



Party Law in Modern Europe

The Legal Regulation of Political Parties in Post-War Europe

Breaking the Cartel: The Effect of State Regulation on New Party Entry

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**Breaking the Cartel:
The Effect of State Regulation on New Party Entry**¹

Abstract

Despite the growing amount of party regulation, we still have a limited understanding of the effect that party laws have on political competition. Notwithstanding the predictions that incumbent parties adopt rules favouring their own position, found both in the cartel party thesis and the rational actor view of politics, we continue to witness the 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 changes in the rules governing parties and explore the effect of party regulation on the number of (successful) new entrants. Overall we find that increasing regulation significantly decreases the number of successful new entries overall, while being a post-communist democracy significantly increases the number of new entrants.

Introduction

In recent years, both the external activities and the internal operations of political parties in European democracies have become increasingly subject to external regulations which define or prescribe their operations. Indeed, the legal regulation of parties has become more and more customary, to the point that, as Katz has noted, parties have become ‘legitimate objects of state regulation to a degree far exceeding

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what would normally be acceptable for private associations in a liberal society.’ (Katz 2002: 90) 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 fulfill their democratic functions adequately. Given their fundamentally private and voluntary character, the state in liberal democratic societies has traditionally been reluctant to intervene in the operations of political parties. Today, however, 19 out of the 33 European democracies has adopted a law on the financing of political parties, 20 countries have adopted a special party law, while 28 of them have formally codified political parties in their national constitutions.

As the regulatory environment of political parties is becoming increasingly more intense, the question rises if this has any consequences for the party systems within which they 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 paper, we provide a comprehensive comparative analysis of the effect of party regulation on party formation and party entry in post-war Europe, focusing in particular on the extent to which the changing regulatory environment acts to deter the successful entry into parliament of new parties. We observe that the overall increase in the regulatory environment for political parties is most significant with regard to the regulation of party financing and the party organization. In examining the effect of regulation on party competition, we do not find confirmation that increasing regulation deters new party formation, however our analyses show that more regulation has a negative impact on new party

entry overall. In addition, our study demonstrates that successful new party entries are significantly higher in the post-communist states.

Regulation and the challenge of new entrants

In their seminal paper, Katz and Mair (1995) suggest that in the process of party transformation and adaptation in Western Europe, not only the linkages between parties and civil society have 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 & 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 & Mair 1995: 16)

In their restatement of the cartel party thesis, Katz and Mair (2009: 759) furthermore note that one aspect of the behavior 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.’ 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. We find 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 favor their own position, also in the rational actor view of politics. Scholars in this tradition study the effect of electoral (Benoit 2001; Duverger 1954; Lijphart 1990) and social factors (Amorim-Neto and Cox 1997; Ordeshook and Shvetsova 1994) on political competition in a more quantitative manner. More recently, in addition to electoral and social factors, party system scholars (Rashkova 2010; Spirova 2007; Tavits 2007) have also incorporated state constraints such as public funding and ballot access rules in their quest to explain the number of political parties. On the basis of the propositions and findings in these qualitative and quantitative traditions, we may expect, but still need additional evidence, that incumbent parties engineer the institutional environment in such a way as to minimize the risk of challenges from new parties.

However, we observe that new political parties continue to appear, contest elections, and even successfully enter parliament. Well-known examples include the various Green parties in Western Europe, such as the German Grünen (who entered parliament in 1983 with 27 seats) and the Austrian Grünen (who secured 8 seats in 1986), both of which have remained in parliament since with growing electoral support. In Eastern Europe, where party systems are often less institutionalized, new parties form and enter not only more frequently, but sometimes with an even larger share of the vote than established parties. Bulgaria’s NDSV, for example, formed in 2001 and obtained 120 out of the 240-seat parliament that same year. On many occasions, moreover, we witness more than one new party entering parliament, especially in the post-communist democracies in Central and Eastern Europe.

