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The Specter Haunting Europe

Takis S. Pappas ■ *Ivan Krastev* ■ *Jacques Rupnik*
Dominique Reynié ■ *Timo Lochocki* ■ *Sheri Berman*
Joanna Fomina and Jacek Kucharczyk

Transition in China? More Likely Than You Think

Minxin Pei

Iraq's Year of Rage

Mieczysław P. Boduszyński

Abdou Filali-Ansary on Ennahda's New Course in Tunisia
Eduardo Dargent & Paula Muñoz on Peru's Elections
Andrea Kendall-Taylor & Erica Frantz on the Death of Dictators
Edward Aspinall on Controlling Corruption

The Vote in the Philippines

Julio C. Teehankee and Mark R. Thompson ■ *David G. Timberman*

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POPULISM AND PROTEST IN POLAND

Joanna Fomina and Jacek Kucharczyk

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The recent rise to power of Poland's Law and Justice party (PiS) began when it won the country's presidency in a May 2015 runoff and then secured a parliamentary majority in general elections five months later. Since then, the PiS government has sought to impose its will in a ruthlessly majoritarian fashion, taking on the high court, the prosecutor's office, the public media, and the civil service in a campaign meant to dismantle existing checks and balances while leaving the opposition and the general public little say.

The PiS belongs to the global phenomenon that Pippa Norris calls "contemporary authoritarian populism."¹ This form of populism, she adds, is mostly "a cultural backlash . . . against long-term ongoing social change." Authoritarian-populist parties such as Law and Justice are not above playing on economic grievances in order to gain support, but economics is not what drives them.

Populism may be broadly defined as "a general protest against the checks and balances introduced to prevent 'the people's' direct rule."² The PiS likes to define "the people" narrowly, drawing harsh rhetorical contrasts between Poles who are "true" and Poles who belong to "the worst sort." In its authoritarian dimension, this populism seeks in Poland and elsewhere to undermine the "universality of democracy and . . . to erode liberal-democratic norms, replacing them with new counterterms that emphasize 'state security, civilizational diversity, and traditional values.'"³

Although the core PiS electorate is limited—many factors had to line up "just so" in order for the party to gain its current 234-seat majority in the 460-member Sejm, or lower house of parliament—the consequences

of PiS rule may be grievous. They include unprecedented polarization as well as rising xenophobia, intolerance, and aggressive nationalism among significant sectors of Polish society.

There had been a PiS-led government from 2005 to 2007.⁴ Then a crisis within the ruling coalition triggered early elections that young urban voters used to send PiS packing and install a centrist government under Prime Minister Donald Tusk and his Civic Platform (PO) party. Tusk moved Poland back toward the mainstream of European politics, seeking stronger links with Germany, closer EU relations with former Soviet countries such as Ukraine, and a “reset” with Russia.

Enhancing its reputation for sound economic governance, Poland was the only EU member state to avoid recession after the 2008 global economic crisis. In 2011, Tusk became the first Polish premier to win a second term since communism fell in 1989. Between 2006 and 2014, Civic Platform defeated Law and Justice eight straight times at the ballot box, in local, national, presidential, and European parliament elections. Analysts had begun to regard PiS as unelectable, and dismissed its authoritarian longings and conservative social ideology as lacking appeal outside older, less educated, and poorer sections of Polish society.

Yet PiS leader Jarosław Kaczyński hung on to his leadership post and his party’s core constituencies, never wavering in his belief in ultimate victory. In 2015, his patience was rewarded: Voters handed the PiS not only the Sejm but the Senate and the presidency, electing little-known PiS politician Andrzej Duda to that office.

Both friends and foes of Kaczyński liken his victory to Viktor Orbán’s in neighboring Hungary, but that comparison is flawed. In 2010, the year that Orbán won his landslide, Hungary was suffering a deep recession, and its ruling Socialist Party had been rocked by a string of corruption scandals. Poland in 2015, by contrast, was looking back on more than a decade of unbroken economic growth, with joblessness the lowest that anyone had seen since 1989.⁵ Poland’s ranking in corruption surveys by Transparency International and others was improving by the year. Public support for European integration was holding steady at around 80 percent, one of the highest such figures in the EU.⁶

How then, given these conditions, can one explain the PiS victory? No simple answer will do. It was not a matter of “winners and losers of transformation” squaring off, nor of any other easily summarized socioeconomic split. Only an analysis that gives weight to a number of factors—and charts their interactions—can suffice.

