



Party Law in Modern Europe

The Legal Regulation of Political Parties in Post-War Europe

Democratisation and the Illegalisation of Political Parties in Europe

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DEMOCRATISATION AND THE ILLEGALISATION OF POLITICAL PARTIES IN EUROPE

ABSTRACT¹

This article explores theoretical explanations for the proscription of political parties in democratising states. A survey of twenty-two party bans in twelve European states identifies two distinct classes of proscription derived from the ‘degree of democratisation’ present in a banning state. Drawing on the democratisation literature, I identify features of ‘new’ and ‘incomplete’ democracies that help explain proscription. Case studies on Germany, Austria, Russia, Latvia and Greece illustrate the impact of ‘modes of transition’, heightened uncertainty, political tensions and instability on ‘new democracy bans’, and the impact of illiberalism, limited checks on executive power and circumscribed political participation on ‘incomplete democracy bans’.

INTRODUCTION

The illegalisation of political parties presents a dilemma for democracies. On the one hand, banning a party may have profound consequences for the enjoyment of liberties, representation and political competition. It is often the mark of authoritarianism. On the other hand, democracies typically ban parties they claim promote authoritarian forms and violent regime change, serve the interests of a foreign power, undermine the territorial integrity of the state or are racist. Proscription may, therefore, help protect democracies from their enemies and promote the rights of vulnerable citizens.

There is a small literature on the proscription of political parties, mostly consisting of single case studies and some comparative studies drawn from the disciplines of law and philosophy (Karvonen, 2007; Sajó, 2004; Niesen, 2002; Fox and Nolte, 2000; Brunner, 2000; Harvey, 2004; Franz 1982; Kirchheimer, 1961). Most of these studies tend not to question official rationales for the proscription of political parties and when they do, fail to develop systematic, comparative or sufficiently detailed arguments. Looking beyond official rationales, I pick up on arguments meriting further development, particularly Karvonen’s (2007) argument that ‘established

democracies' tend to legislate fewer restrictions on political parties than 'new' or 'semi-democracies' and Sajó's point that proscription is more likely in post-communist states because political uncertainty makes them less willing to accept the risk that political liberties may be abused (2004: 214). In short I aim to lay the foundations for more systematic examination of the proscription of political parties by developing plausible hypotheses about the impact of democratisation on a state's decision to ban a political party.

I explore the impact of democratisation on proscription in two main ways. In order to determine whether 'degrees of democratisation' can usefully distinguish different classes of party ban, I conduct a survey of twenty two party bans in twelve European states. This survey reveals two distinct classes of proscription, namely 'new' and 'incomplete' party bans. I then go on to explore the literature on democratisation to determine whether distinctive features of 'new' and 'incomplete' democracies can help explain why these bans occur. Case studies of 'new democracy bans' in Germany, Austria, Latvia and Russia and 'incomplete democracy bans' in Greece and Russia illustrate pertinent arguments from the literature.

PROSCRIPTION OF PARTIES IN EUROPE

There is no up-to-date or comprehensive list of parties banned in liberal democracies,² although the proscription of political parties is probably more common than usually recognised. This article focuses on the proscription of parties in postwar Europe, mainly because relevant primary and secondary sources are more abundant. However, if temporal and spatial parameters are extended back to the interwar years and beyond Europe, it becomes evident that many democracies have initiated or completed proceedings to ban a political party at some point in the last century (Loewenstein, 1937; Kirchheimer, 1961; Capoccia, 2001; Fox and Nolte, 2000).

The first columns of Tables 1 and 2 (below) show significant or well-known examples of proscription in Europe. Selected cases reflect something of the range of parties banned in terms of ideology and salience, and include examples from established and more problematic democracies, and from states with recent experience of democratisation. Most parties listed in these tables fit a broad definition of political

parties as organisations that ‘seek influence in the state’ including office and parliamentary representation; that formulate a preferred set of policies or future-oriented programmes for political change; and contest elections at least some of the time (Ware, 1995: 5). For some small parties, such as the United Macedonian Organisation Ilinden-Pirin (UMO Ilinden-Pirin) and the National Bolshevik Party, participation in elections is very difficult due to the hurdles of registration. For others, such as the Workers Party and the National Democratic Party (Austria), extra-parliamentary forms of opposition may be more or equally important. Indeed, for such cases, the boundaries between political parties, political associations and movements – and sometimes terrorist groups - may be rather blurred. On the other hand, the above definition of political parties cannot fully capture the essentially non-democratic nature of former ruling parties in fascist or communist regimes.

Furthermore, parties included in Tables 1 and 2 illustrate three main categories of party ban. The first involves a process of illegalisation leading to *dissolution*, where a party is barred from participating in the electoral processes. Dissolution often involves bans on other forms of political activity (such as political demonstrations) and the confiscation of party assets. Examples of dissolved parties include National Democratic Party (Austria), Workers Party and *Batasuna*. *Non-registration* is a form of ex-ante exclusion from the political process. It involves a formal decision by a branch of the state not to register an organisation as a political party and thereby denies the party permission to participate in electoral competitions and certain other political rights. Examples of non-registration include Republican Party of Russia, Christian Democratic Party of Russia and UMO Ilinden-Pirin. And finally, there are *lapsed bans*, where despite proscription, parties have been permitted a place in public life under a different guise. A good example is the Communist Party of Greece, which operated through the front organisation United Democratic Left for decades (Kitsikis 1998: 98).

