UNEASINESS WITH THE *STATUS QUO*:
PARTY REGULATION AND PARTY FINANCE IN POST-FRANCOIST SPAIN
(1976-2012)

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The Legal Regulation of Political Parties

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UNEASINESS WITH THE *STATUS QUO*: PARTY REGULATION AND PARTY FINANCE IN POST-FRANCOIST SPAIN (1976-2012)

Introduction[1]

Party regulation in new democracies in general, and in the Spanish political system in particular, has not been a matter of concern until very recently. So far this topic has been persistently neglected by political studies, which considered it an issue for academic lawyers. However, this attitude has recently started to change, since party law has become an institutional factor that might affect strongly the dynamics of party systems, as well as foster intra-party democracy (Müller and Sieberer, 2006: 436-8). In a broad sense, party law refers to "legislation specifically designed to regulate the life of party organizations" (Müller and Sieberer, 2006: 435).

The relevance of party regulation comes from the process of increasing constitutionalization of parties in contemporary democracies, as recognition of the role of political parties in the democratic system (van Biezen, 2011: 188). The Spanish case belongs to those countries of the third wave of democratization in the mid-70s (Huntington, 1991). It means that the process of democracy building was influenced by precedents on party regulation, and also that we could expect a high legal regulation from the very first moment of the party system settlement. The strong tradition of 'political law' in Spain has put the attention on the comparative legal sources used for Spanish party regulation when it comes to ask to what extent this regulation has innovated or has constraint the political field of political parties. Recent studies focus on the function of party regulation in order to preserve political equality in Spain (Fernández Vivas, 2008).

This paper explores the way political parties have been regulated not only in the 1978 Constitution (section 1), but also in the main laws regulating party foundation, organization, dissolution and, not least, funding. In the section 2 we analyse the Law on Political Parties of 2002 (in comparison to the first 1978 Law), following with the section 3, devoted to the Law on Party Funding (both the 1985 and 2007 ones). The empirical part of the paper tries to identify, using process tracing methods, the main

[1] We would like to gratefully acknowledge the support of the European Research Council (ERC starting grant 205660) in the preparation of this paper.

factors laying behind party regulation and each party funding reform adopted in Spain. The main conclusion is that such laws have had a mixed impact on Spain's party political life.

Political Parties and the Spanish Constitution of 1978

Although political parties as such appeared in the "Old bull´s hide" as early as 1834 with the foundation of both the Moderate and the Liberal parties (Marichal, 1980), a right of Spaniards to associate was only recognized with the Constitution of 1869 (art. 17) following the Glorious Revolution of 1868. Interestingly enough, and despite introducing a proper parliamentarian regime in the country for the first time, this Supreme Act contained no mention of political parties at all. More surprising, if possible, was the intentional oblivion of the legislator in the Republican Constitution of 1931, which only refers to "political factions" when regulating the composition of the Standing Committee in the Congress (art. 62) (Linde, 1979: 76 and ff.; Navas Castillo and Navas Castillo, 2005:118; Ramírez, 1980:54). All in all, it was not until 1978 that the constitutionalization of political parties took place.[2]

From a comparative perspective, and despite its condition of trend-setter among "Third Wave" democracies, the Spanish Constitution is neither among the first nor among the last to grant parties a constitutional status: namely, it was only the 11th European democracy to do so (van Biezen, 2011: 198). In a similar vein, and in clear contrast to Portugal and Greece (high levels) or Malta and Cyprus (low levels), Spain occupies a moderate position in terms of constitutional regulation of political parties. In particular, the Spanish *Lex Suprema* is to be considered among the constitutions where party regulation "encompasses many [legal] cathegories […] but with a relatively limited amount of detail" (van Biezen and Borz, forthcoming: 10-11). This is not surprising if we take into account that the 1978 Spanish Constitution only refers to political parties in 3 (out of its 169) articles.[3] Thus, while art. 127.1 of the Basic Act prohibits party membership to "judges, magistrates as well as public prosecutors, whilst

[2] In a European perspective, and despite being a trend-setter among "Third Wave" democracies, the 1978 Spanish Constitution was also very late in the process of granting parties a constitutional status: namely, it was only the 11th democracy to do so (van Biezen, 2011: 198).

[3] Both art. 20.3 ("media access") and 99 ("government formation") of the Spanish Constitution implicitly include a reference to political parties, but the expression "political groups" may also refer to Trade Unions, social movements, parliamentary groups, etc.

actively in office"[4] and art. 159, less restrictive for the members of the Constitutional Court, does not allow them to have "a management position in a political party"[5]; the bulk of the constitutional party regulation in our juridical order is contained in art. 6 that, on the one hand, distinguishes the functions or objectives political parties should develop and, on the other, establishes certain limits or conditions (Jiménez Campo, 1988).

