



The Return of Nationalist Ethos: The Loss of Liberal Democracy in Poland?

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In October 2015, for the first time since Poland transitioned to democracy in 1989, a single political party gained an absolute majority in the Polish parliament. The Law and Justice Party (Prawo i Sprawiedliwość: PiS) cut its political teeth first as a member of the ruling coalition (2005–2007) and later as the largest opposition party in parliament (2007–2015). Although well known for its strong populist and Eurosceptic orientations, during both the presidential and the parliamentary elections the party toned down its strong pro-Catholic Church stance and temporarily suspended its customary preoccupation with Poland's perceived neighbouring enemies and with bringing former communist functionaries to book. Instead, PiS focused on the economy, social issues and education in a dynamic Western-styled electioneering campaign wooing voters in their own neighbourhoods and workplaces with promises of a better life for all.

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Yet the party's Manifesto (Program PiS) leaves no room for doubt where PiS stands politically. The document is couched entirely in nationalist rhetoric and is replete with references to history and tradition. The Manifesto considers the Catholic Church and the mass media as key players in the essential task of sustaining a national identity that is reflective of true Polish values. The nativist ethos also comes through clearly in references to Poland's foreign relations, especially in the context of the European Union.

Not surprisingly, following the installation of the incumbent regime European press reactions were uniformly negative, ranging from mildly cautious to highly alarmist, with the latter foreseeing the emergence of a paternalist-nationalist state crafted on the populist Hungarian model (Hassel 2015). Some of the international academic assessments expressed similar concerns, referring to the new government as illiberal (Freudenstein and Niclewicz 2016) and suggesting that Poland might be seeing the final days of its democracy (Kelemen and Orenstein 2016).

To come to grips with the dramatic political change, this chapter first explores the historical reasons for Poland's drifting away from liberal democracy. The analysis is guided by the assumption that examining the historical trajectory offers insights without which it is difficult, if not impossible, to understand why the agenda of the governing populist party resonates so well with so many citizens. The chapter also addresses the question of how the concept of liberalism is understood in Poland, and to what extent this understanding has a bearing on the shift in political preferences. The developments that have set Poland on a collision course with the European Union are discussed with reference to the controversy surrounding the Constitutional Tribunal, and the attempts by the executive to usurp power over the country's judiciary as a whole.

The conceptual departure point for the discussion has been inspired by the 2016 study of the phenomenon of rising support for populist parties in developed Western societies by Inglehart and Norris (2016). The chapter examines the rise of populism in Poland in reference to this study.

THE RISE OF POPULISM IN WESTERN EUROPE

Much has been written on the subject of contemporary populism and the underlying dynamic that propels populist parties into having greater political influence or gaining political power (Mair 2002; Norris 2005; Albertazzi and McDonnel 2007; Gherghina Sergiu et al. 2013;

Niznik 2016). Three common features seem to capture the essence of populism: an anti-establishment posture, authoritarianism, and nativism (Mudde 2007). Chief among them is the innate antagonism between the people and the political elite, leading to popular perceptions that the existing political establishment is corrupt and no longer represents the people. This anti-establishment sentiment is underpinned by a preference for a strong leader who is thought to better represent the will of ordinary people, and by a retreat into xenophobic nationalism.

Against this background, Inglehart and Norris (2016), focusing their attention on voter behaviour, empirically examine two theories about the demand side of public opinion that seek to explain mass support for populism. The first set of views refers to the profound effect the transformation from an industrial to post-industrial society and economy has had in the West. The process witnessed the collapse of manufacturing industries, the rise of technological innovation and the knowledge society, and unprecedented global flows of people, goods, and capital. The decline of industries has eroded organized labour to a large extent and caused the welfare safety net to shrink, producing much greater income and wealth inequality. The resultant rise in economic insecurity and feelings of social deprivation among people who do not benefit from the changes are said to fuel popular resentment of the political classes.

Inglehart and Norris's second and related thesis cites a cultural backlash as the other main reason for the surge in votes for populist parties. This argument builds on the theory of value change that had emerged in step with the rise to formerly unknown levels of existential security experienced by the citizens of Western societies in the post-war period. Solid empirical evidence documents these developments beginning in the early 1970s when the post-war generation became politically relevant; having made itself first heard in the students protests of the late 1960s. The inter-generational shift, or the "silent revolution," which facilitated the move from traditional values to more progressive norms of cosmopolitanism, multiculturalism, individual liberty and support for left-libertarian parties, triggered a backlash among older generations and the less educated.

For the purposes of their analyses, Inglehart and Norris introduce the classic economic Left-Right cleavage in party competition, which they see as being currently intersected by the cultural cleavage dividing populism and cosmopolitan liberalism. Figure 4.1 offers a visual representation of the crosscutting relationship between the populist-cosmopolitan continuum and Left-Right orientations.¹

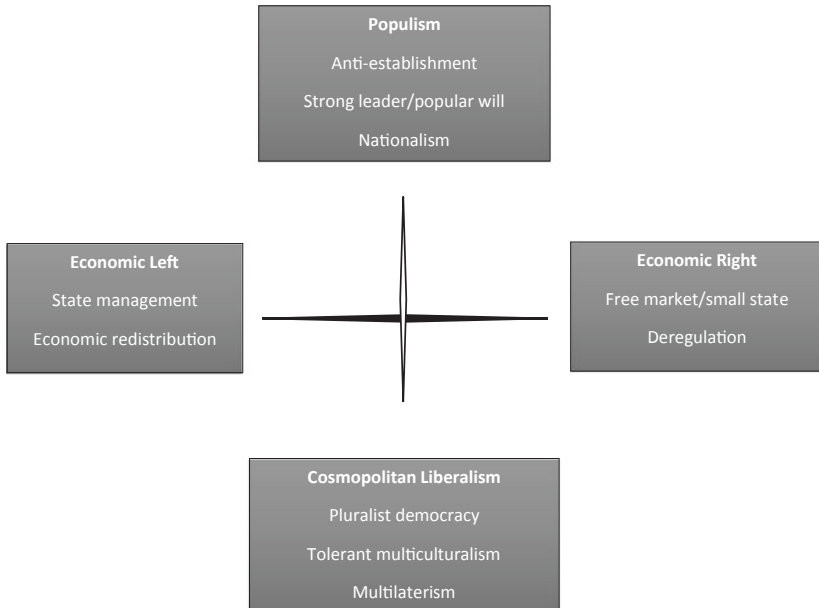


Fig. 4.1 Economic and cultural orientations (*Source* Adapted from Inglehart and Norris 2016)

In their empirical investigation, Inglehart and Norris first identified the ideological location of 268 political parties in thirty-one European countries utilizing data from the 2014 Chapel Hill Expert Survey. They then used the pooled European Social Survey 1–6 (2002–2014) to examine the cross-national evidence at the individual level. This approach allowed them to assess the effect of the economic insecurity and cultural values theses, respectively, on voting behaviour for populist parties.

