VARIETIES OF INSIDER CORPORATE GOVERNANCE: CENTRE-RIGHT PREFERENCES AND THE DETERMINANTS OF REFORM IN THE NETHERLANDS, SWEDEN AND SWITZERLAND

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By

Gerhard Schnyder
King's College London
gerhard.schnyder@kcl.ac.uk

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Abstract:

The impact of centre-left political parties' preferences on a given country's corporate governance system has been widely debated and empirically investigated. Comparatively few efforts have been made to analyse the preferences of centre-right parties and to link these to the 'employer side' of the corporate governance equation. Recent scholarship sought to explain centre-right preferences in corporate governance reforms by electoral strategies that appeal to the median voter, arguing that the aggregate ownership structure that prevails in a country is the main determinant of the politics of corporate governance reforms. In this paper, I challenge this electoral strategy explanation by opposing it to an interest group power explanation of centre-right preferences. Based on the cases of the Netherlands, Sweden and Switzerland I show that the ownership patterns do not explain political preferences. Instead, opening up the black box of insider-orientated corporate governance systems is necessary in order to explain why centre-right parties' preferences concerning shareholder primacy vary from one country to the other. My findings suggest that the extent to which insider control relies on control enhancing mechanisms (CEMs) and the importance of the financial sector in a given economy strongly influence centre-right preferences in the political struggles over corporate governance.

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Key words: Corporate governance, legal reform, Switzerland, Sweden, the Netherlands

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Introduction

There have been profound changes in European corporate governance regimes over the last thirty years. Importantly, the protection of small shareholders has increasingly become an issue for both companies and lawmakers notably in Continental Europe where these issues were traditionally not a great concern. Thus, the level of legal minority shareholder protection (MSP) has continuously increased over the last thirty years (Siems 2007). Much debate has taken place in corporate governance research over the politics that have led to these outcomes and their link with corporate practices.

Mark Roe (2003) argued that countries with strong social democratic parties that defend employees' interests will have insider-orientated corporate governance regimes and concentrated share ownership because employees are hostile to increasing external (capital market) control over the company. Studies on the political process of corporate governance reform in different countries find substantial amounts of contrary evidence: During the 1990s labour and centre-left parties were in certain countries among the most decided promoters of pro-shareholder reforms (see Cioffi & Höpner 2006; Gourevitch & Shinn 2005; Schnyder forthcoming). The question of centre-left preferences has hence known considerable attention. The same is not true for centre-right parties' preferences. A notable exception is Callaghan's (2009) work who argues that a country's overall ownership structure strongly influences the centre-right parties' preferences concerning takeover policies. Where ownership is dispersed – i.e. where a considerable part of up-scale social groups are shareholders – centre-right parties have incentives to promote pro-shareholder policies, while they do not have any such incentives in countries where ownership is concentrated and when there are only few minority shareholders.

In this paper I argue that ownership concentration alone does not allow us to understand the politics of corporate governance reform in all countries. Indeed, an explanation that links the overall ownership structure in a country to party preferences neglects a fundamental insight from research in historical institutionalism: that researchers need to take the differences in actors' identities across countries and the local actor configurations into account (Aguilera & Jackson forthcoming). This is particularly important as not only electoral strategy, but also interest group pressures determine what political parties want. Indeed, rather than focusing on the electoral pressures stemming from political parties' constituencies, we need to take into account resourceful interest groups' demands that push centre-right parties to favour different factions of the business elite. My argument draws on Rhodes and Van Apeldoorn's (1998) finding according to which, despite increasing pressures for liberalisation of corporate governance regimes, domestic elites are very unlikely to support

change that undermines their controlling position within the economy. Drawing on evidence from the Netherlands, Sweden and Switzerland I show that different types of 'insiders' use different means of control and have therefore different preferences regarding the liberalisation of formerly non-liberal corporate governance regimes. Indeed, while most authors in comparative corporate governance use a simple distinction between an insider- or stakeholder and an outsider- or shareholder model of corporate governance (Berglöf 1997, de Jong 1997, Streeck 2001, La Porta et al. 1997), I argue that such a coarse categorization is problematic as we miss crucial determinants of corporate insiders diverging preferences across countries.

Besides the actors' identity and their means of control, a second important determinant of centre-right preferences concerns the configuration of actors, as it derives from the overall structure of a country's business elite. Here, the relative strength of financial versus the traditional industrial elites is crucial as both may have very different preferences concerning corporate governance reforms and may influence centre-right politicians. In accordance with Rhodes and Van Apeldoorn's (1998) prediction, I find that in the three countries business elites did indeed not support change that would fundamentally undermine their control over companies. However, since the instruments that they used to control 'their' companies varied, so did the types of reform policies in the area of corporate governance that were politically feasible.

The paper is structured as follows: the next section reviews what we know about the of role different parties and corporate insiders in corporate governance reforms. The empirical part describes the changes in legal minority shareholder protection as a proxy of the degree of insider- vs. outsider-orientation of the formal corporate governance institutions. Next, it analyses the politics that led to these changes with a view to identifying centre-right parties' preferences. A third part attempts to explain the position of centre-right parties by looking at the identity of the 'controllers' and the structure of the business elite in each case.

1. An Elite-Power Explanation of the Politics of Corporate Governance

Different hypotheses and empirical findings exist in the literature concerning the politics of corporate governance liberalisation. Roe's (2003) very influential study has sparked off an interest in the role of labour and centre-left parties in corporate governance reform. On Roe's account the strength of centre-left parties is the single most important determinant of cross-national differences in CG structures. As employees and their representatives can be expected to be opposed to increasing outsider control over firms and therefore to increasing levels of shareholder orientation in company law and policy, countries with

strong social democratic parties can be expected to have insider-orientated corporate governance regimes with highly concentrated ownership structures (Roe 2003). Recent studies on the politics of corporate governance reforms have found that this assumption does not hold in face of the evidence. In different European countries, labour and centre-left parties were indeed the major driving force in the shareholder-orientated reforms of the 1990s and 2000s (see in particular Cioffi & Höpner 2006, Höpner 2003, Gourevitch & Shinn 2005). This configuration – labour siding with outside shareholders against managers – has been termed the 'political paradox of finance capitalism' (Cioffi & Höpner 2006) because standard finance and agency theories would lead us to expect and insiders (managers and employees) vs. outsiders (small shareholders) conflict to prevail. Class-based theories on the other hand would lead us to expect an opposition between investors and managers against employees (cf. Gourevitch & Shinn 2005). The seemingly paradoxical findings become intelligible when we accept the contention that stakeholder groups are not homogenous and their preferences depend on the context and can change over time rather than being invariable attributes (see Aguilera & Jackson 2003; Steinmo & Thelen 1992).

These insights concerning labour and centre-left preferences have contributed to a better understanding of the processes of corporate governance reforms of the 1990s. Surprisingly, the preferences of centre-right parties and employers associations have been largely neglected in these studies and hardly ever been subjected to systematic analysis.

Roe's (2003) political model of corporate governance reform implicitly assumes that centre-right parties and their core constituency the business elite are favourable to high levels of shareholder protection. Cioffi and Höpner (2006) on the other hand find evidence that the contrary is the case: centre-right parties and the business elite in several European countries and the US seem rather interested in safeguarding traditional non-market mechanisms of corporate control even when they are contrary to minority shareholder interests. Yet, neither of these studies investigates centre-right preferences systematically across cases.

In corporate governance research, corporate insiders are generally attributed preferences that derive from finance theory. Actors – and especially managers, large owners, and entrepreneurs – are considered to be (at worst boundedly-) rational, self-regarding individuals who can be expected to seek to maximise their personal utility. To be sure, some nuances to this schematic view have been added, which allow for instance for family owners to have an interest in 'their' company beyond the maximisation of personal wealth (Gilson 2005). The most influential theories however consider that rent-seeking by corporate insiders is the main source of resistance to changes in continental European

corporate governance systems (Bebchuk & Roe 2004). The only possibility of change is when opportunity costs of blockholding (i.e. the potential gains from selling out ones stake in a period of stock market expansion) are larger than the private benefits of control (PBC) that insiders can extract from the firm. If they are, we would expect blockholding to disappear quickly. If they are not, insiders can be expected to constitute an efficient 'roadblock' to change (Bebchuk & Roe 2004).

While opportunity costs associated with blockholding certainly are a very powerful mechanism creating strong incentives to sell out one's stake, this does not explain why certain countries did not know any diffusion of ownership during the 1990s despite similar trends towards increasing market capitalization in most European countries, leading to hugely increased opportunity costs associated with blockholding (see for the cases of Germany and Italy, as opposed to France Culpepper 2005). In particular, we would expect blockholding to erode in countries where PBC are low, as in Sweden (Gilson 2005). As I will show below, this was not the case. Clearly, then, like labour preferences, insider preferences do not seem to be uniform and invariable across countries or exclusively related to financial incentives. The question arises hence 'what are the factors that determine the attitude of insiders towards pro-shareholder corporate governance reforms?'

