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Constrain-Thy-Neighbor Effects as a Determinant of Transnational Interest Group Cohesion

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Abstract

This article identifies conditions for transnational interest group cohesion by examining German and British employer positions on EU company law proposals. Employers were divided over proposals on takeover bids but formed a united front against proposals on worker participation. I argue that divergent "constrain-thy-neighbor effects" contribute to explaining the observed variation. Actors consider not only how it affects them if they themselves are subjected to an EU law. They also consider how it affects them that the same law will apply abroad. Positive constrain-thy-neighbor effects weaken transnational cohesion. Negative constrain-thy-neighbor effects reinforce it. This argument and analytic framework could be applied to many issues beyond the realm of company law, and to all actors confronted with proposals for cross-border cooperation, including not just employers, but also governments, unions, and a broad range of organized interests. By attending to the multidimensionality of actors' decision-making calculus, the article advances the materialist literature on preference formation in two ways. It bridges the artificial chasm between class-centered and firm-centered perspectives, and it shows how interaction between national and international institutions shapes preferences and cleavages.

Zusammenfassung

Der vorliegende Aufsatz untersucht Bedingungen für den grenzübergreifenden Zusammenhalt von Interessengruppen anhand der Positionen deutscher und britischer Arbeitgeberverbände zum EU-Gesellschaftsrecht seit 1970. Während bei Richtlinien zur Regelung von Übernahmen Uneinigkeit herrschte, zogen deutsche und britische Arbeitgeber bei Richtlinien zur betrieblichen Mitbestimmung an einem Strang. Ich argumentiere, dass unterschiedliche „Constrain-Thy-Neighbor"-Effekte zur Erklärung der Varianz beitragen. Wenn Akteure die Vor- und Nachteile einer EU-Richtlinie gegeneinander abwägen, berücksichtigen sie nicht nur die zu erwartenden Auswirkungen der Richtlinie im eigenen Land. Sie berücksichtigen auch, dass dieselbe Richtlinie auch in anderen Mitgliedstaaten zur Anwendung käme. Positive Constrain-Thy-Neighbor-Effekte schwächen den grenzübergreifenden Zusammenhalt von Interessengruppen. Negative Constrain-Thy-Neighbor-Effekte stärken ihn. Das Anwendungsfeld des vorgestellten analytischen Rahmens umfasst neben gesellschaftsrechtlichen Fragen viele andere Themenbereiche und neben Arbeitgebern alle Akteursgruppen, die mit Vorschlägen für grenzübergreifende Kooperation konfrontiert sind, wie zum Beispiel auch Regierungen, Gewerkschaften und andere Interessenverbände. Indem er die Mehrdimensionalität von Entscheidungskalkülen verdeutlicht, leistet der Artikel zwei Beiträge zur Literatur über Präferenzbildung. Er überbrückt den künstlichen Graben zwischen klassenzentrierten und firmenzentrierten Perspektiven und zeigt auf, wie das Zusammenspiel von nationalen und internationalen Institutionen Präferenzen und Koalitionsmuster beeinflusst.

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> […] the consequences of the proposed rules for employers in other member states are also relevant from a German perspective and must not be ignored. (BDA/BDI 1983b: 6)

1 Introduction

What makes interest groups stick together at the transnational level? The answer sheds light on the conditions and limits not just of transnational interest group cohesion but of cross-border cooperation more generally. Nevertheless, the question has received surprisingly little attention. Previous research illuminates *how* interest groups act at the transnational level but fails to explain when and why they do so. Scholars have largely focused on factors affecting interest group access (Marks/McAdam 1996; Eising 2007), membership decisions (Greenwood/Aspinwall 1998; Mahoney 2004), interest group influence vis-à-vis national governments (Marks/Hooghe/Blank 1996; Grande 1996), or the impact of multilevel governance on the organizational structure of domestic groups (Beyers 2002; Streeck et al. 2006). Greenwood (2002b, 2002a), who does address cohesion, asks only why it varies across associations.

The present article takes a new angle by asking why cohesion varies across issues, even within associations where characteristics of the association such as membership density, organizational purpose, autonomy from members, etc. are held constant. By mapping German and British employer positions on EU company law proposals from 1970 to 2003 I show that that cohesion within UNICE – the European peak employer federation, renamed BUSINESSEUROPE in 2007 – varied strikingly across proposals on worker participation and takeovers.[1] Cohesion was strong on the issue of worker participation: German and British employer federations formed a united front against EU legislation in this area and coordinated their campaigns through their European peak association. Cohesion was weak on the issue of takeovers: German employers opposed the EU-wide removal of barriers to hostile bids while British employers were in favor. This variation is puzzling because the issues at stake resemble each other in many ways. EU directives on worker participation and takeovers both proposed to constrain managers' right to manage by shifting control rights to either workers or shareholders. Both were more compatible with some production strategies than others. Each would have implied greater legislative change in one of the two countries examined.

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1 The time period covers the entire history of EU legislative initiatives on worker participation and shareholder rights in takeover situations, from the first draft of the European Company Statute (presented in 1970 but still under negotiation when Britain joined the European Community in 1973) up to the passage of the Takeover Directive in December 2003. Since then, no new initiatives have been proposed.

