RESEARCH ARTICLE

In the Name of Sovereignty. Right-Wing Populism and the Power of the Judiciary in Western Europe

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ABSTRACT: This contribution addresses the question of how radical right-wing populist parties in Western Europe frame the issue of judicial power. To date, there have been very few in-depth empirical analyses on the topic – a gap that this article aims to fill. The paper will compare two radical right-wing populist parties, the Dutch Freedom Party and the Swiss People's Party, by focusing on party manifestos, parliamentary proceedings and public speeches by their leaders. Our findings show that these parties and leaders tend to undermine the rule of law by calling the impartial position of judges and the autonomy of the judiciary into question in the name of a popular, national and political sovereignism.

KEYWORDS: Populism, Right-wing Parties, Judicial Power, Sovereignism, Western Europe, Dutch Freedom Party, Swiss People's Party

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1. Introduction

In recent decades, Western right-wing populist parties (RWPPs) have attracted growing attention in scholarship (Betz 1994; Wodak 2015; De la Torre 2018). Many aspects of these parties' agendas and strategies have been analysed, some of which have received particular attention in the past few years. How populist parties and leaders frame judicial power is one such aspect, and many examples have demonstrated this issue's relevance in the public sphere: among others, US President Donald Trump's virulent reaction in 2017 when the courts initially opposed certain parts of his executive orders banning individuals from some majority-Muslim countries travelling to the United States (Petkova 2017); the statement by Marine Le Pen, leader of the *Front National* (now *Rassemblement National*), during her 2017 campaign for the French presidency that: 'The rule of law is the opposite of government by judges [...] Judges are there to apply the law, not to invent it, not to subvert the will of the people, not to substitute themselves for the legislator' (Boudet 2017); or the declaration by Matteo Salvini, the former interior minister and leader of the *Lega* party in Italy, who, when struggling with the judiciary power over the application of newly introduced bans on immigrants entering the country, said: 'I see that, out of thousands of judges who do their work honestly, someone instead does politics, writes books, and goes to conferences in favour of open doors for immigration. Is it normal for a judge to attend a conference that is an advertisement for mass immigration?' (Ansa 2019). These examples illustrate an opposition between 'democratic values' and the 'will of the people' in contemporary democracies (Repucci & Pekkanen 2018; Urbinati 2016). Populist parties tend to pit the 'rule of the people' against the 'rule of the law' by emphasising direct democracy and a judicial role for ordinary citizens while simultaneously demanding freedom of speech when judges accuse them of making racist statements. As these issues become increasingly relevant in contemporary public debate, current academic research is providing more theoretical and empirical contributions on populist claims regarding judicial power.

While studies in political science examine how politicians and citizens frame and target 'judges' or 'courts' (e.g. Engel 2011; Navarrete & Castillo-Ortiz 2020; Ura & Higgins Merrill 2017), including in the context of a populist challenge (Voeten 2020), a complementary route of enquiry is to take a theoretical perspective, which can enable us to grasp the link between party-based populism and judicial power. Although the role of populist parties in Eastern European countries, where liberal constitutional rules have eroded in recent decades (Halmai 2018 a,b; Bugaric & Kuhelj 2018), has been particularly interesting for observers, it is worth noting that RRWPs in Western Europe have contributed to reshaping political agendas and policymaking on some major issues, including immigration (Akkerman, de Lange & Rooduijn 2016; Wolinetz & Zaslove 2018). For this reason, we will consider how Western European RWPPs frame judicial issues.

This article will highlight how judicial power and its representatives – that is, the judiciary – embody crucial issues in RWPPs' discourse and agenda. We tackle the following main research question: How do current Western European RWPPs frame judicial power and its representatives? To answer this question, the article argues that, at present, these RWPPs' central discourse strategy is to challenge the autonomy of judiciary power on behalf of national, popular and political 'sovereignism', which embodies a claim of exclusive power for the people.

The article is organised as follows. In the first part, we try to develop a theoretical framework of analysis for the populist parties and their judicial discourse. We contend that Western European RWPPs' discourse strategy on judicial power has to be analysed as part of the populist claim. Judicial populism has to be

considered an inherent component of the populist frame, which includes a defence of the people's and national sovereignty which is undermined by 'bad' elites, along with a promise to restore this allegedly betrayed sovereignty. In the second part, using our framework, we focus on two successful RWPPs, the SVP in Switzerland and the PVV in the Netherlands, which represent two different kinds of judicial populism in Western Europe.