The investigation led Inglehart and Norris to two main findings of comparative relevance to the following discussion:

1. The measures that were used only partially confirmed the claim that populist support is due to the resentment of economic inequality and social deprivation.
2. All of the values scales that were used proved dependable predictors of voting behaviour in support of populist parties.

The overall conclusion the authors reached was that cultural values associated with specific social and demographic factors provided the most persistent and accurate explanation for voting in support of populist parties. Inglehart and Norris noted that the appeal of traditional values associated with support for populist parties was strongest among older generations, ethnic minorities, men, religious believers, and people with limited education. The authors expect that over time the generation gap will fade away as older cohorts with traditional attitudes are gradually replaced by their children and grandchildren who adhere to more progressive values.²

THE RISE OF POPULISM IN POLAND

The Ruling Party: A Programmatic Profile

Figure 4.1 offers a useful conceptual framework within which to profile PiS. On the strength of its own declarations alone, the party can be firmly placed at the populist end of the vertical continuum. The retrograde nationalist vision contained in its Manifesto is one of a Poland where the “teaching of the Catholic Church, Polish tradition and Polish patriotism have powerfully merged with each other to build the political identity of the nation” (Program PiS 2014: 10). The Church is at the centre. It is seen not only as having played a specific nation-building and civilizational role that is historically different than in other nations, but also as the protector of Polish identity. The Manifesto points out that during the 123 years Poland was effaced from the map of Europe by its neighbours, and again under communism, the Catholic Church provided a sanctuary for the preservation of “Polishness” and substituted for the non-existing sovereign state.

Placing Poland in the European context, the Manifesto ostensibly supports the ideals that have given rise to the notion of a unified Europe by stressing the civilizational richness of the continent that is derived from the diversity of its peoples. But, contrary to the logical progression from such an assertion to the idea of cultivating multiculturalism, the document goes on to argue that the only way in which to assure a strong and prosperous Europe is to preserve this diversity as a lasting feature of the cultural space. “Unification, or radical impoverishment of diversity, and the replacement of cultural heritage by primitive civilizational

experiments translate into weakening the continent.” (Program 2014: 12). In a strongly worded passage, PiS rejects political correctness imposed not only by “cultural aggression” but also by administrative and legal means. “We do not accept the uncontrolled erosion of the sovereignty of the European fatherlands. We will defend our freedom decisively and will erect the strongest possible legal barriers to thwart such practices against Poland. This is our ‘Euro-realism’” (Program 2014: 13).

Figure 4.1 is also helpful in situating PiS on the Left-Right axis. The largely leftward position PiS occupies on that continuum confirms the contention that the traditional association of populist parties with the Right in Western Europe fails to capture some key features of contemporary populist parties elsewhere. Its Manifesto makes it clear that PiS, while pro-market in some respects, leans heavily towards economic redistribution and the welfare state. Before sketching the envisaged socio-economic “repair” programme under the heading “Project for Poland,” 27 pages (Program 2014: 17–44) of the document are taken up by a highly contemptuous denunciation of the previous administration, which is being accused of having failed the nation on every level, from political to social, to economic, and to cultural. The “Tusk system”,³ as the Manifesto terms it, is described as having misrepresented democracy with regard to both its essence and the procedures and mechanisms that characterize it. As such the “Tusk system” has worked to block the possibility of achieving positive economic and social changes in Poland.

The welfare system promised by PiS is structured around the “Polish family.” The Manifesto commits the party to supporting the family and its security, and unveils policies aimed at assuring secure family life and encouraging families to have more children. Stressing as fundamental and necessary for secure family life to have a job and roof over one’s head, the party undertakes to help create conditions conducive to achieving these goals. The document further promises an easy access to health services and education, as well as to state support for the aged and infirm members of the family. The specific benefits include, among others, a monthly subsidy of 500 zloty (\pm US\$ 125) for the second and each subsequent child⁴; social grants for poor families; the raising of taxation threshold for low-income families; care for chronic illness sufferers; free preschool; free meals in primary school; free medicine for pensioners over 75 years (Program 2014: 107–122).

THE ELECTORATE: A SOCIAL AND DEMOGRAPHIC PROFILE

In stark contrast to the findings on voting support for populist parties in Western Europe presented by Inglehart and Norris, support for PiS cannot be associated with the same key social demographic factors. As results of the parliamentary elections of 26 October 2015 indicate (Polish Electoral Commission: PKW 2015), voting patterns in Poland do not fit the model of old conservatives versus young liberals, nor the well educated versus the less well educated. In addition, more women voted for PiS than men in a ratio of 49 to 51% (Survey Report 2015: 2); while support across rural and urban areas was evenly spread (Survey Report 2015: 6).

Tables 4.1 and 4.2 show the election results, respectively, by age group and by the level of education of voters. The tables comprise results for only three of the seven parties that contested the election because

Table 4.1 Voting results by age group

<i>Age group</i>	<i>Political parties (%)</i>		
	<i>PiS</i>	<i>PO</i>	<i>Zjednoczona Lewica</i>
18–29	26.6	14.4	3.4
30–39	30.6	23.8	5.6
40–49	38.7	25.8	6.4
49–50	47.1	23.0	7.3
60 and above	48.7	28.1	9.3

Table constructed on data published by the Polish Electoral Commission on October 26, 2015. http://parlament2015.pkw.gov.pl/349_wyniki_sejm/0/0/19

Table 4.2 Voting results by education level

<i>Level of education</i>	<i>Political parties (%)</i>		
	<i>PiS</i>	<i>PO</i>	<i>Zjednoczona Lewica</i>
Primary	55.9	15.4	3.6
Vocational	53.0	19.3	5.3
Secondary	39.2	23.0	7.00
Higher	30.4	26.7	8.5

Table constructed on data published by the Polish Electoral Commission on October 26, 2015. http://parlament2015.pkw.gov.pl/349_wyniki_sejm/0/0/19

of the relevance of those parties to the current discussion.⁵ The parties include PiS, the liberal Civic Platform (Platforma Obywatelska: PO), and the United Left (Zjednoczona Lewica).

