

State Regulation of Anti-Democratic Parties

-A Comparative Study of Germany,
Spain and Sweden

Master Thesis in
International and European Affairs

Author: Frida Trönnberg
Spring Semester 2013
Master of International and European Affairs
Supervisor: Dr. Mikael Rundqvist
ISRN-number: LIU-IEI-FIL-A--13/01567--SE

ABSTRACT

The aim of this thesis is to study state regulation of anti-democratic parties, i.e. party regulation. The term 'Party regulation' refers to laws that may regulate the activities and behavior of political parties. This thesis uses a comparative method, conducted on three European countries which regulate anti-democratic parties differently. The cases studied are Germany, Spain and Sweden.

The basis for understanding state regulation of anti-democratic parties rests on a historical institutionalist perspective along with theories of democratic tolerance. The analysis reveals that states regulate anti-democratic parties differently as a result of their historical past which has made them adopt different ideas of how political parties should be seen. Further, the analysis shows that there is no connection between the party regulation adopted and the effect it has on the anti-democratic parties.

Key Words: Party regulation, anti-democratic parties, historical institutionalism, procedural conception of democracy, substantive conception of democracy, SRP, KPD, NPD, ETA, *Herri Batasuna*, LOPP, NSF

Word Count: 25.663

ABBREVIATIONS AND GLOSSARY

EH	<i>Euskal Herritarok</i> , a Basque extreme left party (banned in 2003)
ETA	<i>Euskadi ta Askatasuna</i> , a Basque terrorist group
EU	European Union
HB	<i>Herri Batasuna</i> , a Basque extreme left party (banned in 2003)
HI	Historical institutionalism
II-SP	<i>Iniziatiba Internazionalista-Herrien Elkartasun</i> , ‘Internationalist Initiative – Solidarity between Peoples’, a Basque extreme left party
KPD	The Communist Party of Germany (banned in 1956)
LOPP	<i>La Ley Orgánica de los Partidos Políticos</i> , the Spanish Party Law from 2002
NPD	The National Democratic Party of Germany, an extreme right party
NSDAP	National Socialist German Workers’ Party, Hitler’s Nazi Party
NSF	National Socialist Front, a Swedish extreme right party
SRP	The Socialist Reich Party of Germany (banned in 1952), successor to the NSDAP
SvP	The Swedish Party, successor to the NSF
US	United States

TABLE OF CONTENTS

1	INTRODUCTION.....	5
1.1	THESIS AIM AND RESEARCH QUESTIONS.....	7
1.2	OUTLINE.....	8
2	METHODOLOGY	9
2.1	A COMPARATIVE CASE STUDY	10
2.2	A QUALITATIVE TEXTUAL ANALYSIS	11
2.3	CHOICE OF THEORY	12
2.4	PREVIOUS RESEARCH ON PARTY REGULATION	13
2.5	LIMITATION	14
2.6	CASE SELECTION.....	16
3	EXPLAINING PARTY REGULATION BY STUDYING HISTORY	17
3.1	PATH DEPENDENCY.....	17
3.2	SOCIAL LEARNING AND IDEAS.....	18
4	THEORIES OF DEMOCRATIC (IN)TOLERANCE	21
4.1	PROCEDURAL AND SUBSTANTIVE CONCEPTIONS OF DEMOCRACY	21
4.2	TWO EXAMPLES - WHAT HAS HISTORY TAUGHT US?.....	24
4.2.1	Hitler’s way to power.....	24
4.2.2	The 1991 Algerian elections	25
5	REGULATION OF ANTI-DEMOCRATIC PARTIES IN GERMANY	27
5.1	PARTY REGULATION IN THE GERMAN CONSTITUTION	27
5.2	THE RATIONALE OF THE GERMAN PARTY REGULATION	29
5.2.1	The memory of the Nazi state.....	29
5.2.2	The threat from the East.....	29
5.3	THE GERMAN PARTY REGULATION’S EFFECT ON THE ANTI-DEMOCRATIC PARTIES	30
5.3.1	The banning of the Socialist Reich Party of Germany (SRP).....	30
5.3.2	The banning of the Communist Party of Germany (KPD)	32
5.3.3	The attempts to ban the National Democratic Party of Germany (NPD)	34
6	REGULATION OF ANTI-DEMOCRATIC PARTIES IN SPAIN	37
6.1	PARTY REGULATION IN THE SPANISH CONSTITUTION	37
6.2	THE SPANISH LAW ON POLITICAL PARTIES.....	38

6.3	THE RATIONALE OF THE SPANISH PARTY REGULATION	41
6.3.1	ETA-Basque Homeland and Freedom	42
6.3.2	ETA's political wings	43
6.4	THE SPANISH PARTY REGULATION'S EFFECT ON THE ANTI-DEMOCRATIC PARTIES	45
6.4.1	The banning of <i>Herri Batasuna</i> , <i>Batasuna</i> and <i>Euskal Herritarok</i>	45
6.4.2	The banning of <i>Batasuna</i> 's successors	48
6.4.3	The Basque extreme left condemns ETA	49
7	SWEDEN'S TOLERANCE OF ANTI-DEMOCRATIC PARTIES	53
7.1	THE EXTREME RIGHT CHALLENGE IN SWEDEN	54
7.1.1	The National Socialist Front (NSF)	54
8	COMPARATIVE ANALYSIS OF CASE STUDY	57
8.1	HOW DO STATES REGULATE ANTI-DEMOCRATIC PARTIES?	57
8.1.1	Substantive conception of democracy in Germany and Spain.....	57
8.1.2	Procedural conception of democracy in Sweden	60
8.2	WHY DO STATES REGULATE ANTI-DEMOCRATIC PARTIES?	61
8.2.1	Why do Germany and Spain regulate anti-democratic parties?.....	61
8.2.2	Why does Sweden tolerate anti-democratic parties?	64
8.3	HOW DOES PARTY REGULATION AFFECT THE ANTI-DEMOCRATIC PARTIES?	65
8.3.1	Party regulation's effect on German and Spanish anti-democratic parties	65
8.3.2	Tolerance's effect on Swedish anti-democratic parties	67
9	CONCLUSION	68
	REFERENCES	72
	APPENDIX: PARTIES BANNED IN SPAIN	80

1 Introduction

“If there be any among us who wish to dissolve this union, or to change its republican form, let them stand undisturbed, as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it.”¹ - Thomas Jefferson

The question of when democracies may restrict the rights of anti-democratic actors has always been difficult to answer for both courts and democratic theorists.² Normally freedom of speech and association are fundamental tenets of democracy but paradoxically states have justified restricting such rights of anti-democratic actors by referring to the need to protect democracy itself. This may cause a dilemma: whether democracies should restrict the human rights of those that want to abolish the democratic order or if they, by being precisely democracies, should tolerate all opinions. Professor of Government and Middle Eastern Studies, Ami Pedahzur, argues that the most important enemies of democracy are anti-democratic political parties.³ One arena where the *democratic dilemma* is apparent is state regulation of anti-democratic parties.

How to deal with anti-democratic parties has been one of the main problems for democracies, both historically and in present day.⁴ Professor of Comparative Politics, Ingrid van Biezen, claims that “parties are regarded by the public as the institution most susceptible to corruption and, perhaps as a consequence, they are one of the least trusted democratic institutions.”⁵ This could be the reason why some states have decided to monitor and control party activity and ideology in order to ensure that parties perform their democratic functions more effectively. Some countries have thus adopted a state regulation of anti-democratic parties that determine what party activities and/or ideologies that go against the law. However, such party regulation carries with it an enormous potential for abuse. If a restriction of civil and political rights is pushed too far it could give rise to authoritarian tendencies. The most extreme party

¹ Fox, Gregory H. & Nolte, Georg (2000) Intolerant democracies, in Fox, Gregory H. & Roth, Brad R. (2000) *Democratic Governance and International Law*. Cambridge: Cambridge University Press, p. 389

² Harvey, Paul (2004) “Militant democracy and the European Convention on Human Rights”, *European Law Review* Vol. 29. No. 3, p. 407

³ Pedahzur, Ami (2004) The defending democracy and the extreme right: A comparative analysis, in Eatwell, Roger & Mudde, Cas (2004) *Western Democracies and the New Extreme Right Challenge*. London: Routledge, p. 127

⁴ Capoccia, Giovanni (2004) Defence of democracy against the extreme right in inter-war Europe: A past still present?, in Eatwell, Roger & Mudde, Cas (2004) *Western Democracies and the New Extreme Right Challenge*. London: Routledge, p. 84

⁵ Van Biezen, Ingrid (2008a) “State Intervention in Party Politics: The Public Funding and Regulation of Political Parties”, *European Review* Vol. 16. No. 3, p. 339

regulation possible is to declare that only one particular party is legitimate, which North Korea has done with the Workers' Party of Korea.

Many democracies have had to cope with totalitarian parties and movements in the past, but also in contemporary Europe we see a rise of political radicalism that challenges the stability of the democratic regime. The economic crisis has nurtured neo-Nazi parties, such as Greece's Golden Dawn and Hungary's *Jobbik*, which makes party regulation a particularly important and timely subject. Germany has recently initiated a legal process to outlaw the neo-Nazi National Democratic Party of Germany (NPD), which further emphasizes the contemporary importance of studies on party regulation. To outlaw a political party because of its political program or behavior, can be seen as an anti-democratic act since it represents a serious limitation of the party's freedom of speech and to associate. This democratic dilemma is particularly urgent when the anti-democratic party has strong support.⁶ However, not banning a political party that wants to kill democracy could cause serious consequences and might even lead to a collapse of the system.

Depending on one's conception of democracy (procedural or substantive), the preservation of the democratic system precedes or follows the protection of civil and political rights. Scholars that have taken the procedural view of democracy, such as Joseph Schumpeter and Jean-Jacques Rousseau, argue that opponents of democracy are important for the system's self-criticism and they should therefore be able to debate their opinions in public.⁷ The substantive view, however, holds that a democratic system cannot merely permit its own alienation. Scholars belonging to this view, such as John Rawls and Karl Lowenstein, argue that the state shall be intolerant towards those who wish to use the democratic system in order to kill it off.⁸

Associate Professor at the Institute for Society and Globalization⁹, Angela K. Bourne, stresses that it is common for scholars who study state regulation of anti-democratic parties to distinguish between the party's ideological character and its activities.¹⁰ Bourne emphasizes that states can ban parties only for their anti-democratic actions or also because of their anti-democratic ideas and views.¹¹ An example of a state that regulates both party activity and ideology is Germany. The German Constitutional Federal Court has the legal power to outlaw political parties whose activities and ideas are opposed to the fundamental principles of the

⁶ Capoccia 2004: 84

⁷ Fox & Nolte 2000: 401

⁸ Ibid: 402

⁹ Roskilde University, Denmark

¹⁰ Capoccia 2001: 13

¹¹ Bourne, Angela K. (2011) "The proscription of parties and the problem with 'militant democracy'", Centre for the Study of European Political Parties, Online Working Paper Series, No. 3, p. 21

free democratic order. Spain, on the other hand, is an example of a state that only outlaws parties for carrying out anti-democratic activities. Hence, Spanish parties are allowed to have anti-democratic ideas, as long as they are not translated into action. Some states however have decided to not adopt a party regulation and thus let political parties operate freely without banning them because of their activities or ideologies. In contrast to Germany and Spain, Sweden does not have state regulation of anti-democratic parties, which implies that Swedish parties cannot be outlawed. However, as many other countries (Germany and Spain included) Sweden has hate speech legislation that can be used to punish party members who engage in persecution of population groups.

1.1 Thesis aim and research questions

The purpose of this thesis is to get a deeper understanding of regulation of anti-democratic parties. This is done by conducting a comparative case study of three European states that regulate anti-democratic parties differently. Germany constitutes the example of a state where political parties, to not be declared illegal, must have both democratic activities and ideologies. Spain will form the example of a state that only regulates anti-democratic conduct and thus permits all ideas that political parties may have, regardless of them being democratic or not. Finally, Sweden will be provided as a contrast example of a state that lacks party regulation and thus has adopted a tolerant approach towards anti-democratic parties. The research focuses on how states regulate anti-democratic parties, the rationale behind such regulation and its effect on the parties.

This thesis will take a historical institutionalist perspective in order to fully understand the role of state regulation of anti-democratic parties. Historical institutionalism is a useful theory for explaining how history and institutions/rules (in this case party regulation) shape behavior. Furthermore, this approach highlights how and why institutions/rules change and how this structure actors' choices.

My research questions are as follows:

- How do Germany and Spain regulate anti-democratic parties?
- Why do Germany and Spain have a party regulation, while Sweden does not?
- How do Germany's and Spain's party regulation and Sweden's lack of it affect the anti-democratic parties?

1.2 Outline

The overall structure of the thesis will be as following. Chapter 2 will explain the adopted methodology along with previous research on party regulation. Chapter 3 and 4 will describe the theoretical framework that will form the basis of this comparative case study. Chapters 5 to 7 contain the empirical results. In Chapter 5, the first case will be presented (Germany) while Chapter 6 will discuss the second case (Spain) and Chapter 7 introduces the last case (Sweden). In Chapter 8, the comparative analysis of the case study will be made in regard to the theoretical framework presented in Chapter 3 and 4. Finally, in Chapter 9, the thesis will be concluded together with a summary of ideas for further research.

2 Methodology

Van Biezen claims that political parties in contemporary democracies are to a growing extent controlled by the state.¹² This is due to that their activities are to an increasing level exposed to regulations and state laws “which govern their external activities or determine the way in which their internal organization may function.”¹³ These laws on political parties, i.e. party regulation, may define for instance the legal definition of a party, regulate the form of activity in which parties may engage (such as campaign activities) and determine who qualifies for ballot access and who benefits from public resources such as subsidies.¹⁴ Finally, and probably most controversially, (that this thesis will be dealing with) a party regulation may regulate the activities and behavior of the political party, such as constraining the ideological content of the party program and force the party to comply with democratic principles. Van Biezen claims that: “It is in this last aspect, by which the state intervenes in the parties’ internal organizational structure or their political profile, which is most likely to infringe upon associational freedoms.”¹⁵ It is here when the democratic dilemma becomes particularly visible; the state has adopted laws which restrict civil and political rights (the stone pillars of democracy) of anti-democratic parties, in order to protect democracy itself.

Political parties that comply with democratic principles will not be affected by this type of party regulation. The parties affected are the so-called anti-democratic parties (extremist parties) that are openly or implicitly hostile to the constitution and policies of democracy.¹⁶ These parties are extremely critical of elements of liberal democracy¹⁷ and in states that have adopted a regulation of anti-democratic parties they might have to change their ideologies and adapt themselves to the system in order to not be outlawed. From now on, when I speak of *party regulation* I do not refer to the regulation of for instance electoral processes, but to the regulation of anti-democratic parties, i.e. state laws that are directed against anti-democratic parties and that force them to comply with democratic principles.

¹² Van Biezen 2008a: 340

¹³ Ibid

¹⁴ Ibid: 343

¹⁵ Ibid

¹⁶ Eatwell, Roger (2004) Introduction, in Eatwell, Roger & Mudde, Cas (2004) *Western Democracies and the New Extreme Right Challenge*. London: Routledge, p. 7

¹⁷ Mudde, Cas (2004) Defending democracy and the extreme right, in Eatwell, Roger & Mudde, Cas (2004) *Western Democracies and the New Extreme Right Challenge*. London: Routledge, p. 193

2.1 A comparative case study

The aim of this research paper is to get a deeper understanding of state regulation of anti-democratic parties. This is done by a comparative case study which compares laws on party regulation in Germany, Spain and Sweden. Robert K. Yin argues that “the central tendency among all types of case study, is that it tries to illuminate a *decision* or set of decisions: why they were taken, how they were implemented, and with what result.”¹⁸ Since my study focuses on how states regulate anti-democratic parties, the rationale behind such regulation and its effect on the parties, a case study is preferable. The possible choices of design for studying party regulation would be either a single case study or a comparative case study.

Yin argues that multiple-case designs are better than single-case designs.¹⁹ This is due to that analytical conclusions that independently arise from two cases are more powerful than those coming from a single case alone. This is in line with Donatella Della Porta who affirms that when “dealing with a small number of cases – usually between two and twenty – the comparative method is a preferred strategy for political and social scientists.”²⁰ She further argues that the comparative method “aims at rich descriptions of a few instances of a certain phenomenon.”²¹ Nicholas Walliman stresses that “the examination of two or more contrasting cases can be used to highlight differences and similarities between them, leading to a better understanding of social phenomena.”²² The comparative method “is justified by its capacity to go beyond descriptive statistical measures, towards an in-depth understanding of historical processes and individual motivations.”²³ This ability to focus on the historical context and actors’ motivations is a great benefit of the comparative case study. Its importance to this thesis has been directly related with the choice to use historical institutionalism as a theoretical framework which, as explained later, highlights how institutions shape behavior.

Since the aim of this study is to get a deeper understanding of how and why states regulate anti-democratic parties; together with how such regulation affects these parties, I have chosen to compare three cases that differ in the way they regulate anti-democratic parties. Furthermore, single case studies on Germany and Spain have already been conducted in the past, but a comparison of party regulation in Germany, Spain and Sweden has never been done before.

¹⁸ Yin, Robert K. (2009) *Case Study Research: Design and Methods*. London: SAGE Publications, p. 17

¹⁹ Ibid: 62

²⁰ Della Porta, Donatella (2008) Comparative Analysis: case-oriented versus variable-oriented research, in Della Porta, Donatella & Keating, Michael (2008) *Approaches and Methodologies in The Social Sciences: A Pluralist Perspective*. Cambridge: Cambridge University Press, p. 202

²¹ Ibid: 198

²² Walliman, Nicholas (2006) *Social Research Methods*. London: SAGE Publications, p. 46

²³ Della Porta 2008: 202

2.2 A qualitative textual analysis

The method used for studying state regulation of anti-democratic parties in Germany, Spain and Sweden is a qualitative textual analysis which Alan Bryman defines as: “An approach to documents that emphasizes the role of the investigator in the construction of the meaning of and in texts.”²⁴ This qualitative textual analysis is conducted by comparing constitutions, party laws and court rulings.

In some states, anti-democratic parties are regulated in national constitutions, whereas other states have adopted special party laws for that purpose. A party law is “the body of state-based regulations that determine the legal status of political parties and that specify how parties may operate, must organize or should be funded.”²⁵ Since this study examines how states regulate anti-democratic parties, party finances are outside of this thesis’ framework. Therefore, no attention will be paid to the laws on the financing of political parties. Instead, the thesis puts emphasis on the articles in the constitutions and/or the party laws that require the activities or/and ideologies of the party to comply with democratic principles. Hence, constitutions and party laws from Germany, Spain and Sweden will serve as my primary data. The constitutions of Germany and Spain contain articles with regulation of anti-democratic parties and will therefore be analyzed. Both countries have adopted party laws, but only the Spanish Party Law regulates anti-democratic parties, which makes it the only party law that will be used in this study. Sweden lacks both party law and a constitutional regulation of anti-democratic parties. However, Sweden has adopted a constitutional regulation of the freedom of association when it comes to organization, which will be examined along with Sweden’s hate speech legislation.

To be able to answer the third research question; the effect that party regulation has on the anti-democratic parties, court rulings of party bans will be analyzed and serve as primary data. I will use secondary data, meaning books, articles and newspapers that speak of anti-democratic parties in respectively country. Furthermore, since historical institutionalism is the chosen theory, secondary data will also be used for explaining the different historical context in respectively country.

²⁴ Bryman, Alan (2004) *Social research methods*. New York: Oxford University Press, p. 542

²⁵ Van Biezen, Ingrid (2008b) Party regulation and constitutionalization: A comparative overview, in Reilly, Benjamin & Nordlund, Per (2008) *Political Parties in Conflict-Prone Societies: Regulation, Engineering and Democratic Development*. Hong Kong: United Nations University Press, p. 29

2.3 Choice of theory

I attempt to answer the research questions by using the perspective of historical institutionalism (HI) along with theories of democratic tolerance. Since this research paper focuses on rules and institutions (constitutions and laws that regulate anti-democratic parties) an institutional perspective has been chosen. The institutional approach emphasizes that rules shape behavior and this can be related to my third research question; namely how party regulation affects the anti-democratic parties. The HI approach emphasizes that the outcome from the same policy varies in different places, depending on the situation and conditions at each site. Historical institutionalism helps explain the differences between how a policy may persist over time and how policies vary between countries. This makes it a suitable theory in a comparative case study.

Pascal Vennesson claims that one limit with the case study is that it is theory-dependent. This becomes a problem when the theory used is ill-suited for the empirical material, which “[leaves] the researcher vulnerable to an ethnocentric bias or forced to use an ill-adapted theory.”²⁶ The validity of a measurement tool is established when the tool measures what it claims to measure.²⁷ In order to establish validity and to not use an ill-suited theory, I chose historical institutionalism as my theoretical framework instead of rational choice institutionalism²⁸ or new institutionalism.²⁹ HI scholars’ focus on history constitutes the core of this study. This is due to that this thesis examines a phenomenon in the past (the adoption of a regulation of anti-democratic parties) by looking at policy documents, such as the German Basic Law from 1949 and the 1978 Spanish Constitution. These constitutions were written following the experience of a dictatorship, which further highlights the importance of bringing history into the study of party regulation. In order to increase validity in this study I have used different sources of information such as constitutions, court rulings and contributions from other researchers that have written about party regulation. The method used in this study truly measures regulation of anti-democratic parties in Germany, Spain and Sweden, and is thus suitable for answering the research questions.

In order to illustrate the democratic dilemma and to explain how countries regulate anti-democratic parties, I have brought theories of democratic tolerance into my study. States’

²⁶ Vennesson, Pascal (2008) Case studies and process tracing: theories and practices, in Della Porta, Donatella & Keating, Michael (2008) *Approaches and Methodologies in The Social Sciences: A Pluralist Perspective*. Cambridge: Cambridge University Press, p. 236

²⁷ Yin 2009: 40

²⁸ Rational choice institutionalism argues that that actors use institutions to maximize their utility.

²⁹ New institutionalism focuses on how institutions interact with each other and how they affect society.

different opinion of party regulation depends on the conception of democracy, i.e. a procedural or a substantive conception of democracy towards the political parties. By using historical institutionalism and theories of democratic tolerance, the implications of this research are to allow for a further understanding of the role of party regulation and its impact on the anti-democratic parties.