Regarding the politics of corporate governance, most studies conflate different categories of insiders into an entrepreneur-blockholder category, not distinguishing large shareholders from managing-blockholders or professional managers (e.g. Pagano & Volpin 2005). Thus, like many others, Gourevitch and Shinn's (2005) 'coalitional approach' analysis different possible collations among just three broad groups: shareholders, managers and employees.[1]

Recently, Callaghan (2009) has argued that the aggregated ownership structure that prevails in a country has an important impact on corporate governance reforms. She finds a correlation between the ownership patterns in the UK, Germany and France and the attitude of centre-right parties towards takeover regulations.[2] The reason why this is the case has to do with the fact that upscale social groups "[…] are split into insider and outsider factions and […] the relative size of these factions depends on the degree of ownership concentration" (Callaghan 2009: 736). In countries where ownership is dispersed, centre-right parties will have a stronger incentive to favour small outside shareholders' interests and hence support policies aiming at increasing MSP.

I do not share the fundamental assumption that the number of small shareholders in a given country is the most important determinant of corporate

governance preferences among political parties (a possibility which Callaghan acknowledges, pp.757-8). Indeed, focusing on aggregate measures of ownership dispersion and on the number of listed companies, as does Callaghan, implies that all concentrated ownership countries can be considered as a uniform category. I reject this implicit assumption, which essentially states that the size of stakes held by individual shareholders is sufficient to explain their preferences.

There is increasing evidence that blockholders are divers and have multiple interests (Gilson 2005, Aguilera & Jackson 2003, 2010). It matters therefore very much whether ownership is concentrated in the hands of a family, another non-financial company or of an institutional investor. Since these actors may have very different preferences and objectives, we can expect that their attitude towards corporate governance liberalisation will vary too. Therefore, in order to understand the politics of corporate governance reform, we need to disaggregate the category of 'insiders' or 'blockholders'. This will allow us to explain how the policy preferences of centre-right parties are shaped by the corporate governance structure prevailing in a given economy.

This relates to another shortcoming of Callaghan's model, that is, that it assumes electoral pressures to have a more important influence on centre-right preferences than interest group demands (again, Callaghan does acknowledge this alternative channel of influence on party preferences, p.758).

Rhodes and van Apeldoorn (1998) propose – besides a path dependence explanation and one based on 'institutional complementarities' (see Deeg 2007) – an elite power explanation of corporate governance reform, arguing that 'convergence' on a shareholder-orientated model is unlikely to happen due to the resistance of the business elite to measures that undermine their control (see also Barker & Rueda 2007, and Rajan & Zingales 2003 on the lack of incentives for controlling shareholders to support corporate governance reform).[3] This argument has some affinities with Bebchuk and Roe's (2004) 'roadblock' theory, which posits that blockholders will oppose liberalisation unless the expected increase in share price will offset the loss in private benefits of control. Yet, it does not posit that financial incentives are the only driving force for insider preferences. Insiders may indeed value control over companies for different reasons then just the PBC that they can extract (cf. Gilson 2005).

Drawing on Rhodes and van Apeldoorn, I propose a model which relies on this insight concerning the potential power of business to influence policy outcomes in particular regarding very technical issues and issues which have normally a low salience – i.e. about which voters do not care much (Culpepper 2010, see fundamentally Lindblom 1977).[4] In such cases, it can be expected that small,

but resourceful social actors with strong preferences, will influence party preferences more than the 'median voter' with only weak preferences concerning these issues. The corporate insiders clearly constitute such a resourceful group with strong preferences. Barker and Rueda (2007: 18-9) argue – based on their distinction between insider and outsider capital – that "[as] a small and cohesive group of elite actors, insider capital is potentially able to acquire political leverage that can be used to protect its incumbent position and block the lobbying demands of minority shareholders for law and regulation to protect their interests relative to blockholders" (see for empirical support Culpepper 2010; fundamentally Olson 1982). Blockholders have much to lose from reforms that undermine their control over companies and have the resources to actively influence political parties' positions in the reform process. Insiders can therefore be expected to be most strongly opposed to legal change which directly affects their capacity to control companies, while they may be more open to changes that increase the protection of outside investors without directly affecting their grip on the company. As the importance of legal means of corporate control varies from one country to another, we can expect that the political opposition to reforms varies too.

Besides the preferences of influential and resourceful corporate insiders and their means of control, a complete explanation of the politics of corporate governance reform also needs to take into account the aggregation of these individual or collective actors' preferences and their transmission into the political arena. Two channels of influence are particularly important: lobbying and structural ties between the business elite and the political sphere (see for the former Culpepper 2010). It goes beyond the scope of this paper to investigate these issues in any detail. Instead, I propose to look at the general configuration of actors as it derives from the overall structure of each country's business elite in order to determine what preferences are more likely to prevail among centre-right parties. The most important cleavage concerning corporate governance liberalisation is between the industrial elite and the financial elite. Indeed, Cioffi and Höpner (2006: 489) have argued that "[c]hanging economic conditions introduced an inchoate conflict of policy interests between managerial and financial elites. The political right was constrained by the legacy of its elite supporters in both camps and fearful of opening the split within their ranks." The conflict between the interests of the financial elite and those of the managerial elite within other industries can hence be expected to determine in part centre-right parties' preferences. Indeed, financial sector companies have much to gain and relatively little to lose from capital-market- and shareholder-orientated reforms, while the managerial elite can be expected to be in many cases more suspicious of increasing financial market pressures and outside control over firms, despite certain obvious advantages such as easier access to

funds. Financial elites can be expected to become a pro-reform force in spite of the fact that they are also part of the business elite more generally and share interests with the 'industrial elite' (see for empirical support Deeg 2005 and O'Sullivan 2003 on Germany; Callaghan 2009 and Brunner 2010 on the UK). It can be expected that the more important the financial sector is for a countries economy the more influential their pro-reform views will be in the political arena. I propose therefore that – besides the type of instruments used by insiders to control 'their' companies – the nature and strength of the financial sector is a second important determinant of centre-right parties preferences and therefore of corporate governance reform trajectories. We expect to find stronger centre-right support for pro-shareholder reform in countries where the financial industry plays a more prominent role.

2. The Evidence: Corporate Governance Change and Centre-Right Preferences in the Netherlands, Sweden and Switzerland

In all three countries studied here the regulatory framework for corporate governance has come under pressure for reform in recent decades. This section first retraces the legal changes and then turns to explain the politics that led to different trajectories of change in the three countries.

2.1 Corporate Governance Reforms: The Legal Story

All three countries experienced during the 1990s and 2000s remarkable changes in the legal framework for corporate governance. The shareholder protection index (SPI) developed at the Cambridge Centre for Business Research, which takes values between 0 and 10, illustrates this (figure 1) (see for details Siems et al. 2009).[5] However, while as of 2006, all three countries had experienced considerable increases in the level of MSP, the dynamics of change were very different in the three countries.

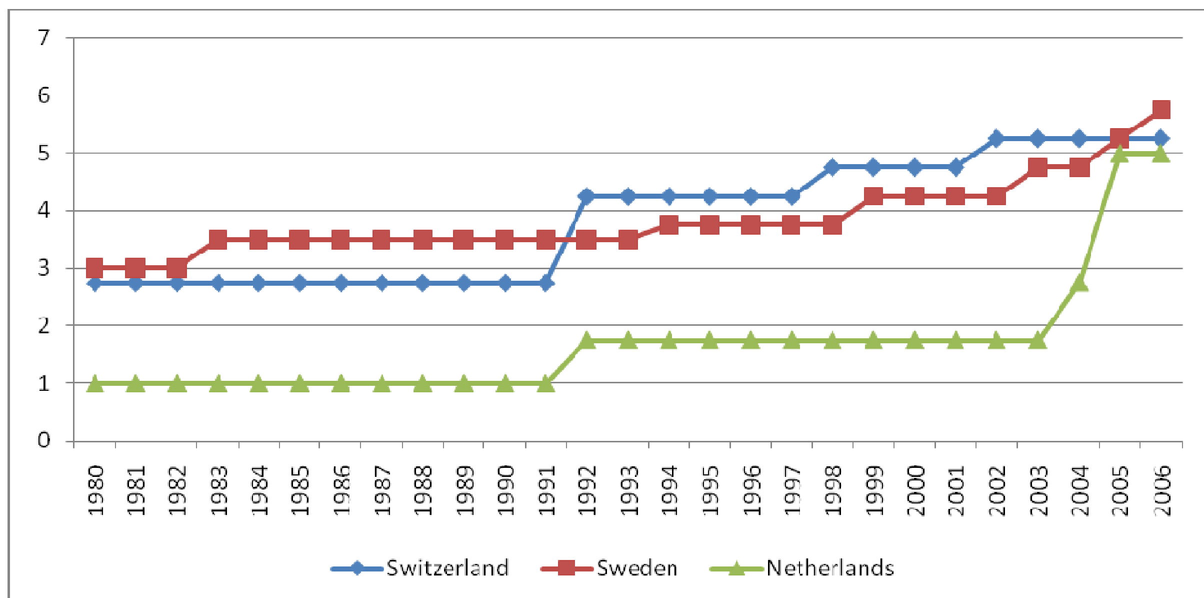
Figure 1 shows that Switzerland – starting from a very low level – has experience during the early 1990s a very marked increase of MSP. Sweden experienced some rather incremental but continuous changes during the 1990s. The Netherlands, on the other hand, did not see any legal change until 2005 when an extensive reform of the corporate governance system was finally adopted. These differences hint at the importance of contextual and political factors in explaining reform process, which will be explored in the next section.

