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## Constitutionalization of Political Parties in East and Southeast Asian Democracies

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Abstract: Many constitutions reflect the central role of political parties in modern democracy. While classic liberal visions of democracy gave little attention to parties, a transformation occurred after the Second World War as constitutions in Europe began to include references to parties as essential for aggregating interests, sustaining pluralism, and reflecting freedom to organize. The constitutionalization of political parties has been documented for Europe but not for Asia. Given the priority placed on the state above party attachments in several parts of the region, it is reasonable to think that this subject is worth exploring in Asia. How do constitutions in Asia's democracies describe parties? What does the constitutional codification of parties suggest for how democracy is envisioned in the region? A database of constitutional references to political parties forms the empirical basis of this paper. The database, compiled by the author, includes all references to parties in current and historic constitutions in the democracies of East and Southeast Asia. The analysis reveals that most constitutions do give significance to parties. Comparison of the themes associated with parties shows similarities and differences within the region and between Europe and Asia. In particular, there is a tendency in the region's constitutions to imagine parties not mostly as electoral bodies but as organizations that need to be limited so as not to undermine democracy, or as public bodies that should be regulated so as to serve public interests. Given that both of these views depart from common ways parties in Asia have been studied, this paper points to the need to think about the region's parties in relation to public law.

## **Introduction**

Constitutions reflect the central role of political parties in modern democracy. While classic liberal visions of democracy gave little attention to parties, a transformation occurred after the Second World War. Public law began to make direct reference to parties as crucial for democracy. These references portray parties as essential for the aggregation of interests, or they insist that the preservation of a multi-party system is imperative for democracy, or they uphold the importance of parties as reflections of the freedom to organize. In Europe, the constitutional codification of parties, or “party constitutionalization”, proceeded rapidly in the second half of the twentieth century (Van Biezen, 2012; Van Biezen and Borz, 2012). Most new democracies, including those formed after the fall of the Soviet Union, wrote clauses on parties in their constitutions. Constitutional references to parties can set the basis for further state regulation of parties through other legal codes, which in turn shape parties and party systems (Avnon, 1995; Janda, 2005; Karvonen, 2007).

While party constitutionalization in Europe has been well-documented, far less is known about the same issue in Asia. Most constitutions in democratic Asia now include articles on political parties. Every new democracy has a constitution featuring reference to parties. Parties are not merely extra-constitutional bodies which form in response to social interests or electoral incentives. They are also enshrined in constitutions as organizations of significance for the operation of democracy. While a great deal is known about parties in Asia as electoral actors or as patronage organizations, they have rarely been studied in relation to public law. What does the constitutional codification of parties suggest for how democracy is envisioned in Asia? An investigation of party constitutionalization in Asia may shed new light on what political parties in the region are and what roles they play in democracy.

This paper replicates research on party constitutionalization in Europe. I adopt the framework and methods of the pioneering study by Van Biezen (2012). This approach allows for comparison between Europe and Asia. Following that study, I compiled a complete set of constitutional references to political parties for democracies in East and Southeast Asia. Since the number of democracies in this region is far fewer than Europe, identification of regional patterns is more difficult. In order to gain a fuller picture, I have collected references not just in current constitutions but from all past constitutions as well. This database of references forms the core material for this paper.

## **Constitutions and the study of party democracy in Asia**

Constitutions can yield insight into the position parties hold in a political system. As documents articulating the polity's main principles, constitutions serve as reference points for public understanding of what democracy is and how it should operate. Constitutional clauses on parties may thus reflect how parties are imagined – if at all – as components of the democratic system. Constitutions may reveal that parties are central to the realization of democracy, for example as aggregators of mass interests. Parties may require protection so as to better represent these interests. Constitutions can also constrain parties to ensure they actually serve public interests. These possibilities suggest contrasting views of where parties fit in democracy. On one hand, parties might be vehicles of democratic interest articulation, while on the other, they may be public institutions which require government oversight. Put more roughly, parties may be treated as being closer to society or closer to the state.

Beyond these symbolic or discursive functions, constitutions can also play a direct role in regulation of political parties. They can delineate the extent of state control over parties, as well as any oversight mechanisms. They can proclaim the government's right or obligation to enact further laws on political parties. References to parties are likely also to serve as foundations of legal decisions related to parties. When parties are dissolved or otherwise punished, constitutional articles can become important in arriving at judicial decisions. A study of party constitutionalization can provide a window onto regulation of parties and judicialization of politics, though separate regulatory laws may hold greater significance for parties.

The position of parties in law has gained sustained attention in regions outside of Asia, and especially in the study of European politics. The literature on the party-law nexus is linked to a conceptual shift in thinking about parties. Legal regulation of parties now lies at the heart of understandings of political parties in advanced democracies. While parties were traditionally understood as emanations from society, Katz and Mair (1995) point out that parties in Europe had developed deep links with the state. Major parties had pushed for legislation on parties, especially related to public funding of parties, in ways that raised barriers to entry to the electoral arena. In this conceptualization, parties are defined less as mass organizations reaching out to voters and more as public agencies connected to the state (Van Biezen, 2004). Legal codes on parties constitute a major component of this state-party relationship (Mair, 1994; Van Biezen and Kopecky, 2014). We know now that state regulation of parties shapes parties and party systems (Avnon, 1995; Janda, 2005; Karvonen, 2007; Norris, 2004; Gauja, 2014). Legal codes can govern party formation and registration,

funding, organization, membership requirements, internal procedures, values and principles, and dissolution, and they are located in party laws or in the constitution.

