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

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CHAPTER 9 - Conclusion

9.1 Latin American party law reform

This dissertation has provided a detailed exploration of the utility of party law, and political parties more generally, for Latin American politicians. The Latin American experience is an important one because no other region in the world has experienced such frequent and dramatic shifts between democratic and authoritarian governance as Latin America has throughout the 19th and 20th century (Drake 2009). Chapter 2 has shown that both political parties and their legal regulation often formed important means to deal with, and overcome, threats to democratic and authoritarian regimes alike by alleviating popular pressure for inclusion. At times, party laws have been adopted to accompany democratic transitions or to institutionalize political conflict, such as through the meticulous regulation of political parties' role in elections. At other times, party law reforms played a vital part in closing up the political system to democratizing forces or served to legitimize authoritarian regimes. Party law reform does not constitute a purely democratizing strategy. Instead, its role differs according to the circumstances under which reforms are adopted.

Chapter 3 has shown that recent theories of party law reform similarly identify that socio-political circumstances drive different types of reform strategies and thereby account for variance in adopted party laws. The purpose of the theoretical framework developed in this chapter has been to identify what these socio-political circumstances are and how they can be linked more systematically to adopted party laws, through the specification of changes in political organizational resources. This study has conceptualized adopted party laws as consisting of two attributes: legal provisions and intended effectiveness. In this manner, the theoretical framework does not only account for differences in legal texts, but also for differences in the intended effectiveness of reforms.

This conclusion discusses the findings of this study's various components, as well as their theoretical implications. The following section compares the finding of the four country studies to assess whether the theoretical framework developed here answers the research question proposed in Chapter 1: *Why do the legal provisions and intended effectiveness of adopted party laws vary?* Section three discusses the paired

comparisons of the four countries studied here, based on these countries' democratic experience and degree of party system institutionalization, to compare the value of the resource-based approach to party law reform to that of more institutionally based explanations. Section four, finally, discusses the implications of the findings for studies of party politics and democracy more generally.

9.2 Case studies of party law reform

Chapter 2 has shown that Latin American efforts at regulating political parties have important consequences for politicians. On the one hand, the normative acceptance of political parties as intermediaries in the political process has resulted in increased state support for Latin American political parties – and for the politicians that operate within these parties by extension. On the other hand, the top-down approach of regulating political parties as a means to cure societal ills has resulted in increased state interference in intra-party affairs. In this manner, party law simultaneously provides access to and constrains politicians' access to the party organizational resources they require to participate in elections and/or to legislate effectively.

This study has argued that the adoption of different types of party laws is therefore best understood in relation to changes in party organizational access to resources. Chapter 3 has outlined how such resource threats may manifest themselves on three different levels: the political system level, the party system level, and the individual party level. The scholarly literature has found that politicians adopt reform strategies in response to the interests and needs that occur at each of these three levels as a result of changing socio-political circumstances. Specification of these changes allowed for the formulation of exploratory propositions on the relationship between changing socio-political circumstances, reform strategies, and adopted party laws. The case studies of party law reform processes in Argentina, Colombia, Costa Rica, and Mexico showed that these propositions captured the empirical reality of party law reform rather well.

9.2.a Organizational economy reforms

At the most basic organizational level, politicians may experience electoral and legislative threats as a result of organizational changes or factional conflict that alter the intra-party distribution of resources. Chapter 3 posited that politicians are expected to respond by adopting party law reforms that redress their control over these resources:

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

bution balance. These legal provisions will likely:

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

Proposition 1 is falsified if party law reforms that are adopted in response to changes in the party organization and/or factional conflict contain legal provisions that 1) constrain the proponent politicians'/factions' own access to resources at the advantage of other politicians/factions, 2) constrain or benefit all politicians'/factions' access to resources equally, or 3) do not contain the necessary legislation and institutions for implementation.

This study identified three cases of *organizational economy* reforms, in which politicians used party law reforms to redress the intra-party balance of access to resources in line with the legal provisions proposed above (see Table 9-1 below for a summary). This was the case in Argentina (2002, 2009) and Colombia (2003). These cases underscore that politicians may respond to changes in their party organizations and/or factional conflict by trying to increase their own control over the organizational infrastructure through party law reform. In Argentina (2002, 2009), for example, Peronist party leaders responded to dissidents running outside of the party through the legal prescription of obligatory and simultaneous party primaries. The 2009 reform also increased the threshold for party formation. Combined, these measures centralized control over the candidate selection process and prevented losers of the Peronist election process from running outside of the party structure under a different party label.

In Colombia (2003), Conservative and Liberal party leaders joined efforts to increase party formation and party exit costs in response to the collapse of established party structures. By making it more difficult to switch parties without losing one's seat in the legislature, these established party leaders sought to increase party cohesion and central party control. Nevertheless, the case of Colombia (2003) also illustrates how politicians may be too late to respond to organizational changes. Party leaders were unable, for example, to coax their representatives into adopting additional rules that would fundamentally alter the candidate selection process or increase legislative discipline effectively. The increased personalized nature of legislative campaigns had already undermined the established party structures in an irreversible manner and the individual politicians' goals were better served by the maintenance of formal party labels than by the reintroduction of party hierarchies.

