

AVOIDING ACCOUNTABILITY: DEMOCRATIC BACKSLIDING IN POLAND

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ABSTRACT After the collapse of the Soviet Union and the democratization of the former Soviet states in Central Eastern Europe, Poland's strong economy and internal stability primed it to be a leader in the region: making it a post-communist success story – but this optimism would not last. The election of the Law and Justice Party (*Prawo i Sprawiedliwość* in Polish, PiS for short) in 2015 marked a significant downturn in the quality of the country's democracy. In this paper, I examine Poland's democratic backsliding at the hands of PiS through three of their most prominent anti-democratic actions: the decreasing freedom of the press, the erosion of judiciary independence, and the party's increasing Euroscepticism, relying on data from international organizations such as Freedom House's Nations in Transit and Reporters Without Borders' World Press Freedom Index.

INTRODUCTION

The collapse of the Berlin Wall in 1989 and the end of the Soviet Union signalled a new era for global politics; one where, according to many, liberal democracy defeated communism and became the ultimate form of governance. For the former Soviet states, however, this optimism did not last long. Despite a generally successful transition to democracy and an upward trajectory in the economic sectors, the Central Eastern European region has suffered a notable amount of democratic backsliding in recent years. One of the most interesting cases of backsliding in the CEE region is in Poland.

Immediately before and during its accession into the EU, Poland was touted as one of the most promising CEE countries due to its strong economy and internal stability (the latter is likely due to the country's ethnic homogeneity), but the benefits of liberalism and assimilating into the rest of Europe were not as quick to arrive as anticipated. The Law and Justice

Party (*Prawo i Sprawiedliwość* in Polish, PiS for short) that currently holds a majority government in Poland is a right-wing populist party that values social conservatism, anti-communism, and has a deep connection to the Catholic church (Folvarčný and Kopeček 2020). Brothers Jarosław and Lech Kaczyński, who were both involved in various anti-communist groups since the 1960s, founded the party. Lech Kaczyński died in a plane crash in 2010, and as the public discourse around the crash turned into a political landmine, his brother peddled conspiracy theories about the plane crash and questioned the reports of the investigative team. Jarosław left Polish national politics after his brother's death and a failed presidential bid, though he still serves as strategist and chair of PiS today (Folvarčný and Kopeček 2020). After PiS was elected to a majority government in 2015 under the leadership of Andrzej Duda, there was increasing concern from the international

community about the government's attacks on democracy, and Freedom House's Nations in Transit report saw Poland declining in their democracy score by a whole 1.2 points since 2015, which dropped them down a category from a "consolidated democracy" to a "semi-consolidated democracy" (Arak and Żakowiecki 2016, Wójcik and Wiatrowski 2022).

As it is not viable to explore every possible contributing factor of Poland's democratic backsliding in this paper, I will focus my research on two of the reasons that Freedom House attributed to the decline in Poland's democracy score as well as a third factor not directly addressed by Freedom House: decreasing freedom of the press, lack of judicial independence, and increasing disdain for the international community through Euroscepticism. The latter is not one of the Nations in Transit categories for evaluating democratic performance, but I believe it is an important measure for how Poland has reacted to pushback from the international community about their anti-democratic actions. I am selecting these three examples for several reasons; in part because they have been the three most high-profile occurrences of democratic erosion that have garnered attention from the international community, and also because they are all elements of a 'thick' definition of democracy, which goes to show that democratic backsliding can manifest in many ways even when the electoral system itself is functioning. I will structure my exploration of Poland's democratic backsliding as follows: first, I will establish a conceptualization of democracy to work with, then I will examine the three factors of democratic backsliding previously mentioned; finally, I will place all this information within the broader context of the CEE region to show how

the resistance to PiS by Polish citizens makes the country stand out in the region.

DEFINING DEMOCRACY: ESTABLISHING A CONCEPTUAL FRAMEWORK

The definition of democracy is contested among academics and there are countless frameworks that serve different analytical functions. I believe that a 'thick' definition of democracy is best suited to examining democratic backsliding since thick frameworks consider not only the electoral system itself but also the political landscape of a given country; its political culture, the existence of pluralism, and political participation (EIU 2020). I will refer to Freedom House's Nations in Transit evaluation criteria, which considers the strength of the electoral system as well as civil society, judiciary independence, media freedom, among other elements throughout this paper (Arak and Żakowiecki 2016). This framework will help dig deeper into the issues in Poland's democracy, considering that the most pressing issues do not actually pertain directly to the electoral system – instead, they happen at the legislative and societal levels.

