

## Coming Out of Illiberalism

Article by Adam Ostolski

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In Poland, the coalition of parties that ousted the far right is making good on its reform pledges, but side-lining an unsympathetic president is leaving the new government open to accusations of undemocratic action.

In October 2023, Polish citizens voted the national conservative Law and Justice party out of office, opening the way to political change. The new government – a coalition of several centre-right and centre-left parties led by Donald Tusk – took oath in December. Even before the new government had fulfilled any conditions to prove its democratic values, the European Commission unblocked money that had been withheld from Poland due to the [rule of law mechanism](#).

As Leszek Miller, a former Polish prime minister and current member of the European Parliament, explained of talk in Brussels: “I have heard it myself in the corridors. Gentlemen, the most important milestone for us was a change of government.” Even beyond the EU bubble, voices in many countries profess how Poland is evidence that populists can be defeated and that a seemingly inevitable drift to the far right all over the continent could be avoided.

The new coalition government poses a mixture of policy rupture and continuation. Its agreement is brief and vague, rich in general promises but cautious with details. There are good reasons for this: the future governmental partners ran on three separate ballots (the centre-right Civic Coalition, the centrist-agrarian Third Way, and the New Left); these parties prevailed in the election precisely because they were not an electoral coalition under a single leadership. While they all agree on the necessity of restoring the rule of law, in other policy areas they often have different, if not contradictory, agendas.

Poland’s accumulative electoral calendar is also dictating the country’s political dynamics. The October 2023 parliamentary elections constituted the opening match that will be followed by local elections this week, European elections in June, and the grand-finale presidential election in the first half of 2025. With President Andrzej Duda, associated with the Law and Justice party, still in office and wielding veto power over new legislation, the new government’s margin for manoeuvre is limited. The entire time between autumn 2023 and spring 2025 is being perceived as a period of transition between illiberalism and fully-restored democracy. While the new coalition expects to gain full executive power and be able to [turn the page on illiberalism](#), Law and Justice may also hope to strike back and turn the tide in their favour.

### First battles

The new Polish government’s return to the rule of law therefore serves a double purpose: to restore liberal order and set the scene for the coming elections. Some steps are obvious and easy: replacing CEOs of public companies and directors of cultural institutions who were Law and Justice loyalists is a no-brainer, as is establishing investigative parliamentary committees to address the most scandalous acts perpetrated by previous government officials. Among those, probably the most pressing issue is the abuses of state surveillance implemented through Israeli spyware Pegasus used by the previous government against many opposition politicians – and even some within its own ranks. Other tasks, such

as restoring trust in public media or efforts to re-reform the judiciary, pose a genuine conundrum. The president and his veto are not the only obstacles in efforts to emerge from illiberalism.

Many of the risks and dilemmas associated with restoring liberal order have become apparent since the battle to “fight back for public media” began. In December 2023 the minister of culture appointed new state television, radio, and Polish Press Agency management boards. With the help of police, who blocked dismissed senior officials from entering media buildings, the new TV board took control and after a very short pause proceeded to broadcast. The minister’s action ignored both a protective order issued days earlier by the Constitutional Court and existing law on public media. Instead, the decision was based on a non-legislative parliamentary resolution, therefore not subject to presidential veto, and the pretence of a legislative void in the media sphere.

While many government supporters enjoyed their moment of sweet revenge, the opposition denounced the act as “a coup against democracy”. Another notable reaction came from one of the fiercest opponents of the previous illiberal government: the Helsinki Human Rights Foundation, an NGO committed to human rights and rule of law. The foundation vocally criticised the minister’s actions and inquired whether it was based on any prior legal advice, filing a request for public information. Despite assurances on the part of the ministry that such a document does exist, the government has failed to produce any paperwork to date.

Whether all this could have been done differently, in a slower manner but with full procedural legality, is now an academic question. Public media was an area where the previous government’s abuses of power were most tangible, which heightened expectations of a swift fix. And, interestingly, a pattern is emerging. The minister of justice chose a similar method of reform – creating the pretence of a legislative void to bypass the president’s prerogatives – to clean up the public prosecutor’s office.

It remains to be seen whether this approach will also apply to the judiciary. But a non-legislative parliamentary resolution is likely to be more difficult to implement due to disagreements among the ranks of liberal lawyers themselves. The Helsinki Human Rights Foundation and Polish Judges’ Association Iustitia have each proposed a very different vision of how to restore judiciary independence. Whichever version the government chooses, some part of liberal civil society will be disappointed.

