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# Why Are Racist Associations Free in Some States and Banned in Others? Evidence from 10 Liberal Democracies

ERIK BLEICH and FRANCESCA LAMBERT

*This article examines factors that explain cross-national variation in states' willingness to repress racist associations. Non-democratic regime history is the primary factor that predisposes a country toward repression. Yet three situational triggers also matter when accounting for the development and application of a state's provisions. First, the immediate aftermath of the transition to democracy can spark new laws and bans; second, ratifying UN provisions against racist organisations can prompt state action; and, third and most importantly in the contemporary era, spikes in high-profile racist events or steady increases in the influence of racist associations can generate the passage of new laws or the enforcement of existing legislation. Focusing on the combination of the one predisposing factor and the three situational triggers provides a systematic probabilistic explanation for cross-national variation in liberal democracies' stances toward racist associations.*

Racist associations are active in every modern liberal democracy. Yet how states treat them varies dramatically. The United States has long tolerated groups like the Ku Klux Klan on the grounds that everyone is entitled to express his or her view, no matter how repugnant. By contrast, Germany has a more proactive history of shutting down racist groups or even political parties if their racism is deemed dangerous. As societies have become increasingly multicultural, states have had to grapple with the challenge of determining how much to limit racist associations. This dilemma is particularly acute in light of communitarian and liberal theorists' views that freedom of association is vital to thriving liberal democracies. Drawing on Tocqueville, for example, Robert Putnam has highlighted the role of groups in reinforcing civic communities that 'make democracy work' (Putnam 1993, 2000). For nineteenth century liberal theorists like John Stuart Mill (1991: 17), freedom of association is inextricably linked to other types of freedoms; more recently, John Rawls (2005: 313) included this freedom in his list of basic liberties that take priority over other societal goals and cannot simply be balanced against other interests.

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Although there is a strong liberal democratic presumption that freedom of association is a core value, no state recognises it as absolute. The least problematic types of restrictions are those aimed at groups that are violent or that promote terrorism. Much more controversial are restrictions that affect groups because of their political or ideological outlook. Racism may be odious, but racist groups and parties are organised around an opinion. Because of this, many liberal thinkers defend their right to exist on the grounds that we must protect, in Oliver Wendell Holmes' famous expression, 'freedom for the thought that we hate'.

Yet freedom of association for racist organisations is not equally protected in all liberal democracies. Based on observations from 10 liberal democracies, this paper seeks to explain why some employ more repression than others against racist associations. We look for both 'predisposing factors' and 'situational triggers'<sup>1</sup> that increase the probability that states will enact and deploy repressive measures. We ask whether levels of repression are influenced by institutional factors like a country's electoral system; by historical factors such as control by a non-democratic regime in the twentieth century; by factors associated with state identity and socialisation (based in constructivist theories of international relations) as measured by embeddedness in the relevant international regime; and by problem-solving perspective insights about the influence of objective levels of racism.

We find that the most significant factor that predisposes a country to increased levels of repression against racist associations is a history of non-democratic regime control in the twentieth century. At the same time, passage of key legislation or its enforcement do not simply occur during the initial transition to democracy. A fuller explanation of timing must include attention to two additional situational triggers. In a few cases, international conventions or pressure by international bodies to enforce such conventions operates as a spur to action. More often, however, the triggering event is an increase in domestic racism, as measured by spikes in domestic racist events or by more gradual growth in racist parties' electoral strength. In sum, if a non-democratic history predisposes a country to repress racist associations, it can be either a transition to democracy, international influences, or problems of racism that spark a country to pass or enforce its provisions. Together, these factors provide a probabilistic explanation of cross-national variation in liberal democracies' repression of racist associations.

The first section of this article sets out definitions of key terms and develops the five-part categorisation of our dependent variable. The second section draws on relevant theoretical literatures to derive four testable hypotheses about the factors that may account for variation in state repression of racist associations. In the third section, we examine how each of our 10 democracies has deployed tools to combat racist associations, categorising each on our scale of repression. Finally, we test the four hypotheses based on the differences between countries. We demonstrate the significance of the historical hypothesis as a key predisposing factor, and the effects of historical circum-

stances, international influences, and problem-solving factors as triggers that increase the likelihood of developing or applying legislation to restrict racist associations.

### **Definitions: Limiting Racist Associations**

States have a wide variety of options for limiting racist associations. While a number of established liberal democracies have explicit provisions permitting the disbanding of associations simply because of their *racist* nature, in many cases the word racism is not found in any legislation invoked to limit racist organisations. This is true in countries like Austria and Italy, where statutes were tailored to prevent the rebirth of fascist parties.<sup>2</sup> In some states, like Germany, the legislation targets anti-system or anti-democratic parties more generally; thus Germany's constitution allows for the dissolution of parties that 'seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany' or of groups that 'contravene the criminal laws, or that are directed against the constitutional order or the concept of international understanding'.<sup>3</sup> While explicitly 'racist' motives are absent from this wording, the systematic racism of far right associations has been used as primary evidence in banning these groups in Germany (Bleich 2011: 97–100). Racism is thus often associated with fascism and anti-democracy in ways that mean it can play an important role in limiting associations without being written explicitly into a country's laws.

When examining the repertoire of state responses to racist *associations*, it is important to distinguish between *political parties* and *private groups*, both of which we refer to under the general heading of 'associations' (or 'organisations'). The distinction between political parties and groups is crucial because when a government dismantles a racist group, it limits important freedoms, but when it bans a political party, it strikes at the foundations of democracy itself.<sup>4</sup> Since political parties play a central role in democratic societies, they are usually more rigorously protected from intrusive state behaviour than small private groups. It is therefore necessary to pay attention to the kind of racist association that is being limited in order to understand the trade-offs states make when restricting freedom of association in the name of curbing racism.

This distinction between the treatment of parties and groups helps to structure our analysis of the dependent variable, namely the *limits* that states put on racist associations. Limitations on racist associations are encouraged by Article 4b of the 1965 United Nations' International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which urges that states:

Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law.

An examination of the approaches taken by some of signatories, however, demonstrates the variation in the extent to which these countries apply these measures in practice. Due to this wide variation in state responses, it is helpful to think of states' limits of racist associations along a sliding scale of repression. In discussing states that take antidemocratic legal measures to combat threats to their existence, Pedahzur (2001) utilises a tripartite categorisation of 'militant', 'defending', and 'immunised' democracies to distinguish between countries that are more or less likely to take repressive measures. Fox and Nolte (2000), on the other hand, differentiate between 'substantive' and 'procedural' democracies that are either 'militant' or 'tolerant' in their state responses. Our classification builds on these insights, but develops more specific measurements by focusing on state responses to *racist associations*, as opposed to responses to general antidemocratic threats (including terrorism) from all actors (including individuals prosecuted for hate speech and crimes).

We develop a five-part classification that is based in a notion of a hierarchy of repression. Our categories range from 'low' to 'high', although we emphasise that these are descriptive (and relational) rather than normative terms. Some observers may find state actions at the 'low' or 'low-medium' levels extremely repressive and objectionable, whereas others may believe countries in the 'medium-high' or 'high' categories do not go far enough to repress racist associations. Our use of these terms is intended simply to describe relative levels of state repression among liberal democracies, noting empirically that while practically every modern liberal democracy incorporates most of the measures at the 'low' repression end of the spectrum, fewer and fewer countries employ repressive measures as we move up to the higher end of the scale. We could equally well have used the descriptors 'level 1' through 'level 5' repression, but we judged those to be less intuitive than terms ranging from 'low' to 'high'.

'Low' repression includes measures employed by virtually all states, such as general ostracism and marginalisation of racist associations and parties. States may also exercise 'passive control' by allowing or even encouraging anti-racist counter-demonstrations. To undercut public support for racist associations, states can adopt social policy-based strategies to counter the expansion of the extreme right, ranging from macro-level programmes to combat urban decay or unemployment, to programmes of social casework tailored toward extreme-right sympathisers in an effort to undermine their ideology or their actions. Additionally, states can employ educational measures, by, for instance, introducing multicultural content in school curricula (Eatwell 2010; Husbands 2002; Pedahzur 2004).