Looking at the results in Table 4.1, support for PiS among the 18–29 cohort might suggest that the youngest voters were the least inclined to vote populist. However, many of their votes went to two other parties: Kukiz'15, a right-wing anti-system party headed by a rock singer and the radically populist KORWiN headed by a controversial maverick. Thus, in total, 37.4% of that age cohort voted Right. When one adds to this result the low support for the United Left party, the picture that emerges is one of young voters leaning alarmingly strongly towards the Right end of the political spectrum (Election Results 2015).

Table 4.2 shows that the higher the voters' education, the less they support PiS. Nevertheless, the percentage of voters with higher education who cast their vote for PiS was still substantial and, significantly, it was 3.7 percentage points higher than votes cast for the liberal PO party.⁶ As Table 4.2 also illustrates, voters with higher levels of education show higher support for the Left. In fact, if the decisive vote was up to

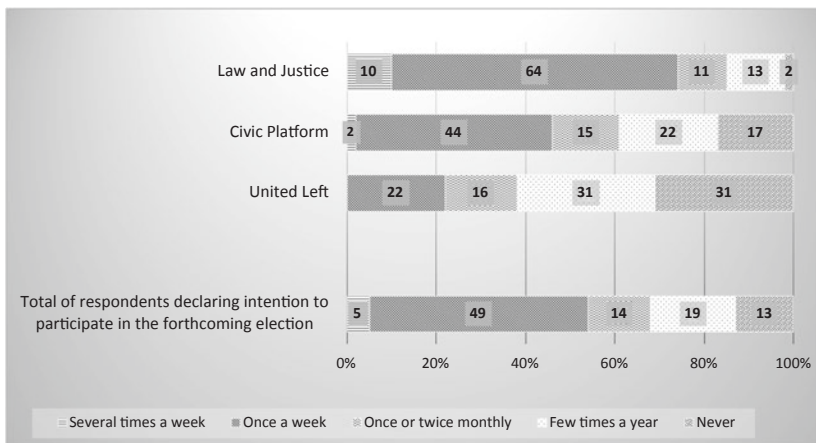


Fig. 4.2 Support for political parties and religiosity of supporters (Source: Graph constructed using data from Report on Survey November 22, 2015. <http://www.newsweek.pl/polska/jak-religijnosc-wplywa-na-wybory-,artykuly,374493,1.html>)

that cohort alone, the United Left party would have reached the mandatory 5% threshold for parliamentary representation.

The one variable applicable to Poland listed by Inglehart and Norris as a predictor of voting preferences for populist parties in the West is religiosity, in the Polish case measured by the frequency of mass attendance.⁷ As the Fig. 4.2 indicates, 74% of those attending mass several times a week or once a week voted for PiS.

The significant support for the populist PiS over its liberal rival is a concern that cannot but raise the most important question: Why would Poland—the first country to break out of the Soviet Bloc and clear the road towards political freedom for others in the region—turn its back on liberal democracy?

AN INTERPRETATION

The title of this chapter refers to the “loss” of liberal democracy in Poland. The question that must necessarily precede any attempt to explain such a loss is to ask what exactly has been lost. To that end, one must come to grips with what liberalism means in Poland and how it has been understood in the context of freedom.

Polish commentators offer a useful start to such discussion by pointing out that the successful establishment and functioning of liberal democracy in Poland occurred under, what they term, the Western stimulus. The idea of liberal democracy, in other words, was a foreign import not a home-grown philosophy, and as such it carries no native tradition (Wnuk-Lipinski 1996; Szacki 2002). What is more, while transition to democracy in Poland was driven by the slogan of “catching up with the West,” for many Poles today the current troubled state of the West raises the question of whether catching up still makes sense and, if so, what does this actually entail. The *raison d’être*, therefore, has been undermined, with negative consequences for Poland’s liberal elite. But, of course, the roots of the problem reach much deeper and, as it is usually the case, can be found in history.

At least three historical factors can be distinguished in the search for a possible explanation for Poland’s populist turn. The first has been a historical trajectory inauspicious to the entrenchment of liberalism. At the time when the American Revolution inspired the drafting of the Declaration of the Rights of Man and the Citizen adopted in 1789, Poland embarked on her long struggle for independence.

The struggle was not guided by the idea of the inviolable right to liberty of the individual, but that of the plurality. The relatively brief period of the regained independent statehood from 1918 to 1939 by a country sandwiched between communist Russia and the increasingly fascist Germany did little to sow the liberal seed. The subsequent attack by both these neighbours on Poland in September 1939 and the ensuing extermination policy against the Poles, and against the elite in particular, were once again mainly about survival as a nation. The forced post-war incorporation of Poland into the Soviet Bloc rekindled the desire to achieve freedom from foreign domination, but was yet again fuelled chiefly by the idea of national freedom. And throughout these turbulent two centuries, the Catholic Church—the very epitome of conservatism—was seen as the only refuge where one could feel truly Polish.

By contrast, Western liberal democracies might be internally differentiated but they are all contained within a common and well-defined value system. This normative delineation is based on the core belief in a specific place of the free individual in the collective. In the Western cultural sphere, this standing is defined by the rights and responsibilities of the individual rooted in the emancipating ideas of the Enlightenment and the French Revolution. In other cultural spheres, the status of the individual in the context of the collective is decided by different cultural norms that have formed under different historical processes (Baszkievicz 1998). This suggests that the transfer of democratic institutions and procedures and their implantation into a culturally alien ground might be a far easier task than the transplanting of liberal values necessary for a healthy growth of democracy.

