Latin American Regulation of Political Parties: Continuing Trends and Breaks with the Past

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The Legal Regulation of Political Parties

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Abstract

This paper looks at the development of the legal regulation of political parties in Latin America, with a focus on the content of the legal changes that have occurred over the last decade. Attention is paid in particular to the development of legal norms related to the registration and dissolution of parties, provisions for internal democracy and candidate selection, and the regulation of private funding, public funding, and access to the media. This comparative analysis identifies general trends across the countries' regulation of political parties, as well as differences between the various legal paradigms as they occur. Rather than treating the development of party law in the Latin American region as one static phenomenon, this paper formulates an answer to the question of how contemporary Latin American states regulate political parties through the identification of continuing trends and breaks with past legal paradigms.

Introduction

The development of party law on the Latin American continent does not take on a singular form. Indeed, over the last decade all Latin American countries have come to reform their instruments of party law or have adopted new legal instruments that regulate political parties in a multitude of ways. Little is known, however, about the substance of these reforms, as scholars have addressed the state of Latin American party law either from a general comparative perspective – meaning that all regulatory efforts are brought together under the header of 'party law in new democracies' – or from a more descriptive comparative perspective that charts the intricacies of the legal status quo without fully addressing how and why party law changes over time.

Rather than taking all changes to the law as a given and deducing general rules from the fact that legal change took place, this paper focuses on the content of these changes to the regulatory framework of political parties. The purpose is to identify how party law has changed over the last decade, what general trends are visible in these legal changes, and whether or not these changes constitute a break with previous developments in the design of party law on the continent. The argument advanced in this paper is that many present-day developments in the legal regulation of political parties in Latin America constitute a continuation of past trends. The 2000s also present some breaks with the past, however, as various countries in the region embarked upon a divergent regulatory pathway.

The following section first provides an overview of the state of comparative research on Latin American party law. Subsequent sections describe the development of party law in the region up to the 2000s. This is facilitated through a temporal perspective, in which a clear period of accommodation of parties, a period of recognition of parties, and a transitional period are linked to the regulation of parties. After this introduction to the history of Latin American party law, subsequent sections describe the changes to party law introduced over the last decade. These sections build upon a database of party laws presently in force in Latin America, which the author herself created.[1] The changes to party law are broadly categorized as belonging to 1) the registration and dissolution of parties, 2) provisions related to internal democracy and candidate selection, 3) the regulation of private funding and party finances, 4) the regulation of public funding for parties, and 5) the provision of access to the media and the regulation of election campaigns.

The development of party law in Latin America

Party law is the general denominator for the legislative work on political parties embodied in the constitution, political party laws, political finance, electoral and campaign laws, and related "legislative statutes, administrative rulings and court decisions" (van Biezen 2008: 342). The constitution holds a privileged position among the instruments of party law, as it reflects fundamental values and legitimizes the political rules of the game through the specification of the procedures that underpin the exercise of power. Through the constitution, one may hence gauge the position of parties within the institutional format of the state (van Biezen 2012: 189-90). The other legal instruments that constitute the body of party law target more tangible aspects of party functioning and behaviour. One should note that *political party laws* – laws that specifically target parties' internal life and that are codified as such – constitute an important but not the only component part of the body of party law more generally (Müller and Sieberer 2006, Janda 2005), as many countries instead opt for party regulation through their electoral code or provide provisions on political parties in multiple legal instruments.

The comparative study of party law mainly differentiates between countries on the basis of regime type and age of democracy. With regard to *regime type*, a common distinction is the one among established democracies, newly democratizing states, and non-democratic

[1] See appendix 1 and 2 for an overview of these legal instruments.

states. In a comparative study on party laws around the world, Karvonen (2007: 437) identifies a difference in the restrictiveness of party laws among these regime types: established democracies put the least restrictions on political parties, non-democratic regimes are very restrictive and use party law as a means to maintain regime stability through the outlawing or negation of parties, and newly democratizing states – the category which fits most Latin American democracies – restrict the freedom of party formation and activity in order to "counteract lingering anti-democratic tendencies." Similar differences between established and new democracies in the content of party law are visible as regards the constitutional codification of parties (van Biezen 2012), the regulation of internal party organization (Karvonen 2007), the provision of direct public funding (van Biezen and Kopecký 2007), and state intervention in parties more generally (van Biezen 2008). The norm on what constitute acceptable restrictions on party behaviour or appropriate topics of regulation thus differs per regime type.

The specific shape of party law in newly democratized countries is often explained with reference to historical legacies that are expected to have influenced the design of party law. Such legacies may provide a source of regulatory inspiration through the evaluation of past regulatory initiatives and failures. In addition, policy makers may create legislation in reaction to historical experiences such as democratic breakdown or undemocratic political parties. In her study on the constitutionalization of party democracy in Europe, van Biezen (2012: 201) finds that "in democracies with an authoritarian or totalitarian past, a legacy of the non-democratic experience is reflected in the new constitutions insisting on maintaining a clear separation between parties and the state by underlining the private character of party organizations and ideology, and by primarily associating parties with basic democratic liberties." In a similar vein, the particular shape of party law in Latin America has been depicted as a response of new regimes to past experiences with democratic instability and breakdown (Freidenberg 2007, Zovatto 2007). The transition to democracy is hence identified as a formative moment of party law.

Latin American legal scholarship – which focuses in detail on the various legal provisions that make up electoral law (Nohlen, et al. 2007), party law (Zovatto 2006), and party finance law (Gutiérrez and Zovatto 2011) – show that the transitional phase forms but one moment in the development of party law in the region. Party law makes a very early appearance on the Latin American continent, with Uruguay actually constituting the first country in the world to provide public funding for political parties (Gros Espiell 2006). In addition, many countries markedly reform the instruments of party law adopted during the

transitional period. Although this body of work is extremely thorough in its description of the various legal instruments that constituted the body of Latin American party law over the last century, it pays less attention to the explanation of the legal status quo and its changes over time.[2]

The goal of this paper is to bring together the descriptive and historical quality of the legal scholarship on Latin American party law with the more categorical comparative approach that political science brings to the study of party law. This paper therefore applies a twofold approach to party law reform. Its first part consists of a historical overview of the development of party law in the Latin American region. From a historical institutionalist perspective, this overview contributes to the identification of continuous regulatory trends and breaks with the past. The second part of the paper seeks to identify contemporary themes in the reform of party law on the basis of five categories that are generally applied to the study of party law. This part can be read as a first attempt at a classification of the different legal paradigms that occur in the region.

Party regulation in the 20th Century

The accommodation of parties and attempts at state building: 1900-1930

Political parties first appear on the Latin American political scenery at the end of the 19th century, when liberal and conservative elite forces come to solidify their political organizations in the form of political parties (Bowen 2011, Krennerich and Zilla 2007). The appearance of these new players on the political stage is accompanied by the incorporation of political parties in new constitutions. Article 132 of the 1918 Uruguayan constitution is particularly illustrative as it shows how the codification of political parties follows from the need to accommodate political reality in the constitutional design of the state:

> "Secondary legislation will determine the duration of the Representative Assemblies, the number of its members, the form and date of their election, the conditions for being elected, the competences of the Assemblies, the means to safeguard against its resolutions and the representation of *the parties* in the administrative councils [translation and emphasis FM]."

[2] One exception to this 'rule' is the work of Casas-Zamora (2005) on the reform of party finance regimes in Costa Rica and Uruguay.

This constitutional article highlights that the rise of political parties went together with the need to develop secondary legislation to guide the functioning of parties in congress and elections. This is also illustrated by the cases of Bolivia (1908), México (1916), and Panama (1916), which first mention political parties in their instruments of public law (Zovatto 2006). According to García (1992: 79) "[r]egulations alluded to parliamentary blocs in congress as expressions of political parties. Electoral laws regulated partisan involvement in elections, parties' behavior during the electoral process, and their support of candidates." The appearance of this new actor in politics leads to its accommodation within the legal texts setting the rules of the political game.

This is not to say that the regulation of political parties in the first phase of the development of party law is only reflective of a new political reality. In fact, this phase coincides with the introduction of public funding in Uruguay through the provision of state subventions for political parties in 1928 (Zovatto 2010: 145) – reflecting the country's early institutionalization of political stability through political compromise (de Riz 1986). Likewise, the strong presence of Liberal and Conservative parties in Panama – inherited from Colombia after its secession in 1903 – gives rise to the 1916 legal provision that only political parties or political associations may postulate candidates for elections (Valdés Escoffery 2006). Even at this early stage, provisions of party law are not limited to the mere accommodation of parties in the political system but show an appreciation for the role that parties play in the structuring of political life.