Scholarship on constitutional provisions on parties makes up a crucial strand of research in this agenda. Van Biezen (2012) traces the history of the incorporation of parties into European constitutions. She refers to this incorporation as “party constitutionalization”. She uncovers “waves” of constitutionalization that have shaped the status of parties, as well as variation in models of party constitutionalization across Europe (Van Biezen and Borz, 2012). Research drawing on evidence from Europe has explored the sources of shifts in constitutional clauses on parties. A set of studies examines the ways post-authoritarian regimes in eastern and southern Europe have made constitutional adjustments to protect broader or narrower ranges of parties (Van Biezen and Casal Bértoa, 2014; Ilonszki and Varnagy, 2014). Other work elucidates the consequences of party constitutionalization for party systems in Europe (Popescu and Soare, 2014; Rashkova and Spirova, 2014; Casal Bértoa and Taleski, 2015).

In contrast to the recent growth in research on European parties from a legal perspective, fewer works on Asian parties have started with law. Law has not been a basis for comparing parties in the region. One body of work documents electoral and constitutional engineering across the region (Reynolds, 2002; Reilly, 2006; Reilly, 2007). Regulation of parties is mentioned in this research but it is not a focus (the exception is Reilly 2006, ch.6). The literature on Asian party politics includes a small number of excellent case studies of constitutional revisions that incorporate new laws on parties (Manikas and Thornton, 2003; Kuhonta, 2008; Horowitz, 2013). Such studies provide valuable insight into processes of legal reform in particular places, but there has been no systematic, comparative research on the legal position of parties in Asia. By looking at how much constitutions have to say about parties and at the aspects of parties that are addressed, party constitutionalization offers a promising means of comparison.

The research agenda on party constitutionalization was developed for the study of European democracy. Is it reasonable to take these concerns to Asia? Historical differences may make the agenda less relevant or imprecisely specified for inquiry into the Asian context. One reason for skepticism is that the constitutionalization of parties in Europe was tied to the above-mentioned historical shift from mass parties to cartel parties (Katz and Mair 1995). While parties once relied on mass memberships for financing, the larger parties now depend more on state support. For the democratic parts of Asia, one could question the fit of this narrative. To begin with, in these countries, parties were historically not mass

organizations. In Japan, parties have done less than individual politicians and their support organizations for electoral mobilization (Curtis 1971). South Korea's parties were, from the 1950s, mostly sets of elite politicians. In the Philippines, informal networks rather than parties have organized interests for elections. Taiwan's KMT stands out in the region for its mass membership and its propagation of ideology. However, the KMT was a Leninist organization established for revolution and war on the Chinese mainland, and so is different from Europe's mass parties. The trend toward state financing of parties is also less certain in Asia. Public subsidies have been introduced in some countries such as South Korea but this has not yet become a norm. Given these differences with Europe, the rationale for party constitutionalization may be weaker.

It is unnecessary to assume that party constitutionalization reflects the same shift in parties in Asia as in Europe. Rather, party constitutionalization can be a useful lens for comparison, while keeping in mind that the concerns driving constitutional codification of parties in Asia may diverge from those in Europe. Two further reasons make an examination of party constitutionalization in Asia promising. First, in research on Asia's parties, there has been an expectation that, with democratization, parties would become mass organizations. Taking the historic formation of democracy in Europe as a reference point, scholars as well as citizens have anticipated that parties would connect with mass constituencies and channel interests to government. This expectation, which has not been fully realized, fails to consider how parties have transformed in Europe. Examination of party constitutionalization can help build an explanation for why many parties have diverged from the mass party model. Second, for much of democratic Asia, there is a legal tradition of viewing parties as regulated bodies. This tradition stems less from public subsidies and more from factors such as the models of public law (especially Germany's) consulted by lawmakers, Cold War anticommunism, and the considerations of powerful external actors (namely, the United States). Parties, in this tradition, should be subject to regulation and their position in the political system should be acknowledged directly. In light of this view, it is reasonable that systematic analysis of constitutions can provide insight into the positions of parties in democracy in the region.

