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Chapter 7: The Legal Environments of Organised Civil Society in 19 Democracies: A Cross-National Analysis

In line with the theoretical framework presented in Chapter 6, I expect that constraining and permissive legal environments are associated with combinations of qualitatively distinct types of conditions. These include on the one hand legitimising conditions that rationalise the regulation of organised civil society as a contentious area of regulation (H1: *Defensive Democracy Hypothesis*; H2: *Voluntary Sector Hypothesis*) and on the other hand conditions reinforcing and facilitating the adoption of constraining regulation generally (H3: *Legal Family Hypothesis*; H4 and H5: *Decision-making* and *Administrative Capacity Hypotheses*). This division of the hypotheses has two major implications; first, if any of the conditions theorised in the five hypotheses are individually necessary or sufficient for the outcome¹ of a constraining legal environment it should be a legitimising condition and not a reinforcing or facilitating one. As the latter do not create incentives and legitimise democratic governments to regulate civil society organisations in particular, they should not be sufficient to produce the outcome. Second, the three types of conditions – legitimising, reinforcing and facilitating – relate to the outcome in qualitatively different ways. The framework theorises several legitimising and facilitating conditions that are expected to be conducive towards the adoption of constraining legal regulation through different mechanisms. Consequently, this raises the question of whether and to which extent various configurations of these qualitatively different conditions might lead to the same outcome in terms of regulatory constraints. To explore this, fuzzy set qualitative comparative analysis (fsQCA) is the most suitable approach. This method and its applicability to the theoretical framework are detailed in the following section. The chapter then presents the empirical

¹ A condition is necessary if it is present in all instances of an outcome. Sufficient conditions are conditions (though not necessarily the *only* conditions) that always lead to an outcome (see for a detailed discussion Schneider and Wagemann 2012).

analysis, first exploring paths towards constraining legal environments, then towards permissive environments as adopted by the 19 long-lived democracies studied.

Qualitative Comparative Analysis

To examine configurations of conditions conducive to constraining and permissive legal environments in which voluntary organisations operate within long-lived democracies, fuzzy set qualitative comparative analysis (fsQCA) is the most suitable methodological choice, both for theoretical and practical reasons (Ragin 2008; Rihoux and Ragin 2009; Schneider and Wagemann 2012; Hinterleitner et al 2016). This method differs from conventional statistical analyses, which are interested in establishing individual variables' average or marginal effects or relatively simple interaction effects on a dependent variable. Instead, fsQCA builds on the assumption of causal complexity consisting of three elements, all of which are in line with the theoretical framework presented in Chapter 6. Firstly, fsQCA assumes *Equifinality*, which implies that different 'paths' – or configurations of conditions – can produce the same outcomes, in this case the level of constraints a democracy introduces in the legal environment it applies to organised civil society. Relatedly, therefore, it also assumes some level of *conjunctural causation*, in that conditions are expected to affect these constraint levels in combination rather than in isolation. Finally, *asymmetrical causation* implies that different combinations of causal factors might matter for different outcomes. In other words, democracies which create permissive legal environments as compared to constraining ones will not necessarily exhibit the 'opposite' value of the conditions which mattered for inducing a constraining environment. Instead, permissive legal environments may be caused by a different combination of conditions altogether (Schneider and Wagemann 2012). In addition, while the number of cases in an analysis should not be the basis for choosing set-theoretical methods such as fsQCA, the latter is particularly suitable for studying variation between a medium-N of cases in relation to a relatively small number of causal conditions (Schneider and Wagemann 2010: 6). The method therefore matches the empirical scope of this study in terms of the number of

democracies covered as well as the number of relevant conditions theorised in the previous chapter.

Calibration and Measurement of Conditions and Outcome Set

fsQCA approaches the five conditions theorised above, as well as the outcome of a ‘constraining legal environment’ (LRI/lri), as sets in which democracies have membership or not. In fsQCA cases may also have partial membership in sets, allowing for greater precision in assigning set membership. The attribution of membership scores to the 19 democracies studied for each of the five conditions as well as the outcome, known as ‘calibration’ in QCA parlance, is a crucial part of the analysis (Schneider and Wagemann 2012: 32).² Through calibration, we identify ‘qualitative anchors’ which specify the points at which a condition is fully present, fully absent and, most importantly for fsQCA, a cross-over or ‘indifference point’ (0.5) which establishes a difference in kind: values above 0.5 indicate that a case is more in than out of the set, while those below indicate a case is more out than in (Schneider and Wagemann 2010: 7; 2012: 32-8). The setting of these qualitative anchors is based on both theoretical and empirical knowledge. This is important, because if a change in the indifference point leads to a case displaying a qualitatively different membership in the set, this can change its membership in the truth table and ultimately the results of the analysis (Schneider and Wagemann 2012: 287-91; see also Hinterleitner et al 2016).

To calibrate the six sets (i.e. the five conditions and one outcome set), different methods of calibration were used reflecting the conceptual nature of the sets as well as the nature of the data used for their measurement. For the two facilitating conditions (decision-making capacity DC/dc; administrative capacity AD/ad) as well as the outcome set (constraining legal environment for voluntary organisations LRI/lri, as measured by the Legal Regulation Index), I used the *direct method of calibration* and applied a logistic function to assign the raw interval data to different qualitative categories. These were partitioned by the qualitative anchors 0.95 (fully in), 0.5 (point of indifference) and 0.05 (fully out). The

² Unlike crisp-set QCA, fsQCA does *not* require the dichotomisation of original interval-scale or ordinal data but converts them into fuzzy membership scores (which range from 0 to 1), thus, takes advantage of the gradations in set membership central to the constitution of fuzzy sets (Ragin 2009: 88; Verkuilen 2005).

respective anchors used to calibrate the three conditions are displayed in the following table.

Table 7.1: Direct Calibration of Outcome and Facilitating Conditions based on Interval Data

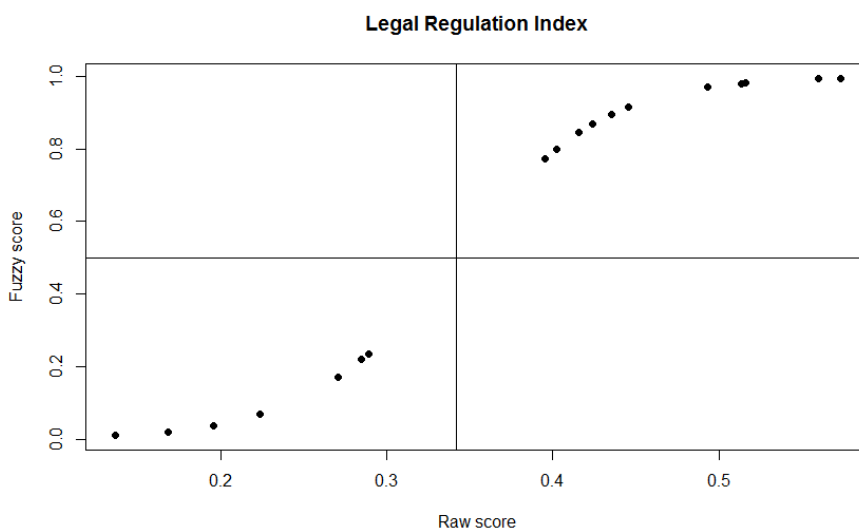
<i>Type of Condition</i>	<i>Set</i>	<i>Measurement</i>	<i>Anchors for Calibration (set membership)</i>		
			Fully out 0.05	Neither in nor out (0.5)	Fully in (0.95)
Outcome	Constraining Legal Environment (LRI/lri)	Regulatory Constraints Index	0.209613	0.3420409	0.46949
Facilitating Conditions	High Decision-making Capacity (DC/dc)	Additive index of power-concentration in political system based on executive-parties and federal-unitary dimension measures (averages 1981-2010) (Lijphart 2012)	2.3	0.49	-1.3
	High Administrative Capacity (AD, ad)	Average population size 1990-2014 (in 1000) (UN Population Division, World Population Prospect 2015)	2000	25683	70478

Note: In brackets abbreviations of conditions as used in the analysis. In line with QCA notation, the presence of a condition is indicated with uppercase letters, its absence with lower case.

For the outcome set LRI/lri a value above 0.5 indicates that a democracy created a legal environment for voluntary organisations that is *rather* or *fully constraining*, while a value below 0.5 characterises the environment as *rather* or *fully permissive*. The cross-over or indifference point, denoting a case neither in nor out of the set of constraining regimes, is set at 0.3420409 – the midpoint between the LRI scores of Iceland (0.288943) and Luxembourg (0.395139). As discussed in detail in Chapter 6, this point represents the most significant ‘gap’ between ‘neighbouring’ democracies based on the distribution of raw scores. It divides the 19 democracies into two qualitatively distinct groups of constraining versus permissive legal environments (see also Chapter 6, Figure 6.3). As noted, each of these two groupings is characterised by specific regional clusters displaying qualitative differences in democracies’ legal disposition towards actively regulating organised civil

society. The following figure shows the country distribution for the calibrated outcome set based on the Legal Regulation Index (LRI).

Figure 7.1: Calibrated 'Legal Regulation Index (LRI/lri) – Country Distribution



The *direct method of calibration* was also used for the two facilitating conditions *Decision-making Capacity* (DC/dc) and *Administrative Capacity* (AD/ad). DC/dc is measured based on an additive index combining data capturing Lijphart's executive-party dimension and federal-unitary dimension, taken from his seminal study on types of democracy, using averages from 1981 to 2010 (Lijphart 2012). In this index each dimension was given equal weight, and captures the extent to which decision-making power is concentrated in a democracy on the basis of different institutional properties. The first dimension considers the 'horizontal axis' of a regime and captures whether power is concentrated in a single-party majority government not facing any partisan or institutional veto players able to obstruct or alter its decision. The second dimension captures the 'vertical axis', indicating whether decision-making authority is dispersed to actors other than the national

government, such as powerful second chambers or regional governments (Lijphart 2012).³ The lower a country's score on the overall index, the more 'majoritarian' or 'power-concentrating' the regime is. Hence, in the terminology adopted here, the lower a score, the *higher* a democracy's decision-making capacity will be for our purposes. Moving to the qualitative anchors, the cross-over point or point of indifference for DC/dc is set at 0.49, between Finland (0.65 - more in than out) and Norway (0.42 - more out than in). This divides the distribution in two qualitatively distinct groupings of countries; democracies that are 'more out than in' or 'fully out' (dc) either have federal structures (vertical axis) or oversized governments, complex multiparty governments or multiparty minority governments (horizontal axis), or both. Conversely, none of the democracies that are 'more in than out' (DC) are constitutionally federal. In other words, national governments do not have to share power with strong regional counterparts. Furthermore, they are characterised by either one-party majority governments, coalitions with dominant parties or strong centrist one-party minority governments. In all cases, therefore, governments should be able to forcefully implement their policy agendas (Strøm 1990; Tsebelis 2002).⁴ The anchor for full non-membership in the set is calibrated at 2.3, located between Austria (mostly but not fully out) and Germany (fully out) and the anchor for full membership is located at -1.3, between France (mostly but not fully in) and New Zealand (fully in).

As detailed in Chapter 6, building on the small states literature, differences in administrative capacity (AD/ad) between the 19 democracies, all of which have professionalised bureaucracies in place, are captured through 'country size' as measured by average population size between 1990 and 2014 (in 1000s). This was based on data provided by the UN Population Division, World Population Prospect 2015.⁵ The cross-over

³ While the measurements as developed by Lijphart have received considerable criticism (e.g. Tsebelis 2002; Bormann 2010), the two dimensions are the most encompassing measures of the range of institutional features that concentrate or disperse power in a regime. Given the aggregate nature of the outcome, this overall characterisation of democracies' institutional make-up is more suitable than more fine-grained, specific measures.

⁴ While the cross-over point is based on qualitative considerations, it also corresponds to the mean (0.5478947).

