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## The parliamentary politics of the rule of law crisis in the EU

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### ABSTRACT

This article studies the positions of political parties around the rule of law crisis in the European Union (EU). What factors explain their position in this crisis? The theoretical expectations focus on populism and government status as the drivers of party positions towards a Member State violating the rule of law. This article assesses these expectations through a comparative case study of the actions of different EU political parties during the first term of the Law and Justice government in Poland (2015–2019). The article examines the relevant documents such as debates and resolutions of parliaments within the EU. It concludes that populist parties are more likely to support the Law and Justice party than mainstream parties, and that parties in government are less likely to challenge Law and Justice than opposition parties. These findings provide important insights into the dynamics of parties' positioning on the rule of law crisis.

### KEYWORDS

National parliaments;  
European Parliament; rule of law; populism; Poland

A perceived democratic deficit of political institutions in the European Union (EU) was one of the main reasons behind enhancing the role of national parliaments (NPs) in the Lisbon Treaty (Auel and Christiansen 2015). However, recent backsliding on the rule of law – a core value of democracy – within some Member States, most prominently in Hungary and Poland (COM(2022) 500), indicates that the Member States themselves may also struggle with democratic deficits, and that, in turn, the EU could play a role in addressing these (Kelemen 2017). Since autumn 2015, the Polish bicameral parliament, which includes the Chamber of Deputies and Senate, has been controlled by the Law and Justice party.<sup>1</sup> During that time, the parliament has adopted a series of laws undermining the independence of the judicial branch. These laws profoundly changed Poland's top courts (the Constitutional Court and the Supreme Court), the ordinary courts dealing with everyday cases, as well as the National Council of the Judiciary, the constitutional body safeguarding the independence of courts and judges.

Violations of the rule of law – a fundamental value of the EU expressed in Article 2 TEU – put Poland, including its parliament, on a collision course with EU institutions. Specifically, one-third of EU Member States, the European Parliament (EP), and the European Commission, are empowered to launch the Article 7(1) TEU procedure in the event of a clear risk of a serious breach of the common values. Accordingly, in

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December 2017 the Commission, for the first time ever, initiated the Article 7(1) TEU procedure against Poland (COM(2017) 835). The Article 7(1) TEU procedure was preceded by almost two years of dialogue with the Polish authorities under the Rule of Law Framework (COM(2014) 158). In fact, as feared by Kochenov and Pech (2016, 1067), this lengthy dialogue delayed the launch of formal proceedings against Poland, thereby enabling its government to cement some of the changes which are incompatible with EU values. For instance, the Law and Justice government has been able to pack the Polish Constitutional Court with judges who are allied to its political positions. These judges have been issuing important constitutional decisions since 2015.

There is a rich literature on the EU rule of law crisis, covering issues such as the limits of the EU's political and judicial responses, the developments in Hungary and Poland (Closa and Kochenov 2016, Blauburger and Kelemen 2017; Sedelmeier 2017), and discussions on proposals for better protecting EU values (Scheppele 2016; Blauburger and van Hüllen 2021). On the EP's response to democratic backsliding, a systematic and comprehensive study by Meijers and van der Veer (2019) analyses the agenda-setting and voting behaviour of MEPs on the rule of law issue. They find that both ideology and party interests explain MEP responses to democratic backsliding. Their article offers a benchmark which can be used to compare the results of this article with respect to the EP.

Against this background, this article studies the responses of political parties to democratic backsliding in Poland in the EP and NPs during the first Law and Justice government (25 October 2015–13 October 2019), offering an analytic, empirical contribution. What factors explain the positions of political parties in the rule of law crisis? This analysis takes the form of a comparative case study of the actions of political parties in parliaments in the EU (NPs and the EP) vis-à-vis the judicial crisis in Poland. This article focuses on the Polish case due to its importance in the developing rule of law crisis. Furthermore, in contrast to Hungary, the process of democratic backsliding in Poland is ongoing and contested and, hence, may still be reversed. The inquiry into the resolutions of parliaments in the EU on the rule of law crisis establishes the factors that condition the positions of political parties in this area.

The following sections explore the positions of political parties in the rule of law crisis in the Polish parliament (in response to the steps undertaken by the EU), in other NPs, and in the EP. This study concludes that a party's vote on resolutions concerning the situation in Poland can be explained by whether it has adopted a populist ideology. The positions of political parties are, moreover, affected by government-opposition dynamics, with parties in government on balance less likely to challenge Law and Justice than parties in opposition.

### **A framework for political party responses to the rule of law crisis in Poland**

This article approaches the response of parliaments – the Polish legislature and other NPs, as well as the EP – to democratic backsliding in Poland through the lens of political parties. Miklin (2013, 26) makes the case that focusing on the party level more accurately reflects the main lines of political contestation than would treating NPs as unitary actors. The responses studied in this article take the form of votes and other political actions around a set of resolutions targeting the rule of law violations by Law and Justice, which

either condemn or support the Polish government. The article emphasises two characteristics of political parties which help explain their response: party ideology; and the division between government and opposition parties.

On party ideology, previous research has highlighted that the traditional (economic) left-right cleavage in politics has shifted towards a division between pro- and anti-globalisation forces (Hix, Noury, and Roland 2019). In fact, this shift can be observed in the pro-/anti-EU conflict that dominated the EP following the 2014 elections (Hix, Noury, and Roland 2019, 4).

