

Party Laws in Comparative Perspective

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Introduction

Political parties have become increasingly subject to legislation in recent years. The liberal principle of non-intervention in political parties' internal matters that prevailed across the European continent from the very emergence of political parties as organizations seems no longer to be the dominant paradigm. The several guidelines adopted by the European Commission for Democracy Through Law ('Venice Commission') and directed to state actors, although not mandatory, offer a clear indication of the degree to which greater intervention in political parties' affairs is currently being sought. According to the 'guidelines on political party regulation' issued in October 2010, "basic tenets of a democratic society, as well as recognized human rights, allow for the development of some common principles applicable to any legal system for the regulation of political parties".¹

Not only has the regulation of political parties in Europe increased overall, but Europe is witnessing a proliferation of specific Laws on Political Parties or Party Laws. Yet, despite increasing state regulation of the life and statute of the political party, relatively little comparative attention has been given to the development of this phenomenon. As Janda observes, "there are not many systematic cross-national surveys of party law" (Janda, 2005, 6 and 2006b). Indeed, except for some references to the regulation of the establishment of political parties, works studying political parties and the dynamics of party systems say little about the most obvious and direct manner through which the life and existence of

a political party is regulated by legislation. Müller and Sieberer (2006, 435) accurately note that party law has been the domain of academic lawyers, and “political scientists, while interested in the substance of party regulation in some selected fields, in particular with regard to election and party finance, have not devoted much attention to party law as such”.

We argue that the proliferation of Party Laws across Europe (i) is an important phenomenon *per se*; (ii) has important normative implications concerning the position that political parties have acquired in modern representative democracies; and also (iii) has the potential to affect the organizational development of political parties and party systems. First, it is the role of political parties as main vehicles of democracy (Schattschneider 1942) and their centrality with respect to political representation (Sartori 1976) that, alone, warrants a study of the rules governing party establishment and party life. Additionally, Party Laws contain regulations on a variety of aspects of party organization, varying from their definition, composition, structure, programme and activities to specific rules about party finance and external control over their activities. The proliferation of such rules has been observed in the light of the increasing intervention of the state in internal party matters, which undermines the fundamental nature of political parties as voluntary organizations, transforming them into ‘public utilities’ (van Biezen 2004). Another reason justifying the interest in the study of party regulation in the Party Law is that often rules specified in, but not limited to, the Party Law affect the format and functioning of party systems; so, for instance, they determine whether or not we see few or many new political entrants (van Biezen and Rashkova 2012) and affect the nature of the competition and competitors (see chapter 9 in this volume on ethnic parties). Finally, as we will discuss in this chapter, there are differences and similarities in the regulation of parties both among states and across time. Thus, by tracing the variation in the constraints and benefits that parties are subjected to, we offer a useful departure base for studies interested in the examination of the causes and consequences of legal regulation, or their effects on party competition, electoral developments, and policy enactment.

This chapter provides an overview of party regulation in the Party Laws of post-war European democracies. Building on previous work studying the constitutional regulation of political parties, a rich and original dataset of party laws has been collected under the *Re-conceptualizing Party Democracy* project.² The chapter explores the temporal pattern of promulgation of Party Laws, their main regulatory focus, and shows how regulation through Party Laws differs over time and across countries. In

doing so, it presents an overview of the content of party laws, offering a quantitative overview of the range and magnitude of party regulation, thus depicting trends in changes of regulation over time, insights to what aspects of the life of political parties are regulated most heavily and most often, as well as providing an analysis of whether there are significant differences in the evolution of regulation between different groups of countries. The final section of the chapter supplements the quantitative examination of party regulation with a qualitative case study on the party law of Spain. Drawing on Karvonen's seminal study (2007), the Spanish Party Law is analysed, emphasizing three distinct categories believed to have a substantive effect on the life of a party. These are party bans, registration and membership requirements, as well as judicial, legal or administrative sanctions. There, and notwithstanding the special concern of the Spanish legislator with terrorism, we find, as in most European countries, a rather open system of party registration; a prototype of what a party statute should contain which, as in most democracies, tends to be minimal; and, last but not least, both governmental (preventive) and judicial (successive) control of political parties. The chapter concludes with a summary of the data presented and a discussion of potential research directions for the future.

The proliferation of Party Laws across Europe

Before we describe the temporal pattern of regulation of political parties through Party Laws across Europe it is essential to provide a definition of Party Law. Indeed, as Janda remarked, "the term 'party law' is nebulous" (Janda 2006b, 2).³ Scholars have defined 'party law' as "the total body of law that affects political parties" (Müller and Sieberer 2006, 436), therefore indicating by this term *all* state rules governing, or having an effect on, political parties as organizations. Indeed, state regulation of political parties may originate in different bodies of law, such as Electoral Laws, Campaign Laws, Political Finance Laws, Party Laws, as well as in Media Laws, Laws on Civil Association, national Constitutions, administrative rulings, legislative statutes, and (constitutional) court decisions (see Janda 2005 and 2006b; van Biezen and Borz, 2012).

As the core focus of this research is on the legal regulation specifically directed at political parties as organizations, in this chapter we define Party Laws (PLs) as those laws which make a textual reference to political parties in their title (e.g. Law on Political Parties, Party Law). Laws that

are not limited in this regard – such as laws on political associations more generally, electoral laws, or laws on party finance – are not considered in this analysis, even though, as described above, they may also apply to political parties. Hence, legal documents which refer to, but are not exclusively devoted to, political parties are not included in our definition.

Of the thirty-three countries included in the *Re-conceptualizing Party Democracy* project, consisting of the independent and democratic European states in the post-war period (1944-2010), twenty have adopted a Party Law: Austria, Bulgaria, Croatia, Czech Republic, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Ukraine, and the United Kingdom.⁴ Figure 1 provides an overview of the establishment of the regulation of political parties through Party Laws in European democracies, listing for each country the year in which Party Laws were first approved.⁵

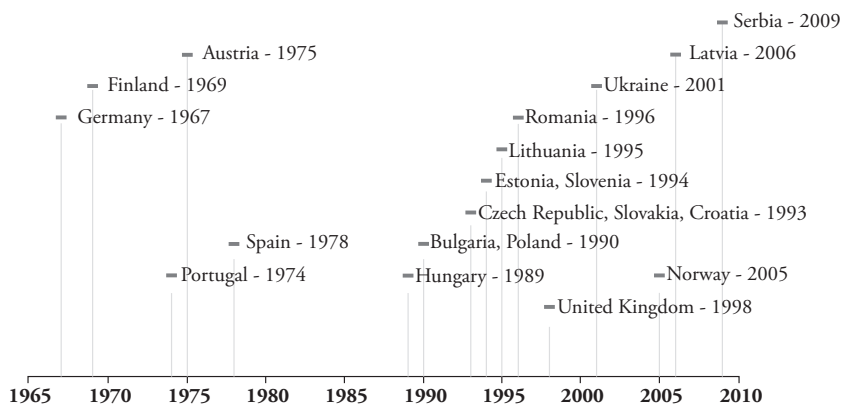


Figure 1. The Adoption of Party Laws in Post-War Europe

Figure 1 shows how the process of party regulation through Party Laws started with the establishment of the German Party Law in 1967. However, although Germany has been considered “the heartland of Party Law” (Müller and Sieberer, 2005, 435), it is important to note here that the so-called *Deutsch Parteiengesetz* was not the first, either in the world or even in Europe (Karvonen, 2007, 451-453). That honour belongs, respectively, to the Venezuelan *Ley de Partidos Políticos, Reuniones Públicas and Manifestaciones* (1964) and the *Siyasî Partiler Kanunu* passed by the Turkish Grand National Assembly in June 1965.⁶ Still, it was only after the promulgation of the German Law on Political Parties on 24 July

1967 that this type of legislation began to proliferate on the continent. In other words, it was not the Venezuelan or the Turkish Party Law but the German Act which, bearer of the most comprehensive and detailed regulation, became a model to follow for many national laws on political parties, particularly in the newly created European democracies (Müller and Sieberer, 2006, 438; Kasapovic, 2001, 7).

