Changing the rules of the game : the development and reform of party law in Latin America
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CHAPTER 7 – Colombia

Cuando llegó la compañía bananera
los funcionarios locales fueron sus-
tituidos
por forasteros autoritarios …
Los antiguos policías fueron re-
emplazados
por sicarios de machetes
-
–Gabriel García Márquez, *Cien años de soledad*[356]

7.1 Colombia: the political accommodation of conflict

The 1810 Colombian Declaration of Independence set into motion a protracted state formation process. Throughout the 19th century, secessionist upheavals and conflict between unitary and federal armed forces became institutionalized in violent political competition between the *Partido Liberal Colombiano* (Colombian Liberal Party, PLC) and the *Partido Conservador Colombiano* (Colombian Conservative Party, PCC). It was not until 1886 that the present-day Republic of Colombia was founded. As noted in Chapter 2, the foundational constitution contained an exceptional constitutional article that responded to the debilitating effect of inter-party conflict by prohibiting permanent party organization altogether. Despite this constitutional effort to create political order, however, violent competition between the two parties continued, culminating in the Thousand Days' War (1899-1902).

The protracted foundational conflict mainly took place at an elite, rather than a societal, level (Bushnell 1993). García Márquez's magical realist novel 'One Hundred Years of Solitude' portrays this divorce between conflicting elite and societal needs in

[356] When the banana company arrived, local officials were replaced by authoritarian outsiders ... The former policemen were replaced by hit men with machetes.

a remarkable manner.[357] The prolonged and futile nature of the Thousand Days' War leads Colonel Aureliano Buendías, one of the book's main protagonists and an avid Liberal guerrilla fighter, to lose his political ideals. 'In the end,' he laments, 'the only real difference between the Liberals and the Conservatives, is that the Liberals go to mass at five and the Conservatives go to mass at eight.' Over the course of the 20th century, the Liberal and Conservative political forces would recognize this literary interpretation of their inter-elite agreement and would embrace that they had indeed more in common than what separated them.

This realization grew in particular after an eruption of inter-party violence between 1949 and 1958. This episode, known as *La Violencia* (The Violence), resulted in the rise of a military dictatorship that sought to re-establish political order. In the process, military governance threatened to become a permanent feature of political life. The two parties responded to this threat to their access to power by agreeing to transition back to democratic governance through an explicit power-sharing agreement (Hartlyn 1988). The *Frente Nacional* (National Front, FN) agreement formed an essential means to lock inter-party conflict into the political system by ensuring both parties equal access to power.[358] The agreement lowered the 'winner-takes-all' nature of elections and prevented the losing party from taking to arms to protect its own survival.

Over the long run, the National Front system did not provide a viable means to address popular demands for participation. The late 1980's and early 1990's were therefore marked by political reforms that decentralized power. Decentralization was seen as a means to ensure broader participation in political life and to open up the political system. In the absence of effective local order, however, decentralization measures contributed to armed and illicit forces capturing local government (Eaton 2006). From the early 2000's onwards, it became apparent that these new political actors had managed to penetrate the national legislature from the bottom up.[359]

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[357] The novel provides a critical interpretation of Colombian political events through its depiction of the rise and downfall of the fictitious town Macondo.

[358] The agreement excluded other parties, particularly the left ones, from politics and shifted political competition from the inter-party to intra-party arena. This was the case because candidate selection procedures, rather than the electoral process, determined access to the fixed quotas of governing and legislative power (Archer 1995; Botero, Losada, and Wills 2011).

[359] In 'One Hundred Years of Solitude', García Márquez similarly describes the societal effects of policy decentralization at the local level back in the 1920's. In the absence of a strong state, the rise of new local power holders had devastating consequences for the population at large: authoritarian foreigners replaced local public officials while hired assassins replaced the former police force. This resulted in the violent repression and murder of civilians.

This chapter traces the development of party law along the lines of political accommodation and conflict depicted in this introduction. The first section will show that party law reform proved a valuable means for the established political parties to create a united (broad) front against the threat that military rule posed to their joint survival. Over the course of the next decades, this front proved unable to react to popular pressure for inclusion in an effective manner. As a consequence, party law reform was imposed on the national political leadership through popular mobilization in the late 1980's.

The second section discusses how the new rules adopted in response to these pressures were unable to abolish politics as usual completely. Traditional elites maintained their dominant hold over the political system and made the new rules work in their favor. At the same time, however, these new rules contributed to the increased personalization and fragmentation of formal party organizations. Table 7-1 below provides some first indications of this in the form of the increases in both the effective number of parties and electoral volatility. These changes culminated in the rise of political semi-outsider Álvaro Uribe to the presidency in the 2002 elections. In response, the traditional elites turned to party law reform (2003) and sought to regain control over the organizational infrastructure through an *organizational economy* reform strategy.

Section three shows how the 2003 party law reform proved ineffective in stemming the tide in the traditional elites' favor. Instead, Uribe capitalized on his massive popularity to abolish the constitutional prohibition on presidential reelection. He required some opposition party support for his reform, however, which allowed these parties to push for an *electoral economy* party law reform (2005) that redressed the inter-party financial resource balance by ensuring that the presidential party would not be able to capitalize completely on the incumbent's financial and ideational advantage. The 2003 reform did succeed in pushing electoral competition back into formal party structures. The number of parties in elections and the legislature dropped steadily, as did the effective number of parties in the legislature (see Table 7-1 below).

Party competition remained high, however, as evinced by the high electoral volatility scores. Combined with the personalized nature of election campaigns and the increased infiltration of local politics by (illicit) armed groups, the competitive nature of elections resulted in an influx of illicit money in political life. The government, which had little else to fear than a loss of ideational capital, responded by adopting a *systemic economy* reform (2009-2011) that introduced new fundamental values on party conduct in an ineffective manner. The final section discusses the relevance of these findings for the resource-based perspective on party law reform developed here.

Table 7-1: Party system characteristics (1994-2010)

Year	No. parties/lists in Senate[360]		No. parties/lists in Lower House		Electoral volatility	Legislature: ENP		Chamber: Voter turnout
	Elections	Elected	Elections	Elected	Chamber	Senate	Chamber	
1994	54/254	22/n.a.	n.a./628	27/n.a.	21.26	2.82	2.71	36.14%
1998	80/314	25/n.a.	n.a./692	29/n.a.	20.21	3.77	3.17	45.00%
2002	63/319	42/96	63/883	40/n.a.	25.81	7.84	5.75	42.45%
2006	20	10	39/412	22	36.38	6.90	7.36	40.49%
2010	18	10	18/282	14	35.12	5.56	5.06	43.75%

Sources: Number of parties and effective number of parties (ENP): Botero (2007), Botero et al. (2011), Botero and Rodríguez Raga (2009), Giraldo and López (2006), Gutiérrez Sanín (2007); Maldonado Tovar (2010), MOE (2013), Pachón and Shugart (2010), Rodríguez Raga and Botero (2006); electoral volatility – Ruth (2016); voter turnout (percentage of registered voters who actually voted) – IDEA (2015).

7.2 The development of Colombian party law: a historical overview

In 1886, Colombian legislators adopted a first constitutional article on political parties when they forbade permanent political associations (§47). Regardless of this prohibitive article, which would only be struck in 1991, the adoption of more permissive constitutional and legal references to political parties soon followed. The 1910 Constitution introduced the electoral principle of proportional *party* representation (§45 – emphasis FM) and Congress sponsored electoral laws that recognized political parties as an institutional reality from the early 20th century onwards (Hernández Becerra 2006, 336). These legal references to parties reflected that the Liberal and Conservative parties had established themselves as the lynchpin of the Colombian political system. They would remain the political system's principal actors until the end of the 20th century (Hernández Becerra 2006, 332; Roll 2001, 33–36).

[360] The electoral rules adopted in the 1991 constitutional reform served as an incentive for political parties to present multiple lists in elections. I therefore report both the number of formal party labels and the number of candidate lists that participated in elections and that obtained legislative representation.

