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The Marketisation of European Corporate Control: A Critical Political Economy Perspective

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The Marketisation of European Corporate Control: A Critical Political Economy Perspective

BASTIAAN VAN APELDOORN & LAURA HORN

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> We are entering into a new phase in EU corporate governance. More than ever, *our action plan must be focused and based on a solid assessment of actual needs of market players and investors.*[1]

As Charlie McCreevy, the European Commissioner for the Internal Market, emphasises, the European Union (EU) is witnessing a transformation of its regulation of corporate governance – that is, those practices that define and reflect the power relations within the corporation and the way, and to which purpose, it is run. At the heart of corporate governance is the issue of corporate ownership and control. The market for corporate control, where the commodity traded is control rights tied to a company's shares, is assigned an ever greater role in the external governance of corporations. Yet, at the same time, (cross-border) takeovers are still highly contested, and the envisaged pan-European market for corporate control clashes with national regulations, protective measures and sentiments. Although there has been a steep rise in European merger and acquisition activity, most notably in hostile takeovers,[2] an unfettered European market for corporate control is still far from an economic and legal reality.

It is in this context that we see the changes in the regulation of corporate governance in the EU as an attempt, initiated and promoted mainly by the European Commission, to develop an EU-level regulatory framework aimed at the further development of a European market for corporate control. Rejecting the notion that changes in corporate governance regulation can simply be reduced to anonymous market pressures selecting the most efficient arrangements,[3] we argue that it is essential to identify the inherently political and partly contingent underpinnings of this marketisation process. To this end, we develop a critical political economy perspective that draws upon both Marx's analysis of capital as a social relation and Polanyi's 'institutionalist' insights into the emergence of market society.[4] The point of departure here is that markets are not the result of people's supposedly innate propensity to 'barter, truck and exchange' (*pace* Adam Smith), but are social and political constructs.

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We argue that such a construction is currently taking place at the level of supranational socioeconomic governance within the EU, where we see a process of what we call marketisation of corporate control as part of a broader European marketisation project. We claim that this project is key to understanding current changes in European corporate governance, and contemporary European capitalism more broadly. Although structural transformations such as the globalisation of capital markets[5] or the financialisation of contemporary capitalism[6] should undoubtedly figure prominently in any causal account of the aforementioned changes, such structural accounts by themselves cannot offer a complete explanation. They are incomplete inasmuch as they overlook the role of political and social agency in enabling and effecting these structural changes. The point of departure for the analysis is that a critical role is played by the EU and by the agency of the transnational social and political forces in constituting what we see as a European *political* project. In other words, to the extent that European corporate governance is subject to processes of globalisation and financialisation, this is in part because of the manner in which this transnational project advances the marketisation of European corporate control.

The purpose of this article is thus two-fold. First, we seek to conceptualise the notion of a marketisation of corporate control in terms of the social and political constitution of markets. Second, we seek to illustrate this by examining how the marketisation of corporate control has taken shape as a concrete political project within the EU.[7] Taken together, we intend to show the political nature of current changes taking place in European corporate governance, rendering contingent what both policy makers and academics often portray as necessary – that is, subjecting the control of corporations, and hence the underlying social relations, to the discipline of the market. In this way, we go beyond not only mainstream accounts in law and economics, which often present the contingent as necessary (and inevitable) in the name of efficiency,[8] but also the 'varieties of capitalism' literature, which, while viewing corporate governance regimes as a critical part of a wider institutional ensemble, tends to take those institutions as given and remains rather apolitical and ahistorical in much of its analysis.[9] In particular, insofar as this literature seeks to account for any institutional change, it is reduced to exogenous influences (that is, globalisation). There is consequently a failure to acknowledge not only the extent to which these transformations are bound up with a political project, but also how this political project is constituted *transnationally* – that is, extending across and transcending different territorial 'levels' rather than contained within separate national states constrained by outside forces.[10] Instead of explaining the existing national variety of capitalism, then, our aim is to contribute to an understanding of the transnational transformation of European capitalism, by analysing the case of corporate control and by arguing how this is in part driven by a transnational marketisation offensive.

The remainder of this article proceeds as follows. In the first part, we discuss the marketisation of corporate control from a theoretical and historical perspective. We outline the institutional preconditions that have to be met for markets to develop and explore how, in the case of corporate control, the rise of the joint-stock company and the concomitant institution of the stock market fulfilled

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several of these preconditions. At the same time, during most of the twentieth century, different regulatory and structural developments impaired a full marketisation of corporate control, and hence the commodification of social relations that make up the firm. In the second part, we apply our conceptualisation of the marketisation of corporate control to the concrete context of the changing political economy of the EU. Here we describe and analyse a number of recent policy initiatives, as well as their underpinning discourse, which we see as an attempt to promote the institutional preconditions for a European market for corporate control.

The marketisation of corporate control in a theoretical and historical perspective: *The Modern Corporation and Private Property* revisited

The issue of corporate control – the control over strategic decision making within the corporation[11] – was brought into being with the rise of the joint-stock company or modern corporation. In their classic study, *The Modern Corporation and Private Property*, Adolf Berle and Gardiner Means argued that this corporate revolution brought about a gradual separation of ownership and control, breaking the link between private property and social power that is seen as a defining feature of capitalist society.[12] As ownership had become dispersed among many shareholders, each holding only a small portion of the shares and unable to overcome their collective action problems, corporate control allegedly came into the hands of a new 'class' of professional managers, free to pursue strategies other than that of profit maximisation.[13] Contrary to this managerialist thesis, however, we argue that there never was a full severance of ownership and control, and that, to the extent that a severance did take place, this is now being reversed through a reconstitution of this link through the market. To understand how this took place, we have first to examine the constitution of capitalist markets in general.

Marketisation: institutional preconditions for markets

Although markets have existed throughout the ages, it is only when commodities are specifically produced for the market and the production process itself is regulated by the market that we witness the emergence of a *market economy*, which 'can only exist in a market society' in the sense that such an economy involves the subordination of 'the substance of society itself to the laws of the market'.[14] In what thus becomes capitalist production, the market constitutes not so much an opportunity but an *imperative*. In such 'a unique system of market dependence [. . .] the dictates of the capitalist market – its imperatives of competition, accumulation, profit maximisation, and increasing labour productivity – regulate not only all economic transactions but social relations in general'.[15] Social relations between people then come to appear as 'social relations between things'.[16] Yet markets and market society are not spontaneous orders, but rather are socially and politically constructed.[17] Here, we distinguish what we consider five key interrelated and partly co-constitutive institutional preconditions for the development

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of (capitalist) markets. These preconditions will subsequently guide our understanding of the marketisation of corporate control.

First, for a market to exist there need to be *commodities*. Marx wrote that '[t]he commodity is, first of all, an external object, a thing which through its qualities satisfies human needs of whatever kind'.[18] For goods to become a commodity, they need to be transferable to others through the medium of exchange.[19] This transferability on the market requires an 'externality' that is not so much a property of the object itself, but rather an effect of specific social relations. Thus, under capitalist social relations goods are produced directly for the market, as commodities. However, in capitalism there are also objects which are not produced for the market, but are nevertheless treated as such. With Polanyi we might call these 'fictitious commodities' – while Polanyi distinguished land, labour and money as such fictitious commodities,[20] we argue that the commodity 'corporate control' may also be conceptualised in this way. Fictitious commodities require an 'externalisation' that is dependent upon prior social and politico-legal constructions through which these 'things' are separated from their natural or social environment: '[t]he separation, or alienation, of things as discrete entities from their social settings, which explain their nature and their existence, is a precondition for their commodification'.[21] In fact, some 'objects', rather than being externalised so that they can be commodified, owe their very existence to certain regulations or laws. Shares are of course a case in point.

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Second, since 'commodities cannot themselves go to market and perform exchanges' markets depend on people as the 'possessors of commodities', as 'owners of private property'.[22] The importance of property rights for the existence of markets is of course recognised by every strand of economics, but it remains important to stress what it means in terms of social power relations. In a capitalist society, market relations between people owning commodities are relations of formal equality, and indeed have to be.[23] Yet this equality is only present in the realm of exchange, and conceals the fundamental power asymmetry residing in the social relations of capitalist production as constituted by capitalist property relations.

