DOES SOCIAL DEMOCRACY MATTER?
CORPORATE GOVERNANCE REFORMS IN SWITZERLAND AND SWEDEN (1980 – 2005)

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by

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Abstract
This paper tests the accuracy of Roe's (2003) claim that 'social democracies' tend to have insider-orientated corporate governance systems, for two extreme cases concerning Roe's independent variable: Switzerland and Sweden. Starting from a position in which both were clearly insider-orientated systems, there was a significant weakening of insider control in Switzerland during the 1990s, but no comparable change in Sweden up until the early 2000s. These developments occurred against the background of contrasting political contexts in the two countries: in Switzerland, change took place in a context of stable dominance over the political arena by centre-right parties; in Sweden, no change took place despite the fact that centre-right parties managed several times to break the traditional social-democratic dominance over government. Thus it would seem that political power relations as such do not explain the observed trajectories of these two corporate governance systems. Instead, the different trajectories are explained by the different preferences of central political and economic actors. The Swiss labour movement, which was traditionally under the dominance of a strong employer side, had important incentives to favour increasing external shareholder control over firms. Conversely, the Swedish labour movement, which had played a considerable part in the shaping of the Swedish corporate governance system, had no such incentives. Also, as Swiss banks started to reorientate their strategies towards financial market-related activities, they became a very important pro-shareholder reform force in Switzerland. Swedish banks, which were part of business groups in which financial interests did not necessarily prevail over industrial interests, did not play any comparable role.

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1. Introduction

Different variables have been singled out in the comparative corporate governance literature in order to explain the existence of insider-orientated corporate governance regimes with concentrated ownership, shallow equity markets, and low levels of legal protection for minority shareholders. One of the more convincing explanations is Mark Roe's (2003) 'partisan theory', which explains concentrated ownership – and hence shallow and illiquid capital markets – by the strength of 'social democracy' in a given country. The stronger the left at the political level, so the argument runs, the more reluctant traditional shareholders will be to sell off their majority stakes.

A logical consequence of the partisan explanation of corporate governance structures is that corporate governance change happens when the political power relations change, that is, when a country stops being a 'social democracy' we can expect its corporate governance regime to become more investor-friendly and the ownership structure of its firms to become more dispersed.

In this paper I investigate into the accuracy of the partisan explanation by analysing the changes in the corporate governance systems of Switzerland and Sweden during the last twenty or so years. The choice of these two countries for the comparison is justified by the fact that they constitute – in some sense – extreme cases concerning the partisan variable: while both countries were traditionally characterised by insider-orientated corporate governance structures, with concentrated control over companies and legal frameworks which protected minority shareholders badly, they are situated at opposite ends of the right-left spectrum concerning the political arena. Sweden is certainly the ideal-typical 'social democracy', with a social democratic dominated government in power for most of the 20th century. Switzerland, on the contrary, has always had a clearly centre-right dominated government with the social democrats and other left parties hardly ever having obtained more than 30% of the seats in the Federal parliament.

Corporate governance arrangements were exposed in both countries to considerable pressures for change at least since the 1980s and the legislator has in both cases at some point revised the existing regulatory framework. On the basis of Roe's partisan theory, we would expect Switzerland to experience little change in corporate governance structures as the left was and has remained weak, whereas we would expect in the Swedish case a more 'politicised' process of corporate governance reform as changes in governmental power give different actors the opportunity to change the rules for corporate governance

according to their preferences. Yet, the empirical evidence, which I present in this paper, contradicts these predictions: despite stable political power relations, Switzerland experienced – starting from an extremely low level – a considerable increase in the shareholder-orientation of its corporate governance system. No similar changes can be observed in Sweden.

This outcome is explained by the fact that the same stakeholder groups had – contrary to a fundamental assumption of most mainstream theories – very different preferences in the two countries. Most importantly, the preferences of the Swedish social democrats were fundamentally different from the preferences of the Swiss social democrats.

This divergence can be observed not only at the level of the legal framework for corporate governance, but even more so at the level of changes in corporate practices. In fact, while the Swedish legislator was obliged – mainly due to EU legislation – to adapt its legal framework somewhat to international standards (which meant increasing minority shareholder protection) despite the absence of any significant domestic impulses to do so, Swedish firms resisted changes to a much larger extent than Swiss firms.

I argue that the differences in the trajectories of Switzerland and Sweden hint at the need to include supplementary variables in the political explanation of corporate governance advanced by Roe (2003). I do not reject the importance of political power relations for explaining corporate governance as such, but I argue that more attention has to be paid to the determinants of actors' preferences and – related – to the heterogeneity within different stakeholder groups that are generally treated as homogeneous groups. In other words, as many recent studies on corporate governance reform show[1], the 'left' is not invariably an anti-shareholder force and the 'right' is not unambiguously pro-market. Including concepts of preference formation in the explanatory framework of corporate governance allows us to understand why certain groups of actors do not necessarily want the same thing in different national contexts and why – consequently – a given set of power relations does not invariably lead to the same outcome.

My study also shows that a more accurate political explanation of corporate governance regimes has to take into account the inter-relation between changes in the legal framework and the actual changes of corporate governance at the level of individual firms (see for a similar point Culpepper 2007). My analysis of the Swiss and Swedish cases suggests in fact that corporate practices are a central determinant of actors' preferences and that we need to take into account

such practices in order to fully understand what actors want in the political struggles over legal reforms.

I find that three factors explain the presence of pro-shareholder reform in Switzerland and the absence of such reforms in Sweden: firstly, the preferences of the centre-left actors were fundamentally different because the Swedish social democrats had much more influence over the terms of the corporate governance arrangements than the Swiss social democrats. Secondly, the type of banks that prevailed in both countries explains to an important extent differences in the trajectories of the two countries. Thirdly and more generally, the type of 'insiders' and the way in which they controlled 'their companies' was another essential determinant of economic actors' preferences and hence of political reform dynamics. More precisely, I show that the central issue in understanding the differences between the corporate governance reforms in Switzerland and Sweden is the fact that in Switzerland insider control over corporations went together with a high ownership concentration, whereas it was based in Sweden, to a much larger extent on controlling minority structures (CMS), such as ownership pyramids and voting right distortions.

Theoretically, this finding hints at another often-neglected point in the comparative corporate governance literature: insider-orientated corporate governance systems show a much greater variety than outsider systems. In fact, while the typical Anglo-American outsider system is characterised by dispersed share ownership and the categorisation of (external) shareholders vs. managers is rather straightforward, systems with concentrated ownership vary greatly concerning the identity of the 'blockholders'. Thus, blockholders in Germany are often industrial companies, insurance companies and banks, in France the state used to be an important 'blockholder', whereas in Switzerland and Sweden the blockholders were mainly the traditional families, which held their shares in Sweden through the intermediary of closed end investment funds (CEIF)[2], but held them directly in Switzerland. It is precisely the neglect of the analysis of who the 'insiders' are in different insider-systems, which has made it difficult to fully understand (legal and actual) corporate governance reforms in certain cases. Therefore, as Culpepper (2007: 784) has pointed out for the Italian case: 'the focus of inquiry needs to turn to the political resources of those who support the existing system: managers and large shareholders'. As I will show in this paper, identifying who supported the traditional system in Sweden and Switzerland and analysing their political resources is key to understanding the different preferences of seemingly similar groups of actors in Switzerland and Sweden and explains ultimately why corporate governance reforms were different in the two countries.

The paper is structured as follows: Section 2 presents Roe's partisan theory of corporate governance and derives from it predictions for the Swiss and Swedish cases. Section 3 analyses the evolution of the dependent variable – that is, legal minority shareholder protection (MSP) – in the two cases using a 10-variable shareholder protection index (SPI) and different country-specific elements concerning the shaping of a company's capital structure and the transferability of shares. Part 4 explores political variables in order to test the accuracy of the predictions derived from Roe's (2003) partisan theory in the two cases. Section 5 analyses the political processes which have led to the changes analysed in section 3. Section 6 compares the two country cases in order to single out the determinants of central actors' preferences in the two cases. Section 7 concludes.

2. Theory: The Power of Political Forces and Corporate Governance

Mark Roe's work contributed greatly to the inclusion of political variables in the explanation of the cross-national diversity of corporate governance regimes (Roe 1994; 2000; 2003). More precisely, Roe (2003) stresses the importance of the left vs. right divide in a society – and by extension in the party system – and explores the link between the power of certain political forces and corporate governance structures. He finds correlations between the strength of centre-left parties[3] in a given country and the concentration of ownership. He explains this correlation by the claim that where labour interests are strong, they give voice to additional claims on the firm's assets to those of shareholders and thereby increase agency costs, which deters investors from acquiring minority stakes and blockholders from selling out their controlling stakes. Roe's central argument is hence not that centre-left parties cause blockholding because they prefer it *per se*, but because in social democracies agency costs are potentially higher in transparent and public companies as claims for wage increases are stronger and managers pursue less profitable strategies. More precisely, Roe (2003: 33) argues that in a 'social democracy' strong pressures exist that push managers to pursue – in the name of high job security – risk-adverse expansion strategies. Since managers are risk-adverse anyway, they easily give way to these pressures and side with workers but neglect shareholders' interests. In Roe's model, managers, are, as a result, '[…] somewhere in between shareholders and employees, pressed to side with either one or the other group' (Cioffi & Höpner 2006: 465). In this situation controlling shareholders will be reluctant to abandon control and public companies with dispersed ownership will therefore be rare.

Therefore, Roe's argument is not primarily a policy argument; he sees reasons for managerial behaviour which is contrary to shareholders' interests in other, fundamental characteristics of a country, such as social norms and culture (see Roe 2003: 36). This is illustrated by the Swedish case, where social democratic power has led to concentrated ownership despite (relatively) high levels of legal MSP (Roe 2003: 94ff). The inclusion of other factors than legal rules in the explanation of concentrated ownership also implies that the ownership structure is deeply rooted in a country's context and hence not likely to change quickly. As a result, it would be wrong to attribute to Roe's work too mechanical a view of the link between changes in formal mechanisms of minority shareholder protection (as legal rules) and the outcome at the level of ownership.

However, his theory does contain an explicit claim that social democratic politicians will not pursue pro-market and pro-shareholder orientated policies. This is most clearly expressed concerning transparency: Roe (2003) considers that the potentially strong pressures on companies to increase wage levels when business is going well, has led in social democracies to low levels of transparency as blockholders and managers do not want employees to be informed about financial figures. One could therefore expect the left to be favourable to increasing transparency, as this would reduce information asymmetries between them and corporate insiders. Despite this genuine interest in increased transparency, Roe (2003: 41) states that the left does not impose higher transparency standards on firms, as this would at the same time increase minority shareholders' control over firms:

> 'Social democratic politicians have little interest in promoting shareholder wealth-maximizing transparency: they would not want to make the accounts sufficiently transparent, such that distant shareholders could better understand the firm and thereby be equipped to press managers to re-position non performing factories.'

Left-wing politicians, so he argues, therefore prefer pro-employee policies other than transparency, which have less ambiguous effects for labour. More generally, Roe (2003: 46) expects a general reluctance of the left to promote instruments of control – such as profit-based compensation for executives and measures favouring takeovers – which at the same time favour shareholders' interests. Thus his model suggests that changes in power relations between left and right are necessary to make pro-shareholder policy possible. Concerning change in policy, he considers that

> '[It is not] assured that a social democratic polity could commit itself to such pro-capital institutions [as profit-related executive pay and pro-takeover measures] if it were temporarily so inclined.

> Realistically, the polity would have to shift rightward for that commitment to be credible.' (Roe 2003: 46)

Following this reasoning, we would expect a weakening of the Social Democratic Party to be crucial in order to make both increases in legal MSP and in the level of diffused share ownership possible. Where a centre-left dominated polity shifts rightwards, we would expect legal MSP to increase, companies to become more investor-friendly, and financial markets to flourish. Without such a change in political power relations, we would expect levels of legal MSP to remain stable.

I show in this paper that, contrary to these expectations, the Swiss corporate governance system appears to have changed towards a more outsider-orientated system already during the early 1990s, whereas the Swedish corporate governance system remained largely stable up until the late 1990s. The next section shows this point concerning the evolution of the level of legal MSP in the two countries since the 1980s.

3. The Evolution of Legal Minority Shareholder Protection in Switzerland and Sweden during the 1990s

The main legal source for shareholder protection in Switzerland is the Stock Corporation Law, which is part of the Swiss Code of Obligations (CO). The 'traditional' corporate governance regime, that is, the one governing Swiss corporations throughout the 20th century, was based on the Stock Corporation Law of 1936. A major reform of this legal framework was initiated in the mid-1960s, and led to a new Stock Corporation Law in 1991. In 1995, the first federal Stock Exchange and Securities Trading Act (SESTA) was adopted, which contains several provisions touching on MSP. Finally, a code of best practices, the Swiss Code of Best Practices in Corporate Governance, was adopted by the main business association – Economiesuisse – in 2002, in parallel with a transparency directive elaborated by the SWX Swiss Stock Exchange (Economiesuisse 2002). Both are binding for listed companies.

As in Switzerland, in Sweden the joint stock corporation was by far the most common form of business enterprise, being used both by large multinational companies and by very small companies. Therefore, rules concerning corporate governance and MSP can be found in Sweden mainly in the Stock Corporation Law (*Aktiebolagslag*, ABL). The legal framework that shaped Swedish corporate governance during the post-war era was defined by the ABL of 1944 and the new ABL of 1975. The most recent reform of the ABL took place between 1990 and 2005.

Several specific laws concerning accounting rules and the trading with securities exist as well, which in some cases affect corporate governance. Finally, a code of best practice was adopted by the Swedish Code Group in 2004 (SOU 2004: 130).

Since La Porta et al.'s (1998) article on 'law and finance', the cross-national comparison of levels of legal minority shareholder protection (MSP) has largely been based on their anti-director rights index (ADRI). However, this index has been criticised on various grounds (see notably Spamann 2006, Braendle 2006, Lele & Siems 2007, Schnyder 2008). Several limitations of the ADRI have been underlined, notably its insensitivity towards the existence of functional equivalents to typically US instruments of shareholder protection. The assessment of the level of MSP in this paper is therefore based on a different shareholder rights index developed by the Corporate Governance Research Programme at the Centre for Business Research, University of Cambridge, UK (see Armour et al. 2007, Lele & Siems 2007), which comprises 10 variables. It has the advantage of still being fairly concise, while making meaningful cross-country comparisons of a relatively large number of cases possible.

The variables of this SPI are chosen and defined in a way which aims to remedy several shortcomings of the LLSV ADRI. The differences concern notably the *sources* of MSP: Armour et al. (2007) include not only positive law, but also rules stemming from self-regulation, such as corporate governance and takeover codes, where they are binding for (listed) companies. The SPI also differs from the ADRI in that it is not based on binary variables, but allows for intermediary scores between 0 and 1 where appropriate. Moreover, the SPI is, unlike the ADRI, sensitive to 'default rules' in the sense of rules which apply in certain circumstances depending on the involved actors' choices. Such laws, although not strictly binding, are not necessarily coded 0. The index also explicitly acknowledges the importance of coding for functionally equivalent instruments in different countries. Finally, the SPI constructed as a longitudinal measure measuring the legal MSP of a given country for each year (see for details Armour et al. 2007: 8ff; Lele & Siems 2007). Table 1 provides the definitions for the ten variables included in the SPI.

Table 1: 10-variable Shareholder Protection Index core variables

Variables	Description
1. Powers of the general meeting for de facto changes	If the sale of more than 50 % of the company's assets requires approval of the general meeting it equals 1; if the sale of more than 80 % of the assets requires approval it equals 0.5; otherwise 0.
2. Agenda setting power	Equals 1 if shareholders who hold 1 % or less of the capital can put an item on the agenda; equals 0.75 if there is a hurdle of more than 1 % but not more than 3%; equals 0.5 if there is a hurdle of more than 3 % but not more than 5%; equals 0.25 if there is a hurdle of more than 5% but not more than 10 %; equals 0 otherwise.
3. Anticipation of shareholder decision facilitated	Equals 1 if (1) postal voting is possible or (2) proxy solicitation with two-way voting proxy form has to be provided by the company (i.e. the directors or managers); equals 0.5 if (1) postal voting is possible if provided in the articles or allowed by the directors, or (2) the company has to provide a two-way proxy form but not proxy solicitation; equals 0 otherwise.
4. Prohibition of multiple voting rights (super voting rights)	Equals 1 if there is a prohibition of multiple voting rights; equals 2/3 if only companies which already have multiple voting rights can keep them; equals 1/3 if state approval is necessary; equals 0 otherwise.
5. Independent board members	Equals 1 if at least half of the board members must be independent; equals 0.5 if 25 % of them must be independent; equals 0 otherwise
6. Feasibility of director's dismissal	Equals 0 if good reason is required for the dismissal of directors; equals 0.25 if directors can always be dismissed but are always compensated for dismissal without good reason;[4] equals 0.5 if directors are not always compensated for dismissal without good reason but they could have concluded a non-fixed-term contract with the company;[5] equals 0.75 if in cases of dismissal without good reason directors are only compensated if compensation is specifically contractually agreed; equals 1 if there are no special requirements for dismissal and no compensation has to be paid. Note: If there is a statutory limit on the amount of compensation, this can lead to a higher score.
7. Private enforcement of directors duties (derivative suit)	Equals 0 if this is typically excluded (e.g., because of strict subsidiarity requirement, hurdle which is at least 20 %); equals 0.5 if there are some restrictions (e.g., certain percentage of share capital;[6] demand requirement); equals 1 if private enforcement of directors' duties is readily possible.
8. Shareholder action against resolutions of the general meeting	Equals 1 if every shareholder can file a claim against a resolution by the general meeting; equals 0.5 if there is a threshold of 10 % voting rights; equals 0 if this kind of shareholder action does not exist.

9. Mandatory bid	Equals 1 if there is a mandatory public bid for the entirety of shares in case of purchase of 30% or 1/3 of the shares; equals 0.5 if the mandatory bid is triggered at a higher percentage (such as 40 or 50 %); further, it equals 0.5 if there is a mandatory bid but the bidder is only required to buy part of the shares; equals 0 if there is no mandatory bid at all.
10. Disclosure of major share ownership	Equals 1 if shareholders who acquire at least 3 % of the companies capital have to disclose it; equals 0.75 if this concerns 5 % of the capital; equals 0.5 if this concerns 10 %; equals 0.25 if this concerns 25 %; equals 0 otherwise

Source: Siems 2007

Figure 1 reports the evolution of Swiss and Swedish company law concerning the protection of minority shareholders' rights between 1980 and 2006. The figure clearly shows that the overall trend in legal MSP in the two countries is similar to the evolution Armour et al. (2007) and Lele and Siems (2007) observe for the countries in their sample, that is to say, towards increasing MSP. Several important differences between the two countries have to be stressed however. Thus, Switzerland had, at the beginning of the period under analysis, a considerably lower level of legal MSP than Sweden. The Swiss law of 1980 scored 2.75 on the 10 points SPI scale, whereas Sweden scored 3.5 in the same year.

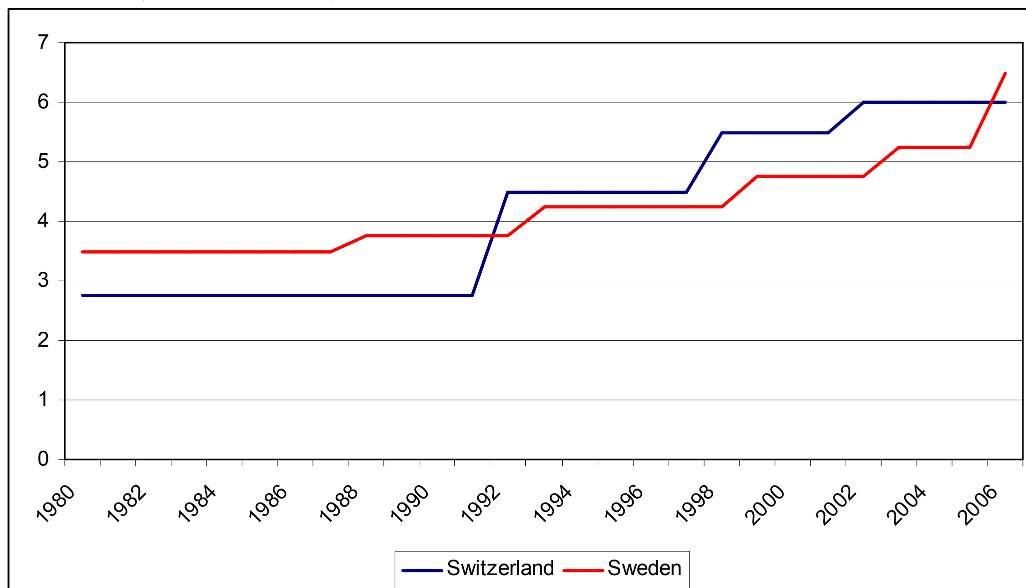
Also, the Swiss legal framework began to change much earlier than the Swedish one. The score increased with the Stock Corporation Law reform of 1992, to 4.5 due to important improvements in the field of proxy voting and the disclosure of large stakes, while the Swedish law changed only very moderately between the adoption of the 1975 Stock Corporation Law and 1990. The only change during this period was the entry into force of law 1987:464 (the so-called 'Leo Law'), which prevented parent companies from selling off stakes in a subsidiary company to related persons without a 90% AGM approval (+0.25 on the SPI). The SPI for Switzerland further increased with the entry into force in 1998 of the Stock Exchange and Securities Trading Act (SESTA), which introduced a mandatory bid rule. In 2002, finally, with the introduction of the Swiss Code of Best Practice (SCBP), a voluntary code, which is quasi-binding for listed companies, the score further increased (+0.5) due to a rule demanding that the majority of board members be independent.

During the 1990s, Swedish law, on the other hand, improved the position of minority shareholders only in 1993 through the adoption of a disclosure rules for stakes above 10%, through the implementation of the EC directive on the information to be published when a major holding in a listed company is acquired or disposed of (88/627/EEC), and in 1999 with the adoption by Stock

Exchange Committee of the Swedish Economy (*Näringslivets Börskommitté*, NBK) of a mandatory bid rule (which was lowered to 30% of the shares only in 2003) (+0.5). Other than that, no change affecting the SPI took place during the 1990s. Only the new ABL of 2005, which entered into force on January 1, 2006, led to a significant increase in the SPI due to better MSP concerning the selling of companies' assets (during a merger), proxy voting, and the election of board members.

In sum, during the 1990s and the early 2000, the Swiss law changed to a larger extent than the Swedish one and legal MSP was higher in Switzerland than in Sweden for several years until the entry into force of the new Swedish ABL in 2006. The difference becomes even clearer when we look at other instruments of insider-control, which are not completely covered by the SPI. While the long-term evolution still points into the same direction, these differences in the trajectories of both countries are significant and appear even more important in light of the political theory of corporate governance which I have presented above.

Figure 1: Evolution of the Shareholder Protection Index in Switzerland and Sweden (1980 – 2006)



Source: My own calculations

In sum, there can be no doubt that the Swiss corporate governance system was, up until the 1990s at least extremely insider-friendly, – and that consequently legal MSP was low (see David et al. forthcoming, Schnyder 2008, Djankov et al. 2006, Monks & Minow 1995). This is clearly confirmed by the SPI. For Sweden, opinions diverge to a greater extent on how to characterise the system. In fact, some authors consider Sweden to be a case of comparatively high levels

of MSP by continental European standards (see Agnblad et al. 2001, LLSV 1998). This classification relies, however, in part on the fact that accounting rules were traditionally rather strict in Sweden and that transparency was high. As early as 1944, the ABL included provisions on the disclosure of certain basic figures (turnover notably), the consolidation of accounts, and the disclosure of affiliations (Kollatz 1962). In comparison, in Switzerland, no such rules existed until 1991. Another example concerns hidden reserves: the Swedish ABL of 1948 allowed their creation, but an amendment of 1950 obliged firms to disclose undervaluation of assets to a certain extent. Thus, the insurance values of buildings and machines had to be indicated (Kollatz 1962: 93-95). The Swiss law, on the other hand, still allows today the creation of hidden reserves for non-listed companies. Hence, while the 'principle of prudence', which by definition leads to an underestimation of profits, was applied in Sweden as well, accounting standards were considerably higher than in Switzerland.

Yet, despite a traditionally – for insider-orientated systems – comparatively high level of legal MSP in Sweden, two factors make it clear that Sweden has to be consider as a case of low shareholder protection: firstly, the SPI clearly shows that the level of MSP in Sweden was below the level of Anglo-Saxon countries (the US score 6.25 and the UK 6.5 on the SPI in 1995, whereas Sweden scored 3.75 in that same year).[7] Secondly, and more importantly, voting right distortions were not prevented by the relatively high level of legal MSP, but were in fact much stronger in Sweden than in any other European country (see section 6.2.2. below for details). Voting right distortions constitute one of the most efficient mechanisms of insider control (Bebchuk et al. 2000) and deprive external shareholders from their most fundamental right, that is, the right to exercise a control over the company corresponding to the financial risk that they carry. Therefore – while granting a relatively helpful insight into the company's financial situation due to high standards of transparency – Swedish company law was contrary to minority shareholders' interests concerning one of the most crucial aspects of corporate control.[8] The traditional Swedish model can thus by no means be seen as protecting minority shareholders significantly better than other continental European countries. Also, a variety of limitations to the transferability of shares – including the possibility of prohibiting foreign investors from acquiring stock in Swedish companies – also existed (see further below).

Consequently, the argument that Sweden did not experience a similar reform of its legal framework as Switzerland is due to its higher 'starting level' of MSP at the outset does not hold. In fact, concerning the most fundamental aspect of corporate governance, the Swedish legal system restricted shareholder rights

even more than other systems and can therefore be expected to have experienced similar pressures to Switzerland. In other words, the different starting levels of MSP between Switzerland and Sweden do not provide a clear explanatory variable for their different trajectories. Both countries clearly belong to the 'insider-orientated' type of corporate governance systems in which shareholders' interests are subordinated to that of insiders. There may indeed have been differences in the degree to which minority shareholders' interests are protected, overall, but MSP was a secondary concern in both systems.

It should also be noted that the SPI aims primarily at making meaningful longitudinal cross-country comparisons of legal MSP by defining a set of variables which are considered to be central to the protection of minority shareholders. Armour et al. (2007: 12) state that the choice of the variables was influenced, among other things, by the importance these instruments had in the different jurisdictions for which the SPI was first developed. The instruments that are measured by these variables were hence not necessarily important in each one of these countries. The SPI can only provide a partial picture. Therefore, in analysing the politics of corporate governance reform in Switzerland and Sweden, it is essential to add in several other country-specific dimensions of shareholder rights, which are not necessarily captured by the SPI, but which, as we shall see, were perceived by the relevant actors in both countries as being central to the question of MSP. The advantage of case studies and 'small number comparisons' is precisely to be able to provide in-depth analyses of a limited number of cases without having to limit the analysis to a small number of indicators for each case. A further point is that while the SPI captures, given its definition, the rules that apply to listed companies, the rules that apply to non-listed companies should also be discussed, as they were relevant to the political debates on corporate governance in the two countries in the period we are concerned with.

Having said that, two issues deserve particular attention when discussing the question of minority shareholder protection in Switzerland and Sweden: firstly, the question of voting right distortions, and secondly, instruments that allowed corporate insiders to shape the capital structure of the firm and to restrict the transferability of shares and/or the exercise of rights linked to these shares. In both countries, such instruments were the central pillar of the traditional insider-domination over firms.