'Low-medium' repression incorporates stricter measures aimed at limiting racist associations. To this end, the state can issue temporary or piecemeal restrictions on an association's right to demonstrate, exclude associations from state media exposure, and set up barriers for association members to join other organisations, such as the civil service or workers' unions. Heavy surveillance and, at times, infiltration by undercover government agents are used to keep track of

associations' actions. These measures are widely employed among states and they are substantially more repressive than those in the 'low' category. But they are aimed at undermining rather than at ending racist associations.

'Medium' measures include, most significantly, the application of legislation allowing for the dissolution of racist groups and the criminalisation of membership in such groups. Medium repression also encompasses systematic or blanket bans on demonstrations and requirements that associations temper the level of their racism through their public statements or official platforms or face legal sanctions. Countries in the medium category thus attack and ban racist associations, going well beyond the steps at the 'low-medium' level. By contrast, they do not have the ability to repress racist political parties.

Two types of countries classify as 'medium-high': ones that have the tools to disband racist political parties, but have not applied them, and ones that do not formally have those tools, but have instead used other means at their disposal to severely hamper racist political parties. These other repressive means include criminalising membership in and financial support of a party, disallowing racist parties to participate in elections, and annulling electoral outcomes if won by racist parties. These countries fall just shy of the 'high' category because they have not actively, officially, and permanently disbanded a political party.

Countries at the 'high' end of the repressive spectrum both have the tools to disband political parties and have demonstrated a willingness to apply them. As stated above, party bans strike not only at freedom of association (as do group bans), but also at core democratic principles of allowing citizens to organise in order to participate in the electoral process.

The five levels of repression can be summarised as follows:

- (1) Low: Social and educational measures; passive control; ostracism.
- (2) Low-Medium: Surveillance and infiltration; exclusion from state media; barriers for association members to join other organisations such as the civil service; temporary or piecemeal demonstration bans.
- (3) Medium: Group dissolution; criminalisation of racist group membership; blanket demonstration bans; legal requirements on associations to temper their racism.
- (4) Medium-High: Strong repression of racist parties via criminalisation of membership in, and/or financial support of, a racist party; exclusion of racist parties from registration and elections; annulment of electoral outcomes if won by racist parties. Also, non-application of specific legislation permitting party dissolution.
- (5) High: Application of specific legislation permitting party dissolution.

With a few minor exceptions, this list is cumulative. That is, states that fall into one category also implement most (but not necessarily all) of the measures that fall into the lower categories. By examining the repressive means employed in our 10 liberal democracies, it is possible to rank them along this five-part continuum of state repression. Ordering them in this manner sheds

light on the current state of such repressive measures in these countries. It also allows us to understand whether the differences in their approaches can be explained by systematic factors.

### **Theoretical Perspectives and Hypotheses**

An examination of the literature on the radical right in specific liberal democracies, on cross-national comparisons of state responses to extremist political associations, and on the effects of such responses, points to four major theoretical perspectives that might account for the variety of outcomes our cases exhibit.<sup>5</sup> Each perspective has two explanatory sub-hypotheses: one that tests for factors that predispose a state to employ repressive means, and the other that tests for triggers that explain the timing of the repressive means employed.

#### *Electoral System*

According to several studies of the radical right, the electoral system of a state plays a significant role in acting as a potential barrier to extremist political parties, whose ability to have their candidates elected to national governments is largely dictated by the voting system and electoral thresholds. Thus while the United States' two-party system and Germany's 5 per cent representation threshold are viewed as efficient barriers preventing extremist parties from becoming serious contenders (Fox and Nolte 2000: 407; Pedahzur 2004: 118; van Donselaar 2003: 273), the extreme proportional representation system of the Netherlands provides little to no such barrier (Mudde and van Holsteyn 2000: 161). Following the logic of these observations, the existence of such barriers should decrease the necessity for states to take 'high' repression measures since electoral barriers act as an important deterrent to racist parties' success.

*Hypothesis 1:* States with significant electoral barriers – as measured by plurality voting or at least a 5 per cent electoral threshold – will be less likely to score 'medium-high' or 'high' on the scale of repression than those without such electoral barriers.

If this perspective is accurate, we also expect the timing of repressive means taken by states with low electoral barriers to correspond with moments when racist parties increase their electoral strength to the point where they first achieve representation in the national parliament.

#### *History of Non-Democratic Regimes*

According to Meindert Fennema,

Western European countries have lived through a series of fascist takeovers in which the possibilities offered by democratic institutions were exploited to arrive at power. This traumatic experience resulted in

specific legislation to prevent the enemies of democracy from destroying the democratic institutions from within. (Fennema 2000: 127)

Authors such as Nancy Rosenblum and Eva Brems have also noted the influence of a country's history with non-democratic regimes (Brems 2006b: 153; Rosenblum 2007: 39). Viewed from this perspective, post-fascist governments will be more likely to employ repressive means to limit racist associations (Pedahzur 2004: 128).

*Hypothesis 2:* States' willingness to curtail freedom of association and to employ more repressive measures against racist organisations will increase with the centrality of non-democratic governance in their nation's history.

If this perspective is accurate, we also expect the timing of repressive means taken by the state – through passage of new legislation aimed at banning neo-Nazi and neo-fascist political parties – to cluster in the years immediately following the institution of the new democratic regime. In addition, we should expect to see harsher repressive measures taken by states that experienced home-grown rather than imposed non-democratic regimes, as a means of preventing and protecting themselves against such future threats.

### *International Influences*

Repression of racist political associations (including bans) finds both direct and indirect support in human rights treaties, conventions, and declarations drafted by such international organisations as the United Nations. Some such treaties – notably Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination – go as far as making it compulsory or strongly recommended for states to impose certain restrictions on racist organisations. Additionally, the Committee on the Elimination of Racial Discrimination (CERD) regularly issues reports voicing concerns, criticisms, and recommendations with regard to signatory states' compliance. According to Fox and Nolte (2000: 420–21), an 'international regime on the question of anti-democratic actors' may be emerging, built on the legitimacy of democratic self-protection. But states vary in their responsiveness to such treaties as the ICERD, with some states refusing to sign them, others taking longer to ratify them and to incorporate them into domestic legislation, or placing reservations on their implementation.

*Hypothesis 3:* States that have stronger ties to international norms, laws, and institutions – based on such measures as whether anti-racist international conventions and treaties were ratified, and, if so, how long it took states to do so – will employ more repressive measures against racist associations than states that do not.

If this perspective is accurate, we also expect the timing of repressive means taken by the state to correspond with the timing of the ratification of such international treaties, as well as with recommendations issued, or pressure exerted, by international bodies such as the CERD, which monitors the implementation of the ICERD.

### *Problem-solving*

Our final hypothesis focuses on the role that objective problem indicators can have on policy outcomes. This line of theorising draws from the literature on the politics of policy change. One aspect of this perspective posits that policies are developed and implemented as solutions to objective societal problems – like levels of racism – reflected in key indicators that spur the state to respond (Hecló 1974).

*Hypothesis 4:* The level of repression will correlate to the existing level of racism, indicated by the frequency and intensity or scope of problem indicators reflecting the strength of racist associations.

If this perspective is accurate, we also expect that the timing of state responses will be driven at least partly by focusing on events that open ‘windows of opportunity’ which provide states with the occasion to develop new legislation, or to apply existing provisions with respect to racist associations (see Cohen *et al.* 1972; Kingdon 1995). Such focusing events may include spikes in public racist acts related to racist organisations, or more gradual but highly significant increases in the strength of racist associations.

