

## The Netherlands and the Myth of the Corporatist Coalition

The 1990s was the era of the Dutch miracle, when international observers lauded the ability of the consensual corporatism of the Netherlands to produce dramatic job growth without introducing the levels of inequality seen in the American labor market. In their well-known study of the Dutch miracle, Visser and Hemerijck highlighted the important role of unions and employers' associations, cajoled by political reformers, in crafting the political compromises that underlay job growth and welfare reform.<sup>1</sup> This recent story is consistent with the long-prevailing understanding of the Netherlands as an exemplar of liberal corporatism, in which the Dutch economy adjusts to international pressures for change through continuous negotiations between employers and labor unions.<sup>2</sup>

In the area of takeover protection, however, the Netherlands was neither corporatist nor reformist in this period. Instead, a well-organized managerial lobby consistently defeated reform measures supported by both the Liberal Party (VVD) and the lobbying organizations of institutional investors. Despite a twelve-year stint in government between 1994 and 2006, the VVD was unable to effect change in the Dutch market for corporate control. This chapter is an inquiry into the reasons why liberalizing reformers were so unsuccessful in the Netherlands.

Unlike in the French and German cases examined in the previous chapter, Dutch managers do not benefit from the direct economic power of concentrated shareholdings. The shares of most Dutch-listed companies are widely held in comparative perspective, as we saw in Chapter 2. The passive market for corporate control in the Netherlands is therefore not the product of informal norms of behavior among a limited group of shareowners. It depends instead on the existence of solid legal defenses against takeovers. To defend such legal instruments requires doing battle in parliament and in bureaucracies, the preserve of formal rules. We would expect there to be powerful

<sup>1</sup> Visser and Hemerijck (1997).

<sup>2</sup> Katzenstein (1985).

political interests on the other side of this fight, and indeed there were. Foreign direct investment is much higher in the Netherlands, as a proportion of GDP, than in France, Germany, or Japan. If institutional investors are a force in politics in any coordinated economy, we would expect them to be powerful in the Netherlands.<sup>3</sup>

This chapter explores how the managers of Dutch large firms successfully defended takeover protections from the attacks of neoliberal politicians and institutional investors. First, the chapter demonstrates empirically that takeover protection is an issue of low political salience. Most Dutch voters do not care about the issue, most of the time. For the leaders of political parties, even those with a strong and ideologically founded view about the importance of changing the rules governing takeover protection, the disinterest of general voters creates a disincentive to invest too much political capital into a project of eliminating them. For managers, in contrast, takeover protections matter a great deal. Their elimination would fundamentally threaten managerial autonomy, forcing them to pay close attention to short-term variations in their stock price. In a country where works councils have defined prerogatives that are difficult for business to challenge, and where cooperative labor relations are considered one of the strengths of the Dutch economy, managers prefer to retain their autonomy vis-à-vis institutional investors rather than to submit themselves to the discipline of an active market for corporate control. With a concentrated interest in the political outcomes of corporate control, and a press and public largely indifferent to the issue, the stage was set in the Netherlands for the managers of Dutch large firms to use the tools of quiet politics.

These tools all stem from the deference that politicians and the press show managers, given their presumed expertise in the needs of Dutch companies. The first advantage is in lobbying the government and members of Parliament. In the Netherlands, where private money plays a negligible role in electoral competition, lobbying is about expertise, especially legal expertise. As one prominent figure in Dutch corporate governance debates said in an interview, “the Netherlands is small and [you] do not realize how close we are to politics, as individuals. So a lot of lobbying is going on. The Netherlands is more a city than a country.”<sup>4</sup> In this small environment, the managerial organization has built close ties with the best corporate lawyers, and these ties are important in influencing legislators. Moreover, as in other countries, Dutch politicians have been willing to grant significant agenda-setting capacity to informal working groups, in which managers have a preeminent voice, and in which unions have no voice at all. Finally, the expertise of managers also gives them a tool to deploy in shaping press coverage of hostile takeovers. When legal measures are introduced to parliament, the ability to influence press coverage improves

<sup>3</sup> Engelen et al. (2008).

<sup>4</sup> Interview with Morris Tabaksblat, chairman of the 2003 Corporate Governance Committee, October 11, 2006.

the odds of lobbying. Subsequent sections of this chapter explore each of these propositions.