Third, as a medium of exchange, money is needed as a universal equivalent in which the value of all other commodities can be expressed as a price. Hence, money is needed to ensure *equality of exchange*.[24] Money also permits 'the separation of sales and purchases in space and time',[25] and therefore allows us to move beyond direct barter, as well as to enable the rise of credit system, which has been critical for the expansion of capitalist production and markets.[26] Moreover, money is fundamental for capitalism as it is this that allows capitalist power relations, the extraction of surplus value, to operate behind the veil of exchange relations.[27]

Fourth, capitalist markets are dependent upon the unfettered operation of the price mechanism – that is, the absence of any 'interference with the adjustment of price to changed market conditions'.[28] At the same time, as a market needs a plurality of independent buyers and sellers, there need to be a sufficient number of people willing and able to buy or sell. This is also needed to ensure that there is some measure of free competition – the principle upon which the price mechanism rests. It is in this way that, with a sufficient number of buyers and

sellers, constituted as 'free' (to enter into any contract) and 'equal' (before the law) agents, the capitalist realm of market exchange, 'the exclusive realm of Freedom, Equality, Property and Bentham [...] a very Eden of innate rights of man', comes to full bloom.[29]

Fifth, as support for this realm of freedom, markets depend on what Neil Fligstein calls rules of exchange, which define who can transact with whom and the conditions under which transactions are carried out – for example, rules pertaining to shipping, billing, insurance, exchange of money and the enforcement of contracts.[30] These rules enable markets to function inasmuch as their enforcement (including the enforcement of contracts) is necessary for market actors to trust that they get what they have bargained for.

These preconditions are of course not brought about by the market itself; they are brought about politically, through the state.[31] It is the state that needs to enable certain 'things' to be turned into commodities, in particular enabling the creation and reproduction of fictitious commodities;[32] creating and enforcing property rights, issuing and sustaining the value of money; ensuring sufficiently competitive markets through, for example, competition law, and creating and enforcing rules pertaining to market contracts and other forms of exchange.[33] We thus understand marketisation as a process that starts with bringing about the institutional (regulatory) preconditions for markets to arise and develop, thereby extending the market mechanism to new areas of social life. In terms of the creation of markets, the marketisation of corporate control is bound up with the development of the capital market, and ultimately that of the market for corporate control. The origins of these markets lie in the emergence of the modern corporation as the dominant production unit.

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Corporate capitalism and the separation of ownership and management

As William Roy has shown, the corporation was a creation of the state and it developed from a quasi-government agency to a fully *privatised* institution solely accountable to its private owners (shareholders) and controlling large sections of industry, towards end of the nineteenth century.[34] This transformation of the corporation into what it is today, the epitome of private power, also transformed the nature and composition of the capitalist class, as well as its relations with labour.

With regard to the capitalist class it must be noted that, on the one hand, the joint-stock company implied a socialisation of capital, or what Marx saw as 'the abolition of capital as private property within the confines of the capitalist mode of production'.[35] On the other hand, far from leading to the dissolution of the capitalist class as managerialist writers had claimed, what took place was a socialisation of capital *within one class*,[36] lending it a coherence that was previously unattainable, as well as a liquidity through which it could wield its power much more flexibly. The basis of this transformation of capitalist private property has been the separation of ownership and management (rather than control) through the externalisation of the former into an object – in the form of shares – transferable through market exchange. Corporate ownership was thus separated from the social context in which it was formerly embedded – that is, the social relations in which the firm was owned and managed by a

single owner-entrepreneur. Marx saw this separation as leading to a bifurcation of the capitalist class because it implied the '[t]ransformation of the actual functioning capitalist into a mere manager, in charge of other people's capital, and of the capital owner into a mere owner, a mere money capitalist'.[37]

As such, the corporate form also transformed the relations between capital and labour. Inasmuch as corporate capital constituted a form of indirect and often impersonal possession,[38] relations between the owners of capital and those who ultimately produce the surplus value also became more indirect and impersonal, mediated by the bureaucracy of professional management. Indeed, these relations became so indirect that, as Berle and Means claim, with the corporate revolution the 'old atom of ownership was dissolved into its component parts, control and beneficial ownership'.[39] Seen thus, '[t]he property rights of individuals are transformed into mere financial claims upon the company'.[40] Yet, attached to these property titles are also rights with respect to control over the corporation, in particular the right to vote at annual general meetings in which the directors of a company are (re-) appointed. These (potential) claims to corporate control (as attached to corporate ownership), are thus also turned into commodities that are traded on the stock market.

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Rather than being a market where new capital is raised and efficiently allocated, the stock market soon developed into a 'mere market for the circulation of property rights as such'.[41] We can also argue that with the joint-stock company and the concomitant institution of the stock market, money capital itself could tendentially develop into 'an independent power, as pure capitalist property external to production and commodity circulation'.[42] However, the potentially disciplinary effects of this liberation of money capital *vis-à-vis* productive capital were for a long time not realised. In particular, from the inter-war period onwards, more and more institutional and structural barriers to that capital market discipline were being erected, such that, as Michel Aglietta and Antoine Rebérioux observe, at least until the 1970s 'corporate governance, though assuming a different form on each side of the Atlantic, nevertheless concurred on one point: the weakness of market mechanisms in general, and of capital market mechanisms in particular'.[43]

In the United States, the lack of capital market discipline was the result not so much of the dispersion of ownership *per se*, but of the growth of state law protecting firms from hostile takeovers from the 1930s onwards.[44] The resulting absence of a market for corporate control was a crucial element in the rise of 'corporate liberalism',[45] in which the modern corporation became the central organisation of capitalist society and relatively detached from the property-owning bourgeoisie, giving space to a relatively autonomous managerial class.[46]

In continental Western Europe, the absence of markets for corporate control has been critical for the development of so-called 'non-liberal' varieties of capitalism.[47] Rather than coinciding with managerialism, the absence of capital market discipline here was bound up with the continued control – often through constructions like cross-shareholdings, pyramids and multiple voting rights – by large blockholders such as banks, other industrial corporations or families. These ownership and control structures were backed up by a certain legal and regulatory framework and constituted *structural* impediments to the marketisation of corporate

control.[48] These impediments enabled a corporate governance regime organised around stable coalitions between blockholders, managers and, to varying degrees, workers. Owners here represented a form of *committed capital* with a strategic interest, as opposed to *liquid capital* having a mere financial interest.[49] Committed capital is bound to a particular firm, and a particular set of institutionalised social relations that make up that firm. This in turn gives managers, and, under certain conditions, workers some power *vis-à-vis* these owners. From the perspective of workers, having stable large blockowners that are 'insiders' to the firm means that one has owners with whom one can bargain. Here, the social relations between capital and labour are still embedded in personal social interaction.

With a process that started in the closing decades of the twentieth century, some of these regulatory and structural limitations to the discipline of the capital market, on both sides of the Atlantic, have now been or are in the process of being undone. Before we go on to analyse how this process is unfolding as a political project in the EU, we should further conceptualise what we mean by the process of the marketisation of corporate control.

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The marketisation of corporate control and the (re-)integration of ownership and control through the market mechanism

We define the marketisation of corporate control as a process through which who controls the corporation and to what purpose it is run become increasingly mediated by the stock market – that is, through the share price as the regulative mechanism. Abandoning the conventional premise that control has to be exercised by a single actor or a group of actors displaying at least a 'minimum level' of cooperation,[50] we argue that what we call market-based control is exercised collectively by a large number of shareholders without any coordination taking place between them except through the market. Thus also in the case of completely dispersed share ownership – what normally, in the tradition of Berle and Means, would be referred to as a complete separation of ownership and control – we can observe a form of owner control, one that is not based on voice, but primarily on the power of exit.[51] This exit power is strongest under the conditions of a fully fledged market for corporate control in which shareholders can exit *en masse*.[52]

Yet a purely market-based mode of control is still rare as corporate ownership continues to be less than completely dispersed. On the one hand, we witness a re-concentration of ownership in the form of institutional investors such as pension funds, mutual funds, hedge funds and so on. On the other hand, in continental Europe we also continue to observe (albeit to a lesser degree than before) the relative concentration of ownership into the hands of 'traditional' blockholders.[53] Our argument, however, is that these forms of (direct) control are also increasingly subject to market forces – that is, to the regulative mechanism of the share price. For instance, although institutional investors increasingly own such large stakes that their liquidity is therefore limited, making them all the more interested in exercising control,[54] the 'voice' that they seek and gain is still backed up by the power of 'exit', even if this power is somewhat tempered in the very short run.

Institutional investors (not just the more aggressive hedge funds) adopt a purely financial perspective, or what in Marxian terms we would call the perspective of money capital. What these 'investors' do not display, then, is loyalty to the firm of which they own a substantial stake.[55] Although the more traditional block-owners of continental Europe may be expected to display more loyalty, there is evidence that they too – under the increasing pressures as well as temptations of the capital market – come to adopt a money capital perspective.[56]

This emergence of a more market-based form of corporate control across various established patterns of control depends on sufficiently liquid capital markets, ultimately backed up by a market for corporate control. This means, first, that ownership is not so concentrated as to make most corporations essentially privately held firms; second, that a large number of those owners is able and, under the right market conditions, willing to sell their stakes; and third, that the buying and selling of shares can actually take place to such an extent that a single market actor can gain full control over what then is no longer an independent enterprise. We have to treat the fulfilment of these conditions as a continuum – the more these markets develop, the more corporate control will be mediated by the market.

