Changing the rules of the game : the development and reform of party law in Latin America

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Preface

Throughout my PhD trajectory, I often wondered why people call the academic profession a lonely one. For me, one of the most rewarding aspects of doing a PhD was that it provided me with the opportunity to discuss my ideas and findings with peers and reviewers around the world. It is with great pleasure that I therefore use these first pages to thank some of the people that were instrumental in bringing this dissertation about and that kept me sane in the process.

A first word of gratitude goes out to my supervisors: Ingrid van Biezen, Ruud Koole, and Imke Harbers. I thoroughly enjoyed working with you and although I surprised you on multiple occasions with massive overhauls of my research design and theoretical framework, you provided me with the space needed to figure out in which direction I wanted to take this research. Rest assured, Ruud, that you have managed to convince me that not all politicians are merely driven by self-serving concerns.

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el but also provided important personal support when needed. Last but not least, my mother who taught me that work is something you do because you like it – not because you are paid for it – and my father who showed me that it is always better to follow your own dreams than to conform to those of others.

This thesis is dedicated to the loving memory of Mandy van Dijk. You were the strongest and kindest person that I have ever known.

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List of abbreviations

Costa Rica

CAFTA	Central American Free Trade Agreement
CEREPP	*Comisión Especial de Reformas Electorales y Partidos Políticos* – Special Committee on Electoral Reform and Political Parties
ML	*Movimiento Libertario* – Libertarian Movement
PAC	*Partido Acción Ciudadana* – Citizen's Action Party
PI	*Partido Independiente* – Independent Party
PLN	*Partido de Liberación Nacional* – National Liberation Party
PRD	*Partido Renovación Democrática* – Democratic Renovation Party
PUSC	*Partido de la Unidad Social Cristiana* – Social Cristian Unity Party
UNIORE	*Union Interamericana de Organizaciones Electorales* – Interamerican Union of Electoral Organizations
TSE	*Tribunal Supremo de Elecciones* – Supreme Electoral Tribunal

Mexico

AMLO	Andres Manuel López Obrador, presidential PRD candidate in 2006/2012
CENCA	*Comisión Ejecutiva de Negociación y Construcción de Acuerdo del Congreso de la Unión* – Executive Committee for the Negotiation and Construction of an Agreement of the Congress of the Union
CFE	*Comisión Federal Electoral* – Federal Electoral Committee
FPPM	*Federación de Partidos del Pueblo Mexicano* – Party Federation of the Mexican People
IFE	*Instituto Federal Electoral* – Federal Electoral Institute
INE	*Instituto Nacional de Elecciones* – National Electoral Institute
PAN	*Partido de Acción Nacional* – National Action Party
PARM	*Partido Auténtico de la Revolución Mexicana* – Authentic Party of the Mexican Revolution
PCM	*Partido Comunista Mexicano* – Mexican Communist Party
PDM	*Partido Demócrata Mexicano* – Mexican Democratic Party
PFP	*Partido Fuerza Popular* – Popular Force Party
PNA	*Partido Nueva Alianza* – New Alliance Party
PNR	*Partido Nacional Revolucionario* – National Revolutionary Party
PPS	*Partido Popular Socialista* – Popular Socialist Party
PRI	*Partido Revolucionario Institutional* – Institutional Revolutionary Party
PRM	*Partido de la Revolución Mexicana* – Party of the Mexican Revolution
PSD	*Partido Socialdemócrata* – Social Democratic Party

PSN	*Partido de la Sociedad Nacionalista* – Party of the Nationalist Society
PT	*Partido de Trabajadores* – Workers' Party
PVEM	*Partido Verde Ecologista de México* – Mexican Green Ecologist Party
TEPJF	*Tribunal Electoral del Poder Judicial de la Federación* – Federal Electoral Tribunal

Colombia

AD/M-19	*Alianza Democrática M-19* – M-19 Democratic Alliance
CE	*Corte Electoral* – Electoral Court
CNE	*Consejo Nacional Electoral* – National Electoral Council
ELN	*Ejército de Liberación Nacional* – National Liberation Army
FN	*Frente Nacional* – National Front Agreement
FARC	*Fuerzas Armadas Revolucionarias de Colombia* – Colombian Revolutionary Armed Forces
M-19	*Movimiento 19 de Abril* – 19th of April Movement
MSN	*Movimiento de Salvación Nacional* – National Salvation Movement
PCC	*Partido Conservador Colombiano* – Colombian Conservative Party
PCR	*Partido Cambio Radical* – Radical Change Party
PD	*Polo Democrático* – Democratic Pole
PDA	*Polo Democrático Alternativo* – Alternative Democratic Pole
PLC	*Partido Liberal Colombiano* – Colombian Liberal Party
PSUN	*Partido Social de Unidad Nacional* – Social Party of National Unity (also known as *Partido de la U[ribe*] – U[ribe]'s Party)

Argentina

AGN	*Auditoría General de la Nación* – National General Auditor
ARI	*Alternativa para una República de Iguales* – Alternative for a Republic of Equals
CNE	*Cámara Nacional Electoral* – National Electoral Chamber
FCE	*Corte Federal Electoral* – Federal Electoral Court
FpV	*Frente para la Victoria* – Front for Victory
FREJULI	*Frente Justicialista de Liberación* – Justicialist Liberation Front
FREPASO	*Frente País Solidario* – Front for a Country in Solidarity
MPF	*Movimiento Popular Fuegino* – Fuegino People's Movement
MPN	*Movimiento Popular Neuquino* – Neuquén People's Movement
PJ	*Partido Justicialista* – Justicialist Party
PP	*Partido Peronista* – Peronist Party
UCR	*Unión Cívica Radical* – Radical Civic Union

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CHAPTER 1 – Party law reform in Latin America

1.1 Latin American party law in action

On 12 November 2011, boxers Manny Pacquiao (the Philippines) and Juan Manuel Márquez (Mexico) faced each other in a Las Vegas ring. The trumpeted 'boxing event of the year' provided an opportunity for Márquez to redeem himself from two earlier, narrow, defeats against Pacquiao. Márquez's fans followed this clash of titans with great interest, as evinced by the 37.2 million viewers that tuned in to the Mexican Azteca television network to watch the fight.[1] Popular support proved insufficient, however, to propel the boxer to a win. Although Márquez remained standing and delivered several heavy blows to his opponent, the judges awarded Pacquaio his third victory over Márquez in a technicality-based majority decision.[2] The outcome caused national sorrow among Mexican boxing fans that saw yet another chance at revenge dissolve into thin air. More importantly, for the purpose of this study at least, the boxing match led a Mexican federal electoral court to overturn a political party's electoral victory.

Why would a Mexican electoral court annul local elections on account of a boxing match organized in the United States? The phenomenon 'party law' is central to answering this question. Party law consists of the body of laws that target all political parties in a given party system (Katz 2004, 2; Müller and Sieberer 2006, 435), such as the constitution, the electoral law, political party law, political finance law, as well as relevant legislative statutes, administrative rulings and court decisions (van Biezen 2008, 342; Janda 2005, 5). What all these legal instruments have in common is that they regulate the basic areas of party structure and behavior: the recognition of an organization as a political party, its external activities, and/or its internal organization (Katz 2004, 3). Combined, these regulatory provisions legally validate the participation of political parties in elections, determine the formal costs of party formation

[1] This equates roughly to one third of the Mexican population.

[2] The Ring Magazine (24 Dec. 2011) 'Readers vote Pacquiao-Marquez III the "Event of the Year" for 2011.'

and party organizational maintenance, and partially set the terms of party competition by determining party access to resources (Molenaar 2014a).[3]

In the case of Mexico, party law prohibits political parties and other actors from obtaining media publicity beyond the official publicity slots that the state allocates to them during election campaigns (Constitution, §41). The Márquez-Pacquaio boxing match took place on the eve of elections in the Mexican Michoacán state. In addition, Márquez's shorts contained a small patch depicting the logo of the Mexican *Partido Revolucionario Institucional* (Institutional Revolutionary Party – PRI). In theory, the exposition of the Mexican television audience to this PRI patch thus formed a constitutional violation. A local branch of the *Partido de Acción Nacional* (National Action Party – PAN) recognized this opportunity and used it to contest PRI candidate Wilfrido Lázaro Medina's victory in the mayoral elections of the Michoacán state capital Morelia. According to local PAN leaders, the constitutional violation provided grounds to annul the elections. In response to these accusations, the *Tribunal Electoral del Poder Judicial de la Federación* (Federal Electoral Court – TEPJF) adopted its own majority decision, in which it agreed with the PAN.[4] Once again, technicalities rather than a popular vote decided the outcome of a fight between two evenly matched competitors.

With this verdict, the Pacquiao-Márquez boxing match became more than a metaphor for the ways in which political parties may fight each other to the last drop. The case underscores the important effect that party law may have on political parties' activities and behavior. It is an example of the pervasiveness of party law, as a patch the size of a hand, worn by an athlete in a boxing match in another country, gains constitutional relevance. The match also provides an example of the consequences that party law may have for political parties. These consequences are not limited to the annulment of local election victories, such as in the above-mentioned case. In its most extreme form, the application of party law results in complete party dissolution and the prohibition of the party's members from forming a new party ever again. Lastly, the match illustrates how electoral courts in many countries have been appointed to a position of watchdogs charged with the oversight over political parties'

[3] By contrast, party statutes (Katz and Mair 1992, 7) and informal organizational rules and norms (Sartori 1976, 72) govern individual political parties internally.

[4] Judges also based this decision on another violation of media publicity rules, as Lázaro had also appeared in a televised event organized by one of the PRI's gubernatorial candidates. See Cambio de Michoacán (29 Dec. 2011) 'La violación directa a la Constitución llevó a anular la elección en Morelia: TEPJF.'

functioning and behavior.[5] This poses important questions as to the independence of political parties from state interference.

1.2 Research question

Intrigued by these issues, this dissertation studies the development and reform of party law in Latin America. This topic is relevant for several reasons. Despite the increased scholarly attention for the phenomenon 'party law', as well as the recognition of party laws' diversity, comparative studies of party law are not common. Most work either focuses on the study of single cases or on particular aspects of party law, such as political finance regulations (Gauja 2016).[6] This dissertation strives to create a more comprehensive understanding of party law reform by bringing together advances in the study of party law into a resource-based theoretical framework. Towards this end, the following chapters zoom in on party law's diversity. Party laws take on many different shapes and forms – some with substantial consequences for democratic governance while others remain very limited in their scope. It is unclear under what conditions adopted party laws constitute a true alteration of the rules of the game and under what conditions adopted party laws are a mere tinkering on the edges. Or, put more simply, why do different types of party law appear as they do?

To provide insights into these questions, this study focuses on the Latin American experience with party law reform. As will be outlined in full detail in Chapter 2, the Latin American region has proven itself an active reformer of party law both throughout the early 20th century and after the region's transition to democratic governance that started in 1978 (Gutiérrez and Zovatto 2011; Nohlen et al. 2007; Zovatto 2006a). At the same time, Latin America is not known for its strong party systems. This raises the important question of why Latin American politicians turn to party law, and to political parties more generally, to structure political life. What it is that political parties and party laws have to offer to Latin American politicians for them to take such an active interest their regulation? These guiding questions are used as a heuristic tool to identify the building blocks for a resource-based theoretical framework of party law reform, which argues that different types of resource threats account for the adoption of different types of party laws. Rather than focusing on the act of adopting party law reforms, this study thereby explores under what conditions politicians opt for one set of rules over others.

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[5] In Costa Rica, Nicaragua, Venezuela, and Bolivia, these electoral courts have even been codified constitutionally as the official fourth branch of government (Jaramillo 2007, 377; López-Pintor 2000, 20).

[6] As noted by Gauja, the working papers made available through the Party Law in Modern Europe research project illustrate the wealth of single case studies.
See: http://www.partylaw.leidenuniv.nl/publications

The added advantage of developing a theoretical framework based on a study of party law reform in Latin America is that the region's party systems and party organizations vary in their degree of institutionalization (Kitschelt et al. 2010; Mainwaring and Scully 1995a). This variance – combined with insights from the classic party organizational literature – allows for the development of a more broadly generalizable theoretical framework that puts party organizational weakness and party organization's quest for survival center stage.[7] The study thereby fills an important gap in the literature on party law reform. Indeed, despite indications that institutional variables matter in explaining variance between party laws (Avnon 1995; van Biezen 2012; van Biezen and Borz 2012; Casal Bertóa, Piccio, and Rashkova 2014; Ewing and Issacharoff 2006b; Karvonen 2007), studies on the dynamics of party law reform more specifically tend to focus on one type of party systems only: established West European democracies (see Clift and Fisher 2004; Koß 2011; Scarrow 2004).[8] The unilateral focus on West Europe runs the risk of introducing a bias in our theorizing on party law reform.[9] A theoretical framework developed to capture the Latin American experience with party law reform will likely travel beyond established party systems only.[10]

A second reason for focusing on the Latin American region is to counter a generalist argument often applied against the study of party law on this continent. This argument holds that the development of party law is irrelevant because it merely fits within the more general legalistic Latin American culture of responding to socio-political problems with symbolic formal laws rather than targeted policies.[11] In line with this argument, it has been stated that "persistent problems of corruption, clientelism, executive-legislative conflict, and the "unrule of law" cast doubt on whether an exclusive focus on "parchment" institutions is sufficient for understanding what drives politics in the region" (Helmke and Levitsky 2006, 1; also see O'Donnell 1996). Indeed, how relevant is a constitution that adopts the formal norm that parties should

[7] This is in line with Dix's contention that the Latin American experience with constructing competitive party systems might be more relevant than the exceptional West European experience for other so-called 'developing countries' (1989, 23).

[8] Casas-Zamora's (2005) book on party finance reform and Scherlis's (2014) study of registration requirements form notable exceptions.

[9] It should be noted that such studies often set out to test Katz and Mair's assertion that the introduction of public funding is symptomatic of Western European democracies' convergence towards cartel party systems (1995) rather than attempting to create a universal theory of party law reform.

[10] This reflects Levitsky and Murillo's observation that theories of institutional development often depart from studies executed within advanced industrial democracies. Such democracies tend to be characterized by strong institutions that are stable and enforced and these factors may therefore interfere with the explanatory factors under study (2009, 117).

[11] See Cepeda Espinosa and Dunkerley (2005) and Domingo and Dunkerley (2005) for a discussion of this culture.

be democratic internally and that they should manage their finances in a transparent manner when such provisions are not enforced whatsoever?[12]

The Mexican example presented above shows, however, that not all Latin American party laws constitute such paper tigers necessarily. The legal retribution that the PRI received for the boxer's patch is particularly striking given Mexico's political history. Informal rules and the PRI party's monopoly over the political process – rather than strong non-partisan institutions – dominated this country's 20th century political process. This legacy might suggest that present-day institutions continue to function in the PRI's best interests. Nevertheless, the TEPJF ruling against the PRI's candidate forms an excellent example of how Mexican politicians adopted effective party laws that reflected a change in the dominant institutional logic. The fact that party law determined the outcome of political conflict by setting limits to party conduct, as occurred in the Mexican case, stands in sharp contrast to the common image of Latin American politics as haunted by strongmen rule and the subjection of formal institutions to personalized leadership. This suggests that, at times, politicians in Latin America do adopt laws that truly matter for party conduct.

From the above considerations it follows that party law reforms vary not only in the legal provisions that they contain, but also in the extent to which these provisions are designed to be effective. The goal of the theoretical framework developed here is therefore to account not only for diversity in the legal provisions of adopted party law reforms, but for the diversity in the intended effectiveness of these reforms as well.[13] This leads to the following research question:

Research question: *why do the legal provisions and intended effectiveness of adopted party law reforms vary?*

As will be discussed at length in the section on operationalization in Chapter 4, the study distinguishes between fundamental values that apply to political parties, political finance regulation, party formation rules, and candidate selection rules as the main legal provisions that may vary. In terms of intended effectiveness, the study investigates to what extent the legal provisions connect logically to the reform's stated problem and to what extent party laws contain the necessary *ex ante controls* – the additional legislation and institutions necessary for implementation – to ensure that

[12] Empirical studies show indeed that Latin American party laws often lack provisions for their enforcement (Freidenberg 2007; Lujambio 2007; Zovatto 2010).

[13] I focus on intended effectiveness rather than effectiveness per se, because the effectiveness of reforms is influenced by many factors outside of the legislative arena as well – such as by the work of implementing agencies and unanticipated consequences. The purview of this study is to explain the design of party laws rather than what happens after party laws have been adopted.

policies are executed effectively and in accordance with the legislative will (Strøm 1995, 73).

1.3 A resource-based approach to party law

To explore why adopted party laws vary, this study develops a resource-based approach that assumes that different strategies of party law reform result in the adoption of different types of party laws. This approach takes for granted Koß's observation that a consensus among relevant political actors constitutes a necessary condition for the introduction and reform of party law (2011). The specifics of which actors constitute these relevant political actors, and the circumstances that facilitate such a consensus, depend on many contextual variables.[14] Regardless of the institutional obstacles to, and requirements for, consensus formation, however, this study departs from an empirical reality: the majority of Latin American legislatures adopt party law reforms on a frequent basis.[15]

Rather than focusing on when or how these reforms come about procedurally, the aim of this study is to understand the variance in the legal provisions and intended effectiveness of the laws adopted during reform processes. Adopted party law reforms thereby constitute the population of cases under study here, meaning that I explore possible causes for the different types of adopted party laws that appear. By extension, variance on the dependent variable consists of variance in adopted party laws. I do not seek to explain why party laws as a phenomenon do or do not appear.

To explore why and when different types of party law come about, this study develops a resource-based perspective on party law reform. The perspective follows from the heuristic question introduced above: what does the political party do for politicians to ensure that politicians care about their regulation? Building on the political party literature, I argue that an efficient party organization contributes to politicians' ability to *present successfully in elections* and to *legislate effectively* (Aldrich 1995; Hale 2006). The reasons for this are both technical and substantive: many countries only

[14] For example, legislative organization, as codified in the constitution, ordinary statute law, and assembly rules, determines the procedural requirements that political actors need to fulfill to reach a consensus (Benoit 2007, 382–83; Strøm 1995, 63). Electoral results and legislative institutions determine the ease of forming an undefeatable and policy viable coalition (Strøm 1990). The number of institutional and partisan veto-points that exist influence the ease of consensus formation (Tsebelis 1995). In the Latin American context, many presidents hold a monopoly over the legislative initiative and hence need to be brought aboard reform efforts as well (Mainwaring and Shugart 1997). In such instances, the executive constitutes a 'genuine veto player' who has the "institutional power to approve, modify or veto policies in intricate decision-making processes" (Koß 2008, 286).

[15] See this study's web appendix for an overview of all party laws and party law reforms adopted in post-transitional Latin America. This web appendix is available at: http://www.partylaw.org.

allow parties to present candidates for elections (Kitschelt et al. 1999, 44) and/or have adopted legal provisions that severely disadvantage individual candidates vis-à-vis political parties (Müller and Sieberer 2006, 441). In addition, party organization provides politicians with 'collective and selective incentives' (Panebianco 1988) that they can use to present in elections and to overcome obstacles to legislative coalition formation (Aldrich 1995; Kitschelt et al. 1999). These incentives offset the costs that politicians incur when they subject to an organization, as minimal as this subjection may be (Hale 2006).

To provide incentives for politicians to join their party organization, political parties require resources. Resources consist of the stock or supply of money, materials, staff, and other – material or immaterial – assets that can be drawn on by a person or organization in order to function effectively. An important characteristic of resources is that they tend not to exist in abundance and that a political party's access to them is not necessarily stable. Instead, access to party organizational resources may change due to external or internal circumstances (Panebianco 1988; Pfeffer and Salancik 1978[2003]). Politicians have multiple strategies at their disposal to respond to changes in the resource distribution balance. In line with Hirschman's theory of voice and exit (1970), politicians may exercise pressure on the party leadership to change the organization so that it continues to serve their individual goals. Alternatively, they may leave their party and join another one where they can expect more effective returns for their investments. The omnipresence of party law in contemporary (Latin American) democracies provides politicians with a third strategy, as they can press for party law reforms that redress the party organizational resource distribution balance.

In line with the conservative logic of party organization (Harmel and Janda 1994; Michels 1915[1968]), individual politicians are therefore expected to have a vested interest in maintaining continued access to party organizational resources. By extension, the specification of the ways in which changing socio-political circumstances alter the party organizational resource balance allows for the formulation of exploratory propositions on when we can expect certain types of adopted party laws to appear. These propositions are further developed in Chapter 3. Suffice it to say here that party law reforms' legal provisions and intended effectiveness should be under-

stood as a consequence of threats to political parties' access to the resources needed to satisfy their politicians' goals.[16]

1.4 Research design

To study how changing socio-political circumstances translate into adopted party laws, this study takes some pioneering steps into the black box of the party law reform process. It does so by looking at reform strategies. Reform strategies constitute a prioritization of interests and the translation of these interests into the design and adoption of a specific party law reform (Scarrow 2004, 655).[17] To study reform strategies, I identify the agenda-setting politicians that drove each reform effort and analyze their statements in defense of the reform.[18] In addition, I compare initial reform proposals with the final reform bill and analyze committee and legislative debates to identify how a broader coalition of politicians defined their interests and pushed for these interests' inclusion in the adopted party law reform. Care is also taken to identify how politicians refer to relevant changing socio-political circumstances to defend this prioritization of interests.[19]

Given the theory-building nature of this study, the research design needs to control for rival explanations to increase the validity of the study's findings (Mahoney 2000, 398). Diachronic comparisons within single countries allow for such elimination by keeping other variables constant (Gisselquist 2014, 479). Towards this end, this study will compare various reform processes within the following four countries: Costa Rica, Colombia, Argentina, and Mexico. Each of these countries underwent multiple rounds of party law reform, which allows for within-country comparisons that approximate a most-similar method of exploratory case selection (Seawright and Gerring 2008, 298).[20]

In addition, and as will be discussed at length in the following chapters, the resource-based perspective on party law developed here is not the only explanation for

[16] This instrumental take on party law reform does not translate directly into normative concerns. Instrumental party law reforms that protect the interests of vested politicians in the short-term may well contribute to party system institutionalization in the long term, for example, by increasing the relevance of established party organizations. In other words, not all instrumental laws are 'bad' laws necessarily.

[17] The word strategy is not used to imply proactive strategizing but to distinguish between different targeted responses.

[18] All in-text citations of relevant material are my own translations. Where possible, I have added the original Spanish text in footnotes.

[19] Relevant changes have been identified *a priori* through a contextual analysis of changes in the political system, party system, and party organization.

[20] It should be noted, however, that insufficient data on reform strategies and adopted party laws were available *a priori* to execute genuine most-similar case selection.

differences in the outcome of adopted party law reforms. Institutional variables, such as party system institutionalization and the age of democracy, have been identified to influence adopted party laws as well (Avnon 1995; van Biezen 2012; van Biezen and Borz 2012; Casal Bertóa, Piccio, and Rashkova 2014; Ewing and Issacharoff 2006b; Karvonen 2007). The research design therefore controls for the influence of party system institutionalization and the age of democracy to explore whether the resource-based perspective travels meaningfully across different institutional settings.[21] Towards this end, the comparative design departs from the careful matching of cases based on variance in relevant independent variables (Lijphart 1971, 687; Tarrow 2010, 244).

The case selection process, which is discussed at length in Chapter 4, creates such variance. Costa Rica constitutes a relatively established, institutionalized party system. Colombia is a case of an established democracy, whose party system has grown less institutionalized over time. Argentina is a young democracy with a weakly institutionalized party system. Mexico, lastly, is one of the youngest democracies in the region, but one that has been able to develop an institutionalized party system. Selection of these countries thus allows for both within-country and cross-country comparative analyses of reform processes that explore the relevance of the resource-based perspective while controlling for institutional – and other potentially relevant – variables.

1.5 Scientific and societal relevance of the study

This study follows in the footsteps of recent advances in the electoral systems literature that treat institutional design as one among multiple political outcomes (Benoit 2004, 2007; Boix 1999; Colomer 2005; Renwick 2010).[22] It similarly takes the variant outcomes of party law reform as one among multiple political outcomes and integrates the existing literature on party law reform and its subthemes registration requirements, political finance regulation, and regulation of candidate selection into an overarching theoretical framework to understand why certain party law reforms come about. To my knowledge, such a comprehensive framework of party law reform does not exist to date.

[21] Studying party law reform in Latin America has the advantage that it introduces variation in the degree of institutionalization and democratic experience in the cases under study. Mainwaring and Scully (1995a) show that Latin American party systems differ from one another as to their degree of institutionalization. Kitschelt et al. (2010) likewise find substantial variation in the extent to which programmatic competition – arguably the most institutionalized form of party competition – structures political parties in Latin America. In a similar vein, Latin American countries differ markedly from one another in terms of their democratic experience (Munck 2015).

[22] Also see Lijphart (1994) and Negretto (2013) on constitutional design.

The advantage of using the resource-based perspective – derived from the heuristic question of what the political party offers to politicians for the latter to care about party regulation – is that it can provide an alternative to a common assumption on reform motivations found in the party law literature. Recent studies on party law reform tend to depart from implicit causal explanations for the development of party law. Most prominently, such studies follow Katz and Mair's cartel party theory (1995, 2009), which suggests that established parties adopt party laws to close off electoral competition to new contenders and to protect the electoral position of an existing party cartel. Rather than taking such assumptions for granted, this study investigates whether different socio-political circumstances result in different types of adopted party laws by putting into motion different reform strategies.

The study's findings are expected to speak to two larger debates as well. Firstly, the resource-based approach to party law connects to party organizational theories that hold that organizational adaptation is a key element for political parties' survival (Mair 1997, 16). Over time, this adaptive dynamic has given rise to a wide array of party organizational formats, or party types.[23] Alternatively, party organizations "also have their own autonomous effect on the environment: they can thus ward off the blows of environmental changes and pressures, to some extent" (Panebianco 1988, 207; also see Mair 1997, 89; Rose and Mackie 1988, 534). This study evaluates the extent to which party law reform forms yet another strategy for politicians to respond to environmental changes that might threaten their political parties' ability to foresee in their organizational needs.

In addition, the study's findings inform more normative debates about the independence of political parties from state interference in general, and from judicial interference in particular (van Biezen 2012, 206; Katz 2011, 599–604; also see O'Donnell and Dunkerley 2005). The development of party-law-related jurisprudence provokes the question to what extent such judicialization of politics is a desirable development, as this process alters the balance between judicial guardianship and democratically elected institutions (Domingo 2004, 111).[24] In the process, the judi-

[23] Examples that stand out are the mass party (Duverger 1964), the catch-all party (Kirchheimer 1966), the electoral-professional (Panebianco 1988) the modern cadre party (Koole 1992), and the cartel party (Katz and Mair 1995). Studies of Latin American party organizational change at transitional moments, such as the Mexican PRI (Langston 2006b), the Argentine Peronist party (Levitsky 2003), and the main Chilean parties (Siavelis 1997) point towards a similar conclusion: party organizations survived such critical junctures due to their elites' ability to transform the organization effectively in the face of changing political contexts.

[24] Domingo notes that these issues reflect "long-standing dilemmas in constitutional democracy concerning the judicial function, such as the balance between judicial guardianship of constitutional principles and majoritarian rule, and the question of who watches the watchmen" (2004, 111).

cialization of politics may also endanger the judiciary's independence once political actors realize that their political goals are best served by coopting this branch (Sieder et al. 2005, 9). This study does not aspire to solve this complex debate definitively, but its findings may contribute to a more empirically based understanding of the way in which Latin American party law development raises concerns about judicial involvement in political life.

The focus on party law reform in Latin America has additional consequences for the theoretical and societal relevance of this study's findings. A theoretical framework developed to capture the Latin American experience with party law reform across a variety of institutional contexts likely travels more easily to other newly democratizing countries in, for example, Eastern Europe, Africa, or Asia. At the same time, this study's purported identification of conditions that contribute to the adoption of party law reforms that are designed to matter could serve as a guide for politicians, experts, and NGOs in newly democratizing regimes that wish to regulate their political parties as effectively as possible.

The empirical contribution of the book is that it puts Latin America's experience with developing party law forefront. In 1926, for example, Uruguay was the first country in the world to introduce public funding for political parties. The practice of providing political parties with access to state media during elections campaigns and the introduction of legislative gender quota also found its origins in Latin America.[25] As a final example, the Mexican *Instituto Nacional Electoral* (National Electoral Institute – INE) constitutes one of the largest, most powerful, and well-funded electoral monitoring bodies in the world. The INE's oversight over political parties is so far-reaching that it may overrule bank, fiscal, or fiduciary secret and can request the tax information of all Mexican citizens (Molenaar 2012b). Contemporary research on party law mostly overlooks these experiences. This study's overview of the historical development of party law in Latin America, the accompanying construction of an online database of all Latin American constitutional references to political parties since independence, and the appended online inventory of all post-transitional Latin American party laws provide party law scholars with a meaningful contrast to the more familiar European experience.[26]

[25] In 1945, the Argentine government adopted a statute that granted parties state radio access during elections. In 1991, Argentina was also the first country in the world to introduce legislative gender quota. Latin American countries have also made strides in the regulation of intra-party candidate selection processes, as all countries but El Salvador and Cuba regulate the method of candidate selection through party law (Molenaar 2014a). By contrast, only four out of the 21 European countries investigated by van Biezen and Piccio (2013) do so.

[26] The database and inventory are available at: http://www.partylaw.org.

1.6 Structure of the book

The following eight chapters elaborate the argument introduced in this chapter. Chapter 2 outlines Latin America's general and innovative experience with party law reform to tentatively answer the heuristic question what the legal regulation of political parties offers to politicians. The first part of the chapter presents a historical comparative content analysis of all Latin American constitutional articles on political parties from the days of independence to the present. The second part of the chapter provides a broader comparison of the contemporary regulation of political parties.[27] The purpose of these analyses is to identify normative conceptions of political parties that underlie these rules and to analyze whether these conceptions have changed over time. Answering this question provides some first pointers as to the formal utility that Latin American political parties and, more importantly, their legal regulation have for politicians.

Chapter 3 provides an overview of the state of the art, which lays down the foundation for a theoretical framework that departs from a resource-based perspective. The chapter starts with a discussion of the effects of party law on political life. These effects suggest that party law reform should be understood in relation to political parties' organizational format. In addition, the chapter provides an overview of recent studies on party law reform processes. The need to respond to threats to party organizational access to resources runs like a common thread through all these studies. The resource-based perspective developed here identifies how different types of changes in socio-political circumstances create different types of resource threats and thereby alter political parties' ability to provide their politicians with access to fundamental party resources. By extension, the legal provisions and intended effectiveness of adopted party law reforms can be linked to these imminent resource threats. The variance in resource threats provides an important indicator for why not all reforms result in resource maximizing laws that increase the established parties' access to money or power. Other strategies may guide the reform process instead.

Chapter 4 discusses the research methodology applied in this study, operationalizes the main concepts, and introduces the comparative research design. The chapter outlines why case study analysis of various party law reform processes is an appropriate method to explore the extent to which organizational concerns drive party law reform strategies and determine the legal provisions and intended effectiveness of adopted party law reforms. In addition, this chapter discusses the operationalization and measurement of resource-based party law reform strategies. Lastly, the

[27] This broader analysis compares the rules found in constitutions, electoral laws, political party laws, political finance laws, etc.

chapter introduces the four countries that are compared to control for the influence of institutional characteristics on party law reform, which are Costa Rica, Mexico, Colombia, and Argentina.

Chapters 5 through 8 present an analysis of party law reform in each of these countries. The country chapters start with a historical overview of party law development in each country and provide important information on how governments historically developed party law in response to political disorder. The main part of each chapter describes the country's political context in terms of changes in the political system, party competition, and party organizational cohesion. It connects the stability or change of these dimensions to the frequent processes of party law reform that took place in each country. Particular attention is paid to the legal provisions contained in these reforms and the extent to which politicians designed the reforms to matter.

Chapter 9 compares the findings of these four country chapters to produce generalizable conclusions. In addition, within and cross-country comparisons identify the extent to which institutional characteristics explain variance in the reform strategies that these countries apply. The chapter places these findings within the larger body of party law scholarship and civil society work on party law to recommend further lines of inquiry. In addition, it discusses the study's implications for our studies of party law reform, the judicialization of politics, and democracy and democratic governance more generally.

CHAPTER 2 - A historical overview of Latin American party law

2.1 Introduction

Constitutions are "instruments of government which limit, restrain and allow for the control of the exercise of political power" (Sartori 1994, 198). Constitutions create an organizational basis for the state premised on two dimensions. Procedural constitutional provisions regulate the allocation of authority to state organs and institutions, the distribution of power between them, and their relation to the private sphere. The adoption of certain institutional configurations is also a fundamental political decision based on normative conceptions regarding the ideal manifestation of government (van Biezen 2012, 189–90; van Biezen and Borz 2012, 328; also see Piccio 2015). Based on these two dimensions, constitutions "not only reflect a particular vision of what the distribution of power actually is, but also of what is should be" (van Biezen 2012, 190).

The way in which constitutional engineers codify political parties hence speaks volumes about the formal roles ascribed to political parties in the political system, and of these engineers' more normative ideas about political parties' role in the political process more generally. From the above, it follows that an analysis of the constitutional codification of political parties may provide tentative insights into why Latin American politicians turn to political parties, and to party law by extension. Towards these ends, this chapter presents a historical comparative analysis of political party constitutionalization using a database of all Latin American constitutional references to political parties since independence to the present.[28]

[28] The database is available as a web appendix to this study at: http://www.partylaw.org. Constitutional provisions adopted by democratic and authoritarian regimes alike have been included in both the database and the analysis.

To my knowledge, this database is the first attempt to chart the Latin American constitutional regulation of political parties in a structural and comparative manner. The database contains 513 constitutional articles found in 67 constitutions and 68 constitutional amendments adopted by the 19 countries that are generally included in studies of Latin American politics.[29] The constitutional articles have been coded in accordance with the coding scheme that van Biezen and Borz (2009, 2012) developed to analyze European constitutions.[30] The analysis presented below discusses the development of the procedural rules and the fundamental values that apply to political parties, as found in these constitutions.

The development of constitutional references is not a static process, but also fits within a larger story of state formation and democratic consolidation (van Biezen 2012; van Biezen and Borz 2012). This chapter therefore analyses the constitutional codification of political parties in the region throughout five different periods of state building and consolidation: 1) nascent Latin American statehood and the rejection of political factions (1820's-1870's), 2) the rise of oligarchic rule and the adoption of party laws as a reflection of the shift to modern party government (1870's-1930's), 3) the advent of popular democracy and the constitutionalization of political parties (1930's-1950's), 4) the development of authoritarian (populist) regimes and repressive dictatorships and the accompanying use of party law for exclusionary and legitimizing purposes (1950's-1980's), and 5) the development of party law during the transition and consolidation of delegative democracies and the rise of participatory forms of governance in the Andean region (1980's-present).

2.2 1820's-1870's: nascent Latin American statehood and the rejection of factions

2.2.a Elections as a means to legitimize political independence

Latin American independence erupted in a spontaneous and rapid fashion in less than two decades time. Starting in 1810, the majority of the countries in the region proclaimed independence from their motherlands and adopted national con-

[29] Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela.
[30] Appendix 1 discusses the coding rules applied to construct the database.

stitutions that established republican states.[31] These republics were not born out of a desire to instigate radical social change, as had been the case during the French Revolution. Instead, Latin American independence movements capitalized on the 1807 French invasion of the Iberian Peninsula. The ensuing opportunity for self-governance, the waxing and waning of the exiled imperial government's hold over the region, and the spring of Enlightenment, combined to bring to power a domestic Latin American elite that had been negated a say in imperial politics traditionally (Centeno and Ferraro 2013, 3).

The independence movements broke away from a colonial empire that legitimized its rule through royal lineage and divine right. The majority of Spanish American elites therefore regarded the republican constitutional political system as the main viable option for state formation and the legitimation of political rule (Drake 2009, 60; Knöbl 2013, 71–72). The introduction of elections, albeit very restricted ones, allowed Latin American elites to select and legitimize their interim governments in a consensual manner.[32] Concomitantly, and in response to these pressures for independence, the Courts of Cádiz, the Spanish throne's legislative body in exile, formed a national sovereign assembly to rule over the Spanish territories. These courts adopted the 1812 Spanish Constitution that inaugurated both municipal elections and indirect elections for the courts' delegates in most of the Hispanic world (Drake 2009, 79-81).[33] Both competing sets of elections set similar precedents for the development of Latin American political systems. Their introduction proved more fundamental in establishing and legitimizing a transitional political order that turned away from formal colonial governance than that it responded to popular pressure for more inclusive political systems.

It is commonly held that the formation of national legislatures and constituent assemblies creates a need for the members of these bodies to act in concert (Duverger

[31] Brazil, Haiti, and Mexico formed the three main exceptions that adopted monarchies at one time or other. In 1822, emperor Dom Pedro I proclaimed an independent Brazilian monarchy that would last until 1889. An emperor ruled over Haiti between 1804 and 1847 and between 1849 and 1859. After independence in 1821, Mexico became a monarchy. The First Republic of Mexico replaced this monarchy in 1823. The country reverted back to a monarchic system between 1864 and 1867. Cuba is a final exception. This country would not be liberated until 1898 and thereby remained the only Spanish colony in the region throughout the 19th century.

[32] Building new states on the basis of elections seemed the best political alternative in this transitional context, and one that had already been tried and tested successfully in other countries that had achieved independence, such as the United States (Centeno and Ferraro 2013, 3).

[33] In theory, the 1812 Constitution granted suffrage to all males (except those of African descent) without adding any literary or proprietary restrictions. In practice, the political will of local leaders determined the extent to which electoral participation was restricted, although some examples exist of remarkable instances of popular participation (Rodríguez O. 1999, 18).

1964, xxx). For Latin American elites, this was the case in particular because the foundation of the new republics revolved around fundamental constitutional issues, such as whether the new states would be federal or unitary ones. This explosive divide overlapped with the economic interests of new urban-based elites versus the interests of more traditional rural-based elites that had founded their empires on the export of agricultural products. Too liberal a constitutional design threatened these vested interests. In response, elite blocs arose to exert influence over the national agenda (Centeno 1997, 1591; Dix 1989, 24).

At the same time, the new states and legislatures existed conjointly with *caudillos* (strongmen rulers) and their private armies that controlled public order. Factional conflict within the nascent legislatures reflected larger armed struggles between these authority figures that fought to protect and expand their domains of power within an anarchic context.[34] As a consequence, the early independence years marked a period of severe conflict over the foundational nature of the state (Centeno and Ferraro 2013, 14; Kurtz 2009). The continuous clashes over the state foundation process also resulted in an outpour of constitutions to legitimize the political ascent of different combative groups to power and/or to implement partisan measures. [35] Drake (2009, 96) notes, for example, that the approximately 18 Latin American countries adopted more than 80 constitutions between 1820 and 1870.[36] The content of these constitutions is reflective of the power struggles over the nascent Latin American state.

2.2.b Inexistence of party law

The early Latin American constitutions and other legal texts made no references to political parties. In a way, this is exceptional as Latin American constitutions were quite lengthy compared to those adopted in, for example, the United States and Europe. In addition, Latin American constitutions spelled out the institutional foundations for the new republics in great – albeit only partially enforced – detail (Drake 2009, 27–32). The frequent adoption of new constitutions over the course of the 19th century provided constitutional reformers with ample room to adopt provisions on political parties. This begs the question why constitutional designers did not deem it necessary or appropriate to adopt provisions on political parties.

[34] This dynamic occurred in many of the new Latin American states, such as Argentina (Rapoport 2003), Colombia (Hernández Becerra 2006, 332), the Dominican Republic (Espinal 2006, 806), and Uruguay (Rilla 2004, 168).

[35] From the late 1820's to the mid-1850's, this violent conflict also resulted in the rise and fall of autocratic rulers that imposed centralized solutions to control the anarchic state formation process (Drake 2009).

[36] The existing number of states fluctuated due to continuous processes of federation formation and discontinuation.

The constitutional omission of parties likely resulted from the common perspective that nascent parties, or factions, were vicious political institutions that harmed the creation of a central state. Indeed, such a negative appreciation of parties was quite common throughout the world at critical points in political history. Bolingbroke's (1733) famous 'Dissertation Upon Parties', written against the backdrop of comparable foundational conflicts between Parliament and the Crown in 17th and 18th century Great Britain, is the first known work on political parties.[37] In it, Bolingbroke asserts that the nature of politics would lead parties to necessarily degenerate into factions that subjugated national principles to personal interests and that thereby endangered constitutional rule.[38]

An identical unfavorable appreciation of political parties is visible in the 18th century writings on political parties in the United States. The 'Federalist Papers', written in defense of the ratification of a Constitution and the adoption of a federal Union, promoted federalism to mitigate the danger of parties and factions. Madison argued, for example, that "the Union would help "to break and control the violence of faction," which had been, and remained, the "dangerous vice" of popular governments" (cited in Sartori 1976, 12). Early Latin American political thinkers were similarly concerned with political parties' role in their burgeoning political systems. This outlook on political parties is perhaps best visible in the discourse of the father of the Latin American independence movement: Simón Bolívar. After the overthrow of the first republican Venezuelan government in 1812, Bolívar identified the causes of the destruction of the Republic in his Cartegena Address: "[t]he internal factions were in reality the mortal poison that pushed the country into her grave" (Bolívar 1812[2003], 8).[39]

[37] According to Sartori (1976, 6), this is the first main body of work that discusses political parties at length.

[38] This mistrust of parties due to their potential factitious nature is visible in Hume's 'Essays' (1777[1987]) on political parties as well. Hume distinguishes between political factions of interest, affection, or principle. He identifies principle-based factions – parties – as the least detrimental form of political organization and therefore accepts parties as a mere "unpleasant consequence, hardly as a condition, of free government" (cited in Sartori 1976, 8).

[39] *las facciones internas que en realidad fueron el mortal veneno que hicieron descender la patria al sepulcro.* Bolívar's cynical outlook on the role of political parties in the Latin American state building project also comes to the fore in a remarkable manner in one of the final letters he wrote before his death in 1930. In it, Bolívar addressed the Gran Colombian nation (present-day Venezuela, Colombia, and Ecuador) with the words that "[i]f my death contributes to the cessation of factions and the consolidation of the Union, I will step peacefully in the grave" (1830[2003], 150). *Si mi muerte contribuye para que cesen los partidos y se consolide la Unión, yo bajaré tranquilo al sepulcro.*

The discourse surrounding the introduction of the 1833 Chilean Constitution confirms that constitutional engineers regarded political parties as a purely empirical reality – and one detrimental to the central state project at that – that merited no place among the institutional design of the state. Arguably the most successful example of constitutional engineering in 19th century Latin America, this constitution would remain in force until 1925. President Joaquín Prieto introduced the reform stating that:

> Without paying attention to deceptive or impractical theories, they [the reformers] have only paid attention to the means needed to safeguard public ORDER and TRANQUILITY. Against the risks of the changing political fortunes of the *parties* that society has been exposed to. The reform is nothing other than a way to end the revolutions and the unrest that have resulted in the disarray of the political system and that the triumph of independence has brought upon us (El Araucano, 1 June 1833, No. 142 – italics FM).[40]

The marked contrast between the need to establish political order and the 'risks of the changing political fortunes of the parties' catches the eye. Prieto may have recognized factions as a political reality, but he did not look upon them favorably given their role in dividing society and in inhibiting the formation of a strong and effective state. It comes as little surprise that the 1833 Chilean Constitution did not recognize political factions or the role they played in the political process.[41]

2.2.c The Colombian exception

The 1886 Colombian constitution is the one exception that confirms the rule that 19th century Latin American political elites refused to recognize political organizations as fundamental institutions in their new political systems. Adopted as a means to end the interminable feuds between unitary and federalist elites, the 1886 Constitution replaced Colombia's 1863 federalist Constitution. Towards this end, the constitution established a centralist government and turned the federal states into departments (Delpar 1981, 133–34). Most relevantly, the new constitution forbade

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[40] *Despreciando teorías tan alucinadoras como impracticables, sólo han fijado su atención en los medios de asegurar para siempre el ORDEN y la TRANQUILIDAD pública. Contra los riesgos de vaivenes de partidos a que han estado expuestos. La reforma no es más que el modo de poner fin a las revoluciones y disturbios a que daba origen el desarreglo del sistema político en que nos colocó el triunfo de la Independencia.*

[41] In a similar vein, Rilla (2004) describes how the 1830 Uruguay constitution – another example of successful constitutional engineering that would remain in force until 1918 – made no mention of the political organizations that had already been established in an embryonic form as a means of political contestation. Despite the domineering role that these caudillo organizations played in Uruguayan politics from the early 19th century onwards, constitutional engineers regarded political factions as an aberration of the constitutional rules of the game rather than forming an essential part of these rules.

the formation of "permanent political associations" (§47).[42] Given the political purpose of the new constitution, the explicit prohibition of parties likely served as yet another means to combat internal divisions and to promote a central state building project. The constitution only mentioned political parties to the extent that they were an undesirable phenomenon that needed to be banished from the institutional scenery.

At the same time, however, the Colombian case also presents an example of how constitutional norms oftentimes formed little more than theoretical aspirations and ideals. In reality, organized political factions had become ingrained so firmly in Colombian political life that they were able to make good use of the centralized political system introduced by the 1886 Constitution to create an oligarchic party system (Delpar 1981). As would occur in several other countries in the region from the 1870's onwards, elite compromise contributed to the consolidation of nascent democratic systems that relied on political parties as a functional necessity for the conduct of elections and the ordering of the legislature.

2.3 1870's-1930's: oligarchic rule and the shift to modern party government

2.3.a The formation of oligarchic political stability

From the mid-19th century onwards, relative socio-economic and political stability ushered in a period of increased Latin American state consolidation. Three major factors contributed to this development. The consolidation of export-economies resulted in economic prosperity and political stability. The Latin American states also imposed greater authority throughout their territories through victorious military campaigns and negotiated partnerships (Centeno and Ferraro 2013, 14–15). Most importantly, elites consolidated political regimes to manage the societal and intra-elite tensions inherent in their political systems.

In most countries, such political consolidation took the shape of dictatorships, as the extreme centralization of leadership proved key in dealing with the anarchical forces

[42] *Son prohibidas las juntas políticas populares de carácter permanente.*

unleashed by independence and unequal societies (Drake 2009, 134).[43] Other countries resolved political division and conflict through the construction of an oligarchic system of limited democratic governance. These systems mainly appeared where elites were able to overcome intra-elite differences and agreed on a common central state building project to promote and defend shared interests (Centeno 1997; Kurtz 2009). The oligarchic projects resulted in regimes in which "presidents and national assemblies derived from open, if not fully fair, political competition for the support of limited electorates, according to prescribed constitutional rules and which were largely comparable to the restrictive representative regimes in Europe of the same period" (Hartlyn and Valenzuela 1995, 99–100; also see Di Tella 1994). Depending on the type of regime at issue, this meant that, to a certain extent, political elites continued to seek recourse to electoral fraud to win elections and that suffrage was still restricted. Nevertheless, the main achievement of the oligarchic regimes was that they constituted a shift from belligerent intra-elite conflict and/or dictatorial rule to organized electoral conflict over the governing and legislative arenas (Drake 2009, 126–27).

The parties that appeared around this time period were an elementary form of what Duverger (1964, xxx) calls 'externally created parties' that arise in response to the need to organize voters. Over the course of the 19th century, several of these proto-parties in the region turned into basic electoral machines that built a pyramid of patron-client networks and usually represented upper-class cleavages such as those related to families, personalistic interests, regions, or the opposition between the Church and the State (Drake 2009, 122–23; Hartlyn and Valenzuela 1995, 119–20). From the mid-19th century onwards, some of these parties became consolidated to the extent that they adopted political programs and statutes (Drake 2009, 122–23; Hartlyn and Valenzuela 1995, 119–20). Nevertheless, the need to secure access to power through elections – rather than their desire to contribute to broad-based political representation – formed their existential cause.[44]

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[43] The rise of dictatorships did not negate the formation of political parties necessarily. Many of these regimes tended to confirm their legitimacy through the regular organization of (restricted) elections and based their legitimacy on a republican constitution (Drake 2009, 134). The decade-long rule of Porfirio Díaz over the Mexican state (1876-1910) is a case in point. Díaz consolidated his rule through the creation of a strong political machine and the centralization of power and legitimized this rule through regular, fraudulent, indirect elections (Paoli Bolio 1985, 131) that nevertheless applied the principle of universal male suffrage. The parties that operated in these elections were of a temporal nature (Knight 2013, 119).

[44] This is reminiscent of the parties identified by Ostrogorksi (1902) in late 19th century in Britain and the United States.

2.3.b The legal recognition of political parties' electoral and legislative roles

In response to these developments, several early 20th century Latin American constitutions and electoral laws recognized that parties had become a functional necessity for the conduct of elections and the structuring of the legislature. These laws thereby constitute the first legal recognition of the institution political parties. Colombia, for example, mentioned the electoral role of parties in a 1910 constitutional reform, which introduced the electoral principal of proportional *party* representation (Acto Legislativo 3, §45 – emphasis FM). In 1914, the Chilean electoral law established procedures for the inscription of *party* candidates (§104 – emphasis FM).[45] In its 1924 Electoral Law, lastly, Bolivian regulated parties' electoral function by adopting rules on the printing of *party* candidate lists. This entailed the recognition that political parties – among other groups – presented candidates at elections (Lazarte 2006, 244).[46] Moving beyond the mere recognition of political parties, Panama, which seceded from Colombia in 1903 and had inherited the latter's oligarchic Liberal and Conservative political parties, was the first country to explicitly regulate political parties' role in the electoral process. In a clear instance of the legal codification of political parties' contribution to upholding the oligarchic system, the 1916 Administrative Code established that political parties would only be recognized if they organized throughout the entire country (§§226-227) and that only registered parties would be allowed to present candidates in elections (§§228-230).

2.3.c Uruguay: a country far ahead of its time

Over the next decades, several countries in the region transitioned from oligarchic rule into even more inclusive forms of representative party government. In the case of Uruguay, this development resulted in the transition to a new, and very early, model of party regulation as well.[47] In 1918, after decades of armed conflict, the two main oligarchic parties in Uruguay adopted a progressive constitution. The constitution was a political compromise resulting from divided government, as a different group of elites than the one in government dominated the Constituent Assembly. At the same time, both sides possessed veto power to block the adoption of the new constitution (Chasquetti and Buquet 2004, 226). Consequentially, the reform process

[45] The law also stipulated that parties could appoint representatives to the electoral juntas (§104).

[46] Early regulatory efforts also focused on the role of political parties in the monitoring of electoral proceedings. The 1896 Peruvian Electoral Law established, for example, that political parties could send delegates to attend the deliberations of the National Electoral Junta (§§17-18), while the 1908 Bolivian Electoral Regulation established that members of political parties could present complaints at election stations during the voting process (§44). This was likely due to the rampant practice of electoral fraud mentioned above.

[47] Other examples where such a transition took place include Argentina (1912-1930) after its adoption of universal male suffrage in 1912 (Rapoport 2003) and Chile (1920-1924) after middle and working classes defeated the traditional parties in the 1920 presidential elections (Drake 2009, 159).

resulted in a consensual project that contained reciprocal concessions. It formed a clear example of the country's early institutionalization of order and stability through political compromise (De Riz 1986).

To achieve these aims, the parties codified co-participation in government, introduced proportional representation, and implemented obligatory and universal male suffrage in continuous elections. As occurred in the examples of the oligarchic republics discussed above, the new constitution mentioned political parties in passing due to their electoral and legislative functions. Article 9.2 acknowledged political parties electoral role by prohibiting both police and military personnel from participating in political clubs and from endorsing party manifests.[48] Article 132 also acknowledged political parties' legislative role as it stated that:

> "Secondary legislation will determine the duration of the Representative Assemblies, the number of its members, the form and date of their election, the conditions for being elected, the competences of the Assemblies, the means to safeguard against its resolutions and *the representation of the parties* in the administrative councils [emphasis FM]."

The 1918 Constitution resulted in the democratization of the political system and legally solidified the established political parties' hold over politics. Complex electoral legislation accompanied the introduction of these new constitutional norms to ensure the two traditional parties' electoral unity that had been threatened historically by intra-party conflict (Casas-Zamora 2005, 79; Davis 1958, 103).

Although the 1918 Constitution maintained the limited model of merely recognizing political parties' role in elections and the legislature, it set the stage for the transformation of Uruguayan party law to a new model of regulation. Over the course of the 1920's, political parties secured their role as necessary institutions for the conduct of elections and governance to such an extent that in 1928 Uruguay became the first country in the world to adopt a post-electoral financial reimbursement scheme for political parties (Casas-Zamora 2005, 96). This reform was deemed necessary due to the fundamental role that the constitution of government held for the Republic and was proposed to facilitate "the exercise of the right to vote to all citizens, no matter how poor they may be" (Battle y Órdoñez 1924, cited in Casas-Zamora 2005, 95–96).

[48] *Los funcionarios policiales y los militares en actividad deberán abstenerse, bajo pena de destitución, de formar parte de comisiones o clubs políticos, de suscribir manifiestos de partidos y, en general, de ejecutar cualquier otro acto público de carácter político, salvo el voto.*

This regulatory development is reminiscent of a shifting legal conception of political parties as *public utilities* (van Biezen and Borz 2012, 349–50). This type of regulation accompanies a conception of party democracy in which parties resemble "an agency performing a service in which the public has a special interest sufficient to justify governmental regulatory control, along with the extension of legal privileges, but not governmental ownership or management of all the agency's activities" (Epstein 1986, 157; also see van Biezen 2004). Political parties are recognized as fundamental institutions in their own right that can be controlled in a top-down manner to support democratic government and the maintenance of the constitutional order. This view of parties allows for state support of their activities to maintain the healthy functioning of democracy. Uruguay was ahead of its time in this shift, however, as it would take many other countries in the region – and the world – decades to even recognize political parties in their most basic capacities as electoral and legislative organizations.

2.4 1930's-1950's: revolutionary democracy and the constitutionalization of parties

2.4.a Democratic breakdown and transition

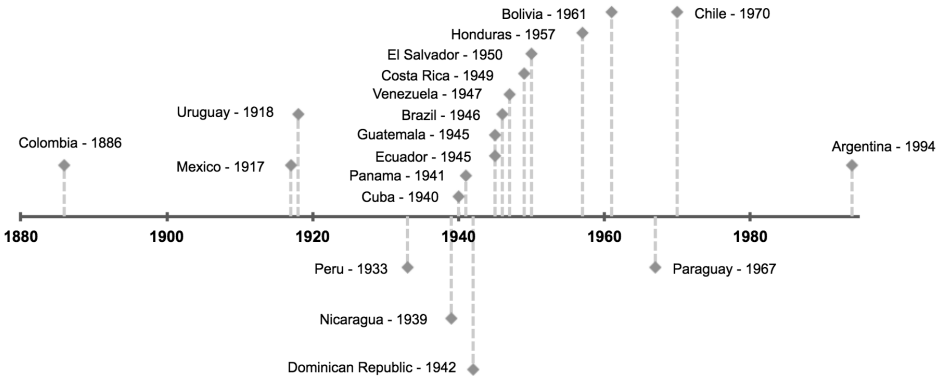
In the 19th century, Latin American states' central challenge had been to address the 'winner-takes-all' nature of presidential contests that often resulted in bloody battles between competing elites and their followers (Hartlyn 1988, 104). Over the course of the 20th century, an increasing push for popular participation and representation created a second challenge for the Latin American state. Demands for more inclusive systems tested elites' willingness to incorporate new groups in the state. The constraints of constitutional democracy oftentimes gave way to spirals of authoritarian rule, as elites and masses faced each other in attempts to respectively maintain and rupture the political status quo (Drake 2009, 165; Hartlyn 1988, 104).

The majority of Latin American states dealt with these centrifugal tendencies through the alternation between democratic and authoritarian regimes (Mainwaring and Pérez-Liñán 2013). The one thing that many of these regimes had in common was that they relied on elections to legitimize their rule and on political parties to structure elections and formal governance.[49] The development of party law during the decades between 1930 and 1980 reflects the appreciation of political parties in both newly democratizing and more authoritarian forms of political systems. Figure

[49] As will be discussed in more detail below, the bureaucratic-authoritarian regimes that arose in 1970's and 80s form a partial exception.

2-1 (below) depicts how the majority of countries in the region adopted their first constitutional codification of political parties throughout this time period.[50]

Figure 2-1: Year first constitutional codification political parties in Latin America



The countries above the timeline are (nominally) democratic or democratizing regimes. The countries below the timeline constitute authoritarian regimes, which will be discussed in more detail in section 2.5.[51] For simplicity purposes, the figure contains each country's first relevant constitution only.[52]

2.4.b First wave of democratic political party constitutionalization

The 1930's formed a critical juncture in Latin American politics. Global economic depression precipitated the collapse of the region's classic liberal export-economies. At the same time, newly arisen populist leaders and political parties capitalized on public discontent and demanded political socio-economic inclusion for their followers (Dix 1985; Di Tella 1965, 2004). The combination of these events resulted in a

[50] Latin American countries recognized the constitutional relevance of political parties relatively early in time. In Europe, for example, most countries codified political parties from the 1970's onwards (van Biezen 2012; van Biezen and Borz 2012). Rather than seeing this as a virtue of mid-20th century democratic governance in the region, this development underlines the inherent tensions that these regimes were subject to. In this sense, it is notable that the earliest instances of party constitutionalization in Europe took place in Austria (1945), Italy (1947), and Germany (1949). These countries used their constitutions to regulate democratic party functioning in detail to defend their democracies against anti-democratic tendencies they had experienced earlier (van Biezen 2012, 201).

[51] A review of secondary literature, as cited in the text, enabled me to classify the countries according to regime type. In addition, I used the 'Electoral democracy index' and the 'Freedom of association index' from the Varieties of Democracy database (Coppedge et al. 2015), as well as Munck's (2015) overview of Latin American transitions to electoral democracy, to verify the accurateness of my distinction between democratic and authoritarian regimes.

[52] The same applies to all other figures presented below.

highly explosive situation. Over the course of the 1930's, coups took place in no less than 14 Latin American countries (Drake 2009, 162–65).[53]

By the end of WWII, however, democratic optimism flooded the Latin American region. Many countries that had been subjected to authoritarian rule in the 1930's shifted back to democratic governance (Drake 2009, 166).[54] A majority of these democratic governments adopted constitutions that recognized political parties for the first time in their history. What all these cases have in common is that the constitutional codification of political parties followed after the revolutionary overthrow of either oligarchic rule or a military dictatorship. This indicates that democratic party politics had come to be regarded as a fundamental alternative to these other forms of governance.

Figure 2-1 above shows that Cuba forms the earliest example of this trend. Its constitutional codification of political parties in the 1940 Constitution formed the culmination of a reformist shift from oligarchic rule to a nominally open constitutional democracy (Whitney 2001, 3). Similar transitional conditions resulted in the adoption of constitutions in Guatemala (1945), Venezuela (1947), and Costa Rica (1949).[55] Brazil is a special case, as national political parties had been underdeveloped historically due to the decentralized nature and autonomy of the effective power holders. Here, the 1946 constitutional codification of parties formed part of a conscious effort to consolidate a national party system to accompany the transition from the dictatorship of Getúlio Vargas to a more democratic political system (De Riz 1986, 677–78).[56]

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[53] The import of anti-democratic ideologies from Europe, combined with a shift in United States' foreign policy away from promoting (nominally) democratic governance throughout the region, exacerbated this authoritarian trend.

[54] Oftentimes, these democratic governments were inclusive ones that experimented with revolutionary and/or populist policies.

[55] After the overthrow of a military dictatorship in Guatemala, the revolutionary government of President Arevallo constitutionally codified political parties in 1945 (Medrano and Conde 2006, 489). Venezuela codified political parties in its 1947 Constitution that had been adopted after its 1945 *Revolución de Mayo* (Bracamonte 2009). In a similar vein, Costa Rica adopted the first constitutional codification of political parties with the return to democracy after a short but intense civil war in 1949 (Casas-Zamora 2005, 62).

[56] In the early 1940's, Vargas realized that only the formation of national political parties would allow him to maintain power in the political system that would follow his dictatorship (Mainwaring 1988, 93–94). In the advent of the 1945 elections organized to transition from an authoritarian to a democratic regime, Vargas pushed for the adoption of electoral rules that demanded the formation of national political parties (Jardim 2006, 276). The first democratic government maintained this rule in the 1946 Constitution that introduced an electoral system based on proportional representation of national political parties (§134).

Four other countries that partially fit this trend are Panama (1941, 1946), Ecuador (1945, 1946), El Salvador (1950), and Honduras (1957). In Panama, the constitutional codification of political parties occurred under the rule of an oligarchic regime that had been in power since the early 20th century (Biesanz and Smith 1952). In the cases of Ecuador, El Salvador, and Honduras, constitutional development took place in a revolutionary light, as progressive military forces staged coups against the ruling authoritarian regimes in order to allow for a temporary return to democracy. These coups were followed by Constituent Assemblies that adopted new Constitutions recognizing the right of citizens to organize political parties. Although the Honduran military subsequently handed over power to a civilian government, the El Salvadorian and Ecuadorian coups resulted in military-sponsored rather than actual democratic governance (De La Torre 1994; McDonald 1969). The 1961 Bolivian and 1970 Chilean Constitutions form the final instances of constitutional codification within this trend. In the case of Bolivia, the revolutionary populist government that had come to power in the 1952 revolution ascribed a fundamental role to political parties in the political system constitutionally (Lazarte 2006, 245). The Chilean case will be discussed in more detail below.

2.4.c Procedural and normative appreciation of political parties

The transitional constitutions discussed above mention political parties in articles that establish electoral rules, such as proportional representation. In addition, they refer to parties in articles that regulate the composition of the national and local legislatures and governments (see Figure 2-2 and Figure 2-3). This recognition of the procedural role of political parties, both in the conduct of elections and in government formation processes, built upon the earlier oligarchic regulation of political parties.

Figure 2-2: First constitutional codification of parties' electoral role

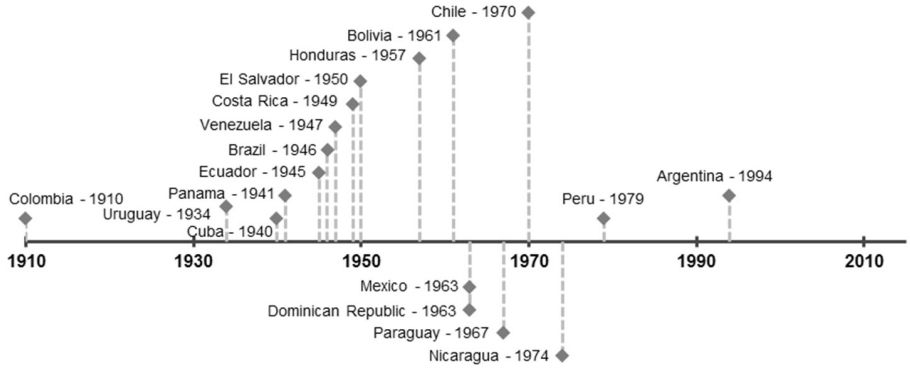
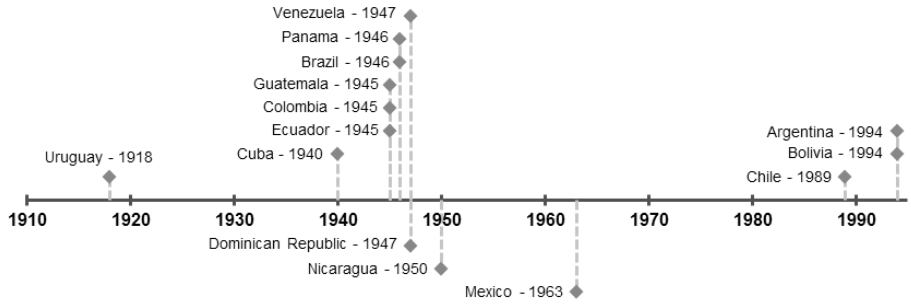
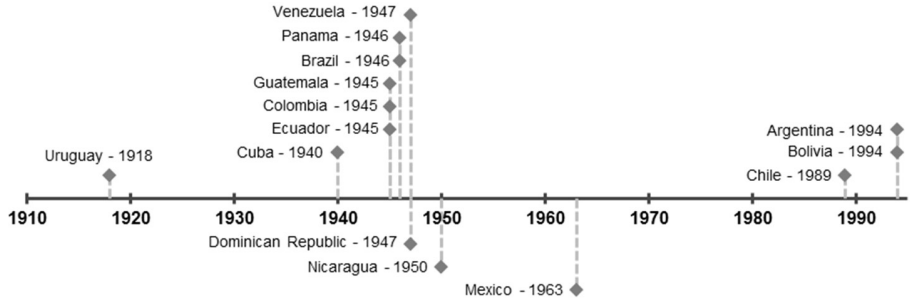


Figure 2-3: First constitutional codification of parties' governing role



In addition, several countries also regulated political parties' extra-parliamentary role in their constitutions, albeit in a rudimentary manner (see Figure 2-4 for an overview). Ecuador (1945), Colombia (1945) and El Salvador (1950) did so by adopting provisions on party membership incompatibility. Cuba (1940), Guatemala (1945), and Honduras (1957) established requirements for party registration and dissolution, and, in the case of the Cuba, even appointed the parties' assemblies the exclusive right to select the parties' candidates. Such articles form a first recognition of political parties as institutions in their own right.

Figure 2-4: First constitutional codification of parties' extra-parliamentary role



The institutional recognition of political parties is visible in other new types of constitutional articles as well. Six out of the eleven countries that adopted democratic constitutions throughout this period constitutionally established political parties as one of the democratic system's foundational institutions. They did so by defining fundamental values, such as participation, pluralism, sovereignty, representation, de-

mocracy, in terms of political parties (see Figure 2-5 for an overview).[57] Participation proved the most popular value linked to political parties (four out of six countries).[58] In addition, nine out of the eleven countries also codified political parties in articles that guaranteed citizens the right to free and fair association and speech, with freedom of association being the main right defined in terms of party (see Figure 2-6).

Figure 2-5: First constitutional definition of democratic party principles

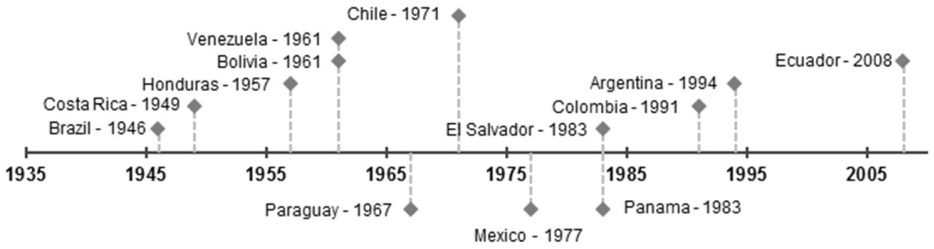
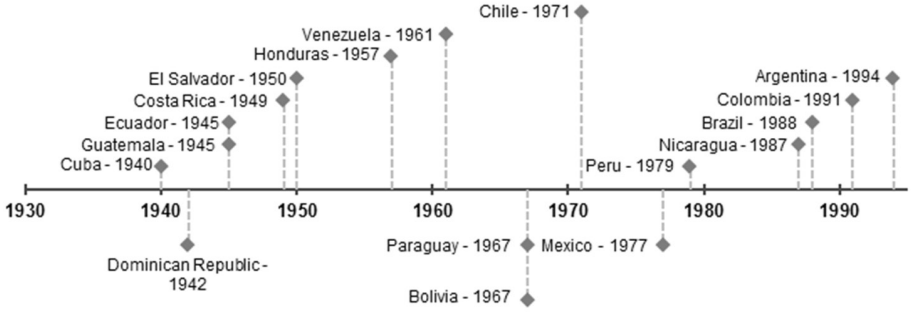


Figure 2-6: First constitutional association of parties with fundamental rights



Both sets of constitutional provisions recognize the institution 'political parties' beyond their mere electoral or legislative functions. They indicate a normative appreciation of political parties precisely because of parties' procedural ability to allow for more participation in political life. In an interesting twist to E.E. Schattschneider's (1942, 2) famous adage, the transitional constitutions thereby reflect the notion that "[t]he political parties created participation and modern participation is unthinkable

[57] Figure 2-5 shows that this development was not limited to democratic regimes. The authoritarian regimes that appeared from the late 1950s, and which will be discussed in more detail below, quickly adopted this trend as a means to legitimize their political systems. Other countries waited until the start of the third wave of democratization (1978) to codify such provisions.

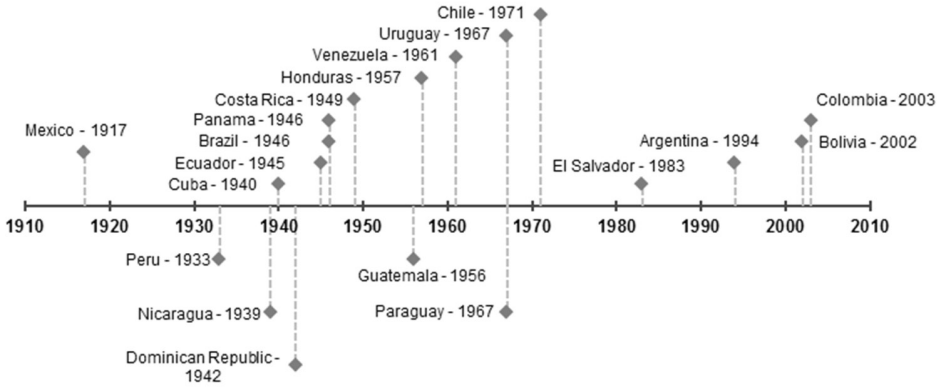
[58] The definition of democratic values is distributed as follows: participation (Costa Rica, Honduras, Venezuela, Chile), pluralism (Brazil), representation (Bolivia), and democracy (Honduras).

save in terms of the parties." This is unsurprising given that the new democratic regimes appeared at a time when demands for inclusion drove the political agenda.

2.4.d Defending democracy

Regardless of the constitutional appreciation of political parties identified above, other constitutional articles reflect that politicians did not look upon inclusive party politics as a panacea. Nine countries also adopted provisions that constrained political party organization by the need to adhere to certain duties and obligations (see Figure 2-7 for an overview). The most common obligation for parties that appears throughout this time period is the need to respect democratic principles (Brazil, Panama, Costa Rica, and Honduras), followed by the prohibition of ethnic parties (Cuba and Panama) and religious parties (Ecuador, Panama).

Figure 2-7: First constitutional definition of parties' duties and obligations



Mexico forms a very early example of this latter trend. Over the course of the 19th and early 20th century, the country had suffered clashes between *caciques* (local strongmen) and a powerful Church on the one hand, and federal governments on the other, spurring bloody civil wars on several occasions. In 1917, the end of the violent, decade-long Mexican Revolution resulted in the foundation of the contemporary constitutional order (Eisenstadt 2004, 95). To address past political strife, constitutional engineers adopted a strict prohibition of political parties organized on the basis of religion:

> §130: The formation of all types of political associations, whose names contain any word or indication of a relationship with a religious denomination, is

strictly prohibited. Political reunions may not be organized in places of worship.[59]

Combined, the ascription of fundamental values to parties, and the restriction of certain forms of party identity and behavior, resemble the model of party regulation that van Biezen and Borz (2012, 348) call "defending democracy".[60] This model focuses on the extra-parliamentary organization of political parties in a normative manner by addressing their right to free association, assembly and speech; their ideological profile and programmatic identity; and their need to respect democratic principles, national sovereignty, and the territorial integrity of the state. In the 'defending democracy' model of regulation, "the functioning of parties is [also] subject to external monitoring by the (constitutional) courts in order to ensure lawfulness and constitutionality" (van Biezen and Borz 2012, 348).

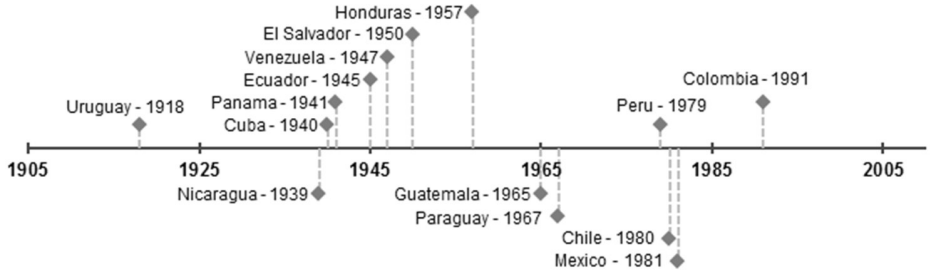
In the European context, this model of regulation mainly appeared in reaction to the rise of anti-system ideologies, such as anarchism, communism, and fascism, combined with the fall of the Weimar Republic at the hands of democratically elected political parties (Loewenstein 1937). An analysis of the constitutional codification of judicial oversight over political parties shows that the early Latin America democracies were more concerned, however, with the functioning of democracy itself.[61] Although political parties are mentioned in several articles related to judicial oversight, these articles do not refer to oversight over parties' upholding of general constitutional principles. Instead, these articles refer to a new independent institution, the electoral authority, which the constitutions ascribe the task of overseeing the free and fair conduct of elections. Political parties, in turn, are often guaranteed a role in the process of electoral oversight and/or in the composition of the electoral authorities (see Figure 2-8 for an overview).