The most common ideological categories for banned parties are parties of the *far right*, including the Socialist Reich Party, National Democratic Party (Austria), Workers Party, and the Center Party 1986; *orthodox communist* parties, such as those in Germany, Greece, Russia, Latvia and Lithuania; and *minority nationalist or separatist parties* such as including UMO Ilinden-Pirin, *Batasuna* and the Democratic

Society Party. The proscription of liberal, pro-democracy parties such as the Republican Party of Russia, or the Russian Christian Democratic Party (among other Russian parties not mentioned here, but see Danks 2009, 319), stand out as significant exceptions.

In terms of size and political significance, parties included in Tables 1 and 2 vary enormously, from the mass communist and fascist parties banned after the end of World War Two and collapse of the Soviet Union, to parties only able to capture a very small percentage of the vote, like the National Democratic Party (Austria), the Workers Party and Centre Party 1986. Between these extremes fall parties like *Batasuna*, which was able to capture as much as 18% in its best showing in Basque elections in 1990 and the Welfare Party, which was the largest party after 1996 elections (with 22% of the vote) and part of a coalition government for nearly a year. And finally, it should be noted that some party bans are sequential. This is the case for bans in Spain, where all bans since the proscription of *Batasuna* in 2003 have sought to prevent *Batasuna* re-emerging under a new name. It is also the case for various pro-Kurdish and Islamist parties in Turkey.

NEW DEMOCRACIES AND THE PROSCRIPTION OF POLITICAL PARTIES

This cannot be the place to enter into complex debates on the general concept of democracy, other than to note Dahl's five criteria (1998: 37-8): In a democracy citizens have equal and effective opportunities for a) making their views known to other citizens; b) voting on public decisions; and c) learning about relevant alternative policies and their likely consequences. Furthermore, d) citizens decide how and what matters are to be placed on the political agenda and e) full citizenship rights are open to all adult permanent residents. 'New', 'incomplete' and 'established' democracies can be conceived as various 'stages' or 'degrees' of democratisation. This is an approach taken by many democratisation theorists, who like Karl and Schmitter tend to see democratisation as a 'complex historical process with analytically distinct, if empirically overlapping, stages of transition' (1991: 271). While there is disagreement over whether democratisation ought to be conceived as a dichotomous or continuous variable (Huntington, 1991: 11), most theorists accept some variation of the following sequence of stages: transition; institutionalisation or installation; consolidation,

persistence or habituation; and possibly deconsolidation (Rustow, 1970; Linz, 1990; Morlino, 1994; Diamond, 1999; Huntington, 1991; O'Donnell, 1994: 56).

By 'new democracy' I mean states at the 'transition' stage of a process which could transform an authoritarian regime into a fully consolidated democracy. This corresponds to what Rustow (1970) defines as the 'preparatory' and 'decision' phases of democratisation. For Rostow, this is when political leaders in a nationally unified political community, involved in a prolonged, profound and inconclusive struggle, decide to accept diversity in their community and institutionalise some critical aspect of the democratic procedure to resolve conflict (1970: 352-6). Later theorists acknowledge more varied paths to democracy, including imposition by external actors, imposition by regime elite, mass-led reform or the revolutionary take over of power (Karl and Schmitter, 1991; Linz, 1990; Huntington, 1991: 109-163). 'New democracies' can therefore be defined, adopting Linz's conception of democratic transitions, as former authoritarian states where there has been: a) the transfer, abdication, or takeover of power by a group willing to open the doors to a democratic process (1990: 148) and b) the successful realisation of free elections; convening of a new parliament on whose confidence government depends, or installation of a new president in office; and a constitution defining the functions of different organs of government (ibid: 157).

It is possible to identify a class of parties banned by new democracies bans by measuring the proximity of the decision to ban a party to a democratising state's first multiparty election. The first multiparty election is rarely the opening event of a democratic transition, but as we have just seen, the successful realisation of free elections is a defining moment of all transitions (Linz, 1990: 157). Table 1 shows the year individual parties were banned in relation to the first multiparty – although not always free and fair – elections held in the post-World War Two period. Parties located in the topmost rows of the Table constitute a class of 'new democracy bans'. Establishing a cut-off point for this class of new democracy bans is somewhat arbitrary. A meaningful average for transition-length is difficult to calculate because the precise point in time when a transition ends is often a matter of debate. For the states included here, an instance of proscription somewhere within five to seven years

of the first multiparty elections can be included within the class of new democracy bans.

