

Ryszard Piotrowski

University of Warsaw, Poland

e-mail: r.j.j.piotrowski@uw.edu.pl

ORCID: 0000-0002-3801-7364

A REPUBLIC OF DISTRUST, FEAR AND DIVISION. RETHINKING CONTEMPORARY POLISH EXPERIENCE*

Abstract

The system of governance in contemporary Poland is founded mainly on a negative narrative of distrust. That narrative brought to power the country's present scaremongering rulers. They continue feeding the public with frightening stories of an influx of refugees, threats of war and terrorist attacks, evils of globalisation and a loss of cultural identity to foreign ways of life. A balance between distrust of rulers and trust in them is part of democracy's constitutional identity. Those currently in power sow distrust in liberal democracy and its values – they violate the constitution, stir up distrust of elites, and make attempts at bringing the judiciary to heel while staging judges bashing propaganda campaigns. Distrust of European law and European institutions is part and parcel of this process. The negative narrative weakens and threatens to disenfranchise civil society, blurring the line between law and lawlessness. It also weakens those in power.

KEYWORDS

distrust, power, constitution, democracy, state, human rights, new technologies, judicial power, opposition

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SŁOWA KLUCZOWE

nieufność, władza, konstytucja, demokracja, prawa człowieka, nowe technologie, władza sądownicza, opozycja

1. In her Nobel lecture, which included the passage “there is something wrong with the world,” Olga Tokarczuk reminded us that “he who has and weaves the story is in charge”.¹

The system of governance in contemporary Poland is founded mainly on a negative narrative of distrust. That narrative brought to power the country’s present scaremongering rulers. They continue feeding the public with frightening stories of an influx of refugees, threats of war and terrorist attacks, evils of globalisation and a loss of cultural identity to foreign ways of life.²

A balance between distrust of rulers and trust in them is part of democracy’s constitutional identity.

Those currently in power sow distrust in liberal democracy and its values – they violate the constitution,³ stir up distrust of elites, and make attempts at bringing the judiciary to heel⁴ while staging judges bashing propaganda campaigns. Distrust of European law and European institutions is part and parcel of this process. The negative narrative weakens and threatens to disenfranchise civil society, blurring the line between law and lawlessness. It also weakens those in power.

The present pervasive pessimism about the future (consequences of climate change and technology development) reinforces the distrust in the ruling class – now only in Poland. For the authorities to enjoy trust, people must optimistically believe that they can deliver a safe and secure future. Moreover, democratic institutions lose their legitimacy when they cannot resolve problems they contribute to creating.

An indication of mistrust in those in power, in their experts and their truths, is provided by the large proportion of those who have skipped COVID-19 vaccination. The government attempts to encourage vaccination by enlisting support from the Catholic Church. However, trust in the Church hierarchy is limited when many clergy members openly take the government’s side, and many senior Church officials are accused of condoning paedophilia.

¹ <https://www.nobelprize.org/prizes/literature/2018/tokarczuk/lecture/>.

² Cf. W. Sadurski, *Poland’s Constitutional Breakdown*, Oxford 2019, p. 168 ff.

³ Commission Staff Working Document 2021 Rule of Law Report – Country Chapter on the rule of law situation in Poland, https://ec.europa.eu/info/sites/default/files/2021_rolr_country_chapter_poland_en.pdf.

⁴ R. Piotrowski, *The issue of the legitimization of the judicial power in a democratic state ruled by law*, (in:) A. Machnikowska (ed.), *The Legitimation of Judicial Power*, Gdańsk 2017, p. 17.

A rivalrous democracy – where, just as in the market economy, the goal is to destroy competitors – triggers mutual de-legitimacy of those in power and those aspiring to it. Little wonder, then, that trust in the system of governance, so constructed, is by no means high. The final argument for democracy remains one offered by Churchill: your choice is the best because you have no other choice.⁵

Critical distrust in government comes as a constructive element of the perception of government in the culture of constitutionalism. As Jefferson put it, “confidence is everywhere the parent of despotism; free government is founded in jealousy and not in confidence”.⁶ Nevertheless, for democracy to survive, those in power and those aspiring to power must realise that the democratic system constitutes a community of values in which they all must have confidence, even if not trusting each other.