2.4 Previous research on party regulation

Many studies on party regulation have focused on the quantitative approach, meaning addressing *how many* European countries (and which type of countries) that have adopted party laws, constitutional party regulation and how frequent national constitutions mention political parties.³⁰ Ingrid Van Biezen showed in her study “State Intervention in Party Politics: The Public Funding and Regulation of Political Parties” from 2008 that new European democracies (such as the former countries belonging to the Soviet Union) have to a greater extent adopted specific party laws that regulate for instance political parties’ internal organization compared to older democracies.³¹ Since this study was quantitative it failed to give a deeper explanation of the role of party regulation in each country and it did not discuss how the regulation affected the anti-democratic parties. Furthermore, Van Biezen’s study did not focus on state regulation of anti-democratic parties but on all type of party regulation, meaning laws on party finances and regulation of electoral processes.

There is a shortage of comparative qualitative studies dealing with regulation of anti-democratic parties. Case studies, such as Carl Schneider’s study of the German regulation of anti-democratic parties, have however been conducted.³² His research paper “Political Parties and the German Basic Law of 1949” explains the regulation of anti-democratic parties in Germany and gives a description of the Court decision to ban two extreme parties. However, since Schneider’s research paper is from 1957 there is a need for further studies on party regulation to examine its effect on anti-democratic parties in present-day Germany.

Another case study on state regulation of anti-democratic parties is written by Angela K. Bourne who analyzed why Spain banned the extreme party *Batasuna*. Bourne concludes, among other things, that “democracies ban anti-system parties when alternative forms of

³⁰ See Karvonen, Lauri (2005) “Legislation on Political Parties: A Global Comparison.” *Paper presented at the Southwestern Political Science Association 2005 Annual Meeting, New Orleans, March 23-26 Panel PS 73: “Rediscovering Democracy”*, Aie-Rie Lee, Chair; Van Biezen 2008a; Van Biezen, Ingrid & Borz, Gabriela (2009). “The Place of Political Parties in National Constitutions: A European Overview”, Working Paper Series on the Legal Regulation of Political Parties, No. 1.; Bourne 2011

³¹ Van Biezen 2008a

³² Schneider, Carl (1957) “Political Parties and the German Basic Law of 1949”, *The Western Political Quarterly*, Vol. 10. No. 3, pp. 527-540

marginalization are not effective.”³³ As mentioned, comparative studies are more preferable than single-case studies because they highlight differences and similarities between cases and this leads to an in-depth understanding of a phenomena. Paul Franz’s research paper “Unconstitutional and Outlawed Political Parties: A German-American Comparison” from 1982 compares state regulation of anti-democratic parties in Germany and in the United States (US).³⁴ Franz concludes that Germany has adopted a stricter party regulation than the US since it regulates both anti-democratic activities and ideologies, whereas the US only regulates anti-democratic conduct. However, Franz did not explain why these two states had taken different paths in dealing with anti-democratic parties. The research paper was published in 1982 which makes it, like Schneider’s case study, out of date.

There is insufficient research on state regulation of anti-democratic parties. The studies that exist are based on states that already have adopted a regulation of anti-democratic parties. By introducing a contrast example of a state that does not regulate anti-democratic parties (Sweden), my hope is that it will produce new knowledge of the role of party regulation.

2.5 Limitation

In the third research question, there is a need to clarify what I mean with ‘the effect’ that party regulation has on the anti-democratic parties. By effect I mean when anti-democratic parties are banned because they have breached the constitution and/or the party law. The effect in this study also implies when anti-democratic parties, because of party regulation, change part of their identities in order to be declared legal. I am aware of that these two consequences do not include all possible effects that party regulation might have on anti-democratic parties. For instance, the effect of banning an anti-democratic party could lead to that the party goes underground and continues to operate while hidden. To know whether a party has gone underground or not is very difficult to determine and thus that effect will not be studied in this thesis.

It will be possible to explore if Spanish anti-democratic parties have changed their identities because of the party regulation. This is due to that the new law on political parties was implemented in 2002. It is thus possible to look at how anti-democratic parties behaved before the implementation of the new party regulation and compare that with how they operate today. This change in party regulation is unfortunately not possible to examine in Germany.

³³ Bourne, Angela K. (2010) “Political Parties and Terrorism: Why ban *Batasuna*?” Paper presented at Elections, Public Opinion and Parties Annual Conference University of Exeter, 9-11 September 2010, School of Humanities, University of Dundee

³⁴ Franz, Paul (1982) “Unconstitutional and Outlawed Political Parties: A German-American Comparison”, *Boston College International and Comparative Law Review*, Vol. 5. Issue 1/3

This is due to that the German regulation of anti-democratic parties has not changed since it was adopted in 1949. Nevertheless, even though I will not be able to examine if the German party regulation has helped changing the anti-democratic parties' identities, I still believe that it is important to highlight that party regulation may force political parties to adapt to the system (as in the case of Spain). Hence, this will be shown by bringing in examples of when political parties in Spain changed identities because of the party regulation.

One limitation to this study is that I have not been able, due to the lack of space, to examine all party bans in Spain. However, (as the Appendix shows) the reason to why Spanish parties have been banned is because the Court considered them to be successors to parties that had been controlled by the terrorist group ETA. Since all parties have been banned on the same grounds, I believe that the important ban to study is the first one from 2003 since it set the conditions for what it takes to outlaw a political party and how the Court shall interpret the new party law. The latest court rulings from 2009-2012 are also important to explore since they show how anti-democratic parties were affected by the party regulation and came to change identities.

A measure is said to have a high reliability if a later investigator followed the same procedures and arrived at the same findings and conclusions.³⁵ In this study, reliability has been established since I have not only relied on secondary data, but on original policy documents (constitutions, party laws and court rulings). However, a problem for the reliability is that I could not find the original documents of the German party bans from 1952 and 1956. Instead, I have had to rely on secondary data from authors that have discussed these party bans. However, to improve the reliability I have read articles, by different authors, who have written about these court rulings and I have made sure that the quotes from the Court are identical in all publications.

The aim of this study is to gain a deeper understanding of party regulation. Margaret Myers claims that: "In many situations, a small sample size may be more useful in examining a situation in depth from various perspectives, whereas a large sample would be inconsequential."³⁶ However, qualitative studies of few cases might have problems related to generalizations. Yin claims that quantitative research relies on *statistical* generalization,

³⁵ Yin 2009: 45

³⁶ Myers, Margaret (2000, March). "Qualitative research and the generalizability question: Standing firm with Proteus". [30 paragraphs]. *The Qualitative Report* [On-line serial], 4(3/4), Paragraph 10. Available at: <http://www.nova.edu/ssss/QR/QR4-1/myers.html>

whereas case studies rely on *analytic* generalization.³⁷ Yin states that an analytical generalization, as done here, generalizes the results to a broader theory. The implication of this thesis is that it will contribute to new knowledge about party regulation and that it can be used for future research of this topic.

2.6 Case selection

Bourne stresses that it is common for scholars that study state regulation of anti-democratic parties to distinguish between.³⁸

*The 'Sein' or 'being' of a party of group - the ideological character of the party...- and its 'Handeln' or 'acting'- which mainly regards unconventional, illegal or violent nature of political behavior and strategies.*³⁹

Hence, states that have adopted a party regulation may declare parties illegal for their anti-democratic activities or for both their anti-democratic activities and anti-democratic ideas. The difference between 'anti-democratic action' and 'anti-democratic ideology' bans gives a more nuanced understanding about how a country can outlaw a political party and continue to say that all political programs, even the anti-democratic ones, should be permitted in the course of democratic party competition.⁴⁰

In order to gain a deeper understanding of party regulation, I have chosen cases that vary in the way they regulate anti-democratic parties. My thesis examines a state that regulates both anti-democratic activities and ideologies (Germany), one state that only regulates anti-democratic activities (Spain) and finally one country that does not have party regulation and thus permits both anti-democratic activities and anti-democratic ideologies (Sweden). Since no country only regulates anti-democratic ideologies without also regulating anti-democratic activities, no example of such a case can be provided.

I have chosen to examine party regulation in three European countries; Germany, Spain and Sweden. The reason why I chose European countries is because extreme parties are on the rise in Europe which makes it particularly interesting and important to study party regulation in that area. Furthermore, since extreme parties are hostile to democratic principles, which the European Union is built on; these parties might affect the EU cooperation. This risk further highlights the need to study party regulation in Europe.

³⁷ Yin 2009: 44

³⁸ Bourne 2011: 22

³⁹ Capoccia 2001: 13

⁴⁰ Bourne 2011: 21

3 Explaining party regulation by studying history

Historical institutionalism (HI) argues that institutions are rules that structure and shape behavior.⁴¹ HI scholars study when and how historical processes shape political outcomes and they are interested to know why a certain choice was made and/or why a specific outcome followed. As a consequence, historical institutionalists consider that explaining why particular paths or decisions were *not* taken is as important as specifying the path that was chosen. Historical institutionalism can be distinguished from other social sciences approaches by its historical orientation where the actors are both shaped by and are producers of the past. HI scholars consider that political events happen within a historical context and this has a direct effect on the policy decisions or events.⁴² In other words, historical institutionalists believe that the timing of events shapes political outcomes.⁴³ An example of this is the work of Alexander Gershenkron who claimed that *when* a country industrializes affects *how* it industrializes.⁴⁴

HI scholars seek explanations for specific outcomes by examining the historical moment when a policy decision was taken. According to historical institutionalism, expectations in the present have been shaped by the past. Sven Steinmo highlights how history matters by the example of the American invasion in Iraq.⁴⁵ He states that a historical institutionalist would argue that the United States' success in the Second World War played an important role in the belief that the US could bring democracy to a dictatorship. This is further confirmed by Orfeo Fioretos who stresses that "actors are guided by past balance of past attachments and prospective opportunities."⁴⁶

3.1 Path dependency

A key concept for HI scholars is path dependency, which means that the decisions taken are limited by the decisions one has made in the past.⁴⁷ Paul A. David states that: "A dynamic process whose evolution is governed by its own history is 'path dependent.'"⁴⁸ According to Theda Skocpol and Paul Pierson path dependency expresses the idea that

⁴¹ Steinmo, Sven (2008) Historical Institutionalism, in Della Porta, Donatella & Keating, Michael (2008) *Approaches and Methodologies in the Social Sciences: A Pluralist Perspective*. Cambridge: Cambridge University Press, p. 123

⁴² Steinmo 2008: 127

⁴³ Fioretos, Orfeo (2009) "Historical Institutionalism in International Relations," *International Organization* 65, Spring 2011, p. 371

⁴⁴ Steinmo 2008: 127

⁴⁵ Ibid: 128

⁴⁶ Fioretos 2009: 374

⁴⁷ Pierson, Paul (2004) *Politics in Time: History, Institutions, and Social Analysis*. Oxfordshire: Princeton University Press, p. 95

⁴⁸ David, Paul A. (2006) "Path Dependence- A Foundational Concept for Historical Social Science", *The Journal of Historical Economics and Econometric History* Vol. 1. No. 2, p. 1

“outcomes at a ‘critical juncture’ trigger feedback mechanisms [negative or positive] that reinforce the recurrence of a particular pattern into the future.”⁴⁹ Theda Skocpol and Paul Pierson continue:

*Once actors have ventured far down a particular path, they are likely to find it very difficult to reverse course...The “path not taken” or the political alternatives that were once quite plausible may become irretrievably lost.*⁵⁰

Hence, HI scholars believe that change will be difficult, but not impossible.⁵¹ According to Steinmo, this perception of change is due to several reasons. First, changing a rule or an institution will sometimes have great implications for others; therefore, those who are disadvantaged by the change will oppose it.⁵² Second, people create expectations around a given set of rules/institutions. Thus, a change in rules might have long-term effects that are difficult to predict. Steinmo argues that the uncertainty of the effects of change, leads to that many would prefer to continue with the current rules - even if they are not optimal.⁵³ Third, rules and institutions can become locked in because people have learned the rules. A change could thus produce struggle and conflict in society between those who opposed the change and those who favored it. Finally, since institutions affect behavior, they can also shape preferences over time. This means that individuals may come to prefer a certain institutional arrangement because they have grown used to it.⁵⁴ Steinmo argues that until recently, historical institutionalists have considered that institutions/rules remain stable “until they are faced with an external (exogenous) shock.”⁵⁵ Mark Blyth, however, argues that both wars and economic depressions have produced institutional change, but such external shocks are “neither the only, nor the most common way that institutions change.”⁵⁶

3.2 Social learning and ideas

To explain change, HI scholars today have brought ‘ideas’ into institutional analysis.⁵⁷ Ideas are seen to influence people and to be the very root of political behavior. Steinmo argues that ideas are not irrational but can best be understood as “creative adaptations that can be evaluated

⁴⁹ Pierson, Paul & Skocpol, Theda (2002) “Historical Institutionalism in Contemporary Political Science”, in Katznelson, Ira & Milner, Helen V. (eds). *Political Science: State of the Discipline*. New York: W.W. Norton, p. 665

⁵⁰ Ibid: 666

⁵¹ Steinmo 2009: 130

⁵² Ibid

⁵³ Ibid

⁵⁴ Ibid: 129

⁵⁵ Ibid

⁵⁶ Blyth, Mark (2002) Institutions and Ideas, in Marsh, David & Stoker, Gerry (2002) *Theory and Methods in Political Science*. New York: Palgrave Macmillan, p. 302

⁵⁷ Steinmo 2009: 130

on rational and emotive grounds.”⁵⁸ Hence, a group may conclude that a particular idea is a ‘good idea’ for solving a problem and then decide to proceed with it. In accordance with Steinmo, Peter A. Hall argues that policy makers function within a framework of ideas that defines the goals of the policy and the kind of measure that can be applied to attain them.⁵⁹ Hall further stresses that the constant flow of ideas “is an important dimension of the process in which policy is made.”⁶⁰ Steinmo argues that institutional change occurs when powerful actors “have the will and ability to change institutions in favor of new ideas”.⁶¹ Hall, in turn, highlights that institutional change occurs when actors/states have learned from past experiences, i.e. social learning.

*Learning is conventionally said to occur when individuals assimilate new information, including that based on past experience, and apply it to their subsequent actions. Therefore, we can define social learning as a deliberate attempt to adjust the goals or techniques of policy in response to past experience and new information. Learning is indicated when policy changes as the result of such a process.*⁶²

The concept of social learning implies that we must study history and the ideas that the people had at the time when a certain policy decision was made. By examining states’ history we will comprehend why countries have chosen different paths when it comes to policy adoption. Hall has illustrated the role of ideas in politics by presenting an example of the British government under Edward Heath (1970-74) and the government of Margaret Thatcher (1979-83).⁶³ Both governments were conservative, elected on promises to low the inflation and to cut taxes. When unemployment rates began to rise, the Heath government completely changed strategy back toward interventionist policies. Thatcher, however, did not change course, but held fast to her deflationary policies. Hall explains this difference by that Thatcher had learned from Heath’s experience. Hall’s example thus illustrates how policies are strongly influenced by the past.⁶⁴

According to historical institutionalism, an institutional change can only take place when the benefits of a potential alternative outweigh the losses associated with dissolving past

⁵⁸ Steinmo 2009:131

⁵⁹ Hall, Peter (1993) “Policy Paradigms, Social Learning, and the State: The Case of Economic Policymaking in Britain,” *Comparative Politics*, Vol. 25. No. 3, p. 279

⁶⁰ Ibid: 289

⁶¹ Steinmo 2009: 131

⁶² Hall 1993: 278

⁶³ Ibid: 290

⁶⁴ Ibid

policies.⁶⁵ As contrasting to rational institutionalism, where the appearance of a marginally better alternative changes preference, HI scholars see action as a function of comparison with past and future preferences. This is highlighted by Fioretos who states that “individuals are thought to balance evaluations of the costs and benefits of adapting to new circumstances with the costs and benefits of maintaining or losing their investments in *past* arrangements.”⁶⁶ Hall stresses that institutions change not only as a result of autonomous action by the state, but in response to “an evolving societal debate.”⁶⁷ The media, interest groups, policy experts and political parties all operate within the political discourse that is current in the country at a given time. Hence, since society is linked to the state it is also bound to influence it.

⁶⁵ Fioretos 2011: 375

⁶⁶ Ibid: 373

⁶⁷ Hall 1993: 289

4 Theories of democratic (in)tolerance

“No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time.”⁶⁸ - Winston Churchill

4.1 Procedural and substantive conceptions of democracy

Democratic theory has broken into two fundamental camps between those scholars that advocate a procedural conception of democracy and those who support a substantive conception.⁶⁹ The procedural model defines democracy as no more than a political system where people have the right to vote for their preferred political leaders and party. Joseph Schumpeter defines democracy as “that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote.”⁷⁰ According to the procedural view, the democratic system must always expose itself to self-criticism by exploring the value of tolerance. This is done through electoral politics where all actors and political parties, regardless of their activities or ideologies, are welcome to participate.⁷¹ Hence, opponents to democracy are important for the system’s self-criticism. The procedural view holds that pluralistic systems are created by the people and therefore the majority shall also have the power to abolish it. Jean-Jacques Rousseau’s democratic theory highlights this belief: “Democracy requires that the continuation of democracy always be regarded as an open question.”⁷² Another scholar advocating the procedural model of democracy is Thomas Emerson who argues that democracy will be strengthened if the alternatives to democracy are debated and thus better understood.

Even if we consider freedom of expression an absolute value...nevertheless it is important that it remain open to challenge. Otherwise it becomes a ‘dead dogma,’ ill-understood, lacking in vitality, and vulnerable to erosion or full-scale attack.⁷³

The procedural view holds that freedom of speech and to associate are sacred democratic principles and political parties should therefore be able to express their opinions regardless of

⁶⁸ Speech in the House of Commons on 11 November 1947, published in Raymond, Walter John (1978) *The Dictionary of Politics: Selected American and Foreign Political and Legal Terms*. Lawrenceville: Brunswick Publishing Corporation, p. 124

⁶⁹ Fox & Nolte 2000: 400

⁷⁰ Katz, Richard (2004) Democracy and the Legal Regulation of Political Parties, Prepared for USAID’s conference on “Change in Political Parties,” Washington D.C, 1 October 2004, p. 3

⁷¹ Fox & Nolte 2000: 401

⁷² Quoted in Katz 2004: 7

⁷³ Emerson, Thomas I. (1971) *The System of Freedom of Expression*. New York: Random House, p. 51

how controversial these ideas are. This implies that the state should give parties maximal right of association and freedom of expression.⁷⁴ The procedural view of democracy argues that ‘real freedom is freedom to dissent’.⁷⁵ Voltaire’s quote “I disapprove of what you say, but I will defend to the death your right to say it”⁷⁶ sums up the procedural conception of democracy.

The second view of democracy is substantive which is defined as: “The view that democracy is embodied in the substance of government policies rather than in the policymaking procedure.”⁷⁷ This view takes the position of ‘no freedom for the enemies of freedom’. Scholars holding the substantive view of democracy argue that citizens’ right to freedom of speech and association are not absolute rights and they can therefore not be used to abolish the right itself or other basic rights.⁷⁸ According to this view, a democratic system cannot merely permit its own alienation. Belonging to the substantive view is the German philosopher Karl Lowenstein who argued that democracies should adopt a self-defense mechanism for protection against anti-democratic actors.⁷⁹ He argued that in order to protect itself against the enemies of democracy, democracies had to become ‘militant’. As Paul Harvey put it: “This militancy means they (the states) take an active stance in restricting the human rights of anti-democratic actors to protect the substantive, predetermined values that democracy is meant to secure (...).”⁸⁰ Lowenstein developed his idea of militant democracy as a response to the rise of European fascism in the 1930s. He claimed that actors who wanted to abolish the democratic system could simply do so by taking advantage of the democratic process. In his work “Militant democracy and fundamental rights” from 1937 Lowenstein stated that:

*Until very recently, democratic fundamentalism and legalistic blindness were unwilling to realize that the mechanism of democracy is the Trojan horse by which the enemy enters the city.*⁸¹

⁷⁴ Persily, Nathaniel & Cain, Bruce E. (2000) “The Legal Status of Political Parties: A Reassessment of Competing Paradigms”, *Columbia Law Review* Vol. 100. No. 3, p. 782

⁷⁵ Capoccia 2004: 83

⁷⁶ (Attributed); originated in *The Friends of Voltaire* [1906] (2003) by S. G. Tallentyre (Evelyn Beatrice Hall), Washington: University Press of the Pacific

⁷⁷ Janda, Kenneth, Berry, Jeffrey M. & Goldman, Jerry (2008) *The Challenge of Democracy*. Boston: Houghton Mifflin Company, p. 23

⁷⁸ Fox & Nolte 2000: 402

⁷⁹ Lowenstein, Karl (1937) “Militant democracy and fundamental rights, I”, *The American Political Science Review* Vol. 31. No. 3, p. 424

⁸⁰ Harvey 2004: 408

⁸¹ Lowenstein 1937: 424

One of the most famous scholars that have developed substantive theories of democracy is John Rawls.⁸² In his *A Theory of Justice*, Rawls argues that “democratic societies need not tolerate the intolerant.”⁸³ He asked himself if an intolerant group has any right to complain if it is not tolerated. Rawls answered no because: “a person’s right to complain is limited to violations of principles he acknowledges himself.”⁸⁴ Hence, an actor that seeks to abolish the democratic system cannot be tolerated and will be suppressed. This is, according to Rawls, appropriate because “it is justified by a principle that both sides accept”. Rawls continues:

*The natural strength of free institutions must not be forgotten...Knowing the inherent stability of a just constitution, members of a well-ordered society have the confidence to limit the freedom of the intolerant only in the special cases when it is necessary for preserving equal liberty itself.*⁸⁵

The Israeli judge Yoel Zusan takes the same substantive approach to democracy as Lowenstein and Rawls have done: “Just as a man does not have to agree to be killed, so a state too does not have to agree to be destroyed and erased from the map.”⁸⁶ He further stated that in a “war like any war, the democratic polity has the right to exercise its power, even in the absence of empowering legislation, if this power is applied in self-defence.”⁸⁷

The procedural conception of democracy is more closely linked to the classical definition of democracy: “government by the people”. The procedural view is based on clear, well-established rules for decision making which grants citizens the complete freedom to dissent. Those who hold a procedural conception would oppose state restriction of political rights even if anti-democratic actors threaten to abolish the democratic system. This has been criticized by for instance Kenneth Janda, Jeffrey Berry and Jerry Goldman who argue that the procedural conception of democracy allows actors to violate substantive principles of democracy.⁸⁸ However, since the substantive conception of democracy permits state regulation of anti-democratic actors, one may ask how much restriction is necessary and legitimate in order for the state to feel secure? The more a democracy adopts the substantive or militant mode, the greater is the risk that it will become an authoritarian regime under the name of democracy.