Some early examples of state building through legal reforms are also visible in the region, albeit under United States' command. The Dominican Republic entered the 20th century in a state of turmoil caused by political instability and the dominance of regional "caudillos" (political strongmen). Among other factors, this instability gave rise to an intervention of the United States in 1916, which lasted until 1924. One of the steps taken to promote the institutional fortification of the country's political bodies during this period was the adoption of an electoral code that explicitly regulated the functioning and organization of political parties in line with basic liberal principles (Espinal 2006: 809-10). Party law development in Nicaragua also occurred under a US invasion – which lasted from 1912 to 1933 and saw the creation of a 1923 electoral law that promoted a bi-partisan system and that specified the requisites for intervention in the electoral process (Álvarez 2006). Seeking recourse to the legal regulation of political party as a means of state building is hence not a new phenomenon but something that already occurred on the Latin American continent at the beginning of the 20th century.

In light of these early developments, one should note that the mention of political parties in legal instruments – and their regulation in particular – is still an exceptional development. It will take other countries several decades to attend to the matter, be it because they lack a national party system as is the case for Brazil (de Riz 1986), because they are continuously ruled by military dictatorships as is the case for Guatemala (Medrano and Conde 2006), or because they are ruled by a hegemonic party as is the case for Mexico (Orozco Henríquez and Vargas Baca 2006). The limited array of countries that make a reference to political parties – and the even more limited array of countries that make an actual attempt at the early regulation of political parties – is hence also reflective of the embryonic stage of Latin American party systems in the 1900-1930 period.

The recognition of parties and their prohibition: 1930-1975

Whereas some early attempts at the regulation of political parties through party law were already visible in the early twentieth century, the development of party law becomes more widely diffused throughout Latin America during the next 40 years. This is first of all visible in the constitutional codification of political parties and their political rights. Whereas the 1990-1930 period mainly saw some initial mentions of political parties, the 1930-1975 period witnesses several states that come to define either political rights or the democratic system in their Constitutions in terms of political parties. Whereas Constitutions in the previous decades made only fleeting references to political parties – stemming from the need to address these new political institutions – these Constitutions show that many countries have come to terms with the existence of political parties and reflect that parties are formally around to stay. As visible in table 1, it is not only democratic states that substantively recognize political parties. Instead, several authoritarian regimes legitimize their rule in a similar manner. Variance thus exists between the regime types that constitutionally codify political parties.

Table 1: Substantive recognition of political parties in Constitution[3]

Country	Year	Type of regime at time of recognition
Uruguay	1934	Democracy
Dominican Republic	1942	Authoritarian state
Ecuador	1945	Military coup followed by democratic Constituent Assembly
Guatemala	1945	Democracy – transition
Brazil	1946	Democracy – transition
Panama	1946	Democracy
Costa Rica	1949	Democracy – transition
El Salvador	1950	Military government

[3] Rather than merely mention political parties, the substantive recognition of parties consists of the codification of the right of citizens to associate in the form of political parties or of prescriptions for party behaviour.

Honduras	1957	Military coup followed by democratic Constituent Assembly
Venezuela	1961	Democracy – transition
Paraguay	1967	Authoritarian state
Chile	1970	Democracy

Source: adapted from Zovatto (2006: 15-16)

Party law development in democratic states

In a first group of countries, the Constitutions reflect a process of democratic transition after a period of internal strife or military dictatorships. In Costa Rica, political parties come to be mentioned with the return to democracy after a short but intense civil war. The 1949 Constitution recognizes that the formation of political parties is a fundamental right and prohibits extremist parties (Hernández Valle 2006). In Guatemala, political parties are legally codified in 1945, when the overthrow of a military dictatorship and the coming to power of the revolutionary governments of Arevalo (1945-1950) and Arbenz (1951-1954) give rise to the creation of a new Constitution. This Constitution establishes the citizens' political right to organize themselves in political parties (Medrano and Conde 2006). The constitutional recognition of political parties in Ecuador and Honduras should be seen in a similarly revolutionary light, as in both of these cases progressive military forces stage a coup against the ruling authoritarian regime in order to allow for a return to democracy. These coups are followed by Constituent Assemblies that create a new Constitution recognizing the right of citizens to organize political parties (Cueva 1982, Booth, et al. 2010). Lastly, Venezuela's history of decades of alternation between autocratic, democratic, and military rule culminates in the 1961 Constitution, which creates the basis for a stable democratic party system that will last until the early 1990s. The Constitution explicitly mentions political parties in its article that establishes the freedom to associate in political parties (Brewer-Carías 2006).

Brazil and Chile provide examples of additional rationales for the constitutional codification of parties. In the first, this development should be seen in light of attempts at nation state building (de Riz 1986). Party law first appears in Brazil in 1945 on the eve of the overthrow of the military dictatorship of Getúlio Vargas. Under the auspices of Vargas, the country comes to adopt a constitutional revision in 1945. An accompanying law regulates the electoral process, the electoral justice system, and the organization of *national political parties* (Jardim 2006). Although this is once again an instance of the Constitutional codification of political parties with the return to democracy, it furthermore shows attempts at the institutional design of nationally based parties through legal instruments. Chile is an interesting example in that the constitutional codification of parties appears at a time of political upheaval. A constitutional mention of parties and their rights and freedoms does not

appear until 1970 – the result of an agreement made between several parties during the presidential election campaign. This amendment cannot, however, prevent the subsequent abolishment of parties under the military dictatorship of Augusto Pinochet (1973-1990) (García 2006). Both examples are indicative of the faith that governments put in legal instruments as a solution to political problems.

Next to the codification of political parties in their constitutions, several democratic states also follow the early Uruguayan example of providing public funding for political parties and of regulating party election campaigns. This is particularly notable in the Brazilian electoral code of 1950 (Jardim 2006) and Costa Rica's 1956 codification of the state's obligation to provide financial support to parties (Hernández Valle 2006). Colombia is somewhat of an exception, as its process of developing regulation on the issue is a protracted one. The issue of party finance regulation first enters the political debate in the mid-1940s through criticism of the corruption portrayed during electoral campaigns (Cepeda Ulloa 2005). Although in the 1950s several initiatives to regulate the matter are presented in parliament—and although a first attempt at adopting a party law is made in 1977—it is not until the large political reforms process that starts under the Betancur administration (1982-86) that the matter becomes regulated (Cepeda Ulloa 2005, Hernández Becerra 2006).

Another early trend that finds resonance in this period is that of Panama allowing for political representation only through political parties. This occurs in a similar manner in Bolivia, where the law is amended in 1959 so that only parties may postulate candidates for elections (Lazarte 2006). In Panama, the 1950s and 1960s are characterized by an alternation between the toleration and prohibition of regional parties and by the constant redesign of the number of members needed to form a party. A good illustration of this is the 1953 law, which bans regional parties and increases the number of members needed to maintain party registration to 20% of the votes obtained in the 1952 elections. Only two parties survive this measure (Valdés Escoffery 2006). Similar cartelizing practices are visible in Colombia, where in 1959 the two leading parties constitutionally codify their bipartisan pact to alternate power and spoils among themselves under the guise of the need to preserve political stability (Hernández Becerra 2006).

Hence, the democratic states that regulate political parties in the 1930-1975 period show how the constitutional codification of political parties often accompanies the return to democracy and how it may be reflective of attempts at institutional design and the solution of political crises through legal instruments. Two trends that come up in this period are the provision of public funding for political parties and the legal limitation of representation –

sometimes even leading up to party system cartelization. One thing that should be noted, however, is that it is not just democratic regimes that come to adopt instruments of party law. Instead, several military regimes and hegemonic party systems follow suit as they come to legally regulate political parties in the 1930-1975 period as well.

Party law development in undemocratic or hegemonic states

Brazil is an interesting example as the overthrow of president Goulart by the military in 1964 (Saes 2001) is followed by a period of formal democracy under military command. The new regime immediately adopts a political party law, which revokes the electoral code and establishes rules for party formation, organization, finances, and public funding for parties. Only two months later, however, the regime extinguishes all parties and forms new political parties on the base of the representatives in parliament. The rules of the political party law are not applied to these parties, which are instead heavily regulated by presidential decree. Parliament re-adopts the 1965 political party law in 1971 – albeit under a different header – which it subsequently amends to regulate intra-party activities even more intrusively (Jardim 2006). It appears that by the time of military take-over of parliament and political parties, the legal regulation of political parties – including the provision of public funding for parties – had already ingrained itself as a legal norm to such an extent, that the military command continues to regulate along this formal legal line.