Another prominent way to conceptualise party competition in the EU is the social-cultural, or GAL/TAN dimension (Hooghe, Marks, and Wilson 2002) where GAL stands for green, alternative, and liberal and TAN stands for traditional, authoritarian, and nationalist. Meijers and van der Veer (2019) find support for the idea that ideology along a cultural dimension measured in this way can explain individual MEP responses to democratic backsliding in Hungary and Poland. At the national level, Vachudova (2021) argues that the cultural dimension has increased in importance and now dominates the competition between political parties. According to Vachudova (2021), over the last decade, populist parties on the right have become the drivers of competition along cultural lines, employing an ‘us-versus-them’ rhetoric, as well as misinformation and backsliding on democratic norms. Parties pursuing such a populist agenda may be expected to oppose any EU intervention in the rule of law crisis.

This article focuses on the role of populist ideology during the rule of law crisis. In this, it adopts a perspective that is complementary to other frameworks of cultural ideology, such as the GAL/TAN framework. The article builds on the current mainstream literature on populism, in particular the work of Mudde (2021, 578–580). Mudde defines populism as a thin-centred ideology that sees society divided into ‘the pure people’ who share the same key interests and the ‘morally corrupt elite’. Crucially, populism opposes some key features of liberal democracy, such as minority rights, the rule of law or separation of powers. Scrutiny of elected governments runs counter to the populist idea that ‘takes “government by the people” literally and rejects all checks and balances on the popular will’ (Kriesi 2014, 363). Populist parties might also be wary that any measures taken against Law and Justice may in the future be used against them. Finally, populist parties can be either right- or left-wing, depending on their ‘host ideology’ such as nativism (e.g. Hungarian Fidesz) or socialism (e.g. Greek Syriza) that usually comes before the populist characteristic of that party (Mudde 2021, 580).

The first theoretical expectation guiding this case study thus argues that populist ideology helps explain the position a party takes towards the rule of law crisis in Poland.

Theoretical Expectation 1 (TE1): A populist party is more likely to act in support of a Member State government violating the rule of law than a mainstream party.

The second characteristic of interest is the status of parties in their home NP. Their positioning in the rule of law crisis may depend on whether they are in government and thereby represent their Member State at the EU level. In the context of the Article 7 TEU procedure, Sedelmeier (2017, 340) notes a general disinclination of most national governments to apply sanctions on other Member States over rule of law violations, partly over concerns about national sovereignty and partly due to worries that this could be detrimental to cooperative decision-making in the EU more generally.

The second theoretical expectation thus states that opposition status will contribute to a more critical stance towards Law and Justice in the context of the rule of law crisis in Poland.

Theoretical Expectation 2 (TE2): A party in government is more likely to act in support of a Member State government violating the rule of law than an opposition party.

It is worth noting that the two dimensions covered by TE1 and TE2 do not necessarily have to point in the same direction regarding support for parties violating the rule of law. For example, for a populist party in opposition, TE1 predicts a supportive position towards other populist parties, while TE2 would point towards not supporting such parties. The same divergence can be seen for a mainstream party in government.

## Method

This article assesses the theoretical expectations listed above against the record of three forums on the rule of law crisis in Poland: (1) the Polish parliament; (2) a set of other Member State NPs – the Lithuanian, Hungarian, French, and German parliaments; and (3) the EP. This study's focus on the actions of political parties in these forums is limited to the first term of the Law and Justice government (2015–2019). The Polish parliament serves as a starting point for this article. It is in a structurally distinct position as it is the 'culprit' that adopted a series of reforms violating the rule of law. Faced with criticism from the EU, the parliament defended its position by adopting a resolution 'on the protection of the sovereignty of Poland and the rights of the Polish people' in 2016.

The other parliaments included here were selected from a review of all parliaments in the EU which looked at whether they issued a resolution addressing democratic backsliding in Poland. Accordingly, the Lithuanian and Hungarian parliaments adopted resolutions in 2017 and 2018, respectively, supporting the Polish government. The Hungarian parliament's resolution was welcomed by its Polish counterpart which, in return, adopted a 2018 resolution thanking them for their support. By contrast, the French parliament drafted a resolution condemning the rule of law crisis in Poland in 2019, while similar efforts were undertaken by the German parliament the same year. However, the German resolutions did not garner sufficient support among MPs to be adopted. Finally, since the Belgian and Dutch parliaments debated democratic backsliding in Poland without adopting any resolution on the matter, their involvement is not discussed in detail. In sum, this article studies seven resolutions from the Polish and other NPs which took positions on the democratic decline in Poland.

Finally, the article considers four EP resolutions (B8–0461/2016, B8–0977/2016, B8–0595/2017, B8–0119/2018) condemning rule of law backsliding in Poland which were adopted during the term of the first Law and Justice government. In addition, the article discusses the draft resolution expressing the EP's support for Poland (B8–0865/2016) that ultimately failed.

The article assesses whether a party supported the Law and Justice government by studying its response to the resolutions listed above. Such support can take two main forms. First, it can take the form of a vote or, in the few cases where no vote was recorded (as in the case of the French parliament), a voting intention expressed during a parliamentary debate in favour of a resolution in support of Law and Justice. Second,

it can be a vote or a voting intention expressed during a parliamentary debate against a resolution that criticises Law and Justice and democratic backsliding in Poland.

The article draws on primary documents related to the rule of law crisis in Poland, such as parliamentary debates, resolutions, and votes, to establish the positions of the relevant political parties in NPs and the EP during the first Law and Justice government. It then evaluates TE1 and TE2 against these data.

The key dimension of party ideology in this article is the mainstream-populist axis. To establish which EP groups can be considered populist, this article follows McDonnell and Werner (2020) who identify the European Conservatives and Reformists (ECR), the Europe of Freedom and Direct Democracy (EFDD), and the Europe of Nations and Freedom (ENF) as the EP home for populist radical right parties in the 2014–2019 legislature. On the left, the EP's European United Left-Nordic Green Left (GUE/NGL) can also be considered a radical populist party-group (Damiani 2020, 8). In turn, national parties were categorised as populist based on the data provided in the PopuList dataset (Rooduijn et al. 2019). [Annex 1](#) provides a classification of all the national political parties relevant for this article with regard to their ideology along the populist-mainstream axis. In addition, [Annex 1](#) classifies the same political parties with regard to their government status based on my own survey of the relevant national political systems during the period under scrutiny.

