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Party Politics published online 23 September 2012
DOI: 10.1177/1354068812458616

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Party Politics

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DOI: 10.1177/1354068812458616

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Abstract

Despite the growing amount of party regulation, we still have a limited understanding of the effect that party laws have on party systems and political competition. Notwithstanding predictions that incumbent parties adopt rules which favour their own position, found in both the cartel party thesis and the rational actor view of politics, we continue to witness the frequent appearance of new political parties, some of which successfully enter parliament. Using comparative electoral data and a newly built dataset on party regulation in post-war Europe, we trace the changes in the rules governing political parties and explore the effect of party regulation on the number of successful new entrants. Overall, we find that more regulation significantly decreases the number of successful new entries, while high electoral volatility and the legacy of post-communism increase the amount of successful new party entries in the legislature. Our analysis further shows that the existence of public funding and the payout threshold have no effect on the permeability of party systems.

Keywords

Europe, new parties, party law, party systems, public subsidies

Paper submitted 7 February 2012; accepted for publication 8 June 2012

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Introduction

In recent years, both the external and internal activities of European political parties have become increasingly subject to external regulations that define or prescribe their operations. Indeed, the legal regulation of political parties has become more and more customary, to the point that, as Katz (2002: 90) has noted, parties have become 'legitimate objects of state regulation to a degree far exceeding what would normally be acceptable for private associations in a liberal society'. Many of these regulations were first introduced or were substantially extended in the wake of the introduction of public funding for parties, as the provision of state subventions inevitably demanded a more codified system of party registration and control. Controlling party access to the public broadcasting media has also required the introduction or extension of the system of regulation, which has acted to codify the status of parties and their range of activities. In addition, the rising level of popular discontent seems to have encouraged the enactment of further party legislation, with the primary focus on the question how parties ought to operate if they are to fulfil their democratic functions adequately. State regulation of political parties has therefore expanded substantially, gradually renouncing the notion of parties as fundamentally private and voluntary associations, as a consequence of which the state in liberal democratic societies has traditionally been reluctant to intervene in operations of political parties. Today, 28 out of the 33 European democracies have formally codified political parties in their national constitutions; 20 countries have adopted a special party law, while 19 of them have adopted a law on party financing.

As the regulatory environment of political parties is becoming increasingly intense, the question arises whether this has any consequences for the party systems within which the parties operate. Despite the increased amount of party regulation, however, the phenomenon has received relatively little systematic scholarly attention from political scientists or constitutional lawyers, with the possible exception of Germany, the 'heartland of party law' (Müller and Sieberer, 2006: 435). Indeed, the subject of party law continues to be a neglected aspect of research on political parties, with discussions of party law in the scholarly literature usually limited to passing references and lacking a comparative dimension (Avnon, 1995: 286; for a recent exception, see Karvonen, 2007). In this article, we provide a comprehensive comparative analysis of the changes in regulation in post-war European party laws, focusing in particular on the extent to which the changing regulatory environment acts to deter the successful parliamentary entry of new parties. We systematically test for significant differences in regulation between groups of countries and dimensions of regulation and examine the relationship between party regulation and new party entry. For that purpose, we model new party entry through the level of regulation of parties in the party law and control for the legacy of post-communism, as well as for the effects of the electoral system and the system of party financing. Our sample consists of 33 post-war European democracies. Overall, we observe that the increase in the parties' regulatory environment is most pronounced in the areas of party finance and the regulation of the extra-parliamentary party organization. We also find that more regulation does not necessarily deter the formation of new parties *per se*, but it does significantly decrease their prospects of successfully entering the legislature. Conversely, both the legacy of post-communism and high levels of electoral volatility

significantly increase the number of new parliamentary parties. Our analysis further shows that, contrary to most expectations, the existence of public funding and the payout threshold of state subsidies have no effect on the permeability of party systems.

Regulation and the challenge of new entrants

In their seminal article, Katz and Mair (1995) suggest that in the process of party transformation and adaptation in Western Europe not only have the linkages between parties and civil society become progressively weaker, but those between parties and the state appear to have strengthened. As a result of their movement away from civil society and towards the state, parties have become increasingly entrenched within the institutions of the state and have begun to act as semi-state agencies instead of as organizations of civil society. As an organization, the cartel party is characterized by the interpenetration of party and state, while at the level of the party system it is characterized by a pattern of inter-party collusion rather than competition. In the era of the cartel party, it is presupposed that the main parties work together and take advantage of the resources of the state – such as public subsidies, state-regulated media access or party patronage – to ensure their collective survival (Katz and Mair, 1995). On the one hand, the introduction of public funding for political parties has made them increasingly dependent on the state; on the other, parties are also increasingly managed by the state in that their activities are to a larger extent subject to regulations and state laws (see van Biezen and Kopecký, 2007).

This increased involvement of the state in internal party affairs, whereby parties become subject to a regulatory framework which grants them an official status as part of the democratic state and its institutions, has contributed to a transformation away from the party as voluntary private association to the party as a special type of public utility (van Biezen, 2004). The state thus becomes a font of resources through which parties help to ensure their own survival. What is more, because the legal rules are determined by the parties themselves, ‘they can also enhance their capacity to resist challenges from newly mobilized alternatives. The state, in this sense, becomes an institutionalized structure of support, sustaining insiders while excluding outsiders (Katz and Mair, 1995: 16).

In their restatement of the cartel party thesis, Katz and Mair (2009: 759) furthermore note that one aspect of the behaviour of a cartel is ‘the structuring of institutions such as the financial subvention regime, ballot access requirements, and media access in ways that disadvantage challenges from outside’. To be sure, the existence of a party cartel does not necessarily imply that new parties no longer enter the parliamentary arena. Indeed, the very existence of a cartel might be expected to encourage the formation and enhance the electoral appeal of anti-cartel parties: ‘cartelization has clearly contributed to the rise of populist anti-party system parties that appeal directly to public perceptions that the mainstream parties are indifferent to the desire of ordinary citizens. Such parties have grown substantially in both prominence and support in the last decade’ (Katz and Mair, 2009: 759). One of the implications of the cartel thesis is thus that existing parties, despite their programmatic differences, act in unison in order to prevent new parties from entering the political arena by structuring institutions in a way likely to disadvantage

challengers, or to keep them at bay entirely. If their attempts are successful, we should see fewer parties entering the legislative arena as party regulation increases.