We also examined but quickly discarded two additional explanatory perspectives: *Minority group influence* and *Political party in power*. The hypothesis that states with strong minority or minority-interest NGOs (which lobby the government to combat racist associations) will employ more repressive measures did not fit with the fact that the country in our sample with the strongest minority groups – the United States – was also the country lowest on the scale of repression, while the one with some of the weakest minority groups – Germany – was highest on the scale. Similarly, the hypothesis that the political left is more likely than the right to repress racist political associations failed to satisfactorily account for a wide number of very important instances of passage or application of repressive legislation: for instance, the Christian Democrats were central to the enactment and application of Germany’s ban on fascist parties in the late 1940s and early 1950s; the centre-right Chaban-Delmas government allowed for provisions prohibiting racist groups in 1972; and the Spanish conservative People’s Party (*Partido Popular*, PP) passed legislation in 2002 allowing for the dissolution of racist parties. Finally, periods during which the political left has been in power in countries that rank lower on the continuum

have not seen increased attempts to introduce or pass legislation restricting racist associations.

### **Levels of Repression**

We follow a medium-*n* methodology that permits us to establish patterns of outcomes across multiple cases while preserving the ability to explore contextual details about each country rather than simple summary statistics.<sup>6</sup> The 10 countries that we examine – the United States, Australia, Britain, Italy, France, Israel, Spain, Belgium, the Netherlands, and Germany – were selected as a set of established liberal democracies which differ in ways that allow us to test our explanatory hypotheses. These cases are divided either six–four or five–five in terms of having high versus low electoral barriers; having a history of non-democratic regimes; ratifying the ICERD within five years of its signature and accepting it with or without reservations; and in terms of having a significant far right party presence that signifies a serious level of racism. As we demonstrate in the remainder of this section, they also vary substantially in terms of the dependent variable, reflecting the wide variety of strategies that states have pursued in responding to racist associations.

On the ‘low’ end of the spectrum, the United States provides robust protections for racist groups from state interference, as long as they do not engage in violence or other criminal behaviour. The United States is more committed to freedom of racist association than almost any other country, never having disbanded a self-proclaimed racist organisation, or having the legal means to do so. Thus while leaders and members of racist associations can be prosecuted for their violent actions, political parties and groups are not targeted by repressive legal means simply for being racist. Moreover, the state often sends in law enforcement agents to protect racist demonstrators when faced with instances of potentially violent confrontations. What differentiates the United States from other liberal democracies is the important role played by NGOs and anti-racist organisations (like the Southern Poverty Law Center and the Anti-Defamation League) that track racist organisations and that work to bring civil suits and use tort law against racist groups that have committed violent hate crimes, effectively bankrupting them (Koenig and Rustad 2007; Michael and Minkenberg 2007).

Australia also qualifies as ‘low’ on the scale of repression. Although sometimes characterised as a militant democracy, it has no ability to disband groups or parties because of their racist ideology (Irving 2009: 22–23). Its criminal code empowers the Attorney General to proscribe only ‘terrorist’ organisations (without any reference to their racist nature).<sup>7</sup> Its Racial Discrimination Act of 1975 and its Commonwealth Racial Hatred Act of 1995 incorporate the principles of the ICERD, but Australia has not followed the mandate to criminalise racist organisations. States have passed their own measures aimed at curbing racism, but they do not make explicit or differentiate between individual actors and organisations.<sup>8</sup> Instead, Australia favours generic anti-racism measures

such as anti-discrimination laws and education-based policies aimed at undermining sympathy and support for racist associations. The few attempts by racist groups to hold marches have been met with civilian counter-demonstrations, which usually outnumber and overpower groups like the Australian Defense League (Masanauskas 2011).

In our sample of 10 states, the ‘low–medium’ repression classification applies to Great Britain. There exists no legislation for banning racist parties – nor have there been any such de facto bans – and the Public Order Act of 1936 limits banning political groups to ‘quasimilitary organisations’.<sup>9</sup> That said, the state does limit racist associations by other means, including regular surveillance of extremist groups by MI5 and the Special Branch (Eatwell 2010: 216). In addition, the Public Order Act of 1936, amended in 1986, can be used by the state to ban demonstrations when they are likely to disrupt public order; this tool has been applied to racist groups and parties a number of times, although not strictly speaking on account of their racist views. Members of racist parties can also be restricted from joining other organisations, like the Association of Chief Constables and Police Officers, which issued a ban on BNP (British National Party) membership in 2004 (Eatwell 2010: 214). Finally, in a step that suggests Britain is located closer to the ‘medium’ end of the ‘low–medium’ category, the state can in rare cases require political parties to temper their racist platforms and statements. In 2009, for instance, the BNP’s whites-only membership criterion was ruled racially discriminatory under the Equality Act of 2006; two years and many court hearings later, the BNP finally instituted the required changes by amending its membership rules.<sup>10</sup>

The legal repertoires of the two countries exhibiting ‘medium’ repression – France and Italy – go beyond provisions in other countries reviewed so far by allowing for the dissolution of racist groups. Although the French state cannot legally dissolve political parties,<sup>11</sup> it can – and has, on multiple occasions – banned groups based on their racist views. As amended in 1972, Article 6 of the 10 January 1936 Law allows for the dissolution of groups based on their racial ‘discrimination, hate, and violence’.<sup>12</sup> This specific provision has been applied, most recently, to such racist groups as *Unité Radicale* (2002), *Elsass Korps* (2005), *Tribu Ka* (2006), and *Jeunesse Kémi Séba* (2009). As in Britain, France also restricts members of racist parties from joining other organisations. This was the case when in 1998, *FN-Police* and *FN-Pénitentiaire*, two unions linked to the far right National Front (FN), were deemed illegal by the *Chambre mixte de la Cour de cassation*, which cited as grounds for the ban the principles of non-discrimination contained in the constitution and international engagements of which France is a part (Esplugas 1998: 678). The French state issues precautionary bans on demonstrations, but in piecemeal as opposed to blanket fashion (see e.g. van Donselaar 2003: 276).

Italy has two provisions that place it firmly in the medium category. The post-war ‘Scelba Law’ renders illegal any movement that engages in the dissemination of ‘racial propaganda’.<sup>13</sup> The 1993 ‘Mancino Law’ specifies this further, by prohibiting ‘organisations, associations, movements or groups’ that

incite discrimination or violence ‘for racial, ethnic or religious reasons’.<sup>14</sup> On a few rare occasions the Minister of the Interior has invoked the Mancino Law to this end, such as against the *Movimento Politico Occidentale* (1993), *Azione Skinhead* (1993), and the *Fronte Nazionale* (2000) (Wetzel 2009). These two legal provisions, however, are ‘much less used against [parties like the *Lega Nord*]. The reason for this [is that] the strategy of inclusion of the *Lega Nord* in the democratic system has functioned very well’ (Ceccanti and Clementi 2009: 215). Much more common is the prosecution of members of racist groups (sometimes in large numbers).<sup>15</sup>

The three countries in the ‘medium–high’ category – Israel, Belgium, and Spain – are countries that either: (a) have the tools to severely repress racist political parties but lack the ability to ban them on the grounds of racism; or (b) can formally ban racist parties, but have never done so. Israel and Belgium fall into the former category, as they both have specific legislation aimed at restricting racist political parties but cannot ban them for their racism. Spain, on the other hand, falls into the latter category. Interestingly, each of these countries has moved from the medium to the medium–high category: Israel in the mid-1980s, Belgium in the late 1990s, and Spain in 2002.

