not an event, but a protracted and uncertain process.

## 5. Deepening The Challenges After 2025 Presidential Elections

Contrary to expectations, the 2025 presidential election was narrowly won by Karol Nawrocki, the PiS-backed candidate, defeating the liberal contender Rafał Trzaskowski. Nawrocki, viewed as even more conservative and illiberal than his predecessor Andrzej Duda, presents an additional obstacle to the government's efforts to restore the rule of law. As discussed earlier, the administration formed after the 2023 parliamentary elections was already navigating a difficult and protracted process of institutional recovery, following eight years of governance marked by the erosion of judicial independence and the circumvention of constitutional norms. The government has adopted a strategy of delaying some crucial reforms, like the "reset" of the Constitutional Tribunal, until after the presidential election, hoping for a more favorable presidential alignment. After the election, this strategy has been severely undermined, prolonging the period of institutional paralysis and potentially deepening the crisis of democracy by preventing the restoration of public trust in institutions.

The new President—judging by his public declarations and early use of the veto power—is highly unlikely to support the government's proposed reforms aimed at restoring the rule of law, particularly in the area of judicial independence. His veto authority enables him to block or significantly delay key legislative initiatives, thereby forcing the government to either compromise or seek alternative, and potentially legally contentious, pathways. The Constitutional Tribunal, already heavily politicized, played a central role in legitimizing the agenda of the previous PiS government, including rulings that challenged the compatibility of EU and ECHR standards on judicial independence with the Polish Constitution. The new President is expected to continue referring government bills to this Tribunal for prior constitutional review, thereby employing it as a mechanism to obstruct reform efforts. As a result, the Tribunal is likely to remain a substantial institutional barrier to judicial reconstruction, further prolonging Poland's constitutional crisis.

Many key state institutions remain under the control of PiS-affiliated loyalists. Nomination of new judges continues, and the functioning of the Constitutional Tribunal remains effectively blocked due to internal divisions and questions over the status of its members. Meanwhile, opposition-led efforts to restore legal order are constrained by these structural entrenchments, which complicate the reversal of prior abuses. As a result, Poland finds itself in a legal limbo: the government has changed, but the institutional architecture built under illiberal rule still shapes the boundaries of lawful governance.

The process of holding the previous government accountable for alleged legal violations and corruption has been progressing slowly. In July 2025, a

government reshuffle brought a notable shift in the Ministry of Justice, with judge Waldemar Żurek assuming the ministerial portfolio. Żurek, himself a prominent victim of politically motivated reprisals under the previous administration, quickly emerged as a key figure in the government's strategy to confront and reverse the legacy of rule-of-law dismantling. His appointment signaled a more assertive stance toward accountability and transitional justice, with initial steps focused on exposing and addressing abuses committed by the prior regime within the judiciary.

In order to counter the challenges posed by the election of a new illiberal president, the government needs to employ not only defensive legal and institutional safeguards, but also proactive political, social, and economic strategies. These should aim to rebuild public trust, enhance transparency, strengthen civic participation, and address the underlying drivers of populist support by demonstrating effective governance and a sustained commitment to democratic principles. Achieving these objectives, however, is likely to prove exceptionally difficult.

## **6. Some Lessons for Preventing Authoritarian Tendencies and Addressing Challenges to The Rule of Law**

The Polish case offers several important insights and lessons for preventing authoritarian tendencies and addressing challenges to the rule of law. The populist regimes tend to reject the established understanding of the rule of law, which limits political power through law, especially the constitution, and seek to restrict individual rights and freedoms, particularly those of minorities. "Illiberal democracy" also reinterprets core democratic principles like representation and separation of powers and may replace the "rule of law" with "rule by law". This concept often undermines institutional pluralism, where local governments, the private and voluntary sectors, the judiciary, and independent oversight bodies would otherwise restrict central government power and prevent consolidation.

Efforts to restore the rule of law following a period of illiberal governance must contend not only with institutional resistance, but also with the urgency and expectations of democratic renewal. As Bill and Stanley (2025) argue, the new Polish government confronted what they describe as a "post-illiberal trilemma," in which "Tusk's government was committed to delivering quick, effective, and unimpeachably legal solutions to illiberalism." This formulation reflects the immense difficulty of satisfying all three imperatives simultaneously. If reforms are too slow, they risk prolonging the crisis and eroding public trust; if they are rushed or legally dubious, they may replicate the very abuses they aim

to undo. Thus, the authors suggest that achieving restoration that is both legitimate and sustainable requires navigating this trilemma without sacrificing democratic principles.

At the heart of this struggle lies administrative law—a legal domain traditionally intended to safeguard individuals against state overreach. However, as the Polish experience demonstrates, once liberal-democratic principles are eroded, administrative law can be repurposed to serve authoritarian objectives. Yet, this same legal framework, if reanchored in constitutional values and democratic oversight, may also offer tools for resisting backsliding and restoring the rule of law. Thus, the Polish case illuminates not only the risks of administrative law’s misuse but also its potential as a vehicle for democratic renewal.

The Polish case also illustrates that administrative law, though vulnerable to abuse, can be harnessed as a pragmatic tool for rule-of-law restoration when legislative avenues are blocked or politically fraught. Facing structural constraints—most notably a hostile president and a politicized Constitutional Tribunal—the post-2023 government increasingly turned to administrative instruments to pursue incremental reform. The Minister of Justice, for instance, refrained from exercising expansive appointment powers inherited from the previous regime, instead allowing court presidents to be selected by assemblies of their judicial peers, thus reinforcing internal judicial autonomy. Similarly, the replacement of the National Prosecutor was achieved not through sweeping statutory reform but via administrative procedures grounded in existing legal provisions. These measures, while limited in scope, reveal how administrative discretion and restraint can serve as stopgap strategies in contexts where constitutional change is stalled. By leveraging administrative tools within the bounds of legality, the government was able to initiate a partial reconstitution of judicial independence and institutional integrity—an example of how law, even under strain, can be used not only to constrain but also to reconstruct democratic governance.

