

Poland's Elections: Free, perhaps, but not Fair

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Poland's upcoming parliamentary elections will be the country's most important vote since the historic elections of 1989. These had ushered in the first non-Communist government in Central and Eastern Europe since the Soviet's establishment of "real socialism." The momentous character of the 15 October 2023 poll might be the only proposition upon which the incumbent PiS (Polish acronym for Law and Justice Party, which rules in a coalition with some small satellite groups, forming the so-called United Right) and the democratic opposition (with Donald Tusk's Civic Coalition as the major part) agree. Everything else is a matter of deep disagreement – the deepest one can imagine in today's world of polarized politics. For PiS, a third consecutive victory (following its success in 2015 and 2019) is necessary to consolidate its model of the state unburdened by the division of powers and to continue its defiance of Brussels' bureaucracy. Tusk's victory, meanwhile, in their view would mean a loss of sovereignty in the face of dangers posed by the anti-Polish EU, read Germany. For the democratic opposition, with the Civic Coalition (KO), the Left and the centre-right Third Way, their victory is a prerequisite for arresting further backsliding of Poland into authoritarianism and possibly "Polexit" from the EU. The stakes could not be higher.

Notably, PiS's drive to win is not only fuelled by its vision of an illiberal, centralized and nationalistic order. Rather, [after 8 years of unprecedented and comprehensive destruction of the constitutional system](#) and massive political corruption, with enormous funds moving from the public purse into the personal wallets of PiS loyalists, an electoral defeat would end the life they know and love. To the tens of thousands of people, who have invested their hopes and plans with PiS, it will mean the end of enormous riches they do not deserve, prominent positions they are not qualified to occupy, and for several, it will likely mean jail time for offences such as bribery, corruption, mismanagement and abuse of office. In a very painful and literal sense then, PiS cannot afford to lose these elections.

If the elections in October were fair, PiS' defeat might be plausible though by no means certain. Yet, the preceding sentence identifies a condition we already know will *not* occur. In this analysis, I map the multiple ways in which the system has been tilted in favour of the incumbents such that, irrespective of what October 15 might hold, it is clear that the elections are badly rigged. While I will only describe the most striking aspects of this unfairness, they all form parts of a system and thus should not be looked at in isolation. Kaczyński is a shrewd politician. There's a method to his (apparent) madness. For the opposition to win is thus a Herculean task, far exceeding what an opposition ordinarily has to face. Herculeses do appear in politics – but not that often.

Pork-barrel Politics

While this occurs, to some degree, everywhere, PiS has engaged in policies of huge and shameless buying of consumers' gratitude, hoping the handouts will be repaid at the ballot box. In an economy where so much is state-controlled, with the largest companies and banks having the state as their owner or majority shareholder and thus able to control their management and policies – the capacities for pork barrel politics are much higher.

The good Santa began throwing gifts at his grateful clients in late Spring this year: a significant increase of the famous monthly 800+ family subsidy, paid per child and not needs-tested, no-toll highways, ex-post lowering of the electricity rates, bonuses for teachers, and a 14th “monthly” pension for retirees. The main gas and petrol company Orlen has been artificially lowering petrol prices at its gas stations (in contrast to the worldwide trends), and very recently, on 6 September, the central bank NBP (fully subordinated to Kaczyński) cut interest rates by a hefty 0.75%, to lower mortgage payments. The move, of course, greatly weakened Poland's currency, the zloty, but for the PiS electorate this is not particularly relevant. It is also bound to produce strongly inflationary results, but this effect is delayed in time. The purely political, pre-election character of this huge cut [has not been lost on economic observers](#).

In addition, plenty of public money goes into fully PiS-organized local entertainment and gastronomic events, so-called “800-plus picnics”, designed to “advertise” these government programs. While this is unashamedly partisan propaganda, its parading as government public information means it does not count as campaign spending.

Changes in the Electoral Law

On 26 January 2023, PiS pushed through several amendments to the so-called electoral code – a statute regulating elections, in contravention of an unwritten rule against changing the election rules soon before the election. Designed to prevent incumbents from changing the rules of the game in their favour as the election approaches, the rule was established by the then still independent Polish Constitutional Tribunal – as requiring a minimum 6 months (*a minimum minimorum*, as the Tribunal said in its judgment Kp 3/09 of 28 October 2009) of distance between the new election rules entering into force and the date of the announcement of the date of the forthcoming elections. The new law entered into force on 31 March 2023 while the President announced the election date on 8 August 2023, exactly 4 months and 8 days later. Quite a lot less than the constitutional *minimum minimorum*.

