



Party Law in Modern Europe

The Legal Regulation of Political Parties in Post-War Europe

The Place of Political Parties in National Constitutions: A European Overview

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The Place of Political Parties in National Country Constitutions: A European Overview ¹

Ingrid van Biezen & Gabriela Borz

Introduction

This is the first working paper in the series on The Legal Regulation of Political Parties in Post-War Europe. The series hosts working papers associated with the research projects on *The Constitutional Regulation of Political Parties in Post-War Europe* (funded by the UK Economic and Social Research Council – ESRC) and *Re-conceptualizing Party Democracy* (funded by the European Research Council – ERC). In this first working paper, we concentrate on the empirical dimensions of the constitutional codification of political parties in post-war European democracies. The constitutionalization of political parties is a relatively new phenomenon in modern Europe as, historically, the constitutions of the liberal European democracies typically refrained from making reference to the existence of parties or describing their role in the political system. The constitutionalization of parties in Europe effectively began in the immediate post-war period, with the republican constitution of Italy in 1947 and the Basic Law of the Federal Republic of Germany 1949 as the most notable examples. These were the first European democracies explicitly to recognize the positive contribution of political parties to democracy in their constitutions. This practice has since been followed in constitutional revisions in many other polities, to the point that, as we shall see, most democratic constitutions in Europe today acknowledge the existence of political parties. This makes the constitution an important source for investigations into the character of modern democracy and the prevailing ideas about the place of political parties within the organizational infrastructure of the state and their role in relation to its citizens.

Despite the increased relevance of party regulation through the constitution, however, constitutions are not normally considered as a source of party law (Janda 2005) and this process and its implications have received little systematic scholarly attention from political scientists or constitutional lawyers, with Germany, the ‘heartland of party law’ (Müller and Sieberer 2006: 435) as a possible exception. The

¹ We gratefully acknowledge financial support from the ESRC (RES-061-25-0080).

research project on *The Constitutional Regulation of Political Parties in Post-War Europe* aims to address part of this gap in the literature by analyzing the process of constitutionalization of political parties in post-war European democracies, analyzing the empirical dimensions of the process of party constitutionalization as well as the underlying normative conceptions of political parties and democracy. In this working paper, we present the first empirical findings.²

I. Methodology: data collection and analytical framework

Case selection

The project on *The Constitutional Regulation of Political Parties in Post-War Europe* analyzes all textual references to political parties in the national constitutions of European democracies throughout the post-war period. The countries covered in this research include all European democracies which have a written constitution codified in a single document. For the purpose of this research, ‘democracy’ has been operationalized as an independent country classified as ‘Free’ by the Freedom House at the end of 2007, with the exception of smaller states with a population under 100,000. A total of 32 countries comply with these criteria, including Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, and Ukraine. Because, as we shall see below, 4 of these countries (Belgium, Denmark, Ireland and the Netherlands) have not codified political parties in their national constitutions, our total sample includes 28 countries.

The constitution is understood as ‘a textual source of the norms which aspire to govern the basic structure of power [...] in a modern state.’ (Finer 1995: viii). Constitutions aim to define the democratic ‘rules of the game’, i.e. to ‘regulate the allocation of power, functions and duties among the various agencies and officers of government, and to define the relationships between these and the public.’ (Finer 1995: 1) More specifically, for the purpose of this research, the constitution is taken to

² More details on the research project, as well as an online searchable database, can be found on the project website: www.partylaw.bham.ac.uk.

be that law which is called or commonly referred to as the constitution or basic law, and which is codified in a single document. This implies that the United Kingdom does not form part of our sample as it does not have a constitution in the sense employed here. Furthermore, it means that the constitutions of countries such as Sweden and Finland are taken to be those texts that resulted from the consolidation of various constitutional laws into a single document. For Finland this is the new integrated constitution of 1999, which is based on four older constitutional acts (the Constitution Act, the Parliament Act and two acts on ministerial liability). For Sweden, this is the 1974 constitution, which consists of four fundamental laws (the Instrument of Government, the Act of Succession, the Freedom of the Press Act, and the Fundamental Law on Freedom of Expression) and is the result of a similar process of constitutional integration (Ruin 1988).

The general criteria for the selection of our cases are thus the existence of an independent and democratic nation state with a written constitution codified in a single document, with the following further specifications for coding the year of party constitutionalization, i.e. the year in which the constitution first incorporates a reference to political parties:

1) Only democratic states in the *post-war period* are considered. Our cases effectively start with the first incidence of party constitutionalization in Iceland in 1944. They thus exclude cases of party constitutionalization of the interwar period, such as the 1919 constitution of Weimar Germany, or the 1920 constitution adopted in Austria following the collapse of the Austrian-Hungarian monarchy (subsequently amended in 1929). For Austria, the first democratic constitution is taken to be the constitution of 1945, adopted in the wake of the restoration of democracy after WWII, which reinstated the pre-war federal constitution of 1929 while at the same time rescinding the Austrofascist constitution of 1934. For Germany, the first democratic post-war constitution is the Basic Law of 1949 (For a chronology of party constitutionalization, see Table 1 below).

2) Excluded are *non-democratic constitutions* that still might have been in force after the transition to democracy. For Poland, for example, the first democratic constitution has been taken to be the so-called ‘small constitution’ of 1992, which repealed parts of the communist constitution, even though the country had acquired ‘Free’ status already in 1990. Included, however, are *revised non-democratic constitutions* that were adjusted to the standards of democracy before the transition

had been completed. Thus, in the case of Hungary, we consider the first democratic constitution to be the amended constitution of 1989, even though the status of ‘Free’ was first obtained in 1990. The same is true for the Romania, which first revised its non-democratic constitution in 1991 but did not become ‘Free’ until 1996.

3) For cases where we are dealing with a dual process of democratization and the (re)establishment of independent nation states, the first democratic constitution is taken to be the constitution adopted (or amended) after the collapse of the non-democratic regime and *after* the establishment of an independent nation state. This means that for Croatia, for example, the first democratic constitution is considered to be the one approved in December of 1990, which was adopted few months after the proclamation of the independent Republic of Croatia in the spring of the same year but before the country became considered to be ‘Free’ (in 2000). For Ukraine, the first democratic constitution is the one that was adopted in 1996, after the country formally achieved independence in 1991, but before achieving ‘Free’ status in 2006.

Sources and coding

The textual source that constitutes the basis of our analysis is the English language translation of the national constitution. In most cases, we have relied on the comprehensive collection of documents available in *Constitutions of the Countries of the World* (Flanz 2004). Many of the more recent versions of the constitution have been traced from the websites of the national parliaments, governments, or constitutional courts. Where possible, we have relied on official translations, although some of the translations are our own.

The period under investigation effectively commences with the first reference to political parties in the 1944 Icelandic constitution and concludes with the constitutions in force at the end of 2008. Included for all countries are the constitutions in which parties were first codified, as well as the modification of the relevant provisions in subsequent amendments of the constitution or the adoption of a new constitution. An overview of all constitutional articles and amendments per country can be found in Table A2 in the appendix.

The *unit of analysis* is the sentence of the constitutional article which contains a reference to political parties. Each constitution has been scrutinized for the appearance of the word ‘party’ or ‘parties’, whereby textual interpretation has aided us to include only their occurrence in the socio-political sense and exclude ‘parties’ in

the legal sense. Recorded for all constitutions from the year of first constitutionalization were the number of constitutional references to political parties, including all statements and rules, and counting provisions where parties are the direct subject of regulation as well as those indirectly affecting parties. All constitutional provisions and subsequent amendments, moreover, have assigned to a category of party constitutionalization.

The categorization of party constitutionalization is the result of a mutually reflective process of deductive and inductive analysis (for more details, see van Biezen 2009). Principally, it is based on an analytical framework for the comparative analysis of modern constitutions which conceives of their architecture as a layered narrative with four broad elements: 1) principles and values; 2) rights and duties; 3) the structure of the political system; and 4) ‘meta-rules’ or rules of constitutional interpretation (Frankenberg 2006). Within these four broader areas, we have identified a total of 11 categories on the basis of a close and detailed reading and interpretation of the actual constitutional provisions: democratic principles, rights and freedoms, activity and behaviour, identity and programme, extra-parliamentary domain, electoral domain, parliamentary domain, governmental domain, public resources, judicial oversight and secondary legislation (see Figure 1).

Figure 1. Analytical framework

Area	Principles and values	Rights and duties	Political system	Meta-rules
Category	Democratic principles	Rights and freedoms Activity and behaviour Identity and programme	Extra-parliamentary domain Electoral domain Parliamentary domain Governmental domain Public resources	Judicial oversight Secondary legislation

The categories are jointly exhaustive but not mutually exclusive: each sentence has been assigned to at least one category but, because the coding unit is the whole sentence, it is possible that it includes statements belonging to more than one category. Consider, for example, the constitution of the Czech Republic, where article 5 states that:

‘The political system is based on the free and voluntary foundation and free competition of political parties respecting fundamental democratic principles and rejecting force as a means for asserting their interests.’

In our categorization this provision falls into four different categories: democratic principles, rights and freedoms, activity and behaviour, and identity and programme. More specifically, the operationalization of the 11 categories is as follows: ³

I. Principles and values:

1. *Democratic principles*: constitutional provisions which define the democratic system and / or key democratic principles and values (such as participation, popular sovereignty, equality, or pluralism) in terms of political parties. For example:

Political parties contribute to the formation of the popular will and the expression of universal suffrage. They express democratic pluralism (Luxembourg, art. 32bis).

II. Rights and duties

2. *Rights and freedoms*: constitutional provisions which identify political parties as voluntary associations and associate them with fundamental democratic rights and liberties, such as the freedom of association, freedom of assembly, or the freedom of speech. For example:

The formation of political parties is free (Croatia, art. 6.1)

3. *Activity and behaviour*: constitutional rules specifying the conditions for permissible forms of party activity and behaviour, including, for example, requirements that parties respect the democratic constitutional order, national sovereignty and territorial integrity, and basic human rights, or reject the use of violence. For example:

Activities of political parties aiming at forced overthrow of constitutional system, violation of guaranteed human or minority rights, inciting racial, national or religious hatred, shall be prohibited (Serbia, art.5)

³ Examples given below refer to the most current version of the constitution.

4. *Identity and programme*: constitutional rules concerning the programmatic identity or ideological foundations of political parties, prohibiting for example non-democratic or anti-system parties, or proscribing the existence of parties with ethnic, religious, regionalist or nationalist identities. For example:

Without prejudice to the philosophy or ideology underlying their programs, political parties shall not use names that contain expressions directly connected with any religion or church, or use emblems that may be mistaken for national or religious symbols (Portugal, art.51.3).

III. Political System

5. *Extra-parliamentary domain*: constitutional references applying to the extra-parliamentary organization, or the political party as a whole, including rules about the organizational structure of the party or internal party democracy. For example:

Political parties must be governed by the principles of transparency, democratic organisation and management and the participation of all of its members (Portugal, art. 51.5).

They also include references to the incompatibility of party membership with certain public or elected offices, such as:

Judges may not be members of political parties and may not engage in political activities (Hungary, art. 50.3).

6. *Electoral domain*: constitutional rules applying to political parties in their electoral capacity, including rules about the mechanism of the electoral system, the operation of parties in the electoral arena, and the selection of candidates for public office. For example:

The right to nominate candidates in parliamentary elections belongs to registered political parties [...] (Finland, art. 25.3).

7. *Parliamentary domain*: constitutional provisions relevant to the parliamentary party groups, including references to the composition of the legislature, the size of parliamentary groups, or the membership of parliamentary (sub)committees. For example:

Any political party which is represented at least by twelve per centum of the total number of the Representatives in the House of Representatives can form and shall be entitled to be recognised as a political party group (Cyprus, art. 73.12).

8. *Governmental domain*: constitutional references to the party in government, mainly referring to the composition of national government or regional and local executives.

For example:

Electoral parties represented in the municipal council have a claim to representation on the municipal executive board in accordance with their strength (Austria, art. 117.5).

9. *Public resources*: constitutional provisions which entitle political parties to public resources, such as state funding or time and space on state-owned broadcasting media.