2. Trust is an extremely scarce commodity in today’s world, where its exact opposite is the dominant feature of global relations. Given the level of lingering distrust among some winners of World War II, one might be justified in thinking that that war has yet to be completed. What has changed is only the intensity of this distrust – between, on the one hand, the East, namely Russia and China, and on the other, the West, i.e., the United States and its allies.⁷ “Trust, but verify” was Reagan’s advice for Gorbachev,⁸ who, however, found verifying Reagan to be out of his reach.

Respect for the truth underlies confidence among people and nations, but as it happens, truth in a contemporary world is as scarce as trust is in a society founded on exploitation and inequality.

We are said to live in a world of post-truth.⁹ A lie may be used as justification for hostilities undertaken in breach of international law, and the perpetrators will not be held to account. How then could we deny relevance to a message of 25 centuries ago, recorded by Thucydides, that the superpower of the time, Athens, conveyed to Miletus (who enjoyed no such status): You know it as well as we do that the stronger reach their goals and the weaker do not?

Miletus did not surrender to Athens, and its fate was terrible. Men were slain, and women with children were sold into slavery.¹⁰

Can we reasonably believe that human nature has since changed in any significant way?

⁵ Cf. <https://winstonchurchill.org/resources/quotes/the-worst-form-of-government/>.

⁶ Cf. T. Jefferson, (in:) A. A. Lipscomb (ed.), *The Writings of Thomas Jefferson*, Vol. II, Washington 1903, p. 163.

⁷ Cf. H. Kissinger, *World Order*, New York 2015.

⁸ Cf. <https://www.forbes.com/sites/frankarmstrong/2019/10/21/trust-but-verify/>.

⁹ Cf. A. Przeworski, *Crisises of Democracy*, Cambridge 2019, p. 119 ff.

¹⁰ Cf. Tukidydes, *Wojna peloponeska* (Thucydides, *The History of the Peloponnesian War*), Warszawa 1988, p. 337.

European experience and the history of Poland hardly provide any convincing reason to build up trust in our neighbours. Consequently, the opposition tends to accuse the governing party of serving Russian interests, while pro-government media portray the politician who aspires to lead the opposition as a German viceroy.

The past is used as building blocks to put up domestic divisions and yarn to spin stories about trustful good patriots on the one hand and, on the other, such Poles who are eager to take orders from abroad.

The common good is absent from political practice, where rival actors interpret this notion in their way while discrediting the interpretation provided by opponents. That leaves no room for politics understood as reasonable care for the good of society.

The divisions created by politicians magnify the distrust that permeates the social interactions in some researchers' views. In the light of social psychology findings, we seem to live in a culture of jealousy and mutual distrust.

Lack of trust is also about the Constitution, which some in the government camp describe as "communist", "disgraceful", or – in the president's words – "provisional". The constitutional model of liberal democracy receives support from between 23% and 27% of the respondents.¹¹ The government and its followers present it as a tool to further the elites, who purportedly serve foreign interests and are responsible for Poland's having been turned into a western colony.

While European integration attracts overwhelming majority support in Poland, the conservative groups in the echelons of power seek to build their advantage based on mistrust in European values such as respect for minority rights, including the rights of sexual minorities. They argue that such respect would threaten the Polish national identity, to which Poles are entitled within the European Union, understood by them as a Europe of Nations, not a European federation.

3. Mutual distrust is a dominant feature of the government-opposition relationship, with both parties accusing the other of corruption and branding them thieves. Furthermore, the electorate cast their votes believing that they exercise civic duty by supporting those they believe serve the country well.