The data in Table 1 summarize these phenomena. For each country, we consider the period between the adoption of its first Party Law and the most recent legislative

election. Column 3 reports the total number of elections during that period. The number and percentage of elections in which a new party successfully obtains parliamentary representation is recorded in column 4. The columns reporting the magnitude (on which more below) indicate the extent to which the intensity of the regulatory environment has increased or decreased between the adoption of the first and the current Party Laws. As Table 1 demonstrates, new parties successfully entered parliament in more than a third of the parliamentary elections in Western Europe and in two thirds of the elections in Eastern Europe. The countries that stand out with the highest rate of new party entry are Bulgaria, Lithuania, Slovakia and Ukraine – all with successful new parliamentary parties in over 80 per cent of the national elections. In only one post-communist country – Romania – do new parties successfully enter parliament in less than 50 per cent of its elections.

[Table 1 about here]

Austria and Germany on the other hand, are among the countries with the lowest legislative permissiveness. As we will see below, these two countries in fact tend to regulate parties quite intensively and have furthermore seen regulation increase substantially over time. Recording a low instance of new party entry when regulation is high is consistent with the general proposition that regulation tends to favour incumbents at the expense of newcomers. However, there are also plenty of examples which show the opposite. Bulgaria and Estonia, for example, are cases of intensive party regulation which nonetheless co-exist with very high rates of legislative permissiveness. Countries such as Portugal regulate relatively little in comparison and yet record comparatively low levels of legislative permissiveness. 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, these examples suggest the need for a better and more systematic comparative analysis of the question how and to what extent party regulation has changed and what these changes imply for political competition.

We are not the first to embark on an empirical assessment of the relationship between party regulation and party competition. The thorough examination of funding regulation has been the focus of Casas-Zamora's (2005) study on Latin American.

More recently, Gherghina et al. (2011) have provided a comprehensive study of the case of party financing in Romania. The regulation of political parties and party financing have 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 availability of public funding – operationalized as a dummy variable – increases the success of new party entry in new democracies. In a similar vein, Booth and Robbins, investigate the connection between campaign finance and party system institutionalization in post-communist states, arguing that “without funds, parties are unable to compete effectively, which can spell disaster for the stability of party systems (2010, 4).” Using a broader sample and a more specific operationalization of public funding, however, Rashkova’s (2010) study shows that while ballot access rules suppress the number of political contestants, public funding has no significant effect on the number of competitors. The jury is thus still out on the question if and how legal rules affect the formation of new parties and their chances to successfully enter parliament. This lack of certainty is partly because the rules themselves are often not at the core of scholarly inquiries. Indeed, with the notable exceptions of Scarrow (2006) and Bischoff (2006), relatively few studies explicitly examine the relationship between the parties and the law.

Following the original cartel party argument, some see state subventions as a mechanism of cartelization aimed at eliminating competition, while others contend that public funding for political parties may encourage the formation of new parties and decrease corruption opportunities by providing a transparent source of party income. Scarrow (2006) tests the two competing views and does not find compelling evidence that increased regulation deters new party formation. She makes a valuable contribution with one of the first examinations of the effects of regulation on party competition. 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 her PhD dissertation, Bischoff (2006) offers another longitudinal study of the challenge of new entrants facing the cartel, examining the relationship between institutions affecting the electoral process and the incidence of new party entry. In a

comprehensive analysis of the effects of institutions constraining competition, which she calls barriers of entry, Bischoff shows that the influence of registration requirements, access to finance, and costs of reaching voters do not have significant effects on the number of new parties. She finds significance in the relationship between electoral rules and the number of new parties, which are negatively related, as expected, and between new parties and access to media, which, contrary to expectations, also appears to be negatively related to the number of 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.

Building on previous works, we continue the study of the challenge of new entrants in the realm of a growing regulatory environment. We offer comparative data on the relationship between party regulation and party formation and systematically test for significant differences in regulation among certain groups of countries. Our study tracks changes in regulation and illustrates the categories which show statistically significant differences over time. Further, we examine the relationship between regulation and party entry. For that purpose, we model new party entry through the level of regulation of parties in the party law. We also test the effect of the payout threshold of public funding on the number of new party entries. Based on the predictions of extant theory, we expect increasing regulation to have a negative effect on the number of new party entries. Since political competition is subject not only to regulation of parties in the party law, but also to constraints of the electoral system and the political context, we control for the effect of district magnitude, the effective number of parties, and the relevance of post-communism.