Not less important for obvious, the first thing to be noted is the lack of a constitutional definition of the notion here studies (i.e. parties). Indeed, it is only through the case law of the Constitutional Court that we get to know that political parties are "particular forms of association" (STC 3/81) and, in any case, not "organs of the State" (STC 10/83, 18/84), notwithstanding the public relevance of their functions which, according to the majority of the doctrine (Solozábal Echevarría, Torres del Moral, Rodríguez Díaz) are the following: to (1) be expression of political pluralism; (2) contribute to the formation and expression of the will of the people; and (3) serve as instruments for political participation (STC 5/83). In this sense, the "Spanish Constitution echoes the German Basic Law in enshrining a positive role for political parties" (van Biezen, 2011:196) not only in the development (functions 2 and 3) but also, and mainly, in the guarantee (function 1) of the democratic system.[6] Indeed, the identification of parties as key devices of political pluralism - something that, as van Biezen (2011:196) has noted, constituted a real novelty in post-war European constitutional law at the time – implies the necessity of a system with at least two co-existing parties alternating in power (see Lucas Verdú). It is therefore for all these reasons that political parties have come to be considered as a "particular type [i.e. qualified] of associations" (STC 3/81, 48/2003) regulated in the Preliminary Title of the Constitution, *sedes materiae* that "shows the importance given to political parties in the constitutional system, as well as the protection that of their existence, and their functions, is done" (STC 85/86).[7] Still, this does not mean, as the Constitutional Court accurately notes, that "by forming and participating in a party ones is exercising a

[4] While PSOE, PCE as well as the Catalan minority opposed such prohibition, both AP and UCD supported the current regulation.

[5] Interestingly enough, and in clear contrast to members of the judicial body, simple party membership of Constitutional magistrates is not prohibited (see ATC 226/1988).

[6] It should not be forgotten that our Constitution contemplates political pluralism as one of "the superior values of our jurisdictional order". In this sense, "it is not only a fact, but also an aspiration" (Solozábal Echevarría, 1985:162).

[7] It should be noted here that any modification in this Title requires the reinforced process of reform regulated in art. 168 (i.e. 2/3 majority, new elections, 2/3 majority and referendum).

different right than the right of association. Art. 6 and art. 22 [right of association] need to be interpreted jointly and systematically, without artificial separations" (STC 56/1995).[8] In other words, political parties are the main, but not the exclusive, protagonists to be considered within the democratic process (Ramírez, 1980:55).

Art. 6 of the 1978 Constitution guarantees also the free creation of parties and their activities with two limits: one internal (relative to their structure and functioning, which must be democratic), and one external (i.e. that they respect the Constitution and the law). In relation to the former, almost a perfect copy of art. 21.1 of the Fundamental Law of Bonn, it seems obvious that - as Schattscheneider (1942) once suggested - parties are a necessary condition for democracy, they have to be a clear reflection of the democratic order they are expected to represent (Fernández Segado, 2004:182). It is the scope of the latter requirement, inspired by both the French (art. 4) and German Constitutions (art. 21.2) (Santamaría Pastor, 1985), that has proved to be more controversial.

In brief, the debate is between those who, on the one hand, think that the Constitution allows the legislator to establish limits on the programmes or ideas of political parties, and not only on their activities (Montilla Martos, 2004a; Tajadura Tejada, 2004; Vidal Prado, 2009; etc.); and those who, on the other, consider such practice to be constitutionally unlawful (among others, Aragón Reyes, 1990; Blanco Valdés, 1990; Otto y Pardo, 1985; Solozábal Echevarria, 1985). In contrast to the former, according to which art. 6 "points towards the possibility of configuring the requirement of respect of the constitution as the requirement for a certain degree of adhesion to its basic principles which goes beyond merely formal compliance" (Santamaría Pastor, 2001:100), the majority of the Spanish constitutional doctrine argue that if it is possible to modify the Constitution as a whole (art. 168), it is clear that the constitutional legislator had no intention to allow the ideological control of parties. The Spanish Constitutional Court ("Supreme Interpreter of the Constitution") has systematically allied with the latter when it states that in our constitutional order "there is no space for a 'militant democracy' model […] meaning a model in which positive adhesion to the regulations and, above all to the Constitution is imposed" (STC

[8] For this reason, and as we will have the opportunity to see later on, all the regulation on associations is applicable to parties as supplementary. This, together with a greater system of guarantees, "allows and guarantees a lower degree of state control and intervention" (STC 85/86).

48/2003).[9] In other words, "in our constitutional system, there is room for all ideas and all political projects even […] for those […] which are contrary to the constitutional system" (STS 27.III.2003). In other words, in our legal order even the "democratic suicide" (Tajadura, 2004:230) is permitted, provided that it is not achieved with violence or encroachment of others´ fundamental rights (STC 48/2003; STS 27.III.2003).

