



Party Law in Modern Europe

The Legal Regulation of Political Parties in Post-War Europe

Parties and Ballot Access in Latin America: A New Trend in a New Political Context -

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Abstract

For the last ten years a group of Latin American countries have passed legal reforms raising ballot access requirements. Although each of these reforms have been profusely discussed in every one of the countries involved, so far, they have not been linked as constituting a regional trend. Firstly this paper shows that this trend actually exists, so reversing the dominant leaning on reforms in this field during the 1980s and 1990s. Secondly, the paper shows that the ongoing regional trend emerges in the aftermath of a legitimacy crisis which has been surmounted in every one of the cases.

More specifically, the paper identifies a common sequence followed by four countries (Argentina, Colombia, Mexico and Peru) which leads to the raise of ballot access requirements. The sequence involves the following stages: first, a legitimacy crisis which paves the way to reforms opening up the political system; second, once the legitimacy crisis is left behind, a consensus emerges on the negative consequences of the previous reforms; and third, this consensus culminates with the introduction of the restrictive reforms which have dominated the Latin American landscape for the last decade.

Every case is analyzed by observing the coalescence of what Matthew Shugart (2001) defined as the inherent and contingent conditions necessary to account for the passing of electoral reforms.

Parties and Ballot Access in Latin America: A New Trend in a New Political Context

The presence of quantitative requirements for ballot access is a common feature of representative democracies. Even though rarely studied, these quantitative requirements may have significant consequences over the functioning of a political system (Lewis-Beck and Squire, 1995; Birnir, 2004). Fixing strict criteria in terms of members, spatial distribution, or votes can lead to what Kenneth Janda calls a “Protection Model”, in which the law protects existing parties from potential competitors (2005:12). When parties deliberately impose high entry barriers to avoid potential challengers there could be a cartelization (Katz and Mair, 1995) or a de facto closing of the party system (Issacharoff and Pildes, 1998). To the contrary, too lenient conditions can foster in certain contexts the fragmentation of the party system.

During most part of the 20th Century the regulation of ballot access in Latin America was marked by the existence of what the legal doctrine called qualitative requirements (Vanossi, 2000:258). In a context of institutional instability and deep ideological polarization, this regulation was mainly directed to prevent the electoral participation of left-wing parties or simply to outlaw specific parties or leaders (López, 2001; Molenaar, 2012). Since the third wave of democratization, the issue of the

qualitative requirements lost preeminence, to be replaced by the rising importance of quantitative requirements. In particular during the late 1980s and 1990s there was a strong trend towards a reduction in the quantitative requirements to form parties and run elections, as a reaction to social demands to open the political systems (Tanaka, 2005; Mustapic, 2012). However, over the last years a group of Latin American countries has implemented reforms raising party-formation costs.¹ And it is particularly noteworthy that, while each of these reforms has been broadly discussed and analyzed in every one of the countries in which they took place, they have not been so far identified as part of a regional trend.

This paper seeks to contribute to the study of party and electoral law in contemporary Latin America in two main ways. First, it identifies and describes a so far overlooked trend involving a group of countries, a trend which develops in an opposite sense than the one which had been dominant until a few years ago. Second, it offers a tentative answer to the question about why in the last years some Latin American countries raised party-formation costs. This answer brings to the fore the issue of party fragmentation as a problem perceived by political elites. Political fragmentation emerges then as a new issue motivating political elites to promote electoral reforms. But fragmentation by its own does not suffice to explain why some countries raised ballot access requirements while some others did not. This paper shows that countries which did pass these reforms are those in which fragmentation is perceived as a result of abuses caused by previous reforms which opened up the political system as a response to political legitimacy crises.

These two goals determine how the paper is organized. The first section analyses party-formation costs' reforms implemented over the last decade in Colombia, Peru, Mexico and Argentina. The second section, more extensive, explains the conditions which ushered in the sanction and implementation of these reforms, underlining a common pattern shared by the four cases.

¹ The concept "party-formation costs" is adopted from Hug (2001) and Birnir (2004), and refers to quantitative pre and post election requirements to obtain and retain legal recognition which allows political organizations to run for elections. Instead, ballot access requirements refer, in strict sense to pre-election requirements only, and do not necessarily to parties. Yet, ballot access is often used with the same meaning of party-formation costs and therefore in this paper the two terms are used interchangeably, even when party-formation costs is preferred for being more accurate,

The Rising of Party-formation Costs as a New Trend in Latin America

Although several works have described the presence of party-formation costs in Latin America (Bendel, 1997; Bareiro and Soto, 2007; Franco-Cuervo y Floréz, 2008), it is difficult to find comparative studies in this field concerned with the comparative development of legislation. An exception to this gap is the recent work of Fransje Molenaar. By observing continuities and breaks in the regulation of political parties in the region, this author focuses on ballot access requirements to point out that “the registration and dissolution of political parties has been an active field of party law reform over the last decade” (Molenaar, 2012:16). Molenaar concludes that there is no clear trend in this field, since both a trend opening up and a trend closing up the party systems are visible, each one involving a group of four countries (2012:18).

Certainly, as Molenaar points out, some countries introduced or strengthened the option to run elections through non-partisan vehicles, as political movements or even independent candidates. This is the case of Ecuador (in 1995), Venezuela (in 1999), Bolivia (in 2004) and Mexico in 2012, although in this last case, only provisionally and still without precise rules. However, it is highly debatable whether the introduction of independent candidacies in these countries implies an opposed trend to the one described above. Indeed, the non-partisan candidacies introduced in the late 1990s and early 2000s must fulfill identical or very similar quantitative requirements than political parties, being these requirements quite stringent in all these countries, all of which put into question whether they really entail an opening-up of the political system.²

In this paper I contend that an attentive overhaul of this topic shows that over the last ten years there has been a clearly dominant trend, in the sense of imposing political organizations more stringent requirements for ballot access. As a matter of fact, during this period four countries introduced significant reforms to party-formation rules, and all of them did it in the same restrictive line, closing up the party system. As it is shown in Table 1, this is the case of Colombia, Peru, Mexico and Argentina.³

² In Venezuela, the “groups of voters” must prove the support of at least 0.5 per cent of the voters from the electoral district in which they seek to compete, the same requirements imposed to parties. The “citizens by their own initiative” must meet a much demanding requirement: 5 per cent of signatures of the electoral register. In Ecuador, “political movements”, exactly as parties, must gather 1.5 per cent of signatures to run elections. The same applies to Bolivia, where “groups of citizens”, “indigenous people”, and political parties must prove their supporters reach the 2 per cent of the previous election turnout.

³ One year earlier, in 2002, Panamá reduced the number of required signatures to constitute a party from 5 to 4 per cent of the previous election total turnout. With this requirement Panama remains among the most restrictive democracies in the world regarding ballot access, and therefore this reform can hardly be pointed as opening up the political system.

Table 1: Major party-formation costs reforms in Latin America 2003-2009: Argentina, Colombia, México and Peru

Argentina	<p>2009:</p> <ul style="list-style-type: none"> a. Party membership instead of signatures to obtain and retain legal recognition. b. 2% vote in each district to retain legal recognition (before: 2% in one district to retain legal recognition in all districts) c. 1,5% votes as a threshold in primaries to run in general elections
Colombia	<p>2003:</p> <ul style="list-style-type: none"> a. 2% vote to obtain legal recognition (before: 50,000 signatures) b. Threshold of 2% vote or 50% of quotient for seats c. Ban on multiple lists d. Ban on double membership <p>2009:</p> <ul style="list-style-type: none"> a. Rise of votes for legal recognition and threshold for seats to 3%
Mexico	<p>2003:</p> <ul style="list-style-type: none"> a. Rise of number of states and/or majoritarian districts in which party assemblies must be constituted in order to obtain legal recognition b. Rise in the number of members to obtain legal recognition from 0.13 to 0.26% of electoral register c. Ban on new parties to form coalitions <p>2008:</p> <ul style="list-style-type: none"> a. Permission to new parties to form coalitions, but counting votes per coalition parties, each one must reach 2%
Peru	<p>2003:</p> <ul style="list-style-type: none"> a. Formation of party members` committees geographically distributed b. 5% votes or one congressman elected to retain legal recognition (before: only signatures) <p>2005:</p> <ul style="list-style-type: none"> a. Rise from 1 to 6 congressmen to retain legal recognition. b. Threshold of 5% for seats starting in 2010 (4% in 2006) <p>2009:</p> <ul style="list-style-type: none"> a. Rise in the number of supporters from 1 to 3 per cent to obtain legal recognition

The following paragraphs describe in some detail the legal reforms passed by each of these four countries to reach similar goals.