Other military regimes that existed next to a formal electoral system and political parties put less effort in regulation these parties and more effort in determining what are deemed appropriate parties. In Argentina, the overthrow of the Peronist party by a militarist regime sees the introduction of a ban on this party and other Peronist activities (Potash 1996: 33-34), whereas in Peru the tumultuous political period caused by the rise of mass parties leads to the creation of a Constitution in 1933, which explicitly outlaws parties with international linkages (Tuesta Soldevilla 2006). Various Central American countries similarly seek to prohibit the rise of "political extremists." The Guatemalan constitution adopts a ban on parties that threatened the liberal democratic system, whereas Nicaragua comes to prohibit parties with ties to international organizations and later on to parties with a communist or fascist character.

One should note that the legal restriction of extremist parties is not a phenomenon limited to military regimes. As noted above, Costa Rica prohibits extremist parties with its return to democracy in 1948. On a more global scale, the fear of extremist parties is visible in the trend in post-Second World War Europe of creating prohibitive criteria that are applicable

to both extreme left-wing and right-wing parties (Tomuschat 1992). As is the case in Nicaragua, the United States even come to outlaw the Communist Party by name in its Communist Control Act of 1954 (Franz 1982: 69-70). As García (1992: 80) notes, however, this type of regulation in military regimes constitutes a more extensive control of the party system. "This was a transition to a concealed form of authoritarianism, a kind of constitutional and legal manipulation. Required was the reporting of party affiliation, recognition, activities, programs, history of the party leadership, and financial affairs." The legal regulation of political parties becomes an instrument to maintain the stability of these military-led political systems by outlawing the rise of political parties deemed dangerous in this Cold War context.

Next to the military regimes, some legal regulation of political parties also occurs under the authoritarian or hegemonic party states. In the case of the Dominican Republic, the 1942 constitution recognises the "special" role that the Dominican Party plays in the countries' political process under the authoritarian leadership of Rafael Trujillo. The Dominican Party becomes a central pillar of his dominion and as such it is explicitly recognized in the Constitution (Espinal 2006). This is somewhat reminiscent of the two hegemonic party states in the region, namely Mexico and Paraguay. In Mexico, legal instruments are used to defend the hegemony of the PRI (Wuhs 2008). An amendment to the electoral code in 1951 sets the number of members needed to form a party at 30 thousand. This number is increased to 75 thousand in a 1954 amendment (Orozco Henríquez and Vargas Baca 2006). Given the national reach of the PRI and its extensive member base, such regulations only prevent access to smaller or regional political parties. The Paraguayan political system is marked by a long history of one-party rule dating back as far as the end of the triple alliance war at the end of the nineteenth century. In 1963, the US-led Alliance for Progress pushes the dictatorship of Alfredo Stroessner and his Colorado party to legalize other political parties and to organize semi-competitive elections. In response to these pressures, the 1964 Constitution is the first one to mention political parties. (Bareiro and Soto 2006).

From the above it becomes clear that more similarities exist between the legal regulation of parties under democratic and non-democratic regimes than one would initially expect. The constitutional codification of political parties under a wide array of political regimes is indicative of the role that parties have come to play in Latin American politics in the 1930-1975 period. The prohibition of political parties and the creation of cartel-like thresholds to party formation is a provision that differs in degree rather than kind in their use

in democratic and military or authoritarian regimes. Just as it occurred in the democratic regimes, the non-democratic rulers show a similar preference for institutional design and the solution of political crises through legal instruments.

Third wave of democracy and the regulation of political parties: 1975-2000

The third period of party law development discussed in this paper coincides with Huntington's third wave of democracy, which consists of the region's embrace of democracy as the only feasible form of government. Table 2 provides an overview of the countries in the region that substantively recognize political parties in their Constitutions. Again, the array of regimes under which parties are first recognized is diverse, ranging from a hegemonic party state moving towards a democratic regime to full-blown democratic states. Argentina is the last country in the region to constitutionally codify political parties.

Table 2: Substantive recognition of political parties in Constitution

Country	Year	Type of regime at time of recognition
Mexico[4]	1977	Hegemonic party state
Peru	1979	Democracy – transition
Nicaragua	1979	Democracy – transition
Colombia	1991	Democracy
Argentina	1994	Democracy

Source: adapted from Zovatto (2006: 16)

Although only five cases are mentioned in table 2, one should note that the constitutional codification of parties in the cases mentioned in the previous section does not remain stable over time. Following the third wave of democratization many states come to adopt new Constitutions that extend the degree of constitutional regulation of political parties (Bendel 1998). This last period of party law design hence starts off with active efforts at redesigning the formal rules of the game – including those related to political parties. Parties are attributed more and more functions in their new Constitutions, such as representation, participation, recruitment, competition over public office, formulation of policies, political education, and the upholding of pluralism (Bendel 1998, Bareiro and Soto 2007).

Next to the constitutional codification of political parties, other instruments of party law are extended as well. Of particular importance in this regard are the three purposes towards which parties are regulated, namely the definition of what constitutes a party, the specification of appropriate forms of party organization, and the regulation of party activities (Katz 2004, in van Biezen 2008: 343). The following sections describe how the Latin

[4] Mid-transition rather than post-transition

American countries define what constitutes a party in terms of *registration requirements*, how they put down appropriate forms of party organization through the regulation of *intra-party democracy*, and how they regulate party activities in the form of *public funding and the regulation of party finances, the provision of public funding*, and *the regulation of access to the media and election campaigns*.

Extension of regulation political parties

In terms of *registration requirements* most countries require parties to uphold democratic norms, to refrain from the use of violent means, and to elect their candidates and leadership democratically. Parties often need to put into writing their principles or programs, which can be interpreted as an attempt to achieve parties that are more than personalistic vehicles. Oftentimes, parties need adherents – usually with the additional requirement that they are spread over the entire country – which is an indication that parties are expected to have broad bases of popular support. In terms of affiliates there is a clear emphasis on the need for individual members, meaning that members cannot inscribe as a collective (Bareiro and Soto 2007). This is an effort to break with past corporatist traditions of states forming hierarchical institutional links with trade unions through parties (Wuhs 2008, for a discussion of corporatism cf. Collier and Collier 1979). Out of the 18 countries discussed in this paper, nine allow for political representation through political organizations other than political parties. Guatemala and Paraguay ascribe clear political spaces to these bodies, with Guatemala allowing for local *comites cívicos* and Paraguay for regional movements (Bendel 1998). Reasons for the dissolution of political parties consist of the failure to reach electoral thresholds, electoral fraud, military involvement or violent behaviour, and lack of internal democracy (Bendel 1998, Bareiro and Soto 2007).

Internal democracy is a norm on the rise, with more and more countries introducing provisions related to candidate selection in their instruments of party law. Whereas Costa Rica and Honduras are early regulators of the process of candidate selection, this development is something that becomes particularly pronounced in the mid-1990s as Colombia (1994), Paraguay (1996), Panama (1997), Uruguay (1999), Bolivia (1999), and Venezuela (1999) follow suit. The majority of these countries prescribe a procedure of closed internal elections. Only two countries – Honduras and Uruguay – prescribe primaries, whereas Colombia and Bolivia leave the decision between these two options up to the parties themselves (Freidenberg 2007, Zovatto 2006). Whereas the specification of registration requirements is

not a new phenomenon for the region, the prescription of internal democracy clearly presents a new regulatory trend in Latin America.

The regulation of private funding in general and the management of party finances in particular is another area of extensive regulation. In terms of private funding, many countries develop legislation that prohibits specific sources of funding, such as foreign funding, funding from state contractors, and anonymous donations (Zovatto 2007). Additionally, Bolivia (1999), Brazil (1997), Mexico (1996), and Paraguay (1996) set limits to the acceptable amount of private contributions to parties. One trend that comes up is the need for parties to submit reports on their finances to judicial courts, in which they specify their annual or campaign income and expenses (Zovatto 2007). Whereas electoral courts were traditionally ascribed an important role in the registration of political parties, they now became appointed the additional role of monitoring bodies over party finances.

The discussion presented above already showed some Latin American countries to be early regulators of the public funding for political parties. This legislative area comes to a full bloom in the transitional period, as visible in table 3, which provides an overview of the year of introduction of direct public funding in Latin America. The only countries that do not come to regulate this provision in the 1975-2000 period are Chile and Peru.

