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Right-Wing Eurosceptic Parties and the Strategic Use of Law

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Abstract

Eurosceptic actors often mobilize legal concepts and institutions against European integration. This article makes three contributions to the understanding of this phenomenon. First, it proposes a conceptual definition of the Eurosceptic use of law as part of political strategies, with the aim to make a theoretical contribution to literature in the field. Second, to anchor this idea in the empirical reality, the article exhaustively analyses instances of use of law in the manifestos of medium to large size Eurosceptic parties in national elections, focusing on right wing Eurosceptic parties in the period 2010 to 2021. Third, the article presents some core features of how law is used by the Eurosceptic parties covered by this research at the strategic, conceptual, empirical and political levels, evidencing its widespread utilization and discussing its risks for the process of European integration.

Keywords: Euroscepticism; law; judicial dialogues; election manifestos; European integration

Introduction

Eurosceptic parties have learnt to speak the language of law. In Italy, Salvini's party *Lega* included in its 2018 electoral manifesto the idea that 'the case-law of the constitutional court should prevail over that of the European Court of Justice' (Lega, 2018, p. 21). In Germany, the 2017 manifesto of *Alternative für Deutschland* included references to the Lisbon ruling of the German Federal Constitutional Court, which was mobilized to justify their opposition to 'the rescue policies of the EU, the ECB, and the ESM [which] violate sovereign rights' (AfD, 2017, p. 18). These two instances of Eurosceptic mobilization of law were not accidental. Far from it, both manifestos made the effort to connect their proposals to actual constitutional case law, the phrasing being reminiscent of the discussions on judicial dialogues and legal pluralism that have occupied scholars for decades now (see the excellent works by, inter alia, Alter, 1996; Baquero Cruz, 2007; MacCormick, 1995, 1999).

So far, works in the field of Euroscepticism have been very efficient in analysing some of the main political ideas and framings that Eurosceptic parties mobilize. For instance, De Vries and Edwards (2009, p. 5) show that 'right-wing extremist parties oppose European integration with the defence of "national sovereignty" and successfully mobilize national identity considerations against the EU'. Legal aspects, however, have been often absent from these discussions.

This is not to say that there is no research on this interesting phenomenon, the connection between law and Euroscepticism. Recently, Wind (2021, p. 49) has accurately described the problem of the use of 'constitutional identity politics' against European integration. There is also an important research inquiring whether European integration poses a challenge to liberal constitutionalism (de Búrca, 2018), as well as an incipient

literature starting to analyse the use that illiberal governments make of captured constitutional courts and the implications of this for the process of European Integration (Bárd and Bodnar, 2021; Kelemen and Pech, 2019). Furthermore, the complex reception of the constitutional principles of the European Union (EU) by constitutional courts of member states has long been well known to academics in the field (Bobic and Dawson, 2020; MacCormick, 1995). Suffice it to mention constitutional case law such as the *Solange* saga of the German Federal Constitutional Court, or rulings on EU Treaties such as Maastricht or Lisbon in the higher courts of countries such as Czech Republic, Denmark or Poland. Some of the finest works in this area have analysed this topic in terms of inter-court competition (Alter, 1996). But its dimension of party politics has not been scrutinized in much detail. This is so even if some research shows how national judicial decisions that question the primacy of EU law have been often issued in cases brought about by complaints from Eurosceptic actors (Castillo-Ortiz, 2017; Wendel, 2011).

Thus, to the best of this author's knowledge, comprehensive analyses of the exploitation by Eurosceptic parties of legal doctrines and institutions against European integration are missing. This is surprising because, as this article shows, many such parties are devoting a great attention to this issue.

This article fills in this important gap in our knowledge of the political strategies of Eurosceptic parties when it comes to mobilizing legal ideas and institutions. Focusing on medium sized to large right wing Eurosceptic parties, the article tries to answer the question how do these actors use law and constitutionalism and put it at the service of their political narratives and strategies. In responding this question, the article makes three contributions. First, it conceptualizes the mobilization of law against European integration, making a contribution to literature on Euroscepticism. Second, to ground this conceptualization in the empirical reality, the article analyses the election manifestos of right-wing Eurosceptic parties of the member states of the EU in the period between the entry into force of the Lisbon Treaty and the K3/21 decision of the Polish Constitutional Tribunal. Third, after carrying out this work, the article argues that the Eurosceptic use of law presents four main traits in the manifestos covered by this article: it exploits the reputation of legal institutions, it is distinct from but compatible with other Eurosceptic political strategies, it is a widespread phenomenon and it has the capacity to undermine European integration.

I. The Use of Law as Part of Eurosceptic Strategies

Euroscepticism is often used in a loose sense to refer to opposition to the process of European integration in general or the EU in particular. The concept has become ubiquitous in the academic, political and even journalistic fields. However, as suggested by De Vries and Edwards (2009, p. 10), 'the term suffers from great conceptual ambiguity'.

In their classification, Taggart and Szczerbiak differentiated between hard and soft forms of Euroscepticism. According to the authors, soft Euroscepticism consists on 'concerns on one (or a number) of policy areas [that] lead to the expression of qualified opposition to the EU, or where there is a sense that "national interest" is currently at odds with the EU's trajectory' (Taggart and Szczerbiak, 2002, p. 7). Conversely, hard

Euroscepticism is defined as a 'principled opposition to the EU and European integration and therefore can be seen in parties who think that their countries should withdraw from membership, or whose policies towards the EU are tantamount to being opposed to the whole project of European integration as it is currently conceived' (Taggart and Szczerbiak, 2002, p. 7). The definition of hard Euroscepticism that the authors provide is interesting as it covers two elements: 'membership' and 'policies (…) tantamount to being opposed to the whole project of European integration'. These are in fact two very different aspects of how a political party might articulate Eurosceptic stances.

