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## POLAND: FROM TRANSFORMATION LEADER TO TROUBLEMAKER

Over the course of two decades, my colleague Sandra Archibald (University of Washington, Evans School of Public Policy and Governance) and I led an international research team that studied systemic transformation in post-Communist Central and Eastern Europe. Our team produced a series of articles in 2003, 2005, 2008 and 200<sup>1</sup>9, which argued that at least 10 Central and East European countries (which we named the CEEC-10) had made significant progress over the previous 10 to 15 years transforming their totalitarian political systems with centrally planned economies to democracies based on market principles. This transformation was expedited based on each individual country meeting European Union (EU) institutional, economic and social requirements both before and after they joined. Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia joined the EU in 2004, and Bulgaria and Romania joined in 2007. In 2009 our research team concluded that the CEEC-10 had completed their systemic transformation and had begun moving toward a sustainable path of development based on the implementation of triple-bottom-line principles (TBL). Significant investments in human capital (HC) and social capital (SC) had produced a solid institutional base, including constitutions and other basic laws. (One of the sustainability criteria considered in the research included Non-declining Total Capital – NTK, which includes HC, SC, NC – natural capital – and MC – manmade capital).

However, this progress has been seriously challenged, as several members of the CEEC-10, beginning in 2010, have been taken over by the populist-nationalistic wave, which has significantly changed their basic institutions, including their constitutions (in legal or illegal ways) and rules of law. These countries include Hungary since 2010, Poland since 2015, and likely the Czech Republic since their elections in fall 2017. To further illustrate how the progress made along the path of sustainable development could wane in these countries in the near future, this essay will consider the latest institutional developments in Poland.

In Poland the ruling coalition led by the Law & Justice Party (PiS) started to dismantle the independence of the Constitutional Court by replacing – mainly illegally – its independent judges with their own loyalists just after the parliamentary election in fall 2015. By 2017 they succeeded in completely subordinating the Court to the executive branch of government despite the activity of parliamentary opposition parties, country-wide protests and interventions from the European Commission and the Venice Commission, comprised of prominent European and American judges. As of the writing of this article (Winter 2018), there are no independent institutional checks on the constitutionality of the Polish Government's capacity to pass new laws and regulations.

In July 2017, the Government used the superfast track of the legislative process, passing three basic laws that *de facto* changed the Polish constitutional order – the Common Court System,

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<sup>1</sup> The international team also included Drs. Masahiko Gemma (Waseda University, Tokyo) and Tanja Srebotnjak (University of Washington, Seattle).

the Country Justice Council (KRS) and the Supreme Court – by simple majority rule in the *Sejm* (Parliament) and Senate, bringing foundational changes to the country’s political system in just two weeks. Both the process and the contents of the laws violated the Polish Constitution and basic parliamentary procedures in many areas such as excluding opposition parties from the discussion and nongovernmental organizations from consultations. Although the President, who is a member of PiS, initially vetoed two of the laws (the two which significantly limited his power in favor of the General Prosecutor, who is also the Minister of Justice), the Common Court System law was signed by him and went into effect on September 1, 2017. After negotiations between the President and the PiS party chairman J. Kaczynski – the real decision-maker – two other laws went through the parliamentary amendment process again, were passed by the ruling majority and signed with several insignificant changes, shifting some power from the General Prosecutor to the President and Parliament on December 20, 2017.

The impact of these unconstitutional changes came very soon. As of September 1, 2017, over 120 heads and their regional court deputies have been fired without any comment or justification, and new judges have been appointed who are loyal to the General Prosecutor. The justice system is losing its independence, as it is subordinated to the executive branch run by one-party interests. Basic democratic values, such as rule-of-law, are disappearing step-by-step. The nation is deeply divided, scared and insecure, and private business has cut their investments to the lowest level in a decade (this is a significant threat to sustaining restitution and modernization of MC). Today, Poland’s economic growth is mainly fueled by consumption expenditures financed from budget transfers (mainly by the “500+” program for about 3.5 million people with multiple children), which was instrumental in granting the PiS election victory in 2015.

Recently introduced government “education reform” (called “deform” by the opposition) brings the structure of the Polish K-12 system back to the 1980s (8+4) with old traditional ways of teaching based on teacher-centered approaches. Critical and integrative thinking, combined with practical projects, which were the emphasis of the previous system, have been replaced by extended national history curricula and religion classes at each level. The new curricula could create long-lasting damage to the formation of Poland’s human capital – the real engine of transformation, development and growth.