Israel has had to face anti-democratic threats from both Arab and right-wing Jewish nationalists and it has enforced its laws against both types of actors. It has the power to outlaw political parties when they have carried out actions interpreted as a denial of the legitimacy of the existence of the state of Israel, or when they have been linked to violent or terrorist acts. The state cannot ban a party simply on the grounds of racism, but it does have the ability to refuse to register political parties<sup>16</sup> and to exclude party lists from consideration for Knesset elections.<sup>17</sup> Although these two steps are not as extreme as a ban, they severely undermine the ability of a political party to carry out its expected functions. When the Central Elections Committee tried to ban the overtly racist Kach party (led by Meir Kahane<sup>18</sup>) from participating in the 1984 elections, the Supreme Court overruled the decision, citing the need to protect unpopular views (Navot 2008: 748). In response, the Knesset amended Section 7 of the Basic Law in 1985 to explicitly forbid electoral participation by parties engaged in ‘incitement to racism’.<sup>19</sup> In 1988 and in 1992, this provision was successfully applied to the Kach and Kahane is Alive parties (Cohen-Almagor 1997: 86; Israel Ministry of Foreign Affairs 1994). However, it was not until the massacre of Muslim worshippers at the Cave of the Patriarchs in 1994 by a Kahanist follower that the parties were outlawed under the Prevention of Terrorism Ordinance (Cohen-Almagor 1997: 84; Neuberger 2009: 196). Other repressive measures – notably the amendment of the Knesset Rules of Procedure to allow for the refusal to handle any explicitly racist legislative proposals – were also adopted with the specific aim of limiting Rabbi Kahane (Neuberger 2009: 194–95). Thus Israel has the power to repress racist parties in significant ways, but cannot ban them for their racism, and it has been most willing to apply its restrictive provisions when violence has been an integral part of the racist philosophy of the party.

In Belgium, repressive legal measures against racist groups date back to 1981, with the passage of the ‘Moureaux Law’ – adopted to fulfil the government’s obligations under the ICERD – which punishes ‘whoever belongs to a group or association that clearly and repeatedly practices or advocates discrimination or segregation ..., or who lends his assistance to any such group or associations’.<sup>20</sup> This law criminalises membership in racist groups, but not in racist political parties (Fennema 2000: 128). However, the state has invoked other types of anti-racist legislation to undermine parties. In 1999, parliament passed a law that permitted the state to cut off funds to any party systematically and overtly hostile to human rights (Fennema 2000: 128),<sup>21</sup> and another law that enabled associations (and not just individuals) to be charged in criminal cases. Beginning in 2000, these measures were invoked by two anti-racist groups to launch an indirect attack on the far right Flemish Bloc (*Vlaams Blok*, VB), one of the largest parties in the Flanders region. On 21 April 2004, the Ghent Court of Appeal declared illegal the support granted to the Flemish Bloc by three key groups – responsible for party financing, leadership training, and media relations – on the grounds that the party was a racist organisation. Technically speaking, the party was not banned, because there are no legal provisions permitting such a step. Nonetheless, the loss of its financing and the prosecution of Flemish Bloc members and satellite organisations was a severe blow (Brems 2006a: 704), making continued party survival all but untenable. Shortly thereafter the party dissolved itself and was reborn as the Flemish Interest (*Vlaams Belang*, also VB), continuing in its path, but somewhat toning down many of its egregiously racist views (Bale 2007: 153; Erk 2005: 495). Like the Israeli example, the Belgian case thus falls at the upper end of the ‘medium–high’ category.

The legislation concerning the banning of political parties in Spain is unambiguous. The 2002 *Ley Orgánica de Partidos Políticos*<sup>22</sup> allows for the dissolution of parties based on their racist ‘exclusion or persecution’ or promotion thereof.<sup>23</sup> That said, the only political party the state has ever banned has been *Batasuna*, not for its racism, but for its support of Basque separatist terrorist group *Euskadi Ta Askatasuna* (ETA).<sup>24</sup> Spain does repress racist groups through provisions in its criminal code. Article 515 of the Penal Code allows for the dissolution of associations that ‘promote discrimination, hate, or violence’ (Brems 2006b: 131).<sup>25</sup> Most recently, this measure was invoked by the Spanish Supreme Court to dismantle the Spanish wing of the international neo-Nazi group and music promotion network Blood & Honour. The decision was based on both its ‘anti-Semitic character’ and programme of ‘hate towards the Jewish people’, but also the fact that the group was involved in illegal arms trafficking. This case illustrates the frequent overlap between racism and violence or risk of/incitement to violence. Nevertheless, this decision was viewed as ‘confirming the impossibility of the legal existence of such racist, xenophobic, and anti-Semitic associations’.<sup>26</sup> The Spanish state also employs piecemeal (rather than blanket) bans on demonstrations.

The category of 'high' repression is limited to states like the Netherlands and Germany that take overt and unambiguous actions aimed at disbanding political parties because of their racism. The Netherlands has multiple tools to severely repress political parties, many of which are similar to those in 'medium-high' countries. For instance, in 1978 an Amsterdam court excluded the extremist, racist *Nederlandse Volks-Unie* (Dutch Peoples Union, NVU) from participating in local elections (Ignazi 2003: 164). The state has also applied systematic or blanket bans on demonstrations: 'Since the end of the 1970s virtually any attempt by the extreme right to call a demonstration has been regarded as an unacceptable public order risk' (van Donselaar 2003: 277) and 1996 marked the first time an anti-immigrant party was allowed to organise a public march (Fennema 2000: 130). What justifies elevating the Netherlands to the 'high' category, however, is the existence and application of legislation banning racist political parties. In the Netherlands, the power to ban parties rests with the judge, and though 'actual application of the party ban is a rare occurrence; nevertheless the threat of a ban has been important for the development of the extreme right' (van Donselaar 2003: 282). This power was established by the 1944 'Resolution concerning the Dissolution of Treasonable Organisations', which forcefully set off the process of 'denazification' by banning some 30 organisations in the aftermath of its passage, and in 1955 the *Nationaal Europese Social Beweging* (National European Social Movement, NESB) (Ignazi 2003: 163; Mudde 2000: 117). Then, in 1998, anti-racist legislation led to the prohibition of a political party. An Amsterdam court declared the Centre Party '86 (CP '86)<sup>27</sup> an illegal 'criminal organisation' and dissolved it for the racist and xenophobic statements of its party board (Mudde and van Holsteyn 2000: 149). Under mounting pressure from anti-racist organisations, and after having regularly targeted members of the CP '86 for violating anti-racist legislation,<sup>28</sup> the state finally started – and won – legal action against the party itself (Mudde 2000: 145). Placing the Netherlands in the high category does not mean that it will *always* ban racist parties; it means that the Netherlands has both the tools and the demonstrated will to outlaw racist political parties in ways that set it apart from most other liberal democracies.

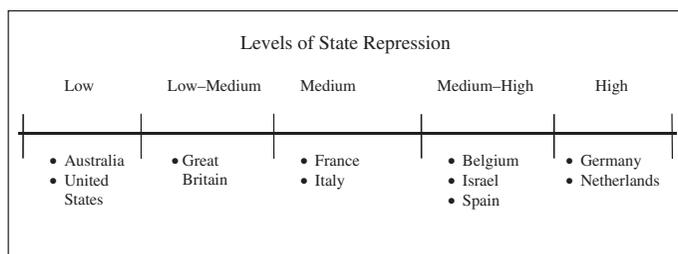
The German state bans marches of private racist groups under a wide variety of circumstances,<sup>29</sup> allows for the dissolution of private racist groups, and bans racist party members from certain organisations.<sup>30</sup> Like the Netherlands, however, it earns its 'high' categorisation through the existence and application of legislation that forbids racist parties. Article 21 of Germany's 1949 Basic Law places the power to dissolve parties with the Constitutional Court, which applied it to outlaw the far right *Sozialistische Reichspartei* (SRP) in 1952 and the far left German Communist Party (KDP) in 1956. Although evidence of racism was not a central factor in either decision, these cases had important consequences for future debates about racist associations. By introducing the concept of 'essential affinity',

the decisions made it possible to claim that racism constitutes evidence of ‘essential affinity’ to the Nazis – the epitome of an unconstitutional organisation – thus making racist parties eligible for banning. Over the following decades, racism took on a greater role as evidence of an association’s incompatibility with Germany’s constitutional order, resulting in the dissolution of several small racist groups by Ministry of Interior decree, with a particularly large wave of bans occurring in the years following reunification (Bundesamt für Verfassungsschutz 2008: 22–27).