### **The Polish parliament in the rule of law crisis**

The Polish parliament scrutinised the rule of law crisis in several ways: by receiving and debating information from the government (Sejm 2016b, 2016a); and, by adopting resolutions on 20 May 2016 'on the protection of the sovereignty of Poland and the rights of the Polish people' and 15 March 2018 'on the cooperation between Poland and Hungary in the European Union'. (The latter was a response to a resolution by the Hungarian parliament and is analysed in the next section.) In the context of Poland, the theoretical expectations appear to be aligned. Both TE1 and TE2 indicate that the governing Law and Justice party would oppose any effort to protect the rule of law, while the mainstream opposition parties – Civic Platform (PO), Modern (Nowoczesna), and the Polish Agrarian Party (PSL) – would support such endeavours. Additionally, the opposition included Kukiz'15, a smaller populist political movement that defined itself by rejecting the 'partocracy' of established parties, including Law and Justice. It saw itself as a party of opposition in general (and not specifically as opposition vis-à-vis the Law and Justice government) and announced it would support the government only if it agreed on the policy at stake and not otherwise (Stanley and Cześnik 2019, 81). TE1 and TE2 point in opposite directions for Kukiz'15: TE1 predicts that as a populist movement it would support the Law and Justice government, while TE2 predicts that as part of the opposition it would support efforts to protect the rule of law. Finally, the members of the small Free and Solidary (WiS) party created by former Kukiz'15 MPs also participated in the vote. Formally, WiS is not included in PopuList and is thereby not coded as a populist party despite its former members originating from Kukiz'15.<sup>2</sup> Thus, for WiS TE1 and TE2 predict that it would support efforts to protect the rule of law.

In May 2016, in the midst of the rule of law crisis, Polish PM Beata Szydło appeared before the Chamber of Deputies. She claimed that the Polish government continued to dialogue with EU institutions and blamed the opposition for acting against Polish

interests and sovereignty in Brussels (Sejm 2016a, 280). Subsequently, the governing majority adopted the resolution of 20 May 2016 'on the protection of the sovereignty of Poland and the rights of the Polish people'. The drafters highlighted that the resolution expressed the 'strong support' of the Chamber of Deputies for the government's fight against attempts to limit Poland's sovereignty (Sejm 2016a, 330). The resolution further asserted that the on-going conflict with the EU around the Constitutional Court was an excuse to violate Poland's sovereignty. The resolution also called on the government to protect the national interests and constitutional order of the state.

The resolution was adopted with the votes of the governing Law and Justice party, the opposition Kukiz'15 and WiS. The other opposition parties condemned the resolution to varying degrees during the debate but did not participate in the vote.<sup>3</sup> In particular, only a small number of Civic Platform MPs voted against the resolution, while the rest of the party did not vote. The pattern of votes is largely consistent with TE1 and TE2. However, the votes of Kukiz'15 and WiS present exceptions. The position of Kukiz'15 in support of Law and Justice might simply be explained by its populist character as per TE1. In addition, while officially not part of the government, Kukiz'15 had adopted an ethos of 'principled opposition' towards the Law and Justice government, whereby it would support government policies if those aligned with its own preferences (Stanley and Cześniak 2019, 85). The vote of WiS in support of the Law and Justice resolution runs counter to both TE1 and TE2. However, the vote could be explained by the fact that WiS consisted of former Kukiz'15 MPs and was thus ideologically close to populism, even if it is not coded that way in PopuList.

### Reactions of other NPs to the situation in Poland

Several NPs have addressed democratic backsliding in Poland. As a baseline, we would expect the bar for taking a position by NPs on the affairs of another Member State to be high. Parliamentarians take an inward-looking approach to the scrutiny of the rule of law, being primarily concerned with their own political system (COSAC 2016). They tend to turn their attention to other NPs only when their own position may be affected, or if their reaction is politically calculated. In scrutinising the rule of law, they concentrate on activities such as drafting legislation in accordance with rule of law standards, ratifying human rights treaties, or overseeing executive actions in this area (COSAC 2016: 20). Still, most parliaments include the monitoring of the rule of law and human rights in other countries among their functions (COSAC 2016, 20). In almost all parliaments, developments in other EU Member States or the EU at large are occasionally a subject of discussion (COSAC 2016, 23).

In that context, the initiatives described below – some supporting the Polish government (Lithuanian and Hungarian parliaments) and some opposing it (German and French parliaments) – are particularly noteworthy, as they present exceptions to the perceived reluctance to address affairs in other NPs. Taking TE1 and TE2 together, we would expect efforts to oppose democratic backsliding to originate from mainstream parties and parties in opposition, and efforts in support of Law and Justice party to come from populist parties and those that form the government.

### ***NPs supporting the Polish government***

On one side of the spectrum were the NPs supportive of Poland. On 9 November 2017, the Lithuanian Seimas adopted resolution No XIII-723 ‘on successful reforms undertaken in the Republic of Poland’. The resolution was tabled by the populist Order and Justice (TT) party after the Speaker of the Polish Chamber of Deputies’ visit to the Lithuanian parliament. The resolution welcomed Poland’s family-oriented reforms and emphasised the importance of interparliamentary cooperation between the two Member States and the need to adopt a common position in the EU. Importantly, the Lithuanian parliament expressed solidarity with Poland over the treaty infringement procedure launched by the Commission.

