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

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### **Citation**

Molenaar, F. F. (2017, September 28). *Changing the rules of the game : the development and reform of party law in Latin America*. Retrieved from <https://hdl.handle.net/1887/55959>

Version: Not Applicable (or Unknown)

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

**Date:** 2017-09-28

## CHAPTER 8 – Argentina

*¡No, no ha muerto! ¡Vive aún; ¡Él vendrá!  
Facundo no ha muerto, está vivo  
en las tradiciones populares,  
en la política y en las revoluciones argentinas*

–Sarmiento, *Vida de Juan Facundo Quiroga*<sup>434</sup>

### 8.1 Argentina: internal contradictions and conflict

Argentina, the ‘Land beside the Silvery River’, derives its name from its location near the *Río de la Plata*: the basin formed by the confluence of the Uruguay and Paraná rivers. The basin, in turn, was named after the sixteenth century European expeditions that explored the region in search of a mystical silver mountain. The conquerors’ inability to locate this *Sierra de la Plata* had important consequences for the subsequent European settlement in the region, as colonization efforts shifted to the golden wealth of the Peruvian Inca civilization instead. The Rio de la Plata region remained a provincial backwater and local elites’ ties to the Spanish Vice-royalty in Lima faded with their distance from the capital (Edwards 2008).

Secluded Buenos Aires tested the limits of the mercantilist colonial regime in particular, as it developed into an unofficial port for contraband and the illegal trade of silver obtained from less mythical silver mines and indigenous trading partners. Competition thereby ensued between the increasingly developed Buenos Aires district and the rest of the Argentine provinces where *gauchos* (cowboys) roamed the lands and where caudillos controlled local order (Edwards 2008). After independence in 1816, tensions between the unitary, and European-oriented, Buenos Aires elites and the more federalist-oriented rural caudillos created prolonged internal conflicts that

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<sup>434</sup> No, he hasn’t died! He’s still alive! He will appear! Facundo hasn’t died; he is alive in popular traditions, politics, and the Argentine revolutions.

hampered the initial formation of a central state. It was not until 1853 that the Constitution codified the political system as a federal republic (Drake 2009, 112–13).

Competition between Buenos Aires and the other provinces, and between conservative elites and the masses more generally, remained and continues to form a central feature of Argentine politics. In 1845, intellectual and future president Domingo F. Sarmiento wrote the great Argentine novel centered on the death of the traditional caudillo, embodied by Juan Facundo Quiroga. Facundo represented the archetypal provincial and barbarian, but also daring and brave, local strongman who stood in stark contrast to the more civilized Buenos Aires elite. Sarmiento argued that Facundo's death had given rise to a new style of leadership: that of then-dictator Juan Manuel Rosas, who Sarmiento located in-between the civilization of the Buenos Aires capital and the *barbarie* (backwardness) of local caudillos. Rosas thereby embodied the worst of both worlds.

Although this (discriminatory) modernization discourse has long been left behind, contemporary Argentina politics remains divided on the basis of such internal, seemingly irreconcilable, contradictions. At the macro-level, this is visible in the co-existence of a nominally democratic federal state and authoritarian provinces where popularly elected semi-dictators exploit formally democratic institutions to solidify their hold over power (Gibson 2005; Giraudy 2010). At the party-system level, Argentina developed a political system firmly structured through two parties that sought to assert their dominance through the rejection of the other's legitimacy (Malamud 2003, 21). At the individual party level, party organization functions as a junction where these regional and systemic anti-democratic tensions meet the state (Sidicaro 2011). As will be discussed at length in this chapter, contemporary Argentine party law reform should be understood in light of the inter- and intra-party competition over resources that follows from these conflictive contradictions.

The following section starts with a historical overview of the development of Argentine party law, which it links to the constant exclusionary forces at work at the national political level. Subsequent sections discuss the first and second major instances of post-transitional party law reform in 2002 and 2009. In particular, these sections describe how events starting in 2002 contributed to the reconfiguration of the national party system. Indeed, as can be gauged from Table 8-1 below, the period between 2001 and 2003 constitutes a turning point in the political system, as depicted by a substantial – and consistent – drop in voter turnout as well by increases in both the number of registered parties and electoral volatility scores.

**Table 8-1: Party system characteristics (1991-2011)**

Year	Registered number of parties		Chamber:	Chamber:	Chamber:
	District parties	National parties	Electoral volatility <sup>435</sup>	ENP	Voter turnout <sup>436</sup>
1991	522	35	n.a.	n.a.	89.71%
1993	473	35	n.a.	n.a.	79.70%
1995	480	37	n.a.	n.a.	80.96%
1997	480	37	13.62	2.96	78.22%
1999	513	41	10.70	3.30	80.54%
2001	542	41	11.67	3.65	75.21%
2003	669	46	15.95	3.42	71.70%
2005	668	43	22.96	3.48	70.94%
2007	674	42	17.51	3.28	73.13%
2009	659	38	22.57	3.66	72.39%
2011	529	40	25.68	4.18	79.39%

Source: number of parties – Mustapic (2013) and National Electoral Chamber (Corcuera 2003); electoral volatility – Ruth (2016); effective number of parties (ENP – Laakso Taagepera) – Ruth (2016); turnout (percentage of registered voters who actually voted) – IDEA (2015).

This chapter’s third section describes how in 2002, these changes resulted in the adoption of an *organizational economy* reform strategy used by contending governing Peronist party factions to gain the upper hand over the party’s next candidate. Amidst troubling times, deciding this candidacy proved fundamental in controlling both the party and the presidential machinery. In addition, the parties responded to the larger legitimacy crisis by adopting a *systemic economy* reform strategy that addressed public demands for change in an ineffectual manner.

Section four describes how in 2009, internal Peronist discontent had spilled over into the electoral arena. In response, the government adopted both an *organizational* and an *electoral economy* reform strategy. The organizational strategy served to increase the costs of party exit and to regain control over the Peronist organizational infrastructure, while the *electoral economy* strategy addressed the rise of new parties

<sup>435</sup> Ruth (2016) only provides data from the 1996 elections onwards. For consistency purposes, I did not include data from other sources. The same goes for the ENP.

<sup>436</sup> Compulsory vote (enforced)

formed around wealthy Peronist dissidents by constraining political parties' access to financial resources such as private corporate funding and private media access. The chapter's final section discusses the relevance of these findings for the resource-based perspective on party law reform.

## **8.2 The development of Argentine party law: a historical overview**

The Argentine party system dates back to 1891. In this year, the gradual emergence of a middle class combined with an intra-oligarchic split resulted in the formation of the *Unión Cívica Radical* (Radical Civic Union, UCR). Due to the oligarchy's instrumental management of the electoral process, the UCR failed to challenge the oligarchic elite's control over the political system successfully. It was not until the subsequent political mobilization of the working classes in the early 20th century that the oligarchy opened up the electoral system to other parties. This occurred in the form of the 1912 Ley de Saenz Peña that introduced the universal, obligatory, and secret male vote. This reform allowed the UCR to compete effectively in elections and thereby mitigated the risk of more radical opposition to the status quo (Drake 2009, 156–57; Edwards 2008; Rapoport 2003).

The nascent democratic party system proved unable to withstand the pressure created by an increased demand for inclusion and representation. The economic fall-out of the Great Depression formed the final nail in democracy's coffin. In 1930, a military coup resulted in the removal of the democratically elected president from power (Rapoport 2003, 131). The goal of the military's coup was not to govern indefinitely but to restore political order. In doing so, the first legal regulation of political parties appeared as a means to tilt the political playing field in favor of those political forces the military deemed the most appropriate (López 2014, 209). Argentina's first 'Political Parties Statute' (Decree 4/1931) introduced several requirements for the recognition of political parties, such as the need to develop a party statute and program, the creation of a party fund consisting of membership fees, the need to keep financial records, and the need to select party leaders and candidates through internal elections (Valobra 2011, 70).

These provisions aimed to mold political party organization in a mass party format to counter the former president's personalistic leadership style. In October 1931, the government elevated its proscriptive regulation to a *de jure* level when it prohibited the personalistic UCR-faction per decree (López 2001, 478–79). The specific outlawing of the UCR set an important precedent for the exclusion of opposition parties from political life by all legal means necessary. At the same time, the rewards of governing became all the greater as the military regime advanced a corporatist

strategy based on integrating trade unions in the state. This strategy would continue to dominate Argentine party politics over the next decades (Rapoport 2003).<sup>437</sup>

When it had to hand over power to a democratically elected government in 1946, the military sought to mitigate these conflictive tensions by adopting a 1945 ‘Political Parties Statute.’ The Statute created a *Corte Federal Electoral* (Federal Electoral Court, FCE) to oversee the organization of clean and fair elections. In keeping with the military’s concern over politically active trade unions, the statute also introduced the first regulation of political finance that prohibited donations from trade unions, and anonymous donations by extension. It relegated oversight over party finance reports to the FCE (Olivero 1994).<sup>438</sup>

The clean 1946 elections brought to power General Juan Domingo Perón and his *Partido Peronista* (Peronist Party, PP) (Levitsky 2001, 2003). Despite Perón’s nominally democratic regime, his aim was to create a state-centered ‘communally organized’ regime whose canalization of popular demands would abrogate the need for political divisions. The Peronist party itself was relegated to the status of the only legitimate electoral body to represent this national movement (Malamud 2003, 20). Other socio-political currents clearly rejected this model, meaning that subsequent legislative efforts at party law reform transpired within a political context where “the lack of acceptance of the other [opposition] party’s legitimacy had reached such heights that it brought the country on the brink of civil war and subjected it to temporary collapses of the democratic system by permitting the emergence of military regimes” (López 2014, 215).<sup>439</sup>

As a consequence of these centrifugal tensions, the Peronists and other successive governments utilized the adoption of party laws as part of a general strategy to ban opposition parties and factions rather than competing against them in elections. A 1949 law (Law 13.645) sanctioned under the government of Perón, for example, strictly regulated the formation of alliances to impede the opposition from forming an effective electoral alliance (López 2014, 216; De Riz and Smulovitz 1990, 12). In addition, this law stipulated that new parties had to register three years before elections. This measure targeted both new parties and the dissident Peronist factions that threatened to eat away at the party’s electoral potential (López 2001, 479; Mustapic

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<sup>437</sup> This policy would lay the basis for the ascent of General Juan Domingo Perón and his broad coalition of urban and rural workers.