Natural capital (NC) has also been victimized by the current government. PiS introduced massive “sanitary” (the Minister of the Environment’s term) cutting in Europe’s oldest ancient forest, *Puszcza Bialowieska*, which is protected for conservation by Polish and EU laws. Despite massive protests from academia and NGO communities, the EC and UNESCO, it was continued until January 2018. Recently introduced amendments to hunting laws (January 2, 2018) gave hunters the rights to hunt in national parks and on private land even against the will of their owners, who risk penalization if they protest. The official reason for these changes is to fight AFS – a disease that effects pigs and wild boars – which has spread from Belarus over last few years due to a lack of effective enforcement of governmental policies. The new hunting laws echo government explanations for aggressively cutting the ancient forests in *Puszcza Bialowieska* for the sake of the forest health and safety of tourists.

Aggressive xenophobic propaganda exercised by the government-controlled media (particularly by the Polish TV – TVP) against opposition parties, intellectual elites, refugees,

neighbors and the EU destroys the social capital (SC) that slowly grew after the transformation due to legitimacy of the democratically elected governments.

The recent development involving controversial amendments to the Act on the Institute of National Remembrance (IPN), which were hastily passed by the Parliament in January and signed by the President on February 6, 2018, opened new areas of conflict not only within Poland but within international communities and states, particularly with Israel and Ukraine. The initial idea behind the amendment was to fight the term “Polish death camps,” which appears from time to time, mainly in the foreign media but also in the speeches of some politicians. For example, President Obama accidentally used this term in his speech awarding a posthumous Presidential Medal of Freedom to Polish hero Jan Karski – an officer from the Polish Underground during WWII, who risked his life many times bringing eyewitness reports of the Holocaust to the United States. The amendment’s initial and noble intention to accurately defend Poland from responsibility for building death camps during WWII when it was occupied by Nazi Germany was expanded in the last phase of drafting by PiS lawyers to exclude not only the Polish State but also the Polish Nation (never defined) from any responsibility or co-responsibility for the Holocaust during WWII and after (Art. 55a). This extension of the law replaced the original and well-defined term “Polish death camps” to the “Polish Nation” and introduced penalties of up to three years in prison according to the Penalty Code for those who will disagree with this provision.

Lawmakers from opposition parties, top Polish experts and members of the international community, including the U.S. Department of State, have noted the serious limitations presented by such a provision to the Constitutional right to freedom of speech. The provision also represents PiS’ attempt to re-write element of the country’s unsavory history, which includes the fact that a number of Poles did collaborate with the German administration during the occupation and others “sold” hidden Jews to Nazis for some benefits. Despite this dark history, it is also true that Poles risked their own and their family’s lives to help Jews hide (occupied Poland was the only country where Germans imposed the death penalty for anyone who helped the Jews). For example, in the Yad Vashem Holocaust Center in Jerusalem, Poles comprise the largest number of documented heroic people who helped Jewish people to survive during WWII (Righteous among the Nations). Ironically the current amendments to the IPN Act initiated a worldwide wave of hate against Poles and the term “Polish death camps” was mentioned not a few hundred times per year as in the past, but a million times per day during the worst of the backlash. At the same time, the numbers of anti-Semitic and anti-Israel comments are growing in Poland and abroad, undermining over three decades of hard work building good relations (SC) between Israel and Poland and between Jews and Poles worldwide – all of whom were victimized by German Nazis.

The IPN law also opened a new conflict between Poland and Ukraine by condemning Ukrainian nationalism, particularly the Ukrainian Insurgent Army (UPA), which is historically responsible for massacres of Poles in Volhynia and Eastern Galicia. The Ukrainian Parliament condemned the new IPN legislation for its “distorted notion” of Ukrainian nationalism by grouping it with German Nazism and Soviet Stalinism. In fact, both nations – Poles and Ukrainians– suffered tremendously from German and Soviet totalitarian regimes. Ukrainian MPs were also concerned that the amended Act would strengthen anti-Ukrainian sentiments among Poles, threatening the safety of approximately 1 million Ukrainians who currently work in Poland. The irony is that Poland was the first country to

recognize the independence of Ukraine in 1991, and until this point Ukrainians have regarded Poles as strong allies (high SC).

Poland's story illustrates the danger posed by populist-nationalist parties, particularly in the rather young democracies of CEE, when they win elections and start implementing their policies and changes in institutional structures. It worth mentioning that during the election campaign (2015), PiS successfully used false slogans such as "a country in ruins" (despite the fact that Poland was the most prosperous it had been in its history) and "rising from its knees" (to protest against Germany, the European Commission in Brussels and multinational corporations "commanding" the Polish economy and previous governments). These slogans and other efforts served to "cure" the populist-nationalists' inferiority complexes, but these tactics could destroy or seriously damaged good relations with neighboring countries and other friendly nations in a very short time. Poland is currently moving in isolation, destroying its traditional alliances and increasing threats to its security.