As others have observed in relation to the “party constitutionalization” phenomenon (van Biezen and Borz, 2012; see also van Biezen in this volume), in the process of Party Law promulgation it is possible to distinguish three different phases. In this context, Germany, Finland, and also Austria – three countries which democratized during the first half of the XXth century – were part of the first wave of party regulation. Even if the latter two differ from the first one in length as well as in the detail of regulation of the parties’ internal organizational structure,⁷ all of them respond to the necessity of regulating the public finance of political parties, granted at the same time (e.g. Austria and Finland) or just a couple of years before the establishment of the Party Law (1959 in the case of Germany) (Piccio, 2012).

A second wave of party law-making coincides with the beginning of Huntington’s ‘Third Wave’, clustering together both Portugal and Spain. Unlike in the previous ‘wave of party regulation’, these laws have a different political background. Here the main aim was not so much the regulation of public funding of political parties, which was introduced at a later stage,⁸ but the necessity to control the creation and activity of the parties which started to proliferate in the new democratic environment. Indeed, as we will underline in the next sections of this chapter, in both Portugal and Spain the bulk of provisions contained in these first laws deal with the regulation of political parties as organizations *per se*.

The third wave of post-war party regulation is strictly connected to the fall of communism in Eastern Europe in the early 90s. In this sense, it exactly coincides with what some have named the “Fourth Wave of democratization” (McFaul, 2002). Indeed, the interconnection between these two waves is so straightforward that no East-European democracy has remained unaffected by such regulatory process since the passing of the first Party Law in Hungary in 1989. Moreover, in most cases the laws regulating political parties were introduced in the years immediately following the democratic transition.⁹ In any case, and with very few exceptions, all these laws, modelled on the German Party Law, have brought together in a single legal document each of the goals examined above: namely, the regulation of both party funding and party

organization. As shown later in Table 1, East-European countries have been more inclined to regulate political parties than earlier democratizers. One reason for this may be the lack of confidence of the legislator in the process of democratic consolidation. All in all, the Party Laws adopted in Europe after 1989 have all been enacted in East-European countries, with the sole exceptions of the United Kingdom and Norway. Unlike those enacted in Eastern Europe, the UK and Norwegian Party Laws do not include provisions on party organization, but they were rather designed to provide a regulatory system for party registration (UK), and for the regulation of party finance (Norway).¹⁰

The content of Party Laws

In the last section we outlined the evolution in the establishment of Party Laws across Europe. But what are Party Laws about, and which specific aspects of party organization do they regulate? Previous research has underlined that Party Laws serve a number of basic purposes: to determine what is entitled to be recognized as a political party; to regulate the forms of activity in which political parties may engage; and to regulate the forms of internal organization and political behaviour that are acceptable for political parties (Katz 2004, 2-3). Karvonen included the establishment of sanctions as a further analytical dimension of party regulation (Karvonen 2007).

In order to make sense of the vast scope of rules which lie in the Party Laws, we used the analytical framework first developed in *The Constitutional Regulation of Political Parties in Post-War Europe* project (see van Biezen and Borz, 2012). As with the analysis of Constitutions, the content of Party Laws is examined with respect to twelve main domains of party regulation: (1) democratic principles; (2) rights and freedoms; (3) extra-parliamentary party; (4) electoral party; (5) parliamentary party; (6) governmental party; (7) activity and behaviour; (8) identity and programme; (9) party finance; (10) media access; (11) external oversight; and (12) secondary legislation.

Democratic principles and *rights and freedoms* include references which define political parties in terms of key democratic principles and values, or which associate parties with fundamental democratic rights and liberties. For example, a discussion of principles such as competition and equality or mention of democratic values like pluralism, participation, popular will, and representation is coded in those two categories. The Party Law

of Lithuania, for instance, stipulates that “political parties shall ... assist in shaping and expressing the interests and political will of the citizens of the Republic of Lithuania” (Law on Political Parties and Organizations, art. 1) and they shall “enjoy the right to freely disseminate information in written, verbal, or any other way in their activities” (*Ibidem*, art. 18.1). The organization of parties is subdivided into four categories, each dealing with regulations of the party in its specific role – the party outside, the party in the electoral arena, the party in parliament, and the party in government. The *extra-parliamentary* category includes provisions regulating the internal operational structure of political parties. Among these are regulations devoted to the internal democracy of political parties, which refer to the election of party bodies, their accountability, the resolution of party conflict and procedures for nomination to public office, to name but a few.¹¹ The German Party Law, for example, stipulates that “Party members and delegates in the party bodies shall have equal voting rights” (The Law on Political Parties, art. 10.2). Reflecting the fact that most states have party law provisions about party membership, one of the main components of the extra-parliamentary party category denotes rules on the compatibility of party membership with membership or activity of other elected offices, the civil service, the judiciary, trade unions, or other public office. The extra-parliamentary party category further includes references to the organizational structure and the legal status and registration requirements of political parties. Electoral rules, campaign activity and rules on fielding candidates are part of the second subcategory in the organizational structure of parties entitled the *electoral party*. This category generally reflects references to the party in competition. The behaviour of parties in parliament in reference to regional and local legislature, the participation in parliamentary committees, staffing, and policy formation are subjects in the *parliamentary party* category. Here, all legal references to the conduct of the party in parliament are coded. Lastly, we have a category dealing with the *governmental party* which includes references on how national, regional and local executive are to be composed.

In the *activity and identity* category, the coding scheme registers provisions aimed at restricting or prohibiting certain forms of behaviour or certain ideological foundations of political parties. Many laws contain conditions regarding respect for human rights, the prohibition of the use of violence, the spreading of hatred or the use of undemocratic methods by political parties. The Spanish Party Law offers an example of the last as it prohibits political parties whose actions “univocally show a track record