⁵ Alternative measures are territorial size or GDP (Borg 2006: 2; see also Alesina and Wacziarg 1998). However, population size is more suitable translation of the properties associated with varying sizes as specified in the theoretical framework (see Chapter 6).

point is located in the largest gap in the distribution (leaving aside the large gap between the outlier of the United States and all other democracies) between Canada (31472 in thousands) and Australia (19894 in thousands). The average population size of Canada is 58% larger than in Australia, and divides the distribution into what are commonly considered demographically small versus large countries. The anchor for full membership is set at 70478 and located between France (mostly but not fully in) and Germany (fully in); the anchor for full non-membership is set at 2000 and located between New Zealand (mostly but not fully out) and Luxembourg (fully out).⁶

To calibrate the *legitimising* conditions VSI and DEM and the reinforcing condition LD, what is often called the *indirect method of calibration* was used instead. In this method, cases are attributed to specific set membership scores based on a qualitative judgement (Ragin 1988: 85-105). Measures for those conditions are either based on categorical data or ordinal data. Hence, they were either transformed into dichotomous crisp sets (VSI) or qualitatively assigned membership values of a fuzzy set (DEM and LD). The latter expressed the degree of set-membership using four-value fuzzy sets ranging from 0 (fully out) over 0.33 (more out than in) and 0.67 (more in than out) to 1 (fully in) (Berg-Schlösser 2012: 96). The following table summarises the coding categories used to allocate fuzzy and crisp set scores.

Table 7.2: Coding Schemes for Translating Ordinal and Categorical Data into Membership Sets

Set	Legal Family	Fuzzy Set Score
High Legal Disposition towards Statutory Specificity (LD, H3)	Common Law	1
	Napoleonic Civil Law	0.67
	Germanic Civil Law	0.33
	Scandinavian Civil Law	0
Set	Configuration of Democratic Discontinuity	Fuzzy Set Score
High Exposure to Democratic Discontinuity (DEM, H1)	Internally triggered/ legitimised discontinuity of democracy	1
	Externally triggered, internally supported democratic discontinuity	0.67

⁶ The threshold for full non-membership between these two democracies capturing a significant gap corresponds to earlier classifications of small states, which considered states as small between 1 and 1.5 million for the relevant period (e.g. Croward 2002; Borg 2006). Other studies have set the cut-off point higher, e.g. to 3 million people (Armstrong et al 1998).

	Externally triggered democratic discontinuity with no/minor internal collaboration	0.33
	Democratic continuity	0
Set	Type of Voluntary Sector Regime	Crisp Set Score
Strong Voluntary Sector Incentives towards Government Regulation (VSI, H2)	Corporatist Regime	1
	Liberal Regime Social Democratic Regime	0

As indicated by Table 7.2, the condition *voluntary sector incentives towards government regulation* (VSI/vsi) was coded based on the classifications of voluntary sector regimes in Salamon and Anheier's seminal work distinguishing social democratic, liberal and corporatist voluntary sector regimes (1998). Democracies were coded based on Einolf's more recent classifications, covering the majority of the 19 democracies, and complemented by comparative and case study research to classify the remaining countries (Einolf 2015: 510-1; 514; Salamon and Anheier 1998; Salamon 1990; Anheier and Ben-Ner 2003; Lasby and Barr 2015; Wiepking and Bekkers 2015; Wiepking and Handy 2015).⁷ On this basis, a crisp set of VSI was created: corporatist regimes, associated with the incentive and the legitimacy of governments to regulate the voluntary organisations, were accordingly coded 1, while liberal and social democratic regimes without these incentives were coded 0. The calibration for *democratic discontinuity* (DEM/dem) was based on qualitative coding, drawing on in-depth studies of each of the democracies covered. Democracies were categorised into four configurations of democratic discontinuity reflecting a *growing legal disposition towards more actively regulating and to adopt more constraining regulation of voluntary organisations*. Regimes that enjoyed democratic continuity were scored 0, and regimes that experienced democratic discontinuity triggered by external forces (e.g. through occupation) with only minor or no collaboration of internal institutional actors and/or of the country's population were scored 0.33. These represent the two configurations generating *no* and

⁷ The literature generally agrees on how to classify individual democracies into the respective categories of third sector regimes. That said, some research considers the Netherlands as corporatist regime, other research as social-democratic regime. I follow the classification of Wiepking and Bekkers (2015: 212) opting for the latter classification. As government controls the provision of public sector goods and services in the fields of health, education and social services, this frees the voluntary sector for expressive functions, which echoes the characterisation of social-democratic third sector regimes as introduced by Salamon and Anheier (1998).

weak dispositions towards adopting ‘defensive’ legal mechanisms against the internal exploitation of democratic rights and privileges. These contrast with regimes that experienced externally imposed democratic discontinuity, either actively supported by institutional actors and/or parts of the country’s population (fuzzy set score 0.67) or an internally triggered democratic breakdown and authoritarian take-over (fuzzy set score 1). These two configurations are expected to provide democratic states with legitimate grounds to adopt rights-restrictive and otherwise constraining legal measures in order to allow it to counter the internal exploitation of democratic rights (Beimenbetov 2014: 177-8). Beimenbetov’s study (2014) has already classified eight democracies accordingly, and the remaining cases were signed a score based on secondary research. While the UK and the overseas Anglo-Saxon democracies could be straightforwardly characterised as continuous ‘democracies’, for the European countries that experienced an interruption of the democratic process through occupation during the Second World War in-depth studies of their democratic history were consulted (Warmbrunn 1963; Dethlefsen 1990; Siaroff 1999; Deák, 2000; Majerus 2002; Maier 2007). They had to be grouped into those cases in which the non-democratic regimes established during that period were only tolerated, or supported by only a minority (fuzzy value 0.33) and those where these non-democratic regimes were supported and legitimised by the active collaboration of internal institutions or actors formerly belonging to the democratic regime, or by larger sections of the population (the fuzzy value 0.67).⁸ This distinction was essential, demarcating the cross-over

⁸ Most democracies could be classified straightforwardly, with the exception of Finland. Strictly speaking, Finland did not – as Sweden and the Anglo-Saxon democracies - experience democratic discontinuity. However, the allocation of a fuzzy set score of 0 would have been misleading as Finland nonetheless experienced several serious, internally triggered or supported challenges to its democratic order that can be considered equivalent to a configuration that legitimises the introduction of and government’s usage of rights-restrictive measures against internal forces that exploit democratic rights and privileges. While Finland was never occupied as such, during the civil war in 1918 (which started as an offshoot of the October Revolution) the country experienced considerable instability, which was resolved by calling in the German army to help right-wing forces to defeat the socialists (Alapuro 1988; Tepora and Roselius 2014). Furthermore, its democracy was seriously threatened by breakdown during another civil war in the early 1930s - the so-called *Mäntsälä* Rebellion - an armed rebellion staged by the fascist Lapua movement. This rebellion constituted the most serious internal threat the Finnish state has encountered, discounting the civil war in 1918. Indeed, the vehement anti-Communism displayed by the fascist movement had its roots in the Finnish Civil War of 1918.

point between those democratic regimes that were ‘tainted’ and thus legitimised defensive mechanisms – the latter configuration – and those that were not. Finally, the framework considers the reinforcing condition of *legal family*, as detailed in Chapter 6, expected to capture the extent to which democracies have a legal *disposition towards the adoption of highly specific statutory legislation* (LD/ld). This disposition is most pronounced in common law democracies (fully in), least pronounced in Scandinavian law democracies (fully out), with Napoleonic civil law (more in than out) and Germanic civil law (more out than in) in between. The coding of the 19 democracies was based on a range of secondary studies in comparative law (Zweigert and Kötz 1998; Bernitz 2007).⁹ The coding of individual countries for the three fuzzy and crisp sets is provided in Table A7.1 in the chapter appendix.

Analyzing Necessary and Sufficient Conditions for Constraining and Permissive Legal Environments with fsQCA

The purpose of the following analysis is the identification of configurations of *necessary and/or sufficient conditions for a democracy to create a constraining legal environment for voluntary organisation (LRI), on the one hand, or a permissive environment (lri) on the other*. Due to the concept of asymmetrical causation mentioned earlier, the presence and absence of a condition needs to be examined in two separate steps of the analysis. fsQCA expresses

While the Lapua movement was eventually banned in 1932 (Siaroff 1999: 117; Jäntti 2013), during the Second World War Finland collaborated with Germany, changing sides only in 1944-5. In essence, internal, non-democratic forces have repeatedly posed a serious threat to the Finnish democratic order, while democratic actors have repeatedly associated themselves with external authoritarian forces. Echoing this, Siaroff characterised Finland as a nation with a ‘paternalistic’ emphasis on law, order and obedience, with a tendency towards strong state action against internal violent rebellion (1999: 119). This suggests a historical imprint on this democracy that favours the usage of legal mechanisms to protect the democratic order against the internal enemies of democracy, constitutive for partial membership in the set of ‘discontinuous democracies’ (fuzzy set score 0.67).

⁹ The classification of the Netherlands deserves a note: While clearly belonging to a civil law family, the Netherlands was historically influence by the Napoleonic Code. However, after the breakaway of Belgium in 1830 civil law was overhauled and cleansed of "Belgian influences". Later on, the new civil law (which came into force in 1992), containing core legislation regulating voluntary organisations, was heavily influenced by German civil law (Smits 2008). Consequently, the Netherland was coded as Germanic civil law system.

the relationship between conditions and outcomes in terms of the logical operators OR (+) and AND (*). In the context of the sufficiency analysis more specifically, these operators are used to depict combinations of conditions, or 'paths', which lead towards either constraining or permissive legal environments. The 'truth table' on which the analysis is based covers all logically possible combinations of the five conditions combining their presence and absence and the outcome – the nature of legal environments (LRI/Iri). If enough democracies' fuzzy-set membership in a truth table row is smaller than or equal to its membership in the outcome, the combination displayed in this row is considered a *sufficient path* (\rightarrow) for the outcome. Then, through a process of logical minimisation, the shortest expression of each path is identified (Hinterleitner et al 2016: 556; Schneider and Wagemann 2012).¹⁰

The two main parameters of fit used to evaluate fsQCA results are *consistency* and *coverage*. Both range from 0-1 and while appropriate levels for these parameters should be set in the specific research context, they are the better the closer they are to 1 (Schneider and Wagemann 2012: 128). *Consistency* indicates the extent to which the results are in line with statements of necessity or sufficiency. It is weakened by 'deviant cases for consistency in kind'. In other words, cases in which similar configurations of conditions lead to divergent outcomes, thereby calling a relation of necessity or sufficiency into question (Schneider and Wagemann 2012: 306-308). Consistency should not be below 0.75 for sufficient conditions, and 0.9 for necessary conditions (Ragin 2008: 46).¹¹ *Coverage* states how well the variation between cases in the outcome matches the configurations of conditions. For sufficient conditions, raw coverage indicates how many cases a single path covers. Unique coverage indicates how many cases it uniquely covers (Thiem and Baumgartner 2016: 21; 24). For necessary conditions, coverage is assessed in terms of the condition's relevance (or trivialness), considering whether it covers a much larger number of cases than those in which the outcome occurs. The Relevance of Necessity measure (RoN) indicates whether

¹⁰ The analysis was conducted with R, packages QCA and Set Methods (Oana et al 2017; Thomann and Witter 2017).

¹¹ The proportional reduction in inconsistency measure (PRI) indicates the degree to which a configuration is as sufficient for an outcome as it is sufficient for the negation of this outcome (Thiem and Baumgartner 2016: 20).

the condition is close to a constant (RoN approx. > 0.6) (Schneider and Wagemann 2012: 144; 235–239).

In the following, I apply the *enhanced standard analysis procedure*, which involves making theoretically informed ‘directional expectations’ about empirically unobserved configurations (i.e. missing configurations in the truth table) in line with the hypotheses developed in Chapter 6. The enhanced standard procedure makes sure that counterfactual assumptions about logical remainders (missing configurations) are theoretically meaningful, and that the coding of the outcome in the truth table does not contradict prior findings of necessity or sufficiency (Schneider and Wagemann 2012: 198–211).¹² Table 7.3 summarises the conditions and the directional expectations¹³ used for counterfactual arguments in the following QCA analysis, reflecting the theoretical discussion in Chapter 6.