The first factor was Civic Platform’s weakness. Some of the fatigue with PO was inevitable given its unusually long tenure in office. In 2015, its ideological breadth, usually seen as a strength, worked against it. Meandering between traditionalism and social liberalism alienated both conservatives and progressives. Law and Justice also gained anti-establishment appeal from the various discontents that Poles feel amid

a “revolution of rising expectations.” Statistics show that economic growth has benefited the vast bulk of households while unemployment and poverty have been falling.⁷ Yet job insecurity, a poor small-business climate, and unsatisfactory public services (especially healthcare) remain serious irritants.

The May and June 2015 presidential balloting brought home the reality of Civic Platform’s trouble. Incumbent Bronisław Komorowski began his campaign as the clear favorite. He said little about voters’ discontents, running instead as the steward of a success story. Failing to hear their concerns addressed, many voters—and especially younger ones—felt let down. Komorowski’s “emotional-intelligence gap” and indifference to voter sentiment were typical of the failings that many mainstream European politicians have been putting painfully on display since at least the euro crisis.⁸

In the first round, antiestablishment candidate Paweł Kukiz—who spouted anti-European, nationalist, and xenophobic slogans but had no substantive program beyond reforming the electoral system—drew crucial younger voters away from Komorowski. Kukiz’s third-place showing (he won 20 percent) set up a runoff between the 63-year-old incumbent and Duda, a man almost two decades his junior. In that two-person second round, Kukiz supporters mostly went to the younger and less “tainted” challenger, who took the presidency with 51.5 percent.

Duda’s surprise win threw Civic Platform into disarray, and PiS moved to exploit the weakness. It managed to integrate the often contradictory discontents of different social groups into a counterfactual “Poland in ruins” narrative, wherein PiS pledged to “rebuild” Poland after the devastation allegedly wrought by PO’s eight-year rule, or even the quarter-century of Poland’s democratic transformation. The ability of PiS to create fact-resistant narratives with the help of traditional and online media stands as a vivid illustration of the broader phenomenon of the “politics of parallel reality . . . in which reason is an irritation, evidence a distraction.”⁹ An earlier instance of such politics was the social movement that PiS created after the 10 April 2010 Smolensk air disaster, in which a Polish Air Force plane carrying President Lech Kaczyński (Jarosław’s twin brother) and other dignitaries crashed in Russia, killing all 96 people on board. This movement aimed to mobilize hardcore PiS supporters by promoting conspiracy theories about the possible involvement in the crash of Russian and Polish “postcommunist” secret services.

The Emperor’s New Clothes

At the same time, PiS softened its image. It placed signs of authoritarian leanings as well as controversial personalities (including Jarosław Kaczyński himself) out of public view. Running on the slogan “Good

Change,” PiS leaders called for compassionate conservatism, and sought to offer undecided voters an alternative to the “boring” PO. Some prominent activists for LGBT rights, noting that they saw scant difference between PiS and PO, announced their support for Duda.

The rising prominence of young, hip, and Internet-savvy public intellectuals on the right aided the PiS rebranding. Nationalist and even xenophobic messages stopped being associated exclusively with muscular, shaven-headed young men in track suits and old ladies in mohair hats, and gained a new cachet. Research shows that PiS used social media effectively to mobilize young and well-educated supporters of the right.¹⁰

Also of help was the party’s decision to nominate Beata Szydło—a far less controversial figure than Jarosław Kaczyński—as its candidate for prime minister. She ran on a platform tailored to address the specific discontents that Civic Platform had overlooked. The price tag seemed not to matter. Law and Justice promised to provide generous new child benefits and to move the retirement age back down to 60 for women and 65 for men—Donald Tusk’s 2011 decision to raise it gradually to 67 for everyone had long been highly unpopular across the political spectrum. Other PiS campaign pledges vowed free prescription drugs for seniors, higher tax credits for low earners, and the forced conversion of home mortgages from Swiss francs to Polish zlotys (a promise that attracted many middle-class voters).

Law and Justice not only wooed new voters, but also mobilized its core electorate. Here, identity politics was crucial. A sizeable share of the Polish public upholds conservative values, reinforced by Catholic teaching, and the Church is heavily engaged in civic and political life. During the 2010 campaign for the presidency, Church officials had been visibly involved in backing Jarosław Kaczyński’s failed bid to win the office after his brother’s death earlier that year. The ensuing backlash against the “republic of parish priests” had boosted an anticlerical party known as Palikot’s Movement to third place with a 10 percent vote share in the 2011 parliamentary elections.