The 1978 and the 2002 Party Laws: Advantages, Disadvantages and Constitutional Interpretation

Although political parties had already been legalized by the Decree-Law 12/77 of February the 8th, with a view to the celebration of the first free elections in more than 40 years, it was not until the approval of the Law 54/78 on December the 4th that a first regulation of such entities was introduced. Thus, Spain became the 5th European democracy, and the 7th in the world, to approve a Law on Political Parties (Casal Bértoa *et al*., forthcoming). A law that, endorsed by the same parties that would pass the Constitution itself, was approved before the latter – as in the Portuguese case. Despite its pre-constitutional character, even if only for a couple of days, the 1978 Law remained in force, despite all the critics (e.g. Cascajo Castro, 1992; García Guerrero, 1990; Blanco Valdés, 1992…but also the STC 85/86); until the approval of a new Law in 2002.[10]

Based on the insights of legal and political theory (Martín de la Vega, 2004; Karvonen, 2007), and in order to structure our comparative analysis of legislative party regulation in Spain, we distinguish the architecture of modern party laws as a layered narrative referred to three different freedoms (or broad domains): a) freedom of creation (registration); b) freedom of organization (internal organization); c) freedom of ideology/activity (restrictions and sanctions).

[9] For a definition of the concept and how it has been adopted in different European legislations, see Thiel (2008).
[10] In 1996 there was an attempt by the new conservative government to pass a new law, but it did not succeed due to the lack of legislative support.

A) Freedom of creation

Art. 1 of both the 1978 and 2002 Laws simply reiterates the principle of free party creation already consecrated in the constitutional norm but, while the former derived it from the right of association, the latter yields it to the Constitution and the 3/2002 Law. Notwithstanding this minor difference, the truth is that the Spanish regulation, in clear contrast to other countries (e.g. most post-communist democracies as well as Portugal, Norway or Finland), has never required a minimum number of supportive signatures or members for the foundation of a party. The only requirement is to have achieved the legal age (i.e. 18) and be in full enjoyment and exercise of rights. The only novelty with the new Law is the prohibition of party promoters to have been criminally condemned for illegal association or any serious crime (i.e. against the Constitution, public order, national independent or the international community) except, obviously, when rehabilitated (art. 2.1).

Following the guidelines established by the previous regulation, art. 3.1 of the current law requires for a party to be registered and, consequently, acquire juridical personality, that the party promoters present at the "Register of Political Parties" established in the Ministry of Interior: (1) the (notarized) founding charter signed by the promoters which, together with the members of the provisional management bodies, must be clearly identified; (2) the statutes; and, last but not least, (3) the address and (4) the name of the party, which cannot lead to "error or confusion regarding its identity […and cannot] coincide, be similar to or identified with, even phonetically, the name of any other political party previously registered […] or *declared illegal, dissolved or suspended* […] the identification of individuals, or the name of pre-existing entities or registered trademarks" (italics are mine and point to an important novelty in relation to the previous regulation and case law) (art. 3.2, p. 2).

In relation to the latter requirement, the current law did not to solve an earlier controversy resulting from the lack of regulation. Thus, from 1978 until 1986, the chief of the Register controlled that the proposed denomination of a party "did not coincide or induce to confusion with other, previously constituted, [parties]" (art. 3.2b of the Law 21/76, on the right of political association). This practice was confirmed in different resolutions of the Supreme Court (STS 23.X.81, 9.V.85) for considering that the 1978 Law on Political Parties was only materially, but not formally, preceded by the Constitution and, therefore, it was fruit of the integrative interpretation of the

constitutional legislator. The Constitutional Court overruled such doctrine in 1986 with a resolution (STC 85/86) which, confirming the pre-constitutional character of the 1978 Act and the necessity to interpret it according to the Supreme Act, made a clear distinction between (1) an administrative control (by the Register and only in case of "identical or coinciding" denominations) and (2) a judicial control (for the rest: i.e. "confusion"). The STC 48/2003 did not but to confirm such doctrine in relation to the new/current regulation, allowing a "preventive" administrative control only for those denominations "which contravene the laws or the fundamental rights of citizens" in a "glaring, overt and patently" manner, therefore, needless of any interpretative effort (Fernández Segado, 2004:214).

One of the main points in which the current regulation clearly differs from the previous one is on the time when political parties acquire "legal status". While the previous law foresaw this phenomenon at the moment of registration (art. 2.2) or, at the latest, "on the twenty-first day following the […] deposit in the Register" (art. 2.1); art. 4.2 of the 2002 Law, gives the Ministry twenty days.[11] However, this period can be suspended if one of the following three scenarios takes place: (1) presence of formal defects (previously not regulated)[12] or lack of capacity by the promoters (novelty), (2) evidence of criminal unlawfulness (art. 3 of Law 54/78) and, last but not least, (3) the party to be registered attempts to continue or succeed the activities of another party previously declared illegal and dissolved (novelty). While in the first case, "the interested parties [will be informed] so that they may rectify such defects" (art. 4.1), in the other two the Ministry will make it known to the Public Prosecutor´s Office (PPO)[13] or the Supreme Court, respectively (art. 5.2 and art. 5.6).

