

THE RESTITUTION LAWS AND POLAND’S MEMORY BATTLES

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Abstract: This article seeks to identify the reasons behind Poland’s decision to adopt a new law on the restitution of confiscated properties in 2021, although another law already stipulated the historical conditions for addressing the legacy of the Holocaust in 2018. The two laws were conceived on the premise that Nazi Germany bore almost exclusive responsibility for the Holocaust. The most recent law intended to regulate a segment of the valuable Warsaw real estate market which had been affected by numerous public scandals during the past two decades. Enacted on August 14, 2021, the new law blocked the former owners and their legal successors not only from recovering their former estates, but also from receiving rightful compensation. Legislators considered that the law had to conform to a 2015 ruling of the Constitutional Tribunal, which imposed limits on appeals against administrative decisions set between 10 and 30 years. Although the law concerns an administrative act, it also reflects the political disputes over the nation’s historical memory and, in particular, one of the most tragic periods in the history of Poland: 1939-1945.

Keywords: Poland, Holocaust, Law of Restitution 2021, Jarosław Kaczyński, Law and Justice (PiS)



Rezumat: Articolul explică de ce Polonia a adoptat o nouă lege, după ce o alta din 2018 stipula deja termenii istorici ce pot fi utilizați pentru fenomenul Holocaustului. Responsabilitatea exclusivă a Germaniei naziste este tema publică fundamentală care reiese din argumentarea celor două legi. Pe de altă parte, legea privind restituirea proprietăților confiscate, adoptată în august 2021, are menirea de a reglementa juridic o parte a pieței imobiliare valoroase din Varșovia și care, nu de puține ori în ultimele două decenii, a provocat scandaluri publice. Legea restituirii proprietăților, intrată în vigoare la 14 august 2021, face posibilă introducerea unor reglementări care blochează nu numai revenirea imobilelor în sine, ci și despăgubirile pentru foștii proprietari și succesorii lor legali. Autorii Legii au considerat necesară alinierea la o decizie a Tribunalului Constituțional, care a stabilit în 2015 că ar trebui impusă o dată limită pentru orice contestație la o decizie administrativă. Prin urmare, Legea prevede o limită cuprinsă între 10 și 30 de ani, în funcție de caz. Chiar dacă se referă la un act administrativ, legea restituirii proprietăților este o parte importantă a disputelor politice referitoare la

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memoria istorică, în special a aceleia care se referă la perioada cea mai tragică din istoria Poloniei în secolul al XX-lea: 1939-1945.

Cuvinte cheie: Polonia, Holocaust, Legea privind Restituirea 2021, Jaroslaw Kaczyński, Partidul Lege și Justiție

I. Introduction

During the heated session of the Polish Parliament of August 12, 2021, the new Restitution Law received 309 votes in favor, no vote against and 120 abstentions.¹ President Andrzej Duda signed it into law two days later, despite strenuous protests issued by Israel and the United States.

This article seeks to identify the reasons behind Poland's decision to adopt this new law, after another law which already stipulated the historical conditions to address the Holocaust legacy was adopted in 2018. At their roots, the two laws were premised on the idea that Nazi Germany bore almost exclusively the responsibility for the Holocaust. The most recent law intended to regulate a segment of the valuable Warsaw real estate market which had been involved in numerous public scandals in the past two decades.

The Restitution Law, which refers almost exclusively to properties located in Warsaw, allows the Polish state to block former owners and their legal successors from recovering their properties and receiving due compensation. The legislators considered that the new law had to comply with a 2015 ruling of the Constitutional Tribunal, which imposed limits on appeals concerning administrative decisions. Indeed, the law allowed only appeals covering a period between 10 to 30 years, depending on the case. In 2001, a draft law that granted compensation for seized private property was approved by the Parliament but vetoed by the President Aleksander Kwaśniewski (in office during 1995-2005), a former communist minister before 1989. That comprehensive restitution bill granted claimants compensation of up to 50 percent of the value of the seized property.² Kwaśniewski claimed that the provision violated principles of social

¹ Maria Wilczek, "US and Israel Condemn Property Restitution Bill Passed by Polish Parliament," *Notes from Poland*, Krakow, 12.08.2021, <https://notesfrompoland.com/2021/08/12/us-and-israel-condemn-property-restitution-bill-passed-by-polish-parliament/>, accessed 13.09.2021.

² Michael Bazyler and Szymon Gostynski, "Restitution of Private Property in Postwar Poland: The Unfinished Legacy of the Second World War and Communism," *Loyola and Los Angeles International Comparative Law Review* 41, nr. 3 (2018): 278.

equality and that the large compensation payouts could hurt Poland's economic development. Instead, he urged owners to lodge their individual claims with the courts.³

In November 2016, *Pravo i Sprawiedliwość* (PiS), the conservative Law and Justice Party of Poland, proposed the creation of a special Verification Commission (*Komisja Weryfikacyjna*) mandated to investigate the legality of all decisions taken by public authorities and local government institutions in regard to the re-privatization of enterprises. Such enterprises had been created across Poland between the fall of the communist regime in 1989 and the PiS's victory in the parliamentary elections of October 2015. Created in March 2017 and chaired by Deputy Justice Minister Patryk Jaki, the nine-member parliamentary commission was able to revoke previous restitution decisions and send them back to the body that originally issued them for reconsideration. In June 2017, the Commission began its hearings, and the following month it already revoked two restitution decisions issued by the Warsaw municipal government.⁴ In October that year, the PiS government recognized the importance of restitution and addressed the issue by publishing a draft law which permitted some of the original owners and their families to make such claims. Notably, it excluded Holocaust survivors and their families from such claims.

Days before the elections for the European Parliament of May 26, 2019, PiS leader Jarosław Kaczyński stated that “Poland has no obligations resulting from the war, neither legally nor morally.”⁵ Interior Minister Joachim Brudziński insisted that as long as PiS is in power, not a single Polish zloty will be spent on compensation without justification, because “one must adhere firmly to the historic truth.”⁶ Prime Minister Mateusz Morawiecki opposed paying restitution to Jews who survived World War II: “If we reach a situation in which Poland pays compensation for World War II, it would be a victory for Hitler. As long as

³ Rebecca Klapper, “Poland Resisting Israel’s Call for Restitution for Jews During Holocaust,” *Newsweek*, 28.06.2021, <https://www.newsweek.com/poland-resisting-israels-call-restitution-jews-during-holocaust-1604709>, accessed 27.08.2021; Israel Hayom, “Poland One Step Closer to Adopting Controversial World War II Restitution Law,” 25.07.2021, <https://israelhayom.com/2021/07/25/poland-one-step-closer-to-adopting-controversial-wwii-restitution-law/>, accessed 26.08.2021.

⁴ Bazylar and Gostinski, “Restitution of Private Property,” 291.

⁵ Monika Sieradzka, “Poland and Israel at Odds over Holocaust Restitution,” *Deutsche Welle*, 13.05.2019, <https://dw.com/en/poland-and-israel-at-odds-over-holocaust-restitution/a-48724524>, accessed 27.08.2021.