¹² The results will present the intermediate solution of three solution terms that the truth table analysis yields when using fsQCA. The intermediate solution includes selected simplifying assumptions (hence directional expectations) to reduce complexity, to avoid including assumptions that might be inconsistent with theoretical and/or empirical knowledge. The results table also gives the parsimonious solution (in bold) which reduces the combinations of conditions to the smallest number of conditions possible, by assuming that all remainders are sufficient for the outcome that lead to a more parsimonious solution. Unlike the use of directional expectations specified by the researcher as done in the intermediate solution, the parsimonious strategy comes without consideration of whether the simplifying assumptions used makes theoretical or substantial sense, a strategy that is strongly argued against in the literature (Ragin 2008: 154; see also Schneider and Wagemann 2012). The third solution term, the conservative solution, is given in the Online Appendix available at <http://socialsciences.exeter.ac.uk/regulatingcivilsociety/publications/>. It does not assume any logical remainder to be sufficient for the outcome. As it usually hardly reduces complexity, it often is unhelpful to data analysis (Legewie 2013). Finally note that as the causal interpretability of non-parsimonious solutions has been questioned (Baumgartner 2015; Baumgartner and Thiem 2017), I will resort to theoretical, conceptual and case knowledge in order to provide a valid interpretation of the results.

¹³ Note directional expectations denote counterfactuals, not empirically testable hypotheses (Schneider and Wagemann 2012: 168-177).

Table 7.3: Directional Expectations for the Enhanced Standard Analysis

Type of Condition	Condition	<i>Ceteris paribus</i> , condition produces constraining legal environment for voluntary organisations (LRI) when....	<i>Ceteris paribus</i> , condition produces permissive legal environment for voluntary sector (lri) when....
<i>Legitimising Conditions</i>	Democratic Discontinuity (DEM/dem, H1)	Present	Absent
	Government Disposition to Regulated Voluntary Sector (VSI/vsi, H2)	Present	Absent
<i>Reinforcing Conditions</i>	Legal Disposition towards Specific Statutory Regulation (LD/ld, H3)	Present	Absent
<i>Facilitating Conditions</i>	Decision-making Capacity DC/dc, H4)	Present	Absent
	Administrative Capacity (AD/ad, H5)	Present	Absent

Note: In brackets abbreviations of conditions as used in the analysis. In line with QCA notation, the presence of a condition is indicated with uppercase letters, its absence with lower case.

Results

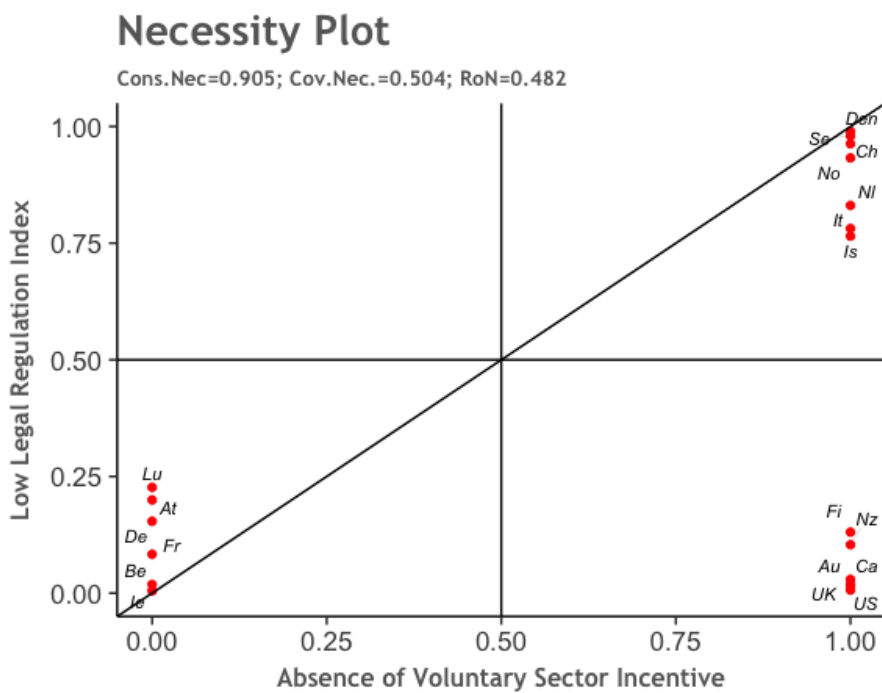
Necessary Conditions for Constraining and Permissive Legal Environments

The analysis of necessity points to one condition whose absence (nearly) meets the parameters of fit¹⁴ for individual necessity for the absence of the outcome (lri) and thus a permissive legal environment: weak voluntary sector incentives towards government regulation (vsi). Parameters of fit show a consistency of 0.905, a coverage of 0.504 and a RoN of 0.482. The following xy-plot for the outcome lri shows that most democracies cluster below or close to the diagonal. Importantly, we do not find cases in the upper left quadrant (deviant cases consistency in kind). In other words, we find no cases of corporatist voluntary sector regimes with permissive legal environments. At the same time, constraining

¹⁴ The following parameters are conventionally used in the assessment of necessity: Consistency threshold: 0.9; coverage threshold: 0.6, RoN: 0.5. Supplementary material on the empirical analysis is provided in the Online Appendix available at <http://socialsciences.exeter.ac.uk/regulatingcivilsociety/publications/>.

democracies vary in vsi/VSI, indicating that the absence of voluntary sector incentives towards government regulation is not a trivial condition either.

Figures 7.2: Necessity Plot – Absence of Voluntary Sector Incentive towards Government Regulation (vsi) and Permissive Legal Environment (Iri)



Thus, even though RoN and coverage are slightly below the thresholds conventionally used in QCA analysis to establish the necessity of conditions and establish the 'non-trivialness' of consistent conditions, the xy-plot suggests that vsi should be treated as an individually

necessary condition for permissive regimes.¹⁵ This is underpinned by the voluntary sector literature as neither in social democratic nor liberal voluntary sector regimes, both subsumed under vsi, are governments both pressed *and* legitimised to regulate the voluntary sector due to functional pressures linked to the state's responsibility to provide welfare services, as is the case in corporatist regimes (VSI) (e.g. Salamon and Anheier 1998; Einolf 2015). Mirroring these arguments, the sufficiency analysis of the permissive legal environment outcome (lri) shows that each of the two paths generating this outcome contains vsi. Based on this finding, the most basic theoretical assumption underpinning this analysis – that different types of conditions generate a propensity towards particular legal environments jointly rather than individually – needs to be refined. As we will see in the next section, while it holds for conditions inviting a constraining regime, this is not the case for a permissive one. At the same time, that it is vsi - one of the legitimising rather than reinforcing or facilitating conditions - that meets the standards of individual necessity bolsters the argument presented in Chapter 6 that the particular nature of the respective conditions suggests qualitatively distinct relationships to the outcome, i.e. that only legitimising factors have implications for regulation of voluntary organisations *specifically* rather than shaping regulatory dispositions generally. Building on the results of this analysis of necessity, in the following sufficiency analysis enhanced standard analysis is used to ensure that no logical remainders are used in the minimisation process that contradict the statement of necessity already established; namely, that weak voluntary sector incentives towards government regulation (vsi) is necessary for a permissive legal environment (lri) (see Table 7.3 for the directional expectations used in the analysis).

Sufficient Paths towards a Constraining Legal Environment for Voluntary Organisations

¹⁵ Four unions of conditions meet the parameters of fit for necessity. However, none of the unions are theoretically meaningful in the sense that the conditions within these unions capture equivalent causal mechanism regarding the generation of regulatory constraints applicable to voluntary organisations or form part of the same overall analytical concept in terms of family resemblance (Goertz and Mahoney 2005: 504; Thomann and Maggetti 2017: 25). Consequently, they are more suitably considered as a result of the fact that unions – in simple data terms - meet the necessity criteria more easily than single conditions.

Table 7.4 presents the two paths or configurations sufficient for the presence of the outcome, a constraining legal environment (LRI). Three of the five theoretically specified conditions play a role in one or more sufficient paths, but only in combination with other conditions. Hence, we do not find individually sufficient conditions. The table provides the consistency and coverage parameters for each individual path. The parameters of fit for the whole solution formula are provided below the table. As detailed earlier, I will interpret the intermediate solution.

Table 7.4: Sufficient Conditions for a Constraining Legal Environment (LRI)

Intermediate Solution	DEM*VSI	+	dem*LD	→ LRI ¹⁶
Single Case Coverage	Ger; At; Lu; F		Au; Nz; Be; Ie; UK; Ca, US	
Consistency	0.954		0.924	
Raw Coverage	0.271469		0.653	
Unique Coverage	0.159274		0.5412749-459	

Note: Solution consistency: 0.924; Solution coverage: 0.812; Cases separated by semicolon belong to different truth table rows. No deviant cases for consistency in kind. Bold conditions in intermediate solution form part of parsimonious solution.¹⁷

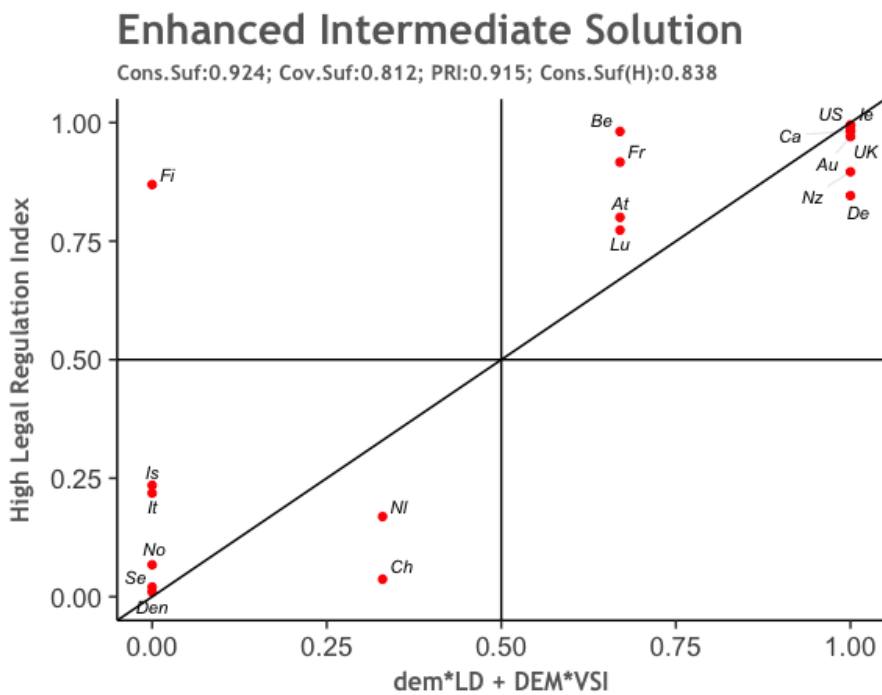
All democracies are uniquely covered by only one of the two paths, indicating that the distinct ‘analytical’ paths identified in the QCA analysis match distinct empirical paths towards a constraining legal environment, each found in several democracies. While the consistency of each solution term is high, however, we find notable differences in the coverage measures. The path dem*LD is empirically the most relevant one. It comprises seven uniquely covered cases, six of which are Anglo-Saxon, common law democracies. The path DEM*VSI uniquely captures four democracies; France and Luxembourg as well as Germany and Austria.

¹⁶ Note that the whole solution is indicated as necessary *and* sufficient in terms of parameters of fit. However, Finland is a deviant case and thus violates the statement of necessity.

¹⁷ Supplementary material on the empirical analyses (e.g. truth tables for the outcomes LRI and Iri; details on the raw consistency thresholds used) is provided in the Online Appendix available at <http://socialsciences.exeter.ac.uk/regulatingcivilsociety/publications/>.