B) Freedom of organization

Echoing art. 4.1 of the previous law, art. 6 of the 2002 Law request that "the organization and operation" of political parties "adhere to democratic principles". Art. 7 further develops what having and democratic "internal structure and operation" means

[11] This way the 2002 Law solves the contradiction created by the previous Law between the period for registration (21 days) and the period of suspension (35 days), a problem never resolved by the Constitutional Court (see García Guerrero, 1990:157-158).
[12] Although provided for by the Constitutional Court in the STC 3/81 and 85/86. On the different contradictory interpretations following these resolutions, see Fernández Farreres (???).
[13] The PPO has twenty days to decide if returning "the communication to the Ministry" or taking "the necessary legal action in the criminal jurisdiction" (art. 5.3).

when (1) stating that the "highest governing body" (i.e. the general Assembly), whose main function is to adopt the most important agreements, has to comprise all party members, either acting "in person or through representatives"; (2) conferring the right "to be voters and be electable for the posts in the party" to all party members; (3) requiring the management bodies to "be filled by means of a free and secret vote"; (4) asking elected party leaders to be democratically controlled; and (5) establishing simple majority as a general rule "of those present or represented" for the adoption of agreements.

In contrast to the "timid" 1978 law which, except for a minimal reference to the general Assembly, referred the regulation of a party´s internal organization to the statutes (art. 4) as well as to the supplementary Law 21/76 (Martín de la Vega, 2004:226-227, STC 56/95); the current Law on Political Parties, although "insufficient" at times, contains a more detailed regulation. Thus, both art. 7 as well as art. 8 establish a kind of "minimal" prototype of party statute when requiring the articles of association to necessarily (1) regulate the management bodies (art. 7.3), (2) give sufficient notice period of meetings; (3) establish the required quorum and majorities for either including/deliberating issues in the agenda or the adoption of agreements (art. 7.4); (3) provide for control procedures of elected leaders (art. 7.5) ; and, finally, (4) have a detailed list of the "equal" rights and duties of party members (arts. 8.2 and 8.3). In this point, art. 8.2 of the 2002 Act not only echoes the previous regulation when entitling member "to be voters and […] electable for the posts in the party", but it also allows them to "challenge" management bodies´ agreement when "considered" illegal, while at the same time enlarging the right of members to information which now covers not only the activities and the financial situation of the party (as in the previous law) but also "the composition of the management and administrative bodies as well as on the decisions adopted by the [former]".[14]

Two other novelties of the 2002 Law are, on the one hand, the enumeration of a minimum compendium of party members´ duties (i.e. respect for the aims, statutes and agreement legally adopted) and, on the other, the provision of procedural measures in case of imposition of sanctions to party members, including his/her expulsion (art. 8.3).

[14] Art. 2.2 of the 2002 Law allows also party statutes to provide for the "formation and recognition of youth organizations".

C) Freedom of activity

In a similar vein to the art. 5 of the 1978 Law, art. 10 of the 2002 Act provides for the dissolution, or provisional suspension, of a political party by the "competent judicial authority" in the following events only: (1) classification by the Criminal Code as "illegal association"; (2) "continuous, repetitive, and serious" anti-democratic internal structure and operation; and, last but not least, (3) "repetitive and serious" anti-democratic activities or seeking to deteriorate or annihilate the system of freedoms or hinder or eradicate the democratic system "through the conduct referred to in article 9". Indeed, it is the specification of the concrete activities allowing a party to be declared illegal for contravening the "democratic principles" that constitutes one of the most important novelties of the new law. Such are:

> a) Violating fundamental rights by promoting, justifying, or excusing attacks on the life or dignity of the person or the exclusion or persecution of an individual by reason of ideology, religion, beliefs, nationality, race, sex, or sexual orientation; b) encouraging or enabling violence to be used as a means to achieve political ends or as a means to undermine the conditions that make political pluralism possible; and c) assisting and giving political support to terrorist organizations with the aim of subverting the constitutional order (Turano, 2003:733)

Paragraph 3 further concretes the illegal character of such activities by describing a whole range of "antidemocratic" behaviours: among others, the inclusion of terrorists in the electoral lists, the use of symbols or messages identified with a terrorist or violent organization, the regular cooperation with such type of organization or even the participation in acts honouring those perpetrating terrorist or violent acts, etc. In other words, it is through the (repetitive and serious) performance of any of the conducts described here that a party can be considered to have carried out a "terrorist or violent" activity which, as we know, is against the democratic principles (STC 48/2003).

Another way in which the new law brings to an end 25 years of "judicial" *impasse*[15] is by, finally, specifying both the process as well as the legal authority with

[15] Despite the closer links between ETA (an "independentist" terrorist organization which since the moment of its foundation in 1959 has killed more than 800 people) and either (Herri) Batasuna or Euskal

the legitimacy to declare the illegalization. In particular, the 2002 Law on Political Parties distinguishes two different procedural means: namely, while paragraph 4 of art. 10 considers cases of "illegal association" (arts. 515 and ff. of the Criminal Code) to be necessarily judged by "the competent judge in the criminal jurisdictional system"; the following paragraph, in which is considered to be the most important – but also controversial – novelty of the law (see Navas Castillo and Navas Castillo, 2005:137), establishes a new preferential and fast procedure (basically civil) to be followed under the competence of a Special Chamber of the Supreme Court which, according to art. 61 of the Organic Law on the Judiciary (modified by the 6/2002 Law), is a kind of "reduced" full Supreme Court composed by the President and representatives of each of the Supreme Court´s jurisdictional courts. In the latter case not only the Government and the Public Prosecutor, as in the previous case (i.e. "illegal association), but also both Chambers of the Parliament are considered to be legitimized (even if indirectly) to request the illegalization which, if appreciated, will have the three following effects: party dissolution, cease of its activities, and patrimonial liquidation.[16] Finally, the law prohibits the re-creation of an (already declared) illegal party, either by a totally new party or by the fraudulent use of an already existing one (arts. 12.1b and 12.3).