The resolution was adopted by the governing coalition MPs of the Lithuanian Farmers and Greens Union (LVŽS) and the Social Democratic Labour Party of Lithuania (LSDDP), with the votes of the TT, the Christian-democratic Electoral Action of Poles in Lithuania-Christian Families Alliance (LLRA – KŠS), and some MPs of the centre-right Homeland Union-Lithuanian Christian Democrat Political Group (TS-LKD).<sup>4</sup> One independent MP and one MP from the Lithuanian Social Democratic Party (LSDP) voted against. The latter MP and some of the TS-LKD MPs were critical of the resolution, pointing out that it concerned the internal affairs of Poland and attempted to assess the performance of another parliament (Seimas 2017, 35–36). MPs from the Liberal Movement (LRLS) did not participate in the vote.

The near unanimity in the votes for the Lithuanian resolution, including support from some mainstream opposition MPs, presents a mixed picture with regard to TE1 and TE2. While parties in government and the populist TT supported Law and Justice, they were also joined by opposition and mainstream parties. Several factors may explain this outcome. First, a high number of MPs was absent during the vote and thus it is unclear whether the party positions would have been the same had more MPs been present. Second, the political situation at the time was relatively unstable. When the 2017 resolution was adopted, part of the Social Democratic Party had just left the government, creating a *de facto* minority government.<sup>5</sup> At a later stage, in 2019, the TT and LLRA-KŠS parties became a part of the reorganised coalition.<sup>6</sup> This may explain the broad support for the 2017 resolution on Poland, including from those opposition parties that would later offer formal support to the government. Third, several issues raised during the debate are unique to the special relationship between Poland and Lithuania. Not only are they both new EU Member States and former-communist countries, but also, between 1569 and 1795, Poland and Lithuania were united as one state under the Polish-Lithuanian Commonwealth, and had a common monarch, parliament, and foreign policy. The MPs maintained that Lithuanian and Polish interests are aligned, and that Lithuania wished to preserve its own identity, culture and sovereignty and stand up to the old EU Member States which dictated the direction of integration (Seimas 2017, 36). Furthermore, the author of the resolution praised the Polish reforms on family and media, saying that Lithuania could learn from these reforms (Seimas 2017, 35). Finally, the debate also raised the question of Russian interests in isolating Poland within the EU (Seimas 2017, 36).

Similarly supportive of Poland, and even more critical towards the EU, was the Hungarian parliament’s resolution of 20 February 2018 ‘on solidarity with Poland against



the political pressure from Brussels', which followed the launch of the Article 7(1) TEU procedure against Poland. The Hungarian parliament highlighted that both Poland and Hungary were subjected to 'unjust attacks by the European Union', and that the initiation of the Article 7(1) TEU procedure against Poland was 'unfounded'. The resolution was adopted with the votes of the governing populist Fidesz party and its coalition partner the Christian Democratic People's Party (KDNP), while members of the opposition Hungarian Socialist Party (MSZP), the green Politics Can Be Different (LMP), as well as one independent MP, voted against it. The populist opposition party Movement for Better Hungary (Jobbik), which has been moving towards the centre of the political spectrum,<sup>7</sup> did not vote.<sup>8</sup> In sum, the vote on this resolution confirms the predictions of TE1 and TE2, as the governing populist party sided with Law and Justice, while the mainstream opposition parties remained critical.

In response, the Polish Senate, with votes from senators from Law and Justice, thanked the Hungarian parliament by adopting a resolution on 15 March 2018 'on the cooperation between Poland and Hungary in the European Union'. The Polish Senate expressed support for Hungarian MPs in building the EU as a 'community of sovereign, independent, and equal states'. The senator-rapporteur labelled the Hungarian resolution 'extraordinary' and highlighted the rare occurrence of parliamentary resolutions expressing 'such a strong support for another country' (Senat 2018, 150). By contrast, the opposition senators from Civic Platform questioned the silence of the Senate's resolution on the violations of the rule of law in Poland. These senators also highlighted the fact that the Hungarian resolution served Hungary's own interests in its conflict with the EU, and that it offered support primarily to the Polish government – rather than Poland as such – in its politics against Brussels (Senat 2018, 158–160). The votes on this resolution, again, confirm the predictions of TE1 and TE2: mainstream opposition senators voted against the resolution while it was supported by senators from Law and Justice.

### ***NPs critical of the Polish government***

On the opposite side of the spectrum was the French National Assembly which adopted a resolution on 27 November 2018 'on the respect for the rule of law in the European Union', denouncing the deterioration of its observance, especially in Poland, Hungary, and Romania. The French parliament also supported the EU pact on democracy, the rule of law and fundamental rights (DRF) proposed by the EP, which is discussed below. Moreover, the resolution included recommendations for better safeguarding the rule of law and called on all NPs to advocate together for these initiatives before the EU institutions.

The resolution was initiated by the ruling majority parties La République en Marche! (LREM) and its affiliated group Democratic Movement (MoDem) (Assemblée Nationale 2018). It found support across the political spectrum with the Socialist Party (PS), Democratic and Republican Left (GDR) and Liberties and Territories (LT) groups. The conservative Republicans Party (LR) complained about the opposition's lack of voice in the drafting process and argued that the resolution was redundant given the EP's vote to trigger the Article 7 TEU procedure (Assemblée Nationale 2018). However, they walked out of the debate at an early stage and, unlike the other parties in the French parliament, did not express a clear voting intention for or against the resolution during the committee meeting. In addition, there is no record of the populist National Front's position which at

the time had only eight MPs in the National Assembly, none of whom participated in the committee debate. In sum, the explicit support for the resolution by the French mainstream parties confirms the predictions of TE1. What is interesting, however, is that the resolution originated from the governing party, contrary to TE2, and that it found support on both sides of the aisle.

