



*Routledge Studies in Extremism and Democracy*

# **DEMOCRATIC DILEMMAS**

## **WHY DEMOCRACIES BAN POLITICAL PARTIES**

Angela K. Bourne



# Democratic Dilemmas

This book examines how democratic communities resolve dilemmas posed by anti-system parties or, more specifically, the question of why democracies take the grave decision to ban political parties. On the one hand, party bans may 'protect' democracies, usually from groups deemed to undermine the democratic system or its core values, territorial integrity or state security. At the same time, banning parties challenges foundational democratic commitments to political pluralism, tolerance and rights to free speech and association. The book probes the deliberative processes, discursive strategies and power politics employed when democratic communities negotiate this dilemma. It examines discourses of securitization and desecuritization, preferences of veto-players, anti-system party orientations to violence, electoral systems and the *cordon sanitaire* as alternatives to party bans, and incentives for mainstream parties to cooperate, rather than ban, parties to achieve office and policy goals. It does so with reference to case studies of party bans, legalizations and failed ban cases in Spain (Herri Batasuna and successors), the United Kingdom (Sinn Féin and Republican Clubs) and Germany (Socialist Reich Party and National Democratic Party of Germany).

**Angela K. Bourne** is an associate professor at the University of Roskilde, Denmark.

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# **Democratic Dilemmas**

Why Democracies Ban Political Parties

**Angela K. Bourne**

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**To Anthony and Samuel**



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# Abbreviations

AfD	<i>Alternative für Deutschland</i> (Alternative for Germany)
AVT	<i>Asociación Víctimas del Terrorismo</i> (Association of Victims of Terrorism)
BMI	Bundesministerium des Innern (Federal Interior Ministry)
BNG	<i>Bloque Nacionalista Galego</i> (Galician Nationalist Bloc)
CC	<i>Coalición Canaria</i> (Canarian Coalition)
CCa PCN	<i>Coalición Canaria – Partido Nacionalista Canario</i> (Canarian Coalition – Canarian Nationalist Party)
CDC	<i>Convergència Democràtica de Catalunya</i> (Democratic Convergence of Catalonia)
CDU	<i>Christlich Demokratische Union</i> (Christian Democratic Union)
CiU	<i>Convergència i Unió</i> (Convergence and Union)
CP	<i>Coalición Popular</i> (Popular Coalition)
Cs	<i>Ciudadanos</i> (Citizens)
CSU	<i>Christlich-Soziale Union</i> (Christian Social Union)
DB	Deutscher Bundestag (German Federal Parliament)
DiL	<i>Democràcia i Llibertat</i> (Democracy and Freedom)
DP	<i>Deutsche Partei</i> (German Party)
DRP	<i>Deutsche Reichs-Partei</i> (German Reich Party)
DVU	<i>Deutsche Volksunion</i> (German People's Union)
EA	<i>Eusko Alkartasuna</i> (Basque Solidarity)
EAE/ANV	<i>Eusko Abertzale Ekintza/Acción Nacionalista Vasca</i> (Basque National Action)
EAJ/PNV	<i>Euzko Alderdi Jeltzale/Partido Nacionalista Vasco</i> (Basque Nationalist Party)
EB-IU	<i>Ezker Batua-Izquierda Unida</i> (United Left)
EBB-IU	<i>Ezker Batua–Berdeak</i> (United Left–Greens)
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EE	<i>Euskadiko Ezkerra</i> (Basque Country Left)
EH	<i>Euskal Herritarrok</i> (Basque Citizens)
EH Bildu	<i>Euskal Herria Bildu</i> (Basque Country Unite)
EHAK/PCTV	<i>Euskal Herrialdeetako Alderdi Komunista/Partido Comunista de las Tierras Vascas</i> (Communist Party of the Basque Homelands)