### **The emergence of party constitutionalization in Asia**

A first task is to determine which regimes should be considered in a study of party constitutionalization in East and Southeast Asia. In order to establish comparability with Van Biezen's European study, a similar range of regimes should be included. Given that there are fewer democracies in Asia, and more regimes that have oscillated between democracy and

authoritarianism, identifying this range requires some care. Taking all the regimes currently classified as “free” by Freedom House, as Van Biezen does, would yield just four democracies: Japan, Mongolia, South Korea, and Taiwan. This strict definition means excluding large countries that are widely understood as democracies, albeit imperfect ones. There would be no Southeast Asian democracy. To exclude the large democracies of Indonesia and the Philippines, which Freedom House has previously scored as “free” but which are currently “partly free”, does not accord with common sense. An alternative would be to include all “partly free” regimes. Doing so brings the two Southeast Asian archipelagic nations into the fold, but it also places Malaysia and Singapore in the study set. The latter two regimes, which have decades-long ruling parties or coalitions and few guarantees on liberties, are frequently referred to as “electoral authoritarian” or hybrid regimes rather than democracies (Case, 2006; Levitsky and Way, 2010; Slater 2010). While studying how these countries’ constitutions codify parties may have value, the perception that ruling parties may manipulate public law means that including them would shift the study away from one focused on democracies.

I propose to introduce Polity scores, as they can help to differentiate the electoral democracies from the hybrid regimes. Polity is useful because it incorporates indicators of regime competitiveness in its system of scoring countries between -10 (most authoritarian) to 10 (most democratic). I include countries that are “partly free” or “free” according to Freedom House, and score at least a 7 on the Polity scale. Following this rule, both Indonesia and the Philippines are included, as is East Timor. Singapore is excluded and so is Malaysia, with its score of 6. A good feature of this definition is that it produces a list of seven countries all of which have continuous experience to the present of meeting the definition. I leave out the regimes that previously met the criteria but currently do not. The most prominent example is Thailand, which met the criteria in 1992-2005 and 2011-13, but does not today. Cambodia holds elections but is not classified as democratic. Myanmar has seen power peacefully transferred but is yet to be rated far along the democracy scores of Freedom House or Polity.

For the seven countries on the list, I gathered their current and prior constitutions. I catalogued every reference to “political party” in the constitutions of these countries. In order to be considered a reference, there must be use of the term “party” or a variation on it. Where possible, I used the original language constitutions in order to identify the word “party” and its variants. Only for the Mongolian constitution did I rely on an unofficial English translation. The task of identifying references to parties was usually straightforward, with a few exceptions. In the case of Taiwan, I include all references not just to “*zhengdang*” (political party) but also

to “*dangpai*” (party faction). The latter term can be rendered in English as “partisan” or “party affiliation.” In either case, it refers to links to parties. Articles with implications for parties but which do not explicitly mention parties, such as clauses on freedom of assembly, are excluded from the analysis. Assembling these articles allows me to determine how many constitutional references to parties there were in any country in a given year.

Table 1 indicates years of party constitutionalization in the region. This table reflects party constitutionalization in democracies only. The column for party constitutionalization thus refers to the year of the first version of a constitution that was relevant under the conditions of the second column. Earlier constitutional references are excluded from this table.

Table 1: Party constitutionalization in East and Southeast Asian Democracies

	Party constitutionalization	FH classification as 'partly free' and Polity score 7+	FH classification as 'free'
Indonesia	2001	1999	2005
Japan	-	*1952	n/a
Mongolia	1992	1992	1991
Philippines	1987 [1935]	1987	1987
South Korea	1987 [1948]	1988	1988
Taiwan	1991 [1947]	1992	1996
Timor Leste	2002	2006	-

Japan, the region’s oldest continuous democracy, has no reference to parties in the constitution. This finding is in keeping with Europe, where some of the earliest democracies only constitutionalized parties in more recent decades. The absence of references to parties in Japan’s constitution also presumably relates to the fact that it was written by Americans, who, thinking of their own constitution, may not have conceived of democracy in terms of parties. Unlike in the other countries, in Japan no amendment has been made to the constitution since 1946.

Japan aside, some early East and Southeast Asian constitutions mention parties. These can be found in the constitutions of a selection of countries in the region that have discontinuous democratic histories. In the Philippines, South Korea, and Indonesia, a greater



degree of openness characterized parts of the 1950s and 1960s than the harsher authoritarian regimes that had appeared by the 1970s. The constitutions of the early period contained commitments to pluralist democracy and, in the cases of the Philippines, Taiwan, and South Korea, reference to parties.

The Philippine constitution of 1935 – which pre-dates independence – was the first Asian constitution to make reference to parties. The references in that constitution reflect a recognition of parties as legitimate actors who share responsibility in oversight. Article 6 of that constitution, for example, states that “The National Assembly shall elect from among its Members, on the basis of proportional representation of the political parties therein, a Commission on Appointments and a Commission on Impeachment, each to consist of twenty-one members.” Another article gave parties in the National Assembly rights to be involved in appointing members to the election commission. These articles were removed in 1940 but new articles giving parties in the National Assembly similar powers were put in place and remained there until Marcos dissolved the constitution in 1972. For example, Article 6, Section 12 of the 1940 constitution states “There shall be a Commission on Appointments consisting of twelve Senators and twelve Members of the House of Representatives, elected by each House, respectively, on the basis of proportional representation of the political parties therein.” On the basis of participation in legislative bodies, parties had rights to oversee government decision-making. They all give powers to parties that have representation in legislative bodies.