⁸² Fox & Nolte 2000: 402

⁸³ Rawls, John (1971) *A Theory of Justice*. Harvard: Harvard University Press, p. 214

⁸⁴ Ibid: 217

⁸⁵ Ibid: 219

⁸⁶ Pedahzur 2004: 110

⁸⁷ Ibid

⁸⁸ Janda, Berry & Goldman 2008: 24

4.2 Two examples - what has history taught us?

In this part I will highlight the democratic dilemma in practice by giving two historical examples. The first example demonstrates how the absence of party regulation can become dangerous, whereas the second case illustrates when state intervention in party politics came to lead to a collapse of the democratic system. The examples that are provided here are Hitler's way to power and the 1991 Algerian elections.

4.2.1 Hitler's way to power

*"This will always remain one of the best jokes of democracy, that it gave its deadly enemies the means by which it was destroyed."*⁸⁹ - Joseph Goebbels

The German Constitution during the Weimar Republic (1919-1933) did not possess strong legislative defenses against the enemies of the democratic order. It did, however, contain the Law for the Protection of the Republic⁹⁰ which punished those who glorified and encouraged violent acts against the republican form of government. This legislation proved inadequate due to an uneven application of the law in the different states (*Länder*).⁹¹ In Prussia the law was applied vigorously, whereas in Bavaria (the state where Adolf Hitler rose to power) the law was seen as a violation of regional autonomy and was thus not applied with the same frequency. Moreover, whenever the law was applied, it was increasingly turned against the extreme left.⁹²

The Weimar Republic's poor party regulation was advantageous to Hitler and his Nazi Party (National Socialist German Workers' Party, NSDAP) since no ideological change in the party program was necessary in order to participate in the elections. In the early 1930s, the Nazi Party won an increasing number of seats in the German Parliament (*Reichstag*). When Hitler was appointed Chancellor in 1933 the party held one-third of the seats, making it the largest party in the *Reichstag*.⁹³ While in power, Hitler immediately began to change the nature of the Chancellor by pressuring *Reichstag* deputies to vote for "The Enabling Act" which would give the Chancellor the authority to enact laws without consulting the German Parliament.⁹⁴ The *Reichstag* adopted the Enabling Act with 83 per cent of its deputies (only the Social

⁸⁹ Quoted in Fox & Nolte 2000: 389

⁹⁰ Vincent, Paul C. (1997) *A Historical Dictionary of Germany's Weimar Republic, 1918-1933*. London: Greenwood Press, p. 370

⁹¹ Ibid

⁹² Ibid: 371

⁹³ Fox & Nolte 2000: 392

⁹⁴ Ibid: 393

Democratic Party voted against)⁹⁵ and the principle of separation of powers was abolished. Hence, by using the democratic system, Hitler succeeded in forming a dictatorship.

Lowenstein stated that: “the Weimar Republic revealed an “almost tragi- comical picture of half-hearted, laggard, and thoroughly ineffective methods of dealing with the subversive technique.”⁹⁶ The German case illustrates the danger of not having party regulation and thus to tolerate an extreme party.

4.2.2 The 1991 Algerian elections

The 1991 Algerian elections present a similar situation to what occurred in Germany; an anti-democratic party, The Islamic Salvation Front (FIS), was elected by the free public will. However, in this case the state intervened and outlawed the party and the Algerian army took control of the country.⁹⁷

In 1991, Algeria held its first multi-party elections since the year of independence in 1962.⁹⁸ In the first round of the elections the FIS won 47.54 per cent of the vote and 189 out of 231 seats that were decided for Algeria’s 430-seat parliament.⁹⁹ The FIS was founded in 1989 and made clear during the election that it aimed to change Algeria into an Islamic State.¹⁰⁰ FIS leaders issued contradictory statements of whether future democratic elections were to take place in the country once the FIS was in power.¹⁰¹ Before the second round of voting could occur, the president resigned and the military intervened and cancelled the elections. A “High Security Council” announced itself to be authority and made sure that the FIS was banned immediately. Furthermore, mass arrests of FIS members were carried out and a state of emergency was declared on February 9, 1992.¹⁰² The state of emergency was first lifted in February 2011. However the authorities have established other repressive laws and regulation, severely restricting people’s right to associate, form political parties and express their opinions.¹⁰³

⁹⁵ Deutscher Bundestag “The Enabling Act of 23 March 1933,” Administration of the German Bundestag, Research Section WD 1, March 2006. Available at: http://www.bundestag.de/htdocs_e/artandhistory/history/factsheets/enabling_act.pdf (Accessed 15 April, 2013)

⁹⁶ Lowenstein 1937: 427

⁹⁷ Fox & Nolte 2000: 394

⁹⁸ Bouandel, Youcef & Zoubir, Yahia H. (1998) “Algeria’s elections: the prelude to democratization” *Third World Quarterly*, Vol. 19. No. 2, p. 177

⁹⁹ Fox & Nolte 2000: 393

¹⁰⁰ Ibid

¹⁰¹ Ibid: 394

¹⁰² Fox & Nolte 2000: 394

¹⁰³ Human Rights Watch, *Human Rights in Algeria*, Available at: <http://www.hrw.org/middle-eastn-africa/algeria> (Accessed 16 April, 2013)

After the cancellation of the elections, Algeria has experienced the worst degree of violence since its independence in 1962.¹⁰⁴ The banning of the FIS triggered the Algerian Civil War (1991-1999) between Islamist rebels and the government and its supporters.¹⁰⁵

Both Hitler's way to power and the 1991 Algerian elections highlight the democratic dilemma; is it democratically legitimate to outlaw a political party that has been elected by the citizenry, and thus infringe civil and political rights, in order to protect other democratic values in the country? This thesis deals with precisely that question. Germany and Spain are two countries that have decided to defend themselves against anti-democratic parties by adopting party regulation. The Swedish case in turn, will provide a contrasting view point of a state that has adopted a tolerant position towards anti-democratic parties.

¹⁰⁴ Human Rights Watch, *Human Rights in Algeria since the Halt of the Electoral Process*, 27 February 1992, Available at: <http://www.unhcr.org/refworld/country,,HRW.COUNTRYREP.DZA,,45c9abf12,0.html> (accessed 20 April, 2013)

¹⁰⁵ Martinez, Luis (1998) *The Algerian Civil War 1990-1998*. New York: Columbia University Press, p. 92

5 Regulation of anti-democratic parties in Germany

The first country in this comparative case study to analyze is Germany. In this chapter the German party regulation is described (research question one), the rationale of the party regulation is explored (research question two) together with its effect on the German anti-democratic parties (research question three).

With the adoption of the German Constitution (the Basic Law of the Federal Republic of Germany) in 1949, Germany became the first European country with a constitution that recognized the necessity of creating a democracy that was capable of defending itself against anti-democratic actors.¹⁰⁶

Motions on outlawing a party can only be brought before the Constitutional Court by the federal government, the parliament or the cabinet.¹⁰⁷ If a party is confined to a single Land, the Land government may also submit a banning motion to the Court. If a party is declared unconstitutional it is forced to dissolve. However, the members of the party will not be punished if they have not been engaged in criminal actions (which in that case will be decided in a separate process).¹⁰⁸

5.1 Party regulation in the German Constitution

Article 21 of the German Basic Law sets very strict rules with regard to political parties' activity and identity.¹⁰⁹ Article 21 states that political parties' internal organization "must conform to democratic principles."¹¹⁰ Furthermore, it defines unconstitutional those parties that by their aim or behavior seek to "destroy the free democratic basic order or to endanger the existence of the Federal Republic of Germany."¹¹¹ Hence, this Article says that a party's right to freedom of expression or of association may be restricted if it threatens or violates the free democratic order.

¹⁰⁶ Harvey 2004: 408

¹⁰⁷ Schneider 1957: 539

¹⁰⁸ Franz 1982: 66

¹⁰⁹ Pedahzur 2004: 119

¹¹⁰ Basic Law for the Federal Republic of Germany, Art. 21. Available at: <https://www.btg-bestellservice.de/pdf/80201000.pdf> (Accessed 15 April, 2013)

¹¹¹ Ibid

Article 21 [Political Parties] in the German Constitution

1) Political parties shall participate in the formation of the political will of the people. They may be freely established. Their internal organization must conform to democratic principles. They must publicly account for their assets and for the sources and use of their funds.

2) Parties that, by reason of their aims or the behavior of their adherents, seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court shall rule on the question of unconstitutionality.

3) Details shall be regulated by federal laws.¹¹²

The principles of the free democratic order protected by Article 21(2)¹¹³ are:

At the very least, respect for the rights of man as set forth in the Basic Law, above all respect for the rights of one individual to life and free development, the sovereignty of the people, separation of powers, the accountability of the government, administration according to law, the independency of the judiciary, the multiparty principle, with equal opportunity for all political parties, including the right to constitutionally acceptable development, and opposition.¹¹⁴

Article 21(2) stipulates that political parties only enjoy democratic freedoms when their activity and ideas do not contradict basic democratic principles. Hence, Germany can both outlaw parties for having anti-democratic ideologies and for carrying out anti-democratic actions. This is shown with the phrase: “Parties that, by reason of their *aims* or the *behavior* (...)” Hence, in Germany it is sufficient to outlaw a political party based on its *intentions*, not whether it is in position to effectuate those aims or not.¹¹⁵ How a party has to behave in order to “seek to undermine or abolish the free democratic basic order or endanger the existence of the Federal Republic of Germany” is not specified. The broad and vague language of Article 21(2) has been heavily criticized for making it possible for the Court to exercise political rather than judicial judgment.¹¹⁶ How the Court has interpreted Article 21 is later illustrated in

¹¹² Basic Law for the Federal Republic of Germany, Article 21. Available at: <https://www.btg-bestellservice.de/pdf/80201000.pdf> (Accessed 15 April, 2013)

¹¹³ The Constitutional Court clarified “the principles of the free democratic order” in the banning case of the Socialist Reich Party in 1952.

¹¹⁴ Decision of 23 October, 1952, 2 BVerfG at 13, quoted in Franz 1982: 57

¹¹⁵ Schneider 1957: 538

¹¹⁶ Schneider 1957: 534

the banning cases of the Socialist Reich Party of Germany (SRP) and the German Communist Party (KPD) further down.

5.2 The rationale of the German party regulation

Before the adoption of the German Basic Law in 1949, political parties had been completely ignored in all German constitutions.¹¹⁷ When the German Basic Law was drafted, two overarching factors influenced its content: the fresh memory of the Nazi state and the rise of the communist regime in the East.¹¹⁸

5.2.1 The memory of the Nazi state

The Weimar Republic had proven defenseless against the rise of anti-democratic parties and had indeed become, like Lowenstein stated, the Trojan horse by which the enemy entered the city.¹¹⁹ The failure of the Weimar Republic and the experiences of the Nazi period indicated that the state could not safely let political parties act and organize completely to their own discretion.¹²⁰ Therefore, the Basic Law intended to control parties at two vital points: (1) over the party organization and (2) over the aims and actions of parties and their members.¹²¹ The party regulation in Germany was thus designed to prevent a repetition of the past when anti-democratic parties could rise and attack democracy itself.¹²² The chairman of the head committee in charge of consolidating the German Basic Law, Carlo Schmid, stated:

It is not part of the concept of democracy that it creates the preconditions of its own destruction (...) we should also have the courage to be intolerant towards those who wish to use a democratic system in order to kill it off.¹²³

5.2.2 The threat from the East

Although not as widely advocated, some authors¹²⁴ have argued that the rationale of the German party regulation was a combination of its totalitarian past together with the fear of the rise of communism in the East. The Parliamentary Council debated Article 21 (regulation of anti-democratic parties) during the Soviet occupation of Berlin (the Berlin blockade) in 1948/1949,¹²⁵ a period when it was especially high tension between the West and the East.

¹¹⁷ Ibid: 527

¹¹⁸ Fox & Nolte 2000: 415

¹¹⁹ Lowenstein 1937: 424

¹²⁰ Schneider 1957: 533

¹²¹ Ibid

¹²² Schweitzer, Carl-Christoph, Karsten, Detlev, Kommers, Donald, Spencer, Robert & Nicholls, Anthony (1995) *Politics and government in Germany, 1944-1994: basic documents*. Oxford: Bergahn Books Providence, p. 201

¹²³ Pedahzur 2004: 110

¹²⁴ See Niesen, Peter (2002) "Anti-Extremism, Negative Republicanism, Civic Society: Three Paradigms for Banning Political Parties* - Part I, *German Law Journal*, Paragraph 4. and Fox & Nolte 2000: 415

¹²⁵ Niesen 2002: Paragraph 7

The escalating Cold War was thus probably in the minds of the framers when they wrote the Constitution. A leading commentator of the German Basic Law stated that Article 21 was directed against “a political order we knew from the past and the East and attempted to rule out at all cost.”¹²⁶ The German party regulation can therefore be seen as both a preventive measure from letting communism in Western Germany gain more power and from repeating the past when anti-democratic parties, by using democratic means, could abolish democracy itself.

5.3 The German party regulation's effect on the anti-democratic parties

Only two parties have been outlawed in Germany and both of the bans occurred more than 50 years ago.¹²⁷ In the early days of the Federal Republic, the Court twice exercised Article 21 of the Basic Law when it declared unconstitutional in 1952 the neo-Nazi Socialist Reich Party of Germany (SRP) and when it in 1956 banned the German Communist Party (KPD).¹²⁸ This part of the thesis also highlights the attempts to ban the National Democratic Party of Germany (NPD).

5.3.1 The banning of the Socialist Reich Party of Germany (SRP)

The Socialist Reich Party of Germany (*Sozialistische Reichspartei Deutschlands*) was founded in 1949 and obtained 11.0 and 7.7 per cent of the votes in the 1951 state elections in respectively Lower Saxony and Bremen.¹²⁹ The SRP claimed that Admiral Karl Dönitz, who had been appointed by Hitler, was the last legitimate president of Germany. Moreover, the party denied the Holocaust and demanded ‘a solution of the Jewish question’.¹³⁰

In 1951 the Federal government submitted a motion to the Constitutional Court regarding the banning of the SRP. The Court stressed that there was no doubt that the NSDAP is the paradigm for a party that would be declared unconstitutional under Article 21(2) (the NSDAP did seek to undermine the free democratic order) and thus all parties that are essential to the NSDAP must also be presumed to be unconstitutional.¹³¹ With the SRP decision, the Court

¹²⁶ Ibid

¹²⁷ German anti-democratic movements and associations have, however, been outlawed by Article 9(2) of the Basic Law which states: “Associations whose aims or activities contravene the criminal laws, or that are directed against the constitutional order or the concept of international understanding, shall be prohibited.” The Basic Law of the Federal Republic of Germany. Available at: <https://www.btg-bestellservice.de/pdf/80201000.pdf> (Accessed 15 April, 2013)

¹²⁸ Fox & Nolte 2000: 416

¹²⁹ Dézé, Alexandre (2004) Between adaption, differentiation and distinction: Extreme right-wing parties within democratic political systems, in Eatwell, Roger & Mudde, Cas (2004) *Western Democracies and the New Extreme Right Challenge*. London: Routledge, p. 26

¹³⁰ Lee, Martin A. (2000) *The Beast Reawakens: Fascism's Resurgence from Hitler's Spymasters to Today's Neo-Nazi Groups and Right-Wing Extremists*. New York: Routledge, p. 50

¹³¹ Lee 2000: 50

had introduced the concept of ‘essential affinity’ to the NSDAP, which therefore gives the Court the legal right to outlaw any political party that has the same identity as the Nazi party. In order to determine if a party is a successor to the NSDAP or not, Peter Niesen states that the Court has to scrutinize “the party’s political program, its strategic and tactical mode of operation, its rhetoric and political language, and, finally, its explicit references to National Socialism (in, e.g., the apology of NS crimes).”¹³² In the case of SRP, the Court analyzed dozens of letters between SRP leaders and potential recruits. These letters showed that most SRP leaders had been Nazis with positions in the SS or the SA.¹³³ The judges concluded that: “the SRP sets about collecting the truly incorrigible, persons who ‘have remained faithful,’ not to gain positive potential for democracy, but to preserve and spread National Socialist ideas.”¹³⁴

The Court also observed that the SRP was actively hostile to most of the democratic principles (Article 21(1)),¹³⁵ especially the principle of the dignity of all men.¹³⁶ Furthermore, the party’s internal organizational structure was not based on equality since party authority flowed from the top down, and not from members to leaders.¹³⁷ The Court therefore stated that:

*(...) the construction of the party must proceed from bottom to top, that the members may not be excluded from the policy-making process, and that the fundamental equality of members, including the freedom to join and resign from the party, must be guaranteed. It would, moreover, contravene democratic principles . . . to demand that members promise unconditional obedience to the party leaders.*¹³⁸

Since the party’s internal structure and ideology reminded strongly of the NSDAP’s identity, the Court concluded that the SRP was its successor. The Court thereby dissolved the party in 1953 and confiscated its assets,¹³⁹ making it the first party to be outlawed by the Federal Republic.¹⁴⁰

¹³² Ibid

¹³³ Kommers, Donald P. & Miller, Russel A. (2012) *The Constitutional Jurisprudence of the Federal Republic of Germany*. London: Duke University Press, p. 288

¹³⁴ Frei, Norbert (2002) *Adenauer’s Germany and the Nazi past: the politics of amnesty and integration*. New York: Columbia University Press, p. 275

¹³⁵ Franz 1982: 57

¹³⁶ Ibid: 86

¹³⁷ Kommers & Miller 2012: 288

¹³⁸ Quoted in Schneider 1957: 536

¹³⁹ Decision of 23 October, 1952, 2 BVerfG at 13, quoted in Franz 1982: 57

¹⁴⁰ Niesen 2002: Paragraph 8

5.3.2 The banning of the Communist Party of Germany (KPD)

The Communist Party of Germany (*Kommunistische Partei Deutschlands*) was founded in 1918 by socialists opposed to the First World War.¹⁴¹ The party had a Marxist-Leninist ideology and was against participation in Germany's emerging parliamentary democracy. Instead it advocated a Bolshevik revolution for Germany.¹⁴² During the Weimar Republic, the KPD was the largest communist party outside of the Soviet Union and usually obtained between 10 and 15 per cent of the national vote.¹⁴³ The goals of the KPD were:

*The complete annulment of all debts, the Bolshevik liquidation of the Versailles Treaty and the Young Plan¹⁴⁴ through the overthrow of the bourgeois state, the setting up of a socialist, Soviet Germany and an alliance with the Soviet Union and the revolutionary workers of all countries.*¹⁴⁵

In March 1920, the KPD had a membership of about fifty thousand, a figure that had risen to 125.000 in 1929.¹⁴⁶ In the elections in November 1932 the party membership had reached to 350.000 and the party obtained 16.9 per cent of the vote in the national elections.¹⁴⁷ During the Nazi era the party was prohibited but after World War II the KPD reorganized in the Western part of Germany.¹⁴⁸ However, in the West German national elections in 1951 it only obtained 2.2 per cent of the vote.¹⁴⁹

Unlike the short proceedings to outlaw the SRP, the process to ban the Communist Party of Germany lasted for almost five years.¹⁵⁰ Niesen states that from this it can be interpreted that the Court did not find it obvious that the KPD was unconstitutional.¹⁵¹ Paul Franz, on the contrary, claims that the long process was due to the Communist party's lengthy defense.¹⁵² In its defense, the KPD had argued that "Article 21(2) was itself an 'unconstitutional constitutional norm,' because it (...) violated rights of free speech and free association

¹⁴¹ Epstein, Catherine (2003) *Last Revolutionaries: German Communists and Their Century*. London: Harvard University Press, p. 19

¹⁴² Ibid

¹⁴³ Worley, Matthew (2004) *In Search of Revolution: International Communist Parties in the Third Period*. New York: I.B.Tauris & Co Ltd, p. 40

¹⁴⁴ 'The Young Plan' was the program for German reparations debt after the First World War.

¹⁴⁵ Worley 2004: 45

¹⁴⁶ Ibid: 23

¹⁴⁷ Major, Patrick (1998) *The death of the KPD: Communism and Anti-Communism in West Germany, 1945-1956*. Oxford: Oxford University Press, p. 21

¹⁴⁸ In the eastern part of Germany, the KPD merged with the Social Democratic Party and formed the Socialist Unity Party which ruled East Germany until 1989-1990. See Busky, Donald F. (2002) *Communism in History and Theory: The European Experience*. Westport: Praeger Publishers, p. 21

¹⁴⁹ Franz 1982: 59

¹⁵⁰ Niesen 2002: Paragraph 11

¹⁵¹ Ibid

¹⁵² Franz 1982: 59

recognized in other parts of the Basic Law.”¹⁵³ The Court focused on whether there was a paradox in the German Constitution and concluded that the KPD was incompatible with the Basic Law since it would, once in power, deny other parties the equal right to competition.¹⁵⁴ The Court argued:

*The Basic Law represents a conscious effort to achieve a synthesis between the principle of tolerance with respect to all political ideas and certain inalienable values of the political system. Article 21(2) does not contradict any basic principle of the Constitution; it expresses the conviction...based on concrete historical experience, that the state could no longer afford to maintain an attitude of neutrality toward political parties. The Basic Law has in this sense created a “militant democracy,” a constitutional value decision that is binding on the Federal Constitutional Court.*¹⁵⁵

Hence, as in the SRP case, the Court ruled that the protection of the democratic order preceded the freedom of speech and association.¹⁵⁶ The Court continued: “If limitations on the political freedom of opponents of the political order are necessary for this defense, then so be it.”¹⁵⁷ The former judge of the Constitutional Court, Ernst-Wolfgang Böckenförde, stated in his work “State, Society, and Liberty: Studies in Political Theory and Constitutional Law” from 1991 that:

*The ban was essentially based on the incompatibility of the KPD’s aims and activities with the democratic principles of freedom and equality, because [the party] allegedly conceives of its political opponent as the enemy to be stripped of his rights as soon as is opportune.*¹⁵⁸

The Court presumed that if the KPD came to power it would refuse fair pluralism of political parties which made the party incompatible with the German Basic Law. Furthermore, the Court ruled that no actual danger to the democratic system is necessary for outlawing a political party.¹⁵⁹ Hence, for banning a German party it is sufficient that a party *seeks* to abolish the free democratic system and thus no evidence of imminent harm is required. Moreover, the Court stated that for a party to be outlawed it does not have to be “probable, by

¹⁵³ Decision of 17 August, 1956, 5 BVerfG at 137, quoted in Franz 1982: 59

¹⁵⁴ Niesen 2002: Paragraph 11

¹⁵⁵ Quoted in Brady, John S., Crawford, Beverly & Wiliarty, Sarah Elise (1999) *The Postwar Transformation of Germany- Democracy, Prosperity, and Nationhood*. Michigan: University of Michigan Press, p. 73

¹⁵⁶ Franz 1982: 62

¹⁵⁷ Quoted in Brady, Crawford & Wiliarty 1999: 73

¹⁵⁸ Quoted in Niesen 2002: Paragraph 11

¹⁵⁹ Fox & Nolte 2000: 416

human standards, that there be the chance of its realizing its unconstitutional goals in the foreseeable future.”¹⁶⁰ However, the Court stated that: “[b]anning the KPD is not legally incompatible with reauthorization of a Communist party were elections to be held throughout Germany”.¹⁶¹ Unlike the SRP which was banned because of its political platform, the Court made it clear that the KPD was outlawed because of its intentions to abolish the democratic system. Hence, it was not its communist ideas per se that resulted in a party ban.