⁶ Jo Harper, “Nationalized Jewish Property: Warsaw’s Restitution Problem,” *Deutsche Welle*, 27.01.2020, <https://www.dw.com/en/nationalized-jewish-property-warsaws-restitution-problem/a-52156875>, accessed 23.08.2021.

our party is in power it will not happen.”⁷ He added that “it would be an abuse of all of the basic principles of international law and would also be Hitler’s posthumous victory”.⁸

President Andrzej Duda’s statement, published by the official *Polska Agencja Prasowa* (PAP) the day after he promulgated the new law (August 15, 2021), explained that it aimed to protect current property owners from unexpectedly being disowned by the restitution claims, and stressed that it “will put an end to the insecurity felt when a flat or property bought in good faith can be taken away on the strength of a simple administrative decision”.⁹ Duda believed that with his signature “the era of legal chaos ends, the era of re-privatization mafias, the uncertainty of millions of Poles and the lack of respect for the basic rights of the citizens of our country [ends]”.¹⁰

In spite of these declarations, the new restitution law jeopardized the temporary and fragile peace which Poland and Israel were able to restore in 2018 after the adoption of the Holocaust Law in Warsaw. After the law’s promulgation, the Polish government found itself in an even more difficult position vis-à-vis its strategic partners in Jerusalem and Washington.

II. A Political Battle over Poland’s Memory: Poles and Jews

In a 2018 analysis of the reasons why the Polish Holocaust Law prohibited the use of the term “Polish extermination camps,” Anne Applebaum observed that the huge national and international political scandal generated by that law was but an “illiterate ‘debate’, with ‘more sordid results’.”¹¹ She further added: “the irony is that none of the protagonists of this story can actually remember World War II, or the terror that is brought to the Jews and to Poland. But that is

⁷ Ibid.

⁸ Gideon Taylor, “Debunking Myths about Calls for a Denationalization Law,” *World Jewish Restitution Organization*, 31.05.2019, <https://wjro.org.il/cms/assets/uploads/2019/07may-31-2019-wjro-op-ed-rzeczpospolita-english-translation.pdf>, accessed 20.08.2021.

⁹ Polska Agencja Prasowa, “Poland’s President Signed Property Restitution Amendments,” 15.08.2021, <https://pap.pl/node/929319>, accessed 20.08.2021.

¹⁰ David M. Herszenhorn, “Israel Recalls Top Diplomat from Poland Citing ‘Anti-Semitic’ Restitution Law,” *Politico*, 15.08.2021, <https://www.politico.eu/article/israel-diplomat-poland-anti-semitic-unethical-restitution-law/>, accessed 17.08.2021.

¹¹ Anne Applebaum, “The Absurdity of Poland’s Holocaust Law,” *Chicago Tribune*, 05.02.2018, <https://www.chicagotribune.com/opinion/commentary/ct-perspec-poland-nazis-death-camps-0206-20180205-story.html>, accessed 26.08.2021.

part of the explanation: As genuine memories of the horror recede, cartoon version of history, easily manipulated, have come to replace them.”¹²

Lavinia Stan, which studies transitional justice, recently wrote about the existence of “competing pasts” which assert themselves each time a regime or political power seeks to legitimize its policies or actions.¹³ In my view, this analytical framework applies to the competing jurisdictions of the memory of the Holocaust in Poland. That is, when analyzing the legacy of the Auschwitz-Birkenau concentration camps in the context of the 2018 law, the removal from the judicial application of the “Polish death camps” sparked an ample national debate and led to a heated international crisis.¹⁴

Where do the competing pasts come into play? To answer this question we must return to the signing of the additional Secret Protocol to the Ribbentrop-Molotov Pact on August 23, 1939. Days later, on September 1, 1939, Nazi troops invaded Poland, followed by the Red Army, on September 17. The Second Republic, whose independence was proclaimed by Józef Piłsudski on November 11, 1918, was divided by the two totalitarian states. Germany and the USSR also signed on September 28, 1939, at Brest-Litovsk a frontier treaty that enshrined the disappearance of Poland. After the President of the Republic, the government, the military leaders, and other 100,000 civilians and officials retreated to Romania on the night of September 17, 1939, Poland re-established a government in exile.¹⁵ First in France, then in London, this government functioned as the legal authority of Poland during World War II, in accordance with international law.

Between 1939 and 1945, the German-occupied Polish territory and the one annexed by the USSR endured one of the most terrible episodes of mass killings on the European continent that prompted Timothy Snyder to refer to this

¹² Applebaum, “The absurdity.” See also Lawrence Douglas, “The Political Battle over Poland’s Holocaust History,” *The Wall Street Journal*, 07.04. 2021, <https://www.wsj.com/articles/the-political-battle-over-polands-holocaust-history-11617803792>, accessed 22.08.2021.

¹³ Lavinia Stan, “The Problem of “Competing Pasts” in Transitional Justice,” *Annals of the “Ovidius” University of Constanța. Political Science Series* 10 (2021): 7-16.

¹⁴ Florin Anghel, “How to Deal with Lost Memory: Holocaust Remembrance Law in Poland (2018) between Politics and History,” *Annals of the “Ovidius” University of Constanța – Political Science Series* 8 (2019): 55-73.

¹⁵ On Polish refugees in Romania, 1939-1945, see *Polscy uchodźcy w Rumunii, 1939- 1947. Dokumenty z Narodowych Archiwów Rumunii*, 2 volumes, introduction by Florin Anghel (Warszawa: Instytut Pamięci Narodowej, 2013), 1576 p.; Florin Anghel, „Dictatura memoriei. Refugiații poloni în România (1939- 1945)”, *Revista istorică* 5-6 (2010): 409-431 and Florin Anghel, „Topografia memoriei exilului polon. Babadag, 1939-1940,” *Studii și materiale de istorie contemporană* XVII (2018): 191-206.

region as the “Bloodlands.”¹⁶ In the respective Polish territories occupied by the Nazis and the Soviets, extermination camps were set up to carry out an ample ethnic cleansing process. Snyder explains that between 1939 and 1945, the eastern territories of Poland were occupied successively by the Soviets, the Nazis, then the Soviets again, and starting in 1941, the most brutal massacres were perpetrated against Jews – massacres in which Lithuanians, Ukrainians, and Poles also took part not as victims.¹⁷ Analyzing Snyder’s work, Daniel Blatman wrote on the initiatives to reinterpret the Holocaust that:

“Attention to the internal violence that took place in these areas, with its murderous aspect – Poles murdering Jews, Ukrainian killing Poles, and vice versa – reveals that there were also patterns of violence and murder within ‘extinct landscape’, in the internal ecological systems of the societies and groups that, although all under the control of the genocidal regime, still found a way to engage in intergroup bloodshed.”¹⁸

Other historians provide a more nuanced view of the Poles’ relationship with the antisemitic historical memory of World War II. Jerzy Kochanowski writes that of the 3,400,000 Jews who lived in Poland in 1939, barely 300,000 survived, half of them in the territories occupied by the USSR; the remainder either went underground or returned from the extermination camps.¹⁹ Kochanowski agrees that the attitude of the Poles engaged in the Nazi operations perpetrated in the occupied territories was “condemnable” in so far as the “extermination of the Jews” was concerned. He draws attention to the actions perpetrated by the rural inhabitants, who collaborated with the Nazis and helped them apprehend the Jews who sought to flee those areas. The historian considers that the Polish

¹⁶ Timothy Snyder, *Bloodlands: Europe between Hitler and Stalin* (New York: Basic Books, 2010). A review by Neal Ascherson in “The Guardian,” 09.10.2010, in <https://www.theguardian.com/books/2010/oct/09/bloodlands-stalin-timothy-snyder-review>.