Table 3: Year of introduction of public party funding in Latin America

Country	Year	Country	Year
Uruguay	1928	Honduras	1981
Costa Rica	1956	El Salvador	1983
Argentina	1961	Guatemala	1985
Brazil	1971	Colombia	1985
Venezuela	1973	Paraguay	1990
Nicaragua	1974	Bolivia	1997
Mexico	1977	Panama	1997
Ecuador	1978	Dominican Rep.	1997

Source: Adapted from Gutiérrez and Zovatto (2011: 543)

With the adoption of public funding for political parties, the countries in table 3 come to possess a mixed model of party funding – meaning that parties have access to both public and private financial resources. The activities on which parties may spend their public funding differs somewhat across the region. The majority of countries deem both electoral and more permanent organizational activities as appropriate destinations for public funding. Only five of these 16 countries limit the use of public funding to electoral campaigns, namely Bolivia, El Salvador, Honduras, Nicaragua, Uruguay, and Venezuela. The allocation of public funding to political parties occurs either on the basis of their electoral strength or in a mixed scheme

that adds the additional criterion of equal distribution of a certain percentage of public funding among all political parties (Navas Carbo 1998, Zovatto 2007). Over the course of the transitional period, public funding for political parties has thus come around to stay.

Next to providing direct public funding for political parties, 13 out of the 18 countries discussed in this paper also introduce indirect public funding to political parties in the form of free access to the media during election campaigns or even on a permanent basis (Zovatto 2007). Only Costa Rica, Ecuador, Honduras, Nicaragua, and Panama refrain from legally regulating this indirect form of party funding. Table 4 provides an overview of the years in which these countries introduce such provisions for the first time.

Table 4: Introduction of access to public media

Country	Year	Country	Year
Mexico	1977	Paraguay	1990
Bolivia	1984	El Salvador	1992
Guatemala	1985	Argentina	1992
Colombia	1985	Dominican Republic	1997
Brazil	1988	Peru	1997
Venezuela	1989	Uruguay	1998
Chile	1989		

Source: Navas Carbo (1998) and author's own elaboration on the basis of the laws

Note that the provision of state-sponsored access to the media need not always provide an important advantage for parties in terms of equality, as the more popular private channels often fall outside of these regulations. The distribution of the allocated media access among parties occurs either on the basis of equality or in a proportional manner. Next to the provision of free access to the media, the majority of countries also regulate the rates for private access to the media and the need for media outlets to treat political parties in an equal manner. This means that media outlets may not discriminate in the rates or time periods that they ascribe to parties, nor may they refuse parties access to publicity. The specific configuration of these provisions differs per country (Lauga and García Rodríguez 2007, Zovatto 2007). A concern with the discriminatory potential of unequal media access shines through these new provisions of party law.

Many countries furthermore prescribe rules for the public activities that parties develop during election campaigns and for the types of advertisements they may emission. Several countries stipulate the period during which parties may begin and need to end their campaigning activities (e.g. 5 days before the elections). A clear regulatory concern with public opinion polls also appear in the instruments of party law that target election campaigns, with many countries putting limits to the activities of pollsters (Lauga and García Rodríguez

2007). The norm arises that party activity and behaviour in election campaigns forms a valid target of regulation through instruments of party law.

The transitional period shows continuing trends in the regulation of registration requirements for parties and the provision of public funding. Some new elements that appear on the regulatory scenery are the provision of state-sponsored access to the media at election time, the regulation of electoral campaigns, and an increased focus on private funding and private finances. The following section investigates the development of party law in these areas over the last decade.

Party regulation in the 21st Century

The frequent reform of the legal regulation of political parties forms somewhat of a norm rather than an exception in the new millennium, as portrayed in table 5. Whereas over the last decade only Paraguay did not change its legal instruments of party law, all other countries in the region made use of a wide array of legislative roads to legal change, such as constitutional reforms or the adoption of a new constitution, legal reforms and the creation of additional instruments of party law, and the use of presidential decrees.

Table 5: Changes in instruments of party law in Latin America between 1999-2011

New constitution: Bolivia (2009), Ecuador (2008), Venezuela 1999) **Constitutional reform:** Bolivia (2004); Colombia (2003, 2009), Dominican Republic (2002, 2010), Mexico (2007), Nicaragua (2000), Panama (2004)	**Modification existing law:** Argentina (2002, 2006, 2007, 2009), Bolivia (1999, 2001, 2002, 2005, 2008), Brazil (2006, 2009), Chile (2003, 2004, 2005, 2009), Colombia (2000), Dominican Republic (2003, 2005), El Salvador (2003, 2010, 2011), Guatemala (2004, 2006), Honduras (2008), Mexico (2003, 2005, 2011), Panama (2002, 2006), Paraguay (2001, 2007), Peru (2005, 2006, 2009), Uruguay (1999, 2009), Venezuela (2009, 2010)
Replacement existing law by new law: Bolivia (2010), Colombia (2011), Costa Rica (1996), Ecuador (2000, 2009), Honduras (2004), Mexico (2008), Nicaragua (2000), Peru (2003), Uruguay (1999)	**Adoption additional law:** Argentina (2002), Chile (2003), Colombia (2005), Peru (2002, 2004), Uruguay (1999, 2004, 2009), Venezuela (2002)

Source: Author's own elaboration

Several trends that show up in the table illustrate the dynamic nature of the design process of party law in Latin America. A first trend is visible in that several countries come to replace the entire spectre of legislative provisions on political parties – which generally stem from the mid-1980s – with a new set of rules and regulations. As such, the legal regulation of political parties appears to be a capricious undertaking. This assumption is invigorated by the

frequency with which countries change their instruments of party law. Out of the 18 countries that reform their instruments of party law, only Brazil, Nicaragua, and Paraguay stick to one instance of change. The following sections describe the changes that occurred in the region in more detail on the basis of the five areas of party law described above.

Registration and dissolution

The *registration and dissolution* of political parties has been an active field of party law reform over the last decade, as eight out of the 18 countries discussed in this paper adopted legal changes in this area. Some clear examples are visible of countries that open up the representative process to political groups other than parties. In the case of Venezuela – following the 1999 election of President Chávez – a constituent assembly adopts a new Constitution that no longer refers to political parties at all. Instead, only mention is made of 'associations with political goals.' With regard to these associations, §67 mentions that all citizens have the right to organize themselves politically. The new Constitution replaces Venezuela's regulation on political parties dating back to 1961 and completely strikes out the constitutional role of political parties in organizing the representative political system. A similar process of opening up the representative process is visible in Bolivia. Whereas in 1999 a law is adopted that raises the thresholds for legal recognition of parties, a constitutional reform in 2004 installs the provision that electoral representation is no longer restricted to political parties. Instead, groups of citizens and indigenous people may also obtain legal recognition as electoral vehicles, making them eligible for state funding as well (Lazarte 2006). This new norm is upheld in the new 2009 Constitution (§209) and the new 2010 electoral code (§48).

Ecuador portrays a similar shift from a closed to an open representative process. Up to the 2000s, the law on political parties holds that only political parties may participate in elections, that parties must have an organizational presence in at least ten provinces of the country in order to register, that party alliances are not permitted, and that parties may be dissolved if they obtain less than five percent of the vote in two subsequent elections (Vela Puga 2006). Amidst public demands for a more accessible political system, the 1998 Constitution opens up the electoral process to political movements and independent candidates (Birnir 2004, Mejía Acosta and Polga-Hecimovich 2011), which is followed by a new Constitution in 2008 that allows for political representation through both political parties and political movements (§65). One last country in this group of countries where the closure

of the representative process is followed by a subsequent opening is El Salvador. This country's political system is codified in its 1983 constitution and electoral code, the latter of which regulates internal party structures, party financing, and electoral campaigns (Urquilla 2006). The code only allows for representation through political parties. On the basis of the registration requirements three out of five parties lost their party status in the 2004 elections, ever since which the party system has been a bi-partisan one. The strict registration requirements are altered in 2010, when a decree is adopted that allows for the participation of non-partisan candidates and their support groups in elections.[5]

Next to countries opening up their representative process to other political organizations and associations, the opposite trend of the party system closing up is visible as well. This occurs first in Colombia in response to its 1991 Constitution that recognizes parties, movements, and political groups as political associations (§40) and establishes that all these forms of political associations are eligible for public funding (§109). The 2003 Constitutional reform sets the limit for recognition of a party at two percent of the votes received in parliamentary elections whereas the 2010 reform sets this limit at three percent. Only legal parties and movements are eligible for public funding.[6] A more explicit closing up of the party system occurs in Peru, where the 1993 Constitution establishes parties as one of the political organizations for political representation. The 2003 law on political parties appoints political movements the role of providing regional and local representation and holds that only political parties may provide national representative services (Tuesta Soldevilla 2006).

