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

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

Helen Callaghan[1]

Abstract

Why does the willingness of interest groups to join forces with their peers abroad vary across issues? The present article points to cross-issue variation in the "constrain-thy-neighbor" effects of transnational law. Interest groups consider not only whether they are worse off if they themselves are subjected to a transnational law. They also consider how it affects them if the same law applies abroad. Depending on the issue, they derive advantages or disadvantages from seeing their neighbors constrained, and this affects their willingness to fight transnational legislation on that issue. To illustrate the argument, the article compares cohesion within the Union of Industrial and Employers' Confederations of Europe (UNICE), the European peak employer federation, on two aspects of EU company law. UNICE members were divided over EU takeover directives while uniting against EU worker participation directives. Statements released by German and British UNICE members show that the divergent constrain-thy-neighbor effect associated with these issues contributed to variation in cohesion.

Keywords

employers, multilevel governance, varieties of capitalism, Germany, United Kingdom, European Union, takeover regulation, worker participation

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Introduction

Groups cannot act collectively unless their members share a cause. Agreement on a common stance can be difficult to reach even at the national level, but the challenge is amplified for transnational groups, whose members assess legislative or policy initiatives from the divergent vantage points of the respective national settings in which they are embedded.

Previous work has little to say on how regional legislative disparities affect the cohesion of transnational groups. The literature on interest intermediation focuses on how groups act at the transnational level, by looking at organizational structures, channels of access, lobbying techniques, and so on (see Beyers, Eising, & Maloney, 2008; Saurugger, 2007; Woll, 2006). Research on collective action problems and on ad hoc coalitions examines why groups that share a common cause do or do not join forces for lobbying purposes (Greenwood & Aspinwall, 1998; Hojnacki, 1997; Mahoney, 2007). Few studies ask what determines whether comparable groups from different countries agree on a common cause, and the ones that do concentrate on organizational and membership characteristics of the groups in question (Greenwood, 2002; Visser & Ebbinghaus, 1992).

The present article fills the gap by drawing attention to what I call the constrain-thy-neighbor effects of transnational legislation. Apart from deciding whether they are worse off if they themselves are subjected to a transnational law, interest group members consider how it affects them that the same law will apply abroad. They may derive advantages or disadvantages from seeing their neighbors constrained, and this affects their willingness to team up with these neighbors in the fight against transnational laws.

Constrain-thy-neighbor considerations shaped the positions of German and British employer associations and hence cohesion within the Union of Industrial and Employers' Confederations of Europe (UNICE) throughout the history of EU legislative proposals concerning takeovers and worker participation.[1] Each proposal would have implied considerable legislative change in one of the two countries examined and next to no change in the other. Each proposed to constrain managerial decision-making powers. Each was more compatible with some production strategies than others. Despite these similarities, transnational cohesion varied across issues. German and British employers fought side by side against EU directives concerning worker participation. They split along national lines against EU directives concerning shareholder rights in takeover situations, with British employers in favor and German employers opposed.

Divergent constrain-thy-neighbor effects contribute to explaining the observed variation. EU-wide restrictions on managers' rights to fend off

unsolicited takeovers have the positive constrain-thy-neighbor effect of facilitating foreign acquisitions. EU-wide worker participation requirements have the negative constrain-thy-neighbor effects of limiting employers' options to engage in regime shopping and of strengthening the advocates of further constraints at the domestic level.

The article proceeds as follows: Section 2 presents the theoretical argument, elaborating on the positive and negative constrain-thy-neighbor effects of transnational law and their implications for the willingness of interest groups to unite across borders. Section 3 justifies the case selection by describing British, German, and proposed EU legislation on takeovers and worker participation between 1970 and 2003 and by identifying the divergent constrain-thy-neighbor effects associated with these issues. Section 4 presents empirical evidence for the relevance of constrain-thy-neighbor effects by mapping German and British employer positions to show that transnational employer cohesion varied across issues and that constrain-thy-neighbor considerations featured in intra-associational deliberations. The conclusion explains how the argument advances research on two-level games, collective action, employer preferences, varieties of capitalism, and institutional convergence.

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

The sources of tension inside employer federations have been subject to much research. Despite their well-defined class interests and contrary to an influential argument advanced by and Offe and Wiesenthal (1980), employers find it no easier than other interest groups to unite behind a cause. Tensions arise not just from the divergent interests of managers and owners (Dahrendorf, 1959/1978, pp. 41-48; Roe, 1994) or of producers and financiers (Cohen, 1995; Ingham, 1984; Longstreth, 1979) but also from the dual role of producers, who are simultaneously buyers of labor with well-defined class interests and sellers of goods in competition with each other (Bowman, 1982; Streeck, 1991). In the latter role, they have interests that vary according to sector, size, production strategy, market position, and so on.

