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Political Parties and Constitutionalism

Richard H. Pildesⁱ

I. Introduction

Constitutions and judicial review are often thought of, particularly in more recent decades, as devices for ensuring the protection of individual rights and, through equality provisions, the rights of potentially vulnerable minority groups. Within this conception, constitutional law is viewed as a means of restraining potentially oppressive majorities from running roughshod over personal liberties or the interests of minority groups. This rights-equality conception tends to emphasize what might be called “negative constitutionalism”: constitutions as shields against majoritarian excesses.

But constitutions also serve to constitute political power. In constitutional democracies, constitutions empower democracy: they create the institutional structures, offices of government, and framework for decisionmaking that organize the diffuse preferences of a mass society into recognizable, meaningful, and legitimate political outcomes. The study of how constitutions create positive political power, and how constitutional law sustains (or fails to sustain) this power might be called “positive constitutionalism.”ⁱⁱ Though most modern constitutional scholarship focuses on the role of constitutions as checks on political power, the role of constitutions as creators of political power is at least as important, both historically, in terms of why constitutions were created originally, and in terms of the practice of governance today. For example, the American Constitution, the oldest one, was created to realize this kind of positive constitutionalism: its central purpose was to create a powerful, effective system for governance at the national level. Only after that Constitution was created was the Bill of Rights, the

provisions designed to check the national government, then engrafted on. In general, the *raison d'être* of constitutions is to create power, albeit power that is checked and channeled appropriately.

That means creating the institutions, structures, organizations, and legal framework that enable democratic government (at least in constitutional democracies). And in any modern state, one of the most essential elements in democratic self-government is the political party. Although the romantic vision of the individual citizen as the vehicle of democratic self-governance still has powerful emotional and symbolic resonance, the reality is that in any large state, the most enduring and powerful vehicle for organizing citizens into effective participants in politics is the political party. Parties are central to defining political agendas, organizing coalitions of voters, amplifying the voices of diffuse groups, and keeping officeholders accountable. In recognition of this fact, Germany's Federal Constitutional Court (*Bundesverfassungsgericht*), has described the post-WW II German Constitution as having created a "party state"; the meaning of this idea is that democracy is only secured and made meaningful to the extent that free and vibrant political parties are permitted to compete for political power. But political parties in control of the powers of government can also use that power to seek to entrench themselves and reduce competitive pressures from other parties. Thus, constitutional regimes must both protect the role of political parties in democratic processes and protect democracy from partisan attempts to manipulate the rules of political engagement. This chapter explores how constitutional texts and court decisions have engaged the now well-recognized centrality of political parties to making democratic self-government meaningful.

II. Constitutional Texts

A great deal of variance exists as to whether constitutions refer to political parties at all and, if so, what kinds of protections are provided. To some extent, this variance is a function of when a constitution was adopted: more recent constitutions tend to reference political parties, while older ones do not. Thus, fewer than 10% of the constitutions in force in 1875 mentioned parties, while over 80% of those in force in 2006 do so.ⁱⁱⁱ Similarly, before 1950 the right to form political parties was virtually non-existent; since then, this right has become much more common, with 60% of the constitutions in effect in 2000 guaranteeing such a right.^{iv} These differences reflect transformations over time in the understanding of what the practice of democracy means in large societies.

The difference between the American and German constitutions is emblematic of this history. The oldest constitution, the American one, does not mention political parties at all; not only did the American Framers fail to anticipate the rise of modern political parties and their centrality to democracy, the American Constitution was actually conceived in hostility to parties.^v Political parties were one quintessential form of the “factions” that James Madison, in defending the American constitutional design, decried.^{vi} In trying to design a constitutional system that would preclude the rise of parties, the American Framers were simply reflecting a deeper, more longstanding tradition in Europe of “antipartyism” – the view that political parties, because they are sectarian and partisan, are divisive elements that corrode the capacity of democratic government to pursue the common good.^{vii}

