

# **POLAND, THE EU, AND BISMARCK'S GHOST?**

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Bismarck succeeded, by a combination of chicanery and bullying in uniting Germany militarily, legally, and culturally in the image of Prussia. Subtract the military element, and the EU seems to have been trying to do the same thing to Poland, albeit using more subtle methods.

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Two days before Christmas, Jarosław Kaczyński, leader of the ruling Law and Justice Party in Poland, held an explosive interview with right-leaning newspaper *Gazeta Polska Codziennie* in Warsaw. In it he accused Germany point-blank of trying to set up a new Fourth Reich under the fig-leaf of the EU. Germany was very unamused at what it saw as a bad-taste reference to the Third Reich. So too was the EU ruling class, which in any case has always cordially detested Law and Justice for its uncooperative attitude to Brussels.

A lot of people will agree with them. For all Poland's justified unhappiness at the EU's project to smother Europe in an all-enveloping comfort blanket of liberal orthodoxy and central micromanagement, any comparison with the horrors of 1933-1945 is pretty preposterous. Mr Kaczyński's diatribe looks like the rantings of a populist out for a scapegoat, not to mention an application in the political sphere of Godwin's law (which, since you asked, is the rule that as any online discussion gets longer, the chance approaches certainty that somebody somewhere will invoke the memory of Hitler).

But look a little more deeply, and there may be more of a grain of truth in all this than first appears. The clue is to delve a bit deeper back in German history: not to the Third Reich

but to the Second, and to the North German Confederation that preceded it. Both involved two interesting features. One was that in a nominal confederation of equal states one part of the grouping—Prussia—remained in de facto control. Whether it concerned conniving in the Russian oppression of Poland (as in 1863), invading Schleswig later in the 1860s, engineering war with France in 1870, or carrying on a *Kulturkampf* in the 1870s aimed at elbowing the Church out of educational and social provision in heavily Catholic southern Germany, Prussia got its way. The other was that while Germany was a nominal parliamentary democracy—remember that Otto von Bismarck had ostensibly supported the liberals in the year of revolutions in 1848—power was deliberately skewed heavily in favour of the centre. The *Bundestag*, it is true, had to approve federal legislation, but quite deliberately was given no power to initiate it. The executive which carried on the government was appointed by the monarch, meaning effectively Bismarck, and was not beholden to the legislature, which it could dissolve at any time. And while the legislature could, and on occasion did, block executive plans, generally speaking it was carefully manipulated by the centre to prevent it becoming too obstructive.

There are here eerie parallels with the EU. Not only do a great deal of its money and much of its political leadership, including Commission president Ursula von der Leyen, emanate from Germany. In much the same way as Bismarck, the founding fathers of the then EEC—many of whom were German—were also leery of the populace at large, and constructed the organisation accordingly. Admittedly the reasons were different: while Bismarck's bugbear was socialism, theirs was nationalistic populism, which they saw as largely responsible for both the world wars that had set the original six members at each other's throats. Nevertheless, they still shared with Bismarck a concern to keep democracy very much in its place. Euro-power was therefore concentrated in a technocratic executive, the Commission, appointed by governments rather than requiring the backing of any parliament (the latter merely receiving a power, intentionally made rather impracticable to exercise, to dismiss the entire Commission). And so it remains today. Conversely, while there was to be a European parliament, it was kept firmly subordinate to the Commission. It started out as an entirely unelected body, with members selected by the parliaments of member states; and even when it became directly elected in 1979, it was, like Bismarck's *Bundestag*, denied power to initiate legislation or to exercise effective control over the executive. Its agendas were, and are, set by the European

Council, which as often as not means the Commission in practice.

Furthermore, means were also found to ensure that as much power as possible remained concentrated at the centre in Brussels rather than in the member states. Prussia and Bismarck had done this by browbeating and political skulduggery. The EU did the same through the medium of law. Its Court of Justice, nominally impartial but in practice *plus communautaire que la communauté*, has a long tradition of reading EU powers expansively. Since 1963 it has also—under pressure initially from the *Wissenschaftliche Gesellschaft für Europarecht* and German jurists such as Euro-enthusiast Hans Peter Ipsen—jealously insisted on the absolute superiority of EU law (as interpreted conclusively by itself) over any national laws whatever.