Building on this, the experience of Poland also demonstrates that local self-government plays a crucial role in defending democratic norms and institutional pluralism in the face of illiberal centralization. During the country’s post-authoritarian transition, the reestablishment of robust, autonomous local authorities not only modernized the state and improved administrative efficiency but also deepened democratic control and citizen engagement (Jakubek-Lalik, 2020). In this way, local government served as a structural counterweight to centralized executive power, helping to insulate the political system from full authoritarian capture. In illiberal democracies, where populist regimes often seek to concentrate authority and undermine independent institutions, local self-government can act as a site of resistance and democratic

resilience. Yet this role is far from guaranteed. As Poland's recent trajectory has shown, even well-established local institutions remain vulnerable to "creeping recentralization"—a gradual erosion of autonomy through financial dependency, regulatory overreach, and selective political targeting. Safeguarding the competences of local authorities is therefore essential not only for democratic functionality, but for preventing the monopolization of power characteristic of populist rule.

To prevent the abuse of administrative law under future governments, an additional multilayered reform strategy is essential. First, insulating the civil service from political capture through merit-based recruitment, tenure protections, and restrictions on arbitrary dismissal can help safeguard impartial administration. Second, reinforcing the independence of administrative courts—by removing executive control over judicial appointments and ensuring security of tenure—ensures that legal oversight remains credible. Third, democratizing administrative procedures through enhanced transparency and participation—such as public input on agency guidance, open hearings, and digital publication of draft decisions—can foster accountability. Fourth, protecting both citizens and civil servants from administrative retaliation is crucial: whistleblower protection laws and anti-reprisal safeguards deter arbitrary or politically motivated enforcement. Finally, robust mechanisms for judicial and societal oversight—through accessible court review, empowered ombudsman institutions, and strong freedom-of-information regimes—ensure that administrative acts are subject to continuous scrutiny. Together, these institutional and procedural safeguards fortify the rule of law by ensuring that administrative power is exercised not arbitrarily, but in the service of legal norms and democratic accountability.

## 7. Conclusions

The restoration of the rule of law in Poland, particularly after the 2023 parliamentary elections, underscores the complex and at times paradoxical role of administrative law. While populist regimes—such as the PiS government—effectively leveraged administrative mechanisms to centralize power and marginalize dissent, these same tools can also serve as foundations for democratic recovery. By relying on regulatory and procedural instruments, the previous government managed to maintain a formal compliance while eroding core democratic standards. Preventing such instrumentalization in the future requires dismantling remnants of the "prerogative state" and ensuring that all state actions are grounded in positive law, aligned with constitutional principles and international standards, and subject to effective judicial review.

The political transition initiated in October 2023 marked a significant turning point, launching efforts to rebuild rule of law and restore judicial independence. These efforts, however, quickly encountered serious legal and institutional hurdles. Resistance has come not only from entrenched beneficiaries of the previous system, but also from the President, who remains aligned with the former ruling party and holds key veto powers. Reforming the judiciary remains an urgent priority—particularly the depoliticization of the Constitutional Tribunal and the National Council of the Judiciary (KRS), both of which had been co-opted through loyalist appointments. The Tribunal's continued obstruction of reform, including rulings against the Minister of Justice's initiatives, illustrates its role in prolonging the constitutional impasse. Moreover, with the likelihood of the new PiS-backed President using his powers to veto or refer laws for review, the legislative pathway remains fraught. Addressing the status of judges appointed or promoted through flawed procedures since 2018 also presents a legally complex challenge, requiring nuanced responses that may test the boundaries of current legal norms. Central to these reforms is the effort to reinstate judicial self-governance in appointments and disciplinary matters, replacing political influence with peer-based processes. Meanwhile, the push to hold the previous administration accountable for legal abuses and corruption faces continued institutional resistance.

Against this backdrop, the Polish experience offers important lessons on the dual nature of administrative law: while susceptible to abuse, it also holds potential as a vehicle for democratic renewal. The 2025 presidential election underscored the fragility of societal consensus around rule-of-law restoration and revealed the limits of relying solely on legislation. With institutional veto players still in place, comprehensive statutory reform is often unfeasible. This necessitates alternative approaches—including the use of internal administrative regulations and regulatory discretion that can advance reform while remaining within constitutional bounds. Equally vital is the cultural dimension of rule-of-law restoration: cultivating a governance culture of legality, transparency, and institutional restraint so that the rule of law becomes a deeply embedded, everyday practice rather than a mere legal ideal.

To achieve this, legal safeguards must be complemented by resilient democratic infrastructure. An independent judiciary protected from political interference is essential. Likewise, local self-government must be fortified against the “creeping recentralization” seen in previous years—manifested in fiscal control, regulatory overreach, and erosion of autonomy. Strengthening civil society and media freedom is also critical. This includes restoring public consultations, reestablishing CSO access to legislative processes, and decentralizing funding to protect their independence. Countering the legacies

of illiberalism requires more than defensive measures; it demands a forward-looking agenda that rebuilds public trust, enhances civic participation, and upholds democratic accountability.

In conclusion, although often exploited by regimes in democratic decline, administrative law's orientation toward accountability and legal restraint—if coupled with judicial independence, empowered local governance, and active civic participation—makes it a powerful tool for democratic repair. The Polish case stands as a sobering but instructive example of the ongoing necessity to defend these structural and cultural foundations against erosion.

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