To explain the observed variation, I develop an analytic framework that highlights the constrain-thy-neighbor dimension of transnational legislation. Apart from deciding whether they are better or worse off if they themselves are subjected to an EU law, actors consider how it affects them that the same law will apply abroad. The nature of this constrain-thy-neighbor effect influences transnational interest group cohesion. Positive constrain-thy-neighbor effects weaken cohesion. Negative constrain-thy-neighbor effects reinforce it.

The framework could be applied to other issues besides takeovers and worker participation, and to all actors confronted with proposals for transnational cooperation, including not just employers but also governments, unions, and a broad range of organized interests. The observation that actors weigh class-level effects against firm-level effects is pertinent to all issues where both effects can plausibly be expected. Examples include not only many corporate governance rules, but also legislation on issues concerning the labor market, welfare, or vocational training. The observation that transnational legislation has constrain-thy-neighbor effects resulting from the imposition of the law on actors in other countries is relevant to harmonization efforts across policy fields. Examples include environmental standards, corporate taxation, the removal of barriers to trade, rules concerning the treatment of prisoners of war, and so on. Beyond that, actors can also be expected to consider constrain-thy-neighbor effects when formulating preferences with regard to domestic legislation, i.e., where neighbors are located in the same country, and such considerations may undermine cooperation at the national level.

The article proceeds as follows: Section two introduces the theoretical framework and explains how it improves upon one-dimensional materialist perspectives on the determinants of preferences. Section three provides background information to the case studies by describing British, German, and proposed EU legislation on takeovers and worker participation between 1970 and 2003. Section four maps German and British employer positions on the proposed EU legislation to show that cohesion varied across issues. Section five shows that constrain-thy-neighbor considerations also differed across issues. The conclusion highlights what the theoretical framework and empirical findings contribute to research on employer preferences and transnational interest intermediation.

2 Analytic framework: Firm-level, class-level and country-level constrain-thy-neighbor effects

Most research in comparative political economy draws on one of two indicators to derive preferences. *Class-centered perspectives* focus on actors' relationship to the means of production, emphasizing within-firm distributional conflict as the main influence on preferences. While some class-centered perspectives simply distinguish between capital

and labor or workers and employers, class-centered perspectives in the corporate governance literature usually treat managers as a separate category in order to capture conflicts of interests between owners as principals and their managerial agents. Managers' main class interest in corporate governance issues is held to be the preservation of their right to manage as they see fit (e.g. Roe 1994; Bebchuk/Roe 1999). *Firm-centered perspectives* focus on characteristics of the company with which actors are associated (e.g. Hall/Soskice 2001). Due to variation in production strategies and ownership structures, corporate governance rules and other institutional arrangements that work well for some companies are thought to work badly for others. Firm-centered perspectives assume, often implicitly, that all stakeholder groups inside the firm have a joint interest in supporting arrangements that optimize the performance of their company as a whole (cf. Fioretos 2001: 255). Managers everywhere may still appreciate the freedom to manage without constraints, but their views on which constraints are burdensome are held to differ across firms.

These perspectives suggest competing hypotheses regarding the propensity of interest groups to join forces at the transnational level. Class-centered perspectives, focusing on within-firm distributional implications, suggest strong cohesion: workers of the world should unite, as should owners, and managers. Firm-centered perspectives, focusing on implications for the performance of the company as a whole, suggest weak cohesion. Instead, they predict "the formation of cross-class coalitions, as firms and workers with intense interests in particular regulatory regimes align against those with interests in others" (Hall/Soskice 2001: 58). To the extent that the different types of firm distinguished by firm-centered approaches are distributed unevenly across countries, the firm-centered perspective also predicts greater loyalty to the national regulatory regime in which companies are embedded. One reason why this might be the case is the possibility that strategy follows structure. The varieties-of-capitalism literature draws on the idea that competitive pressures force firms in unfavorable environments to wither away, migrate, or switch strategies. As Hall and Soskice put it, each distinct set of national rules

> offers firms a particular set of opportunities, and companies can be expected to gravitate toward strategies that take advantage of these opportunities. […] For this reason, [the] approach predicts systematic differences in corporate strategy across nations, and differences that parallel the overarching institutional structures of the political economy. Hall/Soskice (2001: 15)

The present article argues that the exclusive focus on either class-level or firm-level implications is problematic for two reasons. First, many choices have both class-level and firm-level implications. Rules pertaining to takeovers and worker participation illustrate this dilemma. One the one hand, both aspects of corporate governance affect the distribution of power inside firms by constraining managers' right to manage as they see fit. The most contentious aspect of the EU takeover directives was the so-called "neutrality rule," which requires that managers of a company subject to a takeover bid ask shareholders for permission before undertaking any measures that might deter the

bidder. The neutrality rule thus shifts control rights within the firm from managers to shareholders. Similarly, mandatory worker participation shifts control rights from managers to workers. These intra-firm distributional effects are similar for firms everywhere, regardless of production strategies. On the other hand, rules pertaining to takeovers and worker participation have firm-level effects that differ across firms. The neutrality rule has negative firm-level effects for firms pursuing production strategies that rely extensively on specialist skills and equipment because the threat of hostile takeovers discourages long-term and firm-specific investment (see e.g. Shleifer/Summers 1988; Stein 1988).[2] For firms pursuing strategies that do not rely on specialist skills, this provides less cause for concern. Worker participation has positive firm-level effects for firms pursuing strategies that rely extensively on specialist skills because it facilitates worker input into production processes. By increasing job security, it may also encourage investment in firm-specific skills. For firms dependent on quick decision-making and on flexibility to restructure, the delays associated with worker participation can outweigh its benefits (see Freeman/Lazear 1995).