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Figure 7.3: Solution Formula $DEM*VSI + dem*LD$ for a Constraining Legal Environment (LRI)



The plot of the solution formula shows that none of the democracies covered contradicts the statement of sufficiency. In other words, no cases meet the conditions but do not show the outcome. On the other hand, Finland in the upper left corner represents a deviant case for coverage – showing the outcome without the conditions – meaning Finland is not

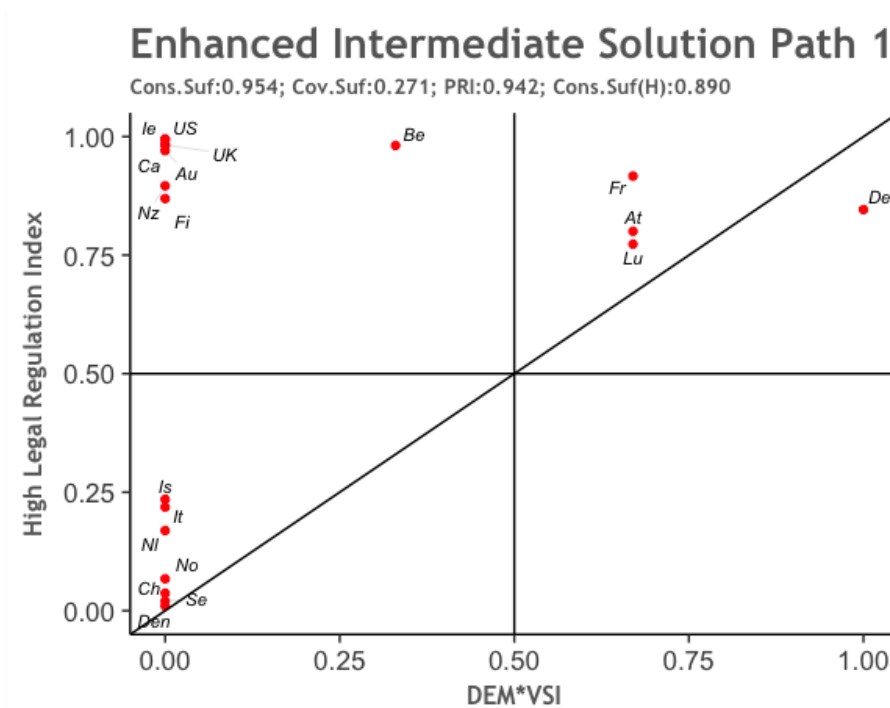
captured by either path. However, it is clearly outnumbered by cases in the upper right-hand corner. Hence, the overall coverage of the solution formula is high. In line with the theoretical framework's conceptualisation of different types of conditions, both solution terms (or paths) include (at least) one of the two legitimising conditions – democratic (dis)continuity (DEM/dem) and voluntary sector incentives to regulate voluntary organisations (VSI) – that were expected to be central for regulatory decisions specifically targeting voluntary organisations. While DEM*VSI combines both legitimising conditions, dem*LD combines a legitimising condition (dem) with the reinforcing condition LD. Thus, none of the configurations consists of reinforcing/facilitating conditions alone. In addition, neither of the facilitating factors - high decision-making capacity (DC) or high administrative capacity (AD) - formed part of a sufficient path. Considering how individual conditions were expected to relate to regulatory constraints according to the theoretical framework, DEM*VSI is clearly in line with theoretical expectations as the *presence* of both conditions constituting this path are conducive to high regulatory constraints (LRI). In contrast, the path dem*LD challenges H1 (*Defensive Democracy Hypothesis*). In combination with the legal disposition towards specific statutory regulation (LD), it is the *absence*, rather than the presence, of *democratic discontinuity* which is conducive to a constraining regime (LRI). This differentiated effect of democratic (dis)continuity on dispositions towards regulating voluntary organisations, depending on the condition that Dem/dem is combined with, will be discussed in detail after having looked at the country clusters covered by each of the two paths.

Starting with the path DEM*VSI that is in line with theoretical expectations, qualitative research tends to group the democracies covered by this path - especially Germany, Austria and France – together.¹⁸ The 'defensive democracy literature' as well as research on party regulation stress the importance of these democracies' experiences of democratic discontinuity for the nature of these states' legal regulation towards different types of

¹⁸ Studies of the nature of government regulation that endorse corporate social responsibility (CSR) echo this and strikingly mirror country clusters found in this analysis. Germany, Austria, Luxembourg and France fall in the same cluster of the 'sustainability and citizenship model'. UK and Ireland, in contrast, fall in the 'business in the community model', while Denmark, Finland, the Netherlands and Sweden group together in the partnership model (Albareda et al 2006).

voluntary organisations (e.g. Beimenbetov 2014; Thiel 2009; Biezen 2012). Meanwhile, in Germany and Austria, the voluntary sector has been characterised as ‘state heavy’¹⁹ due to the dominance of public financing underpinning a close relationship between the state and voluntary organisations (Zimmer and Priller 2001: 136). Similarly, the French voluntary sector has been marked by strong statist traditions, incentivising a close entanglement between voluntary groups and the state (Bode 2011; Kallmann and Nichols Clark 2016; Seibel 1990; Tálos 2004; see for details Chapter 10).

Figure 7.4: Xy-plot of Solution Term ‘Democratic Discontinuity and Voluntary Sector Incentives towards Government Regulation (DEM*VSI)’ for a Constraining Legal Environment (LRI)



Germany especially, with its full membership in DEM*VSI, has been portrayed as a paradigmatic case in three separate literatures, each underpinning this path’s propensity to

¹⁹ The original term used here is *staatslastig* (Zimmer and Priller 2001: 136).

incentivise constraining regulation of both parties and groups. Firstly, Germany is seen as prototypical ‘party state’ in which the legal regulation of political parties is particularly pronounced, a feature frequently associated with its authoritarian past (Biezen 2012: 208; Piccio 2014). Second, it is depicted as an extreme case of ‘militant’ or ‘defensive democracy’²⁰, having adopted a particularly wide range of legal and constitutional mechanisms to defend its democratic order against threats ‘from within’. This attitude was fundamentally shaped by the inability of the Weimar Republic to ‘defend’ itself against internal authoritarian forces, thereby allowing for its ‘legal’ replacement by a non-democratic regime (e.g. Klump 2008; Capoccia 2013; Thiel 2009; Bourne 2012a). Finally Germany is also seen as a prime example of collaborative, corporatist non-profit-government relations, in which the voluntary sector is strongly subsidised and regulated by the state (Seibel 1990; Salamon and Anheier 1998). That these studies of separate topics overlap in part due to legal inclusiveness, as the same legal regulations apply to multiple types of group, further substantiates how the two legitimising conditions DEM and VSI jointly incentivise a constraining legal environment for voluntary organisations. Though a regulation may have been introduced for either reason, its inclusive application is likely to strengthen and reinforce other objectives as well.

While the case of Germany is already very well documented, Chapter 10 will explore this path in depth through a longitudinal case study of the French legal environment. Before moving to the next path though, it is useful to take a glance at the much less studied case of Luxembourg, as in this small democracy conditions and outcome match best (as shown by its proximity to the diagonal in Figure 7.4). Existing case study research echoes the theoretical rationales as captured by the *Defensive Democracy Hypothesis* (H1) and the *Voluntary Sector Hypothesis* (H2). Luxembourg is characterised as a ‘profoundly corporatist’ welfare system and one of the most generous in Europe (Perathoner 2016: 66; Hartmann-Hirsch 2011: 6-7). Moreover, underpinning its classification as a corporatist voluntary sector regime generating high incentives for state regulation, public authorities support almost all social services, but with voluntary organisations being prevalent in service provision thanks

²⁰ There is an extensive German-speaking debate around the concept of *streitbare* or *wehrhafte Demokratie* (Thiel 2003; Weckenbrock 2009; Flümman 2015).

to generous state funding that is associated with little financial risk (Delaunois and Becker 2004: 185-6; 189). The nature of this democracy's position during German occupation in the Second World War is a contested issue, and has for a long time been a taboo topic (e.g. Wehenkel 2006). While the government fled the country, historical research suggests that collaboration with the Nazis was significant. Prior to the war organisations such as the *Luxemburger Volksjugend* (Luxembourg's Youth of the People) were actively attempting to recruit supporters for the latter's ideology. In 1941, this organisation was merged into the *Hitlerjugend* (Majerus 2002: 126-7). By summer 1942, two years after occupation started, the membership of the *Volksdeutsche Bewegung* (VdB), which was founded in 1940 by Nazis sympathisers in Luxembourg and defended the return Luxembourg into the German Reich, had grown massively from 6000 members to over 80,000, nearly one third of the population.²¹ These figures are not necessarily a direct reflection of the scale of the population's conviction in favour of national socialist ideology, as joining could also be linked to the fear of material disadvantages resulting from non-membership. Still, these figures have been read as indication of the principled willingness to cooperate with the occupiers. This is because non-membership remained a viable option, chosen by two-thirds of the population. So did leaving the VdB, as was visible after the forced conscription of Luxembourgers into the German Wehrmacht (Majerus 2002: 128).²² Thus, while Luxemburg is unlike Germany in the sense of having autocracy externally imposed, democratic discontinuity was supported by significant parts of the population who were willing to compromise democratic values during occupation. This provided the foundation for adopting measures to counter non-democratic forces in the reborn democracy's legal repertoire later on.

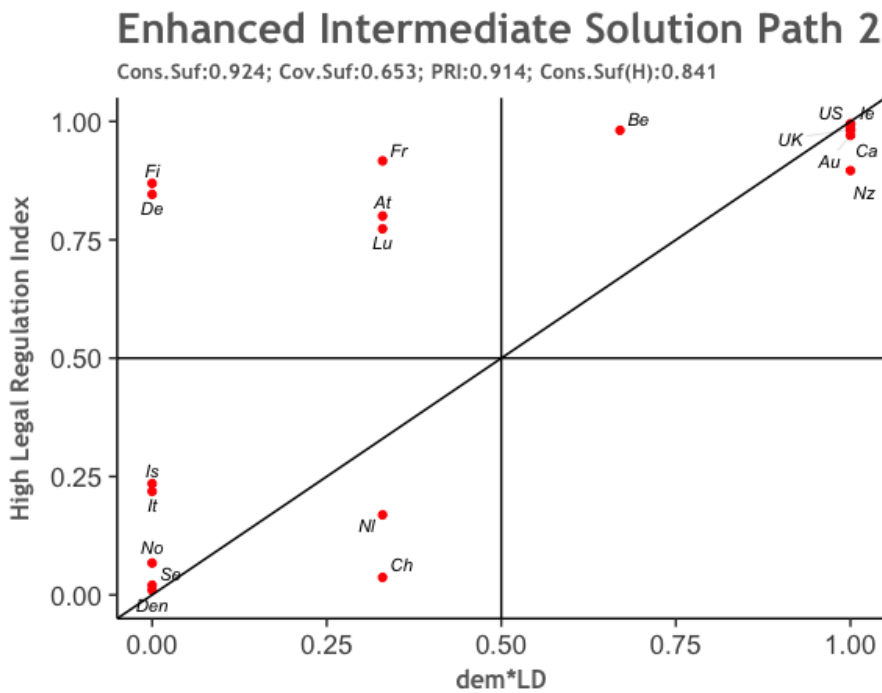
Moving to the second, empirically more relevant yet theoretically challenging path, the following xy-plot shows the solution term dem*LD. The five common law democracies

²¹Luxemburger im Zweiten Weltkrieg, Letzeburg Tageblatt 26. November 2015, <http://www.tageblatt.lu/archives/luxemburger-im-zweiten-weltkrieg-11041197/>, accessed July 27 2017.

²² Collaboration was pronounced in the economic sphere as well, especially the steel industry. The Luxembourgish board of directors of ARBED, a major steel producer, remained in place until March 1942. While it afterwards was replaced by a board consisting of three Germans and two Luxembourgers, the managing director of the company was a Luxembourgish until the Germans left in 1944 (Artuso 2013).

Australia, Canada, Ireland, UK and US cluster close to the diagonal in the upper right-hand corner, matching the condition and the outcome ideal-typically (Schneider and Rohlfing 2013: 581). New Zealand, which also has full membership in dem*LD, scores slightly lower in terms of regulatory constraints (LRI), while Belgium, with its Napoleonic legal system and its experience of externally imposed democratic discontinuity, and thus a partial membership in (dem*LD), has generated a relatively more constraining legal environment than suggested by its lower set membership.