The argument that elites maximize their utility within the institutional constraints that bind them, and that incumbents tend to change the rules of the game in ways that favour their own position, is also found in the rational actor view of politics. Scholars in this tradition study the effect of electoral and social factors on political competition in a more quantitative manner (e.g. Amorim-Neto and Cox, 1997; Benoit, 2001; Duverger, 1954; Lijphart, 1990; Ordeshook and Shvetsova, 1994). More recently, scholars have also started to focus on legal constraints such as public funding and ballot access rules in their attempt to account for the particular format of party systems (e.g. Rashkova, 2010; Spirnova, 2007; Tavits, 2007). On the basis of the propositions and findings in these various traditions, we may expect that incumbent parties engineer the institutional environment in such a way as to minimize the risk of challenges from new entrants.

Despite this expectation, we observe that new political parties continue to appear, contest elections and even successfully enter parliament. A few well-known examples include the various Green parties in Western Europe, such as the German *Grünen*, which entered parliament in 1983 with 27 seats and has remained in parliament ever since, with growing electoral support. In Eastern Europe, where party systems are often less institutionalized, new parties successfully emerge not only more frequently, but sometimes with an even larger share of the vote than some of the established political parties. Bulgaria's *NDSV*, for example, was formed in 2001 and obtained 120 out of the 240-seat parliament in the same year. Most recently, *Positive Slovenia*, which was founded only a little over a month before the 2011 election, finished ahead of all other parties with a spectacular 28.5 percent of the vote, offering yet another example of the success with which newly formed political parties emerge in the legislative arena. Moreover, on many occasions, we witness more than one new party entering parliament, again especially in the post-communist democracies in Central and Eastern Europe. The data in Table 1 summarize this phenomenon.

Table 1 shows the entry of new parties in the legislature in the period between the adoption of the first party law and the most recent legislative election. Column 3 reports the total number of elections during that period, while the number and percentage of elections in which a new party successfully obtained parliamentary representation is recorded in column 4. For this article, we define a new legislative party to be any party that has successfully entered parliament and which has not previously been represented in the national legislature.¹ The column reporting the magnitude of regulation indicates the aggregated frequency of regulatory provisions in the party law of a given country, while the column representing the change in magnitude portrays the extent to which the intensity of the regulatory environment has increased or decreased between the adoption of the first and current party laws. Included in the table are all European countries that have a special law on political parties (N = 20).

As Table 1 demonstrates, new parties have successfully entered the legislature in more than a third of the parliamentary elections in Western Europe, in a total of nearly nine elections on average (see Dalton et al. (2011) for a similar argument that the electoral process and the increasing dependence of the parties on the state benefit all parties and not just a privileged few). Eastern Europe records figures approximately twice as

Table 1. New party entry in European legislatures

| Country ^a | Period | No. of elections | New entry instances ^b | New entry with highest vote-share | Election year | Magnitude regulation ^c | Magnitude change | New parties most recent election (% vote) |
|-----------------------|-----------|------------------|----------------------------------|-----------------------------------|---------------|-----------------------------------|------------------|---|
| Austria | 1975–2008 | 11 | 27.3 (3) | LIF (6.0) | 1994 | 40 | +21 | – |
| Bulgaria | 1991–2009 | 6 | 83.3 (5) | NDSV (42.7) | 2001 | 90 | +70 | GERB (39.7); RZS (4.1) |
| Croatia | 1993–2011 | 5 | 80.0 (4) | ZL (18.3) | 1995 | 24 | +1 | Croatian Labourists (5.1); HSP (2.8) |
| Czech Republic | 1993–2010 | 5 | 60.0 (3) | TOP 09 (16.7) | 2010 | 48 | +26 | TOP 09 (16.7); VV (10.9) |
| Estonia | 1992–2011 | 6 | 66.7 (4) | Res Publica (24.6) | 2003 | 27 | +13 | – |
| Finland | 1969–2011 | 12 | 33.3 (4) | DEVA (4.2) | 1987 | 15 | –1 | – |
| Germany | 1967–2009 | 12 | 16.7 (2) | GRÜNEN (5.6) | 1983 | 101 | +69 | – |
| Hungary | 1990–2010 | 6 | 50.0 (3) | JOBBIK (16.7) | 2010 | 37 | –2 | JOBBIK (16.7); LMP (7.5) |
| Latvia | 2006–2010 | 2 | 50.0 (1) | SC (14.4) | 2006 | 23 | n/a | – |
| Lithuania | 1992–2008 | 5 | 80.0 (4) | DP (28.4) | 2004 | 10 | –13 | TPP (15.1); LRNS (5.7) |
| Norway | 2005–2009 | 2 | 0.00 (0) | – | – | 33 | n/a | – |
| Poland | 1991–2011 | 7 | 71.4 (5) | AWS (33.8) | 1997 | 58 | +49 | Ruch Palikota (10.02) |
| Portugal | 1974–2009 | 13 | 23.1 (3) | PRD (17.9) | 1985 | 7 | –10 | – |
| Romania | 1996–2008 | 4 | 25.0 (1) | PNL (6.9) | 2000 | 14 | –24 | – |
| Slovakia | 1993–2010 | 5 | 100.0 (5) | SDK (26.3) | 1998 | 62 | +40 | Sas (12.1); Most (8.1) |
| Slovenia | 1994–2011 | 5 | 80.0 (4) | Positive Slovenia (28.5) | 2011 | 46 | –1 | PS (28.5); GVCL (8.4); NS – CPP (4.9) |
| Spain | 1978–2008 | 9 | 77.8 (7) | CDS (2.9) | 1982 | 6 | +4 | UPyD (1.2) |
| Ukraine | 2001–2010 | 3 | 100.0 (3) | PR (32.1) | 2006 | 16 | 0 | NBL (4.0) |
| United Kingdom | 1998–2010 | 3 | 66.7 (2) | RES (0.3) | 2005 | 6 | n/a | Greens (0.1); APNI (0.1) |
| Western Europe | | 8.9 | 35.0 (3) | | | | | |
| Eastern Europe | | 4.9 | 70.5 (3.5) | | | | | |