Deterring challengers? Empirical evidence

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). Our data are derived from the

research project *Legal Regulation of Political Parties in Post-War Europe*,² which includes all post-war European democracies (N=33). In the context of the project, ‘democracy’ constitutes an independent country classified as ‘Free’ by the Freedom House, with the exception of smaller states with a population under 100,000. As our content analysis focuses on studying the legal provisions stipulated in Party Laws, the evidence presented in this paper includes only those countries which have adopted a specific law on political parties. These countries are: Austria, Bulgaria, Croatia, the Czech Republic, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Ukraine and the UK (N=20). The time under investigation encompasses the entire post-war period whereby we extend, for each country, our analysis to the moment when a law on political parties was adopted for the first time. In including both West and East-European democracies, and both EU member-states and non-EU countries, our analysis has a broader scope and longer time-span than most research thus far.

The regulation of political parties as laid down in national Party Laws encompasses several dimensions, varying from the broader question of definition and legal status of political parties to the regulation of party registration, party finance, party activity, and party organization. Some rules may be anticipated to obstruct or hinder the formation of new parties or their entry into parliament (such as stringent registration requirements), while others may facilitate this (such as a generous regime of state financing). For the purpose of this paper, we focus on those categories of regulation which may be expected to affect the prospects, or costs and benefits, of new party formation and new party entry.³ We thus examine legal rules which are likely to negatively or positively affect the opportunity structure for actors wanting to form a new party. We leave out regulations that are unlikely to have any direct or indirect effect, such as the legal provisions outlining the parties’ entitlements to the democratic rights and freedoms of association, assembly and speech.

The relevant categories of party regulation examined in this paper fall into four broader areas – party finance, party organization, party activity and identity, and

² Detailed country information and a searchable database of party regulation can be found on our website, www.partylaw.leidenuniv.nl.

³ For an overview and discussion of the coding scheme, see Biezen & Borz 2009.

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 *party organization* category includes rules applying to the extra-parliamentary organization and the legal status of parties and 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 fielding candidates) on the other. *Party activity & identity* contains rules that describe different forms of activity and behaviour and prohibit certain ideological or programmatic foundations (e.g. ethnic, religious, or national identities). Finally, the category *media access* includes the rules of allocation as well as restrictions of 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 a special Party Law, revealing the relative importance of each dimension by country. The data reveal several trends. *Party finance* turns to be the most heavily regulated category. Its five subcategories together account for 81 per cent of the regulation considered here. The highest amount of regulatory provisions is about reporting and disclosure requirements. This subcategory displays a magnitude (i.e. aggregated frequency of regulatory provisions) of 316 references in all national PLs and is present in almost all countries considered here, with Romania and Spain as the only exceptions. *Private funding* is also a highly regulated category: it has a magnitude of 115 and is present in 12 PLs. The dominance of reporting and disclosure and private funding provisions may be considered to indicate increased efforts in improving the transparency of political financing taken by European democracies in an effort to combat corruption. *Direct public funding* is the third most important regulatory category, appearing with a magnitude of 92 in 12 national PLs. Dimensions of political parties which tend to be less intensely regulated in PLs are *media access*, the *electoral arena*, *indirect public funding* and *party activity*. More generally, it is important to emphasize that this paper concentrates only on the regulatory provisions found in PLs. As a result, the figures presented here may underestimate the relative importance of regulatory categories, as these may be elaborated in greater detail in specific laws pertaining to the subject, such as electoral laws and party finance laws.

[Table 2 about here]