Then, in early 2001, the government submitted motions to the Constitutional Court calling for a ban of the far right National Democratic Party (NPD). The NPD is an established political party appealing for votes on a political programme of ‘ethnic (*völkischen*) collectivism, social Darwinism and biological racism, and various motives and dimensions of racist, economic and political anti-Semitic libel’ (Niesen 2002: 1). While the case was ultimately thrown out on procedural grounds,<sup>31</sup> it made clear that government actors believed that dissolving racist parties like the NPD is legitimate in the fight against racism and right-wing radicalism. Proposals like this will certainly gain more traction when racist parties are linked to violence, but a recent poll showed that 77 per cent of those surveyed support banning the NPD, and in December 2011 a state and federal interior ministry working group was set up to organise a fresh case against the party.<sup>32</sup>

A careful examination of our ten liberal democracies permits us to rank them along the five-part scale of repression (see Figure 1). As should be clear from our discussion of each country’s trajectory, our classification allows for movement over time both within and between categories, as well as for gradations within each category. For the sake of parsimony, we do not depict this complexity here. The purpose of Figure 1 is to summarise the significant differences in liberal democratic approaches to restricting racist associations in the contemporary era. We turn to the analysis of these differences in our next section.

FIGURE 1  
THE PLACEMENT OF 10 LIBERAL DEMOCRACIES ON THE SCALE OF REPRESSION



## Findings

Are there systematic factors that help explain why some states rank lower or higher on the scale of repression? In testing our four perspectives, we first examine each as a predisposing factor to see if there is a correlation between the independent variable and a state's level of repression, and if that correlation also reflects a causal relationship. We then examine the timing of the passage and enforcement of legislation to understand the situational triggers that generate policy change or application.

We find that the only perspective that systematically predisposes states to deploy higher levels of repression is having a *history of non-democratic regime* in the country. This factor also functioned as a situational trigger that accounted for early post-war legislation and enforcement. However, since that time, additional laws have been developed and enforced in a number of countries, which the historical perspective cannot fully explain. A few of these have been spurred by *international influences*, especially following national ratification of the 1966 ICERD. A greater number, however, have been influenced by *problem-solving* politics involving two specific situational triggers: increases in domestic racist events, and growth in the electoral strength of racist parties.

### *Electoral System*

According to this hypothesis, we would expect to see states with electoral systems that do not serve as protective barriers employ comparatively harsher repressive state measures against racist political parties. At first glance, this may seem like a significant explanatory factor, as all three countries in the low or low-medium categories have high protective barriers, and four of five in the medium-high or high categories do not (see Table 1).

However, the most direct test for this perspective is whether high barriers obviate the need for strong repression. Looking at the extreme end of the scale of repression, Germany has high barriers but also high repression, a significant

TABLE 1  
LEVELS OF REPRESSION AND ELECTORAL SYSTEMS

	Level of repression	Electoral system as protective barrier?
United States	Low	Yes (simple plurality)
Australia	Low	Yes (single member district instant runoff)
Britain	Low-Medium	Yes (simple plurality)
France	Medium	Yes (2-round plurality)
Italy	Medium	No (2% representation threshold)
Israel	Medium-High	No (2% representation threshold)
Spain	Medium-High	No (3% representation threshold)
Belgium	Medium-High	No (proportional, no national threshold)
Netherlands	High	No (proportional, less than 1% threshold)
Germany	High	Yes (5% representation threshold)

contradiction to the hypothesis. Moreover, it is extremely likely that the observed correlation does not involve causation. There is little evidence to suggest that racist parties are met with repressive means simply because they achieve representation in low threshold countries, nor is there evidence pointing to an underlying causal dynamic linking the timing of new repressive legislation with electoral breakthroughs.

The one important exception to this finding is the passage of the Israeli law disqualifying racist parties shortly after the 1984 election of Meir Kahane to the Knesset (Cohen-Almagor 1997:84). However, this dynamic also involves an increase in the problem of racism (discussed below), so this development lends support to both perspectives. More telling for the overall assessment of the electoral system theory is the lack of state action in every other case, including the electoral breakthroughs of the Flemish Bloc in Belgium, the Senate seat obtained by the One Nation party in Australia in 1998, the 2006 entry of Geert Wilders' Party for Freedom into the Dutch parliament, the long-time presence of the Movimento Sociale Italiano (MSI) and Lega Nord in Italy, and the seating of a substantial number of National Front deputies in the French National Assembly in 1986. In short, we find virtually no support for perspectives that emphasise the role of the *electoral system* in generating repression of racist associations.

### *History of Non-Democratic Regimes*

By contrast, multiple authors and historical documents support the causal connection between having a non-democratic history and a country's willingness to repress racist associations. Yet what is not known is the extent to which countries with a fascist past are systematically more likely to deploy repressive legislation than those without such a history. As illustrated in Figure Table 3, all but one of the countries falling into the 'medium' to 'high' categories experienced either non-democratic regimes or occupation under such regimes. As for Israel, which did not share such an experience, its judgements regarding the banning

TABLE 2  
LEVELS OF REPRESSION AND NON-DEMOCRATIC HISTORIES

	<b>Level of repression</b>	<b>History of non-democratic regimes?</b>
United States	Low	No
Australia	Low	No
Britain	Low-Medium	No
France	Medium	Yes (Vichy Regime, 1940-1944)
Italy	Medium	Yes (National Fascist Party and Republican Fascist Party, 1922-1945)
Israel	Medium-High	No
Spain	Medium-High	Yes (Franco's regime, 1939-1975)
Belgium	Medium-High	Yes (Nazi takeover, 1940-1944)
Netherlands	High	Yes (Nazi takeover, 1940-1945)
Germany	High	Yes (Third Reich/Nazi Germany, 1933-1945)

of an Arab nationalist party in the 1960s were led by the High Court justices of German-Jewish origin who had been heavily influenced by the ‘Weimar effect’ and the German concept of ‘militant democracy’ (Thiel 2009: 388). Contrary to our assumption, we found no difference between countries with a home-grown history of fascism and those which were occupied by fascist powers.

Nevertheless, if this perspective were sufficient to account for all types of variation, we would expect to see the laws limiting racist, neo-Nazi, and neo-fascist associations passed in the immediate aftermath of the non-democratic regime’s rule. While this is true for some of our cases – notably Germany, the Netherlands, and Italy – other countries passed similar legislation with a significant delay, as was the case for France (1972), Belgium (1981, 1999), and Spain (2002). Thus, we conclude that having a *history of non-democratic regime* serves as a predisposing factor which significantly increases a state’s likelihood of taking repressive measures against racist associations. However, this factor operates as a situational trigger that prompts specific legislation or enforcement only in a minority of cases.

### *International Influences*

While it is difficult to assess a state’s likelihood to be influenced by international factors, there are two key indicators that allow us to gauge a country’s ties to international norms and institutions in this domain. One such measure is a state’s commitment to international treaties and conventions relevant to banning racist associations. Thus, while some countries ratified the United Nations ICERD quickly (within five years of its 1966 adoption), others took much longer; the United States, for instance, waited until 1994 to do so (see Table 3).<sup>33</sup> Likewise, while Israel, Spain, the Netherlands, and Germany all ratified the document without reservations, the other six countries all included reservations about the application of article 4 (mandating the dissolution of racist organisations). These countries raised concerns about the convention’s compatibility with the rights of freedom of opinion, expression, association, and

TABLE 3  
LEVELS OF REPRESSION AND APPROACHES TO THE 1966 ICERD

	<b>Level of repression</b>	<b>Acceptance or reservations regarding article 4 of the ICERD?</b>	<b>ICERD ratified within five years?</b>
United States	Low	Reservations	No (1994)
Australia	Low	Reservations	No (1975)
Britain	Low–Medium	Reservations	Yes (1969)
France	Medium	Reservations	Yes (1971)
Italy	Medium	Reservations	No (1975)
Israel	Medium–High	Acceptance	No (1979)
Spain	Medium–High	Acceptance	Yes (1968)
Belgium	Medium–High	Reservations	No (1975)
Netherlands	High	Acceptance	Yes (1971)
Germany	High	Acceptance	Yes (1969)

assembly, as guaranteed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and, finally, domestic legislation (like the United States Constitution).