More recently, Vasilopoulou (2009) provided for a different classification of Eurosceptic positions, focusing on extreme right parties. Her approach differentiates between the 'rejecting type', parties that reject the idea, practice and future of EU co-operation, the 'conditional type', parties that reject only the practice and future of EU co-operation, and the 'compromising type', which only oppose further integration.

This article contributes to literature on Euroscepticism by analysing the role of law in Eurosceptic narratives and strategies. Such strategic use of law complements to and intersects with the definitions of Euroscepticism put forward by the literature. As it is defined in this article, European integration is understood in a wide sense, as referring to not only the EU but also other regional organizations, notably the Council of Europe. Table 1 conceptualizes the strategic use of law in hard and soft Eurosceptic strategies.

Note that the use of Eurosceptic use of law is compatible with other Eurosceptic strategies, such as seeking the exit from European organizations. Hard Eurosceptics very often pursue the withdrawal of their country from the process of European integration or its organizations – that is, the EU of the Council of Europe – of the own member state. In these cases, Eurosceptic actors mobilize mainly other political tools, such as seeking and when possible holding membership referendums. These exit-oriented strategies by Eurosceptic parties are frequently – but not necessarily always – explicit in the goals they seek. They often declare openly their hostility to the relevant European regional organizations, as well as its willingness to lead their country out of them. Parties that favour these forms of Euroscepticism frequently resource to rhetoric of national independence in order to recover sovereignty. Finally, these exit strategies by Eurosceptic actors, in their hard version, largely overlap with the first prong of the definition of hard Euroscepticism put forward by Taggart and Szczerbiak (2002, p. 7) as 'principled opposition to the EU and

Table 1: Law in Hard and Soft Euroscepticism.

	Hard Euroscepticism	*Soft Euroscepticism*
Aspects of law mobilized	Constitutional supremacy: the national constitution takes precedence against European law	Any other Eurosceptic use of law
Effects	Undermining the core legal foundations of European integration	Undermining specific policies or potential developments of European integration
Relationship to Vasilopoulou (2009) *types*	Generally, between rejecting and conditional type	Generally, between conditional and compromising type

European integration and therefore can be seen in parties who think that their countries should withdraw from membership'.

Instead, the strategic use of law in Eurosceptic parties is different, and possibly more complex than plain exit strategies. It resources to primarily legal – mostly constitutional – rhetoric. When mobilizing law against European integration these parties do not focus on proposals about leaving European organizations, even if they often do propose so in parallel. If implemented, strategies turning law against European organizations might undermine them from the inside. Indeed, proposals that use law against European integration do it – to put it in the words of Taggart and Szcerbiak (2002, p. 7) – to oppose 'to the whole project of European integration as it is currently conceived', turning national law and constitutionalism against the fundamental principles around which the EU or the Council of Europe are structured. In the case of the EU, the most notable target is the principle of primacy, which is essential to the construction of this organization (see for some discussions Avbelj, 2011; Kumm and Comella, 2005).

Political strategies by Eurosceptic parties using law can take a number of forms. In its hardest form, Eurosceptics can resource to strong conceptions of constitutional supremacy, thus mobilizing national level constitutionalism against the EU, the Council of Europe, or the case-law of the supranational European courts. They can also resource to more complex doctrines, such as constitutional identity or constitutional pluralism (see Kelemen and Pech, 2019; Wind, 2021, p. 49). Eurosceptics might seek to ground their claims on constitutional provisions, or on constitutional case law, or even in doctrinal works. When convenient, they might amend the constitution to explicitly turn it against the fundamental principles of the European integration, as was recently the case in Hungary (Kelemen and Pech, 2019, pp. 67–68). What characterizes this Eurosceptic strategy is the use of legal arguments, ideas and institutions to undermine European regional organisations.

As already suggested, the use of law is not incompatible with other Eurosceptics strategies, such as seeking the exit from the relevant European organization. Both often feature together in the proposals of certain political parties, sometimes as complementary strategies. For instance, whilst Brexit can be categorized as an archetypical form of exit-type Euroscepticism, 'legal' arguments featured amongst those put forward by the leave camp. In this regard, de Búrca summarized a certain narrative of the leave camp as 'a refusal to be "ruled from abroad", as voters understood it, and a rejection of the primacy of "continental" and unresponsive European supranational law over domestic constitutional law and domestic constitutional traditions', together with issues of immigration, economic insecurity, nationalism and other concomitances with illiberal populism (de Búrca, 2018, p. 342). Furthermore, the author underlines the important role of opposition to the European Court of Justice amongst Brexit voters (de Búrca, 2018, p. 344).

II. Sources and Research Design

In order to scrutinize the Eurosceptic mobilization of law in practice, this article carries out a detailed analysis of manifestos of right-wing Eurosceptic parties in the context of general elections. I decided to use manifestos because of a number of characteristics that make them particularly helpful for this research. First, manifestos not only contain what in principle are the policy preferences of each party, but also constitute one of their main and

most formal ways to present themselves to voters. Second, unlike speeches and media interventions by politicians, manifestos are self-contained documents that can be exhaustively analysed without risk of leaving any information out of the analysis. Third, manifestos are publicly available. Fourth, election manifestos have not been sufficiently researched in this area, unlike judicial decisions questioning elements of European integration law, which have been the object of a large body of literature (inter alia Alter, 1996; Baquero Cruz, 2007; MacCormick, 1995). Finally, manifestos are relevant as they can transform into public policies in case the party reaches power, but they are also important otherwise as they influence public debate.