A comparison between countries reveals further interesting findings. Although *party finance* appears to be most heavily regulated category overall, we observe a number of countries where at least 40 per cent of their regulation concerns the *party organization*, and the *extra-parliamentary party* in particular. Such is the case in Lithuania, Latvia, Romania and Serbia. In addition, countries such as Spain and Portugal also spend more of their regulatory attention aspects other than party finance, focusing instead on the party organization, access to the broadcasting media and restricting party behaviour and activity. We also find considerable variation within the broader categories. Bulgaria, Germany, Finland, Hungary and Slovakia, for example, appear to spend most of their regulating efforts on the *reporting and disclosure* of party finance, while countries such as Estonia, Poland and Slovenia concentrate more efforts than average on the regulation of private finance, and in Austria, the Czech Republic and Norway the Party Law is more attentive to direct public subsidies than elsewhere. These differences cannot be easily accounted for. To examine variations in regulation more systematically, we have run several ANOVA analyses, where we look for significant differences in the amount of regulation overall, as well as in each of the categories: We test differences between countries in terms of their democratic experience, the newness of democracy, and the relevance of post-communism. In addition, we also test for significant differences in terms of the amount of regulation between the party law as it was first adopted and as it is currently in force. Table 3 summarizes the results. The first results (East vs. West) show the comparison between the post-communist democracies in Central and Eastern Europe and the older democracies in Western Europe; the second (New vs. Old) the results of the comparison of the democracies which emerged out the third and fourth waves of democratization (i.e. Southern and Eastern Europe) with the established West-European Democracies; the third (Continuous vs. Discontinuous) the difference between countries with an unstable democratic experience (including Austria, Italy and Germany) and those with an uninterrupted continuous democratic history.

[Table 3 about here]

The evidence in table 3 shows that there is a significant difference in regulation in the *extra-parliamentary* subcategory. The results of the comparison are statistically significant for all groups. 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 several countries tend to concentrate their regulatory efforts. *Private funding, direct public funding, and indirect public funding*, on the other hand, show to be significantly different in terms of the age and/or continuity of democracy. The regulation of *media access* and *party activity & identity* is not significantly different between any of the groups of countries. The last column in Table 3 illustrates that there is a significant difference in the magnitude of regulation between the first and the current Part Laws only with regard to the 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, however, do not show any statistically significant differences. This suggests that among the countries with a Party Law and within the categories we study here, countries change their regulatory environment, more or less in a similar manner – a phenomenon also discussed by Koss (2008).⁴

To complement the results presented in Tables 2 and 3, and in order to assess possible changes over time, we trace the development of party regulation in each country by comparing the first and current Party Law and the respective change in the level of regulation in each of our categories of interest. 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 in comparison to when the PL 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 significantly.

[Table 4 about here]

⁴ For the purposes of completeness we ran the same tests on the full dataset of countries, including the countries which do not have a PL. As expected, we observe statistically significant difference in most categories (results available upon request).

Although it is difficult to assess the real motivations of parties and politicians underlying the extension of party regulation, if political parties are indeed aiming to control access to political participation for newcomers, we would anticipate the overall amount of party regulation to augment in a way that effectively deters 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 be noted that the most significant growth of regulation is found in the area of *party financing*, and most notably in the reporting and disclosure and the regulation of (private) income and expenditure subcategories. This suggests that the drift towards more regulation is likely to have more to do with efforts to enhance transparency and combat corruption as noted above, than with controlling access to the political system for new parties. At the same time, it should also be noted that the subcategories where we find the largest number of countries reporting an increase in regulation (N=8) are of the *reporting and disclosure*, *direct public funding* and the *extra-parliamentary party*. As two of these categories encompass registration requirements and funding for parties, it is conceivable that increasing regulation effectively raises the barrier for new party formation and party entry – this would require an analysis of the qualitative nature of the changes – and are aimed at preserving the position of the incumbent parties. Figure 1 provides a graphical presentation of the common trends in regulation development just discussed.

[Figure 1 about here]

To examine the effect of party regulation on party formation, we compare data of changes in the regulatory environment and changes in the party system. The data for 16 European democracies are presented in Table 5.⁵ The years in which the first and current PLs were adopted are reported in column 2, while columns 3 and 4 show the changes in the magnitude (the aggregated frequency of regulatory provisions for all categories examined here), and range (the number of regulated categories) of party

⁵ Countries which have not amended the Party Law since it was first adopted, and for which therefore the regulatory environment has not changed, are excluded from Table 5.

regulation. The overall increase or decrease of regulation, based on the changes between the first and current PLs, is noted in column 5. To be classified as *increasing*, a country's regulation must increase both in range and in magnitude. As a result, we have nine democracies where the range and magnitude of regulation has increased since the Party Law was first adopted and five democracies where regulation has decreased (Portugal is a special case and is classified as *indeterminate*; although the overall magnitude and range have declined, this is the result of the level of regulation decreasing in some categories and increasing in others). Columns 6 and 7 show the raw number of electoral parties, i.e. the total number of parties that received votes in the general elections, after the adoption of the first and current PLs respectively. Because we are interested in the question whether changes in party regulation affect the formation of new parties, we use the raw count of parties, where all parties which received some votes have been included, rather than relative measures such as the effective number of parties for example.⁶