[59] *Queda estrictamente prohibida la formación de toda clase de agrupaciones políticas cuyo título tenga alguna palabra o indicación cualquiera que la relacione con alguna confesión religiosa. No podrán celebrarse en los templos reuniones de carácter político.*

[60] A similar model was at work in Chile, where legislators adopted the 1948 Permanent Defense of Democracy Law that outlawed the communist party (Urzúa Valenzuela 1992, 545) and the 1958 Electoral Law that established parties as exclusive representational vehicles (García 2006, 305). It would take the country until 1970/1971 to include these provisions in its constitution.

[61] Following an internal war that pitted Communist against anti-Communist forces, Costa Rica is the only nascent democracy that adopted a prohibition of political parties based on their ideology and/or their inability to respect national sovereignty.

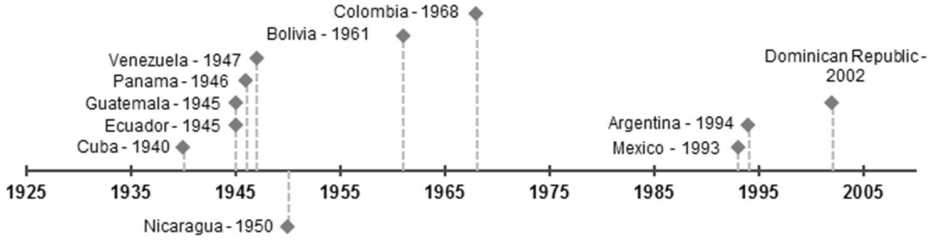
Figure 2-8: First constitutional introduction of partisan oversight over elections



These provisions point towards a concern with the democratic conduct of elections. More importantly, they point towards the concern that one party might control the electoral authority and/or the electoral infrastructure and might thereby influence the outcome of elections. The often-rampant practice of electoral fraud (see Drake 2009) likely formed the basis for the introduction of such rules. Constitutional engineers recognized that the failure to abide by the constitutional rules of the game, and the winner-takes-all nature of political life, formed the gravest threat to the newly established democratic orders.

The adoption of constitutional guarantees that ensured minority and/or opposition parties' right to representation (Cuba, Guatemala), access to elections (Cuba, Panama), influence over the composition of electoral authorities (Ecuador, Panama), and access to the legislature (Venezuela) provides additional evidence for this hypothesis (see Figure 2-9 for an overview). These provisions have in common that they recognize that governing parties hold a marked advantage over the electoral and legislative process and that they seek to mitigate the dangers this poses to political stability through the constitutional guarantee of political opposition and inclusion.

Figure 2-9: First constitutional adoption of minority/opposition party protection



Combined, the provisions introducing partisan oversight over elections and minority/opposition party protection are indicative of the perception of a fundamental threat to the democratic constitutional order. This threat consisted of the traditional

practice of subjugating formally democratic institutions and procedures, such as elections, to particularistic interests through electoral fraud and the violent contestation of election results (Drake 2009). The democratic constitutions adopted throughout this period thereby railed against the crushing of democratic procedures by rival parties that ignored the formal rules of the game.

Politicians thereby presented the institutionalization of political party competition as a solution to the tensions that the push for political inclusion had created in the region. This development was a paradoxical one nevertheless: governments countered threats to democratic governance, which were caused in part by a lack of respect of formal electoral rules and procedures, by adopting more rules and procedures. It may therefore come as little surprise that the introduction of constitutional guarantees generally proved insufficient to defend these incipient democratic regimes.

2.5 1950's-1980's: authoritarian reversals and the exclusion of parties

From the late 1940's onwards, the majority of democracies in the region ended in military reversals and authoritarian regimes (Mainwaring and Pérez-Liñán 2013, 72–73). Political parties were banned completely at one time or other under the military dictatorships that arose in Chile (Fox and Nolte 1995, 66), Argentina (López 2001, 476), and Uruguay (De Riz 1986, 669). The development of party law was arrested temporarily in these cases as well. In other cases, however, authoritarian regimes co-existed with civilian governments elected nominally through political parties. Here, democratic breakdown did not result necessarily in an end to experiments with party law. Authoritarian regimes in 13 countries issued party regulations in their constitutions and electoral codes at one time or other. Table 2-1 provides an overview of the 18 authoritarian constitutions and 11 constitutional amendments that contained legal provisions on political parties adopted in the period between the 1950s and 1994 (the last instance of this wave of authoritarian constitutions).

Table 2-1: Authoritarian constitutional codification of political parties

Country	Year(s)
Nicaragua	1950, 1974
Dominican Republic	1955, 1961, 1963, 1966,
Guatemala	1956, 1965
Cuba	1959, 1976, 1992
El Salvador	1962
Mexico	1963, 1972, 1977, 1981, 1986, 1990, 1992, 1993, 1994
Honduras	1965
Bolivia	1967
Ecuador	1967
Brazil	1967
Paraguay	1967
Panama	1972, 1983
Chile	1980

A review of the relevant legal provisions shows that many of these constitutions addressed similar themes that the earlier democratic constitutions had. A normative appreciation of the institution 'political parties' remains visible, for example, in the definition of key democratic values in terms of political parties. Five of these thirteen countries did so in at least one of their authoritarian constitutions. Participation remained one of the more popular values ascribed to parties, although constitutional reformers now recognized political parties' value for representation as well.[62] Also, ten out of these thirteen countries defined the freedom of association in terms of party in at least one of their authoritarian constitutions.[63]

2.5.a A symbolic approach to constitutionalizing political parties

A question that may arise at this point is whether such rules constitute anything other than formal norms aimed at creating regime legitimacy. To a certain extent, examples of early authoritarian constitutional development in the Central American and Caribbean region support the hesitation to see authoritarian constitutions as

[62] The definition of democratic values is distributed as follows: participation (Paraguay 1967, Mexico 1967 + subsequent, Panama 1983), representation (Bolivia 1967, Brazil 1967, Mexico 1977 + subsequent), pluralism (Brazil 1967 and Panama 1983), democracy (Brazil 1967 and Mexico 1977 + subsequent), and sovereignty (Panama 1983).

[63] Dominican Republic (1955 + subsequent), Guatemala (1956, 1965), Cuba (1959), El Salvador (1962), Honduras (1965), Ecuador (1967), Paraguay (1967), Bolivia (1967), Mexico (1977), and Chile (1980).

anything other than gesture politics. The early authoritarian party law development in the Dominican Republic (Espinal 2006, 809–10) and Nicaragua (Álvarez 2006, 643), for example, followed after decades of United States' interventions to establish political order through the creation of centralized political systems. The adoption of party laws was one element of this state building strategy. Nevertheless, these rules mainly formed a democratic façade and in both instances the US invasions resulted in the rise of dictatorial regimes.

The new authoritarian regimes continued to sponsor party laws that copied the norms of party governance that the United States had imposed on them previously. The Nicaraguan Somoza dynasty did so by adopting the 1939 Constitution that recognized the two principal political parties as political institutions whose "definition, legal personality, and legal rights would be subject to the law"(§327).[64] In a similar vein, the 1942 Constitution of the Dominican Republic, adopted under the auspices of dictator Rafael Trujillo, established political parties' freedom of association as long as parties conformed to the civil, republican, democratic, and representative values ingrained in the constitution (§103).

2.5.b An instrumental approach to constitutionalizing political parties

The early authoritarian party constitutionalization in Peru shows, however, that adopting constitutional norms on political parties also served more instrumental goals. This case should be understood in light of a 1930 military coup, which ended a decade of authoritarian dictatorship and set the stage for highly contested elections between the military *Unión Revolucionaria* (Revolutionary Union, UR) party and the populist *Alianza Popular Revolucionaria Americana* (Popular Revolutionary American Alliance, APRA) party. The 1931 elections, allegedly the most honest elections held in Peru up to that time, resulted in a victory for the UR and in the democratic appointment of a military leader to the presidency and a military party to the legislature (Masterson 1991, 39–47). These elections were followed by tumultuous conflict between the military and rebellious segments of society, which tested the boundaries of the state's institutional foundations.

Following the murder of the president at the hands of an APRA member, the government adopted an emergency law in 1932 that allowed it to jail and exile APRA legislators due to this party's "acts against institutional stability and general social welfare" (Law 7479).[65] To combat the popular following of the communist party, the 1933 Peruvian Constitution similarly introduced the provision that "[t]he state

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[64] *La personalidad y derechos de los partidos políticos y la definición de los dos partidos principales, serán objeto de la ley.*

[65] *actos contrarios a la estabilidad de las instituciones y al bienestar social*

does not recognize the legal existence of political parties that belong to an international organization. Those that belong to such parties are prohibited from exercising any political function" (§53).[66] Peru's negative constitutional codification of parties thereby followed from the competing popular forces' inability to structure political conflict through political institutions. In addition, it shows how adherence to formal institutions nevertheless played an important role in the military government's policy vis-à-vis its opponents.[67]

Looking beyond constitutions, several countries in the region used other instruments of party law in a similar instrumental manner. The adoption of electoral and political party laws in Argentina in the 1950's is a case in point. Here, two increasingly authoritarian and competing power blocs were drawn to party law as part of their general outlook on the political process as a winner-takes-all game that precluded any form of political co-existence with opposition parties. Governments applied party laws, such as those that selectively banned opposition parties or that regulated intra-party democracy and registration requirements more generally, to bar new factions' and parties' access to elections.

A 1949 law (Law 13.645) sanctioned under the Argentine government of Perón, for example, strictly regulated the formation of alliances to impede opposition formation of an effective electoral alliance. Subsequent opposition governments used party law to outlaw the Peronist party in return (López 2014, 216; De Riz and Smulovitz 1990, 12). Legal provisions allowed the governing parties to obstruct the formation and functioning of political competitors either *de facto* or *de jure*. Nevertheless, these governments only managed to in stay in power for a limited amount of time. In a self-perpetuating dynamic, the coups that overthrew these regimes brought to power former opposition parties that subsequently banned the former governing party (Molenaar 2014a, 329). In the long run, the instrumental use of party law to outlaw political conflict only contributed to further political instability.

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[66] *El Estado no reconoce la existencia legal de los partidos políticos de organización internacional. Los que pertenecen a ellos no pueden desempeñar ninguna función política.*

[67] Other authoritarian regimes adopted constitutional prohibitions of political parties based on ideology (Peru 1933, Nicaragua 1939/1948/1950, Brazil 1967, Guatemala 1956, Honduras 1965, Paraguay 1967, Chile 1980), ethnicity (Cuba 1959, Panama 1972/1983, Honduras 1965), and religion (Ecuador 1967, Panama 1972/1983). In addition, political parties were required to uphold democratic principles (Dominican Republic 1942/1947/1955/1960/1961/1963, Panama 1972/1983, Guatemala 1956/1965, Honduras 1965, Paraguay 1967), refrain from using violence (Dominican Republic 1963, Chile 1980), respect human rights (Dominican Republic 1966), sovereignty (Brazil 1967, Panama 1972, Guatemala 1965, Honduras 1965), and the constitutional order (Guatemala 1956, Paraguay 1967).

2.5.c A corporatist approach to constitutionalizing political parties

The constitution codification of political parties did not stop at such symbolic gestures and instrumental efforts to ban opposition parties. A review of the constitutional articles adopted under the authoritarian regimes reveals an appreciation of the role that political parties could play in the maintenance of these systems as well. This reflects the fact that many authoritarian regimes maintained a role for political parties in their regimes through corporatist means. Corporatism is a characteristic Latin American form of governance in which interest representation is ordered along "a limited number of singular, compulsory, noncompetitive, hierarchically ordered and functionally differentiated" institutions that are "recognized or licensed (if not created) by the state and granted a deliberate representational monopoly" (Schmitter 1974, 93–94). In contrast to pluralistic party ideals, this means that the central governments supports a limited number of parties in a top-down manner to *structure and control interest representation*.

The 1955 constitution of the Dominican Republic provides an excellent example of how party law supported the creation of such a privileged institutional position for corporatist structures. In this case, the constitution limited the freedom of association to dictator Trujillo's own *Partido Dominicano* (Dominican Party).

> §106: Political associations and organizations are free to organize in accordance with the law. … It is recognized that the Dominican Party, constituted originally from elements originating from former political parties and associations, which collapsed due to the lack of a constructive patriotic orientation, has been and continues to be an agent of civilization for the Dominican people …[68]

In other countries, the corporatist strategy hinged on the existence of multiple political parties. The Brazilian military regime, for example, maintained state-sponsored governing and opposition parties, combined with a national legislature, throughout most of its corporatist rule between 1964 and 1985. Next to the constitutional regulation of political parties, the military regime adopted a political party law that established rules for party formation, organization, finances, and even the public

[68] *Es libre la organización de partidos y asociaciones políticas de acuerdo con la ley … Se reconoce que el Partido Dominicano, constituido originalmente con elementos procedentes de las antiguas asociaciones y partidos políticos, los cuales se disgregaron por falta de una orientación patriótica constructiva, ha sido y es un agente de civilización para el pueblo dominicano …*

funding of political parties (Jardim 2006, 278). The military ensured the existence of an opposition party throughout its entire rule (Mainwaring 1988, 96).[69]

The authoritarian constitutionalization of political parties in Mexico forms the ultimate case of corporatist party law. Here, the hegemonic PRI frequently sponsored constitutional and other party law reforms from 1963 onwards.[70] These reforms formed part of the PRI's strategy to constrain internal dissidents and to incorporate popular demands for inclusion within the hegemonic state system. It did so by propping up marginal opposition parties (Harbers and Ingram 2014; Molenaar 2014a, 329; Wuhs 2008, 13–18). A 1973 electoral reform, for example, lowered the number of members needed to maintain formal party registration and provided parties with free postage and media access during elections. In this manner, the PRI sought to lower the burden of party maintenance for the existing opposition parties to promote a better showing in elections (Paoli Bolio 1978, 203–4; Rodríguez Araujo 1989, 49–57). Nevertheless, only the PRI presented a candidate in the 1976 elections, which led the party to adopt another extensive constitutional and electoral reform in 1977 to increase the presence of 'legitiziming' opposition parties. These reforms opened up access to the electoral process by lowering the requirements for new party formation and constitutionally established political parties' right to media access and state subventions during elections (Harbers and Ingram 2014, 258–59).

From the above, it can be concluded that the corporatist authoritarian regimes that arose throughout the region showed a constitutional appreciation of political parties not unlike that of the early democratic regimes. Many authoritarian constitutional reformers approached political parties as an institution that could be manufactured in a top-down manner to deal with pressures for more participation. Although the regional political pendulum had shifted towards exclusion, many of these regimes could not ignore demands for inclusion altogether. As such, the authoritarian constitutional codification of political parties formed a continuation of past efforts to use party law as part of a more general strategy to maintain political order amidst centrifugal forces.

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[69] This development posed severe representational dilemmas to opposition parties in particular, as their existence depended on the political regime they sought to overthrow.

[70] The 1967 Paraguayan Constitution (§§117-121) and the Cuban 1959 Ley Fundamental (§§98, 102, 103, 163) and 1976 Constitution (§§5-6) provide additional examples of hegemonic party systems that use party law to legitimize their rule.

2.6 1980's-present: democratic transitions and parties as elector al public utilities

2.6.a Democratic beacons and transitions

Throughout the authoritarian decades, Costa Rica, Colombia and Venezuela stood out as nominal democratic beacons. These countries did not outlaw political conflict as the authoritarian regimes had, but instead incorporated conflict in their institutional frameworks through party law reform. Costa Rica did so in 1949, when it abolished the military to prevent future parties from seeking recourse to the armed forces as a backup plan for when they lost the elections. In addition, its constitution delegated electoral governance to an autonomous court system that would oversee election conflicts (Lehoucq 2002). Subsequent constitutional reforms institutionalized the alternation of political power between the two dominant political parties through the selective allocation of benefits to these parties (Hernández Naranjo 2007).

In Colombia, the traditional Liberal and Conservative parties adopted a 1957 constitutional reform that ended a decade of political violence through an explicit power-sharing agreement (Hartlyn 1988). In this *Frente Nacional* (National Front) agreement, legislators established that '[i]n popular elections … the corresponding elected positions will be awarded half and half to the traditional parties, the Conservative and the Liberal party' (§2).[71] In 1958, the main political parties in Venezuela agreed to a similar power-sharing pact in the *Punto Fijo* agreement (Karl 1987, 85).[72] These agreements might be frowned upon from a contemporary democratic perspective. Indeed, the Colombian and Venezuelan systems have been described as instances of 'partyarchy' due to the excessive political control exercised by the two main parties (Coppedge 1994). Nevertheless, these institutional arrangements did result in relatively stable decades of party politics structured through regular elections (Mainwaring and Scully 1995b).

[71] *En las elecciones populares ... los puestos correspondientes a cada circunscripción electoral se adjudicarán por mitad a los partidos tradicionales, el conservador y el liberal.* The same reform further established that: The ministers will be named and removed freely by the President of the Republic, who, in any case, is obligated to give participation in the ministries to the political parties in the same proportion as their representation in the Legislative Chambers (§4). *Los Ministros del Despacho serán de libre nombramiento y remoción del Presidente de la República, quien, sin embargo, estará obligado a dar participación en el Ministerio a los partidos políticos en la misma proporción en que estén representados en las Cámaras Legislativas.*

[72] The Venezuelan agreement did not codify bi-partisan rule constitutionally to the extent that the Colombian constitution did. Nevertheless, the spirit of the agreement was the same as the main parties agreed upon the formation of government coalitions and an equal distribution of state spoils and jobs among themselves.

The failed case of consolidating party democracy in the case of Chile underlines, however, that the political stability achieved in the cases discussed above was at best an indirect result of constitutionalizing party democracy. With its constitutional codification of political parties in 1970 and 1971, Chile was one of the last countries in the region to formally acknowledge political parties' role in upholding democracy. The reforms resulted from an electoral agreement between the two main parties that competed in the 1970 presidential elections (García 2006, 306). Their legal provisions guaranteed equal access to the legislature through the codification of an electoral system based on effective proportional party representation (1970, §25). In addition, the constitution protected parties' freedom of association (1971, §9) and secured freedom of expression and access to media resources to all the parties (1970, §109; 1971, §§9-10). Despite these attempts to secure party democracy, the constitutional codification could not prevent a 1973 military coup against President Allende and the subsequent ban of all political parties (Valenzuela 1978).

The Chilean case illustrates a more general Latin American problem, namely that legal reforms "could not accomplish all [of the politicians'] objectives without fundamental alterations in the underlying structure of power and beliefs. Elites needed to accept the democratic rules of the game" (Drake 2009, 190). Institutional reforms could not make up for the fact that elites were unwilling to accept the most fundamental rule of the democratic game, namely that it is elections rather than the military that decides who governs. In many countries, Chile being a case in point, the failure to accept this fundamental democratic rule proved political parties' undoing. In addition, this failure formed the main limitation to the institutionalization of democracy through formal rules.

2.6.b Third wave of democratization

Only in the last two decades of the twentieth century did a normative shift finally take hold of the region, as Latin American elites embraced popularly elected governance as the only feasible form of government. This shift occurred in the aftermath of the brutal military regimes that had come to power in large parts of the region throughout the 1970's and 1980's and that had proven unable to govern more effectively than that the previous democratic regimes had. With the exception of Cuba, all other countries in the region transitioned to democracy (Hagopian and Mainwaring 2005; Huntington 1991; Mainwaring and Pérez-Liñán 2013).

In keeping with good tradition, many Latin American states developed their own formal brand of democratic governance that did not necessarily promote more representative forms of politics. The transitioning political systems did meet Robert Dahl's (1971, 8) criteria for polyarchy: the presence of public and political competition over public office and the inclusiveness of the political process due to the protec-

tion of active and passive suffrage rights. Nevertheless, many Latin American elites did not embrace the norm that democratic governance needed to uphold representative and liberal values (O'Donnell 1994). The type of governance that appeared, termed 'delegative democracy', "rest[s] on the premise that whoever wins election to the presidency is thereby entitled to govern as he or she sees fit, constrained only by the hard facts of existing power relations and by a constitutionally limited term of office" (O'Donnell 1994, 59). Just as had occurred since the time of independence, participation in elections – rather than representation – served to legitimize political power within these new political regimes. The post-transitional development of party law reflects this.

2.6.c Post-transitional party constitutionalization

The transitional period started off with active efforts at redesigning the formal rules of the game – including those related to political parties. Many countries adopted new constitutions and electoral rules to regulate free and fair transitional elections (Drake 2009, 218; Zovatto 2006b, 17).[73] This regulatory fever did not die down after transition. Indeed, from the start of their transitional processes to 2016, the 18 democratic regimes adopted 21 new constitutions, 45 relevant constitutional reforms, and 173 electoral laws, political party laws, political finance laws, other types of party law and reforms thereof (see Table 2-2 for an overview).[74]

Table 2-2: Post-transitional party law development in Latin America[75]

Country	Total	New constitution	Constitutional reform	Other party laws and reforms[76]	Total / years of democracy
Costa Rica	13	1	5	7	0.19
Guatemala	7	1	1	5	0.22
Peru	9	2		7	0.25
Argentina	9			9	0.27
El Salvador	10	1		9	0.31
Venezuela	18	2		16	0.31
Colombia	10	1	3	6	0.32

[73] The main institutional features of the political systems remained unaltered, with the exception of a trend towards the decentralization of governance (Harbers 2010).
[74] These legal texts can be found in this study's web appendix at: http://www.partylaw.org.
[75] See http://www.partylaw.org for a detailed overview of these reforms. A reform is defined as any adopted legislative proposal that changes at least one legal article that mentions political parties.
[76] This category contains political party laws, political finance laws, electoral laws, laws that regulate intra-party democracy, etc.

Country	Total	New constitution	Constitutional reform	Other party laws and reforms*	Total / years of democracy
Ecuador	12	3		9	0.32
Nicaragua	11	1	3	7	0.34
Dom. Rep.	13	4		9	0.34
Uruguay	11		3	8	0.35
Panama	11		2	9	0.41
Honduras	16	1	2	13	0.47
Paraguay	14	1		13	0.58
Chile	15		4	11	0.58
Bolivia	20	2	2	16	0.58
Mexico	14		9	5	0.74
Brazil	23	1	8	14	0.74

The median number of party law reforms adopted since the return to democracy is 12,5. With seven adopted reforms, Guatemala has proven itself a rather inactive reformer of party law. On the other end of the scale stands Brazil, with 23 adopted reforms since the return to democracy. When controlled for the differences in the ages of their respective democracies, Costa Rica joins Guatemala as a relatively conservative case of party law reform. On average, Costa Rican and Guatemalan reformers adopt one reform per five years (or 0.19 and 0.22 reforms per year respectively). Mexico and Brazil, on the other hand, average almost one reform (0.74) per year.

2.6.d The constitutionalization of political party privileges

The legal provisions adopted in these post-transitional constitutions and reforms, as well as in the additionally sponsored electoral laws, political party laws, and political finance laws, reveal some interesting continuations and breaks with past efforts at regulating political parties. The normative appreciation of political parties as institutions appears to have deepened even further. Fifteen out of the eighteen nominally democratic regimes have now adopted constitutional articles that define key democratic values in terms of political parties. Pluralism (9 countries) has overtaken participation (8 countries) as the most popular democratic value legally ascribed to political parties. This reflects the normative shift to accepting competitive democracy as the only game in town. The number of constitutions that focus on the relationship between representation and political parties continues to be low, as only three coun-

tries define this value in terms of party.[77] Fifteen countries also codify the connection between political parties and democratic rights and freedoms, and the freedom of association in particular.[78] Political parties hence continue to be valued mainly for their role in upholding the democratic value of pluralistic political participation.

The normative appreciation of the institution 'political party' as fundamental for democracy has not been without its perks for the political parties themselves. As discussed above, such legal conceptions of political parties as *public utilities* often allow for state support of political parties to maintain the healthy functioning of democracy (van Biezen 2004; van Biezen and Borz 2012, 349–50). This is true for the Latin American political parties as well. Reflecting the common view that party democracy had become a necessary element for political stability, all post-transitional Latin American countries adopted some form of direct public funding for parties, oftentimes complemented with state-sponsored media access (see Figure 2-10 and Figure 2-11 for an historical overview of the countries that introduced these sources of public party funding).[79]

[77] The definition of democratic values is distributed as follows: pluralism (Costa Rica, 1997; Peru, 1979; El Salvador, 1983; Brazil, 1988; Chile, 1989; Paraguay, 1992; Panama, 2004; Ecuador, 2008; Dominican Republic, 2010), participation (Costa Rica, 1975; Peru, 1979; Honduras, 1982; Colombia, 1991; Paraguay, 1992; Mexico, 1996; Panama, 2004; Dominican Republic, 2010), sovereignty (Costa Rica, 1997; Peru, 1997; Brazil, 1988; Bolivia, 2002; Panama, 2004; Dominican Republic, 2010), democracy, (Peru, 1979; Brazil, 1988; Colombia, 1991; Argentina, 1994; Mexico, 1996; Dominican Republic, 1996), and representation (El Salvador, 1983; Bolivia, 1994; Mexico, 1996).

[78] Costa Rica (1949), Venezuela (1961), Ecuador (1979), Peru (1979), Honduras (1982), El Salvador (1983), Guatemala (1985), Nicaragua (1987), Brazil (1988), Chile (1989), Colombia (1991), Paraguay (1992), Argentina (1994), Dominican Republic (1994), and Bolivia (1994).

[79] As discussed above, the provision of public party funding is a Latin American invention that first appeared in Uruguay in 1928 in the form of a post-electoral financial reimbursement scheme for political parties (Zovatto 2010, 145).

Figure 2-10: Year of introduction of public party funding in Latin America[80]

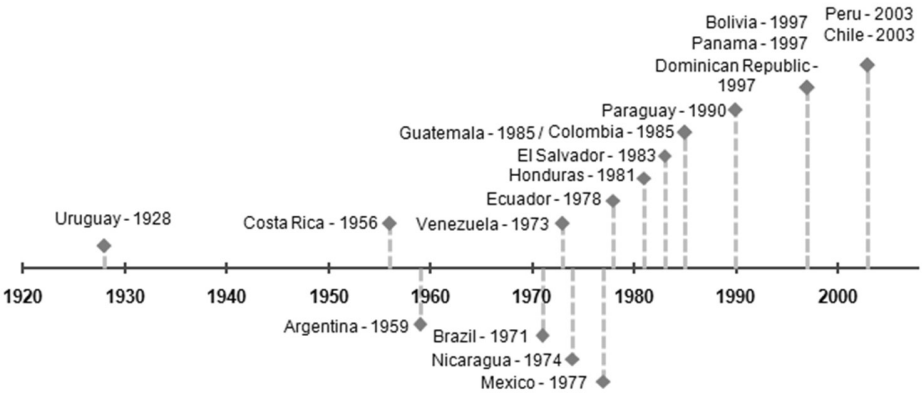


Figure 2-11: Year of introduction of public media access in Latin America

2.6.e. The constitutionalization of political party constraints

The widespread introduction of direct and indirect public party funding reflects a legislative appreciation of the role that political parties play in the legitimization of political power through their ability to structure elections. At the same time, the majority of countries introduced restrictions on private funding as well. Such restrictions consist of donation or expense limits. In addition, many countries installed monitoring mechanisms to create a higher level of transparency over parties' financial matters (Molenaar 2014b). This development can be explained in part with reference to the number of corruption scandals that erupted in the Latin American region over the last decades (Zovatto 2007). More importantly, it is indicative of a

[80] Bolivia and Venezuela have subsequently abrogated public party funding again.

larger trend within these post-transitional constitutions, which constrains political parties internal structure and activities in an increasing manner.

This constrictive tendency is visible first of all in the constitutions' ascription of duties and obligations to political parties. The new constitutions do so in a different fashion than under previous rounds of constitutional development. Sixteen countries have adopted normative rules that political parties need to abide by. Whereas in previous decades such rules focused on the proscription of anti-democratic behavior and ideologies, current efforts at prescribing external party conduct mainly establish that political parties need to uphold democratic principles (eleven countries) and that they need to respect the constitutional order (six countries).[81] The prescription of such appropriate forms of intra-party structures and behavior reflects the embrace of democratic governance.

More importantly, twelve countries also adopted articles that prescribe duties and obligations for political parties' internal conduct. Ten countries prescribe that parties should be internally democratic, six countries stipulate that political parties should promote internal gender or ethnic equality, and four countries put down that political parties should manage their finances in a transparent manner.[82] Contrary to Sartori's wisdom (1965, 124), these articles hence ascribe to a vision of democracy on a large scale as the sum of many small, transparent, and equal democracies. This development is hardly surprising given the region's shift to delegative democracy as the dominant form of governance. As discussed above, the democratic element of such systems is found in popular participation in a pluralist electoral process, rather than in translating the preferences manifested in this process into policies and governance. Maintenance of this system requires the formation of political parties that are able to address popular discontent with the political system.

The focus on the need for parties to be internally democratic, transparent, and to promote gender and ethnic diversity thereby responds to popular concerns of political life as exclusionary and corrupt. The historical approach to political parties as top-down instruments needed to address pressures for inclusion and to establish or maintain political order continues to manifest itself in the region. When looking at

[81] This development is not limited to the Latin American context, but is visible in newly established democracies in Central, Eastern and Southern Europe as well (van Biezen 2012; van Biezen and Borz 2012; van Biezen and Kopecky 2007, 247).

[82] The prescription of internal duties is distributed as follows: intra-party democracy (Uruguay, 1967; Chile 1989; Argentina, 1994; Costa Rica, 1997; Venezuela, 1999; Colombia, 2003; Panama, 2004; Ecuador, 2008; Bolivia, 2009; Dominican Republic, 2015), equality (Argentina, 1994; Costa Rica, 1997; Ecuador, 1998; Bolivia, 2009; Colombia, 2009; Mexico, 2014), and transparency (Brazil, 1988; Peru, 1993; Colombia, 2003; Dominican Republic, 2015).

the constitutional codification of political parties' procedural roles, this approach to political parties has resulted in an increased regulatory concern with political parties in the extra-parliamentary arena. Under the early democratic and authoritarian regime, constitutional references to this arena mainly focused on issues of membership compatibility and registration requirements. The third wave democracies have added more applied rules regarding political parties' internal procedures and their selection of candidates and leaders to this list.[83]

Table 2-3, which is based on a review of all relevant instruments of party law, shows that only two countries in the region refrain from regulating the way in which political parties' select their candidates. Out of the 17 countries that do so, seven countries have prescribed internal primaries at one time or other and five countries prescribe an array of candidate selection methods that political parties may choose from. Ten countries have adopted legal provisions that stipulate that the political parties or their statutes should define these methods. This ensures that party leaders cannot change the procedures of candidate selection at will (Molenaar 2015b).

Table 2-3: Regulation of method of candidate selection

No regulation	Parties/statutes	Partial prescription	Primaries
El Salvador	Costa Rica (1952)	Panama (1997)	Honduras (1986)
Cuba	Argentina (1985)*	Peru (2003)	Paraguay (1996)
	Guatemala (1985)i	Guatemala (2004)	Panama (1997)*
	Chile (1987)i	Colombia (2005ii/11)	Uruguay (1997)ii
	Mexico (1990)	Ecuador (2009)	Argentina (2002)*
	Brazil (1995)		Dom. Rep. (2004)*
	Dom. Rep. (1997)		Argentina (2009)
	Bolivia (1999)		
	Nicaragua (2000)		
	Argentina (2006)*		

* No longer in force
i National Assembly (Guatemala)/National Council (Chile) should select candidates
ii Presidential candidates only

[83] This is the case for Brazil, 1988; Argentina, 1994; Uruguay, 1997; Venezuela, 1999; Colombia, 2003; Panama, 2004; Ecuador, 2008; Chile, 2010; Mexico, 2007.

The concern with political parties' internal functioning is reflective of a perception that political parties' inability to address popular demands for clean politics poses a threat to the political order. Constitutional provisions that regulate electoral oversight over political parties confirm this. As discussed above, the democratic wave of the 1940's saw the introduction of electoral authorities as a way to guarantee (opposition) parties equal access to free and fair elections in the face of overwhelming electoral fraud. Present-day constitutions have added the intra-party domain as an additional arena that requires electoral authority oversight. Electoral courts have been awarded a monitoring and/or facilitating role in the management of political finance, the internal candidate selection process, and may even oversee the content of electoral campaigns and publicity.[84] A similar shift is visible in the regulation of party bans. Whereas such bans historically applied to extremist parties, the post-transitional Latin American democracies increasingly apply the cancelation of party registration as a procedural sanction for parties that fail to live up to or maintain the requirements for their registration, political finance rules, and or intra-party democratic principles (see, for example, López 2014; Molenaar 2015a).

All these aspects points towards a concern with political parties' ability to execute their procedural roles in a manner that is conducive to the maintenance of democratic governance. The perks of being the prime vehicle for democratic participation in the region, both in terms of the *de facto* ability to present candidates and to receive public resources to participate in elections, are thus accompanied by the increased scrutiny of political parties' internal affairs. In this manner, party law both constrains and benefits party formation and organization.

2.6.f The constitutional rejection of the institution political parties

Not all countries in the region adhere to these general trends. In part, this is the case because not all contemporary Latin American states continue to function according to the model of delegative democracy. In several countries, popular masses rejected their elite's control over the democratic system. Most notably, this development occurred in two of the countries that had weathered the authoritarian storms of the 1960's and 1970's through the institutional enclosure of political conflict: Colombia and Venezuela. These cases confirm Katz and Mair's (2009, 759) assertion that car-

[84] Oversight capacities over the most relevant intra-party affairs are codified constitutionally as follows: political finance (Costa Rica, 1997; Ecuador, 1998; Venezuela, 1999; Panama, 2004, and Mexico, 2007) and intra-party democracy (Colombia, 1991; Venezuela, 1999; Nicaragua, 2000; Bolivia, 2009; and Dominican Republic, 2010). Studies of the entire set of legal instruments that constitute party law found that all nominally democratic countries in the region appointed electoral courts with the power of oversight over political finance (Lujambio 2007). In addition, 13 of these countries have appointed the electoral authorities to facilitate, monitor, and/or hear appeals on political parties' internal candidate selection processes (Molenaar 2015b).

telization may result in the rise of anti-system movements and parties that "appeal directly to public perceptions that the mainstream parties are indifferent to the desires of ordinary citizens."[85] Other examples include Peru, Bolivia, and to a lesser extent, Ecuador.

What all cases have in common is that public discontent with the political status quo contributed to the appeal of political outsiders and the rejection of the existing model of governance. The new political leaders that capitalized on these rejectionist movements did not advocate the deepening of democracy towards a fully liberal or representative model of democracy. Instead, they proposed increasing the participatory element of democratic governance by opening up the political system through the use of referenda, community councils and decentralized mechanisms for local political participation (Munck 2015, 379–80).[86]

In the process, the established political parties – rather than the exclusionary nature of many Latin American states – were identified as the main culprits of political inattentiveness to the demands of large parts of society. When combined with the rise of neo-populist leaders, this development tended to exacerbate the approach to democracy already visible in the 'delegative democracy' model, namely that the "nation and its "authentic" political expression, the leader and his "Movement," are postulated as living organisms. The leader has to heal the nation by uniting its dispersed fragments into a harmonious whole" (O'Donnell 1994, 60).

These normative shifts have resulted in a new model of party law that explicitly rejects the figure of political parties as unnecessary intermediary institutions that distorts the representative relationship between the government and the population at large. The case of party law reform in Venezuela is exemplary. The 1999 Constitution, promoted by the anti-system Chávez and his supporters, removed political parties from the state's institutional design. The constitution deliberately does not mention political parties, for example, when it states that "citizens have the right to organize politically through *democratic means of organization, functioning, and leadership"* (§67, emphasis FM).[87]

[85] Understanding this particular trend in Latin American party law hence serves as a warning sign for other regions in the world as well. Too constrictive party laws may eat away the legitimacy of the system it seeks to uphold as their exclusionary nature provides fuel to political movements that capitalize on public rejection of political settlements that are (perceived to be) impenetrable.

[86] When combined with the collapse of existing institutional party structures, such measures tended to result in the rise of competitive authoritarianism (Levitsky and Way 2010).

[87] *Todos los ciudadanos y ciudadanas tienen el derecho de asociarse con fines políticos, mediante métodos democráticos de organización, funcionamiento y dirección.*

With the adoption of this constitution, Venezuela reversed the regional trend towards the increased constitutional codification of political parties. Instead, the constitution no longer mentions political parties at all, but only refers to the broader phenomenon of political associations. Similar changes in party law are visible in the Ecuadorian 2008 Constitution adopted under Rafael Correa and the Bolivian 2009 Constitution adopted under Evo Morales. The latter country establishes that candidates for elected positions can be postulated by a broad spectrum of groups: organizations representing the indigenous nations and peoples, citizen groups, and political parties (§209).[88] As a direct consequence of political parties losing their privileged position in the state's institutional design, Bolivia and Venezuela have also stripped parties of their financial benefits.[89]

Regardless of these changes, the new regimes still depend on periodic, but highly skewed, elections to legitimize their rule (Levitsky and Way 2010). As a consequence, they continue to rely on organized forms of electoral participation that are just not called political parties. This focus on participation means that, in line with other contemporary democracies, many of these countries continue to promote state involvement in intra-organizational affairs. Although constitutional reliance on the institution political parties may have disappeared, the more common practice of managing participation in a top-down manner remains. Venezuela does so by specifying that both the candidates and the leaders of political associations need to be selected through internal elections (§67). In the case of Bolivia, political groups need to select their candidates in an internally democratic manner, with the exception of the indigenous groups, which are allowed to select their candidates in line with communal democratic principles (§210). These articles underline how the rise of 'neopopulist' regimes and the associated reform of party law forms yet another

[88] *organizaciones de las naciones y pueblos indígena originario campesinos, las agrupaciones ciudadanas y los partidos políticos.* Party law reform in Colombia and Peru was less extreme. In Colombia, a large protest movement pushed for the convention of a Constituent Assembly in 1991. This process occurred in a bottom-up manner but only resulted in the partial rise of new political parties, meaning that part of the delegation elected to the Constituent Assembly consisted of representatives of the traditional institutionalized political parties (Roll 2001, 243–245). As a consequence, the 1991 Constitution cut barriers to political representation and opened up the political arena to alternative forms of political organization (§107). In Peru, mass rejection of the existing political system resulted in the election of the authoritarian Fujimori who disbanded Congress in an auto coup (García Montero 2001; Taylor-Robinson 2001). Fujimori adopted a new 1993 Constitution that opened up representation to political movements. Given his authoritarian leadership style, the constitution contained no other measures on political parties.

[89] The new Venezuelan constitution explicitly prohibited any type of political association from receiving state funding. In a similarly symbolic gesture, the Bolivian legislature had earlier adopted a 2008 party finance law that eliminated all public funding for political parties and created a fund for the benefit of disabled people instead (Molenaar 2014a, 334–35).

episode in a long series of party law reforms aimed at regulating formal political participation to address Latin America's chronic inability to address demands for more inclusionary states.

2.7 Conclusion

Time and again, Latin American politicians have turned to party law reform as a means to legitimize democratic and non-democratic forms of governance alike. More importantly, the chapter's analysis of the normative appreciation of political parties visible in contemporary constitutions and other sources of party law points towards the procedural necessity of parties in present-day Latin American democracies. The extent to which political parties constitute permanent forms of organization differs between countries. Regardless of the role that political parties play in political life, however, all countries rely on the regulation of organized forms of political participation as the main avenue to access political power. This provides a first answer to the heuristic question of what utility political parties have for Latin American politicians.

Based on a content analysis of contemporary forms of Latin American party law, the chapter has shown that this conception of political parties as necessary for the maintenance of popular electoral participation, a precondition for democratic governance, has resulted in a utilitarian approach to political parties and party law. The analysis reveals that politicians often attempt to restructure political parties in a top-down manner. This conception is visible most clearly in norms on political parties' duties and obligations and the regulation of the extra-parliamentary party.

Indeed, many contemporary party laws introduce adherence to democratic standards for intra-party conduct as a solution to the wide array of political problems that have accompanied the transitions to democratic governance. As a consequence, these party laws spell out requirements for political parties' internal functioning and behavior in great detail. In return, parties are often awarded access to the financial resources needed for them to exercise their electoral functions. It follows that party laws present politicians – through their respective party organizations – with access to resources that they can use to participate in elections. As a consequence, however, politicians need to abide – at least on paper – to the formal rules that govern party organization.

This chapter's discussion of the historic development of party law has provided some first pointers to the general conditions that motivate politicians to adopt party laws. The chapter has shown that party law reform is best understood as part of a broader elite strategy to deal with conflictive tensions. On the one hand, the need to prevent

violent conflict results in party law reforms as a means to institutionalize power sharing and legitimize political rule through free and fair elections. On the other hand, party law also proves useful at keeping competitors at bay – be it for democratically elected governing parties or more authoritarian rulers. Different changing socio-political circumstances thereby account for different types of adopted party laws. As will be discussed in the next chapters, this finding concurs partly with the extant literature on party (finance) law reform that identifies political crises and electoral concerns as main drivers of reform (Clift and Fisher 2004; Koß 2011; Scarrow 2004).

Nevertheless, the chapter has also pointed out that politicians often respond to the failure of formal rules to structure political life by adopting new rules. Indeed, this chapter identified an important paradox in Latin American party law: rules are often adopted to address political actors' failure to abide by existing rules. Two common critiques on the Latin American practice of regulating political parties is that legislators often ascribe oversight over the implementation of these laws to bodies that are not capable of acting as true monitoring bodies. Furthermore, the Latin American rule of law is generally weak and in many countries the informal structuring of economic and political life is a cultural norm (Zovatto 2007, 753–54). As a consequence, it may be questioned to what extent these party laws genuinely guide the political process or whether norms such as intra-party democracy and transparency are nothing but a dead letter. Answering this question conclusively lies beyond this study's purview. Nevertheless, it does indicate that care should be taken to identify whether the impetus for reform results in party laws that are at least designed to matter in practice.

Only the recognition that not all party law reforms come about under similar circumstances, nor constitute similar endpoints, allows for the development of a theory that truly captures the various strategies of party law reform at work. In order to take on this task, the following chapter develops a theoretical framework that integrates the literature on party organization with recent advances in the study of party registration requirements, political finance regulation, and the regulation of candidate selection. Based on the findings of this chapter, the framework identifies relevant changes in socio-political circumstances to provide a full account of party law reform. It also builds on the discussion of party law under the different political regimes presented here by conceptualizing party law reforms as consisting of two attributes: adopted legal provisions and intended effectiveness.

CHAPTER 3 – A resource-based perspective on party law reform

3.1 Introduction

The study of party law is a relatively recent phenomenon. Both the legal and political disciplines have traditionally paid little systematic and comparative attention to party laws and their political effects (van Biezen 2012, 188; van Biezen and ten Napel 2014, 8; Müller and Sieberer 2006, 435).[90] Only in the last decades did a changing appreciation of party law as a political phenomenon spur the inclusion of the legal regulation of political parties, and of political finance more specifically, in studies of politics.[91] This tentative inclusion followed from the recognition that state regulation of party structures had grown to a point that it exceeded "what would normally be acceptable for private associations in a liberal society" (Katz 2002, 90).[92] In addition, the assertion that the increased regulation of parties reflects a change in the relationship between political parties and society (see van Biezen 2004; Katz and Mair 1995, 2009) has sparked the academic interest in party law.[93]

This chapter provides an overview of the academic scholarship that developed in response to the increased appreciation of the political nature of party law. In the process, it attempts to integrate the findings of these studies into a theoretical framework

[90] Germany, the heartland of party law according to Müller and Sieberer (2006, 435), forms an exception.

[91] Legal scholars have been somewhat more active in producing comparative overviews of the legal regulation of political parties as part of larger constitutional comparisons (see van Maarseveen and van der Tang 1978; Nohlen et al. 2007). Nevertheless, these legal studies have tended to overlook one important aspect: that party laws "neither originate nor operate in a vacuum" and that their "import cannot be meaningfully described or explained independent of the social, political, and economic forces, domestic and international, that shape a given constitutional system" (Hirschl 2013, 2).

[92] Studies of the constitutions of European democracies (van Biezen 2012; van Biezen and Borz 2012) and of European supranational norms regarding the legal regulation of political parties (van Biezen and Molenaar 2012) show that different conceptions of democracy underlie different models of party regulation (also see Persily and Cain 2000).

[93] Unequivocal evidence of this trend remains lacking and several scholars question whether political parties did indeed shift from the realm of society to that of the state (Kitschelt 2000; Koole 1996).

that provides a first tentative answer to the question of why the legal provisions and intended effectiveness of adopted party law reforms vary. Towards these ends, this chapter's first section discusses the effects of party law on political life. These effects suggest that party law reform should be understood in relation to political parties' organizational format. The second section reviews contemporary studies of party law reform, from which it deduces that party law's effect on party organizational access to resources is key to understanding reform processes. The third section builds on these findings and establishes a theoretical connection between party laws and fundamental party organizational resources. This allows for the specification of relevant changing socio-political circumstances, which alter party access to such organizational resources and can thereby be connected to different types of adopted party laws.

3.2 The political relevance of party law

To test empirically if and how party law matters for political life, scholars have set out to investigate whether provisions of party laws have an effect on party competition and party organization. They do so departing from the hypothesis that the introduction of certain provisions of party law, such as rules on party registration or political finance, alters political parties' ease of organization and their ability to compete in elections by extension.

Findings of studies on party competition are mixed, but in general point towards some effect of party law on the shape of competition. An increase in the monetary fee required for party registration has been found to lead to a lower number of parties that participate in elections (Hug 2001; Rashkova and Spirova 2014; Tavits 2008). In a similar vein, the number of signatures required for party registration partly determines the ease of new party formation (Hug 2001; Rashkova 2010; Su 2015; Tavits 2008).[94] New party formation has also been found to increase marginally when public funding schemes exist (Casas-Zamora 2005; Hug 2001; Tavits 2008).[95] All

[94] Scholars disagree, however, on the direction of this effect. Rashkova (2010) demonstrates that an increase in the number of signatures needed for party registration has a negative effect on the number of party that participate in elections at the district level in 20 European democracies. Su (2015) reaches a similar conclusion for his sample of 18 Latin American democracies, where more restrictive signature requirements reduce the number of effective electoral parties significantly. Other authors, on the other hand, reach the contrary conclusion that an increase in the number of signatures needed for new party formation has a small, but positive, effect on new party national party formation in both new Eastern European democracies (Tavits 2008) and developed democracies (Hug 2001) alike. This leads Hug (2001) to suggest that the effect of party formation thresholds depends in part on the credibility of the new parties that form within a given political system.

[95] Rashkova (2010), on the other hand, concludes that no effect exists at all.

in all, these studies point towards an effect of party law on the party system, because it alters the organizational costs and benefits associated with new party formation.

Scholars have similarly focused on the influence of party law on new parties' ability to enter the legislature. Findings on the influence of party finance regulations on new party entry are mixed. Several scholars identify an effect of public funding on new party entry (Birnir 2005; Bisschoff 2011; Booth and Robbins 2010; Casas-Zamora 2005; Nassmacher 2009; Pierre, Svåsand, and Widfeldt 2000; Rashkova and Spirova 2012),[96] although other studies detect no such effect at all (van Biezen and Rashkova 2014; Scarrow 2006). When looking more broadly at the totality of regulation in 33 post-war European democracies, Rashkova and van Biezen (2014) detect a negative and significant impact of an increase in the magnitude of regulation on new party entry. Bisschoff (2011) similarly finds in a study of 21 advanced industrial democracies that high signature requirements and a high registration fee have such a negative effect.[97] Generally speaking, these studies thus point towards a partial, but disputed, effect of party law on the party system through the alteration of organizational costs and benefits for new versus established political parties.

In the process of explaining some of these diverging findings, several scholars argue that the existing party organizational format mediates party law's effect on the party system as a whole. For the effect of public funding on new party entry, Scarrow (2006) suggests that such an effect likely occurs only where weakly institutionalized parliamentary parties exist that fragment when new resources become available to their internal factions. Casal Bértoa and Spirova (2013) confirm that different types of political parties respond differently to party law. In their study of 12 Eastern European countries, these authors show that the presence of public party subsidies explains the choice between survival and disappearance for small new parties that participate in elections without ever reaching the electoral threshold only.

[96] Some scholars identify a (negligible) positive effect of public funding on new party entry in the case of Bulgaria (Rashkova and Spirova 2012), 25 democracies (Nassmacher 2009), six Western-European democracies (Pierre, Svåsand, and Widfeldt 2000), and Costa Rica and Uruguay (Casas-Zamora 2005). Bisschoff (2011) takes a middle position, as she shows that direct public funding itself has no effect on new party entry in 21 advanced industrial democracies, but state-sponsored media access does have a positive effect on new party entry. Birnir (2005), on the other hand, detects that in the eight new Eastern European democracies in her sample, new party entry increases when public funding is absent. Booth and Robins (2010), finally, find that the absence of state funding results in a reduction of the effective number of parties that participate in elections in 16 post-communist democracies, but only when the law restricts fundraising in the private realm concomitantly. The mixed nature of these findings may in part be attributable to the different ways in which scholars conceptualize both party law/political finance regulation and operationalize new party formation and entry (Casal Bertoa and Spirova 2013).

[97] This is partly driven by outliers.

If the party organizational format, or party type, functions as an intervening variable in the relationship between party law and the party system, it is hardly surprising that a number of studies identify a more convincing effect of party law at the party organizational level. In her study of political parties in four post-transitional European democracies, for example, van Biezen (2003, 177–200) finds that high dependence on public funding, as introduced per party law, has consequence for parties' organizational development and the intra-party balance of power. Nassmacher (2009) similarly identifies a shift in the intra-party distribution of power after the adoption of laws that introduce public party subsidies. Whiteley's study of party activism and membership in 25 democracies (2010) finds that excessive political finance regulation stifles voluntary activity at the grassroots level. Birnir (2004), lastly, demonstrates that the presence of rules that stipulate that parties need to register members throughout the entire country explains the lack of indigenous parties in Bolivia, Guatemala, Mexico, Peru, and Ecuador. All these studies suggest that party law may have profound effects on the type of party organizations that appear in a country.

The relevance of party law for party organization follows in part from the fact that, "[i]n many countries, parties' organizational practices must conform to legal statutes that spell out ground rules on such matters as candidate selection, party finance, and leadership selection" (Scarrow 2005, 19).[98] The organizational and attitudinal requirements of party law are particularly stringent when legal rules require parties to change their statutes or activities as a condition to either obtain or maintain their legal registration (van Biezen and Molenaar 2012; Molenaar 2014a). Indeed, failure to abide by such rules has resulted in the frequent banning of politically relevant parties in regions such as sub-Saharan Africa (Moroff 2010), Europe (Bourne 2012), and Latin America (Molenaar 2012a).[99] From the above, it follows that party law may have important political effects on individual party organizations and, through these organizations, on the party system itself as well.

Tsebelis (1990) shows that when institutions determine political outcomes, actors may be tempted to change the existing institutional settings to alter this process to their advantage. It has therefore been argued that the two fundamental questions in politics are how effectively the electoral system can be manipulated and how disposed politicians are to do so (Lijphart 1994, 139). This logic has been a driver most prominently of studies of electoral reform that investigate whether such reforms are

[98] Casal Bértoa et al. (2014), for example, discuss the case of the Communist Party in Portugal, which had to change its internal election process in response to the new norms introduced by a 2003 party law.
[99] Such effects of party law portray an intrusion of "the force of state authority deep into the heart of all political organizations" (Issacharoff 2007, 1460) and question the organizational independence of parties from the state (van Biezen 2004, 2012).

best explained with reference to the electoral concerns of governing parties (Benoit 2004, 2007; Boix 1999; Colomer 2005; Renwick 2010; Rokkan 1970). Recognizing the fundamental effects that party law may have on the structuring of contemporary political life suggests that similar questions need to be addressed as to the legal regulation of political parties. Such questions take to heart Katz's assertion that both the content of party law, as well as the principle that there should be party laws, are not above politics (2004, 10). What these politics are, and how they relate to party law reform, requires further elaboration.

3.3 Explanations of party law

In response to the appreciation of the political nature of party law, scholars have set out to investigate how certain types of party law come about. Rather than focusing on the body of party law as a whole, these studies examine subthemes such as formal registration requirements (Birnir 2004, 2008; Harbers and Ingram 2014; Scherlis 2014), political finance rules (Clift and Fisher 2004; Koß 2008, 2011; Piccio 2014; Scarrow 2004; Weekers, Maddens, and Noppe 2009), and the legal regulation of the candidate selection process (Freidenberg 2015; Lawrence, Donovan, and Bowler 2013; Persily 2001; Ware 2002). To my knowledge, no scholarly attempt has been made to develop exploratory propositions on the way in which politicians redesign the legal framework that regulates their parties' functioning and behavior more generally.

Such an endeavor would be worthwhile nonetheless because political finance, registration, or candidate selection reforms are not necessarily adopted in isolation. Instead, such rules oftentimes form part of larger reform processes. This means that the various components of a party law reform may combine to tell a larger story of (un-) intentional political restructuring. This study aspires to fill this gap by combining advances in the study of party law's subthemes with theories of party organization. A first step towards this aim consists of recognizing that resource needs and interests form a – usually implicit – dimension in many studies explaining adopted party law reforms. In addition, politicians may use party law reforms to respond to these resource needs and interests in various ways.

3.3.a Collective need for resources to ensure organizational continuity

Established political parties may recognize that they have shared interests that they can advance by adopting a political finance scheme that works in their joint favor.[100] This joint favor can take different shapes. It may consist of ensuring organizational

[100] This logic mirrors the cartel party theory as advanced by Katz and Mair (1995, 2009).

continuity at a time when the membership figures of many established political parties have been falling (van Biezen 2004; Katz and Mair 1995, 2009). Also, political parties may try and drive down the collective cost of competing in elections by adopting rules that constrain all political parties' behavior. Such efforts free up the resources used in election campaigns so that these can be used for other organizational purposes. What these 'resource-maximization' strategies have in common is that politicians do not take into account singular political or electoral considerations when adopting a reform (Scarrow 2004). It is the collective benefit that matters.

Empirical studies confirm that such resource maximization explains the content of party law reforms in several European countries. For the German case of political finance regulation, for example, Scarrow (2004) finds that most reforms constituted a resource-maximizing strategy in which parties got access to direct state payments and tax subsidies for party donations. Piccio (2014) identifies a similar collective strategy in the case of Italian political finance reform, where the established political parties ensured the adoption of reforms that increased their collective access to financial resources.

Belgian political finance reforms are also best explained with reference to an increase in campaign expenditures that translated into increasingly competitive electoral politics. This development negatively affected all established political parties equally and thereby encouraged them to work together in a reform that maximized their access to public funding to mitigate the effect of these rising costs on their available resources. As was the case for Germany and Italy, broad coalitions of political parties continuously adopted rules that increased their collective access to financial resources through the introduction of public subventions for political parties (Weekers, Maddens, and Noppe 2009).

In a twist on this collective self-serving logic, Clift and Fisher (2004) find that the introduction of campaign spending limits in the UK, which constrained the amount of resources parties could use in elections, formed a response to an increase in campaign spending. This spending 'arms race', which threatened political parties' overall access to resources, could be halted through the adoption of party law reform that constrained all political parties' behavior collectively. These findings show that political parties hence have multiple strategies at their disposal to increase or protect their collective access to resources.

3.3.b Individual party's need for resources to serve electoral goals

Alternatively, politicians may keep an eye out for their short-term electoral outlook when adopting party law reforms. Under such an electoral economy strategy, party law reforms are expected to either: 1) increase the established or dominant parties'

access to electoral or governing resources relative to the access that other parties have to these resources and/or 2) advance the established or dominant parties' general standing by responding to public demands for change (Scarrow 2004). Both reform strategies depart from the need to protect the individual party's access to resources. The only real difference between them is whether it is the legal provisions contained in the adopted law or the act of adopting the law itself that secures access to these resources. Shugart and Wattenberg (2001, 577) call the former 'outcome-contingent' and the latter 'act-contingent' reforms.

Empirical studies confirm that the outcome-contingent electoral strategy is at work in a broad range of cases of party law reform. Clift and Fisher (2004) find some evidence of institutional redesign by strategic agents in the case of France. Here, early political finance reforms rewarded parliamentarians and the major parties in the system more than they did smaller parties. Other scholars identify similar strategies in the reform of the legal regulation of candidate selection in several Latin American countries (Freidenberg 2015) and the United States (Persily 2001). What all these newly adopted rules have in common is that, although they applied to all political parties equally, in practice the adopted candidate selection rules tended to favor the electoral or governing fortunes of one party (coalition) over those of others.

A similar result pops up in studies of the reform of spatial registration requirements in Ecuador (Mejía Acosta 1996, in Birnir 2004), of party formation rules in several Latin American countries (Harbers and Ingram 2014; Scherlis 2014), and of party formation rules in Central and Eastern Europe and Latin America (Birnir 2008). These scholars point out that politicians tend to sell such reforms first and foremost as a means to combat fragmentation and to increase governability. In practice, however, they note that such rules serve other goals as well, such as the promotion of the incumbent advantage (Birnir 2008) or the closing-up of the party system to newcomers (Harbers and Ingram 2014; Scherlis 2014).

Empirical evidence confirms that the act-contingent electoral strategy also manifests itself, meaning that politicians expect the adoption of symbolic reforms to suffice to address popular demands to do something. Scholars identify numerous examples of party law reforms that advance political parties' general standing by responding to public demands for change. The desire to increase political capital by addressing corruption scandals explains several adopted political finance reforms in France and the UK (Clift and Fisher 2004; also see Scarrow 2004). Koß (2008, 2011) similarly identifies a discourse on political corruption, and one critical of business donations to political parties at that, as a driver for the introduction of public funding schemes in Germany, Sweden, and France.

Such legitimacy-based explanations are not limited to studies of political finance. In their analysis of the adoption of direct primaries in the United States, Lawrence et al. (2013) find that these reforms are best explained as a response to external demands for change that translated into an imminent electoral threat for the established parties. This finding is confirmed by Freidenberg (2015), who identifies the need to create legitimacy for discredited elitist parties and/or the desire to respond to external demands for democratic parties as reform drivers of the legal regulation of candidate selection in several Latin American countries. Scherlis (2014) and Harbers and Ingram (2014), lastly, encounter a similar strategy behind the reform of party formation costs in Peru, Colombia, Argentina, and Mexico. Here, the lowering of party formation costs responded to popular demands for better accessible political systems.

3.3.c Factional need for resources to control the party organization

Intra-party concerns have been identified as a third driver of party law reforms. Party law reform thereby becomes yet another strategy in the hands of established party leaders or factions in the face of internal upheaval. This is the case in particular when these leaders or factions (continue to) control the legislature. The recognition of strategies that depart from changes in intra- rather than inter-party relations hence proves crucial to capturing the full dynamics of party law reform.

To date, the intra-party dimension has only been recognized fully in studies of the reform of the legal regulation of candidate selection. Ware (2002) argues, for example, that the adoption of direct party primaries in the United States is best explained as a strategy of established party elites that sought to maintain control over the party.[101] The introduction of such primaries enabled these politicians to contain dissent and to prevent minor party candidates from running in elections.[102] In a similar vein, Freidenberg (2015) reports that candidate selection reform in several Latin American countries responded to a desire of party leaders to either control the party organization and/or to create consensus and prevent internal divisions. Harbers and Ingram(2014), lastly, discuss how past reforms of legal barriers to party formation in the case of Mexico also aimed to maintain party discipline and internal cohesion.

These studies make a strong case for the adoption of the intra-party considerations as a third important defining influence on the outcome of party law reform. This

[101] This contradicts Lawrence et al.'s finding (2013) that the introduction of these primaries responded to legitimacy concerns.

[102] Control over the party was not only threatened by the rise of new leaders. Persily (2001, 755) describes, for example, that in the segregated United States of the late 19th century, party leaders in Southern single-party states introduced primaries with a high participation threshold to prevent the African American electorate from voting in this 'critical and determinative election'.

begs the question whether intra-party concerns have not been overlooked in studies of other areas of party law reform, such as political finance or the reform of party registration requirements. It may well be the case, for example, that this intra-party dimension is relevant in explaining changes in political finance rules that alter the intra-party distribution of public party subsidies or of high registration rules that increase the costs of party exit to form a new party.

3.3.d Untangling reform causes, strategies, and outcomes

From the above, it follows that politicians apply various reform strategies. Such strategies constitute a prioritization of an interest, which translates into behavior, i.e. the design and adoption of a specific party law reform (see Scarrow 2004, 655). The empirical studies of party law's subthemes also show that adopted reforms can be classified according to various sets or reform benefactors: reforms serve to maximize all political parties' access to resources, to protect one party or party coalition's relative access to either tangible or legitimacy resources vis-à-vis its competitors, or to maintain intra-party discipline and cohesion at the behest of established party leaders. Multiple party law reform strategies exist that serve different purposes.

One question that remains unanswered is why politicians would choose one strategy over others. Under what conditions can we expect each of these strategies to prevail in determining the adopted party law? And can we use these insights to develop exploratory propositions on the expected outcome of party law reform? Indeed, the astute reader may have noticed that several of the empirical studies mentioned above, such as those conducted by Scarrow (2004), Clift and Fisher (2004), and Freidenberg (2015), find evidence of at least two different strategies at work in the countries or regions at issue. This leads these scholars to conclude that different socio-political circumstances result in different reform strategies. What these different socio-political circumstances are, and how they result in different types of adopted party laws, has not been investigated in a systematic manner.[103]

Answering these questions is relevant, as it would allow the study of party law reform to shift from the explanation of singular outcomes to the more deductive formulation of reform propositions. In the process, it may even be possible to explore whether some levels of interests take precedence over others. Towards these ends, it is necessary to tease apart the socio-political circumstances that drive reform, the reform strategies themselves, and the outcomes of reform. Rather than taking the adopted rules as an indicator for politicians' strategies, as many of the above-mentioned

[103] Scherlis's study of registration requirement reform in Peru, Chile, Argentina, and Mexico forms a notable exception, as Scherlis (2014) proposes that politicians open up the political system in response to legitimacy concerns and close up the political system in response to governability concerns.

studies do, such an approach would stipulate relevant socio-political circumstances as drivers of reform and develop exploratory propositions that specify sets of circumstances that are expected to result in different types of party law reforms.

Detaching changing socio-political circumstances and reform strategies from the content of adopted party laws is relevant as well because of a problem that Ware (2002) identifies in his study on the introduction of direct primaries in the United States. Such party law reforms, Ware contends, need to be approved by (state) legislatures. The political parties that are affected by the reform control these legislatures in turn. The agreement of these parties is hence a necessary condition for the adoption of successful reforms (Ware 2002; also see Koß 2011). It may be one thing for politicians to state that they adopt a reform to address popular demands for political change. Indeed, when the general public insists that 'something must be done', blocking any proposed reform effort would likely constitute political suicide (Katz 2005, 69). Designing a law that actually alters the political system in response to such concerns is an entirely different thing, however, as the existing system underlays the governing politicians' position in power.[104]

This begs the question to what extent the legitimacy and corruption scandals identified as drivers of reform above really determine the outcome of reforms. It may well be the case that such scandals serve as a mere pretext for politicians to initiate a reform process that ultimately serves different goals. Rather than taking its alleged symbolic nature for granted, this study therefore looks beyond the mere legal provisions that reformers adopt. It does so by conceptualizing the outcome of party law reform to consist of two dimensions: legal provisions and intended effectiveness.[105] An encompassing explanation of party law reform should be able to specify not only why certain legal provisions appear, but also if and why reforms are designed in an effective or symbolic manner.

3.4 Party law reform: a resource-based approach

The reviews of the literature on both party law's effects and the reform of party law's subthemes suggest that party organization and party access to resources are fundamental to understanding the outcome of adopted party law reform. The tentative creation of a theoretical framework on party law reform therefore requires further

[104] In her study of Italian political finance reforms, Piccio (2014) finds indeed that public demands for change are insufficient to explain politicians' actual legislative behavior. Also see Mietzner (2015).
[105] This latter dimension recognizes that party law reforms may be nothing but window-dressing measures that attend to social demands to 'do something' without effecting any real change (Shugart and Wattenberg 2001, 577).

discussion of what constitute party resources, why politicians might care about their parties having access to such resources, and how party law affects this access. Once fundamental party resources have been identified, this section also looks in more detail into why politicians would be driven to use party law reform to alter their parties' access to these resources.

3.4.a Political parties' utility for politicians

Organizational development has been described as a way for political groups to fortify the numerical potential of their supporters and to thereby realize their political goals (Ostrogorski 1902; Michels 1915[1968]).[106] Party organization structures the interactions among its participants while facilitating the division of labor and role differentiation between them (Janda 1980, 5). [107] The higher goal of forming an organization to structure such interactions is to increase the efficiency and output for all participating individuals. Or, as Aldrich (1995, 5) puts it succinctly, "[a]mbitious politicians turn to the political party to achieve [their] goals, [but] only when parties are useful vehicles for solving problems that cannot be solved as effectively, if at all, through other means." Following this line of reasoning, the identification of the problems that politicians attempt to solve through organization answers the heuristic question of why politicians turn to political parties, and to party law by extension. These problems are likely found in the arenas where political parties operate.

According to Panebianco (1988), the one activity that distinguishes parties from other organizations is their competition for votes during elections. The importance of this arena is also reflected in Sartori's minimal definition of political parties as "any political group that present at elections, and is capable of placing through elections, candidates for public office (1976, 64)." The parliamentary plane is a second arena that distinguishes party activity from the activity of other types of organizations (Duverger 1964, xxxiii). This arena stands forefront in Burke's definition of the political party as "a body of men united, for promoting by their joint endeavors the national interest, upon some particular principle in which they are all agreed" (Burke 1770, 74). Political party organization in the legislature forms the main manifestation of this agreement on the particular principle that promotes the national interest.

Whether politicians decide to invest in party organization building in either or both of these arenas is, however, an empirical question (Kitschelt et al. 1999, 47). To

[106] These authors assert that with the passing of time and with the solidification of the party machine, the organization's main driver shifts from the political causes that incentivized its appearance to organizational survival that served conservative interests with a stake in the party.

[107] Duverger (1964, 4), for example, describes the political party as a community of small component parts that are held together by a coordinative mechanism. It is his assertion that party organization provides the setting for the activity of these small component parts: the party's members.

wit, joining a party organization is not without its costs. Political parties cannot nominate an unlimited supply of candidates to run in elections. Subjecting to the organization's hierarchy thus carries the risk that the party would prefer to nominate a different candidate to participate in the next round of elections. Potential cash demands, the need to back-scratch party leaders, and to adjust one's profile to the party's ideational and organizational straightjacket constitute additional costs (Hale 2006, 173).

Subjection costs may occur in the legislative arena as well, such as is the case when politicians are confronted by the loss of autonomy. These cost are hardest to bear when frictions arise between the formal party line and issues of conscience, or when the national legislative leadership's interests clash with those of local party leaders or constituencies. Whereas subjecting to a party organization in elections may cost a politician his or her spot on a candidate list, subjecting to the party hierarchy in the legislature may damage the relationship between politicians and their constituents and may thereby threaten politicians' future careers (Owens 2003, 14–15).

Despite these risks, formal political party organization abounds in contemporary (Latin American) political systems. This suggests that the benefits of party organization oftentimes outrank its costs and that efficient party organization contributes to politicians' ability to *present successfully in elections* and to *legislate effectively* more so than operating individually does (Hale 2006). The reasons for this are both formal and substantive.[108] Many countries only allow parties to present candidates in elections (Kitschelt et al. 1999, 44) and/or have adopted legal provisions that severely disadvantage individual candidates vis-à-vis political parties (Müller and Sieberer 2006, 441).

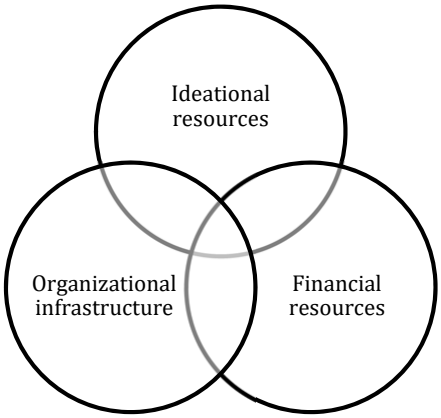
In addition, party organization provides politicians with access to resources that they can use to overcome the social choice and collective action obstacles to electoral participation and legislative coalition formation (Aldrich 1995; Hale 2006, 11–12; Kitschelt et al. 1999, 46). Put differently, party organizational resources enable politicians to convince voters to mobilize behind their candidacy and they minimize the transaction costs of legislative voting procedures once politicians are elected.[109] Access to these resources offsets the costs that politicians incur by subjecting to organizational hierarchies and discipline, as minimal as this subjection may be (Hale 2006).

[108] Empirical studies show, for example, that party organization indeed contributes to effective legislation (Carey 2009; Cox 2006; Cox and McCubbins 1993; Laver and Shepsle 1996).
[109] Organizational resources thus allow political parties to meet "the different needs faced by aspiring politicians under competitive circumstances" (Strøm 1990, 575).

3.4.b Fundamental party resources

A review of the academic literature on political parties allows for the identification of three fundamental sets of party resources that political parties require for meeting their politicians' needs. These resources are interlinked, meaning that the abundance of one resource can overcome problems related to the scarcity of other resources (as depicted in Figure 3-1 below). Party types differ as to the extent in which they rely on each of these resources to satisfy their politicians' demands. Generally speaking, however, all parties require at least some ideational resources, financial resources, and an organizational infrastructure to support their politicians' ability to win elections and legislate effectively. The following sections look at each of these three sets of resources in more detail.

Figure 3-1: Fundamental party organizational resources



Ideational resources

When joining a political party, politicians gain access to *ideational resources*. Ideational resources have been described to consist of the party's original goals and programmatic identity (Panebianco 1988, 16).[110] In the Latin American context, a party's identity often entails the personality of its leadership and/or a charismatic authority figure instead (Roberts 2002, 18–19; Sartori 1976, 73).[111] Identity can also consist of ethnic (Birnir 2004; Van Cott 2000) or populist (Knight 1998; Roberts 1995) appeals.

[110] Given the centrality of identity in party organization, one of the reasons why new parties fail to ensure organizational survival, is that they are unable to develop sufficient voter identification or that they are create a too broad or too narrow integrative identity (von Beyme 1985, 25).

[111] Charismatic leaders provide ideational resources in the form of "solidary incentives to be physically and transfiguratively close to a leader with exceptional capabilities and personality traits" (Kitschelt et al. 1999, 47; also see Weber 1968).

Ideational resources provide a resource for the mobilization of voters and thereby contribute to politicians' ability to participate successfully in elections. They constitute a brand name that allows candidates to convey a great deal of information to voters in a relatively cheap manner (Aldrich 1995, 47–49). In addition, ideational resources help forge legislative coalitions on the basis of mutual policy preferences. Such coalitions serve to overcome the collective action and social choice problems faced when legislators try to come to decisions that reflect their individual preference orderings (Aldrich 1995; Hale 2006, 12). To summarize, ideational resources contribute to politicians' electoral recognition and legislative cohesion.

Party types differ empirically as to degree in which they rely on their ideational capital to successfully present candidates in elections, and to legislate effectively. Broadly speaking, ideational capital is much more relevant for programmatic parties that campaign on a clear programmatic platform than for clientelistic parties that rely on financial rather than ideational resources to bind voters and create coalitions (Roberts 2002). Nevertheless, it seems fair to assert that every party needs at least a minimal degree of name recognition to be recognized by voters and/or to be able to structure legislative relations. When ideational resources are absent, political parties will have a harder time keeping their politicians on board (Müller and Sieberer 2006, 437).

Financial resources

Contemporary political parties also rely on *financial resources* to meet their politicians' needs. Such resources stem from either, or both, public and private sources of funding. Public sources of funding consist of direct and indirect state subventions (Katz 1996, 130). Private funding sources cover any type of money that political parties obtain outside of the state (von Beyme 1985, 196–97; Nassmacher 2009).[112] Both types of funding sources need not necessarily constitute formal or legal exchange relationships (Freidenberg and Levitsky 2006, 189). In Latin America, for example, the prevalence of organized criminal networks has resulted in concerns that illicit actors have become prominent party donors (Briscoe 2014, 2015; Casas-Zamora 2013). In addition, parties may capitalize informally on the state through party patronage (Scherlis 2010), meaning that state jobs have become a *de facto* form of state subvention for the governing party.

[112] Indirect subventions take the shape of state-sponsored media access, tax benefits, free postage, and other goods and services the state provides freely to parties (Katz 1996, 130). Parties obtain private funding from grass roots fundraising, membership fees, donations, and revenues from party enterprises and newspapers (von Beyme 1985, 196–97; Nassmacher 2009).