Colombia

In Colombia two legal reforms, passed in 2003 and 2009, modified the requirements for parties to obtain legal recognition and nominate candidates. The 2003 reform pursued to limit the fragmentation of the party system, as well as parties' personalization and internal disorder (Roll y Pérez, 2011; Hernández Becerra, 2006:337). With that goal, the Legislative Act 1 of July 3, 2003, replaced article 108 of the Constitution. This article required parties and political movements 50,000 votes or signatures to obtain legal recognition, and demanded 50,000 votes or the election of a congressman to retain that status. The reform abolished those requirements stipulating that in order to obtain legal recognition it was necessary to get at least 2 per cent of the votes cast to the Senate or the House of Representatives; not reaching that percentage entails the register's cancellation. The reform also fixed a threshold of 2 per cent of the vote for the Senate and 50 per cent of the quotient correspondent to each district for the House of Representatives. In the same vein, aiming to make parties more cohesive, the new legal framework eliminated the option for parties to nominate multiple lists (a provision also incorporated by the 1991 Constitution). A similar goal followed the ban on double affiliations, a by then tacitly authorized practice (De la Calle, 2010).

A new constitutional reform, passed in 2009 (Legislative Act 1, July 14, 2009), raised the requirements and restrictions imposed in 2003. The reform approved in 2003 had been successful in several concerns, but had not managed to reduce significantly the effective number of legislative parties (Roll y Pérez, 2011:6). In order to advance towards that aim, the reform elevated both the votes required to obtain legal recognition and the threshold to allocate seats from two to three percent. Additionally, in order to raise defection costs and to entrench existing parties, the reform established that those congressmen who decide to run elections through a party different to the one by which they were elected must renounce their seat not later than 12 months prior to registering the nominations.

Peru

During the course of the last ten years, Peru substantially raised party-formation costs. The first and foremost measure in this direction was the approval of a party law, in November 2003. This law was decisively oriented to cut down the number of parties, and to strengthen those (presumably few) which would meet the new requirements (Tanaka, 2005:122; Meléndez, 2006). The law reestablished the partisan monopoly to

run elections for national positions (which had been eliminated by the 1979 Constitution), and substantially raised ballot access requirements.

According to Fernando Tuesta Soldevilla, the main barrier introduced by this law lies on the requirement for new parties to constitute the party members' committees with no less than 50 members each in at least one third of the country provinces (65 out of 195) including no less than two thirds of the provinces (17 out of 25). While this entails a minimum number of members of 3,250, the key aspect lies on the stringent spatial registration requirement which seeks to ensure that parties have a real national character (Tuesta, 2006:778; Meléndez, 2006:47). The law also created a party-members public register aimed to avoid apocryphal supports, and attempted to limit defections by prohibiting legislators to quit their parties at least seven months before the elections if they are to run on a different party's ticket. Lastly, the reform fixed comparatively strict conditions to retain the register: parties should get a five percent of the valid vote in national elections or have at least one representative elected. In 2005 the law was amended modifying this option. From then on, parties would not keep the register unless they had six representatives elected (or obtained five percent of the vote, as in the original text). Simultaneously, Congress introduced a threshold of five per cent of the national vote for the allocation of seats, as of the 2010 elections.

And still, in 2009 a new reform raised the number of party members required to obtain legal recognition from one to three percent of the previous election turnout.

Mexico

In December 2003 Mexican Congress reformed the Federal Code of Electoral Processes and Institutions (COFIPE) in the same direction than the previously referred cases. On the one hand, the reform raised party-formation requirements: instead of 3000 members in 10 states or 300 members in 100 single member districts, and a total of 0.13 percent of the national electoral register – as it was prior to the reform – the amendment required 3000 members in 20 states or 300 members in 200 single member districts, which otherwise should amount to 0.26 percent of the national register. The reform also raised the requirement of party members' assemblies, whose number was increased in the same rate as party members (from 10 state assemblies or 100 district assemblies to 20 state and 200 district assemblies). The reform also imposed a stricter control over

these assemblies, in order to ascertain the veracity and the date of the memberships to avoid “last minute memberships, as it used to be the case” (Flores Andrade, 2007:480).⁴

Yet, the most demanding revision was the one prohibiting new parties to form electoral alliances the first time they run elections. This measure was aimed to prevent new parties from reaching the legal threshold through the constitution of electoral alliances, as it had happened with three parties in the 2000 elections (Flores Andrade, 2006). This norm was amended once again in 2008, but in such a way that the practical consequences remained the same. While new parties were allowed to integrate electoral coalitions, the reform set forth that every member of the coalitions must appear separately in the ballot, so that while all votes cast for the parties are added to the coalition as a single political ticket, each party gets votes individually to determine whether it has or not reached the two percent required to maintain legal recognition.

As in the previously analyzed cases, the Mexican reforms were also promoted with the explicit goal of reducing the number of parties. Yet in this case, more clearly than in the others, the objective was justified mainly on the basis of the generous funding that Mexican registered parties received from the state.

Argentina

By the end of 2009 Argentine Congress passed law 26571 amending the party law and the electoral code, with the explicit purpose of reducing the number of parties. The ruling party's (Front for Victory-PJ, hereinafter FPV-PJ) highest political figures involved in this reform repeatedly stated that the amendments pursued stabilizing a party system which had become inchoate.⁵ In order to achieve this goal, the reform, as in the previously referred cases, raised the requirements to obtain and retain legal recognition. But, additionally, it disentangled the legal recognition from the right to run general elections by setting open and obligatory primary elections with a threshold as a qualifying round.

With regard to legal recognition, the reform replaced the requirement of a percentage of signatures for a percentage of party members. This apparently subtle distinction is nonetheless crucial: The signatures required by law could belong to any citizen – including those not affiliated to any party, or even those affiliated to other

⁴ The translation from Spanish to English in this case, as in the rest of the paper, belongs to the author.

⁵ In terms of senior official and political scientist Juan Manuel Abal Medina, “the core of the project lies in ... consolidating a consistent and well-structured party system” (Abal Medina et al, 2010:51).

parties -, and the same citizen was allowed to support as many parties as he/she wanted. According to the new regulation, parties must show a number of members of at least 0.4 per cent of the total registered voters of the district, a requirement which is checked every year.

The reform also revised the causes for party cancellation. Previously, national parties kept their status by getting at least two percent of the vote in any one of the 24 provinces of the country, in one every two legislative general elections. The new legal framework determines that parties must get two percent of the vote every two elections in every district where they want to maintain the register.

On the other hand, the reform established a system of open, compulsory and simultaneous primaries (PASO), which function both as a mechanism to select candidates and as a qualifying round for parties, which must reach a threshold of 1.5 percent vote to run in general elections. Likewise, parties or alliances must gather 1.5% in each district in which they want to run for deputies or senators.

In sum, Colombia, Peru, Mexico and Argentina passed, in the last decade, legal reforms raising the requirements with the aim of stopping party fragmentation. This deliberate introduction of restrictive reforms implies an unprecedented and remarkable feature of party law in contemporary Latin America.

Political Fragmentation and Legal Reform

The reforms described above shared the explicit purpose of reducing party system fragmentation and, more specifically, lowering the number of legally recognized parties. This reveals that political fragmentation has emerged as a new political issue, which ruling and major parties in general seek to restrain, by means of legal reforms.

In the last decades, Latin American democracies have witnessed the waning of traditional political identities and the profound personalization of electoral processes (Mainwaring and Scully, 1995; Mainwaring et al, 2006; Cheresky, 2011, among many others), as well as a strengthening of particularistic linkages to the detriment of programmatic ones (Roberts, 2002; Kitschelt et al, 2012). This led to the increase of electoral volatility rates and the continuous emergence of short-lived political forces. In many cases, governments besieged by legitimacy deficits primarily originated by economic crisis promoted political reforms opening up the channels of political representation (Tanaka, 2005).

