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

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CHAPTER 5 - Costa Rica

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

5.1 Costa Rica: democratic beacon in an authoritarian region

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.2.a Party system characteristics

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

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

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

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

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

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

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

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

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

5.2.b Historical development of party law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.3.a Changes in the resource environment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.3.b Negotiation process

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[208] Interviews Picado León, Sobrado, 2012

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

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

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

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

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

5.4 1998-2002 reform: lack of political will

5.4.a Changes in the resource environment

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

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

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

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

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

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

5.4.b Negotiation process

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

[213] Interview Picado León, 2012

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

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

5.5 2009 reform: corruption and party system change

5.5.a Changes in the resource environment

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

[214] Interview Sobrado, 2012

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.5.b Negotiation process

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[240] Interview Sobrado 2012.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.6 Conclusion: party law development and reform in Costa Rica

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

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

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

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

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

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

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

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

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