PiS has made several changes, the most important of which is an increase of voting commissions in small population districts. Coincidentally, these districts are composed of PiS' most faithful electorate: small towns that are populated by and large by older, less educated voters. The new law lowered the minimum number of residents necessary to set up a district from 500 to 200, ostensibly to help them

vote. Yet, more voting facilities in villages will also have the side-effect of increasing turnout amongst PIS core electorate.

Two other changes also warrant some attention. The first is a new mode of operation for the election commission after the vote's closing. Instead of distributing all the ballots among some sub-groups of the commission, now the commission's president, or a person nominated by him/her, will need to pick up each ballot, read its content, and make it visible to all members of the commission. Subdividing the task is prohibited. Secondly, the entire business of counting votes, signing the results and passing them to the central electoral bureau needs to be done within the space of 24 hours. Documents delivered after that time must be disregarded.

Both rules may at first blush seem sensible, especially where there's a lack of trust in official institutions, including election committees. Yet, the picture looks different if we consider their impact on the votes of Polish expatriates. The small number of voting stations abroad – in particular in the UK, Ireland, and the United States – are already overburdened with the number of voters they ought to service. For example, I had to wait four hours to cast my vote in Milan, Italy in the 2019 elections. Given these existing delays and problems, there is a high likelihood that these voting stations won't be able to meet the new, rather exacting requirements that each ballot be read by the entire commission and that the count be concluded within 24 hours. Consequently, some votes will not be counted, with the effect that none of the votes in these districts will be counted.

Note that the foreign districts whose votes might be discounted due to the new rules [overwhelmingly vote against PiS](#). In 2019, nearly 39% of Polish citizens voting abroad chose KO and only 24.9% voted for PiS (in Poland, meanwhile, KO received 27% and PiS 43%). And the numbers are not insignificant: 89.000 voters in the UK, 46.000 in Germany, and 30.000 in the US (one of few places, alongside Canada, where the Polish diaspora voted predominantly for PiS).

While PiS was very eager to change *some* rules on voting, it ignored the Central Electoral Commission's repeated request for a legislative update of the district boundaries. Due to demographic and economic changes, the old boundaries had become increasingly anachronistic, such that votes in different districts possessed different weights. Some inequality in this regard is inevitable. However, the differences in weight can be as high as 1:2, meaning that it takes twice as many voters to elect one representative in one district compared to another. Obviously, the vote counts for much more in small districts, which are PIS strongholds, than in huge, densely populated ones, which are reservoirs of liberal, pro-democratic voters. Given that equalizing the weight of votes would have been to the net disadvantage of PIS, it is no wonder that the Electoral Commission's requests fell on deaf ears.

Media Imbalance

Public media in Poland are "public" only in name. State-funded networks such as TVP, in particular, dispense one-sided, governmental propaganda, attacking the opposition and praising PiS and its Leader, both during the main evening news and

their public affairs channel. (A disclosure: TVP sued me for defamation, both in a criminal and in civil trial. While I have been fully acquitted in the criminal trial, in a procedure that went all the way up to the Supreme Court, the civil proceedings are still pending). News stories never present opposing views and embarrassing or inconvenient events for the ruling party – whether corruption affairs or foreign criticisms of the government – are simply ignored. Opposition politicians have no right of reply and the commentators are carefully selected from among PiS propagandists.

Private, commercial networks are also thoroughly pro-PiS. In exchange for receiving a lion's share of advertising funds paid by state-owned companies, they praise the government and PiS, and denounce the opposition. Further, two years ago petrol and gas company Orlen (contrary to the most fundamental rules of economic rationality, and indeed to its business profile) purchased nearly twenty local newspapers from a German-Swiss media conglomerate. Its 800 thousand copies sold every week also provide vehement support for PiS and the government.

Referendum

[Following Viktor Orbán's example](#), PiS decided [to combine the October elections with a referendum](#). Because the 2003 law on national referenda did not allow for a joint vote, the law was duly changed almost overnight in July and entered into force in August: with a comfortable majority in the lower chamber called *Sejm*, PiS swiftly overrode objections from the Senate (where the opposition has a thin majority). PiS parliamentary majority then amalgamated parliamentary elections with a referendum, to be held at the same time, in the same locations, with the same committees, and indeed in the same ballot procedure. Thus, voters will receive three ballot papers: elections to the *Sejm*, the Senate, and the referendum ballot.

Combining elections with various referenda or plebiscites is often done in unimpeachable democracies, for all sorts of (good) reasons, including (cost) efficiency considerations and higher turnouts. But PiS is not a democratic party, playing by the democratic rules of the game. Consider first the four referendum questions: Are you in favour of (1) “selling off” state companies to foreign entities, (2) accepting thousands of illegal migrants, as a result of coercive relocation decided by the European bureaucracy, (3) destroying a “barrier” (a wall) on the Polish-Belarus border, and (4) making people work longer before they retire. (For the full wording and an excellent discussion, see [here](#)).