<sup>438</sup> The statute also introduced public funding in the form of radio access during elections.

<sup>439</sup> “*faltaba la aceptación del otro como partido legítimo en tan alto grado que se habían alcanzado puntos cercanos a la guerra civil o se había llegado al colapso temporario del sistema democrático permitiendo irrupciones de regímenes militares.*”

2013). Through these measures, the governing Peronist faction could legally benefit from a systemic electoral advantage.

A 1955 coup ended Perón's hold over power. Anti-Peronist Radical administrations followed him in office.<sup>440</sup> They made similar use of party law to undermine the Peronist opposition's electoral potential. Between 1955 and 1962, legislators proscribed the Communist and Peronist party, and exiled Perón. In addition, they employed party law to proscribe parties that did not uphold democratic values in their programs or behavior more generally (López 2001, 480, 2014, 217–18).<sup>441</sup> Legislators included these legal norms in a 1965 'Constitutional Political Party Law' (Law 16.652), which the electoral authorities subsequently applied to prohibit the renewed formation of the Peronist party (López 2001, 484, 2014, 218–19). At the same time, the new party law recognized the provision of public party funding, increased the oversight over political finance (Olivero 1994), regulated party registration and dissolution in detail and prescribed internal elections for the selection of both party leaders and candidates (López 2001, 485–86). These legal provisions reflected that political parties had become a public utility needed to manage the political system, while simultaneously underlining the fact that this system could contain only one dominant political party at a time.

The conflictive tensions resulted in yet another bout of military rule in 1966. In its 'national revolutionary accord', the new government dissolved all political parties in order to "eliminate the fallacy of formal and sterile legality that had supported the implementation of a politics of division and confrontation that had invalidated the possibility of a joint [national] effort" (cited in López 2001, 477).<sup>442</sup> The military was similarly unable, however, to overcome political divisions, reconcile the nation, and restructure the economy. Instead, political division and internal armed conflicts only increased (Edwards 2008; Rapoport 2003). The armed forces concluded that they could not govern without legitimacy and called for new elections. In 1973, Perón was allowed back into the country as he was perceived "the only person capable of reigning in the leftist threat" (Edwards 2008, 153; also see Rapoport 2003, 622). His *Frente Justicialista de Liberación* (Justicialist Liberation Front, FREJULI) won the 1973 elections (Rapoport 2003, 627–28).

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<sup>440</sup> These administration introduced private finance regulations in 1956, public funding in the form of free postage in 1957, and direct funding for the printing of party ballots in 1959 (Olivero 1994).

<sup>441</sup> This resulted, for example, in a 1962 Supreme Court sentence that proscribed the *Partido Obrero* (Workers' Party) based on the danger that this party was alleged to pose to the survival of the democratic state.

<sup>442</sup> *eliminar la falacia de una legalidad formal y estéril bajo cuyo amparo se ejecutó una política de división y enfrentamiento que hizo ilusoria la posibilidad del esfuerzo conjunto.* Subsequent laws reinforced the prohibition of political parties and seized all party assets.



Subsequent development of party law took place in 1975, when the Peronist government issued a law (Law 21.018) that reestablished the norms for party formation and organization, political finance, and intra-party democracy as introduced in the 1965 party law (López 2014, 212; Olivero 1994). Several provisions that targeted internal party organization formed the mayor difference with the 1965 law: parties needed to ensure that minority factions were represented within the party organization, they needed to establish an internal court that guaranteed this right independently, and the internal elections of candidates and party leaders needed to be organized with use of the direct and secret vote in which at least ten percent of party members participated (López 2014, 235). These measures responded to two developments in the Peronist party: Perón himself did not succeed in overcoming intra-Peronist conflicts and his death in 1974 left his wife in charge of a political system and a Peronist party marked by conflict and political violence (Rapoport 2003, 667).

The legal attempt to canalize conflict through the Peronist party structure proved insufficient to contain violence. Instead, the intensification of guerrilla activities and right-wing violence led to yet another – and final – military regime between 1976 and 1983 (Edwards 2008; Rapoport 2003). The first act of this military government was to expunge all political parties and repeal all party laws (López 2014, 237). The military regime proved unable, however, to improve the Argentine economy and to weather the global recession of the 1980's. In addition, the regime's extreme repression and human rights violations ate away at its legitimacy. After a failed attempt to win back the *Malvinas* (Falkland Islands) from the United Kingdom to boost popular morale, the regime called for transitional elections in 1983.

In 1985, Congress adopted a new 'Constitutional Political Party Law' (Law 23.298) to replace the transitional regulation of parties issued by the military regime (see Table 8-2 for an overview). The removal of the regulation of party doctrines and the declaration of party principles formed a pivotal change, because these provisions had partially formed the basis for the legal prosecution of political parties in the 1960's. Rather than focusing on control of the parties' ideologies, the new law coupled the possible dissolution of parties to penal offenses of their leaders and representatives (§50).<sup>443</sup> The new law reflected Argentina's shift to a democratic multi-party system

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<sup>443</sup> The new party law no longer prescribed internal elections for candidate and leadership selection but mainly maintained that parties needed to select them in an internally democratic manner (§29). The regulation of public funding mainly shifted from a focus on organizational to electoral funding (§46). A 1994 constitutional reform (Law 24.430) elevated the status of public party funding to a constitutional principle.

of government where competition had to be settled in the electoral – rather than the legal – arena.<sup>444</sup>

**Table 8-2: Development of Argentine party law (1931-1985)**

<b>Topic</b>	<b>Law 16.652 (1965)</b>	<b>Law 23.298 (1985)</b>
District registration	4‰ signature threshold – max. 1 million	4‰ signature threshold – max. 1 million
National registration	2 districts	5 districts
Party ban	Parties should defend the constitutional regime in their programs and actions	Parties/leaders may not commit penal offenses
Party cancelation	Failure to: *participate in 3 consecutive elections *obtain 2% of the registered vote in 1 out of 2 consecutive elections *organize internal elections	Failure to: *participate in 3 consecutive elections *obtain 2% of the registered vote in 2 consecutive elections *organize internal elections
Candidate selection	Internal elections	
Leadership selection	Internal elections	
Direct public funding	Annual: *20 pesos per vote *distributed per district	Elections: *50 austral cents per vote *distributed 80% per district and 20% nationally
Indirect public funding	Elections: *Postal tax exemptions *2 telephones per headquarter *5 public transportation passes *radio and television access	Annual or elections: *executive determines indirect funding and media access

<sup>444</sup> Over the course of the following years, the executive sponsored numerous decrees to implement these financial norms. See Decrees 1486/85, 2140/85, 396/89, 1169/89, 2089/92, 1683/93, 1682/93.

Topic	Law 16.652 (1965)	Law 23.298 (1985)
Donation limits	Prohibition anonymous or forced donations + donations from trade unions and state enterprises	Prohibition anonymous or forced donations + donations from trade unions and state enterprises
Monitoring and oversight	Present annual and electoral finance reports to electoral judge	Present annual and electoral finance reports to electoral judge

### 8.3 2002 reform: response to the *que se vayan todos* protests

#### 8.3.a. Changes in the resource environment

Mustapic (2013) shows that as a result of the rather flexible regulation of party registration, the number of Argentine parties started to rise from 1987 onwards.<sup>445</sup> This increase in the number of parties hardly changed political reality, however, as the Radical UCR and the Peronists, now called the *Partido Justicialista* (Justicialist Party, PJ), remained the two dominant parties in the system. The smaller parties, which mainly consolidated their support bases in the densely populated Buenos Aires district and Buenos Aires province, operated on the peripheries of the political system (Jones 2008, 43; De Luca 2008, 192; Tula and De Luca 2011, 74).<sup>446</sup> Next to these third parties, the national party system contained several district parties that organized successfully as the governing or main opposition party at the provincial level of government (De Luca 2008, 193).<sup>447</sup> The electoral law allowed these parties to participate in federal congressional elections, but it barred their participation in presidential elections.

The year 2001 constituted a critical juncture for the Argentine political system. An electoral crisis manifested itself during the 2001 mid-term legislative elections. Confronted by a prolonged economic crisis, hyperinflation, the freezing of bank accounts

<sup>445</sup> A slight fall in number of parties was visible in 1992, when the provisions for party dissolution were applied for the first time.

<sup>446</sup> The most successful case was the electoral rise of *Frente País Solidario* (Front for a Country in Solidarity, FREPASO) in 1997, which entered a coalition government with the Radicals in 1999 and completely evaporated after the 2001 political crisis that is discussed in more detail below (Jones 2008; De Luca 2008).

<sup>447</sup> In general, these parties lack an organizational structure and form around an elite family or clique of families. The *Movimiento Popular Neuquino* (Neuquén People's Movement, MPN) in the Neuquén province and the *Movimiento Popular Fueguino* (Fueguino People's Movement, MPF) in the Tierra del Fuego province are more institutionalized exceptions to this rule (De Luca 2008, 193).

and a shell-shocked political elite that failed to meet the crisis head on, 50 percent of the electorate expressed its rejection of the political system electorally by either not participating in the obligatory vote, annulling its vote, or casting a blank vote in the legislative elections that same year (Tula and De Luca 2011, 78). These elections also translated into a big loss for the established parties. The governing UCR's vote share dropped to 22.2 percent and the PJ failed to capitalize on its competitor's loss. The remainder of valid votes was divided between small and regional parties, as well as the new anti-corruption party *Alternativa para una República de Iguales* (Alternative for a Republic of Equals, ARI) (Basset 2003, 270). As can be gauged from Table 8-1 above, however, the relatively stable levels of registered parties, electoral volatility, and effective number of parties shows that voter discontent had not yet upset party competition to a large extent.

