

A new beginning for democracy?

Poland after the PiS government

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Plan

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Poland's October 2023 election

- PiS party loses power after 8 years
- “Prodemocratic” opposition alliance led by Donald Tusk
- Trumpeted as Poland’s “return to Europe”
- Tusk receives 2024 Chatham House Prize for “restoring democracy”

But by mid-2025, the picture is considerably more complicated.

Central question

What does “beginning again” realistically mean for democracy after a period of illiberal governance?

The Polish case complicates optimistic narratives of democratic restoration and raises sobering questions about the possibilities and limits of post-illiberal reform.

Before the “Good Change”

Poland's democratic trajectory 1989–2015

Poland as a success story:

- One of CEE's most successful democratic consolidations
- Functioning democratic institutions, independent judiciary, free press
- NATO membership (1999), EU membership (2004)
- Cited alongside Czech Republic and Baltics as proof post-communist democratization could succeed

Underlying vulnerabilities

Despite success, structural problems existed:

- **Regional inequality:** “Poland A” (urban, modern) vs “Poland B” (rural, marginalized)
- **Elite disconnection:** Liberal elites perceived as out of touch, Brussels-oriented
- **Cultural anxieties:** Backlash against rapid social change, European integration, shifting gender norms
- **Institutional weaknesses:** Democratic institutions lacked deep roots, vulnerable to manipulation

Jarosław Kaczyński's critique

PiS's founder developed comprehensive indictment of post-1989 Poland:

- The “Third Republic” had failed ordinary Poles despite surface-level success
- Needed to understand this critique to grasp PiS’s appeal
- Not just economic grievance—moral and spiritual critique

“Układ” (The System)

Kaczyński's central narrative:

- Shadowy network of former communists, secret police, liberal politicians
- 1989 Round Table negotiations = betrayal, not democratic triumph
- Deal allowed communists to convert political power into economic privilege
- This *układ* continued to dominate politics, media, business
- Liberal establishment = continuation of communist-era elite networks

"Impossibilism" and constrained sovereignty

Imposybilizm: Liberal governments telling citizens their aspirations were "impossible"

- Due to EU rules, market constraints, foreign investors
- Resonated with voters feeling governments prioritised fiscal orthodoxy over Polish families' needs

Sovereignty discourse:

- EU membership portrayed as new form of subordination
- Brussels bureaucrats dictating Polish policy
- Clash over progressive values vs Catholic traditions

"Poland in ruins"

Despite impressive macroeconomic performance, Kaczyński insisted:

- Country remained fundamentally broken
- Corrupt institutions, demoralised citizens
- Nation lost its dignity and sense of purpose

Not primarily economic critique - rather moral and spiritual

The dignity of “ordinary Poles”

PiS positioned itself as defender of ordinary Poles against condescending elites:

- The teacher in a small town
- The farmer in eastern Poland
- The pensioner struggling on a meagre income
- The young family unable to afford children

Material dimension: Generous social spending that liberal governments deemed unaffordable

Symbolic dimension: Validating traditional, Catholic, patriotic Poles

Why the critique resonated

Genuine insights alongside distortions:

- Real inequality existed—benefits unevenly distributed
- Some corruption was real
- Elite condescension was palpable
- EU constraints were genuine
- Cultural change was rapid and disorienting

PiS's genius: Weaving genuine grievances into comprehensive narrative offering national redemption

PiS's earlier period in power (2005–2007)

Brief first term:

- Jarosław Kaczyński as PM, twin brother Lech as President
- Marked by nationalist rhetoric, confrontational politics
- Fell in early elections after coalition partners defected

2007–2015: Civic Platform (PO) governments

- Economic growth and European integration
- But growing inequality, perception of complacency
- 2010 Smolensk air disaster: trauma and conspiracy theories

By 2015, Kaczyński's critique had gained force

The “Good Change” and its consequences

PiS's 2015 victory

Historic electoral success:

- Won both presidential election (Andrzej Duda) and parliamentary elections
- Outright majority in Sejm—first single-party majority since 1989
- Reflected genuine popular support for social spending, national dignity, break from elitism