The next case of party constitutionalization came in Taiwan. Taiwan’s 1947 (ROC) constitution has multiple clauses separating party from official offices. Article 138, for example, “The land, sea and air forces of the whole country shall be above personal, regional, or party affiliations, shall be loyal to the state, and shall protect the people.” Article 7 is on equality before the law, regardless of party affiliation. The Republic of China has a long constitutional history. The first constitution went into force in 1912. The 1947 constitution was written with a claim to cover all of China but by 1949 the war with the Communists was lost and the KMT was left with Taiwan. The constitution was based on Sun Yat-sen’s Three Principles of the People. Among its features were Sun’s five branches of government. The “Temporary Provisions during the Period of Communist Rebellion” (not accurate trans.) were added in 1948, making much of the constitution irrelevant. The Temporary Provisions made no direct reference to parties but they effectively suspended rights guaranteed in the constitution.

South Korea’s 1948 constitution also mentions parties. While this constitution grants the “freedom to organize”, the article on the subject does not refer directly to parties. The reference comes in the preamble and it is oblique: the preamble notes that the constitution is

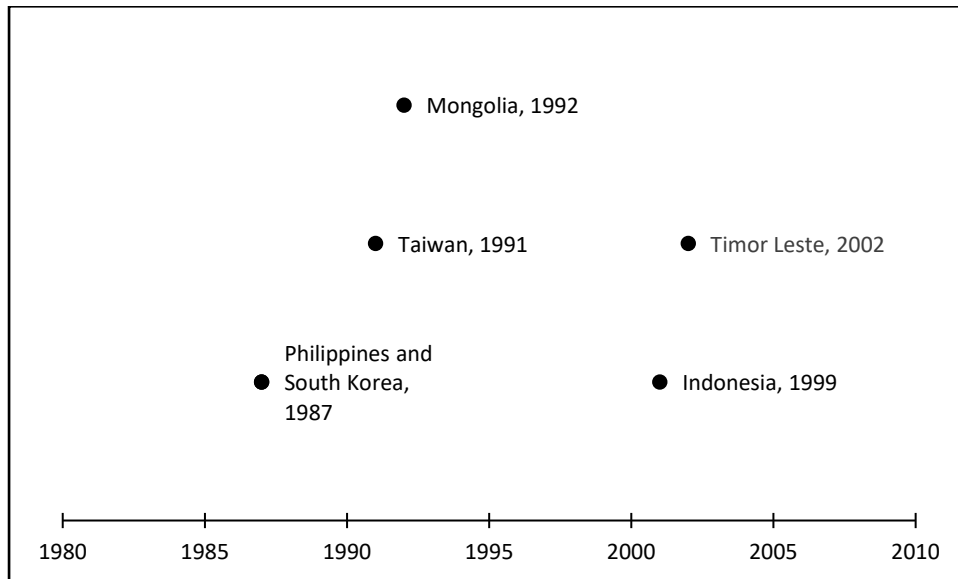
promulgated by “political parties and the freely elected representatives who form the National Assembly”. A constitutional revision in 1960, made after the expulsion of president Syngman Rhee, gave fuller recognition to parties. Six articles did this. The article on freedom to organize added clauses explicitly protecting the right to form parties but also giving the government the power to dissolve them. Article 13 states “Parties receive protection from the state according to law. But, if the party’s aims or actions threaten the basic democratic order, then the government, with the president’s approval and the decision of the Constitutional Court, can order the party to be dissolved.” Another article on the same matter granted the Constitutional Court the right to make decisions related to dissolving parties. Korean lawmakers had borrowed ideas about “militant democracy” (Loewenstein, 1937) from Germany and adapted them to their context.

None of these examples of early party constitutionalization occurred in a country with a continuous history of democracy. While democratic institutions, weak as they were, experienced rollback in subsequent decades, the idea of incorporating parties into public law can be found well before democratization. Democratic reforms re-shaped – to varying degrees, as shall be seen – how constitutions addressed parties, but party constitutionalization was not new with democratization.

### **Democratization and party constitutionalization**

In Europe, it has been observed that postwar party constitutionalization proceeded in waves (Van Biezen, 2012). In part, the diffusion of ideas drove this pattern. Countries revised their constitutions to incorporate articles on parties; some did so as they finally produced their own constitutions. Another source of party constitutionalization was democratization. As countries in the 1980 and early 1990s made democratic transitions, most added laws on parties into their constitutions. In Asia, this latter pattern of party constitutionalization has dominated. There is no case of a long-standing democracy later incorporating reference to parties in the constitution. In every instance, party constitutionalization preceded transition or came in amendments at the time of transition. In one case, East Timor, independence, democratic formation, and party constitutionalization occurred simultaneously.