^aIncluded are all countries that have adopted a special law on political parties, with the exception of Serbia, which adopted a party law only in 2009 and has not held legislative elections since. The UK party law considered here is the 1998 Registration of Political Parties Act. ^bFigures are expressed as a percentage of the total number of parliamentary elections. In parentheses: the raw number of elections in which new parties successfully entered parliament. ^cMagnitude for the party law currently in force.

high, with over 70 percent of the elections recording the entry of new parties, in only five elections on average. The countries that stand out with the highest rates of new party entry are Bulgaria, Croatia, Lithuania, Slovakia, Slovenia and Ukraine – all with successful new parliamentary parties in over 80 percent of their national elections. There is only one post-communist country (Romania) where less than 50 percent of the electoral contests witness the successful appearance of a new party in parliament. The party systems in East European states are thus still quite fluid. Moreover, despite an increasingly demanding regulatory environment, many new party formations successfully manage to cross the electoral threshold. Among the countries with the lowest levels of party system permeability, understood here as the relative ease with which new parties can obtain parliamentary representation, are Austria and Germany. As we shall see, these two countries are in fact exemplary for their tendency to regulate parties quite intensively, while they have furthermore seen the intensity of party regulation increase substantially over time. The fact that they record a low instance of new party entry is consistent with the general expectation that regulation tends to favour incumbents at the expense of newcomers.

A handful of examples that show the opposite pattern, however, suggest that the pattern is not unequivocal. Bulgaria and Estonia, for example, are cases of intensive party regulation which nonetheless co-exist with very high rates of party system permeability. Countries such as Portugal, on the other hand, regulate relatively little, and have furthermore seen the magnitude of regulation decrease over time, and yet record comparatively low levels of party system permeability. In other words, the relationship between the intensity of party regulation and successful new party entry is perhaps not as unequivocal as it may appear at first sight. At the very least, the data in Table 1 suggest the need for a better and more systematic comparative analysis of the effects of party regulation on the permeability of the party systems and the chances of success for newcomer parties.

To be sure, we are not the first to embark on an empirical assessment of the relationship between aspects of party regulation and party competition. Thus far, however, the focus of most studies has been on the regulation of party financing, and on the public funding of parties in particular (e.g. Casas-Zamora, 2005; Koss, 2010), the interest in which has probably been prompted by the very cartel party thesis, in particular because the increasing dependence of parties on public subsidies was initially given a pre-eminent position as a key indicator of cartelization.² The regulation of party financing has also been part of the search for explanatory factors for party system institutionalization (Booth and Robbins, 2010), the number of parties (Rashkova, 2010) and party entry (Hug, 2001; Tavits, 2007). Tavits (2007), for example, finds that the mere availability of public funding increases the success of new parties in younger democracies. This echoes the findings of a similar study by Booth and Robbins (2010), who investigate the connection between campaign finance and party system institutionalization in post-communist states. Using a broader sample and a more specific operationalization of public funding, however, Rashkova (2010) shows that while ballot access rules suppress the number of political contestants, public funding itself has no significant effect on the number of competitors.

Few studies, however, explicitly examine the relationship between parties, party systems and the law. Scarrow's (2006) contribution constitutes a notable exception. She

investigates two competing views on the importance of public funding, i.e. between those who see state subventions as a mechanism of cartelization aimed at reducing competition and others who contend that public funding for parties may encourage the formation of new parties, as well as decrease opportunities for corruption by providing transparency on the sources of party income. She finds no compelling evidence that increased regulation serves to deter new party formation. Her conclusions are limited, however, to the specific impact of one aspect of party subsidization: the payout threshold, i.e. the level at which parties are eligible for state subsidies.

In another noteworthy study, Bischoff (2006) offers a longitudinal analysis of the effects of institutions constraining competition, which she calls barriers to entry, examining the relationship between institutions affecting the electoral process and the incidence of new party entry. Bischoff finds significance, among others, in the relationship between electoral rules and the number of new parties. However, she also shows that, contrary to expectations, registration requirements, access to finance and the cost of reaching voters do not have any significant effect on the number of new parties. Although Bischoff's work significantly adds to our understanding of the relationship between the parties and the law, her investigation focuses on only one set of election rules. Moreover, her findings are limited to the advanced industrial democracies and thus shed no light on the newer democracies in post-communist Europe.

The jury is thus still out on the question if and how the legal rules themselves affect the formation of new parties and their chances of successfully obtaining parliamentary representation, the third of Rokkan's (1970) classic institutional thresholds of party system development. This article thus focuses on the prospects of new party entrants, especially linking the fate of new parties to the realm of growing regulatory environments.

The regulatory environment

We begin the search for empirical evidence of the relationship between parties and the law by a thorough examination of the regulatory provisions pertaining to political parties as codified in national party laws (PLs).³ As our content analysis focuses on the legal provisions stipulated in the party law, most of the evidence presented in this article includes only those countries which have adopted a specific law governing political parties (see Table 1). The time frame under investigation in principle encompasses the entire post-war period, but for each individual country comprises the period between the first adoption of a party law until the present time. Hence, by including both West and East-European democracies, as well as EU member-states and non-EU countries, the analysis we present here has a broader scope and a longer time span than existing research on party regulation thus far.

The regulation of political parties as laid down in national party laws comprises several dimensions, varying from the broader question of the definition and legal status of political parties to the regulation of party registration, party finance, party activity and party organization. Among these, some rules – such as stringent registration requirements – are anticipated to hinder the formation of new parties and their entry into parliament, while others, such as a generous regime of public funding, may act as an

incentive to political entrepreneurship, thus facilitating the establishment of new parties and their competing for legislative representation. In the first part of this article, we focus on those categories of regulation which are expected to affect the costs and benefits, and thereby the prospects, of successful new party entry.⁴ In other words, we examine the effects of those legal rules which are expected to affect the opportunity structure, either in a negative or positive manner, for new prospective actors in the political arena. In the second part of the article, we take into consideration the entire regulatory environment as provided by the party law.