Two last cases of the closing up of the representative process are Nicaragua and Argentina. In the first, a Constitutional reform and the adoption of a new electoral law in 2000 institutionalize a power-sharing pact among two of the main political parties (Álvarez 2006, Booth, et al. 2010). The registration requirements now hold that to constitute a party, citizens need to create municipal delegations consisting of no less than 7 members in every municipality in the country (§§64-54) The case of Nicaragua hence constitutes a prime example of a cartel party system. In Argentina, a 2009 law on political representation establishes that all parties wishing to postulate candidates for national office need to hold open internal elections. In these primaries, 1.5 percent of those registered to vote must participate; otherwise the party is excluded from the general elections. Parties need to have a

[5] Decree no. 555(2010), reformed by Decree no. 835(2011) to mitigate a ruling of unconstitutionality by the Constitutional Chamber of the Supreme Court.
[6] 2004 law on Presidential re-election.

0.4% membership rate in districts where they want to participate. This provision hence takes on the form of a registration requirement.

Table 6 provides an overview of the reform to the registration requirements of parties. No general conclusions can be made about the development of legal provisions for the registration and dissolution of political parties in the region, as both a trend of party systems opening up to alternative forms of representation and a trend of party systems closing up to such alternative forms of representation – even up to the point of creating a rigid two-party system – are visible. The specification of registration requirements is hence an active field of party law reform.

Table 6: Reform of registration requirements

Open up			Close down		
Country	**Year**	**Type of reform**	**Country**	**Year**	**Type of reform**
Ecuador	1998	Allow movements	Nicaragua	2000	Increase registration requirements
Venezuela	1999	Allow movements	Peru	2003	Redefine movements to regional/local politics
Bolivia	2004	Allow movements	Colombia	2003/11	Increase registration requirements
El Salvador	2010/11	Allow independent candidates	Argentina	2009	Increase registration requirements

Source: author's own elaboration on the basis of the laws

Internal democracy and candidate selection

With eleven out of the 18 countries discussed in this paper changing the legal requirements for *internal democracy and candidate selection*, this is an active area of party law reform as well. This regulatory activity manifests itself first and fore all in an increase in the degree in which internal democracy is prescribed. Four countries in the region come to adopt provisions for internal party democracy for the first time in their regulatory history. Ecuador stipulates in its 2008 Constitution that political organizations need to function in a democratic matter and that they need to appoint their candidates through internally democratic processes (§108). Peru prescribes procedures for the internal democratic election of all party candidates and all those occupying internal party functions in its 2003 law on political parties. The electoral court may be called in to facilitate these elections.[7]

Argentina is a third case that comes to regulate specific provisions for internal democracy, although this legal change is a contested one. The original text of its law on political parties establishes in §21 that the party statutes constitute the fundamental rules of

[7] One fifth of the candidates for congress may be appointed, however, by other party organs (§§106-120).

the party and that these statutes establish everything related to the internal life of the party. This principle has subsequently been upheld by jurisprudence of the electoral chamber of the federal justice system. The law does establish, however, that parties that refrain from holding internal elections every four years will expire. A 2002 reform adds to this that the candidates for the presidency, the vice-presidency, and the legislative bodies are to be elected through open primaries, which are to be organized simultaneously. In the same year, a federal judge rules this reform to run counter to the constitution as it arguably interferes with the parties' right to freedom to organize. The Lower Chamber revokes this decision, legally suspends the primaries for the 2003 elections, and instead adopts the double simultaneous vote through a new reform to the political party law. This system for candidate selection is maintained in the 2005 elections (Hernández and Belisle 2006). Yet another reform in 2006 completely annuls the 2002 reform and reinstalls the 1985 version of the party law. A 2009 law on political representation establishes that all parties wishing to postulate candidates for national office need to hold primaries.

The last country that comes to introduce provisions for candidate selection is the Dominican Republic, where the 2004 "Law on internal elections" seeks to introduce national primaries for the selection of party candidates overseen by the Electoral Council (Espinal 2006). The Supreme Court rules this law to be unconstitutional, meaning that the Dominican Republic is one of the few countries in the region that do not address the internal democracy of parties in its instruments of party law.[8] A similar contentious reform process is visible in Panama. Here a 2002 reform process attempts to extend internal elections – which had already been established for presidential candidates in a 1997 reform – to the appointment of all party candidates. The President subsequently amends the article that prescribes the internal election of candidates for the presidency and instead puts down that the use of internal elections for the selection of *any* candidate within the party is optional (Freidenberg 2007: 636). The 2006 changes to the electoral code re-establish internal elections for all party candidates through the specification that party members elects these candidates through a secret vote. The specific process for candidate selection is determined in the party statutes, however, which may opt between conventions and direct elections.

Next to these countries that adopt provisions for internal democracy, several other countries make their existing provisions more explicit. Bolivia is an interesting example in that it rules that party leadership and candidates need to be elected in a democratic manner,

[8] The other countries are Brazil, Chile, Mexico, Nicaragua, and El Salvador

while allowing for an exemption of this rule for indigenous organizations, which may elect their candidates in line with the democratic norms that are in effect in their communities (Constitution, §§210-211). The electoral court has power of oversight over internal elections for leadership positions and candidates (§49). A similar development is visible in Venezuela, where the new electoral branch of governments is awarded the power to organize the internal elections of the political associations mentioned in the Constitution (§293). Likewise, two substantial sections on the regulation of internal elections (§§106-112) and on the regulation of primaries (§§ 113-128) have been added to the 2004 electoral code of Honduras. One norm that shines through the prescriptions of *internal democracy and candidate selection* in these countries is the monitoring role that is delegated to the electoral courts in order to oversee that internal elections occurs in a correct manner.

One should note, however, that not every country is as strict in establishing this norm of oversight. In Colombia, the 2009 Constitutional reform establishes the lack of democratic conventions as one of the reasons for political party dissolution (§108), which points towards a concern with intra-party democracy. The 2011 party law establishes, however, that in terms of candidate selection, parties may chose between primaries (regulated by law) or closed elections (regulated by their statutes). Although efforts are made at regulating this issue, some leeway is hence given to the parties themselves. Additionally, in Mexico the latest round of reforms to the instruments of party law (2007-2008) resulted in the limitation of the power of the Electoral Tribunal over political parties' internal affairs and in an increase of the parties' hold over their own organizations (Córdova Vianello 2009, Serra 2009).

In terms of *internal democracy and candidate selection* the 2000s were a decade of extensive legislation in this area, as depicted in Table 7. All but four countries come to regulate this issue and more and more precisions of appropriate candidate selection procedures appear in the region's instruments of party law. This norm is accompanied by the role of oversight over this process appointed to the electoral court. This is not an undisputed trend, however, as the case of Mexico shows that such norms may also be reversed. Likewise, the extension of provisions for democratic candidate selection itself is not completely undisputed either, as its introduction in several countries leads to a capricious reform process and legislative activity of institutions such as the presidency, the Supreme Court, and federal judges.

Table 7: Reform prescription intra-party democracy

Prescription of a new norm			**Make norm more explicit**		
Country	**Year**	**Reform law**	**Country**	**Year**	**Reform law**
Argentina	2002/06/09	Primaries	Venezuela	1999	Oversight
Panama	2002/06	Intra-party demo.	Honduras	2004	Oversight
Peru	2003	Intra-party demo.	Mexico	2007+08	No oversight
Dom. Rep.[9]	2004	Primaries	Bolivia	2009	Oversight
Ecuador	2008	Intra-party demo.	Colombia	2009+11	Oversight

Source: author's own elaboration on the basis of the laws

Private funding and the regulation of party finances

With the exception of El Salvador, all countries that previously did not provide any regulation in the area of *private funding and the regulation of party finances* adopt legal reforms in this area in the 2000-2011 period. Uruguay sets a first step towards more transparency of party finances in 2004, when it adopts a law that obliges candidates to the presidency and the first candidate on the list for the Senate to hand over to the Electoral Court a report on their campaign finances. Its 2009 party law subsequently establishes that parties need to present the Electoral Court with an overview of their budget before the electoral campaigns start and with an overview over their income and expenses after the campaigns (§33-34). Chile establishes provisions on private funding and the regulation of party finances in its 2003 finance law. In terms of the regulation of party finances, parties need to disclose some, but not all of their private donations (8-12). Both parties and candidates need to present information on their incomes and expenses before and after the elections to the Electoral Tribunal (§§29-37).