Table 1: Proximity of party bans to first multiparty election

Banned Party	Ban Year	First election	Ban proximity to first election (years)
National Fascist Party (Italy)	1943	1948	-5
Communist Party of Latvia	1991	1990	1
Communist Party of Lithuania	1991	1990	1
Communist Party of the Soviet Union/Russia	1991	1991	0
National Socialist German Workers Party (Austria)	1945	1945	0
Communist Party of Greece	1947	1946	1
Socialist Reich Party (German)	1952	1949	3
Communist Party of Germany	1956	1949	7
United Macedonian Organisation Ilinden-Pirin (Bulgaria)	1999	1990	9
Russian Christian Democratic Party	2004	1991	13
National Bolshevik Party (Russia)	2005	1991	14
Republican Party of Russia	2007	1991	16
Workers Party (Czech Republic)	2010	1990	20
<i>Batasuna</i> (Spain)	2003	1977	26
Communist Party of the Basque Homelands (Spain)	2008	1977	31
<i>Askatasuna</i> (Spain)	2009	1977	32
National Democratic Party (Austria)	1988	1945	43
United Communist Party (Turkey)	1990	1946	44
People's Labour Party (Turkey)	1993	1946	47
Centre Party 1986 (The Netherlands)	1998	1946	52
Welfare Party (Turkey)	1998	1946	52
Democratic Society Party (Turkey)	2009	1946	63

There is considerable debate about whether it is appropriate for new democracies to ban political parties and whether such measures are effective. Bans to counter the re-emergence of former non-democratic ruling parties may contribute to political stabilisation in the uncertain conditions of democratic transition, or serve as a 'backward barrier' against insurgency (Minkenberg, 2006: 27; Niesen, 2002: 250). Bans on former ruling parties may help symbolically demarcate the authoritarian past, 'disclose a new republic's understanding of the paradigmatic wrongs of the old regime' and 'specify the new regime's normative orientation towards to the future' (Niesen, 2002: 275). The ECHR, and others, have been willing to tolerate greater limitations on political rights in the special conditions of democratic consolidation (see also Sajó, 2004: 220; Gordon, 1986: 390).³ In contrast, Huntington's approach on the question entails: don't prosecute or punish, don't forgive or forget (1991: 231). He argues that in some cases, political costs may outweigh moral gains, and that experience to the 1990s suggested that transitional justice is rarely delivered in a

sufficiently timely or systematic manner (ibid: 211-231). Linz is equally ambivalent (1990: 159).

Nevertheless, new democracies face particular problems which make the option of proscribing a political party more compelling. New democracies are typically characterised by uncertainty, polarisation, political tension and significant disagreement over the pace and forms of democratisation (Rustow, 1970: 354, 356; Linz, 1991: 153; Huntington 1991: 109-164). As Karl and Schmitter describe it,

...the transition... is subject to unforeseen contingencies, unfolding processes and unintended outcomes. The 'normal' constraints of social structure and political institutions seem temporarily suspended: actors are often forced into making hurried and confused choices; the alliances they enter are usually fleeting and opportunistic (1991: 270).

There is great uncertainty about 'which interests will prevail and what the outcome of the democratic process will be' (Morlino, 1994: 572). There is sometimes a strong possibility that anti-democratic forces from old regime or from the opposition might prevail (Rustow, 1970: 354; Linz 1991: 153, Huntington, 1991: 109-164). Minorities may be particularly vulnerable to the tendency for democratisation to promote communalism and ethnic tensions, which as Huntington and others explain, may be due to the fact that 'in many situations the easiest way to win votes is to appeal to tribal, ethnic and religious constituencies' (1996: 6; Zakaria, 1997: 38).

In contrast, the marginalisation of extremists and anti-system parties is often regarded as a benchmark for democratic consolidation (Linz, 1991: 158; Diamond, 1999: 67-8). Moreover, in an established democracy, uncertainty about the rules of the game are considerably reduced (Rustow, 1970: 361; Morlino, 1994: 572). As Diamond explains, this is achieved through institutionalisation – a move towards routinised, recurrent, predictable, patterns of political behaviour – which enhances 'mutual security' and helps draw 'reliable boundaries around the uncertainty of politics' (1996: 55).

The proscription of political parties in Russia and Latvia in 1991 illustrate the impact that uncertainty, political polarisation and the threat of counterrevolution from agents of the old regime may have on decisions to ban political parties. Democratisation in

Latvia and Russia took place in the context of the rapid disintegration of the Soviet Union, uncertainty about the status of unilateral declarations of independence in Latvia and elsewhere, and the constant threat of counter-revolution on the part of communist party hardliners (Daniels, 1993; Danks, 2009). Indeed, coup attempts by pro-Soviet hardliners in Latvia (and Lithuania) in January 1991 and in August 1991 in the Soviet Union serve as a backdrop against which communist parties in these states were banned.

In a high-profile and politically significant case, the former ruling Communist Party of the Soviet Union (CPSU) was banned within the Russian Soviet Federative Socialist Republic for being an accomplice in the August 1991 communist hardliner's coup attempt against Soviet President Mikhail Gorbachev (Feofanov, 1993: 633). The party was banned by Edict of Russian President Boris Yeltsin. The Russian Constitutional Court was soon called to judge the validity of the ban – or more specifically, whether the President had the power to ban political parties - and the constitutionality of the CPSU itself (Feofanov, 1993; Brunner, 2002: 28-30). By the time Yeltsin issued his edict, the CPSU had ceased to play its constitutional 'leading role', as power shifted to alternative political institutions in the Republics, and Constitutional Court deliberations took place when the Soviet Union was defunct.