Financial resources are an indispensable political resource because they are "readily transferable in temporal, spatial, and interpersonal terms" (Paltiel 1981, 138). Financial resources contribute to the realization of politicians' goals through their facilitation of electoral campaigns, and even the formation of legislative coalitions.[113] To organize an electoral campaign, for example, politicians need to gather information about the electorate, mobilize campaign supporters, and conduct media campaigns (Strøm 1990, 575). Financial resources are required to pay for these activities. Affiliation to a political party provides politicians with easy access to such financial resources (Aldrich 1995, 49–50).[114]

An added benefit of financial resources is that these resources are able to compensate for structural deficiencies in other party resources.[115] This explains why some types of parties rely more on financial resources than others do. In clientelistic parties, for example, money provides an excellent substitute for the ideational capital otherwise required to organize successful electoral campaigns (Kitschelt et al. 1999, 47). In addition, the prospect of a steady stream of financial benefits, combined with the potential threat of being cut-off from this stream, can contribute to the formation of disciplined legislative coalitions when sufficient ideational capital is lacking (Hale 2006, 13–14).

Organizational infrastructure

Party organization also provides politicians with access to an *organizational infrastructure*, which contributes to their ability to participate successfully in elections and to form effective legislative coalitions (Olson 1965; Panebianco 1988). The organizational infrastructure encompasses the administrative and human resources that fuel the organization's daily operations in election campaigns and the legislature. In elections, party members or the party machine can be mobilized at the individual politician's advantage. In the legislature, the party's organizational infrastructure provides politicians with an advantage over individual legislators through the prominent role ascribed to parties in legislative standing orders. In addition, the presence of internal party rules and party whips may contribute to party unity (Strøm 1995, 67). When

[113] The Brazilian *mensalão* scandal showed, for example, how the governing PT party used monthly payments to forge congressional majority coalitions (Balán 2014).

[114] In those cases where joining a political party provides meager access to financial resources only, and/or where politicians have sufficient access to individual financial resources to not require additional party support, politicians are likely less inclined to subject to a party hierarchy.

[115] Also see Nassmacher (2009, 19), who notes that money can "acquire skills to compensate for shortcomings of specific parties or candidates", it can "be employed to pay agents, who act on behalf of other people", and it can be used by "[p]eople who lack the time or the skills to participate personally ... as an efficient means to influence politics."

party unity is high, politicians can count more easily on the legislative support of their parliamentary coalition (Strøm 2003; Van Vonno 2016).

Once again, however, certain party types depend more on an organizational infrastructure than others (Mair and Katz 1997, 112-113).[116] The organizational infrastructure plays an important role in, for example, the election campaigns of Latin American political brokerage and patron-clientelism parties, as well as encapsulating parties. To win elections, the former rely on human resources in the form of local brokers and patronage machines and the latter on strong local branches organized around party militants (Roberts 2002; also cf. Kitschelt et al. 2010, 18–21). Left-wing programmatic parties, personalistic and charismatic parties, and marketing parties, on the other hand, rely more on their provision of ideational and/or financial resources to attract both politicians and voters (Roberts 2002; also cf. Kitschelt et al. 2010, 18–21). In a similar vein, not all parties necessarily control an organizational infrastructure in the legislature. As discussed above, this may lead them to turn to financial resources to forge legislative coalitions instead (Hale 2006, 13–14).[117]

3.4.c Party law reform and resource scarcity

One problematic aspect for politicians is that political parties do not have continuous access to these three sets of resources in a stable manner (Panebianco 1988; Pfeffer and Salancik 1978[2003]). In the process of responding to the (changing) availability of resources, political parties have to "reconcile conflicting external and internal demands [for resources] to persist in the longer run" (Bolleyer 2013, 3). As a consequence, politicians may feel that organizational participation no longer serves their own purposes. Luckily for them, the subjection to party organizational hierarchy and discipline is voluntary.

When politicians feel that the organizational resource balance no longer works in their favor, they have the possibility of party exit at their disposal. This means that they can leave the formal party structure and subject to the hierarchy of another political party that better serves their resource needs – or choose to run independently. Alternatively, politicians can make their voice heard within the party, as a means to spur action to redress the organizational resource balance (Hirschman 1970). The omnipresence of party law in contemporary (Latin American) democracies provides politicians with a third strategy. For each of the three fundamental organizational

[116] In this sense, one may think of the cadre or elite party that relies on local status and connections, the mass party that relies on the support of numbers of members, and the more capital-intensive – and hence less labor-intensive – catch-all and cartel parties.

[117] The Brazilian's governing party's use of monthly payments to forge legislative coalitions with ideologically distant parties is an excellent example (Balán 2014).

resources identified above, party law reform can be used to either increase one's own or decrease another's access to these resources to thereby redress the resource balance.

Regulating access to ideational resources

Party law affects political parties' access to ideational resources through its stipulation of *fundamental values*. Such fundamental values define key democratic principles and rights and freedoms in terms of political parties. In addition, they specify permissible forms of party activity and behavior, as well as acceptable programmatic identities and ideological foundations (van Biezen and Borz 2009, 6–7). In this sense, one may think of the norm that political parties should be democratic internally, manage their finances in a transparent manner, apply the principle of gender, ethnic, and/or youth equality in their internal structures and candidate selection processes, and that they exercise an educational function.

Through the specification of fundamental values for party functioning and behavior, party laws differentiate between illegal and legal – and sometimes even desirable – forms of party identity and behavior. Politicians can use this mechanism to respond to resource scarcity in various ways. The specification of illegal forms of party may serve to restrict the ability of other political parties to capitalize on certain ideational resources, such as ethnicity or a specific ideology. [118] Alternatively, political parties may seek to improve the collective standing of political parties by underpinning their existence through the adoption of certain fundamental values (Molenaar 2014a; Piccio 2015).

Regulating access to financial resources

Party law reform can also be used to alter either one's own or another's access to financial resources. This is the case because political finance rules tame access to *private funding* by regulating political parties' access to income and/or their expenditures (Katz 1996, 124). The regulation of income entails the limitation of the private resources that parties may obtain.[119] The regulation of expenditures consists of the limitation of political spending through the introduction of spending limits. What such rules have in common is that they impact on party organizations' ability to

[118] The blocking effect of general norms is visible most evidently in cases where restrictive party laws proscribe the formation of extremist parties. In what Loewenstein (1937) calls 'militant democracies', for example, legislators adopt restrictive laws to prohibit anti-system or anti-democratic parties from entering politics. A similar constraint is visible in cases where legislators restrict the expediency or formation of mono-ethnic or religious parties (Reilly and Nordlund 2008).

[119] This prevents private donors from buying or supporting candidates. Private donations are limited quantitatively when legislators restrict acceptable amounts of contributions. Qualitative limits entail the prohibition of certain types of donors, such as corporate donations, donations from trade unions or religious organizations, and foreign donations (van Biezen 2010, 76).

use private financial resources as a selective benefit available for distribution to their politicians and supporters.

Secondly, political finance rules regulate access to *public funding*. Public funding regimes consist of direct public funding in the form of state subventions to political parties and indirect public funding in the form of state-sponsored media access, tax benefits, free postage, and other goods and services the state provides freely to parties (Katz 1996, 130).[120] What all these rules have in common is that they increase political parties' access to financial resources, although the specification distribution of money between political parties depends on the accompanying allocation criteria.[121] This way, political finance rules impact directly on the amount of money available to parties.

Regulating access to the organizational infrastructure

Lastly, party law reform may address changes in the organizational infrastructure. This is the case, firstly, because *party formation rules* create an (additional) resource burden for politicians that wish to form a political party by establishing legal requirements for the formation of aspirant parties. Such requirements may take on the shape of quantitative thresholds that establish that parties need to register the support of an absolute number or a percentage of either registered voters or of the valid or total votes cast in previous elections.[122] Qualitative requirements for registration form a broader category of registration requirements, which generally establish more structural or procedural rules for party formation. This category contains procedural requirements that obligate parties to establish a party name, symbol, and national seat, to select leaders and to adopt a party program and statutes. In addition, qualitative registration requirements may specify explicit norms that (should) guide party activity and behavior (Molenaar 2015a).[123]

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[120] The purpose towards which the state awards public funding to parties creates a further distinction between public funding regimes. Generally speaking, states financially support parties' participation in elections, their organizational development, or other earmarked activities such as education, research, or the promotion of female or youth participation.

[121] Such criteria determine the types of organization that qualify to receive public funding, the threshold for access to public funding, and the way in which funding is distributed between the parties, movements and individual candidates that are eligible to receive funding (Pierre, Svåsand, and Widfeldt 2000, 8).

[122] Parties often must present proof of this support in the form of support signatures or by formally inscribing party members. In addition, countries oftentimes adopt quantitative requirements in the form of spatial distribution requirements. Aspirant parties are then required to demonstrate support in a specified number of constituencies or to establish local party offices or organize local party assemblies in a certain number of districts Lastly, parties may need to pay a pre-election deposit to participate in elections, or a post-election fine in case of a poor electoral showing, as an additional requirement.

[123] In such instances, parties need to present proof of their internally democratic structure or of their responsible financial management as a requirement for party formation.

Party formation rules not only determine the costs of establishing a new organizational infrastructure. In addition, such provisions create organizational costs when they establish quantitative or procedural qualitative requirements for the maintenance of party registration. In this sense, one may think of the need to maintain a certain number of members or to organize internal party elections at fixed intervals. When established parties fail to live up to these requirements, this may threaten their continued existence. Party cancelation oftentimes involves the loss of party assets and subjects the party to new registration costs (Molenaar 2015a).[124] The potential effect of such rules is thereby that they impede politicians' access to the resources that party organizational infrastructure provides them with.

Candidate selection rules, secondly, change the locus of decision-making over the method of candidate selection that parties apply.[125] Such changes alter politicians' access to the organization's infrastructure by influencing their control over human resources. This is the case because influence over important party decisions, such as the selection of party candidates, serves as a selective incentive for ordinary party supporters and entrenched party activists alike. As noted by Strøm (1990, 577), the decentralization of policy decisions allows party leaders to activate members or voters by awarding them a say over internal party matters. This means that the candidate selection process has the potential to reinforce a party's active membership base, which may serve as an infrastructural resource in election campaigns. Regulating the candidate selection process through party law reform provides yet another means in which politicians can set this process in motion.

In addition, the candidate selection process provides politicians with a selective incentive for continued organizational participation (Panebianco 1988, 27). The promise of future career opportunities creates an incentive for politicians to subject themselves to the party leadership (Lawson 1976, 117; Sartori 1976, 97; Strøm 1990, 577).[126] This subjection is contingent on the party leaders' control over the

[124] Given these far-reaching consequences, some countries foresee a second response to parties that fail to maintain registration requirements, namely the suspension of registration. In such cases, parties lose access to the resources bestowed on registered parties but are awarded a specific amount of time to renew their compliance with the registration requirements.

[125] This occurs in various degrees of intrusiveness. In the least intrusive manner, the law establishes that parties or party statutes determine the method of candidate selection. Somewhat more intrusively, the law may allow parties or party statutes the final decision over the method of candidate selection, while simultaneously prescribing various options that parties can choose. In its most intrusive form, party law may legally prescribe that parties select their candidates through open or closed primaries, or through delegate congresses (Molenaar 2015b).

[126] It is for this reason that Schattschneider (1942, 64) states, "he who can make the nominations is the owner of the party. This [the nomination process] is one of the best points to observe the distribution of power within the party" (also see Panebianco 1988, 36).

candidate selection process. If an organization's participants have other avenues next to the party career system available to them, which would result in an electoral candidacy all the same, they are less likely to obey the party leadership (Sartori 1976, 98). Regulating the candidate selection process through party law reform provides one way to ensure that politicians can increase their own, or can decrease others', control over the political parties' human resources.

To summarize, party law provisions can be designed in such a way that they increase one's own, or decrease another's, access to organizational resources (see Table 3-1 below for an overview). The regulation of fundamental values can be used to legally validate a party's position within the political system or to prohibit certain types of parties. The regulation of public and private finance can either consist of beneficial private funding rules and high access to public subsidies or of disadvantageous private funding rules and limited/no access to public funding. Party formation and candidate selection rules make it either more easy or difficult to form or maintain a political party and increase or decrease politicians' control over the organizational infrastructure.

Table 3-1: Relationship fundamental party resources and provisions of party law

Type of resource	Legal provisions	Use law to increase own access to resources	Use law to decrease others' access to resources
Ideational resources	Fundamental values	Legally validate own (access to) ideational resources	Prohibit certain types of ideational resources
Financial resources	Public and private finance rules	Beneficial private funding rules + access to public subsidies	Disadvantageous private funding rules + no access to public subsidies
Organizational infrastructure	Party formation + candidate selection rules	Make it easier to maintain a party + increase control over human resources	Make it more difficult to form/maintain a party + decrease control over human resources

3.5 A resource-based model of party law reform

Given this multitude of strategies listed in Table 3-1, the question remains under which circumstances politicians opt for one set of legal provisions over others. Identifying the locus of the resource threat that drives the reform process is key to specifying the conditions that result in the adoption of certain sets of legal provisions. These resource threats can be located at three different levels: the political system, party system, and the intra-party arena (Barnea and Rahat 2007). At the political system level, the general cultural, social, and political environment creates resource threats that apply to all parties. At the party system level, interactions or competition between political parties constitute this resource threat for the parties in power, whereas interactions between individuals, factions and other possible groupings within the party do so at the intra-party level for the party elites in power (Barnea and Rahat 2007, 378).

The resource-based model of party law reform developed here holds that the different outcomes of party law reform can likely be explained with reference to changes at either the political system, party system, or intra-party level that affect political parties' organizational resource balances (see Figure 3-2 below). In response to such changes, politicians adopt a reform strategy with the ultimate aim of redressing this balance to ensure continued access to party organizational resources. Specification of relevant

changes at each of these three levels allows for the development of exploratory reform propositions. Before turning to the specification of changes at these levels, it should be noted, however, that the various reform strategies are not mutually exclusive. Politicians may respond to changes at multiple levels in a single reform effort – thereby combining multiple strategies that each explain part of the adopted party law. In addition, the model focuses on the legislative process only, meaning that it does not take into account any 'unanticipated consequences' (de Zwart 2015) that affect the reform's implementation nor the feedback loop that likely exists between the party law reform and changes at the level of the political system, the party system, and the intra-party arena.

Figure 3-2: Resource-based model of party law reform

3.5.a Party law reform as an organizational economy strategy

At the level of the intra-party arena, the extant literature identifies various types of changing socio-political circumstances that may create resource threats (Panebianco 1988, 243). Changes in the intra-party availability of financial resources may occur when new sources of funding become available to the different branches of the party due to macro-economic change, system-level reforms,[127] or when available sources of funding dry up or are restricted.[128] Next to such externally induced organizational change, rival factions may contest politicians' control over organizational resources more incidentally (Harmel and Janda 1994, 266–67; Panebianco 1988, 243).[129]

Politicians are expected to respond to such threats by adopting laws that redress the intra-party balance of resources (see Müller and Sieberer 2006, 437–38). This 'organizational economy' strategy, a strategy that departs from the resource trans-

[127] See Paltiel (1979, 25) for an example of how economic and budgetary developments changed the intra-party financial balance of power in several Canadian parties. In addition, as noted by van Biezen and Kopecky (2007, 240–41), parties may apply rent-seeking practices involving the capture of state institutions and funds to gain access to resources. Political and fiscal decentralization measures that allow for local state capture therefore have the potential to empower the party on the ground at the expense of the party in public office.

[128] A1992 Constitutional Court decision had this effect in Germany (Scarrow 2004, 663).

[129] This dynamic is particularly relevant in the Latin American context where political parties often consist of a patchwork of internal factions organized around popular candidates and/or political dynasties (Norris 2004, 22).

actions within the individual party organization, likely focuses on the intra-party distribution of financial resources and on the regulation of the party's organizational infrastructure. When the financial autonomy of individual candidates poses a threat to organizational cohesion, for example, politicians may adopt a political finance reform that increases centralized control through the redistribution of intra-party financial means. This can be regulated through the centralization of public funding allocation criteria or by altering the availability of individual private donations to candidates through the regulation of private funding (Casas-Zamora 2005, 177).

Organizational cohesion can also be promoted by restricting the ability of dissident factions to maintain their legislative seats if they leave the party (Janda 2009) or to run outside of the party (Müller and Sieberer 2006, 437–38). This latter aspect can be achieved through the increase of party formation costs, such as by the selective change of party registration rules or dissolution rules.[130] Alternatively, the introduction of inclusive candidate selection practices can stabilize factional party competition, as democratic selection procedures take contentious decisions out of the party leadership's hands and award a legitimate mandate from the entire party to winning candidates (Carey and Polga-Hecimovich 2009, 232; Giollabhui 2011, 582).[131] What all these measures have in common is that they need to be designed in an effective manner to be able to redress the inter-party resource balance.

Proposition 1 – organizational economy strategy: When adopted in response to changes in the party organization and/or factional conflict, party law reforms will contain *effectively designed* legal provisions that redress the intra-party resource distribution balance. These legal provisions will likely:

- increase the proponent politicians'/factions' own access to financial resources and control over the organizational infrastructure; and/or
- decrease other politicians'/factions' access to financial resources and control over the organizational infrastructure.

Proposition 1 is falsified if party law reforms that are adopted in response to changes in party organization and/or factional conflict contain legal provisions that 1) constrain the proponent politicians'/factions' own access to resources at the advantage of other politicians/factions, 2) constrain or benefit all politicians'/factions' access to

[130] Several authors confirm empirically that the reform of party registration rules serves to counter factionalization (Bareiro and Soto 2007, 599; Birnir 2004, 21).

[131] Research indeed reveals a relationship between the introduction of party primaries and the desire to silence dissent and to counter intra-party conflict (Kemahlioglu, Weitz-Shapiro, and Hirano 2009; Ware 2002). Alternatively, Katz and Mair (1995, 21) suggest that party leaders may use a more inclusive candidate selection process to pass over mid-level or entrenched activists in favor of a less organized or fanatic supporters.

resources equally, or 3) do not contain the necessary legislation and institutions for implementation.[132]

3.5.b Party law reform as an electoral economy strategy

At the party system level, changes in party organizational access to resources are relevant to the degree that they affect political parties' ability to compete with other parties. Failure to do so affects the extent to which these parties can satisfy their politicians' demands.[133] The party organizational literature identifies two main threats at the party system level: changes in party competition and the rise of a strong new competitor (Harmel and Janda 1994, 267).[134] These threats have in common that they change the inter-party resource equilibrium and thereby affect the politicians' ability to use fundamental party resources to reach their goals. Party law reform offers a means to redress the inter-party distribution of resources. When opting to respond to such developments through party law reform, politicians are therefore expected to apply an *electoral economy* reform strategy – a strategy that departs from the resource transactions of party organizations vis-à-vis other party organizations.

One way of doing this is by barring other parties' access to resources. As discussed above, party law provides several means to make it more difficult for other parties to compete in elections. The prohibition of certain types of ideational capital, the increase of party formation costs (Janda 2005, 19–20; Katz 2004, 9), and the increase of the threshold for accessing public funding can be used to increase other parties' cost of party formation and organizational continuity. Alternatively, the regulation of private funding of political parties may hinder party competition, such as when "a legislative majority disadvantages a minority that has greater access to business contributions" (McMenamin 2008, 236). The introduction of intra-party democracy can similarly serve to create organizational obstacles for other parties, as the organization of intra-party elections requires organizational investments (Wuhs 2008) and/or may serve to create chaos in parties that rely more on strong leadership than broad-based participation. What all these measures have in common is that they need to be designed in an effective manner to be able to redress the inter-party resource balance.

Proposition 2 – electoral economy strategy: When adopted in response to changes in party competition and/or the rise of a new party, party law reforms will contain *effectively designed* legal provisions that redress the inter-party resource distribution

[132] The intended effectiveness of legal provisions is operationalized in more detail in Chapter 4.
[133] Indeed, Panebianco identifies "electoral defeat and deterioration in terms of exchange in the electoral arena" as "classic types of external challenges which exert very strong pressure on the party" (1988, 247).
[134] The two may be related, but this is not the case necessarily. Party competition among established political parties can alter without a new party rising, and the rise of an irrelevant new party does not alter the dominant mode of party competition (Mair 1997).

balance. These legal provisions will likely:

- prohibit certain types of ideational capital;
- introduce private and public funding rules that are disadvantageous to parties other than the proponent parties;
- make it more difficult to form/maintain a political party; and/or
- decrease other parties' control over human resources.

Proposition 2 is falsified if party law reforms that are adopted in response to changes in party competition and/or the rise of a new party contain legal provisions that 1) constrain the proponent party (coalition)'s own access to resources at the advantage of other parties, 2) constrain or benefit all parties' access to resources equally, or 3) do not contain the necessary legislation and institutions for implementation.

3.5.c Party law reform as a systemic economy strategy

Changes at the political system level may alter political parties' collective access to the resources needed to present in elections and to legislate effectively. According to the party organizational literature, such exogenous induction of change is usually the consequence of broad institutional and societal developments (Mair 1997, 39–40). Relevant institutional developments consist of political reforms and changes in governance structures (Albinsson 1986, 191, cited in: Harmel and Janda 1994; Mair 1997, 39; Strøm 1990, 579). Societal developments that exert a structural influence over party organization range from, amongst other things, changes in the social matrix or cleavage structures that groups the electorate into party followings (Key 1964, 329–30; LaPalombara and Weiner 1966a, 17–19; Lipset and Rokkan 1967) to the availability of, and (technological) changes in, mass communication means and marketing techniques (Gunther and Diamond 2003; Mair 1997, 39; Schonfeld 1983, 494).

What these systemic changes have in common is that they decrease the total amount of resources available to political parties or that they decrease politicians' ability to access these resources. Changes in mass communication means, for example, may increase the costs of elections, resulting in a decrease of the total share of financial resources available to political parties. Alternatively, judicial rulings on financial management, which I take as a type of political reform, may alter politicians' ability to use the political parties' financial resources to their advantage (Scarrow 2004).

In response, politicians are expected to adopt reforms that protect their collective political parties' access to, or control over, resources. They can do so by using fundamental values to legally validate their position within the political system, by adopting beneficial public and private funding rules, by increasing the ease of maintaining party organizations while decreasing the ease of new party formation, and/or by

increasing their control over the party's human resources. Such a *systemic economy* reform strategy departs from the resource transactions of all party organizations within the larger political environment. What all these measures have in common is that they need to be designed in an effective manner to be able to redress the inter-party resource balance.

Proposition 3a – systemic economy strategy: When adopted in response to institutional or societal changes that alter all political parties' access to resources, party law reforms will contain *effectively designed* legal provisions that redress political parties' collective access to resources. These legal provisions will likely:

- introduce fundamental values that legally validate political parties' position within the political system;
- create beneficial public and private funding rules;
- increase the ease of maintaining party organizations while decreasing the ease of new party formation; and/or
- increase political parties' control over their human resources.

Proposition 3a is falsified if party law reforms that are adopted in response to institutional or societal changes that alter all political parties' access to resources contain legal provisions that 1) increase some politicians'/factions'/political parties' access to resources disproportionally, or 2) do not contain the necessary legislation and institutions for implementation

At this point, it should be recognized that one type of collective threat to political parties' resources does not threaten politicians' goals necessarily. This is the case during legitimacy crises, when the values of the political system are re-examined and confidence in the prevailing governing institutions falters. The monopoly position of the established political parties in the representative process, or their collective functioning and behavior, are challenged. At its worst, the legitimacy of the entire institution 'political parties' is called into question. Political parties run the risk of public rejection of their position as intermediaries in the political process (Daalder 1992).[135]

One option available to politicians is to respond to such a collective threat by adopting a party law reform.[136] The main resource change that political parties experience during such legitimacy crises is a joint loss of ideational capital. Parties are expected

[135] Indeed, the previous chapter showed that the normative rejection of the institution 'political parties' under 20th century authoritarian and contemporary neo-populist regimes alike put the established political parties' survival at risk.

[136] A larger study on electoral reforms in Europe since 1945 found indeed that changes in public opinion often contribute to the initiation of electoral reforms (Renwick 2011; also see Norris 2004, 535; Renwick 2010).

to respond by adopting party laws that address the concerns underlying these legitimacy problems. Such reforms can be achieved by addressing the perceived culprit of party rejection through the reform of rules regarding fundamental values. The prescription that political parties should manage their finance in a transparent manner may address concerns of corrupt parties.[137] Politicians may also prescribe general norms such as intra-party democracy or the prohibition of anti-democratic party functioning and behavior.[138]

One problem with such fundamental values is that they do little to ensure actual changes in party activities. For this, politicians would also need to adopt more applied rules regulating political parties' functioning and behavior.[139] Politicians are unlikely to adopt such changes in an effective manner, however, because they continue to profit from the existing resource exchange relationships. Indeed, it should be noted that a legitimacy crisis does not translate necessarily into a direct threat to politicians' ability to win elections or to legislate effectively. It forms an external threat only. The internalization of legitimacy crises is only expected to occur when the popular rejection of established party politics results in the rise of new and successful parties that alter the structure of party competition and the composition of the legislature.

As long as this is not the case, politicians are expected to respond to popular demands for change through reforms that change their party organizations' access to ideational resources only.[140] It is therefore likely that the applied reform of other party organizational resources such as described above will be of a symbolic nature only (Shugart and Wattenberg 2001, 577). Indeed, and as discussed at various points in this study already, not all provisions of party law are designed to be implemented necessarily

[137] By creating a privileged position for themselves in the political system, politicians may also increase the legitimacy of the institution 'political party' more generally (Molenaar 2014a). Indeed, Piccio (2015, 131) notes how by "[p]ortraying themselves, by means of the law, as actors performing crucial functions for democracy, parties created a self-legitimizing system in which they justify their institutional centrality."

[138] Van Biezen and Piccio (2013, 28–29) note, for example, that parties often introduce intra-party democracy and regulation thereof in an attempt to address party legitimacy deficits.

[139] When dubious financial donations form the problem, for example, politicians could adopt restrictions on private funding. This can be combined with the limitation of party expenditure through spending limits and with the limitation of access to funding through donation limits (Fisher and Eisenstadt 2004; Scarrow 2006).

[140] They are able to do so because, with the very rare exception of reforms adopted through referendums (see Renwick 2010, 15), such externally sponsored reforms are put on the agenda by actors that do no exert direct influence over the content of the reform proposals. Instead, the development of reforms remains firmly in the hands of politicians that belong to the (majority coalition of) governing parties (Barnea and Rahat 2007, 377).

(Fisher and Eisenstadt 2004; Mendilow 1992; Mietzner 2015; Nassmacher 2009). It is therefore expected here that – where possible – politicians will respond to legitimacy crises by adopting symbolic reforms that show that political parties still matter as representative vehicles, but without putting into place effective changes in party law that would damage politicians' access to resources.

Proposition 3b – systemic economy strategy: When adopted in response to a legitimacy crisis that only alters political parties' access to ideational resources, party law reforms will contain *symbolic* legal provisions that increase political parties' access to ideational capital. These legal provisions will likely:

- introduce new fundamental values without additional regulation; and/or
- be designed in an ineffective manner.

Proposition 3b is falsified if party law reforms that are adopted in response to a legitimacy crisis that only alters their access to ideational resources contain legal provisions that 1) increase some politicians'/factions'/political parties' access to resources at the detriment of others, or 2) contain the necessary legislation and institutions for implementation.

3.6 Conclusion

This chapter has integrated the literature on party organizational theory and the applied literature on the regulation of registration requirements, political finance regulation, and candidate selection rules into a theoretical framework of party law reform. Towards this end, it has developed a resource-based approach to party law reform. This approach departs from the assumption that politicians use party law reform to protect access to fundamental party resources that allow them to participate in elections and to legislate effectively. Threats to these resources may manifest themselves on three different levels. Depending on the level where resource threats occur, political parties are expected to pursue different reform strategies that result in different adopted party laws.

The added value of the theoretical framework developed here is that a focus on resource threats allows for the specification of different adopted party laws based on different changing socio-political circumstances preceding these reforms. It therefore allows for the formulation of exploratory propositions on party law reform. In the process, the model seeks to account for effective instances of party law reform and for those instances where party laws are adopted in the form of paper tigers that do not contain specific measures for the implementation of the newly adopted norms.

The argument advanced in this chapter departs from the assumption that chang-

es in the socio-political environment result in different party law reform strategies. Legislative strategies are, however, notoriously difficult to measure. The next chapter focuses in more detail on the operationalization of the various socio-political changes and adopted party laws described above. More importantly, it discusses how reform strategies can best be studied to connect these two sets of variables. In addition, the following chapter introduces the research method, design, as well as the cases to which the propositions developed in this chapter will be applied.

CHAPTER 4 – Entering the black box of party law reform

4.1 Introduction

Analyzing whether party law reforms manifest themselves in accordance with different reform strategies entails entering the black box of the reform process. Towards this end, it is crucial to disentangle the different reform strategies and to recognize that "content cannot logically explain its own antecedents or effects" (Riffe, Lacy, and Fico 1998, 138). Instead, care should be taken to measure threats to party organizational resources independently from the adopted party law reforms and to link the two through observable implications within the party law reform process.

The theoretical framework presented in this study holds that changing socio-political circumstances create specific resource threats that result in different types of adopted party law reforms, both in terms of legal provisions and intended effectiveness. This study proposes an 'integrative comparative case study design' (Rohlfing 2012) to explore whether the resource-based approach holds true empirically. Such a design combines within-case analyses of various party law reforms with cross-case comparisons of the case studies' findings. The former explore whether the cases manifest observable implications of the proposed theoretical framework, whereas the latter explore whether the link between reform strategies and adopted party law reforms remains stable across a wide range of institutional settings.

The following section discusses the operationalization and measurement of the three relevant sets of socio-political circumstances that create different types of party organizational resource threats, as well as the operationalization of the legal provisions and intended effectiveness of party law reform. It also introduces the content analysis of party laws used to collect data on adopted party laws. The third section discusses how a focus on the agenda-setting and policy-formation process connects these two sets of independent and dependent variables. The fourth section, lastly, discusses the research design. It explains how selecting the four countries under study here allows for an exploration of the influence of (changing) socio-political circumstances on the outcome of party law reform while controlling for institutional characteristics.

4.2 Operationalizing the resource-based model of party law reform

To explore possible causes of the variance of Latin American party laws, this study conducts comparative qualitative case studies of party law reforms in four countries: Argentina, Colombia, Costa Rica, and Mexico. The choice for qualitative case studies follows from this method's general usefulness for the exploratory research strategy (see George and Bennett 2005; Gerring 2004). Gerring (2004, 350–54) notes, for example, that one of the natural advantages of case study research is that it allows for the *prima facie* identification of relationships on the basis of multiple observations within a single case when little information about relevant causes and outcomes is available *a priori*. This is precisely the case in this study, which provides a first attempt at systematically connecting different types of socio-political changes to Latin American party law reforms.

At the same time, the use of the resource-based approach developed in Chapter 3 requires the operationalization of the relevant variables in this model and linking them to observations (Gerring 2004, 342). For this study, the relevant independent and dependent variables are the different sets of socio-political circumstances that threaten political parties' access to organizational resources (IV) and the adopted party law reforms (DV). The analysis of the legislative process explores whether different changes in socio-political circumstances result in different types of adopted party laws due to the influence of a mediating variable constituted by politicians' adoption of a reform strategy.

4.2.a Operationalizing and measuring changing socio-political circumstances

The previous chapter identified socio-political circumstances that change the party organizational resource exchange balance as: 1) changes in party organization and/or factional conflict, 2) changes in party competition and/or the rise of a strong new competitor; and 3) systemic changes. Changes in these variables only matter, however, to the extent that they alter party organizational access to resources. Rather than seeking to measure each variable independently, the main question for each of them is if they created an incentive for party law reform by altering political parties' access to resources. A review of secondary literature on the countries under study, combined with additional quantitative data and interviews with experts and politicians in de countries under study, provided detailed information on relevant changes in these variables for each reform case.[141]

[141] The interview process will be discussed in more detail in section 4.3.b below.

Changes in party organization and/or factional conflict

Party organizational change is defined as any "alteration serious enough to modify relations among the organization's various components" (Panebianco 1988, 243). Such alterations may take place in the form of changes in economic resources, fluctuations in party membership, the relationship between leadership and cadres, and between central and local party units (Carty 2004). These alterations only matter to the extent that they change political parties' ability to provide their politicians with access to fundamental organizational resources.

Party fractionalization scores form a first tentative measure to capture such *party organizational change*. According to O'Dwyer (2006, 40), lower levels of fractionalization occur when "competition is dominated by a few organizationally rooted parties who can survive outside of government." Changes in the level of fractionalization may thus reflect changes in organizational rootedness of parties. Fractionalization is operationalized using the Laakso-Taagepera index to calculate the effective number of parties. Ruth (2016) provided the data on the effective number of parties in the countries under study here.

Party fractionalization may also indicate a rise of political outsiders. I have therefore used a review of secondary literature and interviews with experts and politicians to identify those instances where changes in these indicators indeed represented party organizational change. Carty's (2004) various intra-party components allowed for the operationzalization of organizational change by providing the following questions to guide the review of the secondary literature and the interviews with experts and politicians: 1) did intra-party economic resources relationships change over time; 2) did the party's membership bases change; 3) did the relationship between party leadership and cadres change over time; and 4) did the relationship between central and local party units change over time (and if so, why)?

In addition, Harmel and Janda assert that "[n]early all parties have identifiable factions within them. Some parties, in fact, are partially identified as collections of rival factions" (1994, 266–67). A focus on internal factions is relevant in particular for Latin America political parties, which often consist of a patchwork of internal groups organized around popular candidates and/or political dynasties (Norris 2004, 22). In lieu of reliable data on *factional conflict*, I have tentatively operationalized this variable as an increase in the absolute number of registered parties and/or parties that participated in parliamentary elections[142] plus an increase in the absolute number of parties that gained parliamentary representation. The data for these indicators were obtained from studies conducted by country experts as well as from relevant electoral

[142] Depending on the type of data that are available for each country.

authorities.[143] The reasoning behind this operationalization is that increased levels of factional conflict will result in factions running on separate labels outside of the party (also see Sikk 2005). Once again, a review of secondary literature and interviews with experts and politicians served to identify those instances where changes in these indicators indeed represented organizational conflict.

Changes in party competition and/or the rise of a strong new competitor

At the party system-level, threats to the political parties' ability to meet their politicians' resource demands are expected to appear when *party competition changes*. Aggregate volatility scores form an initial measure of such changes. This measure represents the minimum probability of a vote shift between two consecutive elections (Pedersen 1979). Again, Ruth (2016) provides the volatility scores for the countries under study here. The 'electoral volatility' measure has been applauded for its elegant simplicity and its potential to provide insights into long-term electoral dynamics (Rattinger 1997, 88). Nevertheless, changes in such long-term electoral dynamics are only of interest to the extent that they affect political parties organizational capabilities. Secondary literature and interviews with experts and politicians have been used to identify those instances where electoral volatility indeed reflected a larger organizational threat.

As discussed above, changes in the number of parties that participate in elections and the legislature and the party fractionalization index may also capture the rise of a *strong new competitor* rather than the secession of party factions. Once again, a survey of relevant secondary literature and interviews with experts and politicians served to identify those instances where changes in the number of parties and/or changes in the party fractionalization index reflected the rise of an important new party.

Systemic changes

As discussed in the previous chapter, the literature broadly identifies two different sets of systemic changes in the socio-political environment when discussing party organizational change. These sets of factors are institutional and societal changes (Albinsson 1986, 19991, cited in: Harmel and Janda 1994; Gunther and Diamond 2003, 191–192; Key 1964, 329–330; LaPalombara and Weiner 1966b, 17–19; Lipset and Rokkan 1967; Mair 1997, 39; Schonfeld 1983, 494; Strøm 1990, 579). For the purpose of this study, changes in these factors are relevant only to the extent that they alter political parties' ability to serve their politicians' goals in a steady manner. Rather than measuring each factor independently, a review of the secondary literature served to identify those instances where this was the case.

[143] The country chapters list all relevant sources.

Institutional factors are defined here as constitutional and political reforms, changes in the structure of governance (Albinsson 1987, 191, cited in: Harmel and Janda 1994), and the adoption of relevant jurisprudence (Katz 2011; Scarrow 2004). Societal changes are defined as changes in relevant values and cleavages and the creation of new technologies and changes in the mass media that alter political parties' ability to appeal to voters directly (Mair 1997, 39–40). The *institutional factors* were operationalized by using the following question to guide the review of the secondary literature and the interviews with experts and politicians: did constitutional and political reforms, changes in the structure of governance, and/or the adoption of relevant jurisprudence alter political parties' access to resources? Societal changes were operationalized partly by asking whether *changes in the technologies and mass media available* altered political parties' ability to appeal to voters directly during the review of the secondary literature and the interviews with experts and politicians.

Changes in the relevant values and cleavages are operationalized here as *legitimacy crises*, or any type of external pressure for the reform of political parties or the party system. This pressure may manifest itself on a large scale, such as when the population at large organizes political protests to demand political reform in response to political crises or scandals (Katz 2005, 74; Renwick 2010, 11). Large changes in the percentage of voter turnout provide a quantitative indicator of a changing public appreciation of the political system (Franklin 2004, 1–2). This is used as an initial measure of legitimacy crises. The IDEA International Voter Turnout Database (2015) provided the data on voter turnout in parliamentary elections.

External pressure for reform may also manifest itself on a minor scale when (international) NGO's and political experts presses for political reform (Katz 2005, 74; Renwick 2010, 11–14) or when the judicial branch or electoral authorities push for reforms (Scarrow 2004). What matters is that actors other than politicians themselves set the agenda for reform by urging politicians to adopt a party law reform. Secondary literature is used to determine the presence of these other forms of external reform pressure, and to check whether changes in turnout did indeed result in pressure on the existing political parties to alter their operational format.

4.2.b Operationalizing and measuring adopted party laws

A review of the websites of national governments and parliaments, electoral authorities, and the Georgetown University Political Database of the Americas allowed for the exhaustive identification of all legal texts regulating political parties.[144] This data collection process presents a first effort to index Latin American party laws systematically and comparatively. Together with the data on Latin American constitutional

[144] http://pdba.georgetown.edu/ [accessed November 21st, 2014].

change presented in Chapter 2, these data have been made available in this study's web appendix.[145] A qualitative content analysis of the party laws adopted in the countries under study here provided the data on the outcomes of party law reform (see Appendix 2 for an overview of the relevant instruments of party law for each country). The content analysis identified changes in the relevant *legal provisions* and whether these changes were designed in an *effective* manner.

Party law reform's legal provisions

The previous chapter distinguished between 1) fundamental values, 2) political finance regulation, 3) party formation rules, and 4) candidate selection rules. These categories follow the constitutional coding scheme developed on the basis of van Biezen's (2013) party law database to measure the *legal provisions* of reforms (see Appendix 3 for the full party law coding scheme).[146] To ensure internal reliability, I coded the relevant laws, as well as other legal proposals that were presented in the legislature throughout the legislative process, in accordance with a three-stage iterative coding process. The first stage consisted of coding all the articles in a single law using the coding scheme. After coding one law, the second stage consisted of checking for consistency with similar articles adopted in the same country at earlier points in time. After coding all laws, the third stage consisted of checking whether all articles within a single sub-category contained similar legal provisions.

Party law reform's intended effectiveness

Effective targeting forms a first attribute of effective reforms. This means that the adopted legal change is designed in a way that truly addresses a stated problem. Ineffective targeting takes place when the legal change does not address the stated problem and/or by the creation of loopholes that undermine effective targeting (see Levitsky and Murillo 2009, 120–22).[147] To determine whether politicians design laws effectively, the study investigates how the reform addressed the stated reason for reform, to what extent it did so, and which stated problems or topics it left unaddressed. These guiding questions allow for the identification of whether politicians adopted a reform to target an existing problem effectively and/or designed the law to be implemented effectively.

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[145] http://www.partylaw.org

[146] In line with qualitative coding good practice, categories for all codes are designed to be mutually exclusive and exhaustive (see Riffe, Lacy, and Fico 1998, 75–76). The database is available at http://www.partylaw.leidenuniv.nl/.

[147] The literature on political finance is illustrative of the first problem. Several authors describe how new political finance laws could not be enforced because they did not match campaign costs or the use of new campaign techniques, or because they addressed regulated centralized political finance structures whereas, in practice, political finance was structured through individual local candidates or vice-versa (Alexander 1970, 104; Nassmacher 2003, 47–48; Paltiel 1970, 121).

When these conditions were absent, care was taken to identify whether this was a conscious decision through an analysis of whether politicians discussed these mismatches in their debates on the draft bill and of how politicians solved such discussions where these occurred. More important evidence of politicians' unwillingness to design effective laws is present when politicians design a law with mechanisms that allow their parties to circumvent the new rules. Under such circumstances, politicians portray an unwillingness of creating an enforceable law.[148]

The introduction of what Strøm (1995, 73) calls *ex ante controls* comprises an additional attribute of effective reforms. Ex ante controls consist of the creation of additional legislation or the institutions necessary for implementation – such as administrative or monitoring bodies – that delegate authority to "individuals and organisations who will execute these policies effectively and in accordance with the legislative will" (Strøm 1995, 57).[149] When reforms do not adopt ex ante controls, on the other hand, they produce paper tigers that growl on paper but that lack the necessary teeth for implementation. Legal change then constitutes little more than a symbolic reform, as the authority to implement the law is never really delegated.[150]

Ex ante controls are present when the law contains one or more of the following provisions: 1) the creation of tools for implementation of the change; 2) the creation of mechanisms that address non-compliance; 3) the appointment of power of oversight over the enforcement of the new provision to a monitoring body; and 4) the supplying of this monitoring body with sufficient tools to exercise this function of oversight. Data on these legal provisions are collected through a substantive content analysis of the provisions related to political parties found in the relevant laws (the content analysis procedure has been discussed in more detail above). Semi-structured interviews with senior officials of these monitoring bodies and relevant civil society

[148] In his study on the introduction of political finance regulation in the United States, for example, Paltiel (1979, 33) cites a member of the governing coalition in Parliament's comment on a draft regulation as: "frankly, we wanted to leave some loop-holes!" Such statements provide clear evidence of legislators' unwillingness to design effective laws.

[149] Ex ante controls ensure – bar 'unanticipated consequences' (see de Zwart 2015) – that new laws can evolve into a behavioral norm beyond mere words. In addition, such measures provide the institution responsible for the implementation of, and oversight over, the new rules and norms with sufficient resources to carry out this task (Ewing and Issacharoff 2006a, 7). Effective delegation of authority takes place when the law creates strong monitoring bodies with sufficient monitoring strategies and the ability to apply penalties (McMenamin 2008, 230).

[150] One advantage of this operationalization of the concept of party law reform is that it targets a problem identified by Zovatto (2010, 146), namely that many reforms are but hidden disinterests in regulating political parties.

organizations, combined with the observation of the monitoring process where possible, provided additional data on the enforcement of legal changes.[151]

4.3 Reform strategies: connecting resource changes to party law reforms

4.3.a Reform strategies

Reform strategies constitute a prioritization of an interest, which translates into behavior, i.e. the design and adoption of a specific party law reform (see Scarrow 2004, 655). The specific resource threat created by changing socio-political circumstances is expected to define these reform strategies. As discussed in the previous chapter, changes in party organization and factional conflict are expected to culminate in an *organizational economy* strategy that alters the intra-party distribution of resources. Changes in party competition and/or the rise of a new competitor are expected to result in *electoral economy* strategies that increase one party or party coalition's selective access to resources vis-à-vis its competitors. Systemic changes, lastly, are expected to set into motion a *systemic economy* strategy that allows politicians to increase or secure political parties' collective access to resources.

Beach and Pedersen (2013, 41) argue that the "level that is theorized is related to the level at which the implications of the existence of a theorized causal mechanism are best studied." For this study, theoretical implications occur at the level of the political parties' representatives in the legislature and government. The initial reform proposals put forward by a select group of politicians provide an important starting point of inquiry, because the agenda-setting process "provide[s] meaning, clarification, and identity" (Zahariadis 2007, 69; also see Kingdon 1995). The translation that politicians make between the public statement of a problem and the changes they deem necessary to solve this problem forms a first indicator of their reform strategies. The analysis focuses in particular on the question of whether politicians refer to the changing socio-political circumstances outlined in the previous chapter, and their effect on political parties' access to resources, when introducing a party law reform. During the agenda-setting stage, a connection can thereby be made between changing socio-political circumstances and reform strategies.

A first step in the analysis entails the identification of reform advocates. These actors consist of the politicians that constitute the reform coalitions as well as the members of the legislative committees that work on the reform. A second step entails the identification of statements that these reform advocates use to defend the reform.

[151] The interview process will be discussed in more detail in section 4.3.b below.

Statements are defined as a verbal expressions of a political opinion (Koopmans and Statham 2010; Melenhorst 2015), in this case an opinion on why reform is needed. Formal reform strategies are deduced from the analysis of the problems and goals that reform advocates use to defend the reform and that the opposition uses to object the reform effort.

A focus on the agenda-setting process serves to link particular reform strategies to changing socio-political circumstances. Additional analysis is needed, however, to link these strategies to specific adopted party laws. Firstly, it may be questioned whether politicians convey their true motivations on the need for reform in public speeches. More importantly, politicians have multiple relevant policy alternatives at their disposal from which they have to select one (Kingdon 1995). A mere focus on agenda-setting misses why politicians prefer one legal avenue to others. An additional focus on the negotiations over the final version of the adopted reform speaks to these issues.

It is expected that an analysis of political debates throughout the policy-formation stage can uncover the expectations that politicians hold with regard to the consequences of legal change and enforcement. In addition, the coordination problems and veto points that characterize policy formation allow for the identification of politicians' reform preferences that do not manifest themselves clearly in the agenda-setting stage (see Rahat and Hazan 2011). The policy-formation stage hence lays bare the ordering of elite preferences on the negotiation table (see Strøm 1995, 64–65). To measure such preference orderings, the analysis focuses not only on the adopted proposals but also on those that were left behind. Note is taken of the public statements that politicians make on the progress of the reform process as well, and on the issues they would still prefer to see addressed. Lastly, the analysis identifies who voted in favor and against the reform, as well as vote qualifying statements.

4.3.b Data collection and analysis

Four periods of fieldwork conducted over the course of 2012 and 2013 provided the data for this study.[152] The collected primary sources consist of thousands of pages of transcripts from legislative and legislative committee debates (see Appendix 4 for relevant primary sources). A content analysis of statements in defense of – or opposed to – the reform, found in the legislative debates on these political reforms and in explanatory memoranda, provided important information on: a) the reasons for reform, b) the ways in which legal changes addressed these reasons through legal change, c) whether these changes target the stated problem (in)effectively, and d)

[152] Argentina (March-May 2012), Mexico (June-July 2012), Costa Rica (November-December 2012), and Colombia (March-June 2013).

what measures have been adopted to implement these changes (see Appendix 5 for a sample of questions guiding the coding process).

Next to these statements, I coded the name of the politician, his or her party label, and whether or not he or she toed the formal party line.[153] Statements by the individual politicians that participated in the reform process form the unit of observation. For clarity purposes, I aggregate these statements and discuss them at the level of these politicians' political parties in the country chapters that follow. Only in those cases where individual politicians dissent from a more general party line, or where the reform addresses intra-party concerns, do I aggregate these statements and discuss the reform preferences at the level of intra-party factions and individual politicians.

Transcripts of official proceedings – such as legislative debates – are generally regarded as accurate records of the events that occurred (Beach and Pedersen 2013, 198).[154] Nevertheless, such documents often limit their description of events to an official version and may thereby ignore the informal decision-making-process taking place outside of the formal debates (George and Bennett 2005, 103). Elite interviews provide data on the informal decision-making process. Elite interviews are interviews with "individuals, who hold, or have held, a privileged position in society and, as far as a political scientist is concerned, are likely to have had more influence on political outcomes than general members of the public" (Richards 1996, 1999).[155] Such first-hand testimony may reveal hidden elements of political action that other primary sources may obscure (Tansey 2007, 767) and thereby has the potential to provide unique insights into decision-making processes and political action. An additional primary data source therefore consisted of 87 elite interviews with high-ranking politicians, such as party presidents and presidential candidates, as well as presidents of the electoral courts and other high-ranking public officials (see Appendix 6 for an overview of respondents).

Woodrow Wilson stated that "Congress in its committee-rooms is Congress at work" (cited in Price 1978, 548; also see Morgenstern 2002, 11). Following this assertion, the politicians interviewed for this study were selected to represent members of the

[153] Where possible, I corroborated this by comparing each politician's vote with the general party vote on the reform.

[154] Transcripts of the relevant debates were obtained from the websites of the national legislatures and through legislative archives.

[155] Given the respondents' privileged position, elite interviews have the advantage that they allow for personal accounts of the processes under study from those people that actually participated in them (Beach and Pedersen 2013, 134; Richards 1996, 200).

relevant legislative reform committees.[156] As not all political parties are necessarily represented in such reform committees, opposition politicians were included as an interview target group more generally.[157] Lastly, interviews with electoral authorities, leaders of civil society organizations, political scientists, and journalists provided information on the (changing) socio-political climate within which reforms appear. Given the exploratory nature of this study, the semi-structured interviews were organized around open questions to allow for the collection of data for theory formation and to avoid coaxing the respondents' answers (Bogner, Littig, and Menz 2009, 46–48).[158] I have coded the verbatim transcripts of the interviews on the basis of the same codes as applied to the legislative debates (see Appendix 5 for a sample of coding and interview questions). Once again, individual politicians' statements on reform motivations form the unit of observation.

Two problems inherent in the use of elite interviews is that respondents may be inaccessible due to their elite status and that respondents are not always willing or able to provide an accurate or objective account of events as they occurred. The objectivity of interview data is also under threat in those instances where, depending on the subject of study, respondents are tempted to increase or minimize their own role in political events (Beach and Pedersen 2013, 135; Berry 2007, 681; Yin 2008, 106). Triangulation ensures access to sufficient data to increase the validity of findings. This entails the use of multiple sources of data for each evidence point (Beach and Pedersen 2013, 128; Tansey 2007, 767). My use of respondents across the political

[156] The relevant legislative committees are called the *Comisión de Asuntos Constitucionales* (Constitutional Affairs Committee) in Argentina, the *Comisión Primera* (First Committee) in Colombia, the *Comisión Especial de Reformas Electorales y Partidos Políticos* (Special Committee on Electoral Reform and Political Parties - CEREPP) in Costa Rica, and the *Comisión Ejecutiva de Negociación y Construcción de Acuerdos del Congreso de la Unión* (Executive Committee for the Negotiation and Construction of Agreements of the Congress of the Union) in Mexico.

[157] Through purposive sampling of respondents, I selected legislative committee members that were leaders of their respective parties, that had held a position in Congress for more than one term, or that had been appointed previously to governing positions at the time the reform was adopted. To prevent drawing potentially skewed inferences because of the biased selection of respondents (Beach and Pedersen 2013, 124), party membership formed an additional criterion for purposive sampling. Given the limited accessibility of the high-level elites targeted in this study (see Richards 1996, 200), I applied snowball sampling as a second sampling technique. This method not only increases the accessibility of respondents but also provides an opportunity to meet with legislators that were influential for reasons not identified *ex ante* (Tansey 2007, 770–71).

[158] Interviews generally lasted an hour and were recorded. The recording process did not appear to affect the respondents' disposition to answer questions. On occasion, respondents asked to be cited with caution, in which case their identity was not revealed in the reform analysis presented in the following chapters. I have provided my supervisors with access to the transcripts of all interviews for verification purposes.

spectrum, that all participated in the same reform process, provides a means for the internal triangulation of findings.

Nevertheless, the selection of respondents and the interviews were neither systematic nor representative enough to serve as an independent primary source of analysis. In addition, I therefore have coded over 500 newspaper articles as a source of data for external triangulation to detect and correct any biases or invalid findings. (Bogner, Littig, and Menz 2009, 46–48). I have coded these newspaper articles in a similar manner as the legislative debates and interview transcripts (see Appendix 5 for a sample of coding and interview questions). In addition, newspaper articles provide important information about: 1) the background against which the events under study occurred (see Beach and Pedersen 2013, 143) and 2) the alternative legislative proposals in the works during the reform process.[159] A systematic search of newspaper articles in at least two national newspapers in the year leading up to the adoption of each reform, on the basis of search words such as 'electoral reform' and 'constitutional reform', allowed for the identification of relevant articles.[160] Where needed or possible, politicians' speeches and politician's blogs provide additional sources of data for external triangulation purposes.[161]

4.4 Research design

The resource-based model of party law reform proposed in Chapter 3 has two implications for the research design. Firstly, the focus on adopted party law reforms indicates that a set-relational approach to causality is applied here. Such an approach applies an invariant take on cause-effect relationships that ties the presence of necessary and/or sufficient conditions to specified outcomes (Gerring 2005; Rohlfing 2012).[162] In other words, the study's purpose is to identify the conditions that lead to the adoption of certain legal provisions, rather than explaining the act of adopting

[159] One problem with newspaper articles is that the accuracy of their accounts may be difficult to assess (Beach and Pedersen 2013, 143). This did not prove problematic, as the content analysis of newspaper articles mainly focused on 'on the record' statements by legislators that sought to explain or defend their reform motivations to the general public.

[160] Argentina: *La Nación* and *Clarín*; Colombia: *El Tiempo* and *El Espectador*; Costa Rica: *La Nación* and *La Prensa Libre*; and Mexico: *El Universal*, *La Jornada*, and political magazine *El País*.

[161] Data from these sources have not been collected in a systematic manner, but form an additional source of data in the absence of other forms of evidence for triangulation purposes.

[162] This stands in contrast to the covariational understanding of causation that requires variation in both causes and outcomes.

party law reforms per se.[163] It follows that adopted party law reforms constitute the entire population of cases that this study's findings speak to. In terms of geographical and temporal scope conditions, this population can be defined more strictly as all Latin American party laws reforms adopted since their country's respective transitions to democracy.

Secondly, causal theories such as the one developed here are vindicated "by showing that the best explanations of relevant phenomena appeal to instances of mechanisms in the repertoire of the theory, rather than relying on rival theories" (Miller 1987, 140; also see Dessler 1991, 349). An appropriate research design should thus focus on the theory's causal mechanisms, while comparing their explanatory power to that of other theories (Hall 2008; Rohlfing 2012). The following section introduces one of the main rival explanations that should be controlled for and discusses its implications for case selection.

4.4.a Alternative explanations of party law reform

Some notable and recent comparative studies of party laws identify institutional factors as an explanation for the adoption of different types of party law (Avnon 1995; van Biezen 2012; van Biezen and Borz 2012; Casal Bertóa, Piccio, and Rashkova 2014; Ewing and Issacharoff 2006b; Karvonen 2007). This begs the question whether it is not just institutional variables that explain variance in adopted party law reforms. A theoretical framework is only as good as the explanatory power it adds to existing theories (Miller 1987, 140; also see Dessler 1991, 349). An appropriate theory-building research design should thus focus on identifying the framework's causal mechanisms, while comparing their explanatory power to that of other theories (Hall 2008; Rohlfing 2012).

Two main findings come to the fore in these institutional explanations of party law: 1) democratic age and anti-democratic legacies correlate with the nature and intensity of party laws and 2) the institutional context explains the type of party laws that countries adopt. In her study of the constitutional codification of political parties in post-war Europe, for example, van Biezen (2012) finds that constitutions in older democracies tend to focus mainly on political parties' electoral role. The constitutions of new and re-established democracies tend to focus on the role of political parties in other arenas as well (also see van Biezen and Borz 2012). In countries with a non-democratic legacy, constitutions tend to associate parties with basic democratic liberties, while simultaneously constraining their ideology and be-

[163] This does not mean necessarily that cases are selected on the dependent variable. As will be discussed below, the specification of relevant control variables allows for the selection of cases from within the population of adopted party law reforms.

havior (van Biezen 2012). Studies of 'Party Laws', which are laws that target parties as organizations specifically, find a similar distinction between stable democracies, newer democracies (Casal Bertóa, Piccio, and Rashkova 2014; Karvonen 2007), and states that experienced a previous collapse of their democratic systems (Avnon 1995; Casal Bertóa, Piccio, and Rashkova 2014).[164] In their comparative study of political finance regimes, lastly, Ewing and Issacharoff (2006a) note that institutional characteristics explain regulatory variance in political finance regimes between established democracies.

To control for the effect of institutional factors, this study selects the relevant cases of analysis at the country rather than the individual case level. This allows for within-country comparative analyses of party law reform to study the effects of changing socio-political circumstances on adopted party laws while keeping institutional variables as stable as possible. In addition, cross-country comparative analyses investigate whether the explanatory power of the resource-based model holds across different types of institutional designs. The following sections discuss both component parts in more detail.

4.4.b Within-country analyses of party law reform

The within-country analyses of party law reform processes focus on the identification of causal process observations that support or discredit the resource-based model of party law reform outlined above. The exploratory nature of this study requires the recognition that other relevant and/or intervening variables than the ones theorized here may be at work in the cases (see George and Bennett 2005, 160). A design that eliminates the potential for rival explanations helps increase the validity of the study's findings (Mahoney 2000, 398). Diachronic comparisons within single countries allow for such elimination by keeping other variables constant (Gisselquist 2014, 479).

Towards this end, the countries selected for this study meet the criterion that they adopted at least two rounds of party law reform after their transitions to democracy. This criterion is a requirement for the use of the diachronic comparative method and approximates the most-similar method of exploratory case selection (Seawright and Gerring 2008, 298).[165] Within-country comparisons investigate the effect of singular changes in a country's socio-political climate to determine, *ceteris paribus*, the adoption of specific party laws. Selection of cases with at least two rounds of reform support the elimination of alternative sufficient causes of reform variance

[164] Party Laws are one type of legal instrument within the broader body of party law (Janda 2005, 5; Müller and Sieberer 2006, 435).

[165] It should be noted, however, that insufficient data on the reform strategies are available *a priori* to execute genuine most-similar case selection.

(see Mahoney 2007, 134). This is the case because, all things being equal, a unique change in a country's political environment can be linked directly to a specific type of adopted party law.

All four Latin American countries selected for this analysis underwent at least two rounds of reform since their transition to democratic governance.[166] Argentina adopted major reforms in 2002/2003 and 2009. In addition, Argentine politicians modified several provisions on political parties in a smaller round of reforms in 2006/2007. Colombia adopted two reforms that changed constitutional provisions on political parties in 2003 and 2009. In addition, two rounds of reform in 2005 and 2011 altered several other legal provisions on political parties. Costa Rican politicians are less active reformers of part law. Two main reform instances that stand out are a 1996/1997 constitutional and electoral reform followed by another electoral reform in 2009.[167] This latter reform was over a decade in the making. Mexico, lastly, adopted a minor reform in 2003 and a major revision of both constitutional and other legal provision on political parties in 2007/2008. In all countries, sufficient reforms have hence been adopted to allow for within-country analyses of reform.

4.4.c Cross-country analysis of party law reform

As discussed above, the state of the art identifies democratic experience and the degree of party system institutionalization as two important explanations for the outcome of party law reform. These findings beg the question what the added value is of a resource-based approach to party law reform. Are institutional characteristics not sufficient in explaining legal variance across countries? The use of cross-case comparisons can aid in answering this question, as such comparisons allow for an exploration of the "impact of a single variable or mechanism on outcomes of interest" (Tarrow 2010, 244). They thereby enable the inclusion of determinants identified in previous research. Towards this end, the comparative design must depart from the careful matching of cases based on variance in relevant independent variables (Lijphart 1971, 687; Tarrow 2010, 244).

Democratic experience is one of the main explanatory variables identified in comparative studies of party law. Democratic experience is either understood as the age of democracy (van Biezen 2012; van Biezen and Borz 2012; Janda 2005; Karvonen 2007) or as the presence of anti-democratic legacies (Avnon 1995; van Biezen 2012; van Biezen and Borz 2012; Casal Bertóa, Piccio, and Rashkova 2014). Chapter 2 has shown that all Latin American countries have been ruled by anti-democratic regimes

[166] Chapter 2 showed that this is the case more generally for all countries in the Latin American region.
[167] In the process of this study, it was revealed that Costa Rican legislators also adopted a very minor party law reform in 2002.

and/or have experienced civil wars. As a consequence, it is impossible to select countries that create meaningful variance in terms of anti-democratic legacies. Instead, the countries selected for this study meet the criterion that they differ in terms of the age of their democracies. This allows for a test of whether democratic experience is not better suited in accounting for the variance in adopted party laws

The cases selected for the cross-country comparison differ strongly in terms of the year in which they transitioned to electoral democracy through the holding of contested elections. Towards this end, Costa Rica (1949) and Mexico (1996) have been selected as the oldest and youngest democracies in the region respectively.[168] In addition, Colombia (1958) was selected as a second relatively old democracy, whereas Argentina (1983) forms a second case that represents the wave of most recent democratic transitions (Munck 2015, 367). The considerations discussed below provided an additional consideration for the selection of these two cases.

One problem with the democratic experience variable is that it may capture the effect of a second independent variable: *party system institutionalization.* Although party system institutionalization is not a linear process necessarily (Mainwaring and Scully 1995a), democratic party politics does take several years, or even decades, to develop and consolidate (Dix 1992; Linz and Stepan 1996). It may well be the case that the influence of the age of democracy identified in other studies thus confounds democratic experience with party system institutionalization more generally. To tease out the effects of these two separate variables, it is necessary to select two pairs of countries for each variable: a strongly and weakly institutionalized old democracy, as well as a strongly and a weakly institutionalized new democracy.

The selection of Colombia and Argentina serves to create this variation. As discussed above, both Costa Rica and Colombia are among the oldest democracies in the Latin American region. When looking at the development of their party systems over time, however, important differences in party system institutionalization are visible.[169] In the case of Costa Rica, changes in interparty competition took place over the course of the 2000's. Nevertheless, the rise of a new competitor did not alter the way in which political parties organize and relate to society, nor the popular acceptance of

[168] As will be discussed at length in the Mexican country chapter, the Mexican transitional process was a protracted one that started in 1977. Nevertheless, true opening up of the national political system did not occur until the late 1980's – making Mexico one of the newest democracies in the region.
[169] This study follows Mainwaring and Scully's (1995a, 1) conceptualization of party system institutionalization as the presence of: 1) stable interparty competition, 2) parties that are rooted in society, 3) the acceptance of the rules of electoral democracy, and 4) stably structured party organizations.

the rules of electoral democracy (Hernández Naranjo 2009b; Lehoucq 2005). Costa Rica represents a strongly institutionalized old democracy.

Colombia, on the other hand, did undergo fundamental changes in its degree of party system institutionalization. As will be discussed at length in the Colombian country chapter, popular rejection of the established party cartel instituted in 1958 started a process of constitutional reform in the late 1980's. Combined with decentralizing measures, this reform contributed to the rise of a style of campaigning and governance that largely centered around individual politicians rather than party labels. As a consequence, the two established parties largely imploded throughout the 2000's. A new type of party emerged as a means to provide the president with a legislative majority. In addition, legislative opposition parties – to the extent that these had existed under the party cartel – disappeared (Gutiérrez Sanín 2007). It follows that Colombia is currently a case of a weakly institutionalized old democracy.

Mexico and Argentina are two cases of new democracies whose processes of party system institutionalization have taken on opposite dynamics. Mexico transitioned from a hegemonic party regime into a party system in which political competition is firmly structured through three main parties. Mirroring the PRI's institutional capacity proved the only way in which viable political alternatives could form and enter the national political system (Eisenstadt 2004; Klesner 2005). Although Mexico is a new democracy, its party system is strongly institutionalized.

Argentina, lastly, developed a two-party system with its transition to democracy in 1983. The two dominant parties experienced a long organizational history and managed to survive protracted periods of authoritarian rule. In the first decade after transition, Mainwaring and Scully (Mainwaring and Scully 1995b) therefore called the party system moderately institutionalized. In the 2000's, however, the two-party system collapsed and the Peronist party became the main arena of political competition. As a consequence, the formal party structure crumbled while various power-holders fought over more informal Peronist party control (Cheresky 2006b; Malamud and De Luca 2011). Argentina currently constitutes a case of a weakly institutionalized new democracy.

Table 4-1: Selected cases for cross-country comparisons

	Party system institutionalization	
Age of democracy	Weak	Strong
New	Argentina	Mexico
Old	Colombia	Costa Rica

Table 4-1 provides an overview of the distribution of the four countries across these two variables. If democratic experience explains the adoption of specific party law reforms, similar dynamics would have to occur in both Colombia and Costa Rica on the one hand, and Argentina and Mexico on the other. Alternatively, if the degree of party system institutionalization matters for party law reform, similar reform strategies would have to occur in Argentina and Colombia versus Mexico and Costa Rica. Case selection for these paired comparisons thus seeks to approximate the most-different method of exploratory case selection (Seawright and Gerring 2008, 298).[170]

It should be noted that the other countries in the region fit these criteria too. Indeed, the purpose of case selection for this exploratory study is to ensure that the selected cases possess 'causal homogeneity' (Rohlfing 2012). In other words, the findings obtained in the countries under study should be expected to hold true for the entire region because these countries are similar with respect to a specific research question. No theoretical reasons thus exist to suspect that selection of different Latin American countries would alter the results of the paired comparisons substantially.

4.5 Conclusion

This chapter has introduced the two-pronged research design that forms this study's backbone. The design builds on case studies to explore how politicians respond to changing socio-political circumstances through party law reform and on within-country and cross-country comparisons to explore whether the resource-based causal mechanisms hold across a wide range of institutional settings. In addition, the chapter has provided an operationalization of the three types of socio-political circumstances that are expected to result in the different party law reforms, as proposed in the previous chapter. Lastly, it operationalized the adopted party laws, both in terms of legal provisions and intended effectiveness. In the process, this study has created the first systematic and comparative overview of Latin American party laws.

The following four country chapters provide an overview of the findings per coun-

[170] Once again, however, insufficient data on the reform strategies are available *a priori* to execute genuine most-different case selection.

try on the basis of diachronic analyses of party law reform processes. Each country chapter starts with an overview of the historical development of party law as well as socio-political environmental changes to provide relevant contextual information. The country chapters' main body focuses on the various reforms that occurred in order to trace actor preferences for legal change and implementation and to compare the various reform processes diachronically. The final comparative chapter presents the results of the cross-case analyses and discusses the theoretical implications of institutional influence on party law reform that emerges from these comparisons.

CHAPTER 5 - Costa Rica

Me importa una cama
me importa un techo
un pan un amor
para ese todos
que los políticos disuelven
en unos cuantos
-
–Carmen Naranjo, *En esta tierra redonda y plana*[171]

5.1 Costa Rica: democratic beacon in an authoritarian region

Costa Rica's relatively stable political system is an outlier in the Central American region. The country achieved this feat in part due to the socio-political factors that characterized its colonial settlement. Costa Rica's location at the fringes of the Spanish empire, combined with the absence of a large indigenous population and the presence of abundant farmlands, contributed to the emergence of a rural wage economy. This stood in stark contrast to the exploitative nature of many other Central American economies, which were based on debt peonage and outright slavery. After its independence in 1821, the country also enjoyed relative political stability – the result of an elite agreement on the development of an inclusive political system (Booth, Wade, and Walker 2010; Lehoucq 2010).[172] The institutional accommodation of conflict, achieved through the delicate balancing of power within and between institutions, contributed to Costa Rica's political stability early on.

[171] I give a ... about having beds, I give a ... about having roofs, and bread, and love for all of those whom the politicians dismiss as being just a few.

[172] Although electoral disarray haunted the country after its political independence, reforms in the late 19th century allocated power to the legislature and thereby facilitated the representation of opposition forces within the political system (Booth, Wade, and Walker 2010, 63; Casas-Zamora 2005, 63). These reforms could take place because a single hegemonic political power did not exist. In addition, they sprung from the desire to accommodate political conflict institutionally rather than solving it through extra-institutional violence (Lehoucq 2010, 64).

A major episode of political violence in 1948 underlines the importance of the institutionalization of political conflict in the maintenance and rebuilding of Costa Rica's political stability. In the early 1940's, a communist-oriented radical left governing coalition laid the foundation for violent conflict when it broke the tradition of institutionalized power sharing by pushing for the concentration of executive power. As a consequence, the presidential race in the 1948 elections was a highly competitive one and electoral fraud abounded. A non-communist opposition candidate won these elections – leading the incumbent government-controlled Congress to annul the election results in response. A 44-day civil war ensued (Lehoucq 2010, 65–66).

The war's outcome can only be understood in light of Costa Rica's experience with accommodation politics. Victorious anti-communist opposition forces formed a *de facto* government that did, however, maintain the socio-economic reforms sponsored under the previous radical left regime to undercut socio-political fragmentation. In addition, the government abolished the military to prevent future use of violence as a means of deciding conflicts (Casas-Zamora 2005, 62–63; Lehoucq 2010, 65–66). To block extra-institutional conflict and to depoliticize governance, the 1949 Constitution introduced the fragmentation of political power among the governmental branches and specialized agencies. It also appointed the autonomous *Tribunal Supremo de Elecciones* (Supreme Electoral Tribunal, TSE) the task of guaranteeing and overseeing the organization of free and fair elections (Lehoucq 2010, 69–70; Sobrado González and Picado Leon 2009, 88).

Combined with government decisions that alleviated the erosion of living standards in the 1970's and 1980's (Booth, Wade, and Walker 2010, 63), this politics of accommodation put Costa Rica on a different path than its neighbors, which all suffered prolonged civil wars throughout the second part of the 20th century. On a larger scale, Lehoucq (2010, 53) contends that the country's political stalemates and resultant institutional design allowed Costa Rica to "depart from the all-too-common mixture of political instability and economic stagnation characteristic of much of the developing world." The country's tradition of institutionalizing political conflict contributed to the formation of a democratic beacon in a region that struggled with authoritarianism and political violence otherwise.

This acclamatory description of the country's political development stands in stark contrast, however, to this chapter's epigraph. In it, Costa Rican novelist and public official Carmen Naranjo provides a beautiful twist of the expression 'who gives a ...' to reflect vocal societal discontent with the country's political system. In the process, she paints a picture of unmet societal wants and a political system that only looks after the interests of a select few. The poem, published in 2001, is reminiscent of the large societal manifestations against established Costa Rican party politics that ap-

peared in the late 1990's and that eventually contributed to the rise of new political contenders.

The shift from the maintenance of political stability through the institutionalization of conflict to the subsequent broad-scale societal rejection of the political status quo is crucial to understand the trajectory of party law reform in Costa Rica. This chapter's first section provides a historical overview of Costa Rican party law reform to sketch out these dynamics. It shows how party law reform historically formed part of a broader process of two-party system institutionalization after the 1949 democratic transition. In the process, the established parties' dominant position within the party system allowed their politicians to adopt reforms that increased their parties' privileged access to public funding on a continuous basis.

Throughout the 1990s, the established parties continued to use this strategy to respond to resource threats that resulted from institutional changes. This chapter's second section discusses how this period was marked by the creation of the *Sala Constitucional* (Constitutional Court) in 1989 and the TSE's increased jurisprudential activism in party-related matters. The Constitutional Court constituted a new veto player that ensured that politicians needed to take into account at least some semblance of democratic principles when designing party law reforms. The TSE's activism on party related matters pushed the established parties to adopt a *systemic economy* party law reform that protected their access to financial resources.

The third section discusses party law reform after the now-infamous 1998 elections, when large-scale public discontent with the status quo erupted on the electoral scenery for the first time since the 1948 civil war. Indeed, as can be gauged from the party system characteristics presented in Table 5-1 below, these elections formed a critical juncture in Costa Rica's political system. Voter turnout dropped dramatically and voter discontent with the established parties resulted in an increase in the number of parties in the legislature. At the same time, however, public discontent with established party politics did not yet result in changes in electoral or legislative competition, as aggregate volatility scores and the effective number of parties remained relatively stable.

Table 5-1: Party system characteristics (1982 – 2010)

Year	Registered parties	Parties in the legislature	Electoral volatility[173]	Legislature: ENP	Legislature: Voter turnout[174]
1982	16	5	n.a.	2.27	78.62%
1986	13	5	n.a.	2.21	81.81%
1990	14	5	n.a.	2.21	81.79%
1994	15	5	10.53	2.30	81.09%
1998	22	7	11.79	2.47	69.99%
2002	18	5	19.30	3.60	68.84%
2006	27	8	32.16	3.59	65.13%
2010	18	8	23.98	3.86	69.11%

Source: Number of registered and parliamentary parties (TSE/UCR 2014); electoral volatility (Ruth 2016); effective number of parties (ENP)(Gallagher 2015; Ruth 2016); voter turnout (percentage of registered voters who actually voted)(IDEA 2015). N.a. = not available.