Yet, in the 2000s the economic growth that spread out over the entire region made it possible to leave behind the recurring political crisis that used to affect Latin American countries. This favored political stability and granted elected leaders, regardless of their ideological profile and rhetoric, approval ratings unknown by their predecessors of the 1980s and 1990s. In this context, political elites, both traditional and new ones, found it both convenient and possible to introduce legal reforms to stop or slow down political fragmentation.

Certainly, countries less affected by political fragmentation, those with a relatively more institutionalized party system – as for instance Uruguay, Chile, Panama or Costa Rica – have not implemented this sort of reforms. Conversely, countries seriously affected by political fragmentation did introduce reforms raising ballot access requirements already in the 1990s, as Ecuador and Bolivia.⁶

However, even when fragmentation and growth in the number of parties appears as a necessary condition to the raising of party-formation costs, it does not suffice to explain why and how these latest reforms were passed and implemented. For instance, Mexico had 11 recognized parties when it approved the first restrictive reforms, while Brazil has 30 political parties, as of 2012, and has not modified its ballot access requirements. Interestingly, the four cases studied in this paper, in which a legal reform raising ballot access and party recognition requirements was passed recently, show a similar path made up by the following four steps (illustrated in table 2).

- a. A broad discredit of traditional parties entailing a legitimacy crisis, in the frame of which social demands to open up the political system gains ground
- b. Implementation of reforms aimed to “shorten the gap” between politicians and the people. This implies reducing party-formation costs and/or lowering barriers to obtain legislative seats.
- c. Proliferation of new legally recognized parties at the same time as the legitimacy crisis is surmounted (mostly due to reasons completely different to the reforms, mainly economic growth). This rise in the number of parties paves the way to a new consensus among political elites and experts on the negative consequences of the previous reforms.

⁶ Bolivia enacted in 1999 a party law elevating the required members to form a party from 0.5 to 2 percent of last election turnout, aiming to stop the multiplication of parties (Lazarte, 2010:299). Previously, in two successive reforms (1992 and 1997) Ecuador had raised the percentage of votes required to retain party registration up to 5 percent of the national vote.

d. The ruling party – usually supported by other major parties - finds it convenient to promote a reform to raise party-formation costs.

Table 2: Sequence followed by countries which raised ballot access requirements

	Colombia	Perú	Argentina	México
Legitimacy Crisis	Exclusive two-party system	False Democracy	Throw Everyone Out! (¡Que se vayan todos!)	Electoral Fraud
Reform to Open up the Political System	New Constitution (1991) and Statute on Parties (1994): No barriers for electoral competition – Multiple lists. Single district with PR and no threshold for Senate	New Constitution (1993): Unicameral Congress in single district with PR and no threshold. Reduction in the number of party members required to obtain legal recognition (2001)	Elimination of party dissolution clauses	Conditional Register for parties
Negative Consequences	Proliferation of parties: Electoral microenterprises	Proliferation of parties: Disposable Parties	Proliferation of parties: Parties as rubber stamps	(Moderate) proliferation of parties: Register for public funding
Reforms to Close the Political System	Constitutional Amendments 2003 and 2009	Party Law 2003 and successive reforms (2005 and 2009)	Party Law reform 2009	Electoral Code reforms 2003 and 2008

Of course, this is not to suggest that only countries following this sequence can pass reforms raising ballot access requirements. But it is interesting to note that whilst fragmentation is admitted as a problem which should be addressed via legal reforms in other Latin American countries (as for instance in Brazil - see Fleischer y Barreto, 2010 - or Paraguay - see Duarte Recalde, 2012), only those countries that went through this sequence have eventually implemented this kind of reforms in the last decade.⁷

⁷ On the other hand, it goes without saying that, a legitimacy crisis does not necessarily trigger this sequence which leads to raise ballot access requirements. As it is well known, in several Latin American countries a deep legitimacy crisis ended up with the collapse of the previously existent party system, followed by the dominance of populist leaders who managed to restore governability without major changes in ballot access rules. An analysis of these leaderships – as Hugo Chávez in Venezuela, Evo

As Matthew Shugart notes, it is the coalescence of inherent and contingent factors what turns the introduction of an electoral reform possible. Inherent factors refer to the flaws in the functioning of the electoral system. Contingent factors are those which eventually trigger the reform, namely the interests and calculations which unleash the political decision of those who yield enough power to make legislatures pass a reform.

Contingent factors may materialize because political actors believe they will be better off under new rules (outcome-contingent factors). But contingent factors can also exist when political actors evaluate that the very act of voting for a reform in the direction suggested by the inherent factors will improve their public image, or when they consider that not voting for such a reform could harm their approval rates (act-contingent factors) (Shugart, 2001:26-7). This means that, firstly, relevant political actors must identify the existence of a problem in the functioning of the electoral system, and then, at certain point, those actors with the power to pass a reform must find it convenient to implement it.

The following paragraphs describe in some detail the process by which ballot access was eventually raised in our four cases.

Colombia: The 1991 Constitution and micro-electoral enterprises

By the 1980s Colombian political system, which had been historically dominated by the Liberal and Conservative parties, became increasingly defined as an exclusive two-party system (Gutiérrez Sañín, 2001). Even the growing levels of political violence were then usually attributed to the rigid control of the political system exercised by traditional parties. This rigid control ushered in a “restricted democracy” (Bejarano and Pizarro, 2005), largely based on the clientelistic use of state structures (Archer, 1995). Hence in the course of the 1980s a strong consensus emerged on the need to get some fresh air into the political system. Already Conservative President Belisario Bentancourt (1982-86) endorsed reforms in this line, mostly based on decentralization, including mayors’ direct elections. His successor, Liberal President Virgilio Barco (1986-1990) put forward a constitutional reform which only materialized due to the decision of the following president, the also Liberal César Gaviria. As Martin Tanaka puts it “it is clear

Morales in Bolivia, and Rafael Correa in Ecuador – is obviously beyond the scope of this paper, but in any case it is worth saying that these leaders succeeded in restoring the political order introducing constitutional reforms which strengthened the position of the president (starting by the presidential re-election) and many times inclining the electoral field on their benefit.

that for both Barco and Gaviria the promotion of an institutional reform was a response to the critical situation of violence and to the state legitimacy crisis” (2005:62).

It is thus not surprising that the enactment of a new Colombian Constitution in 1991, replacing the one in force since 1886, explicitly held as a primary aim opening up the political system. If anything was expected from the Constitutional Assembly this was an answer to the social demand of putting an end to a system blamed for granting privileges to traditional parties and precluding the emergence of new political forces (De la Calle, 2010:392; Bejarano and Pizarro, 2005:245). Yet, the depth of the changes introduced by the 1991 Constitution responded to the strong presence of new organizations in the composition of the Assembly. Hence even when the constitutional reform was sponsored by leaders of a traditional party in order to respond to the growing demands (an Act-contingent factor in Shugart’s terminology), the contents of the reform were largely defined by anti-establishment forces motorized by an outcome-contingent factor.⁸

The Constitution virtually abolished entry barriers to democratic competition (Bejarano and Pizarro, 2005:245). It recognized “social movements” and “groups of citizens” as equivalents to parties, requiring 50,000 signatures or 50,000 votes in the previous election to obtain legal recognition, which granted access to public funding and free media. The Statute on Parties and Movements passed in 1994 went further, determining that anyone could register a candidacy without legal recognition, by paying a sum to be refunded insofar as the candidate gets 50,000 votes. And still, it was the authorization of the so called multiple lists - multiple lists from the same party were allowed to compete without pooling their votes - what eventually had the utmost effect on party system fragmentation. Lastly, the constitutional reform radically changed the Senate electoral system. In order to weaken local party barons, nationalize the functioning of party organizations, and encourage the election of minor parties’ representatives, the Constitution replaced the election of senators on the basis of multiple departmental districts by a single national district (Crisp and Ingall, 2002).