Although the types of measures proposed and adopted in these reform processes thus confirm proposition 1, the 2003 Colombian reform also shows that not all reforms that follow an *organizational economy* strategy are designed to effectively target the problem at hand. Proposed changes that altered the candidate selection process and that externally imposed legislative discipline were so far-reaching that these could only be adopted by including so many loopholes as to render them ineffective. A similar dynamic was visible during the 2002 introduction of party primaries in Argentina. Although the Duhaldist faction managed to push the reform through the legislature, a subsequent legislative stalemate ultimately resulted in the executive abolishing the reform before it could be implemented. Both instances indicate that a slight modification of the theoretical framework is in order, as *organizational economy* reforms are only designed in an effective manner in the absence of legislative veto players within the coalition proposing the reform.⁵⁰⁸ This modification will be discussed in more detail below.

Table 9-1: Summary table organizational economy strategy

Country	Socio-political circumstances	Legal provisions	Intended effectiveness
Argentina 2002, 2009	Factional conflict	Increase control over organizational infrastructure: higher formation threshold and candidate selection rules	Effective as long as faction controlled the legislature
Colombia 2003	Organizational change	Increase control over organizational infrastructure: higher formation threshold, higher exit costs, legislative disciplinary measures	Effective as long as legislative coalition could be maintained

9.2.b Electoral economy reforms

At the party system level, changes in party competition and/or the rise of a new competitor may alter the established or ruling political parties' access to resources.

⁵⁰⁸ Koß (2008, 286) calls these 'genuine veto points', or "actors with the institutional power to approve, modify or veto policies in intricate decision-making processes."

Politicians were expected to respond by adopting party law reforms that redress their access to resources vis-à-vis their competitors:

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

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

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

Changes in party competition and/or the rise of a new competitor set into motion *electoral economy* reforms in Mexico (2003), Argentina (2009), Colombia (2005, 2009), and Costa Rica (2009). What all these reforms had in common is that politicians responded to the changing terms of party competition by addressing the inter-party balance of resources needed to win elections and to govern effectively. The way in which they did so was in line with the proposition outlined above, with Costa Rica (2009) forming a partial exception (see Table 9-2 below for a summary).

In Mexico (2003), for example, the increased involvement of minor parties in electoral and legislative coalitions resulted in the adoption of a reform that increased party formation costs effectively. The effective design of this law ensured that the established political parties could increase their dominant hold over the political process. In the case of Argentina (2009), the governing party sponsored a reform to address some of the conditions it blamed for its recent electoral loss. This reform prohibited private party funding and media access after the party's gubernatorial candidate lost against a wealthy and mediagenic businessman in the Buenos Aires province elections. The government also sponsored the adoption of rules that ensured the effective implementation of these measures.

In Colombia (2005), the introduction of immediate presidential reelections altered the resource balance between the incumbent and all non-incumbent parties. The opposition parties were able to use their legislative leverage, which the executive

needed to ensure passage of the constitutional reform that reversed the prohibition on reelection, to sponsor a law that would limit political parties' use of private means in election campaigns as well as presidential visibility in these campaigns. The law was designed in an effective manner by the creation of tools for oversight over the implementation of these new rules. All cases thereby confirm the reform dynamics as set forward in proposition 2.

The 2009 Costa Rican reform shows, however, that not all reforms that follow an *electoral economy* strategy are designed to effectively target the problem at hand. This reform, which addressed the fact that corruption scandals and irregular financial practices had fueled the rise of the anti-establishment PAC party, focused on introducing more financial controls and transparency. The PAC – a necessary partner in the reform coalition – tried to capitalize on its strategic position by proposing reforms that would overturn the dominant model of financing politics – that benefited the established parties disproportionately – in a much more rigorous manner. Coalition politics prevented this effort, however, as the PLN and PUSC were unwilling to agree on such measures. They thereby constituted what Koß (2008) calls 'genuine veto points' in the decision-making process, meaning that some degree of compromise was necessary to get the reform adopted. The theoretical ramifications of this finding will be discussed in more detail below.