All this gives a much clearer illustration of the Polish government's jaundiced view of the EU and the perceived German influence behind it than any jejune reference to the Third Reich. However much you dislike the Law and Justice Party (which it must be admitted seems to have a fair number of skeletons, both political and legal, in its cupboard), it has at least been elected to govern, unlike the European Commission; and it understandably sees a good deal of the EU pressure on Poland as an attack on the Polish people's right to decide for themselves on how they wish to be governed.

Part of the present *casus belli* is moves by the EU which Poland sees—as many German states saw Bismarck's regime—as inappropriately interfering in its internal affairs in the interests of European centralisation.

Two such issues in particular strike a raw nerve. One is a 2019 complaint by the EU that the Polish judiciary is insufficiently impartial. Poland says that, even if true, this is not the EU's business, and rightly points out that nowhere in any of the treaties are judicial appointments said to be an EU competence. The EU's riposte is a judgment of the EU court—an institution with very sensitive political antennae—insisting that this *is* plainly the EU's concern, on the somewhat tendentious ground that, because somewhere, sometime a Polish court will have to apply EU law, the composition of the latter must therefore be subject to the oversight of the EU. But Poland, understandably, still scents a power-grab,

and is less than happy.

A second bone of contention concerns the status of the Polish constitution. In the judiciary affair, one argument raised by Poland was that the manner in which it appointed its judges was not only its own affair but was governed by its own constitution. The EU saw this argument as beside the point, insisting that its own word had to prevail over minor matters like national constitutions. Tempers were not improved when last year the Polish Constitutional Court ruled that the country had not instituted a solemn constitution, including detailed procedures for amendment, only for its provisions to be vulnerable to the swish of a Eurocrat's pen—and that it would in Poland continue to apply the constitution notwithstanding. The current position is that the EU has darkly threatened Poland with large fines unless it either changes its constitution or somehow muzzles its own constitutional courts from making decisions the EU disagrees with.

A further point of argument is the general sense that the EU produces a centralising ideology for the sake of centralisation, without an understanding that conditions may differ between the 'old,' western EU and the newer Eastern European members.

For example, Poland, together with a number of other states at the eastern edge of the EU such as Hungary, has a serious practical problem with illegal immigration. Its reaction has been to fortify its border so as to make it difficult for migrants to slip across it to the nearest town, formally demand asylum and effectively present Poland (and, it should be added, the EU) with a *fait accompli*—since it would then be remarkably difficult to expel them later. Seven hundred miles further west, away from practical difficulties such as these, Brussels is still loftily pressing its eastern members to ease the process by admitting the migrants, at least temporarily, using laws framed in less crisis-ridden times. For the moment, it seems that Poland, Hungary and a few others will simply ignore any such pressure.

Another example, reminiscent of the *Kulturkampf* of nearly 150 years ago, concerns social policy. On matters such as LGBT equality and abortion, the original western EU members—and, it should be said, most of their electorates—are staunchly liberal and

secularist. They find it difficult to comprehend that Poland and a number of other eastern members, being strongly Catholic or otherwise religious, may think differently. It did not go down well in Poland that last year the European Parliament resolved to condemn Poland's views on abortion and called on the EU to find ways to force it from outside to introduce liberal abortion laws like those in Germany or the Netherlands; nor that Poland and Hungary should be threatened with proceedings from the EU for not limiting the powers of local authorities to express their views on LGBT issues, or adopting limits on the promotion of LGBT lifestyles in school texts and children's books.

In the years after 1870 Bismarck succeeded, by a combination of chicanery and bullying—and not infrequently naked force—in uniting Germany militarily, legally, and culturally in the image of Prussia. Subtract the military element, and the EU in the last ten years seems to have been trying to do much the same thing as regards Poland and a number of eastern European states, albeit using more subtle methods: imposing legal uniformity through a complaisant court and pressing against religious and cultural norms that do not fit in with its liberal world-view.

Will the EU manage to do a Bismarck? It may find things harder than it thinks. The original EU states, with their residual memories of war between them, may be prepared to knuckle under when faced with a peremptory order from an EU court. By contrast the newly joined eastern members have memories not so much of conflict between them as of brutal control by an external body between 1945 and 1989. Any sign that, by joining the EU, they might merely be swapping one bully for another, and they will be more than willing to call Brussels's bluff, even if it does come in the form of facing down a judgment from a court that hitherto has expected and obtained pretty instant obedience. Brussels, if it does not wish to come out of these affairs looking foolish and impotent, might do well to take note of the facts that Ursula von der Leyen isn't Bismarck, and that the EU is not 1870s Prussia.