The broad literature on the consequences of these reforms coincides in stressing that while they effectively opened up the Colombian party system, they did so in such a way that contributed to its atomization, producing also an enormous disorganization

⁸ Although the Liberal Party was the most voted list, it hardly reached 25 representatives of a total of 77, while the Conservative party had only 5. Instead, a myriad of third forces, committed all of them to open up the political system, got 44 seats in the Assembly, being Democratic Alliance M-19 the biggest force with 19 representatives (Hernández Becerra, 2006:342).

among parties.⁹ Certainly, by the beginning of the 1990s the traditional Colombian two-party system had already fall into a profound crisis, with both liberals and conservatives suffering from ruthless factional disputes (Archer, 1995). Thus, the new Constitution definitely did not initiate the deinstitutionalization of a system which would have not remained unaltered irrespective of what electoral system was in force. However, these reforms did contribute to sharpen the crisis of traditional parties as well as to atomize the party system (De la Calle, 2010:395).

The point is that party competition was structurally changed in the years that followed the reform. In particular, the option for parties to run multiple lists stimulated the deinstitutionalization of parties, paving the way to what came to be known as “electoral microenterprises”, which means candidates with no real linkages with a party whatsoever, even though they formally run in a party list (Pizarro, 2002). In reality, each candidate (or micro-entrepreneur) run his own candidacy with total autonomy from the party organization (Shugart et al, 2007; Pizarro, 2008).

The single national district for the Senate also furthered fragmentation. For instance, in the 1998 Senate elections, the most voted list got 1.9 percent of the vote (which implied the election of two senators) whereas eight lists obtained a seat with less than 1 percent of the vote. The multiplication of lists ended up destroying the remnants of party organizations. In terms of Eduardo Pizarro, “the lax rules of the game, whose original intention was to broaden the political system, eventually became a factor of disorganization and an obstacle to the emergence of alternatives” (2002:4).

As shown in Table 3, the number of lists competing for the Senate and the House of Representatives exponentially increased from 1991 to 2002, the last election before the 2003 reform.

Table 3: Colombia. Number of lists in legislative elections, 1991-2002

Election	Lists for Senate	Lists for House of Representatives
1991	143	486
1994	251	628
1998	319	692
2002	321	906

Sources: Bejarano and Pizarro, 2005:246; Roll y Jiménez, 2011:5-6

⁹ See Gutiérrez, 2001; Pizarro, 2002; Pizarro and Bejarano, 2005; Shugart et al, 2007.

The growth in the number of competing lists was paralleled by a rise in the number of effective parties in both chambers of Congress, which increased from 2.2 in 1990 to 7.39 in 2002 in the House and to 9.19 in the Senate (Taylor, 2009:93).

Already by the late 1990s a solid consensus had cemented amongst experts and politicians on the deleterious consequences of the regulations introduced in 1991 and 1994. By then, Colombian political crisis was no longer attributed to a restricted institutional design but precisely to the opposite, an extreme level of laxity (Bejarano and Pizarro, 2005:245-6; Gutiérrez, 2001). When President Ernesto Samper created the 'Comission for the Study of Party Reform' in 1995 the inherent factors to reform were already visible, and from then on they would only get stronger. In fact, during the 1998 electoral campaign conservative candidate Andrés Pastrana promised an electoral reform as a mode to gain support from voters and other political forces. But the contingent factors would only mature during the presidency of Alvaro Uribe.

The 2002 presidential elections exposed some of the main symptoms of the dissolution of the historical Colombian two-party system, but simultaneously the elections results engendered the conditions to reform the rules that had led to the atomization of the political system. These elections were symptomatic because both parties which had dominated Colombian politics for a hundred and fifty years were relegated by Uribe, who obtained a landslide victory with 53 percent of the vote, running as an independent candidate, and denouncing the spurious "*politiquería*" of traditional parties.¹⁰

But these elections were also the inflection point which would lead to political reform. Uribe – as other presidential candidates before him - had committed himself during the electoral campaign to initiate his term by launching an electoral reform. But, unlike his predecessors, Uribe managed to make use of his high approval rates as well as of the decomposition of traditional parties to obtain high rates of legislative success, even when *Primero Colombia* lacked a legislative majority (Milanese, 2008).¹¹ Additionally, the consensus, which included public opinion on the need to reform electoral and party rules, had gained so much strength that promoting some kind of reform became an Act-contingent factor for party politicians. Leaders of legislative

¹⁰ Uribe, who had defected from the Liberal Party, was this time supported by a myriad of groups - including the, by then electorally irrelevant, Conservative Party - under the label "Primero Colombia" (Colombia First).

¹¹ During Uribe's first term 67% of senators and 40% of deputies switched parties, most frequently to join Uribistas' groups (Roll y Jiménez, 2011:12)

groups did not find it convenient to be observed as confronting with a popular president, and rejecting the electoral reform (Shugart et al, 2007). On the other hand, turning back to single party lists became a reasonable measure for traditional parties` politicians, who in the wake of the 2002 elections saw the disappearance of their parties as a real possibility, reinforced by multiple lists (Shugart et al, 2007). Hence, in July 2003 Uribe obtained the agreement of conservatives, liberals, and part of the leftist Democratic Pole to advance a reform with contents that already had the broad consensus of experts on electoral and party law (Roll y Jiménez, 2011:4).

The reform was explicitly aimed to set more restrictive conditions for ballot access. According to David Roll and Nadia Pérez (2011:4), it was about bringing some order into the chaos that by then characterized Colombian electoral competition.

The new rules had immediate effects on the number of competing lists. However, they were less successful in lowering the effective number of parties and limiting the extreme personalization of the political process (Albarracín and Milanese, 2012; Clavijo et al, 2009; Pachón y Hoskin, 2011). Since then, experts in this field and politicians alike coincided in that achieving the reform`s goals would demand stricter requirements for party recognition.¹² Hence it was no wonder that in 2009, in occasion of a new constitutional reform, called responding to a different issue,¹³ the threshold was raised from 2 to 3 percent, both to be elected as well as to retain legal recognition. The certitude that the two percent threshold had not been enough to prevent the atomization of the system worked as the inherent condition.

Naturally, for the main political forces closing up the political system was a convenient decision. A political landscape, in which the demand to open up the political system had receded in the face of a hugely popular president, turned this convenience into a possible public policy.

In sum, in 1991 a political crisis which included a profound crisis of parties` legitimacy paved the way to a reform whose main goal was to open up the political system. This gave place to an extremely lax scheme of ballot access (De la Calle, 2010:417). The implementation of this reform sped up the process of factionalism, personalization and fragmentation of party politics. As a consequence, a new consensus

¹² For example, scholar Augusto Hernández Becerra held in 2006 that “if the goal really consists in fostering the emergence of a moderate multi-party system, it would have been indispensable a threshold no lower than 5 per cent” (2006:358).

¹³ The Legislative Act 1 of 2009 was above all the answer of Colombian politicians to the scandal caused by the linkage between a group of legislators and paramilitary groups (the “parapolitics scandal”) (Rodríguez Pico, 2011)

emerged on the need to do away with the extreme laxness of the electoral system through reforms which sought to strengthen parties' cohesiveness and the governability of the political system. A highly popular president who had pledged himself to change electoral and party rules decided to put pressure on Congress, which ended up passing the reform. The evidence that, in spite of having reached certain goals, the reforms had not led to a moderate multi-party system implied the inherent factor to elevate the threshold. This measure was taken when, in the context of a political crisis, a Constitutional Assembly could amend electoral rules.

Peru: Fujimorismo and party system collapse

In Peru, the last years of the 1980s witnessed the discredit of those parties which had dominated the political scene during the democratic transition. The standing of *Acción Popular* and the *Partido Popular Cristiano* had been severely hurt by the poor performance of President Fernando Belaúnde (1980-85), whom both parties had supported. Similarly, the historically popular APRA fell into bankruptcy following Alan García's disappointing presidency (1985-90). Lastly, *Izquierda Unida* crumbled by ruthless factional struggles.