The trial itself was, according to Yuri Feofanov, something of a 'Russian Nuremberg', which put the Communist party, its ideology, crimes and record at the helm of the Soviet state on trial (1991: 636). In a complex ruling, the court found that the prohibition of the 'high organisational structure' of the CPSU (and the Communist Party of the Russian Soviet Federative Socialist Republic), or those elements of the party apparatus which had controlled the Soviet state, were now unconstitutional (Feofanov, 1993: 637; Brunner, 2002: 30). However, it also ruled that the territorial party organisations – or those elements of the party that were more like public associations – were legal and would be permitted to carry out activities in accordance with the law (ibid). By 1993, the party effectively reconstituted itself as the Communist Party of the Russian Federation.

The Communist Party of Latvia (CPL) was banned in September 1991 by Latvia's Supreme Council. The banning body was a transition parliament composed of an anti-

communist, pro-Latvian independence majority (Popular Front) elected in Latvia's March-April 1990 competitive, multi-party elections (Sprudz, 2001). The CPL was the former ruling party of the Latvian Soviet Socialist Republic, although it participated and won 27% of the vote (and 55 seats) in 1990 elections. After the Supreme Council declared Latvian independence, the CPL remained loyal to the CPSU. In January 1991, the CPL was involved in an unsuccessful coup attempt led by the pro-Soviet Latvian Public Rescue Committee, which declared it was seizing power and dissolving the elected, pro-independence, Supreme Council and the Government of the Republic of Latvia (*Ždanoka v. Latvia*, 58278/00, ECHR, 2006). These acts later served as grounds for its proscription. The party was suspended in August 1991, following their open support for the August 1991 coup attempt against Gorbachev, on the grounds that their activities aimed at the violent transformation or overthrow of the existing constitutional order. Formal dissolution was confirmed a month later.

Another distinctive feature of new democracies is the challenge of 'dealing justly with the previous nondemocratic rulers' (Linz, 1990: 158; Huntington, 1991, 2009; Herz, 1978). As Herz observes:

the most difficult choice that seems to confront all of the [new democracies] is between policies of at least temporary discrimination, in order to eliminate the danger (from right or left) of restoration of dictatorship, and freedom for all groups and factions to organize and operate. Similarly...a choice must be made between actively combating totalitarian and similar ideologies, and allowing everyone to compete freely in the marketplace of ideas' (1978: 561).

The 'torturer problem', or responding to demands for justice for human rights violations committed by individuals from the old regime, is particularly difficult (Linz, 1990, 158; Huntington, 1991, 211-231). There is also the related issue of purging supporters and partners of the old regime from the armed forces, bureaucracy and certain civil society institutions (Linz, 1990, 158; Herz, 1978, 561).

Huntington observes that different 'modes of transition' are associated with different approaches to the issue of purging and punishing protagonists of the old regime: In the case of 'third wave' regime *transformation* (regime reformer-led change) former officials of the authoritarian regime were almost never punished. In case of

replacement (opposition group-led change) they almost always were. In *transplacements* (regime reforms and moderate-opposition led change) this was an issue to be negotiated. Where there is strong support for, or an established practice of, punishing those associated with the former regime for past crimes, or for purging them from positions of authority in the state, there may also be a strong rationale for banning them from participation in democratic politics through the formation of political parties (Herz, 1978: 561). Party bans in Germany and Austria in the immediate aftermath of world war two illustrate the explanatory potential of ‘modes of transition’ for explaining proscription in democratic states, although more research is needed to confirm its broader significance.

Democratisation in Germany and Austria took place after total defeat in war and involved external intervention on the part of the occupying Allied Powers (Niesen, 2002: 253; Knight, 2007). In both countries it took the form of ‘externally monitored installation where the total debellicization of the... state gave to the Allied powers full control of political development’ (Linz, 1990: 113). Democratisation in these countries was as a form of what Huntington calls transition by ‘replacement’, where opposition groups gain strength until the old regime collapses or is overthrown (1991: 142), although in the cases at hand, military intervention by external actors was a more decisive trigger for democratisation than domestic opposition. As mentioned earlier, transition by replacement tends to be associated with policies punishing and purging protagonists of the old regime (Huntington, 1991: 211-231). This expectation holds for the proscription of political parties in Austria and Germany (and in Italy), although it took different forms in different countries.

In Germany, a ban on parties which might take up the mantle of the defeated National Socialist German Workers Party (or the Nazi party) took the form of a constitutional prohibition on all anti-democratic extremist parties. According to Article 21(2) of the 1949 German Basic Law, ‘parties which by their goals or through the acts of their adherents seek to impair or to do away with the liberal democratic order, or to endanger the existence of the Federal Republic of Germany, are unconstitutional.’

Constitutional provisions against extremist parties were first invoked when the government of Konrad Adenauer called on the Federal Constitutional Court to determine the constitutionality of the Socialist Reich Party of Germany (SRP). The

Court found the SRP to be unconstitutional because of its 'essential affinity' to the Nazi party and because it did not support principles constituting the 'liberal democratic order' (Niesen, 2002: 273; Franz, 1982: 57). According to Kirchheimer, the SRP 'barely disguised its kinship with National Socialism', 'revived ultranationalist philosophies', and 'used Nazi techniques to vilify and denounce the exponents of the democratic system' (1961: 151). The SRP obtained some support in certain Northern Lander, but its 1951 success of 11% of the vote in Lower Saxony Land elections was a highpoint soon followed by the initiation of proscription proceedings (Kirchheimer, 1991: 152). Article 21(2) was also invoked against the Communist party of Germany, which was banned in 1956, and the National Democratic Party of Germany, which escaped proscription in 2003.