The poor electoral showing of the established parties presented but the beginning of an all-encompassing legitimacy crisis. Within months of the elections, Argentines took to the street in flocks demanding *que se vayan todos* (out with them all). Radical President de la Rúa responded to the demands for his resignation by escaping from the *Casa Rosada* (Pink House) by helicopter (Levitsky and Murillo 2003). The UCR disintegrated amidst this political-economic debacle, leaving legislative leadership firmly in the hands of the Peronist congressional bloc (Levitsky and Murillo 2008, 18). The first Peronist choice for interim president, Rodríguez Saá, only lasted one week in office. After that, a cross-party coalition formed in Congress to support the Peronist Eduardo Duhalde, who would end up finishing de la Rúa's term (Malamud 2013, 11–13).

The severe legitimacy crisis sparked a reformist boom (Pousadela 2007, 32). Although attempts to reform the legal regulation of political parties had figured on the political agenda since the late 1990's, it was not until the 'que se vayan todos' crisis that party law reform shifted to the forefront of the political agenda. Within his first month of holding office, Duhalde proposed a 'Federal Deal for Political Reform' to reduce the costs of politics and to change the electoral system to address popular demands for change of the corrupt and inefficient status quo (Scherlis 2014, 317).<sup>448</sup> This reform platform resulted in the adoption of a new 'Political Party Finance Law' (25.600) in May 2002 and a new 'Constitutional Political Party Law' (25.611) adopted in June of that same year.

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<sup>448</sup> Also see La Nación (21 Jan. 2002) 'El Poder Ejecutivo presentará mañana la reforma política,' La Nación (25 Jan. 2002) 'Los gobernadores acordaron con Duhalde,' and La Nación (1 Feb. 2002) 'La reforma política, en borrador.'

The legitimacy crisis surrounding the adoption of these laws suggests that legislators likely applied a *systemic economy* reform strategy: a symbolic normative overhaul of existing rules that addresses public demands for change in an ineffective manner. This expectation is grounded in the additional fact that the legitimacy crisis had not resulted in the rise of a strong new competitor. Instead, the PJ capitalized on the UCR's weakness by taking over the reigns and providing a resolution to the political crisis (Malamud 2013; Scherlis 2014, 317). A closer look at the negotiation process reveals that developments within the Peronist party itself created a second motivation for reform, which did result in attempts to change the way in which politics operated in practice. Hidden under the relatively stable party system characteristics, an *organizational economy* reform strategy operated that responded to severe intra-Peronist conflict over ownership over both the party and the presidential machine by controlling the selection of the party's next presidential candidate (see Malamud 2013; Scherlis and Oliveros 2006).

#### **8.4.b Negotiation process**

The 2001-2002 legitimacy crisis resulted in continuous external pressure to adopt reforms that would open up the political process to novel forms of inclusive and transparent representation (Pousadela 2007). The strong electoral showing of the anti-corruption party ARI in the 2001 legislative elections had already provided an indicator that failure to address such demands had the potential to upset the existing party system status quo through electoral means. The three main themes targeted by this round of reform suggest that public attitudes and shifting norms on appropriate party behavior indeed set the agenda for reform. Legislators focused in particular on the increased regulation of private party funding, the lowering of party formation costs, and the strengthening of intra-party democracy. The *systemic economy* reform strategy suggests, however, that such broad new norms do not target the problems at hand effectively, or fail to include measures for the effective implementation of legal changes.

#### ***Political finance regulation***

The adoption of the 'Political Party Finance Law' (25.600) provides excellent proof of this dynamic. Some background information is needed to understand this reform's merits to the fullest. As discussed above, the 1983 party law regulated the public funding of political parties and established donation limits and transparency requirements. In practice, these rules did not succeed in turning political finance into anything other than muddy practices predominated by corruption scandals (Ferreira Rubio 2004).

The absence of clear regulation of the electoral authority's financial oversight over political finance contributed to the inability of the existing finance rules to structure

political behavior. Two months before the 2002 political finance reform, however, the *Cámara Nacional Electoral* (National Electoral Chamber, CNE) had issued a ruling that authorized federal electoral judges to audit party assets and expenses. This ruling established clear procedural guidelines for financial oversight and the presentation of finance reports – thereby potentially threatening political parties’ ability to use their financial resources as they saw fit.<sup>449</sup>

The legislature responded by adopting a political finance law (25.600). Cristina Fernández de Kirchner, president of the Senatorial Constitutional Affairs Committee, introduced the bill as a means to address the “need for transparency and the reduction of political expenses that society demands.”<sup>450</sup> To reach this goal, the new political finance law introduced broad new norms, such as quantitative donation limits (§§35) and limits to party spending in elections (§40)(see Table 8-3 below for an overview of changes in finance regulation).<sup>451</sup> More ambiguously, the new finance law introduced organizational party funding, next to the electoral funding that already existed, and allowed the parties themselves to establish the amount of party funding through the national budget law (§§16, 22). In theory, these latter changes enabled a majority party to determine its own annual amount of public funding outside of the public limelight.

Several new provisions on financial control proved particularly divisive. Legislators delegated this control from the electoral authorities to the *Auditoría General de la Nación* (National General Auditor, AGN), a legislative organ constituted by the parties themselves (§§48-53). This decision created severe contention as opposition parties, NGOs, and news media questioned the AGN’s ability to control political finance independently (Pousadela 2007, 42). Opposition parties were unable, however, to prevent the bill’s passage.

The electoral authorities did not take lightly to the removal of their constitutionally ascribed role to monitor political finance and ordered the executive to annul

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<sup>449</sup> CNE verdict 3010-02, 31 March 2002.

<sup>450</sup> *estamos tratando una norma, en este caso financiamiento de los partidos políticos, donde el bien jurídico tutelado es la necesidad de transparencia y de reducción del gasto y del costo político que ha sido demandado por la sociedad.* Cámara de Senadores (23 May 2002) ‘Versión taquigráfica de la reunión plenaria.’

<sup>451</sup> The bill sponsored by Chamber of Representatives previously contained a provision that prohibited private media access completely as a means to curtail electoral spending as well. The Senate removed this article, however, in order to protect the freedom of speech and because it felt that electoral spending would be curtailed sufficiently by the introduction of electoral spending limits. Cámara de Senadores (23 May 2002) ‘Versión taquigráfica de la reunión plenaria.’

these provisions.<sup>452</sup> Somewhat inexplicably, this external pressure on the government proved successful, as the executive sponsored the finance law without the articles that ascribed a monitoring role to the AGN.<sup>453</sup> Although this guaranteed independent oversight, the new law did not assign the Electoral Chamber additional resources to support its staff in the execution of its monitoring task. Given the decentralized nature of Argentine party organization, this meant that six experts would have to audit the finance reports of 38 national parties and 525 district-level parties.<sup>454</sup>

The 2002 finance law, presented as a means to improve transparency and reduce electoral costs, hence provided many new norms but few means to oversee the upholding of these norms. The established parties capitalized on the reform opportunity to expand their own access to financial resources while simultaneously attempting to sideline the financial control of the empowered Electoral Chamber.

**Table 8-3: Proposed and final changes political finance regulation**

Topic	Law 23.298 (1985)	Law 25.600 (2002)	Decree 990/02
Direct public funding	<p>Elections:</p> <p>*50 austral cents per vote</p> <p>*distributed 80% per district and 20% nationally</p>	<p>Annual or elections:</p> <p>*national budget law determines amount</p> <p>*annual: distributed 80% proportionally and 20% equally</p> <p>*elections: distributed 70% proportionally and 30% equally</p> <p>*distributed 80% per district and 20% nationally</p>	No change
Indirect public funding	<p>Annual or elections:</p> <p>*executive determines indirect funding and media access</p>	No change	No change

<sup>452</sup> La Nación (12 May 2002) 'Los fondos de los partidos, en manos políticas.' La Nación (29 May 2002) 'Estudian un veto a la ley del financiamiento partidario.' La Nación (11 June 2002) 'El gobierno avanza con las elecciones.'

<sup>453</sup> Decree 990/2002

<sup>454</sup> La Nación (25 Dec. 2002) 'Será escaso el control financiero que tendrán los partidos políticos.'

Topic	Law 23.298 (1985)	Law 25.600 (2002)	Decree 990/02
Donation limits	Prohibition anonymous or forced donations + donations from trade unions and state enterprises	Adds quantitative limit: *1% of spending limit (corporate) *0.5% of spending limit (individual)	No change
Spending limit		1 peso per voter	No change
Presentation finance reports	Present annual and electoral finance reports to electoral judge	Present electoral finance reports to AGN	Removes AGN as financial monitoring authority

### ***Lower party formation costs***

The way in which parties responded to demands for lower party formation costs provides a second confirmation that laws adopted in response to a legitimacy crisis are usually not designed in an effective manner. The ‘Organic Political Party Law’ (25.611) addressed public demands for a more inclusive party system by eliminating the quantitative requirement for party maintenance (Scherlis 2014, 317). This meant that parties no longer needed to reach the electoral threshold of two percent of the votes in an electoral district within two consecutive national elections to maintain their formal registration (§50). Indeed, Juan Manuel Uturbey, the Peronist president of the Constitutional Affairs Committee, defended this measure stating that “in these times in which we live, it is a necessity that we guarantee the highest degree of participation possible within the framework of our Constitution and the laws.”<sup>455</sup>

In line with the *systemic economy* reform strategy, however, the adopted measure formed a rather ineffectual solution to the problem of high party formation costs. Given its focus on party maintenance rather than new party formation, the requirements of which the reform left unaltered, the new law did not attend to societal demands that new party entry would be facilitated for the next elections (Pousadela 2007, 40). Recognizing that farther-reaching measures might be necessary, Uturbey promised the Constitutional Affairs Committee that a subcommittee would be formed to investigate alternative measures to increase the flexibility of the requirements for both new party formation and the presentation of independent candi-

<sup>455</sup> *en los tiempos que estamos viviendo es menester garantizar, en el marco de nuestra Constitución y de las leyes, la mayor participación posible.* Cámara de Diputados (19 June 2002) ‘Sesion ordinaria.’



dates.<sup>456</sup> As a result, the government introduced another round of party law reform in July 2002 (see Table 8-4 below for a comparison of proposals and changes).