Although its 1997 electoral code contained some initial provisions for the rendering of accounts, the 2003 Peruvian party law regulates private funding in much more detail. It appoints the power of supervision to a division within the electoral organization and it sets limits to the private sources of party income (§§28-41). The Dominican Republic and Bolivia are exceptional cases in that they delegate the process of legislative development to the electoral court. The Dominic Republic makes an initial attempt at regulating private funding in its 1997 electoral code, where it establishes that the Electoral Court is to issue further regulations on the issue (Espinal 2006). In Bolivia, the 2010 electoral code rules that the Electoral Court will regulate and oversee party finances (263). Political associations are required to present their accounts after the primaries (§266).

[9] Failed attempt

Next to these relatively new regulators, several other countries reform their instruments on private funding and party finances. One new trend that is visible in this area is the creation of spending limits for election campaigns. Again, Brazil is a frontrunner with the creation of spending limits for candidates in its 1997 electoral code (§18). Various countries follow suit in the 2000s. This occurs in Argentina in its 2002 party finance law (§40) – which is replaced by a new finance law with a higher ceiling in 2007 (§45). Chile includes a ceiling on electoral expenses in its 2003 finance law, which does not provide sanctions for parties that surpass this ceiling (§5). The law is amended in 2004 to alleviate this problem. Mexico introduces spending limits for various types of election campaigns in its 2007-2008 round of reforms (§229), whereas Ecuador does so in its 2009 electoral law and law on political parties (§209). Colombia sets a limit for elections in its law on presidential elections in 2004 (§12). Its 2011 party law establishes as a sanction for surpassing this limit that parties, candidates, and political movements may lose public funding or get suspended (§12). Additionally, only 10 percent of the established maximum on spending may come from private donations by individuals (§23). The Guatemalan party law is reformed in 2004 and 2006 to set a limit to expenses on electoral campaigns at $1 per registered voter. Table 8 provides an overview of the introduction of spending limits in the region.

Table 8: Introduction of spending limits

Country	Year	Limits on
Brazil	1997	Candidacies
Argentina	2002 + 07	Party
Chile	2003	Party + candidacies
Colombia	2004 + 11	Party + candidacies
Guatemala	2004 + 06	Party
Mexico	2008 + 08	Candidacies
Ecuador	2009	Candidacies

Source: Author's own elaboration on the basis of the laws

In terms of the regulation of party income, many countries follow the example of the four countries that already set limits to the acceptable amount of private contributions to parties in the late 1990s, as depicted in Table 9. The exception is Costa Rica, which comes to abolish these limits in its 2009 electoral code (§135).

Table 9: Introduction of limits to private donations to parties

Country	Year	Country	Year
Mexico	1996	Chile	2003
Paraguay	1996	Peru	2003
Brazil	1997	Colombia	2004
Bolivia	1999	Guatemala	2004
Ecuador	2000	Uruguay	2009
Argentina	2002		

Source: Author's own elaboration on the basis of the laws

With regard to a prohibition on certain types of donations, Colombia's 2011 party law prohibits foreign sources of private funding, anonymous sources, donations from certain types of state organizations, and anti-democratic sources (§27). Argentina already established several prohibited sources of private funding in its 2002 finance law (§34), but the 2009 law on transparency adds corporate bodies to this list (with regard to the funding of elections campaigns; §44). Costa Rica similarly bans corporate bodies as party donators in its 2009 electoral code (§128). In the case of Chile, parties are prohibited from receiving foreign donations, donations from social and/or political organizations, and donations from state organizations (§§24-25). Ecuador introduces religious organizations as an additional prohibited source of donations (§§359-360). Mexico bans anonymous donations in its 2007-2008 round of reforms (Córdova Vianello 2011). In Peru foreign funding, funding from state contractors, and funding from religious groups are determined off limits (§31), whereas Uruguay establishes a limit to donations and prohibits anonymous donations (§§31, 41, 43) and foreign donations or donations from state organizations (§45). Table 5 provides an overview of the prohibitions on origins of private funding in Latin America as it stand today.

Table 10: Prohibition of sources of private funding in Latin America

Country	Foreign funding	Social/ political organizations	Corporate donations	State contractors	Anonymous donations	Illegal sources	Religious groups
Argentina	X	X	X	X	X		
Bolivia	X				X	X	X
Brazil	X	X	X	X	X		X
Chile	X	X		X	[10]		
Colombia	X		X	X	X	X	
Costa Rica	X	X	X	X	X		
Dom. Rep.	X					X	
Ecuador	X			X	X	X	X
El Salvador							
Guatemala	X	X			X		
Honduras	X	X	X	X	X	X	
Mexico	X	X	X	X	X		X
Nicaragua	[11]				X		
Panama	X		X		X		
Paraguay	X	X	X	X	[12]		
Peru	X			X			X
Uruguay	X	X	X	X	X	X	
Venezuela	X			X	X	X	

Source: Adaptation of Guttiérez and Zovatto (2011: 555) and author's own elaboration on the basis of the laws

[10] But a limit is put to anonymous donations
[11] Foreign funding is only allowed for party training purposes
[12] Anonymous donations are not prohibited explicitly, but parties need to justify the source of all funds received

One last trend that finds resonance in the 2000s is the introduction of monitoring mechanisms that oversee party finances and the requirement that parties provide a transparent account of their income and expenses. Some examples of countries that put party finances on a tighter leash are Brazil, Colombia, Costa Rica, and Mexico. Colombia creates stricter monitoring provisions in its 2011 law on political parties (§25). Mexico introduces transparency requirements in its 2007-2008 round of reforms. The electoral institute is appointed the task the task of supervision over party finances (Córdova Vianello 2011). The Brazilian finance law allows for more judicial inquiry in party finances and urges parties to publish an account of their funding for electoral campaigns online on a website of the electoral tribunal (§28-4). Costa Rica adopts a more efficient regime of sanctions in its chapter on illicit electoral acts and allows the electoral court power to audit party finances in its 2009 electoral code. Not all developments necessarily lead to an improvement of supervision over party finances. Argentina appears to relax its monitoring provisions somewhat, as the regulation of candidate finances is removed from the provisions that regulate party finances in 2007 (§16).

As was the case for the development of party law in other areas, the trend of regulation private funding and party finances finds resonance in the new millennium. Countries that had not yet adopted regulation in this field come to do so and countries that already did regulate these issues adopt more detailed provisions – particularly in the area of judicial oversight over parties' accounts and in the area of prohibiting specific sources of private funding. One new trend consists of the introduction of spending limits for electoral campaigns and more countries come to introduce limits do private donations.

Public funding

As shown above, the provision of *public funding* for political parties already became somewhat of a norm in the Latin American region in the transitional period. This trend continues in the 2000s, as the last countries that previously lacked any provisions for public funding – Peru and Chile – come to formally incorporate such provisions in their instruments of party law. In the case of Peru one should note, however, that a transitional disposition is added to the law,[13] which makes the provision of public funding conditional upon the spending room in the national budget. To date, no government has created a budget for the direct public funding of political parties (Tuesta Soldevilla 2011).

[13] Transitional disposition no.3

The Chilean case is more successful and provides an interesting example of the protracted character that the process of creating public funding for political parties may take on. Attempts to introduce a system of public funding for electoral campaigns go back to the transitional period. The *Junta de Gobierno* decided in 1987 to refrain from the incorporation of these elements in the new political party law. After the completion of the first democratic elections in 1990, the new government introduced legislation to create greater transparency of party finances and state funding for political parties, and to introduce limits to private funding. The Conservative Senate opposed the bill, however, as it did with other attempts at introducing such legislation in 1994 and 1998. Amidst corruption scandals in the early 2000s, attempts to regulate party finances finally gained sufficient leverage to proceed all the legal way. The conservative opposition accepted the reforms on the condition of high limits to electoral expenditures and the tolerance of donations of private enterprises (Garretón 2005). It is in 2003 that a finance law introduces direct public funding for political parties, which parties may use for organizational and electoral purposes. Initially, presidential election campaigns are exempted from public funding, but this is amended in a 2005 revision of the law. The case of creating public funding for parties in Chile shows an interesting parallel with the above-mentioned introduction of such provisions in Colombia – a reform process that also took various decades to complete.

Next to the introduction of public funding for political parties, the last decade also witnesses efforts at reforming the legal provisions that already existed in this area. This is firstly the case in Guatemala, where a 2004 reform increases the barrier of access to public funding from four to five percent of the votes received and raises the amount of funding available for political parties. Regardless of this development, public funding in Guatemala comprises only a small part of the total amount needed for election campaigns and as such parties are largely dependent upon private sources of funding (Ortiz Loaiza 2011). Note that the complete opposite development occurs in Mexico, where during the 2007-2008 reform process, private funding is regulated in more detail to shift the main source of party income to public funding (Córdova Vianello 2009, Serra 2009). This same development is visible in the case of Colombia and Argentina (Gutiérrez and Zovatto 2011). Next to the differing degrees of restriction on private funding, the extent to which public funding is able to have an impact upon the political process also differs – given the amount of public funding that is available for parties among countries. This is reflected in table 6, which provides an overview of the amount of public funding available for political parties per country in the late 1990s.