A closer look at the ten variables composing the CBR SPI reveals interesting differences and similarities between the cases. Thus, in all three cases the variable measuring transparency (i.e. disclosure of major stakes in the company) has increased quite early on (1992 in NL, 1983 and 1994 in Sweden, and 1991 in Switzerland). All three countries also adopted a rule prescribing a minimal

number of independent board members (Switzerland in 2002, the Netherlands in 2004 and Sweden in 2005). Switzerland (in 1991) and Sweden (in 2006) reformed the AGM voting procedures in order to facilitate voting by shareholders who did not attend the AGM. Switzerland and Sweden introduced a mandatory bid rule (Switzerland in 1998, Sweden in 1999, but reinforced it in 2003). By 2006, the Netherlands had not introduced either of these rules.

There are hence several variables where some similar trends have taken place, it is however equally interesting to look at the variables of the indicator which have not changed. Indeed, it appears that changes to legal instruments that are directly related to the question of corporate control have been much more resistant to the trend towards increasing MSP than the above-mentioned areas. Tellingly, neither of the countries in question has eliminated the possibility to issue shares with multiple voting rights.[6] Therefore, the variable of the CBR SPI, which is most directly related to insider control, is also the one where we observe the least change. This seems to confirm the idea that corporate insiders are not ready to abandon control instruments, but are more open to accept reforms that are less directly concerned with corporate control.

Figure 1: Regulatory Minority Shareholder Protection between 1980 and 2006



Source: Siems et al. 2009

It should be noted that the variables that are included in the CBR SPI do not necessarily reflect the country-specific instruments of insider-control such as different control enhancing mechanisms (CEMs) on which insider control is based. It is hence important to briefly discuss changes in these CEMs too. As I will show below, the most important CEMs vary across the three countries. In the Netherlands the two main instruments of insider control were the so-called

‘trust offices’ (*administratiekantoor*) and the particular board structure established under the ‘structure regime’ (*structuurregeling*).

The ‘trust office’ is a foundation, which holds a company’s shares or large parts of it and issues depositary certificates that carry the economic- but not to the associational rights appending to the shares (Meinema 2002). Since 2005, the trust offices are obliged to exercises the voting rights not just in the interest of the company, but also in the interest of the certificate holders. However, as the boards of trust offices are typically controlled by (former) directors of those firms whose shares the office controls, they remain an instrument of insider control (Heemskerk 2007: 56).

The ‘structure regime’ designates a complex board structure where different stakeholder groups’ interests are balanced against each other through different company bodies. The supervisory board (*raad van commissarissen*), which elected its own members in a procedure of ‘controlled cooptation’, was – up until 2004 – arguably the most powerful organ of the company, while the shareholder meeting had only very limited powers (Moerland 2002).

in Sweden the main CMEs are voting right distortions that can reach levels of 1:1000, i.e. a 'normal share' carries 1000 time less voting power than super voting shares.

In Switzerland finally, the main CEM was limitations to the transfer of registered shares called *Vinkulierung. This procedure* allowed it corporate insiders to refuse new shareholders that had bought registered stock, providing insiders thus with the possibility to control the shareholder structure of the firm.

The numerous anti-takeover devices that existed in the Netherlands were the first aspect of corporate governance regulation to come under pressure during the 1980s notably from the stock exchange authorities. However, only limited regulatory change took place. A provisional takeover panel that could suspend takeover defences if a shareholder held more than 70% of the equity for at least 12 months was established in 1995 (de Jong 2001: 164). As disagreements between companies and the stock exchange authorities persisted, a code of conduct was published in 1997 (the Peters Code), which was, however, largely ignored by listed companies (de Jong et al. 2005, Timmerman and Doorman 2002). A new code – the Tabaksblat Code – was published in 2004 and had more constraining effects on companies due to the existence of a comply or explain rule in the company law (Akkermans et al. 2007).

The first legal reform of the ‘structure regime’ – a complex board system that gave the insider-dominated supervisory board far-reaching control over the company – since the 1970s was initiated in 2000 and led to a new law adopted

in July 2004. This reform considerably increased the AGM's say in the nomination of supervisory board members, the approval of the annual accounts as well as the executive compensation policy and in other important decisions – such as the conclusion of joint ventures (Groenewald 2005). Regarding the 'trust offices', certificate holders can now demand that the votes linked to the shares for which they hold certificates be cast according to their instructions (Groenewald 2005). Yet, despite this weakening of CEMs most takeover defences remained explicitly untouched.

In Sweden, the main CEM – voting right distortions – were not significantly weakened and others were even strengthened during the period analysed here. Indeed, a possible limitation or abolition of voting right distortions has been discussed several times during the last 30 years in Sweden. Yet, the investigations had each time reached the conclusion that no limitation was desirable. Therefore, up until the reform of the ABL in 2005 this instrument remained unchanged (see Schnyder 2008). The reform of 2005 even strengthened a series of rules concerning so called 'reservations' (*förbehåll*) concerning the transfer of shares to unwanted sellers, which similarly to the Swiss *Vinkulierung* allowed it insiders to control who became shareholder. The ABL of 2005 introduced two new types of possible reservations, the so-called 'right of first refusal', which obliges existing shareholders to offer shares they wish to sell to a person designated in the articles of incorporation as having a pre-emptive right on certain shares and the 'consent reservation' (*samtyckesförbehåll*), which makes the transfer of shares conditional on the board's consent (see Schnyder 2008; Svensson & Danelius 2005).

In Switzerland finally, while voting right distortions were not abolished but limited to a ratio 1 to 10, the more important CEM – *Vinkulierung* – was considerably reformed in 1991 already. Rather than constituting a right for the board to limit the transferability of shares as such, it constitutes now 'merely' a right to limit the exercise of voting rights anymore (that is, the buyer becomes immediately the rightful owner of the shares, but the exercise of the voting rights remains conditional on the board's consent) (Kläy 1997: 139). More importantly, however, the reasons a company may give for refusing to register a buyer of registered shares have been limited in a very important way. For listed registered shares, the only legitimate reason for refusal is a limitation in the percentage of the number of registered shares for which a shareholder can be registered and thereby exercise her voting rights. Discrimination against certain types of shareholders (for example foreigners) is hence not possible any more. The change is particularly striking if one considers that the law in vigour until 1991 allowed any reason for refusal and permitted the company to refuse shareholders even without mentioning a reason.[7]

In short, the timing and extent of legal changes varies a great deal between the countries in question. While there is clearly some convergence regarding less consequential aspects of corporate governance regimes (transparency, AGM procedures etc.), regarding the main legal instruments of insider control, we observe marked differences in the extent of change. At the lower end of the stability-change continuum is the Netherlands were virtually no regulatory reform has taken place before 2005 and where the main instruments of control have remained largely unchallenged. Sweden has seen different reforms during the 1990s and 2000s, neither of which fundamentally questioned the existence of voting right distortions. The European Corporate Governance Service estimated indeed that the new ABL of 2005 improved the position of minority shareholders to a much weaker extent than similar reforms in other European countries (see ECGS 2007). In Switzerland on the other hand significant reforms took place much earlier and led to a remarkable weakening of the *Vinkulierung* procedure, the main legal instrument of insider control. Different legal experts stress that Switzerland adopted already in 1991 solutions for problems that became in other countries only part of the corporate governance debate of the 1990s (Böckli 2002, see also Kunz 2001: 246).

This is an astonishing finding for a country that is notorious for its conservative nature and the slowness of its political system. The next section turns to explore the preferences of different centre-right actors in order to identify the reasons for the divergent trajectories of change.

2.2 The Political Reform Processes: What Did the Centre-Right Parties Want?

This section explores the politics of corporate governance reform in the three countries, focusing in particular on the preferences of centre-right parties in the political processes that led to the legal changes described above.