The two traditional parties saw their pivotal political position threatened by violence and the subsequent rise of a military dictatorship in the 1950's.[361] In response, the parties formed a pact to ensure their joint organizational continuity and survival by accommodating inter-party conflict through the adoption of a party law: the National Front agreement (Hartlyn 1988). In it, the parties established that "[i]n popular elections … the corresponding elected positions will be awarded half and half to the traditional parties, the Conservative and the Liberal party" (Acto Legislativo 0247, 1957, §2).[362] In effect, these measures institutionalized conflict in the political system to prevent losers from turning to violence as an alternative form of conflict resolution. Regardless of the two parties' vote share in elections, they would receive half of the legislative and half of the governing seats anyway. The reform thereby codified the bi-partisan nature of the Colombian political system. As a corollary effect, the agreement also prevented the rise of new political parties in elections.[363]

Although the FN agreement contributed to the containment of inter-party violence, the same could not be said about socio-political violence more generally. From 1964 onwards, communist guerrilla movements such as the *Fuerzas Armadas Revolucionarias de Colombia* (Colombian Revolutionary Armed Forces, FARC) and the *Ejército de Liberación Nacional* (National Liberation Army, ELN) instigated insurgency campaigns in rural areas. The military, meanwhile, had converted into the armed wing of the National Front coalition, meaning that it intervened whenever social opposition arose to the government's policies. From the mid-1980's, continued violence and political exclusion created social pressure to open up the political system to new political actors (Roll 2001, 211–12). In 1985, the government responded to this pressure by adopting a political 'Basic Statute on Political Parties' (Law 58)(Cepeda Espinosa and Dunkerley 2005; Hernández Becerra 2006; Sánchez Torres 2000, 73–74). The legislative debates that preceded the adoption of this statute mainly focused on ways in which the state could set standards for new party formation and could provide parties with public funding for election campaigns. These measures served as a means

[361] Political reforms adopted in the 1940's reflect the conflictive nature of political life. A 1945 reform (Acto Legislativo 1) addressed the increased debilitation of the judicial regime by inter-party conflict and violence (Palacios 1995, 327) by banning active party members from becoming members of the judicial branch (§164) and by allowing for party proportionality in the appointment of judges (§59).
[362] *En las elecciones populares ... los puestos correspondientes a cada circunscripción electoral se adjudicarán por mitad a los partidos tradicionales, el conservador y el liberal.* The reform also established that the president would appoint ministers in the same proportion (§4) and that the parties would ensure parity and consensus in their selection of the members of the judiciary (§12). A 1959 reform (Acto Legislativo 1, 1959) ruled that, between 1962 and 1974, the presidency would alternate between the two parties (§1).
[363] The National Front agreement was designed to last until 1974. Legislators therefore adopted a new constitutional amendment in 1968 (Acto Legislativo 1) to govern the dismantling of the bipartisan structure. This development did not necessarily introduce large changes in the party system, however, as the traditional parties maintained their political dominance.

to provide third parties with access to the political system (Roll and Feliciano 2010, 107).

The adopted rules were rather lenient. Legislators decided that parties needed 10.000 members to register and that they needed to preserve these membership figures to maintain registration (§4). The state could reimburse election costs partially (§12) and would provide free postage (§20) and indirect public funding in the form of state-sponsored television access during elections (§17). The law prohibited parties from obtaining private television access (§18). In return for these financial benefits, parties needed to present electoral finance reports to the *Corte Electoral* (Electoral Court, CE)(§9), and to respect donation limits (§12).

Despite the favorable rules for new party formation, the reform failed to improve the relationship between society and the state. This was also the case for other reforms initiated in the 1980's.[364] The Colombian political system remained marked by the de-politicization of society and the rupture of state-society relations, the exclusion of third parties from the political system, the increase of abstention combined with the debilitation of party structures, and severe political violence (Giraldo 2007, 126). All these elements created a political crisis that the government was hard-pressed to solve. Changing the political system required a constitutional reform, but the FN agreement restricted the possibilities for such a reform (Roll 2001, 237).

The violent murder of three presidential contenders in the run-up to the 1990 elections provided the final straw needed for constitutional reform. A large student movement formed demanding the *séptima papeleta* (seventh ballot): the addition of an option to the ballot that would allow voters to vote in favor (or against) the formation of a Constituent Assembly (Roll 2001, 241). The president, in response, decreed the application of this seventh ballot in the next elections (Decree 927). Although the constitution did not permit this trajectory of constitutional reform, electoral officials did count the seventh ballot votes. The majority of voters spoke out in favor of a National Constituent Assembly. The Supreme Court thereupon approved its formation in recognition of the Colombian people's popular will (Roll 2001, 241). Amidst all the party law reforms discussed in this and other country chapters, this 1991 reform stands out as an exception. Forces external to the political process managed to push through a substantial political reform.

[364] The government also sponsored decentralizing reforms to provide room for the future reinsertion of demobilized revolutionary forces in political life (Eaton 2006, 541).

Due to strategic miscalculations of the traditional parties, combined with contextual developments that largely favored new political forces, the Assembly contained a substantial number of progressive and left-wing newcomers (Dargent and Muñoz 2011, 52; Roll 2001, 255). According to Antonio Navarro Wolff, the left-wing Assembly president, these new political forces' goal was to break the dominant hold of the traditional parties over the political process and to open up the political system through constitutional design.[365] Towards these ends, the Assembly adopted several electoral reforms (these will be discussed in more detail below). In addition, the 1991 Constitution contained several elements that targeted the closed nature of the political system.[366] First of all, Assembly members aimed to end party system over-institutionalization through fortification of the freedom of political association and participation. This is visible in §107, which established that all citizens have the right to establish, organize, and promote parties *and political movements* (emphasis FM). In addition, the Assembly adopted campaign-spending limits to increase financial equality for newcomers without substantial financial resources to compete successfully in elections (§109).

As to political finance, all legally registered representative forces would be eligible to receive public funding (§109). This issue was a hotly contested one that the Assembly finally decided in favor of the new political forces. As a compromise, §108 regulated that parties and movements would only be recognized legally if they obtained either 50.000 signatures, at least the same number of votes in elections, or legislative representation. (also see Roll and Feliciano 2010, 110–11). This formed an increase from the 10.000 signatures established in the 1985 party statute.[367] The newly created *Consejo Nacional Electoral* (National Electoral Council, CNE) would oversee the party formation process.

The constitutional articles relegated implementation of these new norms to a new party law. Adopting this law proved difficult, however. A strong electoral showing in the 1991 legislative elections allowed the traditional parties to maintain their legisla-

[365] Interview Navarro Wolff, 2013. The Assembly had three presidents: Álvaro Gómez Hurtado for the *Movimiento de Salvación Nacional* (National Salvation Movement, MSN), Antonio Navarro Wolff for the *Alianza Democrática M-19* (M-19 Democratic Alliance, AD/M-19) and Horacio Serpa Uribe for the traditional parties.

[366] The Assembly adopted a national circumscription for the Senate to fight personalism and clientelism and introduced measures to empower the legislature vis-à-vis the executive (Giraldo 2007, 126; Roll 2001). The new Constitution deleted the 1886 Constitutional article that prohibited permanent party formation.

[367] Next to political parties and movements, social movements and significant groups of citizens could also register candidates. Unlike political parties and movements, these groups were not entitled to public funding – unless they obtained sufficient votes or representation in Congress to register as a political party/movement (§109).

tive majority and to thereby leave their mark on the new party law (Gutiérrez Sanín 2007).[368] After two failed attempts, legislators adopted a 1994 'Political Party Law' (Law 130) that hardly matched the amendatory nature of the constitutional reform. Instead, the new norms resembled those adopted in the (now abrogated) 1985 party statute. This was visible, for example, in the fact that legislators increased formation costs for social movements and significant groups of citizens by establishing that their candidates would have to pay a fee to guarantee their earnest desire to run for elections (§9). Organizational funding was distributed 10 percent equally and 50 percent proportionally according to seats in the legislature and in the departmental assemblies (§12).[369] Electoral funding consisted of the post-electoral reimbursement of costs and was distributed proportionally on the basis of the number of obtained votes, with a 5 percent threshold (§13).[370] All these measures benefited the traditional parties that could count on a high vote share and on obtaining the majority of departmental seats due to their established presence throughout the country.[371]

To summarize, the 1991 constitutional reform did not constitute a complete break with past ways of regulating political parties (see Table 7-2 below for a comparison of the legal norms adopted between 1985 and 1994). Although new and progressive forces played an important role in the Constituent Assembly, where they pushed for the adoption of a novel electoral system and the opening-up of the electoral process to new forms of political organization, the newcomers were unable to introduce other substantive changes in the legal regulation of political parties. The established parties managed to maintain relatively high party formation costs and protected their access to state resources at the detriment of newcomers.

[368] Antonio Navarro Wolff was the left-wing presidential candidate in the 1990 elections and the AD/M-19 party president throughout the 1990's. He suggests that the discrepancy between his parties' electoral showing in the 1990 and 1991 elections was due in part to the substantial degree of media attention granted to non-traditional parties in the former elections. Given that three presidential candidates had been assassinated by Pablo Escobar's drug cartel, the candidates campaigned on television from the safety of their own homes. The left-wing parties would never again receive so much airtime during elections. Interview Navarro Wolff, 2013.