Voting Rights, Capital Structure and Vinkulierung *in Switzerland*

The traditional Swiss corporate governance regime rested on two main pillars: first, the existence of a large degree of financial autonomy on the part of corporate insiders due to the possibility of concealing large parts of profits through the creation of hidden reserves; and second, the so-called *Vinkulierung* procedure, which allowed corporate insiders to refuse buyers of registered stock their inscription in the stock ledger. While – for reasons of space – I will not discuss the issue of accounting rules in this paper, the issue of *Vinkulierung* is of central importance for assessing changes in the Swiss corporate governance regime. Indeed, many aspects of the regulation of corporate governance have undergone very significant changes during the 1990s. This concerns notably the level of transparency in accounting, the functioning of the board and the definition of the responsibilities of directors. Yet, the related questions of capital structure, voting rights, and the possibility of corporate insiders rejecting buyers of registered shares, provide a reasonable 'proxy' for power relations between different stakeholders and illustrate well the debates and changes that took place in other fields as well. As noted above, the questions of capital structure and voting rights are even more significant when it comes to analysing changing preferences of political and economic actors concerning the question of insider- vs. outsider-orientated corporate governance, as these issues directly affect power relations between insiders and outside investors. Other aspects, such as transparency, have a much more ambiguous effect on the distribution of power within the firm. Höpner (2003) considers that increasing transparency is more than just 'symbolic policy' and has an important impact on the operational management of the firm, as it gives rise to shareholder claims for an increasing part of the value added, which are hard for managers to resist. This is certainly true, but it should be noted that improved transparency does still not *directly* affect corporate control and it may well be that increasing pressures from shareholders following increasing transparency are often successfully resisted by the 'controllers'. Changes to the means of influencing power relations during the AGM, such as voting right distortions, on the other hand, are an unambiguous sign of changing power relations and preferences. Limiting the discussion to the issue of the capital structure is also justified by the fact that in Switzerland this issue had become – by the mid-1980s – the most controversial issue debated in the federal parliament in relation to the Stock Corporation Law reform (see for a comprehensive analysis of other aspects of the reform Schnyder 2008).

The Swiss Stock Corporation Law of 1936 allowed firms to limit the voting rights of shareholders who owned more than one share (art. 692. al.2 aCO) and

the issuing of 'super-voting shares' (*Stimmrechtsaktien*) was explicitly acknowledged (art. 693 aCO). The Swiss type of 'super-voting shares' is different from multiple voting shares in the sense that both 'normal'[9] stock and super-voting stock carried one vote. However, the face values of shares from different categories were different (art. 693 al.2 aCO). Shares from the category with lower face value gave hence right to more votes for the same amount of capital than from the category with higher face value. The famous slogan 'one share – one vote' was hence literally respected in Switzerland. This is of course not what shareholder activists have in mind today when they demand respect for this principle. The proportionality between voting rights and face value of the investment was often not respected. This type of super-voting shares is usually referred to as 'indirect super-voting stock'.

The provisions of the law concerning voting right distortions did not change much with the adoption of the new Stock Corporation Law in 1991. Thus, art. 692 CO still stipulates the principle of voting rights being proportional to the face value of shares, but admits also the possibility of voting caps (art. 692 al.2 CO) and of issuing shares with lower face value but the same voting right (art. 693 al.1 CO). Art. 693 al.2 CO, however, introduces a new provision, which limits the distortion of voting rights to a ratio of 1 to 10. It is therefore not for that a super-voting share to carry more than ten times as many votes as an ordinary share. Respect for the 'one share – one vote' principle was by no means guaranteed with this new rule, but voting right distortions were somewhat restricted by comparison with the previous law.

In practice, voting right distortions – although fairly common – played a secondary role in Switzerland. This is illustrated by the fact that during the reform of the law of 1936 there was literally no debate about voting rights in Switzerland and that the limitation of 1:10 was accepted without much opposition in both chambers of the parliament (Official Bulletin (OB) of the National Council (NC) 1985: 1659ff; OB of the Council of States (CoS) 1988: 450ff). As I will show below, this contrasts very much with the Swedish case, where the dual class share system was regularly subject to public debate.

The limited importance of voting right distortions in Switzerland was mainly due to the existence of a more efficient instrument of insider control, that is, the so called *Vinkulierung*.[10] *Vinkulierung* designates the limitation of the transferability of registered shares for reasons mentioned in the articles of incorporation or in the law. Concretely, the articles of incorporation could give management[11] the option to refuse the inscription of buyers of registered shares in the stock ledger for reasons specified in the articles of incorporation (art. 686

al.1 aCO). The articles could also specify that the management could refuse to inscribe buyers of registered stock without giving a reason (art. 686 al.2 aCO). This instrument was mainly used by Swiss companies to protect themselves from hostile takeovers notably by foreign competitors and more generally to limit the influence of foreign investors on Swiss companies (see Lüpold 2004). The effect of a refusal of inscription was that the buyer was not considered to be a shareholder (art. 685 al.4 aCO) and did not obtain any of the shareholders' rights (that is, neither voting nor cash-flow rights) (for more details: Kaufmann and Kunz 1991, and Kläy 1997).

Concerning the *Vinkulierung* regime, however, fundamental changes were made with the reform of 1991. First of all a distinction was introduced between listed registered shares and non-listed registered shares, with stricter rules concerning restriction of the transferability of shares applying to the former. Under the new regulation for listed registered shares (art. 685d-685f CO), *Vinkulierung* may not constitute a limitation to the transferability of shares anymore (that is, all rights are transferred to the buyer with the purchase), but 'merely' a limitation on the exercise of voting rights (Kläy 1997: 139). For non-listed registered shares (685b-685c CO), however, the new law introduces the 'theory of unity', which states that the rights appending to the share cannot be separated, in other words, the financial rights (right to receive a dividend and parts of the liquidation proceedings mainly) cannot be transferred to the buyer as long as the associational rights (voting right, right to participate in the AGM) are not transferred.[12] This implies that all rights remain with the seller if the company does not accept the new shareholder (art. 685c al.1 CO; Kläy 1997: 127).

More importantly, however, the reasons a company may have for refusing to register a buyer of 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 (art. 685d al.1 CO). This considerably restricts the scope for refusals of new shareholders, since discrimination against certain types of shareholders (for example foreigners) is not possible any more. The change is particularly striking if one considers that the law of 1936 allowed any reason for refusal and permitted the company to refuse shareholders even without mentioning a reason.

However, the transitional provisions of the new Stock Corporation Law state at art. 4 that the company can – separately from what is stated in art. 685d al.1 – refuse '[…] persons, in as far and as long as their acceptance would prevent the company from providing proof of the composition of the circle of shareholders

as demanded by federal law.' (art. 4 transitory provisions, my translation). The debates which took place in the parliament clearly show that this provision was aimed at maintaining the possibility of excluding foreign investors from Swiss companies – the traditional aim of *Vinkulierung* – without stipulating explicitly in the law that nationality could be a reason for refusal (see e.g. OB of the Council of States (CoS) 1988: 487 and 490). Indeed, federal laws exist which require companies to prove that they are in the hands of a majority of Swiss citizens. In addition to the Banking Act and laws concerning sensitive sectors such as nuclear power plants, the main law which the legislator had in mind here was the so-called 'Lex Koller', which establishes quotas for the acquisition of real estate in Switzerland by foreigners. A Swiss company which is controlled by foreign investors would not be allowed to acquire real estate above this quota.[13] Consequently, as long as the Lex Koller is in force, foreign investors can still be refused the inscription in the stock ledger.[14]

The reasons for refusal are more generously defined for non-listed registered shares. In this case, the company can refuse to inscribe shareholders for 'important reasons', which are mentioned in the articles of incorporation (art. 685b al.1 CO). Such reasons can be provisions justified by a 'social' goal, or the goal of the economic independence of the company. Moreover, the company can reject shareholders who refuse to state that they are buying the shares on their own account (this is intended to constitute a protection against 'trustees' that buy shares for competitors or other, unwanted investors) (art. 685b al.3 CO). Finally, the company can refuse a shareholder without giving a reason if they propose to buy back the shares in question at their real price (art. 685b al.1 CO).

This new regulation concerning *Vinkulierung*, which clearly bears the mark of consensual policy-making and compromising (see below chapter 5.1), may appear to an external observer to be highly restrictive of shareholder rights. However, compared to the law of 1936 and to previous practice, the regulation for listed shares can be considered to be a very large step towards better protection of shareholders as it affects the very heart of the traditional insider-orientated system, in that it effectively deprives insiders of their most important control instrument.

Overall, the 1991 reform constituted a considerable – although not an unambiguous – step towards increasing the shareholder orientation of the Swiss corporate governance system. The ambiguous character of the changes is expressed by the fact that different leading experts on Swiss company law reached quite different conclusions concerning the interpretation of the extent of

these changes. Thus, Forstmoser et al. (1996) pointed out that several 'sacred cows' were not slaughtered (for example, a majority of the board of directors of Swiss companies still had to be Swiss citizens and to reside in Switzerland (art. 708 CO)). Other observers, however, stress that already in 1991, solutions were found for problems that in other countries were only to become part of the corporate governance debate of the 1990s (Böckli 2002). Overall, the assessment was that the reform of the stock corporation law had considerably improved legal MSP. Kunz (2001: 246) considered that

> '[t]he parliament adopted […], concerning minority protection, a patchwork of compromises. This patchwork of compromises, however, takes the interests of shareholders much more fully into account than the cantonal Stock Corporation Laws of the 19th century as well as the two first Stock Corporation Laws at the federal level [i.e. the ones of 1881 and 1936], without putting into question the operability of the company.' (my translation)

This observation corroborates my earlier analysis based on the SPI.

The trend towards increasing MSP continued with the Stock Exchange and Securities Trading Act which was adopted in 1995 and entered into force on January 1, 1998. As far as the SPI is concerned, this law matters because it regulated corporate takeovers for the first time and introduced, most importantly, a mandatory bid rule at the 30% level (art. 32 al. 1 SESTA). This rule implied that any shareholder who holds a stake of more than 30% of the company's equity is obliged to make a public bid for the remaining shares.[15] Moreover, the newly created SWX, which was mandated by the SESTA to establish listing requirements, introduced the 'true and fair' view principle to the listing rules of 1996, which considered a very important increase in transparency levels for listed companies.

It should also be noted that several other reforms to the Company Law – which cannot be discussed in detail in this work for reasons of space – have been undertaken since the end of the 1990s which all confirm the direction of change of the Swiss model, in other words, shareholders' interests increasingly take centre stage. These other reforms include a Merger Act that was adopted in 2003, and an Auditors Oversight Act (AOA), which aims at efficiently supervising the competences and work of auditors and was adopted in 2005. Also, a new proposal for reform of the Stock Corporation Law, which envisages several far-reaching changes – notably the abolishing of proxy voting by banks and the organs of the company – was submitted to the parliament in December 2006 and will be examined in parliament sometime in 2008. The argument that the legal changes that took place in Switzerland during the 1990s (and since)

signify a structural break with the traditional system – even although some features of the traditional model still persist – seems unquestionable.

Voting Right Distortions and Limitations on Share Transfers in Sweden

The ABL of 1975 states in chapter 3 1§ that all shares are to have the same rights. Yet, the articles of incorporation can stipulate that different share categories with different voting rights can be created. The only limitation is that no share may carry more than ten times as many votes as those in the other categories. This rule, which had been introduced in the 1944 ABL, was however combined with a 'grandfather clause' allowing companies that were established before 1944 and had issued shares with more than ten times as many votes than others to continue to issue such shares. As a result, at the beginning of the 21st century, several of the largest companies still had differentials of 1:1000 and continued to issue such shares. As an example, Ericsson issued in May 2002 B-shares which carried just 1/1000th votes compared to the A-shares (Ahlqvist 2004: 4-44). Differential voting rights were an all the more efficient instrument of insider control as the ABL of 1975 contained the possibility of 'directed issues', which in essence allowed the company to cancel the pre-emption rights of certain existing shareholders (that is to say, their right to participate on an equal or proportionate basis in subscribing to newly issued shares). This instrument was restricted in 1987 in the sense that only a 90% majority at the AGM could approve such directed issues if they were made to related persons.

As I will show below (section 5.2), 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 led to the conclusion – supported by the different governments as well as by the industry – that no limitation was desirable. Therefore, up until the reform of the ABL in 2005 this instrument remained unchanged.

Besides voting right distortions and 'directed issues', the Swedish corporate governance system contained a variety of instruments that allowed the company to restrict the transferability of shares and to exclude, above all, foreign investors. The most important of these instruments were probably the existence of 'bound' shares which were subject to a 'foreigner reservation' (*utlänningsförbehåll*), and the redemption clause (*hembudsförbehåll*)[16].

The so-called 'foreigner reservation' was first introduced in the ABL of 1910 and prescribed that only Swedish companies which were not controlled by foreigners or by foreign-controlled Swedish companies could acquire real estate

in Sweden without governmental approval. In order to prove their 'Swedishness', Swedish companies were allowed to introduce an anti-foreigner clause, which since 1934 had been formulated in a way that foreign shareholders could not hold more than 40% of a company's' shares and not more than 20% of the total voting rights. A company could freely decide to make all shares subject to such a clause or to separate the equity capital into shares subject to a 'reservation' – in which case the shares were said to be 'bound' – and shares without such restrictions ('free shares').

This rule remained in force throughout the 20th century. In 1982, it was integrated into the new law on foreign acquisition of Swedish companies (*företagsförvärvslag* 1982:617), which also introduced a general clause obliging foreign investors to ask governmental approval for acquisitions leading to the purchaser exceeding the 10%, 20%, 40% and 50% thresholds in respect of either equity or voting rights (Skog 1994: 119). The government suggested, however, in proposal 1991/92:71, to repeal this law (see PM 18) and – as of January 1, 1993 – Swedish companies were no longer obliged to issue 'bound shares' even when acquiring real estate in Sweden.

While 'bound shares' were abolished – in the light of Sweden's joining the EU in 1995 –instruments for restricting the transfer of shares were further developed in the new law of 2005. The most important of these 'reservations' to the transfer of shares was the 'redemption reservation' (*hembudsförbehåll*). This instrument was defined in ABL 1975 chap. 3 3§ as an exemption to the general rule of the free transferability of shares (ABL 1975 chap. 3 2§). It provided that the articles of incorporation may contain a clause according to which a shareholder or other person has a right to redeem shares when they are transferred to a new owner. An investor who buys shares subject to such a reservation has to inform the company and the company then informs those who have the redemption right ('*lösningsrätt*'). The individuals in question have then two months to make an offer. During the redemption period, neither the seller nor the buyer can exercise voting rights. This clause could – theoretically – also be used against foreigners, as the articles may postulate that the '*hembuds*' clause applies when shares are sold to a foreigner. In view of Sweden's joining the EU, the official report SOU 1992:13 proposed, however, to introduce a new clause in ABL 1975 3 chap. §3, which would have excluded nationality from being a valid reason for the application of a *hembud* obligation. Yet, the new rules concerning the *hembudsförbehåll* (ABL 2005 4:27-36) do not contain any such restrictions concerning the reasons for a '*hembud*'.

Furthermore, the adoption of the new ABL in 2005 introduced two *new* forms of reservations to the transfer of shares were into Swedish law: the ‘right of first refusal’ reservation (*förköpsförbehåll*, ABL 2005 ch. 4 18-26§§), which obliges existing shareholders to offer shares they wish to sell to a person designated in the articles as having a pre-emptive right on certain shares (the *hembud* reservation by contrast is exercised after the selling of the shares to a new owner, not before Svensson & Danelius 2005: 54); and, in addition, the ‘consent reservation’ (*samtyckesförbehåll*), makes the transfer of shares conditional on the board’s consent (ABL 2005 ch. 4 9-17§§).

As I will show below, the fact that bound shares were abolished (due to their incompatibility with EC law), but not functionally equivalent instruments of insider control, is very telling. It shows that increases in MSP in Sweden during the 1990s were mostly linked to adaptations of the Swedish company law to EU directives. Other than that, the Swedish reforms in the field of corporate governance up until 2005 were very precisely calibrated; in particular, the central CMS (voting right distortions and stock pyramids) were not touched by any reform and domestic pressures for change were very weak.

This led the European Corporate Governance Service to the observation that the new ABL of 2005 contained few provisions which affected corporate governance, and was less directly aimed at improving the position of minority shareholders within the company than was the case in other countries (see ECGS 2007).

Nevertheless, some of the more important changes in the corporate governance field at this time include the introduction of the principle that terms of office for directors should only last until the next AGM, unless the byelaws explicitly provide otherwise. The raising of new capital on financial markets and the issuing of new securities were made more flexible through new provisions concerning convertible bonds and incentive warrants (*teckningsoptioner*). In addition, *kapitalandelslån*, loans whose repayment depended on the performance of the company, and stock repurchases, were legalised.[17]

To sum up this part: the analysis of legal MSP in Switzerland and Sweden shows that changes took place earlier in Switzerland than in Sweden, and were more clearly directed towards an increasing protection of minority shareholders. While the SPI indicates a common long-term trend, the discussion of the most central minority control structures – *Vinkulierung* in Switzerland and dual class shares in Sweden – indicates that recent reforms have improved the position of outside investors much more considerably in Switzerland than in Sweden.

The next section analysis the political contexts in which these different trajectories of change took place, so as directly to test Roe's 'partisan' hypothesis.

4. Political Variables: the Polity and Party Strength

As mentioned above, the differences between Switzerland and Sweden concerning the polity and the strength of different political forces in the two countries are very significant. The Swiss polity was characterised during long periods of time by an extremely consensual set-up containing numerous veto points (bi-cameral parliament, federalism, popular referendum, and so on) (see Lijphart 1999).[18] In addition, power relations in the political arena were stable and changes in power relations in the federal parliament did not affect the composition of the coalition government. The Christian-Democratic Party (CVP), the Free Democrats (FDP) and the Social Democratic Party (SPS) each had two representatives in the government, and the Swiss People's Party (SVP) had one member. The centre-right parties thereby held a very clear majority of 5 out of 7 seats in the governmental college. This informal rule concerning the distribution of the seats in the Federal Council – the so-called 'magic formula' – was strictly respected between 1959 and 2003. Therefore, the composition of the Federal Government did not change following general elections even during the 1990s, when the populist right-wing SVP grew to become, by the end of the 20th century, the largest party, while both the other centre-right parties (CVP and FDP) lost considerable numbers of voters. Overall, however, despite the power shift within the 'bourgeois block', power relations between left and right did not significantly change as the centre-left parties (mainly the SPS and the Greens) never had significantly more then 30% of the seats in parliament during the post-war era (figures from Armingeon et al 2005). The Swiss Social Democratic Party was thus never in control of the political decision-making process – either alone, or in alliance with other centre-left parties. Thus the role played by the social democratic party cannot explain the phenomena of concentrated ownership and a low level of MSP before 1990. Also, evidence for decreasing social democratic power – which could explain the increases in levels of MSP after 1990 – is weak. Even though unionisation rates decreased considerably during the period under scrutiny[19], at the political level, the left did not lose its – limited – influence on the political process. In the parliament, the proportion of seats occupied by Social Democrats remained on average fairly stable during this period. If anything, the Social Democrats gained influence during the critical period of the 1990s.[20] However, these fluctuations in the number of votes did not have any major impact on social democratic influence

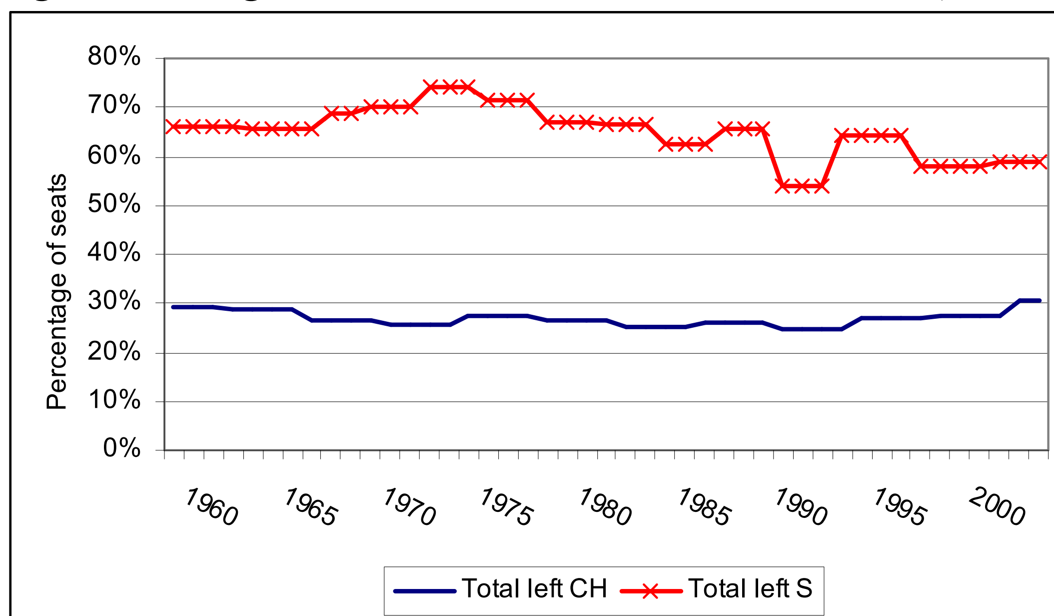
over the political process. The proportional election mechanism for the lower house prevented important changes in power relations despite changes in the party strength. Thus, the 'bourgeois block' in parliament remained clearly dominant and the Social Democrats a structural minority within the governmental college (see below, figure 3).

The corporate governance reforms of the 1990s therefore took place in a context of a highly consensual political system with stable centre-right domination over the executive and legislative powers. Thus the question becomes: why were there such considerable changes in legal MSP despite the stability of political power relations?

Sweden, while usually considered to be a consensual democracy as well, is closer to being a majoritarian system than Switzerland is in several respects (see Lijphart 1999). Sweden is less federalist and has a unicameral parliament, the *Riksdag*. The outcome of the general elections does determine the composition of the government. As in a majoritarian democracy, the winners of the general elections appoint the government.

Despite these 'majoritarian' characteristics, Swedish politics were, in actual fact, characterised by a remarkable stability of political power relations due to the social-democratic SAP's (*Sveriges socialdemokratiska arbetarparti*) dominant position for most of the 20th century. The SAP had rarely obtained less then 50% of the votes in general elections since 1932. The average of seats obtained by centre-left and left-wing parties in the parliamentary elections during the period from 1960 to 2004 was 65.0% (as compared to 27.0% in Switzerland for the lower chamber; see figure 2).

Figure 2: Strength of 'the left' in Switzerland and Sweden (1960 – 2004)



Source: Armingeon et al. 2005;

Notes: The figures report the percentage of seats occupied by 'left' political parties in the national parliament. For Switzerland the figures refer only to seats in the lower house.
'Left' includes in Sweden: Social Democratic Workers Party, Communist/Left Party, Green Party; in Switzerland: Social Democratic Party, Communist Party, Greens, Green Alliance, and Progressive Organisations of Switzerland (POCH).

As a result, Sweden was governed between 1932 and 2006 – with the exception of the years 1976-1981 and 1991-1994 – by a government dominated by the social democratic SAP. In spite of the fact that, especially after the introduction of the proportional election mode in 1974, Swedish governments were often minority governments, the Social Democrats governed – after the end of the last coalition government with the agrarian party *Bondeförbundet*[21] in 1957 – most of the time through a single-party government which was passively supported by the communists of the Left Party[22] and in more recent years by the Greens (*Miljöpartiet*, mp) (see Högfeldt 2005: 522). In Switzerland, on the other hand, the first member of the SP in the Federal Government was elected only in 1943, and only in 1959 did the left obtain a second seat in the Federal Government.

At first glance, Sweden, with its politically strong left, which went together with a marked insider orientation of corporate governance and concentrated corporate control, seems hence to confirm Roe's (2003) partisan hypothesis, in other words the strength of the left led owners to hold on to their stakes in order

to oppose the additional claims on company resources voiced by the labour movement.

Yet, in Sweden, changes in governmental power could and did occasionally happen (see figure 3). Thus, the first bourgeois-dominated government came to power in October 1976 after 40 years of SAP dominance, the SAP regained power in October 1982, but lost it again in 1991 to the centre-right coalition of the ‘moderate’ Bildt government. In 1994, the SAP won the new elections, but had to govern from the late 1990s onwards – due to a considerable loss of votes (45.4% of the votes in 1994 elections and 36.5% in 1998) – in coalition with other left parties. In 2006, finally, a new bourgeois coalition – the Alliance for Sweden – won the elections and formed the Reinfeldt government. Clearly, Swedish politics are still, after 1970, dominated by the social democrats. However, this domination is no longer hegemonic and changes in governmental power do happen. Therefore, in Sweden, contrary to Switzerland, party politics could have played a role in corporate governance reform during the 1980s and 1990s, as changing governments were able to change the direction of policies concerning corporate governance.

Figure 3: Partisan composition of government in Switzerland and Sweden (1980-2000)

	1980	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00
CH	**2**	**2**	**2**	**2**	**2**	**2**	**2**	**2**	**2**	**2**	**2**	**2**	**2**	**2**	**2**	**2**	**2**	**2**	**2**	**2**	**2**
S	**1**	**1**	**2**	**5**	**5**	**5**	**5**	**5**	**5**	**5**	**5**	**4**	**1**	**1**	**2**	**5**	**5**	**5**	**5**	**5**	**5**

Source: Armingeon et al. 2005;

Note: Cabinet composition (Schmidt-Index): 1 = hegemony of right-wing parties (number of cabinet seats occupied by members of a left party (gov_left) = 0), 2 = dominance of right-wing parties (gov_left<33.3), 3 = stand-off between left and right (33.3<gov_left<66.6), 4 = dominance of social-democratic and other left parties (gov_left>66.6), 5 = hegemony of left parties (gov_left=100).

Yet, as I will now show, despite the differences in the political system and the – in part consequential – differences in the politics of the two countries, party politics *did not* play any determining role in corporate governance reform in either case. In Switzerland changes in corporate governance took place despite stable power relations. In Sweden, changes in governmental power did not lead to any corresponding changes in corporate governance policy. Therefore, in Switzerland the dominant centre-right actors' preferences concerning the direction of corporate governance reforms must have changed at some point, while in Sweden no difference between the centre-left's and the centre-rights' preferences in this matter existed.

In the next section, I turn to analyse the political debates over corporate governance reform during the 1980s and 1990s in the two countries in order to identify different actors' preferences empirically.

5. The Politics of Corporate Governance Reforms in Switzerland and Sweden

5.1. Switzerland

As mentioned above (see section 3), two major reforms have changed the rules of Swiss corporate governance during the 1980s and 1990s: the reform of the Stock Corporation Law, which lasted from 1965 to 1991, and the elaboration of the SESTA between 1989 and 1995.

The issue of the reform of the Stock Corporation Law of 1936 was extremely controversial throughout its 26 year-long history. When the federal government initiate a reform discussion in 1965, no significant political force showed much interest in supporting reform, which from the outset aimed at improving the position of 'minorities' within the firm (see Schnyder et al. 2005a, 2005b). The first criticisms of the 'traditional' corporate governance system were mainly academic in nature and attacked the legal precepts on which this system was based (in particular Gautschi 1966, but also Bär 1959 and 1966, Jolidon 1968). The reason why a reform process was initiated despite the lack of any serious political support lies in the particular context of the 1960s. In 1964, a banking scandal hit Switzerland, which in conjunction with a bear market during the first half of the decade, led different economic actors – notably the banks – to support reform of the existing corporate governance regime in order to restore confidence in the Swiss financial system. Yet, this initial support for reform waned quickly as the stock market recovered and the most urgent problems were addressed by the SBA in a circular demanding that listed companies increase the transparency of their annual accounts (see David et al.

forthcoming). Most economic actors and their representatives in the associational and political spheres resolutely disavowed any need for reform, above all in order to avoid the 'politicisation' of issues that were left, under the old law of 1936, to self-regulation.

During this phase, the centre-right parties and their constituencies attempted to limit the public regulation of corporate governance to the absolute minimum necessary, and to defend as far as possible the *status quo*. The social democrats and the trade unions, on the other hand, had, at that time, one single political priority, which was the introduction in Switzerland of a co-determination system based on the German model. All their efforts went in this direction, as is illustrated, for instance, by the fact that the only subject discussed in the Swiss Union of Trade Unions' (*Schweizerischer Gewerkschaftsbund*, SGB) written opinion during the consultation procedure[23] on the first draft law of 1973 was the question of co-determination (Swiss Federal Archives (BAR), E4110 (B); 1992/175; vol.9). Between 1965 and the mid-1970s, support for a far-reaching shareholder-orientated reform came almost exclusively from legal experts and public officials, who had, owing to their expertise, a considerable influence on the definition of the terms of the debate during the pre-parliamentary phase (see for details Schnyder 2008).