The relevant categories of party regulation which are anticipated to have an impact on the cost-benefit structure of parties fall into four broader areas: party finance, party organization, party activity and identity, and media access. *Party finance* encompasses the regulation of direct and indirect public funding, as well as the regulation of private sources of funding, expenditures and requirements of reporting and disclosure. The category *party organization* includes rules applying to the extra-parliamentary organization (including registration requirements such as supporting signatures and registration fees), on the one hand, and rules applying to the political parties in their electoral capacity (such as electoral rules and formula as well as provisions on electoral campaigning and the fielding of candidates) on the other. *Party activity and identity* contains rules that restrict certain forms of activity and behaviour and prohibit the existence of certain ideological or programmatic orientations (such as ethnic, religious, nationalist or extremist parties). Finally, the category *media access* includes the rules of allocation and restrictions to access to the public and private broadcasting media.

Table 2 presents a comparative overview of the intensity of party regulation for these categories for all countries which have passed a party law (N=20), showing the relative importance of each dimension by country, which is calculated by the number of times a specific provision which we have coded under the respective category is encountered – something to which we refer to as *magnitude* of regulation. The data reveal several trends. The category of party finance turns out to be the most heavily regulated. Its five subcategories together account for 81 percent of the regulation considered here, although there is considerable variation between countries. The highest amount of regulatory provisions in the category *party finance* concerns reporting and disclosure requirements. This subcategory displays a magnitude of 316 references in all national party laws and is present in almost all countries considered here, with Lithuania, Romania, Spain and the UK as the only exceptions. Private funding is also highly regulated, with a magnitude of 115 and a presence in 12 national party laws. The dominance of reporting and disclosure and private funding provisions may be an indication of the increased efforts of national governments to improve the transparency of political financing and to combat corruption.⁵ Direct public funding is the third most important category of regulation, appearing with a magnitude of 92 in 12 national party laws. Within our sample, Austria and Norway spend significantly more than the average amount of regulatory efforts on this aspect of party finance.

Although party finance appears to have received the most attention from legislators, the party laws of a number of countries concentrate their attention instead on regulation of the party organization, and the extra-parliamentary party in particular. Such is the case in Lithuania, Latvia, Romania and Serbia, where the relative importance of these rules

Table 2. Dimensions of party regulation by country (%)*

| Category | Party finance | | | | Party organization | | | Media access | | Party activity and identity |
|-----------------------------|--------------------------|------------------|-----------------------|---------------------------|-------------------------|---------------------------|-----------------|-----------------------------|-----------------------|-----------------------------|
| | Reporting and disclosure | Private funding | Direct public funding | Regulation of expenditure | Indirect public funding | Extra-parliamentary party | Electoral party | Allocation and restrictions | Activity and identity | |
| Austria | 47.5 (19) | – | 30 (12) | 17.5 (7) | – | – | – | 5.0 (2) | – | |
| Bulgaria | 64.4 (58) | 15.6 (14) | 5.6 (5) | 5.6 (5) | 2.2 (2) | 5.6 (5) | – | – | 1.1 (1) | |
| Croatia | 41.7 (10) | 16.7 (4) | 20.8 (5) | – | – | 16.7 (4) | – | – | 4.2 (1) | |
| Czech Republic | 47.9 (23) | 18.8 (9) | 22.9 (11) | – | – | 10.4 (5) | – | – | – | |
| Estonia | 37.0 (10) | 25.9 (7) | 7.4 (2) | 3.7 (1) | – | 18.5 (5) | 7.4 (2) | – | – | |
| Finland | 60.0 (9) | – | 13.3 (2) | – | – | 20.0 (3) | – | – | 6.7 (1) | |
| Germany | 59.1 (65) | 13.6 (15) | 16.4 (18) | 1.8 (2) | 5.5 (6) | 1.1 (1) | 2.7 (3) | – | – | |
| Hungary | 59.5 (22) | 27.0 (10) | 5.4 (2) | 2.7 (1) | 2.7 (1) | 2.7 (1) | – | – | – | |
| Latvia | 26.1 (6) | 4.3 (1) | – | 4.3 (1) | – | 47.8 (11) | 13.0 (3) | – | 4.3 (1) | |
| Lithuania | – | 20.0 (2) | – | – | – | 50.0 (5) | – | 30.0 (3) | – | |
| Norway | 48.5 (16) | 9.1 (3) | 36.4 (12) | – | – | 3.0 (1) | 3.0 (1) | – | – | |
| Poland | 36.2 (21) | 27.6 (16) | 17.2 (10) | 10.3 (6) | – | 5.2 (3) | – | 3.4 (2) | – | |
| Portugal | 28.6 (2) | – | – | – | – | 14.3 (1) | 28.6 (2) | 28.6 (2) | – | |
| Romania | – | – | – | – | – | 42.9 (6) | 21.4 (3) | – | 35.7 (5) | |
| Serbia | 14.3 (2) | – | – | – | – | 71.4 (10) | – | – | 14.3 (2) | |
| Slovakia | 53.2 (33) | 22.6 (14) | 8.1 (5) | 1.6 (1) | – | 14.5 (9) | – | – | – | |
| Slovenia | 34.8 (16) | 34.8 (16) | 17.4 (8) | – | – | 10.9 (5) | 2.2 (1) | – | – | |
| Spain | – | – | – | – | – | 16.7 (1) | 16.7 (1) | – | – | |
| Ukraine | 25.0 (4) | 25.0 (4) | – | – | – | 25.0 (4) | – | 18.8 (3) | 66.7 (4) | |
| United Kingdom | – | – | – | – | – | 16.7 (1) | – | 33.3 (2) | 6.3 (1) | |
| Total (magnitude) | 316 | 115 | 92 | 24 | 9 | 81 | 19 | 14 | 16 | |
| Mean (magnitude) | 34.2 | 13.1 | 10.1 | 2.4 | 0.5 | 19.7 | 7.3 | 6.0 | 7.0 | |
| N (No. of countries) | 16 (80%) | 13 (65%) | 12 (60%) | 8 (40%) | 3 (15%) | 19 (95%) | 9 (45%) | 6 (30%) | 8 (40%) | |

*Current party laws. Raw count in parentheses. Boldface entries represent the most regulated category within each country. The total number of countries considered is 20, i.e. all countries with a party law. The N in the last row is the number of countries regulating a particular category.

varies between some 40 and 70 percent of the overall law. What also emerges from Table 2 is that several categories, including media access, the electoral arena, indirect public funding and party activity and identity are less extensively regulated in national party laws more generally. The category of party activity and identity is clearly important in some countries, with Bulgaria and Romania providing very different regulatory environments for ethnic parties for example (Rashkova and Spirova, forthcoming), while regulation in Spain is clearly targeted at secessionist parties (Casal Bértoa et al., forthcoming), but in most countries it does not constitute an important element of party regulation. It is important to emphasize, however, that our efforts here concentrate only on the regulatory provisions found within national party laws. As a result, some of the figures presented here may underestimate the relative importance of a given category. This may also account for the relatively low incidence of provisions in the areas of media access or the electoral party, which may be regulated in more detail in more specific laws, such as electoral, party finance or campaign laws.