Although institutionally overlapping, an analytical distinction must be made between capital markets and markets for corporate control.[57] While the trading of companies has been a factor in economic life in early capitalist times and even before, the market for corporate control is a fairly recent development in mature capitalist societies.[58] As a secondary market, it is dependent on the existence of a liquid and functioning capital market, but the commodity traded here is control linked to shares rather than the share as bearer of certain rights to residual profits. There is thus a *qualitative* difference between the capital market and the market for corporate control in that, whereas the former provides liquidity, the commodity traded on the latter is (control over) the very producer of commodities, in other words, the corporation itself becomes a commodity.[59]

In the market for corporate control the share price becomes a disciplinary device *vis-à-vis* management; it is thus seen as the external control mechanism *par excellence* to ensure the protection of shareholder interests, aligning managerial strategies with the latter.[60] Corporate governance, in this context, simply refers to 'how investors get the managers to give them back their money'.[61] The evaluation of company performance takes place solely on financial criteria – in the case of a takeover, 'shareholders are not asked to evaluate complex alternative business plans for the company. Rather, they need only assess who is offering a higher value for their shares.'[62] Technical or structural barriers to takeovers are thus perceived as detrimental to shareholder interests.

Yet even if a particular company may not itself be exposed to the threat of a hostile takeover (for instance, because of certain anti-takeover defences), shareholders of that firm may still obtain leverage over its management through the threat of exit, submitting the performance of firms to monitoring by the capital market and thus to a form of market-based control.[63] Next to the threat of being replaced, managers may also care about the share price because their own financial interests are tied to it through, for example, stock options;[64] or because the company's credit ratings and thus its ability to

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attract loan capital depend on it; or because the company seeks to take over (through equity swaps) other companies whose share price is lower; or, finally, because keeping the share price high is just held to be a standard of good corporate governance that managers have internalised, conditioned by the competitive environment in which they operate.

Marketisation and the discipline of money capital: deepening the commodification of the social relations of the firm

The marketisation of corporate control puts the firm, its management and workers more firmly under the discipline of the capital market and the market for corporate control. As such the marketisation of corporate control represents the tendential emancipation of money capital (*vis-à-vis* production) that, as noted above, had its origins in the corporate form and the separation of ownership from management but was subsequently impaired in its disciplinary power by structural and regulatory impediments. Share ownership, particularly in its liquid rather than committed form, represents money capital (in the Marxian sense) in its most general and abstract form embodying the total process of capital accumulation.[65] As David Harvey writes, money capital 'express[es] the power of capitalist property *outside of* and *external to* any specific process of commodity production'.[66] The money capitalist can abstract from this concrete production process and its material, technical and social requirements, whereas the productive capitalist cannot. As such, in ideal-typical terms, money capital tends to have a more liberal perspective – adhering to Polanyi's ideal of the self-regulating market – than productive capital.[67] With the marketisation of corporate control the perspective of money capital increasingly comes to reign over productive capital. At the level of the firm, this is expressed most clearly in the rise of 'shareholder value' as the new ideological paradigm for corporate governance.[68]

All of this is not to say that the marketisation of corporate control should be viewed simply in terms of a power shift in which owners win and managers lose. What the latter may lose in decision-making autonomy over the firm, they may win in terms of financial compensation and international career mobility. Although we interpret part of the struggle over corporate control as a struggle between different segments of the capitalist class, and the marketisation of corporate control as implying a reconfiguration of those segments and their power relations, we should also examine the implications for the relation with, and position of, labour, as the capitalist class as a whole, including Marx's 'mere manager', comes to adopt more of a money capital perspective.[69]

Empirical evidence offered by Henk De Jong shows that in market-based regimes about three to four times the share of net added value is being paid to shareholders than in regimes characterised by the absence of a market for corporate control.[70] Capital market pressures re-orient managers to short-term financial performance; that is, they have constantly to increase the rate of the return on capital in order to satisfy mobile shareholders. This translates into a corporate strategy of 'downsize and distribute' – to the shareholders.[71] In other words,

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the redistribution between capital and labour is brought about by a process of corporate restructuring imposed by the discipline of money capital.[72]

The corporate restructuring engendered by the external market mechanism of the capital market and the market for corporate control is, in turn, taking the form of increased competition *within* the firm, in particular between its different units for which increasingly specific targets of profitability (or return on capital employed) are imposed. This internalised competition has a significant impact upon established systems of industrial relations. As Martin Höpner has shown, although the institutional form of German industrial relations, in particular co-determination, for now remains largely intact, its *function* changes from that of a project integrally formed on a societal scale to a firm-oriented scheme.[73] As a result of the redistributive consequences of the marketisation of corporate control – with the relative share of labour declining as the firm shrinks its activities to its so-called core competencies – trade union representatives within the firm also become increasingly oriented to micro-efficiency and performance, a re-orientation that acts to undermine unionist macro-solidarity.

What all of this boils down to is that the marketisation of corporate control deepens the commodification of the social relations that make up the firm as they become increasingly mediated by the capital market. These social relations, which are involved in the material and social reproduction of the firm as a social institution, are thus further obscured, as that institution, or pieces thereof, become treated as a commodity. In corporations over which owners can exercise control through the market, labour power thus becomes a commodity owned by the corporation, which in turn is owned *and* controlled by largely anonymous shareholders, or at least by shareholders whose ties to the firm are purely financial. This deepening commodification must be viewed as inherent in the 'fictitious' nature of the commodity into which corporate control, and ultimately the corporation itself, is turned with the rise of a market for corporate control. As Polanyi argued, the 'commodity fiction', in particular with regard to land and labour, is fundamental to the extension of the market principle and the rise of market society:

> The commodity fiction, therefore, supplies a vital organizing principle in regard to the whole of society affecting almost all its institutions in the most varied way, namely, the principle according to which no arrangement or behaviour should be allowed to exist that might prevent the actual functioning of the market mechanism on the lines of the commodity fiction.[74]

With the emergence of a market for corporate control, then, the corporation is assigned an exchange value, which is turned into what Marx called a 'social hieroglyphic'.[75] Once assigned a value, it is difficult to conceive of commodities as having a meaning outside the market space since they suddenly appear to have an intrinsic value separate from their societal embedding.

We see the market for corporate control as constituting an important step in the evolution of capitalism as an ongoing process of commodification. Whereas capital markets, albeit to varying degrees, have developed from the late nineteenth

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century onwards, markets for corporate control have started to emerge only in the final decades at the end of the last century, first in the USA and the UK, and even only much more recently in continental Europe.

The rise of the market for corporate control and the transformation of post-war capitalism

The marketisation of corporate control first started to make its imprint upon corporate governance in the USA (followed by the UK), with the wave of deregulation with respect to (corporate) finance that occurred during the administration of Ronald Reagan.[76] This produced, in combination with technical innovations, a huge takeover boom,[77] which coincided with rising 'shareholder activism' – that is, unhappy (institutional) shareholders clamouring for their 'rights' in what could be described as a 'revolt' on the part of formerly passive owners.[78]

In continental Europe, developments in the 1990s indicate that a market for corporate control is emerging here too.[79] The volume of unsolicited takeover bids in the EU has been increasing steadily, and the number now actually surpasses the number of takeovers in the US.[80] The rise of institutional investors has been staggering in terms of the total financial assets (including shares) they control relative to gross domestic product (GDP),[81] as well as in terms of the proportion of shares they own in Europe's largest companies.[82] Within some of these companies, these financially oriented investors do not only exercise a degree of control over management, but they are in some cases also in the position to decide the company's fate when it is subject to a takeover bid.[83] Moreover, as these are often foreign (in particular British and American) funds, the marketisation of corporate control coincides with a transnationalisation of corporate control. Concomitantly with the rise of institutional investors there has also been a relative decline of traditional large blockowners, above all of the state as owner with the privatisation waves of the 1980s and 1990s, as well as a re-orientation of remaining blockholders towards maximising the return on their long-standing investment. All of this may be seen as indicative of a tendential rise of a shareholder capitalism even within continental Europe, threatening the erosion of Europe's non-liberal varieties of capitalism premised on stable coalitions of so-called stakeholders.[84]

In creating the conditions for this European shareholder capitalism to emerge, a critical role, both directly and indirectly, is played by the process of European integration, which, since the end of the 1980s, has been driven by a largely neo-liberal marketisation project. We do not claim that the regulatory changes with regard to corporate governance exclusively emanate from the EU. Rather, this regulatory transformation must be viewed as a transnational process where changes take place simultaneously at different levels. What we see as a project of market liberalisation at the EU level must be taken as both an expression and a constituting force of this transnational process. It is in this sense that many of the recent regulatory changes on the national level can only be understood in the context of the European integration process.