In 2015, the Church refrained from overt campaigning, but its support played a major if indirect role in the PiS victory.¹¹ The Church helped to keep core PiS voters on board even as the party tacked rhetorically to the center. Civic Platform struck back by bringing up PiS’s proposed ban on taxpayer funding for in-vitro fertilization (IVF), as well as the authoritarian constitutional draft that Law and Justice had pushed during its previous stint in government. By that point in the 2015 race, however, PiS had refocused the debate on socioeconomic issues, forcing PO to compete in a contest of ever more generous welfare promises.

Although Poland has one of the EU’s most pro-European citizenries, the Union’s recent internal and external crises gave Law and Justice a huge opening. For various reasons, the PiS had relatively little to say about the Ukraine or euro crises, but by 2015 these were overshadowed

anyway by the huge influx of migrants and refugees who were reaching Europe from Africa and the broader Middle East. Kaczyński's hard line on refugees, verging on xenophobia, won over people who normally would never have voted for PiS. The fear of migrants and refugees coming from predominantly Muslim countries prevailed not only among rural and less-educated voters, but among urbanites and the better-educated as well. Together with preexisting anxieties about secularization, "gender ideology," and other threats to family life and cultural tradition, this fear was enough to propel Kaczyński's party into first place.

Majoritarianism Unleashed

The 25 October 2015 parliamentary balloting left five parties with seats in the Sejm and three with seats in the 100-member Senate. Law and Justice led all lower-house contenders in vote share with 38 percent. At 24 percent, Civic Platform was 15 points below its 2011 showing. It had lost voters to a new economically and socially liberal party called Modern, which won close to 8 percent and 28 seats.

Importantly, the United Left alliance failed to pass the 8 percent threshold that a coalition must meet in order to enter the Sejm, finishing just short with 7.6 percent.¹² The votes that might have put the left into parliament went instead to another new formation, known as Razem, which also failed to win seats.¹³ The left's absence from parliament had the effect of creating a seat bonus that mostly benefited PiS, which gained its 51 percent majority with the backing of only 18.6 of all eligible voters (turnout was only 50 percent). The PiS working majority is actually larger, since the ruling party often enjoys the support of yet another new party; this is Kukiz'15, organized by failed presidential candidate Paweł Kukiz. It holds 36 Sejm seats.

During its previous stint in power, the PiS had chafed at certain rulings of the fifteen-judge Constitutional Tribunal, which under Article 190 of the 1997 Constitution cannot be overridden. Eight years later, armed with a majority in each house plus the presidency, Jarosław Kaczyński launched a frontal assault on the Tribunal as the only thing standing in the way of his plans to radically remodel Poland according to his nationalistic and conservative ideology. Unlike Orbán in Hungary, Kaczyński did not have the votes in parliament to change the constitution, so controlling the Tribunal became key.¹⁴

The PO had done him a favor by recklessly deciding, just weeks before the October 2015 voting, to put forward new judges for five seats on the Tribunal. President Duda refused to administer the oath of office to all the newly appointed judges, while the just-installed PiS government moved to annul their nominations by amending the Law on the Constitutional Tribunal. On 2 December 2015, the incoming parliament named five new judges. The following day, the Tribunal ruled that the new

parliament had the right to fill only two of the five disputed seats. The PiS government reacted with defiance, ignoring the ruling and swearing in all five PiS nominees. Additional amendments adopted on December 28 boxed in the Tribunal by increasing the number of judges who would have to hear each case, and by requiring more of them to agree in order to issue a ruling. Even more controversial was a provision stripping the Tribunal of control over its own case docket. The Tribunal held these changes to be unconstitutional, but again the government refused to recognize the ruling, arguing that the Tribunal should have followed the procedures stipulated in the new legislation.

On December 31, after a process that short-circuited standard parliamentary debate and consultation, a new media law was passed that dismissed the boards of all public-service broadcasters. The new law gave each broadcaster a new board controlled by the Treasury Ministry, and sidelined the constitutional body that is charged with guarding media independence. The government appointed a PiS spin doctor as president of public television and promptly conducted a purge of journalists and media workers suspected of lacking enthusiasm for the government's political agenda. All these changes effectively dismantled a number of checks and balances, and substantiated charges that the PiS government harbored authoritarian leanings.