These differences between countries in terms of the nature of their regulatory environment for political parties cannot be easily accounted for. To examine variations in the regulation of political parties more systematically, we have carried out various analyses of variance, where we look for significant differences in the amount of regulation overall, as well as in each of the nine categories of interest. For this purpose, we have conducted three comparisons, contrasting countries on the basis of their democratic experience, the newness of democracy and communist experience. In addition, we assess whether there are meaningful differences in terms of the amount of regulation between the party laws as they were first adopted and as they are currently in force. The results are summarized in Table 3.

The first comparison – Eastern vs. Western Europe – contrasts the post-communist democracies in Central and Eastern Europe with the older democracies in Western Europe. The second – New vs. Old democracies – concerns the differences between democracies that emerged from the third and fourth waves of democratization (i.e. Southern and Eastern Europe) and the longer established West-European democracies. The third group – Continuous vs. Discontinuous democracies – shows the differences between countries with an uninterrupted democratic history and those with an unstable or non-existent democratic experience prior to the most recent (re-)establishment of democracy. In addition to the former authoritarian and totalitarian regimes of Southern and East-Central Europe, this latter group also includes Austria, Italy and Germany.

At first glance, the results reveal that the most significant difference can be found in the regulation of the extra-parliamentary party. The results are statistically significant for all groups, indicating that the largest differences in regulation can be found in post-communist democracies, more recently established democracies as well as discontinuous democracies more generally. Within the category of party finance we also find several significant differences, although not for reporting and disclosure, the subcategory on which we found that many countries tend to concentrate their regulatory efforts. Private funding, direct public funding and indirect public funding, all part of the broader category of party finance, on the other hand, prove to be significantly different depending on the age and/or the continuity of democracy. The regulation of the electoral party,

Table 3. ANOVA tests of significant differences in party regulation*

| Category | Eastern / Western Europe | New / Old democracy | Continuous / discontinuous democracy | First / current party law |
|-----------------------------|--------------------------------|------------------------|--|---------------------------------|
| Reporting and disclosure | 0.03 (0.998) | 0.93 (0.377) | 0.76 (0.456) | 1.64 (0.114) |
| Private funding | -3.22 (0.003)*** | -1.87 (0.084)* | 4.81 (0.000)** | 0.21 (0.838) |
| Direct public funding | 1.34 (0.200) | 2.36 (0.046)** | -1.07 (0.324) | 1.30 (0.202) |
| Regulation of expenditure | 0.67 (0.514) | 1.31 (0.227) | -0.91 (0.401) | 0.76 (0.451) |
| Indirect public funding | 1.18 (0.261) | 0.67 (0.521) | 2.75 (0.010)** | -1.04 (0.308) |
| Extra-parliamentary party | -5.41 (0.000)*** | -4.00 (0.000)*** | 3.38 (0.004)*** | 1.77 (0.088)* |
| Electoral party | 0.73 (0.471) | 0.88 (0.403) | 0.43 (0.681) | 0.47 (0.641) |
| Media access allocation | -0.85 (0.403) | -0.73 (0.472) | 0.25 (0.810) | -0.51 (0.616) |
| Party activity and identity | 0.10 (0.918) | -1.16 (0.257) | 0.54 (0.599) | 1.07 (0.294) |
| Total range | -0.93 (0.367) | 0.39 (0.703) | 1.05 (0.321) | 0.61 (0.543) |
| Total magnitude | -0.52 (0.609) | 0.60 (0.562) | 1.37 (0.193) | 1.60 (0.120) |
| No. of observations | 24/12 | 28/8 | 6/30 | 16/20 |

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 that have adopted a party law are included. Out of the total of 20 countries with a party law, 16 have made amendments to it since it was first adopted, while four have not. The former have been included as two separate observations. The total number of observations thus equals *N*=36.

media access and party activity and identity is not significantly different in any of the groups of countries we examine.

The last column in Table 3 illustrates that there is a significant difference in the magnitude of regulation between the first and the current party laws only with regard to the extra-parliamentary party. The total range and magnitude of regulation, which refer to the amount of regulatory provisions and the number of categories of regulation, respectively, do not show any statistically significant differences. This suggests that when changing the regulatory environment for political parties, all countries tend to follow a similar trend, towards more regulation, a phenomenon also discussed by Koss (2010).⁶

In order to complement the results presented thus far and to assess changes over time, we have also traced the development of party regulation in each country by comparing the first and current party laws and the respective change in the level of regulation in each of our categories of interest. The results are presented in Table 4. The magnitude of change is reported in parentheses. The evidence suggests that despite some variation among countries, the trend is unequivocally towards more regulation. Even though in some countries the magnitude of regulation may have decreased since the party law was first introduced, the averages across countries and categories show that, with very few exceptions, the number of countries which increase regulation outweigh those where regulation decreases. In addition, across all categories, the average magnitude of regulation goes up considerably.