2. Current Views

Populism is a contentious notion. To some extent, however, many definitions converge on the idea that a populist discourse, frame or ideology forms a Manichean view of 'the people' and their 'enemies' – above all, elites. The people are often presented as an entity whose rights and sovereignty have been betrayed (Canovan 1981; 2005; Mudde 2007; see also Basile & Mazzoleni 2020). Regarding the current populist challenge, the focus of the literature has been on perceived enemies, usually immigrants and the political elite (Mudde 2007; Wodak 2015). However, other targets, including intellectuals and journalists, are increasingly part of the picture in the work of communications scholars and political scientists (see Panarari 2020). The same is true of judges: Constitutionalists, in particular, have been discussing populist claims regarding judges and supreme courts (see Hailbronner & Landau 2017). To them, along with a few political scientists, it seems clear that the (liberal) constitutional order is turning into one of the most prominent targets of the RWPPs' strategies (Mudde 2013; Rovira Kaltwasser 2013; Müller 2017; Blokker 2018).

Among the views currently held in political science, the 'opportunist interpretation' can be distinguished as a way to comprehend populists' ambivalent attitudes towards constitutionalism. In this regard, Cas Mudde (2013: 1) underlines that 'while populists-in-opposition cling to the constitutional protection of their minority rights, they reject those of other minorities on the basis of the democratic argument of majority rule'. Rovira Kaltwasser (2013: 3) also mentions opportunism when he highlights the constitutionalist diversity within populist formations: 'some populists tend to invoke the constituent power to change the constitution, others present themselves as guardians of the present constitution and develop a very specific interpretation of this. To a great extent, these differences can be explained by the degree to which the existing constitutional order reduces the room of manoeuvre of populist forces'. Accordingly, as representatives of judicial power and, more generally, of the constitutional order, judges would also be regarded by populists with the same opportunistic eyes: 'their position towards constitutional judges is purely opportunistic. Depending upon the usefulness of their ruling, a judge is branded as one of "the people" or a member of "the elite"' (Mudde 2013: 4). The opportunist interpretation usefully permits focusing on the 'ambivalence' and diversity of populist strategies by leaders and parties. However, this thesis also provides a relevant limit: In particular, it prevents connecting attitudes towards constitutionalism and judicial power to some intrinsic features of populist claims. According to some scholars, populism is inherently ambiguous, chameleonic and flexible (Taggart 2000; Heinisch & Mazzoleni 2017). Thus, from a more analytical point of view, populist approaches to the constitutional order visibly transcend the vagueness of the category of opportunism and introduce, instead, a perspective based on party strategy, which includes both ideational and behavioural components (Hellmann 2011).

Some scholars have begun to develop another interpretation based on what they call 'populist constitutionalism'. Despite their dissimilar conceptualisation, Müller (2016: 61-68; 2017) and Blokker (2018; 2019) argue for the need to identify and theorise populist constitutionalism as the opposite of liberal or legal constitutionalism. These scholars contend that populism is, first of all, characterised by the idea of

popular sovereignty and that the liberal constitutional order does not guarantee enough power for the people. Embedded in alternative forms of constitutionalism, which also include reform projects, populists, especially radical right-wing actors, tend to challenge the liberal and pluralist constitutional order. The anti-liberal and anti-legal populist claims are emphasised once the populists are in power, in particular in the Americas and Eastern Europe, as populist parties and leaders are then in a position to undermine constitutional rules (Halmai 2018a, b). Comparatively, when populists are in opposition, they tend to advocate for an increase in unmediated power and judgement by and through the people – in other words, people's sovereignty (Müller 2016). The advantage of this second interpretation is that it enables a theoretical link between the framing of the judiciary and populism. Meanwhile, the limits of the second interpretation concern the difficulty of considering the ambivalent features of populist claims and of analytically and empirically underlining the populist actors' strategy in their specific contexts.

3. Towards an Alternative Perspective

We contend that a framework of analysis for judicial populism cannot avoid the notion of populism itself. Although Mudde's 'minimal' and somewhat parsimonious definition of populism is currently widespread in political science (see Mudde 2007), it is important to underscore that his definition remains controversial; some authors worry that it might not be sufficient to understand the complexity of populist messages and strategies in different contexts (De la Torre & Mazzoleni, 2019). In our aim to grasp the judicial issues in this paper, we argue that the reflections of Paul Taggart, Yves Mény, Yves Mény, Margaret Canovan and Ernesto Laclau could also prove useful.

Firstly, inspired by Mény & Surel (2001; see also 2002), we could recognise populism as a discourse based on a tripartite master frame: The first part is the 'people', considered as the 'foundation of the community'; the second is 'that the people have been robbed of their rightful primacy'; and the third claims that this primacy, especially in terms of sovereignty, must be 'restored to [its] proper place and society regenerated' (also mentioned in Canovan 2005: 81-82). Secondly, this tripartite frame does not express itself univocally. According to Taggart (2000), populism is intrinsically flexible and chameleonic: Its claims are highly adaptive to different situations. This rationale also deals with contextual constraints and opportunities in which political parties should adjust their strategies. Thirdly, Laclau (2005) underlines that the 'people' and the transformation of the existing situation represent 'empty signifiers' that can take on different meanings within the populist logic. In other words, the tripartite frame might encompass several types of content covering a broad range of issues. In the case of RWPPs, one of the main issues is immigration, which is viewed as a threat to the true community as defined by nativist criteria – therefore, immigration should be restrained or banned.