[Table 5 about here]

As discussed earlier, current theory posits that parties in power adopt rules that favour incumbents. Therefore, all other things equal, the general prediction is to see fewer contestants when regulation increases and more contestants when regulation decreases. The data in the last column of Table 5, however, suggests that among countries with a Party Law, we have more evidence disconfirming this expectation than supporting it. Indeed, we find that in nine out of the 16 states studied, an increase in regulation does not correspond to a decrease (or vice-versa) in the number of political contestants. That is, in five countries (Austria, Germany, the Czech Republic, Slovakia and Spain) we observe an increase in the number of parties over time despite an increase in regulation. In another four (Hungary, Lithuania, Romania and Slovenia), we see the number of parties decline, although this cannot be attributed to stricter rules, as the amount of regulation has in fact decreased. These observations suggest that the relationship between regulation and the number of parties is not so straightforward and is not independent of other factors, such as electoral rules or political past, pertinent to the development of party systems.

⁶ Parties and coalitions are counted the same way (a coalition consisting of three parties is counted as one). Independents and others are not included.

In addition to the question whether the rules serve to deter the formation of new parties, there is the question whether they act to prevent new parties from entering parliament. In their original article, Katz and Mair (1995) note that the existence of a cartel of parties 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. In their restatement, they furthermore observe that ‘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). Leaving such anti-cartel parties and sentiments aside, however, the cartel thesis intimates that existing parties make efforts to keep challenger parties at bay. If they are successful in their attempts, we should see fewer parties entering the legislative arena.

In the second part of our study we look at the relationship between the parties and the law further by systematically examining the effect of regulation on the successful legislative entry of new parties. Here, we expand the examined effect of regulation and instead of concentrating on a few selected categories, we consider the effect of the entire regulatory environment as defined by the Party Law. Using a linear regression analysis we test the effect of party regulation on the number of new party entries. We incorporate controls for the electoral system, which is accepted as the most influential determinant of party system development in the literature, and a communist past, given the generally higher levels of party system fragmentation in the post-communist party systems. The dependent variable is a count of the number of new party entries (NNE) in the election following the adoption of a PL. Thus, countries where a first and current version of the PL exists are treated as separate observations. In countries without a PL, the number of new party entries is averaged from 1970 (1990 for post-communist democracies) onwards. The main independent variable of interest is the Party Regulation Index (PRI). The PRI, similar to Fish and Kroenig’s (2009) parliamentary powers index, assesses the amount of regulation of political parties in all post-war European democracies which have a Party Law. The index provides an overall indication of the level of regulation of political parties at a given point in time.

It is based on the range of party regulation, by which we refer to the number of categories of party regulation and which according to the framework of the research project can vary between 0 and a maximum of 12. The PRI itself ranges from 0 to 1, with 0 meaning no regulation and 1 meaning that parties are regulated in all categories. The formula used to calculate the index is:

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

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

Since political competition is not only subject to regulation of parties in the party law, but also to constraints of the electoral system, we include the effect of district magnitude and the effective number of parties in our model of successful new party entries. District magnitude controls for the *mechanical effect* of the electoral law (Duverger 1954) and is expected to yield a negative sign. The logic here is that because higher district magnitude stimulates more participation, the vote is likely to be spread among more parties, thus lowering the probability of higher vote-share for any party, therefore decreasing the chance of new party entry. Using the standard way of normalizing the variable found in the literature, we operationalize district magnitude as the natural log of the average district magnitude in a given country. The data are from Golder (2005).