Domestic and International Reactions

A broad-based movement has arisen to protest these infringements of democratic norms. At the movement's heart is the Committee for the Defense of Democracy (KOD), a grassroots initiative that grew swiftly via social media, and which has united people of varying political persuasions. Between December 2015 and June 2016, KOD organized a string of successful antigovernment demonstrations, which attracted tens of thousands of protesters.¹⁵ The presence of former Solidarity figures makes the KOD hard to dismiss as a top-down group mobilized by the postcommunist elites. On the contrary, to KOD supporters, there are clear parallels between these demonstrations and those mounted by Solidarity and the Committee for the Defense of Workers (KOR) in opposition to communism several decades ago, when ordinary Poles took a stand for democratic principles and against authoritarian government.

The PiS government and its media organs have reacted by suggesting that KOD is a movement of people who unjustly benefited from the previous order and now fear being brought to account. Those who attend KOD rallies, Kaczyński has said, are "Poles of the worse sort," while the PiS speaks for "the people" or all "true Poles." Neither election tallies nor opinion polls validate government claims that the protests are fringe phenomena with which few sympathize. In a February 2016 poll, 46 percent of respondents said that they supported the KOD, while 42 percent

backed the government. The same research showed that KOD supporters are more likely to live in big cities, have more years of schooling, and be less religious.¹⁶ The KOD draws its supporters mainly from those aged 40 to 60. They represent the generation that has vivid memories of what life was like under communism and is determined to prevent a return of authoritarianism in nationalist-conservative guise. The KOD is less popular among younger voters, who largely supported PiS or other right-wing parties in the 2015 elections. While many younger citizens remain critical of the PiS government, they nonetheless do not feel represented by the KOD and feel disconnected from the narratives of the generation that prides itself on having overthrown communism.

According to an April 2016 poll, KOD enjoyed better favorable-versus-unfavorable numbers (40 versus 28 percent) than did any Polish political party (Law and Justice had the highest “favorable” rating but it was only 32 percent).¹⁷ Strikingly, however, many who said that they now backed the KOD also said that they had voted for Law and Justice. This included one in three of President Duda’s first-round voters and one in four voters who pulled the PiS lever during the parliamentary balloting. Apparently some PiS voters supported many PiS election pledges but were not prepared for the party’s dismantling of Poland’s democratic institutions.

In addition to the KOD, lawyers’ groups and NGOs criticized the government and President Duda over the Constitutional Tribunal and other issues.¹⁸ On 23 December 2015, the government asked the Venice Commission (the Council of Europe’s expert advisory body) to give a formal opinion on the high-court controversy, but then moved ahead without waiting for the Commission to respond. In February 2016, a bipartisan trio of U.S. senators sent Prime Minister Szydło a letter expressing concern that the legal changes “could serve to diminish democratic norms, including the rule of law and independence of the judiciary.”¹⁹ In July 2016, during the NATO summit in Warsaw, U.S. president Barack Obama publicly urged the PiS government to respect the rule of law, citing the case of the Constitutional Tribunal. Government media mistranslated these words, claiming that Obama was actually praising the state of Polish democracy.²⁰

Late in December 2015, Poland became the first EU member state to be a subject of the Union’s new “pre-Article 7 procedure,” adopted just the year before, for looking into possible breaches of EU standards, including harms to the rule of law.²¹ In January 2016, the European Commission launched an official probe. As June began, the Commission stated its own “concerns” with regard to the Constitutional Tribunal situation. Polish authorities reacted indignantly, complaining of ideological bias and meddling in the internal affairs of a sovereign democratic state. They warned of an “undesirable effect” if Brussels pushed too hard. parliament passed a resolution reasserting Poland’s sovereign power to

shape its own domestic institutional order. The opposition split as some of its members worried that strong criticism from Brussels would only inflame Polish Euroskepticism.²²

Surveys suggest that such fears were largely unfounded, and that the European Commission's actions had no noticeable impact on overall support for Poland's EU membership, which remained at its usual high level (80 percent). At the same time that most Poles were generally critical of the authorities' actions against the Constitutional Tribunal, however, they were somewhat less enthusiastic about the involvement of extranational institutions. Dividing lines ran along political affiliations, with the electorates of Civic Platform, the Democratic Left Alliance, and Modern supporting the EU's engagement and PiS supporters criticizing it.²³

A Cultural Backlash

Once in power, Law and Justice found itself under pressure from the Church and other core supporters who expected it to take action on their high-priority issues. In March 2016, a citizens' bill enacting a full ban on abortion was submitted to parliament. Facing mass protests, Prime Minister Szydło publicly declared that there would be no vote on the bill, even though she privately supported the idea. At the same time, the government ended public funding for IVF, and the Health Ministry announced that it would consider restricting access to contraception. These issues remain subjects of heated public controversy, with attendant demonstrations and petition drives.