Table 9-2: Summary table electoral economy strategy

Country	Socio-political circumstances	Legal provisions	Intended effectiveness
Mexico 2003; Argentina 2009; Colombia 2005, 2009	Rise new party/ changes in party competition	Increase party formation costs, introduce disadvantageous private funding rules	Effective
Costa Rica 2009	Rise new party/ changes in party competition	Overturn private funding rules that privilege established parties	Partially effective

9.2.c Systemic economy strategy

The resource-based model of party law reform presented in Chapter 3 argued that systemic changes at the political system level have a tendency to alter all political parties' access to resources. Such systemic changes consist of institutional reform, changes in the social matrix, and/or changes in mass media and technological chang-

es that affect the campaign efforts. Politicians were expected to respond with a systemic economy strategy:

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

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

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

One case under study here provided evidence of politicians' use of party law reform to counter changes in mass media. This occurred in Mexico (2007/2008) after the 2006 elections had escalated into a full-out media war. The increased use of mass media campaigns had created an arms race of sorts in which all political parties were forced to invest more and more resources against diminishing returns. The media war was not only expensive financially speaking, but had damaging consequences for the main political parties' ideational capital as well. In response, politicians adopted a reform that prohibited private media use and negative campaigning. To ensure effective implementation, legislators also increased the IFE's relatively independent monitoring capacities and adopted strict sanctions for non-compliance.

Other cases responded to institutional reforms that altered all political parties' access to organizational resources (see Table 9-3 below for a summary). Systemic changes of this kind took place in Argentina (2002, 2006), Costa Rica (1996/1997, 2009), and Mexico (2007/2008). In all of these cases, judicial or electoral bodies had either set limits to access to organizational resources or had created measures for the implementation of rules that politicians initially designed in a symbolic manner. The development of such jurisprudence had become a nuisance for all political parties, which redressed their joint access to organizational resources by adopting a party law reform.

In Costa Rica, for example, electoral authorities threatened to diminish the total amount of funding available to political parties (1996/1997). In addition, the authorities threatened to implement the paper tigers adopted in 1996 and 1997. Both the Constitutional Court and the TSE developed jurisprudence to fill some (though not all) of the legal voids to allow for effective implementation of the law's principles. This was particularly visible in the area of intra-party democracy and the promotion of female candidates and leadership. In response, Costa Rican politicians adopted a constitutional reform (1997) that safeguarded the total amount of public funding available to them against external interference and a new electoral code (2009) that protected the organizational infrastructure against outside interference.⁵⁰⁹

A similar dynamic was visible in Argentina after the 2002 decision of the electoral authorities to implement symbolic political finance rules. Argentine legislators were quick to remove the electoral authorities as the monitoring body overseeing political finance after the court had adopted a ruling that streamlined this process. Throughout the 1990's, Mexican electoral authorities also started to implement formal norms on intra-party democracy with a vengeance. Politicians responded by sponsoring new rules (2007/2008) to relegate the court's authority to that of a court of last resort after the exhaustion of internal party procedures. All these findings confirm the reform dynamics outlined in proposition 3a.

Systemic economy strategies may also manifest themselves in a second manner. This is the case during legitimacy crises, which constitute a type of systemic change that is not expected to result in effective reforms. Throughout such crises, all political parties' ideational capital is at stake. As long as this does not result in changes in inter- or intra-party competition, however, politicians are expected to address this crisis symbolically only:

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

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

Proposition 3b is falsified if party law reforms that are adopted in response to a legitimacy crisis that only alters their access to ideational resources contain legal provisions that 1) increase some politicians'/factions'/political parties' access to resources

⁵⁰⁹ In a similar vein, the 2009 Costa Rican reform relegated the court's authority over the candidate selection process to that of a court of last resort after the exhaustion of internal party procedures.

at the detriment of others, or 2) contain the necessary legislation and institutions for implementation.

This variant of the *systemic economy* strategy was visible in various cases (see Table 9-3 below for a summary). In Costa Rica (1996/7, 2002, 2009) and Mexico (2003, 2007/2008), politicians used party law reforms to respond to complaints about the rising costs of elections and the rejection of public funding schemes that maintained a perceived party cartel. In Colombia (2009, 2011), parties turned to party law after the 'parapolítica' scandal, in which one third of legislators had become implicated due to financial ties with armed non-state actors. In Argentina (2002), party law reform provided a means to respond to a population that had turned against the entire establishes system when it ousted the president and took to crying 'out with them all.'

What all these crises had in common is that they were not accompanied by changes in resources other than the political parties' ideational capital. In other words, the crises did not challenge the political parties' ability to achieve their politicians' goals directly. As a result, governing politicians did not fear for their immediate electoral or legislative fortunes. Instead, the adoption of reforms that would actually address the crisis at hand posed a higher threat to their ability to govern or win elections.

In the case of Argentina (2002), this resulted in the adoption of a reform that allegedly opened up the political process without altering the requirements for new party formation or registration (ineffective targeting). In a similar vein, Argentine legislators adopted broad new political finance rules without creating the necessary tools for implementation (no *ex ante* controls). Colombian legislators created the empty chair sanction to respond to legislators with illicit financial ties, but failed to adopt rules that ensured its implementation in the upcoming 2010 elections. Actual implementation of these rules would damage the governing parties' legislative standing and it required a degree of party control that the leading politicians were aware they lacked.