In turn, the members of the German Bundestag drafted two resolutions concerning the protection of the rule of law in Europe. The first – the ‘European Values Initiative’ – put forward by the opposition liberal Free Democratic Party (FDP), expressed concern over the lack of respect for the rule of law and human rights in some EU Member States (Bundestag 2019a). The proposed resolution supported the EP’s DRF and suggested expanding the tools available to EU institutions, including limiting access to EU funds. The second resolution, drafted by the opposition Alliance 90/The Greens (Bündnis 90/Die Grünen), highlighted the Polish judicial reforms which endangered the independence of the country’s judiciary (Bundestag 2019c). The resolution called for an independent ‘Copenhagen Commission’ of experts chosen by NPs and the EP.

Both resolutions were rejected in the Bundestag’s European Affairs Committee, with the governing Christian Democratic Union/Christian Social Union (CDU/CSU) and its coalition partner Social Democratic Party (SPD), along with the populist far-right Alternative for Germany (AfD), voting against the resolutions. The populist Left (die Linke) voted against the resolution of the Greens and abstained on the resolution proposed by the FDP (Bundestag 2019b).

The populist AfD and Left parties acted in line with TE1 by offering their support to the Law and Justice party. Yet, since these parties are part of the parliamentary opposition, this support runs counter to TE2. However, both TE1 and TE2 correctly predicted the criticism of the rule of law backsliding by the mainstream Greens and FDP opposition parties who sponsored the resolutions. Also, in line with TE2, but counter to TE1, the two mainstream governing parties (CDU/CSU and SPD) did not condemn the democratic backsliding. In sum, the case of the German parliament presents a mixed outcome for both TE1 and TE2.

Other parliaments organised hearings concerning the observance of the rule of law. For instance, the Committee on Foreign Affairs in the Belgian Chamber of Representatives organised a hearing on the defence of European values which was attended by representatives of academia and civil society (Chambre des représentants 2019). In the same vein, the European Affairs Committee of the Dutch Tweede Kamer held meetings with the First Vice-President of the European Commission, Frans Timmermans (Tweede Kamer 2019a) and with representatives of the Council of Europe (Tweede Kamer 2019b). Moreover, the European Affairs Committee, together with a group of other committees, held a roundtable on the rule of law with representatives of academia, the judiciary, and civil society (Tweede Kamer 2019d), in preparation for a debate with the Dutch Minister of Foreign Affairs (Tweede Kamer 2019c).<sup>9</sup>

Table 1 summarises the positions of national parties across the five NPs according to ideology and government status, based on votes taken or voting intentions expressed (France) in these parliaments.<sup>10</sup> Among the populist parties, we see that they all positioned themselves in support of the Law and Justice government in line with TE1. Notably, populist support for Law and Justice was found across both government and opposition parties, leaving little scope for TE2 to help explain outcomes in those cases.

**Table 1.** NPs' party positions by populist ideology and government status.

		Supports PiS	Does Not Support PiS
<b>Populist</b>	<b>Government</b>	HU Fidesz HU KDNP	
	<b>Opposition</b>	LT TT DE AfD; DE die Linke PL Kukiz'15	
<b>Mainstream</b>	<b>Government</b>	LT LVŽS; LT LSDDP DE CDU/CSU; DE SPD	FR LREM; FR MoDem
	<b>Opposition</b>	LT LLRA–KŠS; LT TS-LKD PL WiS	LT LSDP; PL PO; HU MSZP; HU LMP; FR PS; FR GDR; FR LT DE FDP; DE die Grünen

The picture is more mixed regarding the mainstream parties. While most mainstream parties positioned themselves against Law and Justice, we find several instances where mainstream parties backed it. This was expressed either directly by sponsoring resolutions supporting Law and Justice, as seen in the Lithuanian parliament, or indirectly by scuppering resolutions criticising Law and Justice, such as in the German parliament. We can observe that mainstream parties showed less support to Law and Justice than populist parties. While TE1 on balance helps to predict a party's position, its explanatory power is weaker for mainstream parties than for populist parties.

By contrast, the table suggests that TE2 may help explain positions across mainstream parties. Among the mainstream parties in opposition, most did not support Law and Justice. Conversely, more parties in government supported Law and Justice than did not. This is in line with TE2's argument that government status tends to discourage parties from taking a strong stance against another Member State government when compared to parties in opposition.

Overall, the results in Table 1 show that both TE1 and TE2 help explain a party's position on rule of law violations. In some cases, they point in the same direction when a party is both populist and in government. However, in cases where the two predictions do not point in the same direction, a party's populist identity appears to take precedence over the opposition/government effect, so that populist parties in opposition would still support Law and Justice. The results thus suggest TE1's prediction that populist parties support Law and Justice takes lexical precedence over TE2. It is only with respect to mainstream parties that TE2 becomes relevant for predicting the positioning parties in the rule of law crisis.

## The EP's efforts in the rule of law crisis

Among the EU institutions, the EP is perceived as 'the most vocal in its condemnation of the rule of law backsliding' (Pech and Lane Scheppele 2017, 31). The EP joined the debate on better protecting EU democracy and the rule of law mainly due to the lack of suitable action by the Commission and the Council, despite the tools at their disposal (Sargentini and Dimitrovs 2016).

Within the EP, parliamentarians are organised into factions, called European party groups, formed around ideology (Hix, Noury, and Roland 2007, 55). European party groups play an important role in coordinating MEPs from different countries, aggregating

different national parties. Bressanelli (2012) shows that ideological compatibility explains a party's choice of which group to join. From the perspective of TE1, the party groups likely to support the Polish government are the ECR, of which Law and Justice is a member, as well as the other populist groups. These include the populist radical right parties – ENF and EFDD – as well as, to a lesser extent, the non-attached members (NI) (McDonnell and Werner 2020, 3), and the populist radical left GUE/NGL. Although all these groups are considered to be populist, Falkner and Plattner (2019) report that there is little programmatic coherence among the populist radical right on many important issues. Similarly, McDonnell and Werner (2020, 170) who analysed the roll-call votes of the ECR, EFDD and ENF in the 2014–2019 Parliament's legislative process, find that 'these groups did not tend to vote together as a "right wing Eurosceptic bloc"'.