of breakdown of democracy and offence against the constitutional values” (Law on Political Parties, Preamble). Some states go as far as to prohibit the formation of political parties on ethnic, nationalistic or religious grounds. Indeed, the only country within our dataset to ban parties on ethnic grounds is Bulgaria (for more details, see chapter 8). In some cases, while parties are not banned for identity reasons, stringent rules exist that forbid political parties accepting donations from religious institutions, humanitarian or similar organizations. For instance, while the Bulgarian Party Law stipulates that “political parties shall not receive funds from anonymous donations, legal persons, religious institutions and foreign governments” (2009, Article 24), Slovenia not only does not allow parties to be funded by “state and local community authorities, entities governed by public law, humanitarian organizations, religious communities...” (2007, Art. 25) but it also imposes “a fine of €4150 to €20850 ... upon entities governed by public law, humanitarian organizations, religious communities ... if they finance a party” (2007, Art. 29). Such stipulations are in the *party finance* category. Due to the large number of financial matters pertaining to political parties, the category of party finance is subdivided into five further sub-categories. These are *direct public funding*, *indirect public funding*, *private funding*, *regulation of expenditures*, and *reporting and disclosure*. Naturally, the first two include rules about the amount, allocation and use of public funding, while the last three focus on limits, transparency, and use of private funding, as well as on rules of disclosure of funding and expenditure overall. A large part of the lawfulness of party activity is to be monitored by external institutions, such as a supervising authority or a system of sanctions. Provisions relating to the type of monitoring and how parties are to be monitored are in the *external oversight* category. An example of a clause falling in this category is the stipulation in the Polish Party Law that “[e]xamination of cases for ascertainment of non-compliance of the purposes and activities of political parties with the Constitution shall fall within the competence of the Constitutional Tribunal” (Act on Political Parties, Art. 42). Lastly, regulations pertaining to further legislation applying to political parties and provisions about the use of media by political parties are in the *secondary legislation* and the *media access* categories, respectively. The latter consists mostly of allocation and restriction mechanisms for the use of public and private media during electoral and non-electoral periods.

Data analysis

In order to quantify the extent to which different laws regulate specific domains, each Party Law was coded and analysed for references to the twelve dimensions of party regulation described above. How is regulation distributed along those categories? To give a preliminary answer to this question, table 1 presents a comparative overview of the *magnitude* of regulation of political parties that exists in Party Laws.

The top row lists the categories across which the coding of regulation is done. Table 1 includes the twenty European democracies which have adopted a Party Law. Each cell represents the amount of regulation a country enacts in a specific category in relation to the regulation in its entire party law (in percent), while in parenthesis we show the ‘raw count’ of regulation depicting the number of instances on which a country’s law mentions the category in question. So for example, 24.1 per cent of the Czech Republic’s party law is devoted to the regulation of the *extra-parliamentary* category, with 39 unique counts of mentions of the internal procedures, membership organization or the organizational structure of the party (all in the overarching extra-parliamentary category). In total, when we add all raw counts presented in the parenthesis horizontally, the magnitude of regulation in the Czech party law amounts to 162. This means that 162 unique mentions of characteristics included under our twelve broad categories were found within the law. To put the figure in comparative perspective, the magnitude of the United Kingdom’s party law adds up to a mere 69 mentions. Finland ranks even lower with a magnitude of 50, while Germany, the country where party regulation originated, reportedly exhibits the highest number of regulation instances adding up to 304 altogether.

To ease the comparison between countries, the category in which a country regulates most heavily is shown in bold. We see that Austria and Bulgaria, for example, regulate most heavily in the *party finance* category, while Croatia, Estonia, and Germany, among others, put their regulatory efforts into the *extra-parliamentary* category. The UK, Poland and Estonia, on the other hand, spend half or nearly half of their regulatory attempts in controlling the *external oversight* of parties. Another observation that comes out of the data presented in the table is that the *extra-parliamentary* category is regulated most heavily in the largest number of cases. We see that 10 states devote most of the regulation in their party law to this category. Interestingly, 8 of the 10 states which regulate the *extra-parliamentary party* most heavily are post-communist democracies. Considering that the *extra-parliamentary* category contains regulation

about registration rules and requirements which guide the establishment, existence, and competition of political parties, this is not surprising, as we know that a lot of rules attempting to combat the often high party system fractionalization in those countries have been introduced in recent years. For example, the number of citizens who are required to register a political party, which is in the *extra-parliamentary party* category, varies greatly among countries. According to art. 7 (1990) and art. 10 (2009) of the Bulgarian Party Law, “a political party shall be established at a constituent assembly by the agreement of at least 50 citizens with voting rights.” In Croatia, the requirement is 100 adults (art. 6, 1999), while in Estonia “a political party shall be registered if it has at least 1,000 members (art. 6, 1994).”

The second most heavily regulated category, according to the data in table 1, is the *external oversight* category – it is the most regulated category in seven countries from our sample. What stands out is the observation that the *external oversight* category is regulated more than *party finance*. The latter is the most regulated category in only four countries – Austria, Bulgaria, Hungary, and Norway. This makes sense when we look at the type of regulations which go into the *external oversight* category. It consists of regulations relating to the external monitoring of the lawfulness of party activity, party organization, party finance, as well as penalties and sanctions against prohibited matters. In the Austrian law for instance, we find a clause asking political parties to “keep strict accounting of the use of the subsidies in accordance with their designation In addition, each political party receiving subsidies ... reports publicly the type of its income and expenses” (art. 4, 1975; 2003). Estonia, one of the few countries which take political parties off the registry if they fail to win representation in two consecutive elections, forbids political parties from registering under the name of extant or deleted parties in the party registry (art. 9, 2010).

The great amount of regulation of this category is hardly surprising, given the efforts of the European Union to increase the transparency of political parties in an attempt better to combat corruption. Related to this is the adoption of special Party Finance Laws in many European states, where matters of control, transparency, and accountability of the financing of parties are dealt with directly. Finally, we see that the two least regulated categories are those dealing with the *parliamentary party* and the *government party*. In fact, Latvia, Estonia and Romania are the only states which devote some attention to these categories in their party laws. One explanation for the lack of regulation in those two categories is that

rules applying to parliamentary groups and to the party in government are specified elsewhere (for example in the rules of parliamentary procedure, the electoral law, or the Constitution) and thus are not part of the Party Law *per se*.

Another point of comparison of regulation among countries is the *range of regulation*. Although not reported directly in the table shown here, one can tell the *range* by looking at how many of the twelve broad categories a country regulates. To continue the example of the Czech Republic, we see that according to our coding the Czech party law has a range of 8. This is a relatively high range in comparison to the UK and Norway which have a range of only 5. The highest range achieved by any given country in our sample is that of Portugal. Portugal regulates in all but two categories.¹²

Overall, what our data show is that party regulation has seen a significant increase in the last decade. Among the 16 European states which have more than one PL thus far, only four states – Croatia, Lithuania, Slovenia, and Ukraine – have seen a decrease in the amount of regulation from their first to their current law (data on the first Party Laws not shown). The rest of Europe, led by Poland's rise from a magnitude of 34 in its first party law to a magnitude of 225 in its current law, reports noticeable increases in the amount of regulation.

As discussed earlier, this chapter analyses laws whose titles include a textual reference to political parties. The figures on the regulation of the domains presented above should therefore be understood as exhaustive with respect to Party Laws and not with respect to party regulation more broadly. Hence, the figures on the regulation of the Party Finance category presented in Table 1 do not rule out the fact that there may be other legislative acts regulating party finance. This is for instance the case for Romania, Spain and the UK, whose magnitude scores on the regulation of party finance in their Party Laws are equal to zero, but where the regulation of party finance is included in specific Party Finance Laws.¹³

Variation across countries and over time

So far we have looked at the percentage of regulation each country devotes to the twelve dimensions outlined in the coding scheme. While several patterns stand out, as the previous section contends, there may be patterns which remain unaccounted for.

