Democracy and the Rule of Law: Rethinking Epistemic Accessibility

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ABSTRACT
This paper examines the rule of law as a case of epistemic inequality, focusing on the growing gap between legal experts and ordinary citizens. It argues that this epistemic asymmetry is not merely a practical problem but theoretically embedded in the very concept and functioning of the rule of law, influencing contemporary debates and raising critical questions about its democratic legitimacy. By revisiting the distinction between formal and substantive conceptions, the risk of technocratic rule, and the contested nature of the concept, the paper offers a revised epistemic account of the rule of law. It emphasizes the need for broader epistemic access to legal knowledge as a condition for meaningful democratic participation.

Questo articolo analizza lo stato di diritto come un caso di disuguaglianza epistemica, concentrandosi sul divario crescente tra esperti giuridici e cittadini comuni. Sostiene che tale asimmetria epistemica non sia soltanto un problema pratico, ma sia teoricamente incorporata nel concetto stesso e nel funzionamento dello stato di diritto, influenzando i dibattiti contemporanei e sollevando interrogativi critici sulla sua legittimità democratica. Riprendendo la distinzione tra concezioni formali e sostanziali, il rischio di un governo tecnocratico e il carattere controverso del concetto, il contributo propone una rivisitazione epistemica dello stato di diritto. Esso sottolinea la necessità di un accesso epistemico più ampio alla conoscenza giuridica come condizione per una partecipazione democratica effettiva.

KEYWORDS
Rule of law, epistemic accessibility, democratic legitimacy, common knowledge, fidelity to legality

Stato di diritto, accessibilità epistemica, legittimità democratica, conoscenza comune, fedeltà alla legalità

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1. *Introduction*

The rule of law has long been understood as a safeguard against the arbitrary exercise of power (Dicey 1915) and as a means to guarantee legal certainty (Fuller 1969). Yet, for this ideal to function as such, the law must be not only formally valid but also epistemically accessible. Citizens must be able to understand the norms that govern them in order to orient their actions and participate meaningfully in democratic life. When legal complexity renders the law intelligible only to a narrow circle of experts, the rule of law no longer acts as a universal guarantee, but rather as a mechanism of exclusion. In this light, its promise of equal protection and accountability is undermined by an epistemic asymmetry that raises fundamental concerns about democratic legitimacy. In epistemic terms, it is not enough for the law to be publicly available simpliciter. For norms and remedies to guide action and make it possible to claim rights, they must become common knowledge: not only do I know that I have a right to X, but I also know that others know it, and that they know that I know it, and so on (Lewis 1969; Weingast 1997). This higher-order awareness transforms mere publicity into a shared and effective structure for guiding action; without it, publicity remains formal and produces asymmetrical outcomes in practice. From this perspective, epistemic accessibility encompasses the reciprocity of legal understanding, not just its dissemination.

Jeremy Waldron defines the rule of law as a central ideal of political morality, linking it to the ascendancy of law and legal institutions within a governance system (Waldron 2011, 2016)[1]. Yet, he also highlights its nature as a site of conflict, where citizens' interests clash and interact within a normative framework that guarantees rights and duties. For this process to be genuinely democratic, however, all citizens must have access to legal knowledge and the institutional mechanisms that operationalize it. As Waldron emphasizes:

> «The requirement of access [to the rule of law] is particularly important, in two senses. First, law should be epistemically accessible: it should be a body of norms promulgated as public knowledge so that people can study it, internalize it, figure out what it requires of them, and use it as a framework for their plans and expectations and for settling their disputes with others. Secondly, legal institutions and their procedures should be available to ordinary people to uphold their rights, settle their disputes, and protect them against abuses of public and private power» (Waldron 2016).