EPA	Northern Ireland (Emergency Provisions Acts)
ERC	<i>Esquerra Republicana de Catalunya</i> (Republican Left of Catalonia)
ERC CatSí	<i>Esquerra Republicana de Catalunya–Catalunya Sí</i> (Republican Left of Catalonia–Catalonia Yes),
ETA	<i>Euskadi Ta Askatasuna</i> (Basque Homeland and Liberty)
FAP	<i>Freiheitliche Deutsche ArbeiterPartei</i> (Free German Workers Party)
FCC	Federal Constitutional Court
FDP	<i>Freie Demokratische Partei</i> (Free Democratic Party)
Greens	<i>Bündnis 90/Die Grünen</i> (Alliance 90/The Greens)
HASI	<i>Herriko Alderdi Sozialista Iraultzailea</i> (People’s Socialist Revolutionary Party)
HB	<i>Herri Batasuna</i> (Popular Unity)
INLA	Irish National Liberation Army
IU	<i>Izquierda Unida</i> (United left)
IRA	Irish Republican Army
KAS	<i>Koordinadora Abertzale Sozialista</i> (Patriotic Socialist Coordinator)
KPD	<i>Kommunistische Partei Deutschlands</i> (Communist Party of Germany)
LOREG	Ley Orgánica 5/1985, de 19 de junio, del Régimen Electoral General (Organic Law on the General Election Regime)
MLNV	<i>Movimiento de Liberación Nacional Vasco</i> (Basque National Liberation Movement)
MSI	<i>Movimento Sociale Italiano</i> (Italian Social Movement)
NPD	<i>Nationaldemokratische Partei Deutschlands</i> (National Democratic Party of Germany )
NI	Northern Ireland
NICRA	Northern Ireland Civil Rights Association
NSDAP	<i>Nationalsozialistische Deutsche Arbeiterpartei</i> (National Socialist German Workers’ Party)
NSU	<i>Nationalsozialistischer Untergrund</i> (National Socialist Underground)
PA	<i>Partido Andalucista</i> (Andalusian Party)
PAR	<i>Partido Aragonés</i> (Aragonese Party)
PDS	<i>Partei des Demokratischen Sozialismus</i> (Party of Democratic Socialism)
PEGIDA	<i>Patriotische Europäer gegen die Islamisierung des Abendlandes</i> (Patriotic Movement against Islamicization of the West)
PP	<i>Partido Popular</i> (Popular Party)
PSE EE (PSOE)	<i>Partido Socialista de Euskadi-Euskadiko Ezkerra (PSOE)</i> (Socialist Party of the Basque Country – Basque Country Left (PSOE))
PSOE	<i>Partido Socialista Obrero Español</i> (Spanish Socialist Workers Party)
PTA	Prevention of Terrorism Acts

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REP	<i>Die Republikaner</i> (The Republicans)
SA	<i>Sturmabteilung</i> (Storm Troopers)
SDLP	Social Democratic and Labour Party
SPA	Civil Authorities (Special Powers) Act (Northern Ireland) 1922
SPD	<i>Sozialdemokratische Partei Deutschlands</i> (Social Democratic Party of Germany)
SRP	<i>Sozialistische Reichspartei Deutschlands</i> (Socialist Reich Party of Germany)
UA	<i>Unidad Alavesa</i> (Alavese Union)
UPN	<i>Unión del Pueblo Navarro</i> (Union of the Navarrese People)
UPyD	<i>Unión, Progreso y Democracia</i> (Union, Progress and Democracy)
USHICOG	US High Commissioner for Germany
UUP	Ulster Unionist Party
UV	<i>Unió Valenciana</i> (Valencian Union)
UVF	Ulster Volunteer Force

# Introduction

## Pluralism, tolerance and the proscription of political parties

### The democratic dilemma of party bans

Banning a political party is a grave act for a democracy. It contradicts fundamental commitments to freedom of expression and association, pluralism and tolerance. It distorts the posited level playing field of democratic competition and disrupts the articulation and representation of citizen preferences. The party ban is the harshest of myriad penalties, strategies and manoeuvres that may be employed to marginalize undesired political projects. It is usually the mark of tyranny. Yet at some point in the twentieth century many democratic states in Europe and North America – long the bastions of democratic politics – have banned a political party.

Party bans are justified as a means to protect democratic practices or the state itself. With very few exceptions, proscribed parties are anti-system parties representing communists, the far right, ethnic minorities or religious movements. They are typically banned for promoting authoritarian political forms and violent regime change, undermining democratic commitments to equality and pluralism, serving the interests of a foreign power, undermining the territorial integrity of the state, or some combination of these. Oftentimes, the ban addresses the fear – instantiated by the paradigmatic errors of Weimar Germany and the Nazi's rise to power through constitutional means – that democracy may be abused by 'enemies' of the status quo. Democracy, as Loewenstein put it in his 1937 appeal against fascism, may become the 'Trojan horse by which the enemy enters the city' (Loewenstein, 1937, 424).

Avineri has argued that the end of the Cold War, successive waves of democratization and, in Europe at least, the security umbrella of closer economic and political integration, make the party ban increasingly redundant (2004, 2). It is true that fascist and communist parties are no longer the primary targets of ban proceedings as they were, for instance, in the interwar and early post-war periods, and in the case of communist parties following the collapse of the Soviet Union (Bourne and Casals Bértoa, 2017). Nevertheless, challenges to liberal democratic institutions, values and practices are still channelled through the party system, for example, through parties appealing to religious fundamentalist, neo-fascist or racist programmes or parties representing insurgent, paramilitary



## 2 Introduction

or ‘terrorist’ organizations. Indeed, as Niesen (2002) suggests, decisions to ban parties in contemporary democracies tend to be justified as measures to protect civil society from harm to minorities, individual political rights or the rights of future generations, rather than as a tool to tackle subversion. Bligh similarly distinguishes between traditional Weimar-inspired ‘militant democracy’ rationales, focusing on parties that seek to abolish democracy wholesale, and more contemporary party-ban rationales focusing on parties that incite hatred and discrimination, that support violence and terrorism and that challenge the identity of the state (2013, 1321).