[369] In addition, 30 percent of organizational funding was earmarked for party activities, which the electoral authorities would distribute on the basis of votes in the previous legislative elections. Legislators failed to create a destination for the remaining 10 percent.

[370] The state also provided parties with electoral and organizational media access (§§22, 25, 34). The law established that parties should respect the donation limits set by the electoral authority §§14, 20). They needed to present annual organizational finance reports, as well as electoral finance reports, to these authorities as well (§18).

[371] The established parties also blocked efforts by the progressive political forces in the legislature to introduce obligatory direct primaries for the selection of presidential and vice-presidential candidates. Interview Navarro Wolff, 2013. The compromise reached in the final version of the bill was to leave the choice between primaries and other forms of candidate selection up to the parties themselves (§9).

Although the established parties thereby continued to dictate the terms of electoral competition, other constitutional changes would have a more direct effect on party politics than the established parties had foreseen. The following sections discuss how the constitutional 1991 reform resulted ultimately in a process of party system reconfiguration and established party deinstitutionalization – thereby triggering a new round of party law reform in 2003.

Table 7-2: Development of Colombian party law (1985-1994)

Topic	**1985**	**1991**	**1994**
Participation	Political parties	Political parties, movements, and citizen groups[372]	
Registration requirements	10.000 signatures or votes	50.000 signatures or votes	Adds an insurance fee for candidates of citizen groups
Candidate selection			CNE facilitates primaries
Electoral funding	Partial reimbursement	Proportional reimbursement	Proportional reimbursement, 5% threshold
Organizational funding			150 pesos x number of registered voters, distributed 10% equally; 50% proportional to seats; 10% (sic); 30% proportional to votes

[372] In its revision of the constitutionality of the subsequent 1994 statutory Political Party Law, the Constitutional Court clarified that it understood political parties as permanent institutions and political movements as citizen organizations (Sentence C-089-94, 3 March 1994). Given that both political parties and movements are legally entitled to the same rights and benefits, this formal distinction between them had little consequences in practice.

Topic	1985	1991	1994
Private funding	Prohibition anonymous donations > 200.000.000 pesos + CE establishes donation limits	Donations and spending may be limited	Prohibition anonymous donations + CNE establishes donation limits
Media access	CE establishes television access during elections; prohibition private television access	Parties have right to media access	CNE establishes electoral and permanent media access, distributed 60% proportionally
Monitoring and oversight	Parties present electoral finance reports to the electoral authorities; monetary sanctions	Parties need to render accounts on income and expenses	Parties present CNE annual and electoral finance reports; monetary sanctions

7.3 2003 reform: a response to party organizational change

7.3.a Changes in the resource environment

Both the decentralizing reforms adopted in the 1980's and the 1991 constitutional reform contributed to the unforeseen deinstitutionalization of the party system. This was the case because party organization under the National Front agreement had relied on clientelistic exchange relationships between regional party bosses that used their local support bases to get their parties' candidates elected to Congress (Dargent and Muñoz 2011, 50–51; Gutiérrez Sanín 2007; Roll and Feliciano 2010, 103–4). Decentralizing reforms had taken away these regional party bosses' electoral-financial resources. Formal party structures were removed from the exchange relationships between voters and their representatives as clientelistic practices decentralized to mayors and other local elites (Dargent and Muñoz 2011, 45; also see Gutiérrez Sanín 2007).

National party leaders themselves contributed to the erosion of formal party structures as well through their ingenious use of the new electoral system. The 1991 Constituent Assembly had adopted two electoral changes to break the power of regional

(traditional) party bosses and to improve new parties' electoral chances: it introduced a single national constituency for the Senate and proportional representation that applied the Hare quota with the largest remainder for the Chamber of Representatives (Shugart, Moreno, and Fajardo 2006). The new rules did not, however, prohibit parties from presenting multiple lists. As a consequence, parties strategically presented a multitude of personal lists to capitalize upon the division of seats among largest remainders and to thereby gain more seats in Congress. The so-called *operación avispa* (operation wasp) strategy went so far as to entail the presentation of a new candidate list for each individual candidate (Moreno and Escobar-Lemmon 2008, 122).

As a result, the number of parties that participated in elections and that obtained representation in the Senate increased from 54 to 63 and from 22 to 42 respectively between the 1994 and 2002 elections (see Table 7-1 above). Party participation in Chamber elections became so inchoate that no data are available on the number of parties that participated in these elections. Instead, most studies only mention the number of lists available to voters, which also increased steadily. These changes did not necessarily reflect that the political system opened up to new representative forces. Between 65 percent and 80 percent of the new political parties and movements consisted of politicians that had previously belonged to the traditional Liberal and Conservative parties (Londoño 2010, 13; Roll and Ballén 2010, 81). These parties were able to mitigate the effects of electoral system change on their electoral showing by loosening their formal alliances with their representatives (Dargent and Muñoz 2011, 53). This resulted in the increased personalization of politics (Moreno and Escobar-Lemmon 2008), the permanent circulation of legislative seats between legislators and those that had supported their campaign, and in intra-caucus factions supporting different coalitions (Londoño 2010, 15–16).[373]

Up to the 2003 elections, leaders of the established parties continued to count on the loyalty of their representatives to remain in power (Dargent and Muñoz 2011, 53). It was not until the 2003 elections that the severe consequences of party deinstitutionalization became clear to them (Vélez, Ossa, and Montes 2006, 17). These elections were won by Álvaro Uribe, a relative political outsider who had defected from the Liberal Party to run on the ticket of a political movement. [374] His success capitalized on both a massive support base in the electorate and on the increasingly porous ties

[373] The increased fragmentation of the legislature also had consequences for governability, as the executive had to negotiate with each representative separately in order to obtain the necessary support for his policies. Generally speaking, these negotiations were built on personalistic favors and impeded effective decision-making (Prieto Botero 2010, 27).

[374] His outsider status was not a mere electoral strategy. During the 3rd Annual Reunion of the Inter-American Forum on Political Parties in 2003, the then-elected president expressed that, in his opinion, democracy did not need political parties (Londoño 2010: 16).

between legislators and the traditional parties. Indeed, many traditional politicians registered on independent lists to support his campaign; resulting in the reduction of the strength of the traditional parties to only half of the seats in Congress (Gutiérrez Sanín 2006; Shugart, Moreno, and Fajardo 2006, 23). After the elections, the Liberal party saw its strength reduced even further as many of its representatives in the legislature switched to the Uribe camp where they were sure to obtain more political spoils (Shugart, Moreno, and Fajardo 2006, 24; Vélez, Ossa, and Montes 2006, 16).

The political developments surrounding the 2003 elections hence evinced that changes in party cohesion, prompted by the (unforeseen) deinstitutionalizing measures adopted in the 1980's and 1990's, formed a direct threat to the ability of established party leaders to foresee in their politicians' – and their own – needs. This suggests that the subsequent constitutional reform sponsored by the legislature in that same year (Acto Legislativo 1, 2003) functioned according to the *organizational economy* strategy of party law reform: measures that would focus on redressing the intra-party resource balance in an effective manner such as by increasing the traditional party elites access to financial resources and control over the organizational infrastructure. The following section shows that, although established party elites did push for such an agenda, they were only partially successful. This was the case because the adoption of centralizing reforms, such as closed candidate lists, required a degree of party cohesion and discipline that the national party leaderships no longer wielded.

7.3.b Negotiation process

A look at the negotiation process confirms that legislators of the established parties did indeed seek to respond to the novel electoral threat caused by their loss of control over the organizational infrastructure by sponsoring an *organizational economy* party law reform that sought to strenghten legislative and electoral discipline. In this sense, it is telling that it was not the government, but the 'losing' Conservative and Liberal parties, that sponsored the reform bill (Gutiérrez Sanín 2007, 487; Prieto Botero 2010, 27)(see Appendix 7 for an overview of the decrease of these parties' legislative presence).[375] Together with the left-wing *Polo Democrático* (Democratic Pole, PD – an AD/M-19 successor party), independent legislators, and even some Uribist repre-

[375] Uribe did propose a constitutional reform by referendum simultaneously. His proposal focused more on ways to control Congress (De la Calle 2008, 421; Ungar Bleier and Cardona 2010, 392). This proved an additional reform motive, as legislators sought to establish and protect their autonomy from the executive through the sponsoring and adoption of their own political reform (Vélez, Ossa, and Montes 2006, 19–22).

sentatives, these parties' leaders created a sufficiently large reform coalition to pass a reform bill (Vélez, Ossa, and Montes 2006, 12, 25).[376]

The fact that this reform protected the established parties' organizational continuity was visible from the start. In his discussion of the reform, Liberal party leader Senator Rodrigo Rivera, the driver of the political reform in the Senate's Constitutional Reform Committee, defended the reform effort stating that "the traditional parties' conservational instinct led their leaders to recognize that, without a reform of this nature, they would be condemned to disappear."[377] Nevertheless, the reform process also shows how party organizational deinstitutionalization had reached such heights that the leaders of the established parties were unable to push legislators to adopt reforms that would threaten their own electoral careers unilaterally. This tension was visible most clearly in the main point of contention during the debate of the bill: the introduction of single candidate lists.