Although it is difficult to assess the real motivations of parties and politicians underlying the growth of party regulation, if political parties are indeed aiming to control access to political participation for newcomers, we would anticipate them to adopt more

Table 4. Changes in party regulation by category

| Category | Increasing regulation | Decreasing regulation | No change |
|---------------------------|--|--|--|
| Party Finance | Austria (+13); Bulgaria (+54); Czech Republic (+7); Germany (+46); Estonia (+7); Poland (+21); Slovakia (+17); Slovenia (+2) Average increase: +20.9 | Finland (-1); Hungary (-1); Lithuania (-4); Portugal (-4); Romania (-1) Average decrease: -2.2 | Croatia; Spain; Ukraine |
| Private funding | Bulgaria (+7); Czech Republic (+7); Germany (+14); Estonia (+4); Poland (+12); Slovakia (+12) Average increase: +9.3 | Lithuania (-4); Portugal (-2); Romania (-18); Slovenia (-6) Average decrease: -7.5 | Austria; Croatia; Finland; Hungary; Spain; Ukraine |
| Direct public funding | Austria (+5); Bulgaria (+2); Croatia (+1); Czech Republic (+11); Germany (+7); Poland (+9); Slovenia (+4); Slovakia (+5) Average increase: +5.5 | Hungary (-1); Lithuania (-1); Romania (-4); Spain (-2) Average decrease: -2.0 | Estonia; Finland; Portugal; Ukraine |
| Indirect public funding | Germany (+3) Average increase: +3.0 | Poland (-1); Portugal (-6); Romania (-3) Average decrease: -3.3 | Austria; Bulgaria; Czech Republic; Croatia; Estonia; Finland; Germany; Hungary; Lithuania; Slovakia; Slovenia; Spain; Ukraine |
| Regulation of expenditure | Austria (+2); Bulgaria (+5); Estonia (+1); Poland (+6) Average increase: +3.5 | Czech Republic (-1); Romania (-4) Average decrease: -2.5 | Croatia; Finland; Germany; Hungary; Lithuania; Portugal; Slovakia; Slovenia; Spain; Ukraine |

(continued)

Table 4. (continued)

| Category | Increasing regulation | Decreasing regulation | No change |
|---------------------------------------|---|--|--|
| Party organization | Portugal (+2); Spain (+1) Average increase: +1.5 | Bulgaria (-1); Romania (-1); Slovenia (-1); Average decrease: -1.0 | Austria; Croatia; Czech Republic; Germany; Estonia; Finland; Hungary; Lithuania; Poland; Slovakia; Ukraine |
| Extra-parliamentary party | Bulgaria (+2); Czech Republic (+2); Estonia (+2); Lithuania (+2); Poland (+2); Romania (+1) Slovakia (+6); Spain (+1) Average increase: +2.3 | Germany (-1); Portugal (-1) Average decrease: -1.0 | Austria; Croatia; Finland; Hungary; Slovenia; Ukraine |
| Party activity and identity | Bulgaria (+1); Romania (+4); Spain (+4) Average increase: +3.0 | Austria (-1); Estonia (-1); Portugal (-1) Average decrease: -1.0 | Croatia; Czech Republic; Germany; Finland; Hungary; Lithuania; Poland; Slovakia; Slovenia; Ukraine |
| Media access | Austria (+2); Portugal (+2) Average increase: +2.0 | Lithuania (-6) Average decrease: -6.0 | Bulgaria; Croatia; Czech Republic; Estonia; Finland; Germany; Hungary; Poland; Romania; Slovenia; Slovakia; Spain; Ukraine |
| Allocation and restriction mechanisms | | | |

Figures report magnitude and direction of change in party regulation, comparing the first and current party laws. Country names reported in boldface are countries that do not regulate a given category. Latvia, Norway, Serbia and the UK have been excluded from the comparison as they have not made any changes to their party law since it was first adopted (N=16).

and more stringent rules, such as to deter challengers to the existing parties. In that sense, the tendency towards an overall increase in party regulation is consistent with the premises of the rational actor and cartel party views of politics. However, it should also be noted that the most significant increase of regulation is found in the area of *party financing*, and most notably with regard to the reporting and disclosure as well as the regulation of (private) income and expenditure. This suggests that the drift towards more regulation is likely to have more to do with efforts to enhance transparency and combat corruption than with controlling access to the political system for new parties. At the same time, it should also be noted that the subcategories of direct public funding and the extra-parliamentary party are among those where we find the largest number of countries reporting an increase in regulation. As these categories encompass registration requirements and funding for parties, it is conceivable that efforts to increasing regulation are effectively aimed at preserving the position of the incumbent parties by raising the barriers for new party formation and party entry. This would require an analysis of the qualitative nature of the changes, which unfortunately falls beyond the scope of this article.

Detering new parties?

To examine the relationship between party regulation and party formation, we compared the changes in the regulatory environment with the changes in the format of the party system. For this purpose we compared a country's first party law with its most recent version. Our sample of countries here comprises the 16 European democracies which at some point have amended or replaced their party law (in the remaining four the party law as it was first adopted continues in force). In order to assess the possible impact of party regulation on the number of parties contesting the elections, we first compared the changes in the magnitude and range of regulation with the changes in the number of parties contesting and obtaining votes in the general election.⁷ In a total of nine democracies the magnitude of regulation in the current version of the party law has increased vis-à-vis the law as first adopted, while the range increased or remained the same.⁸ In six countries the magnitude of regulation decreased, while the range also decreased or remained the same.⁹ Only Ukraine showed no differences in terms of the range and magnitude of regulation between its first and current party laws.

If current theories and approaches are correct, we would expect that, *ceteris paribus*, an increase in regulation suppresses the number of contestants while their number may increase when regulation decreases. Our comparative exercise, however, suggests that there is more evidence disconfirming this expectation than supporting it. Indeed, we find that in 9 out of the 16 states an increase in regulation does not correspond to a decrease in the number of political contestants, or vice-versa. That is, in five countries (Austria, Germany, the Czech Republic, Slovakia and Spain) we observe an increase in the number of competing parties over time despite an increase in regulation. In Hungary, Lithuania, Romania and Slovenia, on the other hand, we see the number of parties contesting the election decline, although the amount of regulation has in fact decreased. These observations suggest that the relationship between regulation and the number of parties is not straightforward. We must of course not forget that the number of parties is also

dependent on other factors pertinent to the development of party systems, such as the electoral rules or the persistence of political legacies.