As its Preamble states, the Constitution is established by "We, the Polish Nation – all citizens of the Republic", regardless of their political differences.

The Constitution is established with the desire "to guarantee the rights of the citizens for all time, and to ensure diligence and efficiency in the work of public bodies" (as the Preamble reads) – and not to perpetuate the rule of any party or social class.

The law is based on "respect for freedom and justice, cooperation between the public powers, [and] social dialogue" (as in the Preamble). The Republic of Poland

¹¹ Cf. J. Czapiński, T. Panek (eds.), *Diagnoza społeczna 2009 (Social Diagnosis 2009)*, Warszawa 2009, p. 271.

is “the common good of all its citizens”, reads Article 1. It is, therefore, the common good of – both – the majority and the minority. The Constitution rules out a situation where a minority – that is, the opposition – is barred from defining the common good and the public interest, which should be formulated by the majority and the minority in dialogue and a process of mutual interactions.

“Supreme power in the Republic of Poland shall be vested in the Nation, [and] the Nation shall exercise such power directly or through their representatives”, reads the Constitution in its Article 4. The notion of representatives of the Nation also includes those who lost the elections but who at the same time won, having being elected Members of Parliament – even if they are not in the majority. The Constitution does not differentiate between different statuses of the representatives. Even if backed by just 19% of those eligible to vote, each majority considers itself the only legitimate representative of the Nation. However, nothing in the Constitution says that the citizens who voted for the election losers do not belong to the Nation and cannot exercise their sovereignty.

“Deputies shall be representatives of the Nation. They shall not be bound by any instructions of the electorate” (Article 104 of the Constitution). Embracing the free mandate, and rejecting the imperative mandate, would provide a good starting point for the majority and the opposition to engage in a shared effort to define the good of the Nation. The Constitution does not allow to absolutise the ties linking a Deputy with the political party of which he or she is a member.

According to Article 110.2 of the Constitution, “The Marshal of the Sejm shall preside over the debates of the Sejm, safeguard the rights of the Sejm as well as represent the Sejm in external matters.” The Constitution puts the representative of the majority – that is, the Sejm Marshal – under the obligation to protect the rights of the opposition, who constitute a part of the Sejm. Without the opposition, the Sejm would lack its Constitutional identity in a democratic state.

According to Article 11 of the Constitution, “1. The Republic of Poland shall ensure freedom for the creation and functioning of political parties. Political parties shall be founded on the principle of voluntariness and upon the equality of Polish citizens, and their purpose shall be to influence the formulation of the policy of the State by democratic means. 2. The financing of political parties shall be open to public inspection”.

This passage is of crucial importance for mutual relations between the majority and the opposition. It lays down the principle of political pluralism, based on the freedom of political parties. It allows political parties to use only democratic methods, where the Constitution is respected even in power rivalry. That requires that political parties respect each other, disallow hate speech, rule out law infringing, and use state agencies for political purposes. The transparency of the financing of political parties is meant to prevent infringements of regulations governing this field, especially where such infringement puts the opposition at a disadvantage.

The rights of the opposition are guaranteed by the Constitutional provisions on the political rights and freedoms, especially the freedom of speech, freedom of assembly and association, and the right to a fair trial. Under the Constitution, the source of human rights is not the discretion of any authority based on consent or the discretion of any other majority, but the “inherent and inalienable dignity of the person” (Article 30 of the Constitution), which is beyond the reach of any supreme power.

The non-political nature of the judiciary guarantees the rights of the political opposition, that is, courts and tribunals, and by their particular position in the system of governance. In its Article 173, the Constitution reads: “The courts and tribunals shall constitute a separate power and shall be independent of other branches of power.”

In the light of the Constitution, the following bodies of state control and protection of law can be regarded as non-political and independent public institutions – even if they are appointed by Parliament, by politicians. These are the Supreme Chamber of Control (or, to be more precise, its president), the Ombudsman (also referred to as the Commissioner for Citizens’ Rights), the National Council of Radio Broadcasting and Television (established to safeguard the freedom of speech and the public interest in the media), president of the National Bank of Poland, and the Council for Monetary Policy.