The 1990 presidential campaign turned apparent the breakdown of the party system. The main contenders, Mario Vargas Llosa and Alberto Fujimori, both outsiders to the party system, embodied personalized candidacies sponsored by brand-new labels (Cotler, 1995:346-7). By then, the Peruvian party system revealed clear symptoms of collapse (Dietz and Myers, 2007; Levitsky and Cameron, 2003). Fujimori reached power running by an ad-hoc party, Cambio 90 (Change 90), holding a political discourse hostile to traditional party politics. In the wake of the 1992 self-coup, Fujimori called a Constitutional Assembly supposedly destined to put an end to what he called "false democracy" which had so far dominated Peru. The new Constitution – passed by a majority of *Fujimorist*¹⁴ – replaced the bicameral Congress, with departmental districts of low and medium magnitude, by a unicameral legislature formed by 120 members elected in a single district without threshold. This was expected to benefit Fujimori, since the simultaneity between presidential and legislative elections would produce strong coattail effect, freeing the president from the need to negotiate with local bosses and to develop a territorial organization (which he lacked).

¹⁴ In the elections for the Constitutional Assembly, held in November 1992, the ruling coalition obtained 44 out of 80 representatives.

But, at the same time, the huge district magnitude without threshold turned it possible to reach seats with less than 0.8% votes. As expected, this stimulated the fragmentation and personalization which already existed in the field of the opposition (Tuesta, 2008:840). The low amount of votes required to obtain a seat worked as a new factor for atomization. With no chances to win the presidency, opposition groups had no incentive to form electoral coalitions (Tanaka, 2005:108). For opposition politicians, heading a personal list became the most reasonable option to reach a seat in Congress. In this way, rather than the openness of the political system, the reform triggered its fragmentation (Tanaka, 2005:96).

As in the case of Colombia and the 1991 Constitution, the institutional reforms implemented by Fujimori did not spawn the atomization of the Peruvian party system. However, also as in Colombia, these reforms hastened this process, which ended up with the disintegration of party structures (Meléndez, 2006). There was a proliferation of what Steven Levitsky and David Cameron called *disposable parties*, which means parties created as a politician's personal device to run an election. "Somos Perú" (We are Peru), "Perú Posible" (Possible Peru), "Perú Ahora" (Peru now), "Perú 2000", "Vamos Vecino" (Neighbor go) were but some, among the many labels created to promote a specific candidate in one election, with no real expectations to set up an enduring organization, nor to link the party to civil society (Levitsky and Cameron, 2003:10-14).

The number of lists competing in national legislative elections had already grown from 12 to 16 from 1985 to 1990, but for the first national elections disputed under the new Constitution they climbed up to 20. Yet, fragmentation turned more visible in the number of lists getting seats, rather than in the competing lists. As shown in table 4, while only six lists had obtained legislative representation in 1985 and eight did it in 1990, the 1995 elections gave place to a Congress with representatives elected out of thirteen different lists.

Table 4: Lists competing and obtaining seats in Peru, 1980-1995

	Competing Lists	Lists that obtained seats
1980	15	5
1985	12	6
1990	16	8
1995	20	13

Source: Own elaboration on the basis of Meléndez, 2006:55 and Jurado Nacional de Elecciones

All through Fujimori's government, the political stage was dominated by the president on the one hand, and "the opposition", a myriad of independent figures with no stable party organizations, on the other (Levitsky and Cameron, 2003). Still, once Fujimori's government came to an end, political elites decided to advance democratization by reducing entry barriers to electoral competition. In that line, the amount of signatures required to form a new party was drastically reduced from four per cent of the electoral register (certainly a very high requirement which had subsisted all over the Fujimorista period) to one per cent. As it was to be expected, this favored the proliferation of new parties (Tanaka, 2005:108). But, on the other hand, the post-Fujimori elites decided to return to a system of 25 multi-member districts (most of them of low magnitude) for legislative elections, so downgrading the proportionality of the electoral system.

In any case, in the context of the democratization process that followed the collapse of Fujimorismo, it began to gain ground among experts and politicians the notion of the need to stop the breaking up of the party system. Following this reasoning, the extreme weakness and dispersion of political parties was meant to be addressed by a profound political reform (Tanaka, 2002; Lynch, 2004; Meléndez y León, 2010).

This suggests that the inherent factor for reform was already present when, shortly after the 2001 elections, the Congress created the sub-committee for the drafting of a party law.¹⁵ National and international NGOs, along with scholars and politicians debated the bill, which ended up in a law passed with a broad multi-party consensus (Meléndez, 2006:46; IDEA, 2004). Martín Tanaka reviews the combination of inherent and contingent factors which contributed to the approval of the law. According to Tanaka, the bill expressed "a common sense held by the academic community, the NGOs and some cooperation agencies" in the sense of setting more stringent requirements to recognize parties, and rewarding the fulfillment of these requirements with financial support and the monopoly of political representation. But all in all – Tanaka follows –, the law was passed as a result of "the main parties' calculus on the need to establish some order that enables the most consolidated parties to remove from the electoral arena those spontaneous candidates that in a lucky strike in the midst of an electoral campaign could compete in an effective manner with them" (2005:122).

¹⁵ From the renounce of Fujimori in November 2000 to the approval of the party law in 2003, around 40 bills to regulate party activities were proposed to the Peruvian Congress (IDEA, 2004).

When the law was passed, by the end of 2003, it was expected that it would lead to a system with a small number of players. (Meléndez, 2007:264). Above all, as mentioned in the first section of this paper, the requirement to set up members' committees distributed around the country appeared as a barrier hard to overcome. Nonetheless, by September 2005 the 24 political organizations, registered when the law was approved, had managed to fulfill the requirements, while five new ones had done the same (Tuesta, 2006:779).

Several among the main pundits on Peruvian politics coincided then that the party law had been a step in the right direction, but also that it should have been more stringent regarding the requirements to create parties (see for instance Tanaka, 2004). In this context, in July 2005 President Alejandro Toledo announced a bill to stop party system fragmentation. On the basis of that bill, in October 2005 the major party groups in Congress - APRA, Unidad Nacional, Perú Posible, and the Frente Independiente Moralizador – provided the necessary votes to reform the electoral law, fixing a threshold of four percent of the national vote to obtain a seat in 2006, and of five percent since 2010. The same bill amended the party law abolishing the option to retain parties' legal recognition by getting one representative, and demanding the election of six representatives instead.

In sum, the reform was receptive to the experts' claim on the need to fix stricter requirements to parties, while at the same time responded to the natural interest of the relatively most established political groups to exclude potential challengers.¹⁶ Once again, the notion that the electoral system and the party law were flawed was followed and complemented by the interest of powerful political actors.

The 2006 elections proved that the reform had been effective in reducing the number of parliamentary parties (seven lists got seats, instead of the eleven which had done so in 2001), but not in reducing the number of registered parties. By then, there were 36 registered parties, which run 24 lists for Congress and 20 for president, the highest score in Peruvian history. The persistence of fragmentation led experts to insist in strengthening the control over the fulfillment of legal requirements (Meléndez, 2006:48) and also in increasing party-formation costs (Tuesta, 2008b; Tanaka, 2009). As a reaction to these evaluations, in December 2009 Congress passed Law 29490,

¹⁶ Of course, the new barriers were rejected by minor parties Acción Popular and Alianza Nacional proposed lower thresholds (between 1 and 3 percent). The reform was challenged before the courts, but the Constitutional Tribunal ratified it.

which amended party law elevating from one to three percent of the previous elections' turnout the number of members required by parties to obtain legal recognition.

This description shows that the Peruvian case followed the four steps of the sequence. First, there was a severe legitimacy crisis which ended up in a party system collapse, which in this case was followed by the emergence of an outsider, President Fujimori. Second, once in power Fujimori advanced a Constitutional reform including a new composition of Congress and a new electoral system to elect its members. Third, the reforms favored the dominance of the ruling party and, more important to our concerns, encouraged the fragmentation of opposition forces into disposable parties. Finally, the fall of Fujimorismo was followed by an increasing concern on the extreme weakness of Peruvian parties and, therefore, by a consensus on the need to regulate the electoral and party fields in order to limit fragmentation and strengthen party organizations. The demands to open the system, dominating since the late 1980s, were replaced in the post-Fujimori period by an emphasis on the need for solid and structured parties. This consensus functioned as a powerful inherent factor. In the meantime, consistent economic growth – mostly owed to the rise in commodity prices - improved the standing of the ruling political elites. The interest of the relatively most established parliamentary groups to raise ballot access requirements offered the outcome-contingent factor which led to the passing of the new party law. In the subsequent years it was apparent that the goal to strengthen parties and consolidate a stable party system had not been and would not be achieved with the party law as it had been originally approved. In this context, the experts' suggestions on the need to set more stringent requirements coalesced with major parties' interests, leading to successive amendments, all of them raising party-formation costs.