"Dobra Zmiana" (Good Change) programme:

- Flagship policy: Family 500+ (monthly allowances for families)
- Enormously popular, materially improved lives, reduced inequality

Capturing the Constitutional Tribunal

Almost immediate move to capture judiciary:

- Outgoing PO government appointed judges to fill vacancies—contested
- PiS refused to recognize appointments, installed own judges
- Created “duplicate judges”—individuals in seats legally belonging to others
- 2016: Amended Constitutional Tribunal Act, installed loyalist Julia Przyłębska as president
- Tribunal ceased functioning as independent body, became enabler of PiS agenda

ECHR later ruled: Panels with duplicate judges violated Article 6 (right to fair trial)

Politicizing the National Council of the Judiciary

2017: Targeting judicial appointments:

- NCJ plays crucial role in judicial appointments
- Previously: majority were 15 judges elected by their peers
- PiS changed law: appointed by Sejm with simple majority
- Gave ruling party control over who becomes judge

International rulings: Supreme Court, CJEU, ECHR all ruled changes politicised appointments

Consequence: ~2,700 judges (1/3 of all judges) appointed through defective procedure since 2018

Restructuring the Supreme Court

PiS created new chambers staffed by neo-judges:

- **Disciplinary Chamber:** Designed to discipline judges resisting PiS reforms
- **Chamber of Extraordinary Control and Public Affairs:** Power over electoral matters

December 2023: CJEU ruled this chamber does not meet criteria of independent court under EU law

Colonising state institutions

Beyond judiciary, systematic colonization:

- **Public media:** TVP transformed into government propaganda
- **Prosecution service:** Politicized—Minister of Justice Zbigniew Ziobro also Prosecutor General
- **Civil service:** Purged and replaced with loyalists
- **State-owned enterprises:** Staffed with party allies
- **Court leadership:** Hundreds of court presidents/vice-presidents arbitrarily replaced
- **Disciplinary system:** Used to harass judges defending rule of law

International reaction

Democracy indexes documented sharp declines:

- V-Dem and Freedom House: sharp drops in Polish democracy quality

2017: EU activates Article 7

- “Nuclear option” for breaching rule of law
- EU funds withheld as leverage

Domestic opposition fierce:

- November 2015: Committee for the Defence of Democracy (KOD) forms
- Mass protests over judicial appointments
- Opposition parties, media, civil society attack PiS

PiS's continued electoral success in 2019

Despite international condemnation and domestic protests:

- PiS won another term in 2019 parliamentary elections
- **Expanded** vote share from 38% to 44%

Why?

- Large plurality perceived no serious threat to democracy
- Convinced by PiS's delivery on promises—especially social spending
- Favourable macroeconomic conditions sustained programs
- Opposition appeared divided, poorly led, lacking new ideas

PiS's loss of power

Crises from 2020 onwards

Successive crises eroded PiS support:

- **COVID-19 pandemic**: Ended positive economic climate
- **Russia's invasion of Ukraine (2022)**: Energy crisis, rampant inflation
- Despite Poland's strong Ukraine support being praised, economic costs eroded popularity

Ideological overreach: the abortion ruling

October 2020: Constitutional Tribunal ruling

- Effectively banned abortion except for rape, incest, threat to mother's life
- Eliminated exception for severe fetal abnormalities

Women's Strike movement:

- Hundreds of thousands of protesters (predominantly young women)
- Protests during pandemic lockdown
- Galvanised opposition
- Crucial in mobilizing voters in 2023

Tusk's return and opposition cooperation

2022: Donald Tusk returns to domestic politics

- After serving as European Council president
- Gave opposition more dynamic, savvy leader

#SilniRazem (#StrongTogether) movement:

- Anti-PiS activists demand opposition cooperation
- Created pressure for opposition unity
- Civil society pressure proved important

The 2023 electoral configuration

October 2023: Three opposition groupings

- **Civic Coalition (KO)**: Led by Tusk
- **Third Way (TD)**: Szymon Hołownia's Poland 2050 + Polish People's Party
- **The Left (Lewica)**