The rights and freedoms – also of the opposition – are not presented in the Constitution as absolute. They can be limited. “Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights” (Article 31.3). That means that the rights of the opposition and its chances to play its proper role, meaning the chances of its turning into a majority as a result of an election, are guarded by the Constitutional Tribunal and by courts of law – to the extent in which they review the constitutionality of laws restricting the exercise of rights and freedoms.

The most suitable ways and means – at the legal, institutional and practical level – for building a (more) constructive and effective cooperation between the majority and the opposition are these:

- strict observance of the law by the majority and by the opposition, to avoid consenting to disregard of the law due to political considerations;
- developing such political and civic culture which provides rooms for dialogue between the majority and the minority;
- cooperation between opposition parties in Parliament, instead of mutual enmity and fight against the extra-parliamentary opposition;
- opposition based on a competing manifesto instead of total opposition; ideas instead of invectives;

– readiness on the part of the majority to accept opposition proposals serving the common good; and readiness to abandon the practice where opposition proposals are rejected just because the opposition moved them.

The constant tension between the majority and the opposition results in a continuous rivalry by parties for results of public opinion polls. The majority parties and the opposition parties alike have all the time to:

- 1) provoke the interest of the media and draw their attention;
- 2) discredit the opponents in a race for opinion-poll support.

All this is conducive to antagonistic cooperation between majority and minority and makes it more challenging to collaborate rationally.

4. A democratic state ruled by law is founded on trust in state institutions and the laws made thereby. On the other hand, though, a state that has been created to guard the legal order and protect its citizens from threats posed by others (and by nature) is based on mistrust resulting from human beings' ever-present sense of endangerment. That is about an existential condition of suspicion and uncertainty, rooted in individual experiences and corroborated by history.

Constitutional democracies are primarily underpinned by a lack of confidence in society and the belief that – in Thomas Jefferson's words – there should be "limited constitutions to bind down those whom we are obliged to trust with power".¹² The sovereign, meaning the people, must not be trusted and instead must be fashioned in compliance with constitutional values. This mistrust of citizens – in whose name politicians conduct their business – found reflection in the failure to mount a referendum on Poland's post-1989 systemic transition.¹³ A certain amount of suspicion about citizens' wisdom and decency can also be found in the Polish Constitution, which – just like other democratic constitutions – outlaws undemocratic parties. Based on past and new experiences, the framers of the Constitution have not been overconfident about citizens' ability to resist the seduction of totalitarian ways. The Constitution bans the activities of anti-system parties. Its Article 13 reads: "Political parties and other organisations whose programmes are based upon totalitarian methods and the modes of activity of Nazism, fascism and communism, as well as those whose programmes or activities sanction racial or national hatred, the application of violence to obtain power or to influence the State policy, or provide for the secrecy of their structure or membership, shall be prohibited." Whether or not the goals or activities of a political party conform with the Constitution is adjudicated by the Constitutional Tribunal.

Similarly, the otherwise rational belief that media pluralism does not extend to permitting the operation of TV stations other than those licensed by the relevant authority (in compliance with the Act for the National Radio and Television Board) can hardly be interpreted as a sign of confidence in the citizenry.

¹² Cf. T. Jefferson, (in:) A. A. Lipscomb (ed.), *The Writings...*, p. 163.

¹³ Cf. M. Safjan, *Demokracja referendalna (Democracy and referendum)*, „Newsweek”, October 26, 2008, p. 42.

The likely reasoning behind this position is that numerous viewers of such programmes might be swayed by a persuasion contradicting the *raison d'état*, as defined by the government, and that citizens must be denied a choice for their good they may not be aware of. Consequently, they might make wrong choices – and therefore, state coercion must be invoked to protect potentially endangered fundamental values.