The legal change of single candidate lists formed part of broader set of measures that targeted the proliferation of political parties (see Table 7-3 below for an overview of all the relevant legal changes). Firstly, legislators replaced the Hare electoral method with the D'Hondt method with a threshold of two percent in the Senate and 50 percent of the electoral quotient in the Chamber of Representatives (§263). This addressed the practice of parties using multiple personals lists to benefit from the largest remainder to gain representation. Although not a direct example of party law reform, this measure provided an incentive for candidates to run under their party label again – thereby creating more solid political parties (Shugart, Moreno, and Fajardo 2006).

Secondly, legislators also redressed the intra-party resource balance by increasing the threshold for new party formation to two per cent of the vote in senatorial elections or 50 percent of the quotient for representative elections (§108). These higher formation costs formed an additional set of incentives for legislators to remain within the established parties' organizational infrastructure. Thirdly, and most importantly,

[376] Legislative acts that reform the constitution require adoption by both the Senate and the Camber of Representatives in two consecutive rounds. Adoption in the first round requires a simple majority of the legislators present (at least half of the legislators need to be present to take a decision), whereas adoption in the second legislature requires an absolute majority (84 in the Chamber of Representatives and 52 in the Senate; 1991 Constitution, §375). Statutory laws that regulate "the political party and political movement organization and system; the opposition statute and electoral functions" need to be adopted in a single legislature by an absolute majority of both the Senate and the Chamber of Representatives (1991 Constitution, §§152-3).

[377] *el instinto de conservación de los partidos tradicionales llevó a que sus directivas entiendan que sin una reforma de esta naturaleza estaban condenados a desaparecer*. Cited in Vélez, Ossa and Montes (2006, 17).

the reform introduced the obligation for parties to present a single candidate list per district (§263). Reaching a legislative coalition in favor of single lists was difficult, however, given that legislators had come to rely on their personal electoral capacities to win elections. As a result, the existing party structures controlled no resources that could offset the costs these legislators would incur when they subjected to party hierarchy and discipline. To get the constitutional reform accepted, Conservative party leaders therefore successfully proposed to combine D'Hondt method with the *voto preferente* (open lists)(Vélez, Ossa, and Montes 2006, 24).[378] This would allow party candidates to maintain their position on a single candidate list based on their electoral standing and would limit contestation over the internal configuration of the party list to a minimum.[379] The final bill allowed parties to choose between open and closed lists as they saw fit, rather than prescribing closed lists only as had been proposed initially.

The debate on the adoption of closed or open lists was closely connected to the debate on the regulation of candidate selection methods. The adoption of closed lists with obligatory party primaries formed an alternative solution to ensure that candidates would continue to rely on their personal electoral standing – rather than the political leadership's will – to get elected. Once legislators took the decision to also allow for open lists, the issue of intra-party democracy was dropped from the negotiations.[380] In essence, the introduction of single candidate lists thus allowed for the renewed relevance of party labels in elections, while leaving unchanged the individual and personalized nature of election campaigns and the candidate selection

[378] The executive opposed the open lists because it would maintain the traditional *politiquería* (politicking) practices that Uribe opposed so vehemently. See: El Tiempo (3 May 2003) 'Londoño, a limar asperezas.' Instead, Uribe favored the introduction of closed lists that would allow for more centralized control of candidates. Nevertheless, his own forces in Congress were divided on the matter as many were concerned about the effects a closed list would have on their own electoral standing (Gutiérrez Sanín 2006, 112; Shugart, Moreno, and Fajardo 2006, 27).

[379] Interviews Barrios, 2013; Giraldo, 2013; Juan Fernando Londoño, 2013; Arrieta, 2013; Lizarazo, 2013. The deinstitutionalizing effect of open lists formed exactly the reason why the adoption of closed lists formed part of reform proposals advanced by civil society organizations and political consultants as a means to improve the functioning of political parties and their links with society (Acuña 2009, 108–16; Roll 2001, 267–71). Also see interview Juan Fernando Londoño, 2013.

[380] Interview Navarro Wolff, 2013. A new norm was adopted that merely stated that parties must organize democratically and that party statutes must prescribe the procedures for candidate selection (§107). This left the selection of the specific mechanisms to comply with this norm up to the parties themselves (also see Botero and Rodríguez Raga 2009, 14).

process.[381] One respondent – a longtime senator and party president – corroborates this in his statement that the reform "was an improvement although people still vote for the candidate as a person and not for parties" and that "in essence, parties are not really picky at the moment that they select their candidates. They look for the largest candidates, those that have votes, that are known … They privilege the quantitative. How many votes [the candidates] got."[382]

The explicit prohibition of double party membership (§107) formed a second measure to combat party fluidity.[383] Colombian party membership is generally limited to the parties' elected representatives (Londoño 2010, 9). The new prohibition therefore ensured that dissident legislators would have to rejoin the ranks of one of the major parties.[384] If they failed to do so, the higher requirements for party formation and maintenance would prevent them from continuing to run in elections on the label of loosely affiliated minor political groups.[385] To ensure the adoption of this law, a transitory article (§108) allowed legislators to switch parties, or to form a new party on the basis of past electoral results, once more for the upcoming elections.

Lastly, the reform created the *régimen de bancadas* (system of legislative benches). This new norm held that "[t]he members of governing bodies elected on the label of the same political party or movement will act as one bench in line with the terms that the law decides upon and in conformity with the decisions democratically adopted by these [benches]" (§108). This measure sought to do away with the individual nature of the negotiations between legislators and the executive.[386] Once again, however, adoption of this rule was only possible by adding that party statutes would regulate the *asuntos de conciencia* (topics of conscience) that were exempted from this

[381] Interview Barrios, 2013; Lizarazo, 2013. The continued lack of party cohesiveness is visible in the implementation of candidate selection via the option of closed party lists. Of the ten parties that obtained representation in the Senate, only one presented its candidates on a closed list. For the election of the Chamber of Representatives, only two of the 20 parties that obtained representation did so (Botero and Rodríguez Raga 2009, 21).

[382] *… signifique un avance pero aún se sigue votando por persona y no por partidos. ... en esencia, los partidos son poco selectivos al momento de colocar los candidatos. Se buscan más candidatos números, que tengan votos, que se conozca. … Se privilegia el cuantitativo. Cuántos votos tengo.* Interview Arrieta, 2013.

[383] Cámara de Representantes (31 July 2003) 'Actas de Plenaria,' Gaceta del Congreso 378/2003.

[384] For the Liberal and Conservative parties, these measures served to fortify their party structures. In addition, the measure allowed the left-wing Democratic Pole to overcome the divisive effects that the electoral system had had on the formation of a credible left-wing party. See interviews with Liberal party leader Rodrigo Rivera, Conservative party leader Holguín Sardi, and left-wing party leader Antonio Navarro Wolff in Vélez, Ossa, and Montes (2006, 23–24).

[385] See El Tiempo (26 June 2003) 'Reforma, cuchilla a los partidos' for an overview of the political parties that would likely disappear due to the 2003 reform, as well as these parties' ties to the existing parties.

[386] Interview Navas, 2013.

new rule (Vélez 2007). In this manner, the law introduced legislative discipline as a principle but refrained from implementing it as a fixed standard for all legislators equally. In practice, this allowed individual legislators to steer clear from the party line as they saw fit.

Next to the way in which parties selected and presented their candidates, political finance had also played an important role in the deinstitutionalization of established party organizations. The financial ties between individual legislators and their local constituencies reinforced the legislators' independence from the central party organization (Londoño 2010). At the same time, however, these clientelistic ties had characterized Colombian politics for several decades. It is therefore unsurprising that legislators did not discuss a substantive political finance reform during their negotiations. The only change visible here is that the reform increased public funding available to parties by including public funding for primaries as a category of public funding (§110).

Colombian political consultants, think tanks, and civil society organizations did try to use this reform opportunity to put the broader regulation of private funding on the political table as well. Their influence is visible most clearly in the adoption of changes in the norms regulating electoral finance, such as spending limits, media access, and the presentation of finance reports (§§109,111-112). No real reason existed, however, for political parties to ensure the effective implementation of these norms as their adoption mainly responded to external demands for change. The follow-up that was given to this law confirms that such a minor *systemic economy* strategy was at work here as well.