¹⁷ Timothy Snyder, “Echoes from the Killing Fields of the East,” *The Guardian*, 28.09.2010, <https://www.theguardian.com/commentisfree/cifamerica/2010/sep/27/secondworldwar-poland>, accessed 04.01.2022.

¹⁸ Daniel Blatman, “Beyond National Identities: New Challenges in Writing the History of the Holocaust in Poland and Israel,” in *New Directions in the History of the Jews in the Polish Lands*, ed. Anthony Polonsky, Hanna Węgrzynek and Andrzej Żbikowski (Boston: Academic Studies Press, 2018), 438.

¹⁹ Jerzy Kochanowski, “Les visages de l’occupation nazie en Pologne, 1939-1945: les expériences des Polonais. Le destin de la population juive,” *Guerres mondiales et conflits contemporains* 261, no. 1 (2016): 75-76.

peasants were not motivated by material reward, but rather acted out of fear of reprisals.²⁰

The reputed historian Norman Davies had some reservations regarding the claims of Yehuda Bauer, a significant Israeli historian of the Holocaust. In a 2019 interview given to a conservative Polish newspaper, Davies cited Bauer's very concise observation, formulated in 1974: “former perpetrators – Nazis (not Germans), victims – Jews, and witnesses – Poles.”²¹ However, in 2020, Davies argued that the term “liberation,” when utilized to describe the entry of the Soviet troops in Poland in 1939 and again in 1944, needs to be examined critically so that it also covers the relations between Poles and Jews in the *liberated* territories: “Auschwitz was chosen by Soviets as the showpiece of what they called the *crimes of fascism*.”²²

Anne Applebaum estimates that, after the war, only 10% of the 3.5 million Jews who lived within the borders of prewar Poland had survived. According to her, some 80,000 survivors came from Nazi-occupied Poland while the rest had spent the war in the USSR. In June 1946, around 220,000 Jews lived in postwar Poland – less than 1% of the entire population of the country which amounted to 24 million inhabitants at the time.²³

After the war, the Soviet occupation and the establishment of a communist regime put a stop to any discussion on Polish guilt in relation to the Holocaust. Applebaum did not think that “a more sensitive minefield existed in the history of the Jews from postwar Eastern Europe, and especially of the Jews from Poland.”²⁴ The political and scientific narrative advanced by the communist authorities held that Poland had been solely a victim of the war and bore no responsibility for what had happened on its territory during the period 1939-1945. In the aftermath of the war, Applebaum notes that Eastern Europeans and Jews participated in a *competing martyrology*. The former were resentful because the world knew about the Holocaust, but not about their own suffering at the hands of both the Nazis and the Soviets. Meanwhile, the latter considered

²⁰ Ibid., 95-97.

²¹ Magdalena Rigamonti, “Holokaust, polski antysemityzm... Rewelacje prof. Daviesa o zamkniętym spotkaniu w ambasadzie Izraela,” *Dziennik Gazeta Prawna*, 07.10.2019, <https://wiadomosci.dziennik.pl/opinie/artykuly/609563,norman-davies-historia-holokaust-zydzi-polacy-ii-wojna-swiatowa-niemcy-hitlerowcy.html>, accessed 04.01.2022.

²² Norman Davies, “Auschwitz and the So-Called Soviet Liberation of Poland,” *Notes from Poland*, Kraków, 26.01.2021, <https://notesfrompoland.com/2020/01/26/norman-davies-auschwitz-and-the-so-called-soviet-liberation-of-poland/>, accessed 04.01.2022.

²³ Anne Applebaum, *Cortina de fier. Represiunea sovietică în Europa de Est, 1945-1956* (București: Editura Litera, 2015), 211.

²⁴ Ibid., 208.

that any discussion about wartime suffering, outside of their very own, was depreciating their uniquely tragic experience.²⁵

In 2000, historian Jan Gross published *Neighbors*,²⁶ a book on the events of 1941, which detailed what happened in the village of Jedwabne, where Polish locals killed their Jewish neighbors. After its publication, the discussion about the relations between the Polish inhabitants living under occupation and the Jewish minority became increasingly extensive and intensive, even gaining expressly political connotations after 2015. A Polish commentator supportive of the government's efforts remarked that until the end of the 20th century, the Holocaust remained exclusively a German-perpetrated phenomenon in the historical literature and the mass media. At the start of the 21st century, discussions about the Polish role in the Holocaust emerged initially in the national context, and the debate expanded outside the country after the publication of Gross' texts. The debate was framed in such a way that the responsibility of other countries in the Holocaust was completely erased, and therefore Poland found itself suddenly the only culprit.²⁷

According to the Center for Public Opinion Research, 17% of Poles never heard of the matter described by Gross, although Polish involvement in the persecution of Jews had already been discussed by almost all Polish media for several months in 2001. Of those who heard of it, 11% thought that Gross's work was a mere provocation aimed at slandering Poland, 41% believed that it was the Germans who murdered the Jews, and only 6% were able to accept the cruel truth about Polish involvement in those events.²⁸

In an interview given to an Israeli paper in 2018, Gross explained that the alienation that affected Polish memory of the Holocaust and the Jewish community was unique in the world: “Has there ever been seen in the history of any country that 10 percent of its citizens have been murdered in such an extraordinarily brutal way and this is not part of the country's history?”²⁹ Gross further noted that the Poles had participated “actively” in the Holocaust

²⁵ Ibid., 209.

²⁶ In Romanian: Jan T.Gross, *Vecini: ștergerea comunității evreiești din Jedwabne, Polonia* (Iași: Editura Polirom, 2002).

²⁷ Eugeniusz Guz, “Polska obwiniana o Holokaust,” *Tygodnik Przegląd*, 03.04.2018, <https://tygodnikprzeglad.pl/polska-obwiniana-o-holokaust/>, accessed 23.09.2021.

²⁸ Alina Căla, *Jew. The Eternal Enemy? The History of Antisemitism in Poland* (Berlin: Peter Lang, 2018), 326.