Eduardo Camaño, the president of the Chamber of Representatives, presented the follow-up reform as “President Duhalde’s decision to make the requirements more flexible so that no one can feel excluded from the electoral process.”<sup>457</sup> In the proposal, legislators suggested to lower the signature requirements for party formation from 0.4 to 0.1 percent of the registered voters in each electoral district – in some districts corresponding to a reduction of 7,500 signatures (with the Buenos Aires province constituting an outlier of 30,000 fewer signatures). In this manner, the bill formed an alternative to popular demands, as well as demands from the ARI, to introduce the institutional figure of independent candidacies in the next presidential elections (Pousadela 2007, 40–41).

The bill did not make it through the negotiation process, however, due to intra-party developments. In light of the debilitation of the UCR, the next PJ candidate would likely win the 2003 presidential elections (Malamud 2013, 11). Given the winner-takes-all nature of the candidate selection process, internal divisions between the central and peripheral regional blocs in the PJ therefore increased in the run-up to these 2003 elections. The peripheral bloc united behind the proposed candidacy of former president Carlos Menem, while the more centrist bloc headed by Duhalde supported the candidacy of Santa Cruz province Governor Néstor Kirchner (Cherensky 2006b, 29). These intra-party developments exerted strong pressure over the negotiation process.

Indeed, according to interviews with leading politicians, the Duhaldist faction of the Peronist party opposed the introduction of independent candidacies because it feared that this would empower other factions within its party to run for the presidency outside of the party, thereby debilitating the Duhaldist’s hold over the Peronist electorate. The UCR held similar concerns regarding its own party unity at such turbulent times.<sup>458</sup> Lower formation costs for new parties posed similar problems, as such a reform would still allow dissident factions to create a new party to run in the 2003 presidential elections. To remedy these ills, the reform bill stated that new parties would have to register for the next elections before the date on which the established parties organized primaries to select their presidential candidates. Legis-

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<sup>456</sup> Cámara de Diputados (19 June 2002) ‘*Sesion ordinaria.*’

<sup>457</sup> *una decisión del presidente Duhalde (Eduardo) de flexibilizar esos requisitos para que nadie pueda sentirse excluido del proceso electoral*, cited in La Nación (4 July 2002) ‘*Avanza el proyecto que facilita la legalización de nuevos partidos.*’

<sup>458</sup> La Nación (4 July 2002) ‘*Avanza el proyecto que facilita la legalización de nuevos partidos*’ and La Nación (18 July 2002) ‘*Pedirán menos requisitos a los partidos políticos.*’

lators thereby ensured that any new party that registered to participate in the next elections would come from outside of the political establishment.

Despite the almost unanimous adoption of the bill in the Chamber of Representatives, the Senate subsequently buried the proposal.<sup>459</sup> Given that the Peronist party held a majority in the Senate (Basset 2003, 271), these developments strongly suggest a lack of intrinsic motivation in the PJ to lower party formation costs. Intra-party struggles over control over the organizational infrastructure stood in the way of legislators responding effectively to public demands for change. Indeed, as will be discussed in detail in the following section, the simultaneous introduction and modification of party primaries presented additional evidence of the hypothesis that intra-party struggles partly determined the outcome of the 2002 reform process.

**Table 8-4: Proposed and final changes registration requirements**

Topic	Law 23.298 (1985)	Proposals	Law 25.611 (2002)
Electoral participation	Parties only	Independent candidacies	Parties only
Registration	4 ‰ signature threshold	1 ‰ signature threshold	Maintains 4 ‰ signature threshold
Party cancellation	Failure to: *participate in 3 consecutive elections *obtain 2% of the registered vote in 2 consecutive elections *organize internal elections	Elimination vote threshold	Elimination vote threshold

### ***Strengthening of intra-party democracy***

Next to lowering the requirements for party maintenance, the 2002 law (25.611) introduced open, direct, obligatory, and simultaneous primaries for all parties (§29). In his presentation of the bill, Uturbey introduced this measure as a “necessary [means] to democratize the internal electoral processes, which were not always very

<sup>459</sup> La Nación (28 Aug. 2002) ‘Diputados aprobó la modificación a ley electoral’ and La Nación (30 Aug. 2002) ‘Flexibilizan los requisitos para fundar un partido’.

clear in the history of Argentine parties.”<sup>460</sup> As will be discussed below, this rather vague argument concealed an intense intra-party struggle over control over the Peronist party’s next presidential candidate. Responding to this struggle through party law reform proved difficult, however, due to the fact that the PJ lacked a majority in the Chamber of Representatives (see Appendix 7 for an overview of legislative seats).

To ensure passage of the 2002 reform, the PJ therefore worked in tandem with the UCR.<sup>461</sup> According to Oliveros and Scherlis (2007, 52), this latter party did not look favorably on the introduction of obligatory party primaries. Presenting a united front formed its only chance at survival after the debacle of De la Rúa’s presidency and party primaries potentially opened up the party to vicious internal competition. After receipt of the PJ’s reform bill, the UCR nevertheless agreed to adopt the reform in its present form. It did so because the PJ promised the UCR that the bill would be modified per executive decree to exempt parties with single lists, such as the UCR, from the obligatory organization of primaries.<sup>462</sup> The concessions to the UCR did not constitute the only modification to the introduction of direct, obligatory, and simultaneous primaries for all parties. Instead, the development of this new regulatory provision was subject to frequent changes as intra-Peronist factions vied for control over their party’s next presidential candidates (see Table 8-5 below for an overview of adopted changes).

On 5 August 2002, for example, the executive adopted a decree (Decree 1397) that extended participation in primaries from party members to all registered voters and stipulated that candidates could present themselves for one party and one position only. These measures allowed the executive to determine the internal conflict over the next PJ candidate in his own favor (Sidicaro 2011, 75). Although former president Menem counted with the majority of PJ support, it was generally expected that Kirchner, the executive-sponsored candidate, would obtain support of the entire anti-Menemist electorate in the party primaries (Oliveros and Scherlis 2007, 52). In addition, by stipulating that candidates would only be able to run for one party, the

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<sup>460</sup> *Hay que democratizar los procesos electorales internos, que no siempre fueron claros en la historia partidaria argentina* (cited in La Nación (19 June 2002) ‘Habrá elecciones internas abiertas en todos los partidos y limitaciones a la duración de las campañas’).

<sup>461</sup> Roll-call votes of this reform are unavailable. The reform passed with 152 votes in favor, 34 opposed, and no abstentions. Cámara de Diputados (19 June 2002) ‘Versión taquigráfica de la reunión plenaria.’

<sup>462</sup> Any modification meant that the bill would have to be revised again by both Chambers, which the PJ leadership wanted to avoid at all cost given the contentious political climate. Cámara de Diputados (19 June 2002) ‘Versión taquigráfica de la reunión plenaria’ and Cámara de Diputados (19 June 2002) ‘Interpretación de la Cámara sobre la reglamentación de la Ley Orgánica de Partidos Políticos.’ Also see La Nación (19 June 2002) ‘Habrá elecciones internas abiertas en todos los partidos y limitaciones a la duración de las campañas.’

bill effectively closed up the possibility for Menem to present himself as the candidate of another party in case he lost the Peronist primaries. Sanctioning this decree thus earned the executive a first round victory in the internal fight over the Peronist candidacy.

Although Duhalde counted with the executive power to alter laws by decree, he faced a substantive Menemist faction in the legislature. As a result of the adoption of Decree 1397, a legislative battle ensued that frustrated any substantive progress in governance. Legislative deadlock was unacceptable given the country's need to come to terms with international creditors after it had defaulted on its external debt. Some three weeks later, Duhalde therefore adopted another executive decree that closed down the primaries to party members and non-affiliated voters – thereby excluding members of other parties from participating in the PJs primaries (Oliveros and Scherlis 2007, 52–53; Pousadela 2007, 43–46).<sup>463</sup> This measure likely formed a compromise as it ensured that radical opposition to Menem would not be able to participate in the PJs primaries while still ensuring that Kirchner could turn to the non-Peronist electorate for support in the upcoming primaries.

Nevertheless, the struggle over the next PJ candidacy was not over yet and competition now turned towards the legal arena. Ex-president Menem took the new decree to Federal Court and received a favorable ruling that declared the unconstitutionality of the primaries on the basis of the parties' freedom of association and activity, thereby putting candidate selection back in the hands of the party's electoral council where Menem held a majority.<sup>464</sup> The Electoral Chamber, in turn, revoked this decision on the basis that the Federal Court's decision formed an "excessive exercise of its jurisdictional function" and – thereby in effect reestablished the primaries for the upcoming elections.<sup>465</sup>

Having exhausted the legal route to ensure its preferred candidate, the Menemist camp thereupon reintroduced the struggle into the legislative arena. Amidst the ensuing legislative paralysis, where policy-making was held hostage effectively, the executive finally adopted an Economic, Political and Social Agreement that addressed several pertinent socio-political issues while simultaneously suspending the primaries for the 2003 elections. As a result, each party could pick its candidates for the upcoming elections as it saw fit (Bonvecchi and Giraudy 2007, 37; Oliveros and Scherlis 2007, 53). This decision still did not end the Peronist struggle, as the party now

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<sup>463</sup> Also see La Nación (17 Aug. 2002) 'Duhalde rechazó la ley de lemas' and La Nación (27 Aug. 2002) 'Se harán el 15 de diciembre las internas.'

<sup>464</sup> *exceso en el ejercicio de la función jurisdiccional*. See verdict 625-02

<sup>465</sup> See verdict 3060-02

had to agree on its own how it would select its presidential candidates. A new round of federal court cases followed to determine the issue of the PJ's internal candidate selection procedures once and for all.<sup>466</sup> The Duhalde camp finally proved victorious and the PJ went to the presidential elections with three candidates – effectively letting the electorate decide the party's candidacy. This resulted in an electoral victory for Néstor Kirchner.