This assertion highlights a fundamental tension: while the rule of law is designed to provide a stable and impartial normative framework, this accessibility is rarely fully guaranteed or achieved. The complexity and technicality of the rule of law and its functioning – let alone the theoretical debates surrounding it – can transform it into a source of epistemic inequality. As a result, when access to legal knowledge is concentrated within a small elite of experts, the rule of law ceases to function as a universal safeguard and instead reinforces epistemic barriers that exclude broader

[1] Waldron defines the rule of law as «a political ideal that governs how legal systems should operate» and emphasizes its role in ensuring non-arbitrary governance through law-based reasoning (Waldron 2016).

democratic participation (Tamanaha 2009; May and Winchester 2018). The issue of epistemic accessibility and differential legal knowledge is not an isolated concern but intersects with the major lines of debate on the rule of law. One might argue that epistemic inequality is a general problem of legal systems, rather than something specific to the rule of law. However, what distinguishes the rule of law from other areas of law is its normative foundation: for it to function as a safeguard against rights violations and abuses of power, it presupposes that the subjects of those rights must have knowledge of them. Without such epistemic access, the rule of law loses its core function: empowering citizens to defend their rights through legal means.

It is precisely this demand for accessibility that defines the rule of law within the broader structure of legal systems. Consequently, the epistemic asymmetry at play in the rule of law does not simply add to existing legal complexities but actively reshapes its democratic function. This challenge manifests in three key areas: (1) the epistemic nature of the rule of law and the distinction between formal and substantive conceptions, (2) the risk of a rule by experts as an intermediate configuration between the rule of law and rule by law, and (3) its contested and ambiguous nature. This paper argues that the epistemic asymmetry generated by the technicality of the rule of law is not a secondary issue or a mere byproduct of other theoretical tensions, but a fundamental structural problem. This asymmetry risks limiting citizens' ability to engage meaningfully in legal and political processes. The following sections will examine how this epistemic disparity shapes the definition and theoretical impact of each abovementioned key aspects of the rule of law. By adopting an epistemic lens, this paper seeks to contribute to the theoretical debate on the relationship between the rule of law and democracy (see Maravall and Przeworski 2003), questioning how the concentration of legal knowledge affects democratic participation and legitimacy.

2. *Epistemic Tensions between Formal and Substantive Rule of Law*

One of the main fault lines in the rule of law debate concerns the opposition between formal and/or procedural and substantive conceptions. Authors such as Fuller (1969), Raz (1979) and Habermas (1995, 1997), who offer a formal and/or procedural reading of it, focus primarily on the structure and functioning of the legal system regardless of the substantive content of the rules. Along this line, it is well known that Fuller (1969) proposes eight formal components of the rule of law which constitute the "internal morality of law": generality, publicity, prospectivity, intelligibility, consistency, practicability, stability and congruence[2]. They are essential components for a system of rules to effectively guide human conduct, and among the eight principles, those of publicity and intelligibility (or else clarity) possess a stronger democratic-epistemic dimension and function as common-knowledge generators: norms and remedies must circulate not only as information but as reciprocally recognized information. Publicity is crucial because it makes laws knowable to citizens, enabling them to participate in political life. Clarity, on the other hand, ensures that laws are comprehensible to all, not just experts, allowing citizens to guide their behaviour and critically evaluate regulations. Although other components also[3] may indirectly facilitate the understanding of law, it is publicity and clarity that constitute the epistemic-democratic core of the rule of law, ensuring citizens' real access to legal knowledge. In a procedural view, the rule of law can take thinner or thicker forms (see Bedner 2018), with Raz's (1979) theory at the thin-

[2] A useful summary and analytical breakdown of Fuller's eight principles can be found in Waldron (2008), who also discusses their normative implications. For each component's relevance to democratic functioning, see Postema (2022).

[3] Generality and consistency contribute to a stable and predictable legal framework that facilitates comprehension. Congruence between declared law and official action also has an epistemic dimension, as it enables citizens to form justified expectations regarding the application of the law.