Beyond the conflicts inherent in capitalism as such, regional legislative disparities represent another threat to cohesion that is specific to transnational employer federations. EU efforts to harmonize legislation across member states always depart from a situation of cross-national variation, and EU legislative proposals are usually modeled on legislation that is already in place in some of the member states. As a result, implementing any given EU directive requires greater change to the status quo in some countries than others.

The consequences of such disparities for employers' ability to reach a common stance have not received enough attention. Hall and Soskice (2001, p. 58) observe that companies embedded in different national jurisdictions pursue different production strategies, and Fioretos (2001) builds on this insight to argue that employers'—and governments'—attitudes toward EU legislation depend on how the law in question affects the production strategies that prevail in their country. However, these pioneering efforts note only the threat to cohesion that arises from employers' concern with the consequences of having an EU law imposed *on themselves.* They neglect the effects on cohesion that arise from employers' concern with the consequences of the same law applying in countries other than their own. I refer to the latter considerations as the constrain-thy-neighbor effects of transnational law.

Employers may attach a positive or a negative value to seeing their neighbors bound by a legislative constraint. Positive constrain-thy-neighbor effects include improved competitiveness vis-à-vis employers in other member states. Whenever a legislative constraint constitutes a competitive disadvantage in a contest they care to win, employers have an interest in seeing it imposed on their foreign competitors. Negative constrain-thy-neighbor effects include reduced options to engage in regime shopping and backlash effects that result from the empowerment of actors who advocate tighter constraints in the employer's home country. Whether employers care to maintain the regime shopping options afforded by a non-level playing field depends on whether they are free to exploit the absence of constraints in other member states by using it to circumvent constraints imposed by their own national jurisdiction. Where the beneficiaries of the constraint have veto powers that prevent regime shopping, the absence of constraints abroad is less valuable to employers. Whether a further tightening of their own constraints is a possible consequence of allowing constraints to be imposed on their neighbors depends, first, on whether their own constraint is amenable to further tightening and, second, on whether the beneficiaries of the constraint have an interest in tightening it further. Where either condition is not satisfied, backlash effects are of less concern.

The consequences of seeing their neighbors constrained affect employers' willingness to join forces with those neighbors in the fight against EU-wide laws. Where the consequences are positive, regional legislative disparities undermine transnational cohesion because employers embedded in different national jurisdictions will attach different values to leveling the playing field. Those already constrained by domestic legislation benefit from EU-wide laws, whereas those unconstrained by domestic legislation benefit from the status quo. Where the consequences are negative, transnational cohesion is

strengthened because those already constrained by domestic legislation have an incentive to join the fight against EU-wide laws even where the proposed laws imply no change to the legislative status quo in their own country.

EU Company Law Meets Varieties of Capitalism

EU directives on takeovers and worker participation lend themselves well to illustrating the effects on cohesion of positive and negative constrain-thy-neighbor effects because they resemble each other with respect to several other relevant variables.

Rules on both aspects of corporate governance vary significantly across EU member states, with Britain and Germany at opposite ends of the spectrum. Britain has the oldest and most shareholder-oriented takeover regime of all EU member states, whereas 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. Subsequent revisions have not touched on core principles. Most importantly for the purposes of this article, the British takeover code includes a so-called neutrality rule, which requires that managers obtain authorization from shareholders before they take measures to defend their company in a hostile bid. In Germany, by contrast, a legally binding Takeover Act (Wertpapiererwerbs-und Übernahmegesetz) was only passed in November 2001. Until then, Germany did not have any rules governing the conduct of takeovers except for a nonbinding guideline of very limited scope dating from 1979 and, from 1995 onward, a voluntary takeover codex (Übernahmekodex) that never gained widespread acceptance. To date, Germany still lacks a strict neutrality rule. The managerial board remains free to undertake defensive measures as long as these are approved either by shareholders *or by the supervisory board*, not necessarily during the offer period but up to 18 months prior to an actual bid.