5.3.3 The attempts to ban the National Democratic Party of Germany (NPD)

The National Democratic Party of Germany (*Nationaldemokratische Partei Deutschlands*) is the oldest surviving and the largest German extreme right party. It was founded in 1964 and only two years later the party had over 25.000 members.¹⁶² Two-thirds of the party executive had been members of Hitler’s Nazi Party.¹⁶³ At the state election in Baden-Württemberg in 1968 the NPD achieved 9.8 per cent which gave the party sixty-one seats in seven (out of ten) German state parliaments.¹⁶⁴ The NPD’s electoral success led to that the government began to consider banning the party because of its extremist character.¹⁶⁵ However, in the parliamentary elections of 1969, the NPD obtained 4.3 per cent of the votes and was thus left without seats in the federal parliament (5 per cent limit). After this failure the government abandoned its preparations for a possible ban of the party.¹⁶⁶

The NDP believes that ethnic groups can only survive if they live in their respective countries and thus the party advocates a separation of cultures. In the party manifesto from 2010, the NDP stressed that it was against globalization and that the fundamental principles for the party were national sovereignty, national identity and national solidarity.¹⁶⁷ The party rejects the German Constitution and according to Germany’s domestic intelligence agency it seeks to abolish democracy and create a Fourth Reich.¹⁶⁸ Over the years, members and leaders of the NPD have several times used racist comments, denied the Holocaust and regretted the Nazi defeat in the Second World War. However, the party manifesto does not specifically state that it is against the democratic system.

¹⁶⁰ Quoted in Niesen 2002: Paragraph 11

¹⁶¹ Issacharoff, Samuel (2007) “Fragile Democracies,” *Harvard Law Review*, Vol. 120. No. 6, p. 1435

¹⁶² Dézé 2004: 27

¹⁶³ Ibid

¹⁶⁴ Ibid

¹⁶⁵ Mudde, Cas (2000) *The ideology of the extreme right*. New York: Manchester University Press, p. 27

¹⁶⁶ Ibid

¹⁶⁷ Das Parteiprogramm der Nationaldemokratischen Partei Deutschlands (NPD) 2010, 5. Available at: http://www.npd.de/inhalte/daten/dateiablage/br_parteiprogramm_a4.pdf (Accessed 3 April, 2013)

¹⁶⁸ Bowen, Andrew, “World from Berlin: ‘You Can’t Outlaw Stupidity’ of the Far-Right,” *Spiegel Online International*, 19 March, 2013, <http://www.spiegel.de/international/germany/press-review-german-cabinet-backs-off-attempt-to-ban-far-right-npd-a-889671.html> (Accessed 2 April 2013)

The state made an attempt to outlaw the party in 2001, an effort that failed since the Federal Constitutional Court considered that the Office of the Protection of the Constitution had infiltrated the NPD with too many investigators.¹⁶⁹ This made the Court conclude that it was in fact possible that the party's policies had been shaped by the state. The banning attempt put the party in the spotlight and in 2004 it won seats in Saxony's parliament. This was the first time the NPD had entered any state parliament in 40 years.¹⁷⁰

At present, the NPD has around 6000 members.¹⁷¹ The party is marginalized at the national level and it has never succeeded in winning any seats in the federal parliament (it obtained 1.5 per cent of the vote in the federal elections in 2009).¹⁷² However, it is represented in two of Germany's sixteen state parliaments. The NPD has currently five respectively eight seats in the East German states Mecklenburg-Western Pomerania and the Saxony.¹⁷³ Parliamentary representation is very important for the NPD since it is then provided with access to public funds and it gives the party a bigger platform for spreading its political view.¹⁷⁴

In November 2011, an issue of a ban on the NPD became topical again after the unveiling of a neo-Nazi terrorist group, the Nationalist Socialist Underground (NSU) which had killed nine foreigners between 2001 and 2007.¹⁷⁵ The NPD has however denied any linkage with the terrorist group and has stated that it rejects violence.¹⁷⁶ In December 2012, ten years after the first attempt to ban the NPD failed, the interior ministers from all sixteen German states and the federal interior minister voted to initiate a legal process to outlaw the party for being a

¹⁶⁹ "Banning the NPD: German Governors Agree on Legal Challenge," *Spiegel Online International*, 6 December 2012, <http://www.spiegel.de/international/germany/german-governors-agree-on-legal-bid-to-ban-far-right-npd-party-a-871440.html> (Accessed 25 March, 2013)

¹⁷⁰ "German far-right deputies expelled over clothing," *BBC News Europe*, 13 June 2012, <http://www.bbc.co.uk/news/world-europe-18429463> (Accessed 25 March, 2013)

¹⁷¹ "German Senate backs to neo-Nazi ban," *BBC News*, 10 November 2000, <http://news.bbc.co.uk/2/hi/europe/1016364.stm> (Accessed 25 March, 2013)

¹⁷² The Federal Returning Officer, "Elections to the German Bundestag 2009: Federal result". Available at: http://www.bundeswahlleiter.de/en/bundestagswahlen/BTW_BUND_09/ergebnisse/bundesergebnisse/index.html (Accessed 25 March, 2013)

¹⁷³ Ibid

¹⁷⁴ "German far-right deputies expelled over clothing," *BBC News Europe*, 13 June 2012, <http://www.bbc.co.uk/news/world-europe-18429463> (accessed 25 March, 2013)

¹⁷⁵ "Tyska staten vill förbjuda högerextrema NPD", *Sveriges Radio*, 5 December, 2012. Available at: <http://sverigesradio.se/sida/artikel.aspx?programid=83&artikel=5370720> (Accessed 4 April, 2013)

¹⁷⁶ Gude, Hubert & Stark, Holger, "Praise for Hitler: Secret Files Build Case for Banning Far-Right Party," *Spiegel Online International*, September 3, 2012, <http://www.spiegel.de/international/germany/the-case-for-banning-the-far-right-npd-party-a-853564.html> (Accessed 4 April, 2013)

threat to the free democratic basic order (Article 21, German Basic Law).¹⁷⁷ Ruling from the Court is very unlikely before the federal elections in September 2013.

Conclusion

Following Hitler's dictatorship and the end of World War II, Germany chose to incorporate a constitutional self-defense mechanism against anti-democratic parties. The purpose of the adoption of party regulation was to ensure that an extreme party never again would be able to abolish democracy. Furthermore, the threat from the East might have played a role in Germany's adoption of party regulation.

Article 21 of the German Basic Law made it possible for the Court to outlaw parties for holding anti-democratic ideologies or for carrying out anti-democratic activities. Even though Germany's party regulation is over 60 years old, the German state has avoided exercising Article 21 against anti-democratic parties. Party bans are especially sensitive in Germany where all parties, but the Nazi Party, were declared illegal during the reign of Hitler. Only two political parties have been banned in Germany; the successor to Hitler's Nazi party (the SRP) and the German Communist Party. The government's failed attempt to ban the NPD in 2001 shows that outlawing a party in Germany is not, without clear evidence, easily achieved.

¹⁷⁷ Fürstenau, Marcel, "Germany faces tough struggle over NPD ban," Deutsche Welle, 5 December, 2012, <http://www.dw.de/germany-faces-tough-struggle-over-npd-ban/a-16429160> (Accessed 4 April, 2013)

6 Regulation of anti-democratic parties in Spain

The second country in this comparative case study to explore is Spain. Spain, unlike Germany, only regulates parties' anti-democratic actions. Hence, parties are allowed to have an anti-democratic ideology as long as that belief is not translated into anti-democratic behavior.

Bourne stresses that the line between what constitutes anti-democratic actions and anti-democratic ideology can be rather fuzzy.¹⁷⁸ This is due to that symbolic action may send out a clear ideological message. For instance, party members that attend funerals of a political figure may by this show their support for a specific political project. The same goes for refusing to attend commemorative 'minute of silence' and refusal to condemn acts of political violence.¹⁷⁹ Spain's separation of anti-democratic activity and ideology, leads to that the court, in a banning case, must ensure that it does not outlaw a party because of its identity.

Motions on outlawing a party can only be brought before the Supreme Court by the government or the Public Prosecutor's Office (*Ministerio fiscal*).¹⁸⁰ However, if one of the two houses of parliament, the Congress of Deputies or the Senate, wants a banning case to open the government is obliged to follow. If the Supreme Court (or the Constitutional Court if the ban was appealed) declares the party unconstitutional, the party is forced to dissolve and its assets are given to the state to be used for social and humanitarian purposes.¹⁸¹ As in Germany, the members of the party are not punished if they have not been engaged in criminal actions.¹⁸²

6.1 Party regulation in the Spanish Constitution

Article 6 of the Spanish Constitution from 1978 regulates anti-democratic parties. It states that parties can be freely created but they must 'respect the Constitution and the law' and must be 'democratic in their internal structure and functioning'.

¹⁷⁸ Bourne 2011: 21

¹⁷⁹ Ibid

¹⁸⁰ Bourne 2010: 15

¹⁸¹ The Spanish Law on Political Parties, Article 12. LEY ORGÁNICA 6/2002, de 27 de junio, de Partidos Políticos (BOE núm. 154, de 28 de junio) Available at:

http://www.infoelectoral.mir.es/Partidos/partidos_no_detail_leyes_2.html (Accessed 3 April, 2013)

¹⁸² Sajó, Andrés & Bentsch, Lorri Rutt (2004) *Militant democracy*. AJ Utrecht: Eleven International Publishing, p. 139

Article 6 [Political Parties] in the Spanish Constitution

Political parties are the expression of political pluralism, they contribute to the formation and expression of the will of the people and are an essential instrument for political participation. Their creation and the exercise of their activities are free in so far as they respect the Constitution and the law. Their internal structure and their functioning must be democratic.¹⁸³

The Constitution does not explicitly permit the banning of parties.¹⁸⁴ Instead, the 1978 Spanish Law on Political Parties became the legal instrument by which the Court could outlaw anti-democratic parties.

6.2 The Spanish Law on Political Parties

Spain established its first law on political parties (Party Law) in 1978.¹⁸⁵ It permitted the banning of parties that were ‘illicit associations’ or that did not have a democratic internal structure and functioning.¹⁸⁶ ‘Illicit associations’ is defined in Article 515 of the Spanish Penal Code, and includes “terrorists, other violent groups and those promoting or inciting hate, violence or discrimination against others.”¹⁸⁷

The Party Law from 1978 was replaced by the Organic Law on Political Parties (*La Ley Orgánica de los Partidos Políticos*, LOPP) in 2002 with the purpose of “the strengthening and improvement of the legal status of political parties, with a more defined, guarantee-based and complete system.”¹⁸⁸ Furthermore, the new party law recognized the need to defend the democracy against all hateful means and methods, and preserve its constituent clauses and the substance of the rule of law.¹⁸⁹

The new party law, (from now on referred to as the LOPP) introduced a justification for outlawing a political party if it by conduct threatens to undermine the liberal democratic system.¹⁹⁰ Article 9(1) in Chapter II of the LOPP requires parties to respect democratic

¹⁸³ The Spanish Constitution of 31 October, 1978, Article 6. Available at: http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/const_espa_texto_ingles_0.p df (Accessed 3 April, 2013)

¹⁸⁴ Bourne 2011: 12

¹⁸⁵ Romée Piccio, Daniela (2012) “Party Regulation in Europe: Country Reports”, *Working Paper Series on the Legal Regulation of Political Parties*, No. 18, p. 76

¹⁸⁶ Bourne 2011: 13

¹⁸⁷ Ibid

¹⁸⁸ The Spanish Law on Political Parties, Statement of Motives

¹⁸⁹ Ibid

¹⁹⁰ Bourne 2011: 13

principles, human rights and that “they shall perform the functions attributed to them under the Constitution democratically and in full respect for pluralism.”¹⁹¹

Article 9(2) a-c of the LOPP defines when a party violates the democratic principles and will be outlawed.

Article 9(2) [Activity] of the Spanish Law on Political Parties

A political party shall be declared illegal when, as a result of its activities, it infringes democratic principles, in particular when it seeks thereby to impair or to destroy the system of liberties, to hinder or to put an end to the democratic system, by repeatedly and seriously engaging in any of the conduct described below:

- a) systematically violating fundamental freedoms and rights by promoting, justifying or excusing attacks on the life or integrity of the person, or the exclusion or persecution of an individual by reason of ideology, religion, beliefs, nationality, race, sex or sexual orientation;
- b) fomenting, encouraging or legitimizing violence to be used as a means to achieve political ends or as a means to undermine the conditions that make the exercise of democracy, pluralism and political freedoms possible;
- c) providing assistance and political support to the actions of terrorist organizations with the aim of overthrowing the constitutional order or seriously disturbing the public peace, subjecting the public authorities, certain persons or certain groups in society or the population in general to a climate of terror, or contributing to increasing the effects of terrorist violence and the resulting fear and intimidation.¹⁹²

Article 9(3) a-c describes in detail what type of conduct that goes against the democratic principles. For banning a political party there shall have been “a repetition or an accumulation, by the political party, of one or more of the following instances of behavior:”¹⁹³

¹⁹¹ The Spanish Law on Political Parties, Chapter II, Article 9.

¹⁹² Ibid

¹⁹³ Ibid

Article 9(3) [Activity] of the Spanish Law on Political Parties

- a) giving express or tacit political support to terrorism by legitimizing the use of terrorist actions for political ends outside peaceful and democratic channels, or by excusing them or minimizing their significance and the ensuing violation of human rights;
- b) accompanying violent action with programs and activities promoting a culture of civil conflict and confrontation associated with the actions of terrorists or those who resort to intimidation; pressurizing, neutralizing or socially isolating anyone opposing that violent action, by forcing them to live with a daily threat of coercion, fear, exclusion or deprivation of freedom and depriving them in particular of their freedom to express their opinions and to participate freely and democratically in public affairs;
- c) including regularly in its directing bodies or on its lists of candidates for election persons who have been convicted of terrorist offences and who have not publicly renounced terrorist methods and aims, or maintaining among its membership a significant number of militants who are also members of organizations or bodies linked to a terrorist or violent group, except where it has taken disciplinary measures against them with a view to their exclusion;
- d) using as instruments of its activity, jointly with its own or in place thereof, symbols, slogans or items which represent or symbolize terrorism or violence and conduct associated with terrorism;
- e) conceding to terrorists or to any person collaborating with terrorists the rights and prerogatives which the legal system – and in particular electoral law – grants to political parties;
- f) collaborating habitually with entities or groups which systematically act jointly with a terrorist or violent organization or which defend or support terrorism or terrorists;
- g) supporting, through government institutions, the entities referred to in the preceding paragraph through administrative, financial or any other measures;
- h) promoting or covering activities the object of which is to reward, pay tribute to or honor terrorist or violent actions or those who commit them or collaborate or participate in them;
- i) covering disruptive, intimidatory or socially coercive actions that are linked to terrorism or violence.¹⁹⁴

¹⁹⁴ The Spanish Law on Political Parties, Chapter II, Article 9.

As opposite to the German party regulation, the Spanish party regulation does not prohibit the defense of ideas or doctrines. Instead, the law advocates freedom and pluralism but always with respect for democracy and human rights.¹⁹⁵ Hence, a Spanish political party can be outlawed if it carries out anti-democratic activities, not because it has an anti-democratic ideology.

6.3 The rationale of the Spanish party regulation

In 1936, General Francisco Franco launched a military coup to overthrow the democratically elected government in Spain. The coup culminated in a civil war between those who were loyal to the Spanish Republic (the Republicans) and those who supported Franco (the Nationalists). In 1939, the Republicans were defeated and Franco established a fascist dictatorship which he ruled for 36 years.¹⁹⁶ During the Franco regime, all other parties than Franco's extreme right party *Falange* were prohibited. After the death of Franco in 1975, the Spanish state legalized all political parties and took a tolerant position on the legality of anti-democratic parties.¹⁹⁷ However, the framers of the Constitution did include that parties' activities are free in so far as they respect the Constitution and the law and that their internal structure and their functioning must be democratic,¹⁹⁸ which shows the importance for Spain to remain a democracy. The Constitution together with the 1978 Party Law that could proscribe 'illicit associations', further confirm Spain's reluctance to relive its past.

The new party law from 2002 (LOPP) however, was not grounded in Spain's fear of going back to a dictatorship, but against the Basque terrorist group ETA (*Euskadi Ta Askatasuna*, 'Basque Homeland and Freedom' in Basque) and its political wings.¹⁹⁹ These parties have, over the years, helped ETA to finance itself through the public funding that they received. Moreover, the parties made it possible for ETA to negotiate Basque secession with politicians. To understand the rationale of the Spanish party regulation, it is necessary with a brief background history of the Basque terrorist group ETA.

¹⁹⁵ Case of *Herri Batasuna and Batasuna v. Spain* (Applications nos. 25803/04 and 25817/04) JUDGEMENT STRASBOURG 30 June, 2009. Available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-93475#{"itemid":\["001-93475"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-93475#{) (Accessed 3 April, 2013)

¹⁹⁶ Kohen, Elizabeth Robin & Elias, Marie Louise (2004) *Cultures of the World-Spain*. New York: Marshall Cavendish Benchmark, p. 27

¹⁹⁷ Bourne, Angela K. (2012) "Terrorism and Party Politics: The illegalization of *Sinn Féin* and *Batasuna*," Roskilde University, Denmark. Paper presented at Elections, Public Opinion and Parties conference, University of Oxford 7 to 9 September 2012, p. 2

¹⁹⁸ The Spanish Constitution of 31 October, 1978, Article 6. Available at: http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/const_espa_texto_ingles_0.pdf (Accessed 3 April, 2013)

¹⁹⁹ Romée Piccio 2012: 76

6.3.1 ETA-Basque Homeland and Freedom

ETA is the terrorist group in Europe that has been active for the longest period of time.²⁰⁰ It was formed in 1959 by a group of radical students as a reaction to the dictatorship of General Francisco Franco that suppressed the Basque population.²⁰¹ Since Franco wanted to get rid of all heterogeneity in Spain, the Basque language was prohibited and many Basques were also imprisoned or killed by the regime. ETA has, in its pursuit of an independent Basque country, carried out thousands of attacks that have killed over 800 people and injured more than 7000.²⁰²

The terrorist group's strategy is 'action-repression-action' which implies that by using violence ETA will provoke the Spanish authorities to reinforce the oppression of the Basque Country. The idea was that this would lead to greater support for ETA in the Basque areas and gather the Basques to rise up against the Spanish government.²⁰³

In 1973, ETA managed to carry out its most politically significant attack when the terrorist group assassinated Prime Minister Luis Carrero Blanco, who was considered to be Franco's successor.²⁰⁴ The following year, ETA carried out its first major attack in which 12 civilians were killed and 80 injured in an explosion in Madrid.²⁰⁵

ETA's attacks did not cease with the death of Franco in 1975 or with the adoption of the Spanish Constitution in 1978 which gave the Basque Country and the other regions more autonomy. ETA opposed both the democratic Spain and the Basque self-government since it considered that nothing had changed regarding the Spanish and French 'occupation' of the Basque Country.²⁰⁶ The terrorist group's orientation to violence is thus based on the belief that the Spanish state is anti-Basque and repressive. ETA's response to the major political changes led to an increase in attacks and only in 1980, when the regional autonomy was introduced, the terrorist group killed over 100 people.²⁰⁷

²⁰⁰ Barros Pestaña, Carlos & Gil-Alana, Luis A (2006) "ETA: A persistent phenomenon," *Defence and Peace Economics*, Vol. 17. Issue 2, p. 95

²⁰¹ "Así nació la banda terrorista" *El mundo*, 2009. Available at: <http://www.elmundo.es/eta/historia/index.html> (Accessed 5 April, 2013)

²⁰² "43 años de terrorismo, 829 víctimas mortales," *El País*, <http://politica.elpais.com/especiales/2011/victimas-eta/> (Accessed 5 April, 2013)

²⁰³ Ibid

²⁰⁴ Anderson, Wayne (2003) *The ETA: Spain's Basque Terrorists*. New York: Rosen Publishing Group, p. 24

²⁰⁵ "Los años 70," *El mundo*, 2009. Available at: <http://www.elmundo.es/eta/historia/anios70.html> (Accessed 2 April, 2013)

²⁰⁶ Utrikespolitiska institutet, "Fördjupning Baskien" *Myndigheten för samhällsskydd och beredskap (MSB)*, 23 August, 2012. Available at: <http://sakerhetspolitik.se/konflikter/baskien/fordjupning/> (Accessed 1 April, 2013)

²⁰⁷ Ibid

During the 1990s, ETA began a massive targeting of civilians and politicians who did not share a nationalist ideology.²⁰⁸ The purpose of this systematic violence campaign was to raise fear among the Basque citizens and thus convince them to support ETA. During the first decade of the 2000s, ETA has been severely weakened because of, among other things, a series of arrests of ETA leaders in collaboration with Spanish and French police. Between 2007 and 2010, more than 400 ETA activists were arrested and it is estimated that approximately 700 members are imprisoned in Spain and in France.²⁰⁹

Over the years, ETA has announced a dozen ceasefires. The latest ceasefire was announced on October the 20th 2011 when the terrorist group declared a permanent end to the violence.²¹⁰

Spain's party regulation clearly reflects its tough line against political parties that have links to terrorism and ETA. This is due to that ETA, over the years, has been able to gain access to the negotiation table because of its many political wings.