The continuing importance of party proscription in democratic states is also apparent from its treatment in international law. Party bans are regulated by various international charters on human rights, including the 1948 Universal Declaration of Human Rights, the 1953 European Convention on Human Rights (ECHR), the 1966 International Covenant on Civil and Political Rights and the 1966 Convention on the Elimination of all forms of Racial Discrimination (Tomuschat 1992; Brems, 2006a). In Europe, the jurisprudence of the European Court of Human Rights (ECtHR) has been particularly influential. Its rulings have established the doctrine of ‘militant democracy’, which permits, under certain conditions, restrictions on rights of anti-democratic actors where this is necessary for the protection of democracy itself (Harvey 2004; Brems 2006a).

Anti-system parties may thus continue to pose an acute dilemma for democracies: Banning a party may help to defend democracies from their ‘enemies’ but proscription risks undermining foundational liberal democratic commitments to free association, free speech and the representation of all citizens in the public sphere.

Democratic states respond to the dilemma in different ways. A study of party bans in European democracies in the post war period conducted by Bourne and Casals Bértoa (2017) illustrates this point. The study showed that the majority – 20 out of 37 – European democracies surveyed had banned a party at some time during that period. Table I.1 lists banned parties and banning countries included in Bourne and Casals Bértoa’s survey. It shows that parties of similar types were banned in some democracies, and in some distinctive historical contexts like the Cold War, but not others. Fascist, neo-Nazi and far-right parties have been banned, stripped of political rights or forced to dissolve in Italy, Germany, Austria and the Netherlands (and outside Europe, in Israel). Such parties have not, for instance, been banned in Sweden, Denmark or Britain. During the Cold War, communist parties were banned, or subject to ban proceedings, in Germany and Greece (and outside Europe in Australia and the United States). After the collapse of the Soviet Union, communist parties in Russia, Latvia, Lithuania and Ukraine also faced proscription. Yet communist parties in Italy and France, at their peak both highly successful electoral parties, were not subject to ban proceedings. Nor was the successful Czech Communist Party of Bohemia and Moravia proscribed in the post-Soviet period. Furthermore, while Sinn Féin, the political wing of the Irish Republican Army, was banned in 1956 and legalized in 1974, Herri Batasuna and various successors serving as the political wing of

the terrorist group *Euskadi Ta Askatasuna* (ETA, Basque Homeland and Freedom) were legal in the democratic period except for the ten years between 2003 and 2012. Separatist and/or minority nationalist parties have also been banned in Turkey and Bulgaria.

This variation in responses to anti-system parties raises the principal puzzle I explore in the book: *Why do some democracies respond to the dilemma posed by anti-system parties by banning them, while other democracies do not?* Answers to this question not only provide insights into the practical steps taken in democratic states to deal with anti-system parties, and the impact of varying institutional arrangements, political cultures and actor constellations on public decisions of constitutional significance. It also provides opportunities to probe the deliberative processes, discursive strategies and political strategies employed when democratic communities negotiate inherent tensions in foundational commitments to tolerance and pluralism. In this book, I explore these issues through empirical case studies of anti-system party bans in the United Kingdom, Spain and Germany. These are countries which have recently proscribed, or considered proscribing, anti-system parties (Spain and Germany), where proscription has been an important part of state responses to paramilitary violence (Spain and the United Kingdom), or where ban decisions take place against a backdrop of the legacy of authoritarian rule (Spain and Germany).

More specifically, the book examines the proscription of radical Basque nationalist parties, *Herri Batasuna* (HB, Popular Unity), *Euskal Herritarrok* (EH, Basque Citizens) and *Batasuna* (Unity) in 2003. *Herri Batasuna* had been legal and participated in elections at state and regional levels for around two decades prior to this. These parties were banned for integration in the terrorist group ETA, which pursues a separate Basque state incorporating provinces in France and Spain. The book also examines the legalization of the radical Basque nationalist parties in the form of *Bildu* (Unite) in 2011 and *Sortu* (Create) in 2012, following ETA's declaration of a definitive cessation of armed struggle.

The fate of the republican parties, *Sinn Féin* (We Ourselves) and its (temporary) successor Republican Clubs in Northern Ireland (1922–72) is also addressed. *Sinn Féin* was banned in 1956 and the Republican Clubs were banned in 1967 for integration in the terrorist group, the Irish Republican Army (IRA). Republican organizations pursued the incorporation of Northern Ireland into the Republic of Ireland. In 1972, following increasingly violent sectarian conflict in Northern Ireland between the (Irish) nationalist and Catholic community, on the one hand, and the (British) unionist and Protestant community on the other, the United Kingdom suspended Northern Ireland's devolved institutions and ruled the territory from Westminster. *Sinn Féin* and the Republican Clubs were legalized almost immediately afterwards, eventually allowing *Sinn Féin* to play a major role in the process leading to the IRA's renunciation of armed struggle.