2.2.1 The Netherlands

During the 1980s and 1990s, corporate governance reform in the Netherlands was limited and took mainly the form of voluntary codes of conduct. Significant pressure for corporate governance reform came mainly from the stock exchange authorities (*Vereniging voor de Effectenhandel*, VEH) since the mid-1980s and aimed primarily at abolishing takeover defences. These claims were decidedly opposed by the listed companies who established in 1988 an association of listed companies (the *Vereniging Effecten Uitgevende Ondernemingen*, VEUO) in order to defy the VEH's reform claims (de Jong 2001: 164). The opposition between the listed companies and the stock exchange authorities persisted

throughout the 1990s and no permanent solution could be found for the contested issue of anti-takeover measures (see Culpepper 2010, de Jong 2001). The opposition of the business elite to change is notably expressed in the non-compliance with the voluntary Peters Code and the eventual need to give the Tabaksblat Code legal enforceability trough a 'comply-or-explain' rule (de Jong et al. 2005, Timmerman and Doorman 2002). Due to its quasi-legal status, the latter code has been implemented to a larger extent than the Peter's Code (Akkermans et al. 2007).

The 'comply-or-explain' rule was introduced into the Commercial Code as part of the first reform of the structure regime since the 1970s. The reform had been initiated in 2000 by Prime Minister Wim Kok's 'purple government' that sought advice from the tripartite Social Economic Council (Sociaal-Economische Raad, SER) on reforms to the 'structure regime'. This led the SER to publish in 2001 a very influential report (SER 2001), which proposed to increase – moderately – the influence of both shareholders and employees of the firms (Timmerman & Doorman 2002). The second Balkenende government – uniting the major centre-right parties Christian-Democratic Appeal (CDA), the liberal People's Party for Democracy (VVD), and the progressive liberal D66 – carried on this reform. The new law was adopted by the Second Chamber of the Dutch parliament in September 2003 and by the First Chamber in July 2004.

As the reform took place under the centre-right Balkenende government, changes were possible only with centre-right support. The reason for the increasing reform will among centre-right parties, lies in the particular context of the early 21st century. Contrary to Switzerland, where the corporate governance reforms took place during a period of increasing admiration for the US' economic dynamism (cf. the debate about the 'New Economy'), debates in the Netherlands were very much marked by the general suspicion against the corporate elite in the 'post-Dot-com Bubble' and 'post-Enron' era. The accounting scandals at Dutch multinationals Royal Ahold N.V. and Royal Dutch/Shell, which became public in February 2002 and in January 2004 respectively, led to a widely-shared view that the Dutch system lacked important 'checks and balances'. During the debates in the Parliament, members of all parties cited these scandals to show the need to increase the control over the supervisory and management boards. Thus, when the lower house of parliament voted on September 9, 2003 on the new law, only the – at the time small – left-wing Socialist Party (SP) rejected the reform proposals. The major parties agreed hence on the need to limit the power of the managerial elite and to introduce appropriate 'checks and balances'. Yet, no major political force – except for the liberal VVD who asked for the abolishing of the structure regime (see intervention Ankie Broekers-Knol, minutes of the first Chamber of parliament EK 38 38-2069) – supported far-reaching liberalisation steps – such

as abolishing anti-takeover measures –, as they were considered to give excessive powers to shareholders. Indeed, neither centre-left nor centre-right saw the solution to the problem at hand in an unconditional increase in shareholder power. The governing centre-right CdA rejected the abolishing of anti-takeover devices and considered hostile takeovers not as a control mechanism, but as a danger for the economy (see explicitly Rob van de Beete (CdA), EK 38 38-2071). The oppositional social-democratic *Partij van de Arbeid* (PvdA) explicitly supported this goal. In the First Chamber of parliament MP Ing Yoe Tan (PvdA) backed the second Balkenende government's idea to maintain in principle the two-tire board system and the existing of anti-takeover devices, underscoring explicitly the limits of a shareholder-orientated Anglo-Saxon model (Session of July 6, 2004; EK 38 38-2067). Takeover devices are indeed fiercely and largely successfully defended by the Dutch managerial elite with support of both the centre-right CdA and – less enthusiastically and more opportunistically – the PvdA (Culpepper 2010, chapter 4).

2.2.2 Sweden

The most recent reform of the Stock Company Law (ABL) was kicked off by the social democratic SAP government of PM Ingvar Carlsson in 1990. An *Aktiebolagskommitté* (Stock Corporation Committee) was charged with adapting the ABL of 1975 to EC law in view of Sweden's membership of the EU in 1995. A second aspect of the reform however was explicitly to improve the protection of minority shareholders (cf. Governmental Directive dir. 1990:46). The reform led quickly to different changes in the Swedish ABL, which adapted Swedish law to the EC company law directives and increased MSP somewhat. Most importantly, 'bound shares', through which foreigners could be excluded from Swedish companies, were abolished in 1993 as they were incompatible with the EU's anti-discrimination principle (see governmental reform proposal 1992/93:68).

However, beyond EU harmonisation, the debate about minority shareholder rights and about shareholder primacy did not go very far. The Stock Corporation Committee did stress the fact that owner interests were at the centre of the reform. However, the idea of shareholder-orientation was interpreted in a very different way than in most other European countries where Anglo-Saxon ideas of shareholder primacy gained increasing prominence during the 1990s. In accordance with the traditional Swedish conception of ownership (see Henrekson & Jakobsson 2001), shareholder orientation was interpreted as enhancing the means of large shareholders to actively influence and monitor the companies' activities. The Swedish legislator coined the term 'active ownership' for this specific Swedish variation on the Anglo-Saxon shareholder primacy theme. Thus, the AB Committee stressed the 'importance of an active

ownership role' (SOU 1995:44, p.19; my translation) and that '[s]hareholders who take responsibility for the corporate and business development are […] an important element in a prosperous market economy' (see the official report on 'The Organisation of the Stock Corporation'; SOU 1995:44 p.154; my translation). The stress was hence put on the importance of those shareholders who have the means and the will to become active owners, which is obviously not similar to an Anglo-Saxon conception of shareholder-orientation where the ideal-typical investor is the small, anonymous outside shareholder. Indeed, rather than leading to increasing MSP, the idea of 'active ownership' was the rationale for rejecting different reform claims – mainly stemming from foreign investors and the lobby of small shareholders *Aktiesparernas Riksförbund* – to abolish voting right distortions and to introduce a mandatory bid rule. The Committee argued that voting right distortions would guarantee that even in large companies, blockholders could play an active role in corporate governance. The introduction of a mandatory bid rule was rejected on the same grounds, as it would make it more difficult for large shareholders to acquire a strong position within a firm (see e.g. SOU 1997:22, p.40).[8] This view was explicitly supported by the successive governments – both centre-right and social democratic – and the legislator during the 1990s. In fact, despite several changes in governmental power during the reform process, these changes did not give rise to any perceptible change in the direction of the reforms as both the 'party paradox' and class-based explanations of the politics of corporate governance would have it. Indeed, the new ABL was adopted by the *Riksdag* – Sweden's unicameral parliament – in 2005 in an atmosphere of astonishing consensus. MPs from both the centre-right Alliance for Sweden and the then governing SAP expressed the broad consensus that prevailed during the reform process (see notably intervention of Bertil Kjellberg (*moderaterna*) and Johan Löfstrand (SAP) in the debates in the Riksdag on June 13, 2005).

In short, in Sweden party politics did not play an important role in corporate governance reform. Both SAP- and bourgeois-dominated governments largely aimed at maintaining the traditional system in place although some concessions had to be made notably due to EU membership. One telling example that illustrates the consensus over corporate governance reforms concerns a draft of the EU takeover directive, which threatened to limit the use of super-voting shares in cases of takeovers. When this draft was tabled in late 2001, the Swedish owner families – led by the Wallenbergs – successfully lobbied the social democratic Persson government in order to defend voting right distortions against EU legislation (Reiter 2003: 118).

2.2.3 Switzerland

The two main legal reforms in Swiss company law increasing MSP were the Stock Corporation Law reform of 1991 and the adoption of a new Stock Exchange and Securities Trading Act adopted in 1995. As shown above, these laws increased legal MSP in Switzerland considerably and even weakened the main legal CEM in Switzerland, the *Vinkulierung* procedure (see Kunz 2001: 246). While the centre-left parties were one of the driving forces behind the reform (Schnyder forthcoming), given the strongly centre-right dominated federal parliament in Switzerland, these reforms became only possible with centre-right support. Indeed, centre-left parties never controlled more than 30% of the seats in the lower chamber of parliament (the National Council) (see Armingeon et al. 2005) and considerably less in the upper chamber, the Council of States (CoS).