Right-wing Eurosceptic parties have been selected because of the conceptual link between their general political stance and Eurosceptic uses of law. Some literature has convincingly argued that nationalism is a common characteristic of both left-wing and right-wing Eurosceptic parties (Halikiopoulou et al., 2012). But this literature also suggests that right-wing Euroscepticism – singularly of a radical type – has specific features, including their aim to 'protect the nation against foreign influences' and their 'ethno-centric message that stresses the incompatibility of the EU with ethnic values' (Halikiopoulou et al., 2012, p. 510). These ideas are compatible with the strategic use of law in Eurosceptic narratives, in which national law – notably the constitution – can be used as an instrument to carry out a nationalist agenda through legal rhetoric and legal tools. The focus on right-wing Eurosceptic parties thus involve the exclusion from the sample of other parties, from left-wing Eurosceptics to more mainstream centrist parties, and thus the findings are not generalizable to them. In exchange, this strategy will allow me to provide for a more in-depth analysis of right-wing Eurosceptics, a family of parties that looks a priori very likely to mobilize national law in Eurosceptic strategies.

Within this family of parties I focus on those that obtained at least 10% of the vote in the relevant general election for all EU member states, so the object of the article is medium to large size Eurosceptic right-wing parties. Parties below 10% can also be politically influential: for instance, they can be king-makers in coalition negotiations, and they often condition the strategies of larger competing parties. However, I have focused on parties above 10% of the vote for two reasons. First, one of the aims of this article is to assess the risks for European integration of this mobilization of law, and smaller parties are more unlikely to implement their policies in each of electoral cycles covered. Second, the manifestos of larger parties are more likely to be relevant in terms of their capacity to influence public debate.

Finally, I focus on the manifestos of these parties in national elections – as opposed to, for instance, European Parliament elections – for two reasons: first, because the research has a particular interest in the mobilization of *national* law against European integration, and thus national elections are a particularly appropriate context to display the party stance before the voters and to put forward this type of Eurosceptic strategy and, second, because national elections are still considered as first-order elections, in which the most important political issues are debated.

Overall, the definition of the object of study thus involves the exclusion from this research of the manifestos of several types of parties. But in exchange, it will allow for a more systematic and detailed analysis of the parties and manifestos covered.

The period covered by this research starts when the Lisbon Treaty entered into force and finishes with the decision K3/21 of the Polish Constitutional Tribunal (7 October

2021). The Lisbon Treaty has been selected as starting point as it created the current institutional architecture of the EU. In particular, Declaration 17 annexed to the Lisbon Treaty acknowledges the principle of primacy as developed by the case law of the Court of Justice of the EU. The Lisbon Treaty, thus, culminates the legal evolution of the principle of primacy, putting it in a prominent place in the legal-political framework of the EU.

The period covered finishes with the judgement K3/21 of the Polish Constitutional Tribunal (7 October 2021). This judgement is so far the most far-reaching attempt at actually implementing a legal Eurosceptic strategy (see Bárd and Bodnar, 2021). The decision was so relevant that it is considered that it will change the dynamics of use of law in the manifestos of the Eurosceptic parties covered by this research. In this regard, it inaugurates a new phase in the politics of the Eurosceptic mobilization of law, and thus manifestos in elections taking place after this decision should be analysed separately. As suggested by Wind (2021, p. 49) it 'let the spirit out of the bottle, inspiring others far beyond the Polish borders. All of a sudden, not only right-wingers like French Marine Le Pen, Eric Zemour and Viktor Orban but also a respected conservative like Michel Barnier as well as the contender to the French Presidential election Valerie Precesse started questioning the primacy of EU law'.

In total, as can be seen in Table 2, 49 election manifestos were exhaustively analysed in search for proposals or arguments mobilizing national law against European integration. To do so, the manifestos were first read by the researcher in their entirety to look for instances of uses of law as part of Eurosceptic proposals and narratives. Second, to minimize the risk of missing information, each manifesto was checked again searching separately for key words: 'constitution' 'primacy' and 'supremacy'. In a third stage, a database was constructed, in which for each manifesto I included all relevant parts in which law was used in Eurosceptic proposals or narratives. That database was the main material upon which the findings of this article are based.

The manifestos were obtained from the Manifesto Project database (Volkens et al., 2021), which is widely used in political science (inter alia Røed, 2022; Schumacher et al., 2015). To manage the diversity of languages of the documents automated translation with Google Translate was used when necessary. Whilst automated translation software may be imperfect, it is still highly reliable and it was the only viable option to carry out a comprehensive research whose object of study is so diverse linguistically. Research in the social sciences shows the usefulness and reliability of the use of Google Translate (de Vries et al., 2018; DeMattee et al., 2022).

III. Analysis. Law in the Manifestos of Right-Wing Eurosceptic Parties

In this section, I show that the idea that law is mobilized as part of Eurosceptic strategies is backed by empirical material: the manifestos of right-wing Eurosceptic parties covered by this article. As I show, proposals in these manifestos can be classified into hard and soft forms of Euroscepticism when it comes to their use of law. Both forms of Euroscepticism in the manifestos provide for interesting insights on how these parties are accustomed to mobilizing law for their purposes. The parties frequently showed knowledge of constitutional case-law on European integration, citing not only their own national constitutional courts but also constitutional courts of other member states.