In Costa Rica, legislators responded to demands for less costly elections by increasing the amount of funding available to them (1996/7) or by lowering the total amount of funding for one election only (2002, 2009). A similar dynamic was visible in Mexico (2007/8), where legislators also claimed to lower electoral funding in response to demands for less costly elections, while providing parties with a substantial amount of indirect funding (media access) and increased access to annual organizational funding simultaneously. These findings all confirm the reform proposition specified above.

Table 9-3: Summary table systemic economy strategy

Country	Socio-political circumstances	Threat	Legal provisions	Intended effectiveness
Mexico 2007/2008	Societal/media	Increased cost elections	Beneficial private funding rules	Effective
Argentina 2002; Costa Rica 1996/1997, 2009, Mexico 2007/2008	Institutional	Less control over financial/human resources	Increase control over the parties' human and financial resources	Effective
Costa Rica 1996/1997, 2002, 2009; Mexico 2003, 2007/2008; Colombia 2009, 2011; Argentina 2002	Legitimacy crisis	Ideational capital	Lower public funding, lower party formation costs, stringent private funding rules	Ineffective

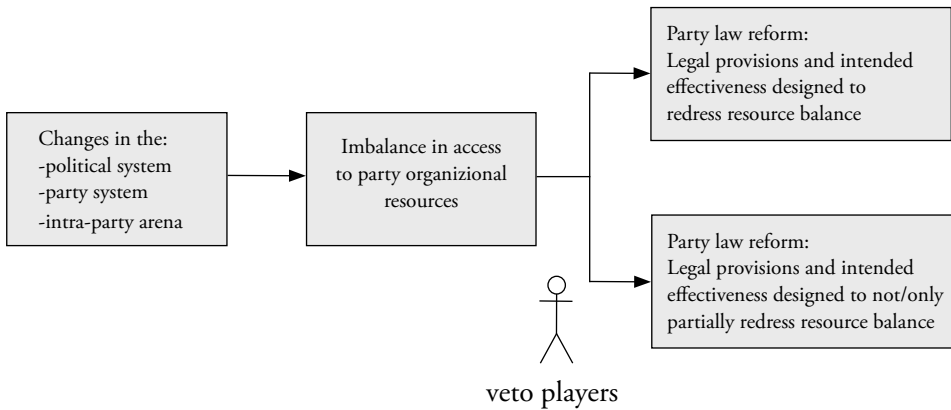
9.2.d The adjusted resource-based model of party law reform

From the above, it follows that the exploratory propositions put forward by the resource-based model capture the variance in legal provisions of adopted party laws remarkably well. Rather than seeing such legal provisions as the result of a proactive strategy in which politicians try to create favorable conditions for their own parties or to maximize their access to resources – just because they can – the cases discussed in this study all provide evidence of conservative politicians turning to party law reforms in a much more reactive manner to address threats to the resources needed to satisfy their most basic goals.

As to the intended effectiveness of adopted party law reforms, the theoretical model developed out of the resource-based perspective explains the adoption of effective versus symbolic reforms to a large extent, but not completely. While the *systemic economy* propositions captured the adoption of effective versus symbolic reforms well, the *organizational* and *electoral economy* propositions only did so in the face of a unified legislative coalition proposing the reform.

This finding is not surprising given the distinct dynamics of the *systemic* versus the *organizational* and *electoral economy* reform processes. Whereas the former implies a broad coalition of parties looking out for their joint access to resources, the latter implies a more narrow reform coalition seeking to redress the resource balance between or within parties. This logically creates more resistance from politicians that stand to loose from the reform effort. When their collaboration is needed for the formation of a viable reform coalition, such politicians may stand in the way of too effective a reform. Several of the *organizational economy* (Argentina 2002, Colombia 2003) and the *electoral economy* (Costa Rica 2009) cases showed that when reformers needed to include veto players in reform coalitions to get the reform adopted, this tended to result in more symbolic reforms than the propositions outlined in Chapter 3 suggest. The inclusion of veto players in the resource-based model is thus in order – as portrayed in Figure 9-1 below.

Figure 9-1: Adjusted resource-based model of party law reform



9.3 Within and cross-country analyses

Chapter 4 has discussed how the literature on party law reform identifies institutional characteristics, such as democratic experience and degree of party system institutionalization, as important alternative explanations for variance in adopted party laws. Comparing the explanatory power of this study’s findings against institutional explanations forms one way to explore the added value of the resource-based model advanced here.

9.3.a Cross-country comparisons

Table 9-4 compares the various party law reform strategies applied in the four countries under study here across different institutional settings. The most important finding of this comparison is that all countries have, at one point or other, adopted party law reforms to secure party access to organizational resources in response to systemic or electoral threats. For the four countries under study here, these strategies are the most common ones that politicians applied when reforming party law. Neither the age of democracy nor the degree of party system institutionalization hence explains why the systemic and electoral economy logic of party law reform appears. For these two types of reforms, resource threats are a better explanation of adopted party law reforms than that institutional characteristics are.