As long as true electoral defeat appeared distant, party law reform took on the character of a legitimization strategy. In particular, the established parties sought to address public outrage over too costly elections and corrupt politicians by adopting new political finance rules. The fact that the established parties maintained a legislative majority, as can be gauged from their solid control over the legislature (see Appendix 7), ensured that politicians designed these reforms in as least effective a way as possible to maintain maximum access to resources. It was not until after the 2006 elections, when a third party posed a real threat to the political status quo for the first time since the 1940's, that political elites needed to start taking external demands for more accountable and transparent parties seriously. The final section will show, however, that this resulted in a hybrid form of party law reform as the established parties continued to protect the dominant mode of financing politics with a vengeance.

5.2 The development of Costa Rican party law: a historical overview

5.2.a Party system characteristics

With the return to democratic governance in 1949, accommodative politics resulted

[173] Ruth (2016) only provides data from the 1994 elections onwards. For consistency purposes, I did not include data from other sources.
[174] Compulsory vote (not enforced)

in the institutionalization of political conflict in a bi-party system. This was visible first of all in the adoption of the 1949 Constitution and the 1952 Electoral Code. Both legal instruments facilitated the restoration of the party system through the lenient procedural regulation of parties – while barring the defeated Communist party from participating in this system.[175] The regulation of political finance quickly followed suit. In a 1956 constitutional reform (Law 2036), politicians adopted the reimbursement of political parties' electoral expenses as a means of public funding (see Table 5-2 for an overview of the legal provisions adopted throughout this period).[176]

Adoption of this finance reform marked the beginning of a stable bi-party system. The *Partido de Liberación Nacional* (National Liberation Party, PLN) was the first party to establish itself solidly within this system. This party succeeded a coalition of forces that had overthrown the radical left government during the civil war (Booth, Wade, and Walker 2010, 71–75). In opposition to the PLN, several conservative parties organized themselves in the *Unificación Nacional* (National Unification) coalition.[177] This multi-party coalition constituted the second player in the bipartisan framework. In 1983, the coalition formally institutionalized itself as the *Partido de la Unidad Social Cristiana* (Social Christian Unity Party, PUSC)(Sánchez Campos 2007).

In the five decades that followed the democratic transition, the Costa Rican party system gradually evolved into a prime example of a cartel party system: a system marked by the interpenetration of party and state and by a pattern of inter-party collusion (Katz and Mair 1995, 17). Third parties played a minor role in the party system, which was due in part to an electoral system that rewarded the two traditional parties with a disproportional share of seats in the Legislative Assembly (Alfaro Re-

[175] The instigative role that the communist party had played in the 1948 civil war provoked the explicit constitutional prohibition of communist parties. Towards this end, article 98 proscribed the formation of parties "whose ideological programs, means of action or international ties set up to destruct the foundation of the democratic state of Costa Rica, or that threaten national sovereignty." *se prohíbe la formación o el funcionamiento de partidos que sus programas ideológicos, medios de acción o vinculaciones internacionales, tiendan a destruir los fundamentos de la organización democrática de Costa Rica, que atenten contra la soberanía del país, todo a juicio de la Asamblea Legislativa, por votación no menor a dos terceras partes de sus miembros y previo informe del Tribunal Supremo de Elecciones*. Costa Rican legislators abolished the prohibition of communist parties in 1975 (Law 5698, 4 June 1975).

[176] The practice of subsidizing the governing party's election costs had already been in place since 1910 (Casas-Zamora 2005, 72). This was the first time, however, that the reimbursement of election costs was legally codified and extended to all parties.

[177] This coalition was known as *Unificación Nacional* (National Unification) between 1958 and 1974, and as the *Coalición Unidad* (Unity Coalition) between 1978 and 1982 (Hernández Naranjo 2007).

dondo 2006, 126).[178] Programmatic competition between the two established parties disappeared in light of an economic crisis and the need to implement neo-liberal policies (Hernández Naranjo 2007, 106; Wilson 1994). Competition mainly took place within the PLN and PUSC instead, where large horizontal factions vied over control of the party structure and its leadership.[179]

5.2.b Historical development of party law

Party law reforms adopted up to the 1990's supported the party cartel's maintenance. In the absence of any serious social or political contestation, the established parties used these reforms to respond to minor threats to their access to resources. They did so by increasing the existing political parties' overall access to resources at the detriment of potential new contenders (Hernández Naranjo 2009a, 10–11; Sánchez Campos 2007). This was an easy feat as the two established parties continuously held the two-thirds legislative majority required to adopt such reforms.[180]

A first example of this dynamic took place during the 1971 round of party law reform (Law 4794 and Law 4813). A liberal-conservative legislative coalition modified the registration requirements for parties by exempting those parties that had obtained a number of votes equivalent to the number of signatures needed for inscription from the need to re-inscribe as a party. This decreased party maintenance costs for the political parties that had participated successfully in past elections. In addition, the renewed requirements for registration established similar terms of registration for party coalitions (Electoral Code, §73) – thereby facilitating the conservative coalition's access to public funding.

The reform also provided the two established parties with a marked financial advantage as it introduced a system of pre-electoral public funding that would be allocated on the basis of previous election results while maintaining the ten percent vote threshold to access public funding (Constitution, §96). The reform's proponents argued that these new measures would diminish the influence of moneylenders over the political parties. These financial agents filled the gap between the funding of

[178] Proportional representation (Hare and largest remainder) with closed party lists in seven electoral districts (one for each province) and a district threshold of 50 percent of the district quotient.

[179] In the case of the PLN, this even led to large party splits, the most notable of which were the split of the *Partido Independiente* (Independent Party, PI) in 1958 and of the *Partido Renovación Democrática* (Democratic Renovation Party, PRD) in 1974. Nevertheless, scholars hold that the exclusionary design of the party system contributed to the fact that these splits never established themselves successfully as permanent electoral alternatives (Hernández Naranjo 2009a, 10–11; Sánchez Campos 2007).

[180] The constitution specifies that a constitutional reform can only be adopted by a two-thirds majority of the total members of the Assembly (38 out of 59) in two consecutive legislatures (§195). Political finance reforms require a similar two-thirds majority (§96).

election campaigns and the post-electoral reimbursement of elections costs. Their increased relevance in political life cost political parties dearly, as the lenders applied stiff interest rates to cover the financial risk involved. Increasing political parties' access to public financial advances allowed the established parties to circumvent these lenders in a resource-maximizing manner.[181]

In 1988, a political agreement between the PLN and the newly formed PUSC resulted in another round of resource-maximizing reforms (Law 7094). The law raised quantitative and qualitative barriers to the formation of political parties through an increase in signature and organizational requirements for party formation. The new code required both national and local parties to collect signatures corresponding to 1.5 percent of the registered voters in their respective circumscriptions (§64). As an additional organizational requirement, political parties needed to organize party assemblies in order to be eligible for registration. To ensure implementation of these rules, legislators awarded the TSE power of oversight over national and provincial party assemblies (§64).[182]

Next to the increase of registration requirements, increased (access to) financial resources formed a second focal point of this reform. The parties established a fixed amount of public funding by calculating this as 0.27 percent of GDP (§187). At a time of large-scale neoliberal economic reforms and government austerity measures (Wilson 1994), parties thereby ensured that their access to financial resources could not be cut.[183] In addition, legislators turned the provision of public funding into a permanent subvention with a ten percent threshold (§§193-194); arguably to "prevent the post-election system lethargy of party structures" (Casas-Zamora 2005, 75). In this way, the established parties would receive organizational funding next to the existing figure of electoral funding.

[181] Opponents held that the new scheme would lead to the cartelization of the party system because of its retrogressive allocation of funding on the basis of votes obtained in past elections (Casas-Zamora 2005, 75; Hernández Naranjo 2007, 225). A 1972 constitutional reform (Law 4973) attended to this critique by lowering the public funding threshold to five percent.

[182] The reform also introduced party primaries as a form of candidate selection, albeit in an optional rather than mandatory manner. The major parties had taken to this form of presidential candidate selection since the late 1970's (Casas-Zamora 2005, 75). Indeed, the PLN had discovered in the late 1970's that primaries were a useful means of channeling intra-party conflict over candidate selection (Sánchez Campos 2007). The legal change in the 1988 reform constituted the continuation of the parties' general practice of reforming party law to match political reality rather than the other way around (Hernández Naranjo 2007, 368). The law therefore did not create any mechanisms for oversight over the internal candidate selection process but merely reflected the situation on the ground.

[183] This amount still needed to fall within the maximum amount of 2 percent of the national budget established by the constitution (§96), but needed to equate to at least 0.27 percent of GDP.

The reform sparked protests from new and minor parties that felt disadvantaged by the new rules. Politicians were subject to accusations that they used electoral reforms to create a party cartel (Hernández Naranjo 2007, 343). Nevertheless, these protests proved insufficient to counter the tide of cartelizing party laws in an increasingly institutionalized bi-party system. In the absence of pressing socio-political changes, the two established parties could use party law as a means to jointly maximize their access to resources.[184]

Table 5-2: Development of Costa Rican party law (1949-1988)

Topic	1949/53/56	1971	1988
Electoral participation	Only registered parties may participate in elections	No change	No change
Registration	National party: 3000 signatures; Local party: 1% of registered voters	No change	Signatures of 1.5% of registered voters (+/- 25.000 voters) + organization of assemblies[185]
Party ban	Prohibition of anti-democratic (communist) parties	No change[186]	
Party cancelation	Failure to maintain signatures	Failure to maintain signatures (or obtain equal number of votes)	No change
Candidate selection	National Assembly designates candidates	No change	Statutes determine method. Assembly ratifies candidates[187]

[184] Traditionally, then, Costa Rican party law reform provided a perfect example of the cartel party logic of party law reform.
[185] TSE oversees their organization
[186] In 1975, legislators adopted a constitutional reform (Law 5698) that struck this prohibition and changed the norm to that "parties must respect the constitutional order."
[187] The Executive Committee is responsible for the organization and conduction of internal elections.

Topic	1949/53/56	1971	1988
Leadership selection	Party statutes must contain mechanism for the election of internal organs	No change	No change
Electoral public funding	2% of state budget -distributed proportionally as post-electoral reimbursement with 10% vote threshold[188]	Same as before + 70% distributed as pre-election loan to reimburse cost with 10% vote threshold[189]	0.27% of GDP – 70% distributed as permanent funding and 30% as post-electoral reimbursement; both with 10% vote threshold

5.3 1996/1997 reform: protecting a party cartel amidst modernizing pressures

5.3.a Changes in the resource environment

From the early 1990's onwards, several changes in the resource environment created the impetus for a new round of party law reform. Financial scandals surrounding the 1986 and 1990 elections had put the established parties' management of financial resources high on the political agenda. Both elections had had a contentious aftermath as several large financial scandals erupted involving campaign donations and other financial ties between politicians belonging to the two established parties and drug-traffickers and other foreign authorities (Casas-Zamora 2005, 141).[190] This posed a threat to political parties' ideational capital.

[188] Parties must verify electoral expenses with General Comptroller of the Republic as a requirement for the receipt of public funding

[189] The threshold for the pre-election loan was lowered to five percent in 1972.

[190] Also see LA Times (4 Feb. 1990) 'Costa Rica Campaign Caught in Drug Traffic: Election Day: Latin America's Most Stable Democracy Picks a President amid Charges that Drug Money Helped Fund both Candidates.'

Regardless of these scandals, however, political stability continued to mark the first half of the 1990's. The number of registered parties and parties in the legislature did not increase in the 1994 elections, nor did voter turnout change. The distribution of legislative seats among the established parties remained stable as well, meaning that a coalition between the PLN and the PUSC continued to hold the two-thirds majority required for such reforms (see Appendix 7). In line with the *systemic economy* reform strategy, this suggests that party law reform would provide an opportunity to redress access to legitimacy resources through the adoption of ineffective new norms on financial management.

At the same time, institutional changes started to alter both the dynamics of the party law reform process and threatened the established parties' access to financial resources. In 1989, a partial constitutional reform introduced the *Sala Constitucional* (Constitutional Court) as a new veto player in the reform process.[191] The Constitution ascribed the Court the task of guaranteeing fundamental rights, protecting the constitutional order, and resolving conflicts between the various branches of the State. As a result of these faculties, the Court gained a constitutional mandate to exert a substantial degree of power over the other branches of government (Wilson, et al. 2004, Wilson and Rodríguez Cordero 2006). Those opposed to a legal reform could request the Court to legally protect their rights and/or ask the Court to rule on the constitutionality of a law (Hérnandez Valle 2008: 460-4).

From 1991 onwards, and in an unanticipated move, the Constitutional Court started to use these faculties to rule over the norms and provisions introduced by party law reforms. In a first instance of this new dynamic, the Court agreed with the plaintiffs that had brought a case against the above-mentioned 1988 reform, as it declared fundamental parts of the law unconstitutional. The judges held that the increase in registration requirements was "disproportionate, unreasonable, and unnecessary" (Hernández Naranjo 2007, 344). In particular, the Court argued that the increased registration requirements led to:

> ... the near freezing of contemporary political options and reveals an almost confessed tendency to legally impose, if not a ferocious bipartisanship, than at least a constraint on the development of true democratic multi-partisan

[191] This development should be understood in light of the international judicial reform and rule of law programs that dominated the region at the time (Wilson et al., 2004, Wilson and Rodríguez Cordero, 2006)

> ship, which the Court already identified as a clear constitutional foundation.[192]

The Court also agreed with the plaintiffs in its ruling that the vote threshold to access pre-electoral loans was unconstitutional because it benefited the established parties over new parties. The same went for the provision of electoral funding on the sole basis of past electoral results (Hernández Naranjo 2007, 236). The Court argued in particular that the existing party finance rules:

> equated the congealment of the Costa Rican people's political options, by awarding the traditional [parties] an odious monopoly and by excluding the other [parties] from egalitarian participation, if not making this participation practically infeasible, to the extent that the increase in public funding *de facto* blocks every alternative [form of] financing.[193]

As a result of these considerations, the Court declared both the 1971 and the 1988 reforms unconstitutional and the relevant provisions of the 1956 Constitution came back into force (Casas-Zamora 2005, 75; Sobrado Gónzalez 2010, 3). This posed serious challenges to political parties' access to financial resources. Next to the elimination of the permanent party subvention (party organizational funding), political parties lost access to the pre-election loan they could use to reimburse election costs. This meant an increase in political parties' dependency on the more expensive moneylenders.

Political parties' access to financial resources was threatened even further when the TSE started to mirror the Constitutional Court's activist stance in party-related matters. In 1996, the Tribunal ruled that it could limit the total amount of public funding available to parties as a post-electoral reimbursement of election costs within the maximum margin established by the law. In the process, it would have to apply a:

> prudent and reasonable assessment of all the circumstances that coincide at the moment of establishing the [total] amount [of public funding], especial-

[192] Sentence 980-91, 21 May 1991. *de hecho, una casi congelación de las opciones políticas actuales, y revelando una casi confesada tendencia a imponer legalmente, si no un férreo bipartidismo, por lo menos una limitación en el desarrollo de un verdadero pluripartidismo democrática, que ya la Sala señaló como clara derivación constitucional*.

[193] Sentence 980-91, 21 May 1991. *equivale a fosilizar las opciones políticas del pueblo costarricense, otorgando a los tradicionales un odioso monopolio y exluyendo a los demás de una participación igualitaria, si es que no de toda viabilidad práctica en la medida en que el crecimiento de la contribución estatal ha venido cegando de hecho todo alternativa de financiación"*.

ly those related to the country's socio-economic conditions[194]

In the sentence, the Tribunal referred indirectly to the common public sentiment that political parties received too much state funding whereas the rest of the country suffered from economic cuts and neo-liberal reform programs.[195]

Combined, the financial scandals and the TSE's increased activism thus threatened the established political parties' access to resources from two sides simultaneously. The public rejection of political parties' corrupt financial practices threatened the established parties' access to ideational resources. In the absence of a serious electoral contender, however, these threats did not directly affect political parties' ability to win elections or legislate effectively. At the same time, the established parties saw their collective access to financial resources threatened by the TSE's recent verdict. In line with the resource-based perspective on party law reform, this suggests that politicians would adopt a *systemic economy* reform to safeguard their access to these fundamental organizational resources.

5.3.b Negotiation process

In the early 1990's, the PLN-PUSC coalition initiated talks on a new party law reform that comprised both a change of the electoral code and a constitutional reform.[196] According to former PUSC President Lorena Vásquez, vice-President of the PUSC legislative caucus throughout the mid-1990's, the reform effort resulted from a larger desire to "modernize" the electoral system. Nevertheless, the established parties failed to reach a broader reform agreement, such as on the extension of the legislative and executive period from four to five years and the addition of another 20 representatives to the legislature. As a result, reform efforts mainly focused on filling the legal vacuum that the Court's 1991 sentence had created and on addressing the legitimacy concerns sparked by political parties' non-transparent financial management.[197]

A review of the reform process evinces that the 1996/1997 reforms functioned according to the *systemic economy* reform logic. The 1996 reform (Law 7653) modified 100 of the 196 articles of the Electoral Code. The simultaneous constitutional reform (Law 7675) required approval by two legislatures and was finally adopted in

[194] TSE verdict 727-1996, 22 July 1996. *Bajo una prudente y razonable valoración de todas las circunstancias que converjan al momento de establecer la cantidad, especialmente aquellas relacionadas con las condiciones económico-sociales del país*

[195] La Nación (25 July 1996) 'Recorte en deuda sacude a partidos.'

[196] Asamblea Legislativa (2 June 1992) 'Acta de la sesión ordinaria No.19.'

[197] Interview Velásquez, 2012. Also see interview Fernández, 2012.

1997. It modified three main articles related to political parties (§§95, 96, 98).[198] Despite this large number of changes, the reforms introduced few changes in the effective legal regulation of political parties. This path-dependent nature of the reform process was mainly due to the dominance of the PLN and PUSC politicians over the reform process, as these possessed few incentives to introduce substantive changes in the rules of game – other than to safeguard and increase their parties' access to financial and ideational resources respectively.[199]

It should therefore come as little surprise that the only two substantive changes introduced in this round of reforms focused on the provision of public funding and party formation rules. With regard to the first, the reform introduced measures that allowed the established parties to protect their access to resources. The constitutional reform altered the amount of public funding available to parties from a maximum of two percent of the national budget to a fixed amount of 0.19 percent of GDP (Constitution, §96). As discussed above, the GDP constituted a safer bet than the national budget in times of national austerity measures. In addition, the reform stipulated that the law would determine the circumstances that allowed for a reduction of this percentage. Politicians thereby overturned the TSE's recent verdict that ruled that this body could lower public funding as it saw fit. In this manner, they protected collective party access to public funding from electoral authority interference.

To ensure that the reform would be able to survive the scrutiny of the Constitutional Court, legislators needed to set a threshold to access public funding in accordance with the new normative standards. Towards this end, they brought the 1956 vote threshold of ten percent down to a four percent vote threshold to access this post-electoral reimbursement fund. Alternatively, any party with one elected legislator obtained access to this funding. This measure circumvented the Constitutional Court's prohibition on using quantitative registration requirements as the sole qualification to access public funding.

Interestingly enough, the constitutional reform stipulated that parties could receive partial advances of electoral public funding (Constitution, §96), but legislators did not create the necessary accompanying regulation to implement this new norm. According to the legislative transcript of the debate, this was due to the difficulty involved in setting an adequate threshold for new party access to this funding, as

[198] Although roll-call vote data are not available, vote qualifications in the transcripts of the relevant plenary seasons reveal that the PLN and PUSC supported both sets of reforms unanimously whereas two district parties opposed them. Asamblea Legislativa (8 Oct. 1996) 'Versión taquigráfica de la reunión plenaria,' Asamblea Legislativa (28 Nov. 1996) 'Versión taquigráfica de la reunión plenaria.'
[199] Interviews Velásquez, Fernández 2012.

necessitated by the 1991 Court ruling.[200] It is safe to assume that the absence of such financial advances hurt potential new competitors more than the established parties and that the introduction of a financial advance with the low threshold desired by the Constitutional Court would weaken rather than increase the established parties' access to financial resources.

Similar tensions between past practices and new normative standards were visible in the reform of party registration requirements. The 1991 Court sentence had removed the requirement for new parties to obtain a number of signatures equivalent to 1.5 percent of registered voters. The new proposal set the signature threshold for new party registration at one percent of the national electorate. Facultative consultation of the Constitutional Court revealed this to be unconstitutional and legislators thereupon dropped this provision from the bill.[201] In the end, legislators decided to only add the failure to participate in elections as an additional reason for the cancelation of party registration (Electoral Code, §73). As was the case for the reform of the public funding rules, these considerations show how jurisprudence now delineated the agenda for party law reform. Politicians needed to take into account the Court's democratic standards if they wanted to adopt an effective law that would not be struck down by the Court.

Other elements of the reform addressed structural changes in the norms guiding the legal regulation of political parties. In response to the corruption scandals involving drug traffickers in the late 1980's, politicians were externally driven to adopt several provisions that addressed transparency concerns.[202] The consequences that political parties' loss of legitimacy would have for their organizational survival stood central in the discourse of the politicians that put these measures on the political agenda. PLN representative Alejandro Antonio Soto Zúñiga argued, for example, that:

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[200] See Asamblea Legislativa (8 Oct. 1996) 'Versión taquigráfica de la reunión plenaria.' Nevertheless, and as discussed above, such difficulties did not hold legislators back when they increased the total amount of public funding available to parties in the 1996 electoral reform.

[201] Asamblea Legislativa (8 Oct. 1996) 'Versión taquigráfica de la reunión plenaria,' Asamblea Legislativa (25 Nov. 1996) 'Versión taquigráfica de la reunión plenaria,' Asamblea Legislativa (28 Nov. 1996) 'Versión taquigráfica de la reunión plenaria.'

[202] See, for example, statements of Pueblo Unido representative Rodrigo Alberto Gutiérrez Sáenz and PLN representative Alejandro Antonio Soto Zúñiga who advocate in favor of such reforms. Asamblea Legislativa (2 June 1992) 'Acta de la sesión ordinaria No.19.' In a similar vein, PLN representative Roberto Obando Venegas applauded the reform stating that: "today we have taken a big step. Today, Costa Rica has a new Electoral Code that guarantees that the drug-traffickers that creep up on our borders will not intervene as they intervene in other countries, contaminating the electoral system." *hoy se ha dado un gran paso. Hoy, Costa Rica tiene un nuevo Código Electoral que le garantiza que el narcotráfico que acecha nuestras fronteras, no intervenga como interviene en otros países contaminando el sistema electoral.* Asamblea Legislativa (8 Oct. 1996) 'Versión taquigráfica de la reunión plenaria.'

> we shouldn't come to the conclusion that this democracy is everlasting and that we can continue its existence by hosting an electoral tournament every four years. The more advanced and developed societies are teaching us this [lesson] already. The appearance of anti-system forces in France, in Italy, in Germany, and even the United States, shows that it is precisely the lack of political leaders' transparency that conspires against the political parties that bring these leaders to power.[203]

In the 1996 Electoral Code, these legitimacy concerns resulted in the prohibition of foreign donations (except for training purposes) and the introduction of donation limits (Electoral Code, §176).[204] Legislators also adopted transparency requirements for party accounts and established penal sanctions for transgressions of finance regulation (Electoral Code, §§58, 176). Lastly, they regulated media access during election campaigns (Electoral Code, §85).[205] All these legal changes constituted substantial overhauls of existing legislation on paper. Indeed, this was the first time that Costa Rican legislators introduced private finance regulations.

Nevertheless, and in the absence of any substantial changes in inter- or intra-party relations, the established parties had no intrinsic desire to alter their behavior in practice. Although legislators created formal provisions for implementation, these new provisions were not very extensive. According to the TSE's representative to the 1996 reform committee, more substantive proposals on private finance regulation and control were introduced and discussed in the negotiation process. He contends that the PLN and PUSC negotiators struck these down in a private negotiation meeting where they decided upon the final, boiled down, reform text between them-

[203] *no lleguemos a pensar que esta democracia es eterna y que aquí vamos a seguir viviéndola con un torneo electoral cada cuatro años. Ya nos lo están enseñando sociedades más avanzadas y más desarrolladas. La aparición de las fuerzas antisistema en Francia, en Italia, en Alemania, en los mismos Estados Unidos, hace que precisamente la falta de transparencia de los líderes políticos, conspiren contra los partidos que los llevan al poder.* Asamblea Legislativa (2 June 1992) 'Acta de la sesión ordinaria No.19.'

[204] Asamblea Legislativa (8 Oct. 1996) 'Versión taquigráfica de la reunión plenaria.'

[205] A 1997 Constitutional Court sentence annulled several of the articles on penal sanctions and media access, because it ruled these an unconstitutional limitation of the freedom of expression (Sentence 1750-97, 21 March 1997). As a result, the TSE could levy no sanctions for the transgression of the newly introduced finance regulation.

selves.[206] In line with the *systemic economy* reform strategy when responding to external demands for change, the leading parties' politicians thereby ensured that these rules were designed in a largely symbolic manner.

Reform of the candidate selection process was of a similar cosmetic nature. In line with new international norms, legislators introduced the rule that parties needed to be internally democratic (§98). The new norm was not accompanied, however, by any substantial regulation. To understand this development, it should be noted that the legal prescription of intra-party democracy had become a common concern of electoral authorities in the region. During the 1992 meeting of UNIORE, the Inter-American Union of Electoral Organizations, the role that electoral authorities should play in internal candidate selection processes formed one of the focal points of discussion (IIDH 2012, 20). In addition, three other countries in the region adopted obligatory primaries for candidate selection throughout the 1996/1997 Costa Rican reform process.[207] These examples pushed Costa Rican legislators to adopt similar norms.[208]

At the same time, however, the established parties had already taken to the practice of using primaries to select their presidential candidates since the late 1970's. For legislative candidate selection, parties resorted to the use of national party assemblies, with party statutes explicitly allowing the presidential candidate to select the top candidates on the party list. This offered the opportunity to parties to maintain a substantial degree of control over the party's legislators (Taylor-Robinson 2001, 7–8). Incorporation of the general norm of intra-party democracy, without any measures to ensure implementation of this norm, reflected that parties had already introduced some of these measures internally while they continued to rely on less democratic measures for the selection of their legislative candidates simultaneously. No reason existed for them to change these internal procedures.

To summarize, the 1996/1997 round of reforms responded to systemic reform pressures. On the one hand, the established parties responded to recent legal actions that threatened their access to financial resources by adopting rules that safeguarded their

[206] Interview Fernández, 2012. The TSE did implement the submission of quarterly finance reports and check these reports to formal adherence to the law. In an overview of the implementation efforts, Casas (2005, 146–47) notes, however, that many parties did not take this reporting exercise seriously and that the TSE exercised formal control only – meaning that it could not corroborate the information that the parties provided to them. In addition, one party official confirmed to Casas that his party circumvented individual donation limits: "we somehow abide by the law while in fact, there may be a single source for several contributions."

[207] Paraguay (1996), Panama (1997), and Uruguay (1997).

[208] Interviews Picado León, Sobrado, 2012

access to public funding. In the process, legislators needed to ensure that the reforms would be able to withstand the Constitutional Court's scrutiny. On the other hand, once legislators put the possibility of political reform on the table, it became very difficult for them to neglect external pressure to also adopt new rules that targeted party functioning and behavior. This resulted in the adoption of broad norms on private party finance and intra-party democracy. In a region where party law reform had become a common practice, norms on appropriate forms of party regulation managed to set the agenda for reform – albeit in an indirect and rather ineffective manner.

Table 5-3: Development of Costa Rican party law (1991-1997)

Topic	**1991**	**1996/1997**
Registration	National party: 3000 signatures; Local party: 1% of registered voters	*national: 3000 signatures *local: 1% of registered voters + organization of assemblies
Party cancelation	Failure to maintain signatures	Failure to: *participate in elections *maintain signatures (or obtain equal number of votes)
Oversight		TSE oversees national, provincial, and cantonal assemblies
Candidate selection	National Assembly designates candidates	Parties must be internally democratic + statutes determine method + Assembly ratifies candidates[209]
Leadership selection	Party statutes must contain mechanism for the election of internal organs	No change
Electoral public funding	2% of state budget – distributed proportionally as post-electoral reimbursement with 10% vote threshold	0.19% of GDP as post-electoral reimbursement with 4% vote threshold or 1 elected representative; party statutes determine to what extent parties spend this on organizational expenses and earmarked activities.

[209] The 1996 reform introduces the Internal Election Tribunal as an organ that the Executive Committee may delegate the responsibility to organize and oversee the conduct of internal elections.

Topic	1991	1996/1997
Donation limits		Prohibition anonymous donations and foreign donors[210] + annual donation limit (minimum wage*45)
Monitoring and oversight	Parties must verify electoral expenses with General Comptroller of the Republic to receive public funding	Parties must present quarterly reports to the TSE (monthly during election campaigns)

5.4 1998-2002 reform: lack of political will

5.4.a Changes in the resource environment

The 1996/1997 round of reforms proved insufficient to protect the established parties' dominant hold over the party system indefinitely. Instead, economic developments in the late 1990's resulted in increased popular discontent, which contributed to a process of party system reconfiguration (Booth, Wade, and Walker 2010, 75; Lehoucq 2005, 145–46). This was visible first of all in an increase in social movement and union mobilization for socio-economic policy change. The general public increasingly accused the traditional parties of forming a political cartel, the so-called PLUSC, that bestowed its leaders with benefits but that left society at large worse off (Frajman 2012, 118).[211]

The PLN was hit hard in particular, as this party had implemented three structural adjustment programs in 1985, 1989, and 1995 respectively. Internal division arose between neoliberal reformers and more traditional social democratic PLN factions (Booth, et al. 2010: 75). In the advent of the 1998 elections, disputes over candidate selection led a reformist faction to take the party leadership to the Constitutional Court to allow party members a stronger say over this process (Lehoucq 2005, 147).[212] In addition, the subsequent outflow of PLN party leaders contributed to

[210] Including Costa Ricans living abroad, but with the exception of international organizations dedicated to democratic development and political training.
[211] The fact that alternation in government took place in 1990, 1994 and 1998 successively is an indicator of an early effect of this general discontent on the party system. Previously, alternation had always occurred in a pattern of two PLN governments followed by one PUSC government (Booth, 2010: 75)
[212] Lehoucq (2005: 147) notes that such internal conflicts were largely absent in the PUSC because it had adopted a statutory rule in 1995 that required all legislative pre-candidates to obtain 40 percent support in lower-level party assemblies.

the creation of new parties, such as the *Partido Acción Ciudadana* (Citizen's Action Party, PAC). A second party on the rise was the *Movimiento Libertario* (Libertarian Movement, ML), which organized itself around a radical liberal agenda and opposed state intervention in social life (Hernández Naranjo 2009a, 26).

Popular discontent reached its zenith in the 1998 elections. These elections formed a turning point in Costa Rican politics, as voter turnout dropped with more than 10 percent to 69.99 percent. Structural factors, such as socio-economic exclusion, had historically explained electoral abstention (Hernández Naranjo 2009a, 37). In the 1998 elections, however, the level of abstention increased in all districts of the countries and on all socio-economic and educational levels. This suggested that abstention was strongly related to voter de-alignment and general discontent with the political system (Raventós Vorst and Ramírez Moreira 2006, 14).

For the first time since the transition to democracy in 1949, public discontent with the established status quo translated into changing party system characteristics. The number of registered parties rose from 15 to 22 and after the 1998 elections the number of parties in the legislature rose from 5 to 7. The effective number of parties did not rise substantially, however, which suggests that the formation of reform coalitions had not become more difficult. The seat share of the established parties confirms this. Between 1998 and 2002, the PLN and PUSC continued to reach the two-thirds majority needed to sponsor constitutional and/or other party law reforms conjointly (see Table 5-1 above and Appendix 7). In the absence of real electoral or legislative contestation, the established political parties could be expected to continue adopting ineffective *systemic economy* party law reforms to improve their faltering popular standing without risking upsetting the existing intra- or inter-party distribution of resources.

5.4.b Negotiation process

The reforms adopted under the 1998-2002 Legislature confirm the unwillingness of the established politicians to substantially alter the political rules of the game. Indeed, it was the TSE rather than the parties themselves that stepped into the driver seat of party law reform. The Tribunal initiated a study of electoral legislation in which it brought together various civil society organizations specialized in electoral matters. The final reform project that resulted from this roundtable sought to improve the link between voters and their representatives, such as through the introduction of open party lists and independent candidates (Sobrado González and Picado Leon 2009, 91).[213]

[213] Interview Picado León, 2012

The Tribunal pushed President Miguel Ángel Rodríguez to present the bill to the Legislature in 2001. Given the closeness of the 2002 elections, however, the Assembly did not make any advances in this area.[214] During the 1998-2002 period, the Legislature only adopted two minor laws that introduced changes in the regulation of political finance.[215] Of these two, Law 8119 is the most relevant one, as it provided a means for the established parties to redress their joint loss of ideational capital by addressing the common complaint that parties received too much public funding. The law resulted from a pact between the PLN and PUSC to acknowledge public demands for lower election costs, that is, to address external reform pressure. [216] At the same time, however, the parties themselves were the main benefactors of public funding and would be hit hardest by any substantial changes. Legislators therefore adopted a law that lowered the amount of public funding available to parties from 0.19 to 0.10 percent of GDP for the 2002 elections only. In line with a true *systemic economy* strategy, legislators ensured that they designed a reform with very limited effective consequences.

This reform episode is an important one because it underlines the limited impact that external pressure for reform, such as public rejection of the political status quo or the TSE's push for a more inclusive political system, may have in terms of effecting real legal change. In line with the resource-based perspective, such external pressures are only expected to result in real change if the relevant political parties internalize them as threats to their direct ability to win elections or legislate effectively. The 1998 elections had not (yet) formed such a threat – other than that parties feared for their ideational capital. Although voter turnout decreased and the PAC rose as a relatively strong new party, the PLN and PUSC's vote share did not decline markedly. As a result, the parties continued to respond to the external pressure to do something through a *systemic economy* reform strategy that did little to change the reality of political life.

5.5 2009 reform: corruption and party system change

5.5.a Changes in the resource environment

The two rounds of elections following the 1998 elections continued the trend of party system crisis and reconfiguration, albeit it in an uneven manner. Voter turnout

[214] Interview Sobrado, 2012

[215] Law 8123 established some minor changes in the control of party expenses that were reimbursed by the state.

[216] The parties went as far as to state that this reform was a joint effort that no sole party could take electoral credit for Asamblea Legislativa (26 June 2001) 'Acta de la Sesión Plenaria 28.'

decreased steadily from 80 percent in the early 1990s to 65 percent in the 2006 elections, while electoral volatility grew from 10 percent in the early 1990s to 30 percent in the 2006 elections. The number of registered parties and the number of parties elected to the legislature fell in the 2002 elections, only to nearly double in size in the 2006 elections (see Table 5-1 above). In the 2002-2006 legislature, these changes resulted in the PLN and PUSC losing the two-thirds majority needed to adopt party law reforms for the first time ever (see Appendix 7). This meant that the established parties had missed their chance at using party law reforms as part of an *electoral economy* strategy to address the rise of a new party. Virtually any reform coalition now necessitated inclusion of the opposition PAC.

Initially, the established parties started experimenting with the introduction of more democratic methods to select their candidate lists for the Legislative Assembly to turn the tide of voter disaffection. This attempt to strengthen internal participation backfired, however, as the parties were suddenly confronted by an increase in both intra-party conflicts and legislative indiscipline.[217] In the run up to the 2006 elections, all parties (including the newcomers PAC and ML) therefore refrained from using primaries to select their candidates. This was also the case because the PUSC was in internal disarray after corruption scandals had hit it hard in 2004, because the PLN had already decided that Oscar Arias was the only way forward to save the party in the upcoming elections, and because the new parties did not feel comfortable resorting to the use of primaries for candidate selection just yet.[218] In a context of party system reconfiguration, control over the organizational infrastructure formed a crucial element of survival.

Recent TSE verdicts appeared, however, to restrict political parties' ability to use candidate selection methods in such a flexible manner. Indeed, what parties had not counted on when they introduced intra-party democracy as a symbolic norm in 1997, was that this opened the door to judicial involvement in internal party matters. This occurred first in a case in 2000, when the TSE ruled that citizens could appeal to the Tribunal for legal protection (*recurso de amparo electoral)* in those cases

[217] Interviews Ballestero, 2012; Vásquez, 2012. Also see Freidenberg (2006, 118). These experiments also resulted from the fact that the common practice of presidential candidates electing the top candidates on the party lists became a contested one. The established parties' legislative factions decreased due to the rise of new parties, which increased the relative weight of these handpicked candidates in congressional factions.

[218] Interviews Ballestero 2012; Bolaños, 2012; Vásquez, 2012; Solís, 2012; Guevara, 2012. Also see Hernández Naranjo (2009a). This changed again in 2010 when the PLN, PUSC, and PAC returned to the use of party primaries for presidential candidate selection. ML President Guevara maintained that up to this point in time his party lacked the "political maturity" to use democratic candidate selection methods. He expects that the party will organize its first primaries for the 2018 elections.

involving matters related to the internally democratic structure and functioning of parties (Sobrado Gónzalez 2007, 25). The resolution explicitly justified the involvement of the Tribunal in such cases through reference to the parties' monopoly over the representative process:

> With regard to this it is important to point out that, given that political parties are the unavoidable intermediaries between the government and the governed – to the extent that our current legal system contains a monopoly over the nomination of candidates for the various positions up for popular election –, whichever illegitimate restriction to the participation of party members in the internal processes brings with it an intolerable artificiality of their political rights, which the Supreme Electoral Tribunal may curb.[219]

Subsequent resolutions interpreted the principle of internally democratic structure and functioning to mean that parties should renew their leadership at least every four years at the risk of losing their right to participate in elections[220] and that party assemblies could not overturn candidates selected through internal elections because "party members form the parties' highest authority."[221] In similar vein, the TSE used its ability to create jurisprudence over electoral matters to promote more effective female participation through its ruling that gender quota should be applied to eligible positions on the party list rather than to the party list in total.[222] As can be gauged from these resolutions, the Tribunal took it upon itself to force political parties to function in an internally democratic manner, because:

> [t]he participation of members is fundamental for the democratic exercise and impedes the oligarchization, which is becoming less frequent, and which seeks to maintain concentrated control and power over the decision-making

[219] TSE verdict 303-E-2000, 15 Feb. 2000: *Sobre este punto conviene precisar que, siendo los partidos políticos los ineludibles intermediarios entre el gobierno y los gobernados -a tal punto que en nuestro régimen legal vigente detentan un monopolio en la nominación de los candidatos a los distintos puestos de elección popular-, cualquier restricción ilegítima a la participación de los militantes en los procesos internos conlleva una afectación intolerable a sus derechos políticos, fiscalizable por el Tribunal Supremo de Elecciones*

[220] TSE verdict 1536-E-2001, 24 July 2001.

[221] TSE verdicts 1671-E-2001, 10 Aug. 2001 and 0046-E-2002, 16 Jan. 2002. Also see verdicts 202-E-2000 and 0859-E-2001 that prohibit the establishment of excessive requirement for members that want to postulate themselves as candidates in the internal selection process.

[222] TSE verdict 2096-E-2005, 31 Aug. 2005.

> process in the party leadership, thereby putting at risk its [the party's] own democratization[223]

Next to the TSE's threat to collective party control over the organizational infrastructure, the established parties saw their access to ideational resources continue to shrink over the course of the 2006 elections. Firstly, the PUSC collapsed amidst damaging corruption scandals involving its ex-presidents and the flight of party leaders to other political parties. At the same time, the elections turned into an unofficial referendum on the signature of the Central American Free Trade Agreement (CAFTA), which pitted the PLN (in favor) and the PAC (opposed) against one another. In the end, 80.7 percent of the emitted votes were distributed between these two parties, whereas the PUSC (3.55 percent) and the ML (8.48 percent) were relegated to a marginal third and fourth position (Rojas Bolaños 2008).

Party system change extended to the 2006-2010 legislature, where the PUSC became the fourth largest caucus with a mere five seats. Combined, the PLN and PUSC maintained only 52 percent of the seats, which meant that they drifted even further away from the two thirds majority needed to sponsor a party law reform to protect access to ideational capital (see Appendix 7). A viable reform coalition necessitated inclusion of the main opposition party PAC. Although an unlikely feat at first sight, such a reform coalition did come about throughout the following legislative period. The tremendous political impact of the corruption scandals that had occurred under the previous government, combined with the fact that the PAC traditionally campaigned on a platform of ethics and 'doing things differently', created a new drive for party law reform and put the issue of party finance high on the political agenda (Sobrado González and Picado Leon 2009, 92).

At the same time, however, coalition dynamics complicated the reform process. The PLN and PUSC were mainly concerned with their ideational capital and the need to show they cared about more transparent finances. The PAC, on the other hand, was more concerned with redressing access to financial resources in its favor by overturning what is perceived to be an elitist and exclusionary model of political finance. This suggested an *electoral economy* strategy proposing disadvantagous political finance rules targeting the established parties. A hybrid reform was the result, as the both sides acted as veto players against the other's reform objectives.

[223] TSE verdict 1440-E-2000, 14 July 2000. *La participación de los adherentes es fundamental para el ejercicio democrático e impide a la vez la oligarquización, cada vez más en desuso, que procura mantener concentrado el control y el poder de decisión en la cúpula del partido, atentando de esta manera contra su propia democratización.*

5.5.b Negotiation process

After the 2006 elections, the PLN government created the *Comisión Especial de Reformas Electorales y Partidos Políticos* (Special Committee on Electoral Reform and Political Parties, CEREPP). The Committee was to continue working on the 2001 reform bill promoted by the TSE and other party law reform bills that had been introduced in the Legislative Assembly in previous years. The difficulty of reaching an agreement on political finance regulation manifested itself in the negotiations early on. The committee members decided to leave discussions on contentious matters to the last part of the negotiation process in the hope that sufficient momentum would have been created to agree on such matters as well.[224] Despite this decision, the work of the committee lost momentum in mid-2007 as the negotiations over CAFTA took political forefront and eventually led to the resignation of the CEREPP's president from the legislature. Over the course of the second half of 2007, the committee therefore met only once to appoint its new president (Sobrado González and Picado Leon 2009: 93-4).

In 2008, the committee picked up speed and started to meet more frequently in order to adopt a reform that could be implemented in the then upcoming 2010 elections. After several discussions of the project in the Legislative Assembly, and the subsequent discussion of motions in the committee, the Assembly voted on the reformed Electoral Code on 28 July 2009 and 11 August 2009. Forty-two out of the 45 representatives present in the Assembly approved the reform during the first vote, whereas 45 out of the 49 representatives present did so during the second vote. No roll-call data are available on these votes and the Assembly president did not allow for vote qualifications after the vote.[225] According to newspaper articles and the minutes of the debates, representatives of several minor parties and several ML delegates stated that they would vote against the reform.[226] This means that the PLN, PUSC and PAC likely voted in favor of the reform.

CEREPP members note that several sources of external pressure set the agenda for the reform. The media played an important role in creating a public opinion very much in favor of political finance regulation – particularly in the aftermath of the party finance scandals that had erupted during the previous legislature.[227] The TSE

[224] Minutes CEREPP (5 Oct. 2006).

[225] Asamblea Legislativa (11 Aug. 2009) 'Acta extraordinario 26.'

[226] Asamblea Legislativa (10 Aug. 2009) 'Acta 53.' Also see La Nación (29 Juy 2009) 'Nueva ley electoral regirá en comicios de febrero 2010,' La Nación (8 Aug. 2009) 'Congreso suspende votación de ley electoral,' La Nación (11 Aug. 2009) 'Reforma electoral logró aprobación definitiva.'

[227] Interviews Ballestero, Fernández, Guevara, Sobrado, Vásquez, 2012. Minutes of the CEREPP corroborate that the committee takes into account public opinion, such as is the case on 22 November 2006, when the media had turned against the regulation of opinion polls.

participated in the negotiation process through its creation of the initial reform proposal and through its attendance to the committee sessions.[228] The Tribunal had historically pushed for tighter political finance regulation and this reform instance formed no exception. In addition, the PAC, which had now become the main opposition party, internalized the demands for clean political finance as part of its anti-establishment platform.[229] Nevertheless, the PLN and PUSC diametrically opposed many of its efforts to alter the existing model of political finance – thereby resulting in a hybrid *electoral economy* reform.

On the one hand, the internal and external pressure for better finance regulation resulted in higher levels of control over political finance. The TSE replaced the *Contraloría General* (General Comptroller) as the entity in charge of approving and overseeing the reimbursement of party expenses. The Tribunal's monitoring capacity was expanded, such as by allowing it to audit parties (§12). The new Code also improved the regime of sanctions through the provision of extended penal sentences and the clearer distinction between electoral misdemeanors and electoral crimes (§§271-302). The first, punishable with monetary sanctions, now fell under the TSE's jurisdiction, whereas the latter fell under the Penal Code (also see Sobrado González and Picado Leon 2009). Combined, these measures ensured better implementation of political finance rules.

The reform of other legal provisions indicates, however, that the 2009 reform simultaneously undermined the effective nature of political finance control through its selective targeting of private party finance practices. The prohibition of corporate and anonymous donations formed a breaking point in the negotiations. The PAC proposed this measure as a means to clean up political finance, whereas the established PLN and PUSC opposed it. Up to the discussions in the Legislative Assembly, the reform proposal went back and forth between the prohibition and the permission of this type of donations.[230] In the end, the law prohibited corporate donations, and anonymous donations by extension (§123).

Nevertheless, the law did not prohibit or regulate the common practice of emitting party bonds before elections (§108).[231] As discussed above, Costa Rican party

[228] The minutes of the CEREPP show that the committee members actively seek input of the TSE on the normative and practical feasibility of proposed changes.
[229] Interviews Alfaro Salas, Ballestero, Fernández, Solís, Vásquez, Bolaños, 2012
[230] Interviews Alfaro Salas, Ballestero, Vásquez 2012
[231] Although some respondents claim that the regulation of bonds had not been talked through sufficiently, the TSE representative to the committee argues that the topic did make it onto the agenda on various occasions but that the traditional parties opposed the regulation of this stable source of income. Interview Fernández, 2012

funding now consisted of the post-electoral reimbursement of expenses distributed proportionally on the basis of the votes obtained by each party. Parties therefore issue party bonds to private financers to cover electoral costs. The interest rate varies according to the 'risk of repayment', which is calculated on the basis of the party's electoral prognosis (Casas-Zamora 2005, 120). In practice, this allowed corporations and anonymous donors to donate to parties by buying worthless party stock.[232] Legislators also eliminated individual donation limits and removed the regulation of media access during elections from the electoral code without much discussion.[233] These legal changes all ensured that, while the TSE obtained more monitoring power, parties had to obey fewer rules in practice.

The reduction of the amount of public funding available to political parties formed a second major point of contention. As had been the case for over a decade, the public at large continued to demand a decrease of electoral funding (Casas-Zamora 2005, 76).[234] The PLN and PUSC were less willing than the other parties to lower this funding substantially.[235] In the end, legislators reached a compromise to lower public funding for the next election through a transitional article. This effectively transferred the decision on the permanent reduction of public funding to the next legislature.[236] Other proposals sponsored by the TSE – an attempt to create more equality in the electoral process, such as the distribution of a minimum amount of media access to all parties and greater advances of public funding to all parties – were not discussed in the negotiations, because the traditional parties opposed them.[237]

Both the PLN committee president and the main PAC committee delegate state that similar tensions between the established and new/minority parties were visible in the proposal's regulation of registration requirements that went back and forth between the prescription and elimination of assemblies at the district level as a spatial requirement for party formation. Organization of such assemblies contributes to party formation costs, so the minor parties in particular opposed this measure. Similarly, the

[232] In the 2010 elections, for example, the PUSC sold many more bonds than that the party could be expected to repay, based on the predicted election results, through its post-electoral reimbursement (Auditoría Electoral Ciudadana 2011, 34).
[233] Interviews Alfaro Salas, Ballestero, Fernández Vásquez 2012.
[234] Minutes CEREPP (7 July 2006).
[235] Interviews Ballestero, Vásquez, Bolaños 2012.
[236] In addition, the new Electoral Code regulated public funding in the form of pre-electoral loans to political parties (§96) and the provision of public funding for organizational and educational purposes through quarterly settlements of the percentage put down towards this end in the parties' statutes (§§92-95). The PLN and PAC supported organizational funding as a means to strengthen permanent party structures; the PAC proposed the re-regulation of pre-electoral loans as a means to strengthen its electoral position. Interviews Ballestero, Alfaro Salas 2012.
[237] Interviews Ballestero, Salas, 2012.

regulation of coalitions – an electoral utensil for minority parties – went back and forth between stricter and less strict formats.[238] In the end, the new electoral code established lower requirements for the formation of local parties but maintained the 1996 standards on national party registration and maintenance of registration (§60). It ascribed the electoral authorities the right to oversee party assemblies at all organizational levels, which in effect formed a new obstacle to party formation (§12).[239] This reform hence increased some of the qualitative requirements for party registration, while throwing minor parties a bone by decreasing the quantitative requirements for local party formation.

Next to setting the agenda for reform, changing norms played a delineating role in the reform process as well. Legislators countered the trend of electoral jurisprudence by establishing provisions with little leeway for interpretation to provide political parties more certainty about the formal rules of the game.[240] Indeed, examples of such reasoning come up in various committee minutes:

> Mario Nuñez Arias (ML): "that it remains established in the minutes, on the record, what the spirit of the legislator is."[241]
>
> Carlos Luís Pérez Vargas (PLN): "even if we reject the motion, we have left fundamental concepts on the record, and that way the Supreme Electoral Tribunal cannot use the interpretational road to incorporate additional requirements to those already established that may come to obstruct the capacity of the parties to participate in the electoral process."[242]

These examples show that legislators had become more than aware of the jurisprudential power of the Tribunal and of the danger involved in creating a paper tiger with too much leeway for subsequent legal interpretation.

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[238] Interviews Alfaro Salas, Ballestero, 2012; Also see minutes CEREPP 20 July 2006, 23 June 2009, 30 June 2009.

[239] In addition, legislators added the qualitative requirement that parties apply gender parity within their internal structures (§60). This latter point was an ideological one that had been promoted by the PAC and PLN and that the ML opposed on principle. In addition, the ML felt it did not count with the necessary human capital to implement gender equality. Interviews Ballestero, Guevara 2012.

[240] Interview Sobrado 2012.

[241] Minutes CEREPP 23 June 2009. *si queda establecido en actas, en el expediente cuál es el espíritu del legislador*

[242] Minutes CEREPP 19 June 2009. *aún rechazando la moción, hemos dejado sentado en el acta, conceptos fundamentales y es que por la vía de la interpretación no puede el Tribunal Supremo de Elecciones, incorporar requisitos adicionales a los ya establecidos que vengan a obstruir la capacidad de los políticos de participar en el proceso electoral*

With regard to the regulation of candidate selection, the reform codified what had already been established through TSE jurisprudence, namely that that the selection of presidential candidates through closed primaries was final (and needed to be ratified by the National Assembly) and that the TSE would oversee the organization of party assemblies (§12). These issues seemed to have been of little relevance to the legislators involved in the reform, as the committee minutes show no debate over the matter.[243] In addition, however, the reform established that parties needed to create internal election tribunals to oversee the candidate selection process and handle internal contention (§74). The law specifically states that this was related to the principle of self-determination: "In line with the principle of self-regulation as established by article 98 of the Constitution, parties shall create an internal elections tribunal."[244] Legislators likely introduced this new norm on internal party affairs to keep the active TSE at bay.

Events in the aftermath of the 2009 reform showed legislators' fear of judicial norm creation to have not been unfounded. The Constitutional Court adopted two additional sentences directed against the cartelization of the party system. In 2010, the Court declared the spatial requirement that parties organize assemblies in all districts unconstitutional because it deemed these to "contradict the constitutional principles of equality, the democratic and pluri-partisan organization that political parties should have as purported by §98 of the Constitution and the principles of reasonableness and proportionality."[245]

In a similar vein, the Court adopted a sentence in 2011 that declared unconstitutional the provision that failure to participate in elections led automatically to party cancelation. It argued that this provision "affects citizens' fundamental right to form political parties and to participate through them in electoral processes to designate its public authorities in an excessive and disproportionate manner" and that this restriction "could not rely on the support of any constitutional objective to justify and sustain it."[246] Both examples of judicial intervention provide additional evidence for the suggestion that – whereas in the previous 40 years, the major parties had been

[243] Minutes CEREPP 17 Aug. 2006 and 24 Aug. 2006.

[244] *Los partidos políticos deberán, de acuerdo con el principio de autorregulación partidaria establecido en el artículo 98 de la Constitución Política, crear un tribunal de elecciones internas.*

[245] Sentence 9340-2010, 26 May 2010: *contrario a los principios constitucionales de igualdad, de la organización democrática y pluripartidista que deben tener los partidos políticos al tenor del artículo 98 de la Carta Fundamental y los principios de razonabilidad y proporcionalidad.*

[246] Sentence 16592-2011, 30 Nov. 2011: *afecta de manera excesiva y desproporcionada el derecho fundamental de los ciudadanos de agruparse en partidos políticos y participar a través de ellos en los procesos de elección para el nombramiento de autoridades públicas. … sin tal restricción cuente para sí con el apoyo de alguna finalidad constitucional que venga a justificar y dar sustento a la medida.*

able to make good use of party law reform to accommodate their own privileged position in the country's legal framework – from 1991 onwards legislators had to take into account the guiding constitutional principles on the legal regulation of political parties as affirmed by the Constitutional Court.

To summarize, the 2009 reform resulted from the desire of the established PLN and PUSC parties to address their loss of ideational capital. For the PUSC in particular, this loss had started to affect its ability to win elections and maintain a legislative presence. Both parties were therefore willing to invest in measures that contributed to more transparent political finance rules. At the same time, however, a coalition with the PAC was necessary to see the reform through Congress. The PAC held completely different objectives, as it would be to its electoral advantage to overturn the existing political finance system entirely. Coalition politics thereby resulted in a hybrid reform with many loopholes and ineffective provisions.

Table 5-4: Development of Costa Rican party law (1996-2009)

Topic	1996	2009
Registration	*national: 3000 signatures *local: 1% of registered voters[247] + organization of assemblies	*national: 3000 signatures *provincial: 1000 signatures *cantonal: 500 signatures + organization of assemblies[248] + application gender parity principle
Party cancelation	No electoral participation or failure to obtain the no. of votes equivalent to the no. of signatures needed for registration	No electoral participation[249] or failure to obtain the no. of votes equivalent to the no. of signatures needed for registration
Candidate selection	Parties must be internally democratic + statutes determine method + Assembly ratifies candidates [250]	Parties must be internally democratic + statutes determine method + obligatory creation of an Internal Election Tribunal
Gender quota	40% gender quota applicable to internal party structure and candidate lists[251]	Principle of gender parity and alternation apply to party structure and candidate lists
Electoral public funding	0.19% of GDP as post-electoral reimbursement with 4% vote threshold or 1 elected representative;	0.19% of GDP[252] distributed proportionally among parties that reach 4% vote threshold or elect one delegate to reimburse election costs. 15% advance is distributed equally among regional parties (20%) and national parties (80%) that can prove liquid guarantees

[247] Sentence 15960-2006, 1 Nov. 2006 held that the constant increase of signatures needed for the formation of provincial and cantonal parties (one percent, which could supersede the 3000 signatures needed for a national party) was unconstitutional.
[248] Sentence 9340-2010, 26 May 2010 declared that the need for parties to organize district assemblies was unconstitutional.
[249] Sentence 16592-2011, 30 Nov. 2011 declared this unconstitutional.

Topic	1996	2009
Organizational public funding	Party statutes determine to what extent parties spend electoral reimbursement on organizational expenses and earmarked activities.	Quarterly settlements for organizational expenses and earmarked activities
Donation limits	Prohibition anonymous donations and foreign donors[253]+ annual donation limit (minimum wage x 45)	Prohibition anonymous donations + prohibition foreign and corporate donors + all finances must go through party
Monitoring and oversight	Parties must present quarterly reports to the TSE (monthly during election campaigns)	Parties must publish authorized financial statement and list of donations and donors in national newspaper. Expansion of the TSE's investigative capacity

[250] TSE verdict 1861-E-1999, 23 Sep. 1999 determined that this quota had to be applied to eligible positions on the candidate list and not the candidate list in total.
[251] A transitional article determined that for the 2012 elections, this percentage would be set at 0.11 percent.
[252] Including Costa Ricans living abroad, but with the exception of international organizations dedicated to democratic development and political training.
[253] Including Costa Ricans living abroad, but with the exception of international organizations dedicated to democratic development and political training.

5.6 Conclusion: party law development and reform in Costa Rica

This chapter has shown how Costa Rica's established liberal and conservative political parties historically used party law reform to protect and increase their collective access to financial resources. The increased activism of the electoral authorities, combined with the societal rejection of established party politics in the late 1990's, altered the objectives that the parties sought to achieve through the application of this strategy – albeit not the dominant *systemic economy* reform strategy itself. Party law reforms continued to form a means to respond to changes in – or threats to – the established parties' access to ideational capital, financial resources, and control over the organizational infrastructure (see Table 5-5 below for a summary).

These dynamics were visible first of all in the established parties' response to the TSE's 1996 verdict, which posed a threat to political parties' collective access to financial resources. Legislators mitigated this threat by taking away the Tribunal's authority in this matter effectively. A similar development took place in 2009, when the Tribunal's increased involvement in intra-party affairs resulted in a reform that increased political parties' autonomy in matters concerning the candidate selection process and intra-party democracy more generally. In this manner, legislators protected collective party control over their respective organizational infrastructures. These findings support proposition 3a on the *systemic economy* strategy developed in Chapter 3, which holds that when adopted in reponse to institutional or societal changes that threaten all parties' access to such resources directly, party law reforms will contain effectively designed legal provisions that redress political parties' collective access to resources.

A second *systemic economy* dynamic was visible as well. This dynamic occurred when the increased scrutiny of non-transparent political financial practices and the rejection of high levels of public funding resulted in several symbolic reforms of related legal provisions. In response to the corruption scandals of the late 1980's and early 1990's, political parties adopted some limited private funding rules in the 1996 electoral reform. In 2002 and 2009, external pressure to increase transparency and decrease public party funding set the agenda for reform. In response, parties lowered the amount of public funding available to them for one election only (2002, 2009). This finding confirms proposition 3b on the *systemic economy* strategy developed in Chapter 3, which holds that when adopted in response to a legitimacy crisis that only alters political parties' acccess to ideational resources, party law reforms will contain *symbolic* legal provisions that increase political parties' access to ideational capital.

The dominant logic of reform partially changed in 2009, when political finance reforms were adopted as part of an *electoral economy* strategy. Party corruption had started to affect the established parties' ability to win elections – particularly in the

case of the PUSC – meaning that the established parties were motivated to invest in some semblance of finacial control and transparency. At the same time, however, they needed to work together with the PAC as a reform coalition partner. The PAC held different objectives as part of its *electoral economy* strategy, namely the complete overturn of the political finance system that benefited the established parties. The result was a hybrid reform with new political finance results designed in a partially effective manner only. This finding partially discredits proposition 2 developed in Chapter 3, which held that when adopted in response to changes in party competition and/or the rise of a new party, party law reforms will contain *effectively designed* legal provisions that redress the inter-party resource distribution balance. The implications that this finding has for the theoretical model will be discussed in more detail in Chapter 9.

This chapter has also shed some initial light on the influence of institutions on adopted party laws. The rise of the Constitutional Court's role in the reform process did not lead to changes in the dominant *systemic economy* reform strategy of Costa Rican party law reform. The established political parties did need, however, to take the jurisprudence of the Court into account to ensure the effective implementation of new rules and legal changes. Subsequent party law reforms would have to search for mechanisms that upheld the new norms upheld by the Court. The Costa Rican case thereby shows that institutions may matter in the party law reform process, but in a constraining rather than a defining manner. This study's conclusion will discuss this finding in comparison with those of other country studies to identify its implications for theories of party law reform more generally.

Table 5-5: Summary of Costa Rican party law reform (1996-2009)

	1996/1997	
Strategy	Systemic economy	
Resource at issue	Financial	Ideational
Threat	Internal TSE threatens to lower public funding	External Legitimacy crisis due to financial scandals involving both parties
Legal provisions	*Increase total amount public funding *Increase threshold party maintenance	*Regulation private funding/ transparency *Regulation media access + partial advances *Democratic candidate selection adopted as new norm
Effective design	Effective Designed so that Court cannot strike down law	Symbolic Few/no instruments adopted to enforce changes

2002	**2009**	
Systemic economy	Electoral economy	Systemic economy
Ideational	Ideational/ Financial	Organizational infrastructure
External Public rejection cost of elections	External/Internal Corruption scandals + finance rules create advantage for established parties	Internal Increased interference TSE
Lower total amount public funding	*Extend TSE's monitoring capacity + sanctions *Prohibit corporate and anonymous donations *Lower total amount public funding	Set limits to judicial involvement
Symbolic For 1 election only	Effective/symbolic More control but many loopholes	Effective Designed to prevent external interference

CHAPTER 6 – Mexico

El caudillo gobierna de espaldas a la ley:
él hace la ley.
El tlatoani, inclusive si su poder brota
de la usurpación azteca
o del monopolio del PRI,
se ampara siempre en la legalidad:
todo lo que hace,
lo hace en nombre de la ley
-
–Octavio Paz, *Crítica de la Pirámide*[254]

6.1 Mexico: rise and fall of a party hegemony

In 1917, the end of the violent, decade-long Mexican Revolution marked the foundation of Mexico's contemporary constitutional order. A centralized post-revolutionary political system replaced conflictive local caudillo and church rule. The stability of the new system depended to a substantial extent on the creation of the *Partido Nacional Revolucionario* (National Revolutionary Party, PNR), which managed to absorb political conflict within its ranks. Its successor, the *Partido Revolucionario Institutional* (Institutional Revolutionary Party, PRI), remained in power throughout the twentieth century (Eisenstadt 2004).

The institutionalized nature of the political settlement set the PRI-governed Mexican state apart from the authoritarian, more personalistic, regimes that dominated the Latin American region throughout the 20th century. In the appendage to his famous 'Labyrinth of Solitude', Nobel laureate Octavio Paz argues that this is the case because the PRI built on the legacy of the great Aztec empires. These *tlatoani* (rulers)

[254] The caudillo governs with his back to the law: he makes the law. The tlatoani habitually exercises a right [to govern] – regardless if his power springs from the usurpation practiced by the Aztecs or from the PRI's monopoly: everything the tlatoani does, it does in the name of the law.

governed through an impersonal, clerical, and institutional form of domination. The PRI's rule relied similarly on legalistic, rather than personalistic, practices to ensure its organizational survival.[255] The informal *dedazo* practice (finger marking), for example, allowed PRI presidents to handpick their successors from a small group of close allies. This informal institution ensured the religious-like alternation of PRI presidents and lowered the likelihood of instability during the regular turnover of political power from one PRI president to the next (Langston 2006a).[256]

Despite the institutionalized nature of its rule, the PRI was unable to maintain its dominance over the political system indefinitely. The 2000 election of Vicente Fox – the presidential candidate for the *Partido de Acción Nacional* (National Action Party, PAN) – marked the end of a 70-year-cycle of PRI presidents and thereby completed a process of democratic transition (Córdova Vianello 2008, 672–73; Wuhs 2008, 20). Party law reform played an important role in this transitional process, as these reforms opened up the political system in a gradual and controlled manner (Diaz-Cayeros and Magaloni 2001; Eisenstadt 2004). The legally embedded transitional process underlines how Mexican politicians continued to construct their rule through constitutional principles even as the internal make-up of the tlatoani shifted.

Contemporary party law reform in Mexico should be understood in the context of the legacies of the PRI hegemonic system founded on legalistic practices and the gradual closing- and opening-up of the political system to opposition forces through political reforms. This chapter's first section describes the development of party law since 1917, when the restrictive regulation of political parties started to be used as a strategy to concentrate and maintain political power in an institutionalized manner (Rodríguez Araujo 1989; Wuhs 2008, 10–14). It shows how from the 1970's on, growing political protests and social demands for political change led the hegemonic party elites to adopt an ever-more-inclusive electoral regime through various rounds of party law reform. [257] The transitional process culminated in the adoption of the 1996 electoral code**,** which institutionalized a multi-party system of governance that relied on a firm constitutional principle: public money should predominate over private money in the funding of elections to ensure equality between the main political contenders (Córdova Vianello 2011, 351–54).

[255] This is not to say that the PRI never engaged in violent acts or electoral fraud to maintain its position in power. Nevertheless, the legal validation of its rule through formal institutions formed an important pillar of the PRI's hegemony (Eisenstadt 2004).
[256] The prohibition of presidential reelection had formed one of the central outcomes of the Mexican Revolution (Aguilar Camín and Meyer 2010, 92).
[257] These reforms took place in 1977, 1986, 1989-1990, 1993, 1994, and 1996.

In 2003, the political system had reconfigured to such an extent that three political parties had established themselves as relevant national political alternatives, that is, as realistic presidential contenders. At the same time, the party system remained fluid enough to confront these parties with serious challenges. Firstly, the generous availability of public money to finance elections resulted in both public outrage over public party funding and in an increase in the number of parties that ran in elections. Secondly, and as can be gauged from Table 6-1 below, this increase concurred with both an increase in electoral volatility and an increase in the effective number of parties in the legislature. Small and minor political parties had become electoral and legislative forces to be reckoned with.

Section two discusses how these developments created the need for political parties to engage in both electoral and legislative coalitions. In addition, it will show how the 2003 party law reform allowed the established political parties to respond to these developments through an *electoral economy* reform effort that targeted small and minor parties' access to resources by increasing formation costs. Reform agenda-setters identified the smaller parties as the main culprit of high election costs and presented the reform as an effort to curtail their access to organizational resources. In practice, this reform solidified the established parties' access over the electoral and legislative process at the detriment of new/minor parties without lowering the total amount of public funding available to parties substantially. As a consequence, the number of registered parties that ran in elections dropped steadily after the 2003 elections.

Section three discusses how the 2006 presidential elections presented a major challenge for the three established political parties. These elections proved highly contentious and resulted in a systemic legitimacy crisis and an 'arms race' pattern of electoral spending at the advantage of national media conglomerates. The three parties responded to these collective threats to their ideational and financial resources by adopting a constitutional (2007) and an electoral (2008) reform in line with the *systemic economy* reform strategy. In the process, politicians designed effective reforms to jointly limit their electoral spending while taking a symbolic stance against high electoral spending.[258] The final section discusses the relevance of these findings for the resource-based perspective on party law reform developed here.

[258] In 2014, Mexican legislators adopted a new round of party law reform. Given that research on the Mexican case had already been completed at the time, this chapter does not discuss this latest round of reform. It should be noted, however, that the provision introduced in 2014 followed the same principles that marked the shift to a multi-party system through the 1996 constitutional reform.

Table 6-1: Party system characteristics (1991-2012)

Year	Registered parties	Parties in the legislature	Electoral Volatility[259]	Legislature: ENP	Legislature: Voter turnout[260]
1991	10	6	n.a.	n.a.	61.11%
1994*	9	4	n.a.	n.a.	77.73%
1997	8	5	11.67	2.48	57.69%
2000*	11[261]	8	15.33	2.83	57.24%
2003	11[262]	6	17.80	2.85	41.68%
2006*	8	8	16.47	3.20	58.90%
2009	8	8	16.37	3.56	44.61%
2012*	7	7	n.a.	n.a.	62.45%

* - presidential elections
Source: Number of registered and parliamentary parties - Elizondo (2010, 14–15) and Flores Andrade (2005); electoral volatility (Ruth 2016); effective number of parties (ENP)(Ruth 2016); voter turnout (percentage of registered voters who actually voted)(IDEA 2015). N.a. = not available.

6.2 The development of Mexican party law: a historical overview

The first legal regulation of political parties in Mexico did not necessarily set the stage for the creation of a hegemonic party state through the obstruction of new party formation.[263] Instead, the 1918 'Law for the election of the Federal Powers' established low registration requirements for the formation of political parties, as support of 100 members sufficed.[264] Legislators also allowed independent candidates to present in federal legislative elections if they demonstrated the support of at least 50 citizens (Larrosa and Guerra 2005)(see Tabel 6-2 and Table 6-3 below for an overview of legal provisions adopted throughout the 20th century).

[259] Ruth (2016) only provides data from the 1996 elections onwards. For consistency purposes, I did not include data from other sources. The same goes for the ENP.
[260] Compulsory vote (not enforced)
[261] Grouped into four coalitions
[262] Two parties formed a coalition
[263] Religious parties were the only political parties whose foundation was obstructed. This was the case because onflict over church-state relations had played a substantial role in the Mexican Revolution. The 1917 Constitution addressed this conflict dynamic by adopting an explicit prohibition of religious political groups (§130).
[264] Diario Oficial, 2 July 1918.

A lenient party formation process thus marked the first post-transitional decades. Rather than relying on party law to maintain a dominant governing position, the PRI's forerunners PNR and the *Partido de la Revolución Mexicana* (Party of the Mexican Revolution, PRM) remained in power throughout the 1920's and 1930's through their dependency on populist policies instead. It was not until the early 1940's, when dissident governing party factions arose as viable electoral alternatives, that the government turned to legal means to institutionalize social conflict within a hegemonic party state model (Langston 2002, 66–69; Rodríguez Araujo 1989, 37, 40).

The 1946 'Federal Electoral Law' achieved this by banning independent candidates and by setting high quantitative and spatial registration requirements for new party formation.[265] The 1946 reform also contained provisions that sought to prevent intra-PRI conflict from spilling over into the electoral arena (Langston 2002, 69; Paoli Bolio 1985, 146).[266] To ensure that party formation costs did not inhibit the creation of the different electoral options that the PRI required to legitimize its rule, a transitory article added that for the 1946 elections, existing parties could register with 10.000 members only (transitory §2). This provision allowed the PRI, PAN and *Partido Comunista Mexicano* (Mexican Communist Party, PCM) to register throughout the next two years (Rodríguez Araujo 1989, 42).[267] The party system thereby maintained a veneer of free and fair electoral competition.

Despite these new rules, internal party dissent did not die down immediately. In the 1952 elections, revolutionary PRI factions mobilized behind the candidacy of General Henríquez Guzmán and his *Federación de Partidos del Pueblo Mexicano* (Party Federation of the Mexican People, FPPM)(Langston 2002, 69–71; Rodríguez Araujo 1989, 42). The government responded by sponsoring a next round of electoral reform in 1954. This reform increased the requirements for party registration once again.[268] In addition, it canceled the FPPM's registration as a result of one of its parties' alleged violation of public order during a party meeting earlier that year (Pellicer de Brody 1977, 486–87). As had been the case in 1946, legislators used the law

[265] Diario Oficial, 7 Jan. 1946.

[266] Towards this end, the government established that new parties needed to register at least one year before elections (§37). In addition, the law required parties to adopt a system for the internal election of candidates in their party statutes (§25). A subsequent 1949 reform (Diario Oficial, 21 Feb. 1949) went even further and added the failure to organize internal elections for candidate selection as one of the reasons for the cancelation of party registration (§36).

[267] The 1946 reform also introduced the prohibition of parties with international ties (§24). This prohibition allowed the PRI to target those opposition parties with real electoral potential. As a result, the government used the new law to ban both the PCM and the fascist *Partido Fuerza Popular* (Popular Force Party, PFP) in 1949 (Paoli Bolio 1985, 147).

[268] Diario Oficial, 7 Jan. 1954.

to institutionalize some semblance of oppositional electoral forces to ensure regime legitimacy, while simultaneously addressing the threats that dissident PRI factions posed for the survival of the hegemonic model.

The various rounds of reform, as portrayed in Table 6-2 below, succeeded in closing up the party system over the course of the next decades.[269] Inter-party competition shifted to the local political level instead (Paoli Bolio 1985, 152). At the federal level, the PAN maintained itself as the only real, albeit ineffective, opposition party. Other parties mainly functioned as government-sponsored opposition satellites that ensured electoral legitimacy (Harbers and Ingram 2014, 258). The high exit costs for dissident factions, a direct result of the high party formation rules, contained intra-PRI competition successfully (Langston 2002, 72). In addition, the PRI consolidated an informally institutionalized mechanism for candidate selection that ensured internal stability (Peschard 1993, 101). As a result, no other losing faction would leave the PRI until 1987 (Langston 2002, 72–73).

[269] It should be noted that the successive PRI governments also made good use of electoral system reforms to manage the shape of formal party competition in elections (see Diaz-Cayeros and Magaloni 2001).

Table 6-2: Development of Mexican party law (1918-1954)

Topic	1918	1946	1954
Electoral participation	Parties and independents	Only registered parties	No change
Members per state		1000 members in 2/3 states[270]	2500 members in 2/3 states
Total members	100	30.000	75.000
Party ban	Religious parties	Violent, religious, or international parties are banned	No change
Party cancelation		Failure to maintain registration requirements, party organs, and monthly party newspaper[271]	No change
Candidate selection		Statutes determine method	No change

Intra-PRI stability did not result, however, in regime stability. In the early 1960's, it became apparent that the hegemonic system with controlled opposition parties had become exhausted as a large part of the electorate refused to vote in elections (Paoli Bolio 1978, 201–2; Rodríguez Araujo 1989, 44–45). In response, the government adopted a 1963 electoral reform that introduced proportional measures to ensure more representative opposition parties.[272] Nevertheless, the opposition's practical political insignificance only contributed to more societal discontent with the federal political system. Electoral abstention therefore continued to increase from the late 1960's onwards. The PRI's hegemony was more at risk due to the erosion of its popular legitimacy than due to party competition.