A first significant change in the politics of reform took place in 1976, when the social-democratic popular initiative[24] concerning the introduction of a German-style co-determination system was rejected by a very large majority of Swiss voters. The failure of the left's demand for co-determination led them to join the reformers who were pushing for increasing transparency and minority shareholder protection in the Stock Corporation Law. In the absence of any possibility for employees to influence firm-level decision-making from within, the 'second best solution' for the left became increasing the possibility of control from 'without' through increasing transparency and control rights over the insiders.

Paraphrasing Höpner (2003), one can say that the rejection of the co-determination initiative led to the emergence of the 'Swiss party paradox', that is, the fact that the Social Democrats became the main political force pushing for shareholder-orientated corporate governance reforms, while the bourgeois centre-right parties opposed such a liberalisation. In fact, this attitude of the Swiss centre-left clearly contradicts Roe's (2003) prediction, which claims that social democrats would not favour such a 'second best' solution, as the empowerment of shareholders would have ambiguous effects on labour (see above section 1). This apparently paradoxical situation – paradoxical because an

increased shareholder-orientation is generally associated with increasing distribution of value added to shareholders, down-sizing of the work force, and increasing job insecurity – is explained in the Swiss case by the convergence of outside shareholders' and employees' interests in increasing transparency and outside control over management in order to reduce agency costs (see below section 6.1 for details concerning the reasons for left support of pro-shareholder reform).

The reform proposal was transferred from the federal administration to the lower chamber of the federal parliament – the National Council (NC) – in 1981, after fully 16 years of pre-parliamentary deliberations in two different expert committees. The pre-parliamentary phase was very conflict-laden and at different points the reform was in danger of being abandoned due to the irreconcilable positions of the pro- and anti-reform forces (see Schnyder et al. 2005b). Yet, the governmental proposal still contained a fairly liberal – that is, pro-shareholder – tendency, the result of legal experts disproportionate influence on the definition of the terms of the reform during its early stages. This can be seen in the governmental explanation of the reform and its insistence on the need to improve the position of the minority shareholder within the firm. The following passage taken from the Official Journal (*Bundesblatt*, BB), which accompanied the draft law when it was handed from the government to the parliament, expresses this point of view:

> 'The protection of shareholders [in Switzerland] is parlous: the shareholder submits to the power of the majority and puts up with leaving the management of the capital he invested in the hands of someone else. Most of the time, restrictions on the transferability of the shares […] prevent him from selling his shares if he wants to avoid this […] threat. The protection that he is offered by the law is deficient: due to a lack of sufficient information, the shareholder is not well informed about the real situation of his company, so that it is difficult for him to […] protect and defend himself.' (BB 1983 vol. II, no.27: 779; my translation).

In the lower house, which debated the reform proposal between 1982 and 1985, only a very limited number of liberally-minded members of the bourgeois parties supported the government's and the Social Democrats' efforts to improve the protection of minorities and to limit the power of mangers. At that stage, the Swiss 'transparency coalition' (see for the concept of 'transparency coalition' Cioffi & Höpner 2006) was largely composed – besides legal experts and civil servants – of Social Democrats. This 'coalition' pushed mainly for improvements in the level of transparency in accounting, notably by limiting – or even prohibiting – hidden reserves and for a limitation of the management

and board's far-reaching powers. Lillian Uchtenhagen – an influential socialist MP – expressed explicitly the somewhat paradoxical situation in which the social democrats sided with 'capital' in order to oppose the power of mangers:

> 'The evolution of the last decades has shifted the power within the joint stock corporation from the shareholders to the management. The goals of the intended reforms are not least explained by this evolution. The question was never the control or the containment of the power of capital providers, who were previously called 'capitalists'. On the contrary, the aim was to protect the rights of the shareholders – especially the minority shareholders – from over-powerful management. The attempt to create transparency concerning the financial situation and the results of the company, too, aimed to limit somewhat the nowadays almost unlimited power of management, which exists in many companies even towards the boards of directors – in theory the supreme management body.' (OB CN 1985: 1791; my translation)

The vast majority of bourgeois MPs, however, fiercely opposed any attempt to liberalise the corporate governance system, pointing to the importance of management's independence from market forces for the success of a business enterprise. The minimalist character of the law of 1936 was considered to be one of the factors explaining the economic success story of Switzerland during the 20th century. This view had been expressed by the representatives of the business all the way through the elaboration of the draft laws, and justified their preference for the *status quo* (see, for example, minutes of the Tschopp Committee 2nd meeting, September 1968: 10-11). During the first half of the 1980s, virtually all economic actors – whether they were close to the SME sector, to the large MNCs, the banks, and even some representatives of the accounting profession – were very critical of the governmental proposal and above all rejected transparency and disclosure requirements, as well as the restriction of the *Vinkulierung* procedure, as too far-reaching[25] Unsurprisingly, the strongest opposition came from the SME sector. Just before the debates in the lower house, the most important business association in this sector, the Swiss Trade Association (*Schweizerischer Gewerbeverband*) sent, on August 26, 1983, a letter to several MPs, whom they thought sympathetic to their cause, in order to ask them to defend the interests of the small companies during the parliamentary debates.[26] In this letter, the USAM complained in particular about the importance that was given to minority shareholder protection in the governmental draft law:

> 'The minority needs without doubt protection. However, the enterprise and the main shareholders, the management and the

> employees too need protection from the minority! Therefore, no minority protection rules, which not only paralyse the stock corporation, but can even destroy it, should be adopted. Much importance is attributed in this Stock Corporation Law reform to the theme of 'minority protection'. One gets the impression that the shareholders – especially the minority shareholders – are martyrs; people who subscribe for or acquired shares completely disinterestedly and unselfishly, who give their money altruistically to the economy. Anyone who knows the practice just a little bit knows that this is not the case. This kind of ill-conceived minority protection, as is illustrated by the [reform proposals for] the *Vinkulierung*, the special control etc., has as its sole aim to promote vexatious litigation and the subjugation of the enterprise.' (Letter from August 26, 1983: 5, my translation)

This passage very clearly shows the opposition between two contradictory views of the firm and of shareholders which have shaped the Swiss corporate governance reform debate throughout the 20th century (see Schnyder et al. 2005a, Lüpold & Schnyder 2008).

While the SME sector defended the most conservative point of view, even large companies were very much opposed to the direction of the reform. This can be illustrated by the fact that MPs like the Christian Democrat Paul Eisenring, one of the most fervent opponents of the reform and one of the representatives of the CVP in the preparatory committee of the NC, held seats on the board of several of the largest Swiss companies, including BBC (which was later to merge with the Swedish company Asea AB to become ABB Ltd.), Motor-Columbus (an investment company in the Energy sector close to the UBS), Jacobs-Suchard, and Südelektra (which was later to become Xstrata).

The centre-right actors close to both the SME sector and large companies, along with their representatives in parliament, constituted an insurmountable 'bourgeois block' – or 'conservative coalition of insiders' – controlling more than 70% of the seats in the lower chamber of parliament (see figure 2 above) against which the emerging 'transparency coalition' had no possibility of defending the governmental reform proposal. As a result, it came as no surprise that the draft law adopted by the NC in 1985 undid most of the – already moderate – reforms that the governmental proposal had suggested and which aimed at tipping the power balance within the company somewhat in favour of the shareholders. The proposal of the National Council was, according to certain observers, even more insider-friendly than the law of 1936. Kaspar Villiger, an

influential Radical Democratic MP who was later to become Minister of Finance, explains the attitude of the majority thus:

> 'Even if we consider that the main emphasis should be shifted in favour of the shareholder, the survival of the enterprise still has to have absolute priority.' (OB NC 1985: 1661, my translation)

A number of observers – even from the centre-right – were critical of the work on the reform that the NC had done between 1982 and 1985. This was for instance the case with many national newspapers. The very influential *Neue Zürcher Zeitung* – close to the FDP – and the head of its economic department Hansjörg Abt were very critical of the work of the National Council. Other examples include *Der Bund* from the city of Bern and the *Basler Zeitung*, which ran on October 5, 1985 an article with the headline 'Aktionäre bleiben die Dummen' ('shareholders remain the losers').[27]

Actors close to the SME sector, on the other hand, were delighted with the result of the negotiations within the NC. Several newspapers of trade organisations and notably the *Schweizerische Gewerbe-Zeitung* published an article on November 21, 1985 whose title read 'Aktienrechtsrevision – die Vernunft hat gesiegt' ('Stock Corporation Law Reform – Reason has Triumphed').

The period from 1982 to 1985 therefore saw the conservative coalition of insiders successfully block rising pressures for corporate governance reform in the political arena stemming from a (weak) transparency coalition of the centre-left, trade unions, civil servants, liberal lawyers, and some isolated liberal members of the bourgeois parties.

Yet, a very considerable and unexpected change in the direction of the reform took place when the reform proposal was transferred in 1985 from the lower chamber of parliament to the upper chamber, the Council of States (CoS). From the late 1980s onwards an increasing number of formerly conservative bourgeois MPs started to support a certain degree of pro-shareholder reform, which led the – even more clearly conservative-dominated – Council of States[28] to adopt in 1988 a reform proposal which was much more orientated towards the interests of shareholders then the version adopted by the NC in 1985. This change surprised most commentators, who had expected the CoS to further reduce the extent of the reform. The difference in the approaches of the two chambers was made clear from the outset by the chairman of the CoS, Carlo Schmid – a conservative member of the Christian Democratic Party – who presented the preparatory committee's proposal in the Plenum of the CoS in 1988 in the following words:

> 'The old saying, according to which the shareholder is stupid and impertinent, stupid because he gives away capital and impertinent because he wants even a dividend for it, *should not even remotely be the guiding principle of our reform*. The fact that [the preparatory committee of the CoS] has come back to the Governmental slant is not least of all linked to the fact that *we wanted to lay the stress more on the protection of the shareholder* than the National Council, which had attached more value to the operability of the enterprise.' (OB CE 1988: 455, emphasis added, my translation)

Given that the same centre-right parties dominated the CoS and the NC, this passage shows that a fundamental change in centre-right actors' preferences started to take place during the second half of the 1980s, which cannot be explained by changing political power relations. This becomes even clearer when we consider that most of the changes to the reform proposal proposed by the CoS in 1988 were ultimately accepted by the NC and were in some cases even further developed towards shareholder interests (see Schnyder 2008 for details).

The change in centre-right actors' preferences led at the end of the 1980s to the emergence of a genuine cross-class transparency coalition, uniting actors close to the large, internationalised companies and centre-left actors. An example from the legal debates over a provision, which would have obliged companies to disclose details any participation in other companies over 5% of the equity, illustrates this new constellation of forces. The SVP MP Christoph Blocher had submitted a proposal containing such an obligation to the plenum of the NC in 1990 (which is interesting in itself as Blocher was one of the addressees of the SGB letter referred to above and one of the most conservative MPs during the first half of the 1980s; see footnote 54 below for a possible explanation). The Social Democrat Lilian Uchtenhagen intervened in order to ask her fellow party members to back Blocher:

> 'I demanded the floor mainly in order to tell those, who think that whenever Mr. Blocher is favourable to something, they have to be against, that Mr. Blocher represents concerning the Stock Corporation Law economic interests – this is legitimate – but he does it very independently, contrary to many other business representatives. In this matter, he will often say correct things; it is therefore worthwhile listening to what he says.' (OB CN 1990: 1363, my translation).

The changing preferences of the centre-right MPs and the consequential strengthening of the transparency coalition were the single most important

factor explaining the increase in legal MSP, as I have observed in section 3 (above).

The reasons of the changing centre-right preferences are multiple and complex and will be discussed in more detail below (section 6). Suffice here to say that the changes can be attributed to changes in Swiss companies' practices towards an increasing shareholder orientation, which stopped politicians close to these companies opposing the reform. More precisely, banks and large – and mostly listed companies – had already changed their practices in important ways during the late 1980s. Smaller companies, on the other hand, did not necessarily follow the same path. The change in the preferences of the large companies and the resistance of SMEs to such changes led to an increasing heterogeneity of corporate governance practice within the Swiss system (see for this concept Deeg & Jackson 2006). As a result of this increasing heterogeneity, tensions within the business elite started to increase as centre-right MPs close to the SME sector continued to oppose the reform, while many MPs close to the MNCs and banks started to abandon their resistance. This tension can be illustrated by the following passage taken from the parliamentary debates in the Council of States in 1988. In the field of *Vinkulierung*, the preparatory committee of the CoS had proposed to the plenum to retain the nationality of investors as a reason for rejection of a shareholder. Yet, the majority of the clearly centre-right dominated Council did not support the Preparatory Committee's solution any longer. The most conservative senators such as the Radical Democrat Peter Hefti were surprised by this loss of support for *Vinkulierung* from their fellow party members:

> 'Especially those circles who are now up in arms against the solution proposed by the preparatory committee [i.e. maintaining the anti-foreigner clause], stressed at the time very much how important it was that the Swiss character of an enterprise could be preserved, in other words, that it was possible to keep foreigners at bay. I do not really understand how this volte-face came about.' (OB CoS 1988: 485)

While Hefti was not close to the SME sector alone, but rather a member of the board of Zurich Insurance, one of the largest Swiss insurers, this still illustrates the increasing cleavage within the formerly cohesive centre-right coalition. This increasing cleavage considerably weakened the anti-reform coalition and made change possible. Yet, given the existence of numerous veto points in the Swiss political process (bicameralism, popular referendum, etc.) and given the political and organisational resources of the SME sector and its economic power, the conservative coalition remained influential even during the 1990s and prevented any radical change (such as abolishing *Vinkulierung* altogether). In other words, the strength of the SME sector – in a very consensual polity –

constituted a conservative bias in the reform process, which explains why the reform was more limited than could have been expected from the considerable political support for pro-shareholder reforms during the 1990s.

In order to overcome the increasing volatility of majorities within the parliament and the SME opposition to reform, a mechanism was used, which Thelen (2003) has labelled 'institutional layering'. The new regulation of *Vinkulierung* gives a good example for this: the parliament decided at the end of the 1980s to make two separate regulations for *Vinkulierung* depending on whether shares were listed on the stock exchange or not. As I have shown above (see section 3), the rules for listed shares were much stricter than the latter. Through this 'layering' of new (more liberal) rules over the old ones – which remain applicable to certain companies (that is, non-listed ones) – the legislator managed to achieve a politically viable and internationally acceptable equilibrium between continuity and change. Deeg and Jackson (2006: 14) observe that '[i]nstitutional layering […] may allow differential adoption of "old" and "new" business practices according to sectoral and firm-specific characteristics'. This was indeed the case in Switzerland.[29]

When we look at the elaboration of the first federal stock exchange law between 1988 and 1995, the profound changes in Swiss corporate governance and in business actors' preferences become even clearer. The two central issues touching the question of MSP in the SESTA were the regulation of hostile takeovers and transparency standards for listed firms, which were defined in the listing requirements adopted by the newly created Swiss Exchange, SWX. The SESTA introduced for the first time in Switzerland legal rules for takeovers including a mandatory bid rule (the AGM could decide to 'opt out' however). Concerning the second dimension – transparency – the SWX was mandated to elaborate a new set of listing requirements. These listing requirements made *de facto* compulsory the 'true and fair view' standard for listed firms. This was a very significant increase in transparency compared to the level of transparency imposed by the Stock Corporation Law even after 1992. One legal expert commented on this evolution in the following words:

> 'If one thinks of the very cramped and almost passionate debates that have taken place in this field for the last twenty or thirty years, it is incredible to observe the facility with which this problem could be solved so quickly through the adoption of listing requirements, with almost no opposition from the listed companies.' (Hirsch 1995: 230; my translation).

One important factor to explain this astonishing observation is of course that the SESTA concerned only listed companies and that the most conservative actors,

that is the private SMEs, were not concerned with these rules. Yet, as I have shown above, some years earlier, even the largest companies were firmly opposed to stricter rules concerning accounting. The increase in MSP in these new regulations is therefore very remarkable.

Conclusion on Switzerland

To sum up, the analysis of the decision-making process highlights two fundamental changes in the configuration of political coalitions: after the rejection of the popular initiative on co-determination in 1976, the labour movement more or less abandoned its struggle for co-determination and started to support what it had seen as second best solutions – the improvement of external control over firms through increasing transparency – and in so doing joined forces with legal experts and public officials[30]. This second phase of the reform process saw the emergence of an important endogenous source for corporate governance change – left political pressure – and was marked by a coalition of members of the social democratic party and some liberal legal experts who were struggling to increase minority protection and transparency in the Stock Corporation Law.

The conservative coalition of insiders during this phase was still very cohesive and opposed to any attempt at change. Given the weakness of the left in Switzerland, the conservative actors very largely managed to impose their preferences on the pro-reform actors, leading to amendments in the governmental reform proposal which turned the draft law into a very conservative, insider-orientated legislation, which offered virtually no protection for minority shareholders.

Yet, centre-left support for pro-shareholder reform was still an important factor for the reform process as it kept questions linked to MSP on the political agenda throughout the 1980s. Reasoning counterfactually, one could say that had the left not supported such a reform, the reform process would without doubt have been abandoned at the end of the 1970s or concluded in the early 1980s with a very conservative law. The left's support for the reform was therefore essential for the changes of the early 1990s. However, given the political weakness of the left in the Swiss parliament, centre-left support was not enough to push through a pro-shareholder reform.

From 1985 onwards, the power relations within the parliament started to change, as a cross-class pro-reform coalition, including an increasing number of centre-right MPs close to the business elite, emerged. This change led to a profound reorientation of the reform during the last phase of the decision-making process (1986-1991). The law that was finally adopted in 1991

protected shareholders considerably better than the law of 1936 or the proposal of the National Council of 1985. Moreover, the elaboration of the Stock Exchanges and Securities Trading Act in 1995 and the adoption of Listing Rules by the new Stock Exchange, SWX, show that the actors' preferences continued to evolve during the 1990s, making possible a change which clearly departed from the traditional paradigm of insider-orientated corporate governance.

The conservative coalition – since the early 1990s mainly composed of SMEs – remained, however, influential and managed – especially due to the consensual decision-making process – to push the transparency coalition to make compromises, which took mostly the form of flexible, enabling, and vague rather than constraining rules. This allowed the SMEs to stick to their somewhat insider-orientated practices while forcing listed companies could adapt to international standards.

The Swiss case therefore shows that it was not changes in partisan power relations, but changing preferences of centre-right politicians, that best explain the changes we observe in the legal framework of corporate governance. Before turning to explaining these remarkable changes in more detail, I analyse, in the next section, the Swedish reform process, in order to compare the Swedish coalition configuration to the Swiss case.

5.2 Sweden

Since the adoption of a new Stock Corporation Law in Sweden in 1975, some reform work has been going on almost without interruption. Several official investigations into different problems related to the Stock Corporation Law and to MSP took place during the 1980s notably concerning the question of voting rights (SOU 1986:23 by the 'Voting Right Committee' (*Röstvärdeskommittén*); SOU 1988:38 and 1990:1 by the *Ägarutredning*). Most of these investigations did not result, however, in concrete legal action. Only in 1990 was a major reform process initiated, leading to several successive changes to the legal framework of corporate governance during the 1990s. More precisely, in the light of Swedish accession to the EU in 1995, the social-democratic government of PM Ingvar Carlsson established in 1990 the *Aktiebolagskommitté* (Stock Corporation Committee, committee no. Ju 1990:08). The AB Committee published its reform proposals in intermediary reports in 1992, 1995, 1997, 1999 and 2000 – before submitting the final report in 2001.[31] These intermediary reports led to regular changes in the ABL of 1975 throughout the 1990s until it was finally replaced by the new ABL of 2005 based on the Persson government's proposal 2004/05:85 of March 10, 2005.[32]

By Swedish standards, this was a very long legislative process. In contrast to Switzerland, however, this lengthy process was not caused by political conflicts and opposition to the reform, but rather to the continuing evolution of the European company law directives, which led to the extension of the reform mandate and the inclusion of new issues (see Jan Ertsborn's (fp) intervention in the parliamentary debate on the ABL on June 13, 2005).[33]

The AB Committee's mandate was, in the first place, to examine the compatibility of the Swedish ABL with the European Company Law Directives in view of Sweden's entering the EU in 1995. The first part of this task led to two official reports (SOU 1992:13 and SOU 1992:83). SOU 1992:83 'Aktiebolagslagen och EG', which adapted Swedish law to the First, Second Third and Twelfth Company Law Directives, was debated in parliament in 1992, and the new rules entered into force on January 1, 1993.

The second part of the committee's task was to examine questions concerning the company's capital and instruments of finance, its organisation and the protection of minority shareholders (see governmental directive dir. 1990:46). The most important changes related to these reports concerned the abolition of 'bound shares' (prop 1992/93:68), discussed above, and the division of stock corporations into two categories, public ABs and private ABs (prop 1993/94:196).

While EU legislation required a certain adaptation of Swedish law, it is striking to see that these changes did not give rise to any significant political debate. The abolition of 'bound shares' was arguably a considerable change to the traditional Swedish corporate governance system. The anti-foreigner clause was still widespread in corporate articles of association in the beginning of the 1990s. The AB Committee found that in 1991, 80% of all Swedish companies had an anti-foreigner clause in their articles, which was twice as many as the number that the AB Committee which prepared the ABL of 1944 had identified in 1941 (see PM 18, p.17). Among listed companies, 89% (188 out of 212 listed companies) used such a 'reservation'. The abolition of this clause in 1993 therefore constituted a considerable interference with corporate practice. Yet, neither the existence of nor the removal in 1993 of these anti-foreign measures gave rise to much debate (Henrekson & Jakobsson 2003: 79). This contrasts starkly with the Swiss case, where the question of the anti-foreigner clause had become, at the end of the 1980s, the most controversial issue of the stock corporation law reform of 1991 and gave rise to lengthy debates and many conflicts.

The 'civilising force' of the EU largely explains why this reform generated little controversial debates, as these legal provisions were clearly incompatible with the principle of the equality of treatment of EU nationals and had to be abolished given Sweden's entry into the EEA on 1 July 1994 and into the EU in 1995. EU legislation has pushed the Swedish legislator to undertake some reform steps despite a virtual absence of domestic pressure for such reforms.[34]

Beyond the adaptation of Swedish law to EU legislation, it is striking to see that in all the reports published by the AB Committee, the issue of MSP was – despite the initial mandate of the AB Committee – only very marginally touched on. Agnblad et al. (2001: 251) also consider that '[e]xpropriation of minorities [is] remarkably absent as an issue in the public debate'. This contrasts strongly with the Swiss case where the protection of minority shareholders was the main issue throughout the reform process. This does not mean that Sweden was not affected by the international debates about an increasingly shareholder-orientated view of the firm (see for instance very explicitly in SOU 2001:1, p.26). In fact, in one sense, the Swedish debate was clearly shareholder-orientated as well. Thus in its official report on *The Organisation of the Stock Corporation* of 1995 (SOU 1995:44), the AB Committee stressed that owner interests were at the centre of the reform proposal:

> 'The Companies Act must guarantee owners the ultimate right of decision in their companies and allow for changes in ownership structures. The Companies Act should also provide owners with the opportunity to uphold their interests vis-à-vis the companies' management' (SOU 1995:44 p.19; my translation)

At first glance, this sounds very much like the pro-shareholder rhetoric that was popular during the 1990s among economic actors and politicians in many countries including Switzerland. Yet, the same report made it also very clear that by 'owners' the AB Committee did not principally mean external minority shareholders. Rather, the AB Committee had 'active ownership' by *large* shareholders in mind. In fact, the 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' (SOU 1995:44 p.154; my translation).

The idea of 'active ownership' was the closest that the Swedish legislator got to a 'shareholder value debate'. Yet, this concept is far from being equivalent to the Anglo-American idea of shareholder primacy. On the contrary, in several respects the Swedish variation of the 'shareholder theme' is at odds with the debates about Anglo-American corporate governance that were going on

elsewhere. Firstly, the Swedish idea focused on large shareholders as they were considered to be the ones who can realistically be expected to have a real influence on the management of the company. Secondly, the idea of 'taking responsibility' for the company – or even the economy as a whole – is very much contrary to the shareholder primacy idea, which states precisely that the shareholder does not have any responsibility for the company in which she invests (see for a discussion of different concepts of the stock corporation and of the rights and responsibilities of shareholders Lüpold & Schnyder 2008 and contributions in Biondi et al. 2007).

This perception of the role of the owners was widely shared among different political forces in Sweden during the 1990s. As the moderate MP Stig Rindborg put it during the debates in parliament on SOU 1995:44:

> 'One of the starting points of this revision was that the stock corporation law should promote an active owner function in the firm. The law has been considered under different governments, but there was a large consensus in the investigation that ownership has a great importance. We have witnessed, during the last few decades, how increasing possibilities of influence from the owners' side have created the conditions for successful companies. […] Owners who take responsibility for the company's and the economy's development are therefore an important element in a functioning market economy' (Minutes of the *Riksdag* 1997/98:114; intervention no. 200: my translation)

The idea of active ownership by large shareholders is perfectly in line with the Swedish tradition of actively favouring the concentration of share ownership and hence the existence of large institutional blockholders, which manage the firm largely without interference from the (social-democratic) state (box 1).

Indeed, the crucial role that owner families – most importantly the Wallenbergs – had played for the Swedish economy since the 19th century favoured a largely positive view of large owners' involvement in industrial companies. This explains why the 'active ownership' idea enjoyed such a large support among Swedish politicians (see Carlsson 2007).

Box 1

Private Property, Concentrated Ownership and the Wage-Earner Funds

One of the puzzling facts of the Swedish case throughout the 20th century is that the Social Democrats – despite their political power – never attempted up until the 1970s to socialise private enterprise. On the contrary, they consciously favoured the concentration of private property in the hands of a very limited number of owners (Högfeldt 2005, Henrekson & Jakobsson 2001). This strategy is explained by the idea of Ernst Wigforss – from the 1910s till the end of the 1940s the SPA's leading ideologue –of creating, in the long run, 'social companies without owners', that is, very large companies which were owned and governed by all stakeholders, not by the 'capitalists'. This ideal state was considered to be best achieved through the intermediary goal of favouring the concentration of ownership of very large companies in the hands of large – preferably institutional – owners rather than dispersed ownership among countless small shareholders (Högfeldt 2005).

This idea was linked to Joseph Schumpeter's and John K. Galbraith's theories concerning the evolution of capitalist societies and the increasing concentration of industrial production, which had had a major influence on the ideologues of Swedish Social Democracy (Henrekson & Jakobsson 2001; Högfeldt 2005). In particular, Galbraith's books from 1952 and 1967 (Galbraith 1952; 1967) were received with much interest by the Swedish Social Democrats and one Swedish prime minister even invited Galbraith to a conference in Stockholm (Högfeldt 2005: 540, note 11).

For the 'capitalists' and the bourgeois parties, on the other hand, this approach had – in the short- or medium run – considerable advantages as well: given the very strong position of trade unions and the SAP in the political arena, the fact that SAP did not aim at abolishing private ownership was a considerable achievement in itself.

The SAP's restraint also made possible the so-called 'historical compromise', which implied that the Social Democrats accepted (concentrated) private ownership, whereas the 'capitalists' ('[…] a relatively small number of owners or owner groups – that is, an identifiable industrial elite […]', Henrekson & Jakobsson 2006: 9; my translation) accepted in return the development of an extensive welfare state (Korpi 1982,). In respect of corporate governance, this compromise explains why the SPA and the unions were reluctant to interfere with the management of the companies (Högfeldt 2005).