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The marketisation of corporate control as a European project

Adopting a critical transnational political economy perspective that focuses on the socioeconomic content of the integration process as an outcome of political and ideological struggles within a transnational political arena,[85] we interpret the marketisation of corporate control as a *political* project. By this we refer to 'initiatives and propositions that, as pragmatic responses to concrete national and European problems, conceptually and strategically further the process of socio-economic, societal and institutional restructuring'.[86] This project is as part and parcel of a broader neoliberal project of European integration, supported and to an extent propagated by globalising European capital since the early 1990s. It has become manifest in the whole internal market programme, within Economic and Monetary Union (EMU), and with efforts to promote the liberalisation of European labour markets (and thus the further commodification of labour) in the name of 'competitiveness'. The role of the European Commission in establishing and executing this project is crucial. Yet the European Commission, although indeed an important supranational public actor, whose role as policy entrepreneur is also strongly confirmed by our case of European corporate governance regulation, must not be interpreted as an autonomous actor in the way some 'supranationalist' accounts of European integration tend to do.[87] Rather, the Commission can be viewed as a key public actor within the EU as a 'multi-level state formation',[88] and as such *embedded* in a particular configuration of transnational social forces – first and foremost, those forces bound up with transnational capital. As such, the agency of the Commission must be seen as shaped by a concomitant transnational (and potentially hegemonic) construction and articulation of interests.[89]

Since the late 1990s the European marketisation project has been entering the area of corporate control. As indicated, the marketisation of corporate control is dependent upon the development of an active and liquid capital market and, ultimately, a functioning market for corporate control. The former has in fact been an integral part of the internal market programme.[90] As we argue below, the marketisation of corporate governance and specifically of corporate control has subsequently been built upon this integration of Europe's capital markets.

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Financial market integration and the marketisation of European corporate governance

The speed with which financial market integration was implemented was at first rather impressive, helped along by the 'Europhoria' in the second half of the 1980s. Yet, it was only in the second half of the 1990s that the neoliberal project fully took shape and rose towards hegemony, at least at the level of the European elite discourse.[91] In this context, a number of new initiatives have been undertaken by the EU to accelerate and complete the creation of the single financial market. These initiatives, in tune with the broader neoliberal marketisation project, started with the Cardiff Council of 1998, which called for the Commission to develop an action plan for removing the remaining obstacles to an integrated financial market. The Financial Services Action Plan (FSAP) turned financial market integration into one of the EU's top priorities.[92]

The FSAP constitutes an integral part of the Commission's 'Lisbon strategy', which articulates the goal of competitiveness with that of 'social cohesion', but in a way that makes the latter subordinate to the exigencies of the former, as defined by a neoliberal competitiveness discourse underpinning the neoliberal integration project, and widening its appeal across different social forces.[93] Although the Lisbon 'reform process' has recently come under much criticism because of its lack of implementation, most progress has in fact been made in the area of financial market integration under the heading of the FSAP.[94] The then Commissioner for the Internal Market, Frits Bolkestein, explained how this 'core of the Lisbon strategy' is bound up with the goal of competitiveness:

> Without a fully integrated financial services and capital market in Europe we shall be unable to release the economic opportunities that will underpin the Union's new competitiveness. Without this the cost of capital will remain too high and the yields on assets unnecessarily low.[95]

In other words, integrating financial markets is about 'sufficiently rewarding' holders of liquid assets. It is thus about a redistribution from 'stakeholders' to shareholders, though at the same time the claim is upheld that financial market integration 'will lead to a higher quality of life for all European citizens. A large, more liquid capital market in Europe will create investment, more growth, more innovation, more jobs and higher incomes.'[96]

The marketisation of corporate control constitutes an increasingly central element of the Commission's overall strategy towards (financial) market integration in the EU. The Commission's 2003 Action Plan for 'Modernising Company Law and Enhancing Corporate Governance' frames its plans for corporate governance reform essentially in the same notions of competitiveness and efficiency that also underlie its agenda for capital market integration, by arguing that 'a dynamic and flexible company law is essential for deepening the internal market and building an integrated European capital market. An effective approach will foster the global efficiency and competitiveness of business in the EU [. . .] and will help to strengthen shareholder rights.'[97]

In the next section, we illustrate the notion of the marketisation of corporate control by looking at a number of concrete regulatory initiatives. By interpreting these in terms of bringing about preconditions for a capitalist market by the state (or, in this case, the supranational agency of the Commission), we stress the fundamentally political nature of this process. While our main focus is the discursive construction of the marketisation project and identifying the overall ideological and strategic thrust of this neoliberal offensive,[98] we will also, albeit to a lesser extent, seek to demonstrate how this marketisation project has been translated in and mediated by concrete policy instruments.

Establishing the preconditions

The EU continues to play a vital role in establishing a regulatory framework conducive to the further integration of European capital markets. As McCreevy

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argues, 'financial services and capital market integration is one of the main roads to improved competitiveness for the EU financial sector and the European economy as a whole'.[99] Regulation is increasingly seen as a means to stabilise and improve market conditions, rather than to provide for social cohesion by taking the edge off the societally adverse consequences of the capitalist market system.[100] Bolkestein put this very bluntly by asserting that 'the responsibility of the regulator is to set up the framework, which then enables the markets to play their disciplining role in an efficient way'.[101]

It appears that, within the framework of European market integration, the purpose of regulation is increasingly assumed to be to serve the exigencies of 'efficient' and well-functioning capitalist markets. At the same time, it is regulation that establishes the preconditions necessary for the formation and maintenance of these markets in the first place:

> There is no doubt that, particularly in financial markets, regulation has a crucial role to play. Without legal certainty, without reliable information, without clear framework rules markets cannot work for long. So a stable, reliable and transparent regulatory environment is essential. But [i]t is economic freedom that lets markets best play their role [...] Legislation has to help, not hinder, this process – *working with the ebbs and flows of markets*.[102]

We now turn to the five interrelated and mutually constitutive institutional preconditions for a capitalist market (for corporate control), and their articulation in regulatory initiatives pertaining to corporate governance in the EU. To this aim, we identify the objectives underlying the discursive construction of the marketisation project. Consequently, we illustrate how, and to what extent, these initiatives have been translated into concrete policies.

Corporate control as a commodity. As noted above, the fictitious commodity of corporate control originated in the separation of ownership and management and the alienability of the former in the form of shares traded on the stock market. Although control rights were in principle attached to this commodity, structural and institutional impediments blocked the development of a fully fledged market for corporate control. As such, the commodification of (control over) the corporation remained limited for a large part of the twentieth century. However, it is precisely this commodity fiction that is now being promoted at the level of EU corporate governance regulation and related policy discourse. Specifically, we observe here the social and political construction of corporate control, and ultimately the corporation itself, as an 'asset' to be traded on the market.[103] The Commission has repeatedly expressed its belief in the efficiency of the market for corporate control or, as Bolkestein put it, a market where 'the good can take over and improve the bad'.[104] As he explained on another occasion:

> Companies must be exposed not just to the scrutiny of their owners but also to that of the wider market. New management may be

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> needed to improve the overall efficiency and thus real investor returns. Even what is sometimes seen as the menace of takeovers offers a valuable discipline to firms and their management.[105]

As an expression of this understanding of the nature of corporate control as a commodity, the 2004 Takeover Directive serves as a prime case in point. Intended to 'facilitate the restructuring of the financial industry [..] and mark an important milestone in the emergence of an open market in EU corporate ownership', and thus to promote the development of a pan-European market for corporate control,[106] it represents an important stepping stone towards the marketisation of corporate control in the EU inasmuch as it not only sets the regulatory stage for further advances in this direction, but also because it promotes the perception of corporations as commodities. While the Member States and the European Parliament rejected several draft versions over national differences in takeover defences and other legal arrangements, the perception of corporate control as a commodity exchangeable on the market was not questioned at all.[107] Although the compromise form of the 2004 Takeover Directive, which had been watered down considerably in the European Parliament, provides Member States and firms with a certain degree of optionality with regard to the removal of structural barriers and the neutrality of management in case of a takeover bid,[108] these provisions have nevertheless been established as the dominant norm. This then helps to underpin the discursive and political construction of corporate control, and of the corporation, as a commodity. At the same time, the non-optional provisions of the Directive introduce a regulatory setting that establishes a variety of measures conducive to the other preconditions discussed below, in particular disclosure and transparency rules. These can be perceived as 'a cornerstone of the effective operation of capital markets and the market of corporate control'.[109]

The Commission stresses the importance of a regulatory framework enhancing transparency by pointing out that 'our action has been based on two key principles: (1) bringing more transparency in the way companies operate; and (2) empowering shareholders'.[110] It is the latter 'key principle' to which we now turn.