Strategy: Maintain independence while presenting united front

- Target different voter groups
- Cooperate against PiS

The 2023 Results

Historic turnout and opposition victory:

- **74.4% turnout**—historically high for Poland
- PiS remained largest single party: **35.4%**
- But opposition alliance: **53.7%** and 248/460 seats in Sejm

Democratic mandate:

- Strong mandate to “restore Polish democracy”
- “De-PiSify” captured institutions
- Redemocratization = only common policy position among coalition
- Marked differences on other issues (especially abortion)

December 2023: Tusk’s government takes office after two months of PiS/Duda delays

The Post-2023 scenario

The Post-illiberal trilemma

Bill and Stanley's framework:

Tusk's government committed to delivering:

1. **Quick** solutions
2. **Effective** solutions
3. **Unimpeachably legal** solutions

In practice: Could often fulfill at best only **two of three** conditions at once

The trilemma dimensions

Effectiveness:

- Must undo consequences of illiberal measures
- Remove policies/mechanisms corroding liberal democracy

Legality:

- Restoring liberal democracy = polity subject to rule of law
- Cannot rely on unrestrained scope of action

Speed:

- Popular demands for swift action
- Restrict ongoing illiberal consequences
- Bring protagonists to reckoning

Structural constraints

Severe limitations on comprehensive reform:

- No constitutional majority (requires 2/3 Sejm)
- Forced to work with PiS-aligned President Duda
- President has significant powers:
 - Veto legislation (requires 3/5 majority to override)
 - Refer laws to Constitutional Tribunal

“Illiberal enclaves”: PiS retains footholds in Constitutional Tribunal, NCJ, Supreme Court

The public media takeover

Less than two weeks after taking power—dramatic first move:

The approach (legally creative):

- Exploited loophole: Culture Minister has right under Commercial Companies Code
- State treasury = sole shareholder of public media companies
- Could reappoint boards

The action:

- Purge of PiS-appointed boards
- Shutdown of TVP Info (PiS propaganda since 2016)
- Entirely rebooted evening news

Public media takeover: controversy

PiS response:

- Supporters protested
- Politicians staged sit-in of TVP offices using parliamentary privilege

Legal problems:

- Independent legal experts criticized approach
- Helsinki Foundation for Human Rights (prominent PiS critic) expressed concern
- Registry court rejected media board reappointments
- Government placed media companies into liquidation
- Courts eventually approved amid ongoing legal debate

Venice Commission: Criticized government's practice of refusing to publish Constitutional Tribunal rulings

The arrest of PiS politicians

Government pushed for imprisonment of two PiS politicians:

- Previously convicted of abuses of power
- President Duda claimed to have pardoned them preemptively in 2015
- Supreme Court rejected pardon's validity before 2023 election
- Two took refuge in presidential palace
- Arrested there in January 2024
- Duda reissued pardon → release

Legal dualism and parallel realities

“Legal dualism”: Widening gap between two perceptions of Poland’s legal order

- Each side refers to authorities not acknowledged by the other
- PiS Constitutional Tribunal continues ruling
- Government ignores these rulings
- Refers to Supreme Court/ECHR: Tribunal not valid court
- Two Supreme Court chambers issue mutually contradictory rulings
- Some MPs call for ignoring president’s veto

No universally recognised higher body to adjudicate

Militant democracy and its risks

September 2024: Tusk invokes “militant democracy”

- Argued current circumstances make reform impossible without “committing actions that may be inconsistent with the letter of the law”

Fundamental question:

Does defending liberal democracy via exceptional means ultimately **entrench majoritarian, illiberal practices** rather than overcome them?

Risk: Replicating illiberal modus operandi embeds logic of “deciding on the exception” as legitimate governance mode

Subsequent governments may claim same exceptional rights

Legislative paralysis

Despite reform efforts, remarkably little achieved legislatively:

2024: Three acts passed

- Two concerning Constitutional Tribunal
- One reforming NCJ
- **None has entered into force**

Why?