The German case study permits analysis of proscription proceedings against parties of the extreme right. The Socialist Reich Party of Germany (SRP, *Sozialistische Reichspartei Deutschlands*), effectively a Nazi successor party, was banned in 1952, soon after foundation of the democratic Federal Republic of

Table I.1 Parties subject to ban proceedings in Europe, 1945–2015

<i>Countries</i>	<i>Banned parties (year)</i>	<i>Ideological orientation</i>
Austria	German National Socialist Workers Party (1945)	Extreme right
	National Democratic Party (1988)	Extreme right
Belgium	Flemish National Union (1945)	Extreme right/substate nationalist
	Parti Rexiste (1945)	Extreme right
	Flemish Block (2004)	Extreme right/substate nationalist
Bulgaria	United Macedonian Organisation/Illinden-Pirin (2001)	Substate nationalist
Croatia	Serbian Democratic Party (1995)	Substate nationalist
Czech Republic	Workers' Party (2010)	Extreme right
France <sup>1</sup>	Nationalist Party (1959)	Extreme right
	Proletarian Left (1970)	Extreme left
	Revolutionary Communist League (1973)	Extreme left
	Enbata (1974)	Substate nationalist
	Corsican Movement for Self-determination (1987)	Substate nationalist
	Radical Unity (2002)	Extreme right
Germany <sup>2</sup>	Socialist Reich Party (1952)	Extreme right
	Communist Party of Germany (1956)	Extreme left
Greece	Communist Party of Greece (1947)	Extreme left
Italy	National Fascist Party/Republican Fascist Party (1947)	Extreme right
Latvia	Communist Party of Latvia (1991)	Extreme left
Lithuania	Communist Party of Lithuania (1991)	Extreme left
Moldova	Communist Party of the Republic of Moldova (1991)	Extreme left
The Netherlands <sup>3</sup>	National Socialist Movement in the Netherlands (1945)	Extreme right
	National European Social Movement (1955)	Extreme right
	Dutch Peoples Union (1978)	Extreme right
	Centre Party '86 (1998)	Extreme right
Norway	National Gathering (1945)	Extreme right
Romania	Communist Party ( <i>Nepeceristi</i> ) (2008)	Extreme left
Slovakia	Slovak Community-National Party (2006)	Extreme right
Spain <sup>4</sup>	<i>Herri Batasuna</i> (2003)/ <i>Euskal Herritarrok</i> (2003)/ <i>Batasuna</i> (2003)/ <i>Eusko Abertzale Ekintza</i> (2008))/Communist Party of the Basque Territories (2008)/ <i>Askatasuna</i> (2009)	Substate nationalist

Turkey <sup>5</sup>	Turkey Comfort Party (1983)	Pan-Islamist
	United Communist Party of Turkey (1991)/Socialist Union Party (1995)	Extreme left
	Socialist Party (1992)	Substate nationalist
	People's Labour Party (1993)/Freedom and Democracy Party (1993)/Democratic Party (1994)/People's Democracy Party (2003)	Substate nationalist
	Socialist Turkey Party (1993)	Extreme left/(minority) nationalist
	Democracy Party (1994)	Substate nationalist
	Democracy and Change Party (1996)	Substate nationalist
	Labour Party (1997)	Extreme left
	Welfare Party (1998)/Virtue Party (2001)	Pan-Islamist
	Democratic Mass Party (1999)	Substate nationalist
	Democratic Society Party (2009)	Substate nationalist
UK	Sinn Féin (1956)/Republican Clubs (1967)	Substate nationalist
	Fianna Uladh (1956)	Substate nationalist
Ukraine	Communist Party of Ukraine (1991)	Extreme left
	Russian Bloc (2014)	Substate nationalist
	Russian Unity (2014)	Substate nationalist
	Communist Party of Ukraine (2015) <sup>6</sup>	Extreme left

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Source: data from Bourne and Casals Bértoa (2017). The 17 states in the survey that did *not* ban parties were Albania, Bosnia-Herzegovina, Cyprus, Denmark, Estonia, Finland, Hungary, Ireland, Kosovo, Macedonia, Montenegro, Poland, Portugal, Slovenia, Serbia, Sweden and Switzerland.

#### Notes

- 1 In France many small, rather obscure organisations have been banned and it is often difficult to distinguish between banned parties and associations. The list provided here is a sample.
- 2 In the case of Germany, the far-right Free German Workers Party and National List were excluded because the Federal Constitutional Court ruled that these were associations. (See Table 2.3).
- 3 It is a grey area whether Dutch People's Union is a party ban case. It was characterised as a prohibited association in 1978, but the Dutch Supreme Court later ruled that because it was not formally dissolved it could no longer be excluded from participating in elections.
- 4 This list of party bans in Spain does not include parties that were denied registration or party lists or lists of electoral coalitions banned prior to electoral contests (for more details see Table 2.1).
- 5 Party ban cases for Turkey only include those after 1983, the initiation of the longest period of (semi-) democratic rule in Turkish modern history.
- 6 The Communist Party of Ukraine was the same party banned in 1991 but permitted to re-emerge in 1993. The ban in 2015 was due to the party's separatist goals and for purportedly undermining constitutional values.