During the 1980s, Swiss centre-right parties' preferences resembled their counterparts' preferences in other European countries in that they strongly opposed any liberalisation (Schnyder 2008). However, during the late 1980s a very remarkable change set in; the upper chamber of parliament – where the left held during this period only 6 out of 46 seats – reintroduced several pro-shareholder reform-postulates of the governmental proposal that had been cancelled by the lower chamber between 1982 and 1986. The chairman of the preparatory committee of the Council of States – the Christian Democrat Carlo Schmid – explicitly stated that the upper chamber '[…] wanted to lay the stress more on the protection of the shareholder than the National Council […]' (Official Bulletin of the Council of States 1988: 455, my translation). Given that the same centre-right parties dominated the Council of States and the National Council, this remarkable change indicates a volte-face among the centre-right parties. Indeed, contrary to its conservative position in the mid-1980s, during the early 1990s even the National Council adhered to most of the proposals of the CoS, illustrating the change in preferences. As a result, the new law limits considerably the use of *Vinkulierung* in the case of listed shares and introduced new shareholder rights in order to control management (for details Schnyder 2008).

This trend towards increasing shareholder orientation continued during the 1990s notably with the adoption of the first Stock Exchange and Securities Trading Act (SESTA) at the federal level in 1995, which introduced a mandatory bid rule and constitutes the legal basis for the listing requirements of the newly formed Swiss Stock Exchange SWX. The new listing requirements introduced far-reaching changes, as for instance the 'true and fair' view principle in accounting, which would have been unthinkable only ten years previous (Hirsch 1995: 230).

In short, the preferences of centre-right parties in the three countries varied both across cases and over time. Overall it appears that the Swiss centre-right parties were much earlier ready to support pro-shareholder reforms than in the two other cases. Indeed, in Sweden reform was mainly made possible by EU membership and remained limited. The major parties opposition to change was the result of strong pressures from the traditional owners and prevented any radical change in legal rules. Meanwhile, in the Netherlands the major scandals of Ahold and Royal Dutch/Shell were necessary to finally bring about moderate change despite a lack of enthusiasm for reform among both centre-right and centre-left parties.

Based on the accounts of legal changes and the politics of corporate governance reforms in the three countries, it becomes apparent that centre-right preferences diverged considerably from one country to the other. In particular, the question why we observe only in Switzerland considerable centre-right support for corporate governance reform as early as 1991 becomes important. The next section attempts to explain these differences by analysing how the preferences of centre-right parties are linked to the underlying corporate governance structures and the actor configuration within the business elites.

2.4 What Explains Diverging Centre-Right Preferences? Ownership, CEMs and the Power of Banks

As mentioned above, Callaghan's (2009) approach would lead us to link centre-right preferences to the ownership structure that prevails in the different countries. Yet, the ownership structure of the three countries clearly does not explain the differences we observe: Switzerland has a much more concentrated ownership structure then the Netherlands with Sweden laying somewhere in between (see below). Following Callaghan's argument we would expect centre right support for pro-shareholder reforms in the Netherlands, somewhat less in Sweden and even less in Switzerland. In actual fact, however, only Switzerland experienced substantial centre-right support for pro-shareholder reforms while in both the Netherlands and Sweden the defence of the traditional system prevailed. In this section I argue that an interest group power argument provides a more convincing explanation of the observed differences.

At first glance, the evidence for Switzerland also contradicts Rhodes and van Apeldoorn's business power thesis according to which we would expect insiders to oppose changes that undermine their control position within the firm. Bebchuck and Roe's (2004) 'roadblock thesis' would attenuate this view stating that if the pecuniary benefits that can be made by selling out a large block of stock exceed the private benefits of control that accrue to insiders, the latter will

be willing to support reform. Besides the simplistic model of human motivation that informs this view, this expectation is also implausible because it would lead us to expect the most important changes to happen in cases where private benefits of control are low compared to the increases in market valuation of companies. However, it has been shown that in Sweden PBC are among the lowest in the world (Gilson 2005). We would therefore expect that even small increases in the market value of a company would create incentives for the Swedish owners to cash in on this increase. Yet, this is clearly not what happened in Sweden during the 1990s when market capitalization increased in important ways, but blockholders still opposed increasing shareholder orientation and ownership concentration, if anything, increased. There is hence no reason to believe that the increasing opportunity costs linked to blockholding and insider control due to the development of financial markets, created enough incentives for blockholders to cash in on their stakes in Switzerland but not in the two other countries.

It has also been argued that managers can be expect to have increasingly incentives to support outside shareholders' claims, as their remuneration becomes increasingly dependent on share performance through stock options (Höpner 2003, Moore & Rebérioux 2007, Schnyder 2010). Yet, this does not explain why Swedish and Dutch managers seem to have largely resisted the temptation to favour increases in shareholder value over insider control. To give but indicator of managers' alignment with capital market interests, the Netherlands had at the beginning of the 21st century a considerably higher proportion of companies granting their mangers stock price related incentive plans: they were 90% of the companies in 2001 as opposed to 70% in Sweden and 60% in Switzerland (TowersPerrin 2006). It could be expected that countries where managers have more stock price related incentive plans would be more open to pro-shareholder reforms.

Instead of these universal variables, which cannot explain cross-country differences, I argue in this section that the differences in the business elites' preferences have mainly to do with two factors: firstly, the insiders' means of control over 'their' firms and their vulnerability to liberalisation. Secondly, the domestic actor configuration and divergent interests among industrial and financial elites.

2.4.1 Three Brands of Insider Corporate Governance: The Managerial-, Spherical- and Entrepreneurial Models

All three countries analysed in this paper clearly showed features of insider-dominated corporate governance regimes: Control was exercised mainly by the insiders of the firm, capital market pressures on firms were low and outside

shareholders' interests were very largely subordinated to other interests. However, these common features were the result of very different types of instruments of insider control. This section traces the main dimensions along which the three systems diverge: ownership, the identity of the 'controllers' and legal means that serve to enhance their control.

Ownership Concentration

A first dimension along which the three countries are different concerns ownership concentration. La Porta et al.'s (1998) concentration index of the three largest shareholders in the 10 largest domestic non-financial, non state-owned companies in 1995 shows an average concentration of 41% for Switzerland, 39% for the Netherlands and 28% for Sweden (LLSV 1998: 1147, Table 7). Other studies, however, show considerably lower levels of concentration for the Netherlands. Heemskerk and Schnyder (2008: 51) find an average concentration of 53.4% in 1990 and 40.7% in 2000 for Switzerland, but only a concentration of 22.3% in 1996 and 24% in 2000 for Dutch companies. The difference is all the more significant as the Swiss sample is much smaller (the largest 106 and 108 companies respectively) than the Dutch sample (250 companies for each year). As smaller companies have usually more concentrated ownership patterns, we could have expected higher levels of concentration in the Dutch case. Windolf and Nollert (2001: 64-5) for a sample of 300 companies find in 1995 a blockholder holding 10 % or more of the capital in 'only' 46.2% of the Dutch firms, of which only 8.3% are families. This compares to 64.6% of the 300 largest Swiss firms whereof 31.1% are family/individually owned. Given the large size of Windolf and Nollert's sample, the Dutch figures constitute arguably a rather low level of blockholding for a 'blockholder system'. It appears hence that ownership is much less concentrated in the Netherlands than in Switzerland.

Ownership concentration in Sweden seems closer to Switzerland, although no directly comparable data is available. The average voting power of the single largest shareholder in a panel of listed companies was 31% of voting rights in the late 1970s, but increased to 38% in the early 1990s (Isaksson & Skog 1994: 295). Agnblad et al. (2001: 234) report that the mean stake of the largest shareholder of the companies listed on the SSE was 37.7% as of October 1998. Yet, these figures do not render the full extent of insider control in Sweden, where the separation of ownership and control seems extreme. Henrekson and Jakobsson (2006: 27-28) report that the Wallenberg foundation controlled at the end of 1998 approximately 42% of total market capitalisation of the SSE, while holding only 1% of the capital. This proportion had decreased to 32% by the end of 2005, indicating a certain change in the Swedish system (Henrekson & Jakobsson 2006: 28).

Controller Identity

A second dimension along which the three systems differ relates to the identity of the blockholders and/or controlling insiders of the companies. The Netherlands is different from the two others in that individuals and families do not play a significant role as owners. Indeed, de Jong and Röell (2005: 482) find for 1993 that only 10.4% of the 143 Dutch firms in their sample can be considered to be family-controlled. La Porta, Lopez-de-Silanes and Shleifer's (1999: Table III) find among the largest twenty companies notable differences between the three insider systems in terms of family ownership (table 1). The lesser importance of families in the Netherlands (only 20% of the 20 largest companies have a family owner) as compared to Switzerland (40%) and Sweden (55%) is striking. La Porta et al.'s sample of 10 mid-cap companies[9] shows similar differences: 40 % of Swiss companies are widely-held, 50 % have a family owner that holds more than 10 % of equity and 10 % have a large shareholder of another type. This compares to 10% widely held, 60% family-controlled, 20% state controlled and 10 % controlled by a widely-held financial institution in Sweden. In the Netherlands, family owned companies account for 20% of the LLSV mid-cap sample (see table 2).