²⁹ Vanessa Gera, “Poland is trying to ‘gag’ history, says Holocaust historian who triggered debate,” *The Times of Israel*, 28.03.2018, <https://www.timesofisrael.com/poland-trying-to-gag-history-says-holocaust-historian-who-triggered-debate/>, accessed 30.08.2021.

although in their collective memory “Auschwitz is a place of Polish martyrdom, a [death] camp where many non-Jews had been imprisoned and executed.”³⁰

Jan Grabowski, who in early 2021 was condemned by a Polish court for his writings on the basis of the Holocaust Law of 2018, also remarked in an interview for *The Algemeiner*, that “the idea that Jedwabne became an everyday reality in 1942 and 1943 is something that is absolutely unacceptable to Polish society.”³¹ In another interview offered in 2021, Grabowski pointed out that Poland had “an official version of history” which was “optimistic.” According to it, Poles saved Jews during World War II.³² In his words, “history, and especially the one concerning World War II, represents a main concern for the nationalists who are in power, since it also happens to be the main topic of interest for their electorate.”³³

The conservative PiS government adopted the political decision around the Restitution Law in the context of a major attitude shift in the Polish society about the Holocaust, in general, and Auschwitz, in particular. The results of a survey conducted in 2020 and coordinated by sociologist Marek Kucia confirm the reasons behind these political initiatives. When asked with what they most associated Auschwitz, half of the respondents said “the martyrdom of the Polish nation,” followed by “the destruction of the Jews” (42.6%).³⁴ Kucia noted that a decade earlier more Poles associated Auschwitz with the destruction of Jews than with Polish martyrdom. He ascribed this attitude shift to the influence of the political narrative that recently underscored the notion that the Poles were victims of the war.³⁵

In this context, the 2021 law on the restitution of confiscated properties in Warsaw reopened older wounds that negatively affected the relation between Poles, Jews, the Holocaust and World War II, and sparked a debate over the

³⁰ Jan Tomasz Gross, “Des Polonais ont participé activement à la Shoah,” *La Croix*, 25.01.2020, <https://www.la-croix.com/France/Jan-Tomasz-Gross-Polonais-participe-activement-Shoah-2020-01-25-1201074050>, accessed 23.09.2021.

³¹ Ben Cohen, “This is Unprecedented: Leading Holocaust Experts Weigh in on Polish State’s Campaign to Rewrite History of World War II,” *The Algemeiner*, 24.08.2021, <https://www.algemeiner.com/2021/08/24/this-is-unprecedented-leading-holocaust-scholars-discuss-polish-states-campaign-to-rewrite-history-of-world-war-ii/>, accessed 31.08.2021.

³² La Rotonde, “Pologne, responsabilité et Shoah: le peretuel débat,” 21.02.2021, <https://www.larotonde.ca/responsabilite-holocauste-pologne-colere/>, accessed 18.09.2021.

³³ Ibid.

³⁴ Daniel Tilles, “Poles See Auschwitz Primarily as Site of Polish Martyrdom not Jewish Suffering,” *Notes from Poland*, Kraków, 05.02.2020, <https://notesfrompoland.com/2020/02/05/poles-see-auschwitz-primarily-as-site-of-polish-martyrdom-not-jewish-suffering-finds-study/>, accessed 22.08.2021.

³⁵ Ibid.

accusation that the Polish conservative government was rewriting history. The law was a byproduct of the unique historical context that shaped Poland after World War II and during the first years of communist rule. As a result of war losses and redrawing of borders, Poland's population dropped to 24 million people, that is, 30% less than in 1939.³⁶ Furthermore, after the Holocaust, Jewish life all but disappeared from Poland, and, especially, from Warsaw.³⁷

In several writings, Timothy Snyder insisted that when Poland disappeared as a country (1939), the state sought to transfer its Jewish population (some 3.5 million people) to the island of Madagascar, a French colony at the time. The idea of sending Polish citizens to Madagascar was first raised in 1926, when it was touted as a solution to the emigration of Polish peasants from the overpopulated countryside. According to Snyder, a decade later, after Pilsudski's death, the idea was resurrected. Józef Beck proposed the emigration of Polish Jews to Madagascar to the French Prime Minister Léon Blum in October 1936.³⁸ In 2018, Snyder warned that “the history of the Holocaust and the genocides of the 1930s and 1940s must remain alive so we can grasp the challenges facing us today. When we speak of memory, it seems to us that we know everything and that we were on the right side.”³⁹

Thus, Poland's relation with its historical memory and memory places remains uneasy. The disappearance of the state in September 1939, coupled with the destructions provoked by Nazi Germany and the USSR, irreversibly affected the state's capacity to both relate to its past and identify future options. Even today, major resentment persists within the Polish society toward the German and Russian states, regimes, and societies. Being so complicated and riddled with emotion, the memory of the relation between the Poles and the Jewish community, and especially as concerns the millions of Jewish Poles who died in the Holocaust, is an exhausting exercise for the Polish society today. A politically rewritten past is accepted, while reckoning with the real past and atoning for major historical misdeeds appear to be too overwhelming to

³⁶ Filip Musiał, “Stalinism in Poland,” *The Person and the Challenges* 9, no. 2 (2019): 13.

³⁷ Geneviève Zubrzycki, “The Politics of Jewish Absence in Contemporary Poland,” *Journal of Contemporary History* 52, no. 2 (2017): 250.

³⁸ Timothy Snyder, “When Poland Eyed Madagascar as a Future Homeland for Jews,” *Toronto Star*, 19.09.2015, <https://www.thestar.com/news/insight/2015/09/19/when-poland-eyed-madagascar-as-a-future-homeland-for-jews.html>, accessed 20.08.2021.

³⁹ FNP (Fundacja na rzecz Nauki Polskiej), “*History is always a warning*: interview with Prof. Timothy Snyder, 2018 Foundation for Polish Science Prize laureate,” 09.01.2019, <https://www.fnp.org.pl/en/historia-jest-zawsze-ostrzezeniem-wywiad-z-prof-timothym-snyderem-laureatem-nagrody-fnp-2018/>, accessed 20.08.2021.

address. In this context, some political leaders are taking advantage of this morally existential dilemma, obstructing any attempt to honestly and meaningfully reckon with the past.

III. The 1945 Decree and the Rewriting of History

After the Red Army occupied Poland in 1944-1945, power was transferred from the London-based government in exile that enjoyed internationally recognition to the one controlled by Moscow and the communists. Afterwards, the Polish communist authorities dutifully sought to install a totalitarian regime. Unlike the other Soviet-occupied capitals of Central and Eastern Europe (except Berlin), Warsaw was distinctly marked by the war, as more than 90% of it was completely destroyed. Its inhabitants were killed or had fled the city in order to survive. Given these circumstances, the Polish communist leaders felt compelled to take measures which, in many ways, anticipated the initiatives implemented in other countries of the region.

The Decree of 26 October 1945 on the Ownership and Usufruct of Land in the Capital of Warsaw, known as the “Bierut Decree” after the name of the communist leader who initiated it, transferred ownership of all property within the prewar boundaries of Warsaw to the municipality. Bolesław Bierut (1892-1956) led the United Workers’ Party in 1944-1956 and served as prime minister in 1952-1954 and head of state in 1947-1956.⁴⁰ He was the Polish communist leader closest to Joseph Stalin, joining him during the Potsdam Conference where the United States, the United Kingdom, and the USSR committed themselves to rebuilding the postwar world.