Figure 7.5: Xy-plot of Solution Term 'Absence of Democratic Discontinuity and Legal Disposition towards Specific Statutory Legislation (dem*LD)' for a Constraining Legal Environment (LRI)



In light of the theoretical framework, the association between LD and LRI is in line with the *Legal Family Hypothesis* (H3). However, against theoretical expectations, the path dem*LD suggests that – in combination with LD – the *absence, not the presence of democratic discontinuity* is conducive to a constraining legal environment. This does not mean that expectations derived from the ‘defensive’ or ‘militant democracy literature’ about democratic discontinuity inducing more constraining legal regulation are ‘wrong’. As we have just seen, DEM – the *presence of democratic discontinuity* – forms a necessary part of the path DEM*VSI. This latter path contains exclusively Continental European democracies in which traditions of defensive or militant democracy have been considered particularly prominent (Thiel 2009).

That the presence and the absence of the same condition leads to the same outcome depending on the other conditions it is combined with underpins the initial choice for a QCA analysis. However, it does not make the path dem*LD any less counter-intuitive. Why does the *absence of democratic discontinuity*, when combined with a legal disposition towards adopting highly specific statutory legislation due to a contentious relationship between parliament and judiciary (see for details Chapter 6) lead to a constraining legal environment for voluntary organisations? With the exception of Belgium, all these cases are common law democracies and have enjoyed democratic continuity without their regimes having experienced any internally triggered or externally imposed disruptions. Hence, they are characterised by full set-membership in both dem and LD and, as mentioned already, meet the combination of conditions ideal-typically. The answer to this puzzle lies in the implications of the absence of the experience of discontinuity as such, or, put another way, the implications of the absence of the perceived ‘corruption’ of internal democratic institutions or the population through collaboration with non-democratic regimes. This absence suggests that in continuous democracies it is not only the problematisation of the risk of the *abuse of the democratic process by internal enemies* that is less pronounced. As a flipside of the coin, a problematisation of *the abuse of state power through overly intrusive regulation* is likely to be less pronounced as well. Arguments in favour of ‘defensive democracy’ refer to the need to equip democracy with ‘weapons’ against its internal enemies. At the same time, these arguments are embedded in a discourse around the need for safeguards that prevented the abuse of such ‘weapons’ by the state itself in order to counter a possible degeneration of liberal into illiberal democracy (e.g. Thiel 2009; Bale

2007). Measures associated with 'defensive democracy' such as extensive ban provisions were deemed acceptable in countries like Germany or France (see Chapter 4) but were and are highly controversial. To this day, they are much debated whenever authorities try to apply them. For democracies in which regime stability is the 'default scenario' this is different. Voluntary organisations and democratic institutions are perceived as sufficiently resilient 'in themselves' to sustain democracy. They are *neither* perceived as particularly vulnerable to non-democratic societal forces, *nor* to state intrusion.

This interpretation can be put on a broader foundation when considering the state traditions characterising the common law democracies dominating the dem*LD path and those of continental European democracies characterising the DEM*VSI path respectively, a distinction which captures major differences in theories of institutional political power (Kaufmann 1986: 131). Discussions around state traditions in the Anglo-Saxon democracies such as UK and US highlight the notion of the 'stateless society', with scholars arguing that the concept of the state is 'alien' to British political self-understanding. Instead, discourse shifts attention to matters of 'government' and 'parliament' and their operations instead, a situation strikingly distinct to continental Europe (Nettle 1966: 562; Dyson 1980: 43-6). Likewise, Meadowcroft (1995: 38) points out that "France and Germany provided classic examples of countries with well-developed traditions of stateness, while Britain was the paradigmatic stateless society" (see also Schrijver 2006: 264-5; Dyson 1980). This quotation mirrors these democracies' association with the two alternative paths towards constraining legal regulation. Democracies characterised by the notion of the 'stateless society' lack a conception of the state as a legal institution with corporate capacity that has the responsibility to regulate matters of public concern. Such democracies also lack the ability to act in the name of a public authority *separate from* and possibly *opposed to* society. As a consequence, while there might be concerns on the proper limits of 'state activity' in these democracies as well, these reflections are not as intense as in the context of continental traditions where the state is essentially seen as counterpart to society (Dyson 1980: 19, footnote 2; 208). By contrast, this tendency of reducing the state to notions of government has been influential not only in the UK and US but also in the other Anglo-Saxon democracies. Even though Australia, for instance, deviates from the UK and US template by traditionally considering the state as the protector of individual liberty, major constraints on such liberty were considered to be located in the private and not in the public sphere (Pusey

1992: 1-2; 14). This fits the broader argument that government regulation of voluntary organisations as private actors is less problematised in such states than the problem of illiberal private organisations. If concerns in Anglo-Saxon democracies are focused on the working of 'government' rather than on the relationship between state and society, and with this the exercise of state power in the societal sphere, this suggests that when drafting and passing statutory legislation in common law systems attention may fully centre around the contentious relationship between parliament and judiciary. In other words, parliament's attempt to make sure the judiciary will implement legislation as intended rather than resorting back to precedent can form a central concern (Dainow 1966: 425-6; 431). This, in turn, enhances the specificity of regulation and thus the constraints applicable to voluntary organisations without being curtailed by normative concerns around 'state intrusion' into society.

In sum, the disposition of *legal systems reinforcing statutory specificity combined with the absence of experiences of democratic discontinuity* (dem*LD) allows a constraining legal environment to emerge (LRI) as democratic actors in such countries rely on their regimes' stability and their civil societies' resilience without normative questions about the potential abuse of state power likely to be dominant. Therefore, legal regulation of societal actors in the voluntary sector or of political parties can be considered in purely 'functional' terms, i.e. shaped by whether regulation is likely to address the policy problem at hand or not. This provides governments with comparatively wide regulatory leeway and allows the legal disposition towards specific statutory legislation associated with a democracy's legal traditions to fully feed into the creation of a constraining environment for voluntary organisations.

To sum up, in light of the substantively differing interpretations of the two distinct paths towards constraining regulation, the path dem*LD could be labelled the 'functionalist path' towards a constraining legal environment. In this path, the adoption of constraining regulation is assessed in light of its suitability to solve specific, currently salient policy problems, while normative considerations remain secondary. This favours a legal environment characterised by significant constraints on voluntary organisations tailored to specific areas of regulation. By contrast, the path DEM*VSI could be labelled the 'statist path' towards a constraining legal environment. Here, the adoption of constraining

regulation is shaped by considerations about what the state, as the counterpart to society, should or must be able to do. This is determined by the two conditions DEM and VSI legitimising such action, but - related to DEM - in the context of an on-going problematisation of the means through which a democratic state might be able or allowed to influence and steer organised civil society. As noted already, Chapters 9 and 10 will explore the 'functionalist path' and the 'statist path' in greater detail through case studies of the UK and France respectively.

Sufficient Paths towards a Permissive Legal Environment for Voluntary Organisations

Moving to the analysis of paths sufficient for a permissive legal environment, Table 7.5 presents the results. We find two paths, one of which (*vsi*Id*) is clearly more relevant in terms of unique coverage (0.649). This path covers the Scandinavian region plus the Netherlands and Switzerland. The second (*DEM*vsi*AD*) is a much more complex path which only captures Italy (unique coverage = 0.062).

Table 7.5: Sufficient Conditions for a Permissive Legal Environment (Iri)

Intermediate Solution	<i>vsi*Id</i>	+ <i>DEM*vsi*AD</i> → Iri
Single Case Coverage	Nl, Ch; Se, No, Is; Den, <i>Fin</i>	It
Consistency	0.820	0.916
Raw Coverage	0.756	0.170
Unique Coverage	0.649	0.062

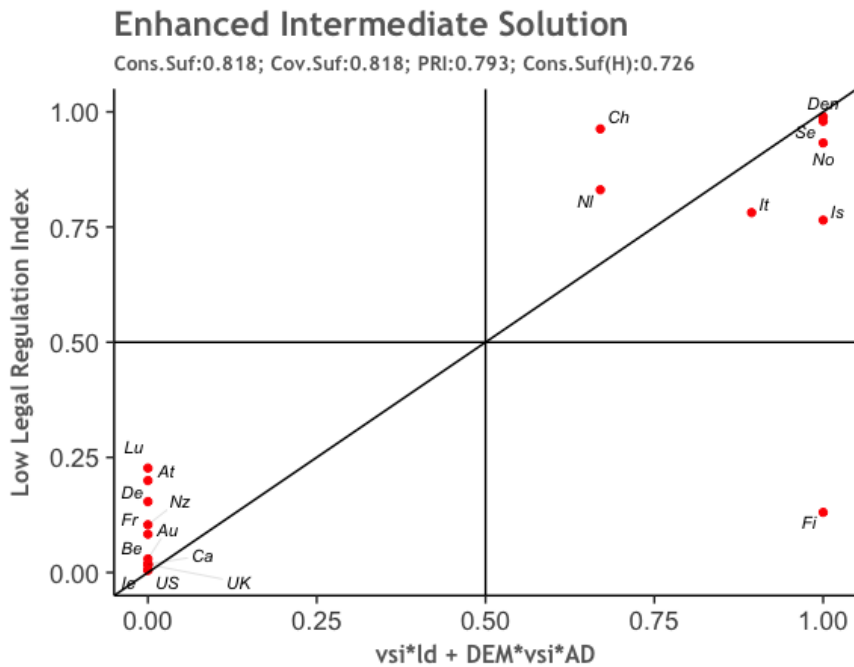
Note: Items in italics indicate 'deviant cases consistency in kind'. Solution consistency: 0.818; Solution coverage: 0.818; Cases separated by semicolon belong to different truth table rows. Bold conditions in intermediate solution form part of parsimonious solution.²³

Again, in line with theoretical expectations, both paths combine at least one legitimising condition with one or several reinforcing or facilitating conditions. More specifically, both paths towards permissiveness entail the absence of government incentives to regulate voluntary organisations contain (*vsi*). This is in line with the earlier analysis of necessity that

²³ Supplementary material on the empirical analyses (e.g. truth tables for the outcomes LRI and Iri; details on the raw consistency thresholds used) is provided in the Online Appendix available at <http://socialsciences.exeter.ac.uk/regulatingcivilsociety/publications/>.

identified vsi as individually necessary condition for Iri. The following xy-plot visualises the solution formula ($vsi*Id + DEM*vsi*AD \rightarrow Iri$). It shows that only one of the democracies, Finland, contradicts the statement of sufficiency, by meeting the conditions without the outcome. Consequently, the consistency of the solution is high.

Figure 7.6: Xy-plot for Solution Formula $vsi*Id + DEM*vsi*AD$ for a Permissive Legal Environment (Iri)



The central path ($vsi*Id$), accounting for most of the cases with a permissive legal environment is defined by the absence of legal dispositions towards detailed statutory regulation (Id), a condition associated with the Scandinavian or Germanic civil law families, combined with weak government incentives to regulate voluntary organisations (vsi), linked (predominantly) to social democratic voluntary sector traditions. As the xy-plot of this path shows (Figure 7.7 below), the Scandinavian countries cluster closely together on the diagonal, thus, representing ‘ideal types’ of this configuration, scoring high on both the conditions and the outcome (Schneider and Rohlfing 2013: 581). Importantly, we find one deviant case in kind belonging to this regional cluster (Finland) which will be discussed in detail further below. As for the main path leading to a constraining environment discussed earlier, legal traditions are again crucial in line with the *Legal Family Hypothesis* (H3). However, this is the case in combination with (the absence of) another legitimating factor, namely vsi , emphasising the notions of asymmetrical and complex causation underpinning QCA analysis. As detailed in Chapter 6, Scandinavian civil law not only lacks the tendency

towards encompassing regulation that covers whole areas of law systematically (as demonstrated in the absence of a civil code), but also lacks a disposition towards specific and constraining statutory legislation, given the collaborative relationship between parliament and the courts. Meanwhile, social-democratic welfare regimes have been argued to 'set civil society free' from service-delivery, liberating them to engage in expressive and political activities. (Salamon and Anheier 1998). This fundamentally shapes the nature of voluntary sectors in these regimes and restricts government incentives to interfere with voluntary organisations, in line with the *Voluntary Sector Hypothesis* (H2). In essence, democracies belonging to this path have neither a broader legal disposition to adopt specific legislation nor the incentives or the legitimacy to actively steer voluntary organisations towards the provision of particular services, and thus to constrain them in their political activities potentially conflicting with such tasks (Young 2000). The combination of these conditions therefore strongly favours the creation of a permissive legal environment for voluntary organisations.