For example:

Political parties are entitled to receive financial support by the State for their electoral and operating expenses [...] (Greece, art. 29.2)

IV. Meta-rules

10. *Judicial oversight*: constitutional rules which establish external control on the lawfulness and constitutionality of party activity and identity by the courts. For example:

The Constitutional Tribunal shall adjudicate regarding [...] the conformity to the Constitution of the purposes or activities of political parties (Poland, art. 188).

11. *Secondary legislation*: constitutional provisions which reflect the hierarchical legal order and demand the enactment of further legislation on political parties in secondary legislation and by-laws. For example:

Organic laws shall regulate [...] the organization, functioning, and financing of political parties (Romania, art. 73.3.b)

These categories form the basis of our coding system, which has been applied to every text unit (sentence) of the constitutional articles in our dataset which mentions or refers to political parties. Parts of articles or sentences without any explicit or implicit reference to parties have been disregarded from the analysis. The text coding was applied twice, by different coders, with the aim of providing for validity and test-retest reliability, which ensures the replicability of the data generated by our text analysis method. The content analysis of the constitutional provisions has been carried out both quantitatively and qualitatively. After the coding and categorization of the constitutional articles, they were summarized numerically. A breakdown of the content analysis per category can be found in Table A3 in the appendix, where the score in parenthesis reflects the number of times a particular sub-category was assigned to a clause from our dataset. The aggregate situation per country on the frequency of categories has been compiled in an SPSS data file on the basis of which further quantitative text analysis has been conducted.

II. The timing of party constitutionalization

This section discusses the process of party constitutionalization in post-war European democracies with a particular emphasis on the underlying temporal patterns. It presents an overview of the chronology of the party constitutionalization across Europe, and identifies five different waves of party constitutionalization. These appear largely to correspond to waves of democratization, state formation and constitution writing.

Table 1 provides a first overview of the timing of party constitutionalization in post-war Europe, listing for each country the year in which political parties were first incorporated in the national constitution. The table includes 28 European countries, which together represent 87.5 per cent of post-war European democracies which now acknowledge political parties in their constitutions. Political parties receive no mention at all in only in the constitution of four of the longer established liberal democracies: Belgium, Denmark, Ireland, and the Netherlands.

The earliest case of party constitutionalization in post-war Europe occurred in Iceland in 1944. Previously under Danish rule, Iceland formally became independent in 1944 following a popular referendum on the questions whether to abolish the union with Denmark and to adopt a new republican constitution, both of which received an overwhelming majority of the votes in favour. The republic of Iceland came into

being on 17 June 1944. It instituted its first constitution on the same day, with article 31 including a clause on political parties. Iceland was subsequently followed by Austria in 1945, Italy in 1947 and the Federal Republic of Germany in 1949.

As can be seen from Table 1, the process of post-war party constitutionalization was not a gradual or linear process but rather appears to occur in clusters, or waves. These correspond closely to the waves Huntington (1991) has observed for democratization processes and which Elster (1995) has identified as waves of constitution-making. On this view, Iceland, Austria, Italy and Germany belong to the *first wave* of post-war party constitutionalization, which largely corresponds to the second wave of democratization after the Second World War (WWII). *Iceland* included a reference to political parties in its first democratic institution adopted after the foundation of the independent republic in 1944 (art. 31). The Icelandic constitution was revised in 1999 by an amendment which clarified election procedures. Austria, as described earlier, re-instated the 1929 constitution in 1945, with four constitutional provisions about political parties carrying over from the pre-war federal constitution. The constitution adopted in post-war *Italy* introduced references to political parties in articles 49 and 98.3, with the transitory and final provisions furthermore proscribing the reorganization of the dissolved fascist party.

The constitutionalization of political parties in *Germany* dates back to the adoption of the Basic Law in 1949. The German Basic Law is probably the best known example and, at the time, article 21 represented the most comprehensive set of constitutional rules on political parties (see Tsatsos 2002). The German constitution was amended in 1983, introducing tighter provisions on the financing of political parties and the disclosure of the sources and use of their funds, in part as a response to the Flick affair, a political scandal revolving around politicians of the major parties obtaining illegal funds from the Flick corporation.

The *second wave* of constitutionalization of political parties occurred in the 1950s and 1960s and is connected with the break-up of the French and British colonial empires. Corresponding cases include France, Malta and Cyprus. In *France*, a reference to political parties is contained in article 4 of the new constitution inaugurating the Fifth Republic in 1958. It was amended in 1999, adding more details on their electoral functions. *Cyprus* adopted a new constitution in 1960, upon acquiring independence from the United Kingdom, with political parties appearing in article 73. Similarly, the new constitution of Malta followed its independence from

the UK in 1964. The Maltese constitution has been amended on several occasions, with the revisions of 1974, 1987, 1996, 2000 and 2007 affecting the provisions on political parties.

The *third wave* of party constitutionalization occurred in the 1970s and essentially corresponds to Huntington's third wave of democratization in Southern Europe (Greece, Portugal and Spain). From a purely temporal perspective, it also includes

Table 1. Chronology of post-war party constitutionalization

Wave	Country	Party constitutionalization (Year) ^a
I	Iceland	1944
	Austria	1945
	Italy	1947
	Germany	1949
II	France	1958
	Cyprus	1960
	Malta	1964
III	Sweden	1974
	Greece	1975
	Portugal	1976
	Spain	1978
IV	Norway	1984
	Hungary	1989
	Croatia	1990
	Serbia	1990
	Bulgaria	1990
	Latvia	1991
	Romania	1991
	Slovenia	1991
	Czech Republic	1992
	Estonia	1992
	Lithuania	1992
	Poland	1992
	Slovakia	1992
	Ukraine	1996
V	Finland	1999
	Switzerland	1999
	Luxembourg	2008

^a Year of approval

Sweden, where provisions on political parties can be found in the Instrument of Government adopted in 1974, one of the four fundamental laws which together comprise the Swedish constitution. In *Greece* the new constitution of 1975 marks the first constitutionalization of political parties after the overthrow of the military regime and the return to parliamentary democracy. Two major constitutional amendments have since affected political parties, one in 1986 which was meant to reaffirm direct control of the state over radio and television, and one in 2001 which strengthened the constitutional position of the parties and consolidated their right to financial support by the state. In *Portugal* the first references to political parties were included in the new constitution adopted in 1976 after the revolutionary transition to democracy. The Portuguese constitution has been heavily amended over the course of the last thirty years, with the 1982, 1989, 1997 and 2004 amendments all affecting the position of political parties. Finally, the 1978 constitution of *Spain*, endorsed by popular referendum after the fall of the Franco regime, includes a handful of references to political parties. The Spanish constitution has not been amended since.

Norway prepares the way to the *fourth wave* of constitutionalization. The first constitutionalization of political parties in the Norwegian constitution involved an amendment in 1984 of the old 1814 constitution. Another provision on political parties was added by amendment in 1988. Most significantly, the fourth wave of constitutionalization includes the new Central and Eastern European democracies, the majority of which adopted new constitutions after the demise of communism. The constitution of *Hungary* was first revised in 1989, effectively consisting of a comprehensive amendment of the 1949 constitution. To date, it continues to be a heavily amended leftover from the communist period, with the 1990, 1994, 2001 and 2004 amendment affecting the position of political parties. Similarly, the *Bulgarian* constitution was amended in 1990 when two articles were revised in order to recognize political pluralism and the relevance of parties for democracy. The first constitutionalization of political parties in *Serbia* occurred in 1990, with the adoption of a new constitution at a time when Slobodan Milosevic was still president. In 2006 the old constitution was replaced with a new one, adopted in order to remove the resemblances to the 1974 Titoist constitution which had still been present in the 1990 version. This constitutional revision renewed all existing provisions on political parties. In *Croatia* political parties were incorporated in the new constitution adopted

in December 1990, after the proclamation of the independent Republic of Croatia in May 1990. Provisions on political parties were later amended in 2000 and 2001.

In 1991, four other post-communist countries adopted new constitutions. The constitutions of *Bulgaria* and *Slovenia* have not been amended since then. *Romania* adopted a new constitution in 1991 according to the French model, which was amended 2003 with the aim of ensuring a constitutional ground for joining the European Union. Amongst others, the amendment added more details on the regulation of party finance. In 1991, after gaining independence from the Soviet Union in September 1991, *Latvia* originally reinstated its pre-war 1922 constitution. The constitution was significantly amended in October 1998 by inserting a new chapter on fundamental rights, which repealed many articles from the 1991 constitutional. Overall, the constitutional references on political parties declined from three to only one (art. 102), making Latvia stand out as the only country which has seen a decrease in the level of party constitutionalization.

The 1992 constitutions of the *Czech Republic* and *Slovakia* were approved just before the dissolution of the federal state of Czechoslovakia, which took effect on 1 January 1993. The Czech constitution has not amended the provisions on parties since, while the 2001 constitutional amendment in Slovakia added new provisions on political parties, mainly referring to the incompatibility of party membership with the judiciary. In the Baltic states, the 1992 constitutions of *Estonia* and *Lithuania* were adopted after gaining independence from the Soviet Union in 1991 and 1990 respectively. The last post-communist country in our sample to acquire independence was *Ukraine*, which was established by the independence act of 1991. In the new 1996 constitution, parties are extensively dealt with in the chapter about human rights and citizens' freedoms and duties. A constitutional amendment in relation to political parties was adopted in 2004, regulating the powers and responsibilities of the members of parliament in more detail.

Finally, the *fifth wave* of party constitutionalization includes Finland and Switzerland, both in 1999, and Luxembourg in 2008. As described above, the Finnish constitution is taken to be the consolidated document resulting from the integration of various constitutional laws in 1999, even though one of its constituent parts (The Parliament Act) had already included a reference to political parties since 1991. The new Swiss constitution is the product of a comprehensive constitutional overhaul, completely updating and replacing the old constitution of 1874 without, however,

substantially altering the country's fundamental institutional structure. Under this new constitution, political parties are acknowledged in a separate article. The most recent case of party constitutionalization is *Luxembourg*, which in 2008 approved the addition of a special article on political parties as an amendment to the constitution, with a view to acknowledge the special significance of political parties within the institutional infrastructure of the democratic system as the crucial intermediary link between citizens and government (Dumont *et al.* 2008).

As shown in Table A2 in the appendix, since the first constitutional codification of political parties many European countries (N=16) have subsequently amended their constitutions, including the provisions affecting political parties. This includes Austria, Croatia, France, Germany, Greece, Hungary, Iceland, Latvia, Malta, Norway, Poland, Portugal, Romania, Serbia, Slovakia and Ukraine. As we shall see below, however, in most cases these revisions did not substantially alter the nature of party constitutionalization.

III. Intensity of party constitutionalization

In this section, we analyze the intensity of party constitutionalization in more detail. In doing so, we will concentrate primarily on quantitative indicators, such as word and article frequency and the range and magnitude of constitutionalization, which are discussed below. Before we turn to these, however, it is worth pointing out that one ostensibly obvious indicator will not be considered, i.e. the particular placement of political parties within the framework of the constitution as a whole. To be sure, there are clear differences between countries with regard to the location of political parties in the overall constitution. Political parties can be mentioned in different chapters or sections of the constitution, ranging from the very first preamble or preface (Hungary, Serbia), to the final and transitory provisions (Austria, Italy). While the ordering of articles may give us some indication of their relative importance, the particular structure of constitutions is also largely a product of cultural or historical conventions, and it is not necessarily the case that an article or section at the beginning should be considered as more substantial than one appearing nearer the end. For that reason, it is virtually impossible to draw any plausible inferences about the importance attached to political parties by looking at their relative position within the overall constitution. Having said that, however, it is perhaps noteworthy to underline that the constitutions of 12 European democracies dedicate a special article – i.e. an article which is entitled

‘political parties’ or in which parties are the central subject – exclusively to the role and functions of political parties (Bulgaria, Croatia, France, Germany, Hungary, Luxembourg, Poland, Portugal, Romania, Serbia, Spain, and Switzerland). The German Basic Law is a well-known example:

Article 21 – Political Parties

- (1) The political parties participate in the formation of the political will of the people. They may be freely established. Their internal organization must conform to democratic principles. They must publicly account for the sources of their funds.
- (2) Parties which, by reason of their aims or the behaviour of their adherents, seek to impair or destroy the free democratic basic order or to endanger the existence of the Federal Republic of Germany are unconstitutional. The Federal Constitutional Court decides on the question of unconstitutionality.
- (3) Details are regulated by federal legislation.