The effective number of electoral parties (ENEP) captures the *psychological effect* of electoral rules as it takes into account how voters choose. We expect a positive relationship, as a larger number of effective parties suggests weaker party support, which offers a larger chance of entry for a new party. ENEP is a weighted measure of the number of political contestants which accounts for the relative vote share of all applicants. The measure is constructed using Laasko and Taagepera's (1979) formula and the data are taken from Gallagher *et al.* (2008) and Golder (2005). The core model that we fit is:

$$NNE = \beta_0 + \beta_1 * PRI + \beta_2 * \ln(M) + \beta_3 * ENEP + \varepsilon$$

In variations of the main model we include a post-communist dummy and a variable denoting the payout threshold for party subsidies.⁷ The results are presented in Table 6. The model is tested with two datasets, one consisting only of observations of the countries which have adopted a PL (N=30, models 1 and 3) and one consisting of observations of all post-war European democracies included in our project (N=45, models 2 and 4). The data reveal interesting results. First we see that party regulation has a positive and significant effect on the number of new entrants within the set of countries that have a party law (model 1); however, the effect is overruled when we control for post-communist state (model 3). This means that within the set of countries with a PL, being a post-communist democracy has a stronger effect on the number of new entrants than the regulation found in the PL. The regression results are consistent with the conclusions from Table 5, where it was illustrated that an increase in regulation often coincides with an increase in the number of new entries within regulating countries, yet that relationship was likely to be a result of another factors such as a country's political past, which model 3 confirms. The precedence of being a post-communist country is shown also when we test the model with all post-war European democracies – as we see, the overall effect of regulation when both countries which have and do not have a PL are taken into account, is insignificant less post-communism is controlled for. That changes in model 4 where both PRI and the post-communist dummy are significant. Interestingly, the sign of the effect of party regulation changes in the full dataset models, yet the importance of whether a country belongs to the post-communist bloc remains the same. This suggests that the overall effect of increasing regulation does indeed suppress new party entry as theory predicts, however being a post-communist democracy is a factor significantly related to new party entries. Without controlling for post-communism party regulation does not significantly affect the success of new parties. The *mechanical effect* of the electoral law, modeled through the district magnitude, shows to be consistently significant in suppressing the number of new party entrants, as we expect. The *psychological effect* of the electoral law however, modeled with the effective number of parties, carries the expected positive sign but shows to be significant in only one model – the full dataset model where post-communism is not controlled for. Perhaps this strengthens the conclusion of the significance of the political environment on the

⁷ Following Scarrow's (2006) emphasis on the importance of examining specific regulations on public funding, we include the payout threshold in our analysis.

number of new party entries, as it once again confirms that party system dynamics in post-communist states of Central and Eastern Europe are still rather fluid and actors do not always respond to incentives as we would expect them to do in more established democracies.

In the last two models, we test the more specific effect of funding regulations. Following Scarrow's (2006) qualitative analysis of the development of payout thresholds and their effect on the changes in party competition, we incorporate the payout threshold in our model. As can be seen from model 5 in Table 6, the results of our quantitative analysis show that there is no proof that the payout threshold has a significant effect of the number of new party entries. Our conclusions are thus similar to Scarrow's, who detected 'no systematic pattern in the way political competition changes after the introduction of direct subsidies for parties' (2006, 633). Finally, as the methods of allocation and distribution of state subsidies vary widely and cannot be easily quantified (for example when funding is given to every party), we run the model with a dummy variable for the availability of public funding (at any threshold). The results show once again that there is no evidence for a significant effect of state subsidies on the number of new party entries.

Conclusion

In this paper we study the relationship between the parties and the law, and more specifically we seek to explain whether and how party systems change as a result of a changing regulatory environment. Our quest for answers to this question is rooted in the common belief found in extant theory that incumbent parties 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 found within national Party Laws in post-war Europe, we assess whether the evidence supports this expectation. At a very basic level, the expectation is that as the regulatory environment defined by Party Laws become more intensive, the number of new parties will diminish.

Our data show an observable increase in the magnitude of party regulation between the first and current Party Laws across Europe, with the most notable difference seen in the areas of party finance and party organization. Except rules for the extra-

parliamentary party however, regulation seems to have increased in similar fashion in all countries which have a Party Law. While this increase is in itself consistent with theoretical expectations, we note that the growth largely found in the area of party financing may have more to do with the desire to enhance transparency and to combat corruption than with controlling access to the political system for new parties.

To examine the between link the observed growth in regulation and changes in the party system we look at the formation of new parties as well as the number of successful new party entries after the adoption of a party law. Abreast with current theoretical predictions, we expect that an increase in regulation will result in fewer new party formations and de-regulating political parties will stimulate more parties to occur. Data from electoral results over the last two decades reveals otherwise - we find that there are many cases where the relationship between party regulation and party formation runs in the opposite than the expected direction. Indeed, we find that new parties successfully enter parliament in more than a third of the elections in West-European democracies and in twice as many elections in the states of Eastern Europe.