## **Münchhausen’s wager**

In all these efforts, there is a paradox: to restore liberal order, the government needs to bypass the constitutional prerogatives of the president and ignore a growing body of rulings by the Constitutional Court. This is presented as justified because the government perceives the existing Constitutional Court as unconstitutional, and thus unable to issue any binding rulings. There are good reasons for this presumption: some members of the tribunal should not be there in the first place, and the president of the court is staying in her seat even though her legal term in office has long expired. Yet the government’s approach comes at a cost. Restoring the rule of law by declaring a constitutional void effectively introduces a limited state of legal exception. All this is beginning to look like the legendary predicament of Baron Münchhausen, who claimed to have escaped a swamp by pulling himself out by his hair.

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It is not a bad thing to pull yourself out of dangerous waters, unless what you happen to be doing is the opposite. Having already been ignored, the Constitution has to be ignored again, just this once, to get it back on track. But can you ignore the Constitution “just this once” and hope to build a sustainable framework that subsequently would be respected by all sides? The assumption is that the opposition will either ultimately accept the rules of the game or forever be foreclosed from coming back to power. However, the constitutional void might therefore become a benchmark.

There are many arguments in circulation to explain why Law and Justice will never be coming back. Given political trends and tectonic movements in Europe and beyond, most of these opinions are clearly delusional. Looking at the post-communist transition model from the 1990s is particularly misleading. Two aspects from that time were different: democracy was the global trend, so the international context stabilised the transition; and, more importantly, the transition itself was negotiated between the leadership on both sides of the cleavage, who subsequently accepted the new rules.

Today, the global trend is towards illiberalism, not away from it. And the new government seems both incapable of and unwilling to convince either the leadership of the opposition or their voters that a liberal constitutional order is better for them as well. For this, the government would need to offer a direction for the country and counter the vision of community built by Law and Justice with a more attractive option. And this is going to be an uphill struggle.

## **A coalition of blocking tactics**

The ruling coalition parties won the election thanks to a well-designed division of messages to different parts of the electorate. But precisely what made it possible to win makes it also more difficult to rule. The present government’s agenda can be understood as a reaction to its predecessor’s legacy – be it a reversal or a continuation thereof. And, apart from the short list of topics where there is consensus within the current coalition, the course of action depends on who can block whom.

Continuation is most visible in the areas of foreign policy associated with security issues. There is broad consensus between the parties on military and diplomatic support for Ukraine, defence contracts with South Korea, and concern over agricultural imports from Ukraine. Repressive policies against refugees on the border with Belarus also continue, with the deputy minister responsible for migration claiming that they are now “ethical pushbacks”, while humanitarian NGOs with first-hand knowledge of the situation beg to differ.

Social spending is another area of prolongation. The government is set to continue its predecessors’ general social programmes, and even up the ante: teachers and police officers have received a pay rise, and IT specialists, the beauty sector, and entrepreneurs have been promised forthcoming tax exemptions. Although certain coalition partners may not be happy with these measures, there is a general understanding that welfare spending is a good investment towards thwarting the Law and Justice party.

In other policy areas, a coalition party in the minority on certain debates is using its position to block key courses of action. The Left is blocking rolling back some labour rights, for example. In 2018 Law and Justice realised the long-standing demand of some trade unions by introducing a reform that seriously limited trade on Sundays. Retail employees were enthusiastic about the reform. The general population,

in all its plurality, after adapting to the ruling, still supports the status quo. Even though both the Civic Platform and the Third Way promised to let shopping centres open on Sundays again, this cannot be done without the support of the Left, and the current minister of family, work, and social issues seems to be content with the current restrictions.

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The Civic Platform is likely to block some of the previous government's megaprojects. Law and Justice began the construction of a nuclear power plant and the Solitary Transport Hub, a huge airport and several high-speed railway lines connecting it with the rest of the country. Despite the Left trying to defend the latter project as a symbol of modernisation and public investment, plans for the airport are likely to be shelved.

The Third Way, meanwhile, is blocking progress on women's rights. The party wants to revert to a prior status quo by undoing the Constitutional Court's ban on abortion for malformed fetuses but wants to defer decisions on any deeper legal changes to a referendum. Both the Civic Platform and the Left are sceptical about putting women's rights to a public vote, having both promised access to legal abortion at a woman's request within the first 12 weeks of pregnancy. However, without the Third Way's members of parliament, there won't be a majority to pass such a law.

Unfortunately, this ability to block some policies is not matched with a capacity to determine direction. The Third Way is not able to impose cuts on social spending, The Left is likely to be unable to defend the European Green Deal, which is approached with growing scepticism from both the Civic Platform and the Third Way due to its alleged incompatibility with ambitious defence spending – not to mention the farmers' protests.

The unprecedented mobilisation of young voters and women was the single most important factor that ousted the Law and Justice party. It was the first time in recent history that the turnout among women was higher than men. Will these newly motivated voters find it worthwhile to turn out again next time? The biggest challenge for the government is not to let them down. For this, they will need to win not only the battle with populists but, more importantly, also the battle with themselves.

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