Table 2 presents a general quantitative overview of the degree with which political parties are regulated in the national post-war European constitutions. Reported in this table are the frequency with which the words ‘party’ or ‘parties’ appear in the constitution.⁴ In addition, in order to assure a valid cross-country comparison, we have calculated the relative word count of provisions on political parties in relation to the overall length of the constitution (‘word frequency’) as well as the relative importance of articles pertaining to political parties in relation to the total number of articles in the constitution as a whole (‘article frequency’).

Table 2 shows that, on average, the total word count of ‘party’ and ‘parties’ is 10.2, with ‘parties’ occurring slightly more often than ‘party’. Countries such as Greece, Malta and Portugal score significantly higher than the average word count. Countries such as Latvia and Luxembourg score significantly lower, with the constitutions mentioning political parties only once. In relation to the overall length of the constitution, the word frequencies of articles⁵ which mention parties are relatively modest with an average of 2.4 percent. Ranking highest in this respect are Croatia, Greece, Hungary and Norway, while in the constitutions of France, Germany and

⁴ Excluded in the word count in Table 2 are indirect references to parties (such as statements containing possessive pronouns ‘they’ and ‘their’), although all direct and indirect references to parties have been included in the substantive textual analysis.

⁵ The word count for also includes the titles as well as the headings and subheadings of the constitutional articles.

Switzerland the relative importance of parties is much smaller in this respect. With regard to the article frequency, i.e. the relative importance of articles on political parties in relation to the total number of articles in the constitution as a whole, the overall 28-country mean is 3.3. Austria and Hungary are ranking highest in this respect, with around 10 per cent of the constitutional articles referring to political parties. Positioned at the bottom of the list, registering under 1 per cent, are Cyprus, Germany and Luxembourg.

Table 2. Descriptive measures of party constitutionalization*

Country	Word count					Article count					R**	M**
	'Party'	'Parties'	Total	Party articles	Constitution	Word freq. (%)	Parties	Constitution	Art. freq. (%)			
Austria	7	13	20	1,140	40,917	2.8	13	152	8.6	4	27	
Bulgaria	5	7	12	382	13,071	2.9	8	169	4.7	8	14	
Croatia	2	8	10	514	12,114	4.2	7	145	4.8	7	14	
Cyprus	4	0	4	224	31,605	0.7	1	186	0.5	1	5	
Czech rep.	2	1	3	91	8,115	1.1	2	113	1.8	4	7	
Estonia	2	4	6	223	11,900	1.9	4	168	2.4	5	10	
Finland	2	1	3	181	12,635	1.4	2	131	1.5	1	3	
France	0	1	1	69	15,623	0.4	1	89	1.1	4	6	
Germany	0	2	2	120	21,990	0.5	1	141	0.7	7	8	
Greece	20	13	33	1,671	27,661	6.0	9	120	7.5	8	49	
Hungary	5	11	16	592	12,837	4.6	9	78	11.5	7	20	
Iceland	1	2	3	70	4,118	1.7	1	39	2.6	1	2	
Italy	1	2	3	123	12,026	1.0	3	139	2.2	5	6	
Latvia	0	1	1	30	4,625	0.6	1	116	0.9	1	1	
Lithuania	1	7	8	297	12,644	2.3	6	154	3.9	5	10	
Luxembourg	0	1	1	35	6,747	0.5	1	120	0.8	1	3	
Malta	23	8	31	1179	33,654	3.5	4	124	3.2	3	12	
Norway	11	8	19	447	7,218	6.2	2	112	1.8	3	15	
Poland	6	6	12	473	20,262	2.3	10	243	4.1	7	17	
Portugal	5	31	36	1,689	38,319	4.4	21	296	7.1	10	52	
Romania	4	8	12	393	14,681	2.7	7	156	4.5	8	16	
Serbia	2	8	10	409	20,269	2.0	5	206	2.4	8	11	
Slovakia	4	2	6	306	19,028	1.6	5	156	3.2	3	6	
Slovenia	0	5	5	216	12,610	1.7	5	174	2.9	2	5	
Spain	1	2	3	167	18,819	0.9	3	169	1.8	4	11	
Sweden	9	7	16	410	35,852	1.1	5	156	3.2	2	14	
Switzerland	0	3	3	73	23,196	0.3	2	197	1.0	2	2	
Ukraine	0	10	10	407	18,310	2.2	4	161	2.5	6	18	
Mean	4.1	6.1	10.2	426.1	18,244.8	2.3	5.0	150.3	3.3	4.5	13.0	

*Current constitutions

** R=Range; M=Magnitude

These numbers provide some, albeit limited, insight into the relative weight of provisions on parties within the framework of the constitution as a whole. In order to further examine the differences in the intensity and variety of party constitutionalization between countries, we have developed two additional measures, i.e. the range (R) and magnitude (M) of party constitutionalization. These are independent of the overall length of the constitution and show the variation across European constitutions with greater clarity. For each country, the *range of party constitutionalization* refers to the total number of categories of party constitutionalization – as described above – that has been identified in the national constitution. As our analytical framework comprises a total of 11 categories, the range of party constitutionalization can take values between a minimum of one (when all constitutional provisions belong to a single category) and a maximum of eleven (when the constitutional references to parties span the entire spectrum from ‘democratic principles’ to ‘judicial oversight’). This measure gives us an indication of the nature of party constitutionalization, and the scope encompassed by the constitutional clauses in particular. The *magnitude of constitutionalization*, on the other hand, represents the frequency with which the categories of party constitutionalization occur within the constitution. Put differently, the magnitude of constitutionalization of a country refers to the total number of constitutional provisions that have been categorized. These measures give us an indication of the intensity of party constitutionalization as well as the level of detail with which parties are described in the constitution. These two measures vary independently from one another, except that the magnitude cannot be lower than the range.

To illustrate the difference between the two measures, consider, for example, the case of Luxembourg. The only provision referring to political parties in the Luxembourg constitution is article 32bis, which in 2008 was added to read that:

Political parties contribute to the formation of the popular will and the expression of universal suffrage. They express democratic pluralism.

This article comprises two sentences, which both fall within the category of democratic principles. The range of constitutionalization in the case of Luxembourg thus equals one. These two sentences appear to contain three statements: one on popular sovereignty (‘Political parties contribute to the formation of the popular

will'), one on participation ('[political parties contribute to] the expression of universal suffrage'), and one on pluralism ('They express democratic pluralism'). They have therefore have been assigned to as many subcategories. The magnitude of party constitutionalization in Luxembourg thus equals three.

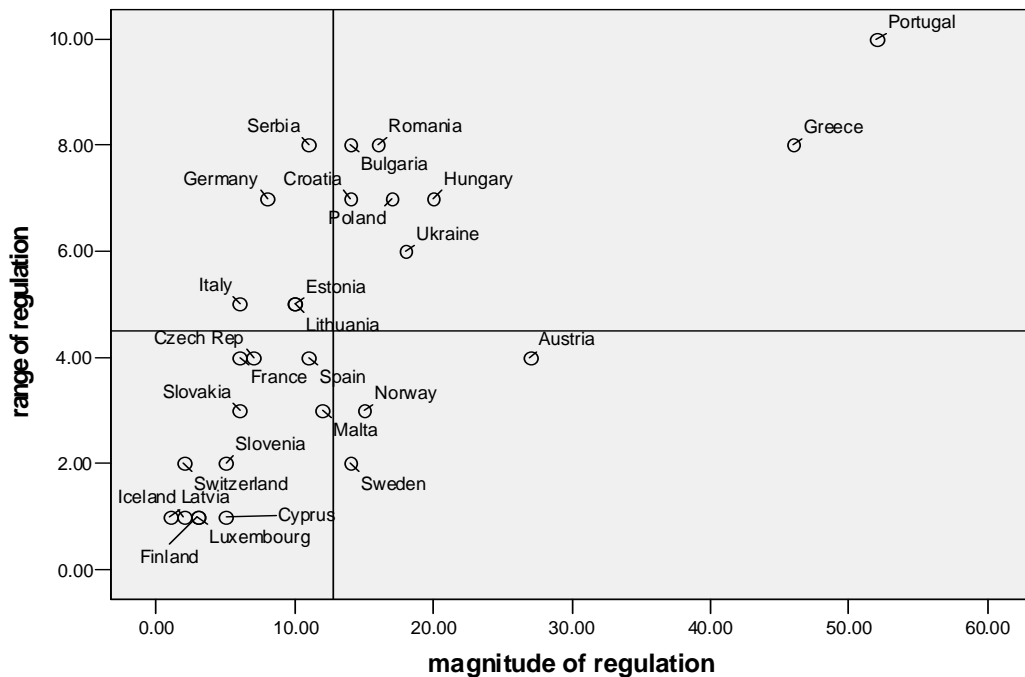
Turning to the empirical evidence, Table 2 shows that the average *range* of party constitutionalization is 4.5. The range is particularly high in Portugal (10), where, with the exception of the governmental domain, the constitution regulates parties in all areas that can be identified. Also high in range are countries such as Greece, Romania and Serbia, each equalling a range of 8, while Cyprus, Finland, Iceland and Luxembourg confine the constitutionalization of parties exclusively to one category. The average *magnitude* of party constitutionalization is 13.0. Portugal and Greece stand out for the highest rankings, while Latvia, Iceland and Switzerland record the lowest scores on this measure.

Figure 2 shows a graphical representation of the distribution of countries on the basis of the magnitude and range of party constitutionalization. The reference lines attached to the X and Y axes are defined by the mean of both variables (12.8 and 4.5 respectively). The quadrant in the upper left corner shows the countries (N=5) which regulate political parties in their constitutions on many domains (i.e. a high range) but with a relatively limited amount of detail (i.e. a low magnitude). Conversely, the lower right quadrant shows countries (N=3) with the most detailed regulation of parties (i.e. a high magnitude) but applying this to only to a relatively limited number of domains (i.e. a low range). Such is the case in Sweden and Norway, for example, which regulate the same (electoral and parliamentary) domains in detail in several constitutional articles. The quadrant in the upper right corner shows the European countries with the highest levels of constitutional regulation of parties, characterized by both a high range and magnitude well above the European average (N=8). As can clearly be seen here, Portugal and Greece clearly stand out for the highest intensity of party constitutional regulation. The lower left corner includes those countries (N=12) for which both the range and the magnitude is below the European average. Countries such as Iceland, Latvia, Cyprus, Finland and Luxembourg concentrate mainly on one or two domains which are regulated relatively sparsely by only a few clauses.

The range of party constitutionalization appears to be strongly associated with the number of articles in which political parties are mentioned as well as with the article frequency as a percentage of the whole constitution. The correlation coefficient

between the range and the number of articles is .50. The correlation between the range and article frequency is .52 (both at sig .00). This suggests that the higher number of separate articles on political parties, the larger the number of areas that are regulated. The magnitude, on the other hand, is more closely related to the word frequency (correlation coefficient .72 significant at .00). This implies that that the longer the articles on political parties, the more detailed the regulation.

Figure 2. Intensity of party constitutionalization in Europe



IV. Regional patterns of party constitutionalization

In this section we will examine the content of the constitutions in more detail. We will explore the variation between countries in terms of the particular domains of party constitutionalization, and assesses the differences in light of their past experience with democracy.

First of all, Table 3 provides a general overview of the relative importance of our 11 categories by country, as per the current constitutions, measured as the proportion of constitutional provisions per category for each country. Thus, in Austria for example, one out of 27 constitutional provisions (3.7 per cent) belongs to the extra-parliamentary domain, another one (3.7 per cent) to the governmental domain,

eight provisions (29.6 per cent) to the electoral domain while the large majority (17 or 62.9 per cent) belongs to the parliamentary domain.

The evidence presented here shows that in half of the countries political parties are associated with the realization of essential democratic principles. In a small majority of countries parties are associated with the basic democratic freedoms of association, assembly, and speech, while a similar number of constitutions at the same time include constraints on party ideology or behaviour. The extra-parliamentary organization appears to be the most crowded category, with nearly two thirds of the countries regulating matters pertaining to the internal organizational of party structures by constitution. The electoral and parliamentary domains are less extensively constitutionalized, while the governmental domain in particular appears to be a very rare subject of constitutionalization, with only 3 cases falling into this category. A handful of countries endow political parties with special access to public resources such as state funding or the broadcasting media, granting them a constitutionally uniquely privileged position in terms of direct and indirect state support. Finally, a large number of countries, although a minority, provide for judicial oversight of party activity and behaviour and stipulate the need for further legislation.