The PiS government continued to use the refugee crisis as grounds for criticizing both the previous government and the European Commission. Poland's official quota was nine-thousand Syrian refugees but officials delayed accepting them, pointing to national-security and social-cohesion concerns.

Citing alleged security threats, the government in June 2016 passed antiterror legislation that radically boosts the powers of the Internal Security Agency (ISA); makes it legal under some circumstances to conduct surveillance of foreigners without their knowledge; limits the freedom of assembly; and opens up the possibility of the ISA blocking selected Internet content.²⁴ As with other controversial pieces of legislation, the new law was adopted without public consultations and over protests from the Ombudsman's office as well as civil-rights NGOs.

One of the received theories regarding authoritarian populism's rise across the West points to growing social inequality, typically finding the post-1989 neoliberal arrangement known as the "Washington consensus" to be at the bottom of the trouble. What makes this theory plausible is that populism does draw support from those with less schooling and income, especially men whose economic footing has become precarious in postin-

dustrial, globalized, and increasingly automated Western economies. Yet this theory has limited explanatory power. As Pippa Norris notes:

Populist authoritarian leaders have arisen in several affluent post-industrial “knowledge” societies, in cradle-to-grave welfare states with some of the best-educated and most secure populations in the world, like Sweden and Denmark—where you’d expect social tolerance and liberal attitudes instead of xenophobic appeals.²⁵

In Poland, the PiS victory came at a time of economic stability, with joblessness and poverty falling. Poland’s post-tax and transfer Gini coefficient of 0.31 puts the country close to the EU average when it comes to socioeconomic inequality. Inequality and downward mobility, therefore, seem unlikely drivers of the PiS surge. Norris may be closer to the truth, at least in Poland’s case, when she argues that “authoritarianism can best be explained as a cultural backlash in Western societies against long-term, ongoing social change.”²⁶

Since communism’s fall in 1989 and EU membership in 2004, Poles have seen sweeping alterations in society and culture. Integration with Western political and economic structures and the opening of borders have brought sustained economic development and vast EU-funded infrastructure investments, but also the spread of liberal social norms. After 2007, during the center-right government, many ideas and policies promoted by relatively marginal groups of feminist and LGBT activists became mainstream, even if they did not always pass into law. While most Poles remain at least formally Roman Catholic, studies show growing social and political splits over moral and cultural rather than socioeconomic issues.

The rise of authoritarian populism should be seen as a reaction against these liberal cultural trends. Although Law and Justice was elected on a platform of generous socioeconomic promises, its dominant position on the righthand side of the political spectrum and its resilience despite years in opposition came from its strong stance on issues connected to national identity and sovereignty and from its bond with the Catholic Church. The refugee and migrant crisis—and especially the European Commission’s controversial demand that each EU country accept a mandatory quota of Syrian refugees—gave Polish populism a new xenophobic energy and brought it closer to its West European counterparts.

Kaczyński’s victory would not have been possible without the creation of a highly effective “anger industry,” which fed on the many discontents of different social groups and pushed the “Poland in ruins” narrative despite considerable evidence to the contrary. Since the new government’s assault on public media, the politics of “parallel reality” has gained access to public resources, reminding many older Poles of the air of unreality that state media, especially television, used to emanate under communism.

At the same time, Kaczyński's attack on the Constitutional Tribunal and his inflammatory rhetoric have aroused an unprecedented response from civil society. The PiS government is taking advantage of the robust economy to implement costly social programs for its constituents, and is not shy about using public resources to fund sympathetic media and nongovernmental organizations. The opposition is getting its message out through social media and peaceful street protests. International criticism of the government is helping to keep the opposition resilient and determined. But as long as Polish society remains deeply split, the confrontation between authoritarian populists in power and their critics will not end.

NOTES

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14. Bojan Bugarič and Tom Ginsburg, "The Assault on Postcommunist Courts," *Journal of Democracy* 27 (July 2016): 69–82.

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