The National Socialist German Workers' Party (NSDAP) and its associated organisations have been banned in Austria since the end of World War Two. The NSDAP achieved an electoral breakthrough in the early 1930s but had effectively become a branch of its German counterpart in 1926 (Sørensen, 2002). After the *Anschluss* its members and supporters obtained advantageous and powerful positions in government and civil society (ibid, Knight, 2007). The ban on the NSDAP was part of the Allies' de-nazification programme and was required in accordance with the 1955 State Treaty for Austria. One of the first acts of the Austrian Second Republic was the 1945 Prohibition Act (subsequently amended in 1947 and 1992). This Act dissolved all National Socialist organisations, confiscated their assets and prohibited actions inspired by National Socialist ideas (Muller 2006: 6). A new article prohibiting Holocaust denial was introduced in 1992. The Prohibition Act was also used in 1988 to dissolve the National Democratic Party for reactivating national socialist ideas.

INCOMPLETE DEMOCRACIES

Huntington observes that so-called 'waves of democratisation' are usually accompanied by liberalisation or partial democratisation in political systems that do not become democratic (1991: 15). Moreover, democratisation waves have been followed by 'reverse waves' where 'some but not all countries that previously made

the transition to democracy reverted to non-democratic rule' (ibid). These processes produce incomplete democracies.

By 'incomplete democracy' I mean states that have set out on a process of democratic reform, and obtained some – but not other fundamental - characteristics of established democracies. Established or 'consolidated' democracies, are those where democracy becomes 'the only game in town' (Linz and Stepan, 1996: 15-16), and which meet high standards of democratic quality (Diamond and Morlino, 2005). In established democracies: no politically significant group seriously attempts to overthrow the democratic regime or to secede from the state; the overwhelming majority of people believe further political change must emerge from the democratic process, even in the face of severe economic and political crisis; and all political actors become habituated to resolving political conflict by democratic means (Linz and Stepan, *ibid*; see also Diamond, 1999; Rustow, 1970).

There is some disagreement about the threshold of democratic consolidation. Huntington, for instance, adopts a minimalist conception of 'electoral democracy', where a political system is 'democratic to the extent that its most powerful collective decision-makers are selected through fair, honest and periodic elections in which candidates freely compete for votes and in which virtually all the adult population is eligible to vote' (1991: 7). This conception implies 'the existence of those civil and political freedoms to speak, publish, assemble and organise that are necessary to political debate and the conduct of election campaigns' (*ibid*). This minimalist conception, however, has been criticised for ignoring other dimensions of democracy, such as minority rights or the existence of domains of power beyond the reach of democratically elected representatives (Diamond, 1999: 31). Maximalist definitions, articulated most clearly in work on democratic 'quality', include additional criteria, namely the absence of reserved domains of power for non-democratic actors, horizontal accountability, extensive guarantees for political pluralism, political and civil freedoms, and the rule of law (Diamond, 1999: 11-12; Diamond and Morlino, 2005: xii-xxix).

Despite some blurring of the boundaries between consolidated and unconsolidated democracies, scaled measures of democratisation, such as the widely-used Polity IV

democracy scores, permit identification of a class of incomplete democracy bans. Table 2 shows Polity democracy scores in the year it banned a party.⁴

Table 2: State’s degree of democratisation in year party is banned

Banned Party	Ban Year	Democracy score
National Socialist German Workers Party (Austria)	1945	Interregnum
National Fascist Party (Italy)	1943	Interregnum
Communist Party of the Soviet Union/Russia	1991	3
Republican Party of Russia	2007	5
Russian Christian Democratic Party	2004	6
National Bolshevik Party (Russia)	2005	6
Communist Party of Greece	1947	8
Communist Party of Latvia	1991	8
United Macedonian Organisation Ilinden-Pirin (Bulgaria)	1999	8
Workers Party (Czech Republic)	2010	8 ¹
Democratic Society Party (Turkey)	2009	8
Welfare Party (Turkey)	1998	8
United Communist Party of Turkey	1990	9
People’s Labour Party (Turkey)	1993	9
National Democratic Party (Austria)	1988	10
Socialist Reich Party (Germany)	1952	10 ²
Communist Party of Germany	1956	10
Communist Party of Lithuania	1991	10
Centre Party 1986 (Netherlands)	1998	10
<i>Batasuna</i> (Spain)	2003	10
Communist Party of the Basque Lands (Spain)	2008	10
Askatasuna (Spain)	2009	10

Notes: 1. Scores for Czech Republic are for 2009, because 2010 scores have not yet been calculated. It may therefore be subject to revision. 2. Scores are for Germany are polity scores for ‘West Germany’, given that bans occurred before reunification.