With respect to TE2, there are no formal government-opposition dynamics in the EP. The largest group, the Christian democratic European People's Party (EPP), and to some degree the Progressive Alliance of Socialists and Democrats (S&D), are, however, affiliated with many national governments and thus prominent in the Council. As such, according to TE2, they would be less willing to act against another Member State government than a European party group that is closely associated with national opposition parties, such as the Greens/European Free Alliance (Greens/EFA) and the Alliance of Liberals and Democrats for Europe (ALDE), as well as the populist groups mentioned above.

The EP entered the fray in 2013 by adopting a resolution on the Hungarian case (Closa 2016, 23–24) that called for an 'Alarm Agenda', a monitoring system for the observance of EU values with a view to enhancing respect for the rule of law (P7\_TA(2013)0315, tiret 70). The resolution called on NPs to increase their role in monitoring compliance with EU values and condemn any deterioration in EU Member States (ibid., tiret 64).

The EP has since maintained its efforts to strengthen the rule of law toolbox. Specifically, the EP's resolution of 25 October 2016 recommended to the Commission the establishment of the DRF (P8\_TA(2016)0409), a single instrument for upholding EU values, thereby integrating the toolboxes of the Commission and Council. The resolution emphasised the crucial role of the EP and NPs in scrutinising compliance with EU values and called for annual reports drafted by an expert panel appointed by NPs and the EP. Depending on the outcome of the reports, the Article 7 TEU procedure might then be launched against a Member State. However, so far, the Commission has not put forward any proposal regarding the DRF, despite renewed calls to do so (P8\_TA(2018)0456, P9\_TA(2021)0313).

Beyond its efforts to strengthen the EU rule of law toolbox, the EP has remained active in its attempts to solve the crisis in Poland. For example, the EP has held debates on the situation in Poland, such as that of 19 January 2016 attended by Polish PM Beata Szydło. Moreover, the EP has sent a delegation to investigate the situation on-site (European Parliament 2018) and adopted a series of resolutions regarding the situation as discussed in more detail below.

### ***The EP's resolutions on the Polish rule of law crisis***

During the Law and Justice government's first term, the EP debated and passed – with great majorities – four resolutions concerning Poland. The first resolution, adopted on 13 April 2016, was related to the paralysis of the Constitutional Court (B8–0461/2016).

Shortly after the Commission issued the first rule of law recommendation, the EP followed with another resolution on 14 September 2016 which expressed concerns about the state of constitutional review in Poland and its impact on EU fundamental rights (B8–0977/2016). The third resolution, adopted on 15 November 2017, addressed the negative impact of the judicial reform on the independence of courts and judges in Poland, as well as several other Polish laws infringing on fundamental rights (B8–0595/2017). To the EP, the situation in Poland amounted to a clear risk of a serious breach of EU values and it started the process of launching the Article 7(1) TEU procedure. However, on 20 December 2017, the Commission pre-empted the EP on the matter through its own launch of the Article 7(1) TEU procedure against Poland. Consequently, the fourth resolution by the EP on 1 March 2018 supported the action of the Commission vis-à-vis Poland and called on the Council to take further steps (B8–0119/2018).

The voting results indicate that in its opposition to the four resolutions, Law and Justice was supported in the EP by a majority of MEPs from the populist ECR, ENF and EFDD groups as well as some NI MEPs.<sup>11</sup> This is consistent overall with TE1, with the exception of the vote by the populist left GUE/NGL which co-sponsored most of the resolutions with mainstream groups. The ECR formed the single strongest opposition bloc to the resolutions, in support of its member Law and Justice. However, the other populist groups, ENF and EFDD, jointly provided almost as many votes. While the ENF's share of votes against the resolutions was as high as that of the ECR (around 80%), less than two-thirds of EFDD MEPs voted against the resolutions. The support Law and Justice received from these two groups was geographically widespread, underlining the strength of populist party ideology in shaping behaviour. Indeed, MEPs from more than half of EU Member States supported Law and Justice on at least one resolution.

In turn, the EP resolutions were supported by strong majorities of MEPs from the more centrist blocs, including the EPP, S&D, Greens/EFA, and ALDE groups, consistent with TE1. However, there were some significant exceptions. Within the EPP, which includes the main Polish opposition party, Civic Platform (PO), among its members, an overall small share (less than 10%) of rebels opposed the resolutions. Yet, given the size of the EPP grouping in the EP, the total number of rebel votes is meaningful. The EPP rebels came mostly from the Hungarian Fidesz party, while small numbers came from parties from twelve other Member States. On the 2017 and 2018 resolutions, the majority of the Polish EPP members (both Civic Platform and Polish Peasants Party) did not vote or abstained. Moreover, all Polish S&D members abstained from voting on those two resolutions. Finally, in contrast to TE1, the GUE/NGL group joined the mainstream parties by offering its support to the resolutions, suggesting that within populism, left-right divisions remain important.

In addition to the four successful resolutions, on 29 June 2016 the populist right-wing ENF group proposed a resolution defending Poland against EU interference (B8–0865/2016). The only votes in favour of this resolution came from the same side of the political spectrum: the ECR, EFDD, ENF and NI groups. However, even within these groups, cohesion was rather low, showing the imperfect predictive power of TE1. Within the EFDD, all 14 Italian Five Star Movement MEPs voted against the resolution, while all other members, primarily the UK Independence Party, voted overwhelmingly in favour. Within the ECR, the votes in favour came almost exclusively from Polish MEPs. In turn, the EPP,

S&D, ALDE, GUE-NGL, and Greens/EFA groups maintained strict cohesiveness against this resolution with not a single vote in favour.