Tax incentives were the central instrument of the SAP in the shaping of the ownership structure of Swedish firms. Substantial taxes on shareholdings by individuals and on profits that were extracted from the company favoured

ownership by large, institutional shareholders rather than by private individuals, and this led to ever larger companies due to the reinvestment of large parts of the profit stream. This policy also explains the extremely powerful position that the traditional Closed-End Investment Funds (CEIF) of major families and banks held in the Swedish system, while individual ownership declined throughout the post-war era (Högfeldt 2005)

In the 1970s, however, a strategic reorientation of the left concerning private ownership took place. The LO – with the timid support of the SAP leadership – adopted in 1976 a programme that aimed to put the idea of ‘capitalism without capitalists’ (Johansson & Magnusson 1998) into practice. This was to be achieved through a (gradual) socialisation of private companies through the establishment of wage-earner funds that would, little by little, take over the ownership of companies. More precisely, companies with more than 50 employees would have been obliged to issue each year new shares to the wage-earner funds corresponding to a value of 20 per cent of their earnings (Henrekson & Jakobsson 2003: 85). Over the years, the wage-earner funds would thereby acquire a majority stake and exercise voting rights collectively through employers’ and other stakeholders’ representatives (Högfeldt 2005: 546). In the history of the Swedish labour movement, this was the trade unions’ and SAP’s only deviation from the principle of redistributing ‘incomes but not property rights’ (Högfeldt 2005). However, due to the first electoral defeat of the socialists that same year after 44 years in power, the programme was not immediately implemented. A considerably watered-down version of the wage earner funds was finally implemented in 1984, when the SAP was back in power, but this version of the funds was ‘[…] cosmetic at best’ (Blyth 2002: 214). In fact, when the SAP was back in power in 1982, the Social Democrats’ ‘ownership policy’ had fundamentally changed, and they adopted an economic programme which implied ‘[…] far-reaching deregulation of the banking system, dismantling of capital flow controls, privatisation of state-owned firms and policies that promoted market competitiveness, and reactivation of equity markets that were liberalized with unrestricted foreign ownership of shares’ (Högfeldt 2005: 546-547). One of the most important reforms in that respect was a comprehensive (Reaganite) tax reform, which constituted a turning away from the left’s strategy of heavily disadvantaging individual ownership and the distribution of benefits (Henrekson & Jakobsson 2003: 81, Reiter 2003). The wage-earner funds were finally abolished by the new centre-right government which came to power in 1992 (Högfeldt 2005).

Following the financial market liberalisation of the late 1980s (see below section 6.2.2), new types of owners (notably (foreign) mutual funds and insurance companies) emerged, which were expected to take a similar role in the companies as the traditional institutional investors. In fact, the new investors were repeatedly accused in the Swedish press of not taking responsibility for their investments and of not adopting an active role in the company (Reiter 2003: 116). The aim of the improvement of shareholders' position within the firm was hence not so much to protect them from agency- and expropriation costs, but to give them the means to exercise actively their ownership rights. Thus, the Law Committee (*Lagutskottet*, LU) of the Swedish parliament explicitly stated in its report on the governmental proposal for a new ABL (prop 2004/05:85):

> '[…] it appears, according to the committee's opinion, important to revise the Swedish stock corporation law rules in a way, which gives the Swedish as well as the foreign institutions effective opportunities to participate in the Swedish companies' management' (Bet 2004/05:LU23; my translation)

This was to be achieved through measures such as the abolition of the rule which limited the maximum voting rights that can be exercised by one shareholder to 20% of the total number of votes present during the AGM (SOU 1995:44). The AB Committee argued that voting caps

> '[…] impair rather than enhance an active ownership role and increase the risk of isolating the company's management from monitoring by the owners' (SOU 1995:44; p.20, my translation).

Some MPs wanted even to go further concerning the 'responsibilisation' of shareholders by introducing personal liability for large shareholders for the company's activities. According to the author of motion 1997/98:L21 – Yvonne Ruwaida (Greens) – for instance, this would have created incentives for large shareholders to exercise pressure on the board to take their responsibilities seriously.[35] The parliament's Law Committee, however, taking the view that personal liability for certain types of shareholders was contrary to the fundamental idea of the joint stock corporation, rejected this motion.

The concept of 'active ownership'' marked the debates concerning the reform of all major instruments of insider control in Sweden. The single most important of these instruments was without doubt the system of differential class shares, as part of which companies were allowed to issue A- and B-shares with differential voting rights. This system of voting right distortions has repeatedly come under attack from different sides.

On the one hand, starting in the mid-1970s, the liberal *Folkpartiet* (fp) attempted several times to abolish voting right differentials (Reiter 2003: 111). At the end of the 1980s, a group of fp MPs led by Hadar Cars submitted a motion to the *Riksdag*, which demanded the prohibition of dual class shares for listed companies' new issues (motion 1989/90:L214). The MPs justified their claim by the argument that 'similar risk on the stock market should give rise to similar rights to influence [...]' (see *Betänkande* 1990/91:LU2). Thus a part of the Swedish centre-right did promote the liberalisation of the corporate governance system. Yet, the fp constitutes only a minority in the Swedish 'centre-right block' (holding on average 9% of the seats in parliament during the period 1980 to 2000: Armingeon et al. 2005), which is clearly dominated by the liberal-conservative *Moderata samlingspartiet* (or *moderaterna*, the Moderates). Following the fp's motion – and a similar one coming from the Greens (*miljöpartiet*, mp) – the parliament dealt with the question in autumn 1989, but rejected both motions, referring to the ongoing work of different governmental committees in this area (*Betänkande* 1989/90:LU3).[36]

The system of differential voting rights came also under pressure following the so-called 'Fermenta scandal'.[37] The scandal revealed apparent several failures in the Swedish ABL concerning the protection of minority shareholders. In particular it led the Stockholm Stock Exchange (SSE) to establish in 1987 a committee of experts in order to investigate the affair. The report of August 1988 (*Fermenta – fakta och erfarenheter*) concluded among other things that there were various reasons for abolishing voting right distortions in listed companies. However, like the governmental committees, the Ferment committee did not make any concrete proposal to prohibit voting right differentials, but proposed instead to limit the voting rights of large shareholders. This recommendation, however, did not give rise to any concrete results.

On the other hand, the SAP and the trade unions also had a genuine interest in abolishing voting right distortions. Since the introduction of the wage-earner funds (*löntagarefonder*) in the early 1980s (see box 1), the LO's attempt to increase employees' influence in companies through share ownership had been frustrated by the fact that they gained control only over B-shares with minimal voting rights. Thus at one point, the left – and in particular the trade unions – were favourable to the abolition of dual class shares in order to increase the power of the wage-earner funds (see explicitly in SOU 1981:78, pp.99-105).

As a result, several governmental committees investigated voting right distortions as early as the 1980s, but none of them actually proposed their abrogation. Thus, the Voting Rights Committee (*Röstvärdeskommittén*) concluded in SOU 1986:23 that, due to a lack of evidence on the consequences of an abrogation, they would not put forward any definitive response to the issue. Similarly, in SOU 1988:38, the 'Owner investigation' (*Ägarutredningen*), although observing a considerable increase in voting right distortions between 1978 and 1988, considered that the existing rules should be maintained.

This view was shared by the different SAP governments during the 1980s –they did not undertake any concrete step to remove voting right differentials – and the trade unions' interest in attacking this system vanished in 1992 when the Bildt government abolished the wage-earner funds. At the end of the 1990s, Per Lindh of the SIF trade union explicitly stated that voting right differentials were favourable to employees as they facilitated the company's long-term orientation (quoted in Ahlqvist 2004: 4-61). With trade union pressure gone, the social-democratic Persson government had even fewer incentives to question this system. At the end of the 1990s, the LU quoted the government as follows:

> '[T]he government states that the custom of having shares with differential voting rights has a long tradition in Swedish law and that this system has great advantages' (*Betänkande* 1997/98:LU26; my translation).

Reiter (2003: 104) explains the centre-left's reluctance to change this system by reference to its importance not only for the corporate insiders, but also – more generally – for the economic system as a whole. Voting right distortions were central to the concentration of corporate control and had

> '[…] enabled bank-related investment companies to emerge as dominant economic actors during the postwar period. [Providing] the state with a partner in economic policy making, for example in the area of industrial policy. […] For [this reason], the Swedish (Social Democratic) government explicitly omitted the issue of voting rights from its deregulation and liberalisation programme in the 1980s and the beginning of the 1990s'.

More precisely, the abolition of voting right distortions was rejected by reference to the argument of 'active ownership'. The AB Committee concluded in SOU 1995:44 that

> 'Differentiated voting rights facilitate a strong ownership role, even in very large companies. The Committee therefore dismisses the notion of restrictions or further limitations on the right to issue shares with different voting rights' (SOU 1995:44, p.20, my translation)

In short, voting right distortions – the main pillar of insider-control in Sweden – enjoyed very large support from the right to the left of the political spectrum, and was not seriously threatened by any legal measure up until the early 2000s.

Other examples of this very timid approach from the Swedish government and legislator towards MSP can be mentioned. Significantly, when problems of minority protection were mentioned at all during the reform process, the AB Committee referred to the 'horizontal' rather than the 'vertical' corporate governance problem (cf. Roe 2005), that is, the need to protect minority shareholders from other shareholders rather than from managers and/or directors. In fact, the AB Committee acknowledged that the aim of the reform – strengthening the role of large owners – led to an increasing risk of abuse by the majority, which made a certain increase in MSP necessary as well (SOU 1995:44, p.21). The measures that were proposed to achieve this were new rules concerning the organisation of the AGM: the announcement of the AGM should be made earlier and important issues had to be contained in the notice so that minority shareholders could prepare properly. Obviously, this constituted a very marginal increase in MSP. The AB Committee made it clear that minority shareholders should not be able to obstruct decisions that a large majority was in favour of (SOU 1995:44, p.20).[38]

The government defended the same point of view, rejecting even moderate claims for improving the accessibility of existing instruments of minority protections. The Swedish law of 1975 contained three different instruments that were explicitly designed for the protection of minority groups. These instruments concern chap. 9 6§ ABL 1975, which stipulates that 10% of the capital can call an extraordinary AGM; chapter 12, 3§: which states that the same proportion of shareholders can demand the distribution of half of what remains of net profit after certain deductions; and chapter 15 5§, which gives them the right to file a law suit for damages against the company. Claims for lowering the threshold for the use of these instruments from 10% of the capital to 5% had been voiced notably by the Stockholm Stock Exchange (SSE) and the Swedish Shareholder Association (*Sveriges Aktiesparares Riksförbund*) in the aftermath of the 'Fermenta scandal' and were taken up during the reform process by MPs from the liberal *folkpartiet* (motion 1997/98:L16). The Persson Government, however, in the governmental proposal 1997/98:99 on the 'Stock Corporation's Capital' rejected these claims.

The main argument against increasing MSP was every time that it would hamper the 'active ownership role' of large blockholders. This can also be illustrated by the debate about a mandatory bid rule. In SOU 1997:22 on 'the

Stock Corporation's Capital' the AB Committee rejected the idea of introducing a mandatory bid rule in the ABL on the grounds that this would make the building up of a strong owner position in a company difficult and was hence fundamentally contrary to the aim of an 'active ownership role' (SOU 1997:22, p.40).[39]

Most significantly, however, the AB Committee explicitly stated in SOU 1997:22 (p.28) that 'shifts in control' over firms were considered to be potentially detrimental to the company. As a result, the AB Committee proposed to strengthen the existing instruments for restricting the transferability of shares. Thus, besides the traditional *hembudsförbehåll* (redemption reservation), which obliges buyers of shares that are submitted to such a 'reservation' to offer the shares to the company, the AB Committee also proposed to introduce – for private companies[40] – a 'right of first refusal' (*förköpsförbehåll*), which would allow them to buy the shares from an existing shareholder before they were sold to a new investor. Moreover, the AB Committee also proposed to give 'coupon companies' the power to introduce a 'consent reservation' (*samtyckesförbehåll*), which would have subjected the selling of certain shares to the need to get the prior approval of the company (SOU 1997:22, p. 29).[41] These proposals were accepted by the parliament without any significant opposition or debate. The strengthening of instruments limiting the transferability of shares, which are comparable to the Swiss *Vinkulierung*, accordingly shows that up until the early 21st century there was only a very limited willingness in Sweden to limit the traditional instruments of insider control. The strengthening of these instruments is even mentioned as a major achievement of the reform process (SOU 2001:1, p.26).

When the governmental proposal was finally adopted (prop. 2004/05:85), it was 'based on an agreement between the social democratic government, the left party and the Greens' (Bet 2004/05:LU23). Yet, like the changes introduced during the 1990s following the various intermediary reports, the reform proposal 2004/05:85 was accepted by the oppositional centre-right MPs in a climate of consensus; and this despite the fact that the parties were already preparing for the general elections of 2006.

The only critical voices concerning the draft law during the consultation procedure (*remiss*) in 2004 were those of the Swedish Shareholder Association, which criticised the intended weakening of the 'Leo law', that it to say, the proposal that the sale of shares in a subsidiary company would no longer require AGM approval (*Dagens Nyheter* online edition, March 21, 2004).[42]

The *Allians för Sverige* (Alliance for Sweden) – an electoral coalition uniting all major bourgeois parties (*Moderaterna*, *Folkpartiet*, the Christian-conservative *Kristdemokraterna* and the *centerpartiet*) – presented only 19 proposals for modifications. Bertil Kjellberg – entrepreneur and moderate MP –, who presented the centre-right's 'reservations', further qualified the extent of divergence from the government's position:

> 'The proposal for the Stock Corporation Law is in large parts acceptable. The modifications that we demand are in many respects not linked to political divergences, but more to questions of the legal method which is preferred.' (Minutes of the *Riksdag*; June 13, 2005, my translation)

All other bourgeois MPs who intervened during the debate supported the governmental proposal in large parts as well (see also the interventions of Jan Ertsborn (fp) and Yvonne Andersson, Christian-democrats (kd)).

Due to this large consensus and to the social-democratic control over the – unicameral – parliament, all formal 'reservations' of the bourgeois Alliance were rejected and the law was adopted without major changes on June 15, 2005. However, as mentioned above, while the reform was quite comprehensive, it was not very profound in the sense that it did not fundamentally put into question the traditional instruments of insider domination and the power relations between different stakeholder groups, which of course reduced the probability for conflicts greatly. Thus, the most central instruments of insider-domination – dual class shares, limitations to the transferability of shares, and pyramids – were not touched by the reform, leaving the insider-orientation of Swedish company law intact.

Conclusion on Sweden

To sum up, the analysis of the political process of the Swedish corporate governance reform in this section shows very different political power relations, coalition configurations, and preferences of central actors than in Switzerland. Clearly, there was no transparency coalition between the centre-left and the liberal right in Sweden comparable to what I have shown for Switzerland above and to what other authors have shown for other countries (Cioffi & Höpner 2006, Gourevitch & Shinn 2005). The Swedish centre-left did not defend a pro-minority shareholder stance during theses reforms. Rather the smaller bourgeois parties – *folkpartiet* and *centerpartiet* – were from time to time the advocates of small shareholders, but only to a very limited extent. In fact, the consensus about the direction of the reform among left and right parties was very broad.

The increase in MSP that did take place was hence not the result of domestic pressures but mainly of EU legislation.

The Swedish Social Democrats therefore behaved as Mark Roe's (2003) political theory would predict. They preferred low levels of MSP and insider-domination over market control. They were not opposed, however, to the parties of the centre right on corporate governance issues. Rather, we find strong evidence for the existence of a strong corporatist coalition between the left and the centre-right, which opposed shareholder-orientated reform.

Given the very extensive changes that Sweden has experienced concerning the welfare state, labour market and the financial system since the 1980s, it is very striking to see how resistant corporate governance was to change, and in particular how little influence neoliberal ideas (shareholder value and primacy, value-based management etc) had on the reform of corporate governance[43]. Pontusson (1997:69) explains the contradiction between parts of the Swedish model moving towards the 'German model' and parts moving towards an Anglo-Saxon one, by a compromise between political forces close to the business elite pushing for market solutions, and forces close to labour (the LO, not the SAP) fighting to preserve the traditional Swedish model. Clearly, however, corporate governance does not fit this explanation: there was a broad consensus on the maintenance of the 'old system' and the business elite did not show any sign of favouring liberalisation.

The comparison of the Swiss and the Swedish cases show that Roe's (2003) partisan explanation of corporate governance systems is too simplistic. The same collective actors can defend very different preferences from one country to the other and over time. In order to understand how reform occurs in corporate governance systems, it is therefore necessary to look at the determinants of the different actors' preferences. The next section attempts to do precisely this.

6. Discussion: The Determinants of Preferences

The aim of this section is to explain the divergent political dynamics of corporate governance change in Switzerland and Sweden by explaining what the different actors' preferences were and how they changed – or did not change – over time. More precisely, the questions that I will try to answer in this section are: firstly, why did the Swiss left support pro-shareholder reform, while the Swedish left opposed it? Or in other words, why did a transparency coalition emerge in Switzerland, but not in Sweden? And secondly, why did the Swiss

business elite adhere during the 1990s to a shareholder-orientated approach to corporate governance and start, as a result, to abandon its opposition to change, while no such change took place among the Swedish business elite?

6.1 Corporatism vs. Transparency: Explaining the Preferences of the Left

As I have shown above, one central factor explaining pro-shareholder reforms in Switzerland was the continuous centre-left support for such reforms, which constituted between the mid-1970s and the early 1990s the main domestic pro-reform force and managed to keep the issue on the agenda despite strong centre-right opposition. Conversely, the absence of left support for reform was a crucial factor explaining the absence of pro-shareholder reform in Sweden. In fact, reasoning counterfactually, one could make the hypothesis that SAP support for pro-shareholder corporate governance reform would have been at different points in time – at least arithmetically – a sufficient condition for such reforms to take place. It therefore becomes important to explain the preferences of the left.

In order to answer this question, it is useful to look at Cioffi and Höpner's (2006) analysis, which constitutes the most elaborate analysis of the 'transparency coalition' phenomenon to date. They identify the emergence of a 'transparency coalition' concerning corporate governance reforms of the 1990s in Germany, Italy, France, and to a lesser extent, the US. They explain the seemingly paradoxical centre-left support for pro-shareholder reforms in these three cases by different 'push factors' (Cioffi & Höpner 2006: 487-488): firstly, during the 1990s, in a time of sluggish growth and high unemployment, the centre-left was in need for an economic reform agenda which would allow it to maintain its electoral competitiveness by seducing middle-class centrist but also left-wing and working-class voters. Second, centre-left parties started increasingly to ally with new financial institutions against their traditional opponents, that is, centre-right parties and their constituency, managers. Third, increasing shareholdings among the general public and the importance of equities in underpinning pension arrangements created a situation in which centre-left, anti-elite and pro-welfare preferences could be reconciled with pro-market and pro-shareholder stances. As a result:

> 'The centre-left saw corporate governance reform as a way of promoting economic restructuring, dynamism, and fairness without increasing managerial autonomy and power at employees' expense. Corporate governance reform also provided the centre-left with a way to attack the opaque and strategically important relationships between conservative politicians and corporate managers, while appealing to

> the resentment of their left-wing constituents towards these incestuous elites.' (Cioffi & Höpner 2006: 488)

Besides these reasons linked for the most part to electoral strategies, there were other more specific reasons for Social Democrats and – in particular – trade unions to support pro-market reforms (Cioffi & Höpner 2006: 477-478). Firstly, increasing transparency and management accountability implied increasing the power of the supervisory board, which was desirable for employees in systems where board-level codetermination existed. Secondly, in common with shareholders, labour has an interest in limiting agency costs stemming from excessive managerial pay and value-destroying strategies such as empire building. Thirdly, employees were themselves becoming shareholders to an increasing extent, both directly through savings and indirectly through their interests in pension funds. Thus their preferences and those of shareholders were becoming increasingly blurred.

These explanations for centre-left support for pro-shareholder policies can – apart from the co-determination variable – be applied to the Swiss case as well. Concerning co-determination, I showed above that in the Swiss case, it was not the presence of co-determination, but rather its absence that gave rise to centre-left support for such policies. Yet, these explanations would lead us to expect centre-left support for corporate governance reforms in Sweden as well. After all, Sweden has board level co-determination, Swedish employees have an interest in limiting managerial agency costs and have increasing parts of their savings invested in shares, either directly as private household savings or indirectly through their pension funds (see for figures Gourevitch & Shinn 2005). The puzzle therefore lies in the fact that Swedish centre-left parties did not support reform, given all the reasons singled out by Cioffi and Höpner (2006) are applicable to the Swedish case.[44]

A tentative answer can be seen in the possibility that supervisory board or strong works council representation may – contrary to Cioffi and Höpner's (2006) argument – push labour to oppose rather than favour increases in transparency and external control. Of course, increasing board power is favourable to workers who are represented on the board. However, in Sweden employee representation is strictly minoritarian. Hence, increasing supervisory board power can be perceived to benefit the majority of the board more than the labour minority. The increasing influence that transparency and stronger supervisory board control over managers confer to genuine outsiders – such as shareholders – can be perceived by employees to outweigh the benefits that these changes confer on labour.[45] In other words, workers who are given instruments which allow them to monitor and influence the management of the

company from within can be expected to oppose changes which would lead to increasing external control over the firms. This is all the more the case as Cioffi and Höpner (2006: 477-478) identify the main reason why increasing MSP should favour co-determination as the reduction of information asymmetries between the labour representatives on the board and the management. Because transparency levels were traditionally considerably higher in Sweden than in Germany, the Swedish labour movement's incentives to support pro-shareholder reforms were particularly low.

The degree of information asymmetries between managers and other stakeholders expresses a more fundamental characteristic of the relationship between labour and employers in Sweden, that is, their cooperative and 'equilibrated' nature. Certainly, Switzerland has a very developed culture of corporatist negotiating as well. However, contrary to Sweden, Switzerland is a case of 'corporatism without labour', where a very strong and well-organised employer side faces a deeply divided trade union movement. Swiss trade unions were historically split along sectoral, religious, and linguistic lines and hence much more heterogeneous and weaker than the Swedish unions (Kriesi 1998). This led to a situation in which trade unions could not negotiate with employers' associations on equal terms, and did not have enough political power to compensate at the level of the welfare state for their organisational weakness. The corporatist arrangements that emerged in Switzerland were therefore much less favourable to labour than in Sweden.

This can be illustrated by the question of co-determination. The political weakness of the Swiss left meant that no political force guaranteed that companies would respect workers interests within the firm, or at least that workers would be compensated by a developed welfare state in case of hardship. Labour's direct influence on corporate control was much more vital to trade unions in Switzerland than in Sweden, where labour could count on the SAP's political protection. This explains why the left in Switzerland was much more active in promoting corporate governance reform – first through their claim to introduce a co-determination system akin to the German system, and later through market-orientated reforms that were intended to increase transparency and control over insiders. The weakness of Swiss labour also led to their using, at times, highly conflictual strategies. Thus the Swiss trade unions' attempt to introduce a German-style codetermination system was an extremely conflict-laden process which culminated in a very aggressive campaign in the run up to the popular vote on the introduction of such a system. During the campaign, employers' associations accused the left to attempt a 'bolshevisation' of the Swiss economy (see David et al. forthcoming). Due to

the limited support of the left among Swiss voters, the centre-right opposition to co-determination could not be overcome.

In Sweden, in contrast, co-determination was instead the result of long-term cooperation, and can be interpreted as a reward for restraint in wage demands during the post war years. Thus codetermination did not generate much opposition by employers (see for this interpretation Högfeldt 2005).[46] This interpretation is supported by a look at political power relations: in Sweden, very tellingly, codetermination arrangements – while elaborated in 1976 under the SAP government under pressure of the LO – were implemented in 1977, when the Fälldin Government, the first centre-right government since 1932, had just come to power. The centre-right government did nothing to abolish the co-determination act or other laws adopted by the SAP government during the early 1970s which aimed at the 'democratization of working life' (see Blyth 2002: 202ff). Högfeldt (2005: 552) notes, concerning the differences between codetermination in Germany and Sweden, that '[u]nlike in Germany, co-determination was not designed to appease aggressive unions and to fight social and political instability.'

In short, the extensive social-democratic control over the public sector in Sweden allowed labour to establish a highly developed welfare-state, influence the allocation of resources at the macro-level, and set up other policies aiming at the redistribution of wealth in favour of employees (all this can be seen as part of the 'historical compromise'). This had as a consequence that employee participation at the level of the company was dispensable, and more generally that corporate governance could be largely left to managers and capitalists.

It did not make sense for Swedish labour representatives to '[...] attack opaque and strategically important relationships between conservative politicians and corporate managers, while appealing to the resentment of their left-wing constituents towards these incestuous elites […]' (Cioffi & Höpner 2006: 488), given that they were, in some way, part of these 'incestuous elites', or at least bound to them through strong and equilibrated corporatist arrangements. On the contrary, the same 'pull factors' which Cioffi and Höpner (2006: 487) identify as major elements which prevent *centre-right* politicians in Germany, Italy, and France from supporting pro-market reform apply to Swedish *labour representatives*:

> '[T]he established post-war political economic institutions and corporate governance regimes were largely, and in the French and Italian cases almost entirely, the creation of the right and they were designed to benefit conservative parties, politicians, and their

> supporters. This led to close and mutually reinforcing business-party relationships between managerial and party elites that persisted over decades and became extremely valuable politically and financially for managers and politicians alike.' (Cioffi & Höpner 2006: 487)

Given that the political economic institutions in Sweden – but not in Switzerland – were created in cooperation between labour and employers in the shadow of labour-dominated governments, it comes as no surprise that the left did not favour the dismantling of these institutions. This is all the more the case given that from the 1970s onwards, the Swedish left did not content itself with leaving corporate governance relations at the firm level to the employers any more. While the strong corporatist compromise that prevailed between the 1930s and 1960s consisted mainly in leaving the management of firms to the 'capitalists', at the end of the 1960s, the trade unions – and notably the LO – started to question this distribution of roles. The reason for this changing strategy was that the LO had increasing difficulties in obtaining what it wanted in bilateral negotiations with the employers' association SAF. Thus, in 1968, the LO failed to obtain in bilateral negotiations with the SAF greater worker decision making at the plant level. A year later, an extensive strike in the mining industry in the Kiruna area over pay increases and over working conditions put further pressure on the LO to improve working conditions. As no self-regulatory solution could be found with the SAF, the LO turned to the SAP government and pushed it to adopt, during the early 1970s, a series of laws aiming to 'democratize working life' (Blyth 2002: 203). Both the co-determination act and the wage-earner funds were part of this programme. Furthermore, in 1973 the Working Hours Law (*Arbetstidslagen*) and a year later the Job Security Law (*Lagen om anställningsskydd*; LAS) were adopted by the SPA-dominated parliament. The Working Hours Law limited the working week to 40 hours; the LAS introduced far-reaching dismissal protection and the 'last in – first out' (LIFO) principle, which had been advocated by the LO. Also, legal reasons for dismissal were limited to 'gross misconduct' and redundancies (Högfeldt 2005: 26). Due to the political power of labour in Sweden, the legislative path was in the short-run more efficient for the left, rather than negotiating with the employer side; however these developments led to a deterioration in traditional corporatist relations with the SAF and permanently upset relations with the employers (Blyth 2002).

This 'legislative turn' of the labour movement has far-reaching consequences for the question of corporate governance reform. Due to the increased legal action during the 1970s in favour of labour, the left became even more than before the architect of the Swedish corporate governance system. The Swedish centre-left's incentives to attack this system were thereby even further reduced.

This change also pushed the employers to become increasingly politically active as well, and led to the ‘remobilisation of Swedish business’ as a political actor (Blyth 2002: 209ff). As a result, relationships between labour and employers became increasingly conflictual and would progressively lead during the 1980s and 1990s to the often-anticipated end of the Swedish model. As the LO had put into question the principle of self-regulation and negotiation between employers and employees, the SAF started to reject traditional corporatist arrangements as well. Already in 1977, following the adoption of the co-determination act, the SAF declared the death of the *Saltsjöbadavtal*, that is, the agreement between trade unions and employers, which had constituted the basis for self-regulation of labour relations in Sweden since 1938. During the 1980s, this evolution continued as the SAF started to adopt a neoliberal reform program putting into question the LO’s control over labour-market policy, rejecting corporatist institutions like the consultation (remiss) on new laws (Blyth 2002: 227) and announcing in 1991 that it would abandon the tripartite boards of state agencies (Pontusson 1997). In Sweden, pro-market reforms were a political weapon for the right rather than for the left.