Scores are allocated along a spectrum ranging from 0 to 10, where ten is the highest level of democratisation. Scores are determined by qualitative evaluations of the openness and competitiveness of executive recruitment, constraints on executive authority and the competitiveness of political participation. Parties in the top three rows of Table 2 have been considered in the context of new democracy bans. Those cases with a democracy score ranging from five to seven may be considered ‘incomplete democracies bans’ given that banning states initiated democratic transitions and yet fell short of top categories of democratic quality in the year the ban occurred. Once again, it must be acknowledged that this is an imperfect measure for identifying the ‘degree of democracy’ in different states. One problem is that democracy scores in a specific year - the year of proscription - do not accurately capture the degree of democratisation over the medium to longer term. A good example is the democracy score for Greece - considered in more detail below – which fell from a score of eight to seven soon after the proscription of the Communist Party

and remained at this level between 1949 and 1966. While this example highlights the need to avoid an overly mechanical application of the measure and caution in the selection of case studies, it does permit the identification of a class of ‘incomplete democracy bans’, even if though the boundaries between an incomplete and established democracy may be difficult to discern with absolute precision.

Closer examination of work conceptualising different forms of incomplete democracy provide various theoretical explanations for this class of party ban. Merkel and Croissant distinguish various forms of ‘defective democracies’ that fall in the ‘grey area’ between consolidated liberal democracies and open autocracy (2000: 31). Defective democracies are ‘democratic’ because there is a ‘meaningful and effective universal “system of elections” (free, secret, equal and general elections) regulating access to political power” (ibid: 35). However, they may deviate from democratic standards in three ways: In an *exclusive* democracy, certain groups are systematically denied access to political power, due to voting restrictions, discriminatory party laws or electoral system distortions (among other things) (ibid: 36-7). In a *domain* democracy, certain political domains are controlled by groups (such as the military) which are not democratically elected or legitimated (ibid: 36). This is essentially the same as O’Donnell’s conception of ‘delegative democracy’, which ‘rests on the premise that whoever wins the presidency is thereby entitled to govern as he or she sees fit, constrained by the hard facts of existing power relations and by a constitutionally limited term of office’ (1994: 55). There is vertical accountability, including periodic elections along with freedom to form parties and organisations, but horizontal accountability through checks on presidential power are weak or non-existent (ibid: 61-2) and government is paternalistic, populist and illiberal (ibid: 55).

Merkel and Croissant’s third kind of defective democracy is *illiberal* democracy, where ‘representatives elected in free and general elections breach these fundamental rules, if the mutual checks on power are eliminated by the circumvention of parliament and the judiciary, or if the rule of law is deliberately or chronically damaged’ (ibid: 36). Zakaria (1997) develops a similar conception of ‘illiberal democracy’, where the procedural requisites of democracy are divorced from the goals of ‘liberal constitutionalism’, which seeks to promote individual liberty and autonomy through the rule of law. In an illiberal democracy, elected power holders

‘routinely ignore constitutional limits on their power and deprive...citizens of basic rights and freedoms’ (Zakaria, 1997: 22). Distinctions between liberal and illiberal democracy also emerge in differences between ‘high’ and ‘low’ quality democracies elaborated by Diamond and Morlino (2005) and their collaborators. While higher quality democracies provide for ‘liberty on paper’, they also develop a ‘culture of liberty’, where freedoms are used and properly upheld by an independent judiciary, and where rights derogations are limited (Beetham, 2005: 34). ‘Lower quality’ democracies, however, may provide ‘rights on paper’ but will subvert these standards by practices that include ‘exclusionary rules on registration of voluntary associations, trade unions or political parties’ and ‘discriminatory application of registration requirements’ (ibid, 38).

In short, various essential characteristics of incomplete democracies generate the expectation that the proscription of parties will be more likely in incomplete democracies, especially the absence of effective checks on executive power, the systematic circumscription of political participation or underdeveloped commitments to liberal constitutionalism. The explanatory potential of these theoretical explanations can be illustrated by cases of proscription in Greece and Russia.

Multiparty elections were held in Greece at regular intervals during the ban on the Communist Party of Greece (1957-74), with the exception of the Colonel’s coup and military rule between 1967 and 1975. Multiparty elections have also taken place at regular intervals in Russia, including the period from 2001, when the number of Russian political parties banned outright or denied registration increased dramatically. Nevertheless, at the time in question, both states bore the hallmarks of ‘defective’ or ‘illiberal’ democracies described above (Merkel and Croissant, 2000; Zakaria, 1997).

As Diamandouros observes, the post-World War II Greek political system was ‘indelibly marked by the effort of a politically triumphant Greek Right to institutionalise [an] anti-communist state’ (1986: 143). Even before the Colonel’s coup and military rule, the Right dominated a ‘guided democracy’ or ‘circumscribed parliamentarianism’ which marginalised the left and centre and employed a ‘para-constitution’ denying equal rights to those whose commitment to the political regime and established social order might be in doubt (ibid: 143).