To summarize, the 2002 adoption of party primaries followed the *organizational economy* reform strategy. The intra-Peronist struggle over the next presidential candidate resulted initially in the highly effective regulation of intra-party elections: these primaries were obligatory for all parties and to be organized on the same day. Introduction of this legal change provided President Duhalde with a means to control the decision-making process over internal candidate selection process. The stakes in the internal party contest were so high, however, that adoption of this law resulted in complete legislative paralysis. In the end, the law was suspended again before the next elections. Introduction of these primaries posed such a threat to the Menem camp that it used all the legislative and legal measures at its disposal to prevent the law's implementation.

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<sup>466</sup> See verdict 707-2003 of 23 Jan. 2003 and 11 Feb. 2003. Also see La Nación (24 Jan. 2003) 'Servini exige que el PJ haga internas'.

**Table 8-5: Proposed and final changes candidate selection**

<b>Topic</b>	<b>Law 25.611 (2002)</b>	<b>Decree 1397/02</b>	<b>Decree 1578/02</b>	<b>Economic, Political and Social Agreement</b>
Selectorate	Party members	Electorate	Members + non-affiliated voters	Suspension primaries 2003 elections
Obligatory nature	Yes	Not for parties that present single list		
Timing	Electoral authorities sets date	No change		
Other		Candidates may register for one party/position only		

**8.3.c Aftermath of the 2002 reform**

To the extent that they had not been abrogated per executive decree already, the 2002 reforms would only remain in force until 2006. Two different developments contributed to the short-lived nature of these new norms, namely the elite’s unwillingness to organize party primaries and an electoral ruling that obstructed the further implementation of political finance regulation.

With regard to the first, the 2002 political party law established that obligatory primaries would have to be organized from the 2005 mid-term legislative elections onwards. Once again, these elections coincided with power struggles within the Peronist party structure (Cheresky 2006a; De Luca and Malamud 2010; Zelaznik 2011). The organization of party primaries became an uncertain feat, but after publicly going back and forth on the issue, the executive decreed new regulations and scheduled the primaries for August 7, 2005 (Decree 295/2005)(Oliveros and Scherlis 2007, 54). In addition, however, another executive decree (Decree 535) allowed ‘parties in formation’ to participate in elections without use of primaries for candidate selection (Pousadela 2007, 57).

Combined with the rule that parties that presented a single list did not have to organize primaries, these measures circumvented the obligatory nature of the primaries and allowed factions to present candidate lists outside of their parties. This resulted in the organization of 21 primaries throughout the country – which was actually the lowest number since the return to democracy in 1983 and mainly reflected the mobilization of party machines (Oliveros and Scherlis 2007, 54–60).<sup>467</sup> Given the lackluster enthusiasm of both society and political parties to use primaries, a 2006 government proposal (Law 26.191) to repeal Law 25.611 met with large support in both the Chamber of Representatives and the Senate (Bonvecchi and Giraudy 2007, 37; Oliveros and Scherlis 2007, 60; Tula and De Luca 2011, 79–80). Obligatory party primaries had proven themselves not to be a panacea for internal party struggles.

The political finance law underwent a similar fate. Given the limited amount of control mechanisms and resources this law instituted, Argentine political financial management portrayed little respect for the law over the next years. Political parties ignored campaign limits by actively campaigning before the established *franja electoral* (official campaign period). They also used this method to get around spending and donation limits (Pousadela 2007, 47). The provisions on finance reporting were either ignored completely<sup>468</sup> or circumvented through the issuing of reports that did not accurately reflect electoral spending.<sup>469</sup>

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<sup>467</sup> A mere 3.23 percent of the electorate participated in primaries. It was mainly opposition parties that resorted to primaries to select their candidates. Nevertheless, participation was highest in those districts where the government sought to select its candidates through primaries. (Oliveros and Scherlis 2007, 54–60).

<sup>468</sup> In an overview of the implementation of finance regulation in 2003, the vice president of the *Cámara Nacional Electoral* (National Electoral Chamber, CNE) noted that as regards presidential elections, 183 of the parties had lived up to the provision to open one bank account whereas 123 had not; 191 parties had appointed a special finance manager whereas 115 had not; and 185 parties reported on their accounts, whereas 121 had not. In addition, only 92 parties had delivered the obligatory final report as stipulated, whereas 214 had not. Similar figures apply to the parties that participated in the 2003 legislative elections (Corcuera 2003). Given the automatic suspension of public funding if parties did not report on their finances, compliance with this norm rose to 75 percent in the 2005 legislative elections (Ferreira Rubio 2007).

<sup>469</sup> The Peronist presidential campaign report was particularly noteworthy as it respected the formal obligation to present a report, but stated that in the first 80 days of the 90-day-campaign the party had spent 1 US\$ on the creation of the obligatory bank account. As regards party income, the report stated that the party had received a mere 160 US\$ and that the party's financial and political campaign managers were its only donors. In its final campaign finance report, the party put down 1.5 million US\$ in media expenses whereas an independent media monitoring exercise of the NGO *Poder Ciudadano* detected campaign spots worth around 11 million US\$ (Ferreira Rubio 2005).

The National Electoral Chamber issued sanctions to a number of parties and their financial campaign managers that had superseded electoral spending limits. The accordant Electoral Justice did not uphold these sanctions, however, as the financial campaign managers argued to have had no prior knowledge of the purchasing of campaign ads by third parties (in the legal sense of the word). As a result, the judge ruled that the parties and their managers could not be held accountable for these expenses and declared the application of spending limits unconstitutional.<sup>470</sup>

In response, the government sponsored a new finance law (26.215) that was adopted in December 2006. Urtubey, still in charge as president of the Chamber's Constitutional Affairs Committee, introduced the bill stating that: "taking into account that recently – as a product of the task that followed the last elections [auditing campaign reports] – the Court of First Instance declared the fundamental article of this law [25.600] unconstitutional, this Chamber obviously understood that this was an issue that needed to be resolved swiftly."<sup>471</sup> The new finance law addressed the legal vacuum by prohibiting third parties from sponsoring media access to political parties during election campaigns (§49). This new provision thereby rehabilitated the use of spending limits, as parties could now be held responsible for all the campaign adds that ran in their name. Legislators also allowed the Electoral Chamber to monitor the media in order to oversee spending in election campaigns (§73).

Next to these changes, the new law introduced several measures that weakened the transparency of political finance. Legislators allowed for the unification of party organizational and electoral accounts (§20), thereby impeding effective monitoring of campaign income and expenses by making it more difficult to disentangle them from organizational spending more generally. In addition, legislators removed the obligation for party candidates to report on campaign financing, thereby allowing for double streams of money in election campaigns. More importantly, the new law increased spending limits for election campaigns with 50 per cent (§45) and doubled the amount of the individual donation limits (§16). Combined, these measures lead party finance expert Ferreira Rubio to argue that – rather than reforming party finance practices – the new law was a mere attempt of some legislators to publicly appropriate an ethical high-ground while simultaneously covering up the unpopular decision to increase electoral spending limits.<sup>472</sup>

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<sup>470</sup> See La Nación (01 Nov. 2006) 'Favorece una sentencia de Servini a jefe de Gabinete.'

<sup>471</sup> *En la República Argentina está vigente parcialmente la ley 25.600, habida cuenta de que hace muy poco tiempo – producto de lo que fue la tarea posterior a las últimas elecciones – se declarara en primera instancia la inconstitucionalidad del artículo medular de dicha ley, entiendo obviamente esta Cámara que este era un tema que debía resolver a la brevedad.* Comisión de Asuntos Constitucionales (13 Dec. 2006) 'Versión taquigráfica de la sesión ordinaria de prerroga.'

<sup>472</sup> Interview Ferreira, 2012.



In the absence of a major legitimacy crisis, the government thus responded to a legal dilemma through adoption of a minor reform that hardly changed the letter of the law or the reality of Argentine political finance in terms of financial transparency but that did provide parties with more financial leeway during their election campaigns. This is an example of a *systemic economy* reform strategy that allowed parties more access to resources during elections amidst relatively stable socio-political circumstances.

## **8.4 2009 reform: a response to electoral defeat**

### **8.4.a Changes in the resource environment**

Despite the 2002 reform's rather symbolic changes, and its 2006 abrogation, scholars have ascribed it a tremendous impact on the number of parties in the Argentine political system (see Mustapic 2013; Scherlis 2014).<sup>473</sup> The president of the Electoral Chamber provides evidence of this assertion by noting that in the period between 1983-2001, 179 parties lost their legal inscription due to their failure to reach the electoral threshold in two consecutive elections. By contrast, the number of parties rose substantially after the 2002 revocation of this requirement (Corcuera 2003) (see Table 8-1 above for an overview of party system change).<sup>474</sup> The simultaneous adoption of a 2002 political finance reform allowed these new parties access to public funding. The new legal framework promoted "rubber stamps," tiny parties often oriented towards the capture of public funding" (Scherlis 2014, 317). Rather than effectively opening up the political system to new representative groups, scholars thus suggest that the 2002 reform process contributed to the fragmentation and decentralization of the formal party system.<sup>475</sup>

The party system did not only change in terms of the number of parties that participated in elections. In addition, political competition continued to rage over capture of the Peronist party, which Kirchner won in a somewhat peculiar manner (Tula and

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<sup>473</sup> One should note that the rise of parties is also partly attributable to the political and legitimacy crisis in 2001 (Mustapic 2013).

<sup>474</sup> This rise in parties is attributable to an increase in parties at the provincial level, as the number of national parties remained rather stable over time. Indeed, Mustapic (2013) notes that, whereas in 1986 the mean number of districts in which parties were present was 4.22, by 2005 this had fallen to 2.2.

<sup>475</sup> This development had already been underway since the 1999 elections, when an increase was visible in the incongruence between the number and type of parties that competed at the national and provincial level (Gibson and Suarez-Cao 2010; Mustapic 2013). In addition, inter-party boundaries became more fluid and more and more competition among party factions was visible as a result of the internal division of the two major political parties (Bonvecchi and Giraudy 2007; Mustapic 2013; Tula and De Luca 2011).