Looking at the data from a country by country perspective, it appears that the category of *democratic principles* is predominant in Luxembourg, where it is actually the only dimension on which the constitution regulates political parties. Similarly, *rights and freedoms* are the only dimension associated with political parties by the 1998 constitution of Latvia. The *extra-parliamentary domain* is predominant in Slovenia, where 80 per cent of the total constitutional provisions on political parties relate to the internal structure of the party organization, and to party membership incompatibilities in particular. Political parties are seen only as part of the *electoral domain* in Iceland, and only in the *parliamentary domain* in Cyprus (both 100 per cent). Parties in *governmental domain* are the least regulated in Europe, with Croatia outscoring the rest of the countries (7.1 per cent). *Activity and behaviour* is the predominant regulatory domain in Lithuania (30 per cent), while *identity and programme* has no supremacy in any country from our sample. Portugal and Malta dominate the other European countries on the regulation of access to *public resources* offered to parties (5.8 percent). *Judicial oversight* of political parties predominates in Slovenia (20 per cent), and *secondary legislation* comparatively has the highest score in Romania (18.7 per cent).

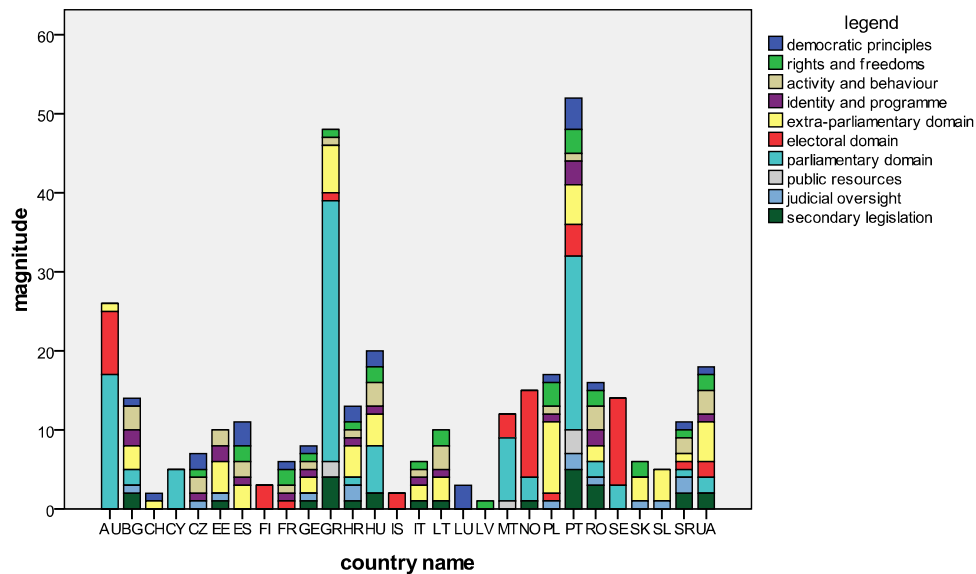
Table 3. Relative importance of dimensions of party constitutionalization by country (%)*

Area	Principles & values		Rights & duties			Political system			Meta-rules			
	Category / country	Democratic principles	Rights and freedoms	Activity and behaviour	Identity and programme	Extra-parliamentary domain	Electoral domain	Parliamentary domain	Governmental domain	Public resources	Judicial oversight	Secondary Legislation
Austria	-	-	-	-	-	3.7 (1)	29.6 (8)	62.9 (17)	3.7 (1)	-	-	-
Bulgaria	7.1 (1)	-	-	21.4 (3)	14.3 (2)	21.4 (3)	-	14.3 (2)	-	-	7.1 (1)	14.3 (2)
Croatia	14.3 (2)	7.1 (1)	7.1 (1)	7.1 (1)	7.1 (1)	28.6 (4)	-	7.1 (1)	7.1 (1)	-	14.3 (2)	7.1 (1)
Cyprus	-	-	-	-	-	-	-	100.0 (5)	-	-	-	-
Czech Rep.	28.5 (2)	14.3 (1)	28.5 (2)	14.3 (1)	14.3 (1)	-	-	-	-	-	14.3 (1)	-
Estonia	-	-	20.0 (2)	20.0 (2)	20.0 (2)	40.0 (4)	-	-	-	-	10.0 (1)	10.0 (1)
Finland	-	-	-	-	-	-	100.0 (3)	-	-	-	-	-
France	16.6 (1)	33.3 (2)	16.6 (1)	16.6 (1)	16.6 (1)	-	16.6 (1)	-	-	-	-	-
Germany	12.5 (1)	12.5 (1)	12.5 (1)	12.5 (1)	12.5 (1)	25.0 (2)	-	-	-	-	12.5 (1)	12.5 (1)
Greece	-	2.0 (1)	2.0 (1)	-	-	12.2 (6)	2.0 (1)	67.3 (33)	2.0 (1)	4.1 (2)	-	8.2 (4)
Hungary	10.0 (2)	10.0 (2)	15.0 (3)	5.0 (1)	5.0 (1)	20.0 (4)	-	30.0 (6)	-	-	-	10.0 (2)
Iceland	-	-	-	-	-	-	100.0 (2)	-	-	-	-	-
Italy	-	16.6 (1)	16.6 (1)	16.6 (1)	16.6 (1)	33.3 (2)	-	-	-	-	-	16.6 (1)
Latvia	-	100.0 (1)	-	-	-	-	-	-	-	-	-	-
Lithuania	-	20.0 (2)	30.0 (3)	10.0 (1)	10.0 (1)	30.0 (3)	-	-	-	-	-	10.0 (1)
Luxembourg	100.0 (3)	-	-	-	-	-	-	-	-	-	-	-
Malta	-	-	-	-	-	-	35.2 (3)	58.8 (8)	-	5.8 (1)	-	-
Norway	-	-	-	-	-	-	73.3 (11)	20 (3)	-	-	-	6.6 (1)
Poland	5.8 (1)	17.6 (3)	5.8 (1)	5.8 (1)	5.8 (1)	52.9 (9)	5.8 (1)	-	-	-	5.8 (1)	-
Portugal	7.7 (4)	5.8 (3)	1.9 (1)	5.8 (3)	5.8 (3)	9.6 (5)	7.7 (4)	42.3 (22)	-	5.8 (3)	3.8 (2)	9.6 (5)
Romania	6.2 (1)	12.5 (2)	18.7 (3)	12.5 (2)	12.5 (2)	12.5 (2)	-	12.5 (2)	-	-	6.2 (1)	18.7 (3)
Serbia	9.1 (1)	9.1 (1)	18.2 (2)	-	-	9.1 (1)	9.1 (1)	9.1 (1)	-	-	18.2 (2)	18.2 (2)
Slovakia	-	33.3 (2)	-	-	-	50.0 (3)	-	-	-	-	16.7 (1)	-
Slovenia	-	-	-	-	-	80.0 (4)	-	-	-	-	20.0 (1)	-
Spain	27.2 (3)	18.2 (2)	18.1 (2)	9.1 (1)	9.1 (1)	27.2 (3)	-	-	-	-	-	-
Sweden	-	-	-	-	-	-	78.6 (11)	21.4 (3)	-	-	-	-
Switzerland	50.0 (1)	-	-	-	-	50.0 (1)	-	-	-	-	-	-
Ukraine	5.5 (1)	11.1 (2)	16.6 (3)	5.5 (1)	5.5 (1)	27.7 (5)	11.1 (2)	11.1 (2)	-	-	-	11.1 (2)
Total	N=14	N=16	N=16	N=14	N=18	N=18	N=12	N=13	N=3	N=3	N=11	N=13
	(50.0%)	(57.1%)	(57.1%)	(50.0%)	(64.3%)	(64.3%)	(42.8%)	(46.4%)	(8.3%)	(8.3%)	(39.3%)	(46.4%)
Mean	21.5	19.2	15.8	10.4	30.1	30.1	39.1	35.4	4.3	5.2	11.7	11.7

* Current constitutions; raw count magnitude in parentheses; N = number of countries.

The data revealing the distribution of domains per country are schematically represented in Figure 3, clearly showing the variety in magnitude and the relative importance of the different domains between countries. From the data in Table 3 and Figure 3, there appears to be a significant difference between the established democracies and the more recently created democracies. The established democracies predominate in the regulation of the ‘electoral domain’. Out of the 11 constitutions that currently regulate parties in their electoral capacity, 7 are old democracies while only 4 belong to the more recently established third and fourth wave democracies. In the older democracies, moreover, this type of regulation on average comprises a significantly larger share of constitutional references to political parties than in the newer democracies. Constitutions of the more recently established democracies, on the other hand, appear to regulate parties significantly more extensively on nearly all the other domains, including democratic principles, rights and duties, the extra-parliamentary organization and judicial oversight.

Figure 3. Magnitude of party constitutionalization per country



In order to test for the possible impact of regional variation and the legacy of authoritarian and communist rule, we have carried out four different types of comparisons: (1) Western European versus Central and Eastern European democracies; (2) old versus new democracies; (3) countries with a continuous versus

countries with a discontinuous (or non-existent) democratic experience; and (4) a longitudinal comparison of the five different waves of party constitutionalization.

Western versus Eastern Europe

First we have contrasted the patterns of party constitutionalization in Western Europe with those in the Central and Eastern European democracies, in order to assess the possible relevance of the legacy of communism. This analysis reveals a number of significant differences between the regions. Out of eleven general categories, Eastern European countries regulate political parties on average in 5.1 areas, while the average for their Western European counterparts stands at a much lower 3.7. This suggests that political parties in the post-communist democracies are more extensively regulated.

A more detailed breakdown by category of the regional comparison further substantiates that there are significant differences, as can be seen from the data reported in Table 4. The Anova significance tests of the mean magnitudes of the two groups demonstrate that the differences between East and West are significant for most of the categories, and more specifically for ‘rights and freedoms’, ‘activity and behaviour’, ‘identity and programme’, ‘extra-parliamentary domain’, ‘electoral domain’, ‘parliamentary domain’ and ‘judicial oversight’. The higher intensity of regulation of these domains in Central and Eastern Europe suggests that the post-communist countries in the process of constitutional engineering have sought to subject party organization, activity and behaviour to external constitutional and judicial control. Somewhat paradoxically, in fact, many of the areas that were previously under the control of the ruling communist parties are now heavily regulated by the post-communist constitutions.

No significant differences between Eastern and Western democracies can be found in terms of the constitutional regulation of parties in terms of ‘democratic principles’, ‘governmental domain’, ‘public resources’ or ‘secondary legislation’. Differences in the ‘rights and freedoms’ and in the ‘parliamentary domain’ are much smaller, only at a significance level lower than .1.

Conversely, significantly more so than in Central and Eastern Europe, Western European constitutions include constitutional provisions on parties which relate them to the *electoral domain*. Provisions on electoral rules and political parties, candidate selection and parties’ campaign activity dominate in Western Europe (with a 2.93

average of provisions as opposed to .31 average in Central and Eastern Europe). At a lower significance level (lower than .1), the *parliamentary domain* is also more regulated in Western Europe. These empirical results indicate that the early West European democratic constitutions had a more instrumental view on parties and perceived them essentially as a necessary tool for the electoral procedures of representative democracy.

Old versus new democracies

In addition to an East-West comparison, we have extended the analysis to a comparison between old and new democracies, including Greece, Portugal and Spain among the new democracies given their relatively recent adoption of democratic constitutions. We expect these countries to show commonalities in terms of party constitutionalization with the Central and Eastern European democracies, given that they both form part of more recent waves of democratization.

Table 5 below depicts the difference between the levels of party constitutionalization in old and new European democracies. The means per each domain are reported together with the Anova statistical test, which tells us if the two country groups differ significantly in their provisions on each domain. The range of constitutionalization appears to differ substantially between the two groups, with 5.8 domains regulated in the new democracies compared to only 2.8 domains in their older counterparts.