All in all, the new Law on Political Parties has improved the previous regulation in many aspects (see above). This is not to say, however, that it has escaped to the critics of part of the literature.[17] First of all, some scholars (e.g. Iglesias Ibañez, 2008; Martín de la Vega, 2004:209-211; Bastida Freijedo, 2003) have seen the 2002 Act as both extremely *ad hoc*, fruit of the political environment at the time (i.e. following the terrorist attacks in New York on 11/9), and *ad cassum* (i.e. the only objective of achieving the illegalization of one single political party: namely, *Batasuna*). This was also one of the arguments on which the Basque Government grounded its "appeal of unconstitutionality" to the Constitutional Court which, anyway, rejected it for considering that "the presence of a party whose activity and behavior contradicts the model of party covered by the constitutional regulation can constitute an *ocassio* for the

Herritarrok (two political formations with parliamentary representation in the Spanish and European Parliament, as well as the *Eusko Legebiltzarra*, at different points in time), no political party was dissolved in the 25 years the 1978 Law was in force (Vírgala Foruria, 2004: 203). Scholars have attributed such inaction to vagueness of the law (Ramírez, 1980), lack of political will (Iglesias Bárez, 2008; Morodo and Lucas Murillo, 1996) or, simply, a deficient democratic tradition (Vidal Prado, 2009:249).

[16] According to art. 12.1c, "the resulting net balance will be assigned by the Treasury to activities of social and humanitarian interest".

[17] For a general analysis of the Law, and the main criticisms in particular, see Montilla Martos (2004b).

approval of this type of regulation". In particular, the Supreme Interpreter of the Constitution admitted the generality of the law both in formal and material terms, as it "contemplates in the abstract a number of conducts or behaviours which in the future might lead to the illegalization and, therefore, dissolution of any (already founded or to be) party" (STC 48/2003, FJ 14).

Secondly, legal scholars have put into doubt the convenience of attributing the control of a party´s democratic organization and activities to the Supreme Court (Rubio Llorente, ; Navas Castillo and Navas Castillo, 2005:124). The debate picks up on an argument previously made by Lucas Verdú, Ramírez Jiménez and Farreres , who, due to vagueness of the 1978 Law regarding the "competent judicial authority", understood that the Constitutional Court was the right instance, solving some of the problems Fernández Segado has pointed out in relation to the Special Chamber of the Supreme Court: namely, lack of specialization, non-permanent character and disconnection to previous competences (2004:200; see also Tajadura, 2004:245). Moreover, this would also bring to an end the use of the Constitutional Court as a second instance in the form of "appeal for Constitutional right´s legal protection" (see section 4 below).

Thirdly, some authors (Bastida Freijedo, 2003), together with the Basque nationalist formations, have criticized the law for introducing a control on parties´ aims and/or ideology. Unfortunately, this criticism derives from an inadequate and totally biased reading of the Law, which in its Statement of Grounds and echoing previous case law expressively states that "any project or objective is compatible with the constitution, provided that it is not defended through an activity that breaches the democratic principles or the fundamental rights". Indeed, and in clear contrast with other legislations (e.g. Germany, Turkey, etc.), the provisions of the new law on party dissolution are formulated in order to prevent anti-democratic activities, rather than ideology, and therefore cannot be interpreted as a requirement to positively adhere to the constitutional *idearium* (STC 48/2003; Karvonen, 2007:445). In this context, the Spanish Constitutional Court clearly departs from the European Court of Human Rights which in the case of *Herri Batasuna and Batasuna v. Spain* (2009) rule in favour of Spain and, departing from a "material" notion of democracy, consider Batasuna´s goals to be "in contradiction with the concept of a *democratic society*" (van Biezen and Molenaar, 2012).

Finally, the 2002 Act has been also criticized for being "redundant" at times while "insufficient" at others. The former can be said not only in connection to the

rather long - the longest among all the European Party Laws, as pointed our by Casal Bértoa *et al.´*s (forthcoming) comparative analysis - Statement of Grounds; but also in relation to the typification in art. 9.2 of certain conducts already contemplated in arts. 515, 576 and 578 of the Criminal Code (Fernández Segado, 2004:221-222), giving path to two simultaneous judicial processes, which, although allowed by art.10.6 of the Law, may end in contradictory resolutions, not to say, superimposed sanctions.[18] Last but not least, some authors complain about the lack of "enough detail about the minimum requirements of [parties´] internal democratic structures" (Vidal Prado, 2009:251). Others cry for the excellent opportunity the organic legislator has missed to "end the [existing] normative dispersion" in the field by including, among other things, a regulatory party funding framework – instead of leaving it for a different piece of legislation (Navas Castillo and Navas Castillo, 2005:123; see also Pérez-Moneo Agapito, 2007:134-135). It is to the latter question that we will dedicate the following section.