Germany has always had the most extensive worker participation rights of all EU member states, whereas the reverse applies to Britain. When the European Commission launched its first company law initiative in 1970, German workers already enjoyed mandatory participation both on the shop floor and at the board level. The 1972 Works Constitution Act made works councils (Betriebsräte) mandatory for all private companies with six or more employees and required a central works council (Gesamtbetriebsrat) for multiplant enterprises. The 1976 Codetermination Act (Mitbestimmungsgesetz) extended parity codetermination on the supervisory board beyond the coal and steel industry to any corporation with more than 2,000 employees. German works councils have extensive information and consultation rights

and codetermination rights regarding employment criteria, hiring, firing, transfer decisions, vocational training, working hours, vacation schedules, the fixing of job and bonus rates, and so on. Amendments to the Works Constitution Act in 1989 and 2001 further strengthened these rights (for details, see Addison, Bellmann, Schnabel, & Wagner, 2004; Müller-Jentsch, 1995). Britain, by contrast, has no mandatory participation structures at the shop floor or on the board level, except for the minimal requirements imposed by the EU Information and Consultation Directive, which entered into force in 2003. The nearest equivalent to German-style works councils is joint consultative committees on matters of workplace organization. However, unlike their German counterparts, these committees do not have any veto rights, and their formation is purely voluntary (Knudsen, 1995; Waschke, 1977).

Transnational legislation on both issues would have implied considerable change in one of the two countries examined and next to no change in the other. Draft takeover directives presented in 1973, 1989, 1997, and 2001 and 2003 were all modeled on the British City Code. Unlike German domestic law, they all included a neutrality rule. (The fourth draft, adopted in 2003, leaves each member state to decide whether the neutrality rule must apply in companies incorporated within its territory.) The EU worker participation initiatives fell increasingly short of German legal requirements 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. The Vredeling Directive, presented in 1980 and revised in 1983, was less demanding than German legislation on shop-floor participation and aimed only at companies with a complex or multinational structure. New drafts of the Fifth Company Law Directive and European Company Statute, presented in 1983 and 1989, allowed countries to choose among four models of workforce participation, including the German model of supervisory board codetermination. The European Works Councils Directive, passed in 1994, applies only to multinational firms and does not include rights to consultation, let alone codetermination (see Knudsen, 1995; Kolvenbach, 1990; Streeck, 1997). The European Company Statute, passed in 2001, 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 Information and Consultation Directive, presented in 1998 and passed in 2001, gives workers the right to be informed and consulted on past and future employment trends, on changes in work organization, and on contractual relations.

Legislation on both issues proposed to constrain managerial decision-making powers. The 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) shifts control rights within the firm from managers to shareholders. Mandatory worker participation shifts control rights from managers to workers. The degree of tension between different segments of capital differs across issues, but this difference does not explain variation in cohesion at the transnational level. Using Mark Smith's (2000) terminology, one could describe takeover regulation is a "divisive issue" and worker participation is a "unifying issue" because the former pitches managers against shareholders, whereas the latter unites managers and shareholders against workers. However, the neutrality rule pitched managers against shareholders in both Germany and the United Kingdom. Nevertheless, employer attitudes toward enshrining the neutrality rule at the European level differed across countries.

Each legislative proposal was more compatible with some production strategies than with others. The neutrality rule disrupts production strategies that rely extensively on specialist skills and equipment because the threat of hostile takeovers discourages long-term and firm-specific investment (see Shleifer & Summers, 1988; Stein, 1988).[2] Worker participation is conducive to production strategies that extensively rely 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). According to the literature on varieties of capitalism, rules governing both issues are therefore central to the comparative institutional advantages enjoyed by companies in Germany and the United Kingdom (see Vitols, 2001).

Despite these similarities, transnational cohesion varied across issues. With regard to worker participation, employers united under the umbrella of their European peak employer federation. With regard to takeover regulation, they divided along national lines. Put differently, British managers wanted to export their takeover constraints, whereas German managers did not want to export their worker participation constraints.

The divergent constrain-thy-neighbor effects of EU directives on takeovers and worker participation contribute to explaining the observed variation. EU takeover directives have the positive constrain-thy-neighbor effect of improving employers' competitive position in cross-border battles for corporate control. As mentioned above, a key aspect of the directives was the neutrality

rule, which constrains managers' freedom to take defensive measures to fend off unsolicited bids. Employers may not like to watch defenseless as their own companies are taken over, but neither do they like to encounter resistance when they themselves launch hostile bids. By having the rule imposed on managers in countries other than their own, they improve their chances of making hostile acquisitions abroad. Negative constrain-thy-neighbor effects are less pertinent to the takeover directives. Enshrining the neutrality rule at the transnational level does not involve the sacrifice of regime shopping options, such as the possibility of escaping the neutrality rule at the domestic level because regime shopping against the will of shareholders—who can veto managerial decisions to reincorporate in a less shareholder-oriented jurisdiction—is not an option anyway. Backlash, that is, the danger that the advocates of shareholder power will use their victory at the transnational level to demand even more extensive control over managerial decisions, is no serious concern either because shareholders' appetite for managerial power is not without limits. If it were, shareholders would use their capital to run their own companies, instead of appointing managerial agents.