Second, both perspectives neglect the constrain-thy-neighbor implications of legislative proposals. Apart from deciding whether they are worse off in direct terms if they themselves are subjected to a proposed law, actors consider how it affects them that the same law will apply to others. Constrain-thy-neighbor considerations are most easily traceable in transnational settings where actors find themselves on opposite sides of a non-level playing field. EU efforts to harmonize legislation across member states inevitably depart from a situation of significant cross-national variation, and legislative proposals are usually modeled on legislation already in place in one of the member states. As a result, implementing any given EU directive requires greater change to the status quo in some countries than others, so that actors weighing the pros and cons of a proposed directive face different considerations depending on which side of the non-level playing field they are on. Those who lack domestic legislation on the issue need to consider not just the constrain-thy-neighbor effects of EU legislation, but also the direct effects of new constraints on their own right to manage. Those actors already subject to the proposed constraints – and hence the direct effects – through their domestic legislation need only consider whether they want the EU to impose similar constraints on their competitors abroad. However, while the transnational setting thus makes it easier to isolate constrain-thy-neighbor effects, they are equally relevant in a purely domestic context.

I argue that divergent constrain-thy-neighbor considerations help explain why transnational interest group cohesion varies across issues despite similar class-level and firm-level effects. The nature of the constrain-thy-neighbor effects varies across issues

2 Workers and suppliers in doubt that their relationship with a particular firm will last have a weaker incentive to acquire non-transferable skills. Managers under pressure to maximize shareholder value have a stronger incentive to lay off trained workers during economic downturns and to raise dividends instead of investing in human capital.

depending on the logic of the game being played. Positive constrain-thy-neighbor effects arise where actors situated on opposite sides of the non-level playing field belong to opposite teams. In this case, players on the constrained side benefit from having their constraints extended to players on the non-constrained side. Boxing gloves are more acceptable if also worn by one's opponent. Negative constrain-thy-neighbor effects arise where actors on different sides of the non-level playing field are on the same team against a joint opponent. In this case, players on the constrained side suffer if their constraints are extended to players on the non-constrained side. If one team member has their hands tied, it is all the more important that others remain free to fight.

The nature of the constrain-thy-neighbor effect influences transnational class cohesion. Where actors like to see their neighbors constrained, transnational solidarity in the fight against EU legislative efforts is weakened because actors on opposite ends of a non-level playing field have divergent interests. Those already constrained through domestic legislation will favor EU-wide constraints to bind their competitors. Those not constrained through domestic legislation will prefer maintaining the non-level playing field. Where actors dislike seeing their neighbors constrained, transnational solidarity in the fight against EU legislative efforts is strengthened because actors on opposite ends of a non-level playing field share an interest in preventing the EU from imposing constraints on the hitherto unconstrained members of their team.

The cases discussed below illustrate this argument. EU directives on worker participation and takeovers both proposed to constrain managers' right to manage by shifting control rights to either workers or shareholders. Both were more compatible with some production strategies than others. Each would have implied greater legislative change in one of the two countries examined because British managers, unlike their German counterparts, were already constrained in takeover situations through their domestic regulatory framework, while German managers, unlike their British counterparts, were already constrained with regard to worker participation. Why, then, did British managers want to export their takeover constraints, thereby undermining transnational class cohesion on the issue of takeovers, while German managers did not want to export their worker participation constraints?

EU directives on takeovers and worker participation have divergent constrain-thy-neighbor effects. Rules designed to tie managers' hands in takeover situations have positive constrain-thy-neighbor effects because the main battlefront on the issue pitches managers not just against shareholders, but also against their peers. Managers may not like to watch defenseless as their own companies are taken over, but neither do they like to encounter resistance to their own efforts at taking over companies run by other managers. A shared interest in preserving the right to manage fails to ensure intra-class cohesion because one manager's freedom to fend off unsolicited bids directly conflicts with another manager's freedom to make hostile acquisitions. Under conditions of a non-level playing field, those already subject to domestic constraints on their freedom to defend themselves stand to gain from an EU-wide spread of their constraints be-

cause it increases their ability to make hostile acquisitions abroad. Those not subject to domestic constraints stand to lose the freedom to fend off unsolicited bids. The compensating gains are smaller for this latter group because, even without EU legislation, they can already launch hostile bids against managers that are subject to domestic constraints.

Mandatory worker participation has negative constrain-thy-neighbor effects because the main battlefront on the issue pitches managers against workers, rather than against their peers. Those already subject to worker participation requirements in their home country need to consider several adverse consequences of constraining their peers abroad. First, an EU-wide spread of existing constraints empowers labor-friendly actors at the European level, who may exploit their new-gained strength to further tighten these constraints in future. Second, an EU-wide spread of existing constraints amounts to new constraints on the foreign branches of multinational companies. Third, preservation of regime competition helps the quest for lower standards at home. Worker participation becomes harder to roll back once it is enshrined at the transnational level. While the third consideration is only relevant for domestically constrained actors who regard their own constraints as burdensome, the first two apply even to those domestically constrained actors who regard the status quo as tolerable.