Germany. In 2001, after a long period where the state took a more permissive stance on anti-system parties, the German government, the Bundestag and Bundesrat, initiated ban proceedings against the neo-Nazi National Democratic Party of Germany (NPD, *Nationaldemokratische Partei Deutschlands*). However, the German Federal Constitutional Court rejected the petition on procedural grounds. In 2013, the Bundesrat, representing Länder governments, relaunched ban proceedings against the NPD. While accepting the argument that the NPD sought to undermine the free democratic basic order, the Federal Constitutional Court nevertheless rejected the ban petition ruling that the NPD was not likely to achieve its goal.

In what remains of the introduction, I define the key concepts ‘anti-system parties’ and ‘party bans’, outline hypotheses explored and the methodological approach employed and present the main findings of the research.

### **Defining ‘anti-system parties’ and ‘party bans’**

Defining ‘political party’ is notoriously difficult, given the range of historical and political contexts in which they operate and the various normative assumptions about functions parties ought to perform (Duverger, 1954, xiv–xv and xxii–xxiv; White, 2006). Nevertheless, it is necessary to adopt a working definition in order to distinguish the object of study – political parties – from sometimes very closely related phenomena such as associations, interest groups or insurgent groups.

One can begin with the criteria of self-identification; a political party, at the very minimum, is an association of people that claims to be a political party. Official recognition is also relevant for many of the parties considered here; a political party is an association that has been formally recognized as such, often through an official registration procedure. Beyond this, political parties can be defined with reference to certain distinctive goals and modes of behaviour. Political parties are typically organizations which, in Alan Ware’s (1996, 1–6) formulation, ‘seek influence in a state’, often, but not always, fielding candidates in elections in order to occupy positions in government at various territorial levels. They may formulate a programme of government, sets of preferred policies, future-orientated programmes for political change or simply serve as a vehicle for the political ambitions of individuals. They ordinarily pursue goals through non-violent and legal means, although some may secretly employ illicit means or have close links to violent or clandestine groups.

The task of defining anti-system parties is more complex, partly due to a tendency for this term to be used as a synonym for the more derogatory term, ‘extremist parties’. To be sure, some anti-system parties pursue ethically objectionable goals. However, to label all parties subject to party bans as extremist parties seems to prejudice questions about the justice of their exclusion or marginalization from the public sphere. A further difficulty for defining anti-system parties relates to the changing nature of the goals and rhetorical strategies pursued by parties outside the political mainstream. In the first few decades after

World War II, defining anti-system parties involved the identification of parties that clearly rejected the core institutions and values of liberal democracies. In 1966, for instance, Otto Kirchheimer distinguished between ‘loyal opposition’ and ‘opposition in principle’. Loyal opposition included groups which pursued goals in harmony with the constitutional requirements of the system, whereas ‘opposition in principle’ pursued goals ‘incompatible with the constitutional requirements of a given system’ (1966, 237).

Soon after, Giovanni Sartori (1976) developed the best-known conception of anti-system party (1976, 117–118). In broad terms, an anti-system party will ‘undermine the legitimacy of the regime it opposes’ (*ibid.*, 117–118). More specifically, an anti-system party ‘would not change – if it could – the government, but the very system of government’. Echoing Kirchheimer’s distinction, Sartori argues anti-system parties are not talking about an ‘opposition on issues’, but an ‘opposition of principle’. The anti-system party, then, ‘abides by a belief system that does not share the values of the political order in which it operates’ and is distinguished by the ideological distance between itself and mainstream parties. Anti-system parties may operate from within the system or from without and include parties dedicated to revolutionary preparation and activity, as well as those which are willing to play by the democratic rules of the game, at least in the short term.

One critique of these early conceptions of anti-system behaviour is that they fail to problematize orientations to violence, which is clearly an important part of what can make some parties problematic in democratic states. Linz’s distinction between ‘loyal and disloyal opposition’ is more instructive insofar as it focuses less on programmatic goals and relations with mainstream parties than on attributes which might undermine democratic regimes (Linz, 1978, 27–38). More specifically, ‘disloyal oppositions’ are anti-system parties which question the existence of a democratic regime and aim to change it. They are considered dangerous because they may take power or divide the population and cause civil war if, in a crisis, they can mobilize support, and if they cannot be repressed and isolated (*ibid.*, 27). Among other things, disloyal parties will not unambiguously and publically reject the use of violent means to achieve or maintain power and may employ a rhetoric of violence to mobilize supporters. This last facet of Linz’s concept of ‘disloyal opposition’ – that is, a party’s orientation to violence – is particularly useful because it permits consideration of an important means by which anti-system parties may undermine the legitimacy of the regimes they oppose.

Over time, however, definitions such as those offered by Kirchheimer and Sartori have become more problematic. When formulating their definitions, such scholars mostly had in mind the fascist and communist movements in interwar Europe, the remnants of Western European fascist movements that lingered after the defeat of the Axis powers in World War II and West European communist parties, which in countries like Italy, France and Finland, were relatively successful in elections. These were parties that appeared to participate in democratic politics in order to destroy the democratic system itself (Capoccia, 2002a, 11). In more

recent times, however, anti-system parties have often come to claim the mantle of democracy and sought to pursue their political goals through parliamentary means (ibid., 12). While there is room for reasonable doubt about the sincerity of some of these groups' proclaimed commitments to democracy, it is hard to deny that the ambiguity, internal contradictions and inconsistencies in the stated goals of some parties make it difficult to determine with certainty whether they embrace a clear cut anti-democratic ideology (Schedeler, 1996, 303).

