

political parties Political parties are key actors in major constitutional events such as the formation of government and the conduct of elections. They also conduct discreet but invaluable tasks in the selection and training of candidates and enable citizens to play a role in policy formation. That many of these functions are regulated by constitutional convention and political fact accounts in part for the lack of legal attention parties have received. Similarly, the evolution from fluid political associations during the Glorious Revolution, to loosely organised parliamentary factions in the 19th century, to disciplined, mass member, ‘catch all’ parties in the era of universal suffrage took place without apparent legal influence.

The prominent role played by political parties in our system of government is often taken for granted by constitutional lawyers. The work of notable exceptions such as Sir Ivor Jennings has been coolly received, it being said of his three volume study that it “was a mistake to complete and publish *Party Politics* [which] will remain unread”. Leading textbooks typically pay parties scant attention, arguing that until recently the law has played little part in regulating political parties. Whilst it is certainly the case that legal regulation has increased since 1997, it is not the case that political parties were previously unknown to the law. Unknown to many constitutional lawyers perhaps, but not to the law.

Reference is commonly made to the Ministers of the Crown Act 1937 (which defined and granted a salary to the Leader of the Opposition) as the first legal acknowledgement of the existence of political parties. The story certainly starts earlier, not least since the Labour Party was substantially forged in legal disputes concerning its financial relationship with trade unions – e.g. *Amalgamated Society of Railway Servants v. Osborne* [1910] AC 87. More recently the same party lost a challenge to its attempt to adopt ‘all women shortlists’ for parliamentary candidate selections – *Jepson v. Labour Party* [1986] 1 IRLR 116. On both occasions the decisions were reversed by primary legislation. The intervention of the state has also augmented the capacities of parties, with successive broadcasting regulatory regimes requiring licensed broadcasters to allocate a certain quantity of ‘party election/political broadcasts’ free of charge to parties. The BBC, whilst not subject to this regime, has agreed to parallel rules of allocation.

The most significant process of subjecting political parties to legal regulation commenced with New Labour’s assumption of power in 1997, which sought *inter alia* to respond to the corruption allegations that dogged the previous Conservative administration. A voluntary scheme of party registration was introduced by the Registration of Political Parties Act 1998 for the purpose of protecting parties’ identities, which was quickly subsumed into the wide-ranging Political Parties Elections and Referendums Act 2000 which made registration compulsory. More importantly, it introduced a complex and comprehensive regulatory scheme for party political funding including the establishment of an Electoral Commission with extensive monitoring, investigatory, reporting and reforming powers.

Political parties fulfil vital and varied constitutional functions, based on their ability to act as proxies for democratic opinion. Yet in the face of apparently unceasing funding scandals and declining memberships – a feature common to almost all western democracies – their legitimacy, and therefore prospects, are under strain.

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Further reading: I Jennings, *Party Politics, 3 volumes* (Cambridge : Cambridge University Press, 1960-2)
M Ostrogorski, *Democracy and the Organisation of Political Parties* (London: Transaction Books, 1982)