Political elites turned to yet two more rounds of party law reform in 1973 and 1977

[270] The 1949 Federal Electoral Law (Diario Oficial, 21 Feb. 1949) established that the government could cancel the registration of those political parties that failed to fulfill the law's requirements. A 1951 electoral reform required parties to present a notary certification that proved residency of at least five percent of these members (Diario Oficial, 4 Dec. 1951).
[271] A 1949 reform adds failure to organize intra-party elections to select candidates as an additional reason for the temporal cancelation of party registration (Diario Oficial, 21 Feb. 1949).
[272] Diario Oficial, 22 June 1963.

to promote political participation (Paoli Bolio 1985, 155; Peschard 1993, 105; Rodríguez Araujo 1989, 49). The 1973 reform of the Federal Electoral Law lowered the costs of party maintenance for the existing opposition parties so that these could obtain a better showing in elections (Paoli Bolio 1978, 203–4; Rodríguez Araujo 1989, 49–57)(see Table 6-3 below for an overview of the legal provisions adopted between 1973 and 1996).[273] It also introduced public party funding through the provision of indirect public funding in the form of free postage and media access during elections (§39). Given that the PRI held monopolistic access over all the state's resources, these provisions should be read as attempts to create an incentive for opposition party formation and maintenance (Harbers and Ingram 2014, 260).

Despite these efforts to solidify a credible opposition, the 1973 reform proved insufficient to address the hegemonic party system's deteriorating legitimacy resulting from the lack of credible political opposition (Barquín Álvarez 1987, 334–35). In 1977, the newly elected government therefore responded to the imminent legitimacy crisis by adopting an even further-reaching constitutional reform and a new electoral law: the 'Law on Political Organizations and Electoral Processes.'[274] The new electoral law lowered the spatial requirements for party formation.[275] It also established that the *Comisión Federal Electoral* (Federal Electoral Committee, CFE), a governing body with party delegates, would implement the equal provision of media access and access to electoral resources in more detail (§49).[276] Combined, these measures facilitated the creation of new political parties (Córdova Vianello 2008, 659).

Pressure for political opening continued throughout the 1980's and manifested itself most clearly in PRI dissident Cuauhtémoc Cárdenas's strong showing in the 1988 elections. Although early vote counts put Cárdenas ahead on election night, PRI candidate Salinas came out first after a computer malfunction (Harbers and Ingram 2014, 260–61; Langston 2002, 78). As a consequence of these events, Salinas's electoral victory lacked popular legitimacy. In addition, it united the PRI government and the PAN in their desire to stop Cárdenas's left-wing political advance (Eisenstadt 2004, 45). Adopting a new round of electoral reforms proved key in addressing

[273] Diario Oficial, No. 4, Jan. 1973.

[274] Diario Oficial, 30 Dec. 1977. Jesús Reyes Heroles, Interior Secretary and the reform's author, defended this reform's measures aimed at opening up of the party system as the only way to maintain political order (Paoli Bolio 1978, 205).

[275] In addition, parties could apply for conditional registration if they could demonstrate to have engaged in continuous political activities for a period four years. Conditional registration would be converted into final registration if the party received 1.5 percent of the national vote (§32).

[276] The 1987 'Federal Electoral Code' (Diario Oficial, 12 Feb. 1987) also introduced proportional public funding and media access for parties with the requirements that parties needed to present finance reports to the electoral authorities (§61).

both the legitimacy crisis and in fostering an alliance between these two parties. As a gesture of goodwill to the PAN, the 1990 reform increased non-PRI party access to public funding (§49).[277] The main focus of the subsequent 1989-1990 constitutional and electoral reform was the creation of an autonomous electoral authority, the *Instituto Federal Electoral* (Federal Electoral Institute, IFE), that would oversee the fairness of elections (Córdova Vianello 2008, 661; Eisenstadt 2004, 45).[278] This would prove a key moment in the transitional process of Mexican reform and the IFE would continue to exercise this role for the next 15 years.

Despite these new rules, severe contention ensued during the 1994 elections over disparity in the resources that parties had at their disposal (Córdova Vianello 2008, 668; Harbers and Ingram 2014, 263). In response, a 1996 constitutional reform established equal access to financial resources as a democratic principle and ordered that public resources should prevail over private party funding (§41).[279] The accompanying 1996 electoral reform increased equal access to financial resources in its regulation of media access in elections (§47).[280] The monitoring capacities of the electoral authority were increased through the creation of a special monitoring unit within the IFE (§49). In addition, the IFE obtained the right to qualify the outcome of presidential elections (§60). This latter reform proved a turning point in the transitional process, as it eliminated the executive branch's electoral authority (Córdova Vianello 2008, 670; Eisenstadt 2004, 63).

This final round of reform preceded two important developments: the 1997 elections that gave rise to the first PRI presidency without a legislative majority and the 2000 elections that witnessed the first alteration of the presidency from the PRI to PAN President Fox (Klesner 2005). As has been illustrated in detail in this section, party law reform played a substantial role in this extended transitional process. With the rise of relevant oppositional alternatives, regulatory emphasis shifted to the need to professionalize and improve the quality of elections and to create a financial level playing field between parties (Córdova, 2011: 349-351; Becerra, Salazar and Woldenberg, 2005). As will be discussed in more detail in the following sections, these new normative concerns would continue to drive party law reform after democratic transition.

[277] In 1993, a constitutional reform codified that the law would establish rules for public funding and electoral campaigns (§41). An electoral reform that same year (Diario Oficial, 24 Sep. 1993) specified the sources of funding upon which parties could rely.
[278] Diario Oficial, 15 Aug. 1990.
[279] Harbers and Ingram (2014, 263) note that the PRI went along with these changes due to its increasingly problematic access to state resources through the Finance Ministry.
[280] Diario Oficial, 31 Oct. 1996.

Table 6-3: Development of Mexican party law (1973-1996)

Topic	1973	1977
Members per state	2000 in 22 states[281]	3000 in 16 states
Members per district		300 in 150 districts
Minimal number of members	65.000	65.000
Party cancelation	Failure to maintain membership	Failure to: *maintain membership *obtain ≤1.5% votes
Intra-party democracy in party statutes	Method for internal election candidates and leadership	Internal procedures for renovation leadership/ norms for candidate nomination
Indirect public funding	*Free postage *Media access during elections	*Access to electoral resources
Direct public funding		
Private funding		

[281] Party registration required that state assemblies contained a minimum of 25 members from at least half of the states' municipalities – as verified by a public notary or judge.
[282] A 1993 reform changed this into failure to reach 1.5 percent of the vote in two consecutive federal elections
[283] A 1993 reform adds quantitative and qualitative donation limits and established that only parties may procure media access during elections.
[284] Also: limitation annual individual donations to 0.05 percent of total organizational funding and prohibition anonymous donations

1987	**1990**	**1996**
No change	No change	3000 in 10 states
No change	No change	300 in 100 districts
No change	No change	0.13% electoral register
No change	Failure to: *obtain ≤1.5% votes[282] *maintain membership *participate in elections	Failure to: *obtain ≤2% votes *maintain membership *participate in elections
Norms for candidate nomination	Norms for democratic candidate nomination and procedures for democratic leadership selection	No change
*15 minutes media access monthly. Increase during elections	*15 minutes media access monthly. Prop. increase during elections	*250 radio hours and 200 television hours in elections. Distributed 30% equally and 70% prop.
Distributed: *50% prop. to votes *50% prop. to seats	Distributed: *prop. to votes	Distributed: *30% equally *70% prop. to votes
Present finance reports to FCE	Present finance reports to IFE[283]	Private funding max. 10% of total funding.[284]

6.3 2003 reform: closing up the party system

6.3.a Changes in the resource environment

Throughout the 1990's, party system opening resulted in an increase in the number of registered parties that participated in federal elections and that obtained seats in the legislature (Córdova Vianello 2011, 354–358, also see Table 6-1 above). These developments were accompanied by an increase in electoral volatility and ballot splitting. A relatively high degree of Mexicans across the entire societal spectrum voted for different parties in consecutive elections and for different parties in the same elections (Crow 2005). The party system thereby demonstrated a fluid and transitional dynamic.

The new parties that arose did not necessarily offer new programmatic alternatives nor did they represent new cleavages (Flores Andrade 2005, 2007). As a consequence, many of the newly registered parties failed to obtain legislative representation and often did not even obtain sufficient votes to maintain their registration.[285] Their proliferation is best explained with reference to the availability of public funding, which created incentives for the formation of unviable political parties that did not necessarily constitute political advocates of underrepresented groups and currents in society.[286] Such parties could register, obtain public funding, and disband after elections without having to devolve the money they had received from the state. The ephemeral *Partido de la Sociedad Nacionalista* (Party of the Nationalist Society, PSN) was a case in point as it merely provided employment to, and advanced the interests of, one extended family.

Despite their relatively small sizes and short lifespans, the new and/or minor parties played an increasingly important role in Mexican politics due to their role in electoral and legislative coalitions. Expanded electoral competitiveness pushed parties to strategically coordinate the presentation of candidates in electoral districts so as to avoid wasting votes on weak candidates.[287] The established parties PRD and PAN relied on this strategy, which bridged their ideological left-right divide, to take on the

[285] Given that the political reforms had aimed to open up the electoral system as well, this discrepancy was not due to malapportionment. The *Partido Demócrata Mexicano* (Mexican Democratic Party, PDM), *Partido Popular Socialista* (Popular Socialist Party, PPS) and the *Partido Auténtico de la Revolución Mexicana* (Authentic Party of the Mexican Revolution, PARM) are paradigmatic cases.

[286] Due to a lack of regulation, the state was unable to retrieve subventions and assets from those parties that lost their registration. It was not until 2003 that the IFE's General Council adopted an agreement (CG153/2003) that obviated this problem. Also see La Universal (09 July 2003) 'Pide Huchim cambiar leyes para que partidos devuelvan recursos,' La Universal (26 Sept. 2003) 'El IFE, imposibilitado de recuperar los bienes adquiridos por el PSN.'

[287] For elections at the local level, Reynoso (2011) demonstrates that these alliances tended to be purely pragmatic ones that did not entail policy or ideological agreement.

hegemonic PRI in its subnational bastions of power. The small and new parties applied the coalition strategy in an even more pragmatic manner in federal elections as well, where they forged alliances with different established and minor parties in different states within the same elections (González Madrid and Solís Nieves 1999).[288]

Alliance formation provided the small and minor parties with multiple benefits. At times, the formation of electoral alliances enabled newly registered parties to circumvent the threshold for the cancelation of party registration by artificially increasing the number of votes received in elections (Flores Andrade 2005, 151). Alliance formation did not take place in elections only. In the legislature, the PRI's 1996 loss of its legislative majority had opened up the door for small parties to participate in legislative coalitions. On occasion, these parties delivered crucial votes to ensure the failure or passage of legislative initiatives.[289] The minor parties also obtained positions in, and presided over, a number of legislative committees (Casar 2000; González Madrid and Solís Nieves 1999, 217–18; Pérez Correa 1999). All of these developments increased the leverage of small and new parties over the existing parties and provided them with electoral and legislative bargaining chips they did not sell cheaply (Flores Andrade 2005, 136. 150).

The process of party system change that had started in the 1990's thus increased the relevance of small/minor parties in Mexican political life. At the same time, the established parties saw themselves confronted by a string of corruption scandals that threatened both their legitimacy and their access to financial resources. The PRI came under fire in the so-called *Pemexgate* scandal that referred to the transfer of 50 million dollars from the state-owned oil company PEMEX, through its trade union, to the campaign of the PRI's presidential candidate in the 2000 elections. The PAN and PVEM, had simultaneously become implicated in the *Amigos de Fox* (Friends of Fox) scandal. This scandal involved a civil society organization that had supported the successful presidential candidacy of PAN candidate Vicente Fox with over nine million dollars through the triangulation of funds (Córdova Vianello and Murayama 2006).

Several small and/or new parties, such as the *Partido Verde Ecologista de México* (Mexican Green Ecologist Party, PVEM) and the above-mentioned PSN, also became in-

[288] It should be noted that Méndez (2012) does find that the larger the ideological distance between parties, measured as their hypothetical distribution along a left-right 10-point-scale, the lower the likelihood that they will form an electoral alliance.

[289] PAN delegate Beatriz Zavala Peniche relates, for example, how the vote of one representative of a minor party determined that a political trial would be started against Yucatán governor Cervera Pacheco. La Jornada (4 March 1998) 'Votos determinantes en la Cámara.'

volved in cases of financial mismanagement and corruption scandals.[290] These scandals increased the public perception that these parties were not just unrepresentative, but mainly out to capture public resources (Flores Andrade 2005, 2007).[291] At the same time, public opinion increasingly turned against the high costs of elections and the substantial amount of public funding that all political parties received (Córdova Vianello 2011, 357; Peschard 2006), as well as the "boring, aggressive, and useless" nature of election campaigns.[292] Opening up the political system to new competitors had increased the costs of elections without convincing the public at large about the benefits this electoral competition bestowed on them.

Several direct and indirect resource threats thus confronted the established political parties in the early 2000s. The increased legislative and electoral relevance of new/minor parties decreased the established parties' ability to promote their politicians' electoral and legislative goals. More indirectly, the public rejection of high elections costs threatened the parties' collective access to ideational resources. In line with the resource-based perspective on party law reform, this suggests the adoption of an *electoral economy* reform in which the established parties' would seek to protect their access to resources vis-à-vis newly formed parties in an effective manner. In response to external demands for change, parties are expected to adopt a *systemic economy* reform in which they would safeguard continued access to financial resources effectively while addressing public concerns over high election costs in a more symbolic manner.

6.3.b Negotiation process

A review of the reform process shows that these strategies did indeed define the outcome of the adopted party law reform. This process was initiated by the PRI, which emerged as the largest legislative party from the 2003 mid-term legislative elections. Before the new legislature had been installed, the PRI leadership took immediate legislative initiative by proposing an electoral reform. Its proposal contained measures

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[290] See El Universal (08 Sept. 2003) 'Descuidaron minipartidos la capacitación de militantes,' El Universal (10 Oct. 2003) 'Ratifican multa al PAN y a ecologistas,' El Univesal (25 May 2003) 'Sanciona el IFE a PSN con 36 mdp,' El Universal (24 Sept. 2003) 'PGR investiga por fraude al líder del PSN,' El Univeral (22 July 2002) 'Acusan al PSN capitalino de desviar tres millones,' El Universal (14 Sept. 2002) 'Acusa PRI a partido de engañar con falsas pólizas de seguro,' El Universal (22 Sept. 2003) 'Partidos efímeros, son fugaces y costosos.'

[291] In a 2003 opinion poll commissioned by the Chamber of Representatives, six out of ten respondents therefore opposed the registration of new political parties. Centro de Estudios Sociales y de Opinión Pública (2003) 'El IFE en la opinión pública.'

[292] According to a 2003 opinion poll by newspaper *Reforma,* 50% of respondents agreed with this characterization of election campaigns. La Reforma (4 July 2003) 'Encuesta/Critican ciudadanos campañas políticas.' According to Estrada and Poiré (2007, 77), this newspaper is the country's most credible newspaper pollster.

that addressed public discontent with election costs and the proliferation of small/minor parties. Towards these ends, it reduced public party funding and the length of campaigns, it increased the IFE's oversight over political finance in general and over campaigns for candidate selection in particular, and it increased the threshold for maintenance of party registration from two to five percent to impede the formation of parties that only function as "satellites that appear in search of public funding."[293]

Governing PAN President Fox quickly coopted the PRI's proposal by urging its Interior Minister Santiago Creel to coordinate a consensual agreement among the various parties in the legislature. This appeared a rather easy feat as all parties agreed publicly on the need to address the themes that the PRI's proposal mentioned.[294] Indeed, the PRI and PAN controlled sufficient seats to pass any bill (see Appendix 7). Despite positive reports on the proposal's progress, however, the electoral reform's timing obstructed its swift trajectory through the legislature (Cadena-Roa and López Leyva 2011, 440). The PAN's rapprochement to the PRI on fiscal and energy reforms had created internal divisions within this latter party (Langston 2010, 247–48).[295] In addition, a legislative decision to start criminal proceedings against a PRI senator for his involvement in Pemexgate damaged relations between the parties.[296]

As a consequence, the PRI withdrew its unconditional support for the electoral reform and sided with the small PVEM party in its opposition to a higher threshold for maintenance of party registration.[297] Legislators subsequently dropped the need to set boundaries to the so-called 'business parties,' 'family parties', and 'political franchises' from the political agenda.[298] Instead, attention shifted to the need to develop better rules to recover funding from parties that lost their registration to decrease this incentive for their proliferation (see Table 6-5 for an overview of the changes in reform proposals).[299] This theme still linked to the broader public debate on the costs of elections and the shortcomings of small and minor political parties. Up to this point, external pressure to reduce election costs hence seemed to set the reform agenda.

[293] El Universal (9 Aug. 2003) 'Presenta PRI iniciativa de reforma al Cofipe.'
[294] El Universal (3 Sep. 2003) 'Acuerdan diputados cambiar ley electoral.'
[295] El Universal (26 Sep. 2003) 'Creel: hay disposición priísta para avanzar,' El Universal (01 Oct. 2003) 'Polariza el tema a los priístas.'
[296] El Universal (5 Sep. 2003) 'Niega Creel que juicio contra Aldana sea chantaje al PRI.'
[297] El Universal (17 Sep. 2003) 'Divide a diputados tope para que partidos salven registro.'
[298] See El Universal (22 Sep. 2003) 'Avala Consejo la agenda del PRD,' El Universal (23 Sep. 2003) 'Ampliará Senado poder de fiscalización del IFE.'
[299] El Universal (25 Sep. 2003) 'Freno a proliferación de partidos familiares.'

Over the course of September 2003, legislators stated once again that they had reached a consensus on issues such as the reduction of public funding and the length of campaigns (used to calculate the total amount of public funding), as well as the improvement of the IFE's monitoring functions, and would soon present their proposal to Congress.[300] At the start of October, however, an important IFE ruling further altered the course of the negotiations over this integral reform effort. In response to the above-mentioned financial scandals, the IFE's General Council imposed a 32.3 million dollar fine on the PAN and 16.5 million dollar fine on the PVEM for their role in the Amigos de Fox scandal. These fines were so high because the donations at issue exceeded personal donation limits by far and had originated from prohibited sources such as foreigners and commercial businesses.[301] This verdict followed in the footsteps of an 89.2 million dollar fine that the PRI had received earlier that year in relation to the Pemexgate scandal.

The IFE subtracts fines from the amount of public funding appointed to each party. Three out of six congressional parties were therefore confronted by a substantial decline in their public funding in the run-up to the important 2006 presidential elections. As a consequence, the reduction of public funding, a common public demand, became a thorn in the negotiation process. Parties first tried to offset the reduction of direct public funding by simultaneously proposing an increase in party access to public media.[302] This proved an insufficient incentive and one that also met with severe opposition from the media lobby.[303] When confronted by the sudden need to safeguard what public financial resources they had left, legislators relegated the need to address political parties' image in the eyes of society to second place. It became increasingly unlikely that the parties would adopt a reform that addressed the pressure to lower the costs of elections.

Next to influencing the established parties' financial outlook, the IFE's imposition of huge fines on the PAN, PRI and PVEM also influenced party willingness to form a reform coalition in support of an integral reform effort in other ways. This was

[300] El Universal (25 Sep. 2003) 'Freno a proliferación de partidos familiares,' El Universal (26 Sep. 2003) 'Creel: hay disposición priísta para avanzar.'
[301] El Universal (10 Oct. 2003) 'Ratifican multa al PAN y a ecologistas.'
[302] El Universal (12 Oct. 2003) 'Se fueron 'partiditos' sin rendir cuentas,' El Universal (12 Oct. 2003) 'Reducir costo de institutos políticos, reto dice Zebadúa,' El Universal (24 Oct. 2003) 'Proyectan 'endurecer' la fiscalización del IFE,' El Universal (29 Oct. 2003) 'Eliminaran para IFE secreto bancario.'
[303] Increasing party access to the media as a means to curtail public funding usually means that parties may only use the media access provided to them by the state. In this manner, party media expenses drop and parties require less direct public funding. Such a prohibition on privately obtained media access curtails the profits that media outlets can make of elections. During the 2007/2008 round of reform, PRI Senator Manuel Bartlett revealed that these interests had blocked previous reform efforts. See El Universal (4 July 2007) 'Urgen a concretar una nueva ley electoral para que rija en 2009.'

the case because the reform had been planned for introduction in Congress on 28 October 2003, combined with a proposal for the renovation of the members of the IFE's General Council.[304] The PRD and PAN members wanted to reelect several experienced council members to ensure institutional continuity and to maintain their partisan influence within this body (Estévez, Magar, and Rosas 2008). The PRI opposed this proposal due to its outrage over the large fine it had received earlier that year. Through reference to a 1996 transitional article, the PRI argued that all members of the IFE's General Council were barred from reelection; thereby punishing the Council for its disciplinary actions against the PRI (Peschard 2006, 103).[305]

More problematically, in the subsequent negotiations over the appointment of new electoral councilors, the PRI and PAN used their combined supermajority in the Chamber of Representatives to shut out the PRD from the negotiation process (Peschard 2006, 103). Whereas the previous General Council had been appointed in 1996 with support from all parties, which provided the institution with an important source of legitimacy, the new Council did not result from such a broad partisan consensus (Estévez, Magar, and Rosas 2008; Peschard 2006, 103). The PRI and PAN defended their actions, stating that "the IFE's renewal is a delicate matter, which should not be influenced by the idea of party 'quotas'. If we build an IFE based on quotas, we would end up wounding this institution mortally, and, consequently, democracy as well."[306]

Needless to say, the PRD did not agree with this point of view and fought a public battle to shift the negotiations "from the city's restaurants to Congress," where all parties would be able to have a say over the appointment process.[307] The conflict culminated on 28 October 2003, the proposed date for the introduction of both the electoral reform and the nomination of new council members in the Chamber of Representatives. One of the proposed Council candidates revoked his nomination due to the PRD's opposition to his election.[308] This upset the working relationship between the three established parties – which had already been strained to begin

[304] La Jornada (25 Oct. 2003) 'Confía Creel en que la actual legislatura aprobará las reformas estructurales,'
El Universal (26 Oct. 2003) 'Necesarios, 6 meses para una campaña presidencial: Gómez.'
[305] The 1996 transitional article prohibited the reelection of the so-called 'citizen councilors.' The 1996 reform abolished this figure and replaced them by 'electoral councilors' selected through congressional consensus (Estévez, Magar, and Rosas 2008).
[306] El Universal (4 Oct. 2003) 'Confía AN en PRI para avalar en este periodo de las enmiendas.'
[307] El Universal (12 Oct. 2003) 'Plantean que líderes nombren a consejeros,' El Universal (24 Oct. 2003) 'El martes, la votación para consejeros electorales,' El Universal (28 Oct. 2003) 'Entra en nuevo impasse nombramiento de consejeros del IFE.'
[308] El Universal (28 Oct. 2003) 'Entra en nuevo impasse nombramiento de consejeros del IFE.'

with – to such an extent that the electoral reform lost its momentum and was put on the backburner.[309]

The inability of legislative parties to create an integral reform coalition did not, however, forestall political reform completely. That same day, the PRI's coalition partner PVEM introduced a reform proposal in the Senate that left all issues discussed above unanswered, but retook the proposal to address the proliferation of the so-called business parties.[310] In her Statement of Intent, PVEM Senator Verónica Velasco Rodríguez explicitly mentioned that the proposal addressed the "extreme pluralism" caused by the registration of new parties.[311] In order to fight this ill, the PVEM proposed to increase the spatial requirement for party formation from 10 to 15 states and from 100 to 150 uninominal districts. It appointed oversight over registration requirements to the IFE, thereby ensuring the implementation of this new rule. The PVEM also proposed to cut public funding for newly registered parties from two to one percent of the total amount of public funding.

This new proposal reflected a shift of legislative attention towards the role that new and minor parties played in politics. The need to address public demands for less costly elections was relegated to a legitimizing status, such as by framing the proposal as one that addressed 'business parties.' By the beginning of December, the integral reform proposal had vanished from the political agenda completely, despite attempts from the executive, the PRD, and the IFE to keep the reform of political finance and oversight in the public spotlight.[312] Instead, reform efforts focused on the PVEM's proposal, which the relevant Senate committees passed on to the Chamber of Representatives with some important modifications. The modified bill increased the spatial requirements even further to 20 states and 200 uninominal districts respectively. It also increased the quantitative membership requirement from 0.13 to 0.26 percent of the electoral register. In addition, it prohibited newly registered parties from forming electoral alliances during their first elections.

Lastly, the new proposal established that only national political associations could apply for party registration. Given that the electoral code allowed such associations

[309] El Universal (9 Nov. 2003) 'Congeladas' las reformas electorales: AN.'
[310] The PVEM likely acted in coordination with the PRI as the parties had formed a partial electoral coalition in the 2003 elections and had tended to take a joint stance on issues related to party law. See, for example, El Universal (17 Sep. 2003) 'Divide a diputados tope para que partidos salven registro,' El Universal (23 Sep. 2003) 'Ampliará Senado poder de fiscalización del IFE.'
[311] Cámara de Senadores (28 Oct. 2003) 'Exposición de Motivos.'
[312] El Universal (8 Nov. 2003) 'Promueve el IFE nueva reforma electoral,' La Jornada (16 Nov. 2003) 'La propuesta del Ejecutivo pretende regular el financiamiento a las precampañas,' El Universal (22 Nov. 2003) 'Camacho: no se ha caído la iniciativa electoral.'

to register only in the year before federal elections, whereas new parties could only register during a seven-month-period after federal elections, this provision effectively barred the formation of new parties for the 2006 presidential elections. The committee proposed these modifications to reach the reform's purported aim of limiting electoral participation to those parties that represented the entire national population.[313] All measures point to the senators' determination to address the theme of small/minor parties and their unwillingness to alter the distribution of, or oversight over, public funding whatsoever.

After having passed the relevant Senate committees, both Chambers of the Legislature adopted the bill swiftly. The Senate adopted the bill with 90 votes in favor and zero opposed. In a similar consensual manner, the Chamber of Representatives adopted the bill with 426 votes in favor, 21 against and three abstentions. The *Partido de Trabajadores* (Workers' Party, PT) constituted the only party that voted against the bill. This party opposed the closing up of the party system that the reform entailed.[314] In their debate on the matter, senators and representatives from the various parties demonstrated a consensus on the need to address the functioning of political parties by preventing the formation of 'family and business parties'.[315] In particular, senators and representatives alike argued that such measures were needed to improve the image of party politics in the eyes of society and to lower the cost of politics by "preventing the proliferation of parties, as experience has shown us that [new/minor parties] only serve as leeches of the budget and that they do not contribute to Mexican democracy."[316]

The new bill provided an opportunity for legislators to show responsiveness to public concerns about the functioning of parties, while putting the blame for the high costs of politics on the new/minor parties entirely.[317] As shown in Table 6-4 below, this

[313] Comisiones Unidas de Gobernación y de Estudios Legislativos (3 Dec. 2003) 'Dictamen.' The Senate committees did cut the proposal to lower public funding for newly registered parties from the reform proposal.
[314] Cámara de Diputados (27 Dec. 2003) 'Minuta.'
[315] Senado (9 Dec. 2003) 'Minuta.'
[316] Cámara de Diputados (27 Dec. 2003) 'Minuta.' Due to some minor revisions introduced by the Chamber of Representatives, the Senate passed the bill again on 28 December 2003.
[317] The one thing that the legislative parties did not agree on was the extent of this reform. Indeed, in both the Senate and Chamber discussions of the initiative, the PRD, PAN, PT, and *Convergencia* (Convergence) lamented the fact that this electoral reform did not contain measures on the reduction of the costs of public funding and the length of election campaigns as well as the IFE's capacity to monitor political finance. The PRI's silence on this matter suggests that this party had formed a major obstacle to the more integral reform proposal discussed above. Also see El Universal (23 Sep. 2003) 'Ampliará Senado poder de fiscalización del IFE.'

discourse misrepresented the reality of political finance, in which new and minor parties obtained some five percent of public funding only. More importantly, the established parties took control over their organizational resources by increasing formation costs – a measure that mainly hit the new and minor parties.

Table 6-4: Minor parties' public funding share of total amount of public funding[318]

Category	**1997***	**%**	**2000****	**%**	**2003*****	**%**
Permanent organization	15,251,920.92	1.5%	160,763,156.22	10,7%	137,072,374.08	5.7%
Electoral expenses	19,689,901.16	1.9%	160,763,156.22	10,7%	137,072,374.08	5.7%
Earmarked activities	0	0%	7,297,551.19	11.6%	4,055,404.19	4.3%
Total	35,441,822.08	1.7%	328,823,863.03	10.7%	278,200,152.35	5.6%

Source: author's own elaboration based on the data provided by Flores Andrade (2005, 147–48)

* two parties; ** six parties; *** three parties

[318] In Mexican pesos (MXN)

Table 6-5: 2003 reform proposals

Topic	September proposals	October proposals	Adopted proposals
Registration requirements	Increase registration threshold to 5%		*Spatial requirements: 20/200 districts *Quantitative requirements – 0.26% of electoral register *Prohibition electoral alliances for new parties *Only NPA's may register
Public funding/cost of elections	*Reduce direct public funding *Provide free media access	*Reduce direct public funding *Provide free media access	
Private funding/cost of elections	Cut length of campaigns	Cut length of campaigns	
Monitoring and oversight	Improve IFE's monitoring capacity over political finance	Improve IFE's monitoring capacity over political finance	Appoints IFE to oversee registration requirements

To conclude, the 2003 reform created a window of opportunity to increase party registration requirements and to thereby put an end to the increased role that new and minor parties had come to play in the electoral and legislative arena. In line with the *electoral economy* reform strategy, the established parties' intrinsic desire to address these changes in the terms of party competition ensured the implementation of the new rules by relegating oversight over them to the IFE – an institution that had come to be well known for its robust monitoring efforts. At the same time, and in line with the *systemic economy* reform strategy in response to a legitimacy crisis, the new rules targeted the main public demand for change, the high costs of elections, in the least effective way possible. The 2003 reform merely addressed the changing terms of electoral competition, while legitimizing this effort by referring to public demands to lower public funding. In practice, the reform did not address these demands substan-

tially as this would threaten to undermine the established parties' financial resources needed for the upcoming 2006 presidential elections.

6.4 2007/2008 reform: tying up loose ends

6.4.a Changes in the resource environment

The 2003 reform had failed to address pertinent issues, such as the high degree of public party funding, lengthy campaigns, and the cost of elections. The 2006 presidential elections exacerbated these issues even further. The established political parties approached these elections as a zero-sum game in which they believed their entire political futures and chances at governing to be on the line. This was the case in particular for PAN candidate Félipe Calderón and PRD candidate Andres Manuel López Obrador (AMLO), as the PRI's candidate Roberto Madrazo had fallen behind in the polls some five months before the elections.

Both the PAN and PRD stood a realistic chance at winning the presidential elections, which resulted in an aggressive electoral playing field (Estrada and Poiré 2007, 75–77). In response, the parties spent excessively on campaign ads (Córdova Vianello 2011, 354–58), particularly in the urban areas and in regions with high levels of middle class voters where parties typically rely on marketing campaigns rather than clientelism to win elections (Curzio 2013, 141). The total cost of these campaign ads has been estimated at 180 million USD, or 56 percent of parties' electoral budgets (Orozco Henríquez 2011, 273).[319] The voluminous use of campaign ads was not only problematic in terms of their costs. In addition, all parties violated campaign regulations in their fight over the political limelight. The PAN did so in particular by resorting to negative campaign ads that targeted López Obrador, only to have the PRD follow its lead (Córdova Vianello 2011, 354–58; Magar and Romero 2007, 184).[320] This violated the electoral law, which prohibited parties from making derogatory remarks about other parties (§38).

Violations of the electoral law also took place because trade unions, NGOs, and business groups contributed heartily to the electoral media circus through the exploitation of legal loopholes. This occurred despite the fact that campaign regu-

[319] El Universal (11 June 2007) 'Proponen prohibir *spots* con ataques entre candidatos,' El Universal (14 June 2007) 'PAN, PRD y PRI coinciden en bajar costo a campañas.' Legislators estimate this cost to have been even higher, namely 72 percent. Also see El Universal (2 Sep. 2007) 'Pactan prohibir a los partidos contratar spots en campañas.'

[320] The PAN campaign characterized him as 'a danger for Mexico' by equating his left-wing agenda with that of Venezuelan neo-populist Hugo Chávez. The PRD subsequently tried to rupture Calderón's public image by linking him to corruption scandals.

lations only allowed for political ads financed by the parties themselves (§48). In addition, outgoing PAN president Fox violated campaign laws by making good use of his public stature to promote Calderón's candidacy. Combined, all these violations resulted in high levels of electoral litigation as a means to further the parties' electoral goals while simultaneously painting their competitors in a bad light (Cadena-Roa and López Leyva 2011, 433, 442; Schedler 2007, 89). With regard to campaign ads, for example, Estrada and Poiré (2007, 77) report that the *Tribunal Electoral del Poder Judicial de la Federación* (Federal Electoral Tribunal, TEPJF) – the judicial branch specialized in electoral matters – issued bans on no less than 29 denigrating campaign ads.

The problematic renewal of the IFE's General Council served to increase these inter-party tensions even further. As discussed above, the PRI and the PAN had appointed the members of the new council through an exclusionary consensus agreement in October 2003. As a consequence, the PRD did not acknowledge the IFE's legitimacy or political independence (Peschard 2006, 103). Throughout the elections, this rejection manifested itself in the PRD's public denouncement of the way the IFE had handled the PAN's negative campaign ads against López Obrador (Cadena-Roa and López Leyva 2011, 444; Magar and Romero 2007, 184).[321] The PRD's campaign strategy evolved from the mere questioning of its opposition candidates into one questioning the institutional framework established to guarantee democratic rights and freedoms.

During and after the elections, which were held on 2 July 2006, López Obrador expanded this strategy by questioning the IFE's work in producing a valid vote count and the TEPJF's handling of the subsequent electoral contention. The IFE itself provided some leverage for the PRD's strategy, as it had been unable to present an immediate electoral victor on Election Day. This was the result of the highly competitive nature of the elections and the subsequent inconclusive outcome of the preliminary electoral results. Both Calderón and López Obrador thereupon declared themselves winner of the presidential elections on the basis of different election polls.

It took the IFE four days to declare the final tally in favor of Calderón by a 0.58 percent margin – or 233,000 out of 40 million votes. This opened up the floor to PRD accusations of electoral fraud and demands for corresponding judicial action, which the IFE failed to address effectively. The PRD followers took to the streets of the capital to reinforce López Obrador's demand for a recount at first, and for the invalidation of election results later on. In addition, López Obrador declared

[321] The TEPJF did order the PAN to stop emitting its commercials targeting AMLO only to have the PAN circumvent this ruling through legal loopholes.

publicly that he did not recognize Calderón as president and proclaimed himself the legitimate head of state instead. It would take the TEPJF two months to finally declare Calderón president and protests did not die down until Calderón took office on 1 December 2006 (Cadena-Roa and López Leyva 2011, 445; Estrada and Poiré 2007, 73; Magar and Romero 2007, 184).

The explosive aftermath of the 2006 presidential elections damaged the Mexican party system and the legitimacy of its democratic institutions. López Obrador's discourse on electoral fraud resonated in those parts of society that had not been convinced about the democratic nature of the political system to begin with (Estrada and Poiré 2007). Indeed, one year after the elections, a poll by newspaper *Reforma* revealed that 36 percent of the population believed the elections to have been fraudulent (cited in: Cadena-Roa and López Leyva 2011, 445). This represented a severe blow to the authorities involved in the management of, and oversight over, the electoral process.[322]

The contentious elections started a round of constitutional and electoral reforms that partly changed the legal regulation of Mexican political parties. On the one hand, these contextual events suggest that the legitimacy crisis spurred legislators to overcome their previous legislative impasse with regard to the reform of party laws in order to safeguard democratic governance. At the same time, however, the 2006 elections resulted in a continued PAN presidency and did not introduce major changes in the party system. In line with the resource-based perspective, this suggest the adoption of a *systemic economy* reform that would be able to address legitimacy concerns while safeguarding or increasing collective party access to organizational resources in the process.

6.4.b Negotiation process – 2007 constitutional reform

The PAN emerged from the 2006 elections as the largest party in the legislature. The PRI did not do so well, with the 2006 elections resulting in its lowest seat share in history (see Appendix 7). As a result, the 2006-2009 Legislature lacked any two-party combination that surpassed the two/thirds majority needed for constitutional reform.[323] This suggested bleak prospects for reform. Indeed, during his visit to Mexico in April 2007, Italian political scientist Giovanni Sartori stated that "it would merit an Olympic medal" if legislators managed to adopt such a reform within a single

[322] Whereas election observers, political parties, and media reporting on the ground had registered no grave violations during the election process, something underwritten by the IFE's subsequent investigations, the elections nevertheless turned into "epic confrontations and rhetoric of past democratization struggles" (Schedler 2007, 91).

[323] During the previous 2003-2006 Legislature, the established parties had proven unable to negotiate an integral electoral reform, even though the possibility for such a minimal reform coalition did exist.

year.[324] In a feat of Herculean proportions, the legislature nevertheless adopted both a constitutional reform in November 2007 and an electoral reform in January 2008.

One important factor distinguished the extensive 2007 reforms from the limited 2003 reform process. Senator Manlio Fabio Beltrones, the PRI president of the Senate, understood that within the polemic political climate, a political reform effort would only succeed if it were adopted in a consensual manner outside of the public spotlight while surfing on the political momentum created by the contentious 2006 elections.[325] Towards this end, Beltrones presented a procedural initiative called *Ley para la Reforma del Estado* (Law for State Reform).[326] The initiative proposed the creation of a special reform committee with representatives from all political parties that would negotiate agreements on the most pressing structural concerns within the time frame of a single year.[327] The *Comisión Ejecutiva de Negociación y Construcción de Acuerdo del Congreso de la Unión* (Executive Committee for the Negotiation and Construction of an Agreement of the Congress of the Union, CENCA) took office on 26 April 2007.[328]

Committee work played an important role in the negotiations over the 2007 constitutional reform. The CENCA presented an initial proposal to the legislature on 31 July 2007. The bill mainly consisted of a lengthy substitution of constitutional article 41, which regulates political parties.[329] The most substantial changes that committee members introduced focused on the regulation of political finance and media access. The CENCA proposed a new formula for the calculation of organizational public funding, and of electoral public funding by extension. This formula established the total amount of organizational funding available through the multiplication of the number of registered voters with 70 percent of the minimum salary (Mexico D.F.).

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[324] El Universal (11 April 2007) 'En México la democracia no es sinónimo de igualdad: Sartori.'

[325] Also see discourse Beltrones during the debate of the reform in the Senate. Cámara de Senadores (12 Sept. 2007) 'Minuta.'

[326] El Universal (10 Jan. 2007) 'Discutirá senado en febrero dictamen de Reforma del Estado,' El Universal (31 Jan. 2007) 'Integran diputados comisión especial para la reforma del Estado,' El Universal (11 April 2007) 'Firmarán Calderón y Segob ley para reforma del Estado,' El Universal (17 April 2007) 'Acuerdan empezar con tema electoral diálogo sobre la reforma del Estado,' El Universal (24 April 2007) 'Centran Reforma del Estado en cinco temas.'

[327] Ley para la Reforma del Estado (Diario Oficial, 13 Apr. 2007)

[328] El Universal (22 April 2007) 'Instalará Congreso comisión para concretar Reforma del Estado,' El Universal (26 April 2007) 'Pactan diálogo sin exclusión en la reforma del Estado.' In hindsight, experts note that the committee's ability to negotiate reforms depended on the preliminary exclusion of contentious issues, such as legislative reelection and the introduction of two-round presidential elections, from the negotiation table (Alcocer V. 2008, 216; Freidenberg 2009, 282–83; Serra 2010, 14). Also see El Universal (25 April 2007) 'Avanza acuerdo PRD-PRI para la Reforma del Estado.'

[329] CENCA (31 Aug. 2007) 'Exposición de motivos.'

In addition, the CENCA proposed that this amount would be distributed proportionally between parties. During presidential election years, parties would receive an additional amount of 50 percent of public organizational funding to cover election costs. The bill also earmarked 1.5% of organizational funding for educational purposes, such as political education and training, socioeconomic and political investigations, and editorial tasks. In addition, the article limited the length of legislative campaigns to 45 days, introduced an annual constitutional donation limit at ten percent of the spending limit applied in presidential elections, and stated that public media access would be regulated through law. Political finance regulation was extended to apply to party candidate selection processes as well.

The subsequent passage of the bill through the legislature confirms the important role that the consensus forged in CENCA played in the reform process. The Senate Committees on 'Constitutional Affairs', 'Governance', 'Radio, Television and Cinema', and 'Legislative Studies' reworked this proposal into a reform bill that they presented to the Senate on 12 September 2007 with hardly any differences. Subsequent discussions over the reform in both the Senate and the Chamber of Representatives did not substantively change this proposal either.[330] Legislators hence decided on the most important points within the CENCA setting. Indeed, when comparing the Senate Committees with the CENCA's bill, only minor differences appear (see Table 6-6 for an overview of changes in the proposal).

The relevant committees lowered organizational funding by calculating it based on 65 rather than 70 percent of the minimum wage and altered the distribution of public funding to the 30 percent equally and 70 percent proportionally (instead of 100 percent proportionally).[331] In addition, they increased earmarked public funding for educational activities from 1.5 to three percent of total organizational funding. Last-

[330] The CENCA proposal had established that only political parties would be allowed to present candidates in elections. The legislature removed this monopoly position and put down instead that parties provide citizens with access to the exercise of public power – rather than that they form the only means to do so (§41) – and that parties have the right – rather than the exclusive right – to present candidates for elections (§116). The relevant Chamber committees proposed this change in light of existing international treaties and constitutional norms, which guarantee citizens' active and passive voting rights. The committee members pushed the legislature to ensure the observation of these existing national and international norms.

[331] The Senate Committees changed this to maintain the 1996 norm that "matched the mixed nature of the electoral system." Cámara de Senadores (12 Sep. 2007) 'Dictamen de las Comisiones Unidas de Puntos Constitucionales; de Gobernación; de Radio, Televisión y Cinematografía; y de Estudios Legislativos, con proyecto de decreto de reformas a la Constitución Política de los Estados Unidos Mexicanos, en materia de Reforma Electoral.'

ly, the allowed length of legislative campaigns increased from 45 to 60 days.[332] The most substantial difference is visible in the regulation of media access, as the committees' bill contained extremely detailed regulation of party media access. It prohibited parties from obtaining any private media access at all. Instead, parties could only use the state media allocated to them by the IFE. Media was distributed among parties just as any other source of public funding, meaning that 30 percent was distributed equally and 70 percent proportionally. Parties had equal access to state media outside of elections.[333]

The proposals to restrict private media access met with severe opposition from media outlets and civil society organizations (Serra 2010). According to the media, for example, the proposed bill formed a violation of the freedom of expression and an attempt by the "partyocracy" (PRI, PAN, PRD) to maintain the established party status quo (see Freidenberg 2009, 297). In their debate on the reform, the established parties displayed recognition of this external opposition to the reform agenda. Nevertheless, all the reform proponents agreed that this was an unjust portrayal of the reform as it "only targeted parties, not individuals", and as it sought to "prevent the continued commercialization of politics under the encouragement of the illegal and illegitimate power of wealth[y actors]."[334] Despite a unified effort to pressure the legislature into rejecting the complete prohibition of private media access, politicians went ahead with this substantial reform of the role of money and media in elections.[335]

The Senate adopted the proposal on 12 September 2007 with 110 votes in favor and 11 opposed.[336] The Chamber did so two days later with 408 votes in favor, three opposed, and nine abstentions. The reform coalition, consisting of the PAN, PRD, PRI, and PT, as well as the PASC, all voted in favor of the reform. The PVEM

[332] In addition, the president of the IFE's Council is appointed for a 6-year-term (versus 9 years) but may be reelected (versus a prohibition on reelection). The constitutional reform of the IFE will be discussed in more detail below.

[333] The law also elevated to constitutional norms the prohibition on defamatory ads, as well as media access bought on behalf of the political parties by third parties. As was the case for the constitutional establishment of donation limits, parties hence used the constitution to constrain party access to public and private funding in a very detailed manner.

[334] Cámara de Senadores (12 Sep. 2007) 'Dictamen de las Comisiones Unidas de Puntos Constitucionales; de Gobernación; de Radio, Televisión y Cinematografía; y de Estudios Legislativos, con proyecto de decreto de reformas a la Constitución Política de los Estados Unidos Mexicanos, en materia de Reforma Electoral.' Also see, for example, statements of Representatives Raymundo Cárdenas Hernández (PRD), Diódoro Humberto Carrasco Altamirano (PAN), and Marina Arvizu Rivas (PASC). Cámara de Diputados (14 Sep. 2007) 'Minuta.'

[335] El Universal (13 Sep. 2007) 'Especialistas critican "campaña intimidatoria."'

[336] Cámera de Senadores (12 Sept. 2007) 'Minuta.'

and Convergencia both opposed the reform.[337] These parties rejected the negotiation process that the three established parties had dominated (allegedly).[338] In addition, these minor parties rallied against the way in which the distribution of public funding and media access advantaged the larger parties (Freidenberg 2009, 298).[339]

When looking in more detail at the reform process in relation to the adopted party law, the *systemic economy* reform strategy manifests itself in many ways. This is visible, first of all, in legislators' identification of the reform's purported aims. While introducing the CENCA's proposal in the legislature, PRI Committee President Beltrones presented the proposed changes as a means to "address the two largest problems facing Mexican democracy: money and the use and abuse of the means of communication."[340] The statement is a clear reference to the 2006 elections, when the party's media and advertisement campaigns had taken on the character of an arms race. All parties tried to outspend each other, and engaged in vicious public campaigns, only to reach a 0.58 percent vote difference in the final tally. In addition, this expensive strategy damaged the public image of all parties. As a consequence, the need to address the "corrupting power of private media bosses" ran like a common thread through the vote qualifications of all the parties that supported the reform.[341] Media and election spending had started to pose a threat to political parties' joint access to resources.

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[337] The PNA abstained from voting on the bill. Cámera de Diputados (14 Sept. 2007) 'Minuta.'

[338] See, for example, statements and vote qualifications of Senators Alejandro Gonzalez Yañez (PT), Dante Delgade Rannauro (Convergencia), Francisco Agundias Arias (PVEM), Jose Luis Lobato Campos (Convergencia), Arturo Escobar y Vega (PVEM), Irma Martinez Manriquez (PNA). Cámera de Senadores (12 Sept. 2007) 'Minuta.' Also see vote qualifications Representatives Francisco Elizondo Garrido (PVEM), Jacinto Gómez Pasillas (PNA), and Alejandro Chanona Burguete (Convergencia). Cámara de Diputados (14 Sep. 2007) 'Minuta.'

[339] See, for example, statements Senator Dante Delgade Rannauro (Convergencia) and Representative Alejandro Chanona Burguete (Convergencia). Cámera de Senadores (12 Sept. 2007) 'Minuta.' Cámara de Diputados (14 Sep. 2007) 'Minuta.' As discussed above, the reform did not alter the existing distributive criterion that allocated 70 percent of funding proportionally and 30 percent equally between parties. Nevertheless, the minor parties calculated that the new rules meant that they would lose half of their funding while the established parties' funding would increase by 30 percent. See El Universal (2 Sep. 2007) 'Pactan prohibir a los partidos contratar spots en campaña,' El Univeral (10 Sep. 2007) 'Panal y PAS denuncian 'partidocracia."

[340] CENCA (31 Aug. 2007) 'Exposición de motivos.'

[341] Cámara de Diputados (13 Sep. 2007) 'Dictamen de las Comisiones Unidas de Puntos Constitucionales, y de Gobernación.' Also see vote qualifications of Senators Alejandro Gonzalez Yañez (PT), Carlos Navarrete Ruiz (PRD) and Santiago Creel Miranda (PAN) as well as Representatives Raymundo Cárdenas Hernández (PRD), Diódoro Humberto Carrasco Altamirano (PAN), Marina Arvizu Rivas (PASC), and Ricardo Cantú Garza (PT). Cámera de Senadores (12 Sept. 2007) 'Minuta.' Cámara de Diputados (14 Sep. 2007) 'Minuta.'

Under the resource-based perspective, a response to such a direct threat requires that the legal changes legislators adopt are effective ones. In the case of private finance regulation, this required the constraint of the actions of all parties – including the governing party. In line with the expectations posited under the *systemic economy* reform strategy, legislators adopted measures for the effective implementation of the new political finance regime. They did so by strengthening the IFE's capacity to control party finance.[342] Towards this end, the reform created a new technical committee within the IFE that would monitor political finance (§41). This committee obtained sufficient resources to oversee political finance and was no longer constrained by bank, fiscal or fiduciary secrets (Molenaar 2012b). In addition, the IFE became the ultimate national authority to manage party media access. In this manner, the IFE would be able to oversee the effective restriction of private party funding and media access to protect the established parties from market pressure. Indeed, in the debates on the reform, the reform proponents concur that such impartial and strict application of the rules was a necessary condition for a successful reform effort.[343]

In line with the *systemic economy* reform strategy, parties also needed to prevent that the party in government could have a significant financial or publicity advantage over other parties. Failure to do so would undercut the collective application of the reform. Parties therefore adopted a strict prohibition of government electoral publicity, as well as a prohibition of the involvement of public officials in election campaign (§134). In their debate on this article, representatives of the three major parties identify this measure as a necessary means to ensure "absolute impartiality in the management and application of public resources."[344]

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[342] Other proposed changes to constitutional articles also implemented the new norms created in article 41, such as through the specification that the Mexican states would adopt similar measures to prevent the undermining of these new rules through party practices and behavior at the state level (§116). See Cámara de Diputados (13 Sep. 2007) 'Dictamen de las Comisiones Unidas de Puntos Constitucionales, y de Gobernación' for the explicit mention of the need to professionalize the IFE as one of the reform's motivations.

[343] Cámara de Senadores (12 Sep. 2007) 'Dictamen de las Comisiones Unidas de Puntos Constitucionales; de Gobernación; de Radio, Televisión y Cinematografía; y de Estudios Legislativos, con proyecto de decreto de reformas a la Constitución Política de los Estados Unidos Mexicanos, en materia de Reforma Electoral.' Cámara de Diputados (13 Sep. 2007) 'Dictamen de las Comisiones Unidas de Puntos Constitucionales, y de Gobernación.'

[344] Cámara de Senadores (12 Sep. 2007) 'Dictamen de las Comisiones Unidas de Puntos Constitucionales; de Gobernación; de Radio, Televisión y Cinematografía; y de Estudios Legislativos, con proyecto de decreto de reformas a la Constitución Política de los Estados Unidos Mexicanos, en materia de Reforma Electoral.' Cámara de Diputados (13 Sep. 2007) 'Dictamen de las Comisiones Unidas de Puntos Constitucionales, y de Gobernación'

Lastly, the reform targeted the electoral authorities to ensure impartial application of the political finance regime. Negotiations over the IFE's reform were slightly problematic due to the PRD's rejection of the IFE's conduct in the 2006 elections. Whereas the victorious PAN proposed maintenance of the IFE Council, the PRD only wanted to go ahead with the reform if the IFE would be restructured and its Council would be removed.[345] Other parties advocated the restructuring of the IFE into an *Instituto Nacional de Elecciones* (National Electoral Institute, INE).[346] Such a change entailed that that the electoral authorities would oversee all the Mexican elections rather than just the federal ones. The three established parties finally found a compromise in the tiered replacement of the IFE's council (§41)(Freidenberg 2009, 297).[347]

In light of the recent legitimacy crisis, parties' faced a collective threat to their ideational resources as well – albeit in a more indirect manner because the elections had just been held. To safeguard their joint standing, legislators nevertheless presented the reform of political finance and media access as a means to lower the cost of elections. Frequent mention is made throughout the debates of the three billion pesos that the Mexican state would be able to save through the different calculation of electoral funding and the provision of state media access.[348] The resource-based perspective suggests, however, that little need existed for legislators to address the height of public funding in an effective manner, as the legitimacy concerns did not result in the rise of new contenders.

Indeed, and as I show elsewhere, the new formula applied to calculate party organizational funding constituted a clear increase rather than decrease in the public funding available to parties annually (Molenaar 2012b). This does not contradict the purported aim of the reform directly, which was to "respond to the justified demand from society to reduce *the costs of campaigns* and to prevent the waste and abuse that offends society" (italics FM).[349] Nevertheless, the shift from direct to more indirect public electoral funding in the form of media access, combined with the increase of

[345] El Universal (27 April 2007) 'Reitera PRD condición para apoyar refroma del Estado,' El Universal (17 May 2007) 'Apostará el PAN a fortalecer presidencialismo, dice Espina.'
[346] El Universal (26 April 2007) 'Pactan diálogo sin exclusión en la reforma del Estado,' El Universal (26 May 2007) 'Propone PRI transformar al IFE en Instituto Nacional Electoral,' El Universal (21 May 2007) 'Piden cancelar candidaturas a quienes rebasen topes de campaña,' El Universal (23 May 2007) 'Presenta Frente Amplio propuesta de Reforma del Estado.'
[347] El Universal (31 August 2007) 'Van por renovar IFE y bajar 50% el costo de campañas.'
[348] See, for example, statements of Senators Manlio Fabio Beltrones Rivera (PRI), Santiago Creel Miranda (PAN) and of Representative Raymundo Cárdenas Hernández (PRD). Cámera de Senadores (12 Sept. 2007) 'Minuta.' Cámara de Diputados (14 Sep. 2007) 'Minuta.'
[349] Senator Manlio Fabio Beltrones Rivera (PRI). CENCA (31 Aug. 2007) 'Exposición de motivos.'

organizational funding, does raise the suggestion that this reform contributed to less wasteful political spending in a symbolic way only.[350]

One final element of the reform that requires further elaboration is the regulation of the candidate selection process. The reform relegated the TEPJF to a position of court of last instance for conflicts involving internal party matters (§99). To understand this development it should be noted that, as had been the case in Costa Rica, the Mexican judicial authorities (TEPJF) had recently become more involved in intra-party affairs. This involvement can be traced back to the 1996 reform, which had established the protection of the political electoral rights of citizens as one of the TEPJF's functions. Over the next decade, the TEFPJ used this provision to hear complaints involving intra-party disputes, such as those over candidate and leadership selection (Harbers and Ingram 2014, 264).

In response, the established parties used the opportunity presented by this reform to retake control over the organizational infrastructure. Throughout the 2003 integral reform negotiations, parties had already rallied around the need to set boundaries to the TEPJF's influence in internal party affairs. The 2007 constitutional reform provided an opportunity to address the "unjust judicialization of internal party processes."[351] This is yet another instance of how the collective protection of party resources – in this instance over their respective organizational infrastructures – drove the reform effort.

6.4.c Negotiation process – 2008 electoral reform

After the constitutional reform passed through both Chambers of the Legislature, constitutional article 135 required that the majority of Mexican state legislatures approved the reform as well. On 6 November 2007, after 30 out of 31 states had approved the reform, the Senate declared the constitutional reform adopted. The executive promulgated the decree on 13 November 2007. Legislators had stipulated in

[350] The Senate committees changed the calculation of organizational public funding from 70 to 65 percent of the minimum salary in Mexico D.F. multiplied by the number of registered voters. In defense of this change, the official Committee Decision states that this constitutes a reduction of 200 million pesos annually. Parties hence seem to have been aware of the financial consequences that changing the calculation of public funding would have for the total amount of funding available to them. Cámara de Senadores (12 Sep. 2007) 'Dictamen de las Comisiones Unidas de Puntos Constitucionales; de Gobernación; de Radio, Televisión y Cinematografía; y de Estudios Legislativos, con proyecto de decreto de reformas a la Constitución Política de los Estados Unidos Mexicanos, en materia de Reforma Electoral.'

[351] Cámara de Senadores (12 Sep. 2007) 'Dictamen de las Comisiones Unidas de Puntos Constitucionales; de Gobernación; de Radio, Televisión y Cinematografía; y de Estudios Legislativos, con proyecto de decreto de reformas a la Constitución Política de los Estados Unidos Mexicanos, en materia de Reforma Electoral.' Also see Cámara de Diputados (13 Sep. 2007) 'Dictamen de las Comisiones Unidas de Puntos Constitucionales, y de Gobernación'

a transitory article that Congress would adopt the necessary legislation to implement the constitutional changes within 30 days.

On 30 November 2007, legislators of the established parties therefore presented an electoral reform bill to the Senate. In its exposition of motives, legislators stated constantly that the proposed changes introduced harmony and congruence between the electoral code and the reformed constitution.[352] Indeed, the constitutional reform had established such detailed principles on, for example, the allocation of public funding and media access, that the reform of the electoral code was mostly a formal procedure. In addition, the established parties continued to hold a sufficiently large majority in both Chambers to pass the bill without having to negotiate with the minor parties.

Only one article exhibits substantial changes between the initial reform proposal and the adopted electoral reform. Firstly, in their review of the proposal, the relevant Senate committees modified the distribution of public funding. The new proposal did so based on the number of votes obtained through plurality voting in single-member districts (§78). This benefited the established parties over other parties, as the formed held a marked advantage in single-member districts (Diaz-Cayeros and Magaloni 2001).[353] In addition, the committees established that two percent of organizational funding would be earmarked for activities that promoted female leadership (§78). According to the committees, this change responded to the demands of female legislators from all parties to introduce measures that promoted affirmative action. [354]

None of these changes differ from the changes introduced in the 2007 constitutional reform. In the two months between the adoption of the reformed constitution and of the reformed electoral code, the established parties hence maintained their commitment to the constraint of private party funding while providing themselves with some additional financial benefits. On 11 December 2007 the Chamber of Representatives adopted the reformed electoral code with 351 votes in favor, 86 opposed, and 59 abstentions. Next to the established parties, only the PVEM voted in favor of

[352] Cámara de Senadores (30 Nov. 2007) 'Exposición de Motivos.'

[353] In line with the constitutional restriction of private funding, the committees also made individual donation limits relative to electoral spending limits and lowered the amount of funding that parties could garner through the organization of activities and anonymous collections (§78). Lastly, the committees increased the amount of free postage parties were entitled to receive during both ordinary and elections years (§§91-92) to "cover party necessities in this area."

[354] Cámara de Senadores (5 Dec. 2007) 'Dictamen de las Comisiones Unidas de Gobernación; y de Estudios Legislativos.'

the reform. By contrast, the other minor parties activated all their representatives to vote against a law they saw as merely contributing to an established "partiocracy".[355]

In summary, the 2007 legislative pact thus allowed legislators to do what they had been unable to do in 2003: adopt an integral electoral reform. The established parties used the opportunity for reform created by the contentious 2006 elections to address similar issues as had figured on the agenda in 2003: the costs of political finance, the IFE's inability to monitor political finance effectively, and the high costs of media access. In addition, they used this opportunity to set limits to the TEPJF's interference in internal party life. Consensus on the political finance reform was rather easy because all parties rejected the existing financial scheme that depended heavily on private media access.

In line with the *systemic economy* reform strategy, this ensured that the reform targeted the use of private money and media access in an effective manner and included mechanisms for the implementation of legal changes. In the debates, all parties exhibited a clear concern over the amount of money they needed to spend on media access as well as the viciousness of the last round of election campaigns. It was in all parties' interests to constrain private media spending. The case is also illustrative of the limited role that public opinion plays in constraining *systemic economy* reforms. Even though the media embarked on a public opinion campaign against the reform, legislators pushed through regardless of the public backlash this generated.

Table 6-6: 2007 constitutional reform proposals

Topic	CENCA proposal	Senate committees proposal	Adopted proposals
Representation	Party monopoly over presentation candidates	Same as CENCA	Strikes party monopoly
Candidate selection	Internal party autonomy; TEPJF court of last instance	Same as CENCA	Same as CENCA

[355] See, for example, vote qualifications of Representatives Aída Marina Arvizu Rivas (PASC), Miguel Ángel Jiménez Godínez (PNA), Abundo Peregrino García (PT), and Alejandro Chanona Burguete (Convergencia).

Topic	CENCA proposal	Senate committees proposal	Adopted proposals
Organizational funding	70% of minimum wage in DF x number of registered voters; distributed 100% proportionally	65% of minimum wage in DF x number of registered voters; distributed 30% equally and 70% proportionally	Same as Senate
Electoral funding	50% ordinary funding (30% for legislative elections only)	Same as CENCA	Same as CENCA
Earmarked funding	Earmarked funding 1.5% organizational funding for educational purposes	3% organizational funding for educational purposes	Same as Senate
Private funding	10% spending limits	Same as CENCA	Same as CENCA
Monitoring and oversight	Increase financial control (election and pre-campaigns)	Same as CENCA	Same as CENCA
Media access	Law will regulate party access to media	48 minutes per day (during elections); distributed 30% equally and 70% proportionally; prohibition private media access	Same as Senate
Campaign length	90 days for presidential campaigns; 45 days for legislative campaigns	60 days for legislative campaigns	Same as Senate

6.5 Conclusion: party law development and reform in Mexico

As discussed in the introduction to this chapter, the famous novelist Octavio Paz asserted that the Mexican PRI government historically functioned as a tlatoani: a type of ruler that built its domination on legal and institutional foundations. This chapter has shown that the transition to a multi-party political system, initiated in the 1970's and finalized in 2000, did not alter this dynamic fundamentally. With the opening up of the political system, Mexico moved to institutionalized power sharing among three established parties that continue to validate, as well as protect, their access to power through legal means (see Table 6-7 below for a summary).

These dynamics were visible first of all in the 2003 reform adopted in response to the rise of new parties that had started to change the terms of party competition. In line with the *electoral economy* reform strategy, as well as the predictions of Katz and Mair's cartel party theory (1995), the established parties responded to this development by increasing party formation and maintenance costs. This finding supports proposition 2 developed in Chapter 3, which holds that when adopted in response to changes in party competition and/or the rise of a new party, party law reforms will contain *effectively designed* legal provisions that redress the inter-party resource distribution balance, such as by making it more difficult to form and/or maintain a political party.

In the 2006 elections, however, it was not new parties but the political parties' own functioning and behavior that threatened their collective access to ideational and financial resources. Too much electoral spending had created an aggressive and costly playing field. In response, the parties adopted a *systemic economy* reform that constrained their collective ability to spend money in election campaigns. The mutual constraint of all the established political players was required to mitigate future crises, which ensured that the parties designed this reform in an effective manner. These findings support proposition 3a on the *systemic economy* strategy developed in Chapter 3, which holds that when adopted in response to institutional or societal changes that alter all political parties' access to resources, party law reforms will contain *effectively designed* legal provisions that redress political parties' collective access to resources, such as by creating private funding rules that benefit all parties.

With the introduction of a generous public funding scheme in the 1990's, legislators had opened the door to public outrage over the amount of public money available to parties. In both reform efforts, the parties suggested that they addressed these public concerns by either lowering the amount of money wasted on the proliferation of new/minor parties (2003) or by lowering the amount of electoral funding available to parties (2007/2008). In both cases, this constituted a *systemic economy* strategy, in line with proposition 3b**,** which holds that when adopted in response to a legiti-

macy crisis that only alters political parties' access to ideational resources, party law reforms will contain *symbolic* legal provisions that increase political parties' access to ideational capital, such as by adopting ineffective legal provisions on party finance. In practice, this meant that the political parties increased the total amount of direct and indirect funding available to them while presenting the reform as a cost-reducing effort.

Table 6-7: Summary of Mexican party law reform (2003-2008)

	2003		**2007/2008**
Strategy	Electoral economy	Systemic economy	Systemic economy
Resource at issue	Organizational infrastructure	Ideational resources	Ideational + financial resources
Threat	Internal New/minor parties importance in electoral and legislative alliances	External Public rejection public party funding	Internal Spending 'arms race' leads to high expenses External Public rejection of public party funding [and democratic system more generally]
Legal provisions	Increase party formation costs		*New calculation public funding *Restriction private funding and media access *Restriction campaign length
Effective design	Effective IFE oversees implementation	Symbolic Present reform as a way to lower public party funding	Effective Professionalization IFE and adoption of rules to ensure impartial implementation Symbolic New calculation does not lower total amount public funding

CHAPTER 7 – Colombia

Cuando llegó la compañía bananera
los funcionarios locales fueron sustituidos
por forasteros autoritarios …
Los antiguos policías fueron reemplazados
por sicarios de machetes
-
–Gabriel García Márquez, *Cien años de soledad*[356]

7.1 Colombia: the political accommodation of conflict

The 1810 Colombian Declaration of Independence set into motion a protracted state formation process. Throughout the 19th century, secessionist upheavals and conflict between unitary and federal armed forces became institutionalized in violent political competition between the *Partido Liberal Colombiano* (Colombian Liberal Party, PLC) and the *Partido Conservador Colombiano* (Colombian Conservative Party, PCC). It was not until 1886 that the present-day Republic of Colombia was founded. As noted in Chapter 2, the foundational constitution contained an exceptional constitutional article that responded to the debilitating effect of inter-party conflict by prohibiting permanent party organization altogether. Despite this constitutional effort to create political order, however, violent competition between the two parties continued, culminating in the Thousand Days' War (1899-1902).

The protracted foundational conflict mainly took place at an elite, rather than a societal, level (Bushnell 1993). García Márquez's magical realist novel 'One Hundred Years of Solitude' portrays this divorce between conflicting elite and societal needs in

[356] When the banana company arrived, local officials were replaced by authoritarian outsiders ... The former policemen were replaced by hit men with machetes.

a remarkable manner.[357] The prolonged and futile nature of the Thousand Days' War leads Colonel Aureliano Buendías, one of the book's main protagonists and an avid Liberal guerrilla fighter, to lose his political ideals. 'In the end,' he laments, 'the only real difference between the Liberals and the Conservatives, is that the Liberals go to mass at five and the Conservatives go to mass at eight.' Over the course of the 20th century, the Liberal and Conservative political forces would recognize this literary interpretation of their inter-elite agreement and would embrace that they had indeed more in common than what separated them.

This realization grew in particular after an eruption of inter-party violence between 1949 and 1958. This episode, known as *La Violencia* (The Violence), resulted in the rise of a military dictatorship that sought to re-establish political order. In the process, military governance threatened to become a permanent feature of political life. The two parties responded to this threat to their access to power by agreeing to transition back to democratic governance through an explicit power-sharing agreement (Hartlyn 1988). The *Frente Nacional* (National Front, FN) agreement formed an essential means to lock inter-party conflict into the political system by ensuring both parties equal access to power.[358] The agreement lowered the 'winner-takes-all' nature of elections and prevented the losing party from taking to arms to protect its own survival.

Over the long run, the National Front system did not provide a viable means to address popular demands for participation. The late 1980's and early 1990's were therefore marked by political reforms that decentralized power. Decentralization was seen as a means to ensure broader participation in political life and to open up the political system. In the absence of effective local order, however, decentralization measures contributed to armed and illicit forces capturing local government (Eaton 2006). From the early 2000's onwards, it became apparent that these new political actors had managed to penetrate the national legislature from the bottom up.[359]

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[357] The novel provides a critical interpretation of Colombian political events through its depiction of the rise and downfall of the fictitious town Macondo.

[358] The agreement excluded other parties, particularly the left ones, from politics and shifted political competition from the inter-party to intra-party arena. This was the case because candidate selection procedures, rather than the electoral process, determined access to the fixed quotas of governing and legislative power (Archer 1995; Botero, Losada, and Wills 2011).

[359] In 'One Hundred Years of Solitude', García Márquez similarly describes the societal effects of policy decentralization at the local level back in the 1920's. In the absence of a strong state, the rise of new local power holders had devastating consequences for the population at large: authoritarian foreigners replaced local public officials while hired assassins replaced the former police force. This resulted in the violent repression and murder of civilians.

This chapter traces the development of party law along the lines of political accommodation and conflict depicted in this introduction. The first section will show that party law reform proved a valuable means for the established political parties to create a united (broad) front against the threat that military rule posed to their joint survival. Over the course of the next decades, this front proved unable to react to popular pressure for inclusion in an effective manner. As a consequence, party law reform was imposed on the national political leadership through popular mobilization in the late 1980's.

The second section discusses how the new rules adopted in response to these pressures were unable to abolish politics as usual completely. Traditional elites maintained their dominant hold over the political system and made the new rules work in their favor. At the same time, however, these new rules contributed to the increased personalization and fragmentation of formal party organizations. Table 7-1 below provides some first indications of this in the form of the increases in both the effective number of parties and electoral volatility. These changes culminated in the rise of political semi-outsider Álvaro Uribe to the presidency in the 2002 elections. In response, the traditional elites turned to party law reform (2003) and sought to regain control over the organizational infrastructure through an *organizational economy* reform strategy.

Section three shows how the 2003 party law reform proved ineffective in stemming the tide in the traditional elites' favor. Instead, Uribe capitalized on his massive popularity to abolish the constitutional prohibition on presidential reelection. He required some opposition party support for his reform, however, which allowed these parties to push for an *electoral economy* party law reform (2005) that redressed the inter-party financial resource balance by ensuring that the presidential party would not be able to capitalize completely on the incumbent's financial and ideational advantage. The 2003 reform did succeed in pushing electoral competition back into formal party structures. The number of parties in elections and the legislature dropped steadily, as did the effective number of parties in the legislature (see Table 7-1 below).

Party competition remained high, however, as evinced by the high electoral volatility scores. Combined with the personalized nature of election campaigns and the increased infiltration of local politics by (illicit) armed groups, the competitive nature of elections resulted in an influx of illicit money in political life. The government, which had little else to fear than a loss of ideational capital, responded by adopting a *systemic economy* reform (2009-2011) that introduced new fundamental values on party conduct in an ineffective manner. The final section discusses the relevance of these findings for the resource-based perspective on party law reform developed here.

Table 7-1: Party system characteristics (1994-2010)

Year	No. parties/lists in Senate[360]		No. parties/lists in Lower House		Electoral volatility	Legislature: ENP		Chamber: Voter turnout
	Elections	Elected	Elections	Elected	Chamber	Senate	Chamber	
1994	54/254	22/n.a.	n.a./628	27/n.a.	21.26	2.82	2.71	36.14%
1998	80/314	25/n.a.	n.a./692	29/n.a.	20.21	3.77	3.17	45.00%
2002	63/319	42/96	63/883	40/n.a.	25.81	7.84	5.75	42.45%
2006	20	10	39/412	22	36.38	6.90	7.36	40.49%
2010	18	10	18/282	14	35.12	5.56	5.06	43.75%

Sources: Number of parties and effective number of parties (ENP): Botero (2007), Botero et al. (2011), Botero and Rodríguez Raga (2009), Giraldo and López (2006), Gutiérrez Sanín (2007); Maldonado Tovar (2010), MOE (2013), Pachón and Shugart (2010), Rodríguez Raga and Botero (2006); electoral volatility – Ruth (2016); voter turnout (percentage of registered voters who actually voted) – IDEA (2015).

7.2 The development of Colombian party law: a historical overview

In 1886, Colombian legislators adopted a first constitutional article on political parties when they forbade permanent political associations (§47). Regardless of this prohibitive article, which would only be struck in 1991, the adoption of more permissive constitutional and legal references to political parties soon followed. The 1910 Constitution introduced the electoral principle of proportional *party* representation (§45 – emphasis FM) and Congress sponsored electoral laws that recognized political parties as an institutional reality from the early 20th century onwards (Hernández Becerra 2006, 336). These legal references to parties reflected that the Liberal and Conservative parties had established themselves as the lynchpin of the Colombian political system. They would remain the political system's principal actors until the end of the 20th century (Hernández Becerra 2006, 332; Roll 2001, 33–36).

[360] The electoral rules adopted in the 1991 constitutional reform served as an incentive for political parties to present multiple lists in elections. I therefore report both the number of formal party labels and the number of candidate lists that participated in elections and that obtained legislative representation.