A first overview of party regulation change is shown in Figure 2 (see below), which ranks the 16 European democracies with more than one Party Law in terms of how much party regulation has changed from the first to the last/current party law. Apart from the pronounced cross-

Table 1. Dimensions of party regulation by country (%)^{*}

Country / Category	Democratic principles	Rights & freedoms	Extra-parliament party	Electoral party	Parliament party	Government party	Activity & behaviour	Identity & programme	Media access	Party finance	External oversight	Secondary legislation
Austria	2.2 (2)	2.2 (2)	4.4 (4)	0.0 (0)	0.0 (0)	0.0 (0)	0.0 (0)	0.0 (0)	2.2 (2)	47.8 (43)	34.4 (31)	6.7 (6)
Bulgaria	1.2 (3)	0.4 (1)	20.9 (53)	0.0 (0)	0.0 (0)	0.0 (0)	2.0 (5)	0.0 (0)	0.0 (0)	36.0 (91)	29.6 (75)	9.9 (25)
Croatia	0.9 (1)	0.9 (1)	39.4 (43)	0.0 (0)	0.0 (0)	0.0 (0)	2.8 (3)	0.0 (0)	0.0 (0)	17.4 (19)	33.9 (37)	4.6 (5)
Czech Republic	0.6 (1)	1.2 (2)	24.1 (39)	0.0 (0)	0.0 (0)	0.0 (0)	2.5 (4)	0.6 (1)	0.0 (0)	27.8 (45)	37.0 (60)	6.2 (10)
Estonia	1.0 (1)	1.0 (1)	35.7 (35)	2.0 (2)	0.0 (0)	2.0 (2)	5.1 (5)	0.0 (0)	0.0 (0)	22.4 (22)	21.4 (21)	9.2 (9)
Finland	0.0 (0)	0.0 (0)	22.0 (11)	0.0 (0)	0.0 (0)	0.0 (0)	2.0 (1)	0.0 (0)	0.0 (0)	24.0 (12)	44.0 (22)	8.0 (4)
Germany	2.0 (6)	0.0 (0)	37.8 (115)	1.0 (3)	0.0 (0)	0.0 (0)	0.0 (0)	0.3 (1)	0.0 (0)	36.2 (110)	20.1 (61)	2.6 (8)
Hungary	3.7 (3)	1.2 (1)	12.2 (10)	0.0 (0)	0.0 (0)	0.0 (0)	0.0 (0)	0.0 (0)	0.0 (0)	46.3 (38)	28.0 (23)	8.5 (7)
Lithuania	4.9 (4)	6.1 (5)	47.6 (39)	0.0 (0)	0.0 (0)	0.0 (0)	7.3 (6)	7.3 (6)	3.7 (3)	2.4 (2)	11.0 (9)	9.8 (8)
Latvia	0.5 (1)	0.0 (0)	52.9 (99)	1.6 (3)	1.1 (2)	0.0 (0)	1.6 (3)	2.7 (5)	0.0 (0)	4.3 (8)	28.9 (54)	6.4 (12)
Norway	0.0 (0)	0.0 (0)	17.4 (16)	1.1 (1)	0.0 (0)	0.0 (0)	0.0 (0)	0.0 (0)	0.0 (0)	38.0 (35)	38.0 (35)	5.4 (5)
Poland	0.4 (1)	0.4 (1)	16.4 (37)	0.0 (0)	0.0 (0)	0.0 (0)	1.8 (4)	1.8 (4)	0.9 (2)	24.4 (55)	45.3 (102)	8.4 (19)
Portugal	5.0 (5)	3.0 (3)	52.5 (53)	2.0 (2)	0.0 (0)	0.0 (0)	5.0 (5)	4.0 (4)	2.0 (2)	2.0 (2)	18.8 (19)	5.9 (6)
Romania	2.2 (4)	0.0 (0)	53.3 (96)	1.7 (3)	0.0 (0)	0.6 (1)	4.4 (8)	2.2 (4)	0.0 (0)	0.0 (0)	31.1 (56)	4.4 (8)
Serbia	1.4 (2)	0.7 (1)	52.4 (75)	0.0 (0)	0.0 (0)	0.0 (0)	5.6 (8)	0.0 (0)	0.0 (0)	1.4 (2)	34.3 (49)	4.2 (6)
Slovakia	0.0 (0)	0.5 (1)	29.0 (61)	0.0 (0)	0.0 (0)	0.0 (0)	0.5 (1)	0.5 (1)	0.0 (0)	27.6 (58)	37.6 (79)	4.3 (9)
Slovenia	0.7 (1)	0.0 (0)	34.0 (50)	0.7 (1)	0.0 (0)	0.0 (0)	1.4 (2)	0.0 (0)	0.0 (0)	29.3 (43)	32.0 (47)	2.0 (3)
Spain	2.3 (3)	2.3 (3)	31.3 (40)	0.8 (1)	0.0 (0)	0.0 (0)	12.5 (16)	5.5 (7)	0.0 (0)	0.0 (0)	38.3 (49)	7.0 (9)
Ukraine	1.6 (2)	2.4 (3)	35.7 (45)	0.0 (0)	0.0 (0)	0.0 (0)	11.9 (15)	6.3 (8)	2.4 (3)	6.3 (8)	24.6 (31)	8.7 (11)
United Kingdom	0.0 (0)	0.0 (0)	23.2 (16)	4.3 (3)	0.0 (0)	0.0 (0)	0.0 (0)	0.0 (0)	2.9 (2)	0.0 (0)	58.0 (40)	11.6 (8)
<i>Total (magnitude)</i>	<i>40</i>	<i>25</i>	<i>937</i>	<i>19</i>	<i>2</i>	<i>3</i>	<i>86</i>	<i>41</i>	<i>14</i>	<i>593</i>	<i>900</i>	<i>178</i>
<i>Mean (magnitude)</i>	<i>2</i>	<i>1.3</i>	<i>46.9</i>	<i>1.0</i>	<i>0.1</i>	<i>0.2</i>	<i>4.3</i>	<i>2.1</i>	<i>0.7</i>	<i>29.7</i>	<i>45</i>	<i>8.9</i>
N	16	13	20	9	1	2	15	10	6	17	20	20

^{*}Current party laws (as of 2010). Raw count in parentheses. N = number of countries regulating a given category (Total N = 20).

national variation shown by these summary data, two smaller points of immediate interest can be noted. First of all, and most obviously, party regulation has increased in most European countries over time. The only exceptions to this general rule are four post-communist democracies: namely, Ukraine, Croatia, Slovenia and Lithuania. Secondly, while all Western European cases, as expected, have experienced an increase in the magnitude of party regulation, the fact that Poland and Bulgaria come highest in the ranking is surprising, to say the least. Although the fact that their first party laws, passed at the very beginning of the transition process (i.e. 1990), had a minimal and provisional character – their main aim was to allow for the celebration of free and fair elections – may explain a great deal.

