Populism Is Here to Stay

On the Perils of Democratic Restoration in Poland

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Over the past months, clouds have begun to gather over Viktor Orbán's regime. Facing polls that suggest a potential defeat in the upcoming elections, the champion of "illiberal democracy" has hinted that, in response to what he calls the failure of European migration policy, Hungary might consider withdrawing from the European Convention on Human Rights. After the recent CJEU judgment obliging Hungary to recognise same-sex marriages concluded in other EU member states, he insisted that "nobody can force Hungary to do anything". As if that were not enough, his government secured an opt-out from the Migration Pact, while his political grouping in the European Parliament voted against the Green Deal. Orbán triumphantly posted on X:

> *"As I said, Hungary will not accept migrants under the Migration Pact. Nor will it pay for it. That decision has already been made. We act, we don't talk."*

Finally, despite Hungary having one of the strictest abortion laws in Europe, he dismissed the possibility of liberalisation during this term, and in the meantime accused Hungarian women of not having children because they are self-indulgent and too accustomed to comfort.

All of the above statements are true and recent – with one caveat: they are not actually about Hungary and Orbán, but about Poland's pro-democratic government under Prime Minister Donald Tusk, a former president of the European Council, who, following the presidential defeat of his preferred candidate in June 2025, recalibrated – or, more precisely, intensified – his strategy of imitating illiberal political forces, to the extent that his political rhetoric could easily be now mistaken for Orbán's.

The abyss staring back

Even if the most striking, this dynamic is hardly a Polish speciality. Emmanuel Macron has travelled a long path from progressive liberalism to pragmatist or simply cynical positions. Friedrich Merz has openly embraced positions once confined to the margins of German political debate. Keir Starmer has repeatedly repositioned himself to capture voters shifting rightwards. Across Europe, and beyond, mainstream leaders seem convinced that imitating the right will keep the right at bay. Few reminders are more powerful than when you stare into the abyss, the abyss stares back at you.

In my June 2025 piece on the Polish presidential election, I argued that, regardless of its normative assessment, this strategy may be politically misguided. Empirical data indicate that voters eventually choose the original rather than the copy. Suggesting that a state might withdraw from the ECHR or ignore CJEU rulings – even if done insincerely for short-term political gains – only normalises the agenda of the far right and reinforces the impression that euroscepticism and anti-immigrant positions were legitimate from the outset.

The earlier loss of Kamala Harris, the rise of Nigel Farage in the UK under Starmer, and the growing support for radical far-right parties in Poland – emerging precisely in connection with Tusk's rightward shift – seem to confirm this trend. As far as Poland is concerned, this is far more alarming than the previous ruling party PiS, which at least displayed some self-restraint, pursued a generally pro-Ukrainian agenda, and embraced certain progressive socio-economic policies. In this sense, today's pro-democratic forces in Europe and beyond risk becoming a reversed version of

Faust's Mephistopheles. Whereas Mephistopheles "ever wills evil and ever works the good," liberal politicians will the good – that is, countering illiberal forces – yet, by imitating their strategies, end up laying the groundwork for those forces' electoral success.

The myth of "pro-democratic" political forces

What are the implications of this troubling development for what is, in fact, at least in the recent European context, a Polish speciality: the process of democratic restoration? Following the October 2023 election in Poland, which brought Tusk's pro-democratic Civic Coalition to power and ended PiS rule, Yaniv Roznai and Amichai Cohen warned against premature optimism about its outcome. Drawing from Israeli experience, they argued that "post-populists have more in common with populists than they would care to admit", and the mechanisms of governance inherited from populist predecessors "might lead them on a route that, while not identical to the populist one, might come dangerously close to it". This is because populist forces benefited from and uncovered "serious flaws in democracy", and until these flaws are solved, "populism is here to stay".

Similar implications, albeit in a more detailed and empirically grounded form, appear from the paper on the myth of democratic resilience. Drawing on extensive comparative data, the authors show that democratic restoration is rarely a success story: in the long term, most countries are unable to sustain their recoveries. They identify three mutually reinforcing factors:

First, the need to confront authoritarian holdovers ("autocratic enclaves"), including the rules and institutional arrangements left behind by populist governments, leading to the dilemmas about measures and pace in undoing them; second, changes in the international environment that weaken incentives for full democratisation (i.e., the impact of Trump's presidency); and third, undemocratic tendencies within the "pro-democratic" camp itself, which are rooted in the same political-institutional system that previously enabled autocratic leaders to gain power.

In this mix of these three factors, liberal actors may come to rely on the very instruments of executive aggrandisement that they had previously criticised.

Poland's post-populist populism

This dynamic is arguably observable in post-2023 Poland. First, Tusk's gradual metamorphosis has unfolded under the shadow of Trump's political return. Second, from the outset, the democratic coalition faced a structural dilemma: how to undo PiS-era reforms in the presence of "autocratic enclaves", e.g. a PiS-backed president and a Constitutional Tribunal captured by PiS? In many areas, the government refrained from action, waiting for more favourable political conditions – frustrating its electoral base with what "being busy doing nothing". Yet in domains where delay seemed impossible, it resorted to sub-statutory measures and other controversial "second-best" solutions. It pushed through post-2023 changes in the board of national television (TVP), by initiating a liquidation procedure under the Commercial Companies Code, which enabled the appointment of a new board. It also replaced the National Prosecutor in a highly contested move by the Minister of Justice and Prosecutor General, relying on a disputed interpretation of prosecutorial regulations. Finally, in 2024, the Sejm adopted a resolution attempting to "reset" the Constitutional Tribunal by declaring certain prior judicial appointments and rulings invalid.