- President Duda referred all three to Constitutional Tribunal
- Tribunal (PiS-aligned) invalidated all three

Tusk's "100 concrete promises for first 100 days": Delivered on only 12 by mid-2025

The neo-judges problem

Most sensitive challenge: ~2,700 judges appointed through politicized NCJ

Necessary to:

- Restore judicial independence
- Protect legal certainty

But involves difficult decisions affecting:

- Accountability
- Individual rights
- Systemic stability

Venice Commission recommendation: Assess neo-judges individually by independent body—not blanket legislation

Minister Żurek's draft law on neo-judges

Differentiates between categories:

"Young judges" (~1,000)

- Former trainee judges, judicial assistants, graduates
- Promotions only formally confirmed by politicised NCJ
- Would remain in post subject to reformed NCJ approval

Promoted judges (~1,200)

- Judges before changes, promoted through defective procedure
- Return to previous positions but could reapply

Neo-judges draft law

Appointed without prior experience (~400)

- Former prosecutors, attorneys, legal advisers
- Could return to earlier profession or become court clerks

All 55 neo-judges on Supreme Court

- Would lose positions

Developing mechanism satisfying: Judicial associations, civil society, academia, European standards = extremely challenging

The 2025 presidential election

Coalition's medium-term strategy: Win May–June 2025 presidential election

Expected outcome:

- Civic Platform's Rafał Trzaskowski led polls for months

Stunning upset:

- Lost runoff to PiS-backed Karol Nawrocki
- **49.1% vs 50.9%**
- Acrimonious campaign

2025 Presidential Election: What Went Wrong

First-round results set scene for defeat:

- Tusk's coalition + other left-liberal candidates: only **44.9%**
- Far below combined 2023 parliamentary results (**53.7%**)
- Antiestablishment, far-right candidates: unprecedented **21%**
- Much went to Nawrocki in runoff

Trzaskowski's defeat = “midterm verdict” on increasingly unpopular government

Nawrocki's presidency and obstruction

Nawrocki proven even more obstructionist than Duda:

First 100 days:

- Vetoed **13 statutes**
- Repeated PiS conspiracy theory of government “coup”
- Claimed national public prosecutor acting “illegally”
- Supported PiS-era appointees: Constitutional Tribunal president, Supreme Court first president, NCJ chairperson

Nawrocki's attacks on judges

Oath of office refusals:

- Announced would not administer oath to “judges who undermine constitutional legal order”
- Refused for **46 judges**—mostly district court judges who signed public letters on rule-of-law crisis
- Declared would not promote judges who “question constitutional order and listen to misguided advice of Minister of Justice”

Nawrocki's constitutional plans

Inaugural speech announcements:

Council for the Repair of the State System:

- Draft new constitution introducing presidential system by 2030

Presidential bills:

- Reforming NCJ and justice system
- Signals intention to take control of judicial reform away from government

The Chamber of Extraordinary Control problem

Particular problem around presidential election itself:

Chamber of Extraordinary Control and Public Affairs:

- Composed entirely of neo-judges
- Declared illegitimate by CJEU
- Validated election results and considered electoral complaints

Coalition response:

- Passed bill appointing senior legitimate judges to adjudicate validity
- Duda vetoed it

Electoral fraud theories

After Trzaskowski's defeat:

- Some Civic Platform figures and supporters promoted theories of electoral fraud
- Questioned whether illegitimate Chamber could examine complaints impartially

This deepened legitimacy crisis

However: Irregularities too limited to affect outcome given Nawrocki's **369,000-vote margin**

Accountability efforts

Parliamentary investigative commissions examining:

- 2020 presidential election organization
- Illegal visa issuance
- Pegasus spyware use against opposition politicians and journalists

Charges brought against several PiS MPs

Accountability: Ziobro Case

November 2025: Sejm strips former Justice Minister Ziobro of parliamentary immunity

Prosecutors levelled 26 charges:

- Leading “organised crime group”
- Embezzled €35 million from Justice Fund

Final court verdicts expected to take years

Process constrained by standards and procedures of liberal democracy
government seeks to restore