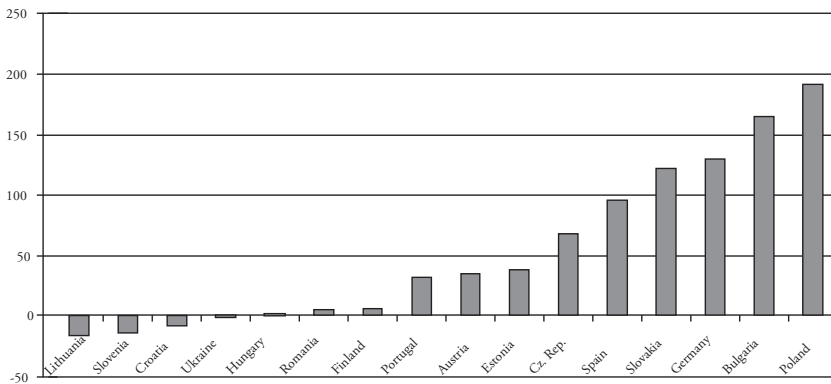


Figure 2. Magnitude change

Note: Only countries with more than one Party Law are included (N=16).

Because the figure above is so crude, we need to undertake an examination of the differences in regulation in a more systematic manner. For that purpose, we use an analysis of variance (ANOVA). In particular, we look for significant differences in the overall level of regulation, as well as within the specific categories, testing for differences between the means of regulation in three groups of countries. The first group, East/West democracy, depicts the relevance of post-communism. The second, New/Old democracy, divides states in terms of the newness of democracy. The third group, Continuous/Discontinuous democracy, reflects countries' democratic experience. The last group tests whether there are significant differences in the amount of regulation between the first and the current party laws. Indeed, with the exception of Latvia, Norway, Serbia and the UK, all countries have adopted changes to their party laws, and thus we

consider and track the development between their first and most current version of the law. The results are summarized in table 2.

The analysis shows that for the continuous and discontinuous democracies the difference in regulation is statistically significant in all but four categories. Highest statistical significance is found in the difference of regulation in the *democratic principles*, *extra-parliamentary*, *party activity & identity*, and *secondary legislation* categories. The categories which do not appear to have statistically significant means are *electoral* and *parliamentary party*, *media access* and *party finance*. In fact, these categories do not show statistical significance in any of the four groups compared. Going back to Table 1 we see that the *electoral* and *parliamentary party* and *media access* categories are scarcely regulated anywhere, while the *party finance* category is regulated in all but three states. The differences in the *party activity & identity* categories are also highly statistically significant between the new and old democracies. This group further exhibits significant differences in regulating the *rights & freedoms* category – something quite intuitive, given that new democracies want to establish democratic political competition and thus refer to a party's rights more often.

Another category which exhibits statistically significant difference in the level of regulation in three separate sets of groups – East/West, New/Old, Continuous/Discontinuous – is the *government party* category. While it has the lowest level of statistical significance (single star), this shows that countries provide different amounts of rules for national and local government, but the differences do not seem to change as the category fails to reach statistical significance when the first and current party laws are examined. What changes in a statistically meaningful manner is the regulation of the *extra-parliamentary party*, the *external oversight* and the *secondary legislation* categories. Those categories, as the discussion at the beginning of the chapter states, contain rules about internal party matters, external control of parties and their activities and additional legislation. Therefore, the increase in regulation in them is consistent with the growing discontent with some political actions and the international struggle for more control and higher transparency of party matters. The growing regulation is also portrayed in the statistically significant result for *total magnitude* comparing the first and current party laws. What this signifies is that the total amount of regulation now is significantly different from what it once was. Interestingly, the *total range* of regulation between the first and the current party laws has not changed. This suggests that while the amount of regulation has increased substantially, it has done so

in the categories which have already been regulated. Some may interpret this, if regulation is taken to be something restrictive, as strengthening the regulatory regime by deepening the control rather than widening its scope.

Within the growing body of regulation, we identify that internal party matters, provisions restricting their activity or identity, as well as rules keeping them in check are among those which are regulated in most different ways. These overlap with the dimensions of party regulation found in Karvonen's (2007) comparative analysis of party laws, the most comprehensive survey of party law to date. In particular, he deems that, when trying to examine the way political parties have been regulated in a specific country, there are three main aspects or "thematic dimensions"

Table 2: ANOVA tests of significant differences in party regulation

Category	East / West Europe	New / old democracy	Continuous / discontinuous democracy	First / last Party Law
Democratic principles	0.46 (0.65)	-0.33 (0.75)	3.52 (0.00)***	-0.88 (0.39)
Rights & freedoms	-0.73 (0.47)	-2.92 (0.00)***	2.03 (0.07)*	0.14 (0.89)
Extra-parliament party	-1.01 (0.33)	-0.63 (0.55)	6.47 (0.00)***	1.73 (0.09)*
Electoral party	0.73 (0.47)	0.88 (0.40)	0.43 (0.68)	0.47 (0.64)
Parliament party	0.00 (1.00)	0.37 (0.72)	1.36 (0.18)	0.32 (0.75)
Government party	-1.74 (0.09)*	-1.72 (0.09)*	1.72 (0.09)*	0.15 (0.88)
Activity & behaviour	-1.59 (0.13)	-5.39 (0.00)***	5.13 (0.00)***	0.58 (0.56)
Identity & programme	-1.57 (0.13)	-4.14 (0.00)***	4.95 (0.00)***	0.28 (0.78)
Media access	-0.85 (0.40)	-0.73 (0.47)	0.25 (0.81)	-0.27 (0.79)
Party finance	-0.10 (0.92)	0.91 (0.39)	0.70 (0.50)	1.29 (0.21)
External oversight	-1.70 (0.09)*	-0.84 (0.41)	1.86 (0.08)*	3.26 (0.00)***
Secondary legislation	-1.95 (0.06)*	-1.63 (0.12)	3.02 (0.00)***	1.89 (0.07)*
Total range	-2.12 (0.04)**	-2.81 (0.02)**	4.66 (0.00)***	-0.73 (0.47)
Total magnitude	-1.21 (0.24)	-0.42 (0.69)	4.52 (0.00)***	2.54 (0.02)**
N of observations	24/12	28/8	6/30	16/20

Note: Two-sample t-test with unequal variances. T-statistic reported, p-value in parentheses;

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$. ^Only countries with PLs included (N=20).

that need to be taken into consideration: namely, (1) provisions aimed at restricting certain types of party activity or prohibiting certain ideological elements [*restrictions*]; (2) provisions pertaining to parties as organizations or legal subjects [e.g. internal *organization*, democratic procedures, membership or registration]; and (3) provisions [regulating] the right of the state to punish parties by legal means [*sanctions*] (2007, 443-444).

Borrowing this framework, the next section turns to take a deeper look at one country's party law – that of Spain – which we find to be paradigmatic in the sense that, while being among the countries with the highest level of regulation, it still approaches the average magnitude, touching on each of the abovementioned dimensions in a rather proportional manner.¹⁴

The Spanish Party Law

As a result of the necessity properly to develop art. 6 of the Spanish Constitution which requires parties, more generally, to “respect the Constitution and the Law” while also asking of them, more particularly, democratic “internal structure and functioning”, the Organic Law 6/2002 on Political Parties came to replace the previous regulation (i.e. Law 54/1978). Existing legislation had been strongly criticized for being both pre-constitutional, heir to its most immediate legislative precedent (i.e. the semi-democratic Royal Decree-Law 12/1977) and, most importantly, for being very brief (Casal Bértola *et al.*, 2012).