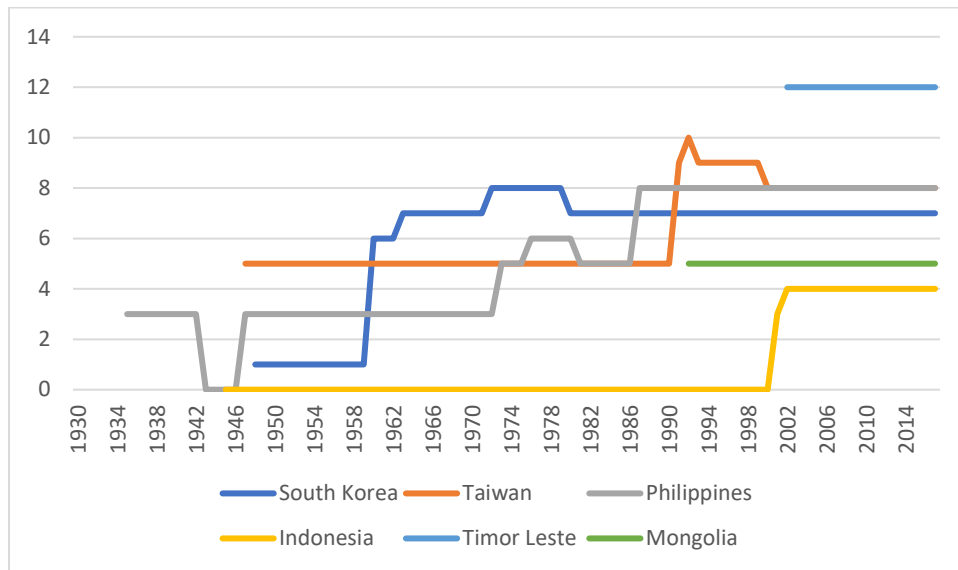
Figure 1: Year of first party constitutionalization in East and Southeast Asian democracies



Four countries transitioned to democracy between 1987 and 1992; post-transition constitutions included laws on parties. The other two cases, a decade later, resulted from Indonesia’s democratization and Timor Leste’s subsequent departure from Indonesia.

Of the six countries, three wrote new constitutions for the democratic transition. These are the Philippines, East Timor, and Mongolia, the only Asian post-communist country. In Taiwan, South Korea, and Indonesia, the existing constitutions were revised. The extent of revision varies in these cases. While East Timor and Mongolia wrote entirely new constitutions, the newly-promulgated constitution of the Philippines drew heavily on earlier constitutions. South Korea has formally had only one constitution since 1948, but multiple revisions have altered the document fundamentally. The democratic reform of 1987 is the most recent of these revisions. Indonesia, too, continues to follow the “1945 constitution” but a series of four revisions between 1999 and 2002 marked a sharp departure from the founding document. In Taiwan, the democratic transition left the constitution fully intact but a set of new articles were added. As the island had been under emergency rule from the late 1940s, most articles of the Republic of China constitution had little bearing on politics in the one-party state.

Figure 2: Number of constitutional articles that make reference to parties, 1945-2017



Many of the constitutional clauses on parties are tied to the problem of democratization. Figure 2 shows the number of articles with references to parties. It is clear that the number increases over time, and that this holds true for most countries. In Mongolia, as in post-communist Europe, protecting space for parties was crucial to the democratic transition. The constitution of 1992 guarantees rights to organize and join parties, while also giving the state the authority to deny the right to party membership to some civil servants (Article 16). The Philippines constitution of 1987, introduced in the wake of “people power” movement that overthrew Ferdinand Marcos, included several new references to parties, including a statement of the significance of a multi-party system (Article 6 and 9C in particular). In South Korea, the number of articles referring to parties did not change with democratization but the description became stronger. The place of parties in Taiwan’s constitutional reform is prominent. Of the ten extra articles added to Taiwan’s constitution in 1991, five make reference to parties.

Other references to parties continued from before the democratic transition. South Korea and the Philippines both had histories of multi-party elections, and prior constitutional clauses on parties continued into the new democratic era. For example, stipulations in the Marcos-era 1981 constitution of the Philippines remained in the “people power” constitution of 1987. Sections separating parties from electoral oversight and prohibiting religious organizations from forming parties (in Article 12 of the 1981 constitution) appear in the 1987 constitution (as Article 9). In South Korea, the state’s right to dissolve parties remained in place

from the earlier era. In Taiwan, where multi-party elections had not been held, the references to parties also remained intact.

The wider set of countries in East and Southeast Asia confirms the tendency for new democratizing regimes to codify the position of parties in constitutions. Thailand, for example, is currently run by a military government but the kingdom has had multiple democratic periods. The numerous Thai constitutions since 1932 have traditionally contained references to parties. During the more democratic periods, this has also been the case. Besides the right to form parties, the 1997 constitution also stipulates key points that should be in the organic act on political parties, including such crucial issues as conditions for formation, dissolution, and state subsidy of parties. Cambodia offers another example. In the early 1990s, Cambodia began a transition from authoritarian rule. It also wrote new constitutional clauses on parties, including a commitment to multi-party democracy (Preamble) and a guarantee of rights to form parties (Article 42). Myanmar began a democratic transition in the early 2010s, but the constitution of 2008 was not revised before new elections were held in 2015.