In Poland, and elsewhere in the region, the final stages of communism witnessed what could be taken for the arrival of such a receptive normative climate in the upsurge of a civic culture driven by unrealized freedom aspirations and widely felt deprivations in the status of a citizen. This impression was particularly strong during the period of the domino effect starting with the emergence of the “Solidarity” Trade Union movement in Poland and the later Polish Round Table talks, moving on to the Velvet Revolution in Czechoslovakia, and the reform negotiations between the communist elite and the opposition in Hungary. This impression was misleading, however, because it was derived from the actions and opinions of the anti-communist elite who challenged the oppressive regime and whose discourse was conducted in the language of

a democratic culture. The same could not be said for the respective societies at large, but even so, in the early stages of transformation the elite enjoyed authentic mass support, which created conditions conducive to the building of liberal democracy on the ruins of communism (Wnuk-Lipinski 2004).

The second factor that might explain Poland's populist turn relates to the length of uninterrupted democratic persistence in a given setting. As Robert Dahl (1997) noted, democratic consolidation requires a strong democratic culture characterized by sufficient emotional and pragmatic attachment to democratic procedures. For this to happen, time is needed. Many authors agree that the longer the period of uninterrupted democratic habituation lasts, the greater the chances for the entrenchment of a liberal civic culture and its acceptance as a natural social environment (Muller and Seligson 1994; Barry 1978; Schmitter and Karl 1991). Time has not been on Poland's side.

The third explanatory variable refers to the nature of the autocratic regime from which a country transits to democracy (Geddes 1999; Teorell 2010). Each type has a specific identity that creates a specific set of problems after transition. At the most general level, the communist type affected those it ruled by the Marxist idea of materialist determinism in which the human being was seen as subject to predetermined historical processes, which tended to instil passivity, risk-aversion, and reliance on the state. But the hypocritical nature and the internal contradictions of the communist system bestowed a much more tangible and damaging legacy. The theoretically attractive, but in reality duplicitous version of the "common good" as experienced under communism, has left many questioning this very principle on which good governance rests. The concepts of law and power were similarly corrupted. The former was equalled with the will of the ruling elite; while holding power was seen more as a goal in itself and, especially, as a means of access to benefits.

The arrival of democracy in 1989 did not dispel the systemic confusion. A survey conducted three years hence revealed that only 9% of respondents thought democracy replaced communism for good; 27% assumed that even though the communist regime had collapsed it was difficult to say if that was a permanent state of affairs or not, and, significantly, 18% saw the Catholic Church as the new "leading force," while 16% perceived "Solidarity" as a new dictatorship, and 15% thought the communists were still in power (Roszkowski 1995).

The difficult task of crafting a new democracy under such a taxing historical bequest soon began emerging, both at the elite and at the societal levels, and in between the elite and the society. The first cracks appeared with the disintegration of the nationwide “Solidarity” movement as it inevitably splintered into different ideological groupings and parties. The disintegration facilitated the entrance onto the political scene of many new actors and the comeback of some of the old communist ones, albeit reorganized under different guises. While this dynamic could be regarded as a natural progression towards the emergence of democratic multiparty politics, the political polarization that had emerged in Poland led to extraordinarily deep cleavages as the various parties clashed over all issues, including such core ones as market economy, privatization, and de-communisation. Equally troubling has been the carry-over authoritarian tendency of keeping closed the channels of communication between the elected representatives and their constituencies (Roszkowski 1995; Grabowska 1995; Wasilewski 1995).

At the same time, the arrival of capitalism brought social divisions and inequalities unknown under communism. This was despite the successful “shock therapy” that transformed the stale-planned economy into a thriving market economy, attracting foreign investment, promoting impressive economic growth, and creating a new middle class and financial upper classes. But rather than first building a strong and transparent state and putting in place appropriate regulation to assure an equitable development of the society as a whole, the neoliberal elite reduced the role of the state. Consequently, the considerable successes did not translate into the creation of a social welfare state of the Western European kind and the fulfilment of hopes for a just and participatory social order that most Poles associated with liberal democracy. Instead, economic exclusions appeared, especially of senior citizens and the young, with an unemployment rate among the latter at 21.1% in 2015, leading to the emigration of over 2.3 million young Poles to Western European countries, and indirectly contributing to Brexit (Karolewski and Benedikter 2016). And as promises for improvement were not met, frustrations developed eroding the legitimacy of the liberal regime.

As a consequence and rather ironically, liberalism, or more precisely the miscomprehension of the concept in Poland, has become the most divisive fault line splitting the nation. Instead of blurring political differences and allowing independent groups to coexist amicably and cooperate with each other on the basis of trust and tolerance, a new ideological

monopoly emerged. In time, many citizens whose expectations were not fulfilled started to equate liberalism with all evil, perceiving it as divisive; anti-Catholic, hence anti-Polish; culpable of perpetuating neoliberal exploitation globally; and devoid of moral values. At the same time, liberal elite came to be seen as cold and rational technocrats obsessed with the market and disinterested in the welfare of ordinary people.

Polish cosmopolitan elite bear much responsibility for such popular misconceptions of liberal democracy. Preoccupied as they were with “catching up” with the West, they did not promote the political aspects of liberalism, nor did they impart to the society the emancipatory essence of liberal values, an omission that is sometimes attributed to their reluctance to openly promote such values for fear of evoking the animus of the Catholic Church (Szacki 2002). Instead, the liberal leadership collapsed the political and normative spheres into the economic one, creating the overwhelming impression that liberalism was essentially about everybody becoming rich, or at least better off.

Writing over two decades ago, Edmund Wnuk-Lipinski, one of Poland’s leading sociologists and political commentators at the time (Wnuk-Lipinski 1996) warned against the absence of political thought. He also bemoaned the lack of a vision that would mobilize genuine support among the majority of the people and offer them, even if only partially, a sense of a new political identity. In his view, the articulation of a target goal was of critical importance for the democratic political process because it provided the average citizen with a reference point for the formulation of his or hers own political preferences: “If there is no vision, there is nothing to identify with, and there is nothing to support” (1996: 271), with the result that values morph into interests.