In a transitory paragraph, legislators stipulated that Congress was to expedite a law regulating these new political finance norms, or – in case it would fail to do so in the three months after the adoption of the reform – that the executive was to regulate the matter by decree before the closure of candidate inscription for these elections (Hernández Becerra 2006, 339). Speediness of subsequent regulation was necessary if the new norms were to be implemented in the 2003 subnational elections. Congress failed, however, to adopt any legislation on the matter. In response, the executive expedited Decree 2207 to regulate the financing of political campaigns, which established that political parties would be held responsible for their candidates' rendering of accounts and violation of spending limits (§§11-12).

The decree created a political struggle between the executive and the directives of the political parties. This struggle underscored the difficulty in constraining individual legislators' behavior – albeit this time round from the central party leaderships' perspective. The party leaders argued that the responsibility to render financial accounts

and to respect spending limits should be the individual candidates purview only. As has been established in detail by now, the party leaders held little to no control over these candidates and the legal responsibility implicated in this decree posed grave dangers to them. In response, Congress adopted a provision in a national budget law (Law 844) that exempted the party and its treasurers from this responsibility (Restrepo H. 2011, 189).[387] These legal battles underline the political reality in which national party leaders feared being held accountable for their candidates' behavior.[388] Future developments would prove these fears not to have been unfounded.

To summarize, the 2003 reform underlines the dynamics of the *organizational economy* reform strategy – albeit in a hybrid manner. The established parties' electoral defeat due to their organizational deinstitutionalization set the agenda for reform. Established party leaders were successful at negotiating a reform that would increase the relevance of the formal party labels, such as by the need for parties to present single lists, the prohibition of double party membership, and the system of legislative benches. They were unable to fundamentally alter the intra-party resource balance, however, due to the lack of party discipline. Legislators had no incentives to voluntarily adopt chains that would constrain their own functioning and behavior and that would potentially endanger their future legislative careers.

As a result, the relevance of formal party labels in elections increased but this did not alter the personalized nature of the election process. The reform similarly refrained from centralizing the candidate selection process or from increasing legislative discipline unequivocally. As a consequence, Colombian political parties continued to organize as 'cadre parties' (Duverger 1964, 64) that orbited around local elites that ensured their own election to Congress with little to no structural assistance from the central party (Gutiérrez Sanín 2007). The reform came too late to change the tide of party deinstitutionalization in all but formality.

[387] The CNE resolved the legal impasse by maintaining the executive decree. In 2004, the Constitutional Court ruled the legislative reform unconstitutional because budgetary laws were not allowed to contain statutory norms (Sentence C-515-04, 27 May 2004). In 2005, it also ruled the executive decree unconstitutional because it had not been presented to the Court for the revision of its constitutionality (Sentence C-523-05, 19 May 2005). The financial investigations that had been undertaken on the basis of this decree were subsequently archived (Restrepo H. 2011, 189).

[388] The distribution of media access was another element of the constitutional reform that necessitated the development of regulatory instruments for its implementation. Given that this was a mere administrative matter, the CNE developed this regulation in a timely manner (De la Calle 2008: 433).

Table 7-3: Development of Colombian party law (1994-2003)

Topic	1991/1994	2003
Registration requirements	*50.000 signatures *50.000 votes *Congressional representation	2 % vote threshold (Senate - +/- 200,000 votes) or 50% of quotient (Chamber = Congressional representation)
Candidate selection and presentation	CNE facilitates primaries	*Parties present single lists *Parties must organize democratically
Party membership and discipline	Law may not interfere in internal organization	*Prohibition double party membership – with exception 2006 elections *System of legislative benches – with exception of sensitive issues
Electoral funding	Proportional reimbursement, 5% threshold	Adds funding for primaries
Organizational funding	10 % equal; 50% proportional to seats; 10% (sic); 30% proportional to votes	No change
Private funding	CNE sets private donation limits + prohibition anonymous donations	Law establishes spending limits
Media access	Electoral access and permanent access	State provides a max. amount of media access to presidential candidates
Monitoring and oversight	CNE receives annual and electoral finance reports	

7.4 2005 reform: a response to the changing terms of electoral competition

7.4.a Changes in the resource environment

A next round of party law reform quickly followed the 2003 reform, albeit in a somewhat unrelated manner. In 2004, President Uribe pushed for the adoption of a constitutional reform that would allow direct presidential reelection for one subsequent period (Acto Legislativo 2). In practice, this reform was expected to enable the popular Uribe to capitalize on his public approval to get reelected. This proposal was therefore a highly contentious one that pitted opposition forces against those sponsoring Uribe's bid for immediate reelection.

The bill faced strong opposition in Congress from both the opposition Liberal Party and the left-wing *Polo Democrático Alternativo* (Alternative Democratic Pole, PDA; the PD's successor), as well as from sectors of the Conservative Party and other parties belonging to the governing coalition (Vargas Silva 2009, 294; Vélez 2007). In order to see the project safely through Congress, the government had to negotiate on a permanent and personal basis and use the patronage resources at its disposal to safeguard a majority coalition.[389] The opposition's inability to prevent adoption of immediate reelection came to light most clearly during a crucial debate in the Constitutional Commission of the Chamber of Representatives. The bill only managed to pass because of a turn of mind of two representatives, who had spoken out against the bill before. It later surfaced that the government had bought their votes (Posada-Carbó 2005, 2–3; Ungar Bleier and Cardona 2010, 406–11).[390]

Given the opposition's inability to block adoption of the constitutional reform altogether, the following negotiation process over the adoption of the presidential reelection reform turned into a complex bargain (Hernández Becerra 2006: 338). Opposition forces fought tooth and nail to obtain the constitutional codification of guaranteed resource equality in presidential election campaigns. This was a necessary means to ensure at least some semblance of equal competition when going up against an incumbent president.[391] As a result, the constitutional reform stipulated in a transitory paragraph that either the executive or the legislative body would present a bill to secure electoral equality between the presidential candidates in the form of

[389] El Tiempo (3 June 2004) 'Reelección, un bumerán.'

[390] These representatives were subsequently convicted by the Supreme Court in what became known as the Yidispolítica scandal – named after Representative Yidis Medina who sold the government her vote in favor of the bill. Also see El Tiempo (6 June 2009) 'Teodolindo e Iván Díaz, condenados por Yidispolítica.'

[391] Interviews Navas, 2013; Navarro Wolff, 2013.

a statutory law.[392] This law would have to regulate access to the media and the prevalence of public funding in presidential campaigns.[393] The last transitory paragraph of this article (§4) stipulated that in case Congress refused to expedite this law or if the Constitutional Court declared said law unconstitutional, the Council of State would regulate the matter temporarily.[394] These contextual developments suggest that the reform process that resulted in the subsequent adoption of the 2005 'Presidential Elections Law' (Law 996) followed the *electoral economy* reform strategy. This means that the changing terms of electoral competition drove the adoption of this bill and that legislators used this opportunity to redress the inter-party balance of financial resources in an effective manner.

7.4.b Negotiation process

An overview of the negotiation process shows that the *electoral economy* reform strategy indeed drove adoption of the 'Presidential Elections Law'. On 2 March 2005, both a group of senators belonging to the governing coalition and a group of Liberal opposition senators introduced proposals to address the changing terms of electoral competition that followed from the adoption of immediate presidential reelection. The Liberal senators noted in their exposition of motives, for example, that:

> In light of the adoption of the Legislative Act [2, 2004], we undertake the task of designing legal mechanisms destined to prevent the possible abuse that may present itself [in elections] and to thereby reestablish, even if only in a partial manner, the equilibrium that has clearly been lost with the establishment of immediate reelection.[395]

To reestablish this equilibrium, both proposals addressed similar themes such as electoral funding, media access, limits to presidential functions at election time, and the regulation of the role of public servants in presidential election campaigns. Given the

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[392] Senado de la República (9 Dec. 2004) 'Acta de conciliación del proyecto de Acto Legislativo número 267 de 2004 Cámara, 12 de 2004 Senado,' Gaceta 799/2004.

[393] Legislators did not define the 'prevalence of public funding in presidential campaigns' in more detail. In its review of the constitutionality of the law, the Constitutional Court determined that prevalence meant more than 50 percent of electoral funding (Sentence C-1153-05, 11 Nov. 2005).

[394] In its ruling on a demand of unconstitutionality, the Constitutional Court declared this paragraph unconstitutional as it assigned legislative powers to a judicial institution (Sentence C-1040-05, 19 Oct. 2005).