The two traditional parties saw their pivotal political position threatened by violence and the subsequent rise of a military dictatorship in the 1950's.[361] In response, the parties formed a pact to ensure their joint organizational continuity and survival by accommodating inter-party conflict through the adoption of a party law: the National Front agreement (Hartlyn 1988). In it, the parties established that "[i]n popular elections … the corresponding elected positions will be awarded half and half to the traditional parties, the Conservative and the Liberal party" (Acto Legislativo 0247, 1957, §2).[362] In effect, these measures institutionalized conflict in the political system to prevent losers from turning to violence as an alternative form of conflict resolution. Regardless of the two parties' vote share in elections, they would receive half of the legislative and half of the governing seats anyway. The reform thereby codified the bi-partisan nature of the Colombian political system. As a corollary effect, the agreement also prevented the rise of new political parties in elections.[363]

Although the FN agreement contributed to the containment of inter-party violence, the same could not be said about socio-political violence more generally. From 1964 onwards, communist guerrilla movements such as the *Fuerzas Armadas Revolucionarias de Colombia* (Colombian Revolutionary Armed Forces, FARC) and the *Ejército de Liberación Nacional* (National Liberation Army, ELN) instigated insurgency campaigns in rural areas. The military, meanwhile, had converted into the armed wing of the National Front coalition, meaning that it intervened whenever social opposition arose to the government's policies. From the mid-1980's, continued violence and political exclusion created social pressure to open up the political system to new political actors (Roll 2001, 211–12). In 1985, the government responded to this pressure by adopting a political 'Basic Statute on Political Parties' (Law 58)(Cepeda Espinosa and Dunkerley 2005; Hernández Becerra 2006; Sánchez Torres 2000, 73–74). The legislative debates that preceded the adoption of this statute mainly focused on ways in which the state could set standards for new party formation and could provide parties with public funding for election campaigns. These measures served as a means

[361] Political reforms adopted in the 1940's reflect the conflictive nature of political life. A 1945 reform (Acto Legislativo 1) addressed the increased debilitation of the judicial regime by inter-party conflict and violence (Palacios 1995, 327) by banning active party members from becoming members of the judicial branch (§164) and by allowing for party proportionality in the appointment of judges (§59).

[362] *En las elecciones populares … los puestos correspondientes a cada circunscripción electoral se adjudicarán por mitad a los partidos tradicionales, el conservador y el liberal.* The reform also established that the president would appoint ministers in the same proportion (§4) and that the parties would ensure parity and consensus in their selection of the members of the judiciary (§12). A 1959 reform (Acto Legislativo 1, 1959) ruled that, between 1962 and 1974, the presidency would alternate between the two parties (§1).

[363] The National Front agreement was designed to last until 1974. Legislators therefore adopted a new constitutional amendment in 1968 (Acto Legislativo 1) to govern the dismantling of the bipartisan structure. This development did not necessarily introduce large changes in the party system, however, as the traditional parties maintained their political dominance.

to provide third parties with access to the political system (Roll and Feliciano 2010, 107).

The adopted rules were rather lenient. Legislators decided that parties needed 10.000 members to register and that they needed to preserve these membership figures to maintain registration (§4). The state could reimburse election costs partially (§12) and would provide free postage (§20) and indirect public funding in the form of state-sponsored television access during elections (§17). The law prohibited parties from obtaining private television access (§18). In return for these financial benefits, parties needed to present electoral finance reports to the *Corte Electoral* (Electoral Court, CE)(§9), and to respect donation limits (§12).

Despite the favorable rules for new party formation, the reform failed to improve the relationship between society and the state. This was also the case for other reforms initiated in the 1980's.[364] The Colombian political system remained marked by the de-politicization of society and the rupture of state-society relations, the exclusion of third parties from the political system, the increase of abstention combined with the debilitation of party structures, and severe political violence (Giraldo 2007, 126). All these elements created a political crisis that the government was hard-pressed to solve. Changing the political system required a constitutional reform, but the FN agreement restricted the possibilities for such a reform (Roll 2001, 237).

The violent murder of three presidential contenders in the run-up to the 1990 elections provided the final straw needed for constitutional reform. A large student movement formed demanding the *séptima papeleta* (seventh ballot): the addition of an option to the ballot that would allow voters to vote in favor (or against) the formation of a Constituent Assembly (Roll 2001, 241). The president, in response, decreed the application of this seventh ballot in the next elections (Decree 927). Although the constitution did not permit this trajectory of constitutional reform, electoral officials did count the seventh ballot votes. The majority of voters spoke out in favor of a National Constituent Assembly. The Supreme Court thereupon approved its formation in recognition of the Colombian people's popular will (Roll 2001, 241). Amidst all the party law reforms discussed in this and other country chapters, this 1991 reform stands out as an exception. Forces external to the political process managed to push through a substantial political reform.

[364] The government also sponsored decentralizing reforms to provide room for the future reinsertion of demobilized revolutionary forces in political life (Eaton 2006, 541).

Due to strategic miscalculations of the traditional parties, combined with contextual developments that largely favored new political forces, the Assembly contained a substantial number of progressive and left-wing newcomers (Dargent and Muñoz 2011, 52; Roll 2001, 255). According to Antonio Navarro Wolff, the left-wing Assembly president, these new political forces' goal was to break the dominant hold of the traditional parties over the political process and to open up the political system through constitutional design.[365] Towards these ends, the Assembly adopted several electoral reforms (these will be discussed in more detail below). In addition, the 1991 Constitution contained several elements that targeted the closed nature of the political system.[366] First of all, Assembly members aimed to end party system over-institutionalization through fortification of the freedom of political association and participation. This is visible in §107, which established that all citizens have the right to establish, organize, and promote parties *and political movements* (emphasis FM). In addition, the Assembly adopted campaign-spending limits to increase financial equality for newcomers without substantial financial resources to compete successfully in elections (§109).

As to political finance, all legally registered representative forces would be eligible to receive public funding (§109). This issue was a hotly contested one that the Assembly finally decided in favor of the new political forces. As a compromise, §108 regulated that parties and movements would only be recognized legally if they obtained either 50.000 signatures, at least the same number of votes in elections, or legislative representation. (also see Roll and Feliciano 2010, 110–11). This formed an increase from the 10.000 signatures established in the 1985 party statute.[367] The newly created *Consejo Nacional Electoral* (National Electoral Council, CNE) would oversee the party formation process.

The constitutional articles relegated implementation of these new norms to a new party law. Adopting this law proved difficult, however. A strong electoral showing in the 1991 legislative elections allowed the traditional parties to maintain their legisla-

[365] Interview Navarro Wolff, 2013. The Assembly had three presidents: Álvaro Gómez Hurtado for the *Movimiento de Salvación Nacional* (National Salvation Movement, MSN), Antonio Navarro Wolff for the *Alianza Democrática M-19* (M-19 Democratic Alliance, AD/M-19) and Horacio Serpa Uribe for the traditional parties.

[366] The Assembly adopted a national circumscription for the Senate to fight personalism and clientelism and introduced measures to empower the legislature vis-à-vis the executive (Giraldo 2007, 126; Roll 2001). The new Constitution deleted the 1886 Constitutional article that prohibited permanent party formation.

[367] Next to political parties and movements, social movements and significant groups of citizens could also register candidates. Unlike political parties and movements, these groups were not entitled to public funding – unless they obtained sufficient votes or representation in Congress to register as a political party/movement (§109).

tive majority and to thereby leave their mark on the new party law (Gutiérrez Sanín 2007).[368] After two failed attempts, legislators adopted a 1994 'Political Party Law' (Law 130) that hardly matched the amendatory nature of the constitutional reform. Instead, the new norms resembled those adopted in the (now abrogated) 1985 party statute. This was visible, for example, in the fact that legislators increased formation costs for social movements and significant groups of citizens by establishing that their candidates would have to pay a fee to guarantee their earnest desire to run for elections (§9). Organizational funding was distributed 10 percent equally and 50 percent proportionally according to seats in the legislature and in the departmental assemblies (§12).[369] Electoral funding consisted of the post-electoral reimbursement of costs and was distributed proportionally on the basis of the number of obtained votes, with a 5 percent threshold (§13).[370] All these measures benefited the traditional parties that could count on a high vote share and on obtaining the majority of departmental seats due to their established presence throughout the country.[371]

To summarize, the 1991 constitutional reform did not constitute a complete break with past ways of regulating political parties (see Table 7-2 below for a comparison of the legal norms adopted between 1985 and 1994). Although new and progressive forces played an important role in the Constituent Assembly, where they pushed for the adoption of a novel electoral system and the opening-up of the electoral process to new forms of political organization, the newcomers were unable to introduce other substantive changes in the legal regulation of political parties. The established parties managed to maintain relatively high party formation costs and protected their access to state resources at the detriment of newcomers.

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[368] Antonio Navarro Wolff was the left-wing presidential candidate in the 1990 elections and the AD/M-19 party president throughout the 1990's. He suggests that the discrepancy between his parties' electoral showing in the 1990 and 1991 elections was due in part to the substantial degree of media attention granted to non-traditional parties in the former elections. Given that three presidential candidates had been assassinated by Pablo Escobar's drug cartel, the candidates campaigned on television from the safety of their own homes. The left-wing parties would never again receive so much airtime during elections. Interview Navarro Wolff, 2013.

[369] In addition, 30 percent of organizational funding was earmarked for party activities, which the electoral authorities would distribute on the basis of votes in the previous legislative elections. Legislators failed to create a destination for the remaining 10 percent.

[370] The state also provided parties with electoral and organizational media access (§§22, 25, 34). The law established that parties should respect the donation limits set by the electoral authority §§14, 20). They needed to present annual organizational finance reports, as well as electoral finance reports, to these authorities as well (§18).

[371] The established parties also blocked efforts by the progressive political forces in the legislature to introduce obligatory direct primaries for the selection of presidential and vice-presidential candidates. Interview Navarro Wolff, 2013. The compromise reached in the final version of the bill was to leave the choice between primaries and other forms of candidate selection up to the parties themselves (§9).

Although the established parties thereby continued to dictate the terms of electoral competition, other constitutional changes would have a more direct effect on party politics than the established parties had foreseen. The following sections discuss how the constitutional 1991 reform resulted ultimately in a process of party system reconfiguration and established party deinstitutionalization – thereby triggering a new round of party law reform in 2003.

Table 7-2: Development of Colombian party law (1985-1994)

Topic	1985	1991	1994
Participation	Political parties	Political parties, movements, and citizen groups[372]	
Registration requirements	10.000 signatures or votes	50.000 signatures or votes	Adds an insurance fee for candidates of citizen groups
Candidate selection			CNE facilitates primaries
Electoral funding	Partial reimbursement	Proportional reimbursement	Proportional reimbursement, 5% threshold
Organizational funding			150 pesos x number of registered voters, distributed 10% equally; 50% proportional to seats; 10% (sic); 30% proportional to votes

[372] In its revision of the constitutionality of the subsequent 1994 statutory Political Party Law, the Constitutional Court clarified that it understood political parties as permanent institutions and political movements as citizen organizations (Sentence C-089-94, 3 March 1994). Given that both political parties and movements are legally entitled to the same rights and benefits, this formal distinction between them had little consequences in practice.

Topic	1985	1991	1994
Private funding	Prohibition anonymous donations > 200.000.000 pesos + CE establishes donation limits	Donations and spending may be limited	Prohibition anonymous donations + CNE establishes donation limits
Media access	CE establishes television access during elections; prohibition private television access	Parties have right to media access	CNE establishes electoral and permanent media access, distributed 60% proportionally
Monitoring and oversight	Parties present electoral finance reports to the electoral authorities; monetary sanctions	Parties need to render accounts on income and expenses	Parties present CNE annual and electoral finance reports; monetary sanctions

7.3 2003 reform: a response to party organizational change

7.3.a Changes in the resource environment

Both the decentralizing reforms adopted in the 1980's and the 1991 constitutional reform contributed to the unforeseen deinstitutionalization of the party system. This was the case because party organization under the National Front agreement had relied on clientelistic exchange relationships between regional party bosses that used their local support bases to get their parties' candidates elected to Congress (Dargent and Muñoz 2011, 50–51; Gutiérrez Sanín 2007; Roll and Feliciano 2010, 103–4). Decentralizing reforms had taken away these regional party bosses' electoral-financial resources. Formal party structures were removed from the exchange relationships between voters and their representatives as clientelistic practices decentralized to mayors and other local elites (Dargent and Muñoz 2011, 45; also see Gutiérrez Sanín 2007).

National party leaders themselves contributed to the erosion of formal party structures as well through their ingenious use of the new electoral system. The 1991 Constituent Assembly had adopted two electoral changes to break the power of regional

(traditional) party bosses and to improve new parties' electoral chances: it introduced a single national constituency for the Senate and proportional representation that applied the Hare quota with the largest remainder for the Chamber of Representatives (Shugart, Moreno, and Fajardo 2006). The new rules did not, however, prohibit parties from presenting multiple lists. As a consequence, parties strategically presented a multitude of personal lists to capitalize upon the division of seats among largest remainders and to thereby gain more seats in Congress. The so-called *operación avispa* (operation wasp) strategy went so far as to entail the presentation of a new candidate list for each individual candidate (Moreno and Escobar-Lemmon 2008, 122).

As a result, the number of parties that participated in elections and that obtained representation in the Senate increased from 54 to 63 and from 22 to 42 respectively between the 1994 and 2002 elections (see Table 7-1 above). Party participation in Chamber elections became so inchoate that no data are available on the number of parties that participated in these elections. Instead, most studies only mention the number of lists available to voters, which also increased steadily. These changes did not necessarily reflect that the political system opened up to new representative forces. Between 65 percent and 80 percent of the new political parties and movements consisted of politicians that had previously belonged to the traditional Liberal and Conservative parties (Londoño 2010, 13; Roll and Ballén 2010, 81). These parties were able to mitigate the effects of electoral system change on their electoral showing by loosening their formal alliances with their representatives (Dargent and Muñoz 2011, 53). This resulted in the increased personalization of politics (Moreno and Escobar-Lemmon 2008), the permanent circulation of legislative seats between legislators and those that had supported their campaign, and in intra-caucus factions supporting different coalitions (Londoño 2010, 15–16).[373]

Up to the 2003 elections, leaders of the established parties continued to count on the loyalty of their representatives to remain in power (Dargent and Muñoz 2011, 53). It was not until the 2003 elections that the severe consequences of party deinstitutionalization became clear to them (Vélez, Ossa, and Montes 2006, 17). These elections were won by Álvaro Uribe, a relative political outsider who had defected from the Liberal Party to run on the ticket of a political movement. [374] His success capitalized on both a massive support base in the electorate and on the increasingly porous ties

[373] The increased fragmentation of the legislature also had consequences for governability, as the executive had to negotiate with each representative separately in order to obtain the necessary support for his policies. Generally speaking, these negotiations were built on personalistic favors and impeded effective decision-making (Prieto Botero 2010, 27).

[374] His outsider status was not a mere electoral strategy. During the 3rd Annual Reunion of the Inter-American Forum on Political Parties in 2003, the then-elected president expressed that, in his opinion, democracy did not need political parties (Londoño 2010: 16).

between legislators and the traditional parties. Indeed, many traditional politicians registered on independent lists to support his campaign; resulting in the reduction of the strength of the traditional parties to only half of the seats in Congress (Gutiérrez Sanín 2006; Shugart, Moreno, and Fajardo 2006, 23). After the elections, the Liberal party saw its strength reduced even further as many of its representatives in the legislature switched to the Uribe camp where they were sure to obtain more political spoils (Shugart, Moreno, and Fajardo 2006, 24; Vélez, Ossa, and Montes 2006, 16).

The political developments surrounding the 2003 elections hence evinced that changes in party cohesion, prompted by the (unforeseen) deinstitutionalizing measures adopted in the 1980's and 1990's, formed a direct threat to the ability of established party leaders to foresee in their politicians' – and their own – needs. This suggests that the subsequent constitutional reform sponsored by the legislature in that same year (Acto Legislativo 1, 2003) functioned according to the *organizational economy* strategy of party law reform: measures that would focus on redressing the intra-party resource balance in an effective manner such as by increasing the traditional party elites access to financial resources and control over the organizational infrastructure. The following section shows that, although established party elites did push for such an agenda, they were only partially successful. This was the case because the adoption of centralizing reforms, such as closed candidate lists, required a degree of party cohesion and discipline that the national party leaderships no longer wielded.

7.3.b Negotiation process

A look at the negotiation process confirms that legislators of the established parties did indeed seek to respond to the novel electoral threat caused by their loss of control over the organizational infrastructure by sponsoring an *organizational economy* party law reform that sought to strenghten legislative and electoral discipline. In this sense, it is telling that it was not the government, but the 'losing' Conservative and Liberal parties, that sponsored the reform bill (Gutiérrez Sanín 2007, 487; Prieto Botero 2010, 27)(see Appendix 7 for an overview of the decrease of these parties' legislative presence).[375] Together with the left-wing *Polo Democrático* (Democratic Pole, PD – an AD/M-19 successor party), independent legislators, and even some Uribist repre-

[375] Uribe did propose a constitutional reform by referendum simultaneously. His proposal focused more on ways to control Congress (De la Calle 2008, 421; Ungar Bleier and Cardona 2010, 392). This proved an additional reform motive, as legislators sought to establish and protect their autonomy from the executive through the sponsoring and adoption of their own political reform (Vélez, Ossa, and Montes 2006, 19–22).

sentatives, these parties' leaders created a sufficiently large reform coalition to pass a reform bill (Vélez, Ossa, and Montes 2006, 12, 25).[376]

The fact that this reform protected the established parties' organizational continuity was visible from the start. In his discussion of the reform, Liberal party leader Senator Rodrigo Rivera, the driver of the political reform in the Senate's Constitutional Reform Committee, defended the reform effort stating that "the traditional parties' conservational instinct led their leaders to recognize that, without a reform of this nature, they would be condemned to disappear."[377] Nevertheless, the reform process also shows how party organizational deinstitutionalization had reached such heights that the leaders of the established parties were unable to push legislators to adopt reforms that would threaten their own electoral careers unilaterally. This tension was visible most clearly in the main point of contention during the debate of the bill: the introduction of single candidate lists.

The legal change of single candidate lists formed part of broader set of measures that targeted the proliferation of political parties (see Table 7-3 below for an overview of all the relevant legal changes). Firstly, legislators replaced the Hare electoral method with the D'Hondt method with a threshold of two percent in the Senate and 50 percent of the electoral quotient in the Chamber of Representatives (§263). This addressed the practice of parties using multiple personals lists to benefit from the largest remainder to gain representation. Although not a direct example of party law reform, this measure provided an incentive for candidates to run under their party label again – thereby creating more solid political parties (Shugart, Moreno, and Fajardo 2006).

Secondly, legislators also redressed the intra-party resource balance by increasing the threshold for new party formation to two per cent of the vote in senatorial elections or 50 percent of the quotient for representative elections (§108). These higher formation costs formed an additional set of incentives for legislators to remain within the established parties' organizational infrastructure. Thirdly, and most importantly,

[376] Legislative acts that reform the constitution require adoption by both the Senate and the Camber of Representatives in two consecutive rounds. Adoption in the first round requires a simple majority of the legislators present (at least half of the legislators need to be present to take a decision), whereas adoption in the second legislature requires an absolute majority (84 in the Chamber of Representatives and 52 in the Senate; 1991 Constitution, §375). Statutory laws that regulate "the political party and political movement organization and system; the opposition statute and electoral functions" need to be adopted in a single legislature by an absolute majority of both the Senate and the Chamber of Representatives (1991 Constitution, §§152-3).

[377] *el instinto de conservación de los partidos tradicionales llevó a que sus directivas entiendan que sin una reforma de esta naturaleza estaban condenados a desaparecer*. Cited in Vélez, Ossa and Montes (2006, 17).

the reform introduced the obligation for parties to present a single candidate list per district (§263). Reaching a legislative coalition in favor of single lists was difficult, however, given that legislators had come to rely on their personal electoral capacities to win elections. As a result, the existing party structures controlled no resources that could offset the costs these legislators would incur when they subjected to party hierarchy and discipline. To get the constitutional reform accepted, Conservative party leaders therefore successfully proposed to combine D'Hondt method with the *voto preferente* (open lists)(Vélez, Ossa, and Montes 2006, 24).[378] This would allow party candidates to maintain their position on a single candidate list based on their electoral standing and would limit contestation over the internal configuration of the party list to a minimum.[379] The final bill allowed parties to choose between open and closed lists as they saw fit, rather than prescribing closed lists only as had been proposed initially.

The debate on the adoption of closed or open lists was closely connected to the debate on the regulation of candidate selection methods. The adoption of closed lists with obligatory party primaries formed an alternative solution to ensure that candidates would continue to rely on their personal electoral standing – rather than the political leadership's will – to get elected. Once legislators took the decision to also allow for open lists, the issue of intra-party democracy was dropped from the negotiations.[380] In essence, the introduction of single candidate lists thus allowed for the renewed relevance of party labels in elections, while leaving unchanged the individual and personalized nature of election campaigns and the candidate selection

[378] The executive opposed the open lists because it would maintain the traditional *politiquería* (politicking) practices that Uribe opposed so vehemently. See: El Tiempo (3 May 2003) 'Londoño, a limar asperezas.' Instead, Uribe favored the introduction of closed lists that would allow for more centralized control of candidates. Nevertheless, his own forces in Congress were divided on the matter as many were concerned about the effects a closed list would have on their own electoral standing (Gutiérrez Sanín 2006, 112; Shugart, Moreno, and Fajardo 2006, 27).

[379] Interviews Barrios, 2013; Giraldo, 2013; Juan Fernando Londoño, 2013; Arrieta, 2013; Lizarazo, 2013. The deinstitutionalizing effect of open lists formed exactly the reason why the adoption of closed lists formed part of reform proposals advanced by civil society organizations and political consultants as a means to improve the functioning of political parties and their links with society (Acuña 2009, 108–16; Roll 2001, 267–71). Also see interview Juan Fernando Londoño, 2013.

[380] Interview Navarro Wolff, 2013. A new norm was adopted that merely stated that parties must organize democratically and that party statutes must prescribe the procedures for candidate selection (§107). This left the selection of the specific mechanisms to comply with this norm up to the parties themselves (also see Botero and Rodríguez Raga 2009, 14).

process.[381] One respondent – a longtime senator and party president – corroborates this in his statement that the reform "was an improvement although people still vote for the candidate as a person and not for parties" and that "in essence, parties are not really picky at the moment that they select their candidates. They look for the largest candidates, those that have votes, that are known … They privilege the quantitative. How many votes [the candidates] got."[382]

The explicit prohibition of double party membership (§107) formed a second measure to combat party fluidity.[383] Colombian party membership is generally limited to the parties' elected representatives (Londoño 2010, 9). The new prohibition therefore ensured that dissident legislators would have to rejoin the ranks of one of the major parties.[384] If they failed to do so, the higher requirements for party formation and maintenance would prevent them from continuing to run in elections on the label of loosely affiliated minor political groups.[385] To ensure the adoption of this law, a transitory article (§108) allowed legislators to switch parties, or to form a new party on the basis of past electoral results, once more for the upcoming elections.

Lastly, the reform created the *régimen de bancadas* (system of legislative benches). This new norm held that "[t]he members of governing bodies elected on the label of the same political party or movement will act as one bench in line with the terms that the law decides upon and in conformity with the decisions democratically adopted by these [benches]" (§108). This measure sought to do away with the individual nature of the negotiations between legislators and the executive.[386] Once again, however, adoption of this rule was only possible by adding that party statutes would regulate the *asuntos de conciencia* (topics of conscience) that were exempted from this

[381] Interview Barrios, 2013; Lizarazo, 2013. The continued lack of party cohesiveness is visible in the implementation of candidate selection via the option of closed party lists. Of the ten parties that obtained representation in the Senate, only one presented its candidates on a closed list. For the election of the Chamber of Representatives, only two of the 20 parties that obtained representation did so (Botero and Rodríguez Raga 2009, 21).

[382] *… signifique un avance pero aún se sigue votando por persona y no por partidos. … en esencia, los partidos son poco selectivos al momento de colocar los candidatos. Se buscan más candidatos números, que tengan votos, que se conozca. … Se privilegia el cuantitativo. Cuántos votos tengo.* Interview Arrieta, 2013.

[383] Cámara de Representantes (31 July 2003) 'Actas de Plenaria,' Gaceta del Congreso 378/2003.

[384] For the Liberal and Conservative parties, these measures served to fortify their party structures. In addition, the measure allowed the left-wing Democratic Pole to overcome the divisive effects that the electoral system had had on the formation of a credible left-wing party. See interviews with Liberal party leader Rodrigo Rivera, Conservative party leader Holguín Sardi, and left-wing party leader Antonio Navarro Wolff in Vélez, Ossa, and Montes (2006, 23–24).

[385] See El Tiempo (26 June 2003) 'Reforma, cuchilla a los partidos' for an overview of the political parties that would likely disappear due to the 2003 reform, as well as these parties' ties to the existing parties.

[386] Interview Navas, 2013.

new rule (Vélez 2007). In this manner, the law introduced legislative discipline as a principle but refrained from implementing it as a fixed standard for all legislators equally. In practice, this allowed individual legislators to steer clear from the party line as they saw fit.

Next to the way in which parties selected and presented their candidates, political finance had also played an important role in the deinstitutionalization of established party organizations. The financial ties between individual legislators and their local constituencies reinforced the legislators' independence from the central party organization (Londoño 2010). At the same time, however, these clientelistic ties had characterized Colombian politics for several decades. It is therefore unsurprising that legislators did not discuss a substantive political finance reform during their negotiations. The only change visible here is that the reform increased public funding available to parties by including public funding for primaries as a category of public funding (§110).

Colombian political consultants, think tanks, and civil society organizations did try to use this reform opportunity to put the broader regulation of private funding on the political table as well. Their influence is visible most clearly in the adoption of changes in the norms regulating electoral finance, such as spending limits, media access, and the presentation of finance reports (§§109,111-112). No real reason existed, however, for political parties to ensure the effective implementation of these norms as their adoption mainly responded to external demands for change. The follow-up that was given to this law confirms that such a minor *systemic economy* strategy was at work here as well.

In a transitory paragraph, legislators stipulated that Congress was to expedite a law regulating these new political finance norms, or – in case it would fail to do so in the three months after the adoption of the reform – that the executive was to regulate the matter by decree before the closure of candidate inscription for these elections (Hernández Becerra 2006, 339). Speediness of subsequent regulation was necessary if the new norms were to be implemented in the 2003 subnational elections. Congress failed, however, to adopt any legislation on the matter. In response, the executive expedited Decree 2207 to regulate the financing of political campaigns, which established that political parties would be held responsible for their candidates' rendering of accounts and violation of spending limits (§§11-12).

The decree created a political struggle between the executive and the directives of the political parties. This struggle underscored the difficulty in constraining individual legislators' behavior – albeit this time round from the central party leaderships' perspective. The party leaders argued that the responsibility to render financial accounts

and to respect spending limits should be the individual candidates purview only. As has been established in detail by now, the party leaders held little to no control over these candidates and the legal responsibility implicated in this decree posed grave dangers to them. In response, Congress adopted a provision in a national budget law (Law 844) that exempted the party and its treasurers from this responsibility (Restrepo H. 2011, 189).[387] These legal battles underline the political reality in which national party leaders feared being held accountable for their candidates' behavior.[388] Future developments would prove these fears not to have been unfounded.

To summarize, the 2003 reform underlines the dynamics of the *organizational economy* reform strategy – albeit in a hybrid manner. The established parties' electoral defeat due to their organizational deinstitutionalization set the agenda for reform. Established party leaders were successful at negotiating a reform that would increase the relevance of the formal party labels, such as by the need for parties to present single lists, the prohibition of double party membership, and the system of legislative benches. They were unable to fundamentally alter the intra-party resource balance, however, due to the lack of party discipline. Legislators had no incentives to voluntarily adopt chains that would constrain their own functioning and behavior and that would potentially endanger their future legislative careers.

As a result, the relevance of formal party labels in elections increased but this did not alter the personalized nature of the election process. The reform similarly refrained from centralizing the candidate selection process or from increasing legislative discipline unequivocally. As a consequence, Colombian political parties continued to organize as 'cadre parties' (Duverger 1964, 64) that orbited around local elites that ensured their own election to Congress with little to no structural assistance from the central party (Gutiérrez Sanín 2007). The reform came too late to change the tide of party deinstitutionalization in all but formality.

[387] The CNE resolved the legal impasse by maintaining the executive decree. In 2004, the Constitutional Court ruled the legislative reform unconstitutional because budgetary laws were not allowed to contain statutory norms (Sentence C-515-04, 27 May 2004). In 2005, it also ruled the executive decree unconstitutional because it had not been presented to the Court for the revision of its constitutionality (Sentence C-523-05, 19 May 2005). The financial investigations that had been undertaken on the basis of this decree were subsequently archived (Restrepo H. 2011, 189).

[388] The distribution of media access was another element of the constitutional reform that necessitated the development of regulatory instruments for its implementation. Given that this was a mere administrative matter, the CNE developed this regulation in a timely manner (De la Calle 2008: 433).

Table 7-3: Development of Colombian party law (1994-2003)

Topic	1991/1994	2003
Registration requirements	*50.000 signatures *50.000 votes *Congressional representation	2 % vote threshold (Senate - +/- 200,000 votes) or 50% of quotient (Chamber = Congressional representation)
Candidate selection and presentation	CNE facilitates primaries	*Parties present single lists *Parties must organize democratically
Party membership and discipline	Law may not interfere in internal organization	*Prohibition double party membership – with exception 2006 elections *System of legislative benches – with exception of sensitive issues
Electoral funding	Proportional reimbursement, 5% threshold	Adds funding for primaries
Organizational funding	10 % equal; 50% proportional to seats; 10% (sic); 30% proportional to votes	No change
Private funding	CNE sets private donation limits + prohibition anonymous donations	Law establishes spending limits
Media access	Electoral access and permanent access	State provides a max. amount of media access to presidential candidates
Monitoring and oversight	CNE receives annual and electoral finance reports	

7.4 2005 reform: a response to the changing terms of electoral competition

7.4.a Changes in the resource environment

A next round of party law reform quickly followed the 2003 reform, albeit in a somewhat unrelated manner. In 2004, President Uribe pushed for the adoption of a constitutional reform that would allow direct presidential reelection for one subsequent period (Acto Legislativo 2). In practice, this reform was expected to enable the popular Uribe to capitalize on his public approval to get reelected. This proposal was therefore a highly contentious one that pitted opposition forces against those sponsoring Uribe's bid for immediate reelection.

The bill faced strong opposition in Congress from both the opposition Liberal Party and the left-wing *Polo Democrático Alternativo* (Alternative Democratic Pole, PDA; the PD's successor), as well as from sectors of the Conservative Party and other parties belonging to the governing coalition (Vargas Silva 2009, 294; Vélez 2007). In order to see the project safely through Congress, the government had to negotiate on a permanent and personal basis and use the patronage resources at its disposal to safeguard a majority coalition.[389] The opposition's inability to prevent adoption of immediate reelection came to light most clearly during a crucial debate in the Constitutional Commission of the Chamber of Representatives. The bill only managed to pass because of a turn of mind of two representatives, who had spoken out against the bill before. It later surfaced that the government had bought their votes (Posada-Carbó 2005, 2–3; Ungar Bleier and Cardona 2010, 406–11).[390]

Given the opposition's inability to block adoption of the constitutional reform altogether, the following negotiation process over the adoption of the presidential reelection reform turned into a complex bargain (Hernández Becerra 2006: 338). Opposition forces fought tooth and nail to obtain the constitutional codification of guaranteed resource equality in presidential election campaigns. This was a necessary means to ensure at least some semblance of equal competition when going up against an incumbent president.[391] As a result, the constitutional reform stipulated in a transitory paragraph that either the executive or the legislative body would present a bill to secure electoral equality between the presidential candidates in the form of

[389] El Tiempo (3 June 2004) 'Reelección, un bumerán.'

[390] These representatives were subsequently convicted by the Supreme Court in what became known as the Yidispolítica scandal – named after Representative Yidis Medina who sold the government her vote in favor of the bill. Also see El Tiempo (6 June 2009) 'Teodolindo e Iván Díaz, condenados por Yidispolítica.'

[391] Interviews Navas, 2013; Navarro Wolff, 2013.

a statutory law.[392] This law would have to regulate access to the media and the prevalence of public funding in presidential campaigns.[393] The last transitory paragraph of this article (§4) stipulated that in case Congress refused to expedite this law or if the Constitutional Court declared said law unconstitutional, the Council of State would regulate the matter temporarily.[394] These contextual developments suggest that the reform process that resulted in the subsequent adoption of the 2005 'Presidential Elections Law' (Law 996) followed the *electoral economy* reform strategy. This means that the changing terms of electoral competition drove the adoption of this bill and that legislators used this opportunity to redress the inter-party balance of financial resources in an effective manner.

7.4.b Negotiation process

An overview of the negotiation process shows that the *electoral economy* reform strategy indeed drove adoption of the 'Presidential Elections Law'. On 2 March 2005, both a group of senators belonging to the governing coalition and a group of Liberal opposition senators introduced proposals to address the changing terms of electoral competition that followed from the adoption of immediate presidential reelection. The Liberal senators noted in their exposition of motives, for example, that:

> In light of the adoption of the Legislative Act [2, 2004], we undertake the task of designing legal mechanisms destined to prevent the possible abuse that may present itself [in elections] and to thereby reestablish, even if only in a partial manner, the equilibrium that has clearly been lost with the establishment of immediate reelection.[395]

To reestablish this equilibrium, both proposals addressed similar themes such as electoral funding, media access, limits to presidential functions at election time, and the regulation of the role of public servants in presidential election campaigns. Given the

[392] Senado de la República (9 Dec. 2004) 'Acta de conciliación del proyecto de Acto Legislativo número 267 de 2004 Cámara, 12 de 2004 Senado,' Gaceta 799/2004.

[393] Legislators did not define the 'prevalence of public funding in presidential campaigns' in more detail. In its review of the constitutionality of the law, the Constitutional Court determined that prevalence meant more than 50 percent of electoral funding (Sentence C-1153-05, 11 Nov. 2005).

[394] In its ruling on a demand of unconstitutionality, the Constitutional Court declared this paragraph unconstitutional as it assigned legislative powers to a judicial institution (Sentence C-1040-05, 19 Oct. 2005).

[395] *Una vez aproabado el acto legislativo, emprendemos la tarea de diseñar mecanismos jurídicos destinados a prevenri los posibles abusos que puedan presentarse y restablecer, así sea parcialmente, el equilibrio que definitivamente se ha perdido con el establecimiento de la reelección inmediata.* Senado de la República (2 March 2005) 'Exposición de motivos proyecto de Ley Estatutaria número 215,' Gaceta del Congreso 71/05.

overlap between the two bills, the Senate decided to combine both proposals into one reform bill.[396]

The subsequent reform negotiations nevertheless pitted the government against the Liberal party. In part, this was due to the fact that the Liberals proposed tighter constraints on presidential electoral finance than the consolidated bill contained. The Liberals advocated, for example, reducing private funding to 10 percent (rather than 25 percent) of total electoral funding. In addition, they proposed the immediate loss of office as a sanction for presidential candidates that superseded their spending limits, as well as a complete prohibition on campaign contributions from state contractors.[397] According to Juan Fernando Londoño, former coordinator of the UNDP Project of Democratic Strengthening and vice minister of Internal Affairs (2011-201), Liberal opposition to the 'Presidential Elections Law' also served to create legal grounds for a case against the constitutionality of immediate presidential reelection.[398] The Liberals would be able to take the 2004 constitutional reform to court if the government failed to observe transitory paragraph 4 that required it to adopt a law to regulate access to the media and the prevalence of public funding in presidential campaigns.

In light of Liberal opposition to the reform, the government sought a partnership with the left-wing PDA to pass the bill (see Table 7-4 for an overview).[399] The failure to provide financial advances was a deal-breaker for the PDA, which had experienced the damaging effect of the lack of financial resources in previous campaigns.[400] The law therefore introduced a pre-electoral financial advance distributed equally among the candidates without much debate (§8).[401] It also lowered the threshold for the post-electoral proportional reimbursement of votes obtained from five to four per-

[396] Senado de la República (2 May 2005) 'Ponencia para primer debate a los proyectos de Ley Estatutaria número 216 de 2005,' Gaceta del Congreso 226/05.
[397] Senado de la República (5 May 2005) 'Ponencia para primer debate a los proyectos de Ley Estatutaria número 216,' Gaceta del Congreso 231/05.
[398] Interview Juan Fernando Londoño, 2013. This assertion is corroborated by the fact that the entire Liberal caucus left the Chamber of Representative during the final vote on the bill, while requesting that formal quorum rules would be respected in their absence. This can be read as a final attempt to obstruct the bill's adoption. See statements Representatives Joaquín José Vives Pérez and Gustavo Lanzziano Molano (Liberal party). Cámara de Representantes (8 Aug. 2005) 'Actas de plenaria,' Gaceta del Congreso 503/2005.
[399] The Chamber of Representatives voted on each article separately and nominally. Although this inhibits a general vote tabulation, the nominal votes on each article show that the representatives of all the governing coalition parties and PDA, plus several Liberal dissenters, voted in favor of the reform. Cámara de Representantes (8 Aug. 2005) 'Actas de plenaria,' Gaceta del Congreso 503/2005.
[400] Interview Navaro Wolff, 2013.
[401] Senado de la República (15 July 2005) 'Actas de plenaria,' Gaceta del Congreso 428/2005.

cent of the vote (§11). In addition, the law stipulated that the state would finance electoral advertising as part of the pre-electoral loan and that it would guarantee equal access to private and state media (§§11, 22-23).[402]

The law also created total and individual donation limits (§14) and set spending limits to the first and second round of presidential elections (§§12-13). One other main point of contention during the negotiation process was the extent to which electoral funding should still consist of private funding – with the government bill starting at 35 percent private funding.[403] In the end, legislators reached a compromise of 20 percent, as a means to live up to the constitutional provision that electoral finance needed to consist preponderantly of public funding (§14).[404] Although the law allowed for corporate donations, the Constitutional Court ruled this unconstitutional as the judges failed to recognize the political rights of corporations.[405] This meant that corporate donations were banned from presidential election campaigns completely.

The negotiation process shows that the PDA held substantial leverage over the executive, who needed the adoption of this bill to secure his ability to run in elections again. For the PDA, the reform presented an opportunity to restrict the incumbent's access to and use of financial and state resources and to thereby improve its own showing in the presidential elections.[406] In line with the *electoral economy* perspective, this focus on redressing the inter-party resource balance ensured the implementation of the new constitutional norms. To provide for more efficient oversight over campaign finance, for example, the law required each candidate to open a single campaign bank account. Legislators also stipulated that the presidential candidate, campaign manager, treasurer and accountant were all responsible for the correct rendering of accounts and compliance with finance regulation. The reform did not change the capacity of the specialized branch within the CNE to oversee political finance (§§15-21). The CNE did, however, develop the necessary regulation to implement the financial control of political campaigns as well as the strict monitoring of equal media access (Restrepo H. 2011, 194).

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[402] The introduction of financial advances with relatively low thresholds created some debate on how to guarantee that only serious presidential candidates would participate in elections and would receive access to public funding. See Senado de la República (15 July 2005) 'Actas de plenaria,' Gaceta del Congreso 428/2005.

[403] Senado de la República (2 March 2005) 'Exposición de motivos proyecto de Ley Estatutaria número 216,' Gaceta del Congreso 71/05.

[404] Senado de la República (1 June 2005) 'Ponencias,' Gaceta del Congreso 312/2005.

[405] Sentence C-1153-05, 11 Nov. 2005.

[406] Interviews Navarro Wolff, 2013; Navas, 2013.

According to several political experts, these changes resulted in the opening up of the presidential election process to new political forces and leveled the electoral playing field somewhat. Nevertheless, the possibility for presidential reelection also introduced a major disadvantage for all other presidential candidates vis-à-vis the executive.[407] These centrifugal tensions underscore the problem that immediate presidential reelection posed for the opposition parties and explains why they advocated the adoption of new party regulations that constrained their own behavior as well. In line with the *electoral economy* reform strategy, the measures adopted in the 2005 reform served to ensure as much resource equality as possible between presidential contenders.

Table 7-4: Development of Colombian party law (1994-2005)

Topic	1991/1994	2003	2005
Electoral funding	Proportional reimbursement, 5% threshold	Adds funding for primaries	Adds equal financial advance (4% threshold) and proportional reimbursement with lower threshold (4%) for presidential elections
Private funding	CNE sets private donation limits + prohibition anonymous donations	Law establishes spending limits	Private donations max. 20% of funding. Individual donation limit of 2% of funding.[408] Spending limits for presidential campaigns
Media access	Electoral access and permanent access	State provides a max. amount of media access to presidential candidates	State provides equal access to state and private media
Monitoring and oversight	Parties present annual and electoral finance reports to CNE		Single campaign fund; present reports to CNE

[407] Interviews Juan Fernando Londoño, 2013; Navarro, 2013. Also see De la Calle (2008: 434).
[408] A Constitutional Court ruling prohibits corporate donations (Sentence C-1153-05, 11 Nov. 2005).

7.5 2009/11 reform: a response to the *parapolítica scandal*

7.5.a Changes in the resource environment

Throughout the 2002-2006 Legislature, the number of parties in the Chamber of Representatives had dropped from 40 to 18 due to the new incentives to run under a formal label (Giraldo and López 2006, 128). The 2003 reform's effects on the party system also manifested themselves during the next elections. The introduction of the new threshold for representation – combined with the use of D'Hondt method for seat repartition, the rule that parties could only present one list, and the prohibition of double party membership – forced parties to join their candidates' electoral forces to obtain sufficient votes for the maintenance of party registration.[409] The number of lists/parties that participated in national elections and that obtained legislative representation decreased substantially from 63 to 20 and from 42 to 10 respectively in the Senate and from 63 to 39 and from 40 to 22 respectively in the Chamber (see Table 7-1 above).

At the same time, the party system reconfigured from one dominated by the two traditional parties to one contested by new left-wing and Uribist forces. Indeed, and as noted above, the 2003 constitutional reform allowed for one more instance of party switching. This accommodated the reconfiguration of politicians among the different political parties, mainly benefitting the *Partido de la U* (U's Party)[410] – the party sponsoring the re-election of the popular president (Pachón and Shugart 2010, 652; Rodríguez Pico 2010, 68).[411] The Liberals were relegated to third place in the 2006 elections, whereas the Conservatives decided to back Uribe's bid rather than sponsoring their own candidate. With 62 percent of the vote, Uribe obtained a landslide presidential victory (Posada-Carbó 2006, 80). It is safe to say that in the 2006 elections, Uribe and his Partido de la U thus consolidated their position as a new power bloc in Colombian political life.

Over the course of the 2000's, the Colombian party system, and political party organization more specifically, also transformed due to forces operating at the local political level. In the absence of an effective state presence throughout the Colombian territory, guerrilla movements, paramilitary force and drug-traffickers had his-

[409] This was particularly the case in the Senate with its single circumscription. The number of parties that present candidates for the Chamber of Representatives is mostly dependent on the size of each territorial circumscription (meaning that the more seats are eligible within a circumscription, the more parties present themselves in elections). Nevertheless, the new electoral rules led to a decrease in the effective number of parties in the Chamber of Representatives as well (see Botero and Rodríguez Raga 2009, 21).

[410] Formally known as the *Partido Social de Unidad Nacional* (Social Party of National Unity, PSUN).

[411] The new rules allowed the Conservative Party to regain some former splinters.

torically used local and regional governments to sponsor their own causes. In the 1980's and 1990's, such efforts mainly entailed armed groups and drug-traffickers participating in national elections directly or more indirectly through the financing of election campaigns – at times giving rise to corruption scandals (Roll and Cruz 2010, 42–43).

After the opening up of local political offices through decentralization reforms sponsored in the 1980's, however, these actors' efforts shifted to the capture of the decentralized municipalities and regional governments to obtain access to the resources that had become available here (Ávila Martínez 2010; Eaton 2006; Roll and Ballén 2010, 68). The fragmentation of the national party system that started in the 1990's reversed the direction of this relationship. Politicians turned to illicit forces in an increasing manner as an important means to access the local vote share through financial support (needed for vote-buying), coercion, or intimidation of other candidates.

Many of the new parties that contributed to party system fragmentation from the early 2000's on were based in regions with a strong paramilitary presence (Ávila Martínez 2010; Eaton 2006). A judicial investigation into the matter revealed that 81 out of 267 legislators elected in 2006 could be linked to paramilitary and other illicit forces that had supported these legislators' campaigns (Ávila Martínez 2010; Restrepo H. 2011, 212–13). Although the political parties replaced the representatives implicated in the scandal with the next person on their respective candidate lists, in many cases these politicians were subsequently linked to the financial scandal as well (Puyana 2012, 23). The continuous entrance of corrupt politicians into Congress – as well as the magnitude of the scandal – sparked public outrage and media pressure for political reform.[412]

Two main socio-political changes hence presented themselves in the run-up to the 2009 constitutional reform. The 2003 reforms had allowed for the renewed importance of party labels. Uribe's strong hold over the political system had nevertheless ensured that his Partido de la U replaced the dominant Liberal party. His parties' legislative strength was based as much on spoils-based party switching as it was on a strong electoral showing (Pachón and Shugart 2010, 652; Rodríguez Pico 2010, 68). This suggests the presence of a perpetual *electoral economy* reform dynamic to redress the inter-party resource balance, such as by adopting legal provisions that increased the ruling party's control over human resources at the detriment of minor parties. At the same time, the *parapolítica* (parapolitics) scandal also created conditions for a *systemic economy* dynamic, aimed at containing the imminent legitimacy crisis.

[412] Interviews Arrieta, 2013; Barrios, 2013; Juan Fernando Londoño, 2013. Also see El Espectador (26 Nov. 2007) 'Revocatoria, la mejor opción.'

7.5.b Negotiation process

Negotiations over the 2009 reform started in 2007 with the president's introduction of a constitutional reform bill that mainly focused on the introduction of the *silla vacía* (empty chair): a sanction that prevented parties from replacing any representative that had lost his or her seat due to ties with illegal armed groups (Puyana 2012, 23). The measure provided an incentive for more deliberate candidate selection as it entailed the loss of representative weight vis-à-vis other parties. The empty chair sanction quickly became part of the social imaginary and was actively sponsored by civil society organizations that followed the negotiation process with interest.[413]

Despite public pressure in favor of adopting this norm, however, legislators could not reach an agreement as to whether this measure should take effect immediately. Many of the legislators implicated in the scandal belonged to the governing coalition. Prompt introduction of the empty chair would thus entail the dismantling of the government's legislative majority (Londoño 2010, 18; Puyana 2012, 24; Ungar Bleier and Cardona 2010, 417). As a result of this threat, the executive took its risks and withdrew its support for the reform in the penultimate debate on the matter (Prieto Botero 2010: 32, Vargas Silva 2009: 303). The legitimacy crisis was not large enough to make Uribe relinquish his governing majority voluntarily.

Instead, the executive presented a new constitutional reform bill in August 2008, which Congress subsequently adopted in July 2009 (Acto Legislativo 1). As opposed to the previous proposal, the new bill only established the empty chair as a general norm that would need to be developed further through a statutory law. Towards this end, a transitory paragraph established a swift legislative trajectory for the adoption of this statutory law needed (§107). Due to its failure to establish effective rules, the main point of critique of civil society groups was nevertheless that the constitutional reform did not target the main problem that the government claimed to address.[414]

The transitory paragraph was unable to address this critique, as subsequent work on this statutory law in the constitutional committees of both the Chamber and Senate did not proceed because of a lack of quorum. Politicians had already started on their campaign trails, which did not motivate them to adopt effective rules to combat

[413] Interviews Barrios, 2013; Jorge Londoño, 2013; Arrieta, 2013. The importance of the *silla vacía* as an image of responsible politics can also be gauged from the popular website http://www.lasillavacía.com, which dedicates itself to describing the actual configuration of political power in Colombia.
[414] Interviews Martínez, 2013; Rodríguez, 2013; Cepeda, 2013. Also see Prieto (2010: 33). One expert concludes that the reform was a mere attempt to placate (international) public opinion (Santana Rodríguez 2010, 44).

the influence of illicit forces in elections and the national legislature by extension.[415] This is not to say that the 2009 reform consisted of ineffective norms in its entirety. The constitutional reform also introduced two measures with a strong effect on the political system. The first measure increased the threshold for party formation and maintenance from two to three per cent (§108).[416] Presented as a way to fortify the existing political parties, this measure put the continued existence of several congressional parties in danger.[417]

Secondly, the reform allowed for yet another instance of party switching through a transitory paragraph (§107). As had become clear in the run-up to the 2006 elections, this measure allowed the government to strengthen its coalition with politicians from other political parties.[418] According to members of the reform committee, these two measures formed the only contentious measures in the reform's debate – as opposed to the adoption of the more general empty chair norm.[419] The fact that these two measures were designed to be implementated in the next elections, suggests that the *electoral economy* reform strategy dominated the 2009 reform effort. The legitimacy crisis provided an opportunity for Uribe to increase his legislative coalition at the detriment of smaller parties that were unlikely to survive the higher vote threshold.

After the elections, Uribe's successor President Juan Manuel Santos put implementation of the 2009 constitutional reform back on the political agenda. This was one of Santos's first acts of governance and may well have formed a way for him to distance himself from his predecessor.[420] The president started off his term with a broad governing coalition called the *Mesa de Unidad Nacional* (National Unity Table). The coalition consisted of all major parties except the left-wing PDA and thereby allowed politicians to reach a broad consensus on bills before they reached Congress.[421] The

[415] El Espectador (10 Nov. 2009) 'Ley estatutaria de la reforma política sigue estancada,' El Espectador (02 Dec. 2009) 'Congreso se desentiende de la reforma política,' El Espectador (02 Dec. 2009) 'Reforma política, herida de muerte.' The debates that did take place focused more on campaign finance regulation and on increasing the amount of public funding available to parties than on the regulation of sanctions for parties that promoted the candidacies of politicians linked to illicit forces.

[416] Legislators added that parties would lose their registration if they failed to organize a party congress where members could influence "important party decisions" every two years.

[417] Interviews Romero, 2013; Baena, 2013; Rodríguez, 2013.

[418] Interview Acuña, 2013. Gutiérrez and Acuña (2011, 5) show that this renewed instance of party switching mainly targeted the *Partido Cambio Radical* (Radical Change Party, PCR), which lost half of its senators and a quarter of its representatives to parties belonging to the governing coalition.

[419] Interviews Andrade, 2013; Arrieta, 2013.

[420] It is a well-known fact that the relationship between Uribe and Santos deteriorated quickly and that they are now archenemies.

[421] Interviews. Arrieta, 2013; Guevara, 2013; Jorge Eduardo Londoño, 2013. Also see El Tiempo (2 Sep. 2010) 'Evalúan incluir la eliminación del voto preferente en la reforma política.'

coalition adopted a new statutory law regulating the functioning and organization of political parties in December 2010. The Constitutional Court subsequently approved the law in its review of its constitutionality in June 2011, upon which the president signed the project into law on 14 July 2011 (Law 1475). Compared to the adoption of the constitutional reform under the previous Uribe administration, the new law was hence adopted without major difficulties.[422]

The statutory law mainly focused on two topics that had been put on the agenda by external actors, such as political consultants and NGOs.[423] Firstly, the law regulated the empty chair so that this norm could be applied in practice (§10). Civil society organizations nevertheless lamented the introduction of several legal loopholes in the application of the empty chair.[424] Two legislators that belong to the governing coalition state that the bill was indeed rather easy to adopt because it did not contain far-reaching measures.[425] In addition, the law contained measures that targeted the funding of election campaigns by introducing pre-electoral financial advances for all candidates (not just presidential ones) and spending limits (§§21-22).[426] The NGOs that participated in the reform processes had proposed these measures as a means to promote clean election campaigns by lowering the candidates' dependence on private funding.[427] Towards this end, the new law also created limits on private media use and stipulated that the CNE would divide free media access equally among inscribed lists and candidates (§36).

The regulation of individual donation limits in election campaigns formed the main point of contention throughout the debates. The bill of the *Mesa de Unidad Nacional* established the limit for individual donations at four percent of total funding. Mem-

[422] This is confirmed by respondents that participated in these negotiations, who note that the *Mesa de Unidad Nacional* – rather than Congress – has become the arena where political agreements were forged; thereby turning the negotiation process in Congress in a mere formality. Interviews, Arrieta, 2013; Jorge Eduardo Londoño, 2013. Also see Acta 18/2010 of the Constitutional Committee of the Chamber of Representatives where Minister of Internal Affairs and Justice Germán Vargas Lleras "reiterates in the First Committee of the Chamber that a broad agreement was reached [on the reform] at the National Unity Table" (*reiteremos en la Comisión Primera de la Cámara, el gran acuerdo en el que avanzamos a nivel de la Mesa de Concertación*).

[423] Interview Martínez, 2013; Barrios, 2013; Lizarazo, 2013. Also see Senado de la República (30 Nov. 2010) 'Ponencias,' Gaceta del Congreso 984/2010.

[424] Interviews Barrios, 2013; Rodríguez, 2013. One loophole consists of the fact that the empty chair is only applied to parties when politicians are convicted during their time in office. A process can take five to six years, which undermines the sanction's effectiveness.

[425] Interview Arrieta, 2013; Molina, 2013

[426] The new law also stipulated that party statutes must prescribe democratic procedures for candidate selection and that parties needed to repay the state's expenses if they campaigned for internal elections but ended up not organizing them (thus using them as an early general election campaign tool)(§22).

[427] Interview Barrios, 2013; Martínez, 2013.

bers of the Chamber of Representatives argued that this did not match the reality of electoral finance in which many candidates sponsored their campaigns either with their own money or with money from their family members.[428] The Chamber subsequently eliminated all donation limits.[429] A stir among the civil society organizations that followed and participated in the negotiation process was the result,[430] leading the Senate to re-include a 10 percent donation limit. Family members and candidates' individual donations were exempted, however, from this donation limit (§§23, 27).[431] An attempted 2011 counter-reform that sought to eliminate these donation limits underlined legislators' unwillingness to incorporate substantial limits to the private funding of election campaigns once more.[432]

The 2011 reform was hence driven by a *systemic economy* reform strategy. Civil society organizations managed to push certain themes on the political agenda – aided by the fact that the government likely wanted to distinguish itself from its predecessor. Nevertheless, legislators had no real incentives to push for the constriction of their own behavior. Even the introduction of financial advances for election campaigns proved a futile attempt. In the 2011 subnational elections, parties failed to make use of these advances on their candidates' behalf for one important reason: their central leadership structures had lost touch with the campaigns on the ground to such an extent that they were incapable of deciding how to distribute public funding among their candidates (Puyana 2012, 39). This did not really matter in practice, however, because legislators had ensured that access to private funding would not be limited through donation limits.

[428] See, for example, statement Representative Carlos Arturo Correa, Cámara de Representantes (13 Oct. 2010) 'Ponencias,' Gaceta del Congreso 771/2010.
[429] Cámara de Representantes (10 Nov. 2010) 'Textos definitivos,' Gaceta del Congreso 882/2010.
[430] Senado de la República (30 Nov. 2010) 'Ponencias,' Gaceta del Congreso 984/2010.
[431] Cámara de Representantes (14 Dec. 2010) 'Informes de conciliación,' Gaceta del Congreso 1095/2010.
[432] Interview Lizarazo, 2013. Also see Puyana (2012) and El Espectador (30 June 2011) 'Se hundió contra-reforma política planteada por el Gobierno.'

Table 7-5: Development of Colombian party law (2009-2011)

Topic	2009	2011
Registration requirements	3 % vote threshold	
Candidate selection	Outcome of internal elections is final	Parties must be internally democratic; party statutes prescribe methods
Party membership	Prohibition double party membership – with exception 2009 elections	
Electoral funding		Adds proportional financial advances based on previous results, no threshold, for all campaigns
Organizational funding		10% equal, 15% equal to seats, 40% proportional to seats[433]
Private funding	Prohibition foreign donations and donations from illicit forces.	CNE establishes spending limits. Individual donation limit 10% of funding, does not apply to family
Media access		CNE establishes limits on media use; provides equal access
Monitoring and oversight		Adds internal party finance monitoring

7.6 Conclusion: party law development and reform in Colombia

In line with the general expectations presented in Chapter 3, the Colombian case partially shows how organizational and electoral pressures for reform resulted in parties adopting laws with teeth. This occurred as early as 1957, when the threat of

[433] 15 percent proportional to seats in municipalities, 10 percent proportional to seats in Departmental Assemblies, 5 percent proportional to the number of elected women, 5 percent proportional to the number of elected youth

continued military rule enabled the traditional parties to overcome mutual (violent) differences and to institutionalize competition. In a similar vein, the 2003 reform instituted effective changes that increased party formation and exit costs to target the threat that party organizational change posed for the continued electoral and legislative effectiveness of the traditional parties. The 2005 reform effectively redressed the inter-party financial balance, whereas the 2009 reform allowed Uribe to solidify his legislative standing through the effective regulation of the organizational infrastructure (see Table 7-6 below for a summary overview). These findings support propositions 1 and 2, as advanced in Chapter 3. According to these propositions, party law reforms that are adopted in response to organizational or electoral threats will contain *effectively designed* legal provisions that redress the intra- or inter-resource distribution balance.

The 2003 reform also shows, however, that established party leaders had waited too long to sponsor party law reforms that addressed changes in their access to organizational resources. Some of the most important measures needed to increase their organizational control, such as a more centralized candidate selection process and measures advancing legislative discipline, could only be adopted in an ineffective manner. This was the case because the established party leaders' relied on the cooperation of their legislative representatives for the adoption of such measures. The latter had become so used to their newfound freedom that they were only willing to subject to a party hierarchy to the extent that this advanced – rather than restricted – their own ability to run in elections and legislate effectively. Chapter 9 discussed the theoretical ramifications of this finding in greater detail.

Lastly, the 1991 reform illustrates the extent of established political elites' unresponsiveness to external demands for change. This constitutional reform, brought about by an extraordinary process in with society pressed for the election of a Constituent Assembly, opened up the political system by some means while simultaneously increasing party formation costs by other means. Despite the increased power of external forces in the Constituent Assembly, these forces were unable to do away completely with the established party structures that they blamed for the political systems' ills. In a more recent instance of reform (2009 and 2011), legislative inertia in the face of the *parapolítica* scandal presents the clearest example of how difficult it is to externally induce parties to adopt changes that affect them at the core of their survival (i.e. their financial structures). These findings support this study's proposition 3b, which holds that when adopted in response to a legitimacy crisis that only alters political parties' access to ideational resources, party law reforms will contain *symbolic* legal provisions that increase political parties' access to ideational capital.

Table 7-6: Summary of Colombian party law reform (2003-2011)

	2003	**2005**	**2009**	**2009/2011**
Strategy	Organizational economy	Electoral economy	Electoral economy	Systemic economy
Resource at issue	Organizational infrastructure	Financial resources	Organizational infrastructure	Ideational resources
Threat	Internal Changes in party cohesion	Internal Incumbent's electoral advantage	Internal Legislative standing depends on party switching	External Rejection parapolítica
Legal provisions	*Increase party formation and exit costs *Norms on candidate selection + legislative discipline *Norms on political finance	*Increase equal access to electoral funding *Restrictions private funding *Increase equal electoral access to media	*Increase threshold party formation *Allow for one instance of party switching	2009 *Norms on losing seat for illicit influence 2011 *Regulation empty chair *Introduction financial advances, spending limits, and limits on media use *Decrease donation limits
Effective design	Effective Implementation of party formation and candidate selection rules Symbolic Loopholes in regulation of intra-party relations and party discipline	Effective Introduction of public funding and some control private funding	Effective Implementation of party forma-tion rules	2009 – Symbolic Introduction of new norms only 2011 – Effective/ symbolic Law with loopholes and selective targeting of electoral finance issues

CHAPTER 8 – Argentina

¡No, no ha muerto! ¡Vive aún¡ ¡Él vendrá!
Facundo no ha muerto, está vivo
en las tradiciones populares,
en la política y en las revoluciones argentinas
-
–Sarmiento, *Vida de Juan Facundo Quiroga*[434]

8.1 Argentina: internal contradictions and conflict

Argentina, the 'Land beside the Silvery River', derives its name from its location near the *Rio de la Plata*: the basin formed by the confluence of the Uruguay and Paraná rivers. The basin, in turn, was named after the sixteenth century European expeditions that explored the region in search of a mystical silver mountain. The conquerors' inability to locate this *Sierra de la Plata* had important consequences for the subsequent European settlement in the region, as colonization efforts shifted to the golden wealth of the Peruvian Inca civilization instead. The Rio de la Plata region remained a provincial backwater and local elites' ties to the Spanish Vice-royalty in Lima faded with their distance from the capital (Edwards 2008).

Secluded Buenos Aires tested the limits of the mercantilist colonial regime in particular, as it developed into an unofficial port for contraband and the illegal trade of silver obtained from less mythical silver mines and indigenous trading partners. Competition thereby ensued between the increasingly developed Buenos Aires district and the rest of the Argentine provinces where *gauchos* (cowboys) roamed the lands and where caudillos controlled local order (Edwards 2008). After independence in 1816, tensions between the unitary, and European-oriented, Buenos Aires elites and the more federalist-oriented rural caudillos created prolonged internal conflicts that

[434] No, he hasn't died! He's still alive! He will appear! Facundo hasn't died; he is alive in popular traditions, politics, and the Argentine revolutions.

hampered the initial formation of a central state. It was not until 1853 that the Constitution codified the political system as a federal republic (Drake 2009, 112–13).

Competition between Buenos Aires and the other provinces, and between conservative elites and the masses more generally, remained and continues to form a central feature of Argentine politics. In 1845, intellectual and future president Domingo F. Sarmiento wrote the great Argentine novel centered on the death of the traditional caudillo, embodied by Juan Facundo Quiroga. Facundo represented the archetypical provincial and barbarian, but also daring and brave, local strongman who stood in stark contrast to the more civilized Buenos Aires elite. Sarmiento argued that Facundo's death had given rise to a new style of leadership: that of then-dictator Juan Manuel Rosas, who Sarmiento located in-between the civilization of the Buenos Aires capital and the *barbarie* (backwardness) of local caudillos. Rosas thereby embodied the worst of both worlds.

Although this (discriminatory) modernization discourse has long been left behind, contemporary Argentina politics remains divided on the basis of such internal, seemingly irreconcilable, contradictions. At the macro-level, this is visible in the co-existence of a nominally democratic federal state and authoritarian provinces where popularly elected semi-dictators exploit formally democratic institutions to solidify their hold over power (Gibson 2005; Giraudy 2010). At the party-system level, Argentina developed a political system firmly structured through two parties that sought to assert their dominance through the rejection of the other's legitimacy (Malamud 2003, 21). At the individual party level, party organization functions as a junction where these regional and systemic anti-democratic tensions meet the state (Sidicaro 2011). As will be discussed at length in this chapter, contemporary Argentine party law reform should be understood in light of the inter- and intra-party competition over resources that follows from these conflictive contradictions.

The following section starts with a historical overview of the development of Argentine party law, which it links to the constant exclusionary forces at work at the national political level. Subsequent sections discuss the first and second major instances of post-transitional party law reform in 2002 and 2009. In particular, these sections describe how events starting in 2002 contributed to the reconfiguration of the national party system. Indeed, as can be gauged from Table 8-1 below, the period between 2001 and 2003 constitutes a turning point in the political system, as depicted by a substantial – and consistent – drop in voter turnout as well by increases in both the number of registered parties and electoral volatility scores.

Table 8-1: Party system characteristics (1991-2011)

Year	Registered number of parties		Chamber: Electoral volatility[435]	Chamber: ENP	Chamber: Voter turnout[436]
	District parties	National parties			
1991	522	35	n.a.	n.a.	89.71%
1993	473	35	n.a.	n.a.	79.70%
1995	480	37	n.a.	n.a.	80.96%
1997	480	37	13.62	2.96	78.22%
1999	513	41	10.70	3.30	80.54%
2001	542	41	11.67	3.65	75.21%
2003	669	46	15.95	3.42	71.70%
2005	668	43	22.96	3.48	70.94%
2007	674	42	17.51	3.28	73.13%
2009	659	38	22.57	3.66	72.39%
2011	529	40	25.68	4.18	79.39%

Source: number of parties – Mustapic (2013) and National Electoral Chamber (Corcuera 2003); electoral volatility – Ruth (2016); effective number of parties (ENP – Laakso Taagepera) – Ruth (2016); turnout (percentage of registered voters who actually voted) – IDEA (2015).

This chapter's third section describes how in 2002, these changes resulted in the adoption of an *organizational economy* reform strategy used by contending governing Peronist party factions to gain the upper hand over the party's next candidate. Amidst troubling times, deciding this candidacy proved fundamental in controlling both the party and the presidential machinery. In addition, the parties responded to the larger legitimacy crisis by adopting a *systemic economy* reform strategy that addressed public demands for change in an ineffectual manner.

Section four describes how in 2009, internal Peronist discontent had spilled over into the electoral arena. In response, the government adopted both an *organizational* and an *electoral economy* reform strategy. The organizational strategy served to increase the costs of party exit and to regain control over the Peronist organizational infrastructure, while the *electoral economy* strategy addressed the rise of new parties

[435] Ruth (2016) only provides data from the 1996 elections onwards. For consistency purposes, I did not include data from other sources. The same goes for the ENP.
[436] Compulsory vote (enforced)

formed around wealthy Peronist dissidents by constraining political parties' access to financial resources such as private corporate funding and private media access. The chapter's final section discusses the relevance of these findings for the resource-based perspective on party law reform.

8.2 The development of Argentine party law: a historical overview

The Argentine party system dates back to 1891. In this year, the gradual emergence of a middle class combined with an intra-oligarchic split resulted in the formation of the *Unión Cívica Radical* (Radical Civic Union, UCR). Due to the oligarchy's instrumental management of the electoral process, the UCR failed to challenge the oligarchic elite's control over the political system successfully. It was not until the subsequent political mobilization of the working classes in the early 20th century that the oligarchy opened up the electoral system to other parties. This occurred in the form of the 1912 Ley de Saenz Peña that introduced the universal, obligatory, and secret male vote. This reform allowed the UCR to compete effectively in elections and thereby mitigated the risk of more radical opposition to the status quo (Drake 2009, 156–57; Edwards 2008; Rapoport 2003).

The nascent democratic party system proved unable to withstand the pressure created by an increased demand for inclusion and representation. The economic fall-out of the Great Depression formed the final nail in democracy's coffin. In 1930, a military coup resulted in the removal of the democratically elected president from power (Rapoport 2003, 131). The goal of the military's coup was not to govern indefinitely but to restore political order. In doing so, the first legal regulation of political parties appeared as a means to tilt the political playing field in favor of those political forces the military deemed the most appropriate (López 2014, 209). Argentina's first 'Political Parties Statute' (Decree 4/1931) introduced several requirements for the recognition of political parties, such as the need to develop a party statute and program, the creation of a party fund consisting of membership fees, the need to keep financial records, and the need to select party leaders and candidates through internal elections (Valobra 2011, 70).

These provisions aimed to mold political party organization in a mass party format to counter the former president's personalistic leadership style. In October 1931, the government elevated its proscriptive regulation to a *de jure* level when it prohibited the personalistic UCR-faction per decree (López 2001, 478–79). The specific outlawing of the UCR set an important precedent for the exclusion of opposition parties from political life by all legal means necessary. At the same time, the rewards of governing became all the greater as the military regime advanced a corporatist

strategy based on integrating trade unions in the state. This strategy would continue to dominate Argentine party politics over the next decades (Rapoport 2003).[437]

When it had to hand over power to a democratically elected government in 1946, the military sought to mitigate these conflictive tensions by adopting a 1945 'Political Parties Statute.' The Statute created a *Corte Federal Electoral* (Federal Electoral Court, FCE) to oversee the organization of clean and fair elections. In keeping with the military's concern over politically active trade unions, the statute also introduced the first regulation of political finance that prohibited donations from trade unions, and anonymous donations by extension. It relegated oversight over party finance reports to the FCE (Olivero 1994).[438]

The clean 1946 elections brought to power General Juan Domingo Perón and his *Partido Peronista* (Peronist Party, PP)(Levitsky 2001, 2003). Despite Perón's nominally democratic regime, his aim was to create a state-centered 'communally organized' regime whose canalization of popular demands would abrogate the need for political divisions. The Peronist party itself was relegated to the status of the only legitimate electoral body to represent this national movement (Malamud 2003, 20). Other socio-political currents clearly rejected this model, meaning that subsequent legislative efforts at party law reform transpired within a political context where "the lack of acceptance of the other [opposition] party's legitimacy had reached such heights that it brought the country on the brink of civil war and subjected it to temporary collapses of the democratic system by permitting the emergence of military regimes" (López 2014, 215).[439]

As a consequence of these centrifugal tensions, the Peronists and other successive governments utilized the adoption of party laws as part of a general strategy to ban opposition parties and factions rather than competing against them in elections. A 1949 law (Law 13.645) sanctioned under the government of Perón, for example, strictly regulated the formation of alliances to impede the opposition from forming an effective electoral alliance (López 2014, 216; De Riz and Smulovitz 1990, 12). In addition, this law stipulated that new parties had to register three years before elections. This measure targeted both new parties and the dissident Peronist factions that threatened to eat away at the party's electoral potential (López 2001, 479; Mustapic

[437] This policy would lay the basis for the ascent of General Juan Domingo Perón and his broad coalition of urban and rural workers.

[438] The statute also introduced public funding in the form of radio access during elections.

[439] "*faltaba la aceptación del otro como partido legítimo en tan alto grado que se habían alcanzado puntos cercanos a la guerra civil o se había llegado al colapso temporario del sistema democrático permitiendo irrupciones de regímenes militares*."

2013). Through these measures, the governing Peronist faction could legally benefit from a systemic electoral advantage.

A 1955 coup ended Perón's hold over power. Anti-Peronist Radical administrations followed him in office.[440] They made similar use of party law to undermine the Peronist opposition's electoral potential. Between 1955 and 1962, legislators proscribed the Communist and Peronist party, and exiled Perón. In addition, they employed party law to proscribe parties that did not uphold democratic values in their programs or behavior more generally (López 2001, 480, 2014, 217–18).[441] Legislators included these legal norms in a 1965 'Constitutional Political Party Law' (Law 16.652), which the electoral authorities subsequently applied to prohibit the renewed formation of the Peronist party (López 2001, 484, 2014, 218–19). At the same time, the new party law recognized the provision of public party funding, increased the oversight over political finance (Olivero 1994), regulated party registration and dissolution in detail and prescribed internal elections for the selection of both party leaders and candidates (López 2001, 485–86). These legal provisions reflected that political parties had become a public utility needed to manage the political system, while simultaneously underlining the fact that this system could contain only one dominant political party at a time.

The conflictive tensions resulted in yet another bout of military rule in 1966. In its 'national revolutionary accord', the new government dissolved all political parties in order to "eliminate the fallacy of formal and sterile legality that had supported the implementation of a politics of division and confrontation that had invalidated the possibility of a joint [national] effort" (cited in López 2001, 477).[442] The military was similarly unable, however, to overcome political divisions, reconcile the nation, and restructure the economy. Instead, political division and internal armed conflicts only increased (Edwards 2008; Rapoport 2003). The armed forces concluded that they could not govern without legitimacy and called for new elections. In 1973, Perón was allowed back into the country as he was perceived "the only person capable of reigning in the leftist threat" (Edwards 2008, 153; also see Rapoport 2003, 622). His *Frente Justicialista de Liberación* (Justicialist Liberation Front, FREJULI) won the 1973 elections (Rapoport 2003, 627–28).

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[440] These administration introduced private finance regulations in 1956, public funding in the form of free postage in 1957, and direct funding for the printing of party ballots in 1959 (Olivero 1994).

[441] This resulted, for example, in a 1962 Supreme Court sentence that proscribed the *Partido Obrero* (Workers' Party) based on the danger that this party was alleged to pose to the survival of the democratic state.

[442] *eliminar la falacia de una legalidad formal y estéril bajo cuyo amparo se ejecutó una política de división y enfrentamiento que hizo ilusoria la posibilidad del esfuerzo conjunto.* Subsequent laws reinforced the prohibition of political parties and seized all party assets.

Subsequent development of party law took place in 1975, when the Peronist government issued a law (Law 21.018) that reestablished the norms for party formation and organization, political finance, and intra-party democracy as introduced in the 1965 party law (López 2014, 212; Olivero 1994). Several provisions that targeted internal party organization formed the mayor difference with the 1965 law: parties needed to ensure that minority factions were represented within the party organization, they needed to establish an internal court that guaranteed this right independently, and the internal elections of candidates and party leaders needed to be organized with use of the direct and secret vote in which at least ten percent of party members participated (López 2014, 235). These measures responded to two developments in the Peronist party: Perón himself did not succeed in overcoming intra-Peronist conflicts and his death in 1974 left his wife in charge of a political system and a Peronist party marked by conflict and political violence (Rapoport 2003, 667).

The legal attempt to canalize conflict through the Peronist party structure proved insufficient to contain violence. Instead, the intensification of guerrilla activities and right-wing violence led to yet another – and final – military regime between 1976 and 1983 (Edwards 2008; Rapoport 2003). The first act of this military government was to expunge all political parties and repeal all party laws (López 2014, 237). The military regime proved unable, however, to improve the Argentine economy and to weather the global recession of the 1980's. In addition, the regime's extreme repression and human rights violations ate away at its legitimacy. After a failed attempt to win back the *Malvinas* (Falkland Islands) from the United Kingdom to boost popular morale, the regime called for transitional elections in 1983.