Party Finance Laws: public funding with extensive regulation

The late implementation of democracy in Spain, together with the peculiarities of Spanish political culture (political cynicism, low participation, interpersonal distrust, etc.) had important implications for the party finance regulation. The development of a party finance system in Spain is closely linked to the process of constitutionalization of political parties, as explained in the previous pages (García Pelayo, 1986). The first references to the political parties finance was linked to the parliamentarians salaries, when the Electoral Act 1878 provided that the post of Member of Parliament was free and voluntary (art. 13). The first public remuneration for parliamentarians was introduced in the 1931 Constitution (art. 54). The absence of public regulation is common at this time to other countries and led to an essentially private funding. The bourgeois parties were financed exclusively from more or less regular members contributions and also from people who financed candidates to obtain some benefits There are other examples of party financing: setting companies to appoint party bureaucracy and to help to finance the election (Molas, 1972), and payment of fees for

[18] According to the Constitutional Court, the latter cannot be the case, as party dissolution cannot be considered to be a criminal sanction but "remedial" (Navas Castillo and Navas Castillo, 2005:136).

supply contracts (Montero, 1977). On the other hand, the left mass parties funding was based only on individual member contributions of the partners.

The building of the mixed party funding system in Spain (1976-1985)

After Francoism, the demobilization process favoured by the dictatorship (and partly maintained during an elite-driven political transition) made clear that party membership development would be very limited (Montero, 1981). Political parties' difficulties to fund themselves with membership fees and donations during the first elections led to the design of a party funding regime in which state funding prevailed. While state subsidies were first limited to election expenses, these ended up soon being extended to all their regular activities (Del Castillo, 1985, Van Biezen, 2000).

The first legislation promoted during the political transition to regulate the political associations close to the authoritarian regime (democratic opposition parties were still banned by then) bent over all for a private funding regime based exclusively on membership fees and donations. The 1976 Political Associations Act detailed the various forms of private contributions: membership fees and other contributions from their members, benefits derived from the activities of the association, donations and legacies, bank loans, etc. The law only included fairly lax limitations to donor identification and to foreign donors[19]. Consequently, the law did not set any limits on the amounts that the political associations could receive from private sources. State funding was allowed through The Budget, but the norm did not specify an amount or a clear mechanism for its distribution, so it was not implemented.

The 1977 Decree-Act calling for the first elections established the legal basis for the introduction of state funding in electoral campaigns. This reform must be attributed to the leading role of democratic opposition parties when negotiating the terms of the transition process with the government. That was meant to help them, so they could compete on more equal terms with other parties close to the authoritarian regime, who could presumably have more support from private funding. The 1977 Decree-Act granted both direct and indirect subsidies. The former were determined on the basis of the results: 6,000€ granted for every congressman and senator achieved; and in those

[19] A ban on foreign donors is quite common in comparative electoral law. In the Spanish case this ban had an added justification: To prevent the support received by the democratic opposition parties from various European governments and political parties. According to some sources, a German secret service fund earmarked 3.8 million euros to Spain and Portugal between 1978 and 1981 (ABC, 7/10/2006).

constituencies in which parties achieved representation, 0,27€ for every vote to Congress, and 0,09€ for every vote to the Senate. The indirect funding included the provisional assignment of municipal premises to hold meetings, space for advertising during the election campaign, reduced rates for advertising mailing, and some free air time in the media (only allowed in public broadcasting). The norm set some limitations on the use of the private funding: private contributions or donations earmarked for electoral purposes had to be deposited into a special bank account; all private transactions had to be registered; the donor had to be identified; foreign donors or donations from foreign government agencies were banned, as well as donations from public administration contractors.

Funding to parliamentary caucuses was immediately introduced after the 1977 legislative elections. The interim regulations of both the Congress and the Senate contemplated the assignment of local and material resources for their parliamentary groups, as well as the introduction of state subsidies depending on the number of members. The new regulation of the Congress and the Senate drafted after the 1982 general elections held the 1977 subsidies: All parliamentary caucuses were entitled to a fixed amount (equal for all them) and a variable grant (depending on the number of group members) per year. The non-proportionality of the 1982 regulations ensured that small parties achieving representation had sufficient means to operate, regardless of their electoral support. Once introduced in the national parliament, similar norms were quickly adopted in the regional parliaments. Spanish political parties justified this new state funding distribution on the limited recourses to do their work. The new grants were specially meant to favour the small regionalist parties, many of them without representation in the national arena.

The 1978 Political Parties Act formally maintained the principle that party activities should be mainly funded from private contributions. Hence, some of the provisions of the 1976 Act dealing with private financing remained in force. However, the Act also set the stage for the introduction of state funding to the regular functioning of political parties through The Budget. From then on, an annual fee was introduced in The Bugdet for each seat won in the two houses of parliament, and another amount was added depending on the number of the votes obtained in those constituencies where they had achieved representation. The law did not set any ceiling to the state funding, so it was left to the parties themselves to modify the annual state budget according to their

needs. Obviously, such a revenue-maximizing Act was adopted by the consensus of all the parties represented in Parliament.