Another issue is represented by judicial power. It can be argued that the discourse of targeting judicial power is part of the populist frame in which the opposition between people and elites is at stake. The assumption that the people are the foundation of the community means that the people's view 'is always right', their power should be 'complete' and 'absolute', and consequently, the people always have the 'supremely authoritative' interpretation 'of the common good' (Ochoa 2017: 623), as well as truthful judgements over social behaviour. The people are not only viewed as voters and members of the political community but as 'true judges', too (Rosanvallon 2010: part 3). According to the populist claims, judicial power and supreme court judges have betrayed this popular common sense, and judges work against the will

and interests of the people, as in the case of rules and sanctions that undermine national authority. Similarly, judges are perceived to be too tolerant of deviant behaviour, including holding soft positions on terrorist threats. The populist appeal to change and restore true popular rights can include instruments to diminish the autonomy of judges as elites – for example, by having jury trials and electing judges by popular vote, having mandatory sentencing and revoking international treaties, whose application by tribunals undermine the rights and the power of 'our' people.

At the same time, populists insist on the supremacy of political decision making over legal powers. Therefore, with regard to populists' opposition to judicial power, three forms of the power of the people – i.e. sovereignism – are framed. The first is popular sovereignty as a form of supremacy over judicial elites when delivering verdicts that do not reflect the will of the people. This is based on the conviction that 'the judgement of the ordinary man' is 'more reliable than that of the highly educated' individuals who are usually in charge of judicial power (Corso 2014: 446). Popular sovereignty also entails forms of direct democracy to take decisions against bad political elites and prevent judicial discretion by introducing new laws to impose punishments for deviant behaviour, such as criminal immigrants. This component is strongly related to 'penal populism', which assumes that judges favour criminals 'at the expense of crime victims and the law-abiding public in general' (Pratt 2007: 12). Penal populism takes the legitimacy of citizens' control over the judicial establishment concerning criminal sentencing for granted, which results in zero-tolerance policies and more severe prison sentences.

The second sovereignist component of the populist claim has a national characteristic and specifically targets the international competences of the judiciary. The populist stance is expressed here as part of an opposition to supranational empowerment. Foreign judicial institutions are presented as a threat to the national interest and identity. The targets can be international courts dealing with human rights or other constitutional courts that are denounced as forms of illegitimate supranational governance (Kelemen 2013; Petrov 2018) and contrasted with the populist government while defending a national justice system that expresses the will of the people (De Spiegeleire, Skinner & Sweijs 2017; Wellings & Vines 2016).

And the third sovereignist component of populist discourse is political: the demand to restore the supremacy of politics and politicians over the 'judicialisation' of politics (Hirschl 2004; Sweet 2000). What the judicialisation of politics often refers to is the increasing role of courts on a range of issues 'varying from the scope of expression and religious liberties, equality rights, privacy, and reproductive freedoms, to public policies pertaining to criminal justice, property, trade and commerce, education, immigration, labour, and environmental protection' (Hirschl 2011: 253; see also Ginsburg 2008; Malleson & Russell 2006). Related to this component is the criticism that judges are opposed to populist politicians, who are consequently cast as victims of judicial power. Restoring political supremacy implies a judicial power that is 'neutral' or benevolent towards party competition and, in particular, the political representatives of the people's will.

As populist frames are highly adaptive, we assume that populist claims regarding judicial power also depend, to some extent, on the context. In party strategies, judges and judicial power can offer a window of opportunity for electoral mobilisation. As expected, RWPPs do not regard judicial power as a danger per se. Judges are sometimes presented as enemies – for instance, as unofficial, unelected and illegitimate 'decision-makers' – and other times as allies – for example, when they take a 'neutral' position on populist demands – to form different configurations that can vary over time within and between parties. Populists act not in a theoretical space but in a context characterised by specific constitutional powers.

We can now address the two main hypotheses: Firstly, the apex courts and judges, especially those bound by international treaties and institutions, are perceived by Western European RWPPs to put illegitimate constraints on popular, national and political sovereignty; secondly, ordinary judges are virtually considered

to be enemies once they politicise justice against populists, or as allies if they guarantee rights favourable to populists, including those related to political competition.