De Luca 2011, 78–79).<sup>476</sup> As discussed above, the PJ presented three candidates in the 2003 presidential elections. The first round of the presidential elections went to the Peronist candidate Menem, who obtained 24.4 percent of the vote vis-à-vis the 22.4 percent secured by Kirchner. Polls predicted that in the following run-off election between Menem and Kirchner, the anti-Menem vote would unite behind Kirchner. Menem therefore stepped out of the race and handed the presidency to Kirchner (Cheresky 2006a).

The fact that the Peronist electorate favored Menem over Kirchner meant that the latter lacked intra-party legitimacy. As a result, Kirchner distanced himself from the formal Peronist party structure and created the *Frente para la Victoria* (Front for Victory – FpV). This party consisted of a coalition of heterogeneous political forces ranging from left-wing groups to local factions of the opposition party, UCR, Peronists, and independent candidates (Cheresky 2006a). This reconfiguration reflected Kirchner’s stance that “the justicialist [party] was just a mere legal unit, because within it, it contained contained clearly contradictory, exclusionary currents” and that it was “a hollowed-out party with no content, no ideas” (cited in Sidicaro 2011, 84).<sup>477</sup>

In the 2007 presidential elections – in which Cristina Fernández de Kirchner ran as the FpV’s presidential candidate – the Kirchners extended the strategy of heterogeneous coalition formation and built an alliance with UCR governors. These thereupon became known as the *radicales K* (K Radicals). In the aftermath of contentious conflict over agricultural exports in 2008, many Peronist dissidents left the FpV to run under their own labels, which led the Kirchners to increase their reliance on the K Radicals, left-wing groups and unaffiliated legislators to form a legislative majority (Zelaznik 2011, 100–102).<sup>478</sup>

Despite this alliance, the 2009 legislative elections formed a severe defeat for the Kirchner alliance. Several important provincial leaders distanced themselves from the FpV and presented their own lists. In addition, the government saw itself confronted by several provincial Peronist leaders that openly aligned themselves to opposition politicians, such as Buenos Aires City mayor Mauricio Macri and the Peronist dissidents Francisco de Narváez and Felipe Solá (De Luca and Malamud 2010, 181). Although the government did receive the highest vote percentage of all parties, it

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<sup>476</sup> The UCR encountered difficulties in the maintenance of its support in the urban centers of the country. Many of the third parties and regional parties that existed before the 2001 crisis disappeared

<sup>477</sup> *Lo único que había en el justicialismo era la unidad jurídica, porque en su seno tenía corrientes abiertamente contradictorias, excluyentes ... un partido vaciado de contenido, sin ideas.*

<sup>478</sup> Presentation Nicolás Cherny, ‘Relación entre la Presidente y el PJ nacional.’ Ciclo de seminarios Peronismo y Democracia, Ayer y hoy. Tercer y último encuentro. El Peronismo en la era Kirchnerista, Buenos Aires, 18 May 2012.

was left without a majority in both the Chamber of Representatives and the Senate. In several important conglomerates, this loss was due to the migration of votes to other Peronist options (Zelaznik 2011, 100–101). The FpV's electoral defeat in the Buenos Aires province was particularly painful as the list headed by ex-president Néstor Kirchner lost against the one headed by the Peronist dissident Francisco de Narváez.<sup>479</sup>

These changing socio-political circumstances suggest that both the *organizational economy* and the *electoral economy* may have been at work here. The following section traces the negotiation process to identify whether references to changes in the internal distribution of access to resources, or the changing terms of electoral competition between parties, can indeed be linked to the reform's outcome. Whereas the *organizational economy* reform strategy is expected to result in measures that redress the intra-party distribution of resources such as by increasing politician's own access to financial resources and control over the organizational infrastructure at the expense of that of others, *electoral economy* reforms likely focus more on the introduction of rules that are disadvantageous to other parties' control over ideational capital, financial resources, and control over the organizational infrastructure. Both strategies have in common that they are expected to result in effective changes to address the imminent electoral threat presented by dissidents running for new parties.

#### **8.4.b Negotiation process**

President Fernández de Kirchner did not wait long to address her 2009 electoral defeat through a party law reform. One month after the elections – but still several months away from the installment of the new Legislature – the president sent a bill to the congressional Constitutional Affairs Committee to reform the 1985 'Organic Political Party Law' (Law 23.298) and the 2007 'Political Finance Law' (Law 26.215). The executive's desire to act speedily was visible in her subsequent issuing of a decree to extend the legislative period as well (Decree 1802/2009). This move ensured passage of the bill before the installation of the new congressional configuration elected in the 2009 elections, in which she could not count on a majority.

Even in the 2007-2009 Legislature, however, the reform could not pass without some effort at coalition building. Given that all the opposition parties rejected the reform, the government needed to get several of the smaller and regional parties, as well independent representatives, aboard the reform effort. Because of the need for concessions, the text of the 2009 'Law that democratizes political representation, transparency, and electoral equality' (Law 26.571) was prone to several modifica-

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<sup>479</sup> See La Nación (29 June 2009) 'Dura derrota de Kirchner.'

tions.<sup>480</sup> This proved sufficient to obtain a majority in favor of the reform before the legislature's term ended. As had been the case in the 2002 reform effort, the main provisions of the law focused on party formation costs, the regulation of candidate selection, and political finance.

### ***Party formation costs***

A look at the original text of the bill shows that the increase of party registration and dissolution requirements formed one of the reform's keystones. The most controversial changes consisted of a 0.5 percent membership threshold at the district level for district party formation and a 0.1 percent membership threshold at the national level for national party formation.<sup>481</sup> The bill also created an additional hurdle for participation in elections. As will be discussed in more detail below, the new law prescribed obligatory primaries for candidate selection. Participation in presidential elections – a partial prerequisite for maintenance of party registration – became contingent on participation of at least 0.5 percent of voters spread throughout 5 districts in presidential primaries.<sup>482</sup> In addition, parties could present those candidates only that had obtained at least three percent of the registered vote in their party primaries.

Several smaller parties publicly opposed these provisions, which they interpreted as proscriptive and anti-democratic.<sup>483</sup> In response, the Constitutional Affairs Committee adopted less stringent registration and dissolution requirements (see Table 8-6 below for an overview of the proposed changes in the government's bill and in the final law). The final reform bill maintained the signature threshold of 0.4 percent of the district's electorate for district party formation (§7) and added no additional threshold for national party formation.<sup>484</sup> With regard to electoral participation, it lowered the threshold from 0.5 to 0.1 percent of turnout in party primaries and established that party candidates could participate in elections if they had obtained at least 1.5 percent of the vote in these primaries (§§21, 45, Law 26.571). The Committee members also lowered the vote threshold for maintenance of party registration from the proposed three to two percent (§50) and added two transitional

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<sup>480</sup> Interviews Camaño, 2012; Pinedo, 2012; Bullrich, 2012; Tulio, 2012.

<sup>481</sup> The bill also re-introduced a three percent vote threshold for maintenance of party registration.

<sup>482</sup> For participation in Congressional elections, parties needed to ensure the participation of at least 0.2 percent of the registered voters in their electoral district to validate their congressional primaries.

<sup>483</sup> Interview Camaños, 2012; I also obtained private documentation of the president of the Constitutional Affairs Committee of the Chamber of Representatives.

<sup>484</sup> In order to complete the final registration stage, parties needed to enroll these signatories as members and organize internal elections to select their leaders (§7bis). In addition, legislators established that parties would lose their registration if they failed to maintain these membership numbers (§7ter) or their registration in five districts (§8).

articles that allowed existing parties a two-year-period to adapt to the law's new requirements for maintenance of party registration (§§107-8).

After its passage through the Constitutional Affairs Committee, Congress swiftly approved the reform.<sup>485</sup> The only opposition to the reform came from several small leftist parties that would lose their registration due to the new rules and that accused the government of seeking the re-installation of a bi-partisan system (Abal Medina 2009; Alessandro 2011).<sup>486</sup> The proponents of the reform mentioned straightforwardly that they sought to combat party system fragmentation. One of the government aids involved in the design of the original bill noted, for example, that the Argentine party system had become very splintered due to the proliferation of parliamentary fractions and of political parties more generally (Alessandro 2011, 198). He added that many of these parties were generally of an *ad hoc* nature and functioned as vehicles for candidates that sought to be elected.<sup>487</sup>

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<sup>485</sup> Five key votes were obtained from representatives that did not belong to the Kirchnerist block, but whose provinces were in dire financial need. This was the case for three Peronist dissidents from Córdoba and one MP from Corrientes and Tierra del Fuego deputy respectively. The latter was rewarded days later with the creation of a university in this province. See La Nación (19 Nov. 2009) 'El apoyo clave de las provincias necesitadas y la izquierda' and La Nación (2 Dec. 2009) 'El oficialismo logró la aprobación de la reforma política.'

<sup>486</sup> Also see La Nación (1 Nov. 2009) 'Bipartidismo.'

<sup>487</sup> Political experts generally shared this opinion (see Scherlis 2014, 317).

**Table 8-6: Proposed and final changes registration requirements**

<b>Topic</b>	<b>Law 23.298 (1985)</b>	<b>Proposal</b>	<b>Law 26.571 (2009)</b>
District registration	4 ‰ signature threshold	5‰ membership threshold	4‰ membership threshold
National registration	5 districts	1‰ membership threshold	No additional threshold
Electoral participation		5‰ turnout primaries 3% vote threshold candidates	1‰ turnout primaries 1.5% vote threshold candidates
Party cancelation	Failure to: *participate in 3 consecutive elections *organize internal elections	Adds: 3% vote threshold Maintain presence in 5 districts + membership	Adds: 2% vote threshold Maintain presence in 5 districts + membership

This reference to *ad hoc* parties as candidate-centered vehicle suggests that the government pushed for these rules to increase the relevance of formal party structures (in light of dissident party exits). The debate on the adoption of party primaries below offers additional evidence for this. Suffice it to say here that if this measure was adopted as part of an *organizational economy* strategy, the government likely pushed for the effective design of these rules. Subsequent developments indicated that the government was indeed not only willing, but even very eager, to implement the law. After Congress and the Senate had adopted the reform, the executive vetoed the two transitional articles that it had negotiated with its coalition partners (Decree 2004). These articles contained the above-mentioned guarantee that existing parties would profit from a two-year-period to adapt to the law’s new requirements for maintenance of party registration (§§107-8). By vetoing these articles, the new norms would now be applied during the upcoming 2011 presidential elections.<sup>488</sup>

<sup>488</sup> Several small parties that feared the effects of this law took this decision to court in order to have it declared unconstitutional. The Electoral Chamber (Verdict 4342, 8 July 2010) ruled, however, that these requirements fit within the margin of appreciation of the Constitution and that these were political rather than legal matters.