Underpinning this rationale, several authors have made a link between the design of welfare state institutions and social capital or trust, referring to the Scandinavian countries and the Netherlands as prime examples (Lee 2013: 620). Rothstein and Uslaner (2005) argue that universal social policy design – the dominance of universal programmes directed to the population as a whole – plays a decisive role in generating norms of trust in societies more broadly. As Kettunen points out, “[public] services, defining and meeting the needs of health, care and education, bore the character of universal social rights” (2001: 239). Under such conditions citizens have no incentive to withhold relevant information from bureaucrats in order to qualify for public services, creating a cycle of trust in social democratic welfare states (Kumlin and Rothstein 2005: 38-9). To the extent that the latter type makes cheating less likely and strict monitoring of citizens less necessary, these settings can also be considered supportive of permissive regulatory approaches towards organised civil society, given that government regulation generally tends to have a strong negative correlation with trust (Aghion et al 2010). Similarly, Scandinavian countries as well as the Netherlands are associated with high levels of civil society voluntarism. In other words, they are democracies with particularly favourable structural conditions to express dissatisfaction with government through extra-parliamentary activities, a condition again associated with these countries' welfare state traditions (Harrebye 2016: 77-9). The

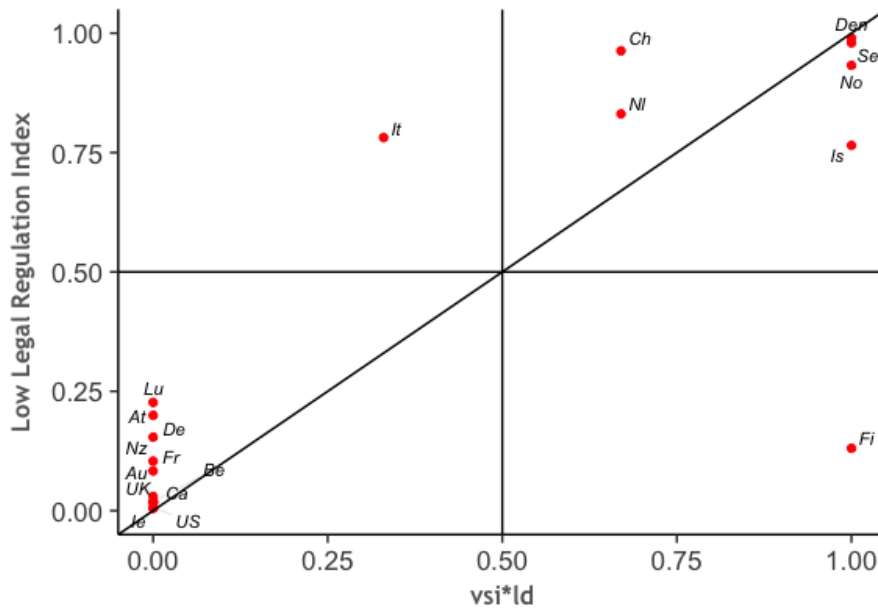
conditions vsi*Id can therefore be considered as part of these structural conditions which favour civil society and seek to preserve it as a sphere serving expressive rather than quasi-governmental functions. Consequently, it is little interfered with through ‘steering’ legislation, a tendency reinforced by legal traditions captured by Id.²⁴ In particular, the characteristic of Scandinavian civil law to leave areas unregulated and apply legal instruments from other areas broadly to fill regulatory gaps underpins this path. As Chapter 3 has highlighted, party and NPO regulation are interlinked, as visible in the number of areas in which NPO regulation is directly applicable to parties. Indeed, such legal inclusiveness is particularly pronounced in regimes belonging to the vsi*Id path. As the case study of Sweden in the next chapter as an ideal-typical representative of this path will illustrate, if regulation applies to groups and parties simultaneously, this generates an additional incentive for government (hence party) representatives to refrain from an active regulatory approach towards voluntary organisations. Echoing this characterisation, the path vsi*Id can be labelled a ‘voluntarist path’ towards a permissive legal environment.

Figure 7.7: Xy-plot of Solution Term ‘Absence of Voluntary Sector Incentives towards Government Regulation and Absence of Legal Disposition towards Specific Statutory Legislation (vsi*Id)’ towards a Permissive Legal Environment (Iri)

²⁴ Note that this interpretation refers to the adoption of regulatory constraints. Hence, it does not suggest that the state is no active beneficiary and hence central to voluntary organisations operating in democracies belonging to this path, which is a different matter.

Enhanced Intermediate Solution Path 1

Cons.Suf:0.820; Cov.Suf:0.756; PRI:0.792; Cons.Suf(H):0.740



Finland as Deviant Case

Despite considerable coherence of the path $vsi*ld$, as shown by the consistency score of 0.820 and the xy-plot above, Finland represents a 'deviant case for consistency in kind' by contradicting the statement of sufficiency (Schneider and Wagemann 2012). While Finland is not too far removed from the cross-over point of 0.5, it ultimately belongs to the group of *constraining* regimes, while meeting fully the sufficient conditions for a *permissive* environment manifest in the rest of Scandinavia. Research on the Finnish legal and state traditions, on the one hand, and voluntary sector relations on the other clearly confirm the democracy's belonging to the Scandinavian civil law group with a social-democratic voluntary sector (e.g. Allard and Funderud Skogvang 2015; Bernitz 2007; Gjems-Onstad 1996; Kettunen 2001; Schofer and Fourcade-Gouringhas 2001; Alapuro 2005; Malminen

2006). Its belonging to the path vsi*Id is therefore clear-cut and measurement error can be excluded as a source of this inconsistency.

Confronted with such a case, the literature recommends exploring whether a relevant condition has been omitted from the analysis (Ragin and Schneider 2011:159; Schneider and Rohlfing 2013:573). Indeed, while being unambiguous about the case's basic classification, both comparative law and voluntary sector research simultaneously stress Finland's distinctiveness, sometimes 'exceptionalism', within the 'Nordic family'. In particular, scholars highlight Finland's historic national identity and state tradition as central influence on its distinct legislative and policy choices (e.g. Gjems-Onstad 1996; Kettunen 2001; Raunio and Tiilikainen 2003). Raunio and Tiilikainen, for example, stress the democracy's 'state centrism', putting an emphasis on values closely associated with the state such as territoriality and sovereignty, and triggering a strong concern about sustaining the independence of the Finnish state. Prior to independence in 1917, Finland had for centuries been a dominion of the Swedish monarchy and, after being conquered by Russia in the Napoleonic wars, became an autonomous Grand Duchy in the Russian Empire (1809 to 1917) (2003: 143). According to Siaroff (1999: 119), strong societal support for the concepts of parliamentary government, but also for law and order, dates back to the struggles against Tsarist autocracy, underpinning a paternalistic political culture stressing law, order and obedience. Broader concerns about state sovereignty, stability and security were central to the democracy's state-centric identity, reinforced during the 1918 Civil War and later during the Cold War when Finland, committed to political neutrality, was located precariously in between the West and Russia (Siaroff 1999: 119; Raunio and Tiilikainen 2003: 143-4).

This unique orientation has affected the use of legal regulation with regards to state-voluntary sector relations, as well as attitudes towards the judiciary, and has set Finland apart from its Nordic neighbours. It also explains why, in spite of shared legal and voluntary sector traditions, Finland has established a constraining legal regime for organised civil society. For instance, the direct regulative role of the state in working-life issues and labour relations has been more important in Finland than in the other Nordic countries, with direct legislation long the dominant means to regulate labour relations (Kettunen 2001: 244-3). Regarding the history of voluntary state-voluntary sector relations more specifically, and the role of government that they continue to incentivise (vsi), Alapuro stresses that, going back to the 19th century, Finland displayed a close cooperation between local administration and

voluntary organisations. At times, organisations were even formed on the initiative of local government, as they were seen as part of a broader strategy of national consolidation and state-building (2005: 382). Ketola summarises the relevance of this history for the distinctiveness of the Finnish government's relationship with the voluntary sector in the following way (2015: 309-10):

"This early nationalist sentiment as a motivation for associational life has continued to influence the size and shape of the Finnish civil society, leading to a body of civil society organisations that share similar structural characteristics. First, the dominance of registered associations has led to the emergence of a "Finnish model of collective action" in which activist roles in education, publicness, peacefulness, and respect for authorities are preferred over anarchic activism. Second, Finnish civil society groups have largely followed hierarchical systems of governance in which grassroots activism is organised through the local associational branches that are then represented by regional and national level organisations. Third, civil society organisations have adopted relatively strong traditions of state-centrism in the approach, in that much of their activism is geared toward collaborating with the state."

The reference to the prevalence of organisations authorised by and registered with the state authorities is particularly telling in light of the earlier assessment of NPO regulation in Chapter 4. As will be recalled, this discussion showed that with the exception of Finland none of the other Scandinavian countries required voluntary organisations to register to gain legal personality. Indeed, no other Scandinavian democracies even have association laws. In contrast to this, the Finnish association law of 1919 was one of the most central law-making projects in independent Finland. Reflecting the Finnish model of collective action and stressing state centeredness and law abidingness, the law "crystallised [civil society] in the institution of registered association". Since then, all important mass organisations irrespective of ideology have registered themselves as associations, thereby accepting (at least formally) the state's authority in return for legal status and partnership with the state (Siisiäinen 2015: 269).

Finland, like the other Nordic countries, tends to be characterised in cross-national research as a non-statist civil society in which social regulation is ensured by cooperation and contrasted with democracies with statist traditions such as Germany and France, in which the state's control of civil society is more widely accepted (Konttinen 2011: 4). However, compared to its Nordic neighbours, and indeed Switzerland and the Netherlands (the other members of the *vsi*ld* path), we find a much more dominant notion of the state shaping Finnish democracy as well as civil society, rooted in the perceived need to protect its integrity. This historically determined and self-reinforcing perception has altered the

relationships between state and voluntary actors significantly, and created both a greater incentive for state authorities to shape civil society organisations through legal means and a greater propensity for voluntary organisations to accept such moves as legitimate.

This distinctiveness is also reinforced by some elements in Finland's legal tradition, despite the significant influence of Swedish legal traditions in the country (Bernitz 2007: 16). In particular, Finland is marked by a more critical attitude towards the judiciary and a greater emphasis on parliamentary control than in other Nordic democracies. This has led to a weakening of characteristics commonly associated with Scandinavian civil law as theorised in the *Legal Family Hypothesis* (H3). Again, this appears to be the product of Finland's history. Hautamäki (2006: 4) stresses that during the period as an autonomous Grand Duchy of Russia (1809 to 1917), the power to scrutinise the constitutionality of legislation was concentrated in a parliamentary committee as safe-guard against Russian Empire's imperialistic attempts to break down Finland's autonomous position. As judges were appointed by the Russian administration, triggering fears of the 'Russification' of the country through the courts, the judiciary were not trusted to have the ability to provide the necessary safeguards within the Finnish political system. Indeed, until 1999, the Finnish constitution expressly prohibited courts from performing judicial review and even today courts must find that the 'conflict is evident' before it is allowed to set aside a statute or statutory provision in conflict with the constitution (Bruzelius 2015).²⁵ At the same time, the *Perustuslakivaliokunta*, the Constitutional Law Committee in parliament, has kept a tight hold on its position as the most authoritative interpreter of the constitution, checking draft legislation *prior to* its passing (Hautamäki 2006: 4). It is indicative that Finnish statutory regulation is more specific than regulation in other Scandinavian countries according to a recent cross-national study.²⁶ This is the case even though Scandinavia as a group has comparatively low specificity levels, reflecting the features of Scandinavian civil law detailed

²⁵ Finnish courts have remained restrained, even though Article 106 of the constitution (introduced in 2000) allows limited control of constitutionality. In 2006, only one decision could be found where Article 106 had been applied by the Supreme Court that left a provision of a law passed by parliament unapplied (Hautamäki 2006: 4).