From 1977 to 1983 the amount of money spent in electoral campaigns increased substantially. In order to curb that pattern, the 1985 Electoral Act introduced important reforms. One of the major changes was the introduction of a ceiling on spending during the electoral campaigns. However, the Act did not impose limits on expenditures that were made during the pre-election campaign. Besides, the Act also banned any kind of soft money spent by interest groups. Only parties or groups of voters with nominated candidates could spend during the electoral campaign. In exchange, the 1985 Act sought to improve the parties' electoral income: First, the state funding amounts had to be corrected to the high inflation rates existing then in Spain. The amount of state subsidies to the Congress and Senate was also updated; Second, to prevent borrowing money from banks for (almost) all campaign expenses, it was established that the parliamentary parties could request an advance fee of up to 30% of the amount received in the previous election. This advanced fee was then deducted from the money they received once the electoral results were known.

The 1987 Law: strengthening public funding and independent control

The 1987 Political Parties Funding Act introduced a major change in the party funding policy approach. While the 1976 and 1978 Act supported the aspiration that parties' regular activities should be mainly maintained by civil society (but did not ban state funding, though), the 1987 Act formally recognized the mixed party finance regime already in place. In reality, the 1987 norm openly bent for the dominance of state funding (García Viñuela and Artés, 2005). In this regard, the law established a ceiling on the total income that parties could receive from private contributions. The ceiling was set at 5% of the total state funding received by each party from The Budget. The law also set up other limits. Any contribution from an individual or interest group for regular expenditures couldn't be earmarked and its limit was 60,000 euros per year. Contributions from firms or interest groups were allowed, but they needed a prior corporate agreement. The 1987 Act also allowed for the first time anonymous contributions from individuals (not firms), and stated that these incomes had to be deposited into specific bank accounts.

However, the most important change in the 1987 Act was the creation of an external regulatory body: the Court of Auditors (Tribunal de Cuentas). The CA was allowed to monitor all income and spending made by political parties, but had very limited penalty capacity. Some other modifications regarding the state funding were included. One of them was a change in the criteria for the distribution of the regular subsidies to party central offices. The general principle of distributing the money in terms of seats and votes obtained remained the same, but some restrictions were added limiting the access of the small parties[20]. The 1987 act also tightened some public spending limits. It was established that each party could not spend more than 25% of the state funding received every year to pay off its debts with banks. On the other hand, the law authorized the Parliament and the regional parliaments to finance the parliamentary caucuses, a practice that began several years before, but now was enacted as law.

The 1985 and 1987 reforms proved to be unable to limit the electoral spending and, in addition, political parties' increasing dependence on bank's borrowing. Hence, in 1991 the 1985 Electoral Act was reformed in several directions: First, to limit the electoral spending a new and low electoral expenditure ceiling was established. Second, to reduce political parties' need of bank borrowing, the State was obliged to return the 45% of the electoral fee 30 days after the parties presented their financial statements to the Court of Auditors. This amount was added to the 30% of the advanced fee deposited before the beginning of the electoral campaign. Third, the amount of electoral state subsidies rose once again. The electoral fees per seat and votes grew by 25% for Congress and 50% for the Senate. But above all, it was decided to introduce a new state subside to cover the costs of the electoral mailing[21] (García Viñuela and Artés, 2004; Álvarez Conde, 1994). As expected, form 1991 electoral public subsidies almost doubled. However, some miscalculations on the ceiling limits lead in the general elections of 1993 to increase the campaign spending by 23% (García Viñuela and Artés, 2004: 15).

[20] One-third of the total amount of state funding for regular activities was allocated according to the seats in the Congress (not on the two chambers of Parliament, as before). The remaining two thirds of sate funding were distributed according to the votes obtained in Congress (not in both chambers). Nevertheless, a clause was added stating that only were counted the votes obtained in those constituencies where a party had reached 3% of the valid votes.

[21] The number of mailing sent by each party could not exceed the number of people in the census of each constituency where the party had nominations. The amount exceeding that limit was not entitled to the grant. However, access to this grant was limited only to parties who could have a parliamentary caucus in the Congress or the Senate. This clearly protected the interests of the dominant parties in front of the minor ones.

In the midst of an economic crisis, in 1994 a new procedure was established to lower once again the spending ceiling. Since then, the fixed amount assigned to each representative elected was eliminated and only was granted a fixed amount of money (0,24€ per citizen) in these constituencies where a party nominated candidates. Furthermore, two new spending ceilings were established: a) One for the outdoor advertising spending that should be less than 25% of the overall electoral spending ceiling; b) And another one for media advertising (newspapers and private broadcasting) that should be too less than 20% of the overall electoral spending ceiling. On the other hand, the campaign and the pre-campaign were shortened: from 21 to 15 days the electoral campaign and from 60 to 54 days the pre- campaign. However, no spending ceilings were fixed during the pre-campaign. Finally, in order to further reduce the electoral debts of the parties, the electoral fee paid by the State after the parties presented their financial statements to the Court of Auditors was increased from 45% to 90% (González Varas, 1995). These changes finally curbed the electoral spending of the parties (García Viñuela y Artés, 2004). For a decade the electoral costs were contained, but the price was to introduce a party finance regime increasingly dependent on the state funding.