ner end of the spectrum. Raz defines the rule of law as a specific – morally neutral – virtue that a legal system can possess, distinguishing it from other ideals such as democracy, justice, equality, human rights, or respect for human dignity. He claims: «the rule of law is just one of the virtues which a legal system may possess and by which it is to be judged. It is not to be confused with democracy, justice, equality (before the law or otherwise), human rights of any kind or respect for persons or for the dignity of man» (Raz 1979, 210). Raz limits it to compliance with formal and procedural legality without explicitly including democratic or substantive elements: rule of law is exclusively about the ability of the legal system to bind the government, providing certainty, predictability and clarity, but without direct reference to democracy, human rights or social justice[4]. In contrast, Habermas (1995, 1997) proposes a "thicker" procedural version of the rule of law, introducing the democratic criterion of consent: for him, citizens must be able to recognize themselves not only as recipients but also as authors of laws. Although Habermas does not consider democracy and the rule of law to be coincidental, he believes that they are interdependent and mutually constitutive[5]. On the substantive side, authors such as Ronald Dworkin propose an even more robust thicker conception of the rule of law (Dworkin 1986), according to which law must be interpreted consistently with fundamental moral principles such as justice, integrity and fairness. Mere adherence to procedural and formal criteria is not sufficient to fully realize the rule of law, which instead requires a substantive value basis to ensure the legitimacy of the legal system and the protection of citizens. Dworkin claims that: «The rule of law on this conception is the ideal of rule by an accurate public conception of individual rights. It does not distinguish, as the rule book conception does, between the rule of law and substantive justice; [...] that the rules in the rule book capture and enforce moral rights» (Dworkin 1978). According to Marmor (1991), the epistemic dimension of Dworkin's substantive system emerges clearly from the central role of legal interpretation, which requires a deep moral understanding of the system and its purposes. In this perspective, the correctness of law is not resolved in merely technical or formal matters but depends on an epistemically informed judgment about underlying moral values. "Law as Integrity" thus urges judges to interpret previous decisions in a way that makes them consistent from the perspective of moral principles.

Therefore, along the axis that distinguishes formal from substantive conceptions of the rule of law, an epistemic dimension always emerges. A central question in this paper then focuses on which conception (formal or substantive) of the rule of law is most appropriate to meet the need for effective epistemic accessibility, which is not limited to a narrow elite of legal experts with privileged awareness, but involves the majority of citizens, rights holders and direct recipients of norms[6]. Following this perspective, the present paper draws inspiration from Waldron in reworking the distinction between formal and substantive rule of law by rethinking its relationship to democracy. The first step is to reject a sharp separation between formality (or proceduralism) and substantiality: instead, it is possible to recognize their mutual interdependence, as well as the still open debate on their relative weight in the definition of rule of law. Waldron himself acknowl-

[4] It is worth noting that Raz has recently revised his earlier theory of the rule of law (Raz 2019), shifting the focus from a list of formal principles to the core aim of preventing arbitrary government. In his new interpretation, Raz argues that the rule of law requires government action to reflect an intention to protect and promote the interests of the governed, acting as a guardian of the public interest. This perspective includes adherence to principles of public accountability and relies on conventions that assume government actions are taken in the interest of the governed. This revision underscores the importance of a government that acts with the intention of serving its citizens (see Raz 2019, 7).

[5] This refers to Habermas's principle of "co-originality" between public and private autonomy, as developed in Between Facts and Norms (Habermas 1996), particularly in the sections discussing discursive legitimacy and legal formalism.

[6] This distinction echoes the "thin" vs "thick" conceptions of the rule of law, where the degree of epistemic commitment to citizen comprehension varies significantly. See Bedner (2018) in the Elgar Encyclopedia.

edges the existence of purely formal conceptions but also admits that many formal procedural aspects of the rule of law find justification in substantive values such as human dignity or freedom (Waldron 2011)[7]. For example, the Fullerian requirement of generality can lead to considerations of justice, just as prospectivity can be linked to respect for individual autonomy. Similarly, this paper argues that the formal knowability of laws must be connected to their democratic accessibility since laws that are technically knowable are not always accessible to everyone. The epistemic dimension of the rule of law, therefore, is not only about normative clarity or public availability, nor just about moral integrity or systemic coherence – it also involves the deeper issue of who has access to legal knowledge and who is excluded from a small group of experts. Ensuring that laws are truly accessible requires more than formal transparency; it demands concrete tools for democratizing legal knowledge. This shift is crucial, as it directly affects both justice and democratic legitimacy[8].