The tools of quiet politics are not emphasized in existing research on corporate control. Such studies tend to assume that the generally corporatist policy-making features of the Netherlands also apply to the governance of corporate control in that country. In the coalitional approach of Gourevitch and Shinn, the corporatist compromise describes the situation in which workers join managers to limit the rights of shareholders, maintaining defenses against hostile takeovers.<sup>5</sup> Yet I will show that Dutch unions have played little role in the politics of corporate control. The shifting positions of the Dutch Labor party are also inconsistent with the partisan logic of Cioffi and Höpner, who claim that leftist parties are stalwart opponents of the arrangements of coordinated capitalism.<sup>6</sup> In fact, the Labor party changed position on the issue, and whether it was for or against takeover protection, the position of managers in protecting takeover defenses consistently prevailed. The preferences of Dutch managers are indeed influenced by the existence of strong institutions of employee representation at the workplace, but that is not the same thing as saying that interest groups representing workers are active players in the politics of corporate control. As this chapter will show, they are not. If the labor-half of the corporatist coalition is unnecessary for political victory, either in the guise of union activity or Labor party support, then the causal mechanism of political success is not the cross-class coalition itself, but the political tools available to managerial organizations under conditions of low political salience.

### **The Political Narrative of Dutch Corporate Control, 1994–2006**

The major stake of Dutch corporate protection politics between 1994 and 2006 was the extent to which legal protections against hostile takeovers, particularly preference shares, could be eliminated or made temporary. The managers of Dutch large companies have fought to defend these protection mechanisms since the mid-1980s when they first came under threat. Like their German counterparts, Dutch managers face well-established works councils representing labor. The “structure regime” of 1971 gives labor representatives important input on the structure of the supervisory board of Dutch companies.<sup>7</sup> The managers of large firms in the Netherlands are already constrained to work with labor at the firm level, and rapid reorganization without labor cooperation would be difficult in the context of Dutch codetermination. This situation has created incentives for these managers not to cede autonomy to investors.<sup>8</sup> Also, as in Germany, Dutch managers use works councils as a resource for

<sup>5</sup> Gourevitch and Shinn (2005: 178).

<sup>6</sup> Cioffi and Höpner (2006).

<sup>7</sup> The structure regime was revised in 2004, but works councils received in the reform the right to propose one-third of the supervisory board members (Schnyder forthcoming).

<sup>8</sup> Poutsma and Braam (2005).

negotiating strategies of firm-level change during mergers or reorganizations.<sup>9</sup> Both because they cannot reorganize rapidly without the acquiescence of works councils, and because cooperation with works councils is considered an advantage in international competition, Dutch managers have fought to maintain the autonomy from investors provided by takeover defenses.

The first political challenge to these defense mechanisms came in 1986, after a series of blocked takeovers led the Amsterdam Stock Exchange to appoint an expert committee to study the issue of takeover protection. This committee, dominated by established managers, recommended against making any significant changes; however, a minority on the committee favored liberalization of the takeover market.<sup>10</sup> The Amsterdam Stock Exchange attempted to incorporate regulation of takeover protections into its listing rules. This event is largely important for Dutch takeover protection because of the political countermobilization it provoked within the employers' organizations. Rather than delegating this issue to the existing peak federations of employers, the VNO and the NCW, managers of the largest listed companies in 1988 founded the Association of Securities-Issuing Companies (VEUO).<sup>11</sup> In the Netherlands, famed for its polder model and corporatist consensualism, this was surprising: "Creating a new lobby association of this kind was a remarkable initiative, as it seemingly bypassed the bodies in which managers and employers normally dealt with each other."<sup>12</sup> The VEUO would orchestrate all major managerial offensives against takeover liberalization over the next two decades. Because the organization was founded to defend takeover protections, its internal logic tends to favor the proponents of takeover protection, even when there are neoliberal opponents of protection measures in the VEUO.<sup>13</sup>

With the election of the first purple coalition in 1994 – uniting the red (left-wing) Labor Party (PvdA), the blue (right-wing) Liberal Party (VVD), and the centrist D'66 party (socially liberal, economically neoliberal) – the Christian Democrats were out of government in the Netherlands for the first time since 1918. The leader of the VVD at the time was Frits Bolkestein, who would later become the EU commissioner who drafted the EU takeover directive. His successor as VVD party leader, Finance Minister Gerrit Zalm, would hold office for all but ten months between 1994 and 2006. During this time, Zalm

<sup>9</sup> Goodijk (2003), van den Berg et al. (2008).

<sup>10</sup> Frentrop (2002: 339–344).

<sup>11</sup> VEUO stands for the Vereniging Effecten Uitgevende Ondernemingen. The two peak associations of all employers – the VNO (Federation of Netherlands Industry and Employers) and the NCW (Dutch Federation of Christian Employers) – merged in 1995 to form the Confederation of Netherlands Industry and Employers (VNO-NCW). Throughout the remainder of this chapter, the organization is referred to by its post-merger name.