Capoccia's (2002a) conception of ideological anti-systemness helps to address this issue. This concept departs from the observation that it would be possible to define anti-system actors as synonymous with anti-democratic actors if a clear definition of democracy is established alongside an indication of how an anti-system party violates or rejects this. To this end, Capoccia adopts Collier and Levitsky's (1997) definition of democracy as a political system that, at a minimum, includes: (a) fully contested elections, (b) full suffrage and an absence of massive fraud, (c) effective guarantees of civil liberties, underpinned by notions of political equality for all citizens regardless of religion, race, colour, age etc. and (d) elected governments with a strong capacity to govern. Capoccia does not seem to specifically address the issue of violence, but we might reasonably add the additional criterion (e) commitments to pursue parliamentary representation and government office through exclusively non-violent means. A final criterion, drawn from Backes' discussion of religious/secularist extremisms, could include (f) commitments to balance goals of religious freedom and secular foundations of the constitutional state (2010, 189). Essentially, if a party rejects one, some or all of these aspects of the liberal democratic system, Capoccia argues, it could be considered an anti-system party. In this book, I adopt Capoccia's (amended) conception of 'ideological anti-system parties' because it acknowledges the variety of ways in which contemporary political parties may challenge the foundational institutions, values and principles of liberal democratic politics.

I define the concept of 'party bans' as acts which subject parties to one of the following five measures. These forms of party ban vary in terms of the degree to which the targeted party is excluded from the public sphere. The most punishing form of exclusion is *dissolution*. It denies a party the right and means to participate in public life principally by disallowing participation in elections or holding office. The party's assets may be seized, its offices closed and the party leadership sanctioned. *Non-registration*, involves denial, by the state, of a new party's right to formally exist as a party, acquire associated privileges or to participate in elections. *Rights denial* involves the withdrawal of certain rights and privileges – such as the right to stand in elections – of already existing parties, even though the party as such may not be formally dissolved. A *lapsed ban* is a ban that has been undermined by the failure of the state to prevent a successor from taking on the mantle of a banned party. A *failed ban* occurs when at least one major institution of the state – government, parliament or the courts – formally approves a party ban but this is not sufficient to complete proceedings to finalize the ban.



Party bans are just one of a wide range of measures that can be employed against anti-system parties. Downs' (2012) and Capoccia's (2005) classifications of measures of defensive democracy are useful for conceptualizing the range of such measures. Downs identifies two strategies governments can use to deal with electorally successful 'pariah' parties – a strategy of disengagement ('clean hands') or one of engagement. Each of these strategies may involve more or less tolerant responses. Combining the disengagement/engagement dimension with the tolerant/militant dimension produces four types of strategy. Party bans are incorporated into a category of measures involving disengagement and intolerance, seen as a 'more aggressive' strategy involving 'overt political and legal attempts to isolate, restrict and repress and even ban the offending pariah' (2012, 31). In addition to party bans, 'ban/isolation' strategies can include a wide variety of legal and political measures, including manipulation of electoral rules, collusion among mainstream parties to reduce anti-system party success at elections or exclude their participation in government, and legal rules punishing offensive speech acts (like Holocaust denial), or displays of politically sensitive symbols (like Nazi paraphernalia). Alternative responses include '*ignore*' (disengagement and tolerance), which is a 'do-nothing approach' aiming to prevent an anti-system party from 'capturing the attention they crave' (ibid., 31–32). A strategy of '*co-option*' (engagement and militancy) occurs when 'the political establishment ... engages the pariah directly on the issue or issues fueling its electoral success and tries to aggressively combat the threatening party by recapturing the policy space' (ibid., 31). A final strategy is '*collaborate*' (engagement and tolerance) and involves agreement by mainstream and pariah parties to work together either prior to elections, for example in the form of electoral pacts, or afterwards in the form of coalition agreements or collaboration, to pass legislation (ibid., 46).

Capoccia's (2005) classification of measures of defensive democracy distinguishes between measures designed with (a) short-term goals, namely 'stemming the development of an existing challenge, to prevent it snowballing [and with the] declared immediate goal of democratic survival' and (b) long-term goals, which 'attempt to reinforce and stabilize the basic procedures and values of the democratic system' (ibid., 48). A second dimension of the typology distinguishes between measures that are predominantly 'exclusive-repressive' and those that are 'inclusive-educational' in nature (ibid.). Plotting these variables into a two-dimensional property space produces four 'polar strategies' of defensive responses to political extremism: Party bans are conceptualized as part of a strategy of *militancy* (short-term, repressive), a strategy which involves measures to 'curb *de jure* or *de facto*, the political and civil rights of certain subjects on the basis of their political opinions and activities, which have been defined as harmful to the survival of the democratic system'. Other measures in this category include restrictions on use of party uniforms or party militias, and regulation of rights of demonstration (ibid., 58). A second strategy is *purge* (long-term, repressive) which is



often adopted after the transition to democracy from an authoritarian regime, involve[s] enhancing the real or perceived legitimacy of the government by, for example, ensuring the systematic loyalty of bureaucrats or prosecuting authors of political crimes connected with the previous regime.