Formed in 1918, the Communist Party of Greece has drifted in and out of legality. Throughout its existence, the party has been characterised by its close association with the Soviet Union and orthodox communism (Kousouros, 1965; Kitsikis, 1988). The party's size and influence grew immensely after it led Greek resistance to German occupation in the 1940s (Kousoulas, 1965). From this powerbase, the communists launched a revolutionary insurrection and civil war (1946-9), eventually quashed with British and US support. The Party was outlawed by the Greek government in December 1947, at the height of the civil war, and at the point when communist guerrillas established an alternative government in the mountains (Kousoulas, 1965: 248). However, before long, the illegalisation of the Communist Party took the form of a *lapsed ban*, as the party staged a comeback through a front organisation, the United Democratic Left. This party, which was formed in 1951, involved other political forces, but pursued many pro-communist policies. It won an average of 14.2% of the vote in the six elections it contested on its own (Kitsikis 1988: 98). It returned to full legality in 1974, when the Colonels relinquished power (Diamandouros 1986: 160).

Under the regime of President, and later prime minister, Vladimir Putin, Russia became a 'managed democracy' and developed what Gel'man (2008) describes as a 'party-based authoritarian regime'. This is a system where party competition has virtually disappeared and all parties are controlled, to a greater or lesser extent, by the Kremlin (ibid: 913). Along with instances of outright fraud; the abuse of administrative resources to promote the pro-Kremlin party, United Russia; and a series of fake, but ultimately pro-Kremlin opposition parties; the progressive tightening of party registration requirements has transformed Russia's 'many party system' into one where only four parties won parliamentary seats in most recent 2007 Duma elections (Gel'man, 2008: 914; Danks, 2009: 31). One of the principal instruments permitting this recentralisation of power was the 2001 Law on Political Parties (amended in 2004).

The Law on Political Parties permits prohibition of political parties on a wide range of grounds: it prohibits 'extremist parties', political parties pursuing protection of 'professional, racial, national or religious interests', and political parties of foreign states (Article 9). In addition to complex and detailed requirements for establishing a

new party, by 2004, a party would be refused registration if it did not have at least 50,000 members overall and at least 500 members in branches in at least half the subjects of the Russian federation (among other things) (Article 41).

Implementation of the Law led to two waves of large-scale 'deregistration'. Before the 2003 election, the Ministry of the Interior announced that 38 parties would be denied registration and that an additional five would be removed from the register (Wilson, 2006: 323). By the time of the 2007 Duma elections, the number of registered parties was further reduced to 15, the same small number as those that currently meet registration requirements (Gel'man, 2008: 919; Central Election Commission of Russian Federation, www.cikrf.ru, accessed 18 August 2010).

It is not possible to discuss single instances of non-registration or outright dissolution in any depth, but the following points serve to illustrate the range of parties affected. The small liberal opposition party, Liberal Russia, was refused registration in July 2002 for technical faults in submitted documentation, while the same faults in United Russia's documentation were overlooked (Wilson, 2006: 324). The party was re-registered a few months later when it expelled co-chairman and major financial backer, the now out-of-favour oligarch, Boris Berezovsky (ibid: 323). The Republican Party of Russia, another small opposition liberal party – and trenchant critic of the Putin regime – was banned in 2007 for failing to meet membership requirements. Founded in 1990, the party re-emerged with a new platform and leadership, including Vladimir Ryzhkov, a high profile Yeltsinite and Duma deputy between 1993 and 2007 (Aron, 2005). Another party banned for failing to meet membership requirements before the 2007 parliamentary elections was the Social Democratic Party of Russia, re-established in 2002 by former Soviet president, Mikhail Gorbachev (Russia's Supreme Court bans Gorbachev's Social Democratic party, *RIA Novosti*, 13 April 2007). Both parties claim that registration authorities failed to take into account all of their members. Other parties banned for insufficient members include the leftist Russian Party of Peace, the Freedom and Rule of the People party. In 2002, the Ministry of Justice refused to register the Russian All-National Union on the grounds that the party was founded on the basis of ethnic Russian affiliation (*Artyomov v Russia*, 17582/05, ECHR, 2006). Similarly, the Russian Christian Democratic Party

was refused registration in 2004 on the grounds that it was a religious party (Danks, 2009, 319).

The National Bolshevik Party – a broadly-based ‘red-brown’ party founded in 1994 - has repeatedly fallen foul of the Law on Political Parties. In 2005, the Courts banned the party on the grounds that it had never officially registered as a party and therefore had no right to use the word party in its title (Supreme Court Presidium says appeals court’s cancellation of National Bolshevik Party ban is illegal, *RIA Novosti*, 5 Oct 2005). When it was refused registration in January 2006, the Federal Registration Service said the party had failed to achieve a quorum at its constitutive assembly, its regional branches included people under age 18, it discriminated on the basis of ethnicity and practiced racial discrimination (Nationalist party appeals registration ban in Moscow court, *RIA Novosti*, 17 April 2006). And finally, in 2007, the Supreme Court endorsed a ban on the party on the grounds of extremism (Top court upholds ban on national Bolsheviks as extremists, *RIA Novosti*, 7 August 2007). The NBP’s inability to obtain formal registration has forced it to maintain a focus on extra-parliamentary activity which has ranged from violent protests, civil disobedience and vandalism, to collaboration with the liberal opposition in the anti-Putin protest movement, Other Russia.