Mexico. Between regime openness and the capture of public funding

The 1988 elections implied a turning point in Mexican politics. The emergence of the Party of the Democratic Revolution (PRD) produced the first really competitive presidential election in Mexican history. Even when the ruling Institutional Revolutionary Party (PRI) might have actually been the most voted party, few doubted then that a massive fraud had been perpetrated (Magaloni, 2005:122). The elected president, Carlos Salinas de Gortari, and the same hegemonic party regime, were involved in a huge legitimacy crisis (Craig and Cornelius, 1995). As one of the many consequences of this crisis, President Salinas took the initiative to implement a political

reform, hoping to recover part of the lost legitimacy (Flores Andrade, 2005:140). Among the many and significant changes introduced by the 1989-90 reforms there were two complementary points which would encourage the creation of new parties. On the one side, the re-introduction of the so called conditional register, a mechanism that enabled new parties to run elections without meeting the requirements to obtain the permanent legal recognition, and still receive half of the public funding that registered parties received.¹⁷ On the other, the introduction of different public funding categories, which set off a process by which state funding to political parties would be progressively and substantially increased. This new legal framework stimulated the surge of new political organizations, many of which were suspected of being oriented towards the capture of public funding (Poire, 2005; Flores Andrade, 2006). Already for the 1991 legislative elections, the first following the reform, 12 organizations requested a conditional register. And even when the Electoral Federal Institute (IFE) rejected most of the requests, 10 parties managed to run in these elections, the highest number in Mexican electoral history. The formation of new parties with conditional register, presumably to capture public funding, became a common practice in successive elections (Flores Andrade, 2007). This evidence led to the elimination of the conditional register in 1996, but at the same time the requirements to obtain a permanent register were changed to make them moderately more flexible. This reform reduced the number of citizens' assemblies (from 16 state assemblies or 150 districts assemblies to 10 and 100 respectively) and modified the requirements regarding party members, from a total of 65,000 to a minimum of 3,000 in 10 states or 300 in 100 districts, which had to make up at least 0.13 percent of the national electoral register. Simultaneously, the reform consolidated the dominant role of public funding in electoral campaigns, setting an annual increase to be defined by the IFE (Andrade Sánchez, 1997). These measures accelerated the previously described dynamics: for the 2000 federal elections the record of competing parties was surpassed once again, whereas only six out of the eleven competing parties were new ones.

Since 1990 there was a slight growth in the number of parties competing in Mexican federal elections, from eight in 1988 to eleven in 2000 and 2003. But the reason that led to revise party-formation costs was not this very moderate growth but the abuses that resulted from the combination of relatively lax entry barriers, abundant public funding,

¹⁷ The conditional register had been created in 1977 and eliminated in 1986. It is called conditional because obtaining the permanent register was conditioned to getting a certain percentage of the vote.

and low exit costs.¹⁸ Indeed, from 1990 to 2003 there is a pattern of permanent creation of new parties that, lacking electoral support, lose the register after their first electoral experience. Overall, between 1991 and 2003 18 new parties were created, 11 of which did it since 1997 responding to the strong increase of public funding (Flores Andrade, 2006). Most of these parties never achieved significant electoral support, and only four of them obtained seats in Congress. Moreover, only a few among these parties managed to maintain the register, usually resorting to coalitions with bigger parties. The majority, by contrast, and as shown in table 6, did not reach two percent of the vote in their first elections and therefore had their registration cancelled.

Table 6: Number of new parties and new parties which failed to retain the register, 1982-2003

1982	1985	1988	1991	1994	1997	2000	2003
3 – 1	2 – 0	2 – 0	4 – 4	3 – 2	2 – 2	6 – 3	3 – 3

Source: own elaboration on the basis of data from Flores Andrade, 2006

As a result, a debate on new parties gained ground among scholars and politicians. This discussion took into account the fact that these parties were recipients of large sums of money, which in many cases seemed to be the major reason for their formation (Poire, 2005; Flores Andrade, 2007:473-4; Langston, 2007:245). Thus the inherent factor for a reform in this field was already present when a particular event came to reinforce it. In May 2003 the IFE applied a millionaire fine to the Nationalist Society Party (PSN) (which had competed for the first time in the 2000 elections) for a huge fraud in the use of public funds.¹⁹

All Mexican parties, including the three major ones (PRI, PRD and National Action Party-PAN) had previously been fined because of the irregular use of public funds. But the PSN affaire made it evident how new parties were formed to profit from the relatively lax rules (Flores Andrade, 2005). In this context, in December 2003 the two biggest parties in Congress – PAN and PRI - supported a bill proposed by the Green Party to amend the Electoral Code in order to prevent the formation of parties oriented to capture state funding.

As described in the first section of this paper, the reform substantially raised the requirements to obtain the register and run elections, both in terms of the number of

¹⁸ Anselmo Flores Andrade refers to the “low exit costs” meaning the lack of penalties and mechanisms to recover the money from parties that do not reach the register (2007:475-6).

¹⁹ The party had used a high share of the funds to hire two companies linked to a party leader. See “Multa de 140 millones 800 mil pesos al Partido de la Sociedad Nacionalista”, La Jornada, April 24, 2003.

assemblies as in the total amount of party members (which was doubled from 0.13 to 0.26 per cent of the national electoral register). But, additionally, the law set a ban on new parties to run elections forming part of an electoral coalition, forcing them to get the 2 percent necessary to obtain the register by themselves. In the words of PAN deputy Yolanda Valladares, who spoke for the bill in Congress, the reform crystallized a “social demand to close the doors to parties living off the public budget.”²⁰ The bill was approved by a landslide majority in both chambers of Congress, and only some of the minor parties, along with a few PRD legislators, opposed it.²¹

For the Green Party, a minor but established organization which used to reach the two percent threshold, the clear goal was to hamper the emergence of potential competitors.²² For the major Mexican parties - PAN, PRI, and PRD- as also was the case of major parties in Colombia and Peru, closing the political system was, obviously, in their benefit, even more so when – contrary to what happened a decade and a half earlier – this measure run parallel to public opinion demands.

In any case, it is apparent that the existence of inherent factors – a public opinion refusing to allocate funds to non-representative parties – was followed by contingent factors: the winners of the 2003 elections, along with a minor one, highly motivated to halt the emergence of competitors, found the appropriate situation to hurdle the access and mostly the permanence of new parties.

The crisis of the hegemonic party regime after the scandalous 1988 elections triggered a wave of reforms. Certainly, the most publicized of these reforms tended to guarantee a fairer electoral field, but others pointed to ease the entrance of new actors to the political system. In this line, the reforms set relatively lax requirements to ballot access, first through the conditional register, and then making it easier to obtain the permanent register. But, above all, it was the introduction of an enormous amount of public funding for all registered parties what encouraged the formation of new parties.

These reforms were effectively followed by a surge of new political parties, but most of them never reached the required electoral support to retain the register. Some cases of fraud, and in particular the PSN affair, gave rise to questioning the lenient

²⁰ See “Diputados endurecen requisitos para formar nuevos partidos político”, La Jornada, December 28, 2003

²¹ The law was passed with 426 affirmative votes and only 21 votes against in the Chamber of Deputies, and with 100 votes for and 16 against in the Chamber of Senators. The Labor Party contested the constitutionality of the law, but the Supreme Court ratified it.

²² More specifically, the bill was motivated by the announcement of multimillionaire businessman known as Dr. Simi – a declared enemy of his brother and leader of the Green Party, Jorge González Torres – to form a new party which would directly compete with the Green Party.

requirements set forth by the Mexican law to get the register. A solid parliamentary majority formed by the two biggest parties (the ruling PAN and the PRI), joined by part of the PRD, and the small Green Party, amended the Electoral Code raising the requirements for parties to achieve and retain legal recognition.