Table 1: Control of Large Publicly Traded Firms

	Widely Held	Family	State	Widely Held Financial	Widely Held Corporation	Miscellaneous
Netherlands	30%	20%	5%	0	10%	35%
Sweden	0%	55%	10%	30%	0%	5%
Switzerland	50%	40%	0%	5%	0%	5%

Source: LLSV 1999, p.493

Note: The data are for a sample of the twenty largest companies by market capitalisation at the end of 1995

Table 2: Control of Medium-Sized Publicly Traded Firms

	Widely Held	Family	State	Widely Held Financial	Widely Held Corporation	Miscellaneous
Netherlands	10%	20%	10%	0	10%	50%
Sweden	10%	60%	20%	10%	0%	0%
Switzerland	40%	50%	0%	0%	0%	10%

Source: LLSV 1999, p.495

Note: The data are for a sample of the ten smallest listed companies with a market capitalisation above USD500m at the end of 1995.

The figures reported by La Porta et al. (1999) show hence that blockholding owner families played a major role in the Swiss and the Swedish corporate governance system, but a much less important role in the Netherlands.

However, even between Sweden and Switzerland there are important differences in family ownership. Indeed, the number of family controlled companies in Sweden reported by LLSV does not allow us to distinguish direct from indirect family control. LLSV investigate the *ultimate ownership* of each entity. Take the example of company A in which an investor X and a financial company both hold a stake of say 5%. If investor X also holds a 'controlling stake' (alternatively 10 or 20% of capital according to LLSV's definition) in the financial company, the control of company A will be attributed to individual X. The number of family-controlled companies reported in their data does hence not distinguish between those directly controlled by a family holding a large stake and those controlled through 'pyramidal structures' involving intermediary companies (LLSV 1999: Table I, p.478). This distinction is however crucial to my argument. Contrary to Switzerland, stock pyramids are wide-spread in Sweden: LLSV find that 78% of the family controlled companies (control is here defined as a shareholder holding 20% of voting rights) in Sweden are controlled by families through pyramidal structures; whereas this is not the case of any of the Swiss companies (LLSV 199: Table V). In other words, each family controlled firm in Switzerland is directly controlled by one family, while in Sweden families use their stakes in one firm to control others. This is confirmed by La Porta and colleagues other variables: The average Swedish family controls 2.5 companies among the top 20 largest companies while the average Swiss (and Dutch) family controls one single company.[10] This reflects the fact that the Swedish economy is organized into different 'spheres' of influence in which a very limited number of individuals and families played a major role (Collin 1998, Carlsson 2007). The Wallenbergs and the management

of Handelsbanken are the most prominent groups of individuals controlling these spheres (Collin 1998). Glete (1994) finds that the Wallenbergs held controlling stakes in five of the twenty-five largest Swedish companies in 1945; a proportion that increased to nine out of twenty-five in 1990. The typical Swedish owner-family controls hence a larger number of firms with little capital investment. As I will show below this made control-enhancing mechanisms (CEMs) more important to exercise control and that the traditional system was more vulnerable to liberalization (Henrekson & Jakobsson 2006).

Moreover, while Swedish families are in 56% of the cases involved in the management of companies[11], in Switzerland this is the case in all the family controlled companies (in the Netherlands the corresponding figure is 50%, but concerns a smaller number of companies) (LLSV 1999: Table V). Therefore Swiss families seem to be more of the entrepreneurial type than Swedish families.

This difference in the importance of families and in the way in which their ownership is structured has very important implications at the political level. In fact, the combination of many large companies being controlled by families and the fact that each family controls only one company makes that such wealthy families are more numerous in Switzerland than in most other countries. This implies that families that are actively involved in management (what one could call 'entrepreneurs') constitute a social group of considerable size – and of course economic wealth – that is susceptible to be not only economically but also politically influential. Moreover, concentrating one's financial resources on one single family rather than spreading it over a large number of companies like in Sweden, certainly increases the family's grip over 'their' company. Indeed, Swiss families can be expected to hold on average larger stakes in 'their' company compared to countries where families exercise control through stock pyramids.

The particular type of family ownership in Switzerland could hence be labelled an *entrepreneurial insider model*, while the Swedish one could be called a *'spherical' insider model*, where family control is exercised through pyramidal structures and CEMs, extents over a large number of companies (a sphere of influence) and implies less direct operational involvement of families.

The Netherlands on the other hand are characterised by a system where ownership concentration is surprisingly low but control is still exercised by insiders. This is the result of even more numerous CEMs and stronger legal means of insider control, which – as I argue in the next section – produced a truly *manager control model* of corporate governance.

Control Enhancing Mechanisms

The prevailing legal mechanism that increased insider control – so called control enhancing mechanisms (CEMs) play a crucial role in distinguishing the three systems. The differences in ownership concentration and structures suggests indeed that Swedish and especially Dutch insiders had to rely to a much larger extent than Swiss insiders on legal instruments to increase their control over a company.

The Dutch model constitutes indeed an extreme case of managerial control, which is not so much based on increasing the influence of large owners, but on instruments that completely separate ownership from control (see Moerland 2002). This has led to the emergence of a powerful economic elite, composed of managers and supervisory board members, which are linked through numerous interlocking directorates – both between supervisory and management boards – and were therefore often considered to form an impenetrable 'old boys network' (see Fennema & Heemskerk 2008). Given the rather dispersed ownership structure, it comes as no surprise that a wide variety of CEMs and of anti-takeover defences existed (de Jong 2001). As mentioned above, besides numerous anti-takeover devices, two legal instruments stick out: the administration offices and the complex board system, which isolated managers and directors largely from shareholder influence.

Sweden, on the other hand, was an extreme case concerning the use of voting right differentials, with several major companies applying distortions of 1 to 1000 as late as the early 21st century. Ownership and control diverged hence very much in Sweden. This reinforced the complex ownership structures in which Closed-End Investment Funds and banks played a major role, and led to a system in which a very limited number of players controlled large parts of the economy. The Wallenberg family which controlled at the end of 1998 – directly and indirectly – about 42% of total market capitalization of the Stockholm Stock Exchange, held only 1% in terms of capital (Henrekson and Jakobsson 2006: 27-28).

In Switzerland finally the main instruments of insider control was the *Vinkulierung* procedure and complex capital structures. These instruments allowed management to decide who could become a shareholder with voting rights and to structure capital in a way that guaranteed corporate insiders a majority in the AGM.

These legal instruments were further reinforced by the proxy voting system allowing banks to represent their clients that had deposited a company's shares with the bank. Due to the Swiss Bankers Association's guidelines, these votes were generally cast in favour of the board. This has changed with the new law

of 1991. Since then, the bank has to ask shareholders for voting instructions before every AGM. In any case, due to *Vinkulierung* and the banks proxies the board was usually sure to have a comfortable majority at the AGM.

Shareholder Orientation in Corporate Practices

If centre-right party preferences are indeed explained by the business elite's underlying preferences, we would expect to find a greater openness of Swiss insiders to reforms not just in the parliamentary arena, but also in corporate practice, while they would resist changes in law and practice in the Netherlands and Sweden.

There is indeed evidence for this prediction as can be illustrated based on changes in companies' capital structure. In 1990 only 14.8% of all listed companies in Switzerland had a capital structure with a single share category and did hence not have any differential voting rights. By 2001 70.7% of the listed companies in Switzerland had introduced the 'unitary share' (*Einheitsaktie*), which guaranteed that all shareholders are treated equally (Kunz 2002: 30). Furthermore, a clear majority (61.3%) of the companies that had introduced by November 2000 the unitary share abolished at the same time the possibility of *Vinkulierung* (Burkhalter 2001).

Dutch insiders resisted the abolishing of instruments of insider control much more decidedly than Swiss insiders. The establishment in 1989 of the VEUO in order to oppose the VEH's claims for abolishing anti-takeover rules (see above) is a very telling example. A report by Deminor Rating shows that in 2005, 86% of the twenty-one Dutch companies in their sample still used one or several instruments of minority control. Another study finds that as late as 2005, Dutch companies were considerably more protectionist than Swiss companies and even than Swedish companies concerning the capital structure: 36% of the 47 largest listed companies still had more than one share class. This compares to 2% (of a total of 58 companies analyzed) for Switzerland and 30% (43 companies analyzed) for Sweden (Aggarwal et al 2007: 34, table 7). Furthermore, whereas hostile takeovers had become a relatively common phenomenon in Switzerland and Sweden by the end of the 1990s (Henrekson & Jakobsson 2006), only one single hostile takeover attempt on Dutch firms had succeeded between 1960s and the late 1990s (de Jong 2001: 160).