Interestingly, however, the neoliberal turn of the Swedish employers and the increasing opposition between employers and labour never extended to the question of corporate governance. Concerning this issue, the ‘corporatist compromise’ was remarkably stable. By leaving the most fundamental mechanisms on which the Swedish system is based – dual class shares, cross-shareholdings, pyramids, and co-determination – intact, even the reform of the Swedish ABL of 1975 was possible without disrupting the equilibrium of the corporatist coalition.[47]

In Switzerland on the other hand, the weak labour movement was largely excluded from the formulation of the corporate governance system, which explains why the left thought it had nothing to lose in siding with outside investors in order to increase external control over corporate insiders.

In short, social democratic power does seem to matter for the shaping of corporate governance systems. A comparison between Sweden and Switzerland suggests that where labour is strong, it might have enough influence on the shaping of the ‘corporate compromise’ to have reason to defend the system in place against reforms. Where labour is weak, however, an alliance with ‘shareholders’ against ‘managers’ may be a politically interesting option in order to change a system that was seen as being constructed against worker interests in the first place. In that sense, Roe’s (2003) prediction concerning

centre-left preferences seems to hold in certain circumstances, but not in all. This is now a well-established finding (see Cioffi & Höpner 2006, Gourevitch & Shinn 2005). Yet, my study shows that the part of employees' pension savings, which is invested in corporate stock, is not a sufficient explanation for the emergence of a transparency coalition, and neither is the existence or indeed the absence of board-level co-determination. The emergence of such a coalition –the comparison suggests – depends also on the type of relations that exist between labour and employers. Relations between labour and employers are the critical variable. Thus in Sweden it was the corporatist coalition between labour and managers/blockholders, which was remarkably strong and long-lasting, which helps to explain why social democrats opposed shareholder-orientated reforms.

Yet, I have also shown that left support for reform was not a sufficient condition for change to happen in Switzerland. This was due to the political weakness of centre-left parties in the Swiss federal parliament. In fact, only a considerable shift in centre-right actors' preferences allows us to understand why change happened in Switzerland during the early 1990s. This is the objective of the next section.

6.2 The National Business System and the Preferences of the Business Elite

In the following sections, I argue that three factors were particularly important to explain the changing preferences of centre-right parties in Switzerland. Firstly, the changing strategies and preferences of banks; secondly, the emergence of corporate raiders; and thirdly, changing corporate practices. I then show that these factors also explain why the Swedish centre-right parties' preferences did not change.

6.2.1 Switzerland

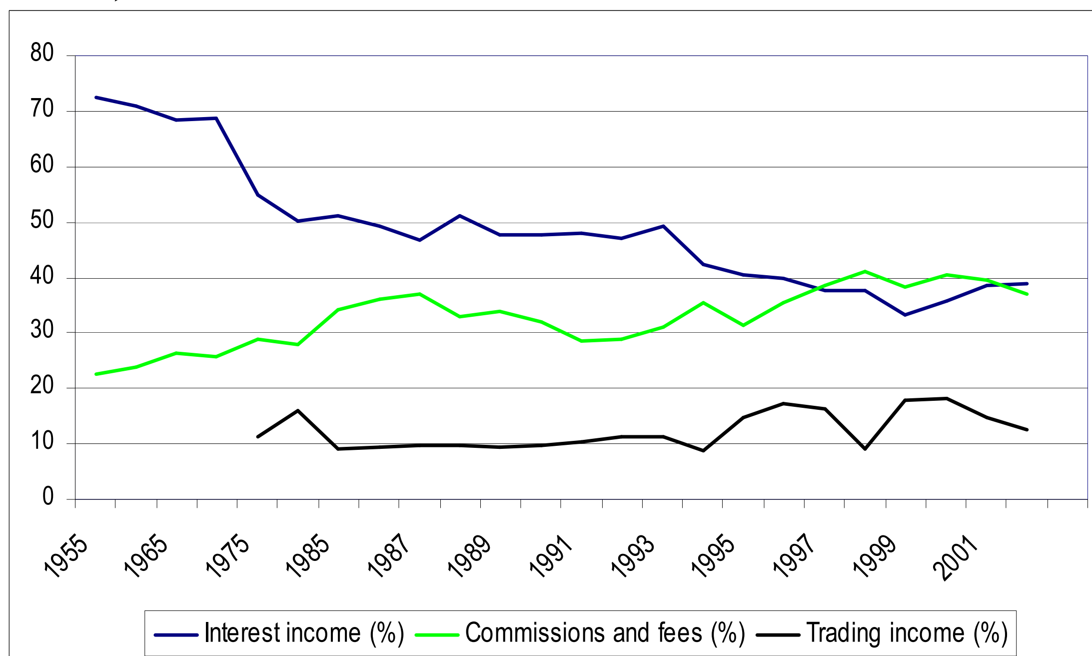
The Role of Banks in Switzerland

The large banks were the first important business actors in Switzerland to change their preferences during the late 1980s. This change was in part the result of a strategic adaptation to new opportunity structures at the international level (new possibilities due to liberalised financial markets) but also to new constraints at the domestic and international level. More precisely, since the early 1980s, competition for savings with insurance companies increased considerably. Since the early 1980s, Swiss insurance companies were in a difficult situation due to the saturation of the domestic market for accident and property insurance as well as increasing deregulation and foreign competition (Ravara 1999). This pushed them to look for growth opportunities in other

sectors. As a result, they started to offer new services such as investment funds and mortgage credits. Due to tax advantages and a lower level of capital reserve requirements, insurance companies found themselves able to provide these services at lower costs than banks (Ravara 1999). The intrusion of insurance companies in the hunting grounds of banks led to a fierce competition for clients between the two sectors. The banks reacted to this increasing domestic competition, as well as to increasing international competition due to the liberalisation of financial markets, by developing highly profitable business opportunities such as investment banking, wealth management, and by pursuing 'bancassurance' strategies, that is, selling bank and insurance services through the same distribution channels.

This strategic change can be illustrated by the changing distribution of bank income (see figure 4). As bank income stemmed increasingly from financial-market related activities (investment banking, asset management), the existence of developed and well functioning capital markets became increasingly important for them. This change explains why – during the late 1980s – the banks gradually stopped supporting traditional insider-orientated corporate governance practices and instruments.

Figure 4: The evolution of income of Swiss banks 1955 – 2003 (in % of total income)



Source: Swiss National Bank (annual reports)

One very telling example of the changing attitude of banks concerns their role in the refusal by Swiss companies to inscribe shareholders on their registers.

The banks had agreed in 1961 to sign a 'Gentlemen's Agreement' with non-financial companies about the use of *Vinkulierung*. In this agreement the banks committed themselves to sell registered shares only to investors who fulfilled the company's requirements for registration in the stock ledger (especially the nationality requirement). Concretely, this meant that banks had to inform themselves about the registration criteria for each listed company, which was done with the help of the so-called 'blue folder' in which the Swiss Bankers Association (SBA) kept a record of the current registration criteria for the firms that were party to the agreement (for more details on the GA of 1961 see Lüpold 2004). Obviously, for the banks, this agreement did not produce many immediate advantages, as it restrained their leeway in trading registered shares. The fact that the banks did respect it for nearly 30 years is a very telling example of the functioning of the cooperative, insider-orientated Swiss corporate governance regime. In the agreement of 1961 the banks justified their position as follows:

> 'For obvious reasons, the banks are in the first place interested in the free circulation of securities. [Therefore, the] banks hope that the industrial companies will henceforth abstain from limiting the transferability of registered shares through their articles of incorporation [...]. Our executive committee [...] *considers [however] that it is, in spite of what precedes, the duty of the Swiss banks is to support the industry in its efforts [to exclude foreign investors] when it is in the superior national interest.* […]' (GA of 1961; quoted in David et al. forthcoming: 217-218; my translation; emphasis added)

The GA of 1961 contributed in important ways to making Swiss companies largely invulnerable to takeover attempts from abroad and constituted hence a central piece in the puzzle of Swiss insider-orientated corporate governance system. It illustrates the strong cohesion and cooperative manner of interaction among the Swiss business elite across sectors, which is also reflected in the cohesion of the 'bourgeois block' in parliament during the first phase of the Stock Corporation Law reform up until 1985.

The immediate reason for the adoption of the GA of 1961 was a ruling by the Swiss Supreme Court – the Federal Tribunal – of 1957 (ATF 83 II 297 ff), which established the so-called doctrine of the 'dissociation of rights'. The 'dissociation of shareholder rights' designated the fact that associational rights linked to the share (that is the voting right, right to participate in the AGM and so on) and the cash-flow rights (the right to receive a dividend, the right to a share in assets on liquidation, and so on) could be transferred separately from each other. Concretely, the Federal Tribunal established that in the case of the refusal of a buyer of registered shares, the voting right remained with the seller

of the shares as long as the new shareholder was not registered in the stock ledger. The cash-flow rights, however, were transferred to the buyer as soon as he bought the shares even if the company refused his registration (see for a detailed discussion Kläy 1997). This doctrine of the dissociation of shareholder rights implied a weakening of the *Vinkulierung* as a defensive mechanism against unwanted shareholders. After this decision, a company could not prohibit an investor from becoming a shareholder, but 'only' prevent her from exercising the voting rights. The GA of 1961 allowed companies largely to counter balance the effect of the Federal Tribunal's ruling by filtering out unwanted shareholders *before* they had the chance to acquire registered stock.

The most problematic aspect of the judicial construct of the 'dissociation of rights' was that the seller of the shares – who did not carry any financial risk any more – could exercise the voting right. The seller remained registered on the stock-ledger as long as the company did not accept the buyer; the seller was therefore called a *Buchaktionär* ('stock-ledger shareholder'). This doctrine had been criticised for a long time by legal experts as well as by economic actors. The Federal Council announced in a statement of 1983 concerning stock corporation law reform that the elimination of this singular legal construct was one of the goals of the reform (BB 1983 II 844). At the time, the most important economic and political actors supported this objective. The business actors did so hoping that the elimination of the dissociation would give the *Vinkulierung* its original form again, in other words they hoped that all rights – not just the voting right – could be restricted with the use of *Vinkulierung*. Yet, up until the mid-1980s, even the banks were favourable to this objective, as is indicated in the SBA's annual report of 1985/86, which enumerates the elimination of dissociation as a priority for its reform objectives (Annual report SBA 1985/86: 132). One year later, however, the SBA rejected this reform objective, stating in its annual report 1986/87 that the abolition of dissociation would make stock market transactions with registered stock submitted to *Vinkulierung* impossible. As banks started to give more attention to their immediate material interests (including the functioning of capital markets), they were not as ready any more to defend Swiss companies' wish to be isolated from market pressures in the name of the 'superior national interest'. This change in preferences created considerable tensions within the Swiss business elite and – at the level of the parliament – within the 'bourgeois block'. Starting from 1986, the preferences of actors close to the banks were opposed to the preferences of industrial companies, which created strong dissensions between the SBA and the two main business associations, the Vorort and SwissHoldings. One senator called this opposition a 'combat of the titans' (Minutes PC-CoS 1988: 483). The disagreement between the banks and the rest of the Swiss economy weakened

considerably the conservative coalition of insiders, and the banks started to support some reform postulates of the pro-reform coalition. The impact of this volte-face on the power relations between the two coalitions can hardly be overestimated. As the banks started to support the transparency coalition, the power of the pro-reform coalition in parliament increased considerably.

However, as I will show in the remainder of this section, other – non-financial – companies were soon to follow a similar change in preferences concerning corporate governance. One crucial reason for this was the emergence of corporate raiders and the threat of hostile takeovers during the late 1980s, which is the subject of the next sub-section.

Corporate Raiders, Takeovers and their Impact on the Swiss Business System

The first Swiss corporate raiders appeared – apart from one isolated case at the end of the 1970s – during the mid-1980s. Most of these raiders aimed to take control of a company or at least to acquire enough influence to impose a shareholder-value enhancing policy, notably by dissolving the large amounts of hidden reserves that Swiss companies were famous for.[48] Most of the time, the raiders also demanded changes to the corporate governance structure of the firm – such as the reduction of the board size, and the abolishing of *Vinkulierung* – in order to empower the shareholder meeting vis-à-vis the management. Where such strategies were successful, they obviously had a direct impact on the corporate governance structures of Swiss firms. Some of the raiders – most notably Martin Ebner and Tito Tettamanti – also actively promoted a shareholder culture in Switzerland through publicity campaigns encouraging people to invest their savings in equity. They thereby contributed to a considerable extent to the changing saving behaviour of Swiss households and to the very pronounced increase in private household savings that were invested in equity (see e.g. Volkart & Cocca 2001).

The most influential raider in Switzerland was Martin Ebner and his investment company BZ Bank, which had a tremendous influence on the Swiss economy especially during the 1990s.[49] Ebner's strategy of acquiring large enough stakes in the largest Swiss companies to impose shareholder-value orientated strategies triggered a wide public debate over issues related to shareholder value and corporate governance in Switzerland and thereby contributed to the changing preferences of the Swiss business elite referred to above. Loderer and Zgraggen (1998: 29) consider that

> 'Until recently Switzerland's economy was dominated by cartels with closely overlapping boards of directors. Hostile takeovers were essentially unheard of, and criticism of management by shareholders

> was highly unusual and thoroughly unappreciated. Martin Ebner's activities have had the merit of stimulating public debate about shareholders' right and shareholder activism. Also, they have contributed to making shareholder value a politically correct goal for firms to pursue and made it more acceptable for shareholders to criticize management.'

It therefore comes as no surprise that Ebner was greeted by the Anglo-Saxon finance press like a saviour who would finally shake up the establishment and break down the notorious Swiss 'fortress of the Alps'. Thus the *Financial Times* run a very positive article about Ebner on December 13, 1985 with the headline 'Readiness to break the mould of conformity' (quoted in Becher 1996: 66).

A very important element in the raiders' contribution to the destabilisation of the traditional corporate governance system was their use of – for Switzerland – unusual investment and financing practices and the introduction of radical innovations concerning financial instruments. These innovations then pushed other – more established – actors such as the major banks to learn from the raiders and use similar strategies and instruments themselves, which greatly favoured the rapid spread of Anglo-Saxon style investment practices in Switzerland. The best example for such an innovative practice is the introduction in Switzerland of *Stillhalteroptionen* (covered warrants) by Martin Ebner's BZ Bank in October 1986 (Becher 1996: 78). The *Stillhalteroption* consisted in the practice of the BZ Bank depositing shares of a given Swiss company in a blocked deposit and issuing options which gave the owner the right to purchase the share of the company in question at a particular date at a fixed price. When Ebner issued his first *Stillhalteroptionen* in October 1986, the large banks – who were planning to launch a standardized market for share-options only in 1988 – were stunned, but they reacted immediately. Only a couple of days after Ebner had issued the *Stillhalteroptionen* on Ciba-Geigy shares, the SBS issued a *Stillhalteroption* on the registered shares of Zurich Insurance and Vontobel followed a little later with a warrant on registered shares of Sandoz AG (Becher 1996: 79).

The most important effect of the emergence of corporate raiders, however, was the fact that they created an unprecedented hostile takeover threat for Swiss firms and demands for an increasing shareholder-orientation. Their unorthodox strategies forced listed companies to react, which led to profound change in corporate practices. The case of *Ebner* vs. *UBS* (see box 2) is a particularly telling example of the impact that the raiders had on the largest Swiss companies. The impact of the takeover battle between BK Vision and the UBS – although just one case among many others – on the Swiss corporate

governance system was particularly great because it was widely discussed even abroad. Thus, the *Financial Times* considered this episode to constitute the end of an era:

> '[The case] is about more than UBS; *it also marks the beginning of the end for continental Europe's discreet and private approach to corporate governance*. Capital market liberalisation and privatisation have created a new shareholder culture bent on accountability. And Mr. Ebner, a former share analyst, has confronted the bank with it.' (FT November 21, 1994, quoted in Burkhalter 2001: 190; emphasis added)

The UBS case was by no means an isolated incident. Since the late 1980s, most of the very largest Swiss companies have come under attack at one point or another by one of the raiders, forcing them most of the time, to change their strategies and corporate governance practices considerably. Ebner alone acquired considerable stakes in ABB, Roche, Rieter, Intershop, and Algroup (Becher 1996). Moreover other raiders including Tettamanti, Braginsky, and Müller-Möhl attacked other traditional companies such as Ascom, Sulzer, and Saurer, creating a general feeling of vulnerability among the Swiss business elite.[50]

The UBS case also illustrates the relative inefficiency of existing takeover protections and notably the *Vinkulierung*. If a raider bought enough registered shares – even if they were not allowed to vote these shares – the raider could block important voting rights, which in turn could allow him to acquire the majority of voting rights by buying the freely transferable bearer shares. Thus *Vinkulierung*, even though it had allowed the management to avoid the acquisition of a controlling stake by the raider, had detrimental effects on the development of the company without ultimately offering efficient protection. For example, UBS was vulnerable despite a complex capital structure, the existing of voting caps, and super-voting shares. Its management therefore had to use other – very radical and costly – instruments in order to protect its independence, including the replacement of the different share categories by a unitary share category (*Einheitsaktie*).[51] When even these moves failed, the incumbent management finally had to change corporate practices in the direction of the raiders' demands. The emergence of corporate raiders led to a change in the preferences of managers not merely in those instances where they were convinced by the new practices, but because they constituted ways in which the incumbent management could avoid takeovers and could, thus, keep their jobs.

Box 2

BZ Bank vs. _UBS_ (1991 – 1997)

The most important example of Ebner's activity was his attack on the largest Swiss bank, the old UBS. The altercation between Ebner and UBS lasted from 1991 until 1997 and had far-reaching consequence for the Swiss economy and the corporate governance system as a whole. Ebner had begun to buy UBS shares through the intermediary of his investment company BK Vision as early as 1991. In 1991 he held 1.4% of the bearer shares and 4.4% of the registered shares of UBS (Loderer & Zgraggen 1998). In parallel, Ebner demanded a strategic reorientation of UBS in order to increase shareholder value. Thus he demanded the imposition of a return on equity (RoE) of 15 to 20%, a reduction of costs through layoffs (SHZ, January 23, 1992), as well as a reduction of the size of the board of directors (from 24 to 9 members) (Burkhalter 2001: 182). Besides these textbook shareholder value claims, Ebner also attacked directly the top management of the UBS. He demanded the resignation of the chairman of the board Nikolaus Senn and of the CEO Robert Studer, two of the most influential members of the Swiss business elite. The UBS rejected all these demands, which led Ebner to further increase his stake. Ebner's perseverance and his considerable financial resources created a permanent threat for the UBS management. In the run-up to the 1996 AGM, Rainer E. Gut – chairman of the UBS's main domestic competitor Credit Suisse – contacted Nikolaus Senn in order to suggest a merger between the two banks in order to fend off Ebner's attack. According to the newspaper *Tages Anzeiger* of April 9, 1996, Gut explicitly threatened to vote the shares controlled by the CS in favour of Ebner's propositions during the AGM, were the UBS to refuse the merger offer (Lüchinger & Nolmans 2003: 182). This breach of the culture of cooperation by a powerful banker was termed in the press as sign of a '*Verrohung der Sitten*' ('brutalisation of manners') and an irresponsible destabilisation of the largest Swiss banks (Sedlmaier 2003: 195). UBS refused the offer and Ebner continued to increase his participation and filed several law suits against UBS notably following the introduction in 1994 of the unitary share, which aimed mainly at diluting Ebner's stake in registered shares (Loderer and Zgraggen 1998). In the autumn of 1997 Ebner held 25% of the equity capital. Together with CS he controlled 40% of UBS.

In order to find a way out of this situation, the UBS management contacted the third large Swiss bank, SBC, and started negotiations on a possible merger. In December 1997, the two banks announced the conclusion of a merger agreement. Following this announcement the litigation with Ebner was settled by an out-of-court settlement. Despite the fact that Ebner did not manage to take the control of UBS, he was still the winner of the six-year confrontation. The

NZZ considered the merger to be a capitulation of the management of the old UBS since 'the new UBS meets in all respects the BK Vision's expectations' (NZZ January 24, 1998 quoted in Burkhalter 2001: 188). Besides the fact that the share price after the announcement of the merger exceeded by far the level prior to the introduction of the unitary share, the new bank very soon implemented most of Ebner's proposals. Thus, a productivity goal was introduced requiring a RoE of at least 15% and the layoff of 13,000 out of the 56,000 employees was announced (7,000 of them were in Switzerland).

In this context, it is important to note that the corporate raiders emerged during the 1980s without any change in the legal corporate governance framework. This shows that the absence of hostile takeovers prior to the 1980s is – contrary to what most incumbent managers and observers believed – not so much explained by the defensive mechanisms as such, but much more by the fact that investors used to 'play by the rules'. In fact, no legal change was necessary in order to make the emergence of corporate raiding possible; it was enough that certain actors dared break the unwritten laws of the business elite. This also points toward the importance that normative and cognitive aspects played in the reform of Swiss corporate governance.

The activities of the corporate raiders were very much linked to their status of outsiders to the Swiss business elite. Due to the fact that they did not consider themselves to be bound by the informal norms and rules of the Swiss business elite, corporate raiders could seize opportunities, which were not open to established actors. Tito Tettamanti explicitly expresses this point in an interview in September 2005. He commented thus on the events around his takeover attempt on the traditional loom producer and machinery company Sulzer during the late 1980s:

> 'My strength was that I […] did not have any debts and did not want to belong to the Establishment, which gave me a certain jester's licence'. (My translation)[52]

Given that these kinds of investment strategies were fundamentally contrary to the informal ethical codes of the Swiss business elite based on cooperation, it comes as no surprise that they were – at first – resolutely rejected by the establishment. Hansjörg Abt, editor at the NZZ, described the reactions to the very first truly hostile takeover in Switzerland – the acquisition of the shoe producer Bally by the young financier Werner K. Rey in 1977 – as follows:

> 'Helvetia's first raider was borne; walls of *Vinkulierung* – which were considered to be earthquake-proof – crumbled, an outcry went through the country. The "NZZ" used three-column-wide, bold block

> letters, which were actually reserved for the outbreak of the Third World War!' (*The Accountant* no. 12/95: 1022, my translation)

The same reaction occurred when the phenomenon of hostile takeovers became more wide-spread during the 1980s (see Becher 1996, Sedlmaier 2003).
A first reaction of the establishment to the new threat was to elaborate – under the leadership of the Association of Swiss Stock Exchanges (ASSE) – a first set of takeover rules in the form of a takeover code, which entered into force on September 1st, 1989 and addressed the most important problems. In order to ensure respect for the code, the ASSE established a 'Regulatory Committee' composed of representatives of the issuing companies and legal experts. Officially, the code aimed at establishing rules, which guaranteed that a takeover took place in a fair and transparent way without either attempting to favour or hamper hostile takeovers. However, the defensive mechanisms that the target companies could use were only mildly constrained by the code (the manipulation of the share price by the management was prohibited), whereas the bidder's leeway was considerably curtailed (Dufour & Hertig 1990). The code can therefore be seen as an attempt by the establishment to limit the chances of success of hostile takeovers (Peter 1990: 161). This interpretation is supported by the fact that after the adoption of the code, hostile takeover attempts almost stopped completely in Switzerland for sometime.[53] However there was litigation in several instances and the decisions of the newly established 'Regulatory Committee' were put into question, which led the Government finally to include the issue of takeovers in the new proposal for the SESTA (BB 1989 I: 1289 ff.).

Paradoxically, however, takeover attempts increasingly generated criticism not of the 'raiders' but much more of the traditional defence mechanisms and of the behaviour of the corporate insiders during takeover battles. Journalists and commentators criticized incumbent managers for the arbitrary way in which they treated the shareholders in a range of widely publicised takeover battles. One case – that of the canned food producer Hero – led the Zurich Stock Exchange to closely examine all strongly bound registered shares that were listed in Zurich and to consider delisting them (Basler Zeitung, February 20, 1987; FA E4110 (B); 1992/175; vol.58). Moreover, given the clear limitations of the traditional defensive mechanisms, some actors started to demand a reorientation of the companies' behaviour. Such claims came in a first phase mainly from the left. Thus, the social democratic Councillor of States Carl Miville stated in September 1988:

> 'I believe that certain companies should realise that the fostering of the capital market, of the share price, and of the shareholders is as

> efficient a takeover defence as the erection of barricades through extensive *Vinkulierung.'* (OB CoS 1988: 485; my translation)

At the end of the 1980s this view began to become increasingly accepted even among actors close to the business elite, who started to realise that '*Vinkulierung ist das Problem für dessen Lösung sie sich hält*' ('*Vinkulierung* is the problem, not the solution it is supposed to be') (Editorial of the Swiss Review of Commercial Law 1988: 87). Similarly, the existence of complex capital structures was also increasingly questioned. Thus the private banker Julius Bär (1991: 6) wrote in a study on equity ownership in Switzerland:

> 'Depending on the constellation of the ownership structure, the excessive use of voting shares and non voting participation certificates can be counterproductive and downright provoke takeovers because the raider will [be able to] focus with relatively little capital spending on the voting shares'.

The new practices introduced by the 'raiders' increasingly gained acceptance among the business elite, while the traditional instruments of insider control lost support. Some established economic actors even went as far as allying with 'raiders' in certain takeovers. Thus, in 1996, the very traditional Winterthur Insurance company joined forces with Ebner in order to take over another Swiss company, the Intershop Group. Thus in this case, the 'pariah' Ebner had support from the very core of the Swiss business elite. Winterthur had very eminent representatives of the Swiss business and political elite on its board. Peter Spälti – between 1983 and 1991 a conservative FDP MP – who was at the time of the Intershop takeover CEO and Chairman of Winterthur, had opposed only a couple of years earlier Ebner's attack on UBS (NZZ April 10, 1996). The fact that such a company allied itself with the raider Ebner points to a considerable change in the establishment's preferences. This shows that during the 1990s Ebner's methods were no longer considered by all members of the business elite to be anything reprehensible. This constituted a crucial step on the way towards a new – shareholder-orientated – corporate governance system.

The increasing acceptance of aggressive investment strategies had an important impact on the political reform processes as it led centre-right MPs to change their preferences concerning central issues of corporate governance. Thus, the conservative MP Ulrich Gadient (UDC) nuanced the negative image of corporate raiders by invoking the laws of the free market[54]:

> 'We have to decide what we want: special rules for Switzerland? A free market economy? As an article in *Finanz und Wirtschaft* has demonstrated, the acquirer is, from the viewpoint of the free market

> economy, not *a priori* worse than the existing shareholders.' (OB CE 1988: 457; my translation)

In short, the fact that certain actors started to consider it to be legitimate – or did not care anymore that it was not – to buy shares against the will of the company's management, take the control, and change the company's strategy, destabilised the traditional corporate governance system in different ways. Firstly, in several cases raiders obtained enough influence in order to impose directly shareholder-orientated strategies and corporate governance practices on the targeted companies. Secondly, their activities showed that the traditional instruments of insider control proved efficient only as long as most actors played according to the rules of the game. This – in combination with the permanent takeover threat – led to an increasing questioning of the traditional system by the business elite and the use of alternative, more market-conforming defence strategies – for example, increasing transparency rather than restricting the transfer of shares – in order to counter the new threat. Worse, little by little less marginal actors – such as managers of 'respectable' firms and MPs close to the business elite – started to support to some extent the new practices. This directly affected the reproduction of the traditional institutional setting, above all because these central actors had a direct influence on the formulation of legal rules through their seats in the non professional parliament. Thirdly, the new investors introduced highly profitable investment strategies and instruments, from which traditional financial companies – and notably the major Swiss banks – were eager to learn. This led to radical innovations in the financial system, which had a considerable impact on the functioning of the Swiss economy. Finally, the raiders' publicity campaigns led to a more general diffusion of a certain 'equity culture' whose most important consequence was the ever increasing part of private savings that was invested in equities rather than traditional savings vehicles such as savings accounts, thereby providing the equity markets with considerable liquidity.

By the beginning of the 21st century hostile takeovers of Swiss firms – even by foreign investors – had become a common phenomenon, which sometimes provoked some admonitory voices – especially in the tabloid press and from the incumbent managers of the attacked firms – but did not arouse any fundamental objection. Clearly, Swiss companies and the Swiss business elite had become more inclined to accept the new rules of the market economy than some ten to fifteen years previously. This process influenced the political debates over legal reforms. The next section explores in more detail this change by analysing how exactly the corporate strategies of Swiss companies changed during the 1980s and 1990s.