6.3.2 ETA's political wings

When we speak of anti-democratic or extreme parties we normally refer to the extreme right which is used to describe Nazi and fascist movements and other groups that hold nationalist, xenophobic and racist views. Spain, however, has had problems with the extreme left, which contains parties that are hostile to liberal democracy and condemns any compromise with capitalism. A party that belonged to the extreme left was *Herri Batasuna* ('People's Union' in Basque, HB) which started out as a political coalition of five Basque parties. It was formed in 1978 and defined itself as a patriotic and socialistic coalition.²¹¹ HB advocated, like ETA, full self-determination for the Basque Country and rejected the Spanish Constitution. HB was considered ETA's political wing since most of the members of HB also were ETA activists. Furthermore, HB never condemned ETA's violence.

In the 1979 Basque regional elections, HB obtained 15.61 per cent of the vote.²¹² In all regional elections in the Basque Country until 1998, it received between 15 to 20 per cent of

²⁰⁸ Alonso, Rogelio & Reinales, Fernando (2005) "Terrorism, Human Rights and Law Enforcement in Spain," *Terrorism and Political Violence*, Vol. 17, p. 270

²⁰⁹ Urkullu, Íñigo & López, Patxi et al. (2012) *La paz llega por fin a Euskadi*. Madrid: Política Exterior, p. 31

²¹⁰ "Las treguas de ETA," *El mundo*, 2009. Available at:

http://www.elmundo.es/eta/negociaciones/treguas_eta.html (Accessed 1 April, 2013)

²¹¹ Clark, Robert P. (1990) *Negotiating With Eta: Obstacles to Peace in the Basque Country 1975-1988*. Reno and Las Vegas: University of Nevada Press, p. 21

²¹² Ministerio Interior, Consulta de Resultados Electorales, Municipales April 1979. Available at:

<http://www.infoelectoral.mir.es/min/busquedaAvanzadaAction.html?vuelta=1&codTipoEleccion=4&codPeriodo=197904&codEstado=99&codComunidad=14&codProvincia=0&codMunicipio=0&codDistrito=0&codSeccion=0&codMesa=0> (Accessed 8 April, 2013)

the vote.²¹³ At its peak, HB managed to win five parliamentary seats (231,722 votes) in the Spanish national elections in 1982 and fourteen seats (224,001 votes) in the Basque parliament in 1998.²¹⁴

In the 1980s, two parties came to abandon HB due to their resistance to participate in the Basque Parliament which they considered was an ineffective institution.²¹⁵ The split led to that HB came to register as a political party instead of as a coalition.²¹⁶

In the campaign for the national elections in 1996, HB published a video that glorified ETA activists. The 23 members of HB's governing body (*La Mesa Nacional*) were sentenced to seven years in prison by the National Court for collaboration with ETA.²¹⁷ The members were charged under Article 174 of the 1973 Penal Code which states that people who collaborate with an armed group or a terrorist group shall be punished with imprisonment from five to ten years.²¹⁸ However, the sentence was annulled twenty months later by the Constitutional Court and the accused were released due to lack of evidence that the members truly supported ETA. The Court concluded that uploading a video that shows ETA activists is a minor conduct and is not comparable to the *collaboration* with a terrorist group.²¹⁹ In 1998, HB reappeared in a coalition called *Euskal Herritarrok* ('The Basque Citizens' in Basque) and in 2001 HB changed its name to *Batasuna* ('Unit' in Basque). Over the years, HB has reappeared many times under a different guise. This has been possible due to the change of party names and by forming coalitions with other political parties.

The purpose of the LOPP was to contribute to end ETA's violence and to prevent the terrorist group from gaining more power.²²⁰ Banning political parties that are related to ETA is thus seen as a positive measure to end terrorism.

²¹³ Ministerio Interior, Consulta de Resultados Electorales, Municipales April 1979. Available at: <http://www.infoelectoral.mir.es/min/busquedaAvanzadaAction.html?vuelta=1&codTipoEleccion=4&codPeriodo=197904&codEstado=99&codComunidad=14&codProvincia=0&codMunicipio=0&codDistrito=0&codSeccion=0&codMesa=0> (Accessed 8 April, 2013)

²¹⁴ Bourne 2010: 2

²¹⁵ Angulo, Javier "Divergencias de Herri Batasuna por la participación en las elecciones al Parlamento vasco," *El País*, 16 January, 1980. Available at: http://elpais.com/diario/1980/01/16/espana/316825226_850215.html (Accessed 19 April, 2013)

²¹⁶ Ibid

²¹⁷ O'Broin, Eoin (2004) *Matxinada: historia del movimiento juvenil radical vasco*. Navarre: Txalaparta, p. 112

²¹⁸ Datadiar televisión - Los delitos que se imputan: castigo en el Código Penal. Available at:

<http://www.datadiar.tv/juicio11m/castigo09.htm> (Accessed 9 April, 2013)

²¹⁹ Yoldi, José "El Constitucional excarcela a la Mesa de HB," *El País*, 21 July, 1999. Available at:

http://elpais.com/diario/1999/07/21/espana/932508001_850215.html (Accessed 19 April, 2013)

²²⁰ Bourne 2012: 12

6.4 The Spanish party regulation's effect on the anti-democratic parties

Spain outlawed its first political parties in 2003 when *Herri Batasuna*, *Batasuna* and *Euskal Herriarok* were declared illegal due to their connections with ETA. These court rulings were very controversial because the parties had existed for over twenty years and had received strong support in the Basque Country. An interesting observation is that only parties from the extreme left has been banned in Spain and no case has ever been raised against the extreme right. For instance, Franco's party *Falange* still exists. This further shows that Spain's party regulation is directed against the Basque extreme left and its links to ETA.

This section examines the banning of *Herri Batasuna* and its successors. Furthermore, I show how party regulation may force political parties to change identity in order to be declared legal, which has been the case with the extreme left parties *Iniziatiba Internazionalista-Herrien Elkartasun* (II-SP), *Sortu* and *Bildu*.

6.4.1 The banning of *Herri Batasuna*, *Batasuna* and *Euskal Herriarok*

The introduction of the LOPP in 2002 has made it possible for Spain to outlaw parties if they by conduct threaten to undermine the liberal democratic system.²²¹ Only some weeks after the LOPP had come into force, the Spanish government together with the Public Prosecutor's Office submitted a motion to the Supreme Court regarding the banning of *Batasuna* (which was the name that *Herri Batasuna* and *Euskal Herriarok* had at that time).²²² The motion was prompted by *Batasuna*'s refusal to condemn the ETA terrorist attack in Alicante in 2002, in which a car bomb had killed two people. The case against *Batasuna* was based on 23 charges, among them that the party had given public messages in support of ETA, that it had threatened members from other parties, that it had included ETA activists in the party and that it had donated funds to a Basque youth organization (supported by ETA) that engaged in street violence.²²³

The introduction of the LOPP and the banning case against *Batasuna* were heavily criticized by the Basque government and the Basque nationalist parties that called them a serious violation of political rights and liberties.²²⁴ One month later after the proceedings against *Batasuna* had begun; the Basque regional government filed a motion to the Constitutional Court regarding the validity of the LOPP.²²⁵ The Basque government claimed that the LOPP was unconstitutional since it went against the right of association and citizen' right to

²²¹ Bourne 2011: 13

²²² Sajó & Bentch 2004: 139

²²³ Ibid

²²⁴ Alonso & Reinares 2005: 269

²²⁵ Ibid

participate in public affairs (Article 22 and 23 of the Spanish Constitution).²²⁶ The Basque government accused the state for “establishing a model of militant democracy imposing restrictions on political parties, in particular by imposing on them an obligation, not provided for in the Constitution, to accept a given political regime or system.”²²⁷

The Constitutional Court responded that the LOPP: “at no time refers to programs or ideology, but to collaborative activities or support of terrorism or violence. (...) There is therefore no infringement of ideological freedom, participation, expression and information.”²²⁸ The Court further added that Spain was not a militant democracy since it allowed all projects and ideologies, regardless of how anti-democratic they might be.

*(...) the Basque Government’s submission that there is no place, in our constitutional order, for a model of ‘militant democracy’ within the meaning given to that expression by the Government, namely, a model in which not only compliance with, but also positive acceptance of, the established order and first and foremost the Constitution is required, must be endorsed ... The impugned Law allows for no such model of democracy.*²²⁹

The Court once again distinguished between anti-democratic actions and anti-democratic ideas when it stated that:

*(...), the explanatory memorandum lays down the principle of a distinction between the ideas and aims proclaimed by political parties, on the one hand, and their activities, on the other, and states that ‘the only aims explicitly vetoed are those which fall within the criminal law’, so that ‘any project or objective is deemed to be constitutional provided that it is not pursued by means of activities which breach democratic principles or the fundamental rights of citizens.’*²³⁰

²²⁶ Sentencia del Tribunal Constitucional Español, STC 48/2003, En el recurso de inconstitucionalidad núm. 5550-2002, Promovido por el gobierno vasco. Available at:

<http://www.juridicas.unam.mx/publica/librev/rev/juselec/cont/20/dcl/dcl12.pdf> (Accessed 8 April, 2013)

²²⁷ Case of Herri Batasuna and Batasuna v. Spain (Applications nos. 25803/04 and 25817/04) JUDGEMENT STRASBOURG 30 June, 2009. Available at:

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-93475#{"itemid":\["001-93475"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-93475#{)

(Accessed 3 April, 2013)

²²⁸ Conde Álvarez, Enrique (2004) “La aplicación de la ley orgánica de partidos políticos. Crónica inacabada de la ilegalización de Herri Batasuna, Batasuna y Euskal Herritarok” *Foro, Nueva época*, No. 00/2004, Catedrático de Derecho Constitucional Universidad Rey Juan Carlos, p. 11

²²⁹ Case of Herri Batasuna and Batasuna v. Spain (Applications nos. 25803/04 and 25817/04)

²³⁰ Ibid

Furthermore, the Court emphasized that Article 6 of the Spanish Constitution stated that “a party may only be considered a party if it is the expression of political pluralism.”²³¹ It is therefore acceptable, concluded the Court, to dissolve a party whose activities undermined pluralism and the democratic order.²³²

The Court ruling shows that a party in Spain, unlike in Germany, is thus allowed to have anti-democratic ideas, objectives and views, as long as these ideas are not translated into anti-democratic behavior. Article 9(2) of the LOPP clearly distinguishes between constitutional political parties that defend their ideas, whatever they may be, democratically and unconstitutional parties who use violence and anti-democratic activities to achieve their aims. The Court stated:

*In our constitutional system, all ideas and political projects are accepted, even (...) those that ‘offend, shock or disturb’. (...) the fact that a group of people ask autonomy or even secession from a territory of the country and therefore require constitutional changes and fundamental law cannot automatically justify a prohibition of their meetings.*²³³

On the 27th of March 2003, only two weeks after that the Court had ruled that the LOPP was constitutional, *Herri Batasuna*, *Batasuna* and *Euskal Herritarok* were outlawed for breaching the LOPP. By examining the three parties’ strategies and activities, the Supreme Court concluded that they all had the same identity as ETA and that the parties were under the control of the terrorist group.²³⁴ The Court based this, on among other things, that several of the members, in particular their spokesperson, had been charged for terrorism-related offences, the party had minimized the significance of violence and had used slogans supporting ETA prisoners and threatening expressions such as “*gora ETA militarra*” (long live ETA military) during demonstrations.²³⁵ Moreover, municipalities governed by *Batasuna* had used sketches and posters encouraging for a struggle against the State, its representatives and against other political parties (especially the leaders of the two biggest parties the People’s Party and the Spanish Socialist Worker’s Party).²³⁶ The judge Baltazar Garzón stated:

²³¹ Case of Herri Batasuna and Batasuna v. Spain (Applications nos. 25803/04 and 25817/04)

²³² Ibid

²³³ Quoted in Conde 2004: 20

²³⁴ Ibid

²³⁵ Case of Herri Batasuna and Batasuna v. Spain (Applications nos. 25803/04 and 25817/04)

²³⁶ Ibid

*The basis for the banning of Batasuna rests in the belief, supported by an overwhelming amount of evidence, that the party constitutes a part within the network of organizations ultimately led by ETA which complement terrorist actions, being all of them a movement that shares objectives as well as overlapping membership.*²³⁷

The Supreme Court's decision to outlaw HB, EH and *Batasuna* was later confirmed by both the Spanish Constitutional Court in 2004²³⁸ and the European Court of Human Rights in 2009.²³⁹ Once the HB, EH and *Batasuna* were declared illegal, the parties automatically lost all entitlements such as state funding received by all legal political parties with parliament representation and their offices were forced to close.²⁴⁰ The 2003 ban on HB, EH and *Batasuna* was the first time democratic Spain had outlawed political parties.²⁴¹ The same year, the EU and the US listed the parties as terrorist organizations.²⁴²

6.4.2 The banning of *Batasuna's* successors

After a political party is banned, it is forbidden to set up new parties that have the objective to pursue the activities of the outlawed party.²⁴³ Between 2003 and 2012 the members of HB, EH and *Batasuna* tried to reorganize by using other party names. These attempts have, however, been blocked by the courts. In order to determine if a new political party is a successor to *Batasuna*, the Court has to take into account the similarities between the new party and *Batasuna*, such as the party structure, internal organization and functioning.²⁴⁴ Following the ban on HB, EH and *Batasuna* in 2003, ten other parties have been outlawed, all on the grounds for being successors to *Batasuna*.²⁴⁵ Unfortunately, I will not be able to examine all party bans due to lack of space. The bans that have been analyzed; the 2003 bans on HB, EH and *Batasuna* are the most important ones since they set the conditions for what it takes to outlaw a political party and how the Court shall interpret the LOPP. In a banning case, the Court now scrutinizes similarities between the new extreme party and *Batasuna*, instead of only examining whether the new party breaches the LOPP or not.

²³⁷ Quoted in Alonso & Reinares 2005: 269

²³⁸ Conde 2004: 22

²³⁹ Case of Herri Batasuna and Batasuna v. Spain (Applications nos. 25803/04 and 25817/04)

²⁴⁰ Ayres, Thomas (2004) "Batasuna Banned: The Dissolution of Political Parties Under the European Convention of Human Rights," *Boston College International and Comparative Law Review*, Vol. 27. Issue 1. Article 3, p. 102

²⁴¹ Ibid

²⁴² "Las caras de Batasuna," *El mundo*, 2009. Available at: <http://www.elmundo.es/eta/entorno/batasuna.html> (Accessed 4 April, 2013)

²⁴³ Case of Herri Batasuna and Batasuna v. Spain (Applications nos. 25803/04 and 25817/04)

²⁴⁴ Conde Álvarez, Enrique & Català I Bas, Alexandre H. (2005) "Los efectos directos y colaterales de la disolución de Herri Batasuna", *Foro: Revista de Ciencias Jurídicas y Sociales*, No 2, p. 135

²⁴⁵ Bourne 2011: 16

The parties that got outlawed most recently; *Iniziatiba Internazionalista-Herrien Elkartasun* ('Internationalist Initiative – Solidarity between Peoples' in Basque, II-SP), *Sortu* ('To rise up' or 'To be born' in Basque) and *Bildu* ('Gather' in Basque), appealed to the Constitutional Court which ruled in their favor. This was due to that the parties explicitly condemned and rejected ETA's violence which emphasized that they did not legitimize the use of terrorist actions for political ends (Article 9(3) of the LOPP).

6.4.3 The Basque extreme left condemns ETA

As we have seen, party regulation may force political parties to dissolve for breaching the law. However, party regulation can also make political parties change their party programs and behaviors in order to be declared legal. Alexandre Dézé states that extreme parties have two options: "either adapt themselves to the system, hence running the risk of losing a part of their original identities and of the support of their most orthodox members, or distinguish themselves from the system, thereby running the risk of being excluded from it, or of being marginalized."²⁴⁶

II-SP, *Sortu* and *Bildu*, like other parties belonging to the Basque extreme left, reject the Spanish Constitution and claim Basque secession from Spain. These three parties differ, however, from earlier parties from the Basque extreme left. This is due to that II-SP, *Sortu* and *Bildu* became the first Basque extreme left parties that condemned ETA's terrorism and explicitly rejected the use of violence for achieving political goals.

In May 2009, the Supreme Court disqualified the electoral lists of II-SP because it considered that the purpose of its creation was for ETA/*Batasuna* to participate in the European elections the same year.²⁴⁷ When the former leaders of *Batasuna* in February 2011 launched a new political project; the Basque nationalist party *Sortu*, the party was also declared illegal by the Supreme Court.²⁴⁸ The ban was based on the belief that *Sortu* had been designed specifically to attend the municipal elections in May 2011 and that the party was controlled by ETA.²⁴⁹

The coalition *Bildu* was later formed in April 2011 as a response to the Supreme Court ruling in March 2011 when *Sortu* was denied registration. *Bildu* consists of two nationalist Basque

²⁴⁶ Dézé 2004: 20

²⁴⁷ Sentencia del Tribunal Constitucional Español, STC 126/2009, recurso de amparo 4630/2009, promovido por la coalición electoral 'Iniciativa internacionalista – La solidaridad entre los pueblos', 21 May, 2009. Available at: http://www.boe.es/diario_boe/txt.php?id=BOE-A-2009-10259

²⁴⁸ Urkullu & López 2012: 33

²⁴⁹ Lázaro, Julio M. "El Supremo acuerda ilegalizar Sortu por dos votos de diferencia," *El País*, 24 March 2012, http://elpais.com/elpais/2011/03/23/actualidad/1300871849_850215.html (Accessed 18 April, 2013)

parties and independent candidates from the left.²⁵⁰ Even though *Bildu*, just as II-SP and *Sortu*, rejects violence, including that of ETA, the Supreme Court declared the coalition illegal. This was due to that the Court considered that *Bildu*'s rejection of violence was not sincere, but tactical and rhetorical.²⁵¹ The Court took the view that *Bildu* could be "instrumentalized by *Batasuna*" and based this on the theory that independent candidates on the list had been chosen by *Batasuna* and thus the whole electoral coalition was considered controlled by ETA.²⁵² The Court rejected the argument from *Bildu* that it condemned violence because "simulation and fraud has always guided ETA/*Batasuna*'s actions when it comes to voting polls (...)". From this perspective, the condemnation of violence, according to the judgment was a tactic instrument used by ETA to prevent the banning of its political wing.²⁵³

The Constitutional Court annulled the decision to outlaw II-SP, *Sortu* and *Bildu* due to lack of evidence that the parties were successors to *Batasuna*. The Constitutional Court pointed out that a party cannot be outlawed *only* because it refuses to explicitly condemn terrorism, but it has to show that it seeks violent means to fulfill its ideology. The Constitutional Court reminded the Supreme Court that the mere suspicion that the parties are instruments by ETA cannot become a legally acceptable argument to exclude anyone from the full exercise of their fundamental right to political participation.²⁵⁴

With being declared legal, II-SP could participate in the European Parliament elections in June 2009 where it obtained 1.12 per cent (178.121 votes) of the national vote.²⁵⁵ After the elections, the coalition dissolved itself. On exactly the day when the campaign for the municipal election started off (5 May, 2011), the Constitutional Court annulled the ban on *Bildu* so that it could participate in the elections.²⁵⁶ *Bildu* won 25 per cent (954 seats) of the vote in the Basque Country²⁵⁷, making it the second party with most votes in the region.²⁵⁸

²⁵⁰ Sentencia del Tribunal Constitucional Español, STC 2561/2011, promovido por la Coalición electoral "BILDU Eusko Alkartasuna (EA)/Alternatiba Eraikitzen", 5 May, 2011.

<http://www.tribunalconstitucional.es/es/resolucionesrecientes/Documents/2011-02561STC.pdf>

²⁵¹ Lázaro, Julio M. "El Supremo acuerda ilegalizar Sortu por dos votos de diferencia," *El País*, 24 March 2012, http://elpais.com/elpais/2011/03/23/actualidad/1300871849_850215.html (Accessed 18 April, 2013)

²⁵² Ibid

²⁵³ Ibid

²⁵⁴ Sentencia del Tribunal Constitucional Español, STC 2561/2011, promovido por la Coalición electoral "BILDU Eusko Alkartasuna (EA)/Alternatiba Eraikitzen"

²⁵⁵ Ministerio Interior, Consulta de Resultados Electorales, Parlamento Europeo 2009. Available at: <http://www.infoelectoral.mir.es/min/busquedaAvanzadaAction.html;jsessionid=35E1F8562F1A187FDC1E9D154D7E9C6D.app1> (Accessed 25 April, 2013)

²⁵⁶ Sentencia del Tribunal Constitucional Español, STC 2561/2011, promovido por la Coalición electoral "BILDU Eusko Alkartasuna (EA)/Alternatiba Eraikitzen"

²⁵⁷ Ministerio Interior, Consulta de Resultados Electorales, Municipales Mayo 2011. Available at:

Sortu was first legalized on 20 June, 2012 and the party has stated that its goal is to become “the political force that brings together all nationalists from the left in the Basque Country.”²⁵⁹ Even though *Bildu* and *Sortu* reject ETA’s violence, they have not encouraged the terrorist group to dissolve and to apologize to the victims of terrorism.

Conclusion

Spain’s constitutional regulation of anti-democratic parties stems from the country’s past as a dictatorship and the fear that the extreme right might take over power again. However, when the new party law LOPP was adopted in 2002 it was directed against the extreme left and its links to the terrorist group ETA. Spanish political parties are allowed to have anti-democratic ideologies, but not to engage in anti-democratic activities. There is a fine line between anti-democratic ideas and anti-democratic conduct. As mentioned, this is due to that symbolic action may send out a clear ideological message. As opposite to Germany, the Spanish Court has to separate between ideas and activities, which sometimes can be difficult.