3. *Rule of Law and Democracy*

In discussing the epistemic dimension of the rule of law, a first objection might spontaneously arise: why consider the rule of law special or peculiar from the epistemic point of view, compared to other forms of law? Are not transparency, knowability and clarity common requirements for all branches of law that affect citizens? If the epistemic dimension of law is such a cross-cutting requirement, what then makes the rule of law particularly meaningful from a democratic-epistemic point of view? To address this objection, it is necessary to clarify the epistemic approach taken in this paper. The focus here is not on legal or constitutional epistemology strictly understood, that is, the theoretical branch that investigates how legal knowledge is autonomously constructed by legal experts. Instead, the focus is specifically on the question of the democratic nature of legal knowledge: that is, the analysis concerns how the rule of law structures and distributes access to legal knowledge and how this distribution directly affects citizens' political participation. This orientation fits into what can be called a political epistemology approach to democracy, which emphasizes the essential role of epistemic access in shaping and strengthening the democratic function of the rule of law. It is precisely in light of this specific epistemological-democratic approach that the more specific epistemic nature of the rule of law, as distinct from other forms of legal normativity, emerges most clearly.

As is also evident from the work of Gerald Postema, this epistemic specificity lies in its primary function of limiting arbitrary power through a widespread and equal distribution of access to legal knowledge among citizens (Postema 2022). Although Postema does not explicitly dwell on the concept of epistemic accessibility in philosophical terms, he strongly addresses the issue of comprehensibility and intelligibility of law as a fundamental condition for the democratic functioning of the rule of law. His goal is avowedly to provide a «clear, publicly persuasive account» (Postema 2022, x) of the rule of law ideal, precisely to counter what some critics dismiss as elitist rhetoric, unable to speak to those outside the inner circle of experts. His insistence on an "intuitive understanding" of the basic constituents of the rule of law, his emphasis on accessible language, and his emphasis on the role of public discussion spaces as sites of accountability suggest

[7] Waldron (2011) also differentiates between formal and procedural analyses in legal theory, but a full treatment of this distinction exceeds the scope of the present paper.

[8] The distinction between formal and substantive conceptions of the rule of law echoes the broader tension between legality and legitimacy. However, democratic aspirations need not operate solely on the side of legitimacy: it is possible to conceive of a *democratic legality*, namely a form of legal normativity anchored in inclusive lawmaking, public deliberation, and accountability. In this view, legality and legitimacy are not inherently opposed, but dynamically correlated. The rule of law achieves its fullest democratic meaning when the legal order is both procedurally valid and publicly justified.

a deep awareness of the problems associated with the conceptual accessibility of the rule of law. In this sense, although Postema does not propose an epistemological theory of rule of law in the strict sense, his contribution offers a solid basis for interpreting the conceptual and practical accessibility of law as a necessary condition for citizens to «speak law to power» (Postema 2022, 18). Only through this widespread and unmediated understanding is an effective exercise of democratic control over power made possible. Such epistemic capacity thus becomes an essential condition not only for an effective democratic exercise of power limitation but also for the construction of a strong and shared democratic convention around the rule of law itself. Epistemic democratization of law, from this perspective, is not only a desirable goal but an intrinsic requirement of the very normative nature of the rule of law.

> «The rule of law subjects the exercise of ruling power to law [...]. Law achieves this form of sovereignty through the essential underwriting support of networks of accountability. These networks, we learn in this chapter, must be found within the structures of government itself ("horizontal accountability") and outside government in the associations, institutions, and practices of civil society ("vertical accountability"). Law disciplines power by tethering its exercise to public norms. These norms direct conduct, and provide a deliberative framework for practical reasoning: the rule of law seeks to establish a rule of reason, or rather of reasons, addressed to those who exercise ruling power and to those subject to it. This requires that officials have legitimate public, law-grounded reasons for their actions, and are required regularly to give those reasons to the public; and those who are subject to ruling power are entitled to demand reasons, and adequate remedies for official violations of law, in forums created for that purpose» (Postema 2022, 115)[9].

The fact that law tethers the exercise of power to public norms means that law does not merely describe or permit certain actions of political power, but directly controls and regulates its exercise. In other words, the law regulates and constrains political power by obliging it to constantly refer to public norms (i.e., known, transparent and understandable to all) to justify its actions. These "public norms" are rules or principles that: (1) are known or knowable by citizens; (2) form the justificatory and deliberative basis for the exercise of power; and (3) ensure that the actions of political power are openly and transparently assessable. Postema, therefore, closely links the rule of law to the idea of public justification of political decisions. Law constrains power by mandating a public, rational and deliberative dimension of the decisions themselves, so citizens must have the opportunity to hold officials accountable under the law for violations and abuses. If widespread legal knowledge is crucial to ensure the democratic dimension and to limit the arbitrariness of political power, it is natural to delve into the relationship between the rule of law and democratic legitimacy more generally[10].