The following section prepares the ground for the empirical evidence by describing the corporate governance regimes in which German and British employers were embedded and the EU proposals to which they reacted.

3 Background to the case study: EU company law meets varieties of capitalism

Scholars of corporate governance commonly differentiate between shareholder-oriented and stakeholder-oriented models (see Aguilera/Jackson 2002). The shareholder model makes managers accountable only to shareholders and relies on market mechanisms to address principal–agent problems. It features takeover rules that promote active markets for corporate control by eliminating barriers to hostile bids. The stakeholder model makes managers accountable not just to shareholders, but also to employees. It relies mainly on company-internal monitoring devices to keep managers in check. Mandatory worker participation provides employees with "voice" both at the company board level and on the shop floor.

Britain and Germany approximate these respective ideal-types. Britain has the oldest and most shareholder-oriented takeover regime of all EU member states, while the reverse is true for Germany. The City Code on Takeovers and Mergers was already in place when Britain joined the European Union in 1973. It has been revised several times since,

but core principles have not been touched. Most importantly for the purposes of this article, it includes a neutrality rule. The Code is enforced by a self-regulatory body – the Panel on Takeovers and Mergers – consisting of representatives from various financial organizations and professional associations in the City of London. Compliance is almost universal. Germany, by contrast, did not have any rules governing the conduct of takeovers until the mid-1990s, apart from a non-binding guideline of very limited scope dating from 1979. A voluntary Takeover Codex *(Übernahmekodex)*, inspired by, but weaker than, the British Code, was drawn up in 1995 but never gained widespread acceptance. A legally binding Takeover Act *(Wertpapiererwerbs- und Übernahmegesetz)* was not passed until November 2001 and still lacks a strict neutrality rule. The managerial board remains free to undertake defensive measures as long as these are approved either by shareholders, not necessarily during the offer period but up to 18 months prior to an actual bid, or by the supervisory board.

Consistent with their respective takeover regimes, Germany has always had the most extensive worker participation rights of all EU member states, while the reverse applies to Britain. When the European Commission launched its first company law initiative in 1970, Germany already enjoyed mandatory participation both at the board level and on the shop floor. Since 1951, the Law on Codetermination in the Coal, Iron and Steel Industry *(Montan-Mitbestimmungsgesetz)* requires that coal and steel companies with at least 1,000 employees allocate half the seats on the supervisory board to worker representatives. For all other sectors, the 1952 Works Constitution Act *(Betriebsverfassungsgesetz)* and its 1972 successor assigned one third of seats to worker representatives. The 1976 Codetermination Act *(Mitbestimmungsgesetz)* extended parity codetermination beyond the coal and steel industry to any corporation with more than 2,000 employees. With regard to shop-floor participation, the 1972 Works Constitution Act, based on the 1952 act, makes works councils *(Betriebsräte)* mandatory for all private companies with six or more employees. Since 1972, multi-plant enterprises must, moreover, establish a central works council *(Gesamtbetriebsrat)* to which each plant-level works council appoints two of its members. German works councils have legal rights to information on economic and financial matters; consultation rights on work processes, plant operation, and manpower planning; and codetermination rights regarding employment criteria, hiring, firing, and transfer decisions, the implementation of vocational training programs, the fixing of daily working hours, vacation schedules, the time, place, and form of remuneration payment, the introduction and use of technical devices for monitoring employees, the form and administration of in-plant social services, and the fixing of job and bonus rates (see Müller-Jentsch 1995: 58–59). Amendments to the Works Constitution Act in 1989 and 2001 further strengthened the consultation and codetermination information rights of works councils on issues related to training, employment security, work organization, environmental matters, and racism in the workplace (see Addison et al. 2004: 395–398). Britain, by contrast, has no mandatory participation structures either at board level or on the shop floor, except for the minimal requirements imposed by the EU Information and Consultation Directive that entered into force in 2003. During the 1970s, the boards of most nationalized industries and a handful of

private British firms included a minority of union representatives on a voluntary basis, but the overwhelming majority of British firms never had any employee participation at board level. Nor did British companies ever have works councils in the German sense. The nearest equivalent is a system of joint consultative committees, which deal with matters of workplace organization. However, unlike their German counterparts, these committees do not have any veto rights, and their formation is purely voluntary. British workers do not have any legal rights to codecision. Consultation rights are limited to issues of workplace security, as laid down by the 1974 Health and Safety at Work Act. Information rights are limited to the 1975 Employment Protection Act, which obliges employers to inform trade union representatives on issues relating to pay, manpower statistics, production performance, and to the company's financial situation (Waschke 1977; Knudsen 1995).