Unfortunately, Wnuk-Lipinski’s prophetic words fell on deaf ears. The detached liberal elite failed to appeal to peoples’ minds and hearts. By so doing, they had opened up a space for their critics from both the Left and the Right to enter with their tools of trade ready and honed to play on human emotions. Neither those on the Left nor those on the Right are afraid to stir up passions or paint the black and white picture of “us” the good ones versus “them” the bad ones, and both sides speak of emancipation—not of the human spirit, though, but from under the “dictatorship” of global capital or the EU. However, while the Left in Poland remains stuck in the passé Marxist terminology of class struggle and Western capitalist exploitation and as such attracts little public attention in the post-communist society, the messages of the Right fit

perfectly into the troubled *Zeitgeist* with all its current anxieties (Tokarski 2016). And PiS has become adept at unscrupulously manipulating societal apprehensions by invoking the familiar calming symbols of the Church and the Polish nation under its moral guidance in an alien world.

PI S: POLICIES AND REACTIONS

A veteran Polish sociologist coined the phrase “anti-communist bolshevism” to describe PiS and its policies (Staniszki 2016). In her view, which reflects that of the majority of Polish academic commentators, the party displays an archaic concept of governance based on the conviction that ruling equates with instilling fear, and is about status, symbolism, and imposition of the government’s will on the populace without encountering resistance; an attitude not unlike that of the erstwhile communist regime.

PiS is a radically conservative party. If political liberalism is understood as a system, which sets limits on government’s interference with the private lives, worldviews, and habits of the citizens, the Polish ruling party’s policies represent the exact opposite. The policies are aimed at forcing the whole of the society to transform—for its own good—under the party’s “Good Change” slogan. Echoing the position of the Catholic Church, PiS is anti-abortion and anti-in vitro fertilization, and it stands for disciplinarian paternalism from the level of the government to that of the family, seeing the family, not the individual, as at the most essential component of the society. The party is also highly insensitive to feminist issues, censures homosexuality, and uses incendiary language about immigrants. In short, PiS stands against most of the values that are seen as progressive in Western democracies. And in trying to impose the “good change,” PiS is not averse to breaking the law and using underhanded tactics, including taking decisions in parliament late at night or early in the morning, with short notices given to opposition parties.

The “Good Change” slogan extends to Poland’s foreign policy, especially within the European Union. On the face of it, Poland under PiS remains entrenched in EU structures and the party continues to pursue some of the main policy objectives of its liberal predecessors, but beneath that façade there is a fundamental paradigm shift. Whereas all of the country’s previous post-communist administrations regarded Europe as a chance for Poland to find security within the structures of NATO and enjoy prosperity and peace as a member state of the EU,

PiS regards Europe not as a chance, but as a risk—if not a danger—for Poland. This reassessment is based not only on highly negative perceptions of the EU and pessimism about its future, but also on the way in which the ruling party defines the Polish nation; a definition that considers it to be a cultural and historical entity, not a political community of citizens. In line with this logic, and as already stated in its Manifesto, PiS continues to insist that the EU will survive only if it foregoes integration in favour of a union of sovereign national states (Stefan Batory Foundation 2016). Integration has been also questioned by PiS on the grounds of faulty representation. The Polish Foreign Minister, Jan Waszczykowski, speaking in parliament remarked that proponents of closer integration want economic governance to be coordinated by the political union and yet “today there is no fair and democratic way of electing legitimate authorities of such a union” (Speech January 29, 2016).

More belligerently, PiS asserts that it will not tolerate any outside interference into Poland’s sovereign affairs, even if the country’s existing laws should be perceived to have been broken. This attitude ignores the fact that on accession to the EU Poland accepted the Copenhagen Criteria, which require the joining state to preserve the institutions of democratic governance and human rights, and respect the obligations and intents of the EU (*Laboratorium Wiedzy* 2016).

PiS’s aggressive stance has been contributing to Poland’s diplomatic isolation and the country’s distancing from mainstream European politics. The collision course with the EU was set over PiS’s introduction of new media laws and, above all, those governing the Polish Constitutional Tribunal. In response, on January 13, 2016, the European Commission launched a formal investigation into PiS’s alleged disempowerment of the checks and balances principle protecting the independence of democratic institutions. This was the first such action taken by the EU against one of its full member states (Karolewski and Benedikter 2016).

The controversy surrounding the Constitutional Tribunal, both outside and inside the country, is so vast and complex that a broad outline only can be presented here. According to the European Commission, PiS is undermining the separation of powers principle by attempting to tip the balance in favour of the executive by using its majority in the legislative body against the judiciary. Is this the case? Unequivocally “yes.” Already as Prime Minister (2006–2007), Jarosław Kaczyński, the then and current leader of PiS, presented a project aimed at curbing the powers of the Constitutional Tribunal, thus making clear his party’s

preference for a majoritarian model of democracy, rather than a liberal one based on the rule of law and separation of powers. Gaining power as a majority party placed PiS in a position to implement such designs.

Consequently, the Constitutional Tribunal debacle has emerged with the topic becoming a political battlefield for the government, parliamentary opposition, civil society organizations, and almost the entire legal profession in the country. In the broadest terms, PiS believes that its electoral victory in 2015 made it clear Poles wanted the new government to deliver a wholesale change, which in the party's view should start not with amending the constitution, but with changing the institution that guards it, that is, the Constitutional Tribunal. The opposition maintains that if any changes were needed, the constitution should be amended and this should be done according to the procedures defined in that very founding document (Kultura Liberalna 2016: 2).

In the opinion of some members of the legal profession, the root of the problem can be found in the provision contained in the 1997 Constitution, which leaves both the organizational and the procedural aspects of the Constitutional Tribunal in the hands of the Legislative (article 197 of the constitution). As they explain, the proviso is the result of an incomplete transformation from the communist political system in which the Sejm (parliament) was the highest organ of state power, to one based on the principle of separation of powers. Among the many negative implications emanating from the proviso, the most concerning is the method of choosing judges for the Constitutional Tribunal; the judges are selected by a parliamentary majority, and not by means of a compromise reached between the legislative majority and the minority.

Since a majoritarian practice has been in operation under the liberal government, PiS is able to claim that it merely continues an already established procedure. Some of the jurists stress that the European Commission failed to notice this irregularity when the liberal government was in power and only started to perceive it as a threat to the rule of law in Poland once the populist PiS took over. On those grounds they consider the intervention by the European Commission as hypocritical, arguing that if each EU member state is supposed to be treated equally, the same member state must also be treated equally in terms of consecutive parliaments, even if the respective assemblies are constituted by a majority of two different political parties (Debata akademicka 2016).