'The shareholder democracy': property rights discourses. Central to our argument about the marketisation of corporate control are the property rights attached to the 'commodity' of corporate control and the claims to residual profits. According to Fligstein, a 'world market for corporate control' has not emerged yet since 'property rights were at the core of the relations between national elites and states. Most national elites have resisted having property rights transferred to the highest bidder because they would lose power.'[111] While this may hold for the creation of markets by nation-states, the emerging marketisation project in the EU is clearly of a transnational nature – that is, it transcends the interests of purely national elites or classes and is in fact premised on an evolving transnational class structure or the formation of a (European and global) transnational capitalist class.[112] It aims at the constitution of property rights, detached from national concerns, on the basis of transnational capitalist interests. National regulation upholding national interests

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thus clashes with the transnational orientation of the marketisation process. An illustration would be the Commission's crusade against 'golden shares' and other instruments allowing governments to retain majority control over corporations.[113]

These arguments are based on the assumption not only that corporate control ought to be exclusively in the hands of the shareholders, but also that no shareholders should be privileged (through certain legal constructions as golden shares, multiple voting rights and so on) over any other shareholders, in particular so called minority shareholders. This assumption crucially informs the regulatory initiatives aimed at strengthening the position of (minority) shareholders; as the Commission puts it, 'shareholders should be able to play an effective role as the owners of the companies in which they invest'.[114] For the Commission this is a matter of shareholders exercising their property rights, including control rights. Considering the latter to be 'fundamental rights',[115] the Commission understands its own function as 'to sort out the plumbing for the exercise of cross-border voting rights. We will guard against disturbing the proper balance between shareholders and management.'[116]

The regulatory initiatives aimed at providing (minority) shareholder protection, and strengthening the position of shareholders in general, are framed in terms of a 'shareholder democracy'.[117] The underlying assumption of 'shareholder democracy' is that control by the owners reduces the need for regulation and will further the efficiency of the market. Yet, it is acknowledged that regulation is needed to bring about this situation in the first place, that is to secure the (property) rights of shareholders and turn them collectively into 'king or queen',[118] equal in rights among each other and sovereign *vis-à-vis* any other group within the firm.

While so-called academic experts and capital market actors are generally in favour of strengthening the proportionality of ownership and control, the principle of 'one share one vote' is heavily contested.[119] Most importantly, Member States in which publicly listed companies have complex multiple voting right schemes (such as in Scandinavia) as well as some business associations oppose the introduction of binding rules in this respect. In light of these controversies, the Commission currently is conducting a study in which the various national and international practices pertaining to ownership and control, and the economic impact of deviations from the principle of proportionality, are being mapped and analysed. The general expectation is that the outcome of this study will provide the Commission with new ammunition to promote the introduction of this principle.[120]

Money – mediating transnational exchange. Money as a medium of exchange is yet another essential precondition for capitalist market systems. In the context of the integration of European capital markets, the pre-eminent project in this regard is the EMU.[121] As Hans-Jürgen Bieling argues, 'its structural impact has been very strong, [promoting] far-reaching changes in the overall mode of reproduction of European capitalism'.[122] Stimulating corporations and financial institutions to operate on a pan-European scale, monetary union promotes cross-border trade and investment and hence cross-border ownership structures. Specifically,

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'investors' are led to diversify their portfolios across the eurozone as the single currency reduces transaction costs for cross-border trade in stocks and bonds.[123] This reinforces the trend towards a transnationalisation of corporate control inasmuch as EMU and its concomitant regulatory framework are increasingly aimed at providing cross-border investment opportunities for transnational financial capital. As cross-border mergers and takeovers are also facilitated in this way, EMU promotes the further development of a pan-European market for corporate control.[124]

With regard to the market for corporate control, it is also notable that the 'currency' used in acquisitions and takeovers can also be shares. Since these are ultimately mediated through money themselves, this practice is not at odds with the above arguments. Yet it entails even more clearly another precondition for the functioning of a capitalist market, namely, regulation to enhance transparency and disclosure.

Getting the price (mechanism) right – transparency and disclosure. The absence of practices interfering with the free operation of the price mechanism, as well as regulation that actively helps to ensure a sufficient degree of competition, are essential for the functioning of a capitalist market system. With regard to the market for corporate control, the latter implies the development of an integrated and sufficiently liquid European capital market (that is, with sufficient buyers and sellers and free competition amongst them or their representatives). As we have seen, this has been an integral part of the single market programme from the start. The former implies that share prices (as a financial asset) are free to adjust to market conditions and to the assessment of supposedly 'rational' investors. To enable investors to make decisions about corporate control transactions they need to be able to base their decisions on reliable information about the 'value' of corporations. Here the disclosure of corporate and financial assets plays an important role for the functioning of the price mechanism.[125] As Bolkestein argued, 'disclosure elements are a highly effective market-led way of rapidly achieving results [...] better disclosure will help the markets to play their disciplining role'.[126]

Within EU financial market and corporate governance regulation, several regulatory initiatives have been aimed at improving transparency and disclosure, most notably the 2003 Prospectus Directive (2003/71/EC) and the 2004 Transparency Directive (2004/109/EC). Supranational regulation aimed at establishing stable and reliable disclosure standards is in fact indispensable with respect to bringing about a convergence of these standards. This also implies the need for a stable set of EU-wide rules of exchange providing the institutional framework for the functioning of capitalist markets.

The rules of exchange. As McCreevy claims, 'for investors, convergence and equivalence would make it easier to compare the performance of companies and make better investment decisions. Equivalence will also further the integration of global financial markets and thereby promote economic growth and prosperity – not just in the EU but globally.'[127] We find the same reasoning in the OECD Principles of Corporate Governance:

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> The rules and procedures governing the acquisition of corporate control in the capital markets [...] should be clearly articulated and disclosed so that investors understand their rights and recourse. Transactions should occur at transparent prices and under fair conditions that protect the rights of all shareholders according to their class.[128]

As Fligstein argues, 'much of the market-making project is to find ways to stabilise and routinize competition'.[129] Rules of exchange help stabilise and enhance market conditions by ensuring that exchanges occur under conditions that apply to all market participants. This is of particular importance for cross-border corporate governance issues, and for facilitating smooth market access for transnational investors. Again, the removal of national barriers for market participants thus constitutes a vital aspect of the transnational marketisation of corporate control.

The Commission's efforts in establishing preconditions for cross-border transactions should be seen in this context. The Commission has issued a proposal for cross-border voting rights that is currently being discussed in the European Parliament (EP), in which it aims at enabling shareholders to exercise their voting rights in cross-border shareholding.[130] The European Company statute, offering the possibility to set up a Societas Europae (SE) under a single set of rules applying throughout the EU, could also be interpreted as a move towards rendering the rules of exchange pertaining to corporate control more favourable to the interests of (transnational) investors as it facilitates and stimulates the restructuring of European industry and business by easing the cross-border differences between national regulatory environments.

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In lieu of a conclusion: European integration and the marketisation of corporate control

The policy initiatives advanced by the EU exemplify that the regulatory framework is indeed aimed at promoting what we have identified as a marketisation of corporate control through the establishment of the right institutional preconditions. Regulation, in this context, is assumed to have to be adapted to the 'requirements of a dynamic economy', while ever more areas of economic life have to be subjected to the full workings of the capital market – as McCreevy argues, 'we cannot keep important sectors of our economies sheltered from market forces'.[131] The role of European regulators, then, is to 'help the markets to help themselves', since 'ultimately, it is only market participants, many of whom already operate on a pan-European if not global basis, that can drive the necessary changes'.[132]

The ideology underpinning the EU's marketisation project, part of a broader European liberalisation project that has been increasingly defining the socioeconomic content of the integration process since the late 1980s, thus subscribes to Polanyi's organising principle of the self-regulating market. On the other hand, it recognises that the self-regulating market does not come into existence by itself, but that it needs a 'helping hand'. It is the market, or rather capital

compelled by the market to go on expanding itself through continuous accumulation, that needs to establish the necessary discipline, impose a logic of commodification on the firm as a social institution, and restructure European industry. But it is public regulation that needs to enable this process. It is questionable whether with this realisation comes an awareness that regulation is necessary not only to bring new areas of social life under the discipline of the market mechanism and promote the process of marketisation, but also, in a Polanyian vein, to sustain capital accumulation in the longer run by protecting society from the most destructive effects of marketisation, and thus temporarily solve the contradiction that capitalism tends to destroy the social substratum which nourishes it.

The project of the marketisation of corporate control is supported by powerful transnational social forces, in particular those forces that stand to benefit most from it – that is, transnationally mobile financial capital or, more generally, those capitalist interests associated with a money capital perspective.[133] At the same time it important to underline that the marketisation of corporate control is very much a project in the making, and as such is open to contestation by a wide array of actors – among others, Member States trying to protect national champions, business associations seeking to reduce the regulatory and administrative burden, managers seeking to preserve or regain some of their decision-making autonomy, trade unions worrying about the position of (organised) labour, and Members of the European Parliament doubting the compatibility of the marketisation of corporate control with the principles of the European Social Model. Yet, the European Commission continues to cling to its faith in 'the market' as the panacea for Europe's alleged economic ills. Indeed, the above analysis serves as testimony to this. Whether the fiction of the corporation as a commodity can in the end be sustained is another matter.