Overall, the composition of the opposing votes presents relatively strong support for the predictions of TE1 concerning MEPs in the ECR and groups that are affiliated with right-wing populist ideology (TE1). MEPs from the populist radical right parties tend to vote in support of Law and Justice with notable consistency. The mutual support and coordination among MEPs from the newly elected populist parties contradicts the findings reported by Falkner and Plattner (2019) that there is little programmatic coherence among this group on several important issues. On the rule of law issue at least, they exhibited a surprising degree of parallelism in their voting behaviour in the EP. Among the populist parties, the left-wing GUE/NGL stands out by siding with the mainstream parties, which tend to support resolutions condemning the Law and Justice reforms.

The findings that votes are explained by cultural (populist) ideology are overall consistent with the results reported in Meijers and van der Veer (2019). Their regression results show that the position of an MEP's party on the GAL-TAN spectrum – and, to a lesser extent, the left-right spectrum – is predictive of both issue emphasis and voting behaviour of individual MEPs on rule of law issues. Similarly, the patterns documented in this article suggest that ideological alignment (in the sense of populist ideology) with those eroding the rule law is a key factor in explaining the position of the EP's political groups on the resolutions concerning Poland. While Meijers and van der Veer (2019) use positions on ideological scales, this article emphasises the cohesion of right-wing populist groupings on the rule of law issue. Furthermore, the case study in this article examines the position of parties on a set of given resolutions concerning the Polish rule of law crisis, while Meijers and van der Veer (2019) also use an original dataset of parliamentary questions and motions which allow them to address the effects of ideology on issue emphasis. Nonetheless, in the realm of the EP, both studies conclude that ideology is the key factor predicting political positions adopted in the rule of law crisis.

Moving on from ideology, the hesitancy of a small share of EPP members to vote against Law and Justice may partly reflect the high number of government-affiliated parties in this group, which is consistent with the predictions of TE2. In their work, Meijers and van der Veer (2019, 849) also report that membership in a party in government was, in general, negatively associated with votes to counteract Law and Justice's actions, although they do not focus on this dimension in their discussion. Other reasons for the observed voting patterns might be the influence of Hungary's Fidesz, and the unwillingness of Polish MEPs to openly condemn their own country. Finally, cohesion in the populist ECR, EFDD, ENF and NI bloc was stronger when opposing resolutions than when actively voicing support for Law and Justice, suggesting that even when ideologies are aligned it may be more difficult for a populist bloc to coordinate on actively adopting a political position, than rejecting the positions adopted by other mainstream party groups in the EP.

## Conclusion

This article mapped the positioning of political parties in NPs and the EP in the rule of law crisis in Poland along two main expectations: (TE1) populist parties, in particular right-wing populist parties, are more likely to support the Law and

Justice government than non-populist parties; and (TE2) government parties on balance are less likely to challenge Law and Justice than parties in opposition. However, there were some differences between the Polish parliament, the other NPs and the EP.

The analysis of votes in the Polish parliament indicates that engagement largely aligns with the predictions. Law and Justice tried to counter the EU's efforts and was supported by the populist opposition, while the mainstream opposition remained critical of the government. NPs in other Member States show more varied patterns. By and large, they adopt an inward-looking approach and do not explicitly engage in the affairs of another Member State. However, there are notable exceptions: the Lithuanian resolution in support of Law and Justice gained the backing of some MPs across ideological divides and from both government and opposition. Similar efforts by the Hungarian parliament are less broad-based and driven mostly by the Fidesz government. The French parliament stands out by having issued a resolution opposing Law and Justice on the back of efforts by a more mainstream, if relatively new, party in government, with strong support including from some opposition parties. Comparable efforts in the Bundestag spearheaded by the FDP and the Greens were ultimately unsuccessful as they were opposed by the governing coalition of mainstream CDU and SPD parties and the populist right- and left-wing opposition of the AfD and die Linke, respectively. It is worth highlighting that the position of die Linke differed from that of the GUE/NGL, its political group in the EP, which condemned the rule of law crisis in Poland in the set of EP resolutions discussed in this article.

Thus, in addition to the importance of party ideology, a second finding of this article is that parties in government are on balance less likely to challenge Law and Justice than parties in opposition. Among the political parties under inquiry, only the French governing party condemned democratic backsliding in Poland. The government and opposition divide remained largely intact in the rule of law crisis, as in the case of the Polish and Hungarian parliaments, the German Bundestag, and the EP. The resolutions, either for or against Law and Justice, were successful only when proposed by the governing parties. For instance, the proposals of the German FDP and Alliance 90/The Greens which opposed Law and Justice were ultimately not supported. However, in the Lithuanian and French parliaments we can observe increased cooperation between the majority and opposition, which adopted overarching resolutions to either support or condemn Law and Justice.

Regarding the EP, the main insight from the analysis is that, consistent with theory, populist party ideology helps explain the votes on the EP resolutions. This finding is in line with the conclusion of Meijers and van der Veer (2019) that party ideology and membership in party groups explain individual-level voting outcomes of EP resolutions on democratic backsliding. Indeed, the right-wing radical groups created a voting bloc on the Polish rule of law crisis, which contrasts with McDonnell and Werner (2020) who reported that these groups do not tend to vote together. In addition, even though the mainstream European party groups broadly positioned themselves against the Polish government, numerous MEPs of the mainstream EPP group voted against the resolutions and thus in support of the Polish government. This article argues that such voting patterns may reflect the fact that the EPP is affiliated with the government in many Member States and thus may be reluctant to engage against Poland.