### *Intra-party democracy*

The 2009 reform also introduced direct, obligatory, and simultaneous primaries for all federal elected offices. The formal reason given for the adoption of these primaries was the need to create more equality in the process of candidate selection. Alejandro Tulio, director of the government's National Electoral Authority and proponent of the reform, notes that the unregulated candidate selection process was a heterogeneous and unequal one because candidates with a lot of resources could obtain a candidacy through other means than democratic selection. Inversely, making all parties select their candidates through primaries, would likely bestow candidates with popular legitimacy.<sup>489</sup>

His mention of resourceful candidates is a thinly veiled reference to the successful candidacy of Peronist dissident, and businessman, Francisco de Narváez who beat the FpV list headed by Néstor Kirchner in the Buenos Aires province. This suggests that the reform formed a means to the electoral threat that the Peronist dissidents posed to the FpV. Vice Chief of Staff Abal Medina (2009, 52) provides additional evidence for this assertion as he stated quite frankly that intra-party conflict in the FpV, the main example of party candidates running for other parties, created the need for top-down regulated party organization:

In the present day we find many anomalies and irregularities of all kinds in this matter, with members of parties presenting themselves as candidates for other parties, or organizations that support candidates of different parties in different districts. Given this situation, direct primaries can be seen as a sort of reigns: they are necessary to stitch together the fracture that has been visible clearly in the contemporary Argentine party system for quite some time. Clearly, if this were a different scene of party competition, we would not agree with the implementation of direct primaries.<sup>490</sup>

A government aid involved in the design of the original bill added that this measure was designed to strengthen political parties because it disabled the option for candidates to run outside of the party (Alessandro 2011, 199–200). As has been discussed above, this strategy formed one of the main organizational factors debilitating the FpV in the electoral arena. All these official reasons for the introduction of party

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<sup>489</sup> Interview Tulio, 2012.

<sup>490</sup> *En la actualidad nos encontramos con anomalías e irregularidades de todo tipo en esta materia, con miembros de un partido que se presentan como candidatos de otros partidos o agrupaciones que apoyan a candidatos de diferentes partidos en distintos distritos. Frente a tal situación, las internas abiertas pueden verse como una especie de yeso: son necesarias al menos por un tiempo porque pueden suturar la fractura claramente visible que se observa hoy en día en el sistema partidario argentino. Seguramente, si otro fuese el escenario de la competencia partidaria, no estaría de acuerdo con implementar internas abiertas.*

primaries thus connect the reform rather directly to the need to prevent intra-party disputes from spilling over into the electoral arena. It bears little surprise that opposition party respondents and political experts stated even more forcefully that the introduction of obligatory and simultaneous primaries mainly served to block FpV candidates from running outside of the party after having lost the internal nomination process.<sup>491</sup>

As the introduction of party primaries responded directly to socio-political changes that threatened the governing party's electoral position, the resource-based perspective suggests that the government would take every means necessary to ensure implementation of the new rules. The executive sanctioned Decree 443/2011, which regulated the organization of the party primaries in more detail, a mere four months before the primaries for the 2011 mid-term legislative elections. The executive's failure to regulate the upcoming primaries created substantial uncertainty about whether or not the primaries would be organized.<sup>492</sup> As a result, representatives of the government and the Electoral Chamber had to ensure both the general public and the opposition parties a mere week before the legally fixed date that these primaries would be organized.<sup>493</sup>

Opposition politicians note that this uncertainty left them with a dilemma: either wait until August to select a candidate through primaries that may or may not be organized – and be left with only one month to campaign for the general elections – or select a candidate early on in order to have more time for the general campaign. In the end, all opposition parties opted out of organizing competitive primaries for

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<sup>491</sup> Interviews Tonelli, 2012; Novaro, 2012; Pinedo, 2012; Reynoso, 2012; Escolar, 2012; de Luca, 2012. In addition, several of these respondents stated that this measure was expected to increase discipline within the vertical FpV party structure. Primaries are useful in this regard, as they automatically link the selection of the candidates at the provincial and local level within the party to the candidacy of the president. This meant that if candidates wanted to run for lower-order offices on the party's ticket, they necessarily needed to support the candidacy of the president as well, rather than run with a different presidential candidate. In this way, the party could be structured in a more vertical manner through the value because candidates need to stick with the party label.

<sup>492</sup> Clarín (15 Jan. 2011) 'Plantean más dudas sobre la realización de las primarias.' La Nación (23 Jan. 2011) 'Dudas en la UCR sobre las internas.' La Nación (25 Jan. 2011) 'De Narváez duda de los comicios.' Clarín (27 July 2011) 'Duhalde: El gobierno presiona para suspender las internas.' Several electoral judges contributed to this uncertainty by publicly stating that it would be impossible for them to organize the primaries on time. La Nación (05 Jan. 2011) 'Nueva advertencia de la Justicia por el armado del padrón.'

<sup>493</sup> Clarín (02 Aug. 2011) 'El gobierno reafirmó que se hacen las primarias.'



their presidential candidates.<sup>494</sup> Although insufficient evidence is available to support this claim, it may well be the case that the executive decided to spread out her chances and wait until the final moment to decide whether or not the organization of party primaries would serve her cause on the ground. If this was the case, the decision was a successful one as the general elections rewarded the president with the highest margin of victory ever seen in Argentina amidst a shattered opposition (Fernández and Cotarelo 2011, Fernández 2011).

#### **8.4.c Political finance regulation**

The 2009 reform also introduced several changes in political finance regulation. These changes mainly focused on the role that corporate donations and media access played in elections. Legislators established that during election campaigns, political parties (and third party supporters) would be prohibited from procuring private media access. Instead, parties could only use the media slots provided to them by the state. Towards this end, the media would have to provide the state with access to 10 percent of programming time available to them (§43). In addition, the law banned all corporate donations to parties. In order to ensure that companies could not bypass this provision, anonymous donations were banned as well (§44). In return, public funding was distributed somewhat more equally among parties, with 50 – rather than 30 – percent distributed on an equal basis (§36). Legislators assigned control over the distribution of public funding and media access to the National Electoral Authority – an executive agency of the Ministry of Internal Affairs (§35, §42).

According to a government aid involved in the reform process, these changes addressed the disparities caused by parties that had access to corporate funding and private media access.<sup>495</sup> Such disparities had become apparent in the 2009 elections in the form of “the emergence of candidates with a commercial background, that were able to auto-finance expensive campaigns” and of “the media applying different prices to the candidates on the basis of their preferences and interests, as a result of which it was impossible to specify the expenses that the parties incurred at the moment that they broadcasted their campaign messages” (Alessandro 2011, 200).

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<sup>494</sup> Next to the uncertainty about whether the primaries would be organized, opposition representatives argue that their parties feared the divisive effect that ferocious primaries might have on their electoral support. Smaller parties additionally feared that the larger parties would intervene their primaries in order to select a weak candidate (Pomares, Page, and Scherlis 2011), whereas new alliances feared the debilitating effect that primaries would have on their nascent cooperation and opted for the “unifying potential of an elite agreement in which we could negotiate over the distribution of candidates on a single list”. Lastly, representatives of several smaller parties note that their parties were simply not institutionalized enough to breach the practice of a single leader determining the candidate list. Interviews Bullrich, 2012; Pinedo, 2012; Alonso, 2012; Ferrari, 2012; Stolzizer, 2012.

<sup>495</sup> Interview Alessandro, 2012.

National Electoral Authority director Alejandro Tulio, proponent of the reform, similarly argued that in light of the 2009 elections, democratizing measures had to be taken to prevent the rise of wealthy parties with little support on the ground and the disproportionate influence of private media on public opinion.<sup>496</sup> The clear message of this justification of the reform is that the state – rather than big business – should provide access to electoral funding and the media.

An anonymous government insider stated more explicitly that the reform aimed to prevent candidates with major financial capabilities from competing in elections through personalized campaigns – in defiance of the party structure.<sup>497</sup> This is a clear reference to the campaign strategy advanced by Peronist dissident Francisco de Narváez in the 2009 legislative elections in the Buenos Aires province, which consisted of an extensive publicity campaign. This campaign used television ads, radio, Internet, and billboards, which were all funded with De Narváez own resources and those of his business connections.

Gustavo Ferrari, a member of De Narváez's block, similarly states that the reform sought to address those factors that contributed to the FpV's electoral loss in the Chamber of Representatives:

So he [Néstor Kirchner] was set on changing all those factors that, according to his judgment, contributed to his loss in the 2009 elections. ... Everything is a reaction to his having lost and to increasing the control of the incumbent government over the elections. ... He made a list of the things that theoretically made him lose the elections and said 'let's change all of this.' And one of these things was the media system.<sup>498</sup>

Ferrari contended that the prohibition of corporate funding and private media access was an attempt to limit the resources of those politicians with close connections to the corporate world, such as Buenos Aires capital governor Mauricio Macri and the afore-mentioned Francisco de Narváez. The new norms indeed favored parties that rely more on their militants for private funding, such as the FpV. Argentine election campaigns traditionally consisted of the distribution of top-down resources through the party machines to local vote movers (Auyero 2001; Jones 2008; Mustapic 2002, 175–76; Scherlis 2010). It is therefore not unlikely that the emergence of a dissident

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<sup>496</sup> Interview Tulio, 2012.

<sup>497</sup> Anonymous interview, 2012.