Table 9-4: Cross-country comparisons of party law reform strategies

Democratic experience	Party system institutionalization	
	Weak	Strong
Short	Argentina: -Systemic economy (2002, 2006) -Electoral economy (2009) -Organizational economy (2002, 2009)	Mexico: -Systemic economy (2007/2008) -Electoral economy (2003)
Long	Colombia: -Systemic economy (2009, 2011) -Electoral economy (2005, 2009) -Organizational economy (2003)	Costa Rica: -Systemic economy (1996/7/2002/2009) -Electoral economy (2009)

A focus on the degree of party system institutionalization does add some explanatory power as only the weakly institutionalized party systems (Argentina and Colombia) have at times adopted laws to address intra-party changes. This underlines the usefulness of studying party law reforms beyond institutionalized party systems only, as alternative strategies of party law reform may present here. It can easily be hypothesized that politicians in countries with weakly institutionalized party systems are less able to exert control over party organizations and that they therefore turn to party law to (re)-gain control over organizational resources instead. Alternatively, it may be easier for politicians in such states to misuse the legislative system for their individual purposes. The within-country comparisons lend some support for this latter assertion.

9.3.b Within-country comparisons

The within-country comparisons have provided some interesting pointers on the role that institutions may play in constraining party law reform strategies. In Costa Rica, the rise of the Constitutional Court in the 1990's and of new opposition parties in the early 2000's created institutional obstacles for the traditional parties to use party law as a means to respond to large-scale party system change. These checks likely prevented the traditional parties from blocking the rise of new parties and thereby contributed to a gradual process of party system change. In 2014, this process resulted in the election of the first non-traditional party president since 1949.

In the case of Mexico, party law reform served to structure the institutionalization of conflict among its three main parties. All reforms adopted since the 1996 transition depart from the same principles: the need to create inter-party equality in elections, to prevent the rise of too many small/new parties, and to improve the credibility of the electoral process. The effectiveness of these reforms in sponsoring democratic governance more generally may be disputed, as many of Mexico's current electoral problems are a direct result of societal problems that cannot be addressed through party laws alone. Nevertheless, party law's introduction of a relatively independent electoral authority forms a check on party behavior.

In Argentina, on the other hand, party law continues to serve as an unstable form of exclusionary institution building that allows the executive to settle both inter- and intra-party resource conflicts at its own discretion – unchallenged by any institutional checks. The only difference with party law reform throughout the mid-20th century is that contemporary Argentine party laws no longer contain clear prohibitions of opposition forces. Instead, these laws block the opposition's access to resources and allow the executive to attend to threats posed by dissident factions through legal reforms.

A similar instrumental use of party law is visible in Colombia, where the 1991 constitutional reform sought to instigate a political transition by doing away with existing party structures. Imposition of this new regulatory mold was an incomplete success in light of the continued political dominance of traditional party elites. The 1991 constitutional reform did contribute to the erosion of the traditional parties' organizational structures. Despite an attempt to reverse this process in 2003, continued party erosion resulted in a situation in which the executive could make increasing use of the legislature to sponsor particularistic party law reforms that served consolidate

its power.⁵¹⁰ By seeking to dismantle the traditional order, the 1991 constitution set a dangerous precedent for party law reform.

When comparing the role of institutions in these stronger versus weaker institutionalized party systems, two important differences stand out. Costa Rica and Mexico have in common that the development of party law played an important role in these countries' transitions to democracy. Party law, and other electoral reforms, allowed these countries to institutionalize political conflict through the creation of an autonomous arbiter, a strong electoral court, which ensured that electoral losses no longer equated to political annihilation. Colombia and Argentina, on the other hand, both developed party law to legally exclude traditional, opposition and/or third forces from the political system. As a consequence, governments in both countries used, and continue to use, party law to accommodate political conflict in their own interest, rather than by delegating this conflict to an independent arbiter that could also protect the interests of opposition or third parties. The old Latin American adage 'for my friends – anything, for my enemies – the law' appears to endure in these countries.

In addition, the presence of an inter-party equilibrium in the legislature at the time of reform sets Costa Rica and Mexico apart from Colombia and Argentina. This is in line with the findings of studies on institutional reform more generally, which find that such equilibriums tend to result in the creation of institutions that do not offer one party a marked advantage over others (Geddes 1991; Lehoucq 2000; Sakamoto 1999). Future research could disentangle the effects of these two variables on party law reform strategies to identify the extent to which such judicial and legislative checks contribute to constraining the reform process.