It is from this perspective that the present paper moves beyond merely formal accounts of the rule of law. Rather than considering it as a neutral constraint on power or, conversely, as a tool of instrumentalization by political authority, this work proposes an intermediate view – one that

[9] The omitted passage discusses how law disciplines power through principles such as legality, reflexivity, and exclusivity, each of which ties legal authority to institutional justification. Postema continues by emphasizing that when institutions reflect these principles, they provide citizens with both protection from arbitrary power and a path for recourse when that power is abused.

[10] For a more classical account of the intrinsic relationship between democracy and the rule of law from a procedural perspective, see Jürgen Habermas's notion of the co-originality of public and private autonomy (Habermas 1995, 1996). While not explicitly addressing epistemic accessibility, Habermas links the legitimacy of legal norms to their discursive formation, suggesting that only norms that all citizens could reasonably accept through rational deliberation can be considered legitimate. In this perspective, human rights and popular sovereignty are co-original and mutually reinforcing: human rights make the exercise of popular sovereignty legally possible, creating the conditions for a real civic practice of communicative freedom.

emphasizes the epistemic asymmetries that condition democratic participation in legal systems[11]. These asymmetries reveal the extent to which the rule of law, while formally in place, may operate in exclusionary ways when legal knowledge is monopolized. This concern is particularly visible in the distinction between the rule of law and the rule by law, a central point in Brian Z. Tamanaha's analysis (2004)[12]. The most minimal and thin interpretation of the rule of law, according to Tamanaha, is essentially a "rule by law" (Tamanaha 2004, 92), where the state merely governs through laws. In this minimalist sense, any governmental decision, even arbitrary ones, can qualify as law, effectively reducing the rule of law to "government by law". Contemporary regimes such as China, according to some scholars, appear to embrace precisely this interpretation, where law serves political power rather than constraining it. Conversely, the broader Western tradition of the rule of law presupposes substantial legal constraints on government power. In this tradition, law is not merely an instrument for governmental use; rather, it limits government actions and prevents abuses of power. Tamanaha further notes that the "formal legality" approach advocated by theorists like Hayek (1955) and Raz (1979), while more sophisticated (demanding generality, clarity, and perspective norms), can nonetheless align with authoritarian regimes due to its exclusive emphasis on legal form rather than content[13]. Thus, the crucial distinction between rule of law and rule by law, as emphasized by Tamanaha, lies in whether legal norms effectively constrain governmental power: rule by law merely demands that government action be channeled through law, while rule of law requires that law itself stands above political authority.

Yet, even when this ideal is formally enshrined, a fundamental epistemic vulnerability persists. The law may remain structurally opaque and practically inaccessible to ordinary citizens, confined instead to the interpretative monopoly of legal experts. This condition opens the door to a hybrid configuration – neither democratic nor overtly authoritarian – which can be described as a *rule by experts*. In such a scenario, the supremacy of law is formally preserved, but the democratic quality of legal systems is undermined by epistemic asymmetries. Legal authority becomes increasingly technocratic, as complex statutory and doctrinal frameworks demand specialized knowledge. The result is a drift toward a governance structure where the locus of decision-making power is epistemically detached from the citizenry[14]. This phenomenon is particularly problematic when legal rationality is deployed as a shield against contestation. The institutional invocation of neutrality, proceduralism, or legal correctness often masks deeper political choices, effectively

[11] Several scholars have examined in the past two decades the relationship between democratic legitimacy, political authority and the rule of law (Maravall and Przeworski 2003; Bedner 2018; Gargarella 2021; Bello-Hutt 2021; Sevel 2025) along several research trajectories, including distinctions between thin and thick conceptions of the rule of law, judicial independence, political accountability, representation, checks and balances, and particularly the contrast between rule of law and rule by law. Given thematic coherence and space constraints, this paper specifically addresses the latter distinction, placing epistemic asymmetry at the center of the analysis.