As demonstrated by Table 3, whether a country expressed reservations is closely correlated to a country's ranking, which suggests this may be a powerful explanation. However, many states place reservations on international treaties due to differing domestic political traditions and constraints. For these reasons, the timing of ratification is a more reliable measure of national embeddedness in an international regime. On this front, Table 3 illustrates the lack of correlation between this measure and our dependent variable, casting doubt on the validity of this perspective as a predisposing factor accounting for a state's level of repression.

At the same time, instances of international influence – like ratification of the ICERD and pressure from international bodies – can in some cases prompt states to employ repressive means. For example, in 1972 the French government outlawed racist groups in part to fulfil its obligations under the ICERD, which it ratified in 1971 (Bleich 2003: 131). Additionally, though policy recommendations put forth by the UN's Committee on the Elimination of Racial Discrimination largely go unheeded, it can at times weigh in at key moments in national discussions. Thus, in May 2002 the CERD voiced concern about the activities and platform of the *Vlaams Belang* (VB), stating:

The Committee is concerned that there is no legislation prohibiting racist organizations and propaganda activities. It is also concerned about the increasing influence of xenophobic ideology on political parties, especially in Flanders ... Taking into account the mandatory nature of Article 4 of the Convention, the Committee also recommends that the state party enact legislation that declares illegal and prohibits any organization which promotes or incites to racism and racial discrimination and consider withdrawing its reservation to the Article.<sup>34</sup>

Belgium did not pass new legislation prohibiting racist organisations, nor did it lift its reservations about ICERD Article 4. Nonetheless, passage of key international conventions and pressure by international organisations can be, at the margins, a modest factor that increases the potential for state repression of racist associations.

### *Problem-solving*

According to the problem-solving perspective, cross-national policy variation is most convincingly explained by objective differences in the level or nature of the domestic problems faced. The argument that higher levels of racism serve as a spur to greater repression of racist associations is not compelling as a sig-

TABLE 4  
LEVELS OF REPRESSION AND FAR RIGHT PARTY PARLIAMENTARY PRESENCE

	<b>Level of repression</b>	<b>Far right party in national parliament, 2010</b>
United States	Low	No
Australia	Low	No
Britain	Low–Medium	No
France	Medium	No
Italy	Medium	Yes (Lega Nord)
Israel	Medium–High	Yes (Yisrael Beiteinu, National Union, The Jewish Home)
Spain	Medium–High	No
Belgium	Medium–High	Yes (Flemish Interest)
Netherlands	High	Yes (Party for Freedom)
Germany	High	No

nificant predisposing factor. Although comparable statistics on racist associations are unavailable in most countries, they do exist for the United States and Germany. In 2008, the Southern Poverty Law Center counted over 900 hate groups in the United States (SPLC 2009), whereas in the same year the Federal Office for the Protection of the Constitution tracked 156 right-wing extremist groups in Germany (Bundesamt für Verfassungsschutz 2010: 53). These numbers would imply a much greater level of repression in the United States than in Germany, while the inverse is true. Moreover, there is at best a weak correlation between the presence of a far right party (with an anti-immigrant or anti-minority stance) in the national parliament and higher levels of state repression (see Table 4).

Examining Table 4 more closely, it is also important to note that the Netherlands had its restrictions in place well before the far right rose to power, and both France and Australia have had parliamentary representation of the far right in the past few decades. These facts further weaken the argument that countries with long-term higher levels of racist associations are likely to develop stricter state repression.

Though the simple prevalence of racist associations does not serve as an overarching predisposing factor, perceived problems of racism can act as situational triggers in two distinct ways. First, spikes in racism and racist violence can generate a short-term repressive response. Two instances that illustrate this process took place in Germany in the early 1990s, and then again in the early 2000s. In 1990, following the unification with East Germany, a spate of anti-foreigner attacks prompted the government to crack down on far right groups, leading to a ban of 11 small organisations between November 1992 and May 1995. Evidence of racism was a significant element in some of the most contentious cases, like that of the Free German Workers Party (FAP), the largest extreme right group in Germany by the early 1990s.<sup>35</sup> Though the FAP was registered as a political party, the Constitutional Court decided in February 1995 that it did not qualify as such (lacking such key criteria as size, organisational strength, and public presence). This determination gave the Minister of the Interior the power to decide the group's fate. He exercised his power to

summarily ban it, declaring: 'The FAP ... resembled in its nature the Nazi party, revered Nazi leaders and fostered Nazi rites. ... It scorned human rights, defamed democratic institutions and spread racist and anti-Semitic tirades' (quoted in Wise 1998: 315–16). Thus the FAP's racist and anti-Semitic nature played a central role in justifying its dissolution, and the timing of the decision was clearly related to the state crackdown on racist incidents in the years following unification.

A few years later, in the summer of 2000, a series of attacks aimed at ethnic minorities and foreigners again prompted the government to respond. It launched a major public relations campaign calling for an 'uprising of the decent' and sponsored various national programmes designed to fight racism (see further Bleich 2007; Bleich and Hart 2008). As part of this effort, political leaders began to call for the dissolution of the NPD, which was striving for broader appeal while still maintaining connections to skinhead and neo-Nazi networks (Staud 2006). In early 2001, the government and both houses of parliament submitted motions to the Constitutional Court calling for a ban of the NPD. Government lawyers argued that such a measure was justified because, like the FAP, the party shared an 'essential affinity' with the Nazi party. Though the case faltered on procedural grounds,<sup>36</sup> it signalled that manifestations of racism could generate strong state repression.

Other such examples of repressive state means prompted by spikes in racist activity can be seen in France during the summer of 1990, when the state imposed precautionary bans on demonstrations in the wake of the desecration of the Carpentras Jewish cemetery (van Donselaar 2003: 276). Similarly, in response to a series of Jewish cemetery desecrations in 2004–2005 (especially in the province of Alsace), the Interior Ministry ordered the national intelligence service to conduct a survey of the racist and violent far right groups, leading to the dissolution of *Elsass Korps* on 18 May 2005.<sup>37</sup> In England, where, as in France, precautionary bans on demonstrations are rare, the far right English Defence League was banned by the Home Office from holding marches against 'Islamic extremism' in Luton for three months; this occurred in response to the sudden increase in violent confrontations between EDL supporters and anti-racist counterdemonstrators during several rallies held across the country (Taylor 2009).

The second major vector through which problem indicators can prompt policy responses involves more gradual increases in the strength and success of racist organisations. Such was the case in Belgium with regard to the rise of the far right Flemish Bloc. Founded in 1978, the party experienced little electoral success until the late 1980s, when it shifted its main platform to the issue of immigration, adopting virulently anti-immigrant stances (Brems 2006a: 707). Since that time, the Flemish Bloc's share of the vote in the economically powerful and more populous Flanders region of Belgium increased steadily, peaking at over 23 per cent in the 2004 European Parliament elections (Bale 2007: 152).<sup>38</sup> As the party gained traction during the 1990s, anti-racist advocates began to contemplate how to use Belgium's 1981 anti-racist statute

against the party. In 1999, with the party becoming even stronger, the state instituted three changes that unsettled the terrain: parliament passed a law permitting the state to cut off funds to any party overtly hostile to human rights (Fennema 2000: 128),<sup>39</sup> a constitutional amendment made it clear that racist press offences could be prosecuted before the general criminal courts (instead of in 'Assize' courts where the burden of proof is much higher), and a new law enabled associations (and not just individuals) to be charged in criminal cases (Brems 2006a: 704).