4. Comparison Between Two Right-Wing Parties in Context

To deal with the rationale and hypotheses above, we will compare two cases in Western Europe: the Swiss People's Party (SVP) and the Dutch Freedom Party (PVV). Although these parties operate in two countries with institutional similarities, such as the system of power-sharing in government (Daalder 1971; Lijphart 1999), there are many aspects of their respective judicial systems that differ from each other. In Switzerland, judicial autonomy is highly constrained by the parliamentary or popular election of judges. The Swiss judicial system reflects the federalist structure of the country. There is no autonomous pattern to judges' careers, as judges are directly elected by Parliament for a limited term or, in some cantons that are strongly autonomous in their rules for the judiciary, through popular election. In the first stages of judicial proceedings, civil juries are also involved. Switzerland is one of the few European democracies where the popular component of judicial power is strongly developed, and this reflects the relevance of referendum tools in the Swiss political system as a whole. Several times a year, popular initiatives at the federal and cantonal levels can change constitutional law, while popular referendums, which are also possible at the federal and cantonal levels, permit the modification of every legislative decision (Linder & Mueller 2017). At the top of the judicial system, there is the Swiss Federal Tribunal, whose members are elected by the federal parliament along partisan lines. According to official statistics, in 2000, only one of the 38 federal judges was not a member of one of the four government parties. Five were members of the SVP. In 2015, the number of federal judges elected under the banner of the SVP doubled to 10, while the SVP's group in Parliament had 51 MPs in 2000 and 74 in 2015.

By comparison, the Netherlands has a long tradition of judicial autonomy; judges are co-opted by their peers without any interference from politicians or voters. The hierarchical Dutch judiciary system, consisting of district courts, courts of appeal and the Supreme Court, mirrors the unitary state structure of the Netherlands. The judiciary is independent: Judges have life tenure until retirement at the age of 70 and are, in principle, not removable. The lower courts nominate judges, and the Supreme Court recommends candidates to the Second Chamber, which usually unanimously follows its proposals, meaning that, in practice, judges are co-opted at all levels. Citizens do not play any role in the process: They do not participate in the Dutch judiciary, also because there is no jury system. In Dutch representative democracy, citizens have no direct say either: Apart from electing members of parliament, officials are not directly elected, nor is there a tradition of referendums or people's initiatives. In 2014, a law enabling consultative popular referendums was introduced, but four years later, after only two referendums, it was repealed. The PVV denounced its abolition as it advocates for more direct democracy and the introduction of binding corrective referendums as instruments to restore popular sovereignty.

It is, therefore, crucial to determine whether, despite differences in these two contexts, similar findings could emerge. To grasp the orientation of the two parties at stake, we examine a set of sources covering the relevant arenas where these parties operate: national election platforms (the electoral arena), speeches by the main party leaders (the public arena) and parliamentary proceedings permit the identification of the positions adopted by MPs (the legislative arena).

4.1 Swiss People's Party (SVP)

The Swiss People's Party (SVP), which was founded in 1971, is one of the most successful right-wing populist parties in Western Europe (Mazzoleni 2018; Hildebrand 2017). It has a complex and articulated organisation with local roots and some 90,000 members. Since the 2000s, the SVP has received the largest electoral support of all Swiss parties. At the Lower Chamber election of October 2019, it won 25.6% of the vote. Its agenda is strongly shaped by opposition to Swiss integration into the EU and mass immigration. Despite its populist claims, the SVP is traditionally a government party and forms part of a large coalition.

In recent years, the SVP has often mobilised in the referendum arena. The party has often launched and supported popular initiatives and referendums on major issues such as immigration and EU relations. Moreover, the party largely considers Swiss direct democracy to be synonymous with popular sovereignty against what it calls 'political elites' – in particular, the other mainstream parties, the left-wing but also the bourgeois (i.e. centre-right) parties, which it accuses of treasonous conduct unbecoming of representatives of the Swiss people. The SVP is increasingly criticising Swiss representative institutions and demanding more popular sovereignty. In 2010, it launched a popular initiative for the direct election of the federal government, one of the few institutional organs in the political system of Switzerland that are not directly elected by the country's citizens.

Among the elites criticised by the SVP, judges are increasingly becoming a target. On the one hand, the party does not campaign against ordinary judges or the functioning of the judicial system. On the other hand, the SVP's representatives are demanding revisions to the procedures for the election of federal judges and asking for more power from Parliament. The SVP is increasingly focused on the perceived excessive discretion enjoyed by judges and their lack of 'respect' for the decision making of ordinary people through referendums. For instance, SVP leader Christoph Blocher often underlines the need to limit the power of judges. In a speech delivered in January 2016, he targeted the Swiss Federal Court: 'The supreme judges who are supposed to apply the law do not respect the right determined by the people and the cantons […] Today, the election of federal judges is taken lightly. However, it must be demonstrated whether each candidate gives priority to democratically legitimised Swiss law […] Judges should decide what they ought to and not what they want' (Blocher 2016). The underlying populist idea was that judicial decision making should be directly led by the people as the true owners of Swiss popular sovereignty and constitutional power.