Table 2: Manifestos Included in the Sample of the Research.

Country[a]	*Party*	*Elections covered*	*Comments*
AUSTRIA	FPO	2013, 2017, 2019	
BELGIUM	N-VA	2010, 2014, 2019	
	VB	2019	
CROATIA	Most	2015	Only covered from 2013, when the country became a member state
	DPMS	2020	
CZECHIA	ODS	2010, 2017, 2021	
	SPD	2017	
DENMARK	DPP	2011, 2015	
ESTONIA	EKRE	2019	
FINLAND	Finss	2011, 2015, 2019	
FRANCE	FN	2012, 2017	
GERMANY	AfD	2017, 2021	
GREECE	ANEL	2012	
HUNGARY	Fidesz	2010	In the 2014 and 2018 election, Fidesz ran without any manifesto
	Jobbik	2010, 2014, 2018	
ITALY	Lega	2018	M5S not covered as it is difficult to classify it as a right-wing party strictly speaking
LATVIA	NA	2011, 2014, 2018	
	KPV LV	2018	
NETHERLANDS	PVV	2010, 2012, 2017, 2021	
POLAND	PiS	2011, 2015, 2019	
SLOVAKIA	SaS	2010, 2016	
	OL'aNO	2016	
SPAIN	VOX	2019	VOX presents the same manifesto twice in the two elections taking place in 2019
SWEDEN	SD	2014, 2018	
UK	Conservative Party	2010, 2015	Period covered finishes for the UK in 2016 when the Brexit referendum takes place
	UKIP	2015	

[a]Only displays countries for which at least a party in at least one election met the threshold to be included in the sample in the period covered.

Although I could not register any instance of an explicit citation to academic literature, the manifestos are also sometimes reminiscent of scholarly discussions about a range of issues such as judicial dialogues, EU democratic deficit, and judicial activism.

Hard Euroscepticism and the Quest for Constitutional Supremacy

The use of law against European integration has as its clearest and hardest expression in the assertion of constitutional supremacy over – and against – European law.

One of the clearest uses of constitutional supremacy against European institutions can be found in the 2018 manifesto of the Italian *Lega*. As explained in the introduction to this article, such manifesto states that the case law of the Italian Constitutional Court has to prevail over that of the European Court of Justice (Lega, 2018, p. 21). Furthermore, it referred to the case law of the German Federal Constitutional Court to argue that European

law (including treaties) in conflict with the national constitution must be rejected (Lega, 2018, p. 9). Salvini's manifesto for this election is particularly prolix in its discussion of constitutionalism and its mobilization against European integration.

Another party for which mentions of constitutional supremacy over EU law are relatively overt is the Polish party Law and Justice (*PiS*). The manifestos of *PiS* contained in three consecutive elections (2011, 2015 and 2019) statements that pointed at the use of Eurosceptic mobilization of law, although in the last instance the mentions were somewhat less explicit. In the 2011 election the manifesto states that the party strives for changes to the Constitution that define its superiority vis-à-vis primary and derivative European law (PiS, 2011, p. 219). The 2015 election manifesto is particularly clear. It states that it is the Polish Constitution that allows the application of EU law in Polish territory. Citing the case law of the Polish Constitutional Court on the Accession Treaty and the Lisbon Treaty, the manifesto commits to regulating the relationship between national law and EU to, inter alia, confirm the primacy of the Polish Constitution over EU law and the judgements of the European Court of Justice (PiS, 2014, p. 151). The 2019 *PiS* manifesto is subtler in this point, although the phrasing of the document has to be put in the context of the ongoing political relationship between the EU and Poland. In such manifesto, *PiS* commits to continue the reform of the judiciary, which the party seemed to deem legally valid. In this regard, it declares that EU law, including the Lisbon Treaty, are valid in their literal form; in connection to that, it also states that the highest law of Poland is the Constitution (PiS, 2019, p. 52). Whilst 2019 phrasing is less straightforward than in other cases, the fact is the PiS officials systematically have argued in defence of Polish constitutional primacy over EU law in relation precisely to the issue of their judicial reforms, so this case can be seen as one of implicit yet hard Eurosceptic use of law.

Together with the 2018 manifesto of the Italian *Lega* and the manifestos of the Polish *PiS*, there is another instance of a rather explicit Eurosceptic use of law in Estonia. In this country, *EKRE* states in its manifesto that the party opposes what they call the indiscriminate transposition of European directives and the implementation of regulations and directives that infringe Estonian sovereignty and the fundamental principles of the Constitution. On the whole, the party takes a very strong stance against supranationalism and European integration, including the suggestion to put Estonia's membership to the EU to a referendum (EKRE, 2019). The case, thus, is one of combination of very explicit Eurosceptic use of law with other anti-EU strategies.

In their 2015 manifesto the Danish People's Party is relatively explicit in its use of law for Eurosceptic purposes: the party states that the essential decisions concerning Denmark must be taken in the Danish parliament, and not by judges in the EU (DPP, 2015, p. 2). The reference to EU judges and the Danish parliament is a clear example of opposition to the role of the Court of Justice of the EU and its case-law. In this case, there is no explicit reference to the constitutional principles of the EU developed by the Court of Justice, such as primacy, but it is difficult not to understand that the criticism of the judges of the EU as an indirect reference to that.