Argentina: From ¡que se vayan todos! to party system fragmentation

In December 2001 Argentina suffered a dramatic social revolt which put into question the legitimacy of its political system and, above all, that of the major parties' political elites. Two parties dominated Argentine politics over the course of the 20 century, the Radical Civic Union (UCR) and the Peronist or Justicialista Party (PJ). But already in the 1990s the strong political identities developed around these two parties showed clear signs of erosion. Popular trust in parties suffered from a continuous decline, falling from 84 per cent in 1984 (in the wake of the transition to democracy) to a meager 15 per cent in 1999, only to plummet to a 4 per cent in 2001, the lowest rate in Latin America at that moment (Levitsky and Murillo, 2008:22). Simultaneously, there was a substantial growth in electoral volatility rates whereas the appearance of many new and generally ephemeral parties became a common trait of the Argentine political system (Mustapic, 2002; Torre, 2003). The rupture in party-society linkages became manifest in all its intensity in the last quarter of 2001. In the October legislative elections almost fifty percent of the citizens opted for what the media called an "anger vote", casting blank and null votes or failing to vote at all. In the context of a severe economic crisis, social and political tension did not stop rising, to explode in December 19 and 20 into a massive civil rebellion against the entire political class under the explicit slogan '¡Que se vayan todos!' (throw everyone out!). Middle-classes *cacerolazos* (pot-banging demonstrations) and unemployed movements *piquetes*, along with strikes and protests of all kinds made up the scene for a profound political crisis, leading to the resignation of President Fernando De la Rúa. The new president designated by Congress also resigned a few days later, to be replaced by Peronist leader, Eduardo Duhalde. As Steven Levitsky and María Victoria Murillo put it, for some months Argentina "teetered on the brink of anarchy" (2003:151), while politicians, identified as responsible for the crisis, were harassed on streets and suffered demonstrations in front of their offices and homes.

However, it would soon be apparent that the Argentine party system would not suffer a total collapse. Unlike what happened in Peru (or for that matter in Venezuela),

Argentine political crisis did not end up in the arrival of political outsiders. Rather, it was the well-established PJ that supplied the leaders and the political structure which would be in charge of providing with a resolution to the crisis (Levitsky, 2003; Torre, 2003). The new Peronist government, however, saw itself in the need to respond to the massive claim for a political reform. Actually, political reform had become an issue in the years preceding the 2001 outburst and, as a matter of fact, President De la Rúa's administration had publicized the political decision to modify the electoral system and regulate party's financing. Yet, the 2001-2002 crisis gave the notion of political reform a new significance. As noted by Inés Pousadela, any program that attempted to offer a solution to the political crisis had to include, necessarily, a proposal of electoral and party law reform (2007:2).

While in the main squares of the country people still demonstrated inspired in the "Que se vayan todos!", President Duhalde announced a "Federal Deal for Political Reform", which purported to meet the demands and proposals put forward by dozens of civil society organizations. Although these demands and proposals covered the most diverse aspects of the electoral system, overall they all sought to open up the political system, eliminating party privileges, which often included the end of partisan monopoly on candidacies and a reduction in ballot access requirements. Eventually, Congress²³, "responding to the pots' noise" (Dalla Vía, 2010:35), passed a reform package, which comprised a party financing law that set a permanent public funding reserve for parties, and open primaries to select candidates. Additionally, the open primaries' law included an amendment to the party law which eliminated parties' register cancellation in case they did not reach two percent of the vote in any district within two successive elections, which virtually implied the elimination of post-election quantitative requirements. This amendment, which received almost no public attention and for which there was no legislative debate at that time, would contribute to accelerate the fragmentation of Argentine party system.

It is worth noting that Argentine party law, unlike that of other federal countries as Mexico or Brazil, allows parties to run candidates for the federal congress having legal recognition in a single electoral district. According to the party law in force since the wake of the transition to democracy, to be legally recognized parties were required to gather signatures representing 0.4 percent of the district electoral register or just 4,000

²³ The PJ was then the biggest group and UCR a far away second.

signatures if the district was bigger than 1 million voters. Legal recognition at the national level (necessary to run a presidential candidacy) required the previous formation of five district parties. Parties would have their legal recognition cancelled if they did not reach two percent of the vote in two successive elections in any district of the country. This clause, which had become effective in 1989 (in the aftermath of the second election following the approval of the law), gave place to the cancellation of more than 179 parties between 1990 and 2000, and thus was the main cause of party cancellations in this period (Dalla Vía, 2010:33). Certainly, this had not prevented that in the 1990s the deinstitutionalization of major parties and the diminishing value of party labels led to the multiplication of legally recognized parties and of competing lists (Leiras, 2007). But this latest reform, passed in parallel to the law that granted public funding for parties, sped up the rise in the number of parties (Mustapic, 2008).²⁴ As illustrated by table 7, the number of parties remained relatively stable during the 1990s, growing in the electoral (uneven) years and shrinking in the even years, mostly due to the two percent cancellation clause. Since 2002, however, the formation of new parties increased dramatically, and the cancellation of parties did not compensate for that growth anymore.

Table 7: Number of district and nacional parties (1990-2007)

<i>Year</i>	<i>District Parties</i>	<i>National Parties</i>	<i>Total (District and National)</i>
1990	504	35	539
1991	522	35	557
1992	462	35	497
1993	473	35	508
1994	446	34	480
1995	480	37	517
1996	447	37	484
1997	480	37	517
1998	473	38	511
1999	513	41	554
2000	496	41	537
2001	542	41	583
2002	548	42	590
2003	669	46	715
2004	621	45	666
2005	668	43	711

²⁴ The Electoral Court of Appeals held that “the elimination of the cancellation clause decided by law 25611 to all those parties that do not reach in any district two percent of the electoral register in two successive elections, arguing to foster political pluralism actually led to the fragmentation of the system, maintaining the recognition of parties with no electoral support, which in some cases are but structures deprived of any content and unable to fulfill the functions expected from them.” Partido Social Demócrata – Distrito Capital, May 27, 2008.

2006	644	43	686
2007	674	42	716

Source: Mustapic 2012

Thus, while the number of parties – counting both district and national ones- rose by a 9.46 per cent in the twelve years going from 1990 to 2002 (from 539 to 590), there was a 21.35 per cent of growth between 2002 and 2007 (from 590 to 716). At the same time, as it was to be expected - and as shown in table 8 - the increase in the number of parties was followed, in some of the most populated districts, by a proliferation of competing lists.

Table 8: Competing lists in legislative elections in four major Argentine provinces

Year	Province of Buenos Aires	City of Buenos Aires	Córdoba	Mendoza
1997	10	15	8	8
1999	13	16	13	7
2001	18	19	22	10
2003	26	33	21	16
2005	26	29	14	16
2007	25	30	23	26

In the meantime, the government led by President Néstor Kirchner since May 2003 had initiated a new political cycle leaving behind the governability crisis and restoring presidential legitimacy (Cherny et al, 2010). In a context marked by consistent extraordinarily high rates of economic growth, demands to open up the political system, which had dominated the political scenario in 2001 and 2002, lost intensity and were eventually confined to the margins of the public scene (Pousadela, 2007). Instead, politicians and experts began to point out the emerging problem of party system fragmentation. Under the new political circumstances the ease to recognize new parties was identified as a problem. Rather than promoting new political options coming out from civil society, this lax legal framework favored party defection (making it easy for politicians to create new labels), and the formation of tiny parties, most times what in the jargon were known as *rubber stamps*, oriented towards the capture of public funding. Hence the flexibility of the electoral and party laws was blamed for

contributing to downgrading the value of party labels and conspiring against party cohesiveness (Leiras, 2007:104-7). Furthermore, the legal framework was found responsible for an “inflated electoral offer” which “introduced confusion and opacity in the electoral process” (Mustapic, 2008:13).

