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

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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 it 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 Cartagena 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 1830. 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

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

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 Bolío 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 Ostrogorski (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 (Chasqueti 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

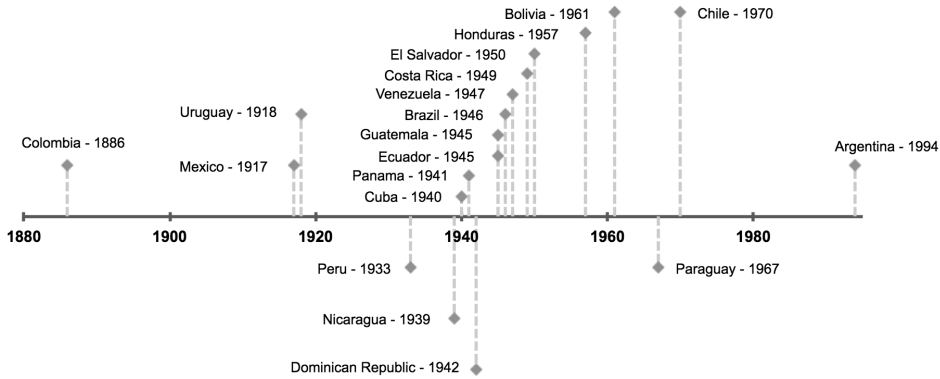
In the 19th century, Latin American states’ central challenge had been to address the ‘winner-takes-all’ nature of presidential contests that often resulted in bloody battles between competing elites and their followers (Hartlyn 1988, 104). Over the course of the 20th century, an increasing push for 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

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 Arevalo 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

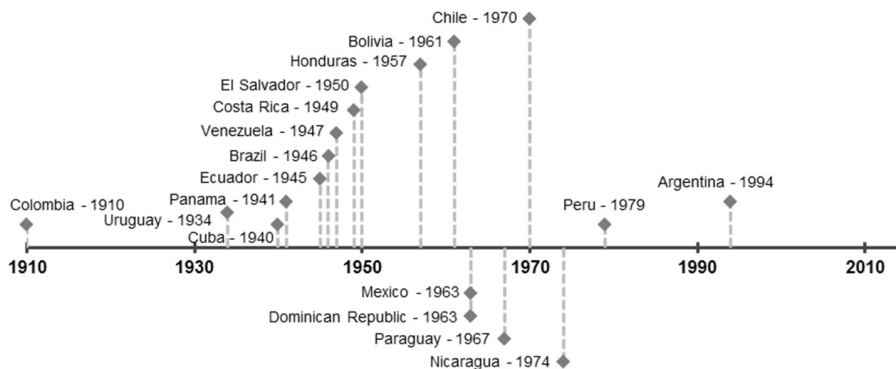
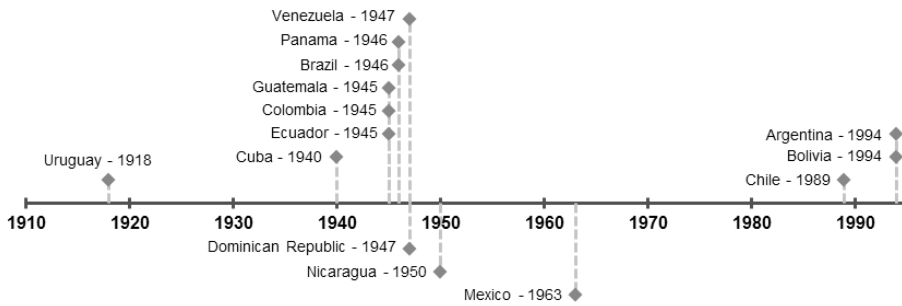
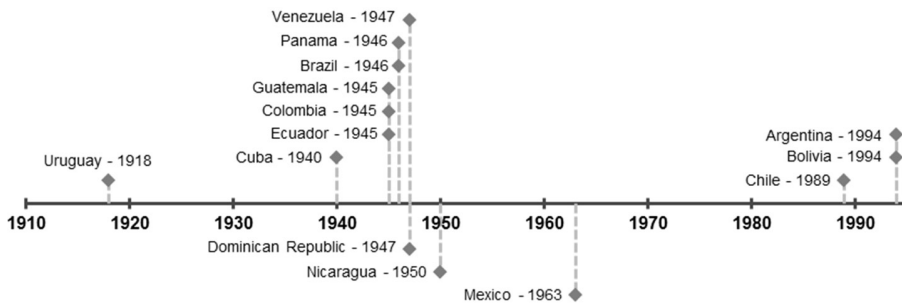


Figure 2-3: First constitutional codification of parties' governing role



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

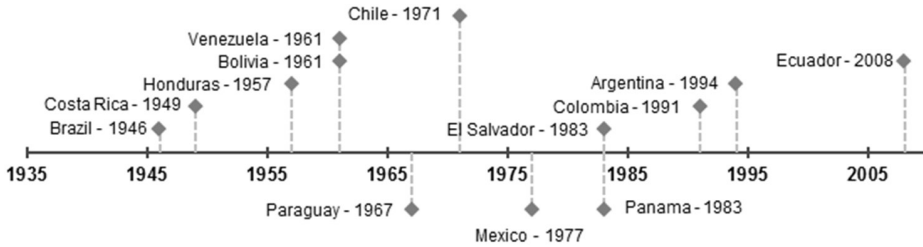
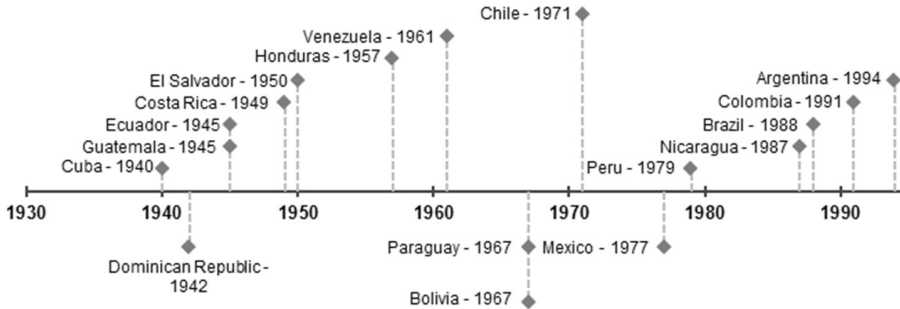


Figure 2-6: First constitutional association of parties with fundamental rights



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.