The 2015 manifesto of the British Conservative party is interesting because it includes an explicit Eurosceptic use of law targeting the European Court of Human Rights. The party states that 'The next Conservative Government will scrap the Human Rights Act, and introduce a British Bill of Rights. This will break the formal link between British courts and the European Court of Human Rights, and make our own Supreme Court

the ultimate arbiter of human rights matters in the UK' (Conservative Party, 2015, p. 60). The same year, UKIP's manifesto included harsh criticisms to the 'poor judgements of the European Court of Justice that trample on the rights of victims' (UKIP, 2015, p. 52). UKIP also promised to remove the UK from the jurisdiction of the European Court of Human Rights, so that 'our own Supreme Court will act as the final authority in matters of Human Rights' (UKIP, 2015, p. 53), and incidentally criticises the Court of Justice of the EU – amongst other actors – for being responsible for the loss of rights of self-government of the UK (UKIP, 2015, p. 70). Eurosceptic mobilization of law addressed to the European Court of Human Rights by British parties runs in parallel to a stream of British legal academia that has showed a strong reluctance vis-à-vis this institution (inter alia Ekins, 2011, 2019).

Some manifestos can be considered to include uses of law in hard Eurosceptic strategies that are implicit rather than explicit. These were difficult cases. The 2012 (May election) manifesto of the Greek ANEL party is a good example. Its references to constitutional supremacy are very explicit, even if there is no direct mention of European integration in the relevant part of the manifesto. The party states that national independence is a non-negotiable principle, and mentions the promotion of national compliance with the Constitution and parliamentary democracy (ANEL, 2012). Similar is the case of Vox in the two 2019 elections in Spain: this party proposed 'to recover national sovereignty in the application of rulings of our courts' (Vox, 2019, p. 29). In the 2017 election the Czech party SPD included in their manifesto what they call the right to reject legislative action based on EU directives, but it is unclear whether they refer to a general rejection of the primacy of directives, or simply to the use of national transposition in a restrictive way. This manifesto, however, has to be put in the context of the complaint by this party that the EU determine the laws applying in the country and the criticism that Czech law is subject to EU law (SPD, 2017). Finally, the case of the British Conservatives in 2010 is very interesting. The party states that 'unlike other European countries, the UK does not have a written constitution. We will introduce a United Kingdom Sovereignty Bill to make it clear that ultimate authority stays in this country, in the Parliament'(Conservative Party, 2010, p. 114). Whilst not explicit, thus, the 2010 manifesto of the British Conservatives seems to clearly point towards some form of Eurosceptic use of law.

There are some cases were borderline but were considered as not being instances of mobilization of law in hard Euroscepticism after all. For instance, PVV (2012) puts forward a proposal of no EU interference with member state's domestic policies, and the submission of any EU plan that affects national sovereignty to referendum (Freedom Party, 2012, p. 17). In addition, they argue that the Netherlands should regain all its powers and veto rights (Freedom Party, 2012, p. 17). These proposals hint at some form of rejection of basic principles of the EU legal system, but since they do it using political language – and not legal concepts – they have not been classified as instances of use of law in Eurosceptic strategies. The 2017 manifesto of the Czech ODS party included the rejection of EU legislation contrary to the national interest (ODS, 2017, p. 11); however, such focus on national interest – a political concept – as opposed to the national constitution means that the case cannot be considered as one mobilization of law in hard Euroscepticism. Similar, finally, is the case of the 2017 manifesto of the French National Front, which simply mentions 'legislative sovereignty' (FN, 2017, p. 3).

In general, thus, the use of law in hard forms of Euroscepticism can be classified through a twofold distinction. On the one hand, there are those that are explicit and those that are implicit. On the other hand, Euroscepticism can mobilize law against the EU institutions, the Council of Europe, or both.

As can be seen in Table 3, by organizations the majority of statements mobilizing law in Eurosceptic strategies (61%) are addressed to the EU, although a large share of manifestos (31%) complement it with uses of law against the Council of Europe and the European Court of Human Rights. By rows, we can observe that a slight majority of uses of Eurosceptic uses of law (54%) are explicit, although there is an important share of manifestos that opt for subtler or implicit forms of legal Eurosceptic strategies (46%).

It is also interesting that when manifestos target the EU institutions they generally do it explicitly. However, when they target both the EU and the Council of Europe they tend to do it implicitly. This is because a vague, ambiguous formulation in this regard can cover both organizations and their courts without explicitly mentioning either of them. A good example is that of Vox, when they talk, as explained above, about 'recovering sovereignty in the application of rulings of our courts' (Vox, 2019, p. 29). Likewise, the aforementioned phrasing in the 2010 manifesto of the British Conservatives is ambiguous enough to question the authority of both the CJEU and the ECtHR without mentioning either of them (Conservative Party, 2010, p. 114). In fact, in these cases the ambiguity of the proposals is not limited to the institutions targeted by them. It extends also to the details of the proposals, and the way in which the relationship with supranational law would be articulated were the proposals to be implemented.

Softer Mobilizations of Law against European Integration

The use of law against European integration is however not circumscribed to the issue of constitutional supremacy. In many cases, political parties used other legal arguments as part of Eurosceptic narratives and proposals. These other aspects were frequently related to the national constitution. But that was not always the case. They sometimes referred to the treaties of the EU or to the secondary legislation of the EU, and even in some occasions to the handling of EU law in the internal legal system in general.

Table 3: Classification of Hard Forms of Eurosceptic Use of Law in the Manifestos.

	EU only	*CoE only*	*EU and CoE*	*Share by rows*
Explicit	Lega 2018 PiS 2011 PiS 2014 EKRE 2019 DPP 2015	Conservatives 2015	UKIP 2015[a]	54%
Implicit	PiS, 2019 ANEL 2012 (m) SPD 2017		Conservatives 2010 Vox 2019 (a) Vox 2019 (n)	46%
Share by columns	61%	8%	31%	100%

[a]Explicit regarding the ECtHR but implicit regarding the CJEU.