In public debates, the government has faced criticism from both directions: for being too cautious and legalistic, and for being too impatient and revolutionary. Unsurprisingly, the former view has prevailed among its supporters, while the latter is championed by its critics and by those presenting themselves as independent – a group often referred to in Polish discourse as "symmetrytists."

This divide, to some extent, translates to similar controversies within scholarly debates. Some authors seek to justify "second-best" solutions under conditions of legislative deadlock. For example, within the framework of "democratic frontsliding", they argue that "transgressive acts of rule-breaking" of pro-democratic government may be normatively justified if they

are conscientious (undertaken in good faith to bolster public justice) and civil (subject to a proportionality test and publicly justified). Others – such as lawyers associated with the Helsinki Foundation of Human Rights – remain critical of such strategies, emphasizing the importance of undoing PiS-era reforms through proper statutory procedures and securing due process, rather than relying on transgressive rule-breaking or sub-statutory measures.

Both scholarly attitudes, however, are not without flaws. The former risks naïveté: it presumes the good faith of political forces that present themselves as pro-democratic but, as the Polish case illustrates, remain susceptible to the temptations of power and demagogic rhetoric. The latter is overly idealistic, overlooking the political reality and complexity of the Polish system of checks and balances, in which holding an ordinary majority in the Sejm is not, by itself, sufficient to govern effectively. Although this stance is framed in the language of legal certainty, in political reality, it offers little prospect for meaningful change and instead perpetuates a prolonged state of legal uncertainty.

Outlook

So far, the government has exercised restraint in resorting to second-best solutions. The change in the Ministry of Justice from Adam Bodnar to Waldemar Żurek, however, may signal a shift in this regard. Żurek has recently suggested that, if the statute aimed at restoring an independent judicial council is vetoed by the President, the government might justify abstaining from applying the existing statute by invoking the Radbruch formula. That formula – holding that one must obey the law unless it reaches an extreme level of injustice – was an intellectual construct developed after the Second World War to justify holding Nazi officials accountable despite their defence that they were merely following orders. Leaving aside whether this is a defensible historical analogy or an appropriate use of the Radbruch formula, Żurek's statement may signal a growing openness to second-best solutions.

Yet the real test of the government's good faith may still lie ahead. To date, the normative justification for sub-statutory and other "second-best" measures has rested on the lack of viable alternatives – a blocked legislative route due to presidential veto and the impossibility of constitutional review due to the Tribunal's lack of independence. Against this background, the government has abstained from nominating judges to the Constitutional Tribunal, citing the 2024 Sejm resolution which stated that the Tribunal, due to the presence of fake judges, does not meet the criteria of an independent court under European jurisprudence. However, with five seats currently vacant and another three expected to open in the coming months, an absolute majority of independent judges out of the total fifteen could emerge by mid-2026. This would create an opportunity to invalidate key statutes undermining judicial independence in a manner that is more socially legitimate than continued reliance on sub-statutory measures.

The question, then, is whether the government will finally seize this opportunity – or whether it will continue to abstain, enjoying the absence of effective oversight and the benefits of governing through sub-statutory instruments. Such a course would risk vindicating Roznai and Cohen's concern that post-populist actors may come to rely on the very instruments left by their populist predecessors, thereby normalizing sub-statutory governance and entrenching – rather than reversing – the executive aggrandizement.

Failure to act

Finally, and only briefly, it is – if not surprising – quite striking how little dialogue exists between the practical enterprise of democratic restoration and the theoretical scholarship on democratic erosion. Scholars have long identified the structural conditions that enable illiberal politics: rising socio-economic inequalities, overly-strong executives, as well as a rise of illiberal public spheres. Yet pro-democratic forces in Poland and elsewhere do remarkably little to address these complex but pressing problems. Instead, they focus almost exclusively on undoing PiS's judicial reforms and holding PiS officials accountable, approaching the restoration of the rule of law through a narrow, legal-formalistic lens.

Conclusion

The purpose of this piece is not to enter a cynical game and claim that liberal leaders, in Poland and elsewhere, are "just as bad" as their populist counterparts. They are not, at least not yet. Instead, this piece should serve as a warning: if no political force is entirely immune to the temptations of unconstrained power or to the use of populist rhetoric for short-term electoral gain, then scholars developing theories that justify democratic transgressions must remain alert to this uncomfortable fact. It may be the case that the enemy of our enemy is not necessarily our friend. The critical gaze we direct at the demon of populism must, with equal resolve, be directed toward those who claim to rescue us from it. Only then can we avoid replacing one set of democratic pathologies with another – and preserve the integrity of the democratic project itself.

At the same time, the persistence of populism in Poland may suggest that the rule-of-law crisis is, in fact, a broader crisis of democracy itself – rooted in extra-legal factors such as socio-economic inequalities, an overly centralised system of governance, and social polarization fuelled by the digital sphere. Unless these underlying problems are addressed within our polities, populism as a mode of governance – as Roznai and Cohen warned – is likely to stay, not merely as one alternative among many, but increasingly as a defining feature of all politically successful projects.

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