In recent years, pivotal political issues have related to judicial power, especially the decision making of the federal apex judges. Many of them were crucial to the SVP's agenda, including the rights of asylum-seekers, immigration and naturalisation. In the latter case, tensions have arisen between local parliaments and municipalities opposed to granting Swiss citizenship to certain foreign residents and the opposing views taken by the judicial power. There was a similar controversy over foreign criminals, as the SVP has made strenuous efforts through two national popular initiatives to automatically expel foreign criminals while simultaneously limiting the role of judges in interpreting penal law. As the SVP's 2015 national election platform pointed out: 'In criminal law, a deterrent effect can only be achieved through harsh sanctions. Minimum sentencing rules are therefore required to limit the leeway of judges' (SVP 2015a). Therefore, the SVP has presented the courts in several cases as opponents of the people's will, including cases related to national independence.

The fight for national sovereignty is also a crucial issue on the SVP's agenda, especially in connection with its anti-EU campaigning. In some cases, this fight explicitly includes judges as targets. For instance,

there was a constitutional popular initiative called 'Swiss law instead of foreign judges (self-determination initiative)', which a majority of Swiss voters rejected in 2018. This constitutional change proposed by the SVP aimed to safeguard Swiss 'self-determination with respect to our own laws'. As the long parliamentary debate on this issue also highlighted, many SVP MPs said the EU sought to undermine the Swiss constitution and the powers of Swiss citizens and was supported by a complicit Swiss political elite disconnected from the real interests of the country (*Parlamentsdienste* 2018). In place of the automatic implementation of foreign (in this case, EU) law, the SVP wants national law to supersede any foreign law in the Swiss constitution. This would likely imply a withdrawal from the jurisdiction of the European Court of Justice (ECJ) and the European Court of Human Rights (ECtHR). Regarding EU integration, the SVP's main goal in Swiss politics is to struggle against the country's 'gradual accession to the EU' and the growing power of EU judges. According to the 2015 national platform, 'Self-determination means: no institutional integration within the EU […], and no foreign judges' able to make binding decisions on behalf of Switzerland in disagreements between the EU and Switzerland (SVP 2015a). Both EU judges and the Swiss Federal (that is Supreme) Court are considered to support the conspiracy of the Swiss elite being against both popular and national sovereignty: 'In general, placing international law above national law and thereby depriving the sovereign people of their legislative rights, the Federal Court has virtually taken the place of the legislator. We are indeed witnessing a *coup d'état*, even if it is a silent one' (Blocher 2016).

The targeting of judicial power might also be connected with certain legal proceedings in which the SVP has been involved. Its principal leaders, including Blocher, have rarely been involved in these proceedings. The only exception is a law criminalising racism, under which some SVP representatives were sanctioned. Recently, the Swiss Federal Court – three judges against two, the latter SVP members – found former leading SVP members guilty of violating an anti-racism law because of a poster used in the party's 2011 initiative campaign against mass immigration. Connected to these proceedings, the SVP openly attacked the political use of this particular law: 'This worrying judgment is a serious violation of the freedom of opinion and expression in Switzerland. It seems that it is no longer permissible to describe a real event as it occurred [...] In this case again, the criminal law against racism has been abused for political purposes to suppress embarrassing opinions' (SVP 2015b). The SVP's representatives have often criticised this anti-racism law that was adopted in 1995. In 2015, the party explicitly mentioned the possibility of not re-electing federal judges who had openly supported the reinforcement of the anti-racism law (Le Temps 2016).

4.2 Freedom Party (PVV)

The Freedom Party (PVV) is a fairly successful right-wing populist party in the Netherlands. It was founded in 2006 by Geert Wilders, who two years earlier had broken away from the conservative Liberal Party group in the Dutch parliament. The party has barely any extra-parliamentary organisation, as it does not enrol members: Its core is its representatives in the national parliament and in some regional and municipal councils. At the national elections of 2006, the PVV obtained 5.9% of the vote, in 2010 15.5%. Subsequently, the party officially supported the minority government consisting of a coalition of Christian Democrats and Conservative Liberals for 18 months. The PVV withdrew its support when the EU demanded budget cuts, causing a cabinet crisis. In the following election, the party of Wilders lost a third of its votes (10.1%). In 2017, the PVV scored 13.1%, becoming the second-largest party in the Netherlands. Like the SVP, the PVV is strongly opposed to immigration, Islamisation and European integration. In the European

Parliament, the party was a member of the Europe of Nations and Freedom Group between 2015 and 2019. At the European elections of 2019, the PVV lost its four seats. Following the United Kingdom's withdrawal from the European Union in January 2020, three additional seats were allocated to the Netherlands, one of which was allocated to the PVV. Its MEP joined the group of Identity and Democracy.