EU company law initiatives on takeovers and worker participation resemble the British and German models, respectively. The first effort to harmonize takeover rules dates back to the early 1970s, when the European Commission appointed a British law professor to present a report on takeover regulations in the European Community. The Pennington Report, presented in 1973, included a draft directive that was discussed informally for several years before disappearing from the agenda. Strongly influenced by the British City Code, it included a neutrality rule (Johnston 1980: 183). In the mid-1980s, the drive towards completion of the internal market and a surge in large-scale controversial takeover battles revived interest in the issue. A draft directive presented in 1989 and amended in 1990 again included a neutrality rule, alongside other requirements borrowed from the British Code. The directive was abandoned in 1991 because it lacked support in the Council of Ministers. A third attempt, presented in 1996 and amended in 1997, dropped other requirements borrowed from the City Code but maintained the neutrality rule. On July 4, 2001, it was rejected in the European Parliament by the narrowest possible margin. The fourth draft, adopted in 2003, leaves each member state to decide whether the neutrality rule must apply in companies incorporated within its territory. A reciprocity clause allows member states to exempt companies from applying these rules if they become the subject of an offer launched by a company which does not apply the same rule.

The EU worker participation initiatives increasingly fell short of the high standards set by the German model but always exceeded what British employers were used to. Proposals during the 1970s, including the Fifth Company Law Directive (1972 draft) and the European Company Statute (1970 and 1975 drafts), sought to impose uniform laws based on the German model. After a decade of fruitless negotiations, the Commission scaled down its ambitions. The Vredeling Directive, presented in 1980 and revised in 1983, aimed only at companies with a complex or multinational structure, was less demanding than German legislation on shop-floor participation and left member states to regulate the election of employee representatives. New drafts of the Fifth Company Law Directive and European Company Statute, presented in 1983 and 1989, allowed countries to choose between four models of workforce participation: the German model of

a two-tier board with supervisory board codetermination; a single board with equal representation of employees and non-executive members; a company-level representative body of employees only; any other participation structure approved by both the employer and workforce, provided that it conformed to specified minimum standards. The European Works Council Directive, which was passed in 1994, applies only to multinational firms. Participation rights are confined to the provision of information on a yearly basis and in exceptional emergencies. There is no right to consultation, let alone codetermination (see Kolvenbach 1990; Knudsen 1995; Streeck 1997). The European Company Statute, passed in 2001 after more than thirty years of negotiation, refrains from regulating worker participation as such. It merely stipulates that, unless workers and management agree to a different solution, a merged company or joint venture incorporated under European law must adopt the highest level of participation existing in the countries involved. The most recent initiative is the Information and Consultation Directive, which gives workers the right to be informed and consulted on past and future employment trends as well as possible changes in work organization and contractual relations. Presented in 1998 and passed in 2001, the Information and Consultation Directive applies to all enterprises with 20 or more employees, except in the UK, where the threshold is 50 employees.

How did German and British employers, embedded in their different corporate governance regimes, respond to these EU proposals? Did they unite under the umbrella of their European peak employer federation to defend their common class interests, as class-centered perspectives suggest? Or were they divided along a production regime cleavage, as suggested by firm-centered perspectives? The following section maps German and British employer positions to show that, contrary to both perspectives, transnational cohesion varied across issues. Before demonstrating this, a methodological caveat is in order. Observing preferences empirically is fraught with difficulties because public pronouncements do not necessarily reflect pre-strategic preferences. As Frieden notes, "the position of a government representative, politician, manager, lobbyist, or union leader typically embeds in it calculations of [...] how its stance will affect the actions of others" (Frieden 1999: 59–60). Moreover, public statements are also unreliable indicators of the motivations behind policy demands because actors, in trying to appeal to a public audience, will try to present purely selfish demands as contributions to a common good. I control for these problems as far as possible by drawing not only on public position papers but also on intra-associational memos and letters as well as knowledge of the political context in which the debates took place. Where there is reason to suspect a divergence between official position and pre-strategic preference, this is mentioned in the text.

4 Finding: Cohesion varies across issues

Transnational cohesion was weak on the issue of takeover regulation. British and German peak employer federations failed to reach a common stance. British employers urged their government to "put its weight behind the draft Directive on Takeovers [which] will give a degree of harmonization of shareholders' rights and put some restraints on defensive measures available to boards" (CBI 1989a: 9). While their enthusiasm for the directive waned quickly due to fears that the directive would interfere with Britain's non-statutory system of regulation, they continued to insist on "measures that will remove barriers in other Member States" (CBI 1989b: 2). Unlike other UNICE member organizations, the CBI refused to support "the attitude taken by UNICE towards poison pills[…]; in particular, UNICE does not acknowledge the paramount interest of shareholders in being entitled to form their view and consent to, or reject, a takeover bid" (CBI 1989b: 2).

The controversial neutrality rule was backed by British employers throughout negotiations on the directive (see Callaghan 2006: 167–168). By contrast, German employers "emphatically reject[ed]" EU efforts to promote shareholder primacy in takeover situations and for a long time failed to see "the slightest need for such a directive" (BDA 1989: 159). Their view, first expressed in 1975 and reiterated verbatim in 1987, was that

> [t]he fact that there are different national provisions and that some Member States have no specific provisions in this area still does not justify harmonization. […] There is no reason why a situation which has proved satisfactory in the past, and which has developed without any formal harmonization, should give rise to problems in the future. (BDI 1987: 1)

Unlike their British counterparts, German employer federations criticized the neoliberal motivations behind the proposals. Responding to the 1991 Bangemann report, the BDI company law spokesperson complained that the European Commission had not sufficiently considered the disadvantages of hostile takeovers, especially in the light of the

> excesses in takeover battles which the Anglo-Saxon economies have gone through in recent years […]. The [German] employer federations believe that hostile takeovers with the goal of asset stripping are undesirable for economic as well as for social policy reasons.
> (Handelsblatt, March 20, 1991)

The neutrality rule, advocated by the CBI, was persistently opposed by the German federations (BDI 1987; BDA/BDI 1989, 1998a, 2002).