As shown by the Anova significance tests in Table 5, when the Southern European democracies of Greece, Portugal and Spain are considered in the group of new democracies, the differences between the old and new bloc of countries becomes significant on 7 out of the 11 regulatory categories. This would seem to support the argument that the length of democratic experience makes a fundamental difference for the ways in which political parties are defined within modern constitutions. The fact that there is no significant difference between old and new democracies with respect to provisions on democratic principles, parliamentary and governmental domain and public resources, however, suggests that the length of democratic experience makes no difference for the constitutional interpretation of parties in relation to these categories.

The bloc of old democracies is outscored by the new democracies on constitutional provisions which associate political parties with rights and freedoms,

Table 4. Western vs. Central and Eastern Europe

East/West Mean	Magnitude	Range	Democratic principles	Rights and freedoms	Activity and behaviour	Identity and programme	Extra-parliamentary domain	Electoral domain	Parliamentary domain	Governmental domain	Public resources	Judicial oversight	Secondary legislation
East (N=13)	11.46	5.46	.85	1.31	1.77	.92	3.23	.31	1.08	.08	.00	.85	1.08
SD	5.66	2.36	.80	.94	1.23	.76	2.35	.63	1.70	.27	.00	.68	1.03
West (N=15)	14.33	3.73	.87	.67	.47	.47	1.33	2.93	6.07	.13	.40	.20	.80
SD	16.09	2.76	1.35	.97	.64	.83	1.95	3.93	10.06	.35	.91	.56	1.56
Total (N=28)	13.00	4.53	.86	.96	1.07	.68	2.21	1.71	3.75	.11	.21	.50	.93
SD	12.27	2.68	1.11	.99	1.15	.81	2.31	3.16	7.75	.31	.68	.69	1.33
<i>Anova sig</i>	<i>.54</i>	<i>.09</i>	<i>.96</i>	<i>.09</i>	<i>.00</i>	<i>.14</i>	<i>.02</i>	<i>.02</i>	<i>.09</i>	<i>.64</i>	<i>.12</i>	<i>.01</i>	<i>.59</i>

Table 5. Old vs. New Democracies

Old/New Mean	Magnitude	Range	Democratic principles	Rights and freedoms	Activity and behaviour	Identity and Programme	Extra-parliamentary domain	Electoral domain	Parliamentary domain	Governmental domain	Public resources	Judicial oversight	Secondary legislation
New (N=16)	16.31	5.81	1.13	1.44	1.69	1.00	3.50	.56	4.13	.13	.31	.81	1.44
SD	14.28	2.50	1.20	.96	1.13	.89	2.25	1.09	9.40	.34	.87	.75	1.54
Old (N=12)	8.58	2.83	.50	.33	.25	.25	.50	3.25	3.00	.08	.08	.08	.25
SD	7.36	1.89	.90	.65	.45	.45	.79	4.28	5.11	.28	.28	.28	.45
Total (N=28)	13.00	4.53	.86	.96	1.07	.68	2.21	1.71	3.75	.11	.21	.50	.93
SD	12.27	2.68	1.11	.99	1.15	.81	2.31	3.16	7.75	.31	.68	.69	1.33
<i>Anova sig</i>	<i>.10</i>	<i>.00</i>	<i>.14</i>	<i>.00</i>	<i>.00</i>	<i>.01</i>	<i>.00</i>	<i>.02</i>	<i>.66</i>	<i>.73</i>	<i>.39</i>	<i>.00</i>	<i>.01</i>

Table 6. Continuous vs. Discontinuous Democracies

Cont/Disc Mean	Magnitude	Range	Democratic principles	Rights and freedoms	Activity and behaviour	Identity and programme	Extra-parliamentary domain	Electoral domain	Parliamentary domain	Governmental domain	Public resources	Judicial oversight	Secondary legislation
Disc (N=19)	15.89	5.73	1.00	1.32	1.53	.94	3.21	.89	4.53	.16	.26	.74	1.32
SD	13.63	2.35	1.15	.94	1.12	.84	2.17	1.99	9.19	.37	.80	.73	1.45
Cont (N=9)	6.88	2.00	.56	.22	.11	.11	.11	3.44	2.11	.00	.11	.00	.11
SD	5.30	1.11	1.01	.66	.33	.33	.33	4.44	2.89	.00	.33	.00	.33
Total (N=28)	13.00	4.53	.86	.96	1.07	.68	2.21	1.71	3.75	.11	.21	.50	.93
SD	12.27	2.68	1.11	.99	1.15	.81	2.31	3.16	7.75	.31	.68	.69	1.33
<i>Anova sig</i>	<i>.06</i>	<i>.00</i>	<i>.33</i>	<i>.00</i>	<i>.00</i>	<i>.00</i>	<i>.00</i>	<i>.04</i>	<i>.45</i>	<i>.22</i>	<i>.59</i>	<i>.00</i>	<i>.02</i>

the extra-parliamentary domain, further restrict the activity and identity of parties, and provide judicial oversight as well as the need for further secondary legislation. The only category where the degree of regulation is higher in the older democracies than in the newer ones is electoral domain. This domain also proved significant in our East-West comparison. With the exception of Poland, Portugal and Serbia, all countries from our sample which constitutionally regulate parties in their electoral capacity are old democracies.

Two categories in particular, ‘rights and freedoms’ and ‘secondary legislation’, stand out for being significant in the Old-New comparison but not in the comparison between East and West. This suggests that the constitutions of the Southern European democracies contain a relatively high number of provisions regulating parties in these domains. Indeed, Greece and Portugal are the only countries in Western bloc, apart from Germany and Italy, for which the constitution stipulates that parties are to be further regulated in secondary legislation or party by-laws. Spain does not have any provisions on secondary legislation and political parties, but a high percentage of its constitutional provisions on parties relate to rights and freedoms. The category of rights and freedoms, defining parties in relation to basic democratic freedoms such as association, speech and activity, is generally highly associated with the newness of democracy. In extreme cases such as Latvia, where 100 per cent of party constitutionalization falls into this category, rights and freedoms is the only area constitutionally associated with political parties.

Continuous vs. discontinuous democracies

It is also possible that the significance of the differences we have found is due not so much to the newness of democracy per se but to the continuity of the democratic history. On this view, we might expect countries with an interrupted democratic experience to differ from those with a continuous democratic history, by building in constitutional safeguards for the protection of democratic institutions, for example. We have therefore also analyzed whether the continuity of a country’s democratic experience is associated with the nature and intensity of regulation. For this purpose, Austria, Italy and Germany, previously grouped with the old and West European democracies, were assigned to the category of discontinuous democracies as in each of these cases the new democratic constitution was a product of post-authoritarian re-democratization. Table 6 contrasts the constitutionalization of political parties of these

two groups, showing that there appears to be more regulation overall in countries with an interrupted history of democracy than in countries with a continuous democratic experience. Unlike in the previous group comparisons, however, no significant differences appear with regard to the regulation of parties in the electoral domain. This is so in particular because countries with a discontinuous democratic history such as Austria tend to strongly emphasize the role of parties in the electoral arena, giving a relatively high importance in their constitutions to the electoral functions of parties.

The differences which were already found to be significant in the previous Old-New comparison – i.e. in relation to rights and freedoms, activity and identity, extra-parliamentary domain, judicial oversight and secondary legislation – persist in this continuous vs. discontinuous comparison. The countries with a discontinuous history of democracy show, as in the case of new democracies more generally, more regulation on these categories. Rights and freedoms, activity and identity of political parties and the extra-parliamentary domain are much more regulated in the discontinuous democracies, where the need for preserving the democratic status appears more powerful under the form of specific rules on the activity and behaviour of political parties which has to respect the democratic system, national sovereignty and the constitution. Additionally, in the discontinuous democracies group, parties appear to be more frequently subject of constitutional control and further secondary legislation than in the group of continuous democracies.

Overall, these results show that the differentiation within Europe is largely based on the newness of democracy and democratic experience rather than the impact of communism. This suggests that the comparison between old and new democracies and between continuous and discontinuous democracies in many ways constitutes a more meaningful way of contrasting the patterns of party constitutionalization across Europe than the comparison between East and West.

Longitudinal trends

In order to trace the possible changes in the ways political parties have been regulated by European constitutions since 1944 and until 2008, we have also compared the constitutionalization of parties across the five waves we have identified in section 1. In order to assess whether the timing of party constitutionalization has influenced the ways parties have been regulated by the constitution, we have compared the first constitutions in which political parties were mentioned across all five waves (i.e.

without considering the further amendments). As can be seen from Table 7, which contains a detailed comparison of the five waves of party constitutionalization, there is a significant difference in terms of the magnitude of party constitutionalization. While the average magnitude of party constitutionalization in the first wave (1940s - 1950s) is 10.75 (meaning that on average 10.75 categories have been identified in the constitutions), the average magnitude in the second wave (1950s - 1960s) is slightly lower with a value of 7.6, and reaches its peak at 31.50 in the third wave (1970s), which is well above the European mean of 13 identified per country. This high level party constitutionalization subsequently decreases in the fourth wave to a value of 11.71, dropping below the European average, and is further reduced to a mean magnitude of only 2.66 in the fifth wave.

With regard to the different categories of party constitutionalization, however, there appear to be few significant differences between the waves. The evidence shows that only the regulation of political parties in the parliamentary domain as well as their access to public resources differs significantly from one period to another. However, there appears to be no linear trend over time. With only a few exceptions, therefore, it generally does not appear to be the case that different degrees of importance have been assigned to certain domains of constitutionalization from wave to wave.

In a second assessment of longitudinal trends we have incorporated the subsequent constitutional amendments to the first constitutions in order to give us an idea of how the nature of party constitutionalization has developed over time across countries. There are two ways of measuring this. First, we have measured the relative importance of the different categories of party constitutionalization over time vis-à-vis each other. These figures are presented in Table 8. Thus, in 1944, when only the Icelandic constitution contained references to political parties and the number of all constitutional provisions totalled two, 50 per cent (i.e. one provision) belonged to the electoral domain and the other one to the parliamentary domain. By 2008, the relative importance of these two categories has declined substantially, with one quarter of all constitutional provisions falling into the parliamentary domain, and just under 12 per cent into the electoral domain. Other categories have gained in significance over time, of which the constitutionalization of the extra-parliamentary domain (18 per cent of all provisions) appears to be the most prominent.

Table 7. Comparison of waves of party constitutionalization*

Wave Means	Magnitude	Range	Democratic principles	Rights and freedoms	Activity and behaviour	Identity and programme	Extra-parliamentary domain	Electoral domain	Parliamentary domain	Governmental domain	Public resources	Judicial oversight	Secondary legislation
1st (N=4)	10.75	4.25	.25	.50	.50	.50	1.25	2.50	4.25	.25	.00	.25	.50
SD	11.11	2.50	.50	.57	.57	.57	.95	3.76	8.50	.50	.00	.50	.57
2nd (N=3)	7.6	2.66	.33	.67	.33	.33	.00	1.33	4.33	.00	.33	.00	.00
SD	3.78	1.52	.57	1.15	.57	.57	.00	1.52	4.04	.00	.57	.00	.00
3rd (N=4)	31.50	6.00	1.75	1.50	1.00	1.00	3.50	4.00	14.50	.25	1.25	.50	2.25
SD	22.00	3.65	2.06	1.29	.81	1.41	2.64	4.96	15.71	.50	1.50	1.00	2.63
4th (N=14)	11.71	5.28	.79	1.21	1.64	.86	3.00	1.07	1.21	.07	.00	.79	1.07
SD	5.25	2.36	.80	.97	1.27	.77	2.41	2.92	1.71	.26	.00	.69	.99
5th (N=3)	2.66	1.33	1.33	.00	.00	.00	.33	1.00	.00	.00	.00	.00	.00
SD	.57	.57	1.52	.00	.00	.00	.57	1.73	.00	.00	.00	.00	.00
Total (N=28)	13.00	4.53	.86	.96	1.07	.68	2.21	1.71	3.75	.11	.21	.50	.93
SD	12.27	2.68	1.11	.99	1.15	.81	2.31	3.16	7.75	.31	.68	.69	1.33
Anova sig.	.00	.07	.29	.20	.06	.41	.06	.56	.02	.67	.01	.19	.10

*First constitutions

Table 8. Relative importance of dimensions of party constitutionalization over time (%)