Table 11: Direct public funding per year and registered voter in 11 democracies

Country	US$	Year
Mexico	3.3	1997-1999
Dominican Republic	3.2	2000
Panama	1.8	1999-2004
Uruguay	1.7	1999-2004
Costa Rica	1.6	2002-2006
Nicaragua	1.1	2001-2006
Bolivia	0.6	1997-2002
El Salvador	0.5	1999-2004
Honduras	0.2	2001-2005
Ecuador	0.2	1995-1997
Guatemala	0.02	1999-2003

Source: Adapted from (Casas and Zovatto 2011: 36-37)

Next to revisions of the amount of public funding available for parties, several countries come to reform the threshold to obtain access to this type of funding. This is the case in Argentina, where the 2002 party finance law modifies the provisions for public funding already put forward in the party law. The new law sets a standard for distribution of public funding among parties, creates provisions for the financing of new parties, and allows for funding of the second round of presidential elections (§§14-30). This law is replaced by a new law in 2007, which maintains the old distributional provisions but sets a one percent vote threshold for eligibility for funding (§9 and §36). The 2009 law on political representation changes the distributional criteria in that 50 percent of public funding goes to national lists of parties and 50 percent to the regional parties that make up these lists – which used to be a 70/30 divide (§36).

In the case of Colombia, the provision of public funding changes little over the various reforms in the 2000s until the adoption of the 2011 party law, which establishes public funding for party organizational purposes. The divisional scheme of this funding is very elaborate,[14] which might be indicative of a difficult negotiation process. Additionally, the threshold for gaining access to public funding for elections is raised and a regional component is introduced as a threshold (§21). These two examples are indicative of the role that regional divisions may come to play in the development of party law, regardless of whether a state is a federal one or not.[15] When discussing the role that *public funding* may have in altering the

[14] Ten percent is distributed equally among parties; fifteen percent goes to parties with three percent of votes in parliamentary or senate elections; 40 percent is distributed in line with parliamentary proportionality; fifteen percent is distributed proportionally according to local elections; ten percent proportionally according to regional elections; five percent proportionally according to the number of women elected; and five percent proportionally according to the number of youth elected (§17).

[15] Colombia is a unitary state, whereas Argentina is a federal state.

distribution of power between parties, these regional divisions must therefore be taken into account as well.

An additional trend that comes up over the last decade is the rejection of public funding for political parties – particularly in the area of public funding for party organizational purposes. This occurs firstly in Bolivia, which adopted a state funding scheme for parties in 1997 (Lazarte 2006). The rejection of public funding is first visible in 2005, when the party law is reformed to lower the amount of public funding for parties. In 2008, a party finance law is adopted which eliminates all public funding for political parties. Instead, it creates a fund for the benefit of people with a disability (§1). This development is reminiscent of the 1999 Venezuelan Constitution, according to which political associations are explicitly prohibited from receiving state funding. The 2010 Venezuelan party law reform does allow, however, for the public funding of electoral campaigns.

In Ecuador, the 2009 electoral law and law on political parties break with several traditions established in past laws. Although public funding is still available for political parties, it may only be spend on activities related to training and formation of the party (§355). Additionally, the budget available for parties has been lowered substantially (Gutiérrez and Zovatto 2011). The major financial brunt of election campaigns in these three countries hence bears upon private funding of political parties. One last case in this line of countries rejecting or lowering public funding for political parties is Honduras. In 2007 Congress seeks to change the public funding of political parties in a permanent endeavour that supports parties' organizational functioning. This creates a large controversy and in the end the executive is not prepared to destine one percent of the national budget to political parties. He therefore vetoes this article out of the reform (Casco Callejas 2011). The unwillingness to fund party organizational purposes is not a regional trend, however, as illustrated by the 2003 party law in Peru – which only laws for public funding for organizational purposes – and the creation of a 2009 party law in Uruguay, which provides funding for party organizational purposes and breaks this country's tradition of only providing public funding for election campaigns.

Table 12 provides an overview of the reforms related to the *public funding* of political parties. This overview shows that although the trend to provide this type of funding continues in the 2000s, this does not necessarily mean that public funding has a similar impact upon all political systems. This is firstly due to the variance in amount of funding available to parties. Additionally some countries take steps to make public funding the only type of funding available for election campaigns, whereas other countries give preference to the private

funding of these campaigns. This latter group forms part of a counter-regulatory trend that seeks to abolish public funding for political parties – at least with regard to funding for party organizational purposes. Although this is by no means a dominant trend in the region, it does indicate that in some countries the provision of public funding for parties can perhaps be better regarded in light of providing equal access to the electoral process rather than in the light of building stable political party organizations. The discussion of public finance thresholds also portrays a concern with regional divisions within parties in the design of party law.

Table 12: Reform provisions of public funding

Country	Year	Type of reform
Introduction of provisions on public funding		
Chile	2003	Introduction of public funding
Peru	2003	Introduction of public funding[16]
Extension of provisions on public funding		
Guatemala	2004 + 06	Increase in public funding
Mexico	2007 + 08	Only public electoral funding
Honduras	2008	Public funding for organizational purposes[17]
Argentina	2009	Only public electoral funding
Uruguay	2009	Public funding for party organizational purposes
Colombia	2011	Leans towards only public electoral funding Public funding for organizational purposes
Abolishment of provisions on public funding		
Venezuela	1999	Abolishment of public funding
Bolivia	2008	Abolishment of public funding
Ecuador	2009	Lowering of public funding

Source: author's own elaboration on the basis of the laws

Access to media and election campaigns

Like the provision of public funding for political parties, the provision of free *access to the media* has long been a trend in the Latin American regulation of political parties. Two countries that had not done so previously come to allot parties with state-sponsored access to the media at election time (Panama in 2002 and Ecuador in 2009). The main bout of regulatory development that occurs in this area consists of the alteration of existing provisions. In Colombia a clear shift is visible in increasing the equality of access to the *franja electoral* – or free public media access during election campaigns. This occurs in the 2003 Constitutional reform, the adoption of the 2004 law regulation presidential election campaigns, and the adoption of the 2011 law on political parties, the latter of which extends

[16] Only on paper, not in practice
[17] Failed attempt due to Presidential veto

the *franja* even to political groups that promulgate abstention (§§36-38). In Peru, the 2003 law on political parties similarly regulates free access to public and private media during and outside of elections (§37).[18] Uruguay reforms its law in 2004 to limit the time during which parties may campaign whereas Chile modifies the distribution of access to the media among parties in a 2009 reform. Even in Bolivia and Venezuela – countries that had previously abolished public funding for parties – the new electoral codes[19] both establish that parties have free access to the media for the purpose of campaigning at election times (§21 and §66 respectively). All these changes show that the public provision of access to the media has clearly come around to stay.

Next to these developments that build upon the transitional trend of providing free access to the media, a new trend comes up in the 2000s, which consists of prohibiting the acquisition of private access to the media at election time. Brazil is a frontrunner in this regard, as its 1995 law on political parties already establishes that parties are not allowed to buy access to the media and that parties may only use the access that is provided to them by the state. The 2009 Argentine law on political representation contains provisions on media access and similarly regulates that parties are prohibited from privately obtaining access to the media (§43). Its 2007 finance law already excluded third parties from buying access to the media for political parties. The Mexican round of reforms in 2007-2008 shortens the duration of election campaigns and prohibits parties from privately funding media campaigns. In return, parties receive a substantial amount of free airtime from the state (Córdova Vianello 2009, Serra 2009). Ecuador follows suit in its 2009 electoral code, which prohibits parties from buying access to the media and allocates them with free access to the media at election time (§358).

Next to regulating access to the media, the reform of regulation dealing with the content of electoral *campaigns* also constitutes a continuing trend. The majority of relevant instruments of party law deal in great detail with the acceptable and unacceptable ways in which parties may attempt to get their campaign message across. One particular provision that gains momentum in several laws is the need to respect the honour of other parties and candidates and to treat one's opponents with dignity. Mexico has gone the furthest within this group of countries, as it constitutionally codified a ban on negative campaigning in 2007. The number of actors that may be sanctioned when violating the new regulations has grown to include not only political parties but also political groups, party leaders, candidates, electoral

[18] Also see the 2004 law on political party access to the media outside of election time.
[19] Promulgated in 2009 and 2010

observers, media outlets, private individuals, and public officials that transmit governmental advertisements at election time (Córdova Vianello 2009, Serra 2009).

