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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 3 – A resource-based perspective on party law reform

3.1 Introduction

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

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

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

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

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

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

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

3.2 The political relevance of party law

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

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

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

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

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

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

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

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

⁹⁷ This is partly driven by outliers.

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

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

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

⁹⁸ Casal Bértoa et al. (2014), for example, discuss the case of the Communist Party in Portugal, which had to change its internal election process in response to the new norms introduced by a 2003 party law.

⁹⁹ Such effects of party law portray an intrusion of “the force of state authority deep into the heart of all political organizations” (Issacharoff 2007, 1460) and question the organizational independence of parties from the state (van Biezen 2004, 2012).

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

3.3 Explanations of party law

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

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

3.3.a Collective need for resources to ensure organizational continuity

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.3.d Untangling reform causes, strategies, and outcomes

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

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

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

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

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

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

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

3.4 Party law reform: a resource-based approach

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

¹⁰⁴ In her study of Italian political finance reforms, Piccio (2014) finds indeed that public demands for change are insufficient to explain politicians’ actual legislative behavior. Also see Mietzner (2015).

¹⁰⁵ This latter dimension recognizes that party law reforms may be nothing but window-dressing measures that attend to social demands to ‘do something’ without effecting any real change (Shugart and Wattenberg 2001, 577).

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

3.4.a Political parties' utility for politicians

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

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

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

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

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

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

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

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

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

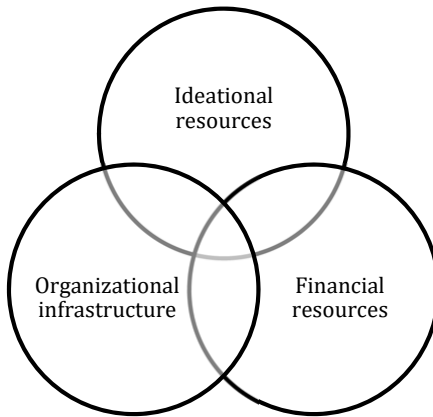
¹⁰⁸ Empirical studies show, for example, that party organization indeed contributes to effective legislation (Carey 2009; Cox 2006; Cox and McCubbins 1993; Laver and Shepsle 1996).

¹⁰⁹ Organizational resources thus allow political parties to meet "the different needs faced by aspiring politicians under competitive circumstances" (Strøm 1990, 575).

3.4.b Fundamental party resources

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

Figure 3-1: Fundamental party organizational resources



Ideational resources

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

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

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

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

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

Financial resources

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

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

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

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

Organizational infrastructure

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

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

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

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

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

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

3.4.c Party law reform and resource scarcity

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

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

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

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

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

Regulating access to ideational resources

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

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

Regulating access to financial resources

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

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

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

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

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

Regulating access to the organizational infrastructure

Lastly, party law reform may address changes in the organizational infrastructure. This is the case, firstly, because *party formation rules* create an (additional) resource burden for politicians that wish to form a political party by establishing legal requirements for the formation of aspirant parties. Such requirements may take on the shape of quantitative thresholds that establish that parties need to register the support of an absolute number or a percentage of either registered voters or of the valid or total votes cast in previous elections¹²² Qualitative requirements for registration form a broader category of registration requirements, which generally establish more structural or procedural rules for party formation. This category contains procedural requirements that obligate parties to establish a party name, symbol, and national seat, to select leaders and to adopt a party program and statutes. In addition, qualitative registration requirements may specify explicit norms that (should) guide party activity and behavior (Molenaar 2015a).¹²³

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

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

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

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

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

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

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

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

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

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

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

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

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

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

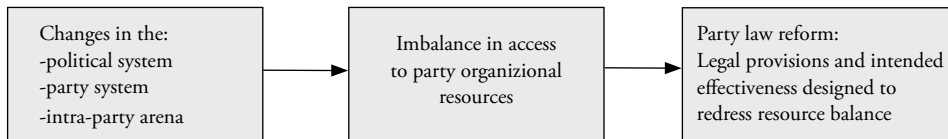
3.5 A resource-based model of party law reform

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

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

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

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



3.5.a Party law reform as an organizational economy strategy

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

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

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

¹²⁸ A 1992 Constitutional Court decision had this effect in Germany (Scarow 2004, 663).

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

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

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

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

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

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

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

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

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

3.5.b Party law reform as an electoral economy strategy

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

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

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

¹³² The intended effectiveness of legal provisions is operationalized in more detail in Chapter 4.

¹³³ Indeed, Panebianco identifies “electoral defeat and deterioration in terms of exchange in the electoral arena” as “classic types of external challenges which exert very strong pressure on the party” (1988, 247).

¹³⁴ The two may be related, but this is not the case necessarily. Party competition among established political parties can alter without a new party rising, and the rise of an irrelevant new party does not alter the dominant mode of party competition (Mair 1997).

balance. These legal provisions will likely:

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

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

3.5.c Party law reform as a systemic economy strategy

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁴⁰ They are able to do so because, with the very rare exception of reforms adopted through referendums (see Renwick 2010, 15), such externally sponsored reforms are put on the agenda by actors that do not exert direct influence over the content of the reform proposals. Instead, the development of reforms remains firmly in the hands of politicians that belong to the (majority coalition of) governing parties (Barnea and Rahat 2007, 377).

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

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

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

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

3.6 Conclusion

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

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

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

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