### **Dimensions of party constitutionalization**

In order to assess what was being addressed in party constitutionalization, I examine the dimensions of party constitutionalization. My method here again is Van Biezen (2012: 200-01). This framework begins with four dimensions of party constitutionalization. The first, *principles and values*, links references to parties to broader statements about the values of the political system. In the second, constitutions set out the *rights and duties* as they relate to parties. This dimension may include rights to organize as parties and obligations on parties to avoid certain views or actions. A third dimension, positions parties within the *institutional structure* of the polity, including how parties operate as electoral actors, what roles they may play in the legislature, any special position for a ruling party, and the organizational structure of parties themselves. Fourth, constitutions may contain *meta rules* for how parties might be further regulated or how judicial bodies might exercise oversight in relation to parties. These dimensions are further divided into multiple categories to capture more specific aspects of each. This gives a total of eleven categories. Table 2 shows the results of coding the current constitutions of the Asian democracies.

Table 2: Dimensions of party constitutionalization

Country	Articles	Principles and values		Rights and duties		Institutional rules			Meta rules				Magnitude	Range		
		Democratic principles	Rights and freedoms	Activity and behaviour	Programme and identity	Extra-parliamentary party	Electoral party	Parliamentary party	Government party	Media access	Party finance	External oversight			Secondary legislation	
Indonesia	4					11.1 (1)	44.4 (4)						33.3 (3)	11.1 (1)	9	4
Mongolia	5		9.1 (1)	27.3 (3)	18.2 (2)	9.1 (1)	9.1 (1)	27.3 (3)							11	6
Philippines	8	8.3 (2)		16.7 (4)	16.7 (4)	12.5 (3)	16.7 (4)	20.8 (5)		4.2 (1)			4.2 (1)		24	8
South Korea	7	6.5 (3)	2.2 (1)	6.5 (3)	4.3 (2)	21.7 (10)	6.5 (3)	4.3 (2)		4.3 (2)			34.8 (16)	8.7 (4)	46	10
Taiwan	8	8 (2)		16 (4)	12 (3)	20 (5)	4 (1)	20 (5)					8 (2)	12 (3)	25	8
Timor Leste	12	22.2 (6)	14.8 (4)			11.1 (3)		18.5 (5)					18.5 (5)	14.8 (4)	27	6
Total		N = 4 (66.7)	N = 3 (50)	N = 4 (66.7)	N = 5 (83.3)	N = 6 (100.0)	N = 4 (66.7)	N = 4 (66.7)		N = 2 (33.3)	N = 5 (83.3)	N = 4 (66.7)				
Mean		7.5	4.3	11.1	8.5	14.3	13.5	15.2	0.0	1.4	16.5	7.8				

Besides the categories, the table also notes the number of articles as well as the magnitude and range of party constitutionalization. Following Van Biezen and Borz (2012), the magnitude refers to the total number of codes assigned to provisions on parties in a given constitution. This figure gives an idea of the extent to which constitutions refer to parties. The range is the number of separate categories that provisions fell under, revealing how broad the area of reference is. The number of articles is included as well. While a constitution may have only a few articles related to parties, those articles might make many stipulations. For example,

Article 8 of South Korea's constitution has several sub-clauses and covers a range of items for a total of 17 references to parties in just one article. The ratio is very different for Indonesia and Mongolia, where four or five articles produce fewer references to parties. It can also be seen that there is variation in the range of categories covered, from just four in Indonesia to eight in three other constitutions to ten in South Korea.

Two-thirds of constitutions make mention of parties when setting out the values of the political system. In the region's most recent new democracy, Timor Leste, the position of parties in that vision is clearest. Article 7.2 holds "The State shall value the contribution of the political parties for the organized expression of the popular will and for the democratic participation of the citizen in the governance of the country." This statement directly links parties to the formation of a popular will and democratic values. South Korea's constitution less directly makes a similar point, stipulating that parties must "participate in the creation of the political will of the citizens" (Article 8.2). While in Europe, many constitutions, especially in the post-communist countries, enshrine parties in the preamble, only one preamble in an Asian constitution mentions parties. They are also not privileged in the region's post-communist country, Mongolia. Parties are also mentioned in half of the constitutions in connection with freedom of association. Nearly all grant citizens the right to form and or participate in parties. In many others, clauses on freedom of association clearly apply to parties but parties are not explicitly incorporated.

Another two-thirds of constitutions offer possibilities for or limits on the orientations of parties in terms of what goals they have and what they do. Most constitutions give attention to rights and duties associated with parties. They also tend to grant the state the right to regulate parties. In several of the cases, constitutions also reserve a right for the state to dissolve parties. In 1992, Taiwan's constitution held a provision allowing the Judicial Yuan to dissolve parties and further noted that "A political party shall be unconstitutional if its goals or activities jeopardize the existence of the Republic of China or free, democratic constitutional order." Article 46 of the Timor Leste constitution both grants the right to form parties and the state the right to regulate them. In the Philippines Article 9C upholds a multiparty system then sets the conditions for refusing registration: "Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration." Article 8 in South Korea states that "there is freedom of political party formation" but also sets out a legal procedure for state dissolution of parties. Indonesia's Article 24C sets out when the Constitutional Court can decide over party dissolution. Constitutional clauses on rights and duties tend also to be related

to sanctions, as violation of the stipulations can be grounds for dissolution or denial of registration.