(Ibid., 49)

*Education* (long-term, accommodative) strategies ‘seek to strengthen democratic values and beliefs as well as democratic practices at different levels’ (ibid.). *Incorporation* (short-term, accommodative) strategies involve measures that ‘endeavor to bring into the system parts of the extremist opposition, thereby simultaneously weakening the extremist camp and increasing the legitimacy of the regime and the support for it’ (ibid., 49).

It is significant that both Downs and Capoccia conceptualize party bans as the most ‘militant’, ‘intolerant’, ‘aggressive’ or ‘repressive’ measure that can be employed against anti-system parties (see also Bleich, 2011, 87). There is also agreement among them that party bans are the most risky in terms of possible damage to the overall quality of the democratic system (Downs, 2012, 49; Capoccia, 2005, 59). It is this – the relatively repressive nature of party bans and its heightened risks for the quality of democracy in practice – that makes banning political parties the grave act claimed in the opening paragraph of the book. Moreover, it is these qualities that make the study of party bans especially pertinent for understanding how democratic states deal with anti-system parties and movements. For the reason that the stakes are so high when banning parties compared to alternatives, that decisions to ban parties can be considered the most extreme conditions in which democracies must negotiate their way through the dilemmas posed by the presence of anti-system parties.

## **Hypotheses and case selection**

Given the relative frequency and political salience of party bans in democratic states, it is surprising how little systematic scholarly attention has been devoted to the task of explaining proscription. The literature on party bans mostly consists of country-specific studies identifying rationales for the proscription of individual parties (e.g. Auerback, 1954; Dyson, 1975; Franz, 1982; Niesen, 2002; Turano, 2003; Tardi, 2004; Dyzenhaus, 2004; Esparza, 2004; Iglesias, 2008; Corcuera *et al.*, 2008; Navot, 2008; Mareš, 2012). While providing useful insights into party ban rationales, these studies tend to take official rationales for party bans at face value, something that this research aims to problematize. Moreover, the topic has traditionally been dominated by the disciplines of law and political philosophy, which have addressed questions other than explanations for party bans. Legal scholars focus attention on the nature of statutory and constitutional constraints on political parties (Kirchheimer, 1961; Gordon, 1987; Tomuschat, 1992; Fox and Nolte, 2000; Sajó, 2004; Brems, 2006a and 2006b; Issacharoff, 2007; Rosenblum, 2007; Bligh, 2013). Political philosophers have explored the appropriateness of

limiting democratic rights and liberties, with work on political tolerance and freedom of expression of particular relevance (Rawls, 1971; Waldron, 1981; Scanlon, 2003; Quong, 2004; Kirshner, 2014; Malik, 2008). Political scientists have reflected more systematically on the effects of party bans, than on explanations for them (Tilly, 2005; Minkenberg, 2006; Koopmans, 2005; Husbands, 2002; Casal Bértoa and Bourne, 2017).

In order to address the scarcity of operationalizable theoretical statements about why democracies ban political parties in the existing literature, it was necessary to employ a complex research design involving two stages of hypothesis formation and testing, which I spell out in more detail in Chapter 1. The first step involved developing hypotheses from underdeveloped but insightful arguments about observed empirical regularities in single and ‘small n’ case studies about the conditions under which democracies ban parties. I then tested these hypotheses in a ‘crucial’ case study (Eckstein, 1979) of party bans in Spain, and more specifically the proscription of Herri Batasuna and its successors in 2003 (Bourne, 2015). Further empirical analysis of the case permitted formulation of additional hypotheses principally drawn from the fields of security studies and new institutionalism.

The hypotheses that emerged from this study and which, in the second step of the research design, I now examine in this book are:

H1. Democracies ban anti-system parties if these parties have been ‘securitized’ as an existential threat.

To paraphrase Buzan *et al.* (1998, 21), ‘securitization’ in this context is the process by which a party is presented and accepted as an existential threat to democratic institutions and values of a political community or the territorial integrity of the state, a threat requiring emergency measures outside the normal bounds of political practice.

H2. Democracies ban anti-system parties if veto players prefer proscription.

Veto players are defined as ‘actors whose agreement is required for a change in the status quo’ (Tsebelis, 2002, 17) and must be taken into account given that party ban decisions typically have major political and constitutional significance and usually involve the principal public authorities of the state.

H3. Democracies ban anti-system parties if they do not unambiguously reject violence.

Today, few parties openly espouse the violent overthrow of the democratic political order. However, some anti-system parties seek to directly or indirectly legitimize the violent actions of others, or as in the case of the political wing of a terrorist group, exist to represent insurgents in the electoral arena.

H4. Democracies ban anti-system parties if alternative forms of marginalization are not effective.