Eurosceptic parties using law in this softer way are not always softer in the rest of their Eurosceptic proposals. A good example is the German AfD party which, as I show below, did not –explicitly- claim the national constitution to have supremacy over EU law, but which however suggested a potential German exit from the EU (AfD, 2017).

Unlike hard forms of Eurosceptic mobilizations of law, that are characterized by their focus on constitutional supremacy, soft Eurosceptic approaches to the use of law are varied. They mobilize law in different ways against European integration. However, some common patterns and themes can be identified:

- *The use of constitutional concepts and case-law to back Eurosceptic policy proposals and narratives*. The German party AfD is a good example of this. In its 2017 manifesto the party AfD cites case law of the German Federal Constitutional Court to argue against the Euro rescue policies and in favour of leaving the Euro currency (AfD, 2017, p. 19). In their 2021 manifesto, the party is less explicit about constitutional case law, even if it includes some statements that are reminiscent of the judicial dialogues and even academic literature about them. For instance, the party argues that only at the national state level there can be popular sovereignty and democracy (AfD, 2021, p. 28). In so doing, AfD seemed to echo the debates about the no-demos thesis and democratic deficit that have long been part of academic discussion on EU constitutionalism (see inter alia Grimm, 1995; MacCormick, 1997). In that manifesto, AfD also argues that the Euro currency lacks the institutional basis that is an essential requirement for its constitutional legitimacy (AfD, 2021, p. 50).
- *Criticisms against EU law.* Other parties include in their manifestos general criticisms about the legal system of the EU. The Danish People's Party criticized in its 2011 manifesto the amount of legislation coming from 'Brussels', arguing that the EU should not decide over Denmark and instead the democratic choices of the Danish people should prevail (DPP, 2011, p. 3). In this regard, the DPP, 2011 manifesto is a borderline case, although it has not been classified as one use of law in hard Euroscepticism because there is no explicit or implicit threat to give precedence to national law over EU law. Similarly, in 2017 the Austrian FPO proposed a reorganization of the Treaties of the EU to supress the developments included in the Maastricht and Lisbon treaties (FPÖ, 2017, p. 27).
- *Criticisms against the handling of EU law in national law and politics*. This includes the 2011 manifesto of Finns Party, which opposes the mentioning of the EU in the Finnish Constitution (Finns, 2011, p. 36). The party also claims that further transfer of powers to the EU should always be put to a national referendum (Finns, 2011, p. 33), something that can also be found in the 2010 manifesto of the Conservative Party (Conservative Party, 2010, p. 113) and the 2017 manifesto of the German AfD (AfD, 2017, p. 8). The Slovak SaS party argued in 2010 that transposition of EU directives is often abused (SaS, 2010, item 42).

IV. Turning Law against European Integration: Some Core Traits of Eurosceptic Strategies Mobilizing Law

This section moves towards a more analytical approach and explains four main traits of Eurosceptic uses of law. My analysis in this section focuses on this phenomenon at the

strategic, conceptual, empirical and political levels, and it has the aim to help us better understand what is the mobilization of law by Eurosceptic parties and what are its implications.

At the Strategic Level it Borrows the Reputation of Legal Institutions

In 1962, in his seminal essay on the topic, Giovanni Sartori warned against the abuse of constitutional ideas and rhetoric:

> In our minds, constitution is a 'good word'. It has favourable emotive properties, like freedom, justice or democracy (…) The political exploitation and manipulation of language takes advantage of the fact that the emotive properties of a word survive –at times for a surprisingly long time- despite the fact that what the word denotes, i.e., the 'thing', comes to be a completely different thing (Sartori, 1962, p. 855).

Sartori's piece was, I believe, an attempt to provide for a meaningful definition of constitutionalism. Contrary to an expansive, shallow use of the concept, constitutionalism as an idea was only meaningful if referring to a system of limited government, with checks and balances and respect for the rights of citizens. Sartori also seemed to warn in his piece about the risks of a potential political exploitation of the positive connotations of constitutionalism.

Eurosceptics uses of law can be best understood in light of Sartori's warning. They use the positive connotations of legal institutions, most frequently of constitutionalism, and puts it at the service of a political enterprise. In turning legal and constitutional ideas and institutions against European organizations, Eurosceptics utilize the prestige and reputational capital that the former enjoy in democratic societies.

At the Conceptual Level it Is Autonomous from but Compatible with Other Eurosceptic Strategies

The connection between Eurosceptic uses of law and other Eurosceptic strategies is also worth analysing, most notably when it comes to proposals to exit European organizations. Conceptually, we can think of these two forms of Euroscepticism as autonomous but compatible. Parties can theoretically opt for a strategic use of law to advance their Eurosceptic agendas, for exit strategies, for both or for none. In fact, when it comes to hard forms of Euroscepticism, there are empirical instances of these four combinations in the parties of the sample (see Table 4).

UKIP is a good example of how a Eurosceptic party can easily combine exit strategies with a strategic mobilization of law. In its 2015 manifesto the party promised to remove the UK from the jurisdiction of the ECtHR (UKIP, 2015, p. 51), which constituted a clear use of law in the context of hard Euroscepticism addressed to the Council of Europe. But, following its traditional party line, UKIP also promised to leave the EU, which is an

Table 4: Examples of the Intersections Between Legal and Political Euroscepticism.