In terms of institutional structure, the most common categories relate to parties as extra-parliamentary organizations, as parliamentary bodies, and as electoral agents. Every constitution includes a reference on extra-parliamentary parties. Many such references relate to limits on partisanship for select groups, such as members of the judiciary and certain categories of state officials. Others relate to the representative function of parties. Of the five new articles on parties in Taiwan's 1991 constitution, four relate to representation including the incorporation of women into government through parties. Party-list systems are also part of the electoral parties. A major role for parliamentary parties is in contributing to making appointments. In the Philippines constitution, for examples, most articles on parties relate to this role, e.g. in the election commission. It is a main theme in the Mongolian constitution as well. It is notable, in contrast with Europe, that only two constitutions make reference to public funding for parties.

References are clustered around meta-rules on parties. In two-thirds of countries, bodies or legal codes are given further authority to rule on parties. In some cases, these clauses make provisions for separate party laws, or empower constitutional courts to make decisions related to parties. Four of these countries have separate party laws, which spell out in further detail how parties can operate. There are several clauses stating conditions for punishment. Article 46 of the Timor Leste constitution grants people the right to establish parties and the state the right to regulate parties.

In the dimensions of party constitutionalization, there is broad similarity with Europe as well as some differences. In both regions, most constitutions regulate the institutional structure of parties; this category also covers the largest proportion of party references (the European figures are from Van Biezen, 2012: 202). In Europe, the principles and values dimension accounts for the second-largest number of references (23 per cent) while this figure is lower in Asia (12 per cent). Meta rules gain relatively more emphasis in Asia, making up to 26 per cent of references compared to the 11 per cent in Europe. These findings suggest that European constitutions highlight the roles of parties in the democratic political system, while Asian constitutions treat parties more as bodies that should be regulated.

### **Political parties and the state**

This analysis of party constitutionalization can yield insight into how parties are understood in democratic Asia. On one hand, parties are granted freedoms as private



associations. On the other hand, given their special ties to the state, they are also regulated. There is tension here: When do regulations undermine democratic rights to speech and organization? The same tension can be found in democratic Asia. Parties are protected for the sake of making democracy function, both for the whole and for the individuals involved. Yet parties are in many contexts also treated as entities requiring special scrutiny. The multiple directions in which parties are pulled deserve attention.

Three modes of party constitutionalization have characterized the European experience (Van Biezen 2012). One mode, most common in the older democracies, preserves the electoral functions of parties. A second mode, seen more in the re-established democracies, emphasizes the need to keep the democratic order stable. The third mode treats parties as public utilities. These modes can be explored in Asia. In keeping with the first mode, constitutions such as the South Korean and the Philippines indicate that parties are important in the context of democratic elections. However, no constitution in democratic Asia limits its treatment of parties to their electoral roles. The constitution most devoted to parties as electoral units is Indonesia's, where three-quarters of articles on parties deal with parties as organizations that field candidates. Yet Indonesia's constitution was promulgated alongside a detailed party law in which parties are treated precisely as bodies requiring regulation. This pattern represents a departure from Europe. Given that the first mode is found in Europe's older democracies, especially in the Nordic countries, it may be less surprising that in a region with a shorter history of democracy this mode is rarer.

The second mode is on full display in democratic Asia. Nearly every constitution places the state as the guarantor of democracy. Parties can be a threat and they must be prevented from subverting democracy. This is the model of West Germany, "the heartland of party law" (Müller and Sieberer, 2006: 435). After the West German Basic Law of 1949, the "militant democracy" approach spread. Later, after the fall of communism, it became attractive to those seeking to limit former ruling parties. How did the German model arrive in Asian countries that were neither post-fascist nor post-communist? Intellectual influence before democratization certainly played a role. South Korean legislators, for example, tended to have exposure to German legal ideas, either directly through experiences studying in Germany or indirectly through knowledge of Japanese public law. They brought such exposure into the 1960 constitution's provision on party dissolution (Yi 2014). Internal conflicts in the context of the Cold War also made state actors attracted to the notion that parties could be legally dissolved. South Korea could ban those suspected of sympathizing with Pyongyang (Song, 2010). Mongolia follows the examples of other post-communist countries that had seen what

happens when one party becomes dominant. The biggest surprise is perhaps that the country with the most similarities to Germany did not embrace this model. Despite having a legal system inspired by Germany and a post-fascist setting, Japan did not adopt laws of the militant democracy sort. Recognition of the need to protect democracy from parties is weakest in Indonesia and Timor Leste but elements can be seen in the other constitutions.