There is little evidence for changes at the level of Swedish companies' instruments of insider control during the 1990s too. Thus, as late as 2006, a clear majority (64%) of listed companies in Sweden have issued dual class shares with voting right distortions, which compares to less than 30% of listed companies in Switzerland (see for Sweden Henrekson & Jakobsson 2006: 24, table 9; for Switzerland Kunz 2002: 31). Also, almost 50% of the 120 Swedish

companies, which went public during the period 1998 to 2002, still issued shares with differential voting rights (Veckans Affärer April 7, 2003). Even major internationalised companies such as, Ericsson issued still in 2002 B-shares which carried just 1/1000th votes compared to the A-shares (Ahlqvist 2004: 4-44), although dual class shares were eventually abolished by the Ericsson board.

The changes in corporate practices in Switzerland – which were not directly the result of legal changes as differential voting rights remain legal – were certainly a crucial factor explaining why large parts of the business elite did not oppose the changes in the company law anymore starting in the late 1980s. The resistance of the corporate insiders to change in Sweden and the Netherlands on the other hand certainly explains the very timid pace of legal reforms in these cases.

A second factor that is important to explain differences in corporate governance reforms in the three countries concerns the constellation of actors, i.e. the particular position of the financial sector in the Swiss economy compared to the two other countries.

2.4.2 Strength and Strategies of the Financial Sector

The financial industry is an obvious candidate for being the spearhead of pro-shareholder reforms, as such reforms reorient much of the economic activity towards financial aspects and spur the development of financial markets and activities (see e.g. Lazonick & O'Sullivan 2000). In many countries, bank strategies have evolved away from lending and commercial banking activities since the 1980s, increasing these banks' interest in well-functioning capital markets and creating incentives for banks to encourage financial market transactions such as M&As and IPOs (see Davis & Mizruchi 1999, Culpepper 2005). This evolution away from a commercial banking business model towards an investment-banking and wealth/asset management model has taken place – in different forms – in the Netherlands and Switzerland (Larsson et al. 2010, Heemskerk & Schnyder 2008), but to a somewhat lesser extent – due to the crisis of the early 1990s, which delegitimized new, riskier strategies at the very moment when they were emerging – in Sweden (see Englund 1999). Changing bank strategies may hence create a resourceful actor in favour of corporate governance reforms.

Indeed, empirical research shows that financial sector actors were among the most fervent promoters of corporate governance reforms in Germany for instance (Deeg 2005). Yet, the impact that these actors will have on patterns of corporate governance reform will depend on the political clout of the banking industry in different countries. Therefore, the contribution of the financial

industry to a country's economic output explains to a certain extent why centre-right parties may be receptive to pro-shareholder ideas.[12]

In Switzerland, banks started during the 1980s to reorient their strategies towards more profitable activities than commercial banking such as asset management and investment banking (Ravara 1989, Schaub 1992, Larsson et al. 2010). The banking sector's increasing focus on well-functioning financial markets directly affected the traditional corporate governance system, as banks' support for nonliberal practices decreased. This concerned first and foremost the *Vinkulierung* procedure, which clearly hampered the development of financial markets as it reduced liquidity and made share transactions more complex. The banks' support for this central pillar of the traditional Swiss system had been essential. In fact, since 1961, banks had formally agreed in a gentlemen's agreement (GA) with non-financial companies to refuse selling registered stock to investors who did not fulfil a company's criteria for registration in the stock ledger. During the late 1980s, the Swiss Bankers Association was increasingly critical towards this practice and started to ignore the GA, urging at the same time companies to liberalize their practices of *Vinkulierung* (Schnyder 2010).

At first, this change in banks' preferences created a situation of considerable tensions between banks and non-financial companies, which fed directly into the policy arena through different expert committees and hearings organised by the parliament concerning the stock company law reform. This opposition between financial and industrial elites was labelled by one MP as a 'combat of the titans' (Minutes of the preparatory committee of the CoS 1988: 483). Given the importance of the financial sector for the Swiss economy, it comes as no surprise that this attitude of the banks and their organisation the Swiss Bankers Association (SBA) had considerable influence within the political arena, ultimately leading to a considerable weakening of the *Vinkulierung* procedure.

The banking sector certainly is more important in Switzerland than in the Netherlands or Sweden. Thus, the proportion of assets under management over GDP was 900% in Switzerland in 2005 (see SwissBanking 2006: 15). This compares to 400% for the Netherlands and 120% for Sweden in 2001 (Prast & van Lelyveld 2004: 8).

Swedish banks were certainly also important actors in corporate governance. Indeed, the Swedish economy is dominated by two main business groups – the Wallenberg sphere and the Handelsbank group – in each of which a bank occupies a central place (see notably Collin 1998). Yet, Swedish banks were different from Swiss banks in two important ways: they were closely controlled from below (owners) as well as from above (state). Thus, Sweden's largest bank the Skandinaviska Enskilda Banken (SEB) is controlled by the Wallenberg

family and the Handelsbanken by individuals close to its management (Högfeldt 2005). All three major Swiss banks on the other hand (UBS, CS, and SBS) were for most of their recent history widely-held companies without any shareholder controlling significant stakes over longer periods. This has important implications for the banking sector's role in corporate governance reform: Swedish banks are closely interwoven in spheres of influence in which financial interests do not prime over industrial interests. Also, their strategic choices were during long time heavily limited by public regulations. Indeed, '[Swedish] banks were, in effect, transformed into repositories for illiquid bonds, crippled in fulfilling their key function in screening and monitoring loans for consumption and investment' (Englund 1999: 83). Rather than being independent economic players, which also constitute a powerful political actor, Swedish banks were largely a means for their owners to control non-financial companies through pyramidal control structures. These owners still valued industrial interests at least as much as financial interests and opposed the abolishing of traditional instruments of insider control, such as voting right distortions, on which their control was based. Therefore, the banking sector was not the vector for the financialization of the economy that it was in Switzerland.

A crucial event in this evolution was the banking crisis in Sweden of the early 1990s, which put a halt to the very aggressive financial liberalisation strategy that the government had adopted in the 1980s and which certainly would have had the potential to transform the Swedish banking industry into a much more aggressive industry than is currently the case. The crisis which made important rescue packages necessary and led to a sharp economic decline and delegitimized aggressive, capital-market orientated strategies like the ones that had become predominant among the largest Swiss – but also Dutch –banks at the time.

The banking sector in the Netherlands is much larger than in Sweden and hence important for the Dutch economy as a whole. Yet, the role of banks was very different from Swiss banks. Historically, Dutch banks did not engage in long-term lending to industrial companies. Attempts to establish a universal bank system akin to the German model failed (de Jong & Röell 2005). Contrary to the Swiss universal banks, Dutch banks therefore never acquired a central position in the economy or in corporate governance and did not develop close relations with non financial companies. Only after 1990, when legal restrictions were removed, did Dutch banks expand their activities into new sectors such as the insurance business (Heemskerk & Schnyder 2008). This led to the emergence of the large financial conglomerates ABN AMRO, ING and the Dutch-Belgian Fortis and to a considerable increase in the size of the Dutch banking sector. Thus, the assets under management by Dutch banks over GDP increased from less than 300% in 1997 to over 400% in 2001 (Prast & van

Lelyveld 2005: 8). Yet, contrary to Swiss banks, Dutch banks' strategies moved to a lesser extent away from the lending business. On the contrary, Dutch banks started to become active in the long term lending business only relatively recently – i.e. since the 1960s - and most did not abandon this sector during the 1980s. In 1990, 71.6% of Dutch banks' income was interest income, while the same figure was only 51.2% for Swiss banks, indicating the greater importance that financial markets had for the latter. Still in 2000, the majority of Dutch banks' income was interest income (53%), while in Switzerland the same figure was down to 37.3% (Heemskerk & Schnyder 2008: 45). The less central position of Dutch banks in the economy and the fact that their income dependent to a lesser degree on financial market activities largely explains why actors close to the banking sector did not play a similar pro-shareholder reform role than the Swiss banking sector. To give but one example, Culpepper (2009) quotes Jan Kalff the former chairman of ABN AMRO who in 1994 led an attack against a proposal to weaken takeover defences: "I am concerned about [the proposal to limit the mechanisms] companies use to protect themselves from undesirable takeovers…. I consider it extremely important that the market should come up with balanced measures in this regard, so that legislation is not required. [Such measures risked creating an] unlevel playing field [in which] attractive Dutch companies [could be sold to foreigners]" (Culpepper 2010: chap. 4, p.22, FN 20). This is a surprisingly conservative statement coming from the head of the country's largest bank.