While the previous, admittedly rough and ready, exercise shows us that there is no unequivocal relationship between changes in the regulatory environment and the number of parties contesting the election, it remains to be established if changes in the intensity of party regulation have any effect on the number of parties that successfully enter parliament. In the second part of our study, we further explore the relationship between the parties and the law by systematically examining the effect of regulation on the successful legislative entry of new parties. This time, we consider the entire regulatory environment as defined by the party law. Using a linear regression analysis, we control for the electoral system, which is commonly accepted as the most influential determinant of party system development, and a communist legacy, given the generally higher levels of party system fragmentation in the post-communist party systems. In line with recent scholarly propositions, as discussed above, our model also tests the effect of the payout threshold and the availability of public funding on the successful legislative entry of new parties.¹⁰

Our dependent variable is the number of new party entries (NNE).¹¹ The main independent variable is the *Party Regulation Index* (PRI). Following the logic of Fish and Kroenig's (2009) parliamentary powers index, the PRI is constructed such that it provides an overall indication of the level of regulation of political parties in a country at a given point in time. It is based on the range of party regulation, which accounts for the number of categories of party regulation in a particular country, over the maximum number of regulatory categories.¹² The PRI index ranges from 0 to 1, where 0 signals no regulation at all and 1 that parties are regulated in all existing regulatory categories. The formula used to calculate the index is:

$$PRI_i = \frac{\text{number of regulated categories}_i}{\text{total number of regulatory categories}_j}$$

where 'i' is a given country and 'j' is the sample of all countries.

Since the likelihood of new party success is not only subject to regulation of parties by public law, but also to constraints of the electoral system, the social structure of the electorate, as well as voter preferences, we control for these effects by including an interactive effect of district magnitude and ethnic heterogeneity and the level of electoral volatility in our model. As Ordeshook and Shvetsova (1994) show, the mechanical effect of the district magnitude is augmented by the cleavage structure of a particular district. An interactive effect between the electoral law and the social structure is therefore included in our model to control for the effect of the rules of the game. We expect the term to yield a positive sign, with larger and more heterogeneous districts offering better prospects for the successful emergence of new parties.¹³ Electoral volatility, or the net transfer of votes between parties in the system, captures the psychological effect of electoral rules. It has been argued that besides accounting for the degree of vote-switching, electoral volatility is superior to other more commonly accepted indicators, such as the effective number of parties, as a measure for the stability of the supply of parties (Enyedi and Casal-Bértoa, 2010). We expect to see more new party entries in states with higher

Table 5. Party regulation and the number of new party entries

| | Model 1 | Model 2 | Model 3 | Model 4 |
|------------------------------|-----------------|-----------------|-----------------|-----------------|
| Party Regulation Index (PRI) | -1.74 (0.50)*** | -2.48 (0.62)*** | -2.09 (0.68)*** | -2.41 (0.63)*** |
| Magnitude*heterogeneity | -3.11 (1.01)*** | -3.07 (0.98)*** | -2.63 (1.66) | -3.21 (0.96)*** |
| District magnitude (lnM) | 0.34 (0.27) | 0.30 (0.26) | 0.24 (0.35) | 0.31 (0.26) |
| Ethnic heterogeneity | 8.08 (2.53)*** | 7.44 (2.47)*** | 6.14 (4.03) | 7.47 (2.45)*** |
| Electoral volatility | 0.06 (0.02)*** | 0.04 (0.02)** | 0.04 (0.02)* | 0.05 (0.02)** |
| Post-communist democracy | | 0.93 (0.49)* | 0.37 (0.54) | 0.72 (0.49) |
| Payout threshold | | | 0.20 (0.12) | |
| Public funding (dummy) | | | | -0.32 (0.42) |
| Intercept | 0.06 (0.64) | 0.43 (0.65) | 0.17 (0.83) | 0.63 (0.69) |
| R ² | 0.50 | 0.55 | 0.49 | 0.60 |
| No. of observations* | 43 | 43 | 34 | 41 |

Dependent variable: number of new parties that have successfully entered parliament.

Linear regression. Standard errors in parentheses. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

*The number of observations varies due to missing values in different specifications.

electoral volatility since higher levels of vote-swinging are indicative of the instability of party support, which can therefore more easily be transferred to new contestants.¹⁴

The core model that we fit is:

$$\text{NNE} = \beta_0 + \beta_1 * \text{PRI} + \beta_2 * \text{In}(M) * H + \beta_3 * \text{volatility} + \varepsilon$$

The model explains the number of new party entries: as a function of the party regulation index, the main independent variable, the institutional and social structure of the electoral environment, via the interaction of the district magnitude and ethnic heterogeneity, and the political climate depicted by electoral volatility. The effects of each of these variables is shown by their respective coefficient – β_1 , β_2 and β_3 . In variations of the main model we include a post-communist dummy, a variable denoting the payout threshold for party subsidies,¹⁵ and a dummy accounting for the availability of public funding. The model is tested on a dataset consisting of observations of all 33 post-war European democracies included in our project, where countries that have amended their first party law are included as two separate observations in order to expand the sample size as much as possible. The results are presented in Table 5. The data reveal that, most importantly, party regulation has a negative and significant impact on the number of new parliamentary entries; the effect is consistently present in each formulation of the model. While the coefficient in model 1 is smaller than in the other specifications, the direction and the significance remain the same. Furthermore, the goodness of fit level, represented by the r-squared statistic, is very decent, given the small sample size. Both models 1 and 2 explain at least 50 percent of the variation in the data, while model 4 performs even better, reaching 60 percent. This gives us the confidence to conclude that increasing regulation indeed deters challenger parties.

One of the two variables controlling for the effect of the electoral system does not perform in the expected direction. The mechanical effect of the electoral law, modelled through the interaction between the district magnitude and ethnic heterogeneity, turns

out to be consistently significant in suppressing the number of new party entrants in all but one model, where the variable fails to reach significance. The negative sign, however, is contrary to expectations and suggests that higher district magnitudes and more heterogeneous societies lower the probability of higher vote-shares, and thus parliamentary representation, for new parties. Model 1 shows that the psychological effect of the electoral law, modelled through the amount of electoral volatility, has a positive effect on new party entry as predicted. The variable retains its expected sign and its statistical significance, although the level of significance varies, in all other models. For robustness check, we have also tested the models using the effective number of parties (Laakso and Taagepera, 1979) as a proxy of party system fractionalization. The output, which is not presented here, shows very similar results. It illustrates the negative and significant effect that party regulation has on new party entry, and the stimulating, positive, effect that a higher effective number of parties has on newcomers. The latter is significant in two models, thus confirming and strengthening the results of the volatility models carried out here.

