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Poland's conservative turn of 2015: Where are its real origins?

The victories of the national-conservative Law and Justice (PiS) party in Poland in both the presidential elections of May 2015 and the parliamentary elections of October 2015 have been controversially debated by journalists and pundits.¹ Many observers interpret Poland's shift to the right as a sign of a broader Central and Eastern Europe (CEE) backslide towards a new form of authoritarianism. On 13 January 2016 for the first time in its history since the founding treaty of Rome in 1958, the European Union (EU) initiated a formal investigation against one of its member states, i.e. Poland. The investigation is intended to question whether new laws introduced by the government of the conservative Law and Justice party (*Prawo i Sprawiedliwość*, PiS), in charge since November 2015, are breaking EU democracy rules and whether they are in accordance with the rule of law and fundamental democratic values.

The EU investigation came after Szydło's government in December 2015 passed controversial laws enabling the government to directly appoint the heads of public TV and radio. At the same time, a new law of December 2015 changed the set-up of Poland's Constitutional Court and its rules of decision-making, forcing it, among other things, to make decisions exclusively with a two-third majority. That makes it de facto difficult for the court to act at all. These two moves have been seen as disempowerment of the check-and-balance principle based on the independence of institutions vital for democratic pluralism by many observers and parts of the citizenry. The new law on the Constitutional Court was signed by President Andrzej Duda in December 2015 but has been disregarded by the Constitutional Court itself, who in a decision of March 2016 ruled the law to be unconstitutional. As a response, the Szydło government decided not to publish the March ruling of the Constitutional Court, as it took place in a set-up determined by an older law on the Court. Both steps paved the way for an ongoing constitutional crisis in Poland. In addition, the so-called "Venice Commission" of the Council of Europe—i.e. the "European Commission for Democracy through Law" which is the Council of Europe's advisory body on constitutional matters of its member states—, who explored the issue on the

invitation of the Polish government, questioned some of the contents of the new law on the Constitutional Court, thus giving the opposition additional arguments against the government.

After Hungary, Poland is the second of the Central and Eastern European countries that raises fears of an authoritarian backslide in the CEE region.² Both countries were long viewed as role models with regard to their political and economic transformation from communism (or the so-called "real existing socialism" as political purists would have it) to democracies starting in 1989–91 until their accession negotiations with the EU in 1998–2002. Given the controversial events in Poland since November 2015, some outside observers continue to offer reductionist readings of the Polish crisis. For example, Daniel Kelemen and Mitchell Orenstein in their *Foreign Affairs* article "Europe's Autocracy Problem: Polish Democracy's Final Days?" are already counting the days of Polish democracy and see its only rescue in the pressure of the EU on the Polish government to withdraw or modify some of the contested laws. Others, such as Ivan Krastev with his "Plane crash conspiracy theory" in *Foreign Policy*, or Judy Dempsey with her assertion that Poland's case is crucial for the future of the EU and must therefore be handled "strongly" in *Carnegie Europe*, are pointing toward the same direction.³

Structural causes

In reality, the "conservative turn" can be explained to a large extent by the specific problems of CEE governance. From a realistic point of view, the most important reason for the recent electoral victory of the Polish right is historic and structural, since it is related to the specific pathologies of CEE post-communist governance. Liberal democracy (accompanied by neoliberal capitalism) was introduced in CEE nations at the historical peak of the neoliberal interpretation of governance, democracy, and capitalism during the years 1989–1990. This led on the one hand to positive effects including robust economic growth and an increase of average living standards. On the other hand, the non-transparent privatization processes and lagging reforms of crucial sectors of

productivity manifested specific governance pathologies in Poland and other CEE countries.⁴

In 2016, after 25 years, the CEE version of governance still remains pathological in many ways. It is showing serious limitations in responding to the social needs of the region's transforming societies. Despite positive macroeconomic development, both young people and senior citizens in CEE have lived under existential pressure for many years with governments unable (and partly unwilling) to strengthen the welfare systems and balance growing social inequality.⁵

As a result, in the past ten years, more than 2.3 million Poles have been forced to emigrate to the United Kingdom, Ireland, the Netherlands, and Germany. Today, the majority of Polish pensioners have to live on 400 EUR per month and must pay for their medicine in full. In addition, Polish pensioners are heavily indebted; their accumulated debt burden was roughly equal to 450 million EUR in 2015. The public health system operates at a dismal level due to chronic underfunding and corruption. Consequently, the majority of Polish citizens have to use private medical services, despite the fact that the average Polish household's net financial wealth is \$10,919, while the OECD average is close to \$67,000.