During our research on designing institutions for sustainable development in CEE (1990–1994) with Richard Bolan (University of MN, Humphrey School of Public Affairs) and our CEE partners, we focused heavily on the critical role of institutions in the transformation process from totalitarian system to democracy. We often cited German philosopher J. Habermas, who indicated how totalitarian institutions could affect basic aspects of societal life, turning socialization into alienation, turning culture into a strange party sub-culture and changing the original meaning of words into their opposite. Having lived my first 40 years in Poland I understood his message well, but I was sure that I would never experience it again. Unfortunately, I was wrong. In the last two years, most of the implementation of the PiS program called "*Dobra zmiana*" (good change) has proven to be bad, and even disastrous, for the country's sustainability. The country has quickly become a divided nation with many Poles immigrating to the West or considering immigration if things go further in this direction. The meaning of words are changing due to the recently changed institutions, e.g., the Ministry of Justice has become the ministry of injustice, the Ministry of Environment – the ministry of environmental destruction, the Ministry of Education – the ministry of deformation, etc. One of the best examples of the meaning change was when PiS established the National Institute of Freedom (*Narodowy Instytut Wolności*) in September 2017 to support NGOs friendly to PiS' ideology and cut off funding to and destroyed independent NGOs. (My Russian and Hungarian friends observed similar processes in their country several years ago.)

This case also shows the importance of high quality and stable institutions. Good institutions are products of rich social capital (SC), the result of heavy investment in building relations, participation from a significant portion of the population and consensus building among and for the people. This is a time-consuming process, but significantly increases the value of SC and produces high-quality institutions for the majority of the population. Institutional changes introduced by PiS in Poland are characterized by fast preparation and implementation without consideration or contributions from the opposition parties, consultation and dialogue with prominent academic or professional experts or even consulting their own layers. The institutional changes are designed and implemented simply to meet narrow party interests and sustain its power. These changes and resulting institutional designs are remarkably similar to the previous totalitarian system.

Poland's government has been led by Prime Minister (PM) Mateusz Morawiecki since January 9, 2018. He removed some of the most controversial ministers, including the Ministers of Environment, Defense and Foreign Affairs. He also introduced new ministers, mainly technocrats from his own circle of trusted people. From the very beginning the PM and his professional, well-dressed and educated ministers have lead with a "charm offensive" within the international community, from Brussels to Davos, to change the bad image of the previous government and repair some damage done by predecessors. Although they are more civilized and knowledgeable than the previous government, it is unlikely they can make any significant change to the institutional changes the PiS has already implemented. I wish they could, but it is unlikely they will be able to bring about anything other than superficial cosmetic changes to improve PR.

Unfortunately, my rather pessimistic predictions about the new PM quickly came true. On Sunday, February 18, 2018, his charm campaign dramatically ended at a security conference in Munich, Germany. At the end of a panel discussion an American journalist with Jewish roots asked PM Morawiecki whether he would be prosecuted according to the new Polish IPN law if he were to write about his mother story of how she overheard that her Polish neighbors were planning to give up her family's hiding spot to the Nazis. The PM, without empathy or civilized apology, speaking as the top representative of Poland, responded with "Of course it would not be punishable or criminal if you say there were Polish perpetrators, just like there were Jewish perpetrators, like there were Russian perpetrators, like there were Ukrainians, not just German perpetrators." This response outraged not only the international audience at the conference, but the world community, particularly in Israel and the US.

Here in Poland we were terribly surprised and ashamed that the PM made a statement that lacked any sensitivity to Holocaust victims. His response has initiated national soul searching and academic discussions analyzing whether it was a personal mistake or a clear policy statement to gain the support of the extreme nationalistic and anti-Semitic electorate within the PiS, and to their right, for the coming election. Whichever the case, the IPN law confirms that institutions introduced hastily and in a totalitarian fashion, as it was in this case (after midnight and without any serious discussion and consultations) produce the opposite result of what was intended – instead of defending the reputation of Poland, it has been terribly damaged worldwide, instead of strengthening ties with our neighbors and friendly countries built over decades of hard work, it has weakened them considerably, instead of promoting Poles as good world citizens, it has isolated us from the global civilized community.

In conclusion, the institutional changes occurring in Poland indicate it is clear that we need to include in our research and in the practice of policy design, implementation and evaluation a fourth element in the criteria for sustainability – Sustainable Institutions –emphasizing the importance of a quadruple-bottom-line (QBL) to protect our democracies and economies from populism and nationalism. Otherwise, the world may witness many more examples where countries move quickly from prosperity to crisis, from role-models to troublemakers.

This is an urgent challenge for all of us, and in particular for academia to identify reasons and propose effective solutions. Collaborative academic research can help answer many questions related to the current crisis, including the following: (1) How to identify emerging threats of populism and nationalism and respond to them effectively? (2) How to educate current and future generations – build HC – to make them immune to such disastrous ideologies? (3) How

to accelerate building social capital – the source of trust and the foundation for sustainable institutions? (4) How to restore damaged SC within a nation and with other nations (e.g., Poles and Jews, Poles and Ukrainians)? (5) How to redesign the political process of electing representatives and keep them responsible for sustainable solutions?