But a Report prepared for the Helsinki Foundation for Human Right (Report 2015–2016) makes it clear that PiS has gone well beyond simply

perpetuating a bad precedence. The authors of the Report do refer to the contested selection of new judges, tracing its origins back to a temporary regulation of June 2015 enacted by the previous government that made possible for the then ruling liberal majority to nominate five new judges to the Constitutional Tribunal. However, this problem has been exacerbated by the regulatory amendments implemented by PiS since November 2015. These amendments effectively undermine the functioning of the Constitutional Tribunal as the executive has usurped for itself the right to verify the decisions taken by the Tribunal, refuse to accept them and/or carry them out.

In reaction to the amendments, there emerged a strong lobby defending the Constitutional Tribunal. Among the lobbyist are the courts—led by the High Court and the Supreme Administrative Court—various legal structures, law associations, law departments at universities, and the general public—with thousands of citizens participating in marches and demonstrations and presenting petitions to the government (Raport 2016). The most vocal and visible among the latter is the Committee for the Defence Democracy (KOD) founded in response to the constitutional crisis (Komitet Obrony Demokracji 2016).

In April 2016, the Centre for Research on Public Opinion conducted a survey to gauge public perceptions of the crisis surrounding the Constitutional Tribunal (CBOS 2016: 62). The results revealed that nearly half of the respondents declared they stood on the side of the Constitutional Tribunal and factions opposed to PiS; over a quarter expressed support for PiS on this issue, as shown in Fig. 4.3.

Supporting one or the other side in the debate was strongly correlated with the respondents' self-identification. Of those supporting the position of the ruling party and its government, 59% placed themselves politically on the Right, and 69% were very religious, attending mass a few times a week. The majority of respondents supporting the Tribunal placed themselves on the Left (73%) or in the centre (62%) of the political spectrum and were mostly non-practicing Catholics (64%) or attending mass only on occasion (60%) (CBOP 62:4/2016).

To establish the impact of the opposing “narratives” meant to sway the public one way or the other, respondents were asked if they agreed or disagreed with the following 10 statements, giving them five choices: “Strongly agree,” “Partially agree,” “Partially disagree,” “Strongly disagree,” and “Hard to tell”.

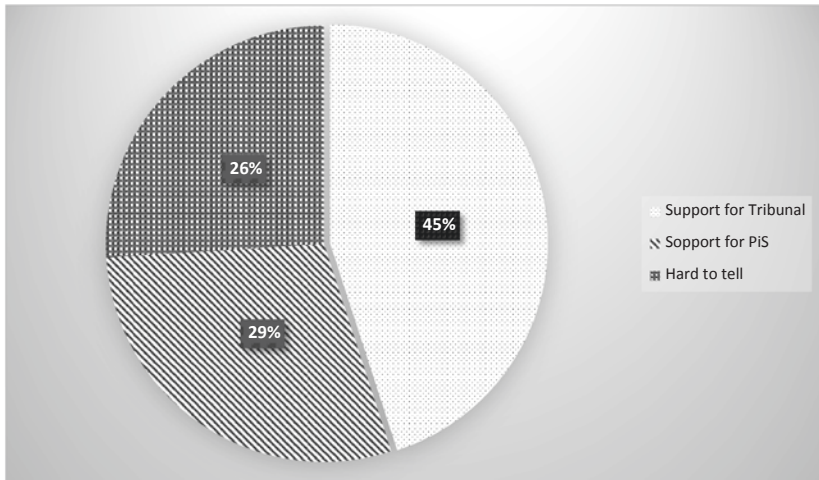


Fig. 4.3 Support for opposing narratives (*Source* Figure constructed using data from CBOS Survey Report (62:4) 2016. http://www.cbos.pl/SPISKOM.POL/2016/K_062_16.PDF)

1. PiS attempts to disable the Constitutional Tribunal so it can rule unrestricted.
2. PiS only wishes to improve governance.
3. The Constitutional Tribunal wants to paralyse governance of the country and puts itself above the law.
4. The Constitutional Tribunal is doing its duty and safeguards democracy and the rule of law in Poland.
5. The opposition is using the Constitutional Tribunal to attempt to overthrow a legally elected government.
6. The opposition cares for democracy and the rule of law in Poland.
7. The EU, its politician, and its institutions care about democracy and the rule of law in Poland.
8. The EU, its politician, and its institutions have been from the start unfriendly towards PiS and support the opposition.
9. The European Commission cares for democracy and the rule of law in Poland.
10. The European Commission has little understanding of Poland and what is happening in that country.

Two indicators were constructed on the basis of the responses. The first showed the effect of PiS's "narrative"; the second one the anti-PiS "narrative". The first indicator was constructed by counting the "Strongly agree" and "Partially agree" responses with regard to the following statements:

- PiS wishes only to improve governance.
- The Constitutional Tribunal wants to paralyse governance of the country and place itself above the law.
- The opposition using the Constitutional Tribunal attempts to overthrow a legally elected government.
- The European Commission has little understanding of Poland and what is happening in that country.

The second indicator was constructed by counting the "Strongly agree" and "Partially agree" responses with regard to the following statements:

- PiS attempts to disable the Constitutional Tribunal so it can rule unrestricted.
- The Constitutional Tribunal is doing its duty and safeguards democracy and the rule of law in Poland.
- The opposition cares for democracy and the rule of law in Poland.
- The EU, its politician, and its institutions care about democracy and the rule of law in Poland.
- The European Commission cares for democracy and the rule of law in Poland.

Figure 4.4 illustrates reactions to the PiS narrative by the number of statements with which the respondents have agreed. Thirty-one per cent of respondents did not agree with any one of the five statements; eleven per cent of the respondents agreed with all five statements.

Positive reactions were noted for less than two statements (Average: 1.86).