Lack of confidence has affected the Constitution, too.¹⁴ On the one hand, it is contravened when its provisions are flouted and when it is referred to as “provisional”, and on the other, it is extolled as the supreme law when seeking to justify the government’s violations of the European Union’s functional constitution.¹⁵

Another manifestation of the culture of suspicion is the portrayal of members of the legal profession, and especially judges – in the government’s propaganda campaigns – as a privileged caste that must be done away with through what is presented as a much-delayed purge which should have been mounted back in the post-1989 period.

Mistrust of the opposition among the parliamentary majority and vice versa is striking. At the Sejm, government-sponsored legislative proposals are commonly questioned by the opposition, and the opposition’s initiatives are as a matter of routine blocked or rejected as flawed. Moreover, as conducted by the majority, the legislative process is usually not worthy of its name.

5. Lack of confidence about the electorate’s acceptance of the choice of the governing majority is high among the reasons why the processing of an abortion-restricting initiative at the Sejm was discontinued and the final say – contested on the streets – was had by the Constitutional Tribunal.

The judgement of the Constitutional Tribunal Ref. No. 1/20 is tantamount to issuing such new regulation on pregnancy termination that the legislature has not passed in a process requiring majority support. At stake is the banning of abortion of malformed foetuses. The judgement gives rise to reservations about its constitutionality and the constitutional status of the Tribunal itself.¹⁶

Constitutional interpretation in the jurisprudence of the Constitutional Tribunal has a limit which could be described as follows: the findings of such interpretation must comply with the principles and values on which the constitutional system is founded. The Guardian-of-Constitution role assigned to the Tribunal does not mean that this court has been vested with the right to resolve unsolvable moral dilemmas or to create constitutional provisions concerning human rights – including where such newly-created provisions undermine a fragile social consensus and where the Tribunal’s constitutional identity is open to question.

¹⁴ Cf. W. Sadurski, *Poland’s Constitutional...*, p. 14 ff.

¹⁵ Cf. T. Isiksel, *Europe’s Functional Constitution. A Theory of Constitutionalism beyond the State*, Oxford 2016, p. 7 ff.

¹⁶ See A. Gliszczyńska-Grabias, W. Sadurski, *The Judgement That Wasn’t (But Which Nearly Brought Poland to a Standstill)*, “European Constitutional Law Review” 2021, No 1, p. 130 ff.

The judgement rests on the premise that, in deference to religious considerations, the questioned provision of the pregnancy termination law must be stricken down, thus enforcing submission to such injunctions that mandate suffering – and this is suffering commanded by the government’s political will, not by the conscience of the person concerned. In a democratic state ruled by law, it is impermissible to impose one’s faith on others, who do not share one’s beliefs and to enforce submission to religious commandments on pain of punishment – as would be the fate of doctors who contravene the prohibitive measure resulting from the Tribunal’s pronouncement.

The outcome of the judgement – replacing individual conscience with the conscience of public authority – can hardly be seen as fleshing out the principle of dignity of the person, laid down in Article 30 of the Constitution.

The judgement blurs the line between law and morality, and it reflects a lack of empathy, characteristic of what could be described as constitutional authoritarianism.

The removal of the statutory provision questioned by the Tribunal has the effect of abandoning the constitutional promise of assistance to those in the direst need and replacing it with an ostentatious demonstration of public authority’s ruthlessness. Likewise, the intimate sphere of maternity and parenthood have been subjected to an imminent risk of state coercion.

The impossibility of reversing the final and no-longer-appealable judgement of the Constitutional Tribunal (leaving aside doubts about that body’s constitutional status) leads us towards a dual system of governance and a situation where people gradually become accustomed to lawlessness. However, even in the absence of an organ and procedure to attest to lawlessness, this lawlessness will not become law.

A solution to the legality of abortion, which would be rational and socially acceptable, should balance the protection of unborn life and the protection of women’s right to make their own decisions about their own life.