We look at the latter in a more systematic way, by fitting a simple statistical model. The model tests the relationship between the level of party regulation found in the PL and the number of new party entries. Our results show that, as theory predicts, there is a statistically significant, negative relationship between the amount of regulation and the number of new party entries. However, the significance depends on the inclusion of a post-communist dummy - an interesting, and surely not unexpected result. Given that party systems are largely shaped by the electoral law, we control for district magnitude and the effective number of parties. The expected negative effect of district magnitude is confirmed by the results. We find consistent evidence that higher district magnitude, which stimulates more parties to compete, significantly decreases the chance of successful new party entry.

Finally, in line with recent research, we test whether specific rules, and not the overall level of regulation, has an effect on the number of new party entries. We look at the payout threshold and the availability of public funding to parties in general. There is no evidence for the effect of state subsidies on the number of new party entries. However, we observe that the number of new party entries is significantly higher in

the Eastern European region, and find the relevance of post-communism to be the overriding explanatory factor affecting the number of new party entries.

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Table 1. New Party Entry in European Parliaments

Country ^a	Period	Number of elections	New entry instances ^a	New entry with highest vote share	Election year	Magnitude regulation ^b	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	1993-2007	4	75.0 (3)	ZL (18.3)	1995	24	+1	HDSSB (1.8)
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	EER (7.1)
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	1991-2007	6	66.7 (4)	AWS (33.8)	1997	58	+49	--
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	1994-2008	4	75.0 (3)	ZARES (9.4)	2008	46	-1	ZARES (9.4)
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)
Eastern Europe		4.7	67.6 (3.2)					
Western Europe		8.86	35.0 (3)					

^a Serbia is not included as it adopted a PL only in 2009 and there have been no elections since. ^b Reported figures are in expressed as a percentages of the total number of parliamentary elections. In parentheses: the raw number of elections in which new parties successfully entered parliament. ^c Magnitude for the PL currently in force.

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

Category	Party Finance					Party Organization		Media Access	Party activity & identity
	Reporting & disclosure	Private funding	Direct public funding	Regulation of expenditure	Indirect public funding	Extra-parliamentary party	Electoral party	Allocation & restrictions	Activity & 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)	-	-	-
Lithuania	-	20.0 (2)	-	-	-	50.0 (5)	-	30.0 (3)	-
Latvia	26.1 (6)	4.3 (1)	-	4.3 (1)	-	47.8 (11)	13.0 (3)	-	4.3 (1)
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)	-	66.7 (4)
Ukraine	25.0 (4)	25.0 (4)	-	-	-	25.0 (4)	-	18.8 (3)	6.3 (1)
United Kingdom	-	-	-	-	-	16.7 (1)	50.0 (3)	33.3 (2)	-
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. N= number of countries regulating a given category (Total N = 20).

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

Category	Eastern / Western Europe	New / Old Democracy	Continuous / Discontinuous Democracy	First / Last Party Law
Reporting & 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 & 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)
<i>N of observations</i>	<i>24/12</i>	<i>28/8</i>	<i>6/30</i>	<i>16/20</i>

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).