Based on these findings, this study provides some tentative pointers as to the role that party law reform plays in institution building. Institutions' defining characteristics are their enforcement and stability (March and Olsen 2006, 3). Enforcement occurs when basic rules and norms are applied effectively. When political actors find ways to work around these rules, institutions are nothing more than a dead letter. Stability entails the durability of institutions, meaning that institutions are able to

⁵¹⁰ As a consequence, the provisions on party membership, for example, now change from one election to the next to ensure party switching in the interest of the governing coalition. External pressure for the adoption of rules that would increase the cohesion of legislative caucuses resulted in the sponsoring of rules that are only applied when this serves the executive's interest.

withstand temporal political pressures and create a steady anchor for the political process (Levitsky and Murillo 2009).⁵¹¹

In this study, I have shown that enforced laws are more likely to appear when a political crisis threatens a governing party or party coalition's access to electoral resources directly. Unenforced laws are more likely to appear when parties adopt laws in response to legitimacy concerns that do not threaten their access to other electoral resources directly. In addition, the within-country comparisons suggests that political parties are less able to adopt laws at will – unstable institution building if you may – when they are up against a strong legislative or judicial veto-player. Combined, these findings suggest that party law reform contributes most to institution building when it responds to internal reform pressures but is subject to strong legislative or judicial checks. When these checks are absent and/or when the executive is strong, party law reform constitutes unstable institution building. In such instances, governments make good use of party law to consolidate their power. This occurs in an *ad hoc* manner that results in rules that enforced in an erratic manner as long as they serve the governing party's electoral goals.

9.4 Implications of the findings and avenues for future research

9.4.a Party law reform

This study's findings speak to some of the assumptions that underlie studies of party law reform. In the process, this study has shown how pressing socio-political changes may lead politicians to adopt rules that do not necessarily increase their absolute access to resources. This supports Scarrow's (2004) assertion that political strategies shape the outcome of debates over party law reform. Specification of the various types of resource threats that occur allowed for the rather accurate prediction of the types of legal measures that politicians will adopt. In addition, it allowed for the rather accurate prediction of whether politicians design such matters to target the threat at hand in an effective manner and whether they adopt measures for implementation of the reforms.

The extent to which politicians adopt symbolic reforms in response to legitimacy crises has proven truly remarkable. This dynamic is not completely surprising. As implied in Chapter 4, the reform process consists of a problem, policy, and polit-

⁵¹¹ Institutional stability encompasses the general consensus that the basic rules and norm of the polity – such as those codified in the constitution – should guide political behavior, that these rules and norms should be applied indiscriminately, and that the reforms of these rules and norms should not be subjected to the whims of political actors.

ical stream and it is up to political entrepreneurs to bring these streams together (Kingdon 1984[1995]). In the process, politicians can manipulate the reform agenda to their own advantage. This is precisely the position that political parties are in when they adopt reforms that seemingly address public pressure for political change, meaning that they can capitalize on the external momentum for reform to redress the resource balance in their own favor. The extent to which the parties in the cases studied here thereby rode roughshod over public demands for change contradicts many scholarly accounts of electoral and party law reforms. It has been suggested, for example, that parties need to take into account public opinion, as too instrumental a reform may end up harming the parties' electoral prospects directly (Blais and Massicotte 1997; Katz 2005; Renwick 2010, 63). The cases presented here do not provide direct evidence of this. It follows that the role of vertical accountability in constraining instrumental party law reforms should not be overestimated. This is the case in particular when external demands for political change are not accompanied by fundamental changes in party competition or organization.

These findings are also important because the legal regulation of political parties has become one of the focal points of international and domestic party aid providers and non-governmental organizations supporting democratic governance. As noted by Carothers (1999, 2006), this type of aid often departs from the European model of programmatic political parties with strong linkages to society. In order to promote such ideal-typical parties, many organizations promote the legal regulation of parties as means to support democratic consolidation in new democracies (Erdmann 2010; Molenaar 2010).⁵¹² This study contributes to these efforts at promoting and consolidating democratic governance by putting center stage the intrinsically political nature of law reform. It has shown that an externally promoted reform agenda will only find resonance in national legislatures if it is able to connect to imminent threats to party organizational survival in a meaningful manner. By showing that not all party reforms are designed in an equal manner, and that the conditions under which party law reforms come about partly determine whether reforms are designed to matter, party aid providers might be able to identify successful conditions for reform beforehand and invest their energy there where it is likely to matter most. Party law reform

⁵¹² This approach finds resonance in supranational organizations such as the European Union and the Council of Europe that issue best-practice reports and common principles on party regulation to promote the development of strong, programmatic parties in the new Eastern democracies and to fight political corruption throughout Europe (van Biezen and Molenaar 2012). In Latin America, supranational cooperation takes place in the *Unión Interamericana de Organismos Electorales* (Inter-American Union of Electoral Organizations – UNIORE). UNIORE organizes biannual conferences between the representatives of the domestic electoral institutions to exchange experiences with electoral rules and practices, such as the legal regulation of political parties.

is not a one-size-fits-all solution and in order for democracy promoters to instigate effective change, they should refrain from treating it as such.