6. It is worth noting that the constitutional judiciary and judicial review crisis in Poland was triggered by a lack of confidence in the political independence and impartiality of Constitutional Tribunal judges. While some in the political class believed that the Tribunal should be staffed with trusted jurists, even ahead of time – for which a legal basis was created, later found by the Tribunal to be unconstitutional – others believed that the judges selected by the political competition must not be trusted and therefore must not be accepted (even if the selection process complied with the Constitution) and that only “their own” jurists should be installed at the Tribunal.¹⁷

¹⁷ See R. Piotrowski, *Remarks on the Dispute over the Constitutional Tribunal in Poland*, “*Studia Iuridica*” 2016, Vol. LXVIII.

Consequently, Poland has a Constitutional Tribunal trusted by the parliamentary majority but mistrusted by the opposition. The European Court of Human Rights questioned the judicial status of some members of that body.¹⁸ Contrary to the intended role of the Constitutional Tribunal, its crises add to the mistrust of the state and the laws, is conducive to blurring the line between law and lawlessness, and results in what can be described as gradually getting used to living with lawlessness.

That also holds for the consequences of unconstitutional changes at the National Council of the Judiciary (Polish acronym: KRS). Mistrustful of judges, the politicians of the ruling majority have embraced an unconstitutional interpretation of the Constitution and arranged that the judges previously posted to the KRS by the judicial community would be selected by the Sejm. As a result, the National Council of the Judiciary has lost its constitutional identity and the status of a constitutional organ. The president appoints judges at the request of the KRS – but when such request is made by a body that is different from the National Council of the Judiciary, as described in the Constitution, then the president-appointed judges are no judges at all. They can be regarded as judges only by those who trust the government and its message to the effect that the changes at the KRS were lawful and that the presidential act of appointment of a judge could not be legally questioned.

7. Mistrust in the elites – which the government claims must be replaced with new ones – breeds experts' mistrust. That is a factor behind the scant interest shown in COVID-19 vaccination. Opponents of the vaccination drive find it easy to recruit followers in a situation where politicians attempt to assume the mantle of sole trusted authority.

Public confidence in politicians, though, is by no means stellar. According to data from the CBOS public opinion research agency,¹⁹ political parties are trusted by 24 per cent of those questioned and mistrusted by 56 per cent. Meanwhile, trust declarations about other entities are as follows: the WOŚP charity campaign 84 per cent, the military 83 per cent, local government 74 per cent, the European Union 73 per cent, the Roman Catholic church 64 per cent, the president 58 per cent, the government 46 per cent, the courts 42 per cent, the Sejm and the Senate 33 per cent, and the media 32 per cent.

The opinion that most people can be trusted is shared by 22 per cent of the respondents, while 7 per cent believe that one must be very cautious in relations with others.²⁰

Building trust towards the government and each other is not helped by the rise of information technology (especially its deployment to watch citizens) and the

¹⁸ Cf. Chamber judgment I in the case of *Xero Flor Poland* (application no. 4907/18).

¹⁹ From the CBOS public opinion research agency (Research Release 43/2020).

²⁰ *Ibidem*.

ease of exploiting the internet against its users.²¹ Governments and international corporations, collecting more and more data on technology users, have become the source of potential threats to them. As a result, we are witnessing “an expropriation of critical human rights that is best understood as a coup from above: an overthrow of the people’s sovereignty”.²²

8. While democracy makes a peaceful change of government possible, such an option is not available in an algorithmic society,²³ where control over algorithms is beyond the citizens’ reach and trust.

It may well turn out that in a situation where the election result is impacted by the use of algorithms influencing electoral preferences almost unnoticeable to voters, this result is not in keeping with the electorate’s will.