[395] *Una vez aproabado el acto legislativo, emprendemos la tarea de diseñar mecanismos jurídicos destinados a prevenri los posibles abusos que puedan presentarse y restablecer, así sea parcialmente, el equilibrio que definitivamente se ha perdido con el establecimiento de la reelección inmediata.* Senado de la República (2 March 2005) 'Exposición de motivos proyecto de Ley Estatutaria número 215,' Gaceta del Congreso 71/05.

overlap between the two bills, the Senate decided to combine both proposals into one reform bill.[396]

The subsequent reform negotiations nevertheless pitted the government against the Liberal party. In part, this was due to the fact that the Liberals proposed tighter constraints on presidential electoral finance than the consolidated bill contained. The Liberals advocated, for example, reducing private funding to 10 percent (rather than 25 percent) of total electoral funding. In addition, they proposed the immediate loss of office as a sanction for presidential candidates that superseded their spending limits, as well as a complete prohibition on campaign contributions from state contractors.[397] According to Juan Fernando Londoño, former coordinator of the UNDP Project of Democratic Strengthening and vice minister of Internal Affairs (2011-201), Liberal opposition to the 'Presidential Elections Law' also served to create legal grounds for a case against the constitutionality of immediate presidential reelection.[398] The Liberals would be able to take the 2004 constitutional reform to court if the government failed to observe transitory paragraph 4 that required it to adopt a law to regulate access to the media and the prevalence of public funding in presidential campaigns.

In light of Liberal opposition to the reform, the government sought a partnership with the left-wing PDA to pass the bill (see Table 7-4 for an overview).[399] The failure to provide financial advances was a deal-breaker for the PDA, which had experienced the damaging effect of the lack of financial resources in previous campaigns.[400] The law therefore introduced a pre-electoral financial advance distributed equally among the candidates without much debate (§8).[401] It also lowered the threshold for the post-electoral proportional reimbursement of votes obtained from five to four per-

[396] Senado de la República (2 May 2005) 'Ponencia para primer debate a los proyectos de Ley Estatutaria número 216 de 2005,' Gaceta del Congreso 226/05.
[397] Senado de la República (5 May 2005) 'Ponencia para primer debate a los proyectos de Ley Estatutaria númber 216,' Gaceta del Congreso 231/05.
[398] Interview Juan Fernando Londoño, 2013. This assertion is corroborated by the fact that the entire Liberal caucus left the Chamber of Representative during the final vote on the bill, while requesting that formal quorum rules would be respected in their absence. This can be read as a final attempt to obstruct the bill's adoption. See statements Representatives Joaquín José Vives Pérez and Gustavo Lanzziano Molano (Liberal party). Cámara de Representantes (8 Aug. 2005) 'Actas de plenaria,' Gaceta del Congreso 503/2005.
[399] The Chamber of Representatives voted on each article separately and nominally. Although this inhibits a general vote tabulation, the nominal votes on each article show that the representatives of all the governing coalition parties and PDA, plus several Liberal dissenters, voted in favor of the reform. Cámara de Representantes (8 Aug. 2005) 'Actas de plenaria,' Gaceta del Congreso 503/2005.
[400] Interview Navaro Wolff, 2013.
[401] Senado de la República (15 July 2005) 'Actas de plenaria,' Gaceta del Congreso 428/2005.

cent of the vote (§11). In addition, the law stipulated that the state would finance electoral advertising as part of the pre-electoral loan and that it would guarantee equal access to private and state media (§§11, 22-23).[402]

The law also created total and individual donation limits (§14) and set spending limits to the first and second round of presidential elections (§§12-13). One other main point of contention during the negotiation process was the extent to which electoral funding should still consist of private funding – with the government bill starting at 35 percent private funding.[403] In the end, legislators reached a compromise of 20 percent, as a means to live up to the constitutional provision that electoral finance needed to consist preponderantly of public funding (§14).[404] Although the law allowed for corporate donations, the Constitutional Court ruled this unconstitutional as the judges failed to recognize the political rights of corporations.[405] This meant that corporate donations were banned from presidential election campaigns completely.

The negotiation process shows that the PDA held substantial leverage over the executive, who needed the adoption of this bill to secure his ability to run in elections again. For the PDA, the reform presented an opportunity to restrict the incumbent's access to and use of financial and state resources and to thereby improve its own showing in the presidential elections.[406] In line with the *electoral economy* perspective, this focus on redressing the inter-party resource balance ensured the implementation of the new constitutional norms. To provide for more efficient oversight over campaign finance, for example, the law required each candidate to open a single campaign bank account. Legislators also stipulated that the presidential candidate, campaign manager, treasurer and accountant were all responsible for the correct rendering of accounts and compliance with finance regulation. The reform did not change the capacity of the specialized branch within the CNE to oversee political finance (§§15-21). The CNE did, however, develop the necessary regulation to implement the financial control of political campaigns as well as the strict monitoring of equal media access (Restrepo H. 2011, 194).

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402 The introduction of financial advances with relatively low thresholds created some debate on how to guarantee that only serious presidential candidates would participate in elections and would receive access to public funding. See Senado de la República (15 July 2005) 'Actas de plenaria,' Gaceta del Congreso 428/2005.

403 Senado de la República (2 March 2005) 'Exposición de motivos proyecto de Ley Estatutaria número 216,' Gaceta del Congreso 71/05.

404 Senado de la República (1 June 2005) 'Ponencias,' Gaceta del Congreso 312/2005.

405 Sentence C-1153-05, 11 Nov. 2005.

406 Interviews Navarro Wolff, 2013; Navas, 2013.

According to several political experts, these changes resulted in the opening up of the presidential election process to new political forces and leveled the electoral playing field somewhat. Nevertheless, the possibility for presidential reelection also introduced a major disadvantage for all other presidential candidates vis-à-vis the executive.[407] These centrifugal tensions underscore the problem that immediate presidential reelection posed for the opposition parties and explains why they advocated the adoption of new party regulations that constrained their own behavior as well. In line with the *electoral economy* reform strategy, the measures adopted in the 2005 reform served to ensure as much resource equality as possible between presidential contenders.

Table 7-4: Development of Colombian party law (1994-2005)

Topic	1991/1994	2003	2005
Electoral funding	Proportional reimbursement, 5% threshold	Adds funding for primaries	Adds equal financial advance (4% threshold) and proportional reimbursement with lower threshold (4%) for presidential elections
Private funding	CNE sets private donation limits + prohibition anonymous donations	Law establishes spending limits	Private donations max. 20% of funding. Individual donation limit of 2% of funding.[408] Spending limits for presidential campaigns
Media access	Electoral access and permanent access	State provides a max. amount of media access to presidential candidates	State provides equal access to state and private media
Monitoring and oversight	Parties present annual and electoral finance reports to CNE		Single campaign fund; present reports to CNE

407 Interviews Juan Fernando Londoño, 2013; Navarro, 2013. Also see De la Calle (2008: 434).

408 A Constitutional Court ruling prohibits corporate donations (Sentence C-1153-05, 11 Nov. 2005).

7.5 2009/11 reform: a response to the *parapolítica scandal*

7.5.a Changes in the resource environment

Throughout the 2002-2006 Legislature, the number of parties in the Chamber of Representatives had dropped from 40 to 18 due to the new incentives to run under a formal label (Giraldo and López 2006, 128). The 2003 reform's effects on the party system also manifested themselves during the next elections. The introduction of the new threshold for representation – combined with the use of D'Hondt method for seat repartition, the rule that parties could only present one list, and the prohibition of double party membership – forced parties to join their candidates' electoral forces to obtain sufficient votes for the maintenance of party registration.[409] The number of lists/parties that participated in national elections and that obtained legislative representation decreased substantially from 63 to 20 and from 42 to 10 respectively in the Senate and from 63 to 39 and from 40 to 22 respectively in the Chamber (see Table 7-1 above).

At the same time, the party system reconfigured from one dominated by the two traditional parties to one contested by new left-wing and Uribist forces. Indeed, and as noted above, the 2003 constitutional reform allowed for one more instance of party switching. This accommodated the reconfiguration of politicians among the different political parties, mainly benefitting the *Partido de la U* (U's Party)[410] – the party sponsoring the re-election of the popular president (Pachón and Shugart 2010, 652; Rodríguez Pico 2010, 68).[411] The Liberals were relegated to third place in the 2006 elections, whereas the Conservatives decided to back Uribe's bid rather than sponsoring their own candidate. With 62 percent of the vote, Uribe obtained a landslide presidential victory (Posada-Carbó 2006, 80). It is safe to say that in the 2006 elections, Uribe and his Partido de la U thus consolidated their position as a new power bloc in Colombian political life.