Two national referendums were held in 2014 and 2018 – one on the EU Association Agreement with Ukraine and the other on the Intelligence and Security Services Act. In 2005, there was a one-off referendum about the Treaty establishing a Constitution for Europe. On all three occasions, the PVV mobilised opposition against these legislative proposals, blaming the political elite for not listening to the people. In its campaigns against the Ukraine Agreement and the European Constitution, the PVV took a radical anti-EU position, which was connected with its aim of restoring national sovereignty by having the Netherlands leave the EU and bringing back the guilder to replace the euro.

From the start, Wilders and his party criticised judges, representing them as being part of the media and the political and judicial elite. According to the PVV's national election platforms in 2010 and 2012, they were 'left liberals in robes', 'divorced from reality' (PVV 2010: 9 and 17), 'one-sided' and 'tilting to the left' (PVV 2012: 30). The PVV explicitly stated that it wanted 'to restrict the freedom of the judges' (PVV 2010: 9). It sought to counter criticism that the party was undermining the rule of law by stating that political elites were a major threat because they were opening the country's borders to mass immigration and transferring sovereignty from the national level to the EU (Voerman & Mazzoleni 2019: 136).

The PVV's strategy of restricting the autonomy of judges had different components. The first consisted of a 'democratisation of the judiciary' (PVV 2012: 31). Already in 2005, Wilders called for replacing the appointment of judges with direct popular elections (Wilders 2005: 129); his stated aim was to bring judicial rulings more in line with public opinion. The PVV's 2012 platform declared the party's determination to reduce the lifetime appointment of judges to a fixed period of 10 years (PVV 2012: 31), with judges only being eligible for reappointment if they impose sufficiently severe sentences. The second component was a politicisation of the nomination process for the Supreme Court. In 2011, Wilders broke with the Dutch political practice of respecting judicial independence by objecting, as an MP, to a Supreme Court candidate, a professor of criminal law and Labour Party member, who had compared Wilders to Mussolini. The PVV requested a roll-call vote and publicly announced that the party had cast a blank vote, breaking the tradition that these votes should remain secret (Bovend'Eert 2018). A few years earlier, the PVV had blocked another Supreme Court candidate in the early stages of the nomination process (Ilsink 2012). Its third approach to reducing judicial discretion was to introduce minimum penalties for specific offences, which it promoted as enhancing the security of the people and better protecting them. In 2009, the PVV proposed legislation to prevent 'judges free-wheeling with sentences', as Wilders argued.[1] The party also suggested imposing life imprisonment after three violent crimes, taking inspiration from the American 'three strikes, you're out' (PVV 2010: 9) law. Finally, he advocated for the introduction of jury trials to put ordinary people in the place of judges (Wilders 2005: 129).

The PVV has sought to not only limit the autonomy of the judges at the national level but also to reduce it to zero at the European and international levels. As with the SVP, this struggle to restore national sovereignty is tied to anti-EU mobilisation. The PVV's MPs have expressed their aversion to 'interventionist' European judges in various ways. 'The silly judges in their ivory towers in Luxembourg or

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[1] Proceedings Second Chamber, 26 October 2010, 13-63.

Strasbourg' have been called 'foolish', 'soft', 'dangerous' and 'weird'.[2] The party has considered the verdicts of the European Court of Justice (ECJ) and the European Court of Human Rights (ECtHR) violations of Dutch sovereignty and infringements on the autonomy of the Dutch parliament by 'unelected EU-technocrats'.[3] In addition, their view is that Dutch law should not be made by judges applying international treaties but only by the democratically elected Dutch parliament. The PVV has also insisted that, in order to restore national sovereignty, the Netherlands should no longer be under the jurisdiction of the ECJ and the ECtHR (Voerman & Mazzoleni 2019: 140-144).

Wilders has criticised the judiciary not only from the outside but also from within, during two trials where he was accused of discrimination and hate speech – in 2010, particularly because of his call to ban the Koran, and in 2016, after an anti-Moroccan campaign (Corduwener 2014). In the first case, he was acquitted; in the second, he was formally convicted. Although he did not receive a sentence, he appealed against the conviction. Wilders used both trials to challenge and attack the 'biased' judges, whom he accused of conducting a political process and gagging his freedom of speech in order to silence him. During the second trial, Wilders warned the judges that they judged not only him but also 'a few million ordinary Dutchmen', whom he represented (Blok 2018: 230). After his conviction, Wilders spoke of a 'fake court' and 'PVV-hating judges' who were 'completely crazy': 'This verdict only proves that you, judges, have completely lost contact with society' (Blok 2018: 233).