Although the two percent of the vote required in order to keep recognition was reestablished by the end of 2006²⁵, the inherent factor for electoral reform was already settled. The rise in the number of parties and lists as a result of a lenient legal framework became a common topic of media criticism. By the second half of the year 2000 the presence of a problem attributable to electoral rules and susceptible to be solved through a legal reform had become apparent.²⁶

These same arguments were adopted by the national government to put forward a broad reform in the second half of 2009. Contingent conditions for reform matured after the June 2009 legislative elections, when the ruling FPV-PJ was defeated in several provinces, in particular in the key Province of Buenos Aires, where a coalition led by a defector Peronist beat the list headed by Néstor Kirchner himself.²⁷

Hence one of the reform’s goals was to make it more difficult for defectors to compete through new parties or to make use of parties which subsist as rubber stamps. As noted above, the bill imposed more rigorous party-formation costs, as well as a threshold of votes to be obtained in the primaries in order to run in general elections. Governmental speakers then declared that the main objective was to provide the party system stability and order. The bill was sponsored and voted in first place by the ruling party (FPV-PJ), but it gained the support of a number of minor allies, which were particularly attracted by the free access to media included in the law. In order to get the support of these minor allies, the FPV-PJ also accepted to reduce some of the requirements which were part of the original bill.²⁸ As for the UCR, which was the main opposition group in Congress, it shared the evaluation regarding the need to reduce the number of parties fixing stricter requirements for party formation, and agreed on reforms towards a more restrictive legal framework. However, this party did not vote

²⁵ When the open primaries law was repealed, the clause included in this law which eliminated the 2 per cent requirement was abrogated.

²⁶ A working paper published by the influential think-tank CIPPEC pointed that “... a permissive regulation regarding party formation ... and public funding, constitute spurious incentives for party fragmentation and for the formation of party structures whose goals are far from the representative principle” (Straface y Mustapic, 2009).

²⁷ The government announced the bill hardly a week after the electoral defeat.

²⁸ The original bill was substantially more restrictive than the one finally approved. For instance, the threshold in primaries was 3 per cent of the vote instead of the 1.5 eventually passed.

for the reform due to disagreements in some minor points and, above all, not to be seen by public opinion as a government supporter.²⁹

Conclusion:

An analysis of the relationship between political legitimacy crisis and electoral reform in contemporary Latin America suggests a distinction between three groups of countries. First, there is a set of countries which have not suffered from a significant political crisis and which, consequently, have not developed inherent conditions for a reform, irrespective of the number of parties, the level of fragmentation or the features of the existing regulatory framework. Countries as Uruguay, Chile, Costa Rica, and to some extent also Brazil, constitute this group.

Another group is formed by countries that did go through a profound political legitimacy crisis, which was followed by the emergence of populist leaders who managed to restore political order. These leaders held an anti-party rhetoric, and normally favored non-partisan candidacies. Yet, the quantitative requirements for these non-partisan alternatives replicated or were even more stringent than the ones to be met by parties. In addition, these leaders fortified the presidency through constitutional and legal reforms which helped them to dominate the political system. Additionally, they generally tilted the electoral field in their favor by making a massive partisan use of state resources (Novaro, 2012). Occasionally, they also imposed specific obstacles for ballot access to opposition candidates.³⁰ Venezuela, Bolivia, Ecuador and Nicaragua form this group.

Lastly, there is the group of the four countries which in the course of the last ten years approved and implemented party and electoral law reforms raising party formation and ballot access requirements. This trend constitutes a novelty in this region, which since the third wave and in particular during the 1990s had been dominated by reforms in the opposite sense. In this paper I offered a tentative explanation to this

²⁹ President of the UCR Gerardo Morales stressed: "We believe that it is necessary to reorganize the political system; it does not make any sense to have 700 parties in the country. There're people who have a party which they create in some strange way... there should be three, four parties... We should seek rules which create some level of responsibility on parties as organizations." Revista Parlamentario, November 7, 2009: <http://parlamentario.com/articulo-4225.html>.

³⁰ This is clearly the case of Venezuela, where the General Comptroller was entitled to prevent public officials from running elections. Chavez administration made extensive use of this prerogative to proscribe dozens of opposition candidates who held elected positions (mostly mayors and governors). See Molina, 2009.

trend, which accounts for the occurrence of these reforms in Colombia, Peru, Mexico and Argentina (and not in other countries of the region).

In the period spanning from 1998 to 2001 each of the four analyzed countries went through a pronounced political legitimacy crisis. These crises affected the legitimacy of traditional political elites and encouraged social demands for institutional reform. In all the four cases the reforms initiated or encouraged by social pressures aimed to strengthen the linkage between political representatives and society, on the basis of a shared belief which identified the crisis of representation with the weakening of that linkage. Accordingly, all these countries passed reforms which reduced entry barriers, lowering party-formation costs and making easier the election of representatives of minor parties. However, once the legitimacy crisis was surmounted – mostly due to a new cycle of economic growth – in each one of the countries the negative consequences of the previous reforms became apparent. These consequences mainly referred to the fragmentation of the party system, and/or abuses regarding the allocation of public funding to legally recognized parties. In none of the four countries the reforms originated the fragmentation of the party system, but in all of them they did foster it. Hence political elites and experts progressively coincided in the existence of a problem, which was at least partly attributable to the legal regulation of parties and elections. Moreover, in the four cases ruling parties found it convenient to propose a reform raising party-formation costs, a proposal which was generally supported by the most established political forces, which worked in these cases as a cartel of parties as described by Katz and Mair (1995).

In sum, the latest years have shown a novel trend in party and electoral law reform in Latin America signed by the rise of ballot access requirements. The political background of these reforms is the waning of traditional party identities and the consequent de-freezing of previously existing party systems. Fragmentation appears in this framework as the foe to be defeated by electoral and party law reform. But even when fragmentation affects a large group of Latin American countries, this trend has so far been confined to a small group. Here I have shown that reforms raising ballot access have been so far passed only where fragmentation is not only identified as a political problem (to the detriment of the legitimacy crisis, which had been overcome), but also when it is at least partly perceived as a result of previous reforms which opened up the political system. This perception cements the inherent conditions for reform. When political circumstances make it possible, major political parties take advantage of these

inherent conditions to advance their political interests, which naturally involve closing up the party system in a cartelized manner.

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Appendix I: Party-formation costs in Latin America, 2012

Country	Political Representation	Quantitative requirements to obtain the register	Quantitative requirements to retain the register
Argentina	Parties	Members, 4% of each province electoral register to get district recognition. Getting 5 district recognitions allows for a national party	2% of the vote in two consecutive elections in each district
Bolivia	Parties, Citizens Groups, Indigenous Peoples	Parties: members, 2% of the last elections' valid votes on a national basis. CG and IP: 2% supporters	2% of the vote in any federal election (president, deputies, senators)
Brazil	Parties	Members, 0.5% of last election turnout in at least one third of the states	
Chile	Parties	Members, 0.5% of the last election turnout	5% of the vote for deputies in at least 8 regions or in 3 contiguous regions. Alternatively, the election of 4 congressmen
Colombia	Parties, Political Movements	50,000 signatures	3% of the national vote
Costa Rica	Parties	3,000 signatures	
Ecuador	Parties, Political Movements	Members, 1.5% of the electoral register.	5% of the vote in one of the two last national elections
El Salvador	Parties	Members, 3% of the last election turnout	2% of national vote in case of a party. 6% in case of a two-party coalition. 9% in case of a three-party coalition, and then a 1% extra per each party
Guatemala	Parties	Members, 0.3% of the electoral register	5% of the vote. Alternatively, the election of a representative
Honduras	Parties	Signatures, 2% of the last election turnout	2% of the national vote
Mexico	Parties	Members, 3,000 in 20 states or 300 in 200 SMD. The total number must reach 0.26% of the national register	2% of the national vote
Nicaragua	Parties	Constitute party committees in all the 153 municipalities of the country	4% of the national vote. In case of electoral coalition, the required percentage multiplies by the number of parties.
Panamá	Parties	Supporters, 4% of the last election turnout	4% of the national vote
Paraguay	Parties Movements	Members, 0.5% of the last election turnout	1% of the national vote
Perú	Parties (Movements for sub-national	Members, 3% of the last election turnout	5% of the vote. Alternatively, the election of 6 Congressmen

	elections only)		
Uruguay	Parties	0.5% of the electoral register	
Dominican Republic	Parties	Members, 2% of last election turnout	2% of the national vote. Alternatively, the election of a representative, national or municipal
Venezuela	Parties, Groups of Voters, Citizens by their own initiative	Parties: Members, 0.5% of each state electoral register to get regional recognition. Getting 12 regional recognitions allows for a national party. Grupos of Voters: 0.5% of members in 75% of the states to run elections. Citizens by their own initiative: Signatures, 5% of the national electoral register	