9.4.b Judicialization of politics

The study's findings also emphasize the important political role of party-law-related jurisprudence in contemporary Latin American political systems. Many Latin American courts have expanded their activities to the legislative sphere in the face of ineffective governments and legislatures (Couso, Huneeus, and Sieder 2010; Sieder, Schjolden, and Angell 2005). Next to normative questions about the appropriateness of involving non-representative agents in legislative activities, the court's appropriation of power over political parties' resources at times provides parties with incentives to capture the courts to protect their own survival. Indeed, the 2003 and 2007/8 reforms in Mexico have shown how legislators punished courts for their activism and how the rejection of partisan courts may come to undermine the entire democratic system.

The empirical findings presented in this study show that the relationship between courts and political parties runs in two directions. On the one hand, the courts' influence was visible most clearly in those instances where the courts adopted applied rules that implemented laws that had been designed in a symbolic manner. On the other hand, an important finding that follows from the cases at issue here is that the judicialization of politics through the development of party-law-related jurisprudence is not a one-way street necessarily. Political parties are not helpless victims in the face of the courts' increased legal activism. Indeed, many of the *systemic economy* reforms contained a component that redressed political parties' autonomy vis-à-vis external judicial oversight.

At the same time, the cases studied here also show that the judiciary may prevent the adoption of too instrumental party laws. Indeed, the judicial branch often ensured that politicians had to take into account existing constitutional norms when adopting party law reforms. If not, they faced the danger that the courts would abrogate their reform efforts.⁵¹³ This constraining effect was visible particularly well in the Costa Rican case. Here, the creation of the Constitutional Court – the reasons for which lie beyond this study's purview – put an effective end to the use of party law to increase the thresholds for new party formation. This ruling severely constrained future reform efforts. A similar concern with violating constitutional norms and international treaties led Mexican politicians to refrain from creating a party monopoly over the representative process. In Colombia, the government feared that the Court

⁵¹³ The ability of courts to do so depends on the constitutional design of such review procedures (Navia and Ríos-Figueroa 2005).

might abrogate the constitutional adoption of immediate presidential reelection if the legislature failed to regulate the funding of presidential election campaigns. This explained why the government made a lot of concessions to the left-wing PDA in the subsequent sponsoring of this 2005 law regulating this issue.

These findings suggests that constitutional actors may have an important agenda-delineating function, but only if the judiciary is willing and able to function as a horizontal check on the reform process. Combined with the finding that public opinion does not exert strong pressure over party law reform necessarily in the form of vertical accountability, this suggests that horizontal accountability may play a more important constraining role in party law reform than popular scrutiny can or does. The extent to which this occurs depends, however, on the presence of strong institutional veto-players that are able or willing to exercise such a function.

9.4.c Party system and party organizational change

Based on these conclusions, a strong case can be made for the inclusion of the resource-based perspective and party law reform in theories of party system and party organizational change more generally. This study has built on a century of political science research on political parties' organizational purposes and the conditions that threaten their organizational continuity. The resource-based perspective served to operationalize party law reform as a survival mechanism that political parties apply in response to party system or party organizational change. The increased appearance of party laws in modern democratic party systems makes this a very viable alternative to other types of survival mechanisms, such as organizational adaptation, party mergers, or the formation of programmatic party cartels.

Rather than addressing the threat posed by the rise of a new party through programmatic means, for example, politicians may turn to party law reform to increase the threshold for new parties to participate in elections. In the process, the increased reliance on party law may contribute to the creation of an ever more conservative party system composed of political parties that are able to withstand environmental changes without altering their internal organizational structures or programmatic offers. Other internal strategies for dealing with party organizational change may also become less relevant due to the contemporary popularity of party laws. Why would party leaders seek to enforce party discipline through the distribution of selective incentives, for example, when party leaders can simply sponsor a law to enforce such discipline in a top-down manner?

Further questions that this study did not address are under what conditions we might expect party law reform to be favoured over other survival mechanisms and whether political parties in some types of party systems are more prone to choose

party law reforms over other survival strategies than parties in other systems. As discussed above, the use of party law reforms in response to organizational concerns occurred in weakly institutionalized party systems only. In addition, the presence of strong institutional or legislative veto points may very well make it less likely that political parties will opt for party law reforms as a survival strategy. Future research could disentangle these relationships further.

9.4.d Democracy, democratic governance, and the political science discipline

Party law is an exception in public law because its targets parties at the individual, rather than the systemic level. This explains why party law may play such an important role in ensuring party organizational change and stability. The question remains to what extent this is a desirable quality and what consequences such instrumental use of party law has for democracy and democratic governance more generally. Although this study has focused primarily on the process of party law reform itself, the findings are such that they allow for some reflections on the larger state of democracy in the world.

Firstly, Katz and Mair's cartel party theory (1995, 2009) runs through this study like an implicit common thread. Given that the cartel party theory is a theory of (changing) party systems, rather than of party law reform, I have refrained from putting the theory center stage where possible. Nevertheless, party law reform is one of the strategies that political parties have at their disposal to promote party system cartelization in the face of threats to their joint survival. Such strategic use of party law reform may become all the more relevant in the present day and age, as populist outsiders and a disenchanted electorate confront established political parties around the world. In the process, established political parties run the risk of making exclusion rather than inclusion the dominant mode of party competition.