In 1985, Congress adopted a new 'Constitutional Political Party Law' (Law 23.298) to replace the transitional regulation of parties issued by the military regime (see Table 8-2 for an overview). The removal of the regulation of party doctrines and the declaration of party principles formed a pivotal change, because these provisions had partially formed the basis for the legal prosecution of political parties in the 1960's. Rather than focusing on control of the parties' ideologies, the new law coupled the possible dissolution of parties to penal offenses of their leaders and representatives (§50).[443] The new law reflected Argentina's shift to a democratic multi-party system

[443] The new party law no longer prescribed internal elections for candidate and leadership selection but mainly maintained that parties needed to select them in an internally democratic manner (§29). The regulation of public funding mainly shifted from a focus on organizational to electoral funding (§46). A 1994 constitutional reform (Law 24.430) elevated the status of public party funding to a constitutional principle.

of government where competition had to be settled in the electoral – rather than the legal – arena.[444]

Table 8-2: Development of Argentine party law (1931-1985)

Topic	Law 16.652 (1965)	Law 23.298 (1985)
District registration	4‰ signature threshold – max. 1 million	4‰ signature threshold – max. 1 million
National registration	2 districts	5 districts
Party ban	Parties should defend the constitutional regime in their programs and actions	Parties/leaders may not commit penal offenses
Party cancelation	Failure to: *participate in 3 consecutive elections *obtain 2% of the registered vote in 1 out of 2 consecutive elections *organize internal elections	Failure to: *participate in 3 consecutive elections *obtain 2% of the registered vote in 2 consecutive elections *organize internal elections
Candidate selection	Internal elections	
Leadership selection	Internal elections	
Direct public funding	Annual: *20 pesos per vote *distributed per district	Elections: *50 austral cents per vote *distributed 80% per district and 20% nationally
Indirect public funding	Elections: *Postal tax exemptions *2 telephones per headquarter *5 public transportation passes *radio and television access	Annual or elections: *executive determines indirect funding and media access

[444] Over the course of the following years, the executive sponsored numerous decrees to implement these financial norms. See Decrees 1486/85, 2140/85, 396/89, 1169/89, 2089/92, 1683/93, 1682/93.

Topic	Law 16.652 (1965)	Law 23.298 (1985)
Donation limits	Prohibition anonymous or forced donations + donations from trade unions and state enterprises	Prohibition anonymous or forced donations + donations from trade unions and state enterprises
Monitoring and oversight	Present annual and electoral finance reports to electoral judge	Present annual and electoral finance reports to electoral judge

8.3 2002 reform: response to the *que se vayan todos* protests

8.3.a. Changes in the resource environment

Mustapic (2013) shows that as a result of the rather flexible regulation of party registration, the number of Argentine parties started to rise from 1987 onwards.[445] This increase in the number of parties hardly changed political reality, however, as the Radical UCR and the Peronists, now called the *Partido Justicialista* (Justicialist Party, PJ), remained the two dominant parties in the system. The smaller parties, which mainly consolidated their support bases in the densely populated Buenos Aires district and Buenos Aires province, operated on the peripheries of the political system (Jones 2008, 43; De Luca 2008, 192; Tula and De Luca 2011, 74).[446] Next to these third parties, the national party system contained several district parties that organized successfully as the governing or main opposition party at the provincial level of government (De Luca 2008, 193).[447] The electoral law allowed these parties to participate in federal congressional elections, but it barred their participation in presidential elections.

The year 2001 constituted a critical juncture for the Argentine political system. An electoral crisis manifested itself during the 2001 mid-term legislative elections. Confronted by a prolonged economic crisis, hyperinflation, the freezing of bank accounts

[445] A slight fall in number of parties was visible in 1992, when the provisions for party dissolution were applied for the first time.

[446] The most successful case was the electoral rise of *Frente País Solidario* (Front for a Country in Solidarity, FREPASO) in 1997, which entered a coalition government with the Radicals in 1999 and completely evaporated after the 2001 political crisis that is discussed in more detail below (Jones 2008; De Luca 2008).

[447] In general, these parties lack an organizational structure and form around an elite family or clique of families. The *Movimiento Popular Neuquino* (Neuquén People's Movement, MPN) in the Neuquén province and the *Movimiento Popular Fuegino* (Fuegino People's Movement, MPF) in the Tierra del Fuego province are more institutionalized exceptions to this rule (De Luca 2008, 193).

and a shell-shocked political elite that failed to meet the crisis head on, 50 percent of the electorate expressed its rejection of the political system electorally by either not participating in the obligatory vote, annulling its vote, or casting a blank vote in the legislative elections that same year (Tula and De Luca 2011, 78). These elections also translated into a big loss for the established parties. The governing UCR's vote share dropped to 22.2 percent and the PJ failed to capitalize on its competitor's loss. The remainder of valid votes was divided between small and regional parties, as well as the new anti-corruption party *Alternativa para una República de Iguales* (Alternative for a Republic of Equals, ARI)(Basset 2003, 270). As can be gauged from Table 8-1 above, however, the relatively stable levels of registered parties, electoral volatility, and effective number of parties shows that voter discontent had not yet upset party competition to a large extent.

The poor electoral showing of the established parties presented but the beginning of an all-encompassing legitimacy crisis. Within months of the elections, Argentines took to the street in flocks demanding *que se vayan todos* (out with them all). Radical President de la Rúa responded to the demands for his resignation by escaping from the *Casa Rosada* (Pink House) by helicopter (Levitsky and Murillo 2003). The UCR disintegrated amidst this political-economic debacle, leaving legislative leadership firmly in the hands of the Peronist congressional bloc (Levitsky and Murillo 2008, 18). The first Peronist choice for interim president, Rodríguez Saá, only lasted one week in office. After that, a cross-party coalition formed in Congress to support the Peronist Eduardo Duhalde, who would end up finishing de la Rúa's term (Malamud 2013, 11–13).

The severe legitimacy crisis sparked a reformist boom (Pousadela 2007, 32). Although attempts to reform the legal regulation of political parties had figured on the political agenda since the late 1990's, it was not until the 'que se vayan todos' crisis that party law reform shifted to the forefront of the political agenda. Within his first month of holding office, Duhalde proposed a 'Federal Deal for Political Reform' to reduce the costs of politics and to change the electoral system to address popular demands for change of the corrupt and inefficient status quo (Scherlis 2014, 317).[448] This reform platform resulted in the adoption of a new 'Political Party Finance Law' (25.600) in May 2002 and a new 'Constitutional Political Party Law' (25.611) adopted in June of that same year.

[448] Also see La Nación (21 Jan. 2002)'El Poder Ejecutivo presentará mañana la reforma política,' La Nación (25 Jan. 2002) 'Los gobernadores acordaron con Duhalde,' and La Nación (1 Feb. 2002) 'La reforma política, en borrador.'

The legitimacy crisis surrounding the adoption of these laws suggests that legislators likely applied a *systemic economy* reform strategy: a symbolic normative overhaul of existing rules that addresses public demands for change in an ineffective manner. This expectation is grounded in the additional fact that the legitimacy crisis had not resulted in the rise of a strong new competitor. Instead, the PJ capitalized on the UCR's weakness by taking over the reigns and providing a resolution to the political crisis (Malamud 2013; Scherlis 2014, 317). A closer look at the negotiation process reveals that developments within the Peronist party itself created a second motivation for reform, which did result in attempts to change the way in which politics operated in practice. Hidden under the relatively stable party system characteristics, an *organizational economy* reform strategy operated that responded to severe intra-Peronist conflict over ownership over both the party and the presidential machine by controlling the selection of the party's next presidential candidate (see Malamud 2013; Scherlis and Oliveros 2006).

8.4.b Negotiation process

The 2001-2002 legitimacy crisis resulted in continuous external pressure to adopt reforms that would open up the political process to novel forms of inclusive and transparent representation (Pousadela 2007). The strong electoral showing of the anti-corruption party ARI in the 2001 legislative elections had already provided an indicator that failure to address such demands had the potential to upset the existing party system status quo through electoral means. The three main themes targeted by this round of reform suggest that public attitudes and shifting norms on appropriate party behavior indeed set the agenda for reform. Legislators focused in particular on the increased regulation of private party funding, the lowering of party formation costs, and the strengthening of intra-party democracy. The *systemic economy* reform strategy suggests, however, that such broad new norms do not target the problems at hand effectively, or fail to include measures for the effective implementation of legal changes.

Political finance regulation

The adoption of the 'Political Party Finance Law' (25.600) provides excellent proof of this dynamic. Some background information is needed to understand this reform's merits to the fullest. As discussed above, the 1983 party law regulated the public funding of political parties and established donation limits and transparency requirements. In practice, these rules did not succeed in turning political finance into anything other than muddy practices predominated by corruption scandals (Ferreira Rubio 2004).

The absence of clear regulation of the electoral authority's financial oversight over political finance contributed to the inability of the existing finance rules to structure

political behavior. Two months before the 2002 political finance reform, however, the *Cámara Nacional Electoral* (National Electoral Chamber, CNE) had issued a ruling that authorized federal electoral judges to audit party assets and expenses. This ruling established clear procedural guidelines for financial oversight and the presentation of finance reports – thereby potentially threatening political parties' ability to use their financial resources as they saw fit.[449]

The legislature responded by adopting a political finance law (25.600). Cristina Fernández de Kirchner, president of the Senatorial Constitutional Affairs Committee, introduced the bill as a means to address the "need for transparency and the reduction of political expenses that society demands."[450] To reach this goal, the new political finance law introduced broad new norms, such as quantitative donation limits (§§35) and limits to party spending in elections (§40)(see Table 8-3 below for an overview of changes in finance regulation).[451] More ambiguously, the new finance law introduced organizational party funding, next to the electoral funding that already existed, and allowed the parties themselves to establish the amount of party funding through the national budget law (§§16, 22). In theory, these latter changes enabled a majority party to determine its own annual amount of public funding outside of the public limelight.

Several new provisions on financial control proved particularly divisive. Legislators delegated this control from the electoral authorities to the *Auditoría General de la Nación* (National General Auditor, AGN), a legislative organ constituted by the parties themselves (§§48-53). This decision created severe contention as opposition parties, NGOs, and news media questioned the AGN's ability to control political finance independently (Pousadela 2007, 42). Opposition parties were unable, however, to prevent the bill's passage.

The electoral authorities did not take lightly to the removal of their constitutionally ascribed role to monitor political finance and ordered the executive to annul

[449] CNE verdict 3010-02, 31 March 2002.

[450] *estamos tratando una norma, en este caso financiamiento de los partidos políticos, donde el bien jurídico tutelado es la necesidad de transparencia y de reducción del gasto y del costo político que ha sido demandado por la sociedad*. Cámara de Senadores (23 May 2002) 'Versión taquigráfica de la reunión plenaria.'

[451] The bill sponsored by Chamber of Representatives previously contained a provision that prohibited private media access completely as a means to curtail electoral spending as well. The Senate removed this article, however, in order to protect the freedom of speech and because it felt that electoral spending would be curtailed sufficiently by the introduction of electoral spending limits. Cámara de Senadores (23 May 2002) 'Versión taquigráfica de la reunión plenaria.'

these provisions.[452] Somewhat inexplicably, this external pressure on the government proved successful, as the executive sponsored the finance law without the articles that ascribed a monitoring role to the AGN.[453] Although this guaranteed independent oversight, the new law did not assign the Electoral Chamber additional resources to support its staff in the execution of its monitoring task. Given the decentralized nature of Argentine party organization, this meant that six experts would have to audit the finance reports of 38 national parties and 525 district-level parties.[454]

The 2002 finance law, presented as a means to improve transparency and reduce electoral costs, hence provided many new norms but few means to oversee the upholding of these norms. The established parties capitalized on the reform opportunity to expand their own access to financial resources while simultaneously attempting to sideline the financial control of the empowered Electoral Chamber.

Table 8-3: Proposed and final changes political finance regulation

Topic	Law 23.298 (1985)	Law 25.600 (2002)	Decree 990/02
Direct public funding	Elections: *50 austral cents per vote *distributed 80% per district and 20% nationally	Annual or elections: *national budget law determines amount *annual: distributed 80% proportionally and 20% equally *elections: distributed 70% proportionally and 30% equally *distributed 80% per district and 20% nationally	No change
Indirect public funding	Annual or elections: *executive determines indirect funding and media access	No change	No change

[452] La Nación (12 May 2002) 'Los fondos de los partidos, en manos políticas,' La Nación (29 May 2002) 'Estudian un veto a la ley del financiamiento partidario,' La Nación (11 June 2002) 'El gobierno avanza con las elecciones.'
[453] Decree 990/2002
[454] La Nación (25 Dec. 2002) 'Será escaso el control financiero que tendrán los partidos políticos.'

Topic	Law 23.298 (1985)	Law 25.600 (2002)	Decree 990/02
Donation limits	Prohibition anonymous or forced donations + donations from trade unions and state enterprises	Adds quantitative limit: *1% of spending limit (corporate) *0.5% of spending limit (individual)	No change
Spending limit		1 peso per voter	No change
Presentation finance reports	Present annual and electoral finance reports to electoral judge	Present electoral finance reports to AGN	Removes AGN as financial monitoring authority

Lower party formation costs

The way in which parties responded to demands for lower party formation costs provides a second confirmation that laws adopted in response to a legitimacy crisis are usually not designed in an effective manner. The 'Organic Political Party Law' (25.611) addressed public demands for a more inclusive party system by eliminating the quantitative requirement for party maintenance (Scherlis 2014, 317). This meant that parties no longer needed to reach the electoral threshold of two percent of the votes in an electoral district within two consecutive national elections to maintain their formal registration (§50). Indeed, Juan Manuel Uturbey, the Peronist president of the Constitutional Affairs Committee, defended this measure stating that "in these times in which we live, it is a necessity that we guarantee the highest degree of participation possible within the framework of our Constitution and the laws."[455]

In line with the *systemic economy* reform strategy, however, the adopted measure formed a rather ineffectual solution to the problem of high party formation costs. Given its focus on party maintenance rather than new party formation, the requirements of which the reform left unaltered, the new law did not attend to societal demands that new party entry would be facilitated for the next elections (Pousadela 2007, 40). Recognizing that farther-reaching measures might be necessary, Uturbey promised the Constitutional Affairs Committee that a subcommittee would be formed to investigate alternative measures to increase the flexibility of the requirements for both new party formation and the presentation of independent candi-

[455] *en los tiempos que estamos viviendo es menester garantizar, en el marco de nuestra Constitución y de las leyes, la mayor participación posible.* Cámara de Diputados (19 June 2002) 'Sesion ordinaria.'

dates.[456] As a result, the government introduced another round of party law reform in July 2002 (see Table 8-4 below for a comparison of proposals and changes).

Eduardo Camaño, the president of the Chamber of Representatives, presented the follow-up reform as "President Duhalde's decision to make the requirements more flexible so that no one can feel excluded from the electoral process."[457] In the proposal, legislators suggested to lower the signature requirements for party formation from 0.4 to 0.1 percent of the registered voters in each electoral district – in some districts corresponding to a reduction of 7,500 signatures (with the Buenos Aires province constituting an outlier of 30,000 fewer signatures). In this manner, the bill formed an alternative to popular demands, as well as demands from the ARI, to introduce the institutional figure of independent candidacies in the next presidential elections (Pousadela 2007, 40–41).

The bill did not make it through the negotiation process, however, due to intra-party developments. In light of the debilitation of the UCR, the next PJ candidate would likely win the 2003 presidential elections (Malamud 2013, 11). Given the winner-takes-all nature of the candidate selection process, internal divisions between the central and peripheral regional blocs in the PJ therefore increased in the run-up to these 2003 elections. The peripheral bloc united behind the proposed candidacy of former president Carlos Menem, while the more centrist bloc headed by Duhalde supported the candidacy of Santa Cruz province Governor Néstor Kirchner (Cheresky 2006b, 29). These intra-party developments exerted strong pressure over the negotiation process.

Indeed, according to interviews with leading politicians, the Duhaldist faction of the Peronist party opposed the introduction of independent candidacies because it feared that this would empower other factions within its party to run for the presidency outside of the party, thereby debilitating the Duhaldist's hold over the Peronist electorate. The UCR held similar concerns regarding its own party unity at such turbulent times.[458] Lower formation costs for new parties posed similar problems, as such a reform would still allow dissident factions to create a new party to run in the 2003 presidential elections. To remedy these ills, the reform bill stated that new parties would have to register for the next elections before the date on which the established parties organized primaries to select their presidential candidates. Legis-

[456] Cámara de Diputados (19 June 2002) 'Sesion ordinaria.'

[457] *una decisión del presidente Duhalde (Eduardo) de flexibilizar esos requisitos para que nadie pueda sentirse excluido del proceso electoral*, cited in La Nación (4 July 2002) 'Avanza el proyecto que facilita la legalización de nuevos partidos.'

[458] La Nación (4 July 2002) 'Avanza el proyecto que facilita la legalización de nuevos partidos' and La Nación (18 July 2002) 'Pedirán menos requisitos a los partidos políticos.'

lators thereby ensured that any new party that registered to participate in the next elections would come from outside of the political establishment.

Despite the almost unanimous adoption of the bill in the Chamber of Representatives, the Senate subsequently buried the proposal.[459] Given that the Peronist party held a majority in the Senate (Basset 2003, 271), these developments strongly suggest a lack of intrinsic motivation in the PJ to lower party formation costs. Intra-party struggles over control over the organizational infrastructure stood in the way of legislators responding effectively to public demands for change. Indeed, as will be discussed in detail in the following section, the simultaneous introduction and modification of party primaries presented additional evidence of the hypothesis that intra-party struggles partly determined the outcome of the 2002 reform process.

Table 8-4: Proposed and final changes registration requirements

Topic	Law 23.298 (1985)	Proposals	Law 25.611 (2002)
Electoral participation	Parties only	Independent candidacies	Parties only
Registration	4 ‰ signature threshold	1 ‰ signature threshold	Maintains 4 ‰ signature threshold
Party cancelation	Failure to: *participate in 3 consecutive elections *obtain 2% of the registered vote in 2 consecutive elections *organize internal elections	Elimination vote threshold	Elimination vote threshold

Strengthening of intra-party democracy

Next to lowering the requirements for party maintenance, the 2002 law (25.611) introduced open, direct, obligatory, and simultaneous primaries for all parties (§29). In his presentation of the bill, Uturbey introduced this measure as a "necessary [means] to democratize the internal electoral processes, which were not always very

[459] La Nación (28 Aug. 2002) 'Diputados aprobó la modificación a ley electoral' and La Nación (30 Aug. 2002) 'Flexibilizan los requisitos para fundar un partido'.

clear in the history of Argentine parties."[460] As will be discussed below, this rather vague argument concealed an intense intra-party struggle over control over the Peronist party's next presidential candidate. Responding to this struggle through party law reform proved difficult, however, due to the fact that the PJ lacked a majority in the Chamber of Representatives (see Appendix 7 for an overview of legislative seats).

To ensure passage of the 2002 reform, the PJ therefore worked in tandem with the UCR.[461] According to Oliveros and Scherlis (2007, 52), this latter party did not look favorably on the introduction of obligatory party primaries. Presenting a united front formed its only chance at survival after the debacle of De la Rúa's presidency and party primaries potentially opened up the party to vicious internal competition. After receipt of the PJ's reform bill, the UCR nevertheless agreed to adopt the reform in its present form. It did so because the PJ promised the UCR that the bill would be modified per executive degree to exempt parties with single lists, such as the UCR, from the obligatory organization of primaries.[462] The concessions to the UCR did not constitute the only modification to the introduction of direct, obligatory, and simultaneous primaries for all parties. Instead, the development of this new regulatory provision was subject to frequent changes as intra-Peronist factions vied for control over their party's next presidential candidates (see Table 8-5 below for an overview of adopted changes).

On 5 August 2002, for example, the executive adopted a decree (Decree 1397) that extended participation in primaries from party members to all registered voters and stipulated that candidates could present themselves for one party and one position only. These measures allowed the executive to determine the internal conflict over the next PJ candidate in his own favor (Sidicaro 2011, 75). Although former president Menem counted with the majority of PJ support, it was generally expected that Kirchner, the executive-sponsored candidate, would obtain support of the entire anti-Menemist electorate in the party primaries (Oliveros and Scherlis 2007, 52). In addition, by stipulating that candidates would only be able to run for one party, the

[460] *Hay que democratizar los procesos electorales internos, que no siempre fueron claros en la historia partidaria argentina* (cited in La Nación (19 June 2002) 'Habrá elecciones internas abiertas en todos los partidos y limitaciones a la duración de las campañas').

[461] Roll-call votes of this reform are unavailable. The reform passed with 152 votes in favor, 34 opposed, and no abstentions. Cámara de Diputados (19 June 2002) 'Versión taquigráfica de la reunión plenaria.'

[462] Any modification meant that the bill would have to be revised again by both Chambers, which the PJ leadership wanted to avoid at all cost given the contentious political climate. Cámara de Diputados (19 June 2002) 'Versión taquigráfica de la reunión plenaria' and Cámara de Diputados (19 June 2002) 'Interpretación de la Cámara sobre la reglamentación de la Ley Orgánica de Partidos Políticos.' Also see La Nación (19 June 2002) 'Habrá elecciones internas abiertas en todos los partidos y limitaciones a la duración de las campañas.'

bill effectively closed up the possibility for Menem to present himself as the candidate of another party in case he lost the Peronist primaries. Sanctioning this decree thus earned the executive a first round victory in the internal fight over the Peronist candidacy.

Although Duhalde counted with the executive power to alter laws by decree, he faced a substantive Menemist faction in the legislature. As a result of the adoption of Decree 1397, a legislative battle ensued that frustrated any substantive progress in governance. Legislative deadlock was unacceptable given the country's need to come to terms with international creditors after it had defaulted on its external debt. Some three weeks later, Duhalde therefore adopted another executive decree that closed down the primaries to party members and non-affiliated voters – thereby excluding members of other parties from participating in the PJs primaries (Oliveros and Scherlis 2007, 52–53; Pousadela 2007, 43–46).[463] This measures likely formed a compromise as it ensured that radical opposition to Menem would not be able to participate in the PJs primaries while still ensuring that Kirchner could turn to the non-Peronist electorate for support in the upcoming primaries.

Nevertheless, the struggle over the next PJ candidacy was not over yet and competition now turned towards the legal arena. Ex-president Menem took the new decree to Federal Court and received a favorable ruling that declared the unconstitutionality of the primaries on the basis of the parties' freedom of association and activity, thereby putting candidate selection back in the hands of the party's electoral council where Menem held a majority.[464] The Electoral Chamber, in turn, revoked this decision on the basis that the Federal Court's decision formed an "excessive exercise of is jurisdictional function" and – thereby in effect reestablished the primaries for the upcoming elections.[465]

Having exhausted the legal route to ensure its preferred candidate, the Menemist camp thereupon reintroduced the struggle into the legislative arena. Amidst the ensuing legislative paralysis, where policy-making was held hostage effectively, the executive finally adopted an Economic, Political and Social Agreement that addressed several pertinent socio-political issues while simultaneously suspending the primaries for the 2003 elections. As a result, each party could pick its candidates for the upcoming elections as it saw fit (Bonvecchi and Giraudy 2007, 37; Oliveros and Scherlis 2007, 53). This decision still did not end the Peronist struggle, as the party now

[463] Also see La Nación (17 Aug. 2002) 'Duhalde rechazó la ley de lemas' and La Nación (27 Aug. 2002) 'Se harán el 15 de diciembre las internas.'
[464] *exceso en el ejercicio de la función jurisdiccional*. See verdict 625-02
[465] See verdict 3060-02

had to agree on its own how it would select its presidential candidates. A new round of federal court cases followed to determine the issue of the PJ's internal candidate selection procedures once and for all.[466] The Duhalde camp finally proved victorious and the PJ went to the presidential elections with three candidates – effectively letting the electorate decide the party's candidacy. This resulted in an electoral victory for Néstor Kirchner.

To summarize, the 2002 adoption of party primaries followed the *organizational economy* reform strategy. The intra-Peronist struggle over the next presidential candidate resulted initially in the highly effective regulation of intra-party elections: these primaries were obligatory for all parties and to be organized on the same day. Introduction of this legal change provided President Duhalde with a means to control the decision-making process over internal candidate selection process. The stakes in the internal party contest where so high, however, that adoption of this law resulted in complete legislative paralysis. In the end, the law was suspended again before the next elections. Introduction of these primaries posed such a threat to the Menem camp that it used all the legislative and legal measures at its disposal to prevent the law's implementation.

[466] See verdict 707-2003 of 23 Jan. 2003 and 11 Feb. 2003. Also see La Nación (24 Jan. 2003) 'Servini exige que el PJ haga internas'.

Table 8-5: Proposed and final changes candidate selection

Topic	Law 25.611 (2002)	Decree 1397/02	Decree 1578/02	Economic, Political and Social Agreement
Selectorate	Party members	Electorate	Members + non-affiliated voters	Suspension primaries 2003 elections
Obligatory nature	Yes	Not for parties that present single list		
Timing	Electoral authorities sets date	No change		
Other		Candidates may register for one party/position only		

8.3.c Aftermath of the 2002 reform

To the extent that they had not been abrogated per executive decree already, the 2002 reforms would only remain in force until 2006. Two different developments contributed to the short-lived nature of these new norms, namely the elite's unwillingness to organize party primaries and an electoral ruling that obstructed the further implementation of political finance regulation.

With regard to the first, the 2002 political party law established that obligatory primaries would have to be organized from the 2005 mid-term legislative elections onwards. Once again, these elections coincided with power struggles within the Peronist party structure (Cheresky 2006a; De Luca and Malamud 2010; Zelaznik 2011). The organization of party primaries became an uncertain feat, but after publicly going back and forth on the issue, the executive decreed new regulations and scheduled the primaries for August 7, 2005 (Decree 295/2005)(Oliveros and Scherlis 2007, 54). In addition, however, another executive decree (Decree 535) allowed 'parties in formation' to participate in elections without use of primaries for candidate selection (Pousadela 2007, 57).

Combined with the rule that parties that presented a single list did not have to organize primaries, these measures circumvented the obligatory nature of the primaries and allowed factions to present candidate lists outside of their parties. This resulted in the organization of 21 primaries throughout the country – which was actually the lowest number since the return to democracy in 1983 and mainly reflected the mobilization of party machines (Oliveros and Scherlis 2007, 54–60).[467] Given the lackluster enthusiasm of both society and political parties to use primaries, a 2006 government proposal (Law 26.191) to repeal Law 25.611 met with large support in both the Chamber of Representatives and the Senate (Bonvecchi and Giraudy 2007, 37; Oliveros and Scherlis 2007, 60; Tula and De Luca 2011, 79–80). Obligatory party primaries had proven themselves not to be a panacea for internal party struggles.

The political finance law underwent a similar fate. Given the limited amount of control mechanisms and resources this law instituted, Argentine political financial management portrayed little respect for the law over the next years. Political parties ignored campaign limits by actively campaigning before the established *franja electoral* (official campaign period). They also used this method to get around spending and donation limits (Pousadela 2007, 47). The provisions on finance reporting were either ignored completely[468] or circumvented through the issuing of reports that did not accurately reflect electoral spending.[469]

[467] A mere 3.23 percent of the electorate participated in primaries. It was mainly opposition parties that resorted to primaries to select their candidates. Nevertheless, participation was highest in those districts where the government sought to select its candidates through primaries. (Oliveros and Scherlis 2007, 54–60).

[468] In an overview of the implementation of finance regulation in 2003, the vice president of the *Cámara Nacional Electoral* (National Electoral Chamber, CNE) noted that as regards presidential elections, 183 of the parties had lived up to the provision to open one bank account whereas 123 had not; 191 parties had appointed a special finance manager whereas 115 had not; and 185 parties reported on their accounts, whereas 121 had not. In addition, only 92 parties had delivered the obligatory final report as stipulated, whereas 214 had not. Similar figures apply to the parties that participated in the 2003 legislative elections (Corcuera 2003). Given the automatic suspension of public funding if parties did not report on their finances, compliance with this norm rose to 75 percent in the 2005 legislative elections (Ferreira Rubio 2007).

[469] The Peronist presidential campaign report was particularly noteworthy as it respected the formal obligation to present a report, but stated that in the first 80 days of the 90-day-campaign the party had spent 1 US$ on the creation of the obligatory bank account. As regards party income, the report stated that the party had received a mere 160 US$ and that the party's financial and political campaign managers were its only donors. In its final campaign finance report, the party put down 1.5 million US$ in media expenses whereas an independent media monitoring exercise of the NGO *Poder Ciudadano* detected campaign spots worth around 11 million US$ (Ferreira Rubio 2005).

The National Electoral Chamber issued sanctions to a number of parties and their financial campaign managers that had superseded electoral spending limits. The accordant Electoral Justice did not uphold these sanctions, however, as the financial campaign managers argued to have had no prior knowledge of the purchasing of campaign ads by third parties (in the legal sense of the word). As a result, the judge ruled that the parties and their managers could not be held accountable for these expenses and declared the application of spending limits unconstitutional.[470]

In response, the government sponsored a new finance law (26.215) that was adopted in December 2006. Uturbey, still in charge as president of the Chamber's Constitutional Affairs Committee, introduced the bill stating that: "taking into account that recently – as a product of the task that followed the last elections [auditing campaign reports] – the Court of First Instance declared the fundamental article of this law [25.600] unconstitutional, this Chamber obviously understood that this was an issue that needed to be resolved swiftly.[471] The new finance law addressed the legal vacuum by prohibiting third parties from sponsoring media access to political parties during election campaigns (§49). This new provision thereby rehabilitated the use of spending limits, as parties could now be held responsible for all the campaign adds that ran in their name. Legislators also allowed the Electoral Chamber to monitor the media in order to oversee spending in election campaigns (§73).

Next to these changes, the new law introduced several measures that weakened the transparency of political finance. Legislators allowed for the unification of party organizational and electoral accounts (§20), thereby impeding effective monitoring of campaign income and expenses by making it more difficult to disentangle them from organizational spending more generally. In addition, legislators removed the obligation for party candidates to report on campaign financing, thereby allowing for double streams of money in election campaigns. More importantly, the new law increased spending limits for election campaigns with 50 per cent (§45) and doubled the amount of the individual donation limits (§16). Combined, these measures lead party finance expert Ferreira Rubio to argue that – rather than reforming party finance practices – the new law was a mere attempt of some legislators to publicly appropriate an ethical high-ground while simultaneously covering up the unpopular decision to increase electoral spending limits.[472]

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[470] See La Nación (01 Nov. 2006) 'Favorece una sentencia de Servini a jefe de Gabinete.'

[471] *En la República Argentina está vigente parcialmente la ley 25.600, habida cuenta de que hace muy poco tiempo – producto de lo que fue la tarea posterior a las últimas elecciones – se declarara en primera instancia la inconstitucionalidad del artículo medular de dicha ley, entiendo obviamente esta Cámara que este era un tema que debía resolver a la brevedad*. Comisión de Asuntos Constitucionales (13 Dec. 2006) 'Versión taquigráfica de la sesión ordinaria de prerroga.'

[472] Interview Ferreira, 2012.

In the absence of a major legitimacy crisis, the government thus responded to a legal dilemma through adoption of a minor reform that hardly changed the letter of the law or the reality of Argentine political finance in terms of financial transparency but that did provide parties with more financial leeway during their election campaigns. This is an example of a *systemic economy* reform strategy that allowed parties more access to resources during elections amidst relatively stable socio-political circumstances.

8.4 2009 reform: a response to electoral defeat

8.4.a Changes in the resource environment

Despite the 2002 reform's rather symbolic changes, and its 2006 abrogation, scholars have ascribed it a tremendous impact on the number of parties in the Argentine political system (see Mustapic 2013; Scherlis 2014).[473] The president of the Electoral Chamber provides evidence of this assertion by noting that in the period between 1983-2001, 179 parties lost their legal inscription due to their failure to reach the electoral threshold in two consecutive elections. By contrast, the number of parties rose substantially after the 2002 revocation of this requirement (Corcuera 2003) (see Table 8-1 above for an overview of party system change).[474] The simultaneous adoption of a 2002 political finance reform allowed these new parties access to public funding. The new legal framework promoted "rubber stamps," tiny parties often oriented towards the capture of public funding" (Scherlis 2014, 317). Rather than effectively opening up the political system to new representative groups, scholars thus suggest that the 2002 reform process contributed to the fragmentation and decentralization of the formal party system.[475]

The party system did not only change in terms of the number of parties that participated in elections. In addition, political competition continued to rage over capture of the Peronist party, which Kirchner won in a somewhat peculiar manner (Tula and

[473] One should note that the rise of parties is also partly attributable to the political and legitimacy crisis in 2001 (Mustapic 2013).

[474] This rise in parties is attributable to an increase in parties at the provincial level, as the number of national parties remained rather stable over time. Indeed, Mustapic (2013) notes that, whereas in 1986 the mean number of districts in which parties were present was 4.22, by 2005 this had fallen to 2.2.

[475] This development had already been underway since the 1999 elections, when an increase was visible in the incongruence between the number and type of parties that competed at the national and provincial level (Gibson and Suarez-Cao 2010; Mustapic 2013). In addition, inter-party boundaries became more fluid and more and more competition among party factions was visible as a result of the internal division of the two major political parties (Bonvecchi and Giraudy 2007; Mustapic 2013; Tula and De Luca 2011).

De Luca 2011, 78–79).[476] As discussed above, the PJ presented three candidates in the 2003 presidential elections. The first round of the presidential elections went to the Peronist candidate Menem, who obtained 24.4 percent of the vote vis-à-vis the 22.4 percent secured by Kirchner. Polls predicted that in the following run-off election between Menem and Kirchner, the anti-Menem vote would unite behind Kirchner. Menem therefore stepped out of the race and handed the presidency to Kirchner (Cheresky 2006a).

The fact that the Peronist electorate favored Menem over Kirchner meant that the latter lacked intra-party legitimacy. As a result, Kirchner distanced himself from the formal Peronist party structure and created the *Frente para la Victoria* (Front for Victory – FpV). This party consisted of a coalition of heterogeneous political forces ranging from left-wing groups to local factions of the opposition party, UCR, Peronists, and independent candidates (Cheresky 2006a). This reconfiguration reflected Kirchner's stance that "the justicialist [party] was just a mere legal unit, because within it, it contained contained clearly contradictory, exclusionary currents" and that it was "a hollowed-out party with no content, no ideas" (cited in Sidicaro 2011, 84).[477]

In the 2007 presidential elections – in which Cristina Fernández de Kirchner ran as the FpV's presidential candidate – the Kirchners extended the strategy of heterogeneous coalition formation and built an alliance with UCR governors. These thereupon became known as the *radicales K* (K Radicals). In the aftermath of contentious conflict over agricultural exports in 2008, many Peronist dissidents left the FpV to run under their own labels, which led the Kirchners to increase their reliance on the K Radicals, left-wing groups and unaffiliated legislators to form a legislative majority (Zelaznik 2011, 100–102).[478]

Despite this alliance, the 2009 legislative elections formed a severe defeat for the Kirchner alliance. Several important provincial leaders distanced themselves from the FpV and presented their own lists. In addition, the government saw itself confronted by several provincial Peronist leaders that openly aligned themselves to opposition politicians, such as Buenos Aires City mayor Mauricio Macri and the Peronist dissidents Francisco de Narváez and Felipe Solá (De Luca and Malamud 2010, 181). Although the government did receive the highest vote percentage of all parties, it

[476] The UCR encountered difficulties in the maintenance of its support in the urban centers of the country. Many of the third parties and regional parties that existed before the 2001 crisis disappeared

[477] *Lo único que había en el justicialismo era la unidad jurídica, porque en su seno tenía corrientes abiertamente contradictorias, excluyentes … un partido vaciado de contenido, sin ideas.*

[478] Presentation Nicolás Cherny, 'Relación entre la Presidente y el PJ nacional.' Ciclo de seminarios Peronismo y Democracia, Ayer y hoy. Tercer y último encuentro. El Peronismo en la era Kirchnerista, Buenos Aires, 18 May 2012.

was left without a majority in both the Chamber of Representatives and the Senate. In several important conglomerates, this loss was due to the migration of votes to other Peronist options (Zelaznik 2011, 100–101). The FpV's electoral defeat in the Buenos Aires province was particularly painful as the list headed by ex-president Néstor Kirchner lost against the one headed by the Peronist dissident Francisco de Narváez.[479]

These changing socio-political circumstances suggest that both the *organizational economy* and the *electoral economy* may have been at work here. The following section traces the negotiation process to identify whether references to changes in the internal distribution of access to resources, or the changing terms of electoral competition between parties, can indeed be linked to the reform's outcome. Whereas the *organizational economy* reform strategy is expected to result in measures that redress the intra-party distribution of resources such as by increasing politician's own access to financial resouces and control over the organizational infrastructure at the expense of that of others, *electoral economy* reforms likely focus more on the introduction of rules that are disadvantageous to other parties' control over ideational capital, financial resources, and control over the organizational infrastructure. Both strategies have in common that they are expected to result in effective changes to address the imminent electoral threat presented by dissidents running for new parties.

8.4.b Negotiation process

President Fernández de Kirchner did not wait long to address her 2009 electoral defeat through a party law reform. One month after the elections – but still several months away from the installment of the new Legislature – the president sent a bill to the congressional Constitutional Affairs Committee to reform the 1985 'Organic Political Party Law' (Law 23.298) and the 2007 'Political Finance Law' (Law 26.215). The executive's desire to act speedily was visible in her subsequent issuing of a decree to extend the legislative period as well (Decree 1802/2009). This move ensured passage of the bill before the installation of the new congressional configuration elected in the 2009 elections, in which she could not count on a majority.

Even in the 2007-2009 Legislature, however, the reform could not pass without some effort at coalition building. Given that all the opposition parties rejected the reform, the government needed to get several of the smaller and regional parties, as well independent representatives, aboard the reform effort. Because of the need for concessions, the text of the 2009 'Law that democratizes political representation, transparency, and electoral equality' (Law 26.571) was prone to several modifica-

[479] See La Nación (29 June 2009) 'Dura derrota de Kirchner.'

tions.[480] This proved sufficient to obtain a majority in favor of the reform before the legislature's term ended. As had been the case in the 2002 reform effort, the main provisions of the law focused on party formation costs, the regulation of candidate selection, and political finance.

Party formation costs

A look at the original text of the bill shows that the increase of party registration and dissolution requirements formed one of the reform's keystones. The most controversial changes consisted of a 0.5 percent membership threshold at the district level for district party formation and a 0.1 percent membership threshold at the national level for national party formation.[481] The bill also created an additional hurdle for participation in elections. As will be discussed in more detail below, the new law prescribed obligatory primaries for candidate selection. Participation in presidential elections – a partial prerequisite for maintenance of party registration – became contingent on participation of at least 0.5 percent of voters spread throughout 5 districts in presidential primaries.[482] In addition, parties could present those candidates only that had obtained at least three percent of the registered vote in their party primaries.

Several smaller parties publicly opposed these provisions, which they interpreted as proscriptive and anti-democratic.[483] In response, the Constitutional Affairs Committee adopted less stringent registration and dissolution requirements (see Table 8-6 below for an overview of the proposed changes in the government's bill and in the final law). The final reform bill maintained the signature threshold of 0.4 percent of the district's electorate for district party formation (§7) and added no additional threshold for national party formation.[484] With regard to electoral participation, it lowered the threshold from 0.5 to 0.1 percent of turnout in party primaries and established that party candidates could participate in elections if they had obtained at least 1.5 percent of the vote in these primaries (§§21, 45, Law 26.571). The Committee members also lowered the vote threshold for maintenance of party registration from the proposed three to two percent (§50) and added two transitional

[480] Interviews Camaño, 2012; Pinedo, 2012; Bullrich, 2012; Tulio, 2012.

[481] The bill also re-introduced a three percent vote threshold for maintenance of party registration.

[482] For participation in Congressional elections, parties needed to ensure the participation of at least 0.2 percent of the registered voters in their electoral district to validate their congressional primaries.

[483] Interview Camaños, 2012; I also obtained private documentation of the president of the Constitutional Affairs Committee of the Chamber of Representatives.

[484] In order to complete the final registration stage, parties needed to enroll these signatories as members and organize internal elections to select their leaders (§7bis). In addition, legislators established that parties would lose their registration if they failed to maintain these membership numbers (§7ter) or their registration in five districts (§8).

articles that allowed existing parties a two-year-period to adapt to the law's new requirements for maintenance of party registration (§§107-8).

After its passage through the Constitutional Affairs Committee, Congress swiftly approved the reform.[485] The only opposition to the reform came from several small leftist parties that would lose their registration due to the new rules and that accused the government of seeking the re-installation of a bi-partisan system (Abal Medina 2009; Alessandro 2011).[486] The proponents of the reform mentioned straightforwardly that they sought to combat party system fragmentation. One of the government aids involved in the design of the original bill noted, for example, that the Argentine party system had become very splintered due to the proliferation of parliamentary fractions and of political parties more generally (Alessandro 2011, 198). He added that many of these parties were generally of an *ad hoc* nature and functioned as vehicles for candidates that sought to be elected.[487]

[485] Five key votes were obtained from representatives that did not belong to the Kirchnerist block, but whose provinces were in dire financial need. This was the case for three Peronist dissidents from Córdoba and one MP from Corrientes and Tierra del Fuego deputy respectively. The latter was rewarded days later with the creation of a university in this province. See La Nación (19 Nov. 2009) 'El apoyo clave de las provincias necesitadas y la izquierda' and La Nación (2 Dec. 2009) 'El oficialismo logró la aprobación de la reforma política.'

[486] Also see La Nación (1 Nov. 2009) 'Bipartidismo.'

[487] Political experts generally shared this opinion (see Scherlis 2014, 317).

Table 8-6: Proposed and final changes registration requirements

Topic	Law 23.298 (1985)	Proposal	Law 26.571 (2009)
District registration	4 ‰ signature threshold	5‰ membership threshold	4‰ membership threshold
National registration	5 districts	1‰ membership threshold	No additional threshold
Electoral participation		5‰ turnout primaries 3% vote threshold candidates	1‰ turnout primaries 1.5% vote threshold candidates
Party cancelation	Failure to: *participate in 3 consecutive elections *organize internal elections	Adds: 3% vote threshold Maintain presence in 5 districts + membership	Adds: 2% vote threshold Maintain presence in 5 districts + membership

This reference to *ad hoc* parties as candidate-centered vehicle suggests that the government pushed for these rules to increase the relevance of formal party structures (in light of dissident party exits). The debate on the adoption of party primaries below offers additional evidence for this. Suffice it to say here that if this measure was adopted as part of an *organizational economy* strategy, the government likely pushed for the effective design of these rules. Subsequent developments indicated that the government was indeed not only willing, but even very eager, to implement the law. After Congress and the Senate had adopted the reform, the executive vetoed the two transitional articles that it had negotiated with its coalition partners (Decree 2004). These articles contained the above-mentioned guarantee that existing parties would profit from a two-year-period to adapt to the law's new requirements for maintenance of party registration (§§107-8). By vetoing these articles, the new norms would now be applied during the upcoming 2011 presidential elections.[488]

[488] Several small parties that feared the effects of this law took this decision to court in order to have it declared unconstitutional. The Electoral Chamber (Verdict 4342, 8 July 2010) ruled, however, that these requirements fit within the margin of appreciation of the Constitution and that these were political rather than legal matters.

Intra-party democracy

The 2009 reform also introduced direct, obligatory, and simultaneous primaries for all federal elected offices. The formal reason given for the adoption of these primaries was the need to create more equality in the process of candidate selection. Alejandro Tulio, director of the government's National Electoral Authority and proponent of the reform, notes that the unregulated candidate selection process was a heterogeneous and unequal one because candidates with a lot of resources could obtain a candidacy through other means than democratic selection. Inversely, making all parties select their candidates through primaries, would likely bestow candidates with popular legitimacy.[489]

His mention of resourceful candidates is a thinly veiled reference to the successful candidacy of Peronist dissident, and businessman, Franscisco de Narváez who beat the FpV list headed by Néstor Kirchner in the Buenos Aires province. This suggests that the reform formed a means to the electoral threat that the Peronist dissidents posed to the FpV. Vice Chief of Staff Abal Medina (2009, 52) provides additional evidence for this assertion as he stated quite frankly that intra-party conflict in the FpV, the main example of party candidates running for other parties, created the need for top-down regulated party organization:

> In the present day we find many anomalies and irregularities of all kinds in this matter, with members of parties presenting themselves as candidates for other parties, or organizations that support candidates of different parties in different districts. Given this situation, direct primaries can be seen as a sort of reigns: they are necessary to stitch together the fracture that has been visible clearly in the contemporary Argentine party system for quite some time. Clearly, if this were a different scene of party competition, we would not agree with the implementation of direct primaries.[490]

A government aid involved in the design of the original bill added that this measure was designed to strengthen political parties because it disabled the option for candidates to run outside of the party (Alessandro 2011, 199–200). As has been discussed above, this strategy formed one of the main organizational factors debilitating the FpV in the electoral arena. All these official reasons for the introduction of party

[489] Interview Tulio, 2012.

[490] *En la actualidad nos encontramos con anomalías e irregularidades de todo tipo en esta materia, con miembros de un partido que se presentan como candidatos de otros partidos o agrupaciones que apoyan a candidatos de diferentes partidos en distintos distritos. Frente a tal situación, las internas abiertas pueden verse como una especie de yeso: son necesarias al menos por un tiempo porque pueden suturar la fractura claramente visible que se observa hoy en día en el sistema partidario argentino. Seguramente, si otro fuese el escenario de la competencia partidaria, no estaría de acuerdo con implementar internas abiertas.*

primaries thus connect the reform rather directly to the need to prevent intra-party disputes from spilling over into the electoral arena. It bears little surprise that opposition party respondents and political experts stated even more forcefully that the introduction of obligatory and simultaneous primaries mainly served to block FpV candidates from running outside of the party after having lost the internal nomination process.[491]

As the introduction of party primaries responded directly to socio-political changes that threatened the governing party's electoral position, the resource-based perspective suggests that the government would take every means necessary to ensure implementation of the new rules. The executive sanctioned Decree 443/2011, which regulated the organization of the party primaries in more detail, a mere four months before the primaries for the 2011 mid-term legislative elections. The executive's failure to regulate the upcoming primaries created substantial uncertainty about whether or not the primaries would be organized.[492] As a result, representatives of the government and the Electoral Chamber had to ensure both the general public and the opposition parties a mere week before the legally fixed date that these primaries would be organized.[493]

Opposition politicians note that this uncertainty left them with a dilemma: either wait until August to select a candidate through primaries that may or may not be organized – and be left with only one month to campaign for the general elections – or select a candidate early on in order to have more time for the general campaign. In the end, all opposition parties opted out of organizing competitive primaries for

[491] Interviews Tonelli, 2012; Novaro, 2012; Pinedo, 2012; Reynoso, 2012; Escolar, 2012; de Luca, 2012. In addition, several of these respondents stated that this measure was expected to increase discipline within the vertical FpV party structure. Primaries are useful in this regard, as they automatically link the selection of the candidates at the provincial and local level within the party to the candidacy of the president. This meant that if candidates wanted to run for lower-order offices on the party's ticket, they necessarily needed to support the candidacy of the president as well, rather than run with a different presidential candidate. In this way, the party could be structured in a more vertical manner through the value because candidates need to stick with the party label.

[492] Clarín (15 Jan. 2011) 'Plantean más dudas sobre la realización de las primarias,' La Nación (23 Jan. 2011) 'Dudas en la UCR sobre las internas,' La Nación (25 Jan. 2011) 'De Narváez duda de los comicios,' Clarín (27 July 2011) 'Duhalde: El gobierno presiona para suspender las internas.' Several electoral judges contributed to this uncertainty by publicly stating that it would be impossible for them to organize the primaries on time. La Nación (05 Jan. 2011) 'Nueva advertencia de la Justicia por el armado del padrón.'

[493] Clarín (02 Aug. 2011) 'El gobierno reafirmó que se hacen las primarias.'

their presidential candidates.[494] Although insufficient evidence is available to support this claim, it may well be the case that the executive decided to spread out her chances and wait until the final moment to decide whether or not the organization of party primaries would serve her cause on the ground. If this was the case, the decision was a successful one as the general elections rewarded the president with the highest margin of victory ever seen in Argentina amidst a shattered opposition (Fernández and Cotarelo 2011, Fernández 2011).

8.4.c Political finance regulation

The 2009 reform also introduced several changes in political finance regulation. These changes mainly focused on the role that corporate donations and media access played in elections. Legislators established that during election campaigns, political parties (and third party supporters) would be prohibited from procuring private media access. Instead, parties could only use the media slots provided to them by the state. Towards this end, the media would have to provide the state with access to 10 percent of programming time available to them (§43). In addition, the law banned all corporate donations to parties. In order to ensure that companies could not bypass this provision, anonymous donations were banned as well (§44). In return, public funding was distributed somewhat more equally among parties, with 50 – rather than 30 – percent distributed on an equal basis (§36). Legislators assigned control over the distribution of public funding and media access to the National Electoral Authority – an executive agency of the Ministry of Internal Affairs (§35, §42).

According to a government aid involved in the reform process, these changes addressed the disparities caused by parties that had access to corporate funding and private media access.[495] Such disparities had become apparent in the 2009 elections in the form of "the emergence of candidates with a commercial background, that were able to auto-finance expensive campaigns" and of "the media applying different prices to the candidates on the basis of their preferences and interests, as a result of which it was impossible to specify the expenses that the parties incurred at the moment that they broadcasted their campaign messages" (Alessandro 2011, 200).

[494] Next to the uncertainty about whether the primaries would be organized, opposition representatives argue that their parties feared the divisive effect that ferocious primaries might have on their electoral support. Smaller parties additionally feared that the larger parties would intervene their primaries in order to select a weak candidate (Pomares, Page, and Scherlis 2011), whereas new alliances feared the debilitating effect that primaries would have on their nascent cooperation and opted for the "unifying potential of an elite agreement in which we could negotiate over the distribution of candidates on a single list". Lastly, representatives of several smaller parties note that their parties were simply not institutionalized enough to breach the practice of a single leader determining the candidate list. Interviews Bullrich, 2012; Pinedo, 2012; Alonso, 2012; Ferrari, 2012; Stolbizer, 2012.

[495] Interview Alessandro, 2012.

National Electoral Authority director Alejandro Tulio, proponent of the reform, similarly argued that in light of the 2009 elections, democratizing measures had to be taken to prevent the rise of wealthy parties with little support on the ground and the disproportionate influence of private media on public opinion.[496] The clear message of this justification of the reform is that the state – rather than big business – should provide access to electoral funding and the media.

An anonymous government insider stated more explicitly that the reform aimed to prevent candidates with major financial capabilities from competing in elections through personalized campaigns – in defiance of the party structure.[497] This is a clear reference to the campaign strategy advanced by Peronist dissident Francisco de Narváez in the 2009 legislative elections in the Buenos Aires province, which consisted of an extensive publicity campaign. This campaign used television ads, radio, Internet, and billboards, which were all funded with De Narváez own resources and those of his business connections.

Gustavo Ferrari, a member of De Narváez's block, similarly states that the reform sought to address those factors that contributed to the FpV's electoral loss in the Chamber of Representatives:

> So he [Néstor Kirchner] was set on changing all those factors that, according to his judgment, contributed to his loss in the 2009 elections. … Everything is a reaction to his having lost and to increasing the control of the incumbent government over the elections. … He made a list of the things that theoretically made him lose the elections and said 'let's change all of this.' And one of these things was the media system.[498]

Ferrari contended that the prohibition of corporate funding and private media access was an attempt to limit the resources of those politicians with close connections to the corporate world, such as Buenos Aires capital governor Mauricio Macri and the afore-mentioned Francisco de Narváez. The new norms indeed favored parties that rely more on their militants for private funding, such as the FpV. Argentine election campaigns traditionally consisted of the distribution of top-down resources through the party machines to local vote movers (Auyero 2001; Jones 2008; Mustapic 2002, 175–76; Scherlis 2010). It is therefore not unlikely that the emergence of a dissident

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[496] Interview Tulio, 2012.

[497] Anonymous interview, 2012.

[498] *Entonces apuntó [Nestór Kirchner] a modificar todas esos factores que a él le pudieron, según su criterio, hacerle perder la elección de 2009. … Todo es una reacción a haber perdido y a fortalecer el control de la elección por parte del propio gobierno que ejerce el poder. … Hizo una lista de porque había perdido teóricamente y dijo 'bueno todo lo cambiamos'. Y uno es el sistema audiovisual.*

faction that was able to finance its campaign through its own resources presented an aberration of this traditional pattern and threatened the government's hold over the Peronist electorate.

Other opposition respondents and political experts noted that the reform also skewed electoral competition in the government's favor, as the reform did not limit government publicity. This meant that the governing party could continue to promote itself before and during election campaigns through media reports on the inauguration of public works and the government's social programs and through its announcements during the *Futból Para Todos* (Soccer For Everyone) transmissions, the government-sponsored airing of soccer matches that make these accessible to the entire country.[499] In spite of the generous amount of media access that the reform provided to all parties, critical respondents argue thus that equality in electoral campaigns deteriorated rather than improved with the 2009 reform.[500]

If the government adopted these reforms to redress the inter-party balance of resources in its own favor, the expectation is that it would seek to implement these legal changes to the fullest degree to ensure effective reform. This was indeed the case for the regulation of media access and corporate donations. Implementation of the first provision was somewhat complicated because of the simultaneous existence of elections and legislation at the provincial level. The executive therefore adopted Decree 445/2011 to extend the scope of the law to those provinces that selected their candidates at the same day as the national elections (Alessandro 2011, 203).[501] As to the prohibition of corporate funding, respondents speak very highly of the monitor-

[499] Interview Camaño, 2012; Interview Esteban Bullrich, 2012; Interview Pinedo, 2012; Interview Alonso, 2012. As one expert notes, this is a clear case of the classic Argentina problem of maintaining a distance between the governing party and the state, or rather, the lack of such a distance. Interview Secchi, 2012.

[500] As regards the government's claim that the reform seeks to increase transparency of political finance, experts points out that the reform does not address donations of government employees. It was exactly this kind of donations that formed the basis for a 2007 corruption scandal. In addition, the initial bill removed the presentation of preliminary finance reports. This would have eliminated the possibility for citizens to inform themselves on party finances before going to the voting booth. The bill thus presented little advances in the transparency of political finance. Interview Secchi, 2012; Deane, 2012; Ferreira, 2012.

[501] Respondents noted that – besides some minor complaints – the distribution of access to the media was implemented in a fair manner. Also see Pomares and Page (2011).

ing efforts of the auditors of the *Cámara Electoral*.[502] Several opposition leaders noted that it had become more difficult for them to attract corporate funding because of this measure.[503]

One element of regulation that remained lacking was the establishment of the newly created *módulo electoral* (electoral unit), which would allow for the definition of the donation and spending limits, as well as for the calculation of the total amount of public party funding. According to the finance law (§68-bis), this limit was supposed to be established in the national budget for every election year. The government was unable, however, to get approval for its accepted by the opposition in Congress it was up against in 2011.[504] Nevertheless, it took no additional action to set this value through an executive decree. The *Cámara Electoral* therefore took it upon itself to determine the value of the *módulo electoral* one month before the primaries.[505] Several opposition parties complained that this created a lot of uncertainty about the amount of money they were to receive and spend during the campaigns.[506] The lack of implementation of these provisions put into question the government's claims that the reform sought to create more equality in elections.

[502] Interview Ferreira, 2012; Deane, 2012; Trombetta, 2012; Patricia Bullrich, 2012; Pinedo; 2012. Both experts and party leaders also note, however, that the prohibition of corporate expenses is rather easy to circumvent, given that private donations from individuals are still allowed. This means that companies may donate through their employees or other middlemen. Indeed, one anonymous opposition politician states that the only difference is that rather than donate openly, corporate sponsors now have to find ways to hide their financial support to his party. This is reflective of a larger problem in the monitoring of party finances, namely that many experts and politicians suspect these reports to only partly reflect party income and expenses.

[503] Interview Ferrari, 2012; Esteban Bullrich, 2012.

[504] La Nación (17 Sep. 2010) 'Con críticas, la oposición anticipó su rechazo al Presupuesto 2011,' La Nación (16 May 2011) 'La ausencia del médico presidencial.'

[505] La Nación (20 July 2011) 'Duplican el límite para los aportes de campaña.'

[506] Interview Bullrich, 2012; Interveiw Ferrari, 2012

Table 8-7: Final changes political finance regulation

Topic	Law 25.600	Law 26.215 (2007)	Law 26.571 (2009)[507]
Direct public funding	Annual or elections: *national budget law determines amount *annual: distributed 80% proportionally and 20% equally *elections: distributed 70% proportionally and 30% equally *distributed 80% per district and 20% nationally	Annual or elections: *national budget law determines amount *annual: distributed 80% proportionally and 20% equally *elections: distributed 70% proportionally and 30% equally *distributed 80% per district and 20% nationally	Elections: distributed 50% proportionally and 50% equally
Indirect public funding	Executive determines indirect funding and media access	Media access elections: * 600 hours television and 800 hours radio *distributed 50% proportionally and 50% equally	Media access elections: *10% of total programming *distributed 50% proportionally and 50% equally

[507] Law 26.571 (2009) reforms Law 26.215 (2007). This column only depicts the reform's changes.

Topic	Law 25.600	Law 26.215 (2007)	Law 26.571 (2009)
Donation limits	Qualitative limit: Prohibition anonymous or forced donations + donations from trade unions and state enterprises Quantitative limit: *1% of spending limit (corporate) *0.5% of spending limit (individual)	Qualitative limit: Prohibition anonymous or forced donations + donations from trade unions and state enterprises Quantitative limit: *1% of spending limit (corporate) *2% of spending limit (individual) *no third party media access	Ban on anonymous & corporate donations + complete ban on private media access
Spending limit	1 peso per voter	1.5 peso per voter	1 módulo electoral per voter
Presentation finance reports	Present electoral finance reports to AGN	Present annual and electoral finance reports to electoral authorities	

8.5 Conclusion: party law development and reform in Argentina

This chapter has shown that post-transitional Argentine party law reforms remain a continuation of past trends, albeit in a somewhat different form. Whereas party law development over the course of the 20th century focused on the outright prohibition of opposition parties, current reforms consist of rules that obstruct new party and opposition formation in more subtle ways and that thereby create an incumbent advantage (see Table 8-8 for a summary overview).

In 2002, the absence of a real non-Peronist competitor meant that this highly reactive strategy mainly focused on controlling the Peronist party's organizational infrastructure through an *organizational economy* reform strategy. In 2009, legislators responded to increasingly successful Peronist dissidents by adopting both *organizational* and *electoral economy* reform strategies. The former sought to increase dissi-

dents' party exit costs and to regain control over the organizational infrastructure, whereas the latter targeted the inter-party imbalance in financial resources to the governing party's advantage. Both of these findings support propositions 1 and 2, as advanced in Chapter 3. According to these propositions, party law reforms that are adopted in response to to factional conflict and/or the rise of a new party will contain *effectively designed* legal provisions that redress the intra- or inter-party resource distribution balance.

In addition, the 2002 reform of political finance and party formation rules responded to social demands for a more inclusive political system in a *systemic economy* manner. Legislators lowered party formation costs in the least effective manner possible by only removing requirements for party maintenance. This instance of ineffective targeting did little to allow for more diverse forms of political participation in the next elections. As such, this 2002 reform supports proposition 3b, as advanced in Chapter 3. According to this proposition, party law reforms that are adopted in response to a legitimacy crisis that only alters political parties' access to ideational resources will contain *symbolic* legal provisions that increase political parties' access to ideational capital.

Given the important role assigned to party primaries in containing party dissidents, the finding that the executive did not take immediate action to implement party primaries in the 2011 elections is somewhat contradictory to the propositions advanced in this study. This deviation may be explained in part by the role that institutions play in translating reform incentives into adopted party laws reform. The Argentine case portrays very little influence of veto players over party law reform. Although the need for coalition formation in the Chamber of Representatives requires some attention to coalition partner preferences, the powerful executive proved able to alter both the 2002 and 2009 adopted party laws in line with its own preferences per executive decree.

In addition, the electoral authorities oftentimes proved unwilling to interfere in matters they deemed political rather than judicial. Existing norms did not constrain the executive's leeway for reform. The executive, on the other hand, had a lot of leeway over the final outcome of reform through its aforementioned decree power. In the 2011 elections, these institutional conditions allowed the president to postpone the implementation of party primaries as she saw fit. This clearly diminished Argentine party law's ability to structure political behavior and to introduce certainty in the political process. The conclusion will discuss these institutional findings in more detail.

Table 8-8: Summary of Argentine party law reform (2002-2009)

	2002		**2009**	
Strategy	Systemic economy	Organizational economy	Organizational economy	Electoral economy
Resource at issue	Ideational capital and financial resources	Organizational infrastructure	Organizational infrastructure	Financial resources
Threat	External Public rejection status quo	Internal Factional conflict	Internal Factional conflict	Internal Rise of mediagenic parties
Legal provisions	*Lower party formation costs *Introduction organizational funding + donation and spending limits	*Introduction obligatory primaries	*Increase formation costs *Introduction obligatory primaries	*Prohibition corporate donations + private media access *Proportional access to public funding
Effective design	Symbolic Ineffective targeting (formation costs) and no capacity building financial control	Effective Designed to apply to most parties but suspended before implementation	Effective/ symbolic *Increased effectiveness through veto transitional articles *Primaries implemented per decree (at final moment)	Effective/ symbolic *Effective control private finance & media access *Delay regulation of public media access

CHAPTER 9 - Conclusion

9.1 Latin American party law reform

This dissertation has provided a detailed exploration of the utility of party law, and political parties more generally, for Latin American politicians. The Latin American experience is an important one because no other region in the world has experienced such frequent and dramatic shifts between democratic and authoritarian governance as Latin America has throughout the 19th and 20th century (Drake 2009). Chapter 2 has shown that both political parties and their legal regulation often formed important means to deal with, and overcome, threats to democratic and authoritarian regimes alike by alleviating popular pressure for inclusion. At times, party laws have been adopted to accompany democratic transitions or to institutionalize political conflict, such as through the meticulous regulation of political parties' role in elections. At other times, party law reforms played a vital part in closing up the political system to democratizing forces or served to legitimize authoritarian regimes. Party law reform does not constitute a purely democratizing strategy. Instead, its role differs according to the circumstances under which reforms are adopted.

Chapter 3 has shown that recent theories of party law reform similarly identify that socio-political circumstances drive different types of reform strategies and thereby account for variance in adopted party laws. The purpose of the theoretical framework developed in this chapter has been to identify what these socio-political circumstances are and how they can be linked more systematically to adopted party laws, through the specification of changes in political organizational resources. This study has conceptualized adopted party laws as consisting of two attributes: legal provisions and intended effectiveness. In this manner, the theoretical framework does not only account for differences in legal texts, but also for differences in the intended effectiveness of reforms.

This conclusion discusses the findings of this study's various components, as well as their theoretical implications. The following section compares the finding of the four country studies to assess whether the theoretical framework developed here answers the research question proposed in Chapter 1: *Why do the legal provisions and intended effectiveness of adopted party laws vary?* Section three discusses the paired

comparisons of the four countries studied here, based on these countries' democratic experience and degree of party system institutionalization, to compare the value of the resource-based approach to party law reform to that of more institutionally based explanations. Section four, finally, discusses the implications of the findings for studies of party politics and democracy more generally.

9.2 Case studies of party law reform

Chapter 2 has shown that Latin American efforts at regulating political parties have important consequences for politicians. On the one hand, the normative acceptance of political parties as intermediaries in the political process has resulted in increased state support for Latin American political parties – and for the politicians that operate within these parties by extension. On the other hand, the top-down approach of regulating political parties as a means to cure societal ills has resulted in increased state interference in intra-party affairs. In this manner, party law simultaneously provides access to and constrains politicians' access to the party organizational resources they require to participate in elections and/or to legislate effectively.

This study has argued that the adoption of different types of party laws is therefore best understood in relation to changes in party organizational access to resources. Chapter 3 has outlined how such resource threats may manifest themselves on three different levels: the political system level, the party system level, and the individual party level. The scholarly literature has found that politicians adopt reform strategies in response to the interests and needs that occur at each of these three levels as a result of changing socio-political circumstances. Specification of these changes allowed for the formulation of exploratory propositions on the relationship between changing socio-political circumstances, reform strategies, and adopted party laws. The case studies of party law reform processes in Argentina, Colombia, Costa Rica, and Mexico showed that these propositions captured the empirical reality of party law reform rather well.

9.2.a Organizational economy reforms

At the most basic organizational level, politicians may experience electoral and legislative threats as a result of organizational changes or factional conflict that alter the intra-party distribution of resources. Chapter 3 posited that politicians are expected to respond by adopting party law reforms that redress their control over these resources:

Proposition 1 – organizational economy strategy: When adopted in response to changes in the party organization and/or factional conflict, party law reforms will contain *effectively designed* legal provisions that redress the intra-party resource distri-

bution balance. These legal provisions will likely:

- increase the proponent politicians'/factions' own access to financial resources and control over the organizational infrastructure; and/or
- decrease other politicians'/factions' access to financial resources and control over the organizational infrastructure.

Proposition 1 is falsified if party law reforms that are adopted in response to changes in the party organization and/or factional conflict contain legal provisions that 1) constrain the proponent politicians'/factions' own access to resources at the advantage of other politicians/factions, 2) constrain or benefit all politicians'/factions' access to resources equally, or 3) do not contain the necessary legislation and institutions for implementation.

This study identified three cases of *organizational economy* reforms, in which politicians used party law reforms to redress the intra-party balance of access to resources in line with the legal provisions proposed above (see Table 9-1 below for a summary). This was the case in Argentina (2002, 2009) and Colombia (2003). These cases underscore that politicians may respond to changes in their party organizations and/or factional conflict by trying to increase their own control over the organizational infrastructure through party law reform. In Argentina (2002, 2009), for example, Peronist party leaders responded to dissidents running outside of the party through the legal prescription of obligatory and simultaneous party primaries. The 2009 reform also increased the threshold for party formation. Combined, these measures centralized control over the candidate selection process and prevented losers of the Peronist election process from running outside of the party structure under a different party label.

In Colombia (2003), Conservative and Liberal party leaders joined efforts to increase party formation and party exit costs in response to the collapse of established party structures. By making it more difficult to switch parties without losing one's seat in the legislature, these established party leaders sought to increase party cohesion and central party control. Nevertheless, the case of Colombia (2003) also illustrates how politicians may be too late to respond to organizational changes. Party leaders were unable, for example, to coax their representatives into adopting additional rules that would fundamentally alter the candidate selection process or increase legislative discipline effectively. The increased personalized nature of legislative campaigns had already undermined the established party structures in an irreversible manner and the individual politicians' goals were better served by the maintenance of formal party labels than by the reintroduction of party hierarchies.

Although the types of measures proposed and adopted in these reform processes thus confirm proposition 1, the 2003 Colombian reform also shows that not all reforms that follow an *organizational economy* strategy are designed to effectively target the problem at hand. Proposed changes that altered the candidate selection process and that externally imposed legislative discipline were so far-reaching that these could only be adopted by including so many loopholes as to render them ineffective. A similar dynamic was visible during the 2002 introduction of party primaries in Argentina. Although the Duhaldist faction managed to push the reform through the legislature, a subsequent legislative stalemate ultimately resulted in the executive abolishing the reform before it could be implemented. Both instances indicate that a slight modification of the theoretical framework is in order, as *organizational economy* reforms are only designed in an effective manner in the absence of legislative veto players within the coalition proposing the reform.[508] This modification will be discussed in more detail below.

Table 9-1: Summary table organizational economy strategy

Country	Socio-political circumstances	Legal provisions	Intended effectiveness
Argentina 2002, 2009	Factional conflict	Increase control over organizational infrastructure: higher formation threshold and candidate selection rules	Effective as long as faction controlled the legislature
Colombia 2003	Organizational change	Increase control over organizational infrastructure: higher formation threshold, higher exit costs, legislative disciplinary measures	Effective as long as legislative coalition could be maintained

9.2.b Electoral economy reforms

At the party system level, changes in party competition and/or the rise of a new competitor may alter the established or ruling political parties' access to resources.

[508] Koß (2008, 286) calls these 'genuine veto points', or "actors with the institutional power to approve, modify or veto policies in intricate decision-making processes."

Politicians were expected to respond by adopting party law reforms that redress their access to resources vis-à-vis their competitors:

Proposition 2 – electoral economy strategy: When adopted in response to changes in party competition and/or the rise of a new party, party law reforms will contain *effectively designed* legal provisions that redress the inter-party resource distribution balance. These legal provisions will likely:

- prohibit certain types of ideational capital;
- introduce private and public funding rules that are disadvantageous to parties other than the proponent parties;
- make it more difficult to form/maintain a political party; and/or
- decrease other parties' control over human resources.

Proposition 2 is falsified if party law reforms that are adopted in response to changes in party competition and/or the rise of a new party contain legal provisions that 1) constrain the proponent party (coalition)'s own access to resources at the advantage of other parties, 2) constrain or benefit all parties' access to resources equally, or 3) do not contain the necessary legislation and institutions for implementation.

Changes in party competition and/or the rise of a new competitor set into motion *electoral economy* reforms in Mexico (2003), Argentina (2009), Colombia (2005, 2009), and Costa Rica (2009). What all these reforms had in common is that politicians responded to the changing terms of party competition by addressing the inter-party balance of resources needed to win elections and to govern effectively. The way in which they did so was in line with the proposition outlined above, with Costa Rica (2009) forming a partial exception (see Table 9-2 below for a summary).

In Mexico (2003), for example, the increased involvement of minor parties in electoral and legislative coalitions resulted in the adoption of a reform that increased party formation costs effectively. The effective design of this law ensured that the established political parties could increase their dominant hold over the political process. In the case of Argentina (2009), the governing party sponsored a reform to address some of the conditions it blamed for its recent electoral loss. This reform prohibited private party funding and media access after the party's gubernatorial candidate lost against a wealthy and mediagenic businessman in the Buenos Aires province elections. The government also sponsored the adoption of rules that ensured the effective implementation of these measures.

In Colombia (2005), the introduction of immediate presidential reelections altered the resource balance between the incumbent and all non-incumbent parties. The opposition parties were able to use their legislative leverage, which the executive

needed to ensure passage of the constitutional reform that reversed the prohibition on reelection, to sponsor a law that would limit political parties' use of private means in election campaigns as well as presidential visibility in these campaigns. The law was designed in an effective manner by the creation of tools for oversight over the implementation of these new rules. All cases thereby confirm the reform dynamics as set forward in proposition 2.

The 2009 Costa Rican reform shows, however, that not all reforms that follow an *electoral economy* strategy are designed to effectively target the problem at hand. This reform, which addressed the fact that corruption scandals and irregular financial practices had fueled the rise of the anti-establishment PAC party, focused on introducing more financial controls and transparency. The PAC – a necessary partner in the reform coalition – tried to capitalize on its strategic position by proposing reforms that would overturn the dominant model of financing politics – that benefited the established parties disproportionally – in a much more rigorous manner. Coalition politics prevented this effort, however, as the PLN and PUSC were unwilling to agree on such measures. They thereby constituted what Koß (2008) calls 'genuine veto points' in the decision-making process, meaning that some degree of compromise was necessary to get the reform adopted. The theoretical ramifications of this finding will be discussed in more detail below.

Table 9-2: Summary table electoral economy strategy

Country	Socio-political circumstances	Legal provisions	Intended effectiveness
Mexico 2003; Argentina 2009; Colombia 2005, 2009	Rise new party/ changes in party competition	Increase party formation costs, introduce disadvantageous private funding rules	Effective
Costa Rica 2009	Rise new party/ changes in party competition	Overturn private funding rules that privilege established parties	Partially effective

9.2.c Systemic economy strategy

The resource-based model of party law reform presented in Chapter 3 argued that systemic changes at the political system level have a tendency to alter all political parties' access to resources. Such systemic changes consist of institutional reform, changes in the social matrix, and/or changes in mass media and technological chang-

es that affect the campaign efforts. Politicians were expected to respond with a systemic economy strategy:

Proposition 3a – systemic economy strategy: When adopted in response to institutional or societal changes that alter all political parties' access to resources, party law reforms will contain *effectively designed* legal provisions that redress political parties' collective access to resources. These legal provisions will likely:

- introduce fundamental values that legally validate political parties' position within the political system;
- create beneficial public and private funding rules;
- increase the ease of maintaining party organizations while decreasing the ease of new party formation; and/or
- increase political parties' control over their human resources.

Proposition 3a is falsified if party law reforms that are adopted in response to institutional or societal changes that alter all political parties' access to resources contain legal provisions that 1) increase some politicians'/factions'/political parties' access to resources disproportionally, or 2) do not contain the necessary legislation and institutions for implementation.