Some have welcomed the rationalisation of what was hitherto a highly fragmented political system (Wilson 2006), and the ECHR has accepted what some may regard as an ‘illiberal’ ban on all ethnic and religious parties as a legitimate aim promoting peaceful co-existence of nations and religions in Russia, a secular state and equality before the law (*Artyomov v Russia*, 17582/05, ECHR, 2006). Nevertheless, the sheer number of ‘de-registrations’ and mainly pro-Kremlin profile of the parties that managed to participate and succeed in electoral competitions has convinced many that the 2001 Law on Political Parties is a measure to undermine opposition and bolster pro-Kremlin parties (Danks, 2009: 315-6, 318; Gel’man, 2008: 919 and see critiques cited in Wilson 2006: 319-20).

CONCLUSION: EXPLAINING THE PROSCRIPTION OF POLITICAL PARTIES

In this article I have conducted a survey of banned political parties in twelve European states and examined the literature on democratisation to develop a series of

plausible hypotheses about why new and incomplete democracies ban political parties. Theoretical arguments drawn from the democratisation literature and empirical observations from various case studies show that threats posed by former regime elites, heightened political tension, instability, insecurity and distinctive modes of transition can help account for the proscription of political parties in new democracies. Distinctive features of incomplete democracies, such as limited checks on executive power, systematic limitations on political participation and illiberalism, can help account for proscription in incomplete democracies.

Further research is needed to determine the validity of the hypotheses developed here. It needs to address three issues. The first is whether the hypotheses explain other cases not examined here. The second is to examine whether there may be distinctive explanations for the proscription of political parties in ‘established democracies’. There are some grounds for believing this may be the case. Harvey, for instance, argues that ‘constitutional provisions designed as tutelary powers for new democracies [may] become instruments for symbolic justice in mature liberal democracies’ (2004: 409). Examples of proscription, according to Harvey, of purely ‘symbolic value’ include bans on *Batasuna* and successors from 2003 in Spain and failed efforts to ban the National Democratic Party of Germany in 2003 (ibid). The third issue for future research is to consider the relationship between explanations for proscription in democratising states and more general explanations for proscription. The arguments developed here cannot serve as general explanations for the proscription of political parties because a) there are many states – such as Spain, Poland, Hungary - which did not ban parties during the uncertain times of democratic transition and b) both incomplete and established democracies ban political parties, as Table 2 shows.

‘Militant democracy’ is the paradigmatic explanation for the proscription of political parties in liberal democracies. Militant democracy is a concept principally developed by legal scholars to specify a class of legal systems equipped with constitutional and legislative instruments permitting the state to protect itself against extremists through measures such as proscription of political parties (Fox and Nolte, 2000; Sajó, 2004; Brunner, 2000). It draws on Loewenstein’s seminal warning against the ‘suicidal lethargy’ of interwar democracies (1937: 423-30) and the vivid demonstration

provided by the Nazi's rise to power of how democracy may be abused by its enemies.

All states banning parties examined here can be considered militant democracies. However, the 'militant democracy' paradigm cannot fully account for the proscription of political parties given that so-called militant democracies use proscription in widely differing contexts and that some states equipped with the instruments of militant democracy fail to use them at all. Nor can it address the question of why only some democracies come to be classed militant democracies in the first place. A number of political triggers may lead to the execution of laws against extremist political parties or the creation of new legal instruments for proscription. It may be that a party is only banned when its competitors expect the ban to win them more votes or seats or when it helps them reach or maintain their position in executive office (Schumpeter, 1947; Downs, 1957). Some research on proscription in 1950s Germany suggests such explanations may be relevant. Kirchheimer, for instance, observes that Socialist Reich Party (SRP) inroads into the 'northwestern Protestant mainstay of the Adenauer government' in 1951 general elections increased pressure on the cabinet to bring a case against the SRP before the Constitutional Court. Similarly, as Niesen observes, 'Adenauer's right wing coalition partners in the cabinet almost sabotaged the motion [to ban] the *Sozialistische Reichspartei* [SRP], and could only be pacified by the simultaneous decision to hand in a motion against the *Kommunistische Partei Deutschlands* [Communist Party of Germany]' (2002, 255).

It may also be more appropriate to examine the behaviour of extremist parties themselves, particularly whether a party's orientation to violence is a better indicator of the likelihood of proscription. In most cases examined here, parties have been banned for direct or indirect involvement in violent political acts, whether past or present. It is also likely that orientations to violence was an important part of what made parties banned for their anti-democratic ideas – such as SRP and the German Communists – so politically undesirable. Alternatively, it may be unnecessary to take the grave and possibly counter-productive course of banning a party if it can be marginalised through the electoral system, collusion of mainstream parties or the targeted use of the criminal justice system against racism, political violence or offensive speech acts (such as holocaust denial). Further research on this and the other

general hypotheses are needed to develop a fuller understanding of why democracies and democratising states ban political parties.

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NOTES

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² Fox and Nolte's 2000 study comes closest to this.

³ The ECHR did not rule against democratisation measures limiting police and civil service employment for communist sympathisers in Hungary (*Rekvenyi v Hungary*, 25390/94, ECHR, 1999) and prohibitions on former communists standing as candidates in elections in Latvia (*Ždanoka v Latvia*, 58278/00, ECHR, 2006).

⁴ All data used in this article can be found at in Polity IV data archives at (<http://www.systemicpeace.org/polity/polity4.htm>).