	Legal strategy present	*Legal strategy absent*
Exit strategy present	UKIP 2015	FN2012
Exit strategy absent absent	Lega 2018	ODS 2021

explicit form of a more 'political' approach to hard Euroscepticism: 'A British exit from the EU, "Brexit", is the only choice open for us, if we are to make our own laws and control our own destiny' (UKIP, 2015, p. 70). In fact, note how the former statement combines legal elements with a clear proposal to leave the EU.

Other parties, however, opted for other combinations of these two forms of Euroscepticism. As explained throughout this article, the Italian *Lega*'s manifesto contained in 2018 a strong component of law as part of the party's Euroscepticism. However, despite a harsh rhetoric against European integration and the EU in particular, and despite proposing an exit from the Euro currency, the party did not suggest in the document an Italian exit from this organization – albeit they argue in favour of a deep renegotiation of the treaties of the EU – (Lega, 2018). The opposite option was represented by Le Pen's *Front National*. In the 2012 election the manifesto of this party does not contain any elaborate, hard forms of legal approaches to Euroscepticism. But instead, the party opts for an exit strategy in its hard – yet ambiguous – Eurosceptic proposal mentioning Article 50 TEU: 'In the context of Article 50 of the Treaty of the European Union, a renegotiation of the treaties will be initiated with an aim to break up with the failing dogmatic construction of Europe' (FN, 2012, p. 15).

Finally, there were instances of manifestos covered by the research that do not contain any hard forms of Euroscepticism, neither using exit strategies nor more law-oriented approaches, despite being traditionally considered as Eurosceptic parties. A good example is the Czech party ODS in the 2021 election.

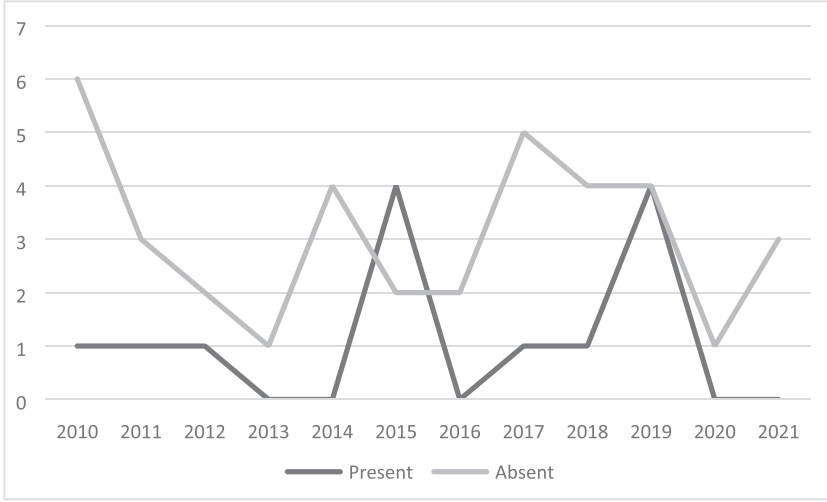
At the Empirical Level it Is Widespread and Not New

Another way to look at hard Eurosceptic uses of law is by describing its occurrence over time (Figure 1) and across countries (Figure 2). Time and geography matter because they offer the possibility to identify some basic patterns in the occurrence with the phenomena explored. To these purposes, in the next lines I use the data presented in 'Hard Euroscepticism and the Quest for Constitutional Supremacy' section (see specially Table 3), as in that section I was enumerated the manifestos that could be considered as including a law-related hard Eurosceptic strategy – that is, one mobilizing constitutional supremacy against European law.

Starting with the time dimension, Figure 1 shows that the absolute number of positive cases does not grow over time. On the contrary, the data does not seem to show clear chronological patterns, with the occurrence of the use of law in Eurosceptic strategies in manifestos probably owing to other variables. As a proportion of cases, however, there is a pattern that can be identified in Figure 1: the number of manifestos with instances of use of law as part of Eurosceptic strategies is, for every year, lower than the number of manifestos without them, with the exception of 2015 and 2019. This, however, is not to say that hard Eurosceptic uses of law are a residual phenomenon: instead, this was observed in 7 out of the slightly more than 10 years of the period covered by the research. Whilst not ubiquitous, the use of law as an element of Euroscepticism is thus a persistent phenomenon in the period covered.

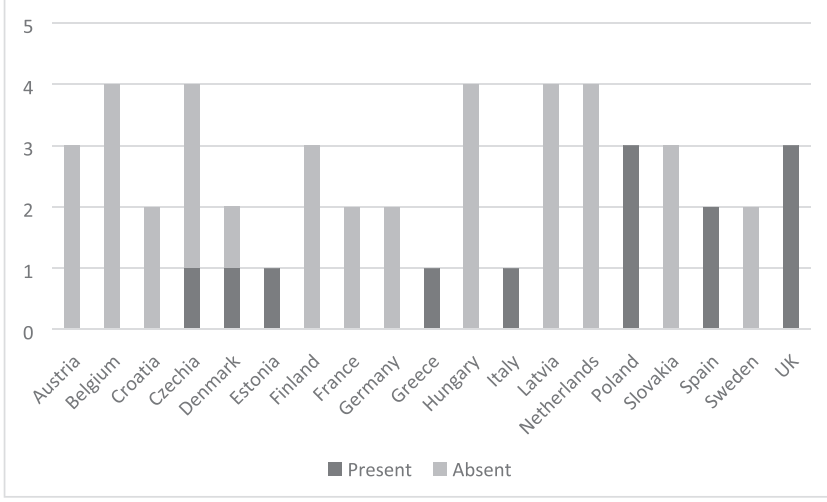
By countries, Figure 2 also allows for the identification of some patterns. First, in many countries (Austria, Belgium, Croatia, Finland, France, Germany, Hungary, Latvia, the Netherlands, Slovakia and Sweden) no manifesto in the sample ever included a hard

Figure 1: Presence and Absence of Law in Hard Euroscepticism in Election Manifestos over Time.