²⁶ The study developed and applied a 'Regulatory Specificity Index', a cross-national measure that is based on various indicators capturing statutory specificity (length of legislation in words, while controlling for substance) and the specificity of other legal obligations and instruments (Cooter and Ginsburg 2006: 11).

in Chapter 6, compared to the remaining 11 European countries included in the study (Cooter and Ginsburg 2006: 11-12). In line with earlier theoretical elaborations, Cooter and Ginsburg also link this statutory specificity to “agency problems between legislators and judges” which are generally low in the Scandinavian context where judges are involved in the drafting and preview of legislation (2006: 17). In sum, while this study confirms Finland’s ‘belonging’ to the Scandinavian regional cluster, it simultaneously shows a relatively stronger tendency towards the adopting constraining regulation than its neighbours.

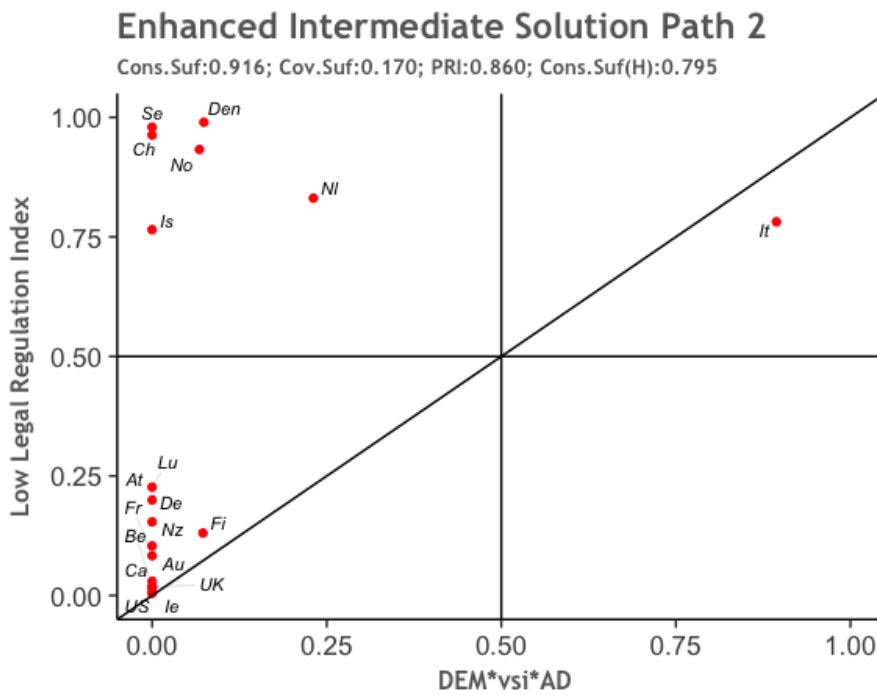
In sum, Finland’s legal distinctiveness within Scandinavia can be traced back to its unique location as a ‘neutral’ border country between East and West underpinning the democracy’s strongly state-centred orientation towards the voluntary sector. This is combined with a greater suspiciousness towards the judiciary and stronger focus on parliamentary control than common in the ‘Scandinavian civil law family’ resulting from its past status as part of the Russian Empire. Engaging in counterfactual reasoning one can expect that without these features, the Finnish legal environment for voluntary organizations would have been more permissive. As these features are *unique* to Finland, this democracy represents a deviant case which does not point to an omitted condition in the dominant path towards permissiveness (*vsi**Id) identified earlier, that should have been part of the theoretical framework to start with.

The ‘Italian Path’ towards Permissiveness

Returning to the overall findings and moving to the second path towards a permissive legal environment, as Figure 7.8 shows, Italy occupies its ‘own path’ towards permissiveness. This path is the most complex in the whole analysis; a democracy with a large administrative apparatus (AD) that has experienced democratic discontinuity (DEM) and is characterised by a voluntary sector giving government few incentives towards or legitimacy in regulating voluntary organisations (*vsi*). In line with the theoretical framework, the condition *vsi* supports permissiveness (H2). However, the presence of the other two conditions *Administrative Capacity* (H5) and *Democratic Discontinuity* (H1) (AD and DEM) were expected to support a constraining environment instead. Though theoretically speaking

counterintuitive, the ‘logic’ of this configuration of conditions and its link to a permissive legal environment becomes clear when considering the Italian case in depth.

Figure 7.8 The ‘Italian Path’ DEM**vsi**AD towards a Permissive Legal Environment



The comparative literature characterises Italy as social-democratic voluntary sector regime characterised by high social welfare spending and a small nonprofit sector (Wiepking and Handy 2015: 11; Einolf 2015: 519; see also Salamon and Anheier 1998). Meanwhile, case study research describes Italy as ‘permissive legal environment’ characterised by fragmentation, without a unified legal approach to organisations belonging to the voluntary sector. Indeed, this is the case both in their role as service providers and in their participation in policy decisions (Patanè 2002: 11; Ranci et al 2005: 7; Ferreira 2006). These characterisations fit the democracy’s classification in the QCA analysis and are in line with the *Voluntary Sector Hypothesis* (H2). Simultaneously, however, in-depth studies of the Italian voluntary sector paint a more complex picture. Following Patanè (2002: 19):

“The Italian case does not seem to be characterised (...) by anything else than contradictory elements: a strong functional interdependence in the absence of an effective form of co-ordination; the great managerial autonomy of non-profit making organisations in the absence of a definite legal profile which distinguishes them from the sphere of state action and makes them independent of the influence of business interests; and the tendency to allocate increasing public responsibilities in the presence of a regime that is characterised by the dependency generated by political patronage and favouritism.”

Italian state-voluntary sector relations are therefore marked by clientelism, combining low regulatory control through formal-legal means with high financial dependency of organisations on state support (Ranci et al 2005: 2; Ferreira 2006). Meanwhile, despite its large public sector (Rhodes 1997: 55), the Italian state is said to lack clear policy goals, leaving the actual management and provision of services to non-profit organisations (Gidron et al 1992). Italian legislation on voluntary sector organisations dates back to the definition of association introduced in the Civil Code in 1942. Apart from this, the only other form of NPO recognition was regulated on an ad hoc basis with the state defining non-profits, through presidential decrees, as moral agencies worthy of public recognition and support (Ranci et al 2005: 6). The voluntary sector was increasingly recognised in formal terms during the 1990s, with the creation of a legal status for organisations involved in services provision, tax concessions and channels for state funding (Ferreira 2006) enhancing the legal complexity of organisations’ legal environment (see on this also Chapter 5). Yet even these reforms were characterised by an ad hoc approach, and were partially reversed after 2001 by the incoming centre-right government (Ranci et al 2005: 6).

Meanwhile, voluntary organisations themselves do not play an independent role in the political arena, which is instead characterised by the informal brokerage between the Catholic Church, trade unions and political parties to which voluntary organisations are subordinated (Ranci 2005: 4). From early on, therefore, organisations’ attitude towards government, as well as their image of the political system and process, has been highly negative (La Palombara 1964: 70). This tight connection and interpenetration between actors dominating different sectors was also a feature of Posner’s critical assessment of the Italian economy, which he describes as dominated throughout the post-war period by a broad-based political and social coalition around the Christian Democratic party (DC), which

incorporated close ties to ministerial bureaucracies, the Bank of Italy, state-controlled enterprises, large corporations, as well as the Catholic church and trade unions (1977: 809).

This overlap of personnel between parties, interest groups and the bureaucracy (Williams 2000: 204; see also Newell 2000; di Mascio 2012) underpinning a network of clientilism, patronage and outright corruption is not only important in trying to comprehend the role of the Italian voluntary sector and its relationship to government institutions. This theme cuts across various literatures on Italian political and economic life and is central to understanding why *in spite of* a large public sector (Rhodes 1997: 55) (AD) and a fascist legacy shaping this democracy's legal foundation (Cappelletti 1989; Corduwener 2017) (DEM) these two conditions contributed, against theoretical expectations, to a permissive rather than constraining legal environment. While stressing the "extensive influence of political parties in public administration at all levels" (Rhodes 1997: 55), Rhodes points to 'two dimensions of power' characterising the Italian legal regime; "one in which the rules of law and formalities of democracy prevail; and another in which they are ignored and which has been likened to a Hobbesian state of nature" with parties' traditionally assuring their survival through activities in the latter sphere (1997: 55). Unsurprisingly, therefore, compared with bureaucracies in other long-lived democracies, public administration in Italy is characterised as poorly designed and inefficient (Golder 2000), with public service positions being "allocated to those who have relatively few other options for employment but the state" (Hine 1993: 238). Recent research on party patronage (party-based public appointments) shows Italy to be among the countries with the highest level of patronage among long-lived European democracies²⁷ (Kopecký et al 2016: 427; Kopecký et al 2012). At the same time, corruption rankings covering long-lived democracies regularly show Italy at the very top (e.g. Gambetta 2016). The pervasiveness of such informal relations, using the administrative apparatus as a pool for patronage, highlights why the on-paper capacity in terms of staffing and resources of the Italian bureaucracy, described by Cotta and Verzichelli (2007: 207) as one of the most heavy and complex state machineries in the Western European landscape (AD), does not in fact encourage the adoption of detailed legal regulation in the civil society sphere.

²⁷ The only EU democracy classified as having higher levels of patronage is Greece, which - as a (relatively) new democracy - is not included in this study (Kopecký et al 2016: 427).

The centrality and long-term collusion of parties in the Italian system, both formally and informally, also explains why regulatory constraints imposed on parties have remained fairly limited. Unlike in Germany (which is often used as comparator due the systems' shared authoritarian past), beside banning the reconstitution of the fascist party in the XII Transitory and Final Provision of the Italian constitution, the Italian Constitutional Assembly in the late 1940s aimed instead at protecting the political freedoms that the two Fascist regimes had banned (Piccio 2014: 139; Pizzimenti 2017: 73). The anti-fascist parties dominating the transition process were strongly opposed against state control and determined to recover their autonomy and strengthen their organisations by occupying and exploiting the newly created democratic institutions they now had access to (an attitude that cut across ideologically differences) (Pizzimenti 2017: 73). Proposals to give political parties a legal status and to require their internal democratic functioning, as the German constitution does, were turned down for fear they would provide the executive with the power to control political parties (Piccio 2014: 149).²⁸ For the same reason, grounds to ban associations are relatively restricted compared to provisions in other democracies (see Chapter 4). The legal constraints on parties that exist today are therefore mainly located in the area of party finance (Pacini and Piccio 2012: 3-4).²⁹ Party finance regulation was introduced as early as 1974 and reformed repeatedly since then. While until recently providing generous party funding, oversight and control over parties' financial management remained poor, while parties exploited loopholes in legislation that party representatives had created in the first place (Rhodes 1997: 54-55; Williams 2000: 204; Piccio 2014: 145-6; Pizzimenti 2017). Indeed, the principle of freedom of association of political parties granted

²⁸ That said, we find similarities between Germany and Italy associated with their shared authoritarian past in other areas that are focused on the protection of citizens from the abuse of state authority (rather than from non-democratic societal actors turning over the democratic order). Cappelletti, for instance, suggested that the reason behind the establishment of a separate constitutional court in Germany and Italy – a watchdog to protect citizens' rights and to prevent illegal dealings by the legislator and executive - was the perceived need for "a pivotal tool for protecting themselves against the return of the evil – the horrors of dictatorship and the consequent trampling on of fundamental rights by legislators subservient to oppressive regimes" (1989: 161).

²⁹ For instance, the constitution does not impose limitations on the political parties' activities, with the exception of external activities that might endanger democratic competition. See for details Pacini and Piccio (2012: 3-4).

in the Italian constitution ultimately provided the foundation for elected officials to resist reform pressures for lengthy periods (Piccio 2014: 149).