Transnational cohesion was strong on the issue of worker participation. In contrast to their divisions over the takeover directives, employers across Europe formed a united front, using UNICE to coordinate their lobbying activities. During the 1970s, they fought against the provisions for board level participation made in the European Company Statute and the Fifth Company Law Directive. Careful observers at the time did "discern

different degrees of hostility, or, to put it more positively, differences in the readiness to put up with worker participation" (Nagels/Sorge 1977: 163), but such divergences were not strong enough to undermine cohesion. The German peak federations regarded the Commission efforts "with the greatest skepticism" (BDA 1975: 153), "strongly objected" to the provisions for worker participation in the draft fifth directive (BDA 1973: 192), and "emphatically rejected" proposals for employee representatives on the supervisory board of companies formed under the European Company Statute (BDA 1974: 167, 1975: 153). The CBI insisted that "the system which is adopted should be suitable to the British economic and social context. The present proposals do not meet this requirement" (CBI 1973: 2). During the early 1980s, the Vredeling directive proposals to impose central works councils on multinationals and conglomerates provoked what was then the "most expensive lobbying campaign in the history of the European Parliament" (Walker 1983: 191). German and British employers were both active in this campaign, which was carefully orchestrated by UNICE and also backed by American and Japanese multinationals. The BDI and BDA communicated their negative assessment of the Fifth Directive (BDA 1982) and the categorical rejection of the draft Vredeling Directive by German industry (BDA 1981), emphasizing that "rejection of the [Vredeling] directive proposal by European Trade is both unanimous and decisive, and this concerns not just the details but the basic principle" (BDA/BDI 1983a: 2). The CBI "unequivocally oppose[d] both the draft Vredeling and Fifth Directives" (CBI 1984: 1). During the early 1990s, employers in both countries rejected European Works councils as cumbersome, bureaucratic, and expensive, claiming that the directive would seriously threaten the international competitiveness of the companies concerned (BDA/BDI 1991; CBI 1991). The CBI was "not interested in a ritualistic doing-it-by-numbers approach to employee involvement" (CBI 1993: 1). A BDA spokesman dismissed EWCs as "permanent tourist events" (Handelsblatt, August 5, 1993). During the late 1990s, the Information and Consultation Directive came under concerted employer attack. The CBI warned that the proposals would "throw a monkey wrench into the works […], grinding business decisions to a halt" (CBI 2001: 1). The BDI and BDA refused to support "EU regulation in an area that is without any cross-border relevance" (BDA/BDI 1998b: 1).

While British employers, unlike their German counterparts, wanted to spread British-style takeover constraints to the rest of Europe, German employers, like their British counterparts, opposed the spread of German-style worker participation. Instead, the BDA and BDI emphasized that "[c]oordination does not imply that the highest level of regulation that exists in one national jurisdiction should be imposed as a binding standard on everyone. That would not be coordination, but maximization" (BDA/BDI 1983b: 2).

They insisted that "[i]nformation and consultation can very well be dealt with satisfactorily at the national level, as is proven by the different models across member states. These different models by no means imply a distortion of competition" (BDA/BDI 1998b: 4; see also BDA/BDI 1981: 1).

5 Explanation: Divergent constrain-thy-neighbor effects

Why did German and British employers' embeddedness in different corporate governance regimes undermine transnational cohesion on the issue of takeover regulation but not on the issue of worker participation? I argue that the divergent constrain-thy-neighbor effects associated with these issues contribute to explaining the observed variation.

The positive constrain-thy-neighbor effects associated with takeover regulation (namely, making other managers vulnerable to takeover) figured prominently in employers' public and internal discourses on the EU Takeover Directive. As a 1989 memo explained, "CBI members are looking for measures which will open up the markets of other EC Member States to contested takeovers. The aim is to reduce the UK's relative vulnerability by removing barriers elsewhere" (CBI 1989a: 8).

That managers weigh the benefit of imposing restrictions on anti-takeover defenses on others against the cost of bearing these constraints themselves is also suggested by a strong emphasis on reciprocity. In a 1988 CBI survey of 250 companies in manufacturing and service sectors, two-thirds wanted to see government intervention in hostile bids from overseas whenever the predator was immune to a counterbid (Financial Times, November 4, 1988).

British employers highlighted two main benefits of spreading their takeover constraints abroad. First, they wanted to increase the "opportunities for UK companies to restructure on a European scale through the process [of contested takeovers]" (CBI 1989a: 6). Second, they wanted to divert hostile attacks away from themselves by making others more vulnerable. John Banham, CBI director general, complained that "[i]n most Continental countries, hostile bids have as much chance of succeeding as a snowball in Hades, so the acquirers of companies within the Community in the run-in to 1992 will have no option but to buy in Britain" (The Times, March 23, 1989).