EU worker participation directives, by contrast, have two negative constrain-thy-neighbor effects. First, they reduce employers' options to engage in regime shopping. A non-level playing field allows employers to circumvent domestic participation requirements, either by reincorporating abroad or by setting up branches in other member states, because workers—unlike shareholders—cannot veto company relocation. Second, imposition of worker participation requirements on employers in other member states threatens to empower labor-friendly actors at the European level, who also have an interest in further tightening worker participation requirements at home. Worker participation is a matter of degree, and the appetite of labor representatives for further participation rights, unlike the appetite of shareholders, does not have obvious limits.

In view of the costs associated with worker participation, one could argue that it also has the positive constrain-thy-neighbor effect of reducing the cost competitiveness of producers in other member states. However, judging from their positions and intra-associational discussions on the EU worker participation directives, employers attached no weight to this concern.

The positive constrain-thy-neighbor effect undermined transnational cohesion on the EU takeover directives by providing British employers with a motive for support that was not shared by their German counterparts. British managers, who were already subject to restrictions on antitakeover defenses, stood to gain from an EU-wide spread of their constraint because it would increase their ability to make hostile acquisitions in Germany and in

other hitherto unconstrained member states. 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 United Kingdom and in other member states where managers were already subject to restrictions on antitakeover defenses through their domestic company law.

The negative constrain-thy-neighbor effects strengthened 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, this asymmetry did not undermine transnational cohesion on worker participation because negative constrain-thy-neighbor effects provided a second motive for opposing the directive.

Other factors also contribute to explaining cross-national variation in employer attitudes toward takeover regulation, but the role of constrain-thy-neighbor effects is discernable nonetheless. Elsewhere, I have pointed to cross-national variation in the structure of corporate ownership as one reason why shareholders have a stronger political voice in Britain than in Germany (Callaghan, 2009). Cross-national variation in the membership structure of peak employer federations is a further explanatory factor. The German Bundesverband der Deutschen Industrie (BDI) represents only the manufacturing industry, whereas the Confederation of British Industry (CBI) also represents the financial sector. However, the question of whether constraints on antitakeover defenses are desirable at the domestic level differs from the question of whether constraints on antitakeover defenses should apply abroad. The British CBI was deeply divided over the first question (see Callaghan, 2006, pp. 176-178), but even fervent opponents of Britain's liberal takeover regime agreed that, given their subjection to constraints on antitakeover defenses, it was only fair that the same constraints should apply elsewhere.

The empirical evidence that follows should be read with some methodological caveats in mind. Observing preferences empirically is fraught with difficulties because public pronouncements do not necessarily reflect prestrategic preferences. As Frieden (1999) 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" (p. 59). 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 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 prestrategic preference, this is mentioned in the text.

Employer Reactions

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, p. 10). Although their enthusiasm for the directive waned quickly because of fears that the directive would interfere with Britain's nonstatutory system of regulation, they continued to insist on "measures that will remove barriers in other Member States" (CBI, 1989b, p. 2). Unlike other UNICE member organizations, 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, p. 2). The controversial neutrality rule was backed by British employers throughout negotiations on the directive. By contrast, German employers "emphatically reject[ed]" EU efforts to promote shareholder primacy in takeover situations (Bundesvereinigung der Deutschen Arbeitgeberverbände [BDA], 1989, p. 159) and for a long time failed to see "the slightest need for such a directive" (BDA & BDI). Their view, first expressed in 1975 and reiterated verbatim in 1987, was that

> the 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, p. 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, p. 5). The neutrality rule, advocated by the CBI, was persistently opposed by the German federations (BDA & BDI, 1989, 1998b, 2002; BDI, 1987).