5. Discussion

The political and judicial systems of the Netherlands and Switzerland are highly divergent. The Netherlands is a decentralised unitary state with a representative democracy that does not provide its people with a direct say over executive or legislative decisions. This arrangement is reflected in the hierarchical structure of the Dutch judiciary, in which judges are appointed for life, effectively co-opted by their fellow judges, and there are no jury trials. Switzerland, by contrast, is a confederation and a direct democracy with referendums and people's initiatives. Popular sovereignty is further integrated into the Swiss judicial system through juries and – in some cantons – the popular election of judges. In Switzerland, the position of judges is formally less independent than in the Dutch judiciary, as partisan belonging is decisive in their election, and the length of their terms is limited. The PVV and SWP also differ in many respects. The SVP has existed for nearly half a century and has participated in government since its founding; the PVV was founded in 2006 and has never been a full member of government: It only formally and partially supported a minority government for 18 months. The SVP is a mass-based party with an extensive extra-parliamentary organisation that is deeply rooted in Swiss society; the PVV is barely organised and completely lacks a party on the ground.

Despite the differences between the Dutch and Swiss political and judicial contexts and between the PVV and SVP in terms of legacy, organisation, strength and position in the party system, their programs as right-wing populist parties show significant convergence with respect to their rejection of immigration, Islamisation and European integration, as do their views regarding the judiciary. Both parties challenge the

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[2] Proceedings First Chamber, 16 February 2016, 20-6-11; Proceedings Second Chamber, 19 April 2017, 70-7-2; *idem*, 2016-2017, aanhangsel (nr. 1902), 2-3.

[3] Proceedings Second Chamber, 16 January 2013.

division of powers in their respective countries by demanding less autonomy for judicial power and promoting the restoration of popular, national and political sovereignty, which in their eyes has been betrayed by judicial elites, as Table 1 sets out in detail.

Table 1. Proposals made by the PVV and the SVP to increase popular, national and political sovereignty within the judicial system

Dimension	Current arrangement in Switzerland	SVP's position	Current arrangement in the Netherlands	PVV's position
Popular sovereignty				
(S)election of judges	Directly elected by Parliament for a limited term; in some cantons, elected by popular vote	Direct popular election of judges	Judges are co-opted by courts and have lifetime tenure	Direct popular election of judges for a limited term
(S)election of judges to the Supreme Court (SC)	Elected by Parliament along partisan lines	More power to Parliament	SC recommends candidates (with no/low political profile) to Parliament, which follows this recommendation	Direct popular election of SC judges
Minimum penalties	No minimum penalties	Introduction of minimum penalties	No minimum penalties	Introduction of minimum penalties
Trial by jury	Trial by jury	Trial by jury	No trial by jury	Trial by jury
National sovereignty				
International courts	Switzerland is subject to the ECJ and is a contracting state to the ECtHR	National laws should have priority over international law; withdrawal from ECJ and ECtHR	As an EU member state, the Netherlands is subject to the ECJ and a contracting state to the ECtHR	National laws should have priority over international law; withdrawal from ECJ, ECtHR and EU
Political sovereignty				
Judicialisation of politics	Courts becoming more decisive in the policymaking process	Opposed	Courts becoming more decisive in the policymaking process	Opposed

Regarding popular sovereignty, the PVV and SWP both favour reducing the autonomy of judges, whom they portray as being out of touch with real life, by increasing the involvement of 'the people' in the judicial sphere. Compulsory referendums and people's initiatives would enable the people to exert control over the institutional structure of the judiciary and their processes of making, interpreting and applying the law. Both parties want to secure popular influence over the selection of judges in order to discipline them – the PVV by demanding that the voters elect them, the SVP by demanding more respect for direct democracy – and over their judgements by advocating policies that restrict the judges' discretion during sentencing, such as the introduction and extension of automatic and minimum penalties (penal populism, both parties) and the introduction of jury trials (only the PVV, as this system is already of long standing in Switzerland).

Therefore, the PVV and the SVP regard direct democracy as an effective instrument to curtail the power of the judicial institutions and restore popular sovereignty over the judicial sphere.

In terms of national sovereignty, both the PVV and the SVP criticise national judges when they apply international treaties, contributing to the reduction of national independence. Both parties especially target the judges of the supranational ECJ, as they are deeply hostile to the European Union. The PVV wants the Netherlands to leave the EU and the SVP campaigns to reverse the ongoing integration of Switzerland into the EU (without becoming a member). Both parties oppose the expanding jurisdiction of the ECJ and its growing power in policymaking and perceive its judgements as violations of national sovereignty. The PVV and SVP also advocate for political sovereignty, as they reject the judicialisation of politics. They primarily object to courts' and judicial instruments' increasing control over the policymaking process, which further empowers the unelected elites (Knopff 1998). At least for as long as they are in a minority position within their respective national political systems, populist parties demand that judges apply constitutional rights as broadly as possible but do not politically implement anti-racism and anti-xenophobia legislation against them. Populists particularly advocate for the maximum possible application of freedom of speech as a means to express the legitimate will of the people. Judges should, therefore, not intervene in party competition but, instead, safeguard its rules and protect the rights of all the parties involved. Prominent representatives of both the PVV and SVP have faced criminal charges for discrimination and racist acts. They respond to what they perceive as the judicialisation of politics by politicising the judiciary. They do this by accusing the judges of pursuing political objectives instead of being impartial, objective and neutral. For instance, when PVV leader Wilders spoke of a political trial, he cast himself as the true representative of the people, who was muzzled while speaking on their behalf.