Given cross-national differences in takeover regulation, these positive constrain-thy-neighbor effects undermined transnational cohesion by providing an incentive for British managers that was not shared by German managers. British managers, who were already subject to restrictions on anti-takeover defenses, stood to gain from an EU-wide spread of their constraint because it would increase their ability to make hostile acquisitions in Germany. German managers, who were not yet subject to restrictions, stood to lose the freedom to fend off unsolicited bids. The compensating constrain-thy-neighbor benefit was smaller for German managers because, even without EU legislation, they could already launch hostile bids in the UK, where managers were subject to restrictions on anti-takeover defenses through the British City Code.

The negative constrain-thy-neighbor effects associated with worker participation (namely, slippery slopes and repercussions for companies' foreign operations) figured

prominently in employers' public and internal discourses on the various EU worker participation directives. The BDA and BDI declared that

> [i]f the imposition of those extensive worker participation rules [on other EU member states] causes friction and a decline in company performance [in these countries], then this could only myopically be regarded as a competitive advantage for German companies. In actual fact, it […] would also be cause for concern from a German point of view. (BDA/BDI 1983b: 6)

German employers highlighted two main objections to spreading their own worker participation constraints abroad. First, they feared slippery slopes, whereby the EU-wide spread of their own constraints might empower labor-friendly actors to further tighten these constraints in future. Gesamtmetall opposed early attempts to set up EWC-like structures on the grounds that "[o]nce such 'contact talks' have become the rule, it is only a small step to demands for some degree of consultation and codetermination in the area of entrepreneurial decision-making" (Gesamtmetall 1970: 194). The BDA warned that the Fifth Company Law Directive would "provide employees with much leeway to make demands beyond the rules contained in the directive proposal and in the German Works Constitution Act" (BDA/BDI 1983b: 6) and that implementation of the proposal would be impossible "without the dispute on codetermination in the Federal Republic of Germany being rekindled with all its bitterness" (BDA/BDI 1983a: 4). Second, they feared the implications of EU-wide constraints for the foreign branches of German multinationals. "Foreign union members who are not familiar with our national practices" (Gesamtmetall 1970: 104), "foreign trade unions who as Communists are programmatically committed to the promotion of class war" (Thüsing 1982: 906) and "national differences in the tradition, self-perception and legitimacy of worker representatives" (BDA/BDI 1991: 8) are a recurrent theme in German employer statements.

Whether a desire to escape Germany's strict worker participation requirements by relocating to other EU member states was a third reason for German managers' opposition to spreading their constraints abroad is impossible to determine because of strong political incentives to deny such motives. In public statements, they regularly acknowledged that they did not fare badly with the worker participation arrangements on which EU proposals had been based, albeit never without insisting that this was due to aspects of German industrial relations that were lacking elsewhere. Commenting on the 1972 draft of the European Company Statute, the BDI chief explained that

> [f]rom our German point of view, there are no objections to the principle of granting one third of seats on the supervisory board to employee representatives […]. This participation would correspond to the provisions in our national company law, which are approved of by German industry, and which, against the backdrop of the socio-economic structure of the Federal Republic, have generally proven their worth,

before adding that "the European Company Statute must not be judged primarily by our national criteria" (Friedrich 1972: 49). A similar approach was taken to the second

draft of the Fifth Company Law Directive. After conceding that "all participation laws practiced in the Federal Republic are subsumed by the norms of the draft directive" (BDA/BDI 1982: 6), the BDA warned that company performance would suffer in other countries, "which largely and for historical reasons face entirely different socio-economic structures" (BDA/BDI 1983b: 6). With regard to the Information and Consultation Directive, the BDA declared that "[i]n Germany, such practices have stood the test of time," before adding that "the positive evaluation by the BDA of information and consultation arrangements at the national level by no means implies support for Community intervention" (BDA/BDI 1998b: 4).

The negative constrain-thy-neighbor effects contributed to transnational employer cohesion on the issue of worker participation because German managers shared them even though they were not adversely affected by the immediate content of the proposed directives. German managers were already subject to the proposed constraints through their domestic legislation and therefore had less reason to worry about the direct effects of the EU worker participation directives. However, in contrast to the case of the EU takeover directives, this asymmetry did not undermine transnational cohesion on worker participation because negative constrain-thy-neighbor effects provided a second motive for opposing the directive that was shared by employers everywhere.

6 Conclusion

By mapping employer positions on EU company law directives, this article shows that standard class-centered or firm-centered approaches fail to explain why transnational interest group cohesion varies across issues. The proposed EU directives on worker participation and takeovers both disadvantaged managers as a class by shifting control rights to workers and shareholders respectively, and both were more compatible with some production strategies than others. Moreover, in both cases, passage of the EU directives would have required considerable change of legislation in one country and next to no change in the other. Nevertheless, transnational cohesion varied, featuring strong intra-class solidarity in the case of worker participation and deep divisions along a production regime cleavage in the case of takeovers.

To explain the observed variation, I present an analytic framework that attends to the multidimensionality of actors' preference calculus. By distinguishing class-level and firm-level effects, it disentangles competing considerations that are either confounded or ignored by standard one-dimensional approaches. By distinguishing these direct effects from constrain-thy-neighbor effects, it introduces a relevant dimension that has so far been overlooked. Drawing on this heuristic, I argue that the constrain-thy-neighbor effects of a policy proposal help determine whether interest groups can muster strong intra-class cohesion at the transnational level, or whether they divide along a produc-

tion regime cleavage. Positive constrain-thy-neighbor effects weaken transnational cohesion while negative constrain-thy-neighbor effects reinforce it.