One case under study here provided evidence of politicians' use of party law reform to counter changes in mass media. This occurred in Mexico (2007/2008) after the 2006 elections had escalated into a full-out media war. The increased use of mass media campaigns had created an arms race of sorts in which all political parties were forced to invest more and more resources against diminishing returns. The media war was not only expensive financially speaking, but had damaging consequences for the main political parties' ideational capital as well. In response, politicians adopted a reform that prohibited private media use and negative campaigning. To ensure effective implementation, legislators also increased the IFE's relatively independent monitoring capacities and adopted strict sanctions for non-compliance.

Other cases responded to institutional reforms that altered all political parties' access to organizational resources (see Table 9-3 below for a summary). Systemic changes of this kind took place in Argentina (2002, 2006), Costa Rica (1996/1997, 2009), and Mexico (2007/2008). In all of these cases, judicial or electoral bodies had either set limits to access to organizational resources or had created measures for the implementation of rules that politicians initially designed in a symbolic manner. The development of such jurisprudence had become a nuisance for all political parties, which redressed their joint access to organizational resources by adopting a party law reform.

In Costa Rica, for example, electoral authorities threatened to diminish the total amount of funding available to political parties (1996/1997). In addition, the authorities threatened to implement the paper tigers adopted in 1996 and 1997. Both the Constitutional Court and the TSE developed jurisprudence to fill some (though not all) of the legal voids to allow for effective implementation of the law's principles. This was particularly visible in the area of intra-party democracy and the promotion of female candidates and leadership. In response, Costa Rican politicians adopted a constitutional reform (1997) that safeguarded the total amount of public funding available to them against external interference and a new electoral code (2009) that protected the organizational infrastructure against outside interference.[509]

A similar dynamic was visible in Argentina after the 2002 decision of the electoral authorities to implement symbolic political finance rules. Argentine legislators were quick to remove the electoral authorities as the monitoring body overseeing political finance after the court had adopted a ruling that streamlined this process. Throughout the 1990's, Mexican electoral authorities also started to implement formal norms on intra-party democracy with a vengeance. Politicians responded by sponsoring new rules (2007/2008) to relegate the court's authority to that of a court of last resort after the exhaustion of internal party procedures. All these findings confirm the reform dynamics outlined in proposition 3a.

Systemic economy strategies may also manifest themselves in a second manner. This is the case during legitimacy crises, which constitute a type of systemic change that is not expected to result in effective reforms. Throughout such crises, all political parties' ideational capital is at stake. As long as this does not result in changes in inter- or intra-party competition, however, politicians are expected to address this crisis symbolically only:

Proposition 3b – systemic economy strategy: When adopted in response to a legitimacy crisis that only alters political parties' access to ideational resources, party law reforms will contain *symbolic* legal provisions that increase political parties' access to ideational capital. These legal provisions will likely:

- introduce new fundamental values without additional regulation; and/or
- be designed in an ineffective manner.

Proposition 3b is falsified if party law reforms that are adopted in response to a legitimacy crisis that only alters their access to ideational resources contain legal provisions that 1) increase some politicians'/factions'/political parties' access to resources

[509] In a similar vein, the 2009 Costa Rican reform relegated the court's authority over the candidate selection process to that of a court of last resort after the exhaustion of internal party procedures.

at the detriment of others, or 2) contain the necessary legislation and institutions for implementation.

This variant of the *systemic economy* strategy was visible in various cases (see Table 9-3 below for a summary). In Costa Rica (1996/7, 2002, 2009) and Mexico (2003, 2007/2008), politicians used party law reforms to respond to complaints about the rising costs of elections and the rejection of public funding schemes that maintained a perceived party cartel. In Colombia (2009, 2011), parties turned to party law after the 'parapolítica' scandal, in which one third of legislators had become implicated due to financial ties with armed non-state actors. In Argentina (2002), party law reform provided a means to respond to a population had turned against the entire establishes system when it ousted the president and took to crying 'out with them all.'

What all these crises had in common is that they were not accompanied by changes in resources other than the political parties' ideational capital. In other words, the crises did not challenge the political parties' ability to achieve their politicians' goals directly. As a result, governing politicians did not fear for their immediate electoral or legislative fortunes. Instead, the adoption of reforms that would actually address the crisis at hand posed a higher threat to their ability to govern or win elections.

In the case of Argentina (2002), this resulted in the adoption of a reform that allegedly opened up the political process without altering the requirements for new party formation or registration (ineffective targeting). In a similar vein, Argentine legislators adopted broad new political finance rules without creating the necessary tools for implementation (no *ex ante* controls). Colombian legislators created the empty chair sanction to respond to legislators with illicit financial ties, but failed to adopt rules that ensured its implementation in the upcoming 2010 elections. Actual implementation of these rules would damage the governing parties' legislative standing and it required a degree of party control that the leading politicians were aware they lacked.

In Costa Rica, legislators responded to demands for less costly elections by increasing the amount of funding available to them (1996/7) or by lowering the total amount of funding for one election only (2002, 2009). A similar dynamic was visible in Mexico (2007/8), where legislators also claimed to lower electoral funding in response to demands for less costly elections, while providing parties with a substantial amount of indirect funding (media access) and increased access to annual organizational funding simultaneously. These findings all confirm the reform proposition specified above.

Table 9-3: Summary table systemic economy strategy

Country	Socio-political circumstances	Threat	Legal provisions	Intended effectiveness
Mexico 2007/2008	Societal/media	Increased cost elections	Beneficial private funding rules	Effective
Argentina 2002; Costa Rica 1996/1997, 2009, Mexico 2007/2008	Institutional	Less control over financial/ human resources	Increase control over the parties' human and financial resources	Effective
Costa Rica 1996/1997, 2002, 2009; Mexico 2003, 2007/2008; Colombia 2009, 2011; Argentina 2002	Legitimacy crisis	Ideational capital	Lower public funding, lower party formation costs, stringent private funding rules	Ineffective

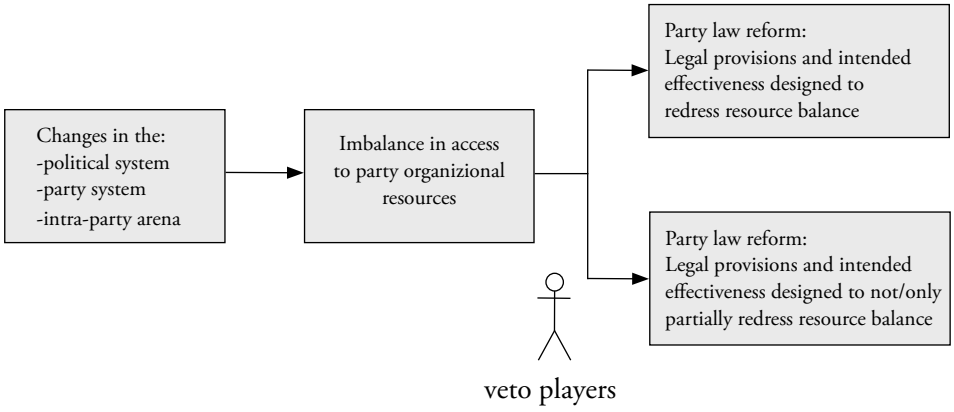
9.2.d The adjusted resource-based model of party law reform

From the above, it follows that the exploratory propositions put forward by the resource-based model capture the variance in legal provisions of adopted party laws remarkably well. Rather than seeing such legal provisions as the result of a proactive strategy in which politicians try to create favorable conditions for their own parties or to maximize their access to resources – just because they can – the cases discussed in this study all provide evidence of conservative politicians turning to party law reforms in a much more reactive manner to address threats to the resources needed to satisfy their most basic goals.

As to the intended effectiveness of adopted party law reforms, the theoretical model developed out of the resource-based perspective explains the adoption of effective versus symbolic reforms to a large extent, but not completely. While the *systemic economy* propositions captured the adoption of effective versus symbolic reforms well, the *organizational* and *electoral economy* propositions only did so in the face of a unified legislative coalition proposing the reform.

This finding is not surprising given the distinct dynamics of the *systemic* versus the *organizational* and *electoral economy* reform processes. Whereas the former implies a broad coalition of parties looking out for their joint access to resources, the latter implies a more narrow reform coalition seeking to redress the resource balance between or within parties. This logically creates more resistance from politicians that stand to loose from the reform effort. When their collaboration is needed for the formation of a viable reform coalition, such politicians may stand in the way of too effective a reform. Several of the *organizational economy* (Argentina 2002, Colombia 2003) and the *electoral economy* (Costa Rica 2009) cases showed that when reformers needed to include veto players in reform coalitions to get the reform adopted, this tended to result in more symbolic reforms than the propositions outlined in Chapter 3 suggest. The inclusion of veto players in the resource-based model is thus in order – as portrayed in Figure 9-1 below.

Figure 9-1: Adjusted resource-based model of party law reform



9.3 Within and cross-country analyses

Chapter 4 has discussed how the literature on party law reform identifies institutional characteristics, such as democratic experience and degree of party system institutionalization, as important alternative explanations for variance in adopted party laws. Comparing the explanatory power of this study's findings against institutional explanations forms one way to explore the added value of the resource-based model advanced here.

9.3.a Cross-country comparisons

Table 9-4 compares the various party law reform strategies applied in the four countries under study here across different institutional settings. The most important finding of this comparison is that all countries have, at one point or other, adopted party law reforms to secure party access to organizational resources in response to systemic or electoral threats. For the four countries under study here, these strategies are the most common ones that politicians applied when reforming party law. Neither the age of democracy nor the degree of party system institutionalization hence explains why the systemic and electoral economy logic of party law reform appears. For these two types of reforms, resource threats are a better explanation of adopted party law reforms than that institutional characteristics are.

Table 9-4: Cross-country comparisons of party law reform strategies

Democratic	**Party system institutionalization**	
experience	Weak	Strong
Short	Argentina: -Systemic economy (2002, 2006) -Electoral economy (2009) -Organizational economy (2002, 2009)	Mexico: -Systemic economy (2007/2008) -Electoral economy (2003)
Long	Colombia: -Systemic economy (2009, 2011) -Electoral economy (2005, 2009) -Organizational economy (2003)	Costa Rica: -Systemic economy (1996/7/2002/2009) -Electoral economy (2009)

A focus on the degree of party system institutionalization does add some explanatory power as only the weakly institutionalized party systems (Argentina and Colombia) have at times adopted laws to address intra-party changes. This underlines the usefulness of studying party law reforms beyond institutionalized party systems only, as alternative strategies of party law reform may present here. It can easily be hypothesized that politicians in countries with weakly institutionalized party systems are less able to exert control over party organizations and that they therefore turn to party law to (re)-gain control over organizational resources instead. Alternatively, it may be easier for politicians in such states to misuse the legislative system for their individual purposes. The within-country comparisons lend some support for this latter assertion.

9.3.b Within-country comparisons

The within-country comparisons have provided some interesting pointers on the role that institutions may play in constraining party law reform strategies. In Costa Rica, the rise of the Constitutional Court in the 1990's and of new opposition parties in the early 2000's created institutional obstacles for the traditional parties to use party law as a means to respond to large-scale party system change. These checks likely prevented the traditional parties from blocking the rise of new parties and thereby contributed to a gradual process of party system change. In 2014, this process resulted in the election of the first non-traditional party president since 1949.

In the case of Mexico, party law reform served to structure the institutionalization of conflict among its three main parties. All reforms adopted since the 1996 transition depart from the same principles: the need to create inter-party equality in elections, to prevent the rise of too many small/new parties, and to improve the credibility of the electoral process. The effectiveness of these reforms in sponsoring democratic governance more generally may be disputed, as many of Mexico's current electoral problems are a direct result of societal problems that cannot be addressed through party laws alone. Nevertheless, party law's introduction of a relatively independent electoral authority forms a check on party behavior.

In Argentina, on the other hand, party law continues to serve as an unstable form of exclusionary institution building that allows the executive to settle both inter- and intra-party resource conflicts at its own discretion – unchallenged by any institutional checks. The only difference with party law reform throughout the mid-20th century is that contemporary Argentine party laws no longer contain clear prohibitions of opposition forces. Instead, these laws block the opposition's access to resources and allow the executive to attend to threats posed by dissident factions through legal reforms.

A similar instrumental use of party law is visible in Colombia, where the 1991 constitutional reform sought to instigate a political transition by doing away with existing party structures. Imposition of this new regulatory mold was an incomplete success in light of the continued political dominance of traditional party elites. The 1991 constitutional reform did contribute to the erosion of the traditional parties' organizational structures. Despite an attempt to reverse this process in 2003, continued party erosion resulted in a situation in which the executive could make increasing use of the legislature to sponsor particularistic party law reforms that served consolidate

its power.[510] By seeking to dismantle the traditional order, the 1991 constitution set a dangerous precedent for party law reform.

When comparing the role of institutions in these stronger versus weaker institutionalized party systems, two important differences stands out. Costa Rica and Mexico have in common that the development of party law played an important role in these countries' transitions to democracy. Party law, and other electoral reforms, allowed these countries to institutionalize political conflict through the creation of an autonomous arbiter, a strong electoral court, which ensured that electoral losses no longer equated to political annihilation. Colombia and Argentina, on the other hand, both developed party law to legally exclude traditional, opposition and/or third forces from the political system. As a consequence, governments in both countries used, and continue to use, party law to accommodate political conflict in their own interest, rather than by delegating this conflict to an independent arbiter that could also protect the interests of opposition or third parties. The old Latin American adage 'for my friends – anything, for my enemies – the law' appears to endure in these countries.

In addition, the presence of an inter-party equilibrium in the legislature at the time of reform sets Costa Rica and Mexico apart from Colombia and Argentina. This is in line with the findings of studies on institutional reform more generally, which find that such equilibriums tend to result in the creation of institutions that do not offer one party a marked advantage over others (Geddes 1991; Lehoucq 2000; Sakamoto 1999). Future research could disentangle the effects of these two variables on party law reform strategies to identify the extent to which such judicial and legislative checks contribute to constraining the reform process.

Based on these findings, this study provides some tentative pointers as to the role that party law reform plays in institution building. Institutions' defining characteristics are their enforcement and stability (March and Olsen 2006, 3). Enforcement occurs when basic rules and norms are applied effectively. When political actors find ways to work around these rules, institutions are nothing more than a dead letter. Stability entails the durability of institutions, meaning that institutions are able to

[510] As a consequence, the provisions on party membership, for example, now change from one election to the next to ensure party switching in the interest of the governing coalition. External pressure for the adoption of rules that would increase the cohesion of legislative caucuses resulted in the sponsoring of rules that are only applied when this serves the executive's interest.

withstand temporal political pressures and create a steady anchor for the political process (Levitsky and Murillo 2009).[511]

In this study, I have shown that enforced laws are more likely to appear when a political crisis threatens a governing party or party coalition's access to electoral resources directly. Unenforced laws are more likely to appear when parties adopt laws in response to legitimacy concerns that do not threaten their access to other electoral resources directly. In addition, the within-country comparisons suggests that political parties are less able to adopt laws at will – unstable institution building if you may – when they are up against a strong legislative or judicial veto-player. Combined, these findings suggest that party law reform contributes most to institution building when it responds to internal reform pressures but is subject to strong legislative or judicial checks. When these checks are absent and/or when the executive is strong, party law reform constitutes unstable institution building. In such instances, governments make good use of party law to consolidate their power. This occurs in an *ad hoc* manner that results in rules that enforced in an erratic manner as long as they serve the governing party's electoral goals.

9.4 Implications of the findings and avenues for future research

9.4.a Party law reform

This study's findings speak to some of the assumptions that underlie studies of party law reform. In the process, this study has shown how pressing socio-political changes may lead politicians to adopt rules that do not necessarily increase their absolute access to resources. This supports Scarrow's (2004) assertion that political strategies shape the outcome of debates over party law reform. Specification of the various types of resource threats that occur allowed for the rather accurate prediction of the types of legal measures that politicians will adopt. In addition, it allowed for the rather accurate prediction of whether politicians design such matters to target the threat at hand in an effective manner and whether they adopt measures for implementation of the reforms.

The extent to which politicians adopt symbolic reforms in response to legitimacy crises has proven truly remarkable. This dynamic is not completely surprising. As implied in Chapter 4, the reform process consists of a problem, policy, and polit-

[511] Institutional stability encompasses the general consensus that the basic rules and norm of the polity – such as those codified in the constitution – should guide political behavior, that these rules and norms should be applied indiscriminately, and that the reforms of these rules and norms should not be subjected to the whims of political actors.

ical stream and it is up to political entrepreneurs to bring these streams together (Kingdon 1984[1995]). In the process, politicians can manipulate the reform agenda to their own advantage. This is precisely the position that political parties are in when they adopt reforms that seemingly address public pressure for political change, meaning that they can capitalize on the external momentum for reform to redress the resource balance in their own favor. The extent to which the parties in the cases studied here thereby rode roughshod over public demands for change contradicts many scholarly accounts of electoral and party law reforms. It has been suggested, for example, that parties need to take into account public opinion, as too instrumental a reform may end up harming the parties' electoral prospects directly (Blais and Massicotte 1997; Katz 2005; Renwick 2010, 63). The cases presented here do not provide direct evidence of this. It follows that the role of vertical accountability in constraining instrumental party law reforms should not be overestimated. This is the case in particular when external demands for political change are not accompanied by fundamental changes in party competition or organization.

These findings are also important because the legal regulation of political parties has become one of the focal points of international and domestic party aid providers and non-governmental organizations supporting democratic governance. As noted by Carothers (1999, 2006), this type of aid often departs from the European model of programmatic political parties with strong linkages to society. In order to promote such ideal-typical parties, many organizations promote the legal regulation of parties as means to support democratic consolidation in new democracies (Erdmann 2010; Molenaar 2010).[512] This study contributes to these efforts at promoting and consolidating democratic governance by putting center stage the intrinsically political nature of law reform. It has shown that an externally promoted reform agenda will only find resonance in national legislatures if it is able to connect to imminent threats to party organizational survival in a meaningful manner. By showing that not all party reforms are designed in an equal manner, and that the conditions under which party law reforms come about partly determine whether reforms are designed to matter, party aid providers might be able to identify successful conditions for reform beforehand and invest their energy there where it is likely to matter most. Party law reform

[512] This approach finds resonance in supranational organizations such as the European Union and the Council of Europe that issue best-practice reports and common principles on party regulation to promote the development of strong, programmatic parties in the new Eastern democracies and to fight political corruption throughout Europe (van Biezen and Molenaar 2012). In Latin America, supranational cooperation takes place in the *Unión Interamericana de Organismos Electorales* (Inter-American Union of Electoral Organizatios – UNIORE). UNIORE organizes biannual conferences between the representatives of the domestic electoral institutions to exchange experiences with electoral rules and practices, such as the legal regulation of political parties.

is not a one-size-fits-all solution and in order for democracy promoters to instigate effective change, they should refrain from treating it as such.

9.4.b Judicialization of politics

The study's findings also emphasize the important political role of party-law-related jurisprudence in contemporary Latin American political systems. Many Latin American courts have expanded their activities to the legislative sphere in the face of ineffective governments and legislatures (Couso, Huneeus, and Sieder 2010; Sieder, Schjolden, and Angell 2005). Next to normative questions about the appropriateness of involving non-representative agents in legislative activities, the court's appropriation of power over political parties' resources at times provides parties with incentives to capture the courts to protect their own survival. Indeed, the 2003 and 2007/8 reforms in Mexico have shown how legislators punished courts for their activism and how the rejection of partisan courts may come to undermine the entire democratic system.

The empirical findings presented in this study show that the relationship between courts and political parties runs in two directions. On the one hand, the courts' influence was visible most clearly in those instances where the courts adopted applied rules that implemented laws that had been designed in a symbolic manner. On the other hand, an important finding that follows from the cases at issue here is that the judicialization of politics through the development of party-law-related jurisprudence is not a one-way street necessarily. Political parties are not helpless victims in the face of the courts' increased legal activism. Indeed, many of the *systemic economy* reforms contained a component that redressed political parties' autonomy vis-à-vis external judicial oversight.

At the same time, the cases studied here also show that the judiciary may prevent the adoption of too instrumental party laws. Indeed, the judicial branch often ensured that politicians had to take into account existing constitutional norms when adopting party law reforms. If not, they faced the danger that the courts would abrogate their reform efforts.[513] This constraining effect was visible particularly well in the Costa Rican case. Here, the creation of the Constitutional Court – the reasons for which lie beyond this study's purview – put an effective end to the use of party law to increase the thresholds for new party formation. This ruling severely constrained future reform efforts. A similar concern with violating constitutional norms and international treaties led Mexican politicians to refrain from creating a party monopoly over the representative process. In Colombia, the government feared that the Court

[513] The ability of courts to do so depends on the constitutional design of such review procedures (Navia and Ríos-Figueroa 2005).

might abrogate the constitutional adoption of immediate presidential reelection if the legislature failed to regulate the funding of presidential election campaigns. This explained why the government made a lot of concessions to the left-wing PDA in the subsequent sponsoring of this 2005 law regulating this issue.

These findings suggests that constitutional actors may have an important agenda-delineating function, but only if the judiciary is willing and able to function as a horizontal check on the reform process. Combined with the finding that public opinion does not exert strong pressure over party law reform necessarily in the form of vertical accountability, this suggests that horizontal accountability may play a more important constraining role in party law reform than popular scrutiny can or does. The extent to which this occurs depends, however, on the presence of strong institutional veto-players that are able or willing to exercise such a function.

9.4.c Party system and party organizational change

Based on these conclusions, a strong case can be made for the inclusion of the resource-based perspective and party law reform in theories of party system and party organizational change more generally. This study has built on a century of political science research on political parties' organizational purposes and the conditions that threaten their organizational continuity. The resource-based perspective served to operationalize party law reform as a survival mechanism that political parties apply in response to party system or party organizational change. The increased appearance of party laws in modern democratic party systems makes this a very viable alternative to other types of survival mechanisms, such as organizational adaptation, party mergers, or the formation of programmatic party cartels.

Rather than addressing the threat posed by the rise of a new party through programmatic means, for example, politicians may turn to party law reform to increase the threshold for new parties to participate in elections. In the process, the increased reliance on party law may contribute to the creation of an ever more conservative party system composed of political parties that are able to withstand environmental changes without altering their internal organizational structures or programmatic offers. Other internal strategies for dealing with party organizational change may also become less relevant due to the contemporary popularity of party laws. Why would party leaders seek to enforce party discipline through the distribution of selective incentives, for example, when party leaders can simply sponsor a law to enforce such discipline in a top-down manner?

Further questions that this study did not address are under what conditions we might expect party law reform to be favoured over other survival mechanisms and whether political parties in some types of party systems are more prone to choose

party law reforms over other survival strategies than parties in other systems. As discussed above, the use of party law reforms in response to organizational concerns occurred in weakly institutionalized party systems only. In addition, the presence of strong institutional or legislative veto points may very well make it less likely that political parties will opt for party law reforms as a survival strategy. Future research could disentangle these relationships further.

9.4.d Democracy, democratic governance, and the political science discipline

Party law is an exception in public law because its targets parties at the individual, rather than the systemic level. This explains why party law may play such an important role in ensuring party organizational change and stability. The question remains to what extent this is a desirable quality and what consequences such instrumental use of party law has for democracy and democratic governance more generally. Although this study has focused primarily on the process of party law reform itself, the findings are such that they allow for some reflections on the larger state of democracy in the world.

Firstly, Katz and Mair's cartel party theory (1995, 2009) runs through this study like an implicit common thread. Given that the cartel party theory is a theory of (changing) party systems, rather than of party law reform, I have refrained from putting the theory center stage where possible. Nevertheless, party law reform is one of the strategies that political parties have at their disposal to promote party system cartelization in the face of threats to their joint survival. Such strategic use of party law reform may become all the more relevant in the present day and age, as populist outsiders and a disenchanted electorate confront established political parties around the world. In the process, established political parties run the risk of making exclusion rather than inclusion the dominant mode of party competition.

Katz and Mair warned us early on that such party system cartelization takes on a self-undermining logic in the long run, as "the cartel parties are often unwittingly providing precisely the ammunition with which the new protesters ... can more effectively wage their wars" (1995: 24). The existence of parties with limited possibilities for intra-organizational dissent, as well as of party systems with minimal competition and with protection mechanisms that safeguard political parties from the consequences of electoral dissatisfaction, obstructs the delivery of organizational or electoral feedback to party leaders and the adoption of programmatic or organizational adjustments in response. Voter frustration and challenges from outside of the cartel are the result, often predicated on a desire to do away with an elitist establishment that is (perceived to be) corrupt (Katz and Mair 1995, 24–25).

To the extent that party law reforms undermine more inclusive forms of political party competition and organization, they may thereby sow the seeds for more – rather than less – political and popular momentum to overturn existing political systems. In this sense, the world has many lessons to learn from the Latin American region, where some of the political systems that were hit hardest by popular uprisings were precisely those that had relied on party laws to maintain an exclusionary political system for decades. At the same time, variations existed in the extent to which anti-establishment movements were able to overturn the party systems completely.[514] The precise dynamics of the relationship between party law, party system legitimacy, and the political trajectories adopted amidst such popular pressure for change remain unclear.

To disentangle these dynamics, one question that requires further research is whether and when party law reforms result in the delegitimization of existing party systems. This study has shown that established political parties often respond to legitimacy crises by adopting symbolic reforms that do not alter political practices substantively. Departing from the assumption that citizens are not so easily deceived, this begs the question whether reforms of the *systemic economy* kind result in lower levels of legitimacy and trust in political parties – thereby setting into motion a self-perpetuating logic of party system delegitimization.[515] It may very well be the case that systemic economy reforms are temporal solutions at best that do more harm to party system legitimacy in the long run than that reformers are aware of.

Secondly, the current pervasiveness of party law in party systems around the world fits within a procedural worldview in which the party system – and the larger democratic process – are defined and seen as technical and moldable entities. This worldview is visible in the work of party aid providers that seek to build a democratic polity from scratch by proposing rigorous party law reforms. In the process, the well-intentioned international community forgets to ask the basic question whether it is really realistic to expect that transparent, democratic, and inclusive political parties can be build in societies that are prone to corruption, subject to authoritarian legacies, and that are highly exclusive. Such an approach is putting the cart in front of the horse at best – and naively expects that democratic societies can be constructed in a top-down manner by putting into place democratic procedures without investing in a democratic spirit at worst.

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[514] Venezuela and Costa Rica constitute two extremes of this spectrum, with Colombia laying somewhere in the middle.

[515] One recent study indeed finds that higher levels of political finance regulation correlate with higher levels of perceived corruption of political parties (Bértoa et al. 2014). Further research is needed to analyze the direction of this relationship.

This procedural worldview is not the limited purview of party aid providers. The same goes for the academic outlook on democracy more generally. An almost exclusive focus on process rather than substance has come to "reinforce the idea that democracy is the domain of the state, with its procedures, institutions and political elites, while ignoring people's views" (Doorenspleet 2015, 470). An important danger of the procedural worldview is that "democracy ceases to be seen as a process by which limitations or controls are imposed on the state by civil society, becoming instead a service provided by the state for civil society" (Katz and Mair 1995, 22). By extension, democratic governance is seen to be legitimate as long as its players follow the formal rules of the electoral and institutional game.

One problematic consequence of this logic is that political battles are increasingly being fought over the interpretation of these rules. Parliamentary coups using formal procedural rules have become an ever more increasing feature of Latin American democracy (Munck 2015). This study has similarly shown how electoral litigation is on the rise as a means to contest the outcome of elections. In the process, issues of substantive representation and the role of the popular vote appear to have taken a back seat. This is not to say that institutions do not matter for democratic governance. Rather, it is to say that equating institutions with democratic governance risks taking away attention from more pressing, substantive democratic concerns that are often overlooked – or even actively pushed back against – through an exclusive focus on rules and procedures.

One final look at the Mexican example discussed in the first paragraph of this study illustrates this. The annulment of a local popular vote, on account of a boxer wearing a patch the size of a fist, in a boxing match organized in another country. How did this verdict safeguard democratic governance? Whose interests were served here and who could be represented in a better, more substantial manner because of the electoral court's decision? Why is it that Mexican political parties feel so insecure about their electoral standing that they fear a political logo on a boxer's shorts is sufficient to sway an election? Admittedly, these are all questions that can be answered quite straightforwardly. But they also point to a larger, overarching concern with politicians that rely on procedure to compensate for their collective failure to invest in a more substantive dimension of democracy – and raise the question what is needed to turn this tide?

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Appendix 1 – Database constitutional codification political parties

Chapter 2 builds on a database of the constitutional codification of political parties in the 19 countries commonly included in comparative studies of Latin American politics.[516] The period under investigation ranges from the first reference to political parties in the 1886 Colombian Constitution to the present. In line with van Biezen and Borz (2009, 4–5), the database contains all textual references to the term 'political party/parties'.[517] The comprehensive and searchable database can be accessed at: http://www.partylaw.org. The database uses the official version of legal texts, which were obtained from the countries' governmental websites in their original language only. Nevertheless, the individual articles have been coded in English to increase the databases' accessibility.

This study broadly applies the deductive-inductive constitutional coding scheme developed by van Biezen and Borz (2009).[518] This coding scheme contains four broad elements: 1) principles and values; 2) rights and duties; 3) the structure of the political system, and 4) 'meta-rules' or rules of constitutional interpretation. The table below provides an overview of the 11 categories within these areas: democratic principles, rights and freedoms, duties and obligations, extra-parliamentary party, electoral party, parliamentary party, governmental party, party finance, media access, external oversight, and secondary legislation.[519] To ensure internal reliability, I applied an iterative coding process. After coding each article, I checked for consistency with similar articles adopted by the same country at earlier points in time. After coding all articles, I checked for consistency in the articles across each sub-category.

[516] These countries are: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Nicaragua, and Venezuela.

[517] One minor distinction is that I also code references to 'political organizations' as textual references to political parties. For the purpose of this study, including this broader category of references allows for a better identification of shifts between the recognition, embrace, and rejection of the institution 'political parties' throughout Latin American history.

[518] Dichotomous coding ensured mutual exclusiveness. This means that an article either contains a specific provision on political parties or it does not. The possibility to assign multiple codes to a single data entry ensured exhaustiveness. This means that each data entry was coded at least once, but that it could also pertain to several relevant categories (see Riffe, Lacy, and Fico 1998, 75–76).

[519] For simplicity purposes I collapsed van Biezen and Borz's distinction between the regulation of political parties' 'activity and behavior' and their 'identity and programme' into a single category: 'duties and obligations'. In practice, it often proved difficult to distinguish between the two categories. I also split their 'public resources' category into two: 'party finance' and 'media access'. In practice, regulation on these two categories proved so elaborate as to require further specification.

Area	Principles and values	Rights and duties	Political system	Meta-rules
Category	Democratic principles	Rights and freedoms	Extra-parliamentary party	External oversight
		Duties and obligations	Electoral party	Secondary legislation
			Parliamentary party	
			Governmental party	
			Party finance	
			Media access	

In line with van Biezen and Borz's coding scheme (2009, 6–8), 'democratic principles' define the democratic system and/or key democratic principles and values in terms of political parties. 'Rights and freedoms' associate political parties with fundamental democratic rights and liberties, such as the freedom of speech or association. 'Rights and duties' specify conditions for permissible forms of party activity, behavior, and identity. In my analysis of the constitutional references, I have used these sub-categories as indicators of the normative appreciation of political parties as institutions.

The other categories all relate to the more procedural position awarded to political parties within the broader system of governance. Constitutional references to the 'extra-parliamentary party' address political parties in the extra-parliamentary domain, such as by focusing on their internal structure or their function as a membership organization. References to the 'electoral party', 'legislative party', and 'governing party' similarly apply to political party organization in these various domains. Articles listed under 'political finance' and 'media access' regulate political parties' access to, and dependence on, public resources. The categories 'external oversight' and 'secondary legislation', lastly, contain references to external control over political parties' upholding of these constitutional provisions as well the delegation of the legal development of other rules and norms to further legislation.

Appendix 2 – Relevant instruments of party law

Costa Rica

1949 Constitution
Law 2036, 1956 'Constitutional Reform'
Law 4794, 1971 'Constitutional Reform'
Law 4813, 1971 'Constitutional Reform'
Law 4973, 1972 'Constitutional Reform'
Law 5698, 1975 'Constitutional Reform'
Law 7675, 1997 'Constitutional Reform'

Law 1536, 1952 'Electoral Code'
Law 6833, 1982 'Electoral Code Reform'
Law 7094, 1988 'Electoral Code Reform'
Law 7653, 1996 'Electoral Code Reform'
Law 8119, 2001 'Electoral Code Reform'
Law 8123, 2001 'Electoral Code Reform'
Law 8765, 2009 'Electoral Code'

Constitutional Court sentence 980-91
Constitutional Court sentence 1750-97
Constitutional Court sentence 15960-2006
Constitutional Court sentence 9340-2010
Constitutional Court sentence 16592-2011

TSE verdict 727-1996
TSE verdict 1861-E-1999
TSE verdict 202-E-2000
TSE verdict 303-E-2000
TSE verdict 1440-E-2000
TSE verdict 0859-E-2001
TSE verdict 1536-E-2001
TSE verdict 1671-E-2001
TSE verdict 0046-E-2002
TSE sentence 2096-E-2005

Mexico

1917 Constitution
1963 Constitutional reform
1972 Constitutional reform
1977 Constitutional reform
1981 Constitutional reform
1986 Constitutional reform
1990 Constitutional reform
1993 Constitutional reform
1994 Constitutional reform
1996 Constitutional reform
2003 Constitutional reform
2007 Constitutional reform

1918 'Electoral Law for the election of federal powers'
1946 'Federal Electoral Law'
1949 'Federal Electoral Law reform'
1954 'Federal Electoral Law reform'
1973 'Federal Electoral Law'
1977 'Federal Law of Political Organizations and Electoral Processes'
1987 'Federal Electoral Code'
1990 'Federal Code of Electoral Institutions and Procedures (COFIPE)'
1993 'COFIPE reform'
1996 'COFIPE reform'
2002 'COFIPE reform'
2003 'COFIPE reform'
2008 'COFIPE reform'

Colombia

1886 Constitution
1910 Constitution
1991 Constitution

Acto Legislativo 1, 1945
Acto Legislativo 0247, 1957
Acto Legislativo 1, 1959
Acto Legislativo 1, 1968
Acto Legislativo 1, 2003
Acto Legislativo 2, 2004
Acto Legislativo 1, 2009

Law 58, 1985 'Basic Statute on Political Parties'
Law 130, 1994 'Political Party Law'
Law 844, 2003 'National Budget Law'
Law 996, 2005 'Presidential Elections Law'
Law 1475, 2011 'Statutory law that adopts rules for the organization and functioning of political parties and movements'

Executive decree 927, 1990
Executive decree 2207, 2003

Constitutional Court sentence C-089-94
Constitutional Court sentence C-515-04
Constitutional Court sentence C-523-05
Constitutional Court sentence C-1040-05
Constitutional Court sentence C-1153-05

Argentina

Law 23.298, 1985 'Constitutional Political Party Law'
Law 24.430, 1994 'Constitutional Reform'
Law 25.600, 2002 'Political Party Finance Law'
Law 25.611, 2002 'Constitutional Political Party Law'
Law 26.291, 2006 'Constitutional Political Party Law'
Law 26.215, 2006 'Political Party Finance Law'
Law 26.571, 2009 'Law that Democratized Political Representation, Transparency, and Electoral Equality'

Executive Decree 990/2002
Executive Decree 1169/2002
Executive Decree 1397/2002
Executive Decree 1578/2002
Executive Decree 295/2005
Executive Decree 535/2005
Executive Decree 2004, 2009
Executive Decree 433/2011
Executive Decree 445/2011

CNE verdict 3010-02
CNE verdict 3060-02
CNE verdict 4342-10

Appendix 3 – Coding of party laws

Type	Category		Legal provisions
Fundamental values	Defending democracy	Respect	-Democracy -National sovereignty -Human rights -Constitutional order
		Prohibit	-Violence -Ties with illicit groups -Minority parties
	Parties as public utilities		-Intra-party democracy -Equality -Transparency -Education
Formation costs	Quantitative registration requirements		-Supporting signatures -No. of members -Electoral participation -Election outcomes -Spatial requirements -Registration fee
	Qualitative registration requirements	Procedural	-Name/symbols -Statutes/program -Registered seat -Organizational structure -Minutes convention -Banking details
		Substantive	-Intra-party democracy -Equality -Transparency
	Party ban		-Loss of registration -Loss of assets -Prohibition party renewal
	Cancelation of registration		-Loss of registration -Loss of assets
	Suspension of registration		-Renewal registration -Loss of access to benefits

Type	Category		Legal provisions
Candidate selection	Locus of decision-making		-Parties/party statutes -One of multiple methods -Legal specification
Political finance	Type of public funding	Direct	-Organizational funding -Electoral funding -Earmarked funding
		Indirect	-Media access -Tax exemptions -Access to public buildings
	Allocation of public funding		-Votes -Seats -Membership figures -Equality
	Threshold for public funding		-Votes -Seats -Candidates/lists -Spatial/representational requirements
	Recipient of public funding		-National party -Sub-national party -Parliamentary caucus -Single candidate
	Restrictions donations	Qualitative	-Members -Individuals -Corporations[520]
		Quantitative	-Total amount -Individual donations
	Restrictions expenses	Qualitative	-Media access -Opinion polls
		Quantitative	-Total amount -Individual expenses

[520] Restrictions may also apply to: (semi-)public entities, organized interest associations, party foundations/youth organizations, foreign sources, anonymous donations, parliamentary groups, representatives or candidates, charities, religious organizations, other political parties, promotional activities, and international organizations.

Appendix 4 – Primary sources

Costa Rica

La Gaceta (Official Gazette)
Asamblea Legislativa – Servicios Documentales (Parliamentary Archives)
La Nación (newspaper)
La Prensa (newspaper)

Mexico

Diario Oficial (Official Gazette)
Servicio de Información para la Estádistica Parlamentaria (Parliamentary Archives)
El Universal (newspaper)
La Jornada (newspaper)
El País (political magazine)

Colombia

Diario Oficial (Official Gazette)
CongresoVisible (Unofficial Parliamentary Archive run by the Universidad de los Andes)
El Tiempo (newspaper)
El Espectador (newspaper)

Argentina

Boletín Oficial de la República Argentina (Official Gazette)
Dirección de Información Parlamentaria (Parliamentary Archives)
La Nación (newspaper)
Clarín (newspaper)

Appendix 5 - Sample coding/interview questions

Reasons for reform
What factors contributed to the adoption of this reform?
What other issues were debated at the time of reform?
What are the major improvements this reform makes?

Reform process
Who constituted the reform coalition?
Who wrote the reform bill?
Which articles were subject to negotiation?
How did negotiations play out?
Who switched positions on reform issues?
Who opposed the reform? Why?

Content and Targeting
What legal options did reformers have available to them?
How did the adopted option address the stated reason for reform?
To what extent did the reform address the stated reason for reform?
Can you name problems or topics that the reform left unaddressed?
How could these problems/topics have been addressed?
To what extent was this subject to debate?
What are the reform's strong points? What are its weaknesses?

Implementation
Which provisions for implementation were created?
How were these provisions thought to be able to solve the problem?
How do these monitoring mechanisms function?
How has the law been put into practice? Why in this manner?
What problems need to be overcome?

Appendix 6 – List of interviews

Costa Rica

Electoral authorities:

- Luis Antonio Sobrado Solís. President of the *Supreme Electoral Tribunal* (TSE). San José, 12 November 2012.
- Martha Castillo Víquez. Director of the Political Parties' Electoral Register of the *TSE.* San José, 27 November 2012.
- Ronald Chacón Badilla. Director of Political Parties' Finances of the *TSE*. San José, 27 November 2012.
- Hugo Picado Leon. Director of the *Institute for Democratic Formation and Studies* (IFED) of the TSE and assessor of the Tribunal to the 2006-2009 Special Committee on Electoral Reform and Political Parties (CEREPP). San José, 30 November 2012.
- Héctor Fernández Masís. Director of the General Direction of the Political Parties' Electoral Register and Finances (DGREFPP) of the *TSE*. San José, 11 December 2012.

Political parties:

- Sergio Alfaro Salas. Member Legislative Assembly (2006-2010) of the opposition *Partido de Acción Ciudadana* (PAC) and member of the Special Committee on Electoral Reform and Political Parties (CEREPP). San José, 14 November 2012.
- Maureen Ballestero Vargas. Member Legislative Assembly (2006-2010) of the governing *Partido de Liberación Nacional* (PLN). Vice president of the Legislative Assembly (2006-10 and president of the PLN legislative caucus (2007-2009). President of the Special Committee on Electoral Reform and Political Parties (CEREPP). San José, 29 November 2012.
- Margarita Bolaños. Secretary general of the *Partido de Acción Ciudadana* (PAC). San José, 3 December 2012.
- José Rosales Obando. Member Legislative Assembly (2006-2010) of the opposition *Partido de Acción Ciudadana* (PAC) and member of the Special Committee on Electoral Reform and Political Parties (CEREPP). San José, 4 December 2012.
- Otto Guevara Guth. President of the *Movimiento Libertario* Movement (ML) and presidential candidate (2002, 2006, and 2010). San José, 4 December 2012.
- Luis Guillermo Solís. Secretary General of the *Partido de liberación Nacional* (PLN)(2002-2003) and presidential candidate of the *Partido de Acción Ciudadana* (PAC). President of Costa Rica (2014-2018). San José, 4 December 2012.
- Lorena Vásquez Badilla. Member Legislative Assembly (1994-1998 and 2006-

2010) of the opposition *Partido de Unidad Social Cristiana* (PUSC) and member of the Special Committee on Electoral Reform and Political Parties (CEREPP). President of the PUSC (2002-2006). San José, 12 December 2012.

Experts:
- Gerardo Hernández Naranjo. Political scientist at the *University of Costa Rica* (UCR). San José, 14 November 2012.
- Rotsay Rosales Valladares. Political scientist at the *University of Costa Rica* (UCR). San José, 6 December 2012.
- Joseph Thompson. Director of the *Center for Electoral Promotion and Assistance* (CAPEL) of the Inter-American Institute of Human Rights. San José, 12 December 2012.

Mexico

Electoral authorities:
- Alfredo Cristalinas. Director of the Financial Audit Unit, *IFE*. Mexico D.F., 21 June 2012.
- Luis Fernando Flores. Director of the Political Party Audit Board, *IFE*. Mexico D.F., 23 June 2012
- Ana Ma. Fuentes Flores. Sub director of the Political Party Audit Board, *IFE*. Mexico D.F., 23 June 2012.
- Claudia Urbina. Director of Public Funding and Political Parties, *IFE*. Mexico D.F., 25 June 2012.
- Ernesto Ramos. Assessor Electoral Councilor, *IFE*. Mexico D.F., 25 June 2012.
- Lorenzo Córdova. Electoral Councilor, *IFE*. Mexico D.F., 27 June 2012.
- Selena Márquez. Director Complaints and Informal Proceedings Board, *IFE*. Mexico D.F., 27 June, 2012.
- Marco Antonio Zavala. Judge, *TEPJF.* Mexico D.F., 2 July 2012.
- Carlos Morales. Assessor Electoral Councilor, *IFE.* Mexico D.F., 3 July 2012.
- Benito Nacif. Electoral Councilor, *IFE.* Mexico D.F., 5 July 2012.
- Octael Nieto. *Public Prosecutor Electoral Crimes* (FEPADE). Mexico D.F., 12 July 2012.
- Hector Hugo Sánchez Cruz. Operations coordinator of the Financial Audit Unit, *IFE.* Mexico D.F., 13 July 2012.
- Mariana Sánchez Pérez. Assessor of the Financial Audit Unit, *IFE.* Mexico D.F., 13 July 2012.
- Félix Varela Rodríguez. President of the Audit Unit, *IEDF*. Mexico D.F., 13 July 2012. Mexico.

Experts:
- Ciro Murayama. Economics professor, *Universidad Nacional Autónoma de México*, Mexico D.F., 6 July 2012.
- Eduardo Huchim. Journalist. Mexico D.F., 9 July 2012.
- Hector Díaz Santana, Research professor *Centro de Investigaciones Económicas, Administrativas y Sociales* (CIECAS), *Instituto Politécnico Nacional* (IPN). Mexico D.F., 10 July 2012.

Colombia

Electoral authorities:
- Antonio José Lizarazo Ocampo. *National Electoral Council* judge (2002-2006) and consultant for the *UNDP* Project of Democratic Strengthening. Bogotá, 3 April 213.
- Alfonso Portela Herrán. Registrator electoral matters, *National Registry of the State.* Bogotá, 16 April 2013.
- Elkin Darío Henao. Assessor inspection and surveillance, *National Electoral Council.* Bogotá, 16 April 2013.
- Álvaro Campos. Head auditor of the National Fund of Political Finance, *National Electoral Council.* Bogotá, 16 April 2013.

Political parties and movements:
- Felipe Santos de Francisco. Secretary general of the *Unión Patriotica* (no representation in Congress). Bogotá, 12 April 2013.
- Víctor Manuel Matiz Moreno. Secretary of organization of the *Unión Patriótica* (no representation in Congress). Bogotá, 12 April 2013.
- Alfredo Guillermo Molina Triana. Representative (2010-2014) and spokesperson of the governing *Partido de la U.* Bogotá, 18 April 2013.
- Camilo Ernesto Romero Galeano. Senator (2010-2014) of the opposition party *Polo Democrático Alternativo.* Bogotá, 22 April 2013.
- Jaime Caycedo Turriago. President and secretary general of the *Partido Comunista Colombiano* (no representation in Congress). Bogotá, 23 April 2013.
- Carlos Alberto Baena López. Senator (2010-2014) and president of the *Movimiento Independiente de Renovación Absoluta* (MIRA, independent). Bogotá, 23 April 2013.
- Samuel Benjamín Arrieta Buelvas. Senator (2006-2014) and president of the *de facto* governing coalition party *Partido Integración Nacional*. Member of the First (Constitutional) Senate Committee (2006-2010). Bogotá, 29 April 2013.
- Jorge Eliécer Guevara. Senator (2006-2014) of the opposition party *Polo Democrática Alternativo.* Bogotá, 29 April 2013.

- Hernán Francisco Andrade Serrano. Representative (1998-2002) and senator (2002-2014) of the governing coalition party *Partido Conservador Colombiano.* President of the Senate (2008-2009) and member of the First (Constitutional) Chamber Committee (1998-2002) and the First (Constitutional) Senate Committee (2002-2014). Bogotá, 30 April 2013.
- Carlos Germán Navas Talero. Independent representative (1998-2006) and representative (2006-2014) of the opposition party *Polo Democrático Alternativo*. Member of the First (Constitutional) Chamber Committee (1998-2014). Vice president of the Chamber of Representatives (2010-2011). Bogotá, 7 May 2013.
- Jorge Eduardo Londoño Ulloa. Senator (2010-2014) of the governing coalition party *Partido Verde*. Member of the First (Constitutional) Senate Committee (2010-2014). President of the *Partido Verde*. Bogotá, 7 May 2013.
- Iván Cepeda Castro. Representative (2010-2014) of the opposition party *Polo Democrático Alternativo.* Bogotá, 7 May 2013.
- Antonio Navarro Wolff. President of the Constituent Assembly (1991), presidential candidate *Alianza Democrática M-19,* and representative (1998-2002) and senator (2002-2006) *Polo Democrático Alternativo*. Member of the First (Constitutional) Chamber Committee (1998-2002) and the First (Constitutional) Senate (2002-2006) Committee. Bogotá, 28 May 2013.

Civil society organizations:
- Alejandra Barrios Cabrera. National director of the *Misión de Observación Electoral*. Bogotá, 3 April 2013.
- Marcela Prieto Botero. Executive director of the *Instituto de Ciencia Política* (Think tank). Bogotá, 6 April 2013.
- Sandra Ximena Martínez Rosas. Coordinator of the Program of Political Transparency of *Transparencia por Colombia*. Bogotá, 15 April 2013.
- Juan Fernando Londoño. Former coordinator of the *UNDP* Project of Democratic Strengthening and former vice minister of Internal Affairs (2011-2012). Bogotá, 28 May 2013.
- Clara Rocío Rodríguez Pico. Coordinator of the Program of Institutionality of Democratic Politics of *Fundación Foro Nacional por Colombia*. Bogotá, 30 May 2013.

Experts:
- Fabian Alejandro Acuña Villarraga. Political scientist at the *National Colombian University* and the *Pontificia Universidad Javeriana.* Bogotá, 2 April and 9 May 2013.
- Pedro Medellín Torres. Economist at the *National Colombian University.* Bogotá, 11 April 2013

- Álvaro Navas Patrón. Ex-vice comptroller of the *National Comptroller´s Office* and government consultant. Bogotá, 17 April 2013.
- Fernando Giraldo García. Political scientist at the *Universidad Sergio Arboleda.* Bogotá, 21 May and 29 May 2013.
- Rodrigo Losada Lora. Political scientist at the *Universidad Sergio Arboleda.* Bogotá, 23 May 2013.

Argentina

Electoral authorities:
- Santiago Hernán Corcuera. President of the *National Electoral Chamber.* Buenos Aires, 26 April 2012.
- Nicolás Deane. Former secretary of Electoral Administration of the *National Electoral Chamber.* Buenos Aires, 3 May 2012.
- Claudio Trombetta. Head of Auditors of the *National Electoral Chamber.* Buenos Aires, 4 May 2012.

Political parties and government officials:
- Graciela Camaño. Representative of the governing *Frente Peronista* (1987-1991, 1997-2001, 2003-2013) and president of the Chamber Constitutional Affairs Committee (2007-2011). Former minister of Employment (2002-2003). Buenos Aires, 11 April 2012.
- Esteban Bullrich. Representative of the opposition party *Propuesta Republicana* – PRO (2005-2007) and minister of Education of the *Buenos Aires government* (2010- 2013). Buenos Aires, 12 April 2012.
- Carolina Poli. Political assistant of the opposition party *Propuesta Republicana* and involved in the initial dialogue on the 2009 reform. Buenos Aires, 12 April 2012.
- Gustavo Ferrari. Representative (2009-2013) of the dissident Peronist faction *Unión Celeste y Blanco.* President of the Unión Celeste y Blanco. Buenos Aires, 20 April 2012.
- Alejandro Tulio. Director of the *National Electoral Department* and proponent of the 2009 reform. Buenos Aires, 2 May 2012.
- Patricia Bullrich. Representative (1993-1997, 2007-2013) of the opposition party *Coalición Cívica* and member of the Chamber Constitutional Affairs Committee (2007-2011). Former minister of Employment (2000-2001) and former minister of Social Security (2001-2001). Buenos Aires, 8 May 2012.
- Federico Pinedo. Representative (2003-2013) of the opposition party *Propuesta Republicana* (PRO) and member of the Chamber Constitutional Affairs Committee (2009-2011). Buenos Aires, 14 May 2012.

- Laura Alonso. Representative (2009-2013) of the opposition party *Propuesta Republicana* (PRO) and former executive director of the Argentine branch of Transparency International *Poder Ciudadano.* Buenos Aires, 15 May 2012.
- Martín Alessandro. Political assistant of Vice Chief of the Cabinet of Ministers Juan Manuel Abal Medina during the 2009 reform. Skype, 23 May 2012.
- Margarita Rosa Stolbizer. Representative of the governing (1999-2001) and opposition party (1997-1999 and 2001-2005) *Unión Cívica Radical* (UCR) and of the opposition party *Generación para un Encuentro Nacional* (GEN)(2007-2013). Member of the Chamber Constitutional Affairs Committee (2001-2003 and 2009-2011). President of the opposition party *Generación para un Encuentro Nacional* (GEN). Buenos Aires, 4 June 2012.

Civil society organizations:
- Delia Ferreira Rubio. Director of the International Board of *Transparency International* and expert on Argentina political finance. Buenos Aires, 15 April 2012.
- Pablo Secchi. Director of the Argentine branch of Transparency International *Poder Ciudadano* and former director of *Directorio Legislativo.* Buenos Aires, 9 May 2012.
- Rosario Pavese. Coordinator of Political Institutions and Government of *Poder Ciudadano*. Buenos Aires, 11 May 2012.
- Gerardo Scherlis. Investigator at the *Centre for the Implementation of Public Policies* (CIPPEC) and political scientist at the *Universidad de Buenos Aires.* Buenos Aires, 29 May 2012.

Experts and journalists:
- Miguel de Luca. President of the *Sociedad Argentina de Análisis Político* (SAAP). Buenos Aires, 9 April 2012.
- Daniel Santoro. Journalist of newspaper *Clarín*. Buenos Aires, 23 April 2012.
- Marcelo Escolar. Political scientist at the *Universidad de San Andres* and technical advisor to the government during the 2009 reform. Buenos Aires, 10 May 2012.
- Diego Reynoso. Political scientist at the *Facultad Latinoamericana de Sciencias Sociales* (FLACSO); involved as expert in the roundtable of the 2009 reform. Buenos Aires, 16 May 2012.
- Luis Tonelli. Director of the Faculty of Political Science of the *Universidad de Buenos Aires.* Buenos Aires, 18 May 2012.
- Marcos Novaro. Director of the *Centro de Investigaciones Políticas.* Buenos Aires, 21 May 2012.
- Laura Capriata. Journalist of newspaper *La Nación*. Buenos Aires, 22 May 2012.
- Germán Lodola. Political scientists at the *Universidad Torcuato Di Tella.* Buenos Aires, 28 May 2012.

- Ana María Mustapic. Political scientist at the *Universidad Torcuato Di Tella*; involved as expert in the roundtable of the 2009 reform. Buenos Aires, 28 May 2012.
- María Inés Tula. Political scientist at the *Universidad de Buenos Aires*; involved as expert in the roundtable of the 2009 reform. Buenos Aires, 5 June 2012.

Appendix 7 – Legislative seat distribution

Costa Rica

Year	PLN	PUSC	PAC	ML	Other
1982	57.9%	31.6%			10.5%
1986	50.9%	43.9%			5.3%
1990	43.9%	50.9%			5.2%
1994	49.1%	43.9%			7.0%
1998	40.4%	47.4%		1.8%	10.4%
2002	29.8%	33.3%	24.6%	10.5%	1.8%
2006	43.9%	8.8%	29.8%	10.5%	7.0%
2010	42.1%	8.8%	19.3%	15.8%	14.0%

Source: author's own elaboration based on TSE data (TSE/UCR 2014; TSE 2014)

Mexico

Year	Party	Chamber of Representatives	Senate
2003	PRI	44.8%	44.5%
	PAN	29.8%	36.7%
	PRD	19.4%	11.7%
	PVEM	3.4%	3.9%
	PT	1.2%	
	Convergencia	1%	
	Independent	0.4%	3.2%
2006	PAN	41.2%	40.6%
	PRD	25.4%	20.3%
	PRI	20.2%	25.8%
	PVEM	4.0%	4.7%
	Convergencia	3.4%	3.9%
	PT	3.2%	3.9%
	PNA[521]	1.8%	0.8%
	PSD[522]	0.8%	0.0%

Source: author's own elaboration based on the data provided by Estrada (2003), the Mexican Senate, and Estrada and Poiré (2007, 74)

[521] *Partido Nueva* Alianza (New Alliance Party, PNA)
[522] *Partido Socialdemócrata* (Social Democratic Party, PSD)

Colombia

Year	Party	Chamber of Representatives	Senate
1991	PLC	54%	56%
	PCC	26.1%	24%
	Other	19.9%	20%
1994	PLC	54%	56%
	PCC	33%	29%
	Other	13%	15%
1998	PLC	54%	48%
	PCC	23.6%	25%
	Other	22.4%	27%
2002	PLC	38.4%	47%
	PCC	27.7%	20%
	Other	33.9%	33%
2006	PSUN	16.9%	19.6%
	PLC	18.7%	17.6%
	PCC	15.7%	17.6%
	PCR	10.8%	14.7%
	PDA	4.8%	9.8%
	Other	33.1%	20.7%
2010	PSUN	29.1%	27.5%
	PCC	21.8%	21.6%
	PLC	23.0%	16.7%
	PIN	6.7%	8.8%
	PCR	9.7%	7.8%
	PDA	3.0%	7.8%
	Other	6.7%	9.8%

Source: author's own elaboration based on the data provided by Vélez, Ossa and Montes (2006, 16), the Colombian Chamber of Representatives and the Colombian Senate. The 2002 figures for the Liberal party are somewhat misleading as they contain both the loyal Liberal representatives and those that switched their allegiance to Uribe.

Argentina

Year	Party	Chamber of Representatives	Senate
2001	PJ	46.3%	54.2%
	UCR	25.3%	29.2%
	ARI	4.3%	
	Frente Grande	3.1%	
	FREPASO	2.7%	1.4%
	Partido Socialista	2.7%	
	Demócrata Progresista	1.6%	
	Movimiento Popular	1.2%	
	Neuquino	12.8%[523]	
	Other		
			15.2%[524]

Source: Chamber of Representatives – Decade Votada, Senate – La Nación (14 Oct. 2001) 'Se renueve la totalidad del Senado.'

[523] Consisting of senators of eight provincial parties and three empty seats.
[524] Consisting of senators of eight provincial parties and three empty seats.

Nederlandse samenvatting

Partijwetgeving is een belangrijke factor geworden in het politieke proces van veel Latijns-Amerikaanse landen. Er gaat bijna geen verkiezing voorbij zonder dat een politieke partij dreigt naar de rechter te stappen omdat een tegenstander de regels van het verkiezingsspel overtreden zou hebben. Dit is een opmerkelijke ontwikkeling omdat Latijns-Amerika tot voor kort bekend stond om haar autoritaire dictaturen met weinig respect voor democratische procedures en verkiezingen. Vandaag de dag lijken het echter één en al partijwetten te zijn die de klok slaan. Partijwetgeving is daarmee een uitermate belangrijk politiek instrument geworden.

Tegelijkertijd bestaat er veel variatie in de partijwetgeving in Latijns-Amerika. Waar sommige landen een uitgebreid systeem hebben opgetuigd om het functioneren van politieke partijen tot in de puntjes te monitoren – inclusief het in het leven roepen van onafhankelijke instanties die aan het roer (zouden moeten) staan van dergelijke inspanningen – maken andere landen zich er gemakkelijk van af door wat regels op papier te zetten die in de praktijk weinig uitmaken of die instrumenteel ingezet worden om het functioneren van politieke tegenstanders te bemoeilijken. Het is onduidelijk waar deze verschillen vandaan komen. De centrale vraag die dit proefschrift beantwoordt is dan ook: Waarom variëren de wettelijke bepalingen en de beoogde effectiviteit van aangenomen partijwetten?

Tot op heden biedt de academische literatuur die zich richt op het verklaren van de inhoud van partijwetgeving weinig houvast om deze vraag te beantwoorden. Een reden hiervoor is dat veel studies zich richten op subthema's van partijwetgeving, zoals politieke financiering, kandidaatselectie of de regels voor het vormen van partijen. Maar deze sub-thema's kunnen in de praktijk vaak niet los van elkaar bezien worden – wat vraagt om een meer overkoepelende theorie ten aanzien van de ontwikkeling en hervorming van partijwetgeving. Daarnaast is de academische literatuur vooral tot stand gekomen om de West-Europese ervaring met partijwetgeving te duiden. De West-Europese context is er echter één van sterk geïnstitutionaliseerde partijsystemen en een sterke rechtsstaat en de hiervan afgeleide literatuur mist hierdoor mogelijk belangrijke inzichten voor landen die niet over dergelijke instituties beschikken.

Dit proefschrift gebruikt daarom de literatuur over partijorganisaties om tot een bredere theorie ten aanzien van partijwetgeving te komen. De partijorganisatie-literatuur problematiseert het vermogen van politieke partijen om te kunnen voortbestaan en onderzoekt wat partijorganisatie voor meerwaarde biedt aan individuele politici. In plaats van te veronderstellen dat politici altijd beter af zijn met sterk gereguleerde politieke partijen, biedt deze problematisering mogelijkheden om de specifieke omstandigheden te duiden waaronder politici zich genoodzaakt voelen bepaalde types

partijwetgeving aan te nemen. De aanname is hierbij dat politici ervoor kiezen om politieke partijen te reguleren wanneer het vermogen van de partijen om in de directe behoeften van hun politici te voorzien wordt bedreigd. Dit is het geval wanneer de toegang tot cruciale politieke middelen – zoals ideationeel kapitaal, financieel kapitaal en de infrastructuur van de partij – onder druk komt te staan.

Het proefschrift bestudeert aan de hand van exploratief onderzoek in hoeverre dit theoretisch perspectief toereikend is om de Latijns-Amerikaanse ervaring met het ontwikkelen en hervormen van partijwetgeving – en de variatie binnen deze partijwetgeving – te duiden. Hoofdstuk 2 biedt hiertoe een overzicht van de innovatieve Latijns-Amerikaanse ervaring met het invoeren en hervormen van partijwetgeving. Het hoofdstuk bevat een historische, vergelijkende inhoudsanalyse van alle Latijns-Amerikaanse grondwettelijke artikelen die betrekkingen hebben op politieke partijen sinds de onafhankelijkheid tot het heden. Daarnaast trekt dit hoofdstuk een bredere vergelijking tussen allerlei vormen van hedendaagse partijwetgeving in de regio. Deze analyses laten zien dat Latijns-Amerika een lange traditie kent van het aannemen van partijwetten – zowel onder democratische als autoritaire regimes – en dat het type wetten dat wordt aangenomen deels verklaard kan worden door de sociaal-politieke omstandigheden die aanleiding hebben gegeven het aannemen van een nieuwe wet.

De vraag is of het mogelijk is om verschillende soorten sociaal-politieke omstandigheden vooraf te specificeren en deze systematisch te koppelen aan de verschillende types wetten die aangenomen worden – waarbij zowel onderscheid gemaakt wordt tussen verschillen in wettelijke bepalingen en verschillen in de mate waarin wetten ontworpen worden om effectief te zijn. Hoofdstuk 3 brengt inzichten uit de academische literatuur over partijorganisaties, partijsystemen en partijwetgeving samen om cruciale sociaal-politieke veranderingen te identificeren waarvan aangenomen kan worden dat ze van invloed zijn op het aannemen van (hervormingen van) partijwetgeving. Breed genomen kan er onderscheid gemaakt worden tussen veranderingen op het niveau van het politieke systeem die de toegang tot middelen van alle politieke partijen min of meer gelijk raken, veranderingen op het niveau van het partijsysteem die de toegang tot middelen van sommige partijen onevenredig veel raken en veranderingen op het niveau van de individuele partijorganisatie die de toegang tot middelen van sommige politici of interne facties onevenredig veel raken. Omdat partijwetgeving over het vermogen beschikt de toegang tot middelen op elk van deze niveaus te vergroten of verkleinen, kunnen er voor elk van deze niveaus verwachtingen omtrent de wettelijke bepalingen en beoogde effectiviteit van de aangenomen wetgeving geformuleerd worden.

Een groot probleem bij het onderzoek naar partijwetgeving is dat de bepalingen van de wet vaak gebruikt worden om de antecedenten van de wet te bepalen. Hoofdstuk 4 trekt oorzaak en gevolg los door een onderzoeksmethode te presenteren die zich richt op het wetgevingsproces zelf. Hiertoe worden in dit hoofdstuk de belangrijkste sociaal-politieke veranderingen geoperationaliseerd, waarvan aannemelijk is dat ze tot verschillende types aangenomen wetgeving te leiden. Daarnaast operationaliseert dit hoofdstuk de wetsbepalingen en de beoogde effectiviteit van aangenomen wetgeving. Om beide sets variabelen met elkaar te kunnen verbinden, operationaliseert dit hoofdstuk daarnaast het begrip 'hervormingsstrategieën'. Hervormingsstrategieën zijn zichtbaar gedurende het wetgevingsproces wanneer politici de noodzaak om een bepaald probleem via partijwetgeving te adresseren op de agenda zetten en wanneer ze tijdens onderhandelingen hun eigen voorkeuren voor oplossingen kenbaar maken (en daarmee de koppeling maken tussen sociaal-politieke veranderingen en voorgedragen wetgeving).

Omdat de academische literatuur een aantal institutionele verklaringen identificeert voor verschillen in partijwetgeving is het noodzakelijk dat de onderzoeksopzet ruimte laat om de op middelen gebaseerde theorie die hier gepresenteerd wordt af te zetten tegen meer gangbare institutionele verklaringen. Om dit te bereiken worden in hoofdstukken 5 tot en met 8 wetgevingsprocessen in vier verschillende landen geanalyseerd, te weten Costa Rica, Colombia, Argentinië en Mexico. Deze landen hebben elk minimaal twee wetshervormingsprocessen meegemaakt en verschillen van elkaar wat betreft hun niveau van partijsysteeminstitutionalisering en de leeftijd van hun democratie. Costa Rica en Colombia zijn twee relatief oude democratieën terwijl Argentinië en Mexico twee relatief nieuwe democratieën zijn. Daarnaast zijn Costa Rica en Mexico twee geïnstitutionaliseerde partijsystemen terwijl in Colombia en Argentinië de institutionalisering van het partijsysteem sterk is afgenomen in de afgelopen decennia. Door hervormingsprocessen binnen en tussen deze landen te vergelijken kan gecontroleerd worden voor de invloed van deze twee gangbare institutionele verklaringen. Dit leidt tot de volgende bevindingen:

Hervormingen van het type 'organisationale economie': Wanneer partijwetgevingen aangenomen worden in reactie op veranderingen in de partijorganisatie of in reactie op interne conflicten tussen de verschillende facties van een partij, dan richten de aangenomen wettelijke bepalingen zich op het beschermen van de toegang tot middelen van de politici of factie die de hervorming voorstonden of op het beperken van de toegang tot middelen van andere politici of facties. Deze dynamiek was zichtbaar in Argentinië in 2002 en 2009 en in Colombia in 2003. In alle drie de gevallen leidden conflicten en veranderingen binnen de gevestigde partij(en) tot het aannemen van wetgeving die via de regulering van het kandidaatsselectieproces en via het opleggen van striktere regels wat betreft de vorming van nieuwe politieke partijen de greep

van de politici die de hervorming voorstonden op de partijorganisatie probeerde te verstevigen. Anders dan verwacht werd niet altijd beoogd deze wetten effectief te ontwerpen. Wanneer er vetospelers in de wetgevende arena aanwezig waren, konden deze hier namelijk een stokje voor steken.

Hervormingen van het type 'electorale economie': Wanneer partijwetgevingen aangenomen worden in reactie op veranderingen in partijcompetitie en/of de opkomst van een nieuwe partij, dan richten de wettelijke bepalingen zich op het beschermen van de toegang tot middelen van de partij of partijcoalitie die de hervorming voorstond of op het beperken van de toegang tot middelen van andere partijen. Deze dynamiek was zichtbaar in Mexico in 2003, Argentinië in 2009, Colombia in 2005 en 2009 en Costa Rica in 2009. In al deze gevallen leidden veranderingen op het niveau van het partijsysteem ertoe dat de partijen die de hervormingen voorstonden de regels voor de vorming van nieuwe partijen aanscherpten en regels invoerden die de toegang tot financiële middelen voor andere partijen probeerden te beperken. Anders dan verwacht werden deze bepalingen niet altijd beoogd om effectief te zijn. Dit was opnieuw het geval wanneer er zich vetospelers in de wetgevende arena bevonden.

Hervormingen van het type 'systemische economie – a': Wanneer partijwetgevingen aangenomen worden in reactie op veranderingen in de bredere institutionele en/of maatschappelijke context, dan richten de wettelijke bepalingen zich op het beschermen van de toegang tot middelen van alle politieke partijen. Deze dynamiek was zichtbaar in Mexico in 2007/2008, Argentinië in 2002, en Costa Rica in 1996/1997 en 2009. In al deze gevallen leidden veranderingen op het niveau van het politieke systeem ertoe dat politieke partijen partijwetgeving gebruikten om hun controle over de partij te beschermen tegen inmenging vanuit andere instituties. Zoals verwacht werd altijd beoogd deze wetten effectief te ontwerpen. Anders dan bij de organisationele en electorale hervormingen was er bij de systemische hervormingen geen sprake van vetospelers in de wetgevende arena, simpelweg omdat dit type hervormingen het doel van alle partijen dient.

Hervormingen van het type 'systemische economie – b': Wanneer partijwetgevingen aangenomen worden in reactie op een legitimiteitscrisis, dan richten de wettelijke bepalingen zich op het vergroten van de toegang tot ideationeel kapitaal van alle partijen door middel van symbolische hervormingen. Deze dynamiek was zichtbaar in Costa Rica in 1996/1997 en 2009, Mexico in 2003 en 2007/2008, Colombia in 2009 en 2011 en Argentinië in 2002. In al deze gevallen leidde de publieke roep om verandering ertoe dat politieke partijen partijwetgeving gebruikten om symbolisch gehoor te geven aan deze eisen zonder daadwerkelijke veranderingen in gang te zetten.

Deze bevindingen laten zien dat het theoretisch model dat in deze studie gepresenteerd wordt vrij goed in staat is om de verschillen in aangenomen partijwetgeving te duiden – zeker wat betreft de aangenomen wettelijke bepalingen. Het model vereist enige bijschaving wat betreft de beoogde effectiviteit van partijwetgeving. Zoals hierboven besproken voldeden de uitkomsten van wetgevingsprocessen niet aan de verwachtingen wat betreft beoogde effectiviteit wanneer er vetospelers actief waren in de wetgevende arena. Deze factor is dan ook opgenomen in een aangepaste versie van het theoretische model.

Wat betreft andere institutionele verklaringen laten de vergelijkingen binnen en tussen landen zien dat systemische en electorale hervormingen in alle typen landen voorkomen. Dit gaat niet op voor organisationale hervormingen, die alleen voorkomen in landen met een zwak partijsysteem. Een mogelijke verklaring hiervoor is dat institutionele zwakte in dergelijke landen ook zichtbaar is in andere instituties en dat het voor politici in dergelijke contexten daardoor makkelijker is om het wetgevende proces te gebruiken om de eigen partij – wanneer nodig – in het gareel te krijgen. Dit creëert een zichzelf versterkend proces van institutionele zwakte en onvoorspelbaarheid. Andersom geldt dat hoe moeilijker het is om partijwetgeving unilateraal te hervormen, hoe meer sprake er lijkt te zijn van partijwetgeving die bijdraagt aan de verdere institutionalisering van partijpolitiek.

De bevindingen uit dit proefschrift roepen een aantal vragen op wat betreft de hedendaagse politiek. Allereerst is duidelijk geworden dat partijwetgeving een effectieve overlevingsstrategie kan zijn voor politieke partijen die zich geconfronteerd zien met sociaal-politieke veranderingen. Het gevaar bestaat echter dat er een fossiliserende werking uitgaat van deze strategie doordat politieke partijen zich kunnen beroepen op instituties en procedures – in plaats van ontwikkeling en groei – om te overleven in veranderende tijden. Zoals Katz and Mair (1995, 2009) terecht opmerkten, creëert dit het gevaar dat de samenleving zich zal afwenden van het bestaande politieke systeem en dat partijen hun legitimiteit en bestaansrecht verliezen. Het is goed mogelijk dat de veelvoorkomende strategie van het aannemen van symbolische hervormingen om de roep tot verandering te adresseren hieraan bijdraagt.

Daarnaast sluit de nadruk die veel Latijns Amerikaanse politici leggen op partijwetgeving als een middel om tot goed functionerende politieke partijen te komen aan bij een trend die breder zichtbaar is. Zowel de internationale gemeenschap als de discipline van de politieke wetenschap hebben vaak de neiging om het democratisch proces terug te brengen tot een set regels en procedures die – indien opgevolgd – een zekere mate van democratie garanderen. De rol die de maatschappij in dit

proces speelt dreigt hierin ondergesneeuwd te raken – zeker wanneer meer substantiële democratische vraagstukken het onderspit delven omdat alle aandacht uitgaat naar formele regels en procedures. Men hoeft slechts naar de Latijns-Amerikaanse geschiedenis en hedendaagse politiek te kijken om te zien hoe gevaarlijke dergelijke strategieën kunnen zijn op de lange termijn.

Curriculum Vitae

Fransje Molenaar (1982, Rotterdam) attended pre-university education at the Maerlant College in Brielle, the Netherlands. She obtained a Bachelor's degree in Political Science, with a minor in Cultural Anthropology (Leiden University, 2008), a Bachelor's degree in Latin American Studies (Leiden University, 2009), a Master's degree in Political Science (Leiden University, 2009) and a Master's degree in Latin American Studies (CEDLA/University of Amsterdam, 2010). From 2010 to 2016 she pursued her PhD degree at Leiden University under the supervision of prof. dr. I.C. van Biezen, prof. dr. R.A. Koole, and dr. I. Harbers. In 2015, the Royal Dutch Academy of Arts and Sciences (KNAW) appointed her as one of their prestigious Faces of Science. Her work has appeared in renowned academic journals and she has presented her work at numerous academic conferences. Throughout her PhD, Fransje has also worked as an independent political (finance) consultant with international organizations such as International IDEA, IFES, Global Integrity, and the NIMD. She is currently employed as a research fellow 'politics and crime' at the Conflict Research Unit of the Clingendael Institute.

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