[12] For a detailed account of the rule by law tradition as it originates in Hobbes, see the paper of Dyzenhaus entitled "Thomas Hobbes and the Rule by Law Tradition" in Meierhenrich and Loughlin (2021). Dyzenhaus argues that Hobbes represents the founding figure of this tradition, in which law derives its authority from sovereign command rather than from any moral or institutional check. While often contrasted with the rule of law ideal, Hobbes's model emphasizes a vision of legal order grounded in political authority and interpretability, where law serves to stabilize rather than constrain power.

[13] This risk is also noted by Raz himself, who warned that formal legality alone may be compatible with authoritarian rule: «A non-democratic legal system, based on the denial of human rights, on extensive poverty, on racial segregation, sexual inequalities, and racial persecution may, in principle, conform to the requirements of the rule of law better than any of the legal systems of the more enlightened Western democracies [...] It will be an immeasurably worse legal system, but it will excel in one respect: in its conformity to the rule of law» (Raz 1979, 211).

[14] For broader discussions on how technocratic governance reshapes the epistemic foundations of democratic participation, see Herzog (2024), Garcin and Moe (2024), and Méndez (2022). Although these works do not directly address the rule of law, they offer important insights into the democratic risks posed by concentrated cognitive authority and expert domination.

removing them from public debate. In this light, rule by experts does not constitute a mere empirical deviation from democratic ideals but reveals a structural risk embedded within the very architecture of the rule of law: that legal authority becomes detached from the epistemic accountability that democracy demands. Postema (2022) implicitly addresses this challenge by insisting on the need for epistemic democratization within the legal system itself. His account of the rule of law centers on mutual accountability and public reasoning, suggesting that law cannot truly "rule" unless it remains accessible and contestable by the political community at large. Similarly, Tamanaha writes:

> «Building a robust legal profession and legal tradition requires a legal education system that transfers legal knowledge and inculcates legal values in those whom it trains. Moreover, the system must attract and reproduce people who are committed to the law and to developing legal knowledge. A potential problem for this element exists in societies where only people from wealthy classes or selected groups have access to legal education or positions of authority in the legal system because this raises the risk that they will develop and utilise the law to advance their own interests at the expense of others, introducing distortions and bias into the law. Citizens will perceive the law as unbalanced, which weighs against the first element above, making it harder to develop a general cultural belief that the law should rule» (Tamanaha 2009, 12).

Accordingly, defending the rule of law requires more than protecting the independence of judges or the formal requirements of legality: it demands an institutional design that fosters public comprehension, democratic participation, and the epistemic empowerment of citizens. It is therefore essential to investigate how the conceptual vagueness and normative flexibility of the rule of law may inadvertently support this shift toward expert-dominated governance. The next paragraph will explore this issue, focusing on the internal tensions and contested meanings that make the rule of law both a normative ideal and a site of epistemic struggle.

4. *Is It Such an Ambiguous and Contestable Concept?*

Having examined the distinction between formal and substantive conceptions of the rule of law, its complex relationship with democracy, and the risk of its degeneration into rule by law, this paper shifts to its final focus. It is one of the most persistent theoretical debates surrounding this ideal: is the rule of law a coherent and normatively binding concept, or rather an ambiguous notion, vulnerable to rhetorical appropriation and instrumentalization? This question is far from marginal; it directly concerns the conceptual stability of a notion that has become central to contemporary democratic discourse. Among the voices that have sharply addressed this issue is Martin Loughlin, who describes the rule of law as a «slogan in search of a concept» (Loughlin 2024, 8) reflecting its evolution from a legal term of art into a contested symbol of legitimacy. This is because of its ambiguity and the multiple interpretations it has acquired over time, moving from a specialized legal term to one of the vaguest catchphrases of contemporary public policy. This has characterized both common law and civil law systems. Regarding the former, the author recalls Dicey and how the "rule of law" had origins closely linked to legal tradition and the specialized expertise of jurists:

> «Rather, it was the achievements of a cloistered body of lawyers, employing a distinctive methodology that moved from precedent to precedent, that was determinative in establishing the judicature as an independent authority beyond the competence and control of the crown. Maintaining a strong sense of the dignity of their role, these lawyers felt able to assert that, rather than being an expression of the

> sovereign's command, the law comprised a type of 'artificial reason' that required 'long study before a man could attain to the cognizance of it'. And this for Dicey captured the essence of the rule of law» (Loughlin 2024, 3)[15].