This contribution advances the materialist literature on preference formation in two ways. First, it bridges the artificial chasm between class-centered and firm-centered perspectives. The firm-centered varieties-of-capitalism literature has been criticized for "privileg[ing] considerations pertaining to efficiency and coordination at the expense of considerations pertaining to conflicts of interests and the exercise of power" and downplaying the "conflict between labor and capital that constitutes a common feature of all capitalist political economies" (Pontusson 2005: 164; see also Howell 2003). The class-centered literature has been attacked for focusing too narrowly on zero-sum class conflicts and neglecting cross-class coalitions (Mares 2003; Swenson 2002). My framework responds to recent calls for a synthesis (cf. Pontusson 2005). Building on Streeck (1991), I stress that the members of business associations are simultaneously buyers of labor and sellers of products and, as such, are concerned with both distributional and efficiency considerations. Streeck uses this insight to explain variation in the organizing capacity across unions and different types of business association. The present article focuses on variation in cohesion across issues within associations. It shows that distributional and efficiency concerns can be associated with a single piece of legislation, that it is unclear a priori how actors weigh these concerns, and that predictions of cleavage patterns derived from one-dimensional approaches are empirically unreliable.

Second, it builds on a recent trend in comparative political economy to consider more seriously how interaction between national and international institutions shapes preferences and cleavages. Moving beyond existing work on multilevel governance and two-level games (e.g. Marks/Hooghe/Blank 1996; Putnam 1988), I argue that the addition of a transnational game board influences actors' preferences, and not just their opportunities to pursue them. However, unlike constructivist accounts (e.g. Cram 1998), which emphasize learning effects associated with interaction at the transnational level, mine suggests that preferences respond to changes in the institutional incentive structure.

In doing so, it also advances the varieties-of-capitalism literature, which has recently begun to focus on the political sources of persistent divergence but for the most part still assumes that rules governing the economy are forged at the domestic level. Fioretos (2001) is a notable exception, but his pioneering effort to anchor a theory of firms' preferences over international rules in an institutionalist framework still construes actors as caring only about the *direct* effects of common rules on institutional investments in their own country. The present article shows that actors additionally care about the constrain-thy-neighbor effects of common rules. Constrain-thy-neighbor effects are compatible with a firm-centered perspective, but they deserve explicit attention because they affect transnational cohesion. If German employers cared only about direct firm-level effects, one would expect them to be indifferent or even favorably inclined towards the proposed EU worker participation directives. Once the constrain-thy-neighbor effects are taken into account, German reluctance to see German-style codetermination

extended to the rest of Europe makes sense from a firm-centered perspective because it renders strategic outsourcing of low-wage components to production processes more difficult and impedes the exploitation of site-specific advantages by German multinationals.

Besides illustrating a widely applicable argument on the incentives for cross-border alliance formation, the case studies also speak to a more specialized literature on the clash of capitalisms in the European political arena (Callaghan/Höpner 2005; Menz 2005; Höpner/Schäfer 2008). According to Vitols (2001), rules governing takeovers and worker participation are thought to shape the comparative institutional advantages enjoyed by companies in Germany and the UK. The finding that transnational cohesion among German and British employers differed across these issues suggests that multilevel governance may contribute to the hybridization of national production regimes. For further elaboration of this argument, see Callaghan (2008).

The framework should not be understood as a foolproof means of mechanically predicting policy preferences, but as a tool for structuring narratives by creating dimensions for cross-case comparison. To calculate how actors weigh competing considerations against one another, one would need to know not only the nature but also the magnitude of the firm-level, class-level, and constrain-thy-neighbor effects. Prior theory or abstract reasoning may generate ambiguous expectations regarding the nature of these effects, and relative magnitudes are impossible to measure quantitatively. To take an example from the research presented above, it is not obvious a priori that managers see the overall constrain-thy-neighbor effects of mandatory worker participation as negative. In deciding whether they were better off or worse off if British employers were subjected to German-style worker participation requirements, German employers had to weigh the advantage of leveling the playing field and imposing additional costs on their competitors against the disadvantage of limiting their own options for regime shopping. Intra-associational debates reveal that the latter – negative – constrain-thy-neighbor effect was more important to them. A priori, one might have expected the opposite. Nevertheless, while the framework does not dispense with the need for contextual knowledge and qualitative research, it identifies important dimensions for comparison across cases.

As such, the article opens two main avenues for further research. First, the framework should be applied to other policy issues and other actors for further examination of what determines transnational interest group cohesion and cross-border cooperation more generally. Second, it is worth exploring how interest group cohesion relates to the effectiveness of lobbying. Are employers more likely to get their way where they form a united stance? At the transnational level, one might expect the opposite, because the constrain-thy-neighbor considerations responsible for undermining transnational intra-class cohesion are more likely to mobilize broad political coalitions at the national level than are class-based considerations. Casual evidence supports this hypothesis. In the case of the EU takeover directives, where German employers disagreed with Brit-

ish employers, German parties on the left and right stood up for German employers' demands – most visibly in the European Parliament, where the 2001 directive was rejected by all but one of Germany's 99 delegates (Callaghan/Höpner 2005). In the case of the EU worker participation directives, where German employers agreed with British employers, their demands were largely ignored by German politicians on the left and right.

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