Echoing, therefore, the abovementioned constitutional mandate, and in consonance with the majority of Europe's current party laws, the Organic Law 6/2002 requires political parties to organize and function with respect for the country's Constitution and, in particular, to operate in a humanitarian, peaceful and democratic way (art. 9.1). In this context, the current regulation allows for the formation of ethnic, religious (banned in Bulgaria), nationalist (not allowed in Serbia) or “pro-independence” parties (e.g. banned in a certain number of countries such as Croatia, Estonia, Portugal, Romania, Serbia and Ukraine),

The need for a general (“external”: i.e. in terms of practices, not principles) adhesion to democracy informs the totality of the 2002 party law, whose main aim – as reflected in the Statement of Motives, the longest by far among all European party laws – is to guarantee the *democratic functioning of the political system*. Interestingly enough, however, such necessity is not so much derived from the existence of ideological forces

threatening with the imposition of a non-democratic political system, as is the case in most of the post-communist political systems (and indeed elsewhere);¹⁵ but from the presence of the Basque terrorist movement ETA, whose murdered victims exceed 800. Although some scholars (for concrete examples see Casal Bértoa *et al.*, 2012, 10), together with Basque nationalist forces, have wanted to see an attempt by the legislator to ban certain political parties in Spain, the truth is that the Organic Law 6/2002, as clearly stated in its Statement of Motives as well as declared by both the Spanish Supreme and Constitutional Courts (STS 12.III.2003; STC 49/2003), simply aims to prevent anti-democratic partisan activities, and politically informed terrorism in particular,¹⁶ rather than to control parties' ideological orientation (Karvonen, 2007, 445; Vidal Prado, 2009, 252-255). A clear example of the latter is that both the Communist (PCE) and the Falangist (FN) party, whose main goal is to establish a more-or-less authoritarian system of government, are considered to be legal. In this context, Spain's party regulation seems to converge with that of the rest of European democracies which, with the exception of Germany and, to a lesser extent, Portugal and Italy,¹⁷ adopt a more "procedural" rather than "material" (i.e. "militant") concept of democracy (see Thiel, 2009). As both the Constitutional and Supreme Courts have put it, adopting the position of the scholarly majority,¹⁸ in our legal order

there is no space for a model in which positive adhesion to the regulations and, above all to the Constitution is imposed, which goes beyond respect (STC 48/2003) [On the contrary,] in our constitutional system there is room for all ideas and all political projects even ..., unlike in other codes, for those ideas which are contrary to the constitutional system, seeking to substitute or derogate or advocate formulas for territorial organization other than those chosen in the constitution (STS 27.III.2003),

provided that they do it by democratic means.¹⁹

It is within this context that article 9.3 contains detailed provisions intended to describe the conducts for which a party is considered "systematically [to] violate the fundamental rights and freedoms" (art. 9.2a), "encourage, support or legitimate violence" (art. 9.2b) or "supplement and politically support" (art. 9.2c) the use of terrorism: namely,

a) giving express or tacit political support to terrorism ...; b) creating a culture of confrontation linked to the actions of terrorists ...; c) including regularly in its directing bodies and on its electoral lists persons who have been convicted for terrorist crimes and who have not publicly renounced terrorist methods and aims ...; d) using in an official way symbols, slogans, or other representational elements that are normally identified with a terrorist organization; e) conceding to a terrorist organization ... the same rights and prerogatives that electoral law concedes to parties; f) collaborating habitually with groups that act systematically in accordance with terrorist ... organizations; g) giving institutional support ... to any of the groups mentioned in the preceding paragraph; h) promoting, giving cover to, or participating in activities ... rewarding, giving cover to, paying homage to, or honoring violent or terrorist actions ...; and i) giving cover to actions that socially intimidate, coerce, or disrupt public order and that are linked to terrorism or violence (Turano, 2003:733-734)

Furthermore, the fruit of the Spanish legislator's extraordinary concern with such "anti-democratic" activities is the inclusion of a special provision banning all those parties seeking "to continue or succeed the activity of another political party declared illegal and dissolved" (art. 5.6), which, although particularly aimed at avoiding the re-creation of ETA's political arm,²⁰ does not avoid its application to both present and future parties, when necessary (STC 48/2003).

As far as the regulation of political parties as *organizations* is concerned, and like in the majority of the European Party Laws, the Organic Law 6/2002 requires their registration in order to acquire legal personality. In clear contrast to other European counterparts, however, the Spanish law is to be considered, together with Austria's, the most liberal in this respect, as it does not require the declared support of a minimum numbers of citizens²¹ which, in other cases, ranges from the merely symbolic 50, 100 or 200 (in Bulgaria, Croatia or Slovenia, respectively) to the more demanding 10,000 (in Serbia, Slovakia or Ukraine) or 25,000 (in Romania). Notwithstanding its suspension or dissolution for the reasons we will examine later on, such registration will have indefinite validity (art. 4). In other words, and contrary to what can be observed in other countries, Spanish political parties may continue to exist without agreeing to participate in elections (e.g. Norway, Portugal, Romania, Slovenia, Ukraine) and/or achieving certain electoral results (e.g. Finland, Serbia or Romania), or without having a minimum number of members (e.g.

Bulgaria, Latvia, Lithuania, Romania and Serbia).²² Given the above-cited liberal inspiration, the Spanish Law does not require the payment of any registration fee,²³ but just the notarization of the so-called *formation agreement* which must include, together with the (personal) identification of the promoters²⁴ and/or members of the provisional management bodies, the articles of association (i.e. statutes) as well as the address and (“original”) name of the party to be formed (art. 3.1). In common with most of the regulations on the subject, the Spanish law does not contain any specific prerequisites in terms of organic composition (an exception was made for the General Assembly – see below), deliberative rules, necessary quorums and/or majorities, duration of mandates, members’ (equal) rights and duties,²⁵ creation/dissolution of party structures, etc.; but it leaves its regulation, implicitly or explicitly, to the statutes of each particular party. Finally, and as in most West European democracies, only judicially incapacitated individuals or those who, having full capacity to act, have not attained 18 years of age are not entitled to be members of a party (art. 8.1).²⁶

In clear consonance with the already stressed “democratic concern” of the Spanish legislator, the 2002 Law on Political Parties establishes the urgent need for partisan organizations’ internal “structure and operation” to adhere to democratic principles (art. 7.1). One of the main practical consequences of this is the obligatory use of free and secret voting when filling the party’s management positions. Another example of the above-cited concern is the legal embodiment of the principle of accountability, according to which party leaders are subject to the democratic control of the members (art. 7.5).²⁷ A final reflection of what has been exposed is the consecration of the subsidiary principle of “*simple majority* of those present or represented” (italics are ours) in the adoption of all types of agreements by the party’s highest governing body, that is, the General Assembly of all the party members – or their representatives (art. 7.2 and 7.4).