In contrast, constitutions formed in the direct aftermath of 20th century totalitarian regimes, or in the knowledge of how such regimes functioned, reflected awareness of the fact that one of the first things such regimes did was to eliminate party competition and consolidate

one-party rule. Thus, the post-World War II German Constitution, in its well-known Art. 21 provision, provides express protection of the right to form political parties – while also requiring, in reaction to the Nazi era, that parties internally be structured along democratic lines:

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

In the eyes of the German Constitutional Court, Art. 21 has “raised [political parties] to the rank of constitutional institutions” and recognizes that parties are “constitutionally integral of government.”^{ix} Further reflecting the ways historical context has shaped the place of political parties in constitutional texts, there is substantial regional variation. Almost every constitution in place in 2000 in Eastern Europe and the post-Soviet countries, as well as Latin America, East Asia, and sub-Saharan Africa makes reference to political parties; only about 60% of the constitutions in effect in 2000 in Europe, the United States, and Canada do so, while about 40% of those in Oceania (Australia, New Zealand, and other Pacific islands) do so.^x A listing of representative provisions is provided below.^{xi}

III. Constitutional Law

Broadly speaking, three different forms of constitutional issues concerning political parties can be identified in the decisions of courts across different systems. The first are “competition-protecting” decisions; these are decisions that seek to ensure the vitality of the democratic process by ensuring that a vibrant system of competitive parties remains in place. The second category are decisions, perhaps unique to the American context, that provide strong protection to the autonomy of political parties. Finally, the third form of issue that courts have

confronted involves attempts to ban various political parties, often on the grounds that the party at issue is itself a threat to the continuation of democracy, because the party is “anti-democratic.”

1. Ensuring Political Competition

A. Ballot Access and Campaign Financing.^{xii} The most robust jurisprudence seeking to protect democratic competition through protecting the rights and interests of political parties is probably that of the German Constitutional Court. That court has recognized consistently, in various ways, that existing political powerholders will be tempted to use their power over election laws to stifle political competition. In response, the German Court has been aggressive in striking down regulations that limit a political party’s access to the ballot. Thus, in the Ballot Admission Case, the German Court invalidated a stringent signature requirement that applied only to the candidate of a party not already represented in the national or state legislatures, while existing parties needed the approval only of the relevant state party executive committee.^{xiii}

Despite the increased risk of political instability from multiparty competition, the German Court found that the 500-signature requirement for new parties interfered with open and fair political competition. The German Court has been even more concerned with ballot access restrictions in local elections. For example, it held unconstitutional one state's requirement that a candidate nominated by local voters' groups secure a minimum number of signatures to appear on the ballot, while political parties did not face a similar obligation.^{xiv} The German Constitutional Court reasoned that “[i]n the field of election law the legislature enjoys only a narrow range of options. Differentiations in the field always require a particularly compelling justification.”

Similarly, in the area of election financing, the German Court has been extraordinarily attentive to the possible partisan manipulation of financing regulations by dominant parties.

Indeed, the Court has essentially defined the rules that govern public funding of political parties. In one striking venture into this area, the German Court in 1958 struck down provisions making donations to political parties tax deductible.^{xv} The Court reasoned that since progressive taxation meant that income tax rates increased as income increased, such a system of financing disproportionately benefitted wealthy (and corporate) taxpayers. Thus, the Court concluded, because tax-deductible party contributions favored certain political parties – those wealthy donors were inclined to support – this policy violated the constitutional principle of equality of opportunity for political parties. In this line of cases, the Court suggested that in order to ensure effective competition and diminish special-interest influence, the government could provide public financing to parties. The Court was careful to stress that such financing could not increase existing de facto inequalities between parties.

When the German government began public financing, the laws distributed funds based on the proportion of parliamentary seats each party won.^{xvi} Parties that did not win seats could not receive public financing, leading parties that had actively campaigned but lost to challenge these limitations.^{xvii} The German Court struck these provisions down as unconstitutional infringements on the rights of minor parties: "It is inconsistent with the principle of equal opportunity for [the legislature] to provide these funds only to parties already represented in parliament or to those which ... win seats in parliament." At the same time, the Court recognized that public reimbursement would encourage new parties and that the legislature could act against the formation of "splinter" parties by making reimbursement contingent upon a new party obtaining a certain percentage of votes.