These are not typical referendum questions: voters are not asked to opine on legislation contemplated by a government keen to consult the vox populi. No political party in Poland has any of these proposals in its program. Nor are voters being asked in good faith. Asking about a “sell-off” (Polish: *wyprzedaż*), carries with it an obvious pejorative implication (it is like selling off family treasure below its real value), necessarily implying a negative answer. Such bad faith is even more obvious in the question concerning the admission of “illegal migrants”, coming as a result of “coercive relocation”, as allegedly determined by the “European bureaucracy.” The loaded language and framing of each question render “No” the only reasonable answer, which, of course, PiS officially and loudly urges citizens to give.

There are at least three ways in which the referendum fundamentally upsets the fairness of the *election*. First, all four “questions” imply policies that PiS attributes to the opposition, particularly the Civic Coalition headed by Donald Tusk. This establishes continuity between the *electoral* campaign and referendum questions. The referendum questions imply that the opposition will open the gates to the Middle-Eastern and African refugees at the Poland/Belarus border, against whom the wall was built by the PiS government; that it will admit thousands of “illegal migrants;” that it will massively privatize state-owned companies, thus “selling off” common assets, probably to foreigners; and that it will raise the retirement age, thus “forcing people to work until their death”, as a PiS slogan goes. The referendum is thus no attempt to consult voters on envisioned legislation but a way of bolstering the partisan, anti-KO and anti-Tusk rhetoric.

Second, the referendum releases to PiS an infinite amount of funds, outside any control normally related to campaign funding. PiS has access to incomparably higher financial assets than the opposition, having captured all key, state-owned industries. While there are clear campaign spending limits, policed by the Election Committee, these only apply to *elections*, not to *referenda*. Indeed, there are no limits on spending, donations, and contributions, and on *who* can donate to a referendum campaign. Most of the state-owned companies, through their foundations, have already registered their willingness to donate to the referendum campaign. They will undoubtedly support the No side, given that they are fully dependent on PiS. To the extent that the referendum campaign will be indistinguishable from a PiS campaign to any voter, PiS thus enjoys a huge advantage in terms of campaign spending.

And third, embedded in the referendum is a direct threat to the secrecy of voting. The best strategy for the opposition to mitigate the referendum’s political fallout is to urge a de facto boycott. Thus, the referendum will be invalid if the turnout is lower than 50% of those eligible to vote. However, to make a boycott effective, a voter must refuse to *take* the referendum ballot paper from the commission official, and demand that the refusal be recorded on the ballot list. The moment a voter takes a referendum ballot form, they are recorded as participating in the referendum and thereby contribute to the turnout, irrespective of what they do with it.

The declarations required to effectuate the boycott cannot be made in secret. And since only anti-PiS voters will boycott the referendum in that way, they are a public admission to being anti-PiS. In PiS-dominated neighbourhoods – especially in small townships and villages- such a surrender of the privacy of one’s vote may be psychologically costly, and fraught with unpleasant consequences.

Judging Election Disputes

With the law on the Supreme Court of 2017, PiS also established the brand-new Chamber of Extraordinary Control and Public Affairs to adjudicate any electoral disputes. This anodyne name hides a group of PiS sympathizers who have *all* been appointed by the President of Poland on the recommendation of a newly set up National Council of Judiciary (KRS, is the Polish acronym). The judges-members of the new KRS are elected by the Sejm, i.e. by the PiS majority. Before its capture

by the executive, the Polish Supreme Court, in the famous [resolution of its three combined chambers](#) of 23 January 2020, minced no words when it proclaimed that the Chamber cannot “be considered a court” because all its members have been appointed in a defective procedure” (para 3). Such a body will be in charge of providing the authoritative resolution of any electoral disputes.

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The length of this piece reflects the magnitude of the unfairness that Poland's opposition has to face in this election. The unfairness is multifaceted, and its individual elements support and magnify each other, producing a toxic effect. This list of the sins committed by PiS is far from exhaustive: I have [not even mentioned “The Law to Take Out Tusk”](#) which has now entered into force, with [a kangaroo court already set up](#) peopled with fanatical right-wingers happy to serve PiS's aim to eliminate (politically) Kaczyński's arch-opponent. The European Commission's [infringement procedure](#) against Poland in response thereto won't undo the damage those show trials will inflict in Warsaw.

The opposition may still win, but they have to fight a steep, uphill battle. They are in a boxing ring with a ruthless opponent armed with a knife and accompanied by his thugs, capable of changing the rules as the game progresses, and the umpire bought by his team.