Corporate Practices and Managerial Preferences

The pressure created by the corporate raiders was a crucial factor triggering change in the Swiss business system starting at the end of the 1980s. However, as I will show in this section, changes in corporate governance practices during the 1990s were very extensive and all of them cannot be attributed to the impact of the raiders alone.

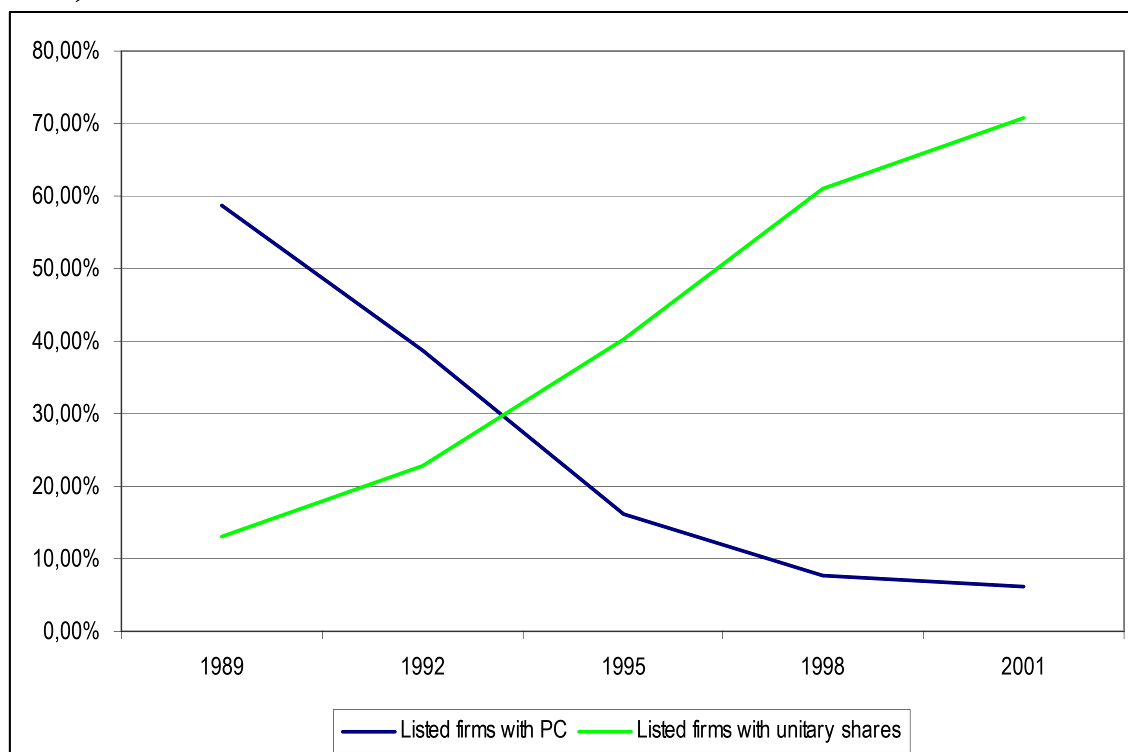
One crucial element of the changes in corporate practices during the 1980s and 1990s was that *Vinkulierung* and especially the exclusion of foreign investors – *the* central pillar of insider domination in Switzerland comparable to the Swedish voting right distortions – increasingly came under pressure. The clearest case in this respect is Nestlé, which decided, in 1988, to abolish its anti-foreigner clause for inscription in the stock ledger. This was mainly the result of the strong reactions in the English press following Nestlé's takeover of the UK company Rowntree. The English press attacked Nestlé's behaviour, pointing out the contradiction between its very aggressive expansion strategy abroad while being completely shielded from takeovers at home. Fearing retaliatory measures from international markets and competitors, Nestlé was pushed to liberalise its *Vinkulierung* regime (Loderer & Jacobs 1995: 320-322).

The case of Nestlé is significant because it can be expected that the practices of this prestigious first mover had a signalling impact on other companies. According to Culpepper (2005) changes in central actors' beliefs – and hence preferences and practices – are central to making institutional change happen. Institutions 'change only when the central strategic actors within the system are persuaded, collectively, that their old cognitive maps are wrong and that they need to devise new ones' (Culpepper 2005: 176). Nestlé's changing corporate governance practices certainly had the potential to spur the spread of such practices among Swiss firms. Nestlé opened its registered share capital to foreign investors in 1988, introduced international accounting standards in 1989, had established an investor relations department by 1990, and decided to introduce the unitary share class in 1993. These very important reforms in one of the largest and most successful Swiss company's corporate governance practices can be expected to have contributed to the generalisation of such practices during the 1990s. Although the reasons why companies like Nestlé adopted new practices are not limited to ideational aspects, but can be linked to very concrete material interests (as Nestlé's fear for international reprisals after the Rowntree takeover), new practices introduced by a prestigious first-mover may lead other companies to being convinced that this example is the lead to follow, thereby producing a 'joint belief shift' ('JBS') (Culpepper 2005). Following such a 'JBS', new practices spread quickly as part of a 'trend'

without questioning of their costs and benefits or even their sense or senselessness.

This can be illustrated by the simplification of complex capital structures, which went often together with the liberalisation of *Vinkulierung*, reported in figure 5. The figure clearly shows a dramatic increase in the number of companies that have a unitary share structure and at the same time the equally dramatic abolition of non-voting participation certificates (PC). By 2001, 70% of the listed companies in Switzerland had introduced the unitary share class (Kunz 2002: 30). 61.3% of the companies which had introduced – by November 2000 – a unitary share abolished at the same time the possibility of *Vinkulierung* (Burkhalter 2001), exposing themselves to a much large extent to financial market pressures than in the past.

Figure 5: Changes in the capital structure of listed Swiss companies (1989-2001)



Source: Kunz 2002

Note: The sample includes all operating public companies under Swiss law that were included in the *Aktienführer Schweiz* and had one or several share classes quoted in the main segment of the Zurich Stock Exchange (up to 1995) or the Swiss Electronic Exchange (from 1998, including Virt-x in 2001) (Kunz 2002: 31). This sample represents over 99% of the market capitalisation and trading volume of Swiss public companies.

The simplification of the capital structure, while exposing insiders to increasing market pressures, allowed them to become more attractive for investors and hence to increase their market capitalisation (Helbling 1996: 216-217). In addition to
increasing the valuation of the company – and hence a reduction of capital costs – the simplification of the capital structure also has a signalling effect, showing investors that the company respects the laws of the financial market, which also indicates the new position of the shareholder within the company (Burkhalter 2001: 244, Kunz 1998: 73, Boemle 2003: 909).

The abolition of multiple share categories is but one – albeit a very important one – of several areas in which corporate governance practices of Swiss firms have changed fundamentally. Another one is the question of transparency in accounting. The first Swiss companies to apply international accounting standards (IAS) were Ares-Serono, BBC, and Tecan, which all introduced IAS rules in 1988; Nestlé followed in 1989, Saurer, Roche, Landis&Gyr in 1990. Accounting standards 'improved' rapidly from that point on.[55] By the mid-1990s, Switzerland was the mainland European country with the highest proportion of companies applying international accounting standards (Dumontier and Raffournier 1998: 216). Thus, in 1995, nine German and twenty-four French companies applied IAS rules (Dick & Zarlowski 2002), whereas we count seventy-eight Swiss companies applying these rules (KPMG 2001).

The reasons for these changes are multiple. Pressures stemming from internationalisation and liberalisation of international markets, mediated through domestic actors such as the corporate raiders and 'norm entrepreneurs' such as the accounting profession, are a central element of this evolution. Through a variety of mechanisms, this led large, mostly listed companies to change their practices. These mechanisms are a mixture of strategic adaptation to new opportunity/constraint structures (access to foreign markets, competitiveness), elements of direct 'external inducement' (Ikenberry 1990) notably through international regulatory pressure (for example, the indirect political and regulatory pressure by EC/EU legislation on Swiss firms) and 'direct coercion' (for example through corporate raiders, but also the listing requirements of foreign stock exchanges and most notably of the LSE).

Besides these external factors, endogenous factors contributed to the increasing shareholder orientation of Swiss firms. One of the most important factors in this respect is the increasing convergence of the preferences of the Swiss managerial elite and of outside investors.[56]

The two main reasons for this ‘convergence of interests’ are a change in managers’ educational profile, leading to changes in norms and values, and an altered pecuniary incentive structure.[57] Concerning the former, a considerable change in the educational profile of Swiss managers can be observed during the 1980s and 1990s: by 2000, Anglo-Saxon style MBAs had become the education *par excellence* for top managers, whereas degrees in law had become much rarer and degrees in engineering were stagnating (Davoine 2005; Dyllick & Torgler 2006). This ‘new school’ of Swiss managers – who often went through Anglo-Saxon business schools and were sometimes trained in American consulting firms such as McKinsey – has imposed a new management culture on many Swiss companies. The new school of Swiss mangers defended fundamentally different norms and values than the traditional managerial elite. Under the old insider-orientated paradigm, managers (often engineers) with profound knowledge of a given company and its production processes were considered to know best what was good for the firm. Outside shareholders, financial analysts, and other actors defending minority interests, on the other hand, were considered to be dangerous *Querulanten* (vexatious litigants) and financial analysts were considered to be ‘rabble’ (explicitly so in minutes of the preparatory committee of the NC, May 1985, p.515). During the 1990s, this changed as consultants, financial analysts, and those holding MBA degrees from US universities or business schools acquired a position of undisputed authority concerning the management of firms. Again, this also shows that ideational changes (acceptance of new values and norms) played an important role in the changing behaviour of Swiss companies, in addition to the role of strategic behaviour (managers taking advantage of new opportunities) and coercion (raiders’ imposing new practices on companies),.

Moreover, as Höpner (2003a) has argued for the German case, managers became increasingly supportive of value-based management methods (VBM) as these methods went together with performance-related pay schemes, which led to a very significant increase in managerial compensation. This was clearly the case in Switzerland too. The rise of performance-related compensation schemes led even mangers of the ‘old school’ to support shareholder-related policies. This new orientation towards financial goals and personal wealth has been publicly criticised in the press by several – interestingly enough often retired – ‘old-school’ managers as greedy unethical behaviour, illustrating the break between two different management ‘cultures’ (see for instance WOZ April 22, 2004; Blick May 9, 2007).

The spread of the shareholder value idea and related management techniques in Switzerland was favoured by the context of the 1990s. Learning from other (foreign) companies based on evidence of their performance (most importantly the success of the US economy during the 1990s, which contrasted with the recession in Switzerland) led to the belief that pursuing the maximization of shareholder value was the most appropriate – or the only sensible – goal likely to guarantee the success of the company in a difficult environment. The traditional 'stakeholder approach' – most often referred to as the 'multi-referentiality of the firm' – was considered, in this environment, as a strategy to reduce managerial accountability by making the measurement of success or failure more difficult. This attitude, which was seen as necessarily leading to sub-standard profitability of the companies, was considered to be impossible in the new context of increasing international competition. By the mid 1990s, 'shareholder supremacy' was accepted by very important Swiss managers, as is illustrated for instance by the contributions in the debate on shareholder value in the columns of the NZZ (NZZ 1996) (see also Forstmoser 2005, Schnyder 2008).

The examples of the capital structure and of accounting rules show that the changes at the level of the listed companies' practices went well beyond the requirements of the new Stock Corporation Law of 1991 or even the SESTA and the SWX listing requirements of 1996. Thus, neither the law nor the listing requirements required the abolition of different share categories or the introduction of IAS standards. These changes in corporate practices can therefore not be explained by the legal change of 1992, but are – conversely – the main reason why considerable legal changes became possible during the 1990s after almost 30 years of fierce centre-right opposition to liberalisation of corporate governance. As MNCs (to use a short hand for the largest listed companies) were increasingly ready to follow international or US corporate governance standards, whereas SME and non-listed firms did not change much, the heterogeneity of practices within the Swiss corporate governance system increasedly led to the emergence of 'models within models' (Deeg & Jackson 2006). The increasing heterogeneity of corporate governance practices directly translated into the political arena through the splitting up of the business elite – and the centre-right parties close to them – into a pro- and an anti-reform camp at the end of the 1980s. The opposition of actors close to the largest companies towards the liberalisation of the traditional instruments of insider domination waned rapidly as 'their' companies abandoned these instruments anyway.

This change in centre-right parties' constituencies tipped the power balance in the Swiss parliament at the end of the 1980s and led to an increasing

substitution of the left-dominated transparency coalition for a manager- and investor-led pro-shareholder coalition. This evolution ultimately explains the legal changes in the Swiss corporate governance system at the beginning of the 1990s since it weakened the coalition of the cohesive business elite – represented by the centre-right parties – whose opposition had made reform impossible despite permanent domestic pressure for change stemming notably from the labour movement.

Concerning the latter point, it is also interesting to note, that centre-left support for pro-shareholder reform started to wane during the 1990s, or at least, to become more conditional. In fact, as the pro-shareholder approach became increasingly a pro-shareholder *value* approach, the left remained supportive of those aspects of the reform, which touched transparency issues, but started increasingly to distance itself from reform claims, which skipped power relations within the firm in favour of shareholders. This divergence increased throughout the 1990s and was spurred on especially by Martin Ebner's and other raiders' activities, as they increasingly pushed for radical restructurings of the targeted firms. In 1999, the chairwoman of the machinery industry trade union FTMH and Socialist MP – Christiane Brunner – denounced in the editorial of a publication dedicated to the theme of 'Shareholder Value' the 'bloodletting' of the Swiss economy in the name of shareholder value:

> 'The industrial substance in Switzerland is to day being bled to death. In fact, we live in a country where one single speculator, motivated only by greed and using foreign capital, can decide about the future of companies and of thousands of jobs; and what is worse, without ever having set foot in a factory. We suffer from an economic system where the most prestigious industrial companies become the plaything of the shareholder strategists'. (FTMH 1999: 2, my translation)

This view contrasts with the traditional view of the left for which the 'arch-enemy' were clearly the directors and the managers – in other words the insiders – while raiders and other actors that fought against insider domination over the firm had been seen as allies in the workers' struggle to increase control over management. Thus, one of Brunner's fellow party members, Carl Miville, had stated in September 1988 during the debates in the parliament:

> 'I share largely the opinion of the executive committee and the board of the Federal Banking Commission [which have] "no fundamental objections to takeovers". Although there may be every now and then an unnecessary takeover, some fresh wind does not do any harm to the boards of directors and the management floors. *Where large takeovers have taken place so far in Switzerland, it became apparent*

> *– at least up to now – that the people who were considered as pure financiers – in the worst case as raiders with asset-stripping in mind – were in fact responsible [people] with an industrial commitment.* And where […] in the past takeovers were prevented with the means and methods of a company protectionism which you all know about, this happened probably more in the interest of a management which did not want to put its cards on the table, rather than for the benefit of the company.' (OB CoS 1988: 485, emphasis added; my translation)

When the shareholder activists started to use the reform demands concerning increased transparency, equal treatment of minorities, and the limitation of the power of insiders, mainly in their own, material short-term interests, the left changed their attitude towards these investors considerably. In this context, the traditional managers – who defended an industrial rather than a financial logic – started to appear like allies rather than enemies. Managers of the 'old school' like for instance Fritz Fahrni, former CEO of Sulzer – who was characterised by the FTMH as '[…] a solid industrialist, who focuses on the long term and who has restructured and made the Sulzer Group competitive' (FTMH 1999: 12, my translation) – became in this context the example to follow. Against these 'traditional managers' pursuing industrial objectives, the left contrasted a new generation of managers such as Fred Kindle and Sergio Marchionne, who explicitly followed a shareholder-value orientated strategy. When Kindle replaced Fahrni at the head of Sulzer in March 1999, he laid off 2,000 employees.

The evolution of corporate governance during the 1990s shows that the left's struggle for increasing transparency and minority shareholder protections – which were meant to serve all outsiders – had as an unintended consequence the empowerment of actors who would use these newly created opportunities against the interests of employees. As a result, during the 1990s, the Swiss Social Democrats started to defend preferences which were closer to what we would expect them to have had under the assumptions of mainstream theory'. Contrary to Roe's (2003) prediction, however, this stance was not 'natural' for the Social Democrats, but the result of a long process in which they had initially seen other strategies and preferences as better serving their interests.

6.2.2 Sweden

In this section I discuss the different factors which explain the centre-right's preferences in the Swedish case. I argue that the same factors, which allow us to understand why the Swiss business elite changed its preferences towards pro-

shareholder reform, allow us to understand why the Swedish business elite's did not.

The Role of Banks in Sweden

One crucial difference between Switzerland and Sweden is the fact that Sweden did not have a bank-centred model of corporate governance in the same sense as Switzerland. To be sure, Swedish banks can be considered as universal banks as well and 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). Reiter (2003: 106) also states that Sweden is a predominantly bank-orientated system, '[…] characterised by a small and strictly regulated capital market, close and long-term relations between financiers and corporate leaders, and an extensive concentration of private sector ownership in the hands of a few powerful bank-centred business groups'. Yet, these general characteristics of the Swedish model can by no means be interpreted as constituting a strictly bank-centred system. In fact, in the comparative corporate governance literature it is common to use 'bank-centred' and 'insider-orientated' corporate governance systems as synonymous terms. However, this broad categorisation neglects the variance that exists between countries within the group of insider-orientated systems. Sweden cannot be considered as a bank-based system to the same extent as Switzerland – or the ideal-type Germany for that matter – for several reasons. Most importantly, Swedish banks were closely controlled both bottom-up (by their owners) and top-down (by the state), reducing their leeway.

Yet, Swedish banks were themselves often closely linked to an owner-family. The Svenska Enskilda Banken (SEB) for instance was and still is controlled by the Wallenberg family. Other families were also linked to one of the three major banks, which were besides the SEB, Skandinavbanken and Handelsbanken (Högfeldt 2005). The case of Handelsbanken, however, is different from the two other major banks in the sense that this bank is directly controlled by its management rather than by owner-families (Agnblad et al. 2001).[58] The fact that individuals or families controlled Swedish banks clearly distinguishes them from Swiss banks. In the Swiss case all three major banks (UBS, CS, and SBS) were widely held companies without any shareholder controlling significant stakes over a longer period of time (see Bank Bär 1991 and 1996).

The ownership structure of Swedish banks had an important impact on the reform process: as Swedish banks were controlled by people who had interests not only in the financial, but also – or even predominantly – in non financial sectors, they did not lobby as much as Swiss bankers did for increasing attention to be paid to the efficient functioning of capital markets. Increasing gains in the

financial sectors could in fact be offset by losses in non-financial sectors. As an example, individuals – such as the Wallenbergs – still valued industrial interests at least as much as financial interests and defended protections against market forces from liberalisation pressures from the EU (see below).

Another important difference between the Swedish banks and Swiss banks consists in the fact that Swedish banks were not only closely held, but also heavily restrained in their activities by governmental regulations. Already in 1932, in the aftermath of the Kreuger scandal, banks were prohibited from directly holding corporate stock. This led to the establishment of closed-end-investment funds (CEIF)[59] by most banks, which held corporate stock on behalf of the banks (Högfeldt 2005). Moreover, as a result, Swedish banks were subject to lending ceilings and had to place more than 50% of their assets in long-term governmental bonds or bonds from mortgage institutions. This led to a situation where '[…] 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). Moreover the Swedish central bank – the *Riksbank* – scrutinised bank strategies closely and communicated what they considered to be appropriate behaviour in weekly meetings with the representatives of the major banks (Englund 1999). Swedish banks were therefore much more constrained in their strategic choices and especially in the development of certain lines of business than Swiss banks. Swedish banks were therefore mainly instruments of corporate control for their owners and integrated into vast spheres of influence in which financial and industrial interests mingled. As a result, the banking sector was not the vector for a financialisation of the economy which it was in Switzerland. At the political level, bankers did not lobby for finance-orientated policies concerning corporate governance, because the banking sector was largely dominated by the interests of the business group as a whole rather than constituting an independent sector and hence a collective political actor in its own right.

Corporate Raiders, Takeovers and their Impact on the Swedish Business System

As in Switzerland, hostile takeovers started to appear in Sweden during the late 1980s, following an even more extensive liberalisation of financial markets, which made possible new financial practices including corporate raiding (Skog 1994; Isaksson & Skog 1994). According to Berglöf (1997: 109), these reforms were influenced by UK regulations and were very far-reaching (see also Blyth 2002, David and Mach 2004, Reiter 2003)

The main changes concerned the reactivation of virtually non-existent financial markets in 1984 and the progressive abolition, between the mid-1980s and 1993, of exchange rate controls and of the need for state approval for foreign

investments in Swedish companies (Henrekson & Jakobsson 2006; Högfeldt 2005, Blyth 20020, Englund 1999).

The reforms of the 1980s allowed banks and mortgage institutions to expand their financial activities into markets which were previously reserved to insurance and investment companies (such as leasing, factoring, credit card issuing). This created a context of increasing competition among financial institutions, which pushed them into riskier markets (Englund 1999). The reforms also made unorthodox investment strategies – such as raiding – possible, and led to the emergence of corporate raiders like Anders Wall and Erik Penser, who specialised in buying and re-selling companies. These new actors brought new, aggressive investment techniques such as 'asset stripping' to Sweden (Henrekson & Jakobsson 2006).

Yet, a crucial difference in the raiders' activities in Switzerland and Sweden concerns the fact that the most aggressive strategies were short-lived in Sweden due to the financial crisis of the early 1990s, which led to heavy losses for the raiders. In fact, in Sweden, the extent and pace of the liberalisation was such that it led rapidly to very pronounced real estate speculation and finally to a financial and monetary crisis in the late 1980s and early 1990s (see Englund 1999). A very significant consequence of the crisis for the question of corporate governance reform was that the role of 'corporate raiders' and of new financial methods was perceived in a very different way in Sweden than was the case in Switzerland. The fact that the emergence of aggressive investment strategies coincided with liberalisation and were subsequently associated – rightly or wrongly – with the ensuing economic crisis meant that the acceptance of these new behaviours by the traditional actors and the public opinion remained very limited. As hostile takeovers had apparently very negative effects on companies and the economy as a whole, as the financial crisis of the early 1990s showed, it was thought that companies should be protected from such activities. The association between real estate speculation and corporate takeovers was expressed for instance in a letter of June 1, 1993 of the white-collar union *Sveriges Industritjänsteman Förbund* (SIF) to the Minister of Justice Gun Hellsvik (The letter can be found in the Swedish National Archives at SE/RA/325044 vol. 3):

> 'The real estate speculation of the 1980s with the ensuing real estate and banking crises are now well-known facts. A similar wave of speculation touched also upon the buying up of industrial companies, which happened at excessive prices. The banks played an important role in this evolution in that they promoted highly leveraged loans for

> company acquisitions and thereby contributed to the unsound prices of such acquisitions. […] Today, the acquired companies and their employees pay a high price for this behaviour when the owners and the banks in all likelihood even break the Stock Corporation Law in their zeal to extract from the company its last money in order to save their own finances. [A]fter the financial crisis of the 1990s it is again time to revise the law so that we get in the future a better protection of our industry and its own capital against the attacks of 'raiders' and the collaborating banks'. (My translation)

In another letter of May 9, 1995 the SIF reiterates its wish to increase the protection of company's equity from the '[…] plundering by owners who have economic problems' (SE/RA/325044 vol.3; my translation). A similar perception of the shareholder as a 'thief' was widespread in Switzerland during most of the 20th century and constituted the main rationale for the very pronounced insider orientation of Swiss firms (see also Lüpold & Schnyder 2008; Schnyder 2008). However, in Switzerland, by the mid-1990s, the negative perception of shareholders had largely given way to the shareholder supremacy view (see above). No such evolution has taken place in Sweden. The financial crisis of the early 1990s certainly contributed to this.

The SIF letter constitutes – of course – only anecdotal evidence; however, examples from the new ABL of 2005 show that this view is even now accepted among leading legal scholars, public officials and the legislator in general. Thus, whereas in most European countries, including Switzerland, the distribution of benefits to shareholders has been greatly facilitated during the 1990s, the provisions of chapter 17 of the new ABL on 'value transfers' (*värdeöverföringar*) – which include distributions of capital gains, own-capital reductions, and the acquisition by a company of its own shares – shows a much more pronounced concern with making sure that a company does not distribute *too much* of its surplus to shareholders by imposing different safeguards. Changes aiming at facilitating distribution of benefits through more precise rules and procedures are counterbalanced by a strong commitment to 'capital protection', which is clearly inspired by a negative view of shareholders' influence. To give but one example, the new ABL of 2005 refrains from abolishing the need for board approval for capital reductions (ABL 2005, chapter 30 3§ 2nd sentence). Svensson and Danelius (2005: 157) explain this fact as follows[60]:

> 'The provision is justified by the fact that it is in general the board, which has the best possibilities to decide how large a distribution is appropriated in view of the company's [financial] situation; and [by

> the fact] that *the board represents the company's long-term interests often better than shareholders for whom an immediate high distribution is sometimes the focus*' (emphasis added, my translation).

This objective – protecting the company's own capital from being 'plundered' by shareholders – reflects persistent negative attitudes towards minority shareholders and helps to explain why in Sweden minority shareholder protection was considered to be of little importance.

The passage from the SIF letter quoted above also suggests that, as in Switzerland, the banks started – despite their larger commitment to industrial interests – to support, to a certain extent, new investment practices, and that they supported corporate raiders in their attacks on Swedish companies. Yet, the financial crisis meant that this change in bank strategies did not gain any legitimacy, as it was seen as being negative for the Swedish economy and for the banks themselves (see the number of bank failures during the crisis of the 1990s: Englund 1999). The transformation of corporate governance structures, which might have taken place due to raiders' activities – provided the banks' owners were really ready to allow it to happen – was thereby aborted very quickly, eliminating one important factor for change.

Yet, despite the fact that corporate raiders did not play the same transformative role as in Switzerland, a fundamental change in the functioning of the market of corporate control took still place in Sweden too. Agnblad et al. (2001) report that during the 1950s on average one acquisition a year took place on the Swedish stock market. During the 1960s the average increased to three and during the 1970s to four a year. During the following decade, more precisely between 1980 and 1992, however, 253 offers took place of which 212 were successful (Agnblad et al. 2001: 247). These takeovers often involved foreign investors and some of the offers were clearly unsolicited. The Swedish Code Group (SOU 2004:130, p.14) wrote in April 2004 that '[t]akeover activities on the Swedish stock market tend to be higher than in the United Kingdom, for example.' Ahlqvist (2004: 4-54) reports that 9% of all listed Swedish companies are targeted by a takeover every year. Increasing M&A activity has notably affected the Wallenberg sphere of influence. Thus, the merger between Pharmacia and Upjohn in 1995, the takeover of Volvo's car manufacturing division by the US company Ford, and the merger of Astra AB and Zeneca Group plc. (both in 1999) signified a considerable loss of control for the Wallenberg family over their most valuable assets (Agnblad et al. 2001). This leads Henrekson and Jakobsson (2003: 96) to state that by 2003:

> '[T]here has been a dramatic shift in corporate governance […]. Until recently, Swedish firms operated in a corporatist environment where

> capital markets and shareholder value played a subordinate role. The change in ownership […] is part of a major restructuring of the Swedish business sector orchestrated by the capital market by means of mergers and takeovers. The situation in Sweden is in many ways similar to that in the USA […]. The difference is that the mergers and takeovers in Sweden have mainly been of the cross-border type. It seems as if the other corporatist economies of Europe have clung to their established patterns of corporate governance to a much larger extent, the only exception being Switzerland.'

However, I will show in the next section that –the question of M&A activity aside – little systematic evidence exists to support the view that changes in Swedish corporate governance have taken place.