With the legal and procedural stumbling blocks now cleared, The Centre for Equal Opportunities and the Human Rights League banded together in October 2000 to launch a case against three associations that offered critical aid to the Flemish Bloc (Coffé 2005: 214). Because Belgium, as we have seen, does not have explicit provisions for party closure, the anti-racist groups launched an indirect attack on the Flemish Bloc by targeting these supporting associations; the goal was to make it illegal for these associations to support the party by having the courts pronounce the Flemish Bloc a racist party. On 21 April 2004, the three associations were declared guilty of supporting a 'group or association that clearly and repeatedly advocates discrimination' (quoted in Brems 2006a: 705). The court found that the Flemish Bloc incited hatred and xenophobia, and by deeming it a racist organisation, any individual or association supporting the party was breaking the law (Brems 2006a: 707). As a result, the party officially disbanded and transformed itself into the Flemish Interest.

A similar scenario unfolded in Britain in the mid-to-late 2000s, when the far right British National Party, founded in 1982 and headed by Nick Griffin since 1999, steadily improved on its electoral results into the new decade. The European elections of 2004 and the United Kingdom general election of 2005 brought major breakthroughs, with the BNP taking a 4.9 per cent and 0.7 per cent share of the votes, respectively.<sup>40</sup> A few years later, in June 2009, the Equality and Human Rights Commission invoked the Race Relations Act to bring a case against the party, deeming its whites-only membership unlawfully discriminatory.<sup>41</sup> Several court cases later, the BNP instituted the mandated changes into its constitution. In France, the steady rise of the far right *Front National* (FN) and its unprecedented electoral success in the mid-1990s prompted the courts to go after the party indirectly. They did so in 1998 by banning two unions attached to the party – *FN-Police* and *FN-Pénitentiaire* – reasoning that the racist nature of the party was incompatible with the constitutional principles of non-discrimination, and that unions could not be founded on such a racist platform (Esplugas 1998: 678).<sup>42</sup> Finally, as discussed above, the rise of the Kach party in Israel and its eventual entry into the Knesset in 1984 spurred parliamentarians to change their procedures and laws to permit restrictions on the racist activities undertaken by the party and by its leader Meir Kahane (Cohen-Almagor 1997).

As important as spikes in racism can be as situational triggers, there are two significant limits to their usefulness as explanatory factors. First, they tend

to have a greater impact on enforcement of existing laws than on the creation of new provisions. Second, they do not automatically result in repressive state responses. Racist events happen with regularity in liberal democracies, and parties with racist elements wax and wane. Most of these developments transpire without generating policy action or enforcement. However, as the above examples demonstrate, spikes in racist activity and steady increases in racist party strength have frequently served as triggers for repressive measures.

### **Avenues for Further Research**

We have used a medium-*n* research strategy to analyse how 10 liberal democracies have dealt with racist associations. This methodology permits us to test our explanatory hypotheses, but like any approach it is only one among many valid research strategies and must be supplemented in the future by additional methodologies. A large-*n* analysis, for instance, would allow for a more comprehensive overview that could verify that the patterns we have identified hold across all liberal democracies. A small-*n* or single-case approach, on the other hand, would permit detailed process tracing to explore the specific causal mechanisms of passage and enforcement of provisions in particular countries. Such an analysis would allow for a more in-depth examination of the relative weight of each of the factors we explore, and would illuminate more of the subtleties of each country's policy evolution.

Taking a step in the direction of expanding our analysis to a greater number of countries, a cursory glance at the 'Alpine republics' seems to lend support to our findings. Austria passed legislation outlawing Nazi and neo-Nazi parties immediately after World War II, and in 1988 its Constitutional Court invoked this legislation to ban the far-right Austrian National Democratic Party (Pelinka 2009: 35).<sup>43</sup> This would seem to place Austria higher on the repression spectrum than Switzerland, which did not experience a non-democratic regime and did not pass any comparable legislation. Additional research should also explore Nordic countries, because they seem at least partly incongruous with our findings regarding the weight of the non-democratic past. Denmark and Norway suffered German occupation while Sweden and Finland did not, yet these countries do not appear to differ much in their handling of racist associations, even if Norwegian authorities purged the entire administrative system of members of the fascist National Gathering (*Nasjonal Samling*) in 1945, executed its leader (Vidkun Quisling) and put a significant portion of its membership on trial (Hoidal 1989: 773; Larsen 1948: 565). Though we do not think that incorporating the Nordic countries into a larger-*n* study would undermine the applicability of our conclusions to the majority of liberal democracies, they may be outliers with respect to the overarching argument. At a minimum, further research on this region would be illuminating.

This article was designed to test several hypotheses derived from relevant theoretical literature. As with any study, however, there are a number of additional plausible arguments that merit closer inspection in future research. For

example, broader structural or cultural differences across countries may play a role in shaping policies toward racist associations. In particular, scholarship on the political economy, on welfare states, and on political traditions of state–society relations each identifies a ‘liberal’ category of countries that may correlate to some extent with protecting the freedom of association for racist groups and parties. While this strikes us as an interesting avenue to explore, it is also the case that two of our countries designated as ‘liberal’ by multiple counts (Great Britain and Australia) impose significant restrictions on freedom of racist speech, and that three countries not associated with liberalism (Belgium, France, and Italy) lodged official reservations regarding the mandate to restrict racist associations embedded in Article 4 of the 1965 ICERD. In other words, explanations grounded in liberalism may be influential in some respects, but they are not a powerful and parsimonious alternative to the argument that we have developed here.

### **Conclusions**

Why do some countries repress racist associations more than others? According to the evidence from 10 liberal democracies, having a history of a non-democratic regime predisposes a state to implement greater levels of repression when compared to countries without such a history. However, to explain the timing of passage and enforcement of such provisions, knowing a country’s history is not enough. A transition to democracy can engender legislation allowing repression, and it can be the spur that prompts restrictions on groups and political parties. But that is only one situational trigger generating repression. International influences, specifically ratification of the UN’s ICERD, can also increase the pressure for restrictive provisions, although this factor accounts for meaningful changes relatively infrequently. The most significant situational triggers in the contemporary era are problems of racism. These problems can manifest themselves through sudden spikes in racist incidents or through a more gradual rise in the influence of racist associations.

Our explanation of cross-national variation in a state’s repression of racist associations thus relies on one predisposing factor and on three situational triggers. This explanation is probabilistic rather than deterministic. Not all formerly non-democratic states exhibit precisely the same levels of state repression, as they range from the medium to the high category. None of the three situational triggers is either a necessary or sufficient condition for explaining passage or enforcement of a state’s provisions. Sometimes transitions to democracy, international influences, and problems of racism lead to action, and sometimes they do not. These are significant limitations on the explanatory power of the argument.

At the same time, our analysis is the first systematic attempt to understand the forces that influence a state’s level of repression vis-à-vis racist associations. We have shown that the tension in liberal democracies between protecting freedom of association and curbing harmful forms of racism can be

resolved in widely divergent ways. These national stances can usefully be understood as falling along a five-category scale of repression. We have also uncovered several systematically important factors that help us understand the conditions that make it more or less likely that a state will position itself closer to the high or low end of the spectrum of repression. This argument can serve as a building block that helps advance scholarly understanding of how liberal democracies manage the policy challenges posed by contentious associations.