The LOPP has led to thirteen party bans, all of them on Basque extreme left parties, because of their links to ETA. Three parties belonging to the Basque extreme left (II-SP, *Bildu* and *Sortu*) have now rejected violence to demonstrate that they are not *Batasuna* successors. Even though political parties in Spain do not explicitly have to reject violence in order to be declared legal, they are not allowed to express or give tactical support to terrorism (Article 9(3) of the LOPP). A rejection of violence could wash away the historical association that Basque extreme left parties have links to ETA, and further demonstrate that the party does not breach the law by minimizing terrorist actions and violation of human rights.

It is not the aim of this thesis to analyze whether II-SP, *Bildu* and *Sortu*’s rejection of violence is sincere or if it is a strategic move for not being outlawed. What is clear, however, is that due to the Spanish party regulation these parties have adapted themselves to the system and thus lost a part of their original identities. In today’s Spain this has become the only alternative for the Basque extreme left in order to not be excluded.

<http://www.infoelectoral.mir.es/min/busquedaAvanzadaAction.html?vuelta=1&codTipoEleccion=4&codPeriodo=201105&codEstado=99&codComunidad=14&codProvincia=0&codMunicipio=0&codDistrito=0&codSeccion=0&codMesa=0> (Accessed 25 April, 2013)

²⁵⁸ The Basque nationalist party Partido Nacionalista Vasco (PNV) won 29.9 per cent of the regional vote.

²⁵⁹ “Sortu busca ‘reunir’ a toda la izquierda soberanista vasca,” *El País*, 10 November, 2012. Available at: http://politica.elpais.com/politica/2012/11/10/actualidad/1352557563_681375.html (Accessed 29 April, 2013)

In order to achieve a better understanding of party regulation, a country that tolerates anti-democratic parties is used as a contrast example. In Sweden, all parties are allowed to exist, regardless of their activities or ideologies.

7 Sweden's tolerance of anti-democratic parties

In this chapter, Sweden's tolerance of anti-democratic parties is explored. Sweden has not adopted a specific party law, and thus the registration procedures and regulation of party names are controlled under Chapter II of the Elections Act (the law that governs the conduct of elections).²⁶⁰ In Swedish legislation, there is no mention of parties needing to comply with democratic principles in contrast to the German and Spanish legislation. Hence, Sweden does not have state regulation of anti-democratic parties, which implies that Swedish parties are allowed to exist regardless of their actions or ideologies. However, Article 14 (Chapter 2) in the Swedish Constitution regulates the freedom of association when it comes to organizations.

**Article 24 (Chapter 2) [Fundamental rights and freedoms]
in the Swedish Constitution**

Freedom of association may be restricted only in respect of organizations whose activities are of military or quasi-military nature, or which involve the persecution of a population group of a particular race, skin color or ethnic origin.²⁶¹

This legislation has never been used²⁶² and it is unclear whether the term 'organizations' also could be applied to political parties. Furthermore, Article 24 states that freedom of association may be *restricted*, but there is no mentioning of that a political party can be outlawed. Hence, as contrary to Germany and Spain, Sweden lacks a legislation to ban political parties. However, Sweden has, like many other states (Germany and Spain included), taken measures against *individuals* who engage in racist and extremist settings. The 1948 law against the persecution of population groups '*hets mot folkgrupp*' (hate speech) refers to "verbal threats, and expressions of contempt, in a disseminated statement, against population groups or groups of persons, with reference to race, skin color, national or ethnic origin, or faith."²⁶³ In 1996, the Swedish Supreme Court ruled that public display of symbols or the wearing of clothes related to extreme right ideologies or racial hatred is considered persecution of a population.²⁶⁴ Furthermore, other court rulings decided that the Nazi salute '*Sieg Heil*' should be dealt with the same. The penalties for hate speech include the imprisonment up to four

²⁶⁰ Romée Piccio 2012: 79

²⁶¹ The Constitution of the Kingdom of Sweden, Article 24 (Chapter 2), p. 88. Available at: <http://www.riksdagen.se/en/Documents-and-laws/Laws/The-Constitution/> (Accessed 20 April, 2013)

²⁶² Widfeldt, Anders (2004) The diversified approach: Swedish responses to the extreme right, in Eatwell, Roger & Mudde, Cas (2004) *Western Democracies and the New Extreme Right Challenge*. London: Routledge, p. 163

²⁶³ Ibid

²⁶⁴ Ibid: 164

years if the crime is considered serious.²⁶⁵ Hence, instead of outlawing anti-democratic parties, Sweden can only punish the party members for wearing racist/Nazi symbols or for expressing hostile opinions against population groups.

7.1 The extreme right challenge in Sweden

There are today a number of far-right nationalist political parties in Sweden with xenophobic elements that want to stop, or at least severely limit, immigration and refugee influx from non-European countries. The only party in this category that is represented nationwide is the Sweden Democrats (SD). However, the SD cannot be categorized an extreme party since it is not openly hostile to the Swedish Constitution and the liberal democratic system. Furthermore, it is not extreme in its party politics with comparison to other extreme European parties²⁶⁶ (such as for instance Spain's *Batasuna* and Germany's SRP). Even though Sweden has no powerful extreme party, there are now a large number of extreme racist or xenophobic groups and organizations, most of them operating on the local level.²⁶⁷ Some groups have however, grown larger and have registered as political parties, as with the neo-Nazi party the National Socialist Front (NSF).

7.1.1 The National Socialist Front (NSF)

The National Socialist Front (NSF) was founded in Karlskrona on 8 August 1994.²⁶⁸ When the NSF dissolved in 2008 it was the largest neo-Nazi political party in Sweden. The NSF's main goals were to abolish the democratic system, to send back immigrants to their home countries, withdrawal from the EU and the United Nations (UN), scientific racism to "secure the Nordic's race spiritual and biological health" and to cut taxes for those families that had genetically healthy children.²⁶⁹ Furthermore, the party denied the Holocaust and called it a "distortion of history."²⁷⁰ The NSF participated in the municipal council elections in Karlskrona in 2002 where it obtained 0.5 per cent of the votes, which left it without representation.²⁷¹ In 2006, the NSF ran for the national elections, winning 0.03 per cent of the

²⁶⁵ Justitiedepartementet, *Brottsbalk* (1962: 700), *Regeringskansliets rättsdatabaser*.

Available at: <https://lagen.nu/1962:700#K16P8> (Accessed 25 April, 2013)

²⁶⁶ Widfeldt 2004: 162

²⁶⁷ Statens offentliga utredningar (SOU: 2000: 88) "Organiserad brottslighet, hets mot folkgrupp, hets mot homosexuella, m.m. - straffansvarets räckvidd". Justitiedepartementet. Available at: <http://www.regeringen.se/sb/d/108/a/615> (Accessed 20 April, 2013)

²⁶⁸ Rundqvist, Mikael (1999) *Demokratins muskler: Kommunpolitikerna och lokala myndighetspersoners åtgärder mot nationalsocialismen i Karlskrona*. Edsbruk: Ceifo, p. 9

²⁶⁹ Ibid: 19

²⁷⁰ Ibid: 21

²⁷¹ Rocky Aloysius, Dewayne (2011) *National Socialist Front*. New York: Populpublishing, p. 8

votes.²⁷² Members of the NSF have several times been charged for having persecuted a population due to public display of Nazi symbols.²⁷³ The NSF was dissolved in 2008 and a new party, the People's Front,²⁷⁴ was set up at the same time with the same leaders in charge. In 2009, the party changed its name again, this time to the Swedish Party (SvP). The SvP's political program states that: "Sweden shall also in the future be Swedish: Only people who belong to the western genetic and cultural heritage, where the ethnic Swedes are included, may become Swedish citizens."²⁷⁵ According to the Swedish Security Service, the NSF's original ambitions to abolish democracy stills exist within the SvP's agenda.²⁷⁶ The SvP gained a seat in the municipal council in Grästorp's municipality after the 2010 election, where 102 persons (2.8 per cent) voted for the party.²⁷⁷

Conclusion

Sweden has provided the example of a state that lacks party regulation, i.e. it allows political parties to choose ideologies and activities freely. Sweden does not have any powerful extreme political party, but the country struggles with violent neo-Nazi organizations. Despite its difficulties with racial and extreme right violence, no organization has ever been prohibited. This shows how strongly Sweden values the freedom to associate and the freedom of speech. Instead of regulating anti-democratic parties, Sweden has chosen to only take actions against the members of the parties. This has resulted in the prohibition for individuals to wear Nazi symbols or to deliver hate speech.

There are no strong voices in Sweden that proclaim regulation of anti-democratic parties, unless we count the feminist party, Feminist Initiative's (Fi), regional department in Västra Götaland that wants to outlaw Nazi parties.²⁷⁸ The regional office stated in May 2011 that the SvP should be outlawed because of its National Socialist ideology. The Swedish strategy of

²⁷² Valmyndigheten, Val till Riksdagen 21 September, 2006. Available at:

<http://www.val.se/val/val2006/slutlig/R/rike/ovriga.html> (Accessed 6 April, 2013)

²⁷³ "Nationalsocialistisk front firade Hitlers födelsedag", 31 May, 2007. *Corren.se*. Available at:

<http://www.corren.se/ostergotland/artikel.aspx?articleid=4210712&name=nationalsocialistisk-front-firade-hitlers-fodelsedag> (Accessed 6 April, 2013)

²⁷⁴ Svenskarnas Parti. 'Folkfronten blir Svenskarnas Parti (SvP)', 29 November, 2009. Available at:

<http://www.svenskarnasparti.se/2009/11/29/folkfronten-blir-svenskarnas-parti-svp/> (Accessed 15 April, 2013)

²⁷⁵ Svenskarnas Parti. 'Vidareutveckling av de politiska punkterna'. Available at:

<http://www.svenskarnasparti.se/2009/11/29/folkfronten-blir-svenskarnas-parti-svp/> (Accessed 15 April, 2013)

²⁷⁶ Säkerhetspolisen, 'Grupper inom vit-makt miljö', 22 December, 2011. Available at:

<http://www.sakerhetspolisen.se/forfattningsskydd/politiskextremism/vitmaktmiljon/grupper.4.3b063add1101207dd46800055810.html> (Accessed 18 April, 2013)

²⁷⁷ EXPO, "EXTRA: Nazistparti tar kommunalt mandat", 20 September, 2009. Available at:

http://expo.se/2010/extra-nazistparti-tar-kommunalt-mandat_3371.html Accessed 18 April, 2013)

²⁷⁸ Feministiskt Initiativ Västra Götaland. "Västra Götaland älskad av alla. Tills på söndag i alla fall", 11 May, 2011. Available at: <http://fivastragotaland.se/2011/05/11/vastra-gotaland-alskad-av-alla-tills-pa-sondag-i-alla-fall/> (Accessed 28 April, 2013)

tolerating extremist parties might work well as long as these parties lack power. However, if an extreme party enters the Swedish parliament in the future, the state response may well be different.

8 Comparative Analysis of Case Study

In this chapter, historical institutionalism (HI) and theories of democratic tolerance (procedural and substantive conception) are used to explain how and why states regulate anti-democratic parties. The two different conceptions of democracy are useful tools for answering the first research question (how states regulate anti-democratic parties). Historical institutionalism highlights the role of the past as the important factor to adopting policies. This theory helps explaining why states choose different paths when it comes to party regulation (Research question two). HI is further applied for understanding the effect party regulation has on anti-democratic parties (Research question three).

The three cases; Germany, Spain and Sweden have provided examples of different response to anti-democratic parties. The analysis will be divided in three parts, starting out with how states regulate anti-democratic parties; continuing with the rationale of the party regulation and ends with how party regulation affects the anti-democratic parties.

8.1 How do states regulate anti-democratic parties?

It has been shown that Germany has the legal right to outlaw political parties both for their anti-democratic activities and ideologies, whereas Spain only can outlaw parties that carry out anti-democratic activities. Sweden, in turn, lacks party regulation and thus tolerates anti-democratic parties. Hence, Germany and Spain have decided to sometimes restrict the freedom of speech and assembly for the political parties in the name of democracy, whereas Sweden has chosen not to. This implies that Germany and Spain have adopted one conception of democracy regarding political parties that Sweden does not agree with. The procedural and substantive conceptions of democracy are here applied in order to better understand the different type of regulation of anti-democratic parties in Germany, Spain and Sweden.

8.1.1 Substantive conception of democracy in Germany and Spain

Germany and Spain have both taken measures to protect themselves from anti-democratic parties. The substantive view of democracy, advocated by for instance Rawls and Lowenstein, holds that it is legitimate to secure the democratic state from those who want to destroy it, and thus to restrict civil and political rights to protect democracy itself. Germany adopted a substantive view of democracy already in its Constitution from 1949. The chairman of the head committee in charge of consolidating the German Basic Law, Carlo Schmid, stated that “it was not part of the concept of democracy that it creates the preconditions of its own destruction and that we should be intolerant towards those who wish to use a democratic

system in order to kill it off.”²⁷⁹ This substantive view goes in line with Lowenstein’s who argues that democracies shall become ‘militant’ and adopt self-defense mechanisms for protection against anti-democratic actors. This should be done by restricting the human rights of the enemies of democracy in order to protect democracy itself.

As opposite to the Spanish regulation of anti-democratic parties, Germany has not specified in the law how a party has to behave in order to endanger the existence of Germany. This means that the German party regulation is vaguer than the Spanish regulation. While Germany’s regulation of anti-democratic parties focuses on that political parties need to have a democratic internal structure and functioning, Spain’s party regulation emphasizes the prohibition of engaging in violence or terrorism.

After the death of Franco, Spain adopted self-defense mechanisms against anti-democratic parties, both in its Constitution and in the 1978 Party Law. Hence Spain, like Germany, chose to incorporate the substantive view of democracy towards anti-democratic parties. Article 6 of the Spanish Constitution, states that political parties can exercise their activities freely in so far as they respect the Constitution and the law. However, Germany has a stronger constitutional regulation of anti-democratic parties than Spain. The drafters of the German Basic Law chose to give the Federal Constitutional Court the right to declare illegal those parties that carry out anti-democratic actions and/or have anti-democratic ideologies. Even though Article 6 of the Spanish Constitution says that political parties have to respect the Constitution and the law, the article does not explicitly give the Court the legal right to outlaw parties. Spain’s Party Law from 1978 did, however, permit the banning of those parties that were ‘illicit associations’, which included terrorists and those promoting or inciting hate, violence or discrimination against others, but this law was never used.

Spain’s substantive conception of democracy in dealing with political parties has, however, grown much stronger with the adoption of the new party law (LOPP) in 2002 that gives the Court the right to outlaw those parties whose *activities* infringe democratic principles. When it comes to regulation of anti-democratic parties, both Germany and Spain have thus agreed on Rawls argument that “democratic societies need not tolerate the intolerant”.

In the case to ban the SRP, the German Federal Constitutional Court stated that the Basic Law had created, what Lowenstein called, a ‘militant democracy’ in order to protect itself. The Court said that it could not afford to maintain an attitude of neutrality towards political parties. The German Court has thus agreed on that Germany has adopted a substantive view

²⁷⁹ See page 29

of democracy towards anti-democratic parties. The Spanish case, however, is different. In the case to determine the constitutionality of the LOPP, the Constitutional Court responded that the LOPP had not created a model of militant democracy. The Court argued that since the new party law allowed all ideologies and political projects, but declared illegal collaborative activities or support of terrorism or violence, it did not imply that Spain had adopted a substantive conception of democracy. Hence, the Spanish Court defined a militant or a substantive conception of democracy as a state that prohibits both anti-democratic activities and ideologies (such as Germany). However, I argue that since Spain takes an active stance in restricting the human rights of anti-democratic parties, it should be regarded as a state that has adopted a substantive view of democracy in dealing with political parties. I do not agree with the Spanish Court's argument that a substantive conception of democracy holds that the state also has to prohibit certain ideologies. Even though Spain only regulates activities, it is just as well a restriction of civil and political rights in the name of democracy. Therefore in my opinion, Spain has, like Germany, adopted a substantive view of democracy towards anti-democratic parties. What is true, however, is that Germany has taken a stronger substantive approach to democracy by regulating both activities and ideologies.

Why has Spain chosen to only regulate party activities and not also anti-democratic ideologies like Germany? My answer is regionalism. In almost all of Spain's 17 autonomous regions, there are political parties that advocate independence and secession from Spain. These parties are especially strong in those regions that have their own languages, such as in Catalonia and the Basque Country. To prohibit those regional parties that reject the Spanish Constitution and advocate secession would be extremely offensive in a country where all regional languages were prohibited during the 36 years of Franco's dictatorship.

To conclude, both Germany and Spain have established a model of 'no freedom for the enemies of freedom' in their party regulation and have thus adopted a substantive approach of democracy towards anti-democratic parties.

8.1.2 Procedural conception of democracy in Sweden

Sweden treats its anti-democratic parties different in comparison with Germany and Spain. This is due to that Sweden has adopted an approach of tolerance against those parties that have racist or neo-Nazi ideologies and that carry out anti-democratic activities. This means that Sweden lets political parties operate freely and that it highly values the freedom to dissent. Sweden has thus adopted a procedural approach to democracy in dealing with political parties. Those having a procedural view of democracy, such as Rousseau, Emerson and Voltaire, argue the importance of exposing the democratic system to self-criticism by letting it remain open to challenge. This is done by allowing all political parties, regardless of their ideologies or activities, to enter the electoral arena and to voice their opinions.

Those holding the procedural view argue that anti-democratic parties are important for not making freedom of speech a 'dead dogma', as Emerson called it, but for strengthening the democratic system by debating the alternatives to democracy. As contrast to Germany and Spain, Sweden lacks the legal measures to outlaw political parties. Although Sweden has adopted a procedural view of democracy towards its anti-democratic parties and thus allows them to exist and to promote their ideas, the country has taken measures against those *individuals* who engage in racist and extremist settings. The party members can thus be punished for putting up Nazi symbols or for expressing contempt in a disseminated statement against population groups or groups of persons. To restrict the freedom of speech in order to protect people is nothing new in democracies. Hate speech legislation that punishes those who incite hate against parts of the population based on ideology, religion, beliefs, ethnicity, race, gender, sexual orientation, disability or illness, exists in many states, including in both Germany and Spain. This implies that all democratic states have more or less adopted a substantive view of democracy when it comes to the freedom of speech, by not tolerating that people use this liberty to discriminate others.

This thesis, however, has not focused on how states deal with individuals who engage in hate speech, but how countries approach anti-democratic *parties* in their party regulation. Germany, Spain and Sweden have the legal right to punish party members who deliver hate speech during for instance a demonstration. However, only Germany and Spain have the power to outlaw the whole party if it infringes the democratic principles. Hence, Germany and Spain have taken a substantive view of democracy in their party regulation, whereas Sweden has adopted a procedural conception of democracy towards its anti-democratic parties.

8.2 Why do states regulate anti-democratic parties?

Historical institutionalism (HI) is a suitable theory for explaining why certain decisions were made, but also for discussing why a particular path was not taken. The theory is therefore useful in a comparative case study to explain why some states have adopted a party regulation, whereas others have decided not to. By examining history, this section explains why Germany and Spain have adopted party regulation and thus taken a substantive view of democracy and why Sweden, in contrast, has adopted a procedural conception of democracy by tolerating anti-democratic parties.

8.2.1 Why do Germany and Spain regulate anti-democratic parties?

HI scholars consider that political events happen within a historical context which affects the policy decisions. In order to explain why Germany and Spain have chosen to regulate anti-democratic parties, we must examine the historical moment in the countries when they adopted their party regulation. Alexander Gershenkron claimed that *when* a country industrializes affects *how* it industrializes.²⁸⁰ This parable emphasizes the role of history to explain certain outcomes and can of course be applied to other topics than industrialization. By referring to the study of this thesis we could claim that; *when* a country adopts a party regulation affects the type of regulation that is adopted.

Germany chose to implement a strict regulation of anti-democratic parties already in its Constitution from 1949. The Weimar Republic had proven defenseless against anti-democratic parties, such as Hitler's Nazi party, and had become, as stated by Lowenstein, the Trojan horse by which the enemy entered the city. Not only fear of repeating the past made the framers of the Basic Law incorporate a clause in the Constitution with the aim to protect the state from anti-democratic parties. The Basic Law was written during the Berlin blockade when the threat from the East was particularly strong. Because of its Nazi past and the rise of the communist regime in the East, Germany could no longer afford to maintain an attitude of neutrality toward political parties. According to historical institutionalism, the historical context in Germany thus affected the policymakers when they adopted the party regulation.

According to HI scholars, states and actors learn from past experience, i.e. social learning. Peter A Hall's defines social learning as a deliberate attempt to adjust the goals or techniques of policy in response to past experience and new information.²⁸¹ In the German case, the framers of the Basic Law implemented a strict party regulation in order to not repeat past

²⁸⁰ See page 17

²⁸¹ See page 19

mistakes, i.e. social learning. The policy makers had learned from Germany's historical experience that a state that lacks legal measures to protect itself from anti-democratic parties (the Weimar Republic) can be dangerous.

Even though Spain, like Germany, had experienced a dictatorship, the Spanish state did not adopt as strong constitutional regulation of anti-democratic parties as Germany. However, the Spanish Party Law from 1978 did proscribe 'illicit associations' which shows the importance for Spain to remain a democracy and not to relive its past. Like the German case, Spain had thus adopted a model of social learning, grounded in fear that a hostile party would be able to gain power and thus reintroduce a dictatorship.

Historical institutionalists would explain Germany's and Spain's different constitutional regulation of anti-democratic parties by referring to ideas and values. Hall argues that policy makers function within a framework of ideas that defines the goals of the policy and the kind of measure that can be applied to attain them. Franco did not, unlike Hitler, cease power legally by using the democratic institutions, but through a military coup. As opposite to Hitler, Franco did thus not use the democratic system to later abolish it and he was neither voted to power. HI scholars would claim that Germany and Spain's dissimilar experiences with how democracy was abolished in respective country, explain why Germany chose to adopt a strict party regulation in its Constitution, whereas Spain decided not to. HI scholars would argue that even though both countries had suffered from dictatorships, their different *ideas* regarding political parties made Germany adopt a stronger constitutional party regulation than Spain and thus regulate both anti-democratic activities and ideologies, whereas Spain only incorporated a clause in its Constitution saying that political parties had to respect the Constitution and the law. Following the fall of the Weimar Republic and the Nazi regime, Germany had come to think of political parties differently than Spain. Instead of seeing political parties as citizens' voice, it had become evident that political parties also could be viewed upon as threats to the state. Spain on the other hand, did not experience how a Republic fell because an anti-democratic party was voted to power, and did thus not find political parties as threatening as Germany.