A third mode of constitutionalization indicates parties as public agencies. As officially-supported entities, parties should be subject to regulation. In Europe, the rise of this mode is connected to state subsidies for parties (Van Biezen 2004). In Asia, too, oversight is a major component of constitutionalization of parties. States can make new rules on parties and can subject them to public scrutiny. There is growing state and judicial encroachment on internal party operations in Asia. Other legislation reflects this. Indonesia, Mongolia, South Korea, and Timor Leste have separate laws specific to parties. Taiwan and the Philippines have draft versions of such laws which have not yet been enacted. There are requirements that parties have democratic internal procedures. However, public financing is only loosely connected to the state's oversight role. Parties are conceived as being components of the public interest, even apart from any subsidies available to them. One reason may be that parties have historically played a role in contributing to public security. Further, the idea that parties are special bodies distinct from other private associations is widespread in the region. Constitutional clauses demanding partisan neutrality of public officials reflects this idea. Many constitutions in the region suggest a logic in which partisan affiliation could make bureaucrats, judges, election commissioners, and even state executives disloyal to the state. The idea that parties are like public agencies can also be found in initiatives to expand representation of women. The introduction in Taiwan of constitutional requirements that parties nominate women serves as an example. South Korea's constitution makes no mention of women's representation, but the country also used the Political Parties Act to require parties to nominate women for office. These moves are consistent with a model of parties as regulated bodies. Besides Taiwan and South Korea, this mode of party constitutionalization is found in Indonesia and Timor Leste, and it is weaker in the Philippines and Mongolia.

## **Conclusion**

Most constitutions in democratic Asia have clauses on parties. Constitutions acknowledge that parties are crucial for democracy. The significance of parties comes from distinct concerns. One is the need to protect space for multiple parties, as can be seen especially in countries with histories of single-party rule. Another concern is that anti-democratic parties

do not subvert democracy. This concern relates to the problem of “militant democracy,” which some governments in the region interpreted through the filter of the Cold War. Anticommunist regimes banned socialist parties on the grounds that they sought to upend democracy; such concerns could remain beyond democratization. Constitutions in the region also treat parties as bodies that ought to be regulated because of their public significance. The logic behind this concern is that since parties fulfill public functions, such as interest aggregation and representation, the state should ensure that parties remain dedicated to their public missions. Leaving parties to be shaped entirely by their members and by electoral competition is, in this view, insufficient for their purposes in a democratic context.

Party constitutionalization in Asia can be compared with Europe. While the emphases and origins of party constitutionalization in Asia are not identical to those in Europe, in both regions parties have become defined increasingly in relation to public law. As in Europe, democratization has tended to bring a reconsideration of the role of parties and this reconsideration has gained constitutional formulation. Similar to post-communist Europe, Asia’s former one-party regimes have been especially attentive to protecting a multi-party system. Such protection is understood as a cornerstone of democracy. On the other hand, the need to regulate parties and place them in a special legal category is largely divorced from reasons related to public financing of parties. Oversight of parties and the state’s right to impose sanctions are especially prominent themes in Asia’s constitutions.

This study has implications for thinking about political parties in Asia. The constitutional design of democracy in Asia places parties in a prominent position. Party organization and, perhaps especially, a multi-party system are treated as crucial to the operation of modern democracy. The region’s constitutions imagine parties not mostly as electoral bodies but as organizations that need to be limited so as not to undermine democracy, or as public bodies that should be regulated so as to serve public interests. Both of these views depart from common ways parties in Asia have been studied. The research presented here suggests that parties in the region ought to be understood in relation to public law. Thinking this way about parties is significant for theoretical, legal, and regulatory dimensions of parties and party democracy. First, theoretically, since constitutions treat parties as components of democracy, public debate about the meaning of democracy invites reflection on the role of parties. Second, legally, because constitutional articles refer to parties, parties can be involved in legal disputes that reach high courts. Constitutional or supreme court decisions on parties can thus be avenues for the judicialization of politics. Third, in relation to regulation, the imposition of rules on parties and state oversight over them means that state regulation can be crucial for shaping

parties and the party system. Not all of these dimensions are relevant for every East and Southeast Asian democracy, but each is relevant for many. Furthermore, viewing parties in relation to public establishes a basis for comparisons and contrasts of party democracy in the region.

There are several directions for further research here. A first is to examine the consequences of party constitutionalization. How has party constitutionalization affected party systems and party organization? The constitutional codification of parties may have impacts on party formation and dissolution. Clauses that raise barriers to entry may deter party formation. Articles protecting a multi-party system may lead to fewer instances of party dissolution, while those which allow the state to ban particular sorts of parties may contribute to more cases of party dissolution. Identifying these impacts is important for understanding the practical significance of party constitutionalization.

Another area of investigation concerns other legal codes that relate to political parties. Constitutions represent only one type of code through which parties are regulated. Separate party laws govern parties with more exhaustive rules. Four of the countries discussed here have party laws. There are also separate pieces of legislation that regulate parties, such as Taiwan's Civil Associations Act. Political finance laws also have direct implications for parties. A full understanding of the legal position of parties should consider these types of laws. Future research could also search for the consequences of these laws for party organization and party systems.

Finally, there is a need to identify and elaborate on dimensions of party regulation that remain under-emphasized in the framework employed here. By replicating research on European contexts, this study is able to offer cross-continental comparison but this method also means that other themes of significance in Asia may become overlooked. For example, partisan neutrality among government officials appears repeatedly in Asia. These articles stem from a view that parties should be carefully separate from public office. This concern does not map exactly onto the framework borrowed here from the study of Europe. Subsequent studies might systematically identify the range of visions in Asia for the roles parties play. Such work would help refine the understanding developed here of party constitutionalization in the region.

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