Source: Own elaboration upon primary sources.

Figure 2: Law in Hard Euroscepticism by Country.



Source: Own elaboration upon primary sources.

Eurosceptic use of law. However, in some other countries (Poland, Spain and UK) two or more instances of hard use of law as part of Euroscepticism strategies can be found. Additionally, Czechia and Denmark are the only country with both cases of presence and case of absence of hard use of legal in Eurosceptic strategies. In the case of

Denmark, this variation is the result of the evolution of the Danish People's Party: the party did not include it in its 2011 manifesto but did in the 2015 election. One additional observation has to do with the diversity of scenarios in which the hard use of law in Euroscepticism can be found, as countries where parties include it in their manifesto are very diverse. They cover member states from the North, South, West and East of the continent. They include countries with traditionally high levels of support for the EU (Spain) together with more Eurosceptic ones (such as the – pre-Brexit – UK). They cover wealthier countries (Denmark) together with member states deeply affect by the Euro-crisis (Greece). This points at hard forms of use of law in Euroscepticism being a versatile electoral strategy, one that can flourish in the most varied socio-political contexts. In other words, no political scenario seems to be immune to it. This poses an additional challenge to European organizations for which, as argued below, legal-Eurosceptic strategies poses a formidable challenge.

At the Political Level it Has the Capacity to Pose a Real Threat to the Process of European Integration

The corollary of the former is that the use of law by Eurosceptics might endanger the process of European integration. European supranational organizations cannot function if European countries that are members to them do not accept their basic principles. In the case of the EU, respect for principles such as primacy. In the case of the Council of Europe, respect for the case law of the European Court of Human Rights.

At this point, however, that is not a given. What many Eurosceptic parties propose is not even quietly ignoring the case-law of supranational courts. Rather, they loudly want to challenge it. They have turned law and constitutionalism against European integration, not only at the rhetorical but also at the practical level. The K3/21 decision of the Polish Constitutional Tribunal is a reminder that the use of law by Eurosceptis in not just a form of discourse: it can become a practice and be implemented through actual State institutions (see Bárd and Bodnar, 2021). The more actors join the Polish Constitutional Tribunal, the more likely it is that the damage becomes serious.

The different contexts in which the legal strategy is used by Eurosceptic parties can have differential impacts on the process of European Integration. The most meaningful such impacts are related their utilization by larger political parties, especially those with an opportunity to reach political power and implement their policy agenda, which were covered by this research.

Kelemen and Pech (2019) have convincingly explained how illiberal governments in power can abuse the doctrines of constitutional identity and constitutional pluralism. The political exploitation of these two doctrines can be deemed as conceptually part of a strategy of Eurosceptic use of law. As put by the authors 'local autocrats operating within unions that guarantee the protection of fundamental rights and core democratic principles are naturally attracted to legal doctrines like constitutional pluralism that would provide them with a justification the union's common norms' (Kelemen and Pech, 2019, p. 64). Wind (2021, p. 51) has also warned against this phenomenon, by arguing that 'any identitarian-based rejection of European constitutionalism would be extremely dangerous and have repercussions for all far beyond its worst protagonists. It would in reality

amount to a goodbye to the Union as we know it and the cohesion of the internal market, and most likely also to those common liberal values which are encapsulated in the treaties, the *acquis communautaire* and our common post-war history'.

Conclusion

This article has provided for a first exploration a phenomenon largely known in European studies but which had remained so far undertheorized and which had not been covered systematically. Works in the field have made exceptional contributions to the understanding of judicial decisions that question elements of European integration law, and also to the understanding specific aspects of the use of law by Eurosceptic parties. But conceptual and systematic empirical analyses of this topic have so far been missing, to the best of this author's knowledge. This is striking given the importance of the phenomenon, which has the capacity to undermine the core elements of the process of European integration.

The aim of this article is to put the legal dimension of Euroscepticism in a prominent place of the agenda in the field. To do so, this research has covered a subset of the potential universe of cases of Eurosceptic uses of law: manifestos of right-wing Eurosceptic parties that obtained at least 10% of the vote in the general elections in the 2009–2021 period. This necessarily limits the reach and generalizability of the findings, even if I believe that such findings tell us something meaningful about the manifestos covered in the sample of this article. In any case, research about parties of other ideologies and in other periods of the process of European integration is essential to understand the genealogy and implications of Eurosceptic strategies using law. And research about smaller parties is necessary to understand whether these follow different strategies when using law. Future research will also have to address the connections between the Eurosceptic use of law by political parties, legal literature critical of the process of European integration, and court decisions. And despite the very valuable existing contributions about the way Euroscepticism through law is actually implemented in countries like Poland or Hungary, more research about its consequences is necessary. After all, the legal dimension of Euroscepticism has facets that are relevant for theorists, doctrinal legal academics, and empirical social scientists.

With this piece, I hope to have provided for a more elaborated conceptualization of the phenomenon explored, a first systematic empirical analysis of its utilization, and more generally, I hope to have contributed to providing the impetus for a further, much necessary research on this important topic.

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