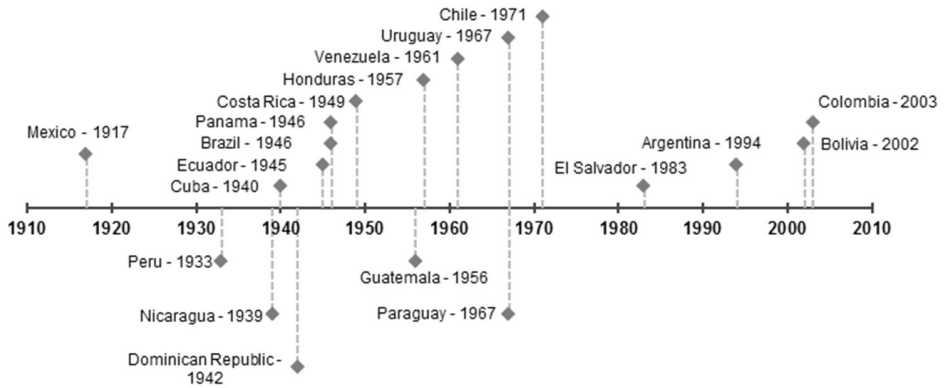
⁵⁸ The definition of democratic values is distributed as follows: participation (Costa Rica, Honduras, Venezuela, Chile), pluralism (Brazil), representation (Bolivia), and democracy (Honduras).

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).

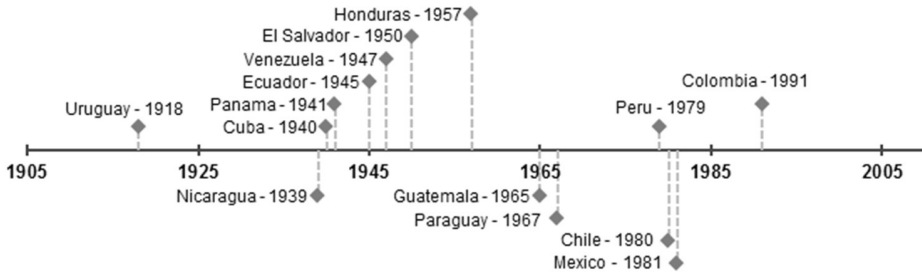
In the European context, this model of regulation mainly appeared in reaction to the rise of anti-system ideologies, such as anarchism, communism, and fascism, combined with the fall of the Weimar Republic at the hands of democratically elected political parties (Loewenstein 1937). An analysis of the 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.

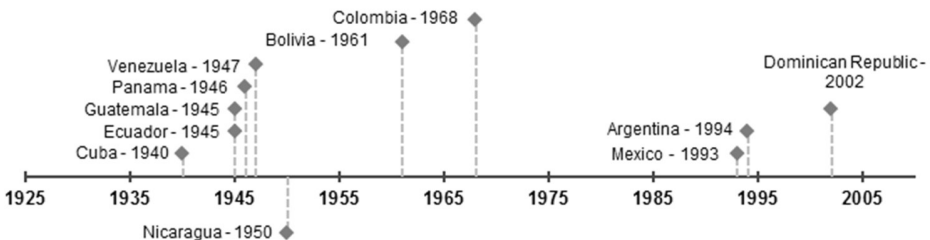
Figure 2-8: First constitutional introduction of partisan oversight over elections



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

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.

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 proping 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.

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 electoral 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 America⁷⁵

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 America⁸⁰

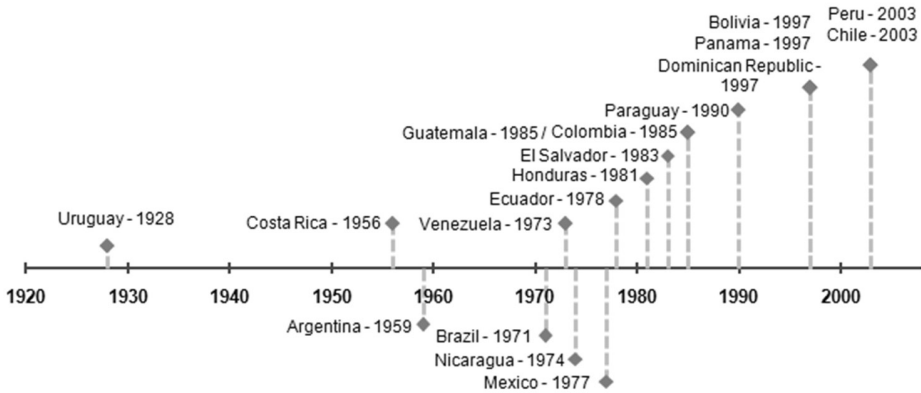


Figure 2-11: Year of introduction of public media access in Latin America



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 (2005 ⁱⁱ /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 cancellation 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).

relization 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.