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### **Notes**

1. Borrowing terminology from Sniderman *et al.* (2004).
2. As in Portugal (Fox and Nolte 2000: 418–19).
3. Articles 21(2) and 9(2) or the Basic Law for the Federal Republic of Germany.
4. For scholarship on party bans, see especially Esplugas (1998); Fennema (2000); Pedahzur (2001); Brems (2006b); Karvonen (2007); Rosenblum (2007); and Navot (2008).
5. This literature examines either the historical evolution of far right groups or the theoretical and practical effects of banning and repressing political associations. Some examples of the latter issue in comparative perspective include Husbands (2002); Minkenberg (2006); Bale (2007); and Michael and Minkenberg (2007).
6. We address the limitations of this medium-*n* strategy in the penultimate section of the article.
7. The principal vehicle for such bans is the Criminal Code Amendment (Terrorist Organizations) Act of 2004 (Irving 2009: 22–23).
8. For an overview of international, Commonwealth, and state legislation as applied in Australia, see <http://www.racismnoway.com.au/about-racism/legislation/index.html> (accessed 18 January 2012).
9. Section 2 of the Public Order Act. Full text: <http://www.legislation.gov.uk/ukpga/Edw8and1-Geo6/1/6//contents> (accessed 15 July 2011).
10. ‘Amended BNP Constitution Ruled Indirectly Discriminatory’, <http://www.equalityhumanrights.com/news/2010/march/amended-bnp-constitution-ruled-indirectly-discriminatory/>, accessed July 15, 2011.
11. Though there may exist a possibility, based on readings of the Constitution (and the ambiguous wording of Article 4), for the French state to ban political parties, this cannot be exploited since there exists no specific mechanism for declaring political parties unconstitutional (Esplugas 1998).
12. Full text: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006071030 &dateTexte=20110608> (accessed 15 July 2011).
13. XIIIth final provision of the Constitution, Law of 20 June 1952 no. 645, also known as the ‘Scelba Law’ (Rosenblum 2007: 40). The Scelba Law ‘bans any movement that: 1) ‘exalts, threatens or uses violence’; 2) ‘advocates the suppression of [Constitutional] freedoms’; 3) engages in ‘racial propaganda’; 4) ‘denigrates democracy’ (‘ITALY: One Down, One to Go’, *Time Magazine*, 30 June 1952). The law also forbids the reconstitution of a fascist political party; because it has never been applied, it is difficult to judge whether it could be used to disband a strictly racist party.

14. The ‘Mancino Law’ (Law of 25 June 1993, no. 205) provides for the dissolution of racist associations, but not political parties (See Article 1(2); also Scaffardi 2009: 193–245; CERD 2011: 11).
15. See Stephen Roth Institute country reports, Italy, at <http://www.tau.ac.il/Anti-Semitism/CR.htm> (accessed 2 August 2011).
16. Section 5 of the Parties Law (1992).
17. Amendment no. 9 (1985) to the Basic Law: the Knesset, Section 7(a).
18. The late Rabbi Meir Kahane (1932–1990), founder of the *Kach* party in Israel, also founded the extremist Jewish Defense League in the USA, classified as a ‘right-wing terrorist group’ by the FBI (Reports and Publications: ‘Terrorism 2000/2001’, US Department of Justice/Federal Bureau of Investigation).
19. It also targeted parties that denied the state of Israel as a state of Jews, and that denied the democratic character of the state (Navot 2008: 749).
20. Article 3 of the Act of 18 July 1981, also known as the ‘Moureaux Law’ (quoted in translation in Brems 2006a: 703).
21. See also Belgium, loi du 12 février 1999 and Arrêt de Cour Constitutionnelle n° 10/2001, de 07 février 2001.
22. The ‘Ley Orgánica 6/2002 de 27 junio de Partidos Políticos’ was conceived to address the problem posed by the radical Basque separatist political party *Batasuna*.
23. Article 9(2)(a) allows a declaration of illegality against a party for ‘violating fundamental rights by promoting, justifying, or excusing attacks on the life or dignity of the person or the exclusion or persecution of an individual by reason of ideology, religion, beliefs, nationality, race, sex, or sexual orientation’ (Turano 2003: 733).
24. The legislation was prompted by *Batasuna*’s refusal to condemn ETA’s car bomb attack in Santa Pola, Alicante, on 4 August 2002 (Turano 2003: 730).
25. There are numerous grounds for which such associations can be banned, including religion, ethnicity and race: see [http://noticias.juridicas.com/base\\_datos/Penal/lo10-1995.l2t21.html#a515](http://noticias.juridicas.com/base_datos/Penal/lo10-1995.l2t21.html#a515) (accessed 28 July 2011).
26. Esteban Ibarra, president of the antiracist organisation *Movimiento contra la Intolerancia* (cited in Barroso 2011).
27. The CP ‘86 was a reincarnation of the Centre Party, rendered bankrupt in May 1986 after being fined for misleading electors (Mudde 2000: 142–43).
28. The Dutch penal code prohibits both racial insults (article 137c) and inciting racial hatred, discrimination or violence (article 137d).
29. Thus the bans imposed by German authorities are ‘non-neutral’, taking into account the content (like racism) of the march – and its likelihood to disturb the public order – into consideration. Bans on marches were rarely used until the 1990s, but because violence has increased since, they have ‘become the rule rather than the exception’ (van Donselaar 2003: 276).
30. Article 33 Section 5 of the Basic Law holds that public servants have to support the free democratic basic order (Thiel 2009: 131).
31. Because ‘the government’s meticulous documentation of the NPD’s unconstitutional nature relied in part on data gathered by informants who had infiltrated the party and whose identity it refused to disclose’ (Minkenberg 2006: 25).
32. ‘Germany Faces Tough Battle to Ban Far-Right NPD’, *Der Spiegel*, 7 December 2011; ‘Three-Quarters Want German Neo-Nazi Party Banned: Poll’, *AFP*, 25 November 2011; ‘German Interior Ministers Seek Ban on Far-Right NPD’, *BBC News*, 9 December 2011.
33. Of the 173 countries that have ratified the agreement, 19 have registered specific reservations about the need to balance article 4 with appropriate attention to freedom of association and expression. These 19 include 9 European countries and the United States. This information is available online through the United Nations Treaty Collection site at: [http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-2&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&lang=en) (accessed 22 June 2011). For an overview of international treaties and commitments relevant to freedom of association see Brems (2006b).

34. Concluding observations of the Committee on the Elimination of Racial Discrimination: Belgium, 21 May 2002, CERD/C/60/CO/2 (cited in Brems 2006b: 132).
35. The discussion of the FAP draws on Wise (1998).
36. A minority of the Court judged that penetration of the NPD had been so extensive that it was not possible to separate NPD-motivated actions from those undertaken by state informants (Rensmann 2003).
37. 'Le conseil des ministres dissout un groupuscule néonazi alsacien', *Le Monde*, 18 May 2005.
38. The successor Flemish Interest party has recently suffered electoral setbacks, dropping from approximately 12 per cent of the national vote in 2007 to approximately 8 per cent in 2010 (see <http://electionresources.org/be/> (accessed 2 August 2011)).
39. See also Belgium, loi du 12 février 1999 and Arrêt de Cour Constitutionnelle n° 10/2001, de 07 Février 2001. Bale (2007: 152) describes the follow-up legislation passed in 2005 designed to further implement the 1999 law.
40. 'Will BNP Election Gains Last?', *BBC News*, 5 May 2006.
41. Equality and Human Rights Commission, <http://www.equalityhumanrights.com/news/2010/march/amended-bnp-constitution-ruled-indirectly-discriminatory/> (accessed 2 August 2011).
42. 'Les syndicats FN-police et FN-pénitentiaire illégaux', *Libération*, 11 April 1998.
43. Austria's 1947 Prohibition Act, however, cannot be used against such parties as the Freedom Party of Austria (FPÖ) and the Alliance for Austria's Future (BZÖ), which combine 'legitimate populism and radical-right elements' (Pelinka 2009: 29).

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