However, Loughlin argues that this original conception, linked to the expertise of jurists, has turned into a «universal placeholder of thoroughly indeterminate meaning» (Loughlin 2024, 7). The use of the term has extended beyond professional legal discourse, being adopted by different actors with different interpretations. The author sees a similar evolution in the concept of rule of law in civil law systems. In the post-conflict period, "Rechtsstaat" as such was largely abandoned in favor of an abstraction called "Rechtsstaat-sprinzip" with a multitude of components, suggesting a loss of a unified and clear concept, similar to the vagueness he attributes to the rule of law (Loughlin 2024, 8). Loughlin points out how the wide range of opinions and perspectives on the meaning, purpose and value of the "rule of law" greatly complicates any inquiry into its current position. The "rule of law" has become a «resonant but vacuous phrase that expresses whatever values the heart desires» (Loughlin 2024, 13). Its universalization and adoption by various actors have led to a loss of semantic precision, making it less accessible and understandable to ordinary citizens. Instead of retaining a clear and shared meaning, the rule of law has increasingly become a slogan – its ambiguity stems in part from the detachment of its original, expert-based understanding from the broader diffusion it later underwent. In this sense, Martin Loughlin's critical insight is that the rule of law's global significance and universal appeal are inseparable from its conceptual vagueness.

Compared to Loughlin, Waldron (2021) presents an argument about the contestability of the "rule of law" based on the concept of an "essentially contested concept". Unlike Loughlin, who sees semantic vagueness primarily as a problem arising from the universalization and loss of specificity of specialized knowledge, Waldron sees contestation as an inherent and potentially positive feature of the concept itself. Picking up on W. B. Gallie's idea[16], defining the "rule of law" as an essentially contested concept is not a criticism, but a way of highlighting how discussions of its meaning contribute to our understanding and evaluation of the systems, practices, and actions to which the concept is applied. Again, Waldron invokes the breadth of the rule of law (thick vs. thin, cf. § 2 of this paper) as an essential area element of contestation of the concept itself. There are disputes precisely about placing substantive political ideals, such as human rights, alongside formal and procedural aspects of the rule of law[17]. Waldron lays out, for example, the case of the World Justice Project (WJP) in its "Rule of Law Index" includes "Open Government" and "Fundamental Rights" in addition to limits on government powers and the quality of civil and criminal justice, assessing adherence to fundamental rights such as the right to life, freedom of expression and workers' rights. So, Waldron sees this very contestation as an engine of theoretical enrichment. The different conceptions, while disagreeing, contribute to a deeper understanding of the values underlying the rule of law. The fact that there is no canonical definition is not necessarily negative but reflects the complexity and continuing importance of the concept.

While Loughlin emphasizes the loss of a clear and shared meaning of the rule of law due to its conceptual vagueness, Waldron contends that the absence of a canonical definition is not necessarily problematic but rather reflects the concept's enduring relevance and complexity. Yet, in both cases, the problem of consensus is strictly semantic. As this paper argues, the issue of con-

[15] Loughlin refers here to Dicey (1915), where the rule of law is closely associated with the legal profession and the notion of law as "artificial reason".

[16] See Gallie (1956), which Waldron draws on to argue that the contestation of the rule of law is a sign of its vitality and centrality to democratic theory.

[17] Previously mentioned in this paper (see §2) in the form of Fuller's eight formal components, which constitute the internal morality of law.