Under Article 7 of the 1945 Decree, former property owners had the right to apply for perpetual usufruct, a 99-year lease on the newly nationalized land or on another plot of land of comparable size. If the municipality dismissed the application for perpetual usufruct, ownership of the buildings found on the land was transferred to the municipality and, then, to the State Treasury.⁴¹ For

⁴⁰ A recent monograph is Piotr Lipiński, *Bierut. Kiedy partya była bogiem* (Warszawa: Wydawnictwo Czarne, 2017). For an analysis of Bierut’s actions and ideology, see Michał Jan Bednarczyk, “Cały kraj serdecznie wita swego pierwszego obywatela”. Przebieg obchodów 60. rocznicy urodzin Bolesława Bieruta na łamach “Trybuny Ludu,” in *Annales Universitatis Mariae Curie-Skłodowska* LXIX, 1-2 (2014): 49-74.

⁴¹ Michael J. Bazylar, Kathryn Lee Boyd, Kristen L. Nelson and Rajika L. Shah, *Searching for Justice after Holocaust Fulfilling the Terezin Declaration and Immovable Property Restitution* (New York:

Katarzyna J. McNaughton, the Decree sought to rebuild the Polish capital, which had been substantially destroyed during the war.⁴² She writes that according to official documents published by the Warsaw City Hall in 2016, former property owners whose property was nationalized by the Decree between 1947 and 1949 filed 17,000 applications to seek temporary ownership. A majority of these petitioners were rejected or are still waiting to receive administrative decisions.⁴³

Michael Bazylar and Szymon Gostynski argue that in the case of Polish Jews, the impact of the immediate postwar legislation, including the Bierut Decree, was limited because 90% of the Polish Jewry had already perished during the Holocaust. After the war, many Jewish survivors left the country never to return and those who stayed were often threatened if they attempted to recover their property.⁴⁴ In Warsaw, many former property owners died in the war, but no official records confirmed their death.⁴⁵ After 1989, third parties who wanted to take illegal ownership of properties in Warsaw had only to ask the courts to recognize them as the legal guardians of the rightful owners.⁴⁶

In recent years, some individual property owners from Warsaw have successfully claimed damages for the loss of property without having to challenge decisions made pursuant to the Bierut Decree. On June 25, 2015, Parliament amended the Law on Real Estate Management and the Family and Guardianship Code, known as the Small Reprivatization Law, to make it even more difficult to return property that was once seized under the Bierut Decree.⁴⁷

In a 2021 article, Aron Mor, founder of the Working Group for the Restitution of Jewish property, pointed out that on the eve of World War II, the value of Jewish property in Poland was second to Germany in Europe, followed by the Czech Republic, Hungary, and Romania.⁴⁸ One quarter of all Jewish

Oxford University Press, 2019), 327-328; Mirosława Pytlewska-Smólka, “Restytucja mienia objętego działaniem tzw. dekretu Bieruta z 26 października 1945 r. w świetle działań Komisji do spraw reprivatyzacji nieruchomości warszawskich,” *Radca Prawy. Zeszyty Naukowe* 3 (2018): 61-84.

⁴² Katarzyna J. McNaughton, “The Problem of Property Reprivatization in Warsaw,” *Loyola and Los Angeles International and Comparative Law Review* 41, no. 3 (2018): 447.

⁴³ McNaughton, “The Problem of Property Reprivatization in Warsaw,” 447.

⁴⁴ Bazylar and Gostynski, “Restitution of Private Property,” 276.

⁴⁵ McNaughton, “The Problem of Property Reprivatization in Warsaw,” 454.

⁴⁶ *Ibid.*

⁴⁷ Bazylar et al., “Searching for Justice,” 328.

⁴⁸ Aron Mor, “What’s the Solution to the Israel-Poland Crisis on Restitution?,” *Jerusalem Post*, 08.09.2021, <https://www.jpost.com/opinion/whats-the-solution-to-the-israel-poland-crisis-on-restitution-opinion-678952>, accessed 08.10.2021.

property in Europe was located in Poland, with an estimated value of around 3 to 4 billion dollars (in 1938 price rates). To date, Poland has return only 2% to 3% of the property.⁴⁹

A legislative measure concerning the Warsaw properties confiscated in 1945 is imperative. Such an initiative is all the more important when considering that after 1989, Poland failed to adopt a law on the restitution of properties nationalized by the communist regime.⁵⁰ A significant percentage of the estates which were the object of the Bierut Decree belonged to the Warsaw Jews. Yet because the original owners died in the Holocaust or afterwards and then a totalitarian regime was imposed on Poland, any restitution demands were rendered impossible. In some cases, no survivors were left among the immediate or extended family members, and no original documentation could be found. In sum, restitution or compensation proved difficult and cumbersome.

As Joanna Tokarska-Bakir explains, at the end of the war, most Poles associated communism with the Jewish community⁵¹ so much so that even after the Kielce pogrom of July 4, 1946, ordinary people who attended a rally in Deblin chanted: “We want democracy but without Jews!”⁵² While the Kielce pogrom was not the first of its kind, it was the bloodiest and reflected stereotypes deeply entrenched in a society devastated both materially and spiritually by the horrors of the war and occupation: the Jews were to blame. Similar attitudes returned in 1968, when 13,000 Jewish Poles lost their citizenship and were expelled out of Poland.⁵³ True, the current Polish government took a public stand on these historical traumas. President Andrzej Duda issued an apology to the Jews expelled in 1968, but in the same speech he also stressed that “the free and independent Poland of today, my generation, is not responsible and does not need to apologize.”⁵⁴

⁴⁹ Ibid.

⁵⁰ Matthias Barelkowski and Claudia Kraft, “La Pologne et les biens allemands et juifs après 1945”, *Revue d’Histoire Moderne et Contemporaine* 61, no. 1 (2014): 62-96; Frances Millard, *Transitional Justice in Poland. Memory and the Politics of the Past* (London: Bloomsbury, 2021).

⁵¹ Joanna Tokarska-Bakir, *Pogrom Cries – Essays on Polish-Jewish History, 1939-1946* (Berlin: Peter Lang, 2019), 228.

⁵² Ibid., 242.

⁵³ Manfred Gerstenfeld, *Israel Must Remain Vigilant in Its Relations with Poland*, BESA – The Begin-Sadat Center for Strategic Studies, Bar-Ilan University, 01.09.2019, <https://besacenter.org/israel-relations-poland/>, accessed 23.08.2021.

⁵⁴ BBC, “Poland’s Andrzej Duda apologises to Jews expelled in 1968,” 08.03.2018, <https://www.bbc.com/news/world-europe-43330963>, accessed 23.08.2021.