However, Spain did change its views on political parties with the implementation of the new party law (LOPP) in 2002. As we have seen, this law was directed against ETA's political wings and to prevent the terrorist group from gaining more power. During the 1980s, ETA's attacks increased but its political arm *Herri Batasuna* (HB) was still allowed to register as a political party. ETA's political wings could operate freely for over twenty years before the

LOPP was introduced. The reason why the Spanish state did not adopt a regulation of anti-democratic parties any sooner can be explained by historical institutionalism's reference to *path dependency*. According to HI scholars Skocpol and Pierson, "once states have ventured far down a particular path, they are likely to find it difficult to reverse course and the political alternatives that were once quite plausible may become irretrievably lost."²⁸² The reasons why Spain waited a long time before adopting the LOPP can be explained by Steinmo's description of why institutional change is difficult. Steinmo argues that changing a rule or an institution will sometimes have great implications for others. This was the case with the LOPP which immediately gave the Court the legal right to outlaw *Herri Batasuna*, *Batasuna* and *Euskal Herritarok*. All of a sudden, the 200.000 people that had voted for these parties were left without a political affiliation.

Steinmo argues that another reason why change is difficult is that it might have long-term effects that are difficult to predict. This uncertainty leads to that many would prefer to continue with the current rules - even if they are not optimal. Hence, the reason why Spain did not adopt a party regulation against ETA before may be grounded in the fear that a ban on the political wings might cause more harm than good. For instance, the LOPP could have resulted into more ETA terrorist attacks. This did however, not occur and ETA has been severely weakened during the decade of the 2000s. The LOPP has probably contributed to this since ETA cannot finance itself through its political wings anymore. However, maybe more importantly are the mass arrests of ETA members by collaboration between Spanish and French police.

Finally, Steinmo argues that another reason why change is difficult is that rules and institutions can become locked in because people have learned the rules. A change could produce struggle and conflict in society between those who opposed the change and those who favored it. For instance, many regionalist parties around Spain opposed the implementation of the LOPP. Furthermore, a party regulation directed against Basque extreme parties is very controversial in Spain, where the Basque population was severely suppressed during the Franco dictatorship and the freedom of speech was heavily restricted.

Path dependency has here been applied to explain why Spain waited over twenty years in banning ETA's political wings. Finally, the change did occur with the implementation of the LOPP in 2002. HI scholars argue that institutional change takes place when the benefits of a potential alternative outweigh the losses associated with dissolving past policies. Spain had

²⁸² See page 18

been terrorized by ETA for over 40 years when the LOPP was introduced, and all governmental measures taken were unsuccessful in making ETA dissolve. Fioretos claims that: “individuals are thought to balance evaluations of the costs and benefits of adapting to new circumstances with the costs and benefits of maintaining or losing their investments in *past* arrangements”.²⁸³ Since Spain’s past arrangements against ETA did not work, it became evident that new drastic measures had to be taken to combat the terrorist group. As with Thatcher who learned from Heath’s experience (brought up by Hall), the Spanish state learned from the failed measures that former governments had taken against ETA, i.e. social learning, and thus chose to try out new policies (the LOPP) against the terrorist group.

8.2.2 Why does Sweden tolerate anti-democratic parties?

For HI scholars, explaining why a certain path was not taken is as important as defining the one that was chosen. Hence, to explain why Sweden lacks regulation of anti-democratic parties is just as important as explaining the rationale of the German and the Spanish party regulation. Furthermore, highlighting why some states do not regulate anti-democratic parties will provide a better understanding of why certain countries decide to implement a party regulation. As mentioned, Sweden has adopted a procedural view of democracy towards anti-democratic parties. Sweden highly values the freedom of association and views its political parties as instruments used for strengthening the democratic system by letting opponents of democracy voice their opinions. The question that remains is why Sweden has adopted a procedural conception of democracy and thus tolerates anti-democratic parties?

Both Germany and Spain introduced a regulation of anti-democratic parties in their constitutions after the dictatorships of Hitler respectively Franco. Spain, further adopted a stricter regulation of parties hostile to democracy in 2002 due to ETA’s 40 years of terrorism. What these countries have in common is something that has triggered a party regulation, be it a war, a former dictatorship or a terrorist group. Sweden’s history, however, is clean from such triggers. Sweden has not, unlike Germany, had an anti-democratic party that was voted to power and that later abolished democracy. Moreover, Sweden has not experienced a dictatorship and in contrast to Spain, no Swedish political party has cooperated with terrorists. Steinmo argues that historical institutionalists have considered that institutions/rules remain stable “until they are faced with an external (exogenous) shock.”²⁸⁴ Even though Sweden has anti-democratic parties, such as the NSF, these parties cannot be considered similar triggers to adopting a party regulation as the ones Germany and Spain have had.

²⁸³ See page 20

²⁸⁴ See page 18

In order to change path dependent institutions, there is a need of a greater shock to the democratic system. It took Spain twenty years before it adopted a stricter party regulation that could outlaw ETA's political wings and at that time ETA had terrorized Spain for over 40 years. Spain highlights the example of sticky institutions and the difficulty of change. Steinmo argues that since institutions affect behavior, they can also shape preferences over time. This means that individuals may come to prefer a certain institutional arrangement because they have grown used to it. This can be linked to the absence of strong voices in Sweden that proclaim regulation of anti-democratic parties.

HI scholars consider that rules and institutions can become locked in because people have learned the rules. If Sweden were to implement a regulation of anti-democratic parties, something great must have triggered it. One could thus argue that since Sweden has not met such external (exogenous) shocks from political parties in the same way as Germany and Spain, there has been no purpose for adopting a regulation of anti-democratic parties. HI scholars would consider that since political parties have not threatened the Swedish democratic system in the past, in the same way as in Germany and Spain, Sweden's conception of political parties are different than the German and Spanish one. Due to lack of historical exogenous shocks or triggers caused by anti-democratic parties, Sweden sees political parties as the voice of the citizens and as no threat to the state. Hence, because of Sweden's history where political parties have operated peacefully in comparison with German and Spanish parties, Sweden has been able to adopt a procedural conception of democracy towards anti-democratic parties.

8.3 How does party regulation affect the anti-democratic parties?

Until now, I have explained how and why Germany and Spain regulate anti-democratic parties and why Sweden has chosen to tolerate them. This part of the thesis examines how party regulation, or the lack of it, affects the anti-democratic parties in respectively country.

8.3.1 Party regulation's effect on German and Spanish anti-democratic parties

Since Germany regulates both anti-democratic activities and ideologies we might say that it has adopted a stricter party regulation than Spain. However, Germany has only outlawed two anti-democratic parties, the SRP and the KPD, and that was 50 years ago. Spain, on the other hand, began outlawing Basque extreme parties with the adoption of the LOPP in 2002 and has until now banned thirteen parties for their connections with ETA. This shows that although a state has a strong party regulation it does not imply that this regulation heavily affects the anti-democratic parties in the country.

In order to ban a political party in Germany there is a need of a great scope of evidence, especially since the party regulation is vague. Furthermore, outlawing parties is controversial, especially if they have large support, because it restricts civil and political rights. Party bans are also particularly sensitive in states that are former dictatorships, such as Germany and Spain. Another reason for the reluctance to prohibit anti-democratic parties is that the state might prefer to combat the parties where it can see them, such as in the political arena. Banning anti-democratic parties can lead to, as Steinmo states, long-term effects that are difficult to predict. For instance, parties can go underground and perhaps become an even a bigger threat to the state as when they were allowed to operate in public. The 2001 attempt to ban the NPD increased the support for the party, which highlights the risk of applying the party regulation on anti-democratic parties. The reason why Germany waited 40 years before it attempted to outlaw the NPD can be explained by the concept of path dependency. Not using the party regulation to ban anti-democratic parties had thus become the standard in Germany. Historical institutionalists would say that the German state has now weighed the possible benefits of a NPD ban with the alternative to continue tolerating it, and decided that it will gain more by outlawing the party.

Spain's party regulation affected the anti-democratic parties for the first time with the implementation of the LOPP in 2002. The year after, *Herri Batasuna*, *Euskal Herriarok* and *Batasuna* were declared illegal by the Court. To be able to voice their opinions, other parties from the Basque extreme left were created. Between 2003 and 2011, the Court outlawed thirteen more parties due to their links to ETA (three bans were overruled). It became evident that if parties from the Basque extreme left were to be declared legal, they had to change strategy and adapt themselves to the system. This occurred when three parties that belong to the Basque extreme left (II-SP, *Bildu* and *Sortu*) for the first time explicitly condemned ETA and rejected violence as a method for achieving political goals. These parties had thus weighed possible benefits of changing strategy with the costs of losing the identity they had in the past. They decided that it was worth leaving a part of their historical identity in order to be declared legal and thus being able to negotiate Basque secession with the government. Historical institutionalism argues that institutions are rules that structure and shape behavior. The Basque extreme left has indeed been heavily affected and shaped by Spain's party regulation. II-SP, *Bildu* and *Sortu* have learned from other parties belonging to the Basque extreme left (social learning) that they will be outlawed if they do not change strategy.

8.3.2 Tolerance's effect on Swedish anti-democratic parties

If Sweden were to adopt party regulation, anti-democratic parties such as the National Socialist Front (nowadays called The Swedish Party, SvP), could have been banned due to its hostility towards certain population groups and the democratic system. However, because of Sweden's procedural conception of democracy towards political parties, no regulation of anti-democratic parties exists. This means that Sweden has its anti-democratic parties where it can see them; namely at the political arena. Sweden can however, just as Germany and Spain, punish individuals who engage in hate speech. Even though Sweden cannot outlaw political parties, the hate speech legislation affects the party members and thus also the political party. This implies that although a political party has for instance a neo-Nazi ideology, the party members will be restricted in speaking about these ideas or engaging in activities that support that kind of ideology. Yet again, we see how institutions and rules shape the behavior of individuals and political parties. Because of the risk of having party members arrested, Swedish anti-democratic parties have to tone down the way they speak about their ideas. As with II-SP, *Bildu* and *Sortu* which, according to historical institutionalism, weighed possible benefits of changing identity with the costs of losing the identity they had in the past, Swedish anti-democratic parties have to adapt to the system if their party members are not to be arrested.

Hence, hate speech legislation also affects anti-democratic parties. However, the difference of being able to outlaw parties (like Germany and Spain) and to only have the legal right to punish party members is that once a party member in Sweden is convicted for hate speech the whole party continues to exist. Nevertheless, hate speech legislation may have a deterrent effect on anti-democratic parties since the parties need to be cautious about what they say and how they proclaim their ideas. It might be easier to get rid of anti-democratic parties by outlawing them, instead of trying to punish each individual for hate speech or hate crimes. However, banning a whole party is more controversial since the people who vote for it will be left without a political affiliation.

9 Conclusion

This thesis has examined state regulation of anti-democratic parties in three European states. The method used was a qualitative content analysis, conducted through a comparative case study. In order to gain a deeper understanding of party regulation, three cases that vary in the way they regulate anti-democratic parties have been compared to each other. The first case explored was Germany that regulates both anti-democratic activities and ideologies. Spain became the example of a state that only regulates party activities and finally, Sweden provided the example of a state that lacks party regulation and thus tolerates both anti-democratic activities and ideologies. The research questions to be answered were: how and why Germany and Spain regulate anti-democratic parties, while Sweden does not. Furthermore, how party regulation, or the lack of it, affected the anti-democratic parties in respectively country was explored.

I have emphasized the importance of studying history for understanding why states choose different paths. Historical institutionalism has been applied to the comparative case study for explaining why states have or have not adopted a party regulation. I argue that because of their past, Germany, Spain and Sweden have adopted different ideas of how political parties should be seen. Hitler's Nazi party could use the weak Weimar Republic to cease power through its democratic institutions, which resulted into the conception that political parties can be dangerous and threatening. The ideas Germany had of political parties thus made the state adopt a strict party regulation.

Spain, on the other hand, did not experience how a political party, by using democracy itself, ceased power and later established a dictatorship. This resulted to that Spain did not associate political parties with danger in the same degree as Germany did. Because of this, Spain did not adopt as strong constitutional party regulation as Germany. The difficulty of institutional change, i.e. path dependency, has explained why Spain waited over twenty years before it introduced the new party law (LOPP). I have argued that although the Spanish Constitutional Court stated that the LOPP does not imply that Spain has adopted a substantive conception of democracy, this law has led to a restriction of civil and political rights, especially since it has been used to outlaw thirteen Basque extreme parties. The definition of substantive democracy is precisely that states take an active stance in restricting the human rights of anti-democratic actors to protect the substantive, predetermined values that democracy is meant to secure, which I argue that Spain has done with the adoption of the LOPP.

In order to understand why states regulate anti-democratic parties it is also important to scrutinize why some countries have decided to tolerate them. Swedish political parties in the past have not posed a threat to the democratic system in the same way as parties in Germany and Spain. This has led to that Sweden's conception of parties is that they are peaceful and important for debating different opinions and it has therefore taken a procedural view of democracy in dealing with political parties.

By comparing the reason why Germany and Spain have adopted party regulation with Sweden's history of tolerance, I have shown that the adoption of party regulation is not something that just happens. There is a reason why certain states regulate anti-democratic parties and by studying history we get closer to the ideas that policy makers had at the time they adopted a party regulation. The historical moment thus influenced the policy makers to take a procedural or substantive conception of democracy towards parties. This in turn, affected the outcome, i.e. the type of party regulation adopted or the decision to not regulate anti-democratic parties. Hence, in Germany, Spain and Sweden there is a correlation between the state's history and the conception of democracy adopted towards anti-democratic parties.

The third research question dealt with how party regulation affects anti-democratic parties. I have shown that although Germany has adopted a stricter party regulation than Spain, by regulating both anti-democratic activities and ideologies, it has only banned two parties. Spain, on the other hand, has outlawed thirteen parties in ten years. This implies that the Spanish party regulation has had a stronger effect on the country's anti-democratic parties, compared to the German one. Thus, only because a state has adopted a strict party regulation it does not automatically imply that the effect on the parties will be great in practical terms. It is therefore no connection between the type of party regulation adopted and the effect that the regulation has on the anti-democratic parties. Instead, the effect of the party regulation seems to be dependent on how prone the government is to initiate banning cases against anti-democratic parties and how likely the Court is to outlaw them.

Although Sweden lacks party regulation its hate speech legislation forces anti-democratic parties to tone down their ideologies in order to not have their members sentenced to prison. Punishing the individuals, instead of the whole party, might thus have the same effect in practical terms because hate speech legislation, just as party regulation, has a deterrent effect on anti-democratic parties. Nevertheless, states may prefer to outlaw the whole party when it continues to rebuild itself under a different guise.

It is important to understand the difficulty of determining the full effect that party regulation has on anti-democratic parties. Political parties may, once banned, go underground and thus become very hard to detect. Hence, the consequences of banning the party may be worse than letting it exist. This problem can be one of the reasons why states, like Sweden, prefer to not ban parties and instead choose to control and combat them at the political arena.

A state's path dependency may create paranoia and political, instead of judicial court judgments. The Spanish Party Law is directed against ETA's political wings and it has only been used to ban parties from the Basque extreme left. This may lead to the belief that all Basque extreme parties are controlled by ETA,²⁸⁵ which shows us the danger of regulating parties. The Court might be so convinced that the party breaches the democratic system that it forgets or neglects to investigate, by judicial means, if it really breaches the law. Hence, sometimes those measures adopted to protect democracy can, in themselves, be a threat to democracy.

Party regulation may force parties to give up part of their identities in order to be accepted. This implies that instead of being the voice of the citizens, parties have to conform to the state. The Basque extreme left has had to change and adapt to the system in order to not be banned. Depending on the conception of democracy (procedural or substantive), one may argue that this is a discrimination of the Basque people's freedom of speech and assembly, whereas others might say that outlawing these parties are necessary for protecting democracy in Spain.

In contemporary Europe, we see a rise of parties from the extreme right which may, if they grow strong, threaten democracy and maybe even the EU cooperation. Countries that have problems with anti-democratic parties, such as Greece and Hungary, must now ask themselves if they consider that it is democratic to force a party to be democratic. Depending on their conception of democracy towards political parties, the answer to that question will be different. Some states will, because of their history, answer that freedom of speech is sacred, even when it comes to intolerant and extremist ideologies. Other countries, however, will argue that the state has to protect itself from the enemies of democracy. This is done by adopting self-defense measures, such as party regulation, which restricts civil and political rights of certain actors. A state that is considering adopting a party regulation has to remember that this regulation might not cause the desired effect. To implement a strict party

²⁸⁵ This can be illustrated by the Constitutional Court's decision to lift the Supreme Court ban on II-SP, *Bildu* and *Sortu* due to that the *mere suspicion* that a party is controlled by ETA cannot become a legally acceptable argument to exclude anyone from the full exercise of their fundamental right to political participation.

regulation, by both prohibiting anti-democratic activities and ideologies, does not automatically imply that it will have a great impact on the anti-democratic parties. Furthermore, party regulation carries with it an enormous potential for abuse and it might lead to unpredictable consequences.

It would be interesting to see future research which attempts to use other theories than historical institutionalism to explain the role of party regulation. An analysis of all party bans in Spain would also be interesting since it was not possible to include all of them in this thesis. Relevant topics for further research could be studies of party regulation in other European countries than presented here. It would also be intriguing to study party regulation in other parts of the world.

References

- Alonso, Rogelio & Reinares, Fernando** (2005) "Terrorism, Human Rights and Law Enforcement in Spain," *Terrorism and Political Violence*, Vol. 17, pp. 265-278
- Anderson, Wayne** (2003) *The ETA: Spain's Basque Terrorists*. New York: Rosen Publishing Group
- Ayres, Thomas** (2004) "Batasuna Banned: The Dissolution of Political Parties Under the European Convention of Human Rights," *Boston College International and Comparative Law Review*, Vol. 27. Issue 1. Article 3, pp. 99-113
- Barros Pestaña, Carlos & Gil-Alana, Luis A** (2006) "ETA: A persistent phenomenon," *Defence and Peace Economics*, Vol. 17. Issue 2, pp. 95-116
- Blyth, Mark** (2002) Institutions and Ideas, in Marsh, David & Stoker, Gerry (2002) *Theory and Methods in Political Science*. New York: Palgrave Macmillan
- Bouandel, Youcef & Zoubir, Yahia H.** (1998) "Algeria's elections: the prelude to democratization" *Third World Quarterly*, Vol. 19. No. 2, pp.177-190
- Brady, John S., Crawford, Beverly & Wiliarty, Sarah Elise** (1999) *The Postwar Transformation of Germany- Democracy, Prosperity, and Nationhood*. Michigan: University of Michigan Press
- Bourne, Angela K.** (2011) "The proscription of parties and the problem with 'militant democracy'", Centre for the Study of European Political Parties, Online Working Paper Series, No. 3
- Bourne, Angela K.** (2010) "Political Parties and Terrorism: Why ban *Batasuna*?" Paper presented at Elections, Public Opinion and Parties Annual Conference University of Exeter, 9-11 September 2010, School of Humanities, University of Dundee
- Bourne, Angela K.** (2012) "Terrorism and Party Politics: The illegalization of *Sinn Féin* and *Batasuna*," Roskilde University, Denmark. Paper presented at Elections, Public Opinion and Parties conference, University of Oxford 7 to 9 September 2012
- Bryman, Alan** (2004) *Social research methods*. New York: Oxford University Press
- Busky, Donald F.** (2002) *Communism in History and Theory: The European Experience*. Westport: Praeger Publishers
- Capoccia, Giovanni** (2004) Defence of democracy against the extreme right in inter-war Europe: A past still present?, in Eatwell, Roger & Mudde, Cas (2004) *Western Democracies and the New Extreme Right Challenge*. London: Routledge
- Clark, Robert P.** (1990) *Negotiating With Eta: Obstacles to Peace in the Basque Country 1975-1988*. Reno and Las Vegas: University of Nevada Press
- Conde Álvarez, Enrique** (2004) "La aplicación de la ley orgánica de partidos políticos. Crónica inacabada de la ilegalización de Herri Batasuna, Batasuna y Euskal Herritarok" *Foro, Nueva época*, No. 00/2004, pp.7-35, Catedrático de Derecho Constitucional Universidad Rey Juan Carlos

- Conde Álvarez**, Enrique & **Català I Bas**, Alexandre H. (2005) “Los efectos directos y colaterales de la disolución de Herri Batasuna”, *Foro: Revista de Ciencias Jurídicas y Sociales*, No. 2, pp. 131-151
- David**, Paul A. (2006) “Path Dependence- A Foundational Concept for Historical Social Science”, *The Journal of Historical Economics and Econometric History*, Vol. 1. No. 2
- Dézé**, Alexandre (2004) Between adaption, differentiation and distinction: Extreme right-wing parties within democratic political systems, in Eatwell, Roger & Mudde, Cas (2004) *Western Democracies and the New Extreme Right Challenge*. London: Routledge
- Della Porta**, Donatella (2008) Comparative Analysis: case-oriented versus variable-oriented research, in Della Porta, Donatella & Keating, Michael (2008) *Approaches and Methodologies in The Social Sciences: A Pluralist Perspective*. Cambridge: Cambridge University Press
- Eatwell**, Roger (2004) Introduction, in Eatwell, Roger & Mudde, Cas (2004) *Western Democracies and the New Extreme Right Challenge*. London: Routledge
- Emerson**, Thomas I. (1971) *The System of Freedom of Expression*. New York: Random House
- Epstein**, Catherine (2003) *Last Revolutionaries: German Communists and Their Century*. London: Harvard University Press
- Fioretos**, Orfeo (2009) “Historical Institutionalism in International Relations,” *International Organization* 65, Spring 2011, pp. 367–99
- Fox**, Gregory H. & **Nolte**, Georg (2000) Intolerant democracies, in Fox, Gregory H. & Roth, Brad R. (2000) *Democratic Governance and International Law*. Cambridge: Cambridge University Press
- Franz**, Paul (1982) “Unconstitutional and Outlawed Political Parties: A German-American Comparison”, *Boston College International and Comparative Law Review*, Vol. 5. Issue 1/3
- Frei**, Norbert (2002) *Adenauer’s Germany and the Nazi past: the politics of amnesty and integration*. New York: Columbia University Press
- Hall**, Peter (1993) “Policy Paradigms, Social Learning, and the State: The Case of Economic Policymaking in Britain,” *Comparative Politics*, Vol. 25. No. 3, pp. 275-296
- Harvey**, Paul (2004) “Militant democracy and the European Convention on Human Rights”, *European Law Review*, Vol. 29. No. 3, pp. 407-420
- Issacharoff**, Samuel (2007) “Fragile Democracies,” *Harvard Law Review*, Vol. 120. No. 6, pp. 1405-1467
- Janda**, Kenneth, **Berry**, Jeffrey M. & **Goldman**, Jerry (2008) *The Challenge of Democracy*. Boston: Houghton Mifflin Company
- Karvonen**, Lauri (2005) “Legislation on Political Parties: A Global Comparison.” *Paper presented at the Southwestern Political Science Association 2005 Annual Meeting, New Orleans, March 23-26 Panel PS 73: “Rediscovering Democracy”, Aie-Rie Lee, Chair*
- Katz**, Richard (2004) Democracy and the Legal Regulation of Political Parties, Prepared for USAID’s conference on “Change in Political Parties,” Washington D.C, 1 October 2004