Over the course of the 2000's, the Colombian party system, and political party organization more specifically, also transformed due to forces operating at the local political level. In the absence of an effective state presence throughout the Colombian territory, guerrilla movements, paramilitary force and drug-traffickers had his-

[409] This was particularly the case in the Senate with its single circumscription. The number of parties that present candidates for the Chamber of Representatives is mostly dependent on the size of each territorial circumscription (meaning that the more seats are eligible within a circumscription, the more parties present themselves in elections). Nevertheless, the new electoral rules led to a decrease in the effective number of parties in the Chamber of Representatives as well (see Botero and Rodríguez Raga 2009, 21).

[410] Formally known as the *Partido Social de Unidad Nacional* (Social Party of National Unity, PSUN).

[411] The new rules allowed the Conservative Party to regain some former splinters.

torically used local and regional governments to sponsor their own causes. In the 1980's and 1990's, such efforts mainly entailed armed groups and drug-traffickers participating in national elections directly or more indirectly through the financing of election campaigns – at times giving rise to corruption scandals (Roll and Cruz 2010, 42–43).

After the opening up of local political offices through decentralization reforms sponsored in the 1980's, however, these actors' efforts shifted to the capture of the decentralized municipalities and regional governments to obtain access to the resources that had become available here (Ávila Martínez 2010; Eaton 2006; Roll and Ballén 2010, 68). The fragmentation of the national party system that started in the 1990's reversed the direction of this relationship. Politicians turned to illicit forces in an increasing manner as an important means to access the local vote share through financial support (needed for vote-buying), coercion, or intimidation of other candidates.

Many of the new parties that contributed to party system fragmentation from the early 2000's on were based in regions with a strong paramilitary presence (Ávila Martínez 2010; Eaton 2006). A judicial investigation into the matter revealed that 81 out of 267 legislators elected in 2006 could be linked to paramilitary and other illicit forces that had supported these legislators' campaigns (Ávila Martínez 2010; Restrepo H. 2011, 212–13). Although the political parties replaced the representatives implicated in the scandal with the next person on their respective candidate lists, in many cases these politicians were subsequently linked to the financial scandal as well (Puyana 2012, 23). The continuous entrance of corrupt politicians into Congress – as well as the magnitude of the scandal – sparked public outrage and media pressure for political reform.[412]

Two main socio-political changes hence presented themselves in the run-up to the 2009 constitutional reform. The 2003 reforms had allowed for the renewed importance of party labels. Uribe's strong hold over the political system had nevertheless ensured that his Partido de la U replaced the dominant Liberal party. His parties' legislative strength was based as much on spoils-based party switching as it was on a strong electoral showing (Pachón and Shugart 2010, 652; Rodríguez Pico 2010, 68). This suggests the presence of a perpetual *electoral economy* reform dynamic to redress the inter-party resource balance, such as by adopting legal provisions that increased the ruling party's control over human resources at the detriment of minor parties. At the same time, the *parapolítica* (parapolitics) scandal also created conditions for a *systemic economy* dynamic, aimed at containing the imminent legitimacy crisis.

[412] Interviews Arrieta, 2013; Barrios, 2013; Juan Fernando Londoño, 2013. Also see El Espectador (26 Nov. 2007) 'Revocatoria, la mejor opción.'

7.5.b Negotiation process

Negotiations over the 2009 reform started in 2007 with the president's introduction of a constitutional reform bill that mainly focused on the introduction of the *silla vacía* (empty chair): a sanction that prevented parties from replacing any representative that had lost his or her seat due to ties with illegal armed groups (Puyana 2012, 23). The measure provided an incentive for more deliberate candidate selection as it entailed the loss of representative weight vis-à-vis other parties. The empty chair sanction quickly became part of the social imaginary and was actively sponsored by civil society organizations that followed the negotiation process with interest.[413]

Despite public pressure in favor of adopting this norm, however, legislators could not reach an agreement as to whether this measure should take effect immediately. Many of the legislators implicated in the scandal belonged to the governing coalition. Prompt introduction of the empty chair would thus entail the dismantling of the government's legislative majority (Londoño 2010, 18; Puyana 2012, 24; Ungar Bleier and Cardona 2010, 417). As a result of this threat, the executive took its risks and withdrew its support for the reform in the penultimate debate on the matter (Prieto Botero 2010: 32, Vargas Silva 2009: 303). The legitimacy crisis was not large enough to make Uribe relinquish his governing majority voluntarily.

Instead, the executive presented a new constitutional reform bill in August 2008, which Congress subsequently adopted in July 2009 (Acto Legislativo 1). As opposed to the previous proposal, the new bill only established the empty chair as a general norm that would need to be developed further through a statutory law. Towards this end, a transitory paragraph established a swift legislative trajectory for the adoption of this statutory law needed (§107). Due to its failure to establish effective rules, the main point of critique of civil society groups was nevertheless that the constitutional reform did not target the main problem that the government claimed to address.[414]

The transitory paragraph was unable to address this critique, as subsequent work on this statutory law in the constitutional committees of both the Chamber and Senate did not proceed because of a lack of quorum. Politicians had already started on their campaign trails, which did not motivate them to adopt effective rules to combat

[413] Interviews Barrios, 2013; Jorge Londoño, 2013; Arrieta, 2013. The importance of the *silla vacía* as an image of responsible politics can also be gauged from the popular website http://www.lasillavacía.com, which dedicates itself to describing the actual configuration of political power in Colombia.

[414] Interviews Martínez, 2013; Rodríguez, 2013; Cepeda, 2013. Also see Prieto (2010: 33). One expert concludes that the reform was a mere attempt to placate (international) public opinion (Santana Rodríguez 2010, 44).

the influence of illicit forces in elections and the national legislature by extension.[415] This is not to say that the 2009 reform consisted of ineffective norms in its entirety. The constitutional reform also introduced two measures with a strong effect on the political system. The first measure increased the threshold for party formation and maintenance from two to three per cent (§108).[416] Presented as a way to fortify the existing political parties, this measure put the continued existence of several congressional parties in danger.[417]

Secondly, the reform allowed for yet another instance of party switching through a transitory paragraph (§107). As had become clear in the run-up to the 2006 elections, this measure allowed the government to strengthen its coalition with politicians from other political parties.[418] According to members of the reform committee, these two measures formed the only contentious measures in the reform's debate – as opposed to the adoption of the more general empty chair norm.[419] The fact that these two measures were designed to be implementated in the next elections, suggests that the *electoral economy* reform strategy dominated the 2009 reform effort. The legitimacy crisis provided an opportunity for Uribe to increase his legislative coalition at the detriment of smaller parties that were unlikely to survive the higher vote threshold.

After the elections, Uribe's successor President Juan Manuel Santos put implementation of the 2009 constitutional reform back on the political agenda. This was one of Santos's first acts of governance and may well have formed a way for him to distance himself from his predecessor.[420] The president started off his term with a broad governing coalition called the *Mesa de Unidad Nacional* (National Unity Table). The coalition consisted of all major parties except the left-wing PDA and thereby allowed politicians to reach a broad consensus on bills before they reached Congress.[421] The

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[415] El Espectador (10 Nov. 2009) 'Ley estatutaria de la reforma política sigue estancada,' El Espectador (02 Dec. 2009) 'Congreso se desentiende de la reforma política,' El Espectador (02 Dec. 2009) 'Reforma política, herida de muerte.' The debates that did take place focused more on campaign finance regulation and on increasing the amount of public funding available to parties than on the regulation of sanctions for parties that promoted the candidacies of politicians linked to illicit forces.

[416] Legislators added that parties would lose their registration if they failed to organize a party congress where members could influence "important party decisions" every two years.

[417] Interviews Romero, 2013; Baena, 2013; Rodríguez, 2013.

[418] Interview Acuña, 2013. Gutiérrez and Acuña (2011, 5) show that this renewed instance of party switching mainly targeted the *Partido Cambio Radical* (Radical Change Party, PCR), which lost half of its senators and a quarter of its representatives to parties belonging to the governing coalition.

[419] Interviews Andrade, 2013; Arrieta, 2013.

[420] It is a well-known fact that the relationship between Uribe and Santos deteriorated quickly and that they are now archenemies.

[421] Interviews. Arrieta, 2013; Guevara, 2013; Jorge Eduardo Londoño, 2013. Also see El Tiempo (2 Sep. 2010) 'Evalúan incluir la eliminación del voto preferente en la reforma política.'

coalition adopted a new statutory law regulating the functioning and organization of political parties in December 2010. The Constitutional Court subsequently approved the law in its review of its constitutionality in June 2011, upon which the president signed the project into law on 14 July 2011 (Law 1475). Compared to the adoption of the constitutional reform under the previous Uribe administration, the new law was hence adopted without major difficulties.[422]

The statutory law mainly focused on two topics that had been put on the agenda by external actors, such as political consultants and NGOs.[423] Firstly, the law regulated the empty chair so that this norm could be applied in practice (§10). Civil society organizations nevertheless lamented the introduction of several legal loopholes in the application of the empty chair.[424] Two legislators that belong to the governing coalition state that the bill was indeed rather easy to adopt because it did not contain far-reaching measures.[425] In addition, the law contained measures that targeted the funding of election campaigns by introducing pre-electoral financial advances for all candidates (not just presidential ones) and spending limits (§§21-22).[426] The NGOs that participated in the reform processes had proposed these measures as a means to promote clean election campaigns by lowering the candidates' dependence on private funding.[427] Towards this end, the new law also created limits on private media use and stipulated that the CNE would divide free media access equally among inscribed lists and candidates (§36).