Three of the four models include a dummy variable for the presence of a communist past, as the legacy of communism is expected to have contributed to the continued permeability of post-communist party systems. The post-communist variable carries a positive sign in all three models, yet reaches significance in just one. This provides some, but not sufficient, evidence that in addition to the institutional framework political context also plays a role in party system development.

In the last two models, we test the more specific effect of funding regulations, incorporating the payout threshold (model 3) and the availability of public funding (model 4). The results of our analysis show that there is no proof that the payout threshold has a significant effect on the number of new party entries. Our conclusions are thus similar to Scarrow's (2006), discussed above, who detected 'no systematic pattern in the way political competition changes after the introduction of direct subsidies for parties' (2006: 633). Finally, given that the methods of allocation and distribution of state subsidies vary widely and cannot easily be quantified, we run the model with a dummy variable for the availability of public funding (at any threshold). This coefficient too fails to reach significance; there is thus no evidence of a systematic effect of the presence or absence of state subsidies on the number of successful new party entries. This confirms earlier findings, although comparative qualitative analyses may be needed to examine in more detail how the funding regime affects the permeability of party systems.

Conclusion

In this article, we have studied the relationship between the parties and the law. More specifically, we have sought to explain whether and how party systems change as a result of a changing regulatory environment. Existing theories suppose that incumbent parties tend to engineer the institutional environment in such a way as to preserve the status quo and disadvantage potential challengers. With a newly constructed database on party regulation in post-war Europe, we have investigated whether the evidence supports the expectation that, as the regulatory environment increases in intensity, the number of successful new entries will diminish.

Our data show that the magnitude of party regulation has increased noticeably across Europe. This is in itself consistent with the premises of the rational actor and cartel party views of party politics. However, a more careful analysis of the dimensions of regulation suggests that the most substantial expansion of regulation has occurred in the area of party financing in particular. This may be driven more by the desire to enhance transparency and to combat corruption than with controlling access to the political system for new parties. In addition, the relationship between party regulation and the number of new parties is not so unequivocal. Despite increasingly intense regulatory environments, new parties continue to successfully enter parliament. Over recent decades, they have done so in more than a third of the elections in West-European democracies and in twice as many elections in Eastern Europe.

In this article, we have systematically assessed the impact of state regulation on the permeability of party systems across post-war European democracies. Our statistical models show that there is a significant relationship between the amount of regulation and the number of new party entries, with the latter decreasing as amount of regulation increases. This is consistent in several different model specifications, controlling for the effects of the electoral law, the stability of the party system, as well as the parameters of public funding. While large district magnitudes and high levels of electoral volatility appear to increase the permeability of the system, the funding regime appears to have no noticeable effect on the number of parties. Whether or not these consequences were intended is hard to say, as the underlying motivations of the decision-makers are difficult to assess reliably. In any case, this article offers the first quantified proof of a phenomenon upon which many have speculated but for which there is limited empirical evidence thus far. As regulation increases in range and magnitude, it indeed acts to prevent new parties from successfully crossing the threshold of parliamentary representation.

Funding

This article forms part of a larger research project *Legal Regulation of Political Parties in Post-War Europe* which is funded by the European Research Council (ERC_Stg07_205660). Their financial support is gratefully acknowledged.

Acknowledgements

We are grateful to Fernando Casal Bértoa, Susan Scarrow and two anonymous reviewers for their helpful comments and suggestions. All errors remain our own.

Notes

1. All parties that have emerged as new formations, including those resulting from party splits or mergers, have been considered as new parties for our purposes; parties that only changed their names, however, have been excluded.
2. See Katz and Mair (2009) for a restatement and a more nuanced view of the relative importance of public funding.
3. Our data are derived from a larger research project focusing on the development of party regulation in post-war Europe. Detailed country information and a searchable database of party regulation can be found on our website, www.partylaw.leidenuniv.nl.
4. For an overview and discussion of the coding scheme, see Biezen and Borz (2012).

5. While the underlying motivations for the observed increase in party regulation do not constitute the focus of this article, we did find a statistically significant relationship between the perceived levels of corruption and the level of party regulation (results not reported). However, using both a larger sample of liberal democracies across the globe and bi-variate rather than multi-variate analysis, van Biezen (2010) observed no significant link between the regulation of party financing, as opposed to party regulation more generally, on the one hand, and perceived levels of corruption on the other. This implies that we cannot conclude with certainty one way or the other before additional tests are done.
6. For the purposes of completeness we ran the same tests on the full dataset of countries, including the countries that do not have a party law. As expected, we observe statistically significant differences in most categories (results available on request).
7. Results are not reported in full here, but are available from the authors on request.
8. Including Austria, Bulgaria, Croatia, the Czech Republic, Estonia, Germany, Poland, Slovakia and Spain.
9. Including Finland, Hungary, Lithuania, Portugal, Romania and Slovenia.
10. For determinants of the vote and seat-share won by new political parties in Western Europe, see Willey (1998).
11. The unit of analysis is the legislative election. In countries where both a first and amended versions of the party law exist, the two respective elections after the passage of the first and most recent law are treated as unique observations. In countries without a party law, the number of new party entries is averaged from 1970 (1990 for post-communist democracies) onwards. The NNE is collected for the election immediately following the adoption of a party law. Where the year in which a party law was adopted coincides with an election year, we have taken the next electoral period.
12. According to our analytical framework, the range of party regulation can vary between 0 and a maximum of 12. For more details, see Biezen and Borz (2012).
13. In order to normalize the variable we have operationalized district magnitude as the natural log of the average district magnitude in a given country. The data are from Golder (2005). The ethnic heterogeneity data are from Alesina et al. (2003), Roeder (2001), and our own calculations.
14. Electoral volatility is calculated with Pedersen's index (1979). The data come from Bartolini and Mair (1990), Casal-Bértoa (forthcoming) and our own calculations.
15. Following Scarrow's (2006) emphasis on the importance of examining specific regulations on public funding, we include the payout threshold in our analysis. The payout threshold is the percent threshold in votes received which political parties competing in elections must pass in order to be eligible for public funding.

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