In sum, in-depth exploration of the Italian case suggests that path DEM*vs*AD with its permissive legal environment for voluntary organisations should not be considered a systematic challenge to the broader theoretical rationales linking administrative capacity (AD) and democratic discontinuity (DEM) with a disposition towards constraining legal regulation. The qualitative assessment of Italy paints a complex picture that requires the consideration of additional factors that are, similar to the Finnish case within the Scandinavian cluster, unique to the country. In this case, this especially refers to the system of informal rules that underpin and integrate different sectors of the Italian polity. On the one hand, the importance of informal rules shapes the likely consequences of formal systemic properties such as high administrative capacity (AD), preventing the latter from facilitating the adoption of constraining legal regulation. On the other, this feature fundamentally affects the extent to which formal legal regulation can be reasonably considered as an effective means to address existing problems in the political system, as that latter are frequently bypassed by informal processes in any case.

More specifically, the analysis stresses two points; one related to the condition 'democratic discontinuity' in particular and its varied effects, and one regarding the methodological status of the 'Italian path' in the context of this comparative analysis more generally. While both the presence and absence of 'democratic discontinuity' contributed to constraining regulation, the outcome ultimately depended on the particular systemic conditions in which decision-making actors were embedded. The Italian path further shows DEM to be conducive to a permissive legal environment when such actors respond to partisan disempowerment under authoritarianism by entrenching partisan privileges once democracy is restored. Especially when contrasted with Germany, which displayed a very different response, the analysis therefore highlights the importance of democracies' distinct reactions to an authoritarian past and their ability to 'use' this past in very different ways. It can be used to justify constraints on groups and (especially) parties – in line with the *Defensive Democracy Hypothesis* (see Chapter 6) – as in Germany. In Italy, however, it was used to assure parties' protection and autonomy *from* the state, with far-reaching consequences (Pizzimenti 2017). This echoes the argument made earlier that the question

of how to protect democracy from its internal enemies as response to experiences of instability not only puts the issue of the state's instruments to fight those enemies centre stage but also the risk of these instruments' potential abuse by the state, leading to more differentiated implications of DEM/dem than the defensive democracy literatures tends to suggest.

Concluding with the methodological status of the Italian case and the path DEM*vsj*AD towards permissiveness that it represents, it is probably best understood as a unique case, especially considering the pervasiveness of its informal institutions which have subverted the formal-legal rules of democracy (Helmke and Levitsky 2006). This factor negatively affected the extent to which its large state apparatus, which ultimately developed as a patronage pool, was able to translate manpower into real administrative capacity supporting policy development and implementation (AD) in a polity whose internal fragmentation and polarisation have been apparent since the late 1940s (Posner 1977: 810). Indeed, law-making capacity in Italy has been criticised for producing "a relatively large number of laws, many of them small in scope, and of a kind which is easily abused for patronage purposes" (Furlong 2004: 184). Legislation therefore frequently reflects collusive behaviour between the major parties in service of their need for resources to sustain bureaucratic mass organisations (Pizzimenti 2007: 73; 81). Consequently, despite a considerable legislative output, legal regulation is inefficient and mechanisms to steer organisational behaviour is essentially absent. This situation was brought about by Italian state's colonisation by political parties, starting as early as 1945. While at the centre of the informal practices bypassing the formal-legal framework to start with (Rhodes 1997), party representatives in their role as law-makers also shaped the long-term evolution of their legal environment in this 'party state' with the aim to sustain their own autonomy (Pizzimenti 2017). Consequently, regulatory change followed a predominantly "self-serving logic" (Piccio 2014: 148). Thus, even though the abolishment of direct party funding and the first ever legal regulation of party organisation was introduced in 2014,³⁰ the legal environment has remained overall permissive and parties have "continued to be disciplined

³⁰ Piccio (2014) and Pizzimenti (2017) refer to the configuration of contingent factors leading to this break with the past, including political and economic instability, as well as the rise of increasingly powerful challenger parties such as the Five Star Movement which put the abolishment of state funding high on the political agenda.

like private associations, in line with the cultural and institutional legacies of the past” (Pizzimenti 2017: 81).

Conclusion

The four paths of sufficient conditions which explain these democracies’ constraining or permissive legal environments as revealed by the QCA analysis have substantiated the importance of taking a configurational perspective on the legal regulation of voluntary organisation. More specifically, the composition of these paths reflected theoretical expectations regarding the complementary relationships between legitimising, reinforcing and facilitating conditions as outlined in Chapter 6. To conclude, therefore, we may now return to an assessment of the role of the conditions constituting the theoretical framework presented earlier. As will be recalled, each of these conditions was derived from a different literature and the empirical findings demonstrate the fruitfulness of using these literatures in conjunction with one another in order gain systematic insights into the legal regulation of civil society as a whole.

The two conditions that were most prevalent across the distinct paths leading to the various patterns of legal regulation, both in terms of their absence and presence, were democratic discontinuity (DEM/dem), and voluntary sector incentives towards government regulation (VSI/vsi). Both of these were theorised as factors which incentivise and legitimise the constraining legal regulation of voluntary organisations in particular. As shown in this chapter, while none of them is individually sufficient, each is represented via their presence or absence in three of the four paths, with each sufficient path containing at least one of them. In addition, the importance of legitimising as compared to the other types of condition has further been stressed by the analysis of necessity which revealed the absence of government incentives towards regulating the voluntary sector (vsi) as an individually necessary condition for a permissive legal environment.

Meanwhile, a democracy’s disposition towards or disinclination against the adoption of specific statutory regulation as linked to a democracy’s legal traditions (LD/lD) forms part of two paths and thus represents when present an important reinforcement mechanism for legal constraints. Conversely, when absent it is (in combination with other conditions)

conducive to legal permissiveness instead. The importance of this condition is highlighted in particular by the two solution terms including LD/ld possessing the highest unique coverage compared to the other two paths identified in the analyses of constraining and permissive environments respectively. These findings emphasise the importance of families of legal systems, as stressed by comparative law (e.g. Dainow 1961; 1966; Zweigert and Kötz 1998), for how democracies legally regulate organised civil society. Thus, the findings demonstrate the fruitfulness of drawing on insights from comparative law in social science disciplines in order to understand important differences in the legal architecture of long-lived democracies.

As discussed in detail earlier, the findings' have complex implications with regard to the literatures on defensive or militant democracy, and thus the causal assumptions made about the effect of experiences of democratic discontinuity (DEM/dem) on democracies' propensity to adopt constraining regulation of voluntary organisations (e.g. Beimenbetov 2014; Biezen 2012). Contrary to this literature, the *absence* of such experience turned out to be one important 'ingredient' for democracies to adopt a constraining legal environment if this occurs in combination with a conducive legal disposition towards specific statutory legislation (LD). Indeed, dem*LD constituted the path with by far the highest unique coverage, apparently contradicting the *Defensive Democracy Hypothesis* (H1) developed in Chapter 6. This finding could be explained, however, by drawing on the literature on state traditions (e.g. Nettle 1966; Dyson 1980), which stresses the complexity of regulatory choices and their drivers in the civil society sphere as a contested area for government invention. Experiences of intrusion into and suppression of organised civil society associated with the exposure to non-democratic forces can generate different responses that are intertwined as much as in tension with each other, forming part of two separate paths towards a constraining legal environment for voluntary organisations in long-lived democracies. In the first 'statist path' (DEM*VSI), past challenges to democracy led to the legitimation of legal mechanisms democratic states can use against internal actors threatening democratic rights and freedoms, even when this threatens to curtail fundamental constitutional provisions. Though perceived necessary, these mechanisms remain normatively contentious as state institutions themselves were often compromised in periods of discontinuity, especially in cases where the latter was triggered by the external

intervention of authoritarian regimes and when this interference was supported by internal institutions or wider parts of the country's population. (Indeed, the 'Italian path' DEM*VSI*AD demonstrated how DEM led to a resistance against the adoption of constraining legal regulation in response to the abuse of state power under authoritarianism, thereby incentivising legal permissiveness instead). The role of such normative tension between legitimating and de-legitimating a 'strong state' in democracies that experienced instability also explains why democracies that – in the opposite - enjoyed democratic continuity for a long time, and thus can take the latter for granted, face less internal resistance against constraining legal regulation of organised civil society. In these settings representing a 'functionalist path towards constraining legal environments' (DEM*ID), regulatory constraints are less normatively problematised and instead evaluated from a functional perspective in terms of whether they are suitable to address the specific policy problem at hand. To reiterate, therefore, the presence and the absence of 'democratic discontinuity' can contribute to a constraining or permissive legal environment depending on the other conditions it is combined with. The differentiated role of this condition highlights the need to approach democracies as inherently complex configurations of systemic factors that reflect historically grown dispositions supporting or disincentivising governments' regulatory approach towards organised civil society (a finding that could not have been generated by methodological approach focusing only on correlations between the individual variables and the outcome).

Moving to government incentives towards voluntary sector regulation as to a democracy's voluntary sector regime (VSI/vsi), the second legitimising condition, this forms part of three of the four paths. Unlike democratic discontinuity, the link between its presence and absence and the nature of organisations' legal environment is in line with theoretical expectations. Its presence is associated with constraining, its absence with permissive environments, thereby substantiating arguments derived from previous research in sociology. While the intensity of government regulation has not been a central aspect through which regime types were distinguished, corporatist voluntary sector regimes have clearly been associated with particularly close state-voluntary sector relations (e.g. Salamon and Anheier 1998; Einolf 2015). As demonstrated here, this has also found expression in governments' propensity to actively steer voluntary organisations through legal regulation.

However, while this especially concerns organisations involved in public service provision that are most dependent on state funding, the dominant mode of state-voluntary sector relations proved to be a pervasive feature of these democracies, spilling over to and affecting other related sectors as well (e.g. Seibel 1990; Brinkerhoff and Brinkerhoff 2002). What is interesting regarding VSI/vsi as a condition, comparing the paths it forms part of, is that its absence is more relevant for permissive environments than its presence is for constraining ones. While it is an essential part of both sufficient paths towards permissiveness, including the dominant 'voluntarist path' (vsi*ld), it does not form part of the most empirically relevant 'functionalist path towards a constraining environment' (dem*ld).

Compared to the legitimising and reinforcing factors, the facilitating factors – legislative decision-making capacity (DC/dc) and presence of administrative capacity (AD) – behaved against theoretical expectations and played only a minor role. Indeed, the former played no role at all, while the latter formed part of a path towards permissiveness exemplified only by the idiosyncratic features of the Italian case, its only representative. One reason might be that the analysis covered a group of relatively homogenous cases whose institutional and administrative infrastructures generally tended to allow governments to pass legislation it is determined to put into place. This seems likely particularly when considering that the 'Legal Regulation Index' (LRI) captures an aggregation of legal constraints applicable to voluntary organisations put in place over many decades. While decision-making and administrative capacity might be central to the speed with which policy can be drafted and implemented, its implication for differences in the broader nature of legal environments of democracies with relatively homogenous institutional frameworks over a longer period of time may be less pronounced.

Building on this cross-national analysis, Chapters 8-10 will conclude this monograph with three in-depth case studies exploring the three empirically most relevant sufficient paths in greater depth. As the analysis so far has not considered how democracies ended up with their current legal environment as measured by the Legal Regulation Index, the final chapter will consider how the interplay of the conditions defining each path had repercussions for the evolution of legal environments over time. Chapter 8 assesses Sweden as a representative of the 'voluntarist path towards a permissive legal environment' (ld*vsi),

Chapter 9 analyses the UK as an ideal-typical representative of the ‘functionalist path towards a constraining legal environment’ (LD*dem) and finally Chapter 10 explores France as a representative of the ‘statist path towards a constraining environment’ for organised civil society (DEM*VSI).

Appendix A.7:

Table A7.1: Fuzzy-set/Crisp-set Scores Country by Country

Country	LD	DEM	VSI
Australia	1	0	0
Austria	0.33	0.67	1
Belgium	0.67	0.33	1
Canada	1	0	0
Denmark	0	0.67	0
Finland	0	0.67	0
France	0.67	0.67	1
Germany	0.33	1	1
Iceland	0	0	0
Ireland	1	0	1
Italy	0.67	1	0
Luxembourg	0.67	0.67	1
Netherlands	0.33	0.33	0
New Zealand	1	0	0
Norway	0	0.33	0
Sweden	0	0	0
Switzerland	0.33	0	0
United Kingdom	1	0	0
United States of America	1	0	0

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