Year	Democratic principles	Rights and freedoms	Activity and behaviour	Identity and Programme	Extra-parliamentary domain	Electoral domain	Parliamentary domain	Governmental domain	Public resources	Judicial oversight	Secondary legislation	Total
1944	0	0	0	0	0	50.0	50.0	0	0	0	0	100
1945	0	0	0	0	11.1	55.6	33.3	0	0	0	0	100
1947	0	6.6	6.6	6.6	20.0	33.3	20.0	0	0	0	6.6	100
1949	4.3	8.7	8.7	8.7	21.7	21.7	13.0	0	0	4.3	8.7	100
1958	7.1	14.3	10.7	10.7	17.9	17.9	10.7	0	0	3.5	7.1	100
1960	6.0	12.1	9.1	9.1	15.2	15.2	24.2	0	0	3.0	6.0	100
1962	5.4	10.8	8.1	8.1	13.5	13.5	29.7	2.7	0	2.7	5.4	100
1964	4.4	8.8	6.6	6.6	11.1	13.3	37.7	2.2	2.2	2.2	4.4	100
1974	3.4	6.7	5.0	5.0	8.5	28.8	33.9	1.6	1.6	1.6	3.3	100
1975	2.5	6.3	5.0	3.8	10.1	22.8	40.5	1.2	2.5	1.2	3.8	100
1976	5.2	6.9	4.3	5.2	10.4	19.1	36.5	0.8	3.4	0.8	6.9	100
1978	7.1	7.9	5.5	5.5	11.9	17.5	33.3	0.8	3.1	0.7	6.3	100
1981	6.8	7.6	5.3	5.3	11.5	16.8	35.8	0.7	3.0	0.7	6.1	100
1982	6.3	7.0	5.6	5.6	10.6	15.5	39.4	0.7	2.8	0.7	5.6	100
1983	6.3	7.0	5.6	5.6	10.6	15.5	39.4	0.7	2.8	0.7	5.6	100
1984	6.2	6.9	5.5	5.5	10.4	16.7	38.8	0.7	2.7	0.7	5.5	100
1986	5.5	6.2	4.9	4.9	9.3	14.9	44.7	1.2	2.4	0.6	4.9	100
1987	5.5	6.1	4.9	4.9	9.2	15.3	44.7	1.2	2.4	0.6	4.9	100
1988	5.1	5.7	4.6	4.6	8.6	19.0	43.1	1.1	2.3	0.5	5.1	100
1989	5.6	6.1	5.6	5.1	9.8	17.0	40.7	1.0	2.0	1.0	5.6	100
1990	7.1	7.1	5.6	5.2	10.4	16.1	37.4	0.9	1.9	2.3	5.6	100
1991	6.5	7.4	7.4	6.1	12.3	14.0	33.7	0.8	1.6	3.2	6.5	100
1992	6.7	8.5	8.9	6.7	13.9	12.8	29.5	0.7	1.4	4.2	6.4	100
1993	6.7	8.5	8.8	6.7	13.8	12.8	29.7	0.7	1.4	4.2	6.3	100
1994	6.6	8.3	8.7	6.6	13.6	12.9	30.4	0.7	1.4	4.2	6.2	100
1996	6.5	8.5	9.2	6.5	14.5	12.8	29.2	0.6	1.3	3.9	6.5	100
1997	6.2	8.7	9.0	6.5	16.5	12.7	27.6	0.6	1.5	4.0	6.5	100
1998	6.2	8.1	9.0	6.5	16.6	12.8	27.8	0.6	1.5	4.0	6.5	100
1999	6.4	8.0	8.9	6.4	16.6	13.8	27.0	0.6	1.5	4.0	6.4	100
2000	6.3	7.6	8.8	6.0	17.0	13.7	27.0	0.9	1.5	4.2	6.6	100
2001	6.1	7.2	8.4	5.8	17.7	13.1	27.6	0.8	1.7	4.0	7.2	100
2003	6.0	7.5	8.3	5.7	17.6	13.0	27.4	0.8	1.7	4.0	7.5	100
2004	6.0	7.4	8.2	5.1	17.4	13.4	28.8	0.8	1.7	4.0	6.8	100
2005	5.9	7.3	8.2	5.1	17.3	13.4	29.2	0.8	1.7	3.9	6.8	100
2006	5.8	7.5	8.3	5.2	17.3	13.1	28.9	0.8	1.6	3.9	7.2	100
2007	5.8	7.4	8.3	5.6	17.2	13.3	29.0	0.8	1.6	3.8	7.2	100
2008	6.5	7.4	8.2	5.2	17.0	13.2	28.8	0.8	1.6	3.8	7.1	100
Mean	5.4	7.4	6.8	5.7	13.4	18.0	32.1	0.7	1.6	2.4	5.8	

The figures in Table 8 show that, despite a decline over time, the highest importance in the constitutional regulations of parties tends to be found in the parliamentary domain. This is manifest from the very first instance of party constitutionalization in Iceland in 1944 as well as subsequent cases, including countries across all waves party constitutionalization. The extra-parliamentary domain becomes the second most important category, which, as indicated earlier, is also the area of party constitutionalization that is present in the largest number of countries. Conversely, the lowest importance appears to be attributed to the governmental domain, which is also the domain regulated in the fewest number of countries (Austria, Croatia and Greece).

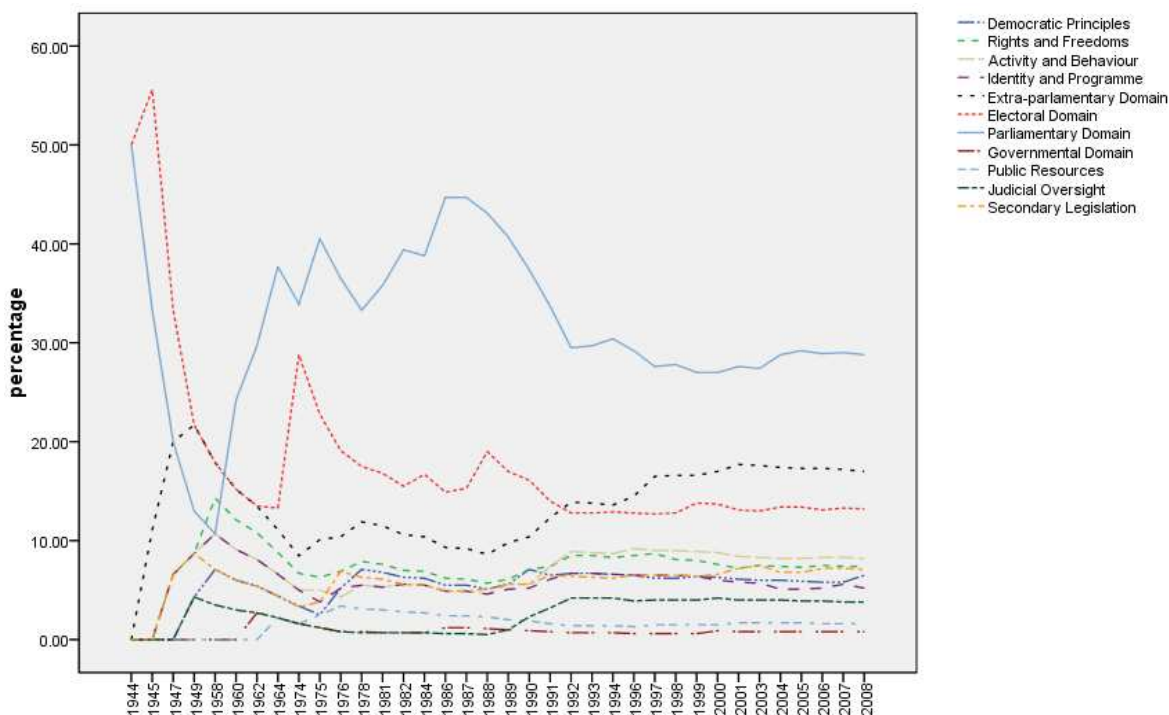
The same information is represented schematically in Figure 4, from which the increased or decreased importance over time per category can be more easily observed. These data clearly show that both the parliamentary and electoral domains have experienced a steady decrease over the post-war period, although the drop is most pronounced in the latter. The biggest increase, on the other hand, can be found in the regulation of the extra-parliamentary domain, starting with the constitutionalization of parties in Austria, Italy and Germany in the first wave after the war, and gaining further momentum with the appearance of the post-communist democracies in the late 1980s and early 1990s.

The variation within other categories is more muted. No clear temporal patterns emerge and much of the within-category differentiation can be explained at the level of individual countries with some evidence of regional variation. For example, the regulation of political parties in relation to ‘democratic principles’ received considerable importance in the early years after the war, and in 1949 (Germany) and 1958 (France) in particular. Hereafter, it has remained relatively constant, although individual country experiences at times have given this category some impulse, such as the adoption of the Portuguese constitution in 1976 or the Spanish constitution in 1978, as well as the post-communist constitutions in Central and Eastern Europe after 1989.

The importance of ‘judicial oversight’, which commenced with the German Basic Law of 1949, seems to have increased again as a result of post-communist democratization, after an initial peak in the early post-war years and a subsequent dip in the 1970s and 1980s. The same pattern is true, although to a lesser extent, for secondary legislation, which was first included in the Italian constitution of 1947,

although in terms of intensity of regulation it clearly outscores the importance of judicial control. The relative importance of access to public resources has decreased since it was first enshrined in the constitutions of Malta, Greece and Portugal, in particular because none of the subsequent waves of party constitutionalization appears to have followed this example.

Figure 4 Longitudinal trends in party constitutionalization



Another way of measuring longitudinal developments is presented in Table 9, which shows the evolution of party constitutionalization over time for each of the 11 categories. This has been measured as the annual change in magnitude for each category, with the table displaying the cumulative percentages taking 2008 as the base rate (100 per cent). This table shows, first of all, that all categories have experienced an increase in magnitude over time. This includes those like the electoral and parliamentary domains, which, as shown above, have seen their relative importance vis-à-vis other categories decrease over the course of the post-war period. Occasions where a relative decline is recorded, such as in 1998 when Latvia adopted a new constitution which consolidated the existing references to political parties in a single article on the freedom of association, are relatively few and can all be attributed to

contingent instances of constitutional revision in individual countries. Overall, the trends shown in Table 9 suggest that the intensity of party constitutionalization has grown stronger across the board, even though the significance of the different categories varies between countries and periods.

A second observation that can be made on the basis of this table is that most of the categories do not experience a linear increase in intensity. Rather, there are surges in intensity clustered around a couple of significant historical junctures, of which the immediate post-war period and the transition from communism stand out in particular. While in 1944, for example, constitutional provisions to political parties were limited to the references to parties in the electoral and parliamentary domains in the Icelandic constitution, the following years witness a rapid increase in the range of party constitutionalization, with the Italian constitution in 1947 and the German Basic Law in 1949 adding the categories of democratic principles, rights and freedoms, activity and behaviour, identity and programme, extra-parliamentary organization, judicial oversight and secondary legislation to the realm of party constitutionalization. The most significant increase on virtually all domains of party constitutionalization subsequently occurs in the early 1990s, when the constitutions of the post-communist in Eastern and Central Europe were written. Exceptions to this pattern are the electoral, parliamentary and governmental domains, and the category of public resources, which follow a more eclectic pattern over time and where surges in the longitudinal increase appear rather contingent upon individual country experiences.

V. Models of party constitutionalization

In this final section we explore the associations between the different regulatory domains in an attempt to uncover the underlying substantive dimensions of party constitutionalization. Based on our content analysis we have arrived at three different theoretical models of constitutional party regulation in European democracies. These patterns are based on the correlations between the magnitude with which certain areas are regulated within each country (see Table A4 in the Appendix) and are confirmed by factor analysis (see Table 10).