6. Conclusion

In this paper, we tried to show the relevance of Western European right-wing populist parties in targeting judicial power. We underlined that judicial populism is a crucial issue in understanding the growth of Western European RWPPs over the past few decades. Beyond opportunist views and constitutional perspectives, we argued for the need to focus on the right-wing populist discourse as it articulates different types of strategies against judicial power. As we have seen, convergent types of frames emerge from two successful RWPPs in Switzerland and the Netherlands. Both right-wing populist parties are clearly seeking to limit the autonomy of the judiciary as a way to enhance popular, national and political sovereignty. While differing in some respects because of institutional, historical and political diversity and despite their different position within their national political system (in opposition or within a government coalition), the two parties and leaders highlight the crucial link between populism and sovereignism as a claim for the supremacy of the people, nation and politics over judicial power. Apex courts and judges, especially those bound by international treaties and institutions, are presented as illegitimate elites; ordinary judges are considered enemies or allies, depending on how they fit the strategic objectives of the populists. The PVV and the SVP share similar anti-judicial claims; they criticise (1) national judges severely, (2) the judicial system of their respective countries and (3) external judicial powers (e.g. EU judges, the European Court of Justice). Both parties reinterpret the issue of the betrayal of popular and national sovereignty and the need to restore both. At the same time, current populists, including right-wing populists, defend the electoral arena and its rules and free party competition, especially when their party is (part of) the opposition.

Meanwhile, the PVV and the SVP do not attack judges indiscriminately. They mainly attack the political role of apex courts and judges. Neither party openly challenges constitutional rights, such as freedom of speech, at least not when the 'true people' and its 'true representatives' are at stake. How should we interpret this strategy? One could view it through the lens of opportunism, as these populists do not present themselves as opponents of judicial power as such. This is what some scholars regard as the opportunist view of populists. However, another interpretation is possible, one that suggests that the populist challenge is a claim for a reduction of the various autonomous powers within liberal democratic regimes: 'In a populist democracy the political domain consequently extends into spheres not considered "political" in a liberal democracy: media, judiciary, culture, the economy and education are allegedly no longer largely impartial and non-political institutions, but all spheres which are political and over which "the people" consequently should be able to exert influence' (Corduwener 2014: 432). A third, complementary interpretation is also possible: Populists are not against judicial autonomy as such but the extended autonomy related to the judicialisation of politics. If this interpretation is viable, the opposition of political sovereignism and judicial power would appear to resonate with a formalistic view of the division of powers. On the one hand, populists attack the division of powers as they criticise the 'political' role of the judges; on the other hand, they promote a formalistic division of powers (judges must only apply the law strictly). This also allows us to understand why populists do not target the judicial system as such. Some judges, in principle those defending a more formalistic division of the power, can make accommodations for populism.

The judiciary is criticised in the name of popular sovereignty, which is regarded as the ultimate source of power and legitimacy within a democratic system. Popular power must reshape the external relationship between the nation-state and supranational structures (EU, international treaties, etc.) through the repatriation of national sovereignty, as well as rearranging internal relations within the nation-state by politicising its societal spheres and state institutions (e.g. the judiciary). Accordingly, popular, national and political sovereignty, betrayed by the elites, can be reinstated. This restoration of popular power and sovereignty is closely connected to the populist 'politics of faith', 'the promise of a better world through action by the sovereign people'. Institutional, legalistic and judicial constraints are regarded as obstacles to achieving this redemption (Canovan 1999, 11; Corso 2014).

Thus, our contribution signals a paradox: While judicial power has so far not been extensively regarded as a scientific issue in populist scholarship, especially in comparative politics and political sociology, the discourse on judicial power by Western European RWPPs is strongly related to some issues recognised by these parties, including direct democracy and opposition to elites and supranational powers.

Of course, our study focused only on two Western European RWPPs and leaves open some questions for further empirical research. The question of the extent to which judicial power is framed similarly by other RWPPs in Western Europe arises. A larger comparative analysis would be needed to clarify this, although the statements by Le Pen and Salvini presented in the introduction to this article suggest that other relevant RWPPs use similar strategies vis-à-vis judicial power. However, these RWPPs' capacity to influence judicial power and the rule of law seems to be weaker than in Central Europe. Systematic comparative studies of the relationship between discourse and policy influence are needed to examine whether, and to what extent, the new authoritarian Central European variant of populism (Hungary, Poland etc.) differs from its Western counterpart and to grasp the crucial link between populism and the judiciary in RWPPs' mobilisation across Europe.

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