The outgoing Commission's agenda for 'further strengthening the rule of law within the Union' (COM(2019) 163) suggested that NPs and parliamentary debates may offer an opportunity to develop and promote awareness on the rule of law at the national level. However, taking into account the different positions taken by NPs on developments in Poland, as indicated in this article, it remains to be seen to what extent they can contribute to the promotion of 'a common rule of law culture' in the EU.

## Notes

1. Following the 2019 parliamentary election, Law and Justice lost its majority in the Senate.
2. PopuList does not explicitly list the parties that it considers non-populist but states that it includes all parties with at least one seat in parliament, which would cover WiS. However, given the short period of existence of WiS, the party might never have been formally reviewed for inclusion in the list.
3. Vote no 95, available at <https://www.sejm.gov.pl/Sejm8.nsf/agent.xsp?symbol=glosowania&NrKadencji=8&NrPosiedzenia=19&NrGlosowania=95> (accessed 8 May 2023).
4. Available at [https://www.lrs.lt/sip/portalet.show?p\\_r=37067&p\\_k=1&p\\_kade\\_id=8&p\\_ses\\_id=110&p\\_fakt\\_pos\\_id=-501191&p\\_bals\\_id=-27592](https://www.lrs.lt/sip/portalet.show?p_r=37067&p_k=1&p_kade_id=8&p_ses_id=110&p_fakt_pos_id=-501191&p_bals_id=-27592) (accessed 8 May 2023).
5. See <https://freedomhouse.org/country/lithuania/nations-transit/2018> (accessed 8 May 2023).
6. See <https://freedomhouse.org/country/lithuania/nations-transit/2020> (accessed 8 May 2023).
7. See <https://freedomhouse.org/article/far-right-hungarian-party-jobbik-moderating-goodthing> (accessed 8 May 2023).
8. Available at [https://www.parlament.hu/web/guest/szavazasok-elozo-ciklusbeli-adatai?p\\_p\\_id=hu\\_parlament cms\\_pair\\_portlet\\_PairProxy\\_INSTANCE\\_9xd2Wc9jP4z8&p\\_p\\_life\\_cycle=1&p\\_p\\_state=normal&p\\_p\\_mode=view&p\\_auth=Fts4zehp&\\_hu\\_parlament cms\\_pair\\_portlet\\_PairProxy\\_INSTANCE\\_9xd2Wc9jP4z8\\_pairAction=%2Finternet%2Fcplsqli%2Fogy\\_szav.szav\\_lap\\_egy%3Fp\\_szavdatum%3D2018.02.20.16%3A11%3A31%26p\\_szav\\_kepv%3DI%26p\\_szavkpvc sop%3DI%26p\\_ckl%3D40%26p\\_osszefuz%3D](https://www.parlament.hu/web/guest/szavazasok-elozo-ciklusbeli-adatai?p_p_id=hu_parlament cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8&p_p_life_cycle=1&p_p_state=normal&p_p_mode=view&p_auth=Fts4zehp&_hu_parlament cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8_pairAction=%2Finternet%2Fcplsqli%2Fogy_szav.szav_lap_egy%3Fp_szavdatum%3D2018.02.20.16%3A11%3A31%26p_szav_kepv%3DI%26p_szavkpvc sop%3DI%26p_ckl%3D40%26p_osszefuz%3D) (accessed 8 May 2023).
9. It is noteworthy that in 2020, thus falling outside the scope of this article, the Tweede Kamer adopted a resolution requesting that the Dutch government brings Poland before the European Court of Justice for serious threats to the observance of the rule of law (Tweede Kamer 2020). The resolution was adopted with votes from across the political spectrum, with the votes against coming mainly from the right-wing populist Party for Freedom.
10. Political parties that did not participate in the vote – Polish Modern and PSL, Lithuanian LRLS, and Hungarian Jobbik – are not included in the table. In the French parliament, the resolution was passed by committee and no plenary vote took place. Party positions were extracted from the committee debate based on the voting intensions expressed by the MPs. The French National Front MPs were not present and thus no position could be assigned. Likewise, for the Republican Party that left the debate.
11. The analysis of EP votes in this article is based on data collected by VoteWatch.eu. I would like to thank Professor Simon Hix for sharing this data with me.

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## Annex 1

	Mainstream	Populist
<b>Government</b>	LT Lithuanian Farmers and Greens Union (LVŽS) LT Social Democratic Labour Party of Lithuania (LSDDP) FR La République en Marche (LREM) FR Democratic Movement (MoDem) DE Christian Democratic Union/Christian Social Union (CDU/CSU)	HU Fidesz HU Christian Democratic People's Party (KDNP) PL Law and Justice (PiS)
<b>Opposition</b>	DE Social Democratic Party (SPD) LT Electoral Action of Poles in Lithuania-Christian Families Alliance (LLRA – KŠS) LT Homeland Union-Lithuanian Christian Democrat Political Group (TS-LKD) LT Lithuanian Social Democratic Party (LSDP) LT Liberal Movement (LRLS) HU Hungarian Socialist Party (MSZP) HU Politics Can Be Different (LMP) FR The Republicans (LR) FR Socialist Party (PS) FR Democratic and Republican Left group (GDR) FR Liberties and Territories (LT) DE Free Democratic Party (FDP) DE Bündnis 90/Die Grünen PL Civic Platform (PO) PL.Modern (.Nowoczesna) PL Polish Agrarian Party (PSL) PL Free and Solidary (WiS)	LT Order and Justice (TT) DE Alternative for Germany (AfD) DE Left (die Linke) HU Jobbik FR National Front (FN) PL Kukiz'15

Notes: Ideological and government/opposition status of political parties in the national parliaments that discussed resolutions on the rule of law crisis in Poland.

Source: own compilation based on Rooduijn et al. (2019) (PopuList).