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, p. 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, p. 153), "strongly objected" to the provisions for worker participation in the draft fifth directive (BDA, 1973, p. 192), and "emphatically rejected" proposals for employee representatives on the supervisory board of companies formed under the European Company Statute (BDA, 1974, p. 167; BDA, 1975, p. 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, p. 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, p. 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, p. 2). The CBI "unequivocally oppose[d] both the draft Vredeling and Fifth Directives" (CBI, 1984, p. 1). During the early 1990s, employers in both countries rejected European Works Councils (EWCs) 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). A BDA spokesman dismissed EWCs as "permanent tourist events" (*Handelsblatt*, August 5, 1993, p. 4). 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). The BDI and BDA refused to support "EU regulation in an area that is without any cross-border relevance" (BDA & BDI, 1998a, p. 1).

Although 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 "coordination 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, p. 2). They insisted that "information 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" (also see BDA & BDI, 1981, p. 1; BDA & BDI, 1998a).

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 (viz., making other companies 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 United Kingdom's relative vulnerability by removing barriers elsewhere" (CBI, 1989a). That managers weigh the benefit of imposing restrictions on antitakeover 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, p. 9).

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). Second, they wanted to divert hostile attacks

away from themselves by making others more vulnerable. John Banham, CBI director general, complained that "in 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).

The negative constrain-thy-neighbor effects associated with worker participation figured prominently in employers' public and internal discourses on the various EU worker participation directives. The BDA and BDI declared that

> if 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, p. 6)

German employers highlighted two main objections to spreading their own worker participation constraints abroad. First, they feared backlash effects, 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 "once 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, p. 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, p. 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, p. 4).

Second, the directives would have reduced their opportunities to engage in regime shopping. The strength of their desire to escape Germany's strict worker participation requirements by relocating to other EU member states is difficult to gage because of strong political incentives to deny such motives. In public statements, German employers 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 because of aspects of German industrial relations that were lacking elsewhere. Commenting on the 1972 draft of the European Company Statute, the BDI chief explained that

> from 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.

The chief added that "the European Company Statute must not be judged primarily by our national criteria" (Friedrich, 1972, p. 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), 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, p. 6). With regard to the Information and Consultation Directive, the BDA declared that "in 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, 1998a, p. 4). Nevertheless, fears about the implications of EU-wide constraints for the foreign branches of German multinationals indicate a desire to preserve existing regime shopping options. "Foreign union members who are not familiar with our national practices" (Gesamtmetall, 1970, p. 194), "foreign trade unions who as Communists are programmatically committed to the promotion of class war" (Thüsing, 1982, p. 906), and "national differences in the tradition, self-perception and legitimacy of worker representatives" (BDA & BDI, 1991, p. 8) are recurrent themes in German employer statements.

Conclusion

In sum, transnational legislation has constrain-thy-neighbor effects, and these influence the willingness of interest groups to unite across borders. Where interest groups derive advantages from seeing their peers abroad bound by a constraint, regional legislative disparities undermine transnational cohesion. Those already constrained by domestic legislation benefit from transnational laws that level the playing field by imposing the same constraints on their neighbors. Those unconstrained by domestic legislation benefit from maintaining the non-level playing field. Where interest groups derive disadvantages from seeing their peers abroad bound by a constraint, transnational cohesion

is strengthened because those already constrained by domestic legislation have an incentive to join the fight against the spread of their constraint.

By drawing attention to the constrain-thy-neighbor dimension of transnational legislation, the article informs research on two-level games, interest group cohesion, employer preferences, and institutional convergence. The literature on multilevel governance and two-level games explores how the addition of a new game board expands interest groups' opportunities to pursue their legislative or policy preferences by allowing interest groups to join forces with like-minded groups in other member states to promote domestic change through the back door via EU intervention (Marks, Hooghe, & Blank, 1996; Putnam, 1988). The obstacles that prevent interest groups from using these opportunities have received far less attention. The present article identifies constrain-thy-neighbor effects as one factor that influences whether regional legislative divergences prevent interest groups from uniting across borders.

In the vast literature on interest groups and ad hoc coalitions, obstacles to cross-border alliance formation mostly take the form of organizational incompatibilities, inadequate resources or free-rider problems that prevent like-minded groups from acting collectively at the transnational level. Variation in the severity of these obstacles accounts for variation in transnational cohesion across groups, but it fails to explain why transnational cohesion varies across issues within groups. The divergent constrain-thy-neighbor effects associated with different issues are one possible explanation.