Factor analysis allows us to reduce the complexity of the data array to several components. We have therefore started with 11 initial categories and arrived at three components (factors) which are reciprocally uncorrelated. Altogether the three factors or patterns explain 68.5 percent of the variance in our data. They are

Table 9. Evolution of party constitutionalization over time (cumulative %)*

Year	Democratic principles	Rights and freedoms	Activity and behaviour	Identity and programme	Extra-parliamentary domain	Electoral domain	Parliamentary domain	Governmental domain	Public resources	Judicial oversight	Secondary legislation
1944	0	0	0	0	0	2.1	1.0	0	0	0	0
1945	0	0	0	0	1.6	10.4	2.9	0	0	0	0
1947	0	3.7	3.3	5.2	4.8	10.4	2.9	0	0	0	3.8
1949	4.2	7.4	6.6	10.5	8.1	10.4	2.9	0	0	7.1	7.6
1958	8.3	14.8	10.0	15.8	8.1	10.4	2.9	0	0	7.1	7.6
1960	8.3	14.8	10.0	15.8	8.1	10.4	7.6	0	0	7.1	7.6
1962	8.3	14.8	10.0	15.8	8.1	10.4	10.4	33.3	0	7.1	7.6
1964	8.3	14.8	10.0	15.8	8.1	12.5	16.1	33.3	16.7	7.1	7.6
1974	8.3	14.8	10.0	15.8	8.1	35.4	19.0	33.3	16.7	7.1	7.6
1975	8.3	18.5	13.3	15.8	12.9	37.5	30.4	33.3	33.3	7.1	11.5
1976	25.0	29.6	16.7	31.6	19.3	45.8	40.0	33.3	66.7	7.1	30.8
1978	37.5	37.0	23.3	36.8	24.1	45.8	40.0	33.3	66.7	7.1	30.8
1981	37.5	37.0	23.3	36.8	24.1	45.8	44.7	33.3	66.7	7.1	30.8
1982	37.5	37.0	26.7	42.1	24.1	45.8	53.3	33.3	66.7	7.1	30.8
1983	37.5	37.0	26.7	42.1	24.1	45.8	53.3	33.3	66.7	7.1	30.8
1984	37.5	37.0	26.7	42.1	24.1	50.0	53.0	33.3	66.7	7.1	30.8
1986	37.5	37.0	26.7	42.1	24.1	50.0	68.5	66.7	66.7	7.1	30.8
1987	37.5	37.0	26.7	42.1	24.1	52.1	69.5	66.7	66.7	7.1	30.8
1988	37.5	37.0	23.3	42.1	24.1	68.8	71.4	66.7	66.7	7.1	34.6
1989	45.8	44.4	36.6	52.6	30.6	68.8	75.2	66.7	66.7	14.3	42.3
1990	62.5	55.6	40.0	57.9	35.4	70.8	75.2	66.7	66.7	35.7	46.2
1991	66.6	66.7	60.0	78.9	48.3	70.8	78.0	66.7	66.7	57.1	61.5
1992	79.1	88.9	83.3	100.0	62.9	75.0	79.0	66.7	66.7	85.7	69.2
1993	79.1	88.9	83.3	100.0	62.9	75.0	80.0	66.7	66.7	85.7	69.2
1994	79.1	88.9	83.3	100.0	62.9	77.1	82.8	66.7	66.7	85.7	69.2
1996	83.3	96.3	93.3	105.0	70.9	81.3	84.7	66.7	66.7	85.7	76.9
1997	83.3	104.0	96.6	110.5	85.4	85.4	84.7	66.7	83.3	92.9	80.8
1998	83.3	96.3	96.6	110.5	85.4	85.4	84.7	66.7	83.3	92.9	80.8
1999	87.5	96.3	96.6	110.5	87.1	93.8	83.8	66.7	83.3	92.9	80.8
2000	87.5	92.6	96.6	105.3	90.3	93.8	84.7	100.0	83.3	100.0	84.6
2001	87.5	92.6	96.6	105.3	98.3	93.8	90.4	100.0	100.0	100.0	96.2
2003	87.5	96.3	96.6	105.3	98.3	93.8	90.4	100.0	100.0	100.0	100.0
2004	87.5	96.3	96.6	94.7	98.3	97.9	96.1	100.0	100.0	100.0	92.3
2005	87.5	96.3	96.6	94.7	98.3	97.9	98.0	100.0	100.0	100.0	92.3
2006	87.5	100.0	100.0	100.0	100.0	97.9	99.0	100.0	100.0	100.0	100.0
2007	87.5	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
2008	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

* All percentages are calculated against the 2008 reference point, which represents 100%

uncorrelated and, theoretically, for each factor there is a common but latent underlying dimension between all the variables assigned to the respective factor. The factor analysis we have employed is principal component analysis with rotated factor loadings according to the orthogonal Varimax method. The rotated coordinate system allows for new axes to emerge, which better explain the variance in our data. As the rotation is orthogonal, the resulting factors are independent of each other.

The first factor (public utilities) explains 25 percent of the variance in our data, the second factor (modern party government) explains 24 percent and the third factor (defending democracy) 19.5 percent. We have constructed our three factors on the basis of categories with the highest factor loadings. For example, as can be seen in Table 10, the category of ‘democratic principles’ has the highest factor loading on the first factor (.75), while ‘parliamentary domain’ has the highest factor loading (.94) on the second factor. ‘Democratic principles’ is therefore considered to belong to the first factor and ‘parliamentary domain’ to the second. The factor loadings represent the correlation of the variable with the underlying factor.

The variable with the highest loading within the first factor is ‘democratic principles’, within second factor the ‘parliamentary domain’ has the highest loading, and finally, within the third factor the ‘extra-parliamentary domain’ has the highest correlation with the underlying model.

Table 10. Models of party constitutionalization

	Factor 1 (Public utilities)	Factor 2 (Modern party government)	Factor 3 (Defending democracy)
Democratic principles	.752	-.007	.109
Rights and freedoms	.544	.095	.531
Identity and programme	.771	.033	.415
Judicial oversight	.465	.112	.361
Secondary legislation	.626	.599	.214
Parliamentary domain	.146	.941	-.152
Governmental domain	-.367	.767	.141
Public resources	.541	.731	-.188
Activity and behaviour	.418	-.101	.670
Extra-parliamentary domain	.209	.430	.707
Electoral domain	-.049	.249	-.693

Notes: Extraction method: principal component analysis.
Rotation method: Varimax with Kaiser normalization

The models reflect the underlying trends in the regulation of parties used by several groups of countries. They are defined by the associations between different categories of party regulation with the same underlying theoretical dimension represented by the factor. Overall, countries which regulate highly on one category are expected to regulate the same way on the other factors' categories as well. However, the model merely reflects theoretical trends in party constitutionalization. A clear-cut country distribution cannot be assigned to any of the factors, but they rather represent an estimate as to which model of party constitutionalization is most closely approximated by a particular country. There is also the possibility that more than one model applies to a specific country, or that a model only partly applies to a country.

On the basis of this evidence, we tentatively arrive at three distinct models of party constitutionalization:

1. *Public utilities.* There is a high association between the constitution defining key **democratic principles** in terms of political parties and also providing parties with democratic **rights and freedoms**, such as the freedoms of association, activity or speech. In this model, furthermore, constitutional restrictions on the parties' **identity and programme** are coupled with the existence of external **judicial oversight**, in the form of (constitutional courts) monitoring the lawfulness and constitutionality of party identity and activity and the need for further **secondary legislation** on various aspects of party identity and activity.

This model closely corresponds to the notion of parties as a special type of public utility (van Biezen 2004). Because parties are seen as necessary and indispensable institutions for democratic participation and representation, through secondary legislation and judicial oversight procedures, the state has a legitimate role in controlling and regulating their activities in order to ensure that they perform their unique democratic services effectively.

2. *Modern party government.* Constitutions which regulate parties primarily in the **parliamentary domain** also tend to regulate them in their **governmental role** and give them access to **public resources** such as state subsidies and the media.

In this model parties are mainly referred to in their manifestation as parliamentary groups, or, by extension, in their governmental capacity. By creating an explicit association between political parties and the parliamentary and governmental domains, the constitution thus effectively acknowledges the reality of party government for modern representative democracy. In addition, by providing parties with access to public resources, current constitutions reflect a modern vision on party government by which the state assumes a proactive role in supporting parties financially as indispensable institutions for a healthy functioning of democracy.

3. *Defending democracy.* Constitutions which emphasize regulation of parties' **extra-parliamentary organization** further stipulate rules to require that in their **activity and behaviour** parties respect the fundamental values of the democratic political system. The **electoral domain** correlates highly (although in the opposite direction) with the same underlying factor.

In this model, the constitutions stipulate that political parties only enjoy democratic freedoms to the extent that their activity and behaviour does not contradict basic democratic principles of the constitutional political order, that their internal structures are democratic and their finances transparent. Besides these provisions, political parties are mentioned in the context of electoral rules and formulas, campaign activity and candidate recruitment.

Conclusion

This paper has presented the first and preliminary findings of our analysis of the constitutional position of political parties in post-war Europe. Evaluating all constitutional references to political parties in the national constitutions of European democracies, we have identified several temporal, regional and substantive patterns. First of all, our analysis shows that five different waves of party constitutionalization can be distinguished, which largely correspond to waves of democratization and constitution writing. In the first wave, the post-war democracies of Iceland, Austria, Italy and Germany, this was followed by a second wave in the late 1950s and early 1960s (France, Cyprus and Malta), a third wave which includes Sweden but otherwise essentially corresponds to the transitions from authoritarianism in Southern Europe in

the 1970s (Greece, Portugal and Spain, also belonging to this group temporally), a fourth wave largely comprising the post-communist democracies of Central and Eastern Europe democratic and, finally, a more recent fifth wave representing the relatively late constitutionalization of political parties in Finland, Switzerland and Luxembourg in the late 1990s and early twenty-first century.

We have also developed tools for the measurement of the intensity of party constitutionalization, distinguishing between the range and magnitude, and demonstrated that considerable variation exists across European democracies in these terms, with older democracies and countries with a continuous democratic experience history generally showing a lower magnitude of party constitutionalization than more recently established democracies or countries with an interrupted democratic history.

We have furthermore outlined the contours of a new analytical framework for the substantive evaluation of the nature of party constitutionalization. Our theoretical framework comprises 4 broader areas (principles and values, rights and duties, organizational structure of the political system, and meta-rules of constitutional interpretation), which can be further divided into 11 different categories. Regional comparisons across these categories reveal significant differences between countries in Western Europe vis-à-vis the post-communist democracies in Central and Eastern Europe, as well as between the older and newer democracies more broadly. The newer democracies show a significantly higher degree and range of party constitutionalization in virtually all areas with the exception of the electoral domain, which tends to be more prevalent in the longer established democracies of Western Europe.

Finally, using factor analysis we have further condensed our data and arrived at three distinct underlying factors of party constitutionalization. These three factors together explain most of the variance in European constitutional references to political parties. The first is the model of political parties as *public utilities*. The model reflects the high association between the notion that parties are indispensable institutions for the realization of key democratic principles, on the one hand, and the existence of a powerful role for external state institutions, on the other hand, in the form of the state controlling and regulating party activity and behaviour through public law and judicial oversight in order that they adequately perform their ascribed democratic functions. We call the second model *modern party government* model, parties are not necessarily acknowledged as institutions in their own right, but mainly referred to in their

manifestation as parliamentary groups, or, by extension, their governmental capacity. Moreover the state provides parties with public resources such as finances and media access. The explicit association between political parties and the parliamentary and governmental domains emanating from this model reflects the effective acknowledgement of the new reality of party government for modern representative democracy. Finally, in the *defending democracy* model, parties are identified primarily in terms of their extra-parliamentary activity. They are clearly circumscribed such that the activity, behaviour and organization of the parties correspond to the fundamental principles of the democratic political order

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Table A1. Party constitutionalization and Freedom House classifications

Country	Party constitutionalization ^a	FH classification as 'Free' ^b	Country	Party constitutionalization ^a	FH classification as 'Free' ^b
Austria	1945	n/a	Latvia	1991	1991 (1991)
Belgium	--	n/a	Lithuania	1992	1991 (1990)
Bulgaria	1991	1991	Luxembourg	2008	n/a
Croatia	1990	2000 (1990)	Malta	1964	(1964)
Cyprus	1960	(1960)	Netherlands	--	n/a
Czech Rep. ^c	1992	1990 (1993)	Norway	1984	n/a
Denmark	--	n/a	Poland	1992	1990
Estonia	1992	1991 (1991)	Portugal	1976	1976
Finland	1999	n/a	Romania	1991	1996
France	1958	n/a	Serbia ^d	1990	2002
Germany	1949	n/a	Slovakia	1992	1994 (1993)
Greece	1975	1974	Slovenia	1991	1991 (1991)
Hungary	1989	1990	Spain	1978	1977
Iceland	1944	(1944)	Sweden	1974	n/a
Ireland	--	n/a	Switzerland	1999	n/a
Italy	1947	n/a	Ukraine	1996	2006 (1991)

^a Year of approval

^b Freedom House rankings commence in 1973. In some countries, the period with 'Free' status is not uninterrupted: Following the Turkish invasion, Cyprus was classified as Partly Free between 1974 and 1980; Estonia was Partly Free in 1991; Latvia was Partly Free in 1992 and 1993, and Slovakia was Partly Free in 1996 and 1997. In parentheses: year of independence for countries emerging from the break-up of larger states.