After the Bundestag responded by imposing a 2% threshold, the Court struck this down as well, on the ground that it violated general equality principles and constitutional provisions mandating universal and equal suffrage.^{xviii} As a matter of constitutional law, the Court then specified that any party capturing 0.5% of the vote "manifests its seriousness as an election campaign competitor" and should receive a portion of public funds. Later, in a separate case, the Court held that independent candidates were also eligible for public funding under certain circumstances.^{xix} The German Court thus has been quite active in drawing the constitutional boundary between political parties and the state - a difficult task complicated by public financing. For many years, the Court struggled to distinguish between public funding designed to defray legitimate campaign costs and public funding designed for the general support of parties. Eventually the Court abandoned that distinction as unworkable and instead held that the total of state funding could not exceed the total amount the parties themselves raised.^{xx} The Court established this rule to ensure that the parties remained tied to their voters and did not become too entrenched. The Court has also attentively monitored tax deductions for party contributions and has banned tax deductions for corporate contributions to parties and for individual contributions so large that they raised concerns about equality between parties.

The Canadian Supreme Court has similarly invoked that country's constitution to protect the constitutional rights of regional or smaller political parties in the context of campaign-finance laws. In the important *Figuroa* case,^{xxi} the Canadian Supreme Court confronted election laws that required a political party to nominate candidates in at least 50 election districts in order to be an officially registered party. Among the benefits of registered party status at issue in the case were the right of registered parties to issue tax receipts for donations the parties

received outside the official election period, the right of candidates to transfer unspent election funds to the party (rather than to the government), and the right of the party's candidates to list their party affiliation on the ballot. The purpose of these provisions, according to the government, was to ensure that only parties representing large coalitions, with some geographic breadth of appeal, would receive the benefits of party status. Thus, the provisions aimed to reduce the fragmentation and splintering of parties.

In a decision unanimous in outcome but split in reasoning, the Court held that these provisions violated the Canadian Charter of Rights and Freedoms, Canada's constitutional text. The majority applied more of an individual rights analysis and concluded that these provisions unjustifiably infringed upon a constitutional right of each citizen to play a meaningful role in the electoral process; voters who supported smaller parties would be unduly burdened by the 50-district requirement for party status. A minority group of Justices was more willing to permit government to subordinate individual interests to various structural or systemic aims in the design of electoral institutions. Thus, this group of Justices thought electoral institutions could be designed for the aim of creating and sustaining more centrist, "accommodative" parties. These Justices pointed to the Canadian Court's handling of gerrymandering claims, in which the Canadian Court had not applied a strict rule of population equality across all election districts, but had instead permitted government to design districts to overrepresent rural areas in order to create more of a sense of inclusion and fair representation. But even though this group of Justices was willing to permit government to treat major and minor parties differently for certain, justifiable ends of democracy itself – such as encouraging parties that represent a national perspective -- these Justices nonetheless also concluded, as the majority did, that the 50-district

requirement for party status was unconstitutional. In large provinces, a regional party could mount 50 candidacies, while parties in small provinces could not; thus, the law was not tailored to ensuring only broad, national parties and effectively did not treat different regions of Canada or different provinces equally – and for that reason, violated the Charter. Thus, for quite different reasons, both groups of Justices concluded that dominant political actors had used their power over election laws to diminish, unconstitutionally, the role of smaller parties.