Interestingly enough, but as with many other European countries, the Spanish Law on Political Parties refrains from including any regulatory stipulations either on the finance of these organizations or on the compatibility between membership of a political party and the exercise of certain professions (e.g. judiciary, law enforcement, civil service, etc.) or the membership of other types of organizations (e.g. trade unions, national broadcasting companies, public or semi-public enterprises or even other political parties). These two issues (i.e. party finance and membership compatibilities) are certainly left to separate pieces of legislation (i.e. Organic Law 8/2007 on the Funding of Political Parties, Organic Law

6/1985 on the Judiciary, Organic Law 9/2011 on the Rights and Duties of the Members of the Armed Forces, etc.).²⁸

As with most European democracies, the Spanish party law puts the management of the Register of Political Parties in the hands of a governmental institution (the Ministry of the Interior, in this case), which is in charge of examining the fulfillment by the party of the above-cited registration requirements and, finally, deciding about its inclusion in the Register as a mean of acknowledging its legal personality (arts. 3-6).²⁹ In the same vein, it also leaves the decision on the suspension of party activities or its dissolution to the judiciary: namely, a criminal court, in the case of illegal association, and a Special Chamber of the Supreme Court³⁰ in the event of democratic breakdowns, in terms of either internal operation or external activity (art. 10). After being dissolved as illegal, the party will be struck from the Register, its activities prohibited and its property liquidated (Casal Bétoa *et al.*, 2012).

Another major sanction included in the Spanish law is the provisional suspension of the party's activities as a precautionary measure in the event of criminal or dissolution proceedings (art. 10.3). Other types of punishments such as electoral disqualification, loss of parliamentary seats or annulment of electoral results are not comprised within the Spanish juridical ordination, in clear consonance with what happens in the rest of the European states. Interestingly enough, the Spanish law does not envisage the imposition of administrative fines or the reduction/suspension of state funds, two popular (pecuniary) sanctions in most European states. The reason for such omission is, however, straightforward: unlike most of the other European party laws, the Spanish act does not contain any rules on the funding of political parties, leaving its regulation (art. 13) to a special law mentioned in the preamble (i.e. Organic Law 3/1987 of 2 July).³¹

Conclusion

This chapter has offered a longitudinal and comparative analysis of the Party Laws of post-war European democracies collected under the European Research Council project *Re-conceptualizing Party Democracy*. We have seen that the time of the adoption of the first Party Law varies from 1967 for Germany, which is the pioneer in the regulation of political parties, to 2009 for Serbia. The chapter introduced the coding scheme

used to code the laws and provided an overview of the extent of party regulation in twelve distinct categories.

Thus, for example, using our database and the analysis provided here, one can see how the regulation of *party finance* or *media access* in Party Laws, to take just two arbitrary categories, varies among the different European states. We find that rules about party finance are most extensive in Bulgaria, while countries such as Romania, Spain and the United Kingdom do not regulate this category at all as they have adopted special Party Finance Laws.

Another interesting finding is that the two most heavily regulated categories are those which deal with registration and establishment rules (*extra-parliamentary party*) and with outside monitoring of the lawfulness of party activity, as well as penalties and sanctions for prohibited matters (*external oversight*). Furthermore, in an analysis of variance these two categories appear to be statistically significant in two categories of groups – continuous/discontinuous democracies and first and current party laws. The second group comparison shows especially the fact that the amount of regulation in these categories differs significantly between laws. This is also reflected in the significant coefficient for the variation in total magnitude between the first and current laws.

The finding that party organization and party matters are among the most regulated characteristics pertaining to political parties was further investigated with a case study of the Spanish Party Law. Following Karvonen's (2007) 'thematic dimensions', the law was examined with particular attention to the restrictions, organization, and sanctions references. In consonance with most European laws, the Spanish act requires political parties to adhere to democratic principles, respect human rights (refraining from using violence) and comply with the constitutional and legal order. Influenced by a rather liberal spirit, the Spanish law does not provide for specific requirements in terms of party formation or maintenance, also leaving the regulation of parties' internal organization to their particular statutes. As in the majority of laws in our dataset, party legislation in Spain assigns the control of party creation and dissolution (Spain's major legal sanction) to governmental and judicial institutions. In sum, notwithstanding its particular concern with partisan terrorist organizations, the Spanish Law on Political parties (influenced, in turn, by Germany's legislation) constitutes a paradigm of European party regulation.

Overall, this chapter has observed how the extent of party regulation through Party Laws in Europe has significantly been increasing over time.

This pattern seems to reveal an interesting transformation in the very conception of political parties: from political parties conceived as private associations, being exempted from specific regulatory constraints, to parties as ‘public utilities’, becoming legitimate objects of state regulation (van Biezen, 2004). Hence, while little comparative attention has been paid to this phenomenon, we contend that the process of party regulation through Party Laws has interesting implications in terms of the place of political parties in modern democracies. Moreover, the results that this chapter has revealed point to interesting possibilities for future research on the effect of the regulatory frameworks on the organizational development of individual political parties as well as on the development of different party systems across the European continent.

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Appendix: Contemporary Party Laws in Europe³²

Countries	Year of Promulgation	Party Law	Year of latest amendment
Austria	1975	404. Federal Law of 2 nd July 1975 on the assignments, financing and the pre-election campaign of political parties (Law on Parties). Entered into force 24.07.1975	2008
Bulgaria	1990	Political Parties Act State Gazette No. 29/10.04.1990	2009
Croatia	1993	Political Parties Act Promulgated on the 30 th of July 1993	1999
Czech Republic	2006	Act No. 342/2006 Coll. amending Act No. 424 of October 2, 1991 on Associating in Political Parties and political movements and successive amendments	n/a

Countries	Year of Promulgation	Party Law	Year of latest amendment
Estonia	1994	Political Parties Act Adopted May 11 th 1994 (RTI 1994 , 40,654) Entered into force June 16 th 1994 (RTI 1994, 40, 654)	2010
Finland	1969	Act on Political Parties (Law 10/1969) Promulgated: 10 January 1969	1992
Germany	1967	Law on Political Parties Promulgated: 24 th July 1967	2004
Hungary	1989	Act XXXIII of 1989 on the Operation and Financial Management of Political Parties	2003
Latvia	2006	Law on Political Parties (7 th July 2006)	n/a
Lithuania	1990	Law on Political Parties and Political Organizations	2004
Norway	2005	Act 2005-06-17 no. 102: Act on certain aspects relating to the political parties or The Political Parties Act (Entry into force 2006-01-01, 2005-07-01)	n/a
Poland	1997	Act of 27 June 1997 on Political Parties	2010
Portugal	2003	Law governing Political Parties, Organizational Law no. 2/2003 of 22 August 2003	2008
Romania	2003	Law no. 14/2003 on political parties (17/01/2003)	n/a
Serbia	2009	Law on Political parties (12/05/2009)	n/a
Slovakia	2005	Act No.85 as of February 4, 2005 on political parties and political movements	n/a
Slovenia	1994	Political Parties Act (Law 62 of 1994) Promulgated: 07/10/1994	2007
Spain	2002	Law on Political Parties (12756 Organic Law 6/2002)	n/a

Countries	Year of Promulgation	Party Law	Year of latest amendment
Ukraine	2001	Law on Political Parties Promulgated: 5/04/2001	2010
United Kingdom ³³	1998	The Registration of Political Parties Act (199 c48) Promulgated: 19/11/1998	n/a

Notes

- * Author names are listed in alphabetical order.
- 1 ‘Guidelines on political party regulation’, by OSCE/ODIHR and Venice Commission, 25 October 2010 (Study no. 595/2010), p. 6.
- 2 *Re-conceptualizing Party Democracy* is a project directed by Prof. Ingrid van Biezen and funded by the European Research Council (ERC). More information can be found at www.partylaw.leidenuniv.nl.
- 3 Elsewhere Janda argued: “[t]he term ‘party law’ has different meanings to different people, even among party scholars” (Janda, 2005, 3).
- 4 A list with the legal reference to the laws included in our sample is presented in Appendix.
- 5 More recently (i.e. March 2011), Cyprus promulgated a “Law on Political Parties”, even if it mainly contains political funding regulations. For this reason, but also due to its recent adoption, we do not include it in the analysis.
- 6 It should be noted, however, that the Turkish Party Law was passed on the basis of art. 57 of the 1961 Constitution which, in turn, was “inspired by art. 21 of the [1949] Constitution of the Federal German Republic” (Dodd, 1969, 130).
- 7 Both the Austrian and Finish laws are characterized by their lower degree of regulation as compared to the German Law on Political Parties, in particular as far as the internal organization of political parties is concerned.
- 8 State subsidies funding the activity of political parties were introduced in Portugal only in 1977 and eight years later in Spain. Moreover, both countries shared a legalistic culture where party funding is regulated in a different piece of legislation.
- 9 In this particular aspect, the only exceptions are Latvia and, to a lesser extent, Serbia, where Party Laws were, respectively, approved only twelve and nine years after the beginning of democracy.