I am partial to Schmitter and Karl's definition of democracy: "[A] system of governance in which rulers are held accountable for their actions in the public realm by citizens, acting indirectly through the competition and cooperation of their elected representatives" (1991, 76). This definition has two key points that I consider essential: the accountability of leaders and the existence of a public realm that is able to provide said accountability. Every action taken by Poland's governing party that I will discuss in this paper is, in its essence, an attempt to avoid accountability, whether it is from the public, the judiciary, or the European community – this is what makes the Law and Justice party undemocratic. That said, if

democracy is not just the act of voting in elections but many elements considered together, democratic erosion or backsliding can exist when any of those factors are not living up to their potential or if a government is actively suppressing them. This approach to looking at democratic backsliding also then assumes that democracy is not a binary, have or have-not situation, but rather a continuum that can get gradually better or worse.

EXAMINING DEMOCRATIC BACKSLIDING IN POLAND: MEDIA CONTROL OR REPRESSION?

The decline of media independence in Poland has been of great concern to organizations such as Reporters Without Borders (RSF), who have dropped the country a whopping 46 spots since 2015 in their annual World Press Freedom Index report and have declared a “press freedom state of emergency” in the country (RSF 2021b). Reuters discusses the recent effort of the Polish government to “repolonize” the media sector; that is, to bring media companies operating in the country - but owned abroad - back under Polish control (Reuters 2019). The Law and Justice party has touted this as an opportunity to gain independence from other nations, but journalists and media companies are concerned it is a veiled attempt to reign in the private media sector (Reuters 2019, RSF 2021b). Two significant private media companies in the country are owned by the US and Germany (Reuters 2019), and there are concerns about what the repatriation of these companies might do to the independence of the media in the country, especially considering the state of the state-owned national broadcaster in Poland. The state-owned media in the country has already been significantly limited in its scope and is heavily biased in favour of the PiS, having backed President Duda’s reelection campaign in 2020

and more or less uncritically espousing the views of the government (RSF 2020), leading to an ever-increasing amount of polarization between Polish citizens who watch the state-owned versus private broadcasters.

Part of the repolonization package includes an increase in advertising tax which would be debilitating for private media companies and would essentially bankrupt them (RSF 2021a), leaving behind only the government-approved media sources in its wake. While TVN has not yet lost its license due to its American ownership and debate on the manner seems to have stalled, this attack of the freedom of the press and the right to diverse perspectives in media and journalism is already detrimental to Poland’s democracy. A free media that presents a plurality of ideas is essential for a functioning democracy, and preventing journalism and media that is critical of the government is undeniably undemocratic. The Polish government’s support of removing broadcasting licenses from foreign-owned media companies that also happen to be occasionally critical of the government fits in Freedom House’s framework for how illiberal regimes squelch criticism and establish media dominance (Repucci 2019).

OBJECTIONS TO JUDICIAL INDEPENDENCE

Another concerning element of democratic backsliding in Poland is its attack on judicial independence. As the lowest-scoring element of Freedom House’s democratic criteria for the nation at 3.25 out of 7 (Wójcik and Wiatrowski 2022), it is a significant cause for concern. The Polish government has made several attempts to silence court judges who are critical of Law and Justice and their policies that have become increasingly extreme, starting with the creation of the Disciplinary Chamber of the Supreme Court in 2017. In 2019, the Sjem

passed more legislation to penalize judges who questioned the validity of other courts in the country, the legitimacy of their peers, or for “engaging in political activity” by cutting their pay or by outright dismissal from their positions (BBC 2019a). While PiS argues that this is a measure to increase the effectiveness of the courts and to erase the enduring communist legacy in the country (BBC 2019b), it is a thinly veiled attempt to muzzle the judges who are invested in keeping judicial independence in the country. This most recent legislation comes only a year after the Sjem passed a law in 2018 that allowed them to appoint members of the National Council of the Judiciary, who then select the Supreme Court judges. It seems that PiS knows that if the courts were to be completely independent - something that is a necessity of a fully functioning democracy - judges would not rule in favour of PiS legislation were it to be challenged in court. Instead, they changed the law so they can appoint their own judges who support their cause: creating a significant amount of tension between the Polish government and the EU, who immediately condemned the new legislation. While Poland agreed to dissolve the Chamber in August of this year (Wanat 2021), they have not yet done so, leading the Court of Justice of the EU to hand out a fine each day the judicial reforms remain (Henley and Rankin 2021).

LAW AND JUSTICE'S EUROSCEPTICISM: AVOIDING ACCOUNTABILITY?

While the term ‘Euroscepticism’ has been used by political analysts and academics for decades now, its current usage is broader and generally refers to the wariness of the European Union by its member states for a myriad of reasons in the years since the Maastricht Treaty. Taggart and Szczberiak’s oft-cited hard versus soft Euroscepticism

(2008, 7) is generally agreed upon as the most usable definition, and their definition of “hard” Euroscepticism is the framework that I will be using. Hard Euroscepticism involves a “principled opposition” to the EU or the wish for a country to leave the EU altogether. This definition also includes those who do not wish to leave the Union entirely, but wish to create reforms and/or membership conditions that are “so unattainable [in the current trajectory of the EU] that it is tantamount to being de facto opposed to EU membership.” (Taggart and Szczberiak 2008, 8). This is the stance that PiS has towards the EU – Poland receives the most funding of any country in the EU, so the likelihood of them leaving the Union is negligible unless the government is prepared to lose over 100 billion Euro annually (Polish Investment & Trade Agency n.d.), but the Law and Justice Party wants the benefits of EU membership without the accountability and inter-dependence that comes with being part of a supranational organization.