The increase in takeover activity points to another significant difference between Sweden and Switzerland, that is, the more active role of institutional investors in Sweden. I have shown elsewhere (Schnyder 2008) that institutional investors – excluding corporate raiders and their investment vehicles from this category[61] – were very passive and did not exercise up until the late 1990s any direct pressures on Swiss firms to 'improve' their corporate governance practices.[62] In Sweden, on the other hand, foreign institutional investors appear to have put pressure on Swedish companies to improve the position of outside investors within the firm much earlier than in Switzerland. The abolition of restrictions on foreign investments led to an ever increasing proportion of foreign ownership in Sweden, so much so that certain authors predicted that most large Swedish company's would be owned by foreigners in the near future (Henrekson & Jakobsson 2000 and 2002). The increase of foreign ownership also involved financially-orientated institutional investors, which put stress on increasing returns on investment. These new actors put the Swedish system directly under pressure, pushing Swedish firms to change their practices. Reiter (2003: 116) notes that

> '[…] new groups of shareholders, domestic and foreign alike, have also exerted direct pressure to change the structures concerning golden shares […]. Foreign investors have repeatedly criticised the Swedish system of differentiated voting rights and have called it "an example of Swedish ultranationalism"'.

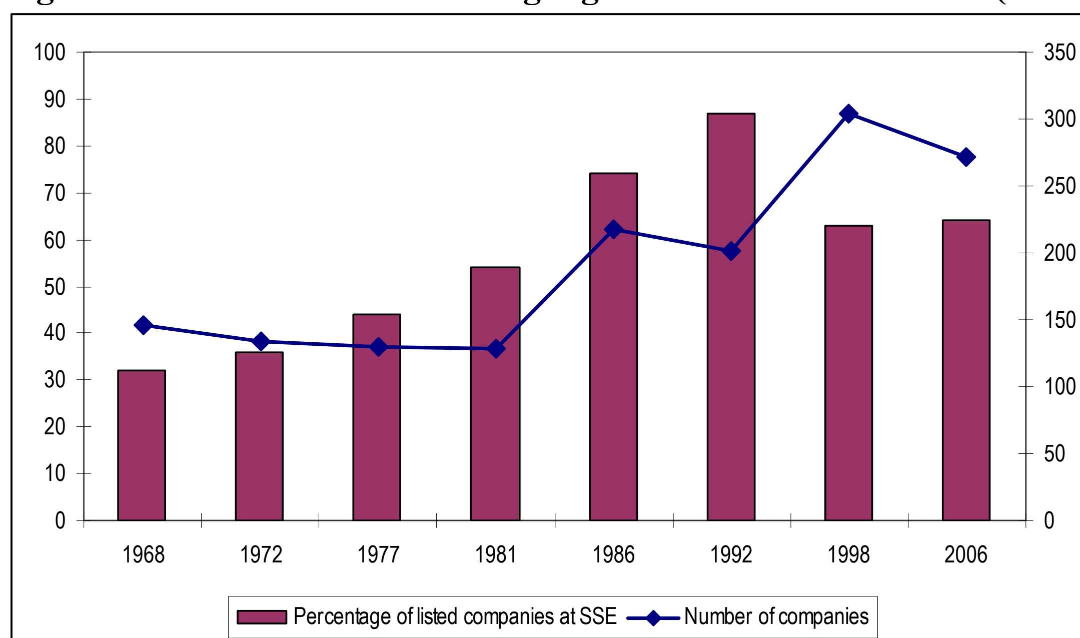
In particular, the US adviser of institutional shareholders, Institutional Shareholder Service (ISS), has continuously lobbied the Swedish government to abolish voting right distortions (Dagens Industri Sept 23 1995, Dagens Industri May 29, 1997).[63] Yet, this lobbying did not lead to any perceptible change in governmental policy concerning this issue (Reiter 2003). Moreover, as I will

show in the next section, during most of the 1990s, a large part of Swedish companies also appear to have resisted these pressures.

Corporate Practices and Managerial Preferences

Since the late 1980s, Swedish companies – contrary to Swiss companies – have increasingly adopted CMS, such as cross-shareholdings and voting caps, and did not – up until the late 1990s – abolish their voting right distortions (see Henrekson & Jakobsson 2006; Skog 1994; Högfeldt 2005). In order to prevent the anticipated opening up of Swedish equity markets to direct ownership by foreigners, family-controlled firms increasingly introduced dual-class shares in the late 1980s and even more so in the 1990s (Högfeldt 2005; Henrekson & Jakobsson 2003). Figure 6 shows that dual class shares have flourished in Sweden throughout the 1990s. This evolution is remarkable if we consider the increasing degree to which Swiss companies introduced unitary share structures during the same period. Certainly, in relative terms, in Sweden also the proportion of companies using voting-right distortions started to decrease at some point during the mid-1990s. The percentage of listed firms with dual class shares peaked around 1992 when 87% of the companies were protected by voting-right distortions (Henrekson & Jakobsson 2006: 23, table 9); by 1998, this share had decreased to reach 63%. By 2006 'only' 64% of the firms listed companies still had voting right distortions. However, this decrease in relative terms is largely due to the impressive increase in the number of companies listed on the SSE. In absolute terms, the number of listed firms with dual class shares actually *increased* up to the late 1990s, and was at the end of the last century – despite a reversal of the trend – still substantially higher than at the beginning of the 1990s. More precisely, in 1992, 202 companies with voting right distortions were quoted on the SSE, in 1998 there were 304 and in 2006 there were still 271 (Henrekson & Jakobsson 2006: 23). Even in relative terms, despite an important decrease between the early and the late 1990s, as late as 2006 a clear majority (64%) of listed companies in Sweden had dual class shares with voting right distortions, which compared to less then 10% in Switzerland (see figure 4 above). In addition, almost 50% of the 120 companies which went public during the period 1998 to 2002 issued shares with differential voting rights (Veckans Affärer April 7, 2003). This evolution can hardly be interpreted as a fundamental change in Swedish companies' corporate governance practices in the sense of an increased openness towards financial markets and a growing shareholder orientation.[64]

Figure 6: Listed firms with voting-right distortions in Sweden (1968-2006)



Source: Henrekson & Jakobsson 2006: 24, table 9

One explanation of the reluctance of Swedish insiders to abolish voting right differentials as compared to the evolution in Switzerland consists in differences in the degree of ownership concentration and – more generally – the prevailing type of owners. The extraordinary degree of concentration in corporate control in Sweden does not go together with a particularly pronounced ownership concentration. LLSV's (1998) concentration index of the three largest shareholders in the 10 largest domestic non-financial, non state-owned companies shows a mean of 28% for Sweden, as compared to 41% for Switzerland. Yet, this captures very incompletely the Swedish reality in which corporate control is mainly exercised through pyramids and voting rights distortions. Sweden is probably the European country with the most concentrated corporate control structure, with most of the major companies being controlled by a very limited number of actors.

This latter point becomes clear when we compare the role of owner-families in Switzerland and Sweden. La Porta et al's (1999: table V) data show that in the mid 1990s 30% of the 20 largest[65] Swiss firms were controlled by families. For Sweden the corresponding figure was 45%.[66] The percentage of total market capitalisation of the sample of twenty firms that were controlled by families was 28.7% for Switzerland and 35.5% for Sweden.[67] Thus family ownership was more common and more extensive in Sweden than in Switzerland. Yet, La Porta et al. (1999) also find that Swiss families were more often actively involved in the management of the firm than Swedish families. In *all* Swiss companies of their sample controlled by a family, a family member held a leading position in

the management; in Sweden this was the case only in 56% of family-controlled companies (LLSV 1999: Table V).[68] The frontier between managers and owners is hence more blurred in Switzerland. Moreover, La Porta et al. (1999) show that in Switzerland each family controlled on average exactly 1 company. Of all family-controlled Swiss companies in the LLSV sample, no two were controlled by the same family. This finding is also supported by Nollert's (2005: 427) data for 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 (Stephan Schmidheiny and Martin Ebner who both controlled an investment company) had important shareholdings in more than one company. In comparison, in Sweden, the average family controlled 2.5 companies (La Porta et al. 1999). This average, however, certainly underestimates the extent of control by some Swedish families. In fact, certain families and individuals – such as the Wallenbergs – control a very large number of companies, which constitute very extensive spheres of influence (e.g. Carlsson 2007). As a result, while in both cases the insider-orientation of the corporate governance system goes together with a significant role for owner-families in corporate governance, important differences exist between the two countries concerning the precise nature of this role. Each typical Swiss owner-family seems to be directly involved in the management of one company, while Swedish families seem to play a more limited management role, but in a greater number of companies. Or in other words, Swiss owner-families appear to be more of the entrepreneurial type, while Swedish owner-families appear to be more owners and controllers of a vast empire of companies in which they have a more distant role.

Control over the Swedish economy was concentrated in the hands of a very limited number of actors. Carl-Henrik Hermansson (1965), then leader of the communist SKP, spoke in 1965 of fifteen families which controlled the Swedish economy. This statement appears to be only slightly exaggerated as contemporary official reports on ownership structure of the Swedish corporations largely confirm this point (Henrekson & Jakobsson 2003, Högfeldt 2005).

Due to the extent of their spheres of influence, Swedish family-owners relied much more on CMS-like pyramids to control their companies than Swiss families did. Thus, La Porta et al. (1999) find that in 78% of family-controlled companies, this control is exercised through the intermediary of at least one other company in Sweden (the corresponding figure for Switzerland is 0%).

The same is true for voting right distortions – the most important Swedish CMS – which reached levels that were unheard of in other European countries with voting right differentials between two share categories reaching proportions of 1:1000 in some cases (Isaksson & Skog 1994: 294). At the beginning of the 1990s, most Swedish firms had voting right distortions of 1:10 (156 out of 202 firms); one firm had a ratio of 1:100 and three of 1:1000 (Isaksson and Skog 1994: 294). Table 2 below confirms the importance that voting right differentials had in the Swedish corporate governance system compared to other countries.

Table 2: Voting right distortions in 1995

Japan	20.00
Spain	20.00
United Kingdom	20.00
Belgium	20.00
France	19.99
United States	19.19
Germany	18.61
Italy	18.04
Netherlands	15.00
Switzerland	*14.18*
Sweden	*12.62*
Average	**18.56**

Source: La Porta et al. 1998, Table IV.

Note: The table reports the minimum percent of the book value of common equity required to control twenty per cent of the votes. The average refers to a sample of 27 countries.

Arguably, the discrepancy between ownership and control in Sweden made the business elite particularly reluctant to liberalise the corporate governance system. Henrekson and Jakobsson (2006: 31) consider that

> '[…] the capital basis, on which the [insiders'] control is based, is smaller in Sweden than in other corporatist economies in Europe […]. This latter feature renders the Swedish control model particularly vulnerable to the threat of globalisation and the increasing domination of pension funds on international stock exchanges' (my translation).

The different attitude of Swiss and Swedish firms towards the liberalisation of their capital structure can therefore be explained by the fact that Swedish controlling shareholders rely more on voting right distortions than Swiss controlling shareholders. Liberalisation – for example the introduction of a

unitary share structure – would in many cases inevitably lead to a loss of control (Henrekson & Jakobsson 2006). To give but one example, Reiter (2003: 109) reports that the Wallenberg family's voting rights in Electrolux would decrease from 95% to 16% were voting right distortions abolished.[69]

In Switzerland, although voting right distortions were common and substantial, the introduction of the unitary share did not necessarily lead to a loss of control as capital stakes were still large enough to guarantee the blockholders a substantial influence in the company. Eleven of the forty largest Swiss companies introduced the unitary share between 1992 and 1994.[70] Only two out of these eleven companies were genuine public companies with no shareholder holding more than 5% of the voting rights in 1990 (Nestlé, where the Bettencourt family held in 1990 only 4% of the voting rights, introduced the unitary share in 1993; Von Roll, which was in 1990 a genuine public company introduced the unitary share in 1994). Most other 'early movers' were family-controlled (Helvetia-Patria Insurance, Logitech, Valora/Merkur, Adecco, Oerlikon-Bührle, Agie Charmilles, Zschokke); one company had a bank as major shareholder (Bâloise Insurance where the SBS held 17% of the voting rights); Saurer was the only 'early mover' controlled by one of the 'new investors', that is, by Tito Tettamanti who held 38.2% of the voting rights (figures based on Bank Bär 1991). Thus nothing indicates for the Swiss case that families were particularly reluctant to liberalise their capital structure. This is all the more remarkable as all but one of the companies which introduced the unitary share between 1992 and 1994 had substantial voting right distortions. In fact, the largest shareholder of the above-mentioned eleven companies controlled in 1990 on average 33.23% of the votes, but only 24.42% of the capital (my own calculations based on Bank Bär 1991). The exception was Zschokke, which did not have any voting right distortions but was controlled by two related families that held together 60% of the capital.

For the companies with voting right distortions, the introduction of the unitary share implied a considerable decrease in control of the traditional blockholders over the company. A comparison of ownership structure between 1990 and 1995 shows that those companies for which the introduction of the unitary share implied the abolishing of voting right differentials, this move resulted on average in a decrease of 14.5% of the stake controlled by the dominant shareholder in terms of votes (my own calculations based on Bank Bär 1991 and 1996). Yet, only the controlling families of Zschokke – ironically the company without voting right distortions in 1990 – had lost control completely by 1995. In all but two of the other companies the former blockholder remained the largest shareholder with an average stake of 18.6% (figures based on annual

reports and Bank Bär 1991 and 1996). Abandoning voting-right distortions was hence less costly for Swiss blockholders than for Swedish ones. This may help to explain why important Swedish actors were more reluctant to liberalise corporate governance practices.

Recently, voting right distortions in Sweden began to be reduced as well, and in some instances dual-class shares were abolished altogether. This was particularly the case with the most extreme voting right differentials of 1:1000, which have now been abolished in all companies. The last company to do so was Ericsson. Ericsson's board and owners (Industrivärde and Investor) agreed in 2002 with institutional investors (notably ISS) on a transformation of golden shares into standard differential voting right distortions (1:10) (Reiter 2003).

Agnblad et al. (2001: 255) consider, that, as a result of these developments:
'There are clear signs that the old structures are already breaking down in response to these pressures. Cross-holdings have all but disappeared from the Swedish corporate scene. Many large corporations are gradually relinquishing the system of dual-class shares. In particular, the largest firms controlled by the Wallenberg family, such as ABB, Astra, Electrolux, and SKF, have over a very short period, either directly or after an international merger, eliminated dual-share classes that most efficiently differentiated votes from equity ownership. Given the traditional stability of the ownership structures in Sweden over the last 60 years, the recent changes have been dramatic; more has happened during the last few years than over the previous 60 years.' (Agnblad et al. 2001:255)
It has to be underscored, however, that no study of the Swedish case provides any systematic data for a supposedly dramatic change in corporate governance practices. It seems rather that beyond the often-quoted examples of a handful of very large companies (SKF, Ericsson, Electrolux), no such change has taken place so far. This is clearly supported, for instance, by the evolution of voting-right distortions quoted above. Some large companies may very well have abolished – or reduced – the most extreme forms of voting differentials, but this cannot – given the limited evidence cited in most studies – be interpreted as a general trend in the Swedish corporate governance system. In 2007 Carlsson (2007: 1045) stated that

> '[Differential voting rights] enjoy solid support from most parts of the Swedish community at large – from the business and financial community as well as from the government and the general public'.

In addition, the evidence quoted by Carlsson (2007: 1043) shows that in the fourteen 'core holdings' of the Wallenbergs, the ratio between the percentage of voting rights and the capital stake is on average 1:2; in other words, the family controls twice as many votes as the capital it owns. Only in five out of these

fourteen companies are there no voting right distortions. Again, this can hardly be interpreted as a dramatic change in Swedish corporate governance practices.

This is further supported by the fact that in relation to the debates about the EU takeover directive, the Wallenberg family made it very clear that they had no intention of abandoning the control over ‘their’ companies completely. In an interview with Dagens Industri of March 13, 2003 Marcus Wallenberg declared that the family would find other ways than dual class shares in order to maintain the control over their sphere, should the EU prohibit the use of super-voting shares during takeovers (quoted in Ahlqvist 2004: 4-58). A draft of the EU takeover directive which was tabled in Winter 2001/2002 contained a clause that would have prevented minority shareholders holding less then 25% of capital from opposing a takeover through the use of dual class shares (Reiter 2003, Ahlqvist 2004). The traditional Swedish owners, and in particular the Wallenbergs, lobbied MEPs and Commissioners as well as the Swedish government in order to persuade them to oppose the directive (Reiter 2003:118). This strategy worked: according to Högfeldt (2005: 565, note 30), ‘[t]he Social Democratic government announced that it would do everything within its power to back the Wallenbergs and fight the proposal. The right to use dual-class shares is declared to be a national interest.’

In short, the preferences of the most important Swedish actors were fundamentally different from their Swiss counterparts. Trade unions and Social Democrats in Sweden preferred insider-control over firms over outside- and market-control. The same is true for the business elite. Sweden did not experience the emergence of a ‘transparency coalition’, but neither did she experience the above-mentioned convergence of interests between managers and shareholders that took place in several European countries. The Swedish case seems much more to be characterised – at least as far as corporate governance is concerned– by the persistence of a corporatist coalition uniting corporate insiders (mangers, blockholders) and labour. This broad and stable coalition explains why shareholder-orientated legal reform did not gain much support in Sweden and why the legal reforms remained very limited.

7. Conclusion

The present study shows that a simple partisan model (strong social democracy = insider-orientated corporate governance; weak social democracy = shareholder-orientated corporate governance) does not allow us to explain the evolution of corporate governance systems in all circumstances, as it fails to account for the variety of factors that influence different economic and political

actors' preferences. The Swiss and Swedish cases show that both a clearly centre-right dominated polity and a clearly centre-left dominated one can lead to an insider-orientated corporate governance system with concentrated ownership. At the same time, the stability of political power relations in Switzerland did not prevent change. Legal changes in Switzerland took place under a clearly bourgeois dominated government and an equally clearly bourgeois dominated parliament. Therefore, not changing power relations, but changing preferences explain why legal MSP increased in Switzerland during the early 1990s. Sweden, on the other hand, experienced during the 1980s and 1990s episodic changes in the governmental coalition, which could have – but did not – lead to changes in policy concerning the protection of minority shareholders. None of the major partisan blocks in Sweden considered shareholder-orientated corporate governance reform to be a priority.

Moreover, in both cases central political actors' preferences only partly correspond to what we would expect to find based on Roe's (2003) theory: the Swiss left was favourable to pro-shareholder policy, where we would expect it to be opposed. The Swedish right was opposed to pro-shareholder reform, where we would expect it to be favourable.

The same is true for the emergence of different coalitions: while Roe's theory would lead us to expect a left-right divide over corporate governance reforms, we find that this was the case in neither of the two countries. The configuration of coalitions in Switzerland is more appropriately characterised as the opposition between a cross-class 'transparency coalition' and a 'conservative coalition of insiders'; in Sweden, the prevailing configuration was a cohesive 'corporatist coalition' with virtually no political force – outside of shareholder lobbies – being favourable to increasing the shareholder orientation in corporate governance.

Therefore, political power relations as such do not explain national corporate governance systems or their reform. Political power relations become a valid explanatory variable only in conjunction with an analysis of different political actors' (and their constituencies') preferences.

This is not to say, however, that social democratic power does not matter concerning corporate governance reform. On the contrary, while social democratic power does not directly determine the outcome at the level of corporate governance structures, it is an important determinant of power relations in the struggle over corporate governance reform. Thus, the exclusion of the weak left from the Swiss corporate governance system made them a

ready ally of outside investors in their struggles with insiders over the liberalisation of Swiss corporate governance. At the political level, the left was even the main force driving the Stock Corporation Reform into a more shareholder-orientated direction between 1965 and 1985. Conversely, the particular role of social democrats in Sweden, their political strength and hence their influence over the definition of the terms of the Swedish 'corporate governance deal', made them much more reluctant to attack the prevailing system. Had they been favourable to extensive reforms, this would probably have led – due to the political power of the left in Sweden – to quite profound changes in the Swedish corporate governance system, as can be illustrated by the legislation of the early 1970s in the area of work relations.

Therefore, the position of the centre-left in the reform process was of central importance in explaining why reforms took place in Switzerland but were very limited in Sweden. Other studies suggest that this finding – that the position of the left within corporate governance arrangements determines to a considerable degree the transformation of those arrangements –probably has a more general validity than just the two cases analysed in this paper (see Cioffi & Höpner 2006, Gourevitch & Shinn 2005). My analysis provides additional elements for understanding the preferences of the left in the process of the political reform of corporate governance. In particular I have shown that these preferences are determined not only by economic factors (e.g. increasing shareholdings by employees), but also by the left's political strength and hence the nature of relations that exist in a country between employers' and employees' organisations.

Another central point is that in Switzerland centre-left support was not sufficient to make reform possible. It was increasing centre-right support for pro-shareholder reform, which eventually tipped the power balance in parliament in favour of the pro-reform actors and made legal change possible during the early 1990s. This hints at another important point of my study: the direction of causality between changes in the business system and changes in the legal framework. Clearly, in Switzerland, changes in the business system explain legal changes, not the other way round as mainstream 'law and finance' theories would suggest (LLSV 1998). This is because the very consensual political system with many veto points and the weak political position of the pro-reform actors, made changes in corporate practices necessary before any legal change could happen. More precisely, the Swiss case can be interpreted as a Katzensteinian case (see Katzenstein 1985 and 2003) of a small European states with a 'dual economy', where a highly adaptive sector of internationally orientated MNCs exists. The opposition between a developed sector of

internationally orientated companies on the one hand and a dominantly inwards-orientated sector of SMEs on the other, led to frictions within the business elite, which explain why pro-market reform became possible in spite of the fact that the left was politically too weak to impose reforms alone.

In the Swedish case, however, no such split took place. In fact, during the 1990s, Swedish companies' corporate governance practices seem to have changed much less than Swiss companies' practices. Nothing indicates that Swedish companies changed their corporate governance structures significantly in favour of shareholders during the 1990s; rather they seem to be as determined as ever to oppose threats to the central instruments of insider control. This is surprising, as Sweden is characterised by a comparable duality of the economy – although the SME sector is considerably weaker – and many Swedish companies depend heavily on international markets.

This suggests that insider-orientated corporate governance arrangements may very well resist the centrifugal forces caused by new opportunities and constraints that impact on the most internationally exposed actors. This finding qualifies accounts of the 'irresistible force' of market liberalisation and competition and points, once again, to the importance of contextual factors in order to understand the business elite's and the centre-right politicians' stance towards reform.

I have identified a number of different factors as playing a (potentially) major role in business system change in the Swiss case and hence in determining the centre-right actors' preferences; and I have analysed the importance of the same factors for explaining the absence of major changes in the Swedish case. Table 3 summarizes the findings for the two cases.

Table 3: Explanatory variables for changes in national business systems

	Dual economy	Convergence of manager/insider and shareholder interests	Corporate raiders/ takeover threat	Institutional investor activism	Powerful universal banks	Outcome (increasing shareholder orientation)
CH	+	+	+	-	+	+
S	+	-	+	+	-	-

The table shows that the most likely explanations for the differences in changes in the two countries' business systems and the legal framework – away from insider- towards shareholder-orientation – are the fact that Swiss – but not Swedish – managers and insiders became themselves increasingly favourable to reform and that Switzerland had powerful universal banks, but not Sweden. The existence of a dual economy is not a sufficient condition to make change happen. Nor is the existence of corporate raiders and of a takeover threat. The presence of institutional investor activism is neither a sufficient nor a necessary condition for such changes to happen.

I have argued that the differences in the variable 'managerial/insider preferences' can be explained by looking at a) who exactly the insiders were and b) how they exercised control over 'their' companies. I have shown that in Switzerland the 'coalition of insiders' was dominated by blockholders of an entrepreneurial owner-manger type (with bankers and professional managers playing an important role as well). In Sweden, the circle of insiders is more restricted and dominated by a very small number of investor families, which have interests in a large number of industries. More importantly, insider-control was achieved in Switzerland mainly through ownership concentration, combined with *Vinkulierung* and hidden reserves. In Sweden, the power of insiders was less based on concentrated ownership, but much more on CMS such as pyramids and very marked voting right differentials between different share classes.

These particularities of each case impacted the preferences of the business elite concerning corporate governance reform in important ways. Put simply, the fact that insider-control in Sweden was more dependent on instruments separating ownership from control than in Switzerland, where ownership (but not control) was more concentrated, may explain why the Swedish business elite resisted pressure for reform for such a long time. Liberalisation without control over the equivalent capital base is very costly for the 'controllers' as it implies necessarily a loss of control. In Switzerland instruments of insider-control could be abolished without necessarily leading to a loss of control by the traditional owners.

Yet, there was certainly also a more genuine change in the Swiss managerial elites preferences leading to an increasing acceptance of market mechanisms, such as hostile takeovers. The spread of investor-orientated management techniques and ideas (VBM, shareholder value) and the convergence of managers and shareholders' incentive structures played an important role in this respect. In fact, changes in managerial preferences and the arrival of a new generation of managers have led to a convergence of preferences between managers and investors, thus leading to a new pro-market coalition. In Sweden, no comparable convergence between mangers' and outside shareholders' interests can be observed. This is explained by the particular approach to industrial ownership that prevailed in Sweden for historical reasons and by the integration of most companies in vast business groups.

The existence of large and powerful banks is the second major explanation – which is not independent from the question of the prevailing type of insiders – for change in the Swiss business system and for absence of change in the Swedish business system. Swiss banks are powerful and widely diversified financial conglomerates and they constitute an important part of the Swiss economy. The financial sector constitutes a powerful sector with numerous actors who increasingly define their interests based on the needs of the financial sector alone. The situation is fundamentally different in Sweden where banks were during most of the 20th century limited in their activities and controlled by actors with much more varied interests than those of the financial sector. The increasing pressure on the profitability of financial institutions in a liberalised environment (and opportunistic behaviour to take advantage of new opportunities) explains why Swiss banks defected from their formerly central role in the insider-orientated corporate governance system, increasingly exposing other companies to market pressures and pushing them to adapt their practices as well. Swedish banks did not experience a similar change as they are part of more tightly knit spheres of influence in which industrial and financial interests blur. In other words, in Switzerland, the financial sector – notably through its peak organisation the SBA – was an important pro-reform actor in its own right promoting the financialisation of the economy from the mid-1980s onwards. The Swedish banking sector – on the other hand – did not play any comparable role.

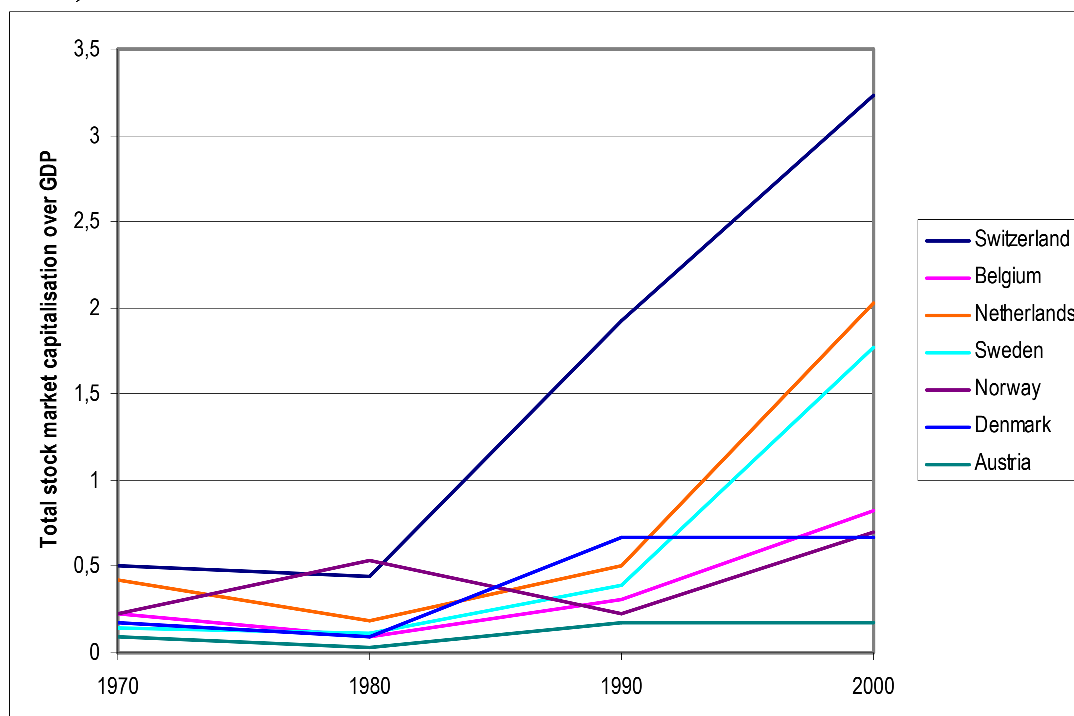
It is also interesting to note the difference in the impact that the existence of a hostile takeover threat had in the two cases. This factor was of major importance for triggering change in corporate governance practices in Switzerland. In Sweden, the emergence of corporate raiders during the 1980s

did not have a similar effect on the business system, which can be explained by the fact that genuine 'corporate raiders' were a rather short-lived phenomenon in Sweden due to the financial crisis of the early 1990s. Yet, takeovers – not necessarily carried out by raiders – still became a common phenomenon in Sweden approximately at the same time as in Switzerland without leading to similar changes in Swedish companies practices. One explanation for this observation may be that the increasing number of takeovers in Sweden were less directed towards financial aims – as was the case in Switzerland due to the existence of the corporate raiders throughout the 1990s – but followed instead an industrial logic, which, as a result, did not necessarily lead to the implementation of a pro-shareholder agenda in the firms that were taken over or threatened by takeover.