- 10 The same applies to the recently established Party Law of Cyprus, whose main regulatory focus is upon party finance regulation (see ft. 5).
- 11 For a comparative analysis of the legal regulation of internal party democracy in Europe see van Biezen and Piccio, 2013.
- 12 For an in-depth diachronic (content) analysis of the Portuguese case see Casal Bértoa (forthcoming).
- 13 For the case of Romania, Spain, and the UK, party finance is regulated, respectively, in the Law on the Financing of Political Parties and Election Campaigns, in the Organic Law on the Funding of Political Parties, and in the Political Parties and Election Act. Other countries included in our sample that adopted a Party Finance Law, specifying party finance regulations in detail, are Croatia, Finland, Hungary, Latvia, Norway, Slovakia, Serbia, and Portugal (Piccio, 2012).
- 14 Data available from the authors.
- 15 See fn. 18.
- 16 Out of 12 European party laws banning the use of violence by political parties, a reference to terrorist activities or organizations can be found only in the Spanish 2002 “Organic Law”. This, however, does not preclude the general character, in both formal and material terms, of the latter (STC 48/2003).
- 17 While in Germany political parties are generally banned on ideological grounds (e.g. both the Neo-Nazi and the Communist Party were banned by the Constitutional Court as early as 1952 and 1956, respectively); in both Portugal and Italy, only the “fascist” parties are prohibited.
- 18 According to the position set up De Otto y Pardo already in 1985 [don’t understand], which considered that allowing for the possibility of modifying the Constitution as a whole (art. 168), the constitutional legislator clearly opposed any ideological control on parties (see also Aragón Reyes, 1990; Blanco Valdés, 1990; Rodríguez-Zapata, 2003). More recently, some scholars – a minority – have pointed “towards the possibility of configuring the requirement of respect of the constitution as the requirement for a certain degree of adhesion to its basic principles which goes beyond merely formal compliance” (Santamaría Pastor, 2001:100; see also Montilla Martos, 2004; Tajadura Tejada, 2004).
- 19 The Spanish case law differs here from the European Court of Human Rights (ECHR), which, in both the *Refah Partisi v. Turkey* (13/02/2003) and *Herri Batasuna & Batasuna v. Spain* (30/06/2009) cases, has adopted a “militant” concept of democracy (Biezen and Molenaar, 2012).
- 20 From the day of the entry into force of the Law on Political Parties (i.e. 29 June 2002) until the moment of writing this article, the Spanish Supreme

Court has banned up to 14 political formations (or the candidatures connected with them) linked with the above-cited terrorist group: namely, Batasuna, EH and Herri Batasuna (STS 27.III.2003), AuB (STS 3.V.2003), HZ (STS 21.V.2004), AG (STS 26.III.2005), ASB (ATS 22.V.2007), AS (STS 5.V.2007), ANV (22.IX.2008), EHAK (22.IX.2008), Askatasuna (ATS 8.III.2009), D3M (STS 8.II.2009), Sortu (ATS 23.III.2011) and Bildu (STS 1.V.2011). Interestingly enough, the Constitutional Court revoked the illegalization of the last for considering that the resolution of the Supreme Court had violated its right to political participation, guaranteed in art. 23 of the Spanish Supreme Act (STC 62/2011).

- 21 The absence of such requirement is common also to the British, German, Hungarian and Estonian Laws. However, while in the first three a minimum of electoral activity is required, in the last parties must have at least 1,000 members.
- 22 The minimum number of members a party must have in order not be dissolved ranges from the symbolic 200 in Latvia to the more “discriminative” 25,000 in Romania, with no fewer than 700 people for each of the 18 state counties, plus Bucharest.
- 23 Out of the 20 European Party Laws here analysed, only four (i.e. Finland, Latvia, Slovakia and Ukraine) require the payment of an administrative fee.
- 24 It should be noted here that it is impossible, except in cases of rehabilitation, for individuals with a criminal record (either for illegal association or certain serious crimes) to found political parties. This responds, once again, to the legislator’s particular concern with Herri Batasuna’s heirs.
- 25 In any case, members are guaranteed the following rights (art. 8.3): of participation, of suffrage (both active and passive), of information (e.g. of decisions, activities, financial situation, etc.) and of complaint (against illegal or anti-statutory agreements). In consideration for this, members are obliged to share the aims of the party, co-operating in their achievement, pay the fees/contributions duly imposed and accept/comply with the agreements legally adopted (art. 8.4).
- 26 In clear contrast, most post-communist countries (as well as Portugal) require party members also to be citizens.
- 27 Surprisingly enough, only two other countries recognize this principle in their Party Laws: namely, Germany and Lithuania.
- 28 Other countries leaving the regulation of party finance to a specific law are Lithuania, Latvia, Portugal, Romania, Serbia and the UK. On the other hand, only the Bulgarian, Estonian, Serbian and Ukrainian Party Laws contain specific provisions in terms of party membership incompatibilities.

- 29 Only three countries leave the Party Register in the hands of a judicial, rather than governmental, authority: namely, Poland (Warsaw's District Court), Portugal (Constitutional Court) and Romania (Bucharest Tribunal).
- 30 Other countries, following the German model, prefer to legitimate the Constitutional Court only (e.g. Croatia, Poland, Portugal, Romania, Serbia or Slovenia). Within the Spanish scholarship, Fernández Segado (2004:200) and Tajadura (2004), among others, have called for a similar solution.
- 31 This is also the reason why, contrary to most of the European party laws (up to 14), the Spanish law does not provide for the operation of an external/independent "monitoring" authority, even if it is mentioned (in passing) in both the preamble and the (final) article 13.
- 32 Laws on-line available at www.partylaw.leidenuniv.nl.
- 33 Although the UK in 2000 enacted the Political Parties, Elections and Referendum Act (PPERA), we included the 1998 Registration of Political Parties Act in our sample. Indeed, the 2000 UK PERPA, and its subsequent amendment (the 2009 Political Parties and Elections Act) are both exceptionally long documents (totalling 260 and 93 pages respectively) which deal almost exclusively with aspects relating to the financing of political parties rather than their operations and activities. In order therefore not to bias the results of the content analysis of Party Laws in the direction of party finance, we deal with the 2000 and 2009 UK Acts as Party Finance Laws rather than Party Laws.

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