<sup>12</sup> Frentrop (2002: 344).

<sup>13</sup> As one leader of the VEUO told me in describing the organization's decision making, "we function very much in an undemocratic manner" (interview, October 11, 2006). The VEUO's position on the questions of takeover protections is thus heavily influenced by the composition of its governing board, and especially the three legal experts who advise that board.

repeatedly tried to eviscerate Dutch takeover protection. His goal was to render all protection mechanisms temporary so hostile takeovers would become possible in the Netherlands. All his initiatives to render protection temporary failed. This section summarizes the key episodes in Dutch takeover politics, while the remainder of the chapter explores the mechanisms that allowed managerial organizations to subvert these liberalizing initiatives.

I call the first episode the Takeover Compromise, which unfolded between 1994 and 1997. Upon coming to office, Zalm signaled his dissatisfaction with the compromise that had been agreed to by the VEVO and the stock exchange in 1991.<sup>14</sup> That agreement had meant that in practice a hostile acquirer could buy a majority of the shares of a listed company but still be unable to replace the managing board because the various antitakeover devices in place separated economic and voting power. Zalm first requested that the VEVO and Amsterdam Stock Exchange renegotiate their original deal, but in two rounds of discussions they failed to reach an agreement to avert government intervention. Zalm then negotiated directly with the Exchange, the VEVO, and the VNO-NCW; unions were not included in this negotiation process. The outcome of the negotiation reached in 1996 was extraordinarily mild: if a suitor had acquired more than seventy percent of the economic shares in a company, then after one year the continuation of existing protection mechanisms could be reviewed by the enterprise court.<sup>15</sup> However, Parliament refused to consider even this weak compromise bill, thus condemning it to Dutch legislative purgatory until 2005 when it was withdrawn in favor of the law implementing the EU takeover directive.<sup>16</sup> According to Minister Zalm, the bill was not considered because of a concentrated lobbying offensive of the VEVO.<sup>17</sup>

The outcome of the Takeover Compromise is not directly inconsistent with the corporatist compromise of Gourevitch and Shinn because at this time the Labor Party was indeed divided on Zalm's initiative. Together with the opposition Christian Democrats (CDA), they blocked the bill from being introduced into parliament. There was no union activity on this issue, but the veto points that exist in the Dutch political system – which are often considered part of the corporatist arrangement – played a role in the bill's demise. Unlike in parliamentary systems that concentrate agenda-setting power in the hands of the government vis-à-vis parliament, the Dutch system strictly separates the government from the parliament and delegates the power for the legislative agenda

<sup>14</sup> The VEVO and the Amsterdam stock exchange had agreed to add an appendix to listing rules spelling out that listing companies could adopt no more than two measures of takeover protection (e.g., they could have preference shares and certification, but not priority shares).

<sup>15</sup> Frentrop (2002: 463).

<sup>16</sup> The Netherlands is one of the few parliamentary systems where bills never die unless they are defeated by a vote. So all bills introduced to Parliament by the government, but never considered by Parliament, sit in a sort of purgatory where they cannot expire but will never be acted upon (Doering 1995: 242–243).

<sup>17</sup> Interview with Gerrit Zalm, former Finance Minister of the Netherlands, July 31, 2007.

entirely to the parliament.<sup>18</sup> Such a system, which is in many ways more akin to the legislative system of the United States than to a typical European parliamentary system, provides ample opportunities for lobbyists opposed to a bill to kill it.

Between 1998 and 2002, there was no major legislative movement in the Netherlands on the subject of hostile takeovers, as policymakers in the Hague waited for the European Takeover Directive before taking up the issue domestically. The next important issue in takeover politics was the development of the Committee on Corporate Governance in 2003.<sup>19</sup> Led by a neoliberal CEO, Morris Tabaksblat, whose name became the eponym for the committee, the Tabaksblat Committee united reformist managers and shareholders' representatives. Although the Tabaksblat Committee excluded any union representatives, its findings were nevertheless supported by the Labor Party in Parliament. And it was convened simultaneously with the outbreak of a big accounting scandal, which substantially increased the group's impact.