<sup>498</sup> *Entonces apuntó [Néstor Kirchner] a modificar todas esos factores que a él le pudieron, según su criterio, hacerle perder la elección de 2009. ... Todo es una reacción a haber perdido y a fortalecer el control de la elección por parte del propio gobierno que ejerce el poder. ... Hizo una lista de porque había perdido teóricamente y dijo 'bueno todo lo cambiamos'. Y uno es el sistema audiovisual.*

faction that was able to finance its campaign through its own resources presented an aberration of this traditional pattern and threatened the government's hold over the Peronist electorate.

Other opposition respondents and political experts noted that the reform also skewed electoral competition in the government's favor, as the reform did not limit government publicity. This meant that the governing party could continue to promote itself before and during election campaigns through media reports on the inauguration of public works and the government's social programs and through its announcements during the *Fútbol Para Todos* (Soccer For Everyone) transmissions, the government-sponsored airing of soccer matches that make these accessible to the entire country.<sup>499</sup> In spite of the generous amount of media access that the reform provided to all parties, critical respondents argue thus that equality in electoral campaigns deteriorated rather than improved with the 2009 reform.<sup>500</sup>

If the government adopted these reforms to redress the inter-party balance of resources in its own favor, the expectation is that it would seek to implement these legal changes to the fullest degree to ensure effective reform. This was indeed the case for the regulation of media access and corporate donations. Implementation of the first provision was somewhat complicated because of the simultaneous existence of elections and legislation at the provincial level. The executive therefore adopted Decree 445/2011 to extend the scope of the law to those provinces that selected their candidates at the same day as the national elections (Alessandro 2011, 203).<sup>501</sup> As to the prohibition of corporate funding, respondents speak very highly of the monitor-

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<sup>499</sup> Interview Camaño, 2012; Interview Esteban Bullrich, 2012; Interview Pinedo, 2012; Interview Alonso, 2012. As one expert notes, this is a clear case of the classic Argentina problem of maintaining a distance between the governing party and the state, or rather, the lack of such a distance. Interview Secchi, 2012.

<sup>500</sup> As regards the government's claim that the reform seeks to increase transparency of political finance, experts points out that the reform does not address donations of government employees. It was exactly this kind of donations that formed the basis for a 2007 corruption scandal. In addition, the initial bill removed the presentation of preliminary finance reports. This would have eliminated the possibility for citizens to inform themselves on party finances before going to the voting booth. The bill thus presented little advances in the transparency of political finance. Interview Secchi, 2012; Deane, 2012; Ferreira, 2012.

<sup>501</sup> Respondents noted that – besides some minor complaints – the distribution of access to the media was implemented in a fair manner. Also see Pomares and Page (2011).

ing efforts of the auditors of the *Cámara Electoral*.<sup>502</sup> Several opposition leaders noted that it had become more difficult for them to attract corporate funding because of this measure.<sup>503</sup>

One element of regulation that remained lacking was the establishment of the newly created *módulo electoral* (electoral unit), which would allow for the definition of the donation and spending limits, as well as for the calculation of the total amount of public party funding. According to the finance law (§68-bis), this limit was supposed to be established in the national budget for every election year. The government was unable, however, to get approval for its accepted by the opposition in Congress it was up against in 2011.<sup>504</sup> Nevertheless, it took no additional action to set this value through an executive decree. The *Cámara Electoral* therefore took it upon itself to determine the value of the *módulo electoral* one month before the primaries.<sup>505</sup> Several opposition parties complained that this created a lot of uncertainty about the amount of money they were to receive and spend during the campaigns.<sup>506</sup> The lack of implementation of these provisions put into question the government's claims that the reform sought to create more equality in elections.

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<sup>502</sup> Interview Ferreira, 2012; Deane, 2012; Trombetta, 2012; Patricia Bullrich, 2012; Pinedo, 2012. Both experts and party leaders also note, however, that the prohibition of corporate expenses is rather easy to circumvent, given that private donations from individuals are still allowed. This means that companies may donate through their employees or other middlemen. Indeed, one anonymous opposition politician states that the only difference is that rather than donate openly, corporate sponsors now have to find ways to hide their financial support to his party. This is reflective of a larger problem in the monitoring of party finances, namely that many experts and politicians suspect these reports to only partly reflect party income and expenses.

<sup>503</sup> Interview Ferrari, 2012; Esteban Bullrich, 2012.

<sup>504</sup> La Nación (17 Sep. 2010) 'Con críticas, la oposición anticipó su rechazo al Presupuesto 2011.' La Nación (16 May 2011) 'La ausencia del médico presidencial.'

<sup>505</sup> La Nación (20 July 2011) 'Duplican el límite para los aportes de campaña.'

<sup>506</sup> Interview Bullrich, 2012; Interview Ferrari, 2012

**Table 8-7: Final changes political finance regulation**

Topic	Law 25.600	Law 26.215 (2007)	Law 26.571 (2009) <sup>507</sup>
Direct public funding	Annual or elections: *national budget law determines amount *annual: distributed 80% proportionally and 20% equally *elections: distributed 70% proportionally and 30% equally *distributed 80% per district and 20% nationally	Annual or elections: *national budget law determines amount *annual: distributed 80% proportionally and 20% equally *elections: distributed 70% proportionally and 30% equally *distributed 80% per district and 20% nationally	Elections: distributed 50% proportionally and 50% equally
Indirect public funding	Executive determines indirect funding and media access	Media access elections: * 600 hours television and 800 hours radio *distributed 50% proportionally and 50% equally	Media access elections: *10% of total programming *distributed 50% proportionally and 50% equally

<sup>507</sup> Law 26.571 (2009) reforms Law 26.215 (2007). This column only depicts the reform's changes.

Topic	Law 25.600	Law 26.215 (2007)	Law 26.571 (2009)
Donation limits	Qualitative limit: Prohibition anonymous or forced donations + donations from trade unions and state enterprises  Quantitative limit: *1% of spending limit (corporate) *0.5% of spending limit (individual)	Qualitative limit: Prohibition anonymous or forced donations + donations from trade unions and state enterprises  Quantitative limit: *1% of spending limit (corporate) *2% of spending limit (individual) *no third party media access	Ban on anonymous & corporate donations + complete ban on private media access
Spending limit	1 peso per voter	1.5 peso per voter	1 módulo electoral per voter
Presentation finance reports	Present electoral finance reports to AGN	Present annual and electoral finance reports to electoral authorities	

## 8.5 Conclusion: party law development and reform in Argentina

This chapter has shown that post-transitional Argentine party law reforms remain a continuation of past trends, albeit in a somewhat different form. Whereas party law development over the course of the 20th century focused on the outright prohibition of opposition parties, current reforms consist of rules that obstruct new party and opposition formation in more subtle ways and that thereby create an incumbent advantage (see Table 8-8 for a summary overview).

In 2002, the absence of a real non-Peronist competitor meant that this highly reactive strategy mainly focused on controlling the Peronist party's organizational infrastructure through an *organizational economy* reform strategy. In 2009, legislators responded to increasingly successful Peronist dissidents by adopting both *organizational* and *electoral economy* reform strategies. The former sought to increase dissi-

dents' party exit costs and to regain control over the organizational infrastructure, whereas the latter targeted the inter-party imbalance in financial resources to the governing party's advantage. Both of these findings support propositions 1 and 2, as advanced in Chapter 3. According to these propositions, party law reforms that are adopted in response to to factional conflict and/or the rise of a new party will contain *effectively designed* legal provisions that redress the intra- or inter-party resource distribution balance.

In addition, the 2002 reform of political finance and party formation rules responded to social demands for a more inclusive political system in a *systemic economy* manner. Legislators lowered party formation costs in the least effective manner possible by only removing requirements for party maintenance. This instance of ineffective targeting did little to allow for more diverse forms of political participation in the next elections. As such, this 2002 reform supports proposition 3b, as advanced in Chapter 3. According to this proposition, party law reforms that are adopted in response to a legitimacy crisis that only alters political parties' access to ideational resources will contain *symbolic* legal provisions that increase political parties' access to ideational capital.

Given the important role assigned to party primaries in containing party dissidents, the finding that the executive did not take immediate action to implement party primaries in the 2011 elections is somewhat contradictory to the propositions advanced in this study. This deviation may be explained in part by the role that institutions play in translating reform incentives into adopted party laws reform. The Argentine case portrays very little influence of veto players over party law reform. Although the need for coalition formation in the Chamber of Representatives requires some attention to coalition partner preferences, the powerful executive proved able to alter both the 2002 and 2009 adopted party laws in line with its own preferences per executive decree.

In addition, the electoral authorities oftentimes proved unwilling to interfere in matters they deemed political rather than judicial. Existing norms did not constrain the executive's leeway for reform. The executive, on the other hand, had a lot of leeway over the final outcome of reform through its aforementioned decree power. In the 2011 elections, these institutional conditions allowed the president to postpone the implementation of party primaries as she saw fit. This clearly diminished Argentine party law's ability to structure political behavior and to introduce certainty in the political process. The conclusion will discuss these institutional findings in more detail.

**Table 8-8: Summary of Argentine party law reform (2002-2009)**

	2002		2009	
Strategy	Systemic economy	Organizational economy	Organizational economy	Electoral economy
Resource at issue	Ideational capital and financial resources	Organizational infrastructure	Organizational infrastructure	Financial resources
Threat	<u>External</u> Public rejection status quo	<u>Internal</u> Factional conflict	<u>Internal</u> Factional conflict	<u>Internal</u> Rise of mediagenic parties
Legal provisions	*Lower party formation costs *Introduction organizational funding + donation and spending limits	*Introduction obligatory primaries	*Increase formation costs *Introduction obligatory primaries	*Prohibition corporate donations + private media access *Proportional access to public funding
Effective design	<u>Symbolic</u> Ineffective targeting (formation costs) and no capacity building financial control	<u>Effective</u> Designed to apply to most parties but suspended before implementation	<u>Effective/symbolic</u> *Increased effectiveness through veto transitional articles *Primaries implemented per decree (at final moment)	<u>Effective/symbolic</u> *Effective control private finance & media access *Delay regulation of public media access