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Notes

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1. Charlie McCreevy, 'The European Corporate Governance Action Plan: Setting Priorities', Speech at the Second European Corporate Governance Conference, Luxembourg, 28 June 2005 (emphasis added).
2. See, for example, David Wells & Lina Saigol, 'Hostile bids are back: companies have targets in their sights and bankers foresee lucrative transactions', *Financial Times*, 18 February 2004, p. 11; James Politi & Lina Saigol, 'Europe outpaces US in volume of deals', *Financial Times*, 26 September 2005, p. 25; James Politi & Lina Saigol, 'M&A fever surpasses dotcom era – global deal-making for first half of year poised to hit dollars 1,930bn', *Financial Times*, 30 June 2006, p. 17; and James Politi & Lina Saigol, 'Rise in hostile bids pushes M&A to record – unsolicited approaches double last year's figure: switch to shorter-term views fuelling the boom', *Financial Times*, 29 September 2006, p. 21.
3. As maintained by, for example, Henry Hansmann & Reinier Kraakman, 'The End of History for Corporate Law', *Georgetown Law Journal*, Vol. 89, No. 2 (2001), p. 56.
4. What is 'institutionalist' in Polanyi's work is his emphasis on the institutional preconditions (including the enabling role of the state) for a capitalist market economy to emerge and be sustained. In contrast to some more functionalist interpretations of his work though, and in contrast to some 'new institutionalisms', we emphasise from a Marxian political economy perspective that institutions themselves are empty if not for the content given to them by social forces and their struggles. In other words, institutions are the outcome as well as the medium of underlying social relations (cf. Peter A. Hall & Rosemary C. R. Taylor, 'Political

Science and the Three New Institutionalisms', *Political Studies*, Vol. 44, No. 5 (1996), pp. 936–57). Beyond Polanyi our 'institutionalism' is also indebted to work in economic sociology. See, especially, Neil Fligstein, *The Architecture of Markets: An Economic Sociology of Twenty-First Century Capitalist Societies* (Princeton University Press, 2001), and William G. Roy, *Socializing Capital. The Rise of the Large Industrial Corporation in America* (Princeton University Press, 1997).

5. See, for example, Michael Useem, 'Corporate Leadership in a Globalizing Equity Market', *Academy of Management Executive*, Vol. 12, No. 4 (1998), pp. 43–59; Mary O'Sullivan, 'Corporate Governance and Globalisation', *Annals of the American Academy of Political and Social Sciences*, No. 570 (July 2000), pp. 153–72.
6. See, for example, Michel Aglietta & Antoine Rebérioux, *Corporate Governance Adrift: A Critique of Shareholder Value* (Edward Elgar, 2005).
7. Due to the limits of a single journal article, we here limit ourselves to the more modest task of describing and interpreting, informed by a preceding theorisation of the marketisation of this political and ideological project as articulated at the EU-level corporate control.
8. This applies, for example, to much of the so-called agency theory. See Michael Jensen & William H. Meckling, 'Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure', *Journal of Financial Economics*, Vol. 3, No. 4 (1976), pp. 305–60; Eugene Fama & Michael Jensen, 'Separation of Ownership and Control', *Journal of Law and Economics*, Vol. 26, No. 2 (1983), p. 16. In this respect, we may also argue that much of this literature is implicitly or explicity rather normative and prescriptive in its orientation. On this, see also Bastiaan van Apeldoorn, Henk Overbeek & Andreas Nölke, 'The Transnational Politics of Corporate Governance Regulation: Introducing Key Concepts, Questions and Approaches', in Henk Overbeek, Bastiaan van Apeldoorn & Andreas Nölke (eds), *The Transnational Politics of Corporate Governance Regulation* (Routledge, 2007).
9. See Peter A. Hall & David Soskice, 'An Introduction to Varieties of Capitalism', in Peter A. Hall & David Soskice (eds), *Varieties of Capitalism* (Oxford University Press, 2001), pp. 1–68. Whereas we share with the varieties of capitalism approach the notion of the indispensability of public regulation in the constitution of markets, we take public regulation here not just as an independent variable but as part of our *explanandum* – with politics (such as the construction of a particular political project) as the *explanans*. On this, see also van Apeldoorn *et al.*, 'The Transnational Politics of Corporate Governance Regulation'. For a notable exception to the ahistoricity of the varieties of capitalism literature, see Wolfgang Streeck & Kozo Yamamura (eds), *The Origins of Non-Liberal Capitalism* (Cornell University Press, 2002). For a recent attempt to make sense of contemporary changes in historical varieties of capitalism, and to underline the politics of those changes, see Colin Crouch, *Capitalist Diversity and Change. Recombinant Governance and Institutional Entrepreneurs* (Oxford University Press, 2005). Finally, we may also note that although we share the emphasis the approach puts on the role of institutions in the organisation of capitalist political economies, we go beyond the institutional analysis of most of this literature by starting with the institutional preconditions of the capitalist market in general (starting with fundamental categories like 'the commodity), rather than focusing on the institutional dimension of its variation across space. We thus enquire about what much of the varieties of corporatism literature (especially Hall & Sockice, 'An Introduction to Varieties of Capitalism') takes as a given.
10. Bastiaan van Apeldoorn, 'Theorising the Transnational: A Historical Materialist Approach', *Journal of International Relations and Development*, Vol. 7, No. 2 (2004), p. 144.
11. John Scott, *Corporate Business and Capitalist Classes* (Oxford University Press, 1997), p. 37.
12. Adolf A. Berle & Gardiner C. Means, *The Modern Corporation and Private Property* (Transaction Publishers, 1991 [1932]).
13. James Burnham, *The Managerial Revolution* (Greenwood Press, 1975 [1941]), p. 223.
14. Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Beacon Press, 1957 [1944]), p. 71.
15. Ellen M. Wood, *The Origin of Capitalism: A Longer View* (Verso, 2002), p. 7.
16. Karl Marx, *Capital*, Vol. 1 (Penguin: 1990 [1867]), p. 166.
17. cf. Polanyi, *The Great Transformation*.
18. Marx, *Capital*, Vol. 1, p. 125.
19. *Ibid.*, p. 131.
20. Polanyi, *The Great Transformation*, p. 72.
21. Helen Raduntz, 'The Economy of Uncertainty, Marketisation and the Direction of Educational Change', paper presented at the Conference of the Australian Association for Education Research, Brisbane, 1–5 December 2002, p. 3.
22. Marx, *Capital*, Vol. 1, p. 178.