B. Internal Parliamentary Rights of Minor Parties and Independent Officeholders

To ensure that dominant parties do not capture politics in yet other ways, the German Court has also been willing to review the internal distributions of policymaking influence within the legislature itself. In particular, the German Court has held that opposition parties have a participatory interest that the ruling coalition cannot suppress through parliamentary procedures.^{xxii} For example, the constitution of one German state allowed one-fourth of the members of parliament to request a committee to investigate problems with government. In one instance, after a minority party had established an investigative committee, the majority party sought to add additional charges to the committee's mandate, including a counter-corruption charge against the leader of the minority party. The minority sued, and the Court upheld the minority's constitutional power to define the terms of its own investigation. In an insightful passage, which recognized that competition between parties was a main mechanism through which government could be held accountable, the Court noted:

The constitutional meaning of the rights of the minority lies in the safeguarding of this control [over defining the terms of its own investigations]... The original tension between parliament and government - as it existed during the constitutional monarchy - has changed. In a parliamentary democracy the majority [party] normally dominates the government. Today, this relationship is characterized by the political tension between the government and the

parliamentary fractions supporting it, on the one hand, and the opposition [party or parties], on the other hand. In a parliamentary system of government [therefore] the majority does not primarily watch over the government. This is rather the task of the opposition, and thus, as a rule, of the minority [party]... If the right of the minority - and thus the parliamentary right to control - is not to be weakened unduly, then the minority must not be left at the mercy of the majority.^{xxiii}

In other litigation, a member of the Bundestag (the German Parliament) who had first been elected as a representative of the Green Party resigned from that party and became an independent representative. He sued after he was stripped of all committee positions, and the Court held that a representative without a party affiliation could not be excluded from committees merely because he was not a member of any party (although he could be denied the right to vote in committee).^{xxiv} As the Court put it, the "constitutional protection of parliamentary minorities - a right following from the principle of democracy - also applies to independent representatives." In general, the Court has taken the position that "parties must be represented on committees in proportion to their strength."^{xxv} Finally, in a case not involving interparty competition, but one in which the Court was aware of the possibilities for partisan manipulation, the Court held that when a successful candidate on a party's list withdraws or resigns after election, the party cannot simply name a substitute, nor can it shift the order of the candidates on its list. To respect the preferences of voters, the candidate who is next in line on the list elected must be given the seat.^{xxvi} This line of cases explores the structure of relationships between parties and their candidates, and between parties within the legislative process, and reveals the extent to which the German Court has taken an active role in protecting the political process from manipulation by partisan majorities.

C. Electoral Thresholds

A recurring constitutional issue across democracies that rest on proportional representation has been the constitutionality of various thresholds of representation. These thresholds have been challenged by minor parties as being inconsistent with constitutional commitments to democracy. Courts have responded by embracing the legitimacy of judicial oversight over these thresholds, rather than treating them as political choices to which courts should be highly deferential. On the merits, courts have sought to find a balance between the need for thresholds at some level – a response to the failed parliamentary systems between the wars, which were thought to be paralyzed in part because representation was highly fragmented among numerous parties, including small ones – and the fact that high thresholds could be a means by which dominant political parties suppress political challenge.

Thus, the German Court has rejected numerous challenges to that system’s five-percent threshold by accepting a weighty governmental interest in effective governance institutions, which in that Court’s view justified measures to avoid party splintering “which would make it more difficult or even impossible to form a majority.”^{xxvii} In similar fashion, the constitutional courts of the Czech Republic and Romania have upheld challenges to their systems’ five-percent threshold for representation.^{xxviii} At the same time, the German court struck down five-percent thresholds in the immediate aftermath of reunification, on the basis that such a threshold would suppress competition and representation from the former East Germany, in light of the lack of electoral experience and hence the ability to forge effective aggregate actors, such as parties, in the first steps of East Germany’s transition to democracy.^{xxix}

2. Bans On Political Parties

The cases above can all be categorized as ones in which courts seek to maintain the conditions of robust democratic political competition by ensuring that the electoral ground rules do not inappropriately constrict the opportunities of political parties – typically, minority parties – to challenge more dominant parties for power. A second major categorization of cases that engage the role of political parties in constitutional regimes can be conceptualized all the way at an opposite pole: whether states can shut certain political parties out of the process of democratic competition altogether by banning or otherwise regulating those parties. This question has bedeviled the high courts of countries as diverse as Germany, Spain, India, Turkey, and Israel, along with the quasi-constitutional European Court of Human Rights.