testability cannot be reduced to a question of meaning alone. It must also be understood in light of the epistemic conditions that shape how the rule of law functions within democratic settings. In this respect, the analysis departs from the traditional conceptual debates by situating the rule of law within its relationship to democracy – understood not merely as another essentially contested concept, in Gallie's (1956) terms, but as a normative framework that actively redefines the conditions of legal intelligibility and accessibility. In this perspective, accountability networks operate as common-knowledge infrastructures: legality operates through public practices sustained by shared expectations and succeeds only when reasons, procedures, and remedies are not merely available but *known as known* across the polity[18], The specifically democratic trait of the rule of law is not mere publicity but second-order knowledge that makes accountability effective. In this sense, an illustrative case is useful: consider two citizens who both have the same legal right to X. Citizen A knows she is entitled to X and knows – because it is publicly and repeatedly reported – that there is a specific protection mechanism M, how it works, the typical timelines, the success rates, and that people in her situation commonly activate it. Citizen B also knows that they are entitled to X, but does not know (nor expect others to know) that M exists or is realistically usable. In A's world, the protection of rights is common knowledge: activating M is "socially normal" and officials expect people like A to do so. In B's world, knowledge is private or fragmented: even with equal formal rights, expectations of outcomes, social signals, and official behaviour diverge over time. This shows that the absence of common knowledge is not a generic information defect, but an endogenous factor of epistemic inequality in the architecture of the rule of law. The result is a long-term differential benefit from the rule of law and a drift toward domination by those who lack the mutual awareness necessary to mobilize remedies.

For the same reason, Postema provides the normative counterpart of the epistemic framework outlined above: the resilience of the rule of law depends not only on the formal adherence of institutions but on a shared and widespread commitment to a culture of legality. In his formulation of the fidelity thesis, Postema states that «the rule of law can be robust in a polity only when all of its members, and not merely the legal or ruling elite, take responsibility for holding each other, and especially law's officials, to account under the law» (Postema 2022, 66). Postema's "fidelity" presupposes mutual knowledge of rights, officials' duties, and avenues of redress; it is not adherence to esoteric rules but a public practice supported by shared expectations that make reason-giving and contestation socially actionable. It is in this framework that fidelity – understood as a shared responsibility in demanding compliance with the rule of law – is revealed to be inseparable from an epistemic condition of accessibility. The perspective opened by Postema makes it possible to reformulate the question of the conceptual contestability of the rule of law in terms that are not only theoretical, but also relational and practical: what matters is not only whether there is an unambiguous definition of the concept, but whether there is a democratic community capable of collectively claiming the meaning and application of the law. Without a public, intuitive and widespread understanding of the law, such fidelity is not possible, and the rule of law risks becoming a technocratic tool, or worse, an empty formula for legitimacy.

Based on the distinction between broader and narrower conceptions of the rule of law – and on the risk that, in its thinner version, it may slide into rule by experts – this paper advances the following hypothesis: only an epistemically balanced relationship between the rule of law and democracy, in which legal knowledge is widely shared and accessible to citizens, can significantly mitigate the risks associated with contestability and conceptual vagueness. More specifically, a more equitable epistemic distribution can reduce the rule of law's vulnerability to interpretive instrumentalization. In this sense, the democratization of legal knowledge is not an external add-on to an otherwise self-standing ideal: it strengthens both the formal-procedural and the substan-

[18] Positive, empirically oriented accounts likewise emphasise the common-knowledge infrastructures that intervene in law to stabilise expectations in strategic interaction (Cf. Hadfield et al. 2021).

tive-value dimensions of the rule of law, thereby enabling it to operate as a public safeguard rather than as an expert-dependent idiom. From this perspective, the contestability of the rule of law is not reduced to a merely theoretical dispute over conceptual meaning – as suggested by Loughlin and Waldron – but becomes a profoundly democratic issue, linked to how epistemic power to define, interpret, and apply the law is distributed in everyday practice. It is precisely within this framework that Postema's fidelity thesis acquires its epistemic-democratic relevance: a shared fidelity to legality is possible only if citizens can genuinely participate in legal knowledge.

5. *Conclusions*

This paper has shown that epistemic asymmetry cuts across three major debates about the rule of law: the formal/substantive divide, the drift toward rule by experts, and conceptual ambiguity. The rule of law functions as a democratic safeguard only if legal knowledge is publicly accessible and reciprocally shared. Epistemic accessibility is thus a structural condition of both legitimacy and democratic effectiveness, and contestability is political, tied to the distribution of epistemic power. Accordingly, the rule of law's democratic resilience turns on a collective fidelity to legality sustained by common knowledge – rules and remedies known as known, which turn publicity into coordination and accountability into ordinary practice.

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