Asked in 2018 how he would characterize the antisemitic events of the spring of 1968, Adam Michnik replied: “dry pogrom.” He specified that “the term ‘dry pogrom’ means that businesses were not vandalized, because there were no Jewish businesses at this time, and Jews at the universities were not physically attacked because the academic milieu was ‘anti’ anti-Semitism.”⁵⁵ In Dariusz Stola’s view, the pogrom of 1968 reflected symbolic aggression towards groups that belong to historically hostile camps.⁵⁶

After 1989, the relation between Poles and the Jews developed in ebbs and flows: if immediately after the collapse of communism, the wounds left by antisemitism could be openly discussed and analyzed, after Gross published his groundbreaking work in 2000, the relation was politicized and instrumentalized into an international polemic. The conversation was driven by Poland’s two most important strategic allies: the United States and Israel. In a speech delivered in the Central Synagogue of New York in 1991, Adam Michnik defined antisemitism as “a form of antiPolishness.”⁵⁷ He explained further: “Poland is a country without Jews, and so, whenever antisemitic opinions make themselves heard, they are not the real topic of discussion, instead the existence or non-existence of a Polish democracy becomes the main concern that needs to be addressed.”⁵⁸

In her history of antisemitism in Poland, Alina Cala wrote that after 1989 “the Antisemitic discourse functioned on the periphery of historical research as a separate (and critically reviewed) phenomenon.”⁵⁹ During the 1990s, other post-communist states such as Romania were able to recover a detailed image of the past with the aid of historiography and cultural memory, denouncing all the public figures which promoted racial hate in the interwar period. Amongst them, one could mention: Ion Antonescu, Vintilă Horia, Radu Gyr, Nichifor Crainic, Mircea Vulcănescu.

Three aspects distinguish themselves in the public discourse centered on this issue. On October 18, 1995, during an official meeting held at the Institute for Polish-Jewish Studies in London, Foreign Minister Władysław Bartoszewski

⁵⁵ The Center for Slavic, Eurasian and East European Studies, “A Conversation with Adam Michnik,” University of North Carolina, Chapel Hill, 03.10.2018, <https://ceees.unc.edu/a-conversation-with-adam-michnik>, accessed 30.08.2021.

⁵⁶ Dariusz Stola, “Anti-Zionism as a Multipurpose Policy Instrument: The Anti-Zionist Campaign in Poland, 1967-1968,” *Journal of Israeli History* 25, no. 1 (2006): 175.

⁵⁷ Adam Michnik, „Polonia și evreii,” in Adam Michnik, *Restaurația de catifea* (Iași: Editura Polirom, 2001), 93.

⁵⁸ *Ibid.*, 91.

⁵⁹ Cala, *Jew. The Eternal Enemy*, 326.

declared that “after the First World the Jews contributed greatly to the development of many aspects of life in independent Poland and, in particular, in culture, the media and the professions – for example 56 per cent of doctors, 43 per cent of teachers, 33 per cent of lawyers and 22 per cent of journalists were Jewish.”⁶⁰ Two decades later, in June 2016, Foreign Minister Witold Waszczykowski told his Israeli counterpart during an official visit to Israel that “Poland was severely ravaged during World War II. Its borders changed dramatically, which, in turn, resulted in mass resettlement of populations living on Poland’s territory. That also affected the question of property and ownership. Restitution should not be regarded as an element of international politics. Nor should it be seen as a problem in Polish-Jewish relations.”⁶¹ By saying this, Waszczykowski defended the reasoning behind the law on the restitution of properties confiscated during the Holocaust and through the 1945 Decree.

After the Restitution Law was promulgated, Deputy Minister of Foreign Affairs Pawel Jabłoński was keen to stress that Poland had entered a new stage in reconciling its relation to the Jewish past. In an interview given to the public radio station *Polskie Radio III* on August 16, 2021, Jabłoński pointed out that “gone are the days when Poles harmed Jews without a response.”⁶²

IV. What’s Next: Poland’s Future with Israel and USA

A new law regulating the restitution of the properties confiscated by the 1945 Decree had long been envisioned by the conservative PiS. It was of great importance for Israel as well, since the law promulgated by President Andrzej Duda on August 14, 2021 referred to all the properties confiscated in 1945, without differentiating between Jewish and non-Jewish owners. This is precisely why the ensuing diplomatic scandal between Poland and Israel was not anticipated and, as such, was inadequately addressed. Poland is a key ally of Israel in the European Union and in all other international fora. Piotr Buras

⁶⁰ Władysław Bartoszewski, “Polish-Jewish Relations in the New Poland,” *European Judaism: A Journal for the New Europe* 30, no. 1 (1997): 87.

⁶¹ Bazyler and Gostynski, “Restitution of Private Property,” 303.

⁶² Tzvi Joffe, “Poland “Reexamining” Israeli Student Trips to Concentration Camps,” *Jerusalem Post*, 16.08.2021, <https://www.jpost.com/diaspora/poland-reexamining-israeli-student-trips-to-concentration-camps-676875>, accessed 18.08.2021.

considers that these legislative measures indicate the complexity of Poland's loss of direction in foreign policy.⁶³

Some analysts have linked the unusual situation involving Poland, a loyal ally of Israel in Europe, to the personal views of the family of Yair Lapid, Israeli Foreign Minister. Note that one of his grandmothers who was deported to Auschwitz lived in Poland,⁶⁴ while his father was a Holocaust survivor who lived in Hungary during World War II.⁶⁵ In 2014, Lapid said that “the Holocaust defined my father, and through him, it defined who I am.”⁶⁶ In 2018, Lapid, then leader of the opposition in Israel, made a series of assertions that were squarely rejected by prominent Holocaust scholars. Some of his claims focused on Poland's role in the Holocaust: “There were Polish death camps and no law can ever change that”; Poland “was a partner in the Holocaust”; and “Hundreds of thousands of Jews were murdered without ever meeting a German.”⁶⁷

The media reported the critical comments of the Israeli Foreign Minister, who stressed that:

“It is a horrific injustice and disgrace that harms the rights of Holocaust survivors, their heirs, and members of the Jewish communities that existed in Poland for hundreds of years”; “The State of Israel will stand as a wall of protection in defence of the memory of the Holocaust, as well as to defend the honor of Holocaust survivors and their property.”⁶⁸

⁶³ Piotr Buras, “How Poland Lost Its Foreign Policy Compass,” *BalkanInsight*, 29.06.2021, <https://balkaninsight.com/2021/06/29/how-poland-lost-its-foreign-policy-compass/>, accessed 01.09.2021.

⁶⁴ Olivier Bault, “Restitution of Property: Tempers Flare between Israel and Poland,” *Visegrad Post*, 23.08.2021, <https://visegradpost.com/en/2021/08/23/restitution-of-property-tempers-flare-between-israel-and-poland/>, accessed 01.09.2021. The article was promptly published in pro-government Hungarian media, Magyar Nemzet, “Restitution des biens: le ton monte entre Israël et la Pologne,” 23.08.2021, <https://magyarnemzet.hu/VisegradPost-fr/2021/08/65906-restitution-des-biens-le-ton-monte-entre-israel-et-la-pologne>, accessed 01.09.2021.