Figure 4.5 shows reaction to the anti-PiS narrative, once again by the number of statements with which the respondents have agreed. Twenty-six per cent of respondents did not agree with any one of the five statements; twenty per cent agreed with all five statements. Positive reactions were noted for more than two statements (Average: 2.31). The results

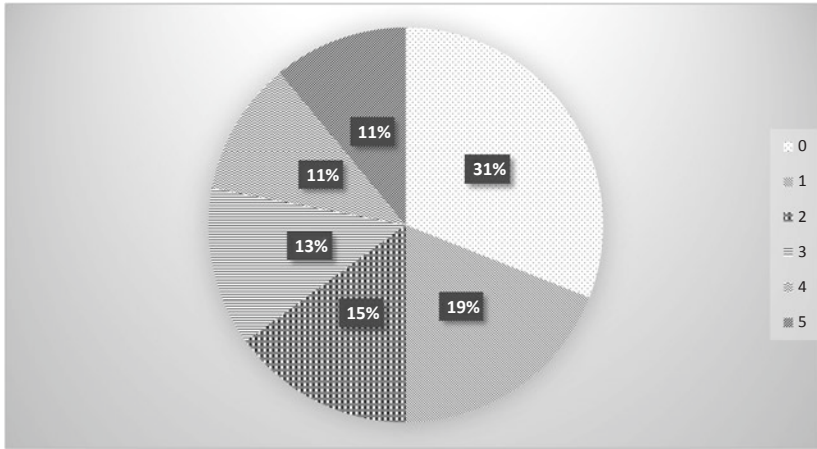


Fig. 4.4 Impact of PiS narrative by reaction to statements (*Source* Figure constructed using data from CBOS Survey Report (62:11) 2016. http://www.cbos.pl/SPISKOM.POL/2016/K_062_16.PDF)

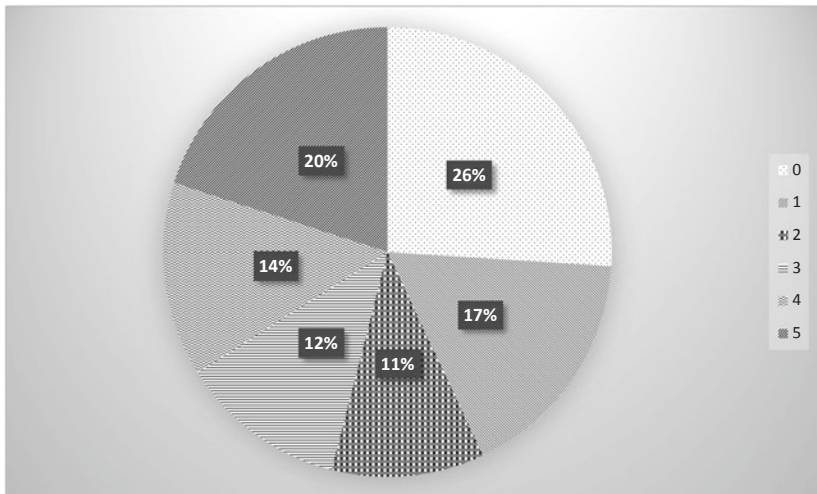


Fig. 4.5 Impact of anti-PiS narrative by reaction to statements (*Source* Figure constructed using data from CBOS Survey Report (62:12) 2016. http://www.cbos.pl/SPISKOM.POL/2016/K_062_16.PDF)

show that in April 2016 just under half of the respondents (45%) stood on the side of the Constitutional Tribunal, against a little more than a quarter (29%) of those who backed PiS on this issue, with neither of the respective “narratives” being fully accepted, but with slightly more credibility given to anti-PiS interpretations.

More than a year later, in July 2017, with the powers of the Constitutional Tribunal having been seriously curtailed in the interim by the ruling party, a survey revealed that 45% of respondents were critical of the Tribunal. The assessments were closely correlated with party political preferences: 47% of PiS supporters approved of the Tribunal, against 74% of polled supporters of the liberal PO party who held critical opinions about it (CBOS 2016).

Having successfully hollowed out the Constitutional Tribunal by assuring the constitutionality of laws PiS tries to push through the parliament would not be questioned, the party set its sights next on disempowering the National Judicial Council and the Supreme Court. When the proposed amendment laws regarding these two institutions were first mooted in early 2017, the Chief Justice of the Supreme Court, in an unprecedented statement of February 2, 2017, accused the government of having used a *fait accompli* to undermine the constitutional foundations of the state, and of trying to dismantle the remnants of the independence of the judiciary in the country. She called on all judges to resist those attempts by appealing to their honour and civic duty (Chief Justice 2017).

In the opinion of the Supreme Court judges, the proposed laws would divest the National Judicial Council of its main function, which is to guard the independence of the courts and the autonomy of the judges. Invoking Article 187 of the Constitution, the Supreme Court pointed out that the proposed amendment would violate the constitution by shifting the control of the nomination of judges from the judiciary to the politicians. Article 31b of the proposed legislation would in effect make the nomination of each new judge subject to parliamentary majority. On February 2, 2017, the proposed law was thus summarily dismissed as unacceptable by the Supreme Court (Supreme Court statement 2017).

Despite the strong objections by the judiciary and widespread public protests, a bill was rushed through parliament in July 2017 that would pave the way for government control of the Supreme Court.⁸ It is worthwhile noting that during the relevant parliamentary debate a PiS

MP explained that the law was meant to “correct” the judiciary system in Poland by enabling the much delayed process of de-communisation to take place, which the ruling party accused the judiciary of having failed to conduct (Parliamentary Debate 2017).

In a surprise move, Poland’s President, Andrzej Duda, vetoed the proposed judicial reforms. The former member of PiS, who earlier rejected a meeting on the crisis with the President of the European Council, Donald Tusk, stated he did not feel the law would strengthen a sense of justice. But he added a new law was necessary and that with the help of experts he would prepare relevant amendments within two months on both the Supreme Court and the National Judicial Council. Thus, at the time of writing, the final outcome remains uncertain (Presidential Veto 2017).

President Duda’s veto and especially continuing public disaffection suggest the ruling party might find it harder to impose its will than it assumes. A case in point has been public resistance to the earlier attempt by PiS to push through at speed an expensive reform of the educational system. The proposed reform was not tabled for public debate or comments, and no explanation was given as to why PiS deemed it necessary to return to the educational system that had existed in communist Poland. A series of mass protests by teachers and teachers associations rolled across the country in October 2016 (Kultura 2016/41).