In short, the presence of strong, independent and heavily capital-market orientated banks as a central pro-reform actor was a crucial factor explaining why centre-right parties in Switzerland were hard pushed to adopt a more liberal stance in corporate governance reforms as early as the late 1980s. Indeed, financial actors – and in particular the large banks and their peak organization, the SBA – represented a very influential part of the Swiss business elite and constitute a considerable political force in their own right, which was not the case to the same extent in both Sweden and the Netherlands. Different banking systems that led bankers to adopt more conservative strategies in the Netherlands and Sweden explain the absence of this pro-reform force and may explain why centre-right parties had fewer incentives to support liberalisation.

Conclusion

The central argument of this paper is that the favourable attitude of centre-right parties towards corporate governance liberalization in Switzerland and the reluctance in the Netherlands and Sweden can be explained by the preferences of the business elite, rather than by electoral pressures pushing parties to cater towards the needs of minority shareholders or blockholders.

The empirical evidence shows indeed that the largest parts of the Swedish and Dutch business elite were opposed to pro-shareholder reforms, whereas centre-right support for pro-shareholder reform in Switzerland was a crucial factor making legal change possible early on. Contrary to Callaghan's (2009) view, which puts the stress on the importance of electoral strategies, I showed that these differences are not explained by aggregate ownership patterns. Indeed, the country with the most concentrated not the most dispersed ownership structure experienced the earliest and strongest centre-right support for pro-shareholder reforms. This situation can be explained by the type of insider system that prevails in the three countries. Indeed, the business elite in all three countries opposed reforms that affected their grip on the companies that they control. Yet, since the means of control varied across these countries, the changes that were politically feasible varied too. The weaker dependence of Swiss insiders on CEMs than in the two other cases made corporate insiders less vulnerable to liberalization. It is unlikely that Swiss insiders would have readily given up control over 'their' companies. Yet, equity ownership is the most direct and most efficient means of corporate control, which is also much less affected by corporate governance liberalisation than CEMs. Swiss insiders were therefore less exposed to the threats of liberalisation and had fewer incentives to strongly oppose corporate governance reform than Swedish and especially Dutch insiders for whom legal means of control are crucial. Combined with a strong pro-reform faction within the business elite related to financial services, this created the political support for considerable pro-shareholder reform at a point when other insider-orientated countries still largely resisted pressures for change.[13]

This comparative analysis suggests different venues for further research into the diversity of insider-orientated corporate governance systems. Thus, it can be expected that in countries where the distortion between ownership and control rights is particularly large, the insiders will oppose reforms, while their attitude may be more favourable to reforms, where their power is based on ownership. Bebchuk and Roe (2004: 98 note 42) state that controlling shareholders are less interested in the existence of anti-takeover rules than professional managers, as they control enough share to prevent hostile bids anyway. My study shows that the same goes for non-controlling blockholders: a blockholder which controls a considerable, but still minority stake, in a firm, will certainly have more incentives to oppose the abolishing of anti-takeover rules than a controlling shareholder. Therefore, the 'means of control' matter in order to understand what goals preferences insiders have in processes of corporate governance liberalisation (see also Whitley 1999).

Therefore, while it has been shown that the insider-outsider divide is an important determinant of party preferences regarding several issues such as

labour market policies (Rueda 2005, 2006) and takeover regulations (Callaghan 2009), I argue that it is not enough to leave it at that. In order to understand cross-country differences in the politics of corporate governance reforms, we also need to take into account differences within the category of 'corporate insiders'. In this paper I distinguished entrepreneurial types of insiders systems where an owner family typically controls just one company from systems where families control large numbers of companies regrouped in a 'sphere of influence' and a truly 'managerial system' where control is exercised by professional managers who do not own any sizeable amount of shares like in the Netherlands.

The study presented here does not allow me to draw any strong conclusion on the necessity or sufficiency of the two factors that explain – cumulatively – change in the Swiss case. Would the financial sector pressures for reform have been enough had the industrial elite strongly opposed these claims? Or was the bankers' support for such reforms necessary to make changes possible? These questions could be further explored in more comprehensive comparative studies that include a larger number of countries.

In any case, these two factors – type of insiders and strength of financial sector – go a long way in explaining different trajectories of change in three – *a priori* very similar – insider systems. This paper contributes hence to the literature by providing certain factors according to which the category of 'insider systems' should be disaggregated (type of control mechanisms and strength of different factions of the business elite).

Notes

[1] See however Barker and Rueda (2007) who add a distinction between outsider labour (parts of the workforce which are either unemployed or in precarious short-term employment relations) and insider labour (i.e. those parts of the workforce which are in a stable employment relation) as well as outsider capital (minority shareholders) and insider capital (blockholders). They argue that it is the interaction between the strength of insider labour and the presence of blockholders, which determines corporate governance reforms and that in situations where insider labour is weakened, blockholders will be hard-pushed to support CG liberalisation.

[2] Callaghan (2009: 736) also argues that centre-left support for outside shareholders is most likely to emerge in countries where ownership concentration is high, because in these cases large blockholders "can be cast as the villains", which allows left-wing parties to support outside shareholders without alienating their working-class base. In this paper I limit the analysis and the argument on the influence of the nature of insider systems on centre-right parties (see however Schnyder forthcoming).

[3] See also Tiberghien 2007 who shows that the French and South Korean policy elites were much more active in promoting shareholder value than elites in Japan and Germany. However, Tiberghien explains this outcome not by interest group power alone, but also by the activity of policy entrepreneurs.

[4] In this context, it is noteworthy that the issue of salience may have influenced Callaghan's findings. Her work focuses on the issue of takeover regulation where electoral pressures may play an important role in determining party preferences. Indeed, hostile takeovers are among the few corporate governance issues – together with management remuneration – which make it regularly on the front pages of national newspapers. There may hence be something to gain from electoral strategies including these issues. Regarding more technical, less emotionally debated aspects of corporate governance, the salience can be expected to be much lower and the influence of corporate insiders and the business elite on the political process and outcomes much stronger (cf. Culpepper 2010).

[5] The ten variables included in the SPI measure the following dimensions of shareholder protection: the power of the general meeting to influence the sale of substantial amounts of assets; the shareholders agenda setting power; legal rules facilitating the anticipation of shareholder decisions; prohibition of multiple voting rights; rules concerning the number of independent board members; feasibility of director's dismissal; the private enforcement of directors' duties (derivative suit); the possibility of shareholder action against AGM resolutions; the existence of a mandatory bid rule and requirements for the disclosure of major stakes in other companies (Siems et al. 2009: 6-8). It should be noted that the SPI is a broad measure of the regulatory framework including rules stemming from codes of conduct and listing requirements where they are binding for listed companies.

[6] Switzerland has in 1991 introduced a rule, which limits the maximal distortion of voting rights to 1:10, i.e. no share can carry more than ten times the voting power of a 'normal' share. In Sweden, such a rule exists since 1944, however, a 'grandfather clause' allows companies that had issued super-voting shares before 1944 to continue issuing such shares.

[7] The reasons for refusal are more generously defined for non-listed registered shares however. This has to be seen as a compromise between MPs close to the largest (listed) companies and representatives of SMEs. Also, a transitional provision of the new stock company act exists which allows – even listed – companies to still refuse foreign shareholders when foreign ownership would mean that the company offends Swiss laws. Indeed, different laws exist which require companies to prove that they are mainly in Swiss hands.

[8] As mentioned above such a rule was ultimately introduced through the stock listing requirements of Näringslivets Börskommitté (NBK) – a self-regulatory authority supervising stock markets – in 1999 and strengthened in 2003.

[9] The sample includes the 10 smallest listed companies with a market capitalisation above $500m as of the end of 1995 (La Porta, Lopez-de-Silanes and Shleifer 1998: 6-7).

[10] This finding is also supported by Nollert's (2005: 427) data for Switzerland in 1995: among the 22 Swiss families or individuals with a fortune of CHF 1b or more in 1996 and who had important stakes in the 300 companies of his sample, only two had important shareholdings in more than one company.

[11] Family involvement in management is defined as the CEO, Honorary Chairman, Chairman or Vice-Chairman of the Board being member of the controlling family.

[12] This is certainly true for the UK, Europe's most important financial centre. Callaghan (2009:745) quotes a labour representative in Britain who accused the Thatcher government of being a "government of the City, for the City, and by far too large an extent by the City"

[13] There are signs, however, that a more profound change in the Swiss model has started taking place during the 2000s with different traditional owners abandoning control over their companies. Schnyder and Widmer (forthcoming) argue that changing educational profiles among Swiss managers contributed in important ways to these more profound changes in corporate practices. It is plausible that similar changes in the educational profile of managers took place in the Netherlands and Sweden too and may start to have an effect on corporate practices. Further research will have to establish the importance of this factor.

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