- Kohen**, Elizabeth Robin & Elias, Marie Louise (2004) *Cultures of the World-Spain*. New York: Marshall Cavendish Benchmark
- Kommers**, Donald P. & **Miller**, Russel A. (2012) *The Constitutional Jurisprudence of the Federal Republic of Germany*. London: Duke University Press
- Lee**, Martin A. (2000) *The Beast Reawakens: Fascism's Resurgence from Hitler's Spymasters to Today's Neo-Nazi Groups and Right-Wing Extremists*. New York: Routledge
- Lowenstein**, Karl (1937) "Militant democracy and fundamental rights, I", *The American Political Science Review*, Vol. 31. No. 3, pp. 417- 432
- Major**, Patrick (1998) *The death of the KPD: Communism and Anti-Communism in West Germany, 1945-1956*. Oxford: Oxford University Press
- Martinez**, Luis (1998) *The Algerian Civil War 1990-1998*. New York: Columbia University Press
- Mudde**, Cas (2000) *The ideology of the extreme right*. New York: Manchester University Press
- Mudde**, Cas (2004) Defending democracy and the extreme right, in Eatwell, Roger & Mudde, Cas (2004) *Western Democracies and the New Extreme Right Challenge*. London: Routledge
- Myers**, Margaret (2000, March). "Qualitative research and the generalizability question: Standing firm with Proteus". [30 paragraphs]. *The Qualitative Report* [On-line serial], 4(3/4). Available at: <http://www.nova.edu/ssss/QR/QR4-1/myers.html>
- Niesen**, Peter (2002) "Anti-Extremism, Negative Republicanism, Civic Society: Three Paradigms for Banning Political Parties* - Part I, *German Law Journal*. Available at: <http://www.germanlawjournal.com/index.php?pageID=11&artID=164>
- O'Broin**, Eoin (2004) *Matxinada: historia del movimiento juvenil radical vasco*. Navarre: Txalaparta
- Pedahzur**, Ami (2004) The defending democracy and the extreme right: A comparative analysis, in Eatwell, Roger & Mudde, Cas (2004) *Western Democracies and the New Extreme Right Challenge*. London: Routledge
- Persily**, Nathaniel & **Cain**, Bruce E. (2000) "The Legal Status of Political Parties: A Reassessment of Competing Paradigms", *Columbia Law Review*, Vol. 100. No. 3
- Pierson**, Paul (2004) *Politics in Time: History, Institutions, and Social Analysis*. Oxfordshire: Princeton University Press
- Pierson**, Paul & **Skocpol**, Theda (2002) "Historical Institutionalism in Contemporary Political Science", in Katznelson, Ira & Milner, Helen V. (eds). *Political Science: State of the Discipline*. New York: W.W. Norton
- Rawls**, John (1971) *A Theory of Justice*. Harvard: Harvard University Press
- Raymond**, Walter John (1978) *The Dictionary of Politics: Selected American and Foreign Political and Legal Terms*. Lawrenceville: Brunswick Publishing Corporation
- Rocky Aloysius**, Dewayne (2011) *National Socialist Front*. New York: Populpublishing
- Romé Piccio**, Daniela (2012) "Party Regulation in Europe: Country Reports", *Working Paper Series on the Legal Regulation of Political Parties*, No. 18

- Rundqvist**, Mikael (1999) *Demokratins muskler: Kommunpolitikens och lokala myndighetspersoners åtgärder mot nationalsocialismen i Karlskrona*. Edsbruk: Ceifo
- Sajó**, András & **Bentch**, Lorri Rutt (2004) *Militant democracy*. AJ Utrecht: Eleven International Publishing
- Schneider**, Carl (1957) "Political Parties and the German Basic Law of 1949", *The Western Political Quarterly*, Vol. 10. No. 3, pp. 527-540
- Schweitzer**, Carl-Christoph, **Karsten**, Detlev, **Kommers**, Donald, **Spencer**, Robert & **Nicholls**, Anthony (1995) *Politics and government in Germany, 1944-1994: basic documents*. Oxford: Bergahn Books Providence
- Steinmo**, Sven (2008) Historical Institutionalism, in Della Porta, Donatella & Keating, Michael (2008) *Approaches and Methodologies in the Social Sciences: A Pluralist Perspective*. Cambridge: Cambridge University Press
- Tallentyre**, S.G. (Evelyn Beatrice Hall) [1906] (2003) *The Friends of Voltaire*. Washington: University Press of the Pacific
- Urkullu**, Íñigo & **López**, Patxi et al. (2012) *La paz llega por fin a Euskadi*. Madrid: Política Exterior
- Van Biezen**, Ingrid (2008a) "State Intervention in Party Politics: The Public Funding and Regulation of Political Parties", *European Review* Vol. 16. No. 3, pp. 337-353
- Van Biezen**, Ingrid (2008b) Party regulation and constitutionalization: A comparative overview, in Reilly, Benjamin & Nordlund, Per (2008) *Political Parties in Conflict-Prone Societies: Regulation, Engineering and Democratic Development*. Hong Kong: United Nations University Press
- Van Biezen**, Ingrid & **Borz**, Gabriela (2009). "The Place of Political Parties in National Constitutions: A European Overview", Working Paper Series on the Legal Regulation of Political Parties, No. 1
- Venesson**, Pascal (2008) Case studies and process tracing: theories and practices, in Della Porta, Donatella & Keating, Michael (2008) *Approaches and Methodologies in The Social Sciences: A Pluralist Perspective*. Cambridge: Cambridge University Press
- Vincent**, Paul C. (1997) *A Historical Dictionary of Germany's Weimar Republic, 1918-1933*. London: Greenwood Press
- Walliman**, Nicholas (2006) *Social Research Methods*. London: SAGE Publications
- Widfeldt**, Anders (2004) The diversified approach: Swedish responses to the extreme right, in Eatwell, Roger & Mudde, Cas (2004) *Western Democracies and the New Extreme Right Challenge*. London: Routledge
- Worley**, Matthew (2004) *In Search of Revolution: International Communist Parties in the Third Period*. New York: I.B.Tauris & Co Ltd
- Yin**, Robert K. (2009) *Case Study Research: Design and Methods*. London: SAGE Publications

Electronic Sources

- “43 años de terrorismo, 829 víctimas mortales,” *El País*,
<http://politica.elpais.com/especiales/2011/victimas-eta/> (Accessed 5 April, 2013)
- Angulo, Javier, “Divergencias de Herri Batasuna por la participación en las elecciones al Parlamento vasco,” *El País*, 16 January, 1980.
http://elpais.com/diario/1980/01/16/espana/316825226_850215.html (Accessed 19 April, 2013)
- “Así nació la banda terrorista,” *El mundo*, 2009.
<http://www.elmundo.es/eta/historia/index.html> (Accessed 5 April, 2013)
- “Banning the NPD: German Governors Agree on Legal Challenge,” *Spiegel Online International*, 6 December, 2012, <http://www.spiegel.de/international/germany/german-governors-agree-on-legal-bid-to-ban-far-right-npd-party-a-871440.html> (Accessed 25 March, 2013)
- Barrientos, Alvaro, “New Basque Party launched, rejects ETA violence,” *The Washington Times*, 7 February, 2011, <http://www.washingtontimes.com/news/2011/feb/7/new-basque-party-launched-rejects-eta-violence/?page=all> (Accessed 5 April, 2013)
- Björling, Sanna. “Extremhögerns nya ansikte,” *Dagens Nyheter*, 1 December, 2011.
<http://www.dn.se/kultur-noje/jag-ser-mig-inte-som-hogerextrem-pa-nagot-satt>
(Accessed 19 April, 2013)
- Bowen, Andrew, “World from Berlin: ‘You Can’t Outlaw Stupidity’ of the Far-Right,” *Spiegel Online International*, 19 March, 2013, <http://www.spiegel.de/international/germany/press-review-german-cabinet-backs-off-attempt-to-ban-far-right-npd-a-889671.html> (Accessed 2 April, 2013)
- ”Das Parteiprogramm der Nationaldemokratischen Partei Deutschlands (NPD) 2010, 5”
http://www.npd.de/inhalte/daten/dateiablage/br_parteiprogramm_a4.pdf (Accessed 3 April, 2013)
- Datadiar televisión - Los delitos que se imputan: castigo en el Código Penal.
<http://www.datadiar.tv/juicio11m/castigo09.htm> (Accessed 9 April, 2013)
- “EXTRA: Nazistparti tar kommunalt mandat,” *EXPO*, 20 September, 2009.
http://expo.se/2010/extra-nazistparti-tar-kommunalt-mandat_3371.html Accessed 18 April, 2013)
- Feministiskt Initiativ Västra Götaland. ‘Västra Götaland älskad av alla. Tills på söndag i alla fall’, 11 May, 2011. <http://fivastragotaland.se/2011/05/11/vastra-gotaland-alskad-av-alla-tills-pa-sondag-i-alla-fall/> (Accessed 28 April, 2013)
- Fürstenau, Marcel, “Germany faces tough struggle over NPD ban,” *Deutsche Welle*, 5 December, 2012, <http://www.dw.de/germany-faces-tough-struggle-over-npd-ban/a-16429160> (Accessed 4 April, 2013)
- “German far-right deputies expelled over clothing,” *BBC News Europe*, 13 June 2012,
<http://www.bbc.co.uk/news/world-europe-18429463> (Accessed 25 March, 2013)
- “German lawmakers removed from parliament for neo-Nazi-favored clothing,” *NYDailyNews*, 13 June, 2012, <http://www.nydailynews.com/news/world/german-lawmakers-removed-parliament-neo-nazi-favored-clothing-article-1.1095300> (Accessed 23 March, 2013)
- “German Senate backs to neo-Nazi ban,” *BBC News*, 10 November, 2000,
<http://news.bbc.co.uk/2/hi/europe/1016364.stm> (Accessed 25 March, 2013)

Gude, Hubert & Stark, Holger, "Praise for Hitler: Secret Files Build Case for Banning Far-Right Party," *Spiegel Online International*, 3 September, 2012, <http://www.spiegel.de/international/germany/the-case-for-banning-the-far-right-npd-party-a-853564.html> (Accessed 4 April, 2013)

Human Rights Watch, 'Human Rights in Algeria'. <http://www.hrw.org/middle-eastn-africa/algeria> (Accessed 16 April, 2013)

Human Rights Watch, 'Human Rights in Algeria since the Halt of the Electoral Process,' 27 February, 1992. <http://www.unhcr.org/refworld/country,,HRW.COUNTRYREP,DZA,,45c9abf12,0.html> (Accessed 20 April, 2013)

"Högerextremister hyrde kursgård som ägs av staten," *Sveriges Radio*, 25 November, 2004. <http://sverigesradio.se/sida/artikel.aspx?programid=91&artikel=510313> (Accessed 19 April, 2013)

"Las caras de Batasuna," *El mundo*, 2009. <http://www.elmundo.es/eta/entorno/batasuna.html> (Accessed 4 April, 2013)

"Las treguas de ETA," *El mundo*, 2009. http://www.elmundo.es/eta/negociaciones/treguas_eta.html (Accessed 1 April, 2013)

Lázaro, Julio M. "El Supremo acuerda ilegalizar Sortu por dos votos de diferencia," *El País*, 24 March 2012, http://elpais.com/elpais/2011/03/23/actualidad/1300871849_850215.html (Accessed 18 April, 2013)

"Los años 70," *El mundo*, 2009. <http://www.elmundo.es/eta/historia/anios70.html> (Accessed 2 April, 2013)

Nationaldemokraterna. 'Nationaldemokraternas principförklaring', 20 August, 2011. <http://www.nd.se/principprogram> (Accessed 20 April, 2013)

"Nationalsocialistisk front firade Hitlers födelsedag," *Corren.se*, 31 May, 2007. <http://www.corren.se/ostergotland/artikel.aspx?articleid=4210712&name=nationalsocialistisk-front-firade-hitlers-fodelsedag> (Accessed 6 April, 2013)

Solomon, John, "Exposing the ETA Financial Network- Spanish Court Issues Historic Ruling," *World-Check Terrorism & Insurgency Research Unit*, 2008. <http://www.c-cft.org/publication/pdf/ExposingtheETAFinancialNetwork.pdf> (Accessed 8 April, 2013)

"Sortu busca 'reunir' a toda la izquierda soberanista vasca," *El País*, 10 November, 2012. http://politica.elpais.com/politica/2012/11/10/actualidad/1352557563_681375.html (Accessed 29 April, 2013)

Svenskarnas Parti. 'Folkfronten blir Svenskarnas Parti (SvP)', 29 November, 2009. <http://www.svenskarnasparti.se/2009/11/29/folkfronten-blir-svenskarnas-parti-svp/> (Accessed 15 April, 2013)

Svenskarnas Parti. 'Vidareutveckling av de politiska punkterna'. <http://www.svenskarnasparti.se/2009/11/29/folkfronten-blir-svenskarnas-parti-svp/> (Accessed 15 April, 2013)

Säkerhetspolisen, 'Grupper inom vit-makt miljö', 22 December, 2011. <http://www.sakerhetspolisen.se/forfattningsskydd/politiskextremism/vitmaktmiljon/grupper.4.3b063ad1101207dd46800055810.html> (Accessed 18 April, 2013)

”Tyska staten vill förbjuda högerextrema NPD”, *Sveriges Radio*, 5 December, 2012.:
<http://sverigesradio.se/sida/artikel.aspx?programid=83&artikel=5370720> (Accessed 4 April, 2013)

Utrikespolitiska institutet, ”Fördjupning Baskien” *Myndigheten för samhällsskydd och beredskap (MSB)*, 23 August, 2012. <http://sakerhetspolitik.se/konflikter/baskien/fordjupning/>
(Accessed 1 April, 2013)

Windeskog, Jimmy S. (2006). Nationaldemokraterna inget högerparti. *Sällskapet Kafé Kastanjetrådet* [Av den nationalistiska statsvetaren Jimmy S. Windeskog]. 21 August.
<http://bssborlange.blogspot.com.es/2006/08/opublicerat-1.html> (Accessed 18 April, 2013)

Yoldi, José, “El Constitucional excarcela a la Mesa de HB,” *El País*, 21 July, 1999.
http://elpais.com/diario/1999/07/21/espana/932508001_850215.html (Accessed 19 April, 2013)

Government Documents

Deutscher Bundestag “The Enabling Act of 23 March 1933,” Administration of the German Bundestag, Research Section WD 1, March 2006. Available at:
http://www.bundestag.de/htdocs_e/artandhistory/history/factsheets/enabling_act.pdf (Accessed 15 April, 2013)

Justitiedepartementet, Brottsbalk (1962:700), *Regeringskansliets rättsdatabaser*. Available at:
<https://lagen.nu/1962:700#K16P8> (Accessed 25 April, 2013)

Statens offentliga utredningar (SOU: 2000:88), ”Organiserad brottslighet, hets mot folkgrupp, hets mot homosexuella, m.m. - straffansvarets räckvidd”, *Justitiedepartementet*. Available at:
<http://www.regeringen.se/sb/d/108/a/615> (Accessed 20 April, 2013)

Constitutions and Party Laws

Basic Law for the Federal Republic of Germany. Available at: <https://www.btg-bestellservice.de/pdf/80201000.pdf> (Accessed 15 April, 2013)

DPRK's Socialist Constitution. Available at:
http://www1.korea-np.co.jp/pk/061st_issue/98091708.html (Accessed 15 April, 2013)

The Constitution of the Kingdom of Sweden. Available at: <http://www.riksdagen.se/en/Documents-and-laws/Laws/The-Constitution/> (Accessed 20 April, 2013)

The German Act on Political Parties (Political Parties Act) of 24 July 1967. Available at:
http://www.bundeswahlleiter.de/en/parteien/downloads/parteiengesetz_engl.pdf
(Accessed 25 April, 2013)

The Spanish Constitution of 31 October 1978. Available at:
http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/const_espa_texto_ingles_0.pdf (Accessed 3 April, 2013)

The Spanish Law on Political Parties, LEY ORGÁNICA 6/2002, de 27 de junio, de Partidos Políticos (BOE núm. 154, de 28 de junio) Available at:
http://www.infoelectoral.mir.es/Partidos/partidos_no_detail_leyes_2.html

Election result

The Federal Returning Officer, Elections to the German Bundestag 2009: Federal result. Available at: http://www.bundeswahlleiter.de/en/bundestagswahlen/BTW_BUND_09/ergebnisse/bundesergebnisse/index.html (Accessed 25 March, 2013)

The Federal Returning Officer, Elections to the German Bundestag 2009: Sachten. Available at: http://www.bundeswahlleiter.de/en/bundestagswahlen/BTW_BUND_09/ergebnisse/landesergebnisse/14/ (Accessed 25 March, 2013)

Ministerio Interior, Consulta de Resultados Electorales, Municipales April 1979. Available at: <http://www.infoelectoral.mir.es/min/busquedaAvanzadaAction.html> (Accessed 8 April, 2013)

Ministerio Interior, Consulta de Resultados Electorales, Parlamento Europeo 2009. Available at: <http://www.infoelectoral.mir.es/min/busquedaAvanzadaAction.html;jsessionid=35E1F8562F1A187FDC1E9D154D7E9C6D.app1> (Accessed 25 April, 2013)

Ministerio Interior, Consulta de Resultados Electorales, Municipales Mayo 2011. Available at: <http://www.infoelectoral.mir.es/min/busquedaAvanzadaAction.html?vuelta=1&codTipoEleccion=4&codPeriodo=201105&codEstado=99&codComunidad=14&codProvincia=0&codMunicipio=0&codDistrito=0&codSeccion=0&codMesa=0> (Accessed 25 April, 2013)

Valmyndigheten, 'Val till Riksdagen', 21 September, 2006. Available at: <http://www.val.se/val/val2006/slutlig/R/rike/ovriga.html> (Accessed 6 April, 2013)

Valmyndigheten, 'Val till Kommunfullmäktige i Nykvarn-Valda', 28 September, 2010. Available at: <http://www.val.se/val/val2010/slutresultat/K/kommun/01/40/valda.html> (Accessed 19 April, 2013)

Valmyndigheten, 'Val till Kommunfullmäktige i Södertälje-Valda', 1 October, 2010. Available at: <http://www.val.se/val/val2010/slutresultat/K/kommun/01/81/valda.html> (Accessed 19 April, 2013)

Court rulings

Case of Herri Batasuna and Batasuna v. Spain (Applications nos. 25803/04 and 25817/04) JUDGEMENT STRASBOURG 30 June 2009. Available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-93475#{"itemid":\["001-93475"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-93475#{) (Accessed 3 April, 2013)

Sentencia del Tribunal Constitucional Español, STC 48/2003, En el recurso de inconstitucionalidad núm. 5550-2002, Promovido por el gobierno vasco. Available at: <http://www.juridicas.unam.mx/publica/librev/rev/juselec/cont/20/dcl/dcl12.pdf> (Accessed 8 April, 2013)

Sentencia del Tribunal Constitucional Español, STC 126/2009, recurso de amparo 4630/2009, promovido por la coalición electoral 'Iniciativa internacionalista – La solidaridad entre los pueblos', 21 May, 2009. Available at: http://www.boe.es/diario_boe/txt.php?id=BOE-A-2009-10259 (Accessed 26 April, 2013)

Sentencia del Tribunal Constitucional Español, STC 2561/2011, promovido por la Coalición electoral "BILDU Eusko Alkartasuna (EA)/Alternatiba Eraikitzen", 5 May, 2011. Available at: <http://www.tribunalconstitucional.es/es/resolucionesrecientes/Documents/2011-02561STC.pdf> (Accessed 25 April, 2013)

Appendix: Parties banned in Spain

Party	Year of ban	Type of ban	Grounds for ban
<i>Herri Batasuna, Euskal Herritarrok, Batasuna</i>	2003	Parties banned and dissolved	Collaboration and support for a terrorist group
<i>Autodeterminaziorako Bilgunea and others</i>	2003	Disqualification of electoral grouping lists	Successor to Batasuna
<i>Herritarren Zerenda</i>	2004	Disqualification of electoral grouping lists	Successor to Batasuna
<i>Aukera Guztiak</i>	2005	Disqualification of electoral grouping lists	Successor to Batasuna
<i>Abertzale Sozialisten Batasuna</i>	2007	Party denied registration	Successor to Batasuna
<i>Eusko Abertzale Ekintza</i>	2007	Disqualification of party lists	Successor to Batasuna
<i>Abertzale Sozialistak</i>	2007	Disqualification of electoral grouping lists	Successor to Batasuna
<i>Eusko Abertzale Ekintza</i>	2008	Party banned and dissolved	Successor to Batasuna
<i>Euskal Herrialdeetako Alderdi Komunista</i>	2008	Party banned and dissolved	Successor to Batasuna
<i>Askatasuna</i>	2009	Disqualification of party lists	Successor to Batasuna
<i>Demokrazia Hiru Milioi</i>	2009	Disqualification of electoral grouping lists	Successor to Batasuna

<i>Iniziatiba Internazionalista - Herrien Elkartasuna (II-SP)</i>	2009	Disqualification of electoral coalition lists (overruled)	Successor to Batasuna
<i>Sortu</i>	2011	Non-registration (overruled)	Successor to Batasuna
<i>Bildu</i>	2011	Disqualification of electoral coalition lists (overruled)	Successor to Batasuna ²⁸⁶

²⁸⁶ Bourne 2012: 13