In similar vein, Bolivia's 2009 electoral code prohibits parties to attack the dignity, privacy, or virtue of another candidate. These prohibitions also count for other means of communication such as text messages and the Internet (§119). In the Dominican Republic, the Electoral Court issues rules on electoral campaigns in 2001 – in line with a 2000 Constitutional provision – which state in §3 that the Court will oversee the campaigns to ensure that "virtuousness, good practice, public order, people's honour, and decorum will be maintained" (translation FM). The 2009 electoral code in Costa Rica prohibits parties from slandering one another (§136), whereas the 2004 Honduran code stipulates that parties must refrain from attacks on a person's good name and honour (§139) and that election campaigns must remain within moral and ethical limits (§146). Venezuela's 2010 electoral code provides a 15-point-list on prohibited types of advertising in §63 whereas §64 stipulates eight forms of prohibited advertising.

Next to this concern with protecting party's good honour, a concern with clientelist practices is visible in regulations that target the use of public goods for campaigning purposes. In its 2009 electoral code, Bolivia prohibits the use of public goods or services for campaigning purposes (§125) or to campaign when recognizable as a public servant (§126). Brazil adopts a campaign law in 2006 that prohibits the distribution of goods to voters during election campaigns (i.e. t-shirts, hats), the use of "show" events or famous artists to promote candidates, and the use of billboards for campaign purposes (§39), and the distribution of goods to the people by the Public Administration in an election year (except when calamities occur – §73). In Costa Rica – as per 2009 electoral code – the executive may not divulge information regarding the public works it has developed during the election campaigns (§142). These specific provisions are new, but they continue a trend already visible during the period of transitional regulation of political parties consisting of the extensive regulation of electoral *campaigns*.

Table 13 provides an overview of some of the reforms to the provisions that regulate *access to the media and election campaigns*. This overview does not show any large-scale new developments in the 2000s. Reforms build upon previously regulated provisions of free access to the media for parties and portray a concern with the content of electoral campaigns. Somewhat novel developments are a shift towards the prohibition of parties buying private access to the media and the tone used in electoral advertisements with regard to opponent parties and candidates.

Table 13: Reform of provisions on access to the media

Country	Year	Type of reform
Panama	2002	Introduction public access
Mexico	2007 + 08	Ban on private access
Argentina	2009	Ban on private access
Ecuador	2009	Introduction public access Ban on private access
Venezuela	2009	Ban on public and private access[20]

Source: author's own elaboration on the basis of the laws

Continuing trends and breaks with the past

The legal regulation of political parties has known a long history in the Latin America, with this region proving to be an early, innovative, and frequent reformer of the legal regulation of political parties. Although the development of party law is often ascribed to the transitional period, this paper shows that attempts at state building through party law go back to the early twentieth century and that the substantive recognition of political parties in the countries' Constitutions did not necessarily coincide with – and often even preceded – these democratic transitions. Likewise, the development of party funding has known a large history in the region. That being said, it is clearly the case that the bulk of party law development coincided for many countries with their return to democracy starting in the late 1970s.

A first thing that comes to the fore in this analysis of party law in the 2000s is that the legal regulation of parties generally constitutes a continuation of the trends that mostly appeared in the third period of party law development. This is the case for the general provision of public funding and free access to the media at election time, for the regulation of private funding and party finances, and for the introduction of regulations on internal party democracy. The increasing need for supervision over the functioning and behaviour of parties that comes with the extension of these provisions gives rise to an ever-increasing role of electoral courts throughout the region. These courts have come to acquire the formal role of guardians of the democratic process, as they formally monitor whether or not parties live up to the regulatory standards. The above discussion showed that some legislative delegation has occurred to these courts in the cases of the Dominican Republic and Bolivia. Panama is a particularly noteworthy example, as reforms of party law have become the responsibility of the electoral court rather than of the legislature in this country. The unwritten norm has arisen that the court forms a committee in the year before the elections – consisting of partisan,

[20] Unless financed by the Electoral Court (§191)

executive, legislative, judicial, and societal representatives – to design the reforms deemed necessary at that point in time (Valdés Escoffery 2006). Further research could shed light on how these new branches of government – that have become such a focal point in the legal regulation of political party – affect the quality of democracy in the region.

Next to these continuing trends, several new trends and breaks with the past occur in the region as well. This is the case for the introduction of a prohibition on private access to the media at election time in some countries. Additionally, several countries come to introduce spending limits for electoral campaigns. Conflicting trends exist in the requirements for the registration and dissolution of parties, as both a trend of party systems opening up to alternative forms of representation and a trend of closing up the party system are visible. The extension of provisions for internal party democracy is not completely undisputed either, as its introduction in several countries led to contention and legal strife. The biggest break with the past is visible in the rejection of public funding for political parties in several countries – at least in terms of party organizational funding. In light of these developments, future research should look at the particular conceptions of party that form the basis of these legal reforms. Of particular interest in this regard is a conception of party as an electoral vehicle and the tension between regional and national party divisions that is omnipresent in the Latin American region.

Appendix 1: Constitutional codification political parties

Country	Constitution	Article
Argentina	1994	38 + 99
Bolivia	1994	222-224
	2009	209-210
Brazil	1988	17
Chile	1980	19
Colombia	1991[2009]	40 + 103-111
Costa Rica	1949[1997]	96 + 98
Dominican Republic	1994[2010]	201 + 214 + 216
Ecuador	1998	98 + 102
	2008	61 + 65 + 108-117
El Salvador	1983	72 + 77 + 80 + 82 + 85 + 208-210
Guatemala	1985	223
Honduras	1982	47-50
Mexico	1918[2007]	41 + 54 + 56 + 60 + 63 + 116
Nicaragua	1987[2000]	55 + 173
Panama	1972[2004]	138-143 + 146 + 150-151 + 159
Paraguay	1992	124-126
Peru	1993	35
Uruguay	1967[1996]	59 + 77 + 271
Venezuela	1961[1983]	113-114
	1999	66

Source: author's own elaboration. Years between brackets stipulate years when article numbers changed or when new articles were added. In the case of the Dominican Republic, the 2010 reform constituted the adoption of a new Constitution, which largely maintained the previous Constitution's format. In the case of Bolivia, Ecuador, and Venezuela, the table includes both the present and the previous Constitution for those interested in tracing the differences in regulation between the two. Hyperlinks lead to the Constitutions in force on January 2012.

Appendix 2: Latin American instruments of party law

Country	Law	Number	Year[reform]
Argentina	Electoral code Political party law Party finance law Democratization law	19945 23298 26215 26571	1983[2009] 1985[2009] 2007[2009] 2009
Bolivia	Electoral code Political party law Party finance law Political organizations law Electoral court law	026 1983 3925 2771 018	2010 1999[2001] 2008 2004 2010
Brazil	Electoral code Political party law	9504 9096	1997[2009] 1995[2009]
Chile	Electoral code Political party law Party finance law	18700 18603 19884	1988[2009] 1987[2003] 2003[2005]
Colombia	Political party law Internal consultation law Presidential election law Regulation parliamentary benches	1475 616 996 974	2011 2000 2005 2005
Costa Rica	Electoral code	8765	2009
Dominican Republic	Electoral code	275	1997[2005]
Ecuador	Electoral code and party law	LOEOP	2009
El Salvador	Electoral code Decree on non-party candidates	417 555	1993[2003] 2010[2011]
Guatemala	Electoral code and party law	1	1985[2006]
Honduras	Electoral code and party law	44	2004[2008]
Mexico	Electoral code	COFIPE	2008
Nicaragua	Electoral code	331	2000
Panama	Electoral code	11	1983[2006]
Paraguay	Electoral code	834	1996[2007]
Peru	Electoral code Political party law	26859 28094	1997 2003[2009]
Uruguay	Electoral code Political party law Political party law Party finance law Electoral publicity law Internal lemas law Internal elections law Reform electoral publicity law	17113 9524 18485 17799 17045 9831 17063 17818	1925[1999] 1931 2009 2004 1998 1939 1999 2004
Venezuela	Electoral code Political party law Electoral court law	5928 6013 37573	2009 2010 2002

Source: Author's own elaboration. Years between brackets stipulate latest revision to the provisions on political parties in the law. Hyperlinks lead to the laws as in force on January 2012.

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