The regulation of individual donation limits in election campaigns formed the main point of contention throughout the debates. The bill of the *Mesa de Unidad Nacional* established the limit for individual donations at four percent of total funding. Mem-

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[422] This is confirmed by respondents that participated in these negotiations, who note that the *Mesa de Unidad Nacional* – rather than Congress – has become the arena where political agreements were forged; thereby turning the negotiation process in Congress in a mere formality. Interviews, Arrieta, 2013; Jorge Eduardo Londoño, 2013. Also see Acta 18/2010 of the Constitutional Committee of the Chamber of Representatives where Minister of Internal Affairs and Justice Germán Vargas Lleras "reiterates in the First Committee of the Chamber that a broad agreement was reached [on the reform] at the National Unity Table" (*reiteremos en la Comisión Primera de la Cámara, el gran acuerdo en el que avanzamos a nivel de la Mesa de Concertación*).
[423] Interview Martínez, 2013; Barrios, 2013; Lizarazo, 2013. Also see Senado de la República (30 Nov. 2010) 'Ponencias,' Gaceta del Congreso 984/2010.
[424] Interviews Barrios, 2013; Rodríguez, 2013. One loophole consists of the fact that the empty chair is only applied to parties when politicians are convicted during their time in office. A process can take five to six years, which undermines the sanction's effectiveness.
[425] Interview Arrieta, 2013; Molina, 2013
[426] The new law also stipulated that party statutes must prescribe democratic procedures for candidate selection and that parties needed to repay the state's expenses if they campaigned for internal elections but ended up not organizing them (thus using them as an early general election campaign tool)(§22).
[427] Interview Barrios, 2013; Martínez, 2013.

bers of the Chamber of Representatives argued that this did not match the reality of electoral finance in which many candidates sponsored their campaigns either with their own money or with money from their family members.[428] The Chamber subsequently eliminated all donation limits.[429] A stir among the civil society organizations that followed and participated in the negotiation process was the result,[430] leading the Senate to re-include a 10 percent donation limit. Family members and candidates' individual donations were exempted, however, from this donation limit (§§23, 27).[431] An attempted 2011 counter-reform that sought to eliminate these donation limits underlined legislators' unwillingness to incorporate substantial limits to the private funding of election campaigns once more.[432]

The 2011 reform was hence driven by a *systemic economy* reform strategy. Civil society organizations managed to push certain themes on the political agenda – aided by the fact that the government likely wanted to distinguish itself from its predecessor. Nevertheless, legislators had no real incentives to push for the constriction of their own behavior. Even the introduction of financial advances for election campaigns proved a futile attempt. In the 2011 subnational elections, parties failed to make use of these advances on their candidates' behalf for one important reason: their central leadership structures had lost touch with the campaigns on the ground to such an extent that they were incapable of deciding how to distribute public funding among their candidates (Puyana 2012, 39). This did not really matter in practice, however, because legislators had ensured that access to private funding would not be limited through donation limits.

[428] See, for example, statement Representative Carlos Arturo Correa, Cámara de Representantes (13 Oct. 2010) 'Ponencias,' Gaceta del Congreso 771/2010.
[429] Cámara de Representantes (10 Nov. 2010) 'Textos definitivos,' Gaceta del Congreso 882/2010.
[430] Senado de la República (30 Nov. 2010) 'Ponencias,' Gaceta del Congreso 984/2010.
[431] Cámara de Representantes (14 Dec. 2010) 'Informes de conciliación,' Gaceta del Congreso 1095/2010.
[432] Interview Lizarazo, 2013. Also see Puyana (2012) and El Espectador (30 June 2011) 'Se hundió contra-reforma política planteada por el Gobierno.'

Table 7-5: Development of Colombian party law (2009-2011)

Topic	2009	2011
Registration requirements	3 % vote threshold	
Candidate selection	Outcome of internal elections is final	Parties must be internally democratic; party statutes prescribe methods
Party membership	Prohibition double party membership – with exception 2009 elections	
Electoral funding		Adds proportional financial advances based on previous results, no threshold, for all campaigns
Organizational funding		10% equal, 15% equal to seats, 40% proportional to seats[433]
Private funding	Prohibition foreign donations and donations from illicit forces.	CNE establishes spending limits. Individual donation limit 10% of funding, does not apply to family
Media access		CNE establishes limits on media use; provides equal access
Monitoring and oversight		Adds internal party finance monitoring

7.6 Conclusion: party law development and reform in Colombia

In line with the general expectations presented in Chapter 3, the Colombian case partially shows how organizational and electoral pressures for reform resulted in parties adopting laws with teeth. This occurred as early as 1957, when the threat of

[433] 15 percent proportional to seats in municipalities, 10 percent proportional to seats in Departmental Assemblies, 5 percent proportional to the number of elected women, 5 percent proportional to the number of elected youth

continued military rule enabled the traditional parties to overcome mutual (violent) differences and to institutionalize competition. In a similar vein, the 2003 reform instituted effective changes that increased party formation and exit costs to target the threat that party organizational change posed for the continued electoral and legislative effectiveness of the traditional parties. The 2005 reform effectively redressed the inter-party financial balance, whereas the 2009 reform allowed Uribe to solidify his legislative standing through the effective regulation of the organizational infrastructure (see Table 7-6 below for a summary overview). These findings support propositions 1 and 2, as advanced in Chapter 3. According to these propositions, party law reforms that are adopted in response to organizational or electoral threats will contain *effectively designed* legal provisions that redress the intra- or inter-resource distribution balance.

The 2003 reform also shows, however, that established party leaders had waited too long to sponsor party law reforms that addressed changes in their access to organizational resources. Some of the most important measures needed to increase their organizational control, such as a more centralized candidate selection process and measures advancing legislative discipline, could only be adopted in an ineffective manner. This was the case because the established party leaders' relied on the cooperation of their legislative representatives for the adoption of such measures. The latter had become so used to their newfound freedom that they were only willing to subject to a party hierarchy to the extent that this advanced – rather than restricted – their own ability to run in elections and legislate effectively. Chapter 9 discussed the theoretical ramifications of this finding in greater detail.

Lastly, the 1991 reform illustrates the extent of established political elites' unresponsiveness to external demands for change. This constitutional reform, brought about by an extraordinary process in with society pressed for the election of a Constituent Assembly, opened up the political system by some means while simultaneously increasing party formation costs by other means. Despite the increased power of external forces in the Constituent Assembly, these forces were unable to do away completely with the established party structures that they blamed for the political systems' ills. In a more recent instance of reform (2009 and 2011), legislative inertia in the face of the *parapolítica* scandal presents the clearest example of how difficult it is to externally induce parties to adopt changes that affect them at the core of their survival (i.e. their financial structures). These findings support this study's proposition 3b, which holds that when adopted in response to a legitimacy crisis that only alters political parties' access to ideational resources, party law reforms will contain *symbolic* legal provisions that increase political parties' access to ideational capital.

Table 7-6: Summary of Colombian party law reform (2003-2011)

	2003	**2005**	**2009**	**2009/2011**
Strategy	Organizational economy	Electoral economy	Electoral economy	Systemic economy
Resource at issue	Organizational infrastructure	Financial resources	Organizational infrastructure	Ideational resources
Threat	Internal Changes in party cohesion	Internal Incumbent's electoral advantage	Internal Legislative standing depends on party switching	External Rejection parapolítica
Legal provisions	*Increase party formation and exit costs *Norms on candidate selection + legislative discipline *Norms on political finance	*Increase equal access to electoral funding *Restrictions private funding *Increase equal electoral access to media	*Increase threshold party formation *Allow for one instance of party switching	2009 *Norms on losing seat for illicit influence 2011 *Regulation empty chair *Introduction financial advances, spending limits, and limits on media use *Decrease donation limits
Effective design	Effective Implementation of party formation and candidate selection rules Symbolic Loopholes in regulation of intra-party relations and party discipline	Effective Introduction of public funding and some control private funding	Effective Implementation of party formation rules	2009 – Symbolic Introduction of new norms only 2011 – Effective/ symbolic Law with loopholes and selective targeting of electoral finance issues