Yet, one important element of the changes of the 1990s that I have not discussed so far concerns the fact that despite a large number of difference between the two cases concerning the protection of minority shareholders during the 1990s, the evolution of the financial markets in the two countries did not diverge much. Figure 7 reports the development of financial markets in small European states and shows that both cases experienced very pronounced increases in total market capitalisation, regardless of the absence of change in the instruments of insider control in Sweden (figure 6). To be sure, Switzerland sticks out as the increase in stock market capitalisation over GDP was far more pronounced and set in earlier than in any other small European state (from 44% in 1980 to 193% in 1990 to 323% in 1999). However, Sweden too has experienced a more important increase in stock market capitalisation than most other small corporatist states (from 11% in 1980 to 39% in 1990 and 177 % in 1999) and now has very well-developed equity markets. This finding would seem to contradicts the 'law and finance' argument concerning the correlation between the quality of corporate law and financial development, as the impressive development of financial markets was not *preceded* by any comparable increase in legal MSP, nor by a change in corporate practices, in the Swedish case.

The different reforms of financial market regulations account in part for this phenomenon. Other factors included, for the Swedish case, the devaluation of the Krona at the beginning of the 1990s (Skog 1994), tax reforms (reducing the 'public benefits of political control' imposed on investors) and informal mechanisms of shareholder protection (Stafsudd 2006)[71]. It could also be argued that investors anticipated Sweden's entry into the European Union, which would guarantee a certain adaptation of its company law to EU standards.

Figure 7: Evolution of financial markets in small European states (1970-1999)



Source: Rajan & Zingales 2003, table 3, p.15;

Note: Rajan & Zingales 2003 do not provide figures for Finland and Ireland, which is why I excluded these 'small countries' from the figure.

Given that the outcome of the reform processes of the 1980s and 1990s appear to be comparable at least if we take a snapshot of both countries in 2006 (comparable increase in market capitalisation, but even some convergence in levels of legal MSP if measured by the SPI (see section 3)), one might wonder if the differences in the trajectories of change analysed in this paper do really matter. In fact, despite the important differences in the contextual variables between the two countries, the outcome appears to correspond fairly well to the 'convergence' argument of the end of national differences (Hansmann & Kraakman 2004).

Yet, my study shows two important points. Firstly, despite certain common trends, differences between national contexts persist in particular at the level of corporate practices and are of significance in order to understand corporate governance regimes (e.g. the persistence of the Swedish system of dual class shares vs. the withering away of *Vinkulierung* in Switzerland).

Secondly, in order to develop accurate theories of corporate governance, it is essential to understand the determinants of different stakeholders' preferences.

More generally, understanding the precise nature of the process of corporate governance reform, the forces that drive it and the reasons for differences in the processes across countries allows us to learn a great deal about the way in which capitalist economies evolve and about what drives economic actors' behaviour. The main lesson from the comparison of Switzerland and Sweden is that 'stakeholder groups' are not homogeneous and it is not possible to attribute *a priori* a given set of preferences concerning corporate governance reforms to these groups. As actors' preferences are malleable and highly contextual, it is only by analysing this context that we are able to explain a particular trajectory of change in a particular country. Beyond attention to the specificities of each case, this study also aimed to contribute to the formulation of mid-range theories of corporate governance reform by singling out factors which can be expected to play a role across national contexts. This small-number study does not allow us to generalise our findings concerning the impact of a given variable. It does allow us, however, to make suggestions concerning the causal mechanisms through which different explanatory variables – the position of banks, the types of insiders, and so on – can be expected to affect corporate governance systems in different cases. This in turn will allow us to understand why social democracy matters as a force of change in some cases but not in others.

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Notes

[1] See notably Cioffi & Höpner 2006.

[2] CEIF have issued a limited number of shares, which are held by a limited number of known shareholders.

[3] Roe's uses the term 'social democracy'. This term is not limited to social democratic parties as such but to a more general tendency within a society to be dominated by a political culture which tends to favour a wider distribution of wealth and the protection of employees than is the case in the US or the UK. Roe (2003: 24) speaks also of 'stakeholder society'. Yet, in order to operationalise this variable, he mainly uses – in addition to the strength of legal job protection and the Gini coefficient –an indicator for political orientation developed by Cusack (1997), which in turn uses survey data from Casles & Mair (1984). This indicator measures the dominance of left vs. right parties over both parliament and government in different countries according to the judgment of experts. Ultimately, Roe's political variable measures mainly party strength.

[4] This can be based on a specific provision in statutory or case law. It can also be based on contract, for instance, if the company has to conclude an employment contract with the director and this contract cannot be terminated without good reason.

[5] This restricts dismissal because either (1) an immediate unilateral termination of this contract may not be possible or (2) the directors have to be compensated in case of immediate unilateral termination of this contract.

[6] We have also given intermediate scores, e.g., ¾ for a 1 % hurdle, ¼ for a 10 or 15 % hurdle. A 5 % hurdle led to the score ½.

[7] The datasets with full description of variables as well as comments on the coding of each case are available at :
http://www.cbr.cam.ac.uk/research/programme2/project2-20.htm

[8] It could be argued that different aspects of corporate law, which are often taken together in order to assess the 'shareholder-orientation' of a given corporate governance regime or of company law should be weighted. Instruments which allow insiders to distort voting rights – and affect power and control directly – are more significant indicators of insider vs. outsider control than for instance information rights or legal instruments to hold insiders responsible *ex post*.

[9] In La Porta et al.'s (1998) terminology 'normal stock' can be either shares with normal voting power or super-voting shares and are distinguished from 'preferred' stock (Spamann 2006: 47). Here, I use the term 'normal stock' in a more everyday understanding as meaning shares that give rights to no particular

treatment or do not imply any restrictions concerning cash-flow and participation rights, in other words, shares that are not super-voting shares.

[10] The term *Vinkulierung* is a translation from Latin and used to render the meaning of 'bound'. Shares that are submitted to *Vinkulierung* are hence said to be 'bound registered shares'.

[11] The term 'management' was used in Switzerland only from the 1950s onwards (Schluep 1955). Before that date, the legislator and jurisprudence did not generally distinguish between the board of directors and a possible management board or executives. This is explained by the fact that no legal obligation existed to separate the operational from the strategic management and control functions (banks, for which a strict separation of the management and the supervisory board exists from 1934, constituted an exception from this rule). A company could either be managed directly by the board of directors, by one of its members (the so called *délégué*) or by a proper management board. In order to capture this variety, it was common to summarise the organs that were in charge of strategic and operational management in the term '*Verwaltung*' (administration). In this section I use the term management to translate the term '*Verwaltung*'. It includes, unless otherwise stated, the board of directors.

[12] The doctrine of the separation of financial and associational rights was established in Switzerland by the supreme court, the Federal Tribunal, in a ruling dating from 1957 ATF (ATF 83 II 297 ff) (see below).

[13] This interpretation of the Lex Koller is disputed however, as the Lex Koller does not aim to prohibit foreigners from acquiring real estate in Switzerland for productive reasons.

[14] The Federal Government submitted a repeal proposal for the Lex Koller to a consultation procedure in 2006. The federal parliament refused, however, in June 2008 to follow the government's proposal to abolish this law as efficient alternative measures against speculation with real estate and the boom of 'second homes' in the Alps are considered to be lacking (see NZZ Online, June 11, 2008). It is also interesting to note that Implenia – a Swiss construction company – has explicitly referred to the Lex Koller in spring 2007 in order to refuse to register a part of a stake which had been acquired by the British hedge fund Laxey Partners in an attempt to take the control over Implenia. Thus the existence of the art. 4 transitory provisions has still a certain practical relevance today.

[15] The AGM can decide, however, to opt-out from this mandatory bid rule before the shares are listed (art. 22 al.2 SESTA) or to increase the threshold for a mandatory bid to 49% (art. 32 al. 1 SESTA).

[16] State controls over investment flows, which obliged foreign investors to ask for governmental approval for investment in Swedish companies, existed as well. However, this instrument was abolished in the late 1980s, in relation to the very extensive liberalisation of the Swedish financial system (Berglöf 1997; Reiter 2003). Following this reform, foreign investors were for the first time allowed to acquire Swedish stock without governmental approval (cf. Pro memoria no. 18 'Fria och bundna aktier – effekter av en EG-anpassning' of December 4, 1992, which can be found in the Swedish State Archives at SE/RA/325044 vol.5, henceforth quoted as PM 18).

[17] The Swedish parliament abolished the prohibition on companies to acquire their own shares for certain public companies in 2000, following SOU 1997:22. Although this measure can be used in favour of shareholders (increasing earnings per shares EPS, pay back excess cash to shareholders), it can also be used as a takeover defence and was actually advocated as such in the early 1990s by the agrarian centre party (see Motion 1989/90:L208 Olof Johansson m.fl. (c)). The impact of this measure on the protection of shareholders' interests is therefore ambiguous.

[18] While Lijphart's (1999) findings for the period between 1967 and 1997 show a very marked and stable consensual system, Vatter (2008), shows that significant changes have taken place since 1997 and that Switzerland has become clearly less consensual measured by Lijphart's 1999 criteria. By 2007, Switzerland still is a consensus democracy, but it has moved form an 'extreme' case of consensus towards an average consensus democracy (Vatter 2008: 37).

[19] Trade union density (percentage of unionized employees as a percentage of total wage and salary earners) has decreased from 31.1% in 1980 to 17.8% in 2001 (Visser 2006).

[20] 24.4% of total of votes for the lower house in 1979 to 23.3% in 2003, with a considerable decline during the 1980s (18.4% in 1987 and 18.6% in 1991) but an increase thereafter (22.50% after the elections of 1999 and 23.33% after the elections of 2003).

[21] The current *Centerpartiet*.

[22] The Communist Party changed names several times during the 20th century: It was called *Sveriges Kommunistiska Parti* (SKP) between 1921 and 1967, *Vänsterpartiet Kommunisterna* (VPK) between 1967 and 1990 and is now called *Vänsterpartiet*.

[23] During the consultation procedure different actors – including business and employees associations, political parties, and cantonal governments – are invited to express their opinion on a given draft for a federal law.

[24] The Swiss direct democratic instruments include – in addition to the popular referendum and cantonal referendums and initiatives – the popular constitutional initiative, which provides that 150,000 Swiss citizens can submit a proposal for a constitutional change to a popular vote.

[25] The collection of newspaper articles in the Federal Archives at E4110 (B), 1992/175, vol.56 concerning the reform give a good overview of this opposition.

[26] The letter was sent to the National Councillors Blocher (SVP), de Capitani (FDP), Couchepin (FDP), Feigenwinter (CVP), Fischer (SVP), Schüle (FDP), Stucky (FDP) and Villiger (FDP). It can be found in the Federal Archives at E4110 (B); 1992/175; vol.3

[27] Literally 'shareholders remain the stupid' in reference to the famous one-liner attributed to the German banker Carl Fürstenberg according to which shareholders are stupid and impertinent. Stupid, because they buy stock and impertinent because they expect a dividend for their stupidity.

[28] A look at the power relations in the Council of States during the period when the Stock Corporation Law reform was debated, shows that the left – if we include the Alliance of Independents in this category – held after the election of 1983 and 1987 6 out of 46 seats (13.04%) and after the elections of 1991 only 4 out of 46 (8.70%) (source: http://www.parlament.ch/homepage/ra-raete/ra-fraktionen.htm).

[29] The hypothesis can be suggested that in the future this 'layering' may be supplanted by a process of 'displacement' through which the new rules start to increase in salience, making the old rules meaningless (Thelen 2003). If more and more firms use the new rules, support for the old ones will vanish and they will eventually become superfluous. As I will show below, such a process seems indeed to have started in Switzerland as more and more Swiss companies do not use *Vinkulierung* anymore, but have introduced during the 1990s a voting cap of typically 5%, which applies to all shareholders alike.

[30] The economic crisis of the 1970s – entailing many corporate failures and layoffs – has certainly contributed to the left's increasing interest in questions of transparency and corporate control.

[31] SOU 1992:13 'Bound Shares', SOU 1992:83: 'Stock Corporation Law and the EC', SOU 1995:44 'The Organisation of the Stock Corporation', SOU 1997:22 'The Stock Corporation's Capital', SOU 1999:36 'The Stock Corporation's Liquidation', SOU 2001:1 'The New Stock Corporation Law '.

[32] While the elaboration of the new ABL by the AB Committee and its intermediary reports are the most important source of change in the Swedish corporate governance system, several other reforms took place in parallel.

Particularly important changes were undertaken in the fields of accounting and auditing as well as concerning the functioning of the financial markets and of securities trading. Moreover, in 2004 a government-sponsored corporate governance code was adopted, which entered into force in July 2005. These latter reforms, however, can only be treated marginally in this paper, in other words, when they impact directly on the MSP variables I am interested in.

[33] The precise source for the session of June 13, 2005 is:
http://www.riksdagen.se/Webbnav/index.aspx?nid=101&dok_id=GS09138&bet=2004/05:138.

[34] It should be noted that Switzerland can by no means be seen as being independent from EC/EU legislation. The question of EC-compatibility has been widely debated in Switzerland. At the end of the 1980s, the Swiss government planned to ratify the EEA treaty at the beginning of the 1990s, and some kind of association to the Community and even a full membership were absolutely conceivable – even very likely – for the political elite and the situation was therefore not much different from the Swedish one. In this context, the doctrine of the '*autonmer Nachvollzug*' ('autonomous follow-up implementation') of EU legislation in Swiss law, that is, the practice of taking into account EU legislation when drafting Swiss laws, emerged, and this led to a situation in which EC directives have an important impact on Swiss law despite the absence of any formal constraint. However, the leeway of the Swiss legislator to follow or not the EC legislation is still considerable and EU measures which are politically controversial at the domestic level are not implemented in Switzerland.

[35] The debate about the 'lifting of the corporate veil' (*ansvarsgenombrott*), which was very much promoted by the left, but opposed by the centre-right, goes in the same direction. This issue was the only instance where a clear left-right divide existed during the reform. While most MPs stress the consensual manner in which the reform took place, this issue clearly opposed the SAP to all the bourgeois parties and was – together with the proposal to introduce an obligation for auditors to report suspicions of criminal behaviour to the attorney general – one of the most debated issues. Thus, the social democratic Carlsson government published in September 1991 a 'supplementary directive' to the AB Committee charging it to investigate cases in which the 'corporate veil' should be lifted, that is, in which directors and shareholders could be held personally liable for wrongdoings (dir 1991:89). When the SAP lost its parliamentary majority in October of the same year, the Bildt government issued, in October 1991, a new directive, which excluded the issue of the 'lifting of the corporate veil' from the AB Committee's competences (dir. 1991:98). The second Carlsson Government, which was in power between October 1994 and March 1996, however reintroduced this obligation through a new 'supplementary

directive' in 1994 (dir. 1994:143). This example of 'stop and go' policy, hints at the impact that the de facto majoritarian functioning of the Swedish polity, with alternations in governmental power, could have had on the corporate governance reform, had the preferences between left and right been different. Once again, the fact that politics did not play a determinant role in the direction that the reform took is explained by the fact that the preferences of left and right did not diverge much on most issues linked to MSP.

[36] It is interesting to note that the question of voting right distortions appears to be one of the only issues which led in Sweden at times to a constellation that resembles the 'transparency coalition' described above, that is, liberal actors from the right (the fp) and from the left (mp) promoting pro-shareholder reform. Yet, given that both the fp and the mp are small parties and that the major parties (SAP and m) did not support this claim, this was not enough to bring about any change.

[37] This scandal involved the company Fermenta created in 1981 by Refaat El-Sayed through the acquisition of Astra's Penicilinfabrik Strangnäs. In 1986, it was made public that El-Sayed did not have the doctorate in biochemistry he had pretended to have, which led to a general loss in confidence in the company and to a crash of its share price. When it became public in December 1986 that there were also irregularities in Fermenta's financial reporting, the share price collapsed further, destroying virtually all the value of the company which had been around SEK 11b before the outbreak of the scandal in February 1986 (*Affärsvärlden* (online edition), February 13, 2006).

[38] Interestingly a similar focus on the majority of the AGM had existed in the legal doctrine and in political debates in Switzerland for a long time (Schnyder et al. 2005a), but had become largely replaced by a minority shareholder view by the mid-1990s.

[39] Two other governmental committees had reached similar conclusions during the late 1980s rejecting a mandatory bid rule as well: the *Ägareutredning* and the *Värdepapersmarknadenkommitté*; see SOU 1987:72 'Värdepapersmarknaden i framtiden' and SOU 1990:1 'Företagsförvärv i svensk näringsliv'.

[40] More precisely, the distinction is not between public and private companies, but between *kupongbolag* ('coupon company') and *avstämningsbolag* (or 'recording company'). The former companies hold a stock ledger of their own, while the later make the exercise of shareholder rights dependent on their registration with a central securities deposit institution authorised by the Financial Supervision Authority (Finansinspektionen) (Svensson & Danelius 2005: 17, 53ff). While, in principle, the decision concerning to which category a

company should belong is left to the AGM (see chap. 1 10§ ABL 2005), listed companies have to be *avstämningsbolag*.

[41] Interestingly, the AB Committee charged with the reform of the 1944 ABL had discussed the introduction of a *samtyckesförbehall* as well (SOU 1971:5, p.161). This proposal was, however, rejected by the government (prop. 1975:103, p.228f) (see PM18, p.15, note 22).

[42] The 'Leo affair' was exposed in autumn 1985. Following the spin-off of the pharmaceutical company 'Leo AB' from its parent Sonesson, it became public that certain Sonesson board members – among others Volvo's then CEO Pehr G Gyllenhammar – had acquired before the spin-off Leo shares through a so-called 'directed issue' (*riktad emission*), i.e. an issue of Leo shares, which was reserved to specific persons and for which the existing shareholders' pre-emptive right to new issues was suspended. Sonesson's shareholders were outraged and a debate over 'directed issues' and MBOs in Sweden was sparked off, pushing finally the Prime Minister Olof Palme to establish an investigation committee (*Dagens Nyheter* (online edition) January 4, 2008). This investigation led to the adoption in 1987 of the 'Leo law' (1987:464) 'on certain directed issues in equity market companies', which essentially gave shareholders more influence over the selling of the company's assets to certain groups of actors close to the company. Ultimately the provisions of the Leo-law were integrated in the new ABL of 2005 (chapter 16, §§1-10).

[43] Reiter (2003:111) reaches a similar conclusion, pointing to the ambiguous stance of the Swedish government at the end of the 1980s, promoting far-reaching liberalisation of many aspects of the Swedish system, but opposing the abolition of voting right distortions.

[44] Concerning the regulation of financial markets, monetary policy and other economic policies, the SAP did however significantly change towards a pro-market approach during the late 1980s and early 1990s in a context of permanent economic crisis (David & Mach 2004).

[45] This corresponds to Roe's (2003) prediction of the social-democratic attitude towards pro-shareholder policy (see above section 2).

[46] Blyth (2002:211) however notes that there was still considerable resistance by the SAF to co-determination agreements. Following the adoption of the law, the SAF declared in 1976 the abandoning of the *Saltjöbadavtal* and threatened workers with mass 'lockouts'. Yet, these threats ultimately failed due to the SAF's own member companies refusing to join the lock-out, above all because the Swedish government subsidised companies that continued production during the economic crisis, which was in 1977 at its worst in Sweden.

[47] One remarkable change in that respect, which may presage a profound change in the Swedish coalition configuration, concerns the policy pursued by the new centre-right government led by Fredrik Reinfeldt (m). A recent proposal to privatise six of the largest partially or fully state-owned companies, which was approved by the centre-right dominated parliament on June 20th 2007, was fiercely opposed by the left opposition (Svenska Dagbladet (SvD) online, June 20, 2007).

[48] The most important raiders in Switzerland were Werner K. Rey, Martin Ebner, Tito Tettamanti, René Braginsky, and Ernst Müller-Möhl.

[49] His influence was important not only in the economy, but also in parliament. This is notably due to the fact that the very influential SVP PM Christoph Blocher was a close ally of Ebner. Blocher – who was formerly clearly part of the conservative coalition – had become more and more open to pro-shareholder reform as his involvement in Martin Ebner's investment company BZ Bank grew, starting in the mid-1980s (see for details of this involvement Becher 1996). Blocher – himself CEO, chairman and main shareholder of a large chemicals company Ems Chemie – started increasingly to favour a 'financial' approach over his traditional entrepreneurial viewpoint. Given his influence on the SVP, this constituted a non-negligible factor contributing to the above-mentioned shift between the conservative and the pro-reform coalition in parliament during the late 1980s and early 1990s.

[50] It should be noted that this first generation of raiders in Switzerland were all Swiss citizens. Foreign investors – notably foreign institutions – did not play any active role in the transformation of Swiss corporate governance. 'Shareholder activism' by (foreign) pension funds was essentially non-existent and only at the beginning of the 21st century – at a moment when the corporate governance system had already changed a great deal – did foreign takeovers of Swiss firms increasingly take place (Schnyder 2008). In recent years, that is, since the early 2000s, foreign institutional investors such as Laxey Partners, Anova, and other hedge and investment funds have increasingly become major actors in the takeovers of Swiss mid-caps.

[51] It is interesting to note that the introduction of a unitary share, while generally a sign of increasing shareholder-orientation, was used in this particular case to fend off a hostile takeover bid by a Swiss investor. Overall, the introduction of the unitary share cost the existing shareholders CHF 3.7b and Ebner's stake alone lost CHF 411m in worth (Loderer and Zgraggen 1998).

[52] The Interview can be found on the web page of the professional association of the Swiss communications industry:
http://www.persoenlich.com/interviews/show_interviews.cfm.

[53] It should be noted however that this is also due to the coincidence of the adoption of the code with the onset of the recession of the early 1990s. The recession stopped M&A activity in general not only in Switzerland but in most countries (see e.g. for the case of the UK Deakin and Slinger 1997).

[54] A comparable evolution has been observed – some ten years earlier – in the US (Hirsch 1986).

[55] In this context, the activities of 'norm entrepreneurs' played a crucial role in translating international pressures into domestic change: accountants and financial analysts were the most active actors in this respect and praised new practices as a solution for existing problems. By way of example, the professional organisation of accountants developed, starting in 1984, a set of accounting standards (the FER – Swiss GAAP) based on international practice, but still adapted to the Swiss context. While these standards were first heavily criticised and opposed by the business elite, they gained quasi-legal status in the mid-1990s, when the newly created SWX Swiss Exchange decided to integrate them in the listing requirements and make them the compulsory norm for listed companies (Schnyder 2008). This constitutes a telling example for the increasing legitimacy of shareholder-orientated ideas.

[56] Moore and Rebérioux (2007) observe such a 'convergence of interests' between managers and shareholders in the cases of the US and the UK.

[57] It should be noted that mangers are not the only insiders to have an incentive to support market-orientated reforms. Large blockholders may in fact favour an increasing valuation of their stakes when their 'intrinsic interest' in 'their' firm is replaced by a financial one (see for instance Gilson 2005). This may be particularly the case if the blockholders are not the founders themselves, but rather the second and third generation of the owner family which do not care as much about the company anymore, which can be seen as a form of the so-called 'Buddenbrooks effect' (Kang 1998).

[58] Since the 1980s, the concentration in the Swedish banking industry has created two new large banks, the partly state-owned Nordea and the Swedbanken, which emerged from a very extensive concentration within the sector of Swedish savings banks. These two banks cannot be considered, however, as universal banks in the same sense as the other large banks. The Skandinavbanken, on the other hand, had merged already in 1972 with SEB.

[59] CEIF have issued a limited number of shares, which are held by a limited number of known shareholders. These CEIF constitute a central element of the typical Swedish ownership pyramids, which consisted of three levels: at the top is usually a bank- or family-controlled foundation, which controlled at the intermediary level a (most of the time listed) CEIF, which in turn controlled the listed company at the bottom (Högfeldt 2005)

[60] It should be noted that one of the authors, Justice Bo Svensson, was also the chairman of the AB Committee and the other, Johan Danelius, was Deputy Director of the Ministry of Finance. They both had a considerable influence on the reform process.

[61] The designation 'institutional investor' is usually applied to four types of organizations: pension funds, mutual funds and investment companies, and insurance companies (Anderson & Hertig 1994). Some authors include money managers of large companies in the definition of institutional investors (Spillmann 2004).

[62] A significant change has taken place, however, with the creation of the Ethos foundation in 1997, which manages the assets of Swiss pension funds and has as explicit objective to promote shareholders interests at the AGMs of Swiss firms.

[63] However, domestic institutional investors such as the '4:e AP-fonden' (the fourth Swedish National Pension Fund), despite being public funds and so independent from companies' management, did not adopt a pro-reform stance. Björn Fronzen, deputy managing director of the 4:e AP-fonden, considered the Swedish system to be a 'good system' and mentioned the examples of Skandia and Volvo, which both had, for Sweden, atypical dispersed ownership structures, and both experienced corporate governance scandals. Fronzen follows the governmental argument by stating that a 'strong ownership role' – which can be achieved through voting right differentials – would probably have helped to prevent such problems (interview quoted in Ahlqvist 2004: 4-59). Thus even public pension funds – in many countries the most important shareholder activists (cf. e.g. the role of CalPERS in the US, Useem 1996) – were as late as the early 21st century still favourable to instruments of insider-control in Sweden.

[64] It is interesting to note that Signhild Hansen, vice-chairwoman of Svenskt Näringsliv, pointed during the debate about the EU takeover directive during the early 2000s to the fact that many Swedish listed companies relied still in 2003 on dual class shares and that this system should therefore not be abolished (quoted in Ahlqvist 2004: 4-56).

[65] According to total market capitalisation of equity at the end of 1995 (La Porta et al 1999: talbe V).

[66] The average for the whole sample of 27 countries is 30% (LLSV 1999: table V)

[67] The average for the whole sample of 27 countries is 25.3% (LLSV 1999: table V)

[68] LLSV define involvement in management as occupying one of the following postitions: CEO, Honorary Chairman, Chairman or Vice-Chairman of the Board (LLSV 1999: Table I).

[69] It is surprising to see however, that dual class shares did not seem to prevent many takeovers from happening. In fact, Veckans Affärer of December 15, 2003 reports that out of 280 takeover bids that took place in Sweden between 1990 and 2002, 245 were successful although 56% of the targeted companies had dual class shares. Among the 35 unsuccessful bids, 63% of the target companies had dual class shares (quoted in Ahlqvist 2004: 4-45). These figures do not distinguish, however, between solicited and hostile bids, which might explain why dual class shares did not play a decisive role in all of these bids.

[70] The figures are based on data collected for a sample comprising the forty largest companies in Switzerland measured by a combination of market capitalisation, turnover, and number of employees (see Schnyder 2008 for details).

[71] Lubatkin et al. (2005) even state that due to a certain set of values, Swedish managers and blockholders behave in less opportunistic ways than their US counterparts. In order to satisfy the three basic preferences that managers are commonly considered to pursue, that is, job stability, financial gains, and increased status, Swedish managers need to cooperate with other members of their business group, rather than compete with them. Opportunistic, self-interested behaviour at the expense of the organisation or the group is frowned-upon and will not lead to any gains in the long run.