At the same time, numerous Polish governments after 1989 used state agencies and enterprises for cronyism and politico-economic clientelism, draining financial resources from the state budget that otherwise could have been invested into higher education, research, health, and pension systems. Foreign capital has not only been unable to substitute for many of these structural difficulties and for the chronic problem of the mismanagement of public funds, but also has produced its own problems, such as real-estate bubbles and problematic mortgages for small savers. While international corporations, banks, and consultancies have mushroomed all over the CEE area, its most important nations Poland, the Czech Republic, Slovakia, and Hungary have become virtual assembly lines for foreign producers that do not hold their Research and Development departments in these nations and in many cases pay their taxes in other EU countries due to lower VAT and better legal certainty. As a result, 70 percent of the entire tax burden in Poland is carried not by European or transnational enterprises, but by small and medium-sized firms of local origin.

Most Polish political parties since 1989 have become complicit in this imbalanced development, widely independent of their leftist or rightist inclinations, dragging their feet for decades on the necessary reforms of the health care, higher education, labor market, and pension systems. Against this backdrop, in the eyes of many voters who completely adhere to democratic values, Poland's political parties and governments have turned into guards of the numerous pathologies associated with CEE governance.⁶

Polish and European controversies

The recent electoral victory of the conservative right in Poland must be read against these developments. It was not the fruit of a sudden "conservative turn," sparked by the cunning motives of just a few astute anti-democratic politicians, as some observers want to depict it. The fact is that the necessary *structural* reforms of the Polish governance system have been widely neglected both by the Polish and CEE governments, and by EU institutions and partner countries as well. It is no coincidence that, paradoxically, the conservative governments in Poland and Hungary immediately after coming into power embraced "neo-leftist" redistributive measures, common in Western welfare states such as Germany and France, that were largely omitted by previous governments in the CEE area. With this, to some extent the case of current Poland continues one paradoxical mechanism of the late EU: that "leftist" governments usually cut into the welfare net and the social system to introduce liberalization, competitiveness and efficiency reforms, and "rightist" governments *nolens volens* have to mitigate social differences and inequality in order to retain popular consent and thus remain credible as "people's parties" in societies increasingly split 50:50 between center-left and center-right. An example for the first mechanism was the German social democratic chancellors Schröder's "Agenda 2010" (2005) which is now imitated, with 10 years' delay, by the young prime ministers of Italy (Matteo Renzi) and France (Manuel Valls). Both are representatives of leftist parties and alliances, but *de facto* have to enact a center-liberal program out of the needs of their countries, sometimes denominating it a contemporary neo-European "Third-Way"-approach.

The Polish PiS is *de facto* one of the examples of the opposite: a conservative party that in many ways pursues a clear "socialist" agenda. The irony built into these contemporary European contradictions is

that since Schröder it has been the conviction of many experts and politicians that only leftist governments can implement cuts and “serious” reforms of the social system, because they are the only ones who can convince the lower classes of the necessity to do so, while only rightist governments can convince the economy to concede a better social share to the broader community. The current Polish government seems to be an expression of this irony.

Conclusions

The controversies surrounding the disempowerment of the Polish Constitutional Court and the public media in 2015-16 have to be seen in this complex framework, particularly in the context of the conservative Polish government’s conviction that the current governance problems of Poland (and other CEE nations) are so serious—and at the same time so widely ignored by the EU partners—that they require an exceptionally far-reaching governmental capacity to act similarly to a government of “national unity”. Only such a much empowered government would be able to break vested interests and remove the all too well-known pathologies of CEE governance. Since the PiS has not forged an alliance of “national unity” with other parties in the parliament nor sought respective consensus through public debate though, critics argue that the government is not legitimized to launch game-changing emergency measures appropriate only to a real, i.e. formalized government of “national unity”, since they modify the rules of the system, not only its applications.

The question in this situation is, if the 2016 intervention of the EU against the PiS government could mark the beginning of a new crisis—a crisis in which, to make matters worse, the main role could be played by a European Union itself plagued by the historical threat of breaking apart in different sectors and at different levels. At the same time, the EU-Poland crisis might have even more serious consequences on the specific governance problems of Central Eastern European nations than the North-South tensions during the European sovereign debt crisis had on the questions of the Euro and of Austerity versus Stimulus Policies. This is because the case of Poland relates to the center of the East-West axis of the European integration project, which is still younger and more instable than most other internal relations within the EU. The current EU refugee crisis since 2012 could make things—at least temporarily—even worse, mainly psychologically, e.g. regarding the trust between

member states and between them and the EU as a whole. For example, today’s calls for more European solidarity by the EU are accompanied by voices of European politicians to cut the European funds to the CEE area—a call which understandably does not exactly enhance the EU approval rate with CEE voters.

Our conclusion is that if the debate between Poland, the EU and the international community about the future of governance and democracy in the CEE area - and in Poland in particular - wants to be productive and forward-oriented, it must concentrate to jointly and collaboratively implement balanced and reasoned reforms of the CEE governance systems in positive cooperation and by using best practice examples at the interface between the EU and the CEE, instead of focusing almost exclusively on the effects of the victory of the PiS in Poland alone. That will require a new, sound and sober spirit of dialogue and cooperation between all partners involved that will have to substitute the rhetoric of scandal and polemic that these days abound on all sides. With this, a practical and at the same time open policy approach for the further steps of the debate is designed.

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