The issue of judicial independence is not the only point of contention between Poland and the EU – the governing party in Poland has been refusing to cooperate with the European Union in countless ways and has been peddling anti-EU sentiment since they were elected. While Euroscepticism isn’t included as criteria in the Nations in Transit report nor the EIU Democracy Index, I think in the case of Poland it is particularly important since, like the judiciary, the EU is a body that has the ability to check the government for anti-democratic behaviour – though in this case, it is from external pressure rather than internal. The EU has demanded that Poland fall in line with EU policies on many things including respect for minority and LGBTQ+ rights as well as media and judicial independence (Henley and Rankin 2021). The issue at the core of all of these infringements on EU policies is that Poland

refuses to recognize EU supremacy, arguably the most important facet of EU membership. In October, the Polish Constitutional Tribunal ruled that some EU laws are not in line with the Polish constitution, and as such are to be disregarded (BBC 2021). Dutch academic Rene Repasi claims that such a rejection of EU law at the level of a national court is unprecedented (cited in Henley and Rankin 2021). This rejection of the Union that Poland worked so hard to join in 2004 goes to show how much democratic backsliding has affected the country – to the point where they refuse to cooperate with the European community in order to further the agenda of the ruling party, likely since they are aware that the EU will hold them accountable to their governing democratic principles. Whether the European Commission will dole out the consequences they have threatened has yet to be seen, but between the increasing limits on media broadcasting, judiciary independence, and disregard for EU supremacy, it is clear that Poland is trying to eliminate anything that might oppose the Law and Justice Party.

POLAND WITHIN THE CONTEXT OF THE CEE REGION POLAND'S SECRET WEAPON: STRONG CIVIL SOCIETY

Within the CEE region, Poland's Nations in Transit democracy score lands somewhere in the lower-to-middle scale – for comparison, Poland's democracy score is 60 out of 100 (considered a semi-consolidated democracy), the Czech Republic's is 76 (a consolidated democracy), and Hungary is at 45 (no longer considered a democracy but a hybrid regime) (Wójcik and Wiatrowski 2022). While Poland has not quite reached the level of backsliding as Hungary has at the hands of the Fidesz party, there are definitive parallels between PiS's and Fidesz's strategies in quashing the voices of opponents. Both nations have very

strong voices within the region and other countries are beginning to follow their lead in anti-democratic practices such as the consolidation of media outlets. The Czech Republic recently dismissed the entirety of the council of the national public broadcaster in order to replace them with sympathizers to President Babiš (Wójcik and Wiatrowski 2022), mirroring similar actions by both Hungary and Poland.

However, what makes Poland stand out is the large amount of public pushback that the Law and Justice Party's policies are creating. The Polish government's actions towards limiting media freedom, judiciary independence, and anti-EU policies have sparked protests around the country (BBC 2019a, BBC 2019b, BBC 2021), which has not been as common in other CEE nations experiencing democratic backsliding. It is clear that the actions of the governments in these countries do not reflect the desires of the general population as seen in the Eurobarometer surveys of the last several years, but only in Poland has there been such notable pushback against the government's anti-democratic policies. While there have been some protests in Hungary this past summer over issues such as LGBTQ+ rights (Dunai 2021), the public has not taken to the streets to voice their disagreement with the government nearly as much as Poland has. This comparative level of political activism is a very positive sign for Poland, demonstrating that the public is still engaged in their democracy. Hopefully, other countries in the region will follow suit and participate in resisting democratic backsliding in the near future.

CONCLUSION

In this paper, I explored three of the key elements of democratic backsliding in Poland as listed in the Freedom House Nations in Transit report and examined their effect on

Poland's democracy. Using a 'thick' definition of democracy is essential when analyzing democratic backsliding as it often manifests in ways that aren't taken into account with more thin, general definitions of the term. I also discussed how the Law and Justice party uses anti-democratic strategies to avoid accountability by attempting to eliminate any potential source of opposition. Despite this, Polish citizens have organized and protested against the government's policies on many occasions, demonstrating that civil society is still strong and citizens are engaged in their democracy. The momentum of the Law and Justice Party doesn't seem to be slowing down, however, and it remains to be seen whether the

European Commission's efforts to punish Poland for its anti-democratic policies will be effective. The democratic backsliding in the CEE region marks a turning point for Europe – how far will the rest of the European community let democratic backsliding go before it's too late? Will Poland be forced to leave the European Union, or will the EU simply make weak attempts at chastising PiS for breaking the rules? No matter what direction the Law and Justice party takes their anti-democratic policies next, the European community must be ready to stand up for their shared democratic principles in order to keep democracy alive in Poland.

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