The types of political parties subject to various modes of state prohibition, or extreme regulatory restriction, include parties deemed to be “antidemocratic,” those considered to be separatist, and ethnic parties.^{xxx} These bans or regulatory restrictions are justified in Europe under the post-World War II rubric of “militant democracy,” or the need of democratic states to be vigilant and aggressive in defending themselves against antidemocratic threats from within – particularly the threat posed in the electoral arena by antidemocratic parties using democratic elections to assume power. Parties that states have viewed as antidemocratic include, for example, neo-Nazi and Communist parties in Germany. In Turkey, religiously-based parties (Islamic parties) have also been treated as antidemocratic because they depart from the Turkish constitutional vision of Turkey as a democratic, secular state. Separatist parties include those that seek to fragment an existing state by the demand for territorial independence; Kurdish parties in Turkey, for example, have been banned under this rationale. Ethnic party bans can be found in many constitutions in Asia, sub-Saharan Africa, post-communist Eastern Europe, and

the fledgling constitutions of Afghanistan and Iraq.^{xxxii} Many of these party bans and regulatory restrictions have been challenged as violating the constitutions of the relevant states.

The form of the restriction on impermissible parties ranges in different countries from outright bans on certain parties to less comprehensive measures. India, for example, does not ban parties, but its electoral code regulates “corrupt practices,” which include appeals to vote for or against candidates on the ground of religion, race, caste, community or language, or the use of, or appeal, to religious symbols.^{xxxiii} The Indian High Court has permitted state electoral authorities to overturn election results when winning candidates have been found to violate these prohibitions.^{xxxiii} In Israel, as a result of interplay between the Israeli Supreme Court and the parliament, the state denies “antidemocratic” parties the right to seek elective office but does not ban them more broadly.^{xxxiv}

For the most part, constitutional courts have upheld these party bans or related measures, though not without concern for the tension that banning any political party poses for democratic systems. Surely it was no surprise that the German Constitutional Court in 1952 upheld a ban on the Socialist Reich Party, a clear vestige of the Nazi party, on the basis of the party’s aim to overthrow democratic government in Germany.^{xxxv} And while the German court in the 1950s upheld a ban on the Communist Party, it is noteworthy that when another Communist Party was formed in 1968, the German government took no steps to ban it, perhaps because the strength of the post-WWII German democratic order was perceived as sufficiently secure as to tolerate previously banned parties.^{xxxvi}

Perhaps the most interesting in the line of cases involving party bans is a series of cases from Turkey dealing with the Refah Partisi (Welfare Party), a mass-based Islamic organization

with wide enough popular support that made it at one time the largest single party in the Turkish parliament. Nonetheless, the Turkish Constitutional Court ordered the dissolution of the party, the surrender of its assets to the state, and the removal of four Refah members from Parliament, while also banning the party's leaders from elective office for five years.^{xxxvii} The Court did so on the ground that the party was "antidemocratic" because it violated the Turkish constitutional commitment to a democratic and secular state. The Welfare Party case is noteworthy not only because the party was a major force in Turkey, not a fringe party, but also because the Welfare Party was able to appeal to a supranational human rights tribunal, the European Court of Human Rights (ECHR).^{xxxviii} Thus, the case tested Europe-wide principles concerning the boundaries, if any, of political party participation in constitutional democracy. The ECHR upheld the decision of the Turkish courts on the ground that "a State cannot be required to wait, before intervening, until a political party has seized power and begun to take concrete steps to implement a policy incompatible with the standards of the Convention and democracy, even though the danger of that policy for democracy is sufficiently established and imminent." Thus, this line of cases across many countries, and their endorsement in the Turkish cases by the ECHR, reveals that the constitutional orders in many countries permit restraints on "extremist parties" that would clearly be unconstitutional within the First Amendment tradition of the United States. To some extent, that is not surprising; the United States has long tolerated extremist speech in general that other democracies proscribe. But it is one thing to regulate even the speech of an individual. The stakes are even higher when the issue becomes the constitutionality in democratic states of regulating, and even banning, entire political parties.