Table 4. Changes in party regulation by category

Category		Increasing regulation	Decreasing regulation	No change
Party Finance	Reporting and disclosure	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 (10); Spain ; Ukraine (4)
	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 (4); 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 (2); Finland (2); Portugal ; Ukraine
	Indirect public funding	Germany (+3) Average increase: +3.0	Poland (-1); Portugal (-6); Romania (-3); Average decrease: -3.3	Austria ; Bulgaria (2); Czech Republic ; Croatia ; Estonia ; Finland ; Germany (6); Hungary (1); 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 (2); Hungary (1); Lithuania ; Portugal ; Slovakia (1); Slovenia ; Spain ; Ukraine
Party Organization	Electoral party	Portugal (+2); Spain (+1) Average increase: +1.5	Bulgaria (-1); Romania (-1); Slovenia (-1); Average decrease: -1.0	Austria ; Croatia ; Czech Republic ; Germany (3); Estonia (2); 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 (4); Finland (3); Hungary (1); Slovenia (5); Ukraine (4)
Party Activity & Identity	Activity & identity	Bulgaria (+1); Romania (+4); Spain (+4) Average increase: +3.0	Austria (-1); Estonia (-1); Portugal (-1) Average decrease: -1.0	Croatia (1); Czech Republic ; Germany ; Finland (1); Hungary ; Lithuania ; Poland ; Slovakia ; Slovenia ; Ukraine (1)
Media Access	Allocation & restriction mechanisms	Austria (+2); Portugal (+2) Average increase: +2.0	Lithuania (-6) Average decrease: -6.0	Bulgaria ; Croatia ; Czech Republic ; Estonia ; Finland ; Germany ; Hungary ; Poland (2); Romania ; Slovenia ; Slovakia ; Spain ; Ukraine (3)

Note: Figures report magnitude and direction of change in party regulation, comparing the first and current Party Laws. Country names reported in bold represent countries which do not regulate a given category. Latvia, Norway, Serbia, and the UK have been excluded from the comparison as they only have one party law available.

Table 5. The effect of regulation on party formation *

Country ^a	First and Current Party Laws	Magnitude change ^b	Range change ^c	Decrease / Increase	Number of parties after first PL	Number of parties after current PL	Do rules affect formation?
Austria	1975 / 2003	+21	0	Increase	4	12	No
Bulgaria	1990 / 2009	+70	+1	Increase	38	18	Yes
Croatia	1993 / 1999	+1	0	Increase	9	6	Yes
Czech Republic	1993 / 2006	+26	0	Increase	16	26	No
Estonia	1994 / 2007	+13	0	Increase	16	11	Yes
Finland	1969 / 1992	-1	0	Decrease	10	19	Yes
Germany	1967 / 2004	+69	0	Increase	11	27	No
Hungary	1989 / 2003	-2	0	Decrease	19	15	No
Lithuania	1995 / 2004	-13	-2	Decrease	24	15	No
Poland	1990 / 2008	+49	+1	Increase	111	10	Yes
Portugal	1974 / 2003	-10	-1	Indeterminate ^c	14	11	Inconclusive
Romania	1996 / 2003	-24	-5	Decrease	64	48	No
Slovakia	1993 / 2005	+40	+1	Increase	17	21	No
Slovenia	1994 / 2007	-1	0	Decrease	22	17	No
Spain	1978 / 2002	+4	+2	Increase	52	96	No
Ukraine	2001 / 2010	0	0	Same	33	n/a	Inconclusive

* The number of parties is the number of parties which enter the electoral race

^a Excluding Latvia, Norway, Serbia and the UK, which have not made changes to their first party laws

^b Aggregate difference in magnitude and range of regulation between the first and current party laws

^c In Portugal, regulation increases in some categories and decreases in others. Therefore, although the overall magnitude and range have declined, the conclusion on the overall increase or decrease of regulation is indeterminate.

Table 6. Party regulation and the number of new party entries

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Party Regulation Index (PRI)	4.28 (1.805)**	-0.80 (0.540)	2.43 (1.925)	-2.01 (0.644)***	-1.83 (0.663)**	-1.68 (0.613)**
District Magnitude (lnM)	-0.37 (0.199)*	-0.33 (0.154)**	-0.44 (0.190)**	-0.38 (0.413)**	-.026 (0.150)*	-0.34 (0.140)**
Effective Number of Parties (ENEP)	0.09 (0.093)	0.17 (0.082)**	0.01 (0.095)	0.07 (0.082)	0.10 (0.116)	0.23 (0.104)**
Post-communist democracy			0.99 (0.042)*	1.24 (0.420)***	0.61 (0.412)	0.93 (0.397)**
Payout threshold					15.86 (11.01)	
Public funding (dummy)						-0.53 (0.382)
Intercept	-1.36 (1.233)	1.37 (0.572)**	-0.33 (1.268)	1.93 (0.558)***	1.28 (0.690)*	1.50 (0.699)**
R ²	0.29	0.19	0.39	0.33	0.36	0.47
N of observations	30	45	30	45	34	42

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

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

Figure 1. Change in magnitude of regulation