The demonstrations by teachers were but part of a series of protests against the top-down “reforming” tendency of PiS that has become its hallmark. But the game changer appears to have been the massive display of opposition to the proposed amendment to the abortion law. Since 1993 Poland has had one of the most stringent legislations in Europe, with abortion available only in cases of rape, incest, serious foetal defects, or threat-of-life to the mother. The 1993 law was a compromise between the communist era of unrestricted abortions and the pro-life proponents of a total ban, strongly supported by the Church. PiS decided to walk away from the compromise, proposing an amendment to the law that would make all abortions illegal, regardless of circumstances.

Anger at the proposal brought out thousands onto the streets. The “Black Protest,” so named after the mostly black-clad female marchers, was the first significant political setback for PiS (Kulisz 2016). The unprecedented withdrawal of the proposal by PiS in the face of the mass protest was the immediate consequence, but there were other, more future-projecting implications. First, the protest of October 3, 2016 was the

outcome of an unmatched in speed and breadth public mobilization not only of women but also of men, with many of the participants having been previously politically disengaged. Second, even some of the newspapers known for their Right-leaning sympathy expressed disapproval, with one editor declaring that for him the “good change” was over (Dziennik.pl. 2016). Third, by withdrawing the proposal PiS let down its own Catholic-conservative electorate inviting criticism under the suspicion that either the party was never actually committed to the proposal and merely was using it in a political game, or that it withdrew from its earlier position out of weakness so as not to deepen further the public wrath that it found it could not control (Kultura Liberalna 2016: 40).

The temporary dip in approval ratings for PiS quickly recovered to former levels, but the party’s arrogance might have been somewhat tempered by the realization that it is not invincible and cannot rule as it pleases. Meanwhile, citizens had a chance to remind themselves of the power they wield to decide their own affairs.

CONCLUDING REFLECTIONS

In Poland, the living memory of a deeply troubled history and the teaching of the Catholic Church are inseparably enmeshed and jointly define the psyche of the nation. The cultivation of liberalism in such ground, like that of an exotic plant, requires special care. As the above analyses documented, such care was not taken. Having defined liberalism mainly in economic terms, Polish liberal elite implemented their ambitious economic programme with great success and managed to change the country into the poster child of post-communist transition. And for a time high expectations of a better life for all, buttressed by robust economic growth, stimulated constituencies to favour liberal economic and political reforms. Yet while the liberal neo-capitalist model was highly successful in producing a new middle class and financial upper classes as well as attracting foreign investment, the lower strata of the population began to feel gradually disenfranchised as high hopes were replaced by a socio-economic decline, aggravated by what was perceived as a disconnect between the elite and the citizens. And as liberalism—such as it was understood in Poland—lost its lustre, the traditional mindset came to the fore opening the door for another political option to enter.

Comparing support for populism in Poland with support for populist parties in Western Europe, as examined by Inglehart and Norris, two

conclusions can be drawn. First, on the basis of election results, which revealed strong populist tendencies among the young cohort, the optimistic expectation that when the older generation dies there will be return to more progressive values, is not pertinent to Poland. Second, the finding that the economic factor plays a lesser role in populist support than the cultural factor is equally inapplicable. Instead, in Poland, the two factors work together, reinforcing each other. PiS assures this by combining leftist redistributive measures, approximating Western European social market economies, with a rightist populist agenda that coincides with the conservative Catholic values of large sections of the electorate. Whereas the economic measures have been exerting a positive socio-economic influence, the extreme brand of populism PiS represents is dragging the country backwards. The blurring of the Church-state line; the re-emergence of deep suspicion of neighbours, Germany and Russia in particular; xenophobia; and intolerance all have raised their ugly heads under the current regime, alienating Poland from the European Union and its values.

Does this mean that Poland is witnessing its final days of democracy, as some fear? The ultimate outcome of the government's interference with the judicial system and its efforts to undermine the separation of powers principle are not possible to predict. However, there is room for guarded confidence in the robust civic engagement of many among the majority of citizens who do not support PiS and who are ready to stand up in defence of their democratic institutions and civil liberties. Still, to return to power and retain it, liberal elite will have to reinvent themselves. In the cultural sphere, unlike their Western counterparts, they do not have the rich repository of emancipatory values to fall back upon, so they will have to become creative and start from scratch. In a country as overwhelmingly Christian as Poland, Christianity could prove a useful catalyst to help make the connection between liberal values and the legacy of the Christian tenets of equality of status and individual liberty on which liberal democracy rests. In the economic sphere, liberal elite—and not just in Poland—will have to learn how to put the people first.

NOTES

1. The authors note that the traditional association in Western Europe of populism with the Right fails to capture certain core features of today's populist parties in other parts of the world.

2. Unfortunately, the study does not offer a speculative explanation as to why the “older cohorts”, the very sixties’ generation who drove the “silent revolution,” should now turn their backs on the progressive norms they had fought to achieve.
3. The term refers to Donald Tusk, President of the European Council since December 1, 2014, who was the Prime Minister of Poland and co-founded the liberal Civic Platform party, which PiS defeated in the October 2015 election.
4. This core campaign promise (called 500+) has been implemented; the others have been either implemented partially or not at all.
5. With a voter turnout of 50.92% the seven parties, which gained parliamentary representation included: Peace and Justice (PiS) 37.58% of votes; Platforma Obywatelska (PO) 24.09%; Together 3.62%; KORWiN 4.76%; Polish Peasant Party (PSL) 5.13%; United Left (ZL) 7.55%; Kukiz’15 8.81%. <http://wiadomosci.onet.pl/kraj/wybory-parlamentarne-2015-pkw-podala-ostateczne-wyniki/zqe59j>.
6. More telling still has been the relative drop in support for PO when compared with the 2011 election in which 48% of the electorate with higher education voted for the liberal party against only 22% of voters who cast their ballot for PiS.
7. The remaining group Inglehart and Norris associated with support for populist parties were ethnic majorities. It is not possible to apply this category to Poland, which in the wake of the Holocaust and the post-World War II mass expulsions of minorities left the geographically shifted country with one of the most mono-ethnic societies in the world.
8. Commenting on the manner in which the bill was passed by the parliament, the former judge of the Constitutional Tribunal, Prof M Safian, stated that if the bill was passed when the Tribunal was still functional, it would have been invalidated on the grounds it violated due process of law (Woszczyk 2017).

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