3. Party Rights to Autonomy?

Beyond the context of ensuring that minor parties continue to be able to put competitive pressure on major parties and the context of “extremist parties,” constitutions and courts vary greatly as to whether parties should enjoy a broad, general constitutional right to autonomy. The German system expressly rejects this view, in the sense that the German Constitution specifically regulates the internal structure and organization of parties; as a reflection of the Nazi experience, Art. 21 of the German Constitution requires that parties be internally organized to be democratic. The German Court has taken this provision to mean that a political party "must be structured from the bottom up, that is, that the members must not be excluded from decision-making processes, and that the basic equality of members as well as freedom to join or to leave must be guaranteed."^{xxxix}

American constitutional doctrine lies all the way at the other end of the spectrum. The American Supreme Court has held unconstitutional legislative attempts to control the internal organization of political parties.^{xl} Even more dramatically, most American states have long required political parties to choose their nominees through a primary election, rather than having party leaders or some other internal party process select candidates. Yet the Supreme Court has held unconstitutional efforts by the state to expand the electorate entitled to participate in those primaries. Thus, the Supreme Court has held that it violates the American Constitution for legislatures to require political parties to permit non-members to participate in these primary elections.^{xli} This is so even when legislatures seek to regulate the major political parties to increase participation in their primary elections. Although the American Constitution contains no express provision recognizing parties, or granting them any rights against the state, the Supreme Court has concluded that the First Amendment protects the right of free political

association, and through that, the rights of political parties. This approach has, in turn, generated the strongest constitutional right of political party autonomy to be found in any major system.

The full scope of this emerging right to party autonomy is still in the process of development in the United States. Whether such a right should be constitutionally recognized is also a matter of much dispute within the American Supreme Court and academic literature. To the extent such a right erects barriers to legislative attempts to enhance the democratic process or the democratic character of political parties, as the right of party autonomy appears to do in the United States, questions have been raised as to whether constitutional rights to party autonomy furthers or undermines the democratic system.^{xlii}

III. Conclusion

In the aftermath of WW II, if not long before, vibrant political parties have come to be recognized as essential to democratic politics. Indeed, democracy has come to be defined as multi-party competition for political power. Modern constitutions reflect this view by granting constitutional status to political parties and enshrining various protections for parties.

In all democratic systems, those who occupy political office will be tempted to use their temporary power to adopt rules that make it more difficult for their potential challengers to succeed. Because rival political parties are the most potent form through which such challenges are likely to be mobilized and organized, all democratic systems face the risk that those in power will seek to adopt rules that weaken rival parties. A central task for modern constitutionalism, therefore, is to seek to preserve and sustain ground rules of political competition that enable parties to compete for political power on fair and appropriate terms. The German Constitutional Court has probably developed the leading jurisprudence thus far on these issues.

At the same time that parties are the principal carriers of democratic participation, they also can pose risks to the democratic system. Courts in many countries in different religious, geographical, and historical contexts have struggled with the issue of whether the constitutional order should permit states to ban, or otherwise restrict, political parties that are considered “extremist” and hence threatening to the maintenance of democracy itself. Precisely how to draw the boundary between protecting parties as vital sources of competition and constraining extreme parties as threats to democracy remains a profound and difficult question that bears future study, particularly as religiously-based parties appear to be on the march in many countries.

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ⁱⁱ I borrow this phrase from my colleague, Stephen Holmes.

ⁱⁱⁱ See Elkins, Ginsburg & Melton (2009) at 19.

^{iv} ConstitutionMaking.Org (2008) at 3.

^v See Hofstadter (1970).

^{vi} The Federalist No. 10.

^{vii} On this tradition of antipartyism, see Rosenblum (2008) at 25-165.

^{viii} Constitution of the German Federal Republic, Article 21.

^{ix} Kommers (1997) at 200, 209.

^x ConstitutionMaking.Org (2008) at 1.