⁶⁵ Cnaan Liphshiz, “Yair Lapid Says the Holocaust “Defined” Him. That’s Adding Fuel to the Fire in Israel-Poland Relations,” *Jewish Telegraphic Agency*, 25.08.2021, <https://jta.org/2021/08/25/global/yair-lapid-says-the-holocaust-defined-him-thats-adding-fuel-to-the-fire-in-israel-poland-relations>, accessed 01.09.2021.

⁶⁶ Ibid.

⁶⁷ Onet Wiadomości, “Izraelski polityk ostro: antysemita patrzy, co robi polski rząd: zauważają OK, to nam daje zielone światło,” 09.05.2019, <https://wiadomosci.onet.pl/tylko-w-onecie/izraelski-polityk-ostro-antysemita-patrzy-co-robi-polski-rzad-i-zauwazaja-ok-to-nam/wvsnvck>, accessed 02.09.2021.

⁶⁸ Amy Spiro, “Israel Slams New Polish Holocaust Law as ‘Immoral’ and ‘a Disgrace,’” *The Times of Israel*, 25.06.2021, <https://timesofisrael.com/israel-slams-new-polish-holocaust-law-as-immoral-and-a-disgrace/>, accessed 15.08.2021.

On August 11, 2021, Lapid tweeted “I condemn the Polish law that damages the memory of the Holocaust and the rights of its victims,”⁶⁹ while on August 14 he wrote “Poland approved – not for the first time – an anti-Semitic and unethical law,” adding that “Poland has become an anti-democratic and illiberal country that does not honor the greatest tragedy in human history.”⁷⁰

In turn, Polish Prime Minister Mateusz Morawiecki wrote on Facebook on August 15, 2021 that “Israel’s decision to lower the rank of the diplomatic representation in Warsaw is groundless and irresponsible, and the words of Foreign Minister Yair Lapid arouse outrage of every honest person,”⁷¹ noting that “Poland won’t pay a single zloty, euro or dollar for German crimes.”⁷² Morawiecki repeated this in an interview for *Polskie Radio*, the Polish national broadcast network.⁷³

The official reaction of the United States government echoed Israel’s discontent and came on the day when President Andrzej Duda promulgated the law, which was also the day when the Afghan state collapsed and the Taliban entered Kabul after the withdrawal of the American troops. Marek Jan Chodakiewicz, a researcher with the Institute of World Politics in Washington,

⁶⁹ Jonathan Lis, Ofer Aderet and Ben Samuels, “Israel Blasts Polish Vote on Holocaust Restitution,” *Haaretz*, 11.08.2021, <https://www.haaretz.com/israel-news/.premium-israel-condemns-polish-vote-on-holocaust-restitution-re-examines-join-statement-1.101109665>, accessed 17.08.2021; Rzeczpospolita, “Izrael: Nowelizacja KPA granicy z negowaniem Holokaustu,” 13.08.2021, <https://www.rp.pl/Polityka/210819764-Izrael-Nowelizacja-KPA-granicy-z-negowaniem-Holokaustu.html>, accessed 17.08.2021.

⁷⁰ Herszenhorn, “Israel Recalls Top Diplomat.”

⁷¹ Lahav Harkov, “Polish PM: Israeli Reaction to Restitution Law ‘Irresponsible’,” *Jerusalem Post*, 15.08.2021, <https://www.jpost.com/international/polish-pm-israeli-reaction-to-restitution-law-groundless-and-irresponsible-676780>, accessed 19.08.2021; Petru Clej, “Premierul Poloniei a declarat că decizia ministerului israelian al afacerilor externe de a reduce rangul reprezentanței sale diplomatice la Varșovia este „nefondată și iresponsabilă”, *G4Media*, 15.08.2021, <https://www.g4media.ro/premierul-poloniei-a-declarat-ca-decizia-ministerului-israelian-al-afacerilor-externe-de-a-reduce-rangul-reprezentantei-sale-diplomatice-la-varsovia-este-nefondata-si-iresponsabila.html>, accessed 20.08.2021.

⁷² Lahav Harkov and Tovah Lazaroff, “Polish PM: We Won’t Pay One Zloty for German Crimes”, *Jerusalem Post*, 26.06.2021, <https://www.jpost.com/israel-mews/lapid-slams-immoral-polish-law-denying-holocaust-survivors-restitution-671987>, accessed 14.09.2021; Ofer Aderet, “Polish Prime Minister to Lapid: ‘Poland Won’t Pay A Single Zloty, Euro or Dollar for German Crimes’,” *Haaretz*, 26.06.2021, <https://www.haaretz.com/israel-news/.premium-polish-prime-minister-to-lapid-poland-won-t-pay-a-single-zloty-for-german-crimes-1.9943459>, accessed 15.08.2021.

⁷³ Polskie Radio, “Mateusz Morawiecki: słowa Jaira Lapida budzą oburzenie każdego człowieka”, 15.08.2021, <https://www.polskieradio24.pl/399/Artykul/2789751,Mateusz-Morawiecki-slowa-Jaira-Lapida-budza-oburzenie-kazdego-uczniwego-czlowieka>, accessed 20.08.2021.

wrote that “the Poles Miss Bibi”⁷⁴ and added that “no sooner was Benjamin “Bibi” Netanyahu gone, that his successors have ripped into Poland over a restitution law that was newly passed in Warsaw. And the Biden Administration supports the Israeli moves.”⁷⁵

Towards the end of July, Cherrie Daniels, the US State Department Special Envoy for Holocaust Issues, declared that the Polish law “would cause irreparable harm to both Jews and non-Jews by effectively extinguishing claims for restitution and compensation of property taken during the Holocaust that was subsequently nationalized during the communist period.”⁷⁶ According to her, the State Department had identified six countries where significant compensation concerns have yet to be addressed, but of those countries only Poland had regressed. The others were Croatia, Hungary, Latvia, Lithuania, and Romania.⁷⁷

The negative reactions of the governments in Jerusalem and Washington were followed by Warsaw’s cutting rejoinder on the future of the Polish-European Union relations, in the context of a more consolidated representation of the conservative right in Brussels, reaffirmed after the European Parliament elections of 2019.⁷⁸ On October 7, 2021, the Constitutional Tribunal in Warsaw found certain articles in the European Union Treaties incompatible with the Polish constitution. Government spokesperson Piotr Muller explained that the “supremacy of constitutional law over other sources of law derives directly from the Constitution of the Republic of Poland.”⁷⁹ The Polish authorities

⁷⁴ Marek Jan Chodakiewicz, “The Poles Miss Bibi”, *The Institute of World Politics*, Washington, 23.07.2021, <https://www.iwp.edu/articles/2021/07/23/the-poles-miss-bibi/>, accessed 02.09.2021. In November 2022 Benjamin Netanyahu regained the position of Prime Minister of Israel.

⁷⁵ Chodakiewicz, “The Poles Miss Bibi”; Josef Federman, “Israel, Poland Agree to Talks on Proposed Holocaust Law: Netanyahu,” *The Globe and Mail*, 28.01.2018, <https://www.theglobeandmail.com/news/world/Israel-poland-agree-to-talks-on-proposed-holocaust-law-netanyahu/article37760041>, accessed 02.09.2021.