The European Dimension

Some European-level successes:

May 2024: EU closed Article 7 procedure

- Poland = first member state launched against and then closed
- Despite none of promised reform bills signed into law

Other successes:

- Recovery and Resilience Facility funds (frozen) released
- Poland joined European Public Prosecutor's Office system
- Sought Venice Commission guidance
- Revised legal positions in rule-of-law cases before CJEU
- European Commission optimistic in 2025 Rule of Law Report

ECHR controversy

October 2024: Tusk statement

- Reform of European Convention on Human Rights system necessary
- Would understand if some states considered denouncing convention if reform impossible

Spokesperson clarified: Poland has no intention of withdrawing

But statement raised concerns about commitment to European human rights framework

Conclusion: key lessons

The fundamental problem of post-illiberalism

Polish case reveals:

No easy or obvious course of action for reforming government, even with strong democratic mandate

Post-illiberal governments are:

- Structurally impeded in capacity to respond to illiberalism consequences
- Perhaps susceptible to temptations of exploiting illiberal precedents for own benefit

Illiberal enclaves and institutional traps

Key legacy of illiberalism:

Series of **institutional traps** difficult to counteract in short term without resorting to same methods that established them

PiS's capture of Constitutional Tribunal, NCJ, Supreme Court:

- Created veto points persisting after electoral defeat
- President's powers add obstruction layer in cohabitation

The dangers of militant democracy

Invocations of “militant democracy” to justify legally contentious measures:

Risk: Defending liberal democracy via exceptional means **entrenches majoritarian, illiberal practices**

- Rapid action at borders of legality may consolidate executive overreach patterns
- Spiral of majoritarianism

Yet: Failure to deliver effective reform leaves institutions damaged, may clear path for illiberals to return

Polarisation and demobilization

High affective polarisation can coexist with modest ideological differences on policy

2025 presidential election exposed:

- Coalition heterogeneity
- Policy deadlock
- Perceptions of government failure
- Demobilisation of supporters while energising opponents

What “beginning again” can realistically mean

Polish case suggests:

“Beginning again” for democracy after illiberalism likely to be **prolonged, uncertain, and conflict-ridden process** rather than triumphant restoration

Two years since taking office:

- Tusk government made limited progress repairing rule of law
- Process constrained by polarization, institutional stalemate, political context
- 2027 parliamentary elections increasingly dominant

Poland finds itself in “prolonged phase of limited rule-of-law repair” (Wójcik)

Under cohabitation with Nawrocki: Truly comprehensive judicial reform and rule-of-law repair unlikely

No false equivalence

Both sides claim to defend democracy and rule of law from attacks

But no false equivalence should be drawn:

- Process of rule-of-law repair moving forward, albeit slowly
- Meaningful changes in disciplinary system
- Prosecutorial reforms

The work continues, even if progress is slower and more contested than hoped

Implications for other cases

Lessons Poland offers for other countries facing illiberal governance:

1. **Capturing apex judicial institutions** creates durable obstacles to reform
2. **Constitutional design matters**—presidential powers can enable backsliding or obstruction of repair
3. **Urgency of reform must be balanced** against risk of normalizing exceptional measures
4. **Demobilisation of reformist supporters** is real danger when expectations exceed what is achievable
5. **Democratic repair ultimately political challenge** requiring sustained public engagement, not just legal technicalities

Closing thoughts

Poland's illiberal moment is far from over

The case serves as warning:

Democratic backsliding creates **legacies that persist well beyond electoral defeat** of illiberal incumbents

Understanding these dynamics essential for anyone seeking to defend or rebuild liberal democracy:

- The trilemmas
- The institutional traps
- The risks of both action and inaction

Questions to consider

- How should post-illiberal governments balance speed, effectiveness, and legality?
- What role should international actors (EU, ECHR) play in democratic repair?
- Can “militant democracy” ever be legitimate, or does it always risk entrenching illiberalism?
- What mechanisms could prevent capture of apex judicial institutions?
- How can reformist governments maintain popular support during slow repair processes?