The 2007 Law: more transparency… and larger dependence of the state funding

Although electoral spending was contained since the mid 1990s, in the early 2000s a new problem appeared: the increasing costs involved in the political parties' regular activities. Parties faced this problem with different strategies: The centre-right parties tried to collect more money from the anonymous fees. The leftist parties tried to (indefinitely) postpone their debts with the banking system. And all of them used the regional and local layer of government to provide money to the activities of their branches. A series of party funding scandals in the early 2000s prompted a new agenda for reform lead by the press and some left parties supporting the minority government of the PSOE.

The 2007 Political Parties Funding Act was mainly devoted to face that problem. Its main effort was to remove the anonymous contributions that favoured the centre right parties. In exchange, other ways to improve political parties regular income were included. Several reforms were introduced with this sense: First, the regular state funding of the political parties increased over the 20%; The reform legalized as well the

regional and local state subsidies devoted to fund regular party activities at these levels[22]; Third, the extinction of the debt by the banks was allowed; Finally, the limit of private donations from identified firms and pressure groups was substantially increased[23]. The 2007 Act also included new supervision powers and control from the Court of Auditors. That control was also extended to the Think Tanks with close links to the parties.

Despite all this modifications, the 2007 Act still showed large continuity patterns with the 1987 Party Finance Act. It kept the main principles of the previous noms while taking a new step forward to the prevalence of state funding. Changes on the objectives and on the policy implementation were rather incremental and were accepted by the dominant parties. However, the PP did not vote for the final drafting of the law (Pérez-Francesch, 2009).

In early 2011 a new amendment to the 1985 Electoral Act was adopted. When the bill started its reform in Parliament, it did not aim to make modifications on party funding. However, the climate of strong adversarial politics between the two major parties, the proximity of the 2011 regional and local election campaign, and the severe economic crisis started in 2008 led to a lowering of the electoral spending and state subsides: the total expenditure ceiling allowed during the elections was lowered; spending on outdoor advertising was reduced from 25% to 20% of the total expenditure limit; all payed private TV broadcasting was banned, as well as any outdoor advertising or media broadcasting during the pre-election campaign. These measures contributed to lower the parties' electoral expenses in the regional and general elections held in Spain during 2011. Late in 2011, the first budgetary measures of the newly formed government of the PP included a reform of the 2007 Political Parties Funding Act. The reform lowered by 20% the state subsidy for the regular activities of the political parties.

Conclusions

[22] Although the previous law only allowed regional and local governments to provide state funding to the parliamentary and local caucuses, regional and local public subsidies for ordinary party activities became a common practice during the 1990s

[23] The criterion for distributing the state regular subsidies was also changed form a percentage of the constituency votes, to the nationwide votes.

This paper has focused on the content of the 1978 Constitution, the 1978 and 2002 party laws, and on the extensive regulation of party funding laws, mainly the 1987 and 2007 laws. Through this observation, we have seen that after a period of party system building, the regulation on political parties has been characterised by a large stability, with some important exceptions, namely the 2002 Party Law including the faculty to ban parties.

The essential continuity experienced by successive party law and party funding reforms reinforces the main assumptions of historical institutionalism: once a model is introduced, changes tend to be incremental and based on existing policy options (Clift and Fisher, 2004: 680). The Spanish case can as well be understood as a long (and never finished) exercise of institutional learning. This path dependency can also be extended to the main goals pursued by parties with successive electoral reforms.

From a constitutional point of view, political parties are considered a key device for political pluralism and consequently the law guarantees the freedom of creation, organization and activity of these entities. However, we have outlined the main controverted change of the 2002 Party Law when it set a specific mechanism to outlaw political parties for reasons of terrorist collaboration. This device has generated important consequences for the political life in the Basque Country.

As for the party economy, the main thrust of party funding in Spain has been to overcome their financial weaknesses. Spanish parties have had few members and big difficulties with their private funding (beyond the interested money provided by banking system). Thus, the meaning of almost all party funding reforms can be classified in what Scarrow labelled *revenue maximizing views*. Similarly, the preservation of the main policy goals that inspired party funding law in Spain can lead to conclusion that all the reforms have been limited to both first-order changes (in policy instruments) or second-order (in policy instruments and settings) ones (Hall, 1993). As pointed out in the analytical framework, the Spanish case (as in other new democracies), allows us to propose the existence of a distinctive *third wave* model of state funding introduction and development. This model would be different than the one suggested by Koβ (2011) for the long-established democracies. The weakness of civil society, the organizational and financial problems of democratic parties after years of prohibition, or fear of the influence of interested money appear as key factors to explain the very early introduction of state funding in Spain. The same conclusions may be

easily extended to other similar countries (Van Biezen, 2003, Van Biezen and Kopecky, 2007).

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