^c Czechoslovakia (1990-1992)

^d Yugoslavia (1990-2003), Serbia and Montenegro (2003-06)

n/a = not applicable (independent democratic states throughout the post-war period)

Table A2. Constitutional articles on political parties: country overview

Country	Constitutionalization (year)	Articles relevant to PP (in first year of constitutionalization)	Amendments (year and article)
Austria	1945	26.6 35.1 55.2 147.4	1962: art. 81.a.3.a inserted 1962: art. 117 revised (PP added to art. 117.5) 1981: art. 148.g.2 inserted 1981: art. 148.g.3 inserted 1981: art. 148.g.4 inserted 1991: art 52.a.1 inserted 1992: sentence 3 added to art. 95.3 1992: art. 26 revised (PP added to 26.2) 1993: art 52.b.1 inserted 1994: art. 151.11.5 inserted 1997: art. 55.2 renumbered 55.3 2005: art. 36.2 revised (PP added) 2007: art. 26.6 revised and renumbered 26.a
Belgium	--	--	--
Bulgaria	1991	1.3 11.2 11.3 11.4 12.2 95.2 116.2 147.5 149.1.5	--
Croatia	1990	3 6.1 6.2 43.1 125	2000: art. 6 revised 2000: art. 43.1 revised (reference to PP removed) 2000: art. 125 re-numbered 128 2000: added art. 96.2 2000: added art. 104.1 2000: added art. 108 2001: art. 3 revised

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			2001: art 96.2 renumbered 95.2 2001: art 104.1 renumbered 103.1 2001: art 108 renumbered 111
Cyprus	1960	73.3 73.4 73.12	--
Czech Republic	1992	5 87.1.j	--
Denmark	--	--	--
Estonia	1992	30.2 48.1 48.3 48.4 84 125	--
Finland	1999	25.3 54.3	--
France	1958	4	1999: art. 4 revised
Germany	1949	21.1 21.2 21.3	1983: art. 21.1 revised
Greece	1975	29.1 29.2 29.3 37.2 37.3 37.4 54.3 68.3 73.4 76.4 113	1986: art. 37 revised 1986: art. 38 added 2001: art. 15.2 added 2001: art. 29 revised 2001: art. 38.2 revised 2001: art. 82.4 added
Hungary	1989	Preamble 3.1 3.2 3.3	1990: art. 19B.2 revised 1990: art. 28.5 revised 1990: art. 32A.4 added 1990: art. 40B.4 revised

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		19.B.2 28.5 32.A.4 32.A.5 40.B.4 50.3 53.2	1990: art. 63.3 added 1994: art. 32A.4 revised 2001: art. 19B.2 revised 2004: art. 40B.4 revised
Iceland	1944	31	1999: art. 31 revised
Ireland	--	--	--
Italy	1947	49 98.3 transitory & final provisions	--
Latvia	1991	8.3 12 30.2	1998: art. 8.3 repealed 1998: art. 12 repealed 1998: art. 30.2 repealed 1998: art. 102 added
Lithuania	1992	35.1 35.2 35.3 44.2 83.2 113 114 141	--
Luxembourg	2008	32bis	--
Malta	1964	57.4 91.2 122.1	1974: art. 57.4 renumbered 57.11 1974: art. 91.2 revised 1987: art. 52 added 1987: art. 57.11 renumbered 56.11 1996: art. 52 revised 2000: art. 91.2 renumbered 90.2 2000: art. 122.1 renumbered 119.1 2007: art. 52 revised
Netherlands	--	--	--

Norway	1984	63.d	1988: art. 59 added
Poland	1992	4.1 4.2	1997: old constitution repealed / new constitution adopted, adding: art 11.1 art 11.2 art 13 art 100.1 art 178.3 art 188.4 art 195.3 art 205.3 art 209.3 art 214.2 art 227.4
Portugal	1976	10.1 40.1 40.2 47.1 47.2 47.3 57.4 117.1 154.1 163.1.c 167.g 179.3 183.1 190.1 290.i	1982: art. 10 revised 1982: art. 40 revised 1982: art. 47 renumbered 51 1982: art. 57.4 renumbered 56.4 1982: art. 117.3 added 1982: art. 136.e added 1982: art. 167.g renumbered 167.d 1982: art. 190.1 revised 1982: art. 181.2 added 1982: art. 182.2 added 1989: art. 40 revised 1989: art. 51.4 added 1989: art. 56.4 renumbered 55.4 1989: art. 117 revised 1982: art. 167.d renumbered 167.h 1989 art. 225.2.e added 1997: art. 10 revised 1997: art. 40 revised 1997: art. 51.5 added 1997: art. 51.6 added 1997: art. 117.1 revised; 117 renumbered 114 1997: art. 136.3 renumbered 133.e

			<p>1997: art. 154.1 renumbered 151.1 1997: art. 163.1.c renumbered 160.1.c 1997: art. 167.h renumbered 164.h 1997: art. 179.3 renumbered 176.3 1997: art. 181.2 renumbered 178.2 1997: art. 182.2 renumbered 179.2 1997: art. 183.1 renumbered 180.1 1997: art. 190.1 renumbered 187.1 1997: art. 225.2.e renumbered 223.2.e 1997 art. 223.h added 1997 art. 239.4 added 1997: art. 290.i renumbered 288.i 2004: art. 114.3 revised 2004: art. 133.j revised (PP added) 2004 art. 234.1 added</p>
Romania	1991	<p>8.2 37.1 37.2 37.3 72.3.b 84.1 102.1 144.k</p>	<p>2003: art. 37.1 renumbered 40.1 2003: art. 37.2 renumbered 40.2 2003: art. 37.3 renumbered 40.3 2003: art. 72.3.b revised and renumbered 73.3.b 2003: art. 102.1 renumbered 103.1 2003: art. 144.k renumbered 146.1 2003: new art. 37.1 added</p>
Serbia	1990	<p>Preface 42 125.5 125.6</p>	<p>2003: old constitution repealed / new constitution adopted, adding: art. 5 art. 55 art. 102 art. 167.5 art. 195</p>
Slovakia	1992	<p>29.2 29.4 129.4 137.1</p>	<p>2001: added: art.145.a.1 2001: added: art.151.a.3</p>
Slovenia	1991	<p>42 133</p>	--

		136 160.1 166	
Spain	1978	6 127.1 159.4	--
Sweden	1974	ch. 3, art. 1 ch. 3, art. 7.1 ch. 3, art. 7.2 ch. 3, art. 8 ch. 3, art. 9 ch. 6, art. 2	--
Switzerland	1999	137 147	--
Ukraine	1996	36 37 92.11 127	2004: added art. 81

Table A3. Content analysis breakdown (N)			
Democratic principles	Rights and Freedoms	Activity and behaviour	Identity and Programme
a. competition (2) b. equality (2) c. participation / voting (4) d. pluralism (6) e. popular will / sovereignty (7) f. general (2)	a. freedom of association / assembly (24) b. freedom of activity / speech (7)	a. respect democratic principles (14) b. respect national sovereignty / territorial integrity (2) c. respect human rights (1) d. prohibit violence (4) e. respect constitutional order (6) f. ethnicity / race (0) g. religion (0) h. regionalism / nationalism (0)	a. respect democratic principles (10) b. respect national sovereignty / territorial integrity (6) c. respect human rights (2) d. prohibit violence (3) e. respect constitutional order (5) f. ethnicity / race (1) g. religion (2) h. regionalism / nationalism (1)
Extra-parliamentary domain	Electoral domain	Parliamentary domain	Governmental domain
a. internal democracy (4) b. <u>membership (in)compatibility</u> : i. civil service (4) iii. elected office (5) iv. judiciary (19) v. public officials (6) vi. law enforcement / security services (8) vii. (semi-) public enterprises (0) viii. trade unions (1) c. <u>organizational structure</u> : i. membership organization (1) ii. party structure (2) d. financial transparency (5) e. policy formation (3) f. interest articulation (2)	a. candidate recruitment / selection (12) b. electoral rules and formula (34) c. campaign activity (1)	a. composition national legislature (46) b. composition regional / local legislature (5) c. procedural responsibilities (6) d. government formation (21) e. membership (semi-) public bodies (7) f. staffing (0) g. threshold group size (2) h. non-incumbent parties (6) i. policy formation (1) j. relationship MPs with extra-parliamentary organization (2)	a. composition national government (2) b. composition regional / local executive (1)
Public resources	Judicial oversight	Secondary legislation	Miscellaneous
a. financing (3) b. media access (5)	18	a. activity (2) b. dissolution (0) c. financing (6) d. formation (4) e. functioning (2) f. organization (1) g. right of assembly (0) h. membership incompatibility (8) i. legal status (1) j. media access (2) k. elections (3)	2

Table A4. Correlations between dimensions of party constitutionalization

		democratic principles	rights and freedoms	activity and behaviour	identity and programme	extra-parliamentary domain	electoral domain	parliamentary domain	governmental domain	public resources	judicial oversight	secondary legislation
democratic principles	Pearson Corr.	1	.462*	.297	.517**	.214	-.212	.082	-.060	.333	.384*	.343
	Sig. (2-tailed)		.013	.125	.005	.275	.278	.680	.760	.084	.044	.074
rights and freedoms	Pearson Corr.	.462*	1	.485**	.529**	.596**	-.273	.094	-.105	.282	.294	.416*
	Sig. (2-tailed)	.013		.009	.004	.001	.160	.633	.595	.147	.129	.028
activity and behaviour	Pearson Corr.	.297	.485**	1	.653**	.397*	-.370	-.077	-.124	-.067	.232	.486**
	Sig. (2-tailed)	.125	.009		.000	.037	.052	.698	.530	.735	.236	.009
identity and programme	Pearson Corr.	.517**	.529**	.653**	1	.448*	-.237	.068	-.149	.325	.489**	.590**
	Sig. (2-tailed)	.005	.004	.000		.017	.224	.729	.450	.092	.008	.001
extra-parliamentary domain	Pearson Corr.	.214	.596**	.397*	.448*	1	-.265	.292	.221	.320	.369	.462*
	Sig. (2-tailed)	.275	.001	.037	.017		.174	.132	.258	.097	.053	.013
electoral domain	Pearson Corr.	-.212	-.273	-.370	-.237	-.265	1	.260	.144	.115	-.220	-.031
	Sig. (2-tailed)	.278	.160	.052	.224	.174		.182	.466	.561	.262	.874
parliamentary domain	Pearson Corr.	.082	.094	-.077	.068	.292	.260	1	.602**	.817**	-.003	.633**
	Sig. (2-tailed)	.680	.633	.698	.729	.132	.182		.001	.000	.986	.000
governmental domain	Pearson Corr.	-.060	-.105	-.124	-.149	.221	.144	.602**	1	.233	.085	.196
	Sig. (2-tailed)	.760	.595	.530	.450	.258	.466	.001		.234	.668	.319
public resources	Pearson Corr.	.333	.282	-.067	.325	.320	.115	.817**	.233	1	.233	.707**
	Sig. (2-tailed)	.084	.147	.735	.092	.097	.561	.000	.234		.232	.000
judicial oversight	Pearson Corr.	.384*	.294	.232	.489**	.369	-.220	-.003	.085	.233	1	.401*
	Sig. (2-tailed)	.044	.129	.236	.008	.053	.262	.986	.668	.232		.034
secondary legislation	Pearson Corr.	.343	.416*	.486**	.590**	.462*	-.031	.633**	.196	.707**	.401*	1
	Sig. (2-tailed)	.074	.028	.009	.001	.013	.874	.000	.319	.000	.034	

Notes: *. Correlation is significant at the 0.05 level (2-tailed). **. Correlation is significant at the 0.01 level (2-tailed); N= 28 countries