^{xi}

The freedom of association includes the right to establish and join political associations and parties and, through them, to work jointly and democratically to give expression to the will of the people and to the organization of political power.-*Portugal 2004. Article 51*
In the Republic of Hungary political parties may be established and may function freely, provided they respect the Constitution and laws established in accordance with the Constitution.-*Hungary 2003. Article 3.1*

A person shall enjoy the liberty to unite and form a political party for the purpose of making political will of the people and carrying out political activities in fulfillment of such will along the democratic regime of government with the King as Head of the State as provided in this Constitution.-*Thailand 1997. Article 47*

The rights of a citizen include the right to form and join political parties, to take part in political campaigns, and to vote and to be a candidate in free and fair elections of members of the House of Representatives held by secret ballot and ultimately on the basis of equal suffrage.-*Fiji 1998. Article 6.fE*

Political parties or groups take part in the elections and the political, economic and social life. They form and conduct their activities freely.-*Central African Republic 2004. Article 20*

Political parties express the democratic pluralism, assist in the formulation and manifestation of the popular will and are a basic instrument for political participation. Their creation and the exercise of their activity are free within the observance of the Constitution and the law. Their internal structure and functioning must be democratic.-*Spain 1992. Article 6*

The Republic of Poland safeguards the freedom for the creation and the functioning of political parties. Political parties shall be founded on the principle of voluntariness and the equality of Polish citizens, with the goal of influencing the formulation of the policy of the State by democratic means.-*Poland 1997. Article 11.1*

Creation, merger, incorporation, and dissolution of political parties is free, with due regard for national sovereignty, the democratic regime, multiplicity of political parties and fundamental human rights, observing the following precepts...-*Brazil 2005. Article 17*

^{xii} The material here and in the next few pages is drawn from Issacharoff & Pildes (1998).

^{xiii} 3 BVerfGE 19 (1953).

^{xiv} Stoevesandt Case, 12 BVerfGE 10, 25 (1960).

^{xv} Party Finance Case II, 8 BVerfGE 51, (1958).

^{xvi} Party Finance Act of 1959.

^{xvii} Party Finance Case III, 20 BVerfGE 56 (1966).

^{xviii} Party Finance Case IV, 24 BVerfGE 300 (1968).

^{xix} Daniels Case, 41 BVerfGE 399 (1976).

^{xx} Party Finance Case VII, 85 BVerfGE 264 (1992).

^{xxi} Figueroa v. Canada (Attorney General) [2003] 1 S.C.R. 912.

^{xxii} Schleswig-Holstein Investigative Committee Case, 49 BVerfGE 70 (1978).

^{xxiii} *Id.*

^{xxiv} Wüppesahl Case, 80 BVerfGE 188 (1989).

^{xxv} Currie (1994) at 110.

^{xxvi} See *id.* at 106-07.

^{xxvii} Kommers (1997) at 187.

^{xxviii} See generally Sadurski (2005) at 154-55.

^{xxix} National Unity Election Case, 82 BVerfGE 322 (1990).

^{xxx} Issacharoff (2007); Basedau (2007).

^{xxx}_i Basedau (2007).

^{xxx}_{ii} Representation of the People Act, No. 43 of 1951, § 123(3).

^{xxx}_{iii} See, e.g., *Prabhoo v. Shri Prabhakar Kasinath Kunte et al*, 1995 S.C.A.L.E. 1 (upholding invalidation of the election of the mayor of Bombay).

^{xxx}_{iv} See Basic Law: The Knesset §7A (excluding antidemocratic parties from elections).

^{xxx}_v Socialist Reich Party Case, 2 BVerfGE 1 (1952).

^{xxx}_{vi} Issacharoff (2007) at 1435.

^{xxx}_{vii} Turkish Constitutional Court, Decision no. 1998/1 (1/16/1998).

^{xxx}_{viii} *Refah Partisi (The Welfare Party) and Others v. Turkey*, Grand Chamber Judgment, Strasbourg, February 13, 2003.

^{xxx}_{ix}. Socialist Reich Party Case, 2 BVerfGE 1 (1952).

^{xl} *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214 (1989).

^{xli} *Cal. Democratic Party v. Jones*, 530 U.S. 567 (2000).

^{xlii} See Pildes (1998) at 101-30.