This threat of algorithms’ influencing the will of vacillating voters active on social networks is already making itself felt in modern democracies. In step with the development of information and communication technology, independent thinking skills are seen as declining, reflecting an individual’s growing dependence on technology as a tool to facilitate and intermediate in the thought process.²⁴ Homo sapiens is also said to be turning into homo videns²⁵ – a tractable man exposed to media manipulation and increasingly defenceless against TV and online messaging.²⁶

Information and communication technologies development poses a threat to the privacy of the individual, which is of paramount consequence for the operation of the democratic system. Democracy, understood as a debate to seek truth and collaboration, can only be practised if its participants are free agents whose identity is respected, meaning that they are empowered to define the limits of access to their thoughts and information that denotes human existence in the world. Human dignity in a modern information society is defined by a person’s ability to control data about themselves.

The right to possess all the information about a given individual – adding up to his or her informational identity – may only be vested in that very person. Taking over control of data that are key to a person’s distinctness and separateness paves the way to taking over control of his or her identity, which results in identity is no longer a determinant of that person’s free agency. In this sense, the informational identity of the individual comes as his or her inherent and inalienable feature, coessential with his or her dignity.

²¹ See S. Zuboff, *The Age of Surveillance Capitalism. The Fight for a Human Future at the New Frontier of Power*, London 2029, p. 93 ff.

²² *Ibidem*.

²³ See M. Schuilenburg, R. Peeters (eds.), *The Algorithmic Society*, London–New York 2021, p. 193 ff.

²⁴ Cf. H. Kissinger, *World...*, p. 112 ff.

²⁵ Cf. G. Sartori, *Homo videns. Televisione e post-pensiero*, Roma–Bari, 1997, p. 37.

²⁶ See R. Piotrowski, *New Technologies or New Human Rights: The Right to a Government by Humans and the Rights to One’s Own Thoughts*, “*Studia Iuridica*” 2018, Vol. LXXVI, p. 283 ff.

The very survival of the democratic system, with its roots in the person's dignity, requires that the right to privacy and protection of personal data be guaranteed.²⁷

The democratic system is premised on the individual's dignity, but this dignity disappears when the human being is stripped of their personality traits in a process whereby they are reduced to a set of data collected and processed by algorithms.

In a society driven by algorithms, their source codes may prove more critical than the codes of law. An algorithm aiding a judge in passing sentence may supersede the law, and it may well turn out that the sentence depends on how the algorithm reflects prejudices against litigants. That makes access to algorithms' source codes so much important.

A government using algorithms to determine the status of an individual, evaluate risks, and manage and solve related problems, gets increasingly dependent on the method applied. Algorithmisation may lead to a situation where standards and stereotypes are applied in separation from the government's key common good-related goals, thus dehumanising the exercise of power. In step with the erosion of human rights in an algorithmic society, the people's sovereignty tends to morph into the sovereignty of algorithms.

An algorithm-driven society is particularly exposed to the risk of a slow-paced, almost imperceptible totalitarian transformation. The technology trap may turn into a trap of totalitarianism. Someone who controls algorithms wields uncontrolled power over those whose destinies are algorithm-dependent.

Consequently, it is important not to approach the inevitable rise of algorithms just to put brakes on it. That is hardly feasible because of the very concrete benefits of the algorithms and given the powerful vested interests involved in the process. However, we must not ignore the threats that the cultural identity of a human rights-based civilisation faces from the use of algorithms and also from a persistent tendency towards questioning human rights' universal appeal.

9. Human civilisation has been founded on distrust – to other people, to strangers, and on fear. A deficit of trust is build-in into the self-preservation instinct. A balance between distrust of rulers and trust in them is part of democracy's constitutional identity. Now it seems that a culture of distrust will prevail. Armaments and war preparations are in progress as usual, but we cannot solve the main problems of humankind. Because of a lack of trust, we are wasting time and resources creating new weapons instead of new energy sources.

Thus the idea of a constitutional state, founded on trust in government and the laws, has been gradually eroded – and not only in Poland. However, no other concept of governance – one that would be worthy of the dignity of man and with which this ideal could be replaced – has yet been devised.

²⁷ *Ibidem.*

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