Katz and Mair warned us early on that such party system cartelization takes on a self-undermining logic in the long run, as "the cartel parties are often unwittingly providing precisely the ammunition with which the new protesters ... can more effectively wage their wars" (1995: 24). The existence of parties with limited possibilities for intra-organizational dissent, as well as of party systems with minimal competition and with protection mechanisms that safeguard political parties from the consequences of electoral dissatisfaction, obstructs the delivery of organizational or electoral feedback to party leaders and the adoption of programmatic or organizational adjustments in response. Voter frustration and challenges from outside of the cartel are the result, often predicated on a desire to do away with an elitist establishment that is (perceived to be) corrupt (Katz and Mair 1995, 24–25).

To the extent that party law reforms undermine more inclusive forms of political party competition and organization, they may thereby sow the seeds for more – rather than less – political and popular momentum to overturn existing political systems. In this sense, the world has many lessons to learn from the Latin American region, where some of the political systems that were hit hardest by popular uprisings were precisely those that had relied on party laws to maintain an exclusionary political system for decades. At the same time, variations existed in the extent to which anti-establishment movements were able to overturn the party systems completely.⁵¹⁴ The precise dynamics of the relationship between party law, party system legitimacy, and the political trajectories adopted amidst such popular pressure for change remain unclear.

To disentangle these dynamics, one question that requires further research is whether and when party law reforms result in the delegitimization of existing party systems. This study has shown that established political parties often respond to legitimacy crises by adopting symbolic reforms that do not alter political practices substantively. Departing from the assumption that citizens are not so easily deceived, this begs the question whether reforms of the *systemic economy* kind result in lower levels of legitimacy and trust in political parties – thereby setting into motion a self-perpetuating logic of party system delegitimization.⁵¹⁵ It may very well be the case that systemic economy reforms are temporal solutions at best that do more harm to party system legitimacy in the long run than that reformers are aware of.

Secondly, the current pervasiveness of party law in party systems around the world fits within a procedural worldview in which the party system – and the larger democratic process – are defined and seen as technical and moldable entities. This worldview is visible in the work of party aid providers that seek to build a democratic polity from scratch by proposing rigorous party law reforms. In the process, the well-intentioned international community forgets to ask the basic question whether it is really realistic to expect that transparent, democratic, and inclusive political parties can be built in societies that are prone to corruption, subject to authoritarian legacies, and that are highly exclusive. Such an approach is putting the cart in front of the horse at best – and naively expects that democratic societies can be constructed in a top-down manner by putting into place democratic procedures without investing in a democratic spirit at worst.

⁵¹⁴ Venezuela and Costa Rica constitute two extremes of this spectrum, with Colombia laying somewhere in the middle.

⁵¹⁵ One recent study indeed finds that higher levels of political finance regulation correlate with higher levels of perceived corruption of political parties (Bértoa et al. 2014). Further research is needed to analyze the direction of this relationship.

This procedural worldview is not the limited purview of party aid providers. The same goes for the academic outlook on democracy more generally. An almost exclusive focus on process rather than substance has come to “reinforce the idea that democracy is the domain of the state, with its procedures, institutions and political elites, while ignoring people’s views” (Doorenspleet 2015, 470). An important danger of the procedural worldview is that “democracy ceases to be seen as a process by which limitations or controls are imposed on the state by civil society, becoming instead a service provided by the state for civil society” (Katz and Mair 1995, 22). By extension, democratic governance is seen to be legitimate as long as its players follow the formal rules of the electoral and institutional game.

One problematic consequence of this logic is that political battles are increasingly being fought over the interpretation of these rules. Parliamentary coups using formal procedural rules have become an ever more increasing feature of Latin American democracy (Munck 2015). This study has similarly shown how electoral litigation is on the rise as a means to contest the outcome of elections. In the process, issues of substantive representation and the role of the popular vote appear to have taken a back seat. This is not to say that institutions do not matter for democratic governance. Rather, it is to say that equating institutions with democratic governance risks taking away attention from more pressing, substantive democratic concerns that are often overlooked – or even actively pushed back against – through an exclusive focus on rules and procedures.

One final look at the Mexican example discussed in the first paragraph of this study illustrates this. The annulment of a local popular vote, on account of a boxer wearing a patch the size of a fist, in a boxing match organized in another country. How did this verdict safeguard democratic governance? Whose interests were served here and who could be represented in a better, more substantial manner because of the electoral court’s decision? Why is it that Mexican political parties feel so insecure about their electoral standing that they fear a political logo on a boxer’s shorts is sufficient to sway an election? Admittedly, these are all questions that can be answered quite straightforwardly. But they also point to a larger, overarching concern with politicians that rely on procedure to compensate for their collective failure to invest in a more substantive dimension of democracy – and raise the question what is needed to turn this tide?