⁷⁶ Maggie Gile, “US Says Poland Legislation Preventing Holocaust Restitution Will Cause ‘Irreparable Harm,’” *Newsweek*, 28.07.2021, <https://www.newsweek.com/us-says-poland-legislation-preventing-holocaust-restitution-will-cause-irreparable-harm-1614051>, accessed 31.08.2021.

⁷⁷ Ibid.

⁷⁸ Mihaela Ivănescu and Luiza-Maria Filimon, “Mainstream Fringes or Fringe Mainstream? An Assessment of Radical Right (Re)Alignments in the European Parliament after the 2014 and 2019 Elections”, *European Review* 30, no. 1 (2022): 96-114.

⁷⁹ G4Media, „Tribunalul Constituțional din Polonia a decis că unele articole din tratatele UE sunt incompatibile cu Constituția țării: „Organele europene acționează dincolo de competențele lor”, 07.10.2021, <https://www.g4media.ro/tribunalul-constitucional-din-polonia-a-decis-ca-unele-articole-din-tratatele-ue-sunt-incompatibile-cu-constitutia-tarii-organele-europene->

categorically rejected the accusation that the decision was endorsing a backhanded Poxexit. In an interview given on October 18, 2021, the Polish Ambassador to Bucharest Maciej Lang stated that “the Constitutional Tribunal’s decision of October 7 was by no means a step towards Poland’s exit from the European Union. This matter was not even discussed by the Tribunal since it was not the subject of debate. No one in Poland wants to leave the European Union, and no one is even considering it.”⁸⁰ As Lang clarified, the Tribunal did not challenge all the provisions of the European Union Treaty, but only stated that the provisions of the Treaty would lead to the supremacy of the international law over the national constitution. This, in turn, would contradict the way in which the sources of law were ranked in Poland.⁸¹

Soon after Russia’s invasion of Ukraine in February 2022, Israel returned its Ambassador to Poland (recalled in August 2021) to rescue its citizens who had reached the country.⁸²

Russia’s invasion of Ukraine raised huge diplomatic, economic, security, and humanitarian challenges for Poland. The war in Ukraine, argued Aleks Sczerbiak, had come to overshadow all other issues and is likely to consolidate support for PiS, which was able to portray Warsaw as a key regional player while the opposition has no instruments to exert any real international influence.⁸³ Warsaw is set to become the linchpin of the West’s efforts to project power in Eastern Europe, as Michal Kranz wrote.⁸⁴ From being the European Union’s bad boy, Poland has become the star pupil thanks to Russia’s invasion of

actioneaza-dincolo-de-competentele-lor.html, accessed 23.10.2021; Łukasz Woźnicki, “Trybunał Konstytucyjny wydaje wyrok w sprawie konstytucyjności prawa UE,” *Gazeta Wyborcza*, 07.10.2021, <https://wyborcza.pl/7,75398,27660695,0-17-15-trybunal-konstytucyjny-wyda-wyrok-w-sprawie-konstytucyjnosci.html>, accessed 09.10.2021.

⁸⁰ Ion M. Ioniță, „Ambasadorul Poloniei la București: Nimeni din Polonia nu vrea să părăsească Uniunea Europeană,” *Adevărul*, 18.10.2021, https://adevarul.ro/international/europa/ambasadorul-poloniei-bucuresti-polonia-nu-vrea-sa-paraseasca-uniunea-europeana-1_616d5e2f5163ec42718377d5/index.html, accessed 23.10.2021.

⁸¹ Ibid.

⁸² Tovah Lazaroff, „Israel Returns Envoy to Poland, Pushes to Rescue Citizens from Ukraine,” *The Jerusalem Post*, 26.02.2022, <https://www.jpost.com/breakig-news/article-698732>, accessed 24.03.2022.

⁸³ Aleks Sczerbiak, “How Will the War in Ukraine Affect Polish Oolitics?,” *Notes from Poland*, 3.03.2022, <https://notesfrompoland.com/2022/03/03/how-will-the-war-in-ukraine-affect-polish-politics/>, accessed 16.03.2022.

⁸⁴ Michal Kranz, “How the Russia-Ukraine Crisis Is Turning Poland into a Strategic Player,” *Foreign Policy*, 23.02.2022, <https://foreignpolicy.com/2022/02/23/poland-ukraine-russia-crisis-nato-strategic-role-military-diplomacy-war/>, accessed 16.03.2022.

Ukraine.⁸⁵ “The end of the era of illusions opens up a completely new chapter in the history of the European Union, NATO and the west as a whole. This must be an era of responsibility,”⁸⁶ added Prime Minister Mateusz Morawiecki after the invasion.

The reevaluation of properties nationalized by the communist regime represents an important post-communist measure that signifies the return to civic, judicial, and institutional normalcy. The restitution of stolen goods is a fundamental principle in democracy. In this area, Poland has taken only mediocre steps after 1989, smaller than those taken by Romania and Bulgaria, two countries associated with the ever present “red flags” tagged on them by various post-communist rankings.

The Restitution Law of August 2021 attempts to address a theft that happened almost 80 years ago. Its provisions do not refer only to the Jewish properties, as the officials representing Israel and the United States implied. The lawmakers intended to rectify a situation that no prior political or administrative power had attempted to address. The conservative government believed that this chapter of the past could be closed by taking political ownership of the issue. While the external context might be disadvantageous, in the long term, the 2021 Law would end the administrative and urbanistic disagreements in the Polish capital.

V. Conclusions

In the short and medium terms, the Restitution Law should produce electoral outcomes that benefit the ruling PiS, while also seriously strain the bilateral relations between Poland and Israel, at least as long the right-wing coalition comprising Naftali Bennett’s New Right and Yair Lapid’s Yesh Atid form the government in Israel. The unprecedented deterioration of the bilateral relations will be hard to overcome and negatively affect Poland’s relation with the United States. While Washington retains influence in Warsaw, the PiS government’s

⁸⁵ Jan Cienski, “Poland Goes from Zero to Hero in EU Thanks to Ukraine Effort,” *Politico*, 3.03.2022, <https://www.politico.eu/article/poland-goes-from-zero-to-hero-in-eu-thanks-to-ukraine-effort/>, accessed 16.03.2022.

⁸⁶ Mateusz Morawiecki, “Europe Must Abandon All Illusions about Russia,” *Foreign Policy*, 25.02.2022, <https://www.ft.com/content/315a342d-d646-4061-ab4a-d2455b6a7221>, accessed 24.03.2022.

projects no longer enjoy the same levels of support as they did during the Trump administration.

The judicial regulation of the property market in Warsaw could bring clear urbanistic benefits, but its political drawbacks are equally, if not even more, significant. The Restitution Law, which follows the Holocaust Law of 2018, places Poland in a delicate relationship with its World War II and, in particular, the relations between the Polish majority and the Jewish community. In comparison to other controversial judicial and legislative measures, these ones pose a fundamental challenge to the long-term political viability of the ruling conservative government.

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