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23. See, for example, Bob Jessop, *The Future of the Capitalist State* (Polity, 2002), p. 39; Marx, *Capital*, Vol. 1, p. 271.
24. David Harvey, *Limits to Capital* (Verso, 1999 [1982]), pp. 19–20.
25. *Ibid*., p. 245.
26. Daniel Ankarloo & Giulio Palermo, 'Anti-Williamson: A Marxian Critique of New Institutional Economics', *Cambridge Journal of Economics*, Vol. 28 (2004), p. 424; Karl Marx, *Capital*, Vol. 3 (Penguin, 1991 [1894]), p. 612.
27. Marx, *Capital*, Vol. 1, pp. 168–9.
28. Polanyi, *The Great Transformation*, p. 69.
29. Marx, *Capital*, Vol. 1, p. 280.
30. Fligstein, *The Architecture of Markets*, p. 35.
31. *Ibid*.; see also Polanyi, *The Great Transformation*; Wood, *The Origin of Capitalism*.
32. See Jessop, *The Future of the Capitalist State*, p. 45.
33. Fligstein, *The Architecture of Markets*, p. 34.
34. Roy, *Socializing Capital*, pp. 16–18; cf. Alfred Chandler, *The Visible Hand: The Managerial Revolution in American Business* (Greenwood, 1977).
35. Marx, *Capital*, Vol. 3, p. 567.
36. Roy, *Socializing Capital*, p. 12.
37. Marx, *Capital*, Vol. 3, pp. 567–8.
38. Roy, *Socializing Capital*, pp. 15–20; 37–8.
39. Berle & Means, *The Modern Corporation*, p. 8.
40. Scott, *Corporate Business and Capitalist Classes*, p. 38; see also Marx, *Capital*, Vol. 3, p. 599.
41. Harvey, *Limits to Capital*, p. 299; see also Douglas Henwood, *Wall Street* (Verso, 1998), p. 57.
42. Harvey, *Limits to Capital*, p. 276.
43. Aglietta & Rebérioux, *Corporate Governance Adrift*, p. 2.
44. Mark Roe, *Strong Managers, Weak Owners: The Political Roots of American Corporate Finance* (Princeton University Press, 1994), p. 230.
45. Kees van der Pijl, *The Making of an Atlantic Ruling Class* (Verso, 1984).
46. The managerialist thesis has in fact never been fully correct, not even in the USA during its so called heyday in the 1960s. See Ronald Dore, William Lazonick & Mary O'Sullivan, 'Varieties of Capitalism in the Twentieth Century', *Oxford Review of Economic Policy*, Vol. 15, No. 4 (1999), p. 109. As many empirical studies have shown, the dispersal of share ownership has only rarely been so advanced as to eliminate any controlling interest. In fact, many corporations, also in the USA, continued to be controlled or at least influenced by large shareowners through a variety of ways, sometimes – in a popular neo-Marxist theory derived from Hilferding – through networks of so called 'finance capitalists' On this see, for example, Maurice Zeitlin, 'Corporate Ownership and Control: The Large Corporation and the Capitalist Class', *American Journal of Sociology*, Vol. 81, No 4 (1974), pp. 1073–119. We argue, however, that if we want to understand the current marketisation of corporate control we have to move beyond these familiar critiques of managerialism, which miss the fundamental point that even in the absence of the ownership of a large block of shares of a single firm, or control by finance capital, capitalist owners may, under certain institutional conditions, still exercise control collectively through the market mechanism.
47. Wolfgang Streeck, *The Transformation of Corporate Governance in Europe: An Overview*, MPIfG Working Papers 01/08, Max Planck Institute for the Study of Societies, Cologne, 2001; Martin Höpner & Gregory Jackson, *An Emerging Market for Corporate Control? The Mannesmann Takeover and German Corporate Governance*, MPIfG Discussion Papers 01/04, Max Planck Institute for the Study of Societies, Cologne, 2001.
48. Ronald J. Gilson, 'The Political Ecology of Takeovers: Thoughts on Harmonizing the European Corporate Governance Environment', *Fordham Law Review*, Vol. 61, No. 161 (1992), p. 181.
49. Gregory Jackson 'Comparative Corporate Governance: Sociological Perspectives', in John Parkinson, Andrew Gamble & Gavin Kelly (eds), *The Political Economy of the Company* (Hart, 2000), pp. 271–3.
50. Scott, *Corporate Business and Capitalist Classes*, p. 50.
51. Albert O. Hirschman, *Exit, Voice and Loyalty* (Harvard University Press, 1970), p. 59; see also Bart Nooteboom, 'Voice- and Exit-Based Forms of Corporate Control: Anglo-American, European, and Japanese', *Journal of Economic Issues*, Vol. 13, No. 4 (1999), pp. 845–60.
52. This notion of market- or exit-based control can in fact also be found in neo-classical agency theory. Fama and Jensen, for instance, argue that '[t]he unrestricted alienability of the residual claims [that is, shares] of

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open corporations', gives these corporations a unique 'external monitoring device' ('Separation of Ownership and Control', p. 16). Agency theory views this in terms of a natural and rational solution to a problem (the agency problem), which might be blocked by the interference of politics (see Michael Jensen, 'Takeovers: Their Causes and Consequences', *Journal of Economic Perspectives*, Vol. 2, No. 1 (1988), pp. 21–48), we adopt the opposite perspective inasmuch as we seek to understand how and why this form of market rule has in fact come into being, suggesting that a political analysis is indispensable.

53. See Bastiaan van Apeldoorn, 'Globalisation, European Integration, and the Transformation of European Corporate Governance the Rise of a European Shareholder Capitalism', paper presented at the annual convention of the European Community Studies Association (ECSA), Madison, Wisconsin, 31 May–2 June 2001; Fabrizio Barca & Marco Becht (eds), *The Control of Corporate Europe* (Oxford University Press, 2001), p. 30.
54. See John C. Coffee, 'Liquidity Versus Control: The Institutional Investor as Corporate Monitor', *Columbia Law Review*, Vol. 91, No. 6 (1991), pp. 1277–366.
55. Martin Höpner, *Wer beherrscht die Unternehmen? Shareholder Value, Managerherrschaft und Mitbestimmung in Deutschland* (Campus, 2003), p. 99.
56. See van Apeldoorn, *Globalisation, European Integration, and the Transformation of European Corporate Governance*.
57. Höpner, *Wer beherrscht die Unternehmen?*, pp. 104ff.
58. Paul Windolf, 'Die neuen Eigentümer: Eine Analyse des Marktes für Unternehmenskontrolle', *Zeitschrift für Soziologie*, Vol. 23, No. 2 (1994), p. 85; Ivo Wildenberg, *De Revolte van de Kapitaalmarkt: Over Fusies, Overnames en de Terugkeer van de Eigenaar-Ondernemer* (Academic Service, 1990), p. 14.
59. Robert Fitch, 'A Reply to O'Connor', *Socialist Register*, Vol. 7 (1971), p. 166; Paul Windolf, 'Die neuen Eigentümer', p. 81.
60. Henry Manne, 'Mergers and the Market for Corporate Control', *The Journal of Political Economy*, Vol. 73, No. 2 (1965), p. 113; see also Jensen & Meckling, 'The Theory of the Firm'.
61. Andrei Shleifer & Robert Vishny, *A Survey of Corporate Governance*, NBER Working Papers, No. WSSS4 1996, p. 4.
62. John Pound, 'The Rise of the Political Model of Corporate Governance and Corporate Control', *New York University Law Review*, Vol. 68, No. 5 (1993), p. 1018.
63. Höpner, *Wer beherrscht die Unternehmen?*, p. 105.
64. *Ibid*., pp. 139–48.
65. Henk Overbeek & Kees van der Pijl, 'Restructuring Capital and Restructuring Hegemony: Neoliberalism and the Unmaking of the Postwar Order', in Henk Overbeek (ed.), *Restructuring Hegemony in the Global Political Economy: The Rise of Transnational Neoliberalism in the 1980s* (Routledge, 1993), p. 3.
66. Harvey, *Limits to Capital*, p. 284 (emphasis in original).
67. Overbeek & van der Pijl, 'Restructuring Capital and Restructuring Hegemony'; Kees van der Pijl, *Transnational Classes and International Relations* (Routledge, 1998), pp. 51–63.
68. William Lazonick & Mary O'Sullivan, 'Maximizing Shareholder Value: A New Ideology for Corporate Governance?', *Economy and Society*, Vol. 29, No. 1 (2000), pp. 13–35; see also Fligstein, *Architecture of Markets*, ch. 7; Aglietta & Rebérioux, *Corporate Governance Adrift*.
69. Van der Pijl, *Transnational Classes and International Relations*.
70. Henk W. de Jong, 'The Governance Structure and Performance of Large European Companies', *Journal of Management and Governance*, Vol. 1, No. 1 (1997), p. 18.
71. Lazonick & O'Sullivan, 'Maximizing Shareholder Value', p. 17.
72. Cf. Aglietta & Rebérioux, *Corporate Governance Adrift*; Robert Boyer, 'Is a Finance-Led Growth Regime a Viable Alternative to Fordism?, *Economy and Society*, Vol. 29, No. 1 (2000), pp. 111–45.
73. Höpner, *Wer beherrscht die Unternehmen?*, p. 210.
74. Polanyi, *The Great Transformation*, p. 73.
75. Marx, *Capital*, Vol. 1, p. 167.
76. Including, crucially, the striking down of all state-level anti-takeover laws by the Supreme Court in 1982. Mark Roe, 'Takeover Politics', in Margaret Blair (ed.), *The Deal Decade* (The Brookings Institution, 1993), p. 335.
77. Blair (ed.) *The Deal Decade*; Douglas Henwood, *Wall Street*.
78. Michael Useem, *Executive Defense: Shareholder Power and Corporate Reorganization* (Harvard University Press, 1993); Wildenberg, *De Revolte van de Kapitaalmarkt*.
79. Höpner & Jackson, 'An Emerging Market for Corporate Control?'; Karel Lannoo, 'A European Perspective on Corporate Governance' *Journal of Common Market Studies*, Vol. 37, No. 2 (1999), pp. 269–94; Karel

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Lannoo & Arman Khachaturyan, *Reform of Corporate Governance in the EU*, Centre for European Policy Studies Papers (CEPS, 2003).