The literature on employer preferences has been trying to bridge an artificial chasm between class-centered and firm-centered perspectives without noticing that both perspectives neglect the constrain-thy-neighbor effects of transnational legislation. Class-centered perspectives assume that employers judge a legislative or policy measure mainly by its consequences for the distribution of power or resources between capital and labor (see Korpi, 2006). Firm-centered approaches assume that employers mainly care about the implications of the measure for the performance of their company as a whole (e.g., Hall & Soskice, 2001). Although nuanced empirical work defies rigid classification as either class centered or firm centered, increasingly one-dimensional theoretical arguments have led Pontusson (2005) and others to call for a revised analytic framework that "treats efficiency and distribution as separate but interrelated and equally important dimensions" (p. 165). However, a mere synthesis of standard class-centered and firm-centered perspectives does not fully capture the multidimensionality of employer preferences in transnational settings because employers consider not just how it affects them in distributional and efficiency terms if they

themselves are subjected to a transnational law. They also consider how it affects them in distributional and efficiency terms if the law applies in countries other than their own.

Constrain-thy-neighbor effects are compatible with both class-centered and firm-centered perspectives, but they deserve to be spelled out because they help to bridge the chasm. Consider, for example, German employer opposition to EU worker participation. A standard class-centered explanation for German employers' active opposition would point to the centrality of worker participation to the struggle between capital and labor. Explicit reference to the constrain-thy-neighbor effects of transnational legislation improves on this explanation by spelling out the *motives* that led German employers to join a class war on this issue. These motives include the firm-centered desire to maintain the conditions for what Hall and Soskice (2001, p. 57) call "institutional arbitrage." Unlike Fioretos (2001), who emphasizes employers' desire to preserve the comparative institutional advantages of their *own* national production regime, a firm-centered perspective that incorporates constrain-thy-neighbor effects can explain why German employers opposed EU worker participation directives that were inspired by the German model.

The debate on whether varieties of capitalism will converge has moved beyond its initial focus on the pressures associated with intensified competition, as scholars have come to recognize that the battle of the systems is fought in the political as much as in the economic realm (e.g., Hancké, Rhodes, & Thatcher, 2007). The various political arenas of the European Union offer ample opportunity to observe the strategies employed by judges, interest groups, members of the European Parliament, commissioners, heads of government, and so on to promote their favorite brand of capitalism at the European level (Callaghan, 2010; Callaghan & Höpner, 2005; Höpner & Schäfer, 2008). The present article contributes to a better understanding of the convergence pressures associated with European integration by spelling out the conditions under which key interest groups strive to preserve or eliminate regime competition.

The relationship among constrain-thy-neighbor effects, interest group cohesion, and lobbying effectiveness merits further exploration. Are employers more likely to get their way where they unite at the transnational level? Paradoxically, the opposite may be true because positive constrain-thy-neighbor considerations that undermine transnational intraclass solidarity are more likely to mobilize broad cross-class political coalitions at the national level than are negative constrain-thy-neighbor effects that reinforce intraclass solidarity.[3] Casual evidence supports this hypothesis. German politicians on the Left and Right shared German employers' opposition to the EU takeover directives, most visibly in the European Parliament, where the 2001 proposal

was rejected by all but one of Germany's 99 delegates (Callaghan & Höpner, 2005). German employers' opposition to the EU worker participation directives, by contrast, was persistently ignored by German governments, regardless of who was in power (Callaghan, 2006, pp. 72-75).

Additional case studies would shed further light on the relevance of positive and negative constrain-thy-neighbor effects for transnational interest group cohesion and for cross-border cooperation more generally. Constrain-thy-neighbor effects apply to transnational legislative and policy initiatives across a broad range of issue areas, including environmental standards, corporate taxation, labor laws, the removal of barriers to trade, rules concerning the prisoners of war, and so on. Positive constrain-thy-neighbor effects can be expected to undermine cross-border cooperation wherever the groups in question are competitors as well as peers. Producers competing on product markets, workers competing for jobs, governments competing for tax revenue, or soldiers competing on the battle field all fall into this category. Negative constrain-thy-neighbor effects can be expected to strengthen cross-border cooperation in the fight against transnational legislation wherever those endorsing constraints on others have reason to fear that this endorsement will come back to haunt them in the form of tighter constraints on themselves. Where both effects apply, empirical research helps determine how actors weigh these competing concerns.

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Notes

1. In 2007, the Union of Industrial and Employers' Confederations of Europe (UNICE) changed its name to BusinessEurope. Because the legislative proposals examined here predate the name change, the article refers only to UNICE.
2. Workers and suppliers in doubt that their relationship with a particular firm will last have a weaker incentive to acquire nontransferable 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.
3. Smith (2000) makes a similar argument with regard to other factors that influence business cohesion.

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