Alternatives I examine in the book are the marginalization of anti-system parties through the electoral system and collusion by mainstream parties to keep anti-system parties out of government office. Alternatives may also include a wide range of other measures identified in Downs' (2012) and Capoccia's (2005) studies, such as criminalization of offensive behaviours and speech acts, collaboration with anti-system parties or civil education.

H5. Democracies ban anti-system parties if partisan veto-players do not need to cooperate with them to win and maintain office and achieve policy goals.

This hypothesis probes the incentives generated in the context of democratic competition on the decisions of partisan party-ban-veto-players to ban parties. It assumes that mainstream parties avoid banning anti-system parties if they think it will damage their chance of obtaining or maintaining hold of political office or achieving policy goals when collaborating with other parties is necessary.

The principal objective of this book is to test these hypotheses in additional case studies described earlier. These cases were selected to permit what Yin describes as 'literal' and 'theoretical' replication of the findings of existing research (2003, 47). Additional case studies selected on the expectation that they would replicate the findings of the first Herri Batasuna and successors party ban study (literal replication) were (1) the *banning* of Sinn Féin (1956), Republican Clubs (1967) and the Socialist Reich Party (1952). Additional case studies expected to produce contrasting results but for reasons predicted by the findings of the 2003 Herri Batasuna and successors case study (theoretical replication) were (2) the *legalization of formerly banned parties* Bildu (2011), Sortu (2012), Republican Clubs (1973) and Sinn Féin (1974) and (3) the two NPD *failed party ban* cases of 2003 and 2017. In the legalization cases, it was expected that each of the conditions under which parties are banned would no longer hold, while in the failed party ban cases it was expected that at least one of the conditions under which parties are banned would no longer hold. I employ a mixed methods approach to data analysis comprising process tracing and discourse analysis, as

well as the quantification of electoral system effects and coalition predictions. The range of methods employed follows from the nature of the hypotheses examined and acknowledges strengths and weaknesses entailed by different methods (George and Bennett, 2005). I draw on secondary literature about the parties studied and state responses to anti-system parties and movements; constitutional frameworks and legislation; election results and data on practices of government formation; newspaper articles, court rulings, government documents, parliamentary debates and, where possible, government archives.

## Structure of the book and findings

In Chapter 1, I present a theoretical framework for explaining why some democracies ban anti-system parties while others do not. It begins with an analysis of the problematic legacy for the study of party bans of the paradigmatic concept of ‘militant democracy’. The chapter then discusses the two-stage research design for hypothesis formation and testing employed for the study and criteria for case selection. This is followed by a discussion of the theoretical underpinnings of the five hypotheses, their operationalization and theoretical expectations regarding relationships between variables. As a prelude to case study analysis, Chapter 2 briefly describes for each of the three country case studies legal rules for banning parties and provides an overview of parties subject to party ban proceedings.

The next three chapters present the results of party ban case studies in Spain (Chapter 3), the United Kingdom (Chapter 4) and Germany (Chapter 5). They address hypotheses related to securitization, veto-players and anti-system party orientation to violence for each type of party ban where relevant (bans, failed bans, legalization of banned parties). Chapter 6 addresses constraints imposed by electoral systems on anti-system parties and more specifically whether electoral rules may provide a substitute for party bans. Chapter 7 addresses party ban decisions in light of government formation processes, in particular the effectiveness of the *cordon sanitaire* as an alternative to proscription and the impact of mainstream parties’ office- and policy-seeking goals on incentives for banning anti-system parties.

On the basis of the empirical research presented in the book, I conclude that party bans are likely to occur when (1) the ambiguity of an anti-system party about the appropriateness of political violence (2) facilitates a securitization of that party as an existential threat and identification of the party ban as a solution to that threat, and (3) this is accepted by party-ban-veto-players. On the other hand, a party ban initiative is likely to fail if veto players cannot agree it is appropriate to ban the party. Legalization of banned parties is likely to occur when (1) veto players accept (2) a desecuritization of anti-system parties as an existential threat and, consequently, the inappropriateness of a party ban. In contrast, (1) the availability or otherwise of effective alternatives to party bans or (2) incentives of partisan party-ban-veto-players to cooperate with, rather than ban, anti-system parties, do not emerge as important explanations for party ban or legalization decisions.

These conclusions suggest that democratic communities are likely to respond to the dilemmas posed by anti-system parties and strategies of democratic defence predominantly through recourse to security discourses. Sufficient consensus must emerge that the party poses a serious threat to democratic values or institutions of the state in order to justify the grave act of banning a party. The ban, moreover, is likely to remain an exceptional measure targeting parties unwilling to embrace non-violent political methods. On the other hand, the malleability of securitization discourses creates opportunities for unscrupulous political actors to mobilize security arguments to justify banning parties that represent unpopular minorities or which serve as political rivals. These complex challenges have emerged intermittently over the post-World War II period and are likely to continue to do so in an era where populist parties and movements question core principles and values of the liberal democratic model, if not the legitimacy of liberal democracy itself.

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