80. Politi & Saigol, 'Europe outpaces US in volume of deals'. The record wave of M&A activity in Europe, including a growing number of hostile bids, also shows now sign of receding, see Politi & Saigol, 'Rise in hostile bids pushes M&A to Record'; Christopher Brown-Humes, 'Debt and equity markets point to continuing boom in M&A', *Financial Times*, 4 November 2006, p. 34.
81. Organisation for Economic Cooperation and Development (OECD), 'Recent Trends: Institutional Investors Statistics', *Financial Market Trends*, Vol. 80, September (2001), pp. 46–52.
82. Organisation for Economic Cooperation and Development (OECD), 'Shareholder Value and the Market for Corporate Control in OECD Countries', *Financial Market Trends*, Vol. 69, February (1998), pp. 15–37.
83. Organisation for Economic Cooperation and Development (OECD), 'The Impact of Institutional Investors on OECD Financial Markets', *Financial Market Trends*, Vol. 68, November (1997), pp. 15–55.
84. See Höpner, *Wer beherrscht die Unternehmen?*; van Apeldoorn, 'Globalisation, Europeanisation and the Transformation of European Corporate Control', Martin Rhodes & Bastiaan van Apeldoorn, 'Capital Unbound? The Transformation of European Corporate Governance', *Journal of European Public Policy*, Vol. 5, No. 3 (1998), pp. 406–27.
85. Alan W. Cafruny & Magnus Ryner (eds), *A Ruined Fortress? Neoliberal Hegemony and Transformation in Europe* (Rowman & Littlefield, 2003); Bastiaan van Apeldoorn, *Transnational Capitalism and the Struggle over European Integration* (Routledge, 2002).
86. Hans-Jürgen Bieling & Jochen Steinhilber, 'Finanzmarktintegration und Corporate Governance in der Europäischen Union', *Zeitschrift für Internationale Beziehungen*, Vol. 9, No. 1 (2002), p. 41 (authors' translation). Employing the concept of a project in terms of a relatively coherent programme, however, should not be taken to imply that there are no contradictions within the project, nor that *a priori* one could expect a smooth implementation of the project.
87. For example, Wayne Sandholtz & Alec Stone Sweet (eds), *European Integration and Supranational Governance* (Oxford University Press, 1998).
88. Jessop, *The Future of the Capitalist State*, p. 205.
89. See van Apeldoorn, *Transnational Capitalism and the Struggle over European Integration.*
90. Hans-Jürgen Bieling, 'Social Forces in the Making of the New European Economy: The Case of Financial Market Integration', *New Political Economy*, Vol. 8, No. 2 (2003), pp. 203–24; see also Jonathan Story & Ingo Walter, *Political Economy of Financial Integration in Europe* (Manchster University Press, 1997).
91. Bieling & Steinhilber, 'Finanzmarktintegration und Corporate Governance', p. 43; van Apeldoorn, *Transnational Capitalism and the Struggle over European Integration.*
92. European Commission, *Financial Services: Implementing the Framework for Financial Markets: Action Plan*, COM (1999) 232, 11 May 1999.
93. Van Apeldoorn, *Transnational Capitalism*, pp. 173–80.
94. European Commission, *Turning the Corner: Preparing the Challenge of the Next Phase of European Capital Market Integration*, 10th FSAP Progress Report (2004), available at http://www.europa.eu.int/comm/internal_market/finances/docs/actionplan/index/progress10_en.pdf (accessed 5 May 2006).
95. Frits Bolkestein, 'Speech at Presidency Conclusion', European Council, Lisbon, 23–4 March 2004.
96. *Ibid*.
97. European Commission, *Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward*, COM (2003) 284 final, 21 May 2003.
98. On the role of discourse in European governance compare Ben Rosamond, 'Imagining the European Economy: "Competetiveness" and the Social Construction of "Europe" as an Economic Space', *New Political Economy*, Vol. 7, No. 2 (2002), pp. 157–77.
99. Charlie McCreevy, 'Regulatory and Supervisory Challenges of Financial Integration', speech at the Lamfalussy London Summer Dinner, London, 27 June 2005.
100. See Polanyi, *The Great Transformation.*
101. Frits Bolkestein, 'Corporate Governance in Europe', speech at the FESE Conference, Amsterdam, 30 February 2003.
102. Charlie McCreevy, 'The Commission's Financial Services Policy 2005–2010', Exchange of Views on Financial Services Policy 2005–2010 Conference, Brussels, 18 July 2005 (emphasis added).
103. Manne, 'Mergers and the Market for Corporate Control', p. 112.
104. Frits Bolkestein, 'Keynote Speech', FESE Convention, London, 23 June 2003.

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105. Frits Bolkestein, 'Speeding up the Consolidation of European Financial Markets', speech held at the Europlace International Financial Forum, Paris, 11 July 2002.
106. European Commission, *Financial Services*, p. 4.
107. Barbara Dauner-Lieb & Marco Lamandini, *The New Proposal of a Directive on Company Law Concerning Takeover Bids and the Achievement of a Level Playing Field, with Particular Reference to the Recommendations of the High Level Group of Company Law Experts set up by the European Commission* (European Parliament, 2002), p. 13.
108. The implementation of the Takeover Directive was slow but was finally completed in 2006. Most Member States have indeed opted out of the board neutrality and the breakthrough rules. For more information on the implementation, see a report by the European Group for Investor Protection, available at http://www.egip.org/docs/EGIP'sconclusions.pdf (accessed 7 December, 2006).
109. Silja Maul & Athanasios Kouloridas, 'The Takeover Bids Directive', *German Law Journal*, Vol. 5, No. 4 (2004), p. 360.
110. McCreevy, *The European Corporate Governance Action Plan*.
111. Fligstein, *The Architecture of Markets*, p. 96.
112. See van Apeldoorn, *Transnational Capitalism*; Bastiaan van Apeldoorn, 'Transnational Class Agency and European Governance: The Case of the European Round Table of Industrialists', *New Political Economy*, Vol. 5, No. 2 (2000), pp. 157–81.
113. In this context, the role of the European Court of Justice is very important. It has repeatedly ruled against golden shares, such as in 2002 (Case C-367/98: *Commission vs. Portugal*, case C-483/88: *Commission vs. France*; case C-503/99: *Commission vs. Belgium*) and 2006 (C-283/04 *Commission vs Netherlands*).
114. McCreevy, *The European Corporate Governance Action Plan*.
115. European Commission, *Fostering an Appropriate Regime for Shareholders' Rights*, consultation document of DG Internal Market (2005), available at http://europa.eu.int/comm/internal_market/company/docs/shareholders/consultation_en.pdf (accessed 5 May 2006), p. 13.
116. Charlie McCreevy, 'Keynote Address', speech held at the ICGN Annual Conference, London, 8 July 2005.
117. European Commission, *Fostering an Appropriate Regime for Shareholders' Rights*, p. 14. In light of these shareholder rights principles, the issue of 'one share one vote' has become one of the main points of debate within the regulation of corporate control in the European Union. According to a recent study, 65 per cent of listed companies in the EU apply the 'one share one vote' principle (Association of British Insurers and Deminor Rating, *Application of the One Share – One Vote Principle in Europe*, 2005, available at http://www.abi.org.uk/BookShop/ResearchReports/Deminor_Report.pdf, accessed 5 May 2006). More than a third of listed European companies thus still have unequal voting rights. *The Economist*, condemning 'Europe's unfair voting rights', claims that this 'means that Europe is unlikely to develop soon the lively market for corporate control that it urgently needs' (*The Economist*, 'Corporate governance in Europe. What shareholder democracy?', 23 May 2005).
118. Charlie McCreevy, 'Interview', *Financial Times*, 17 October 2005, p. 1.
119. For an overview of these debates, see Arman Khachaturyan *The One Share One Vote Controversy in the EU*, EMI Working Paper No. 1 (2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=908215 (accessed 25 November 2006).
120. *Ibid*.
121. For critical political economy scholarship on EMU see, for instance, Hans-Jürgen Bieling 'EMU, Financial Integration and Global Economic Governance', *Review of International Political Economy*, Vol. 13, No. 3 (2006), pp. 420–48; Alan W. Cafruny & Magnus Ryner, *Europe at Bay: The Crisis of European Union* (Lynne Rienner, 2007).
122. Bieling, 'Social Forces in the Making of the New European Economy', p. 211.
123. See Lannoo, 'A European Perspective on Corporate Governance'; OECD, 'Shareholder Value and the Market for Corporate Control in OECD Countries'.
124. On this, see also Charlie McCreevy, *Statement by Charlie McCreevy on the Adoption of the European Parliament Opinion on the Cross-Border Mergers Directive*, Brussels, IP/05/551(2005).
125. Bernard S. Black, 'The Legal and Institutional Preconditions for Strong Securities Markets', *UCLA Law Review*, Vol. 48 (2001), pp. 781–805.
126. Frits Bolkestein, 'The EU Action Plan for Corporate Governance', speech held at the Conference on the German Corporate Governance Code, Berlin, 24 June 2004.
127. Charlie McCreevy, 'Europe must embrace market forces', *Financial Times*, 12 May 2005, p. 19.

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128. Organisation for Economic Cooperation and Development (OECD), *OECD Principles of Corporate Governance* (OECD, 2004), p. 36.
129. Fligstein, *The Architecture of Markets*, p. 5.
130. See the Commission's proposal COM (2005) 685 final, available at http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0685en01.pdf
131. McCreevy, *The Commission's Financial Services Policy*.
132. Christopher Gibson-Smith, 'Brussels can help the markets to help themselves', *Financial Times*, 27 July 2005, p. 17.
133. More empirical research underlining the role of transnational capital market actors in the politics of the transformation of corporate governance regulation can be found in Overbeek *et al*., *Transnational Politics of Corporate Governance Regulation*.

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