Weeks before the formal announcement of the Tabaksblat Committee's formation, the share prices in Ahold, a large supermarket chain, collapsed after it acknowledged overstating its U.S. profits by more than \$500 million. Following closely on the accounting scandal of Enron in the United States, Ahold was widely described as the Dutch Enron. Jaap Peters of the Peters Committee argued, "just the way the Enron matter happened in the U.S., in the same way we needed such a shock as well, just to push us a bit further ahead. That shock was Ahold."<sup>20</sup> In part because it deliberated in the wake of the Ahold accounting scandal, the Tabaksblat Committee went well beyond its defined mission to suggest on a number of changes to practices in Dutch corporate governance, including a recommendation to make all takeover defenses temporary. This was an instance when elements of both the investor and transparency coalitions were firmly in favor of reforming the system of Dutch patient capital.

Despite the possibilities of the moment, however, the government failed to put forward any legislation to render all defense measures temporary in the year that followed the release of the Tabaksblat report. This outcome contradicts both the partisan and coalitional models of corporate governance reform. Both

<sup>18</sup> Among eighteen western European political systems, Doering found that the Dutch system delegated the highest level of agenda-setting control to the parliament (Doering 1995: 225–231). At the opposite end of the extreme were the United Kingdom and Ireland. See also Tsebelis (2002: 99–109).

<sup>19</sup> In December 2002, when the negotiations over the formation of the Committee on Corporate Governance began, Gerrit Zalm was leader of the VVD in Parliament, not the finance minister. This was the period of the short-lived government coalition that included the List Pim Fortuyn (LPF), a party led by a charismatic right-wing politician who was murdered days before the election in May 2002. His party quickly disintegrated after the election, and new elections were held in January 2003. Coalition negotiations lasted until May 2003, when Zalm again became finance minister and deputy prime minister for a right-wing coalition including his Liberal Party (VVD), the Christian Democrats (CDA), and D'66.

<sup>20</sup> Interview with Jaap Peters, chairman of the Peters Committee and former CEO of Aegon, August 21, 2006.

literatures assume that laws are only stable so long as the dominant party or coalition has sufficient political resources to obstruct attempts to change the law. There was, however, no attempt to change the law in 2004 when the resources of managers seemed to be at low ebb and their opponents were united. This is because, unlike scholars of corporate governance, governments do not always care most about reforming hostile takeover laws. Public attention in the Netherlands on the issue of hostile takeovers was very low in 2003 and 2004, in spite of the Ahold scandal. The issue did not gain enough salience with the general public to make legal change in this area a pressing priority for the government.

The final episode of the period is the attempt to use the implementation of the European Union Takeover Directive in 2005 and 2006 as an opportunity to make all Dutch protection measures temporary. After the defeat of Bolkestein's more radical EU-level proposal in 2003, the European directive on takeovers contained optional recommendations on the breakthrough clause and board neutrality. That is, states were free to adopt them or not, as discussed in Chapter 3. Zalm, Bolkestein's handpicked successor in the Liberal Party, chose to support a version that included both clauses using the breakthrough clause as his newest instrument of attack on Dutch takeover defenses. In 2005, Zalm still had the support of the opposition Labor Party for this reform. According to the partisan logic of Höpner and Cioffi, the left party should have been consistently opposed to these measures, which protected managers. Yet the left party in the Netherlands did not have a consistent position on this issue because takeover protection was viewed as a dry and technical matter. In March 2006, the Labor Party abruptly switched sides and helped defeat Zalm's proposal after managerial representatives succeeded in raising political concerns about the threat of foreign hostile takeovers in the Netherlands. But, as freely admitted by the Labor Party's representative on this issue, the switch was a matter of political convenience. Because takeover protection was a second order issue for all parties, and usually for the public, the ability of managers to frame the issue in the press as one of national protection consolidated the power conferred by their lobbying and informal advisory roles. In March 2006, opponents of the law implementing the takeover directive forced the government to eliminate a requirement making all takeover protections temporary. With this requirement the last challenge to Dutch takeover protections died.

Table 4.1 summarizes the expectations of the principal theoretical approaches in the politics of corporate governance and the overall outcomes of the three Dutch episodes. In all three cases, the law was not changed to make protection mechanisms temporary. In the Takeover Compromise, this is the expectation of all three theories, given the multiple veto points and divisions within the Labor Party on this issue. In the latter two episodes, though, the partisan and coalitional literatures both predict change in takeover protection laws. The coalitional literature predicts change because of the active emergence of an investor coalition of shareholders and renegade managers supported by

TABLE 4.1. *Summary of Theoretical Predictions in Dutch Takeover Politics, 1994–2006*

Predictions→	Quiet Politics	Coalition Theory	Partisanship	Outcome
Takeover Compromise (1994–1997)	Protection	Protection	Protection	Protection
Tabaksblat Committee (2002–2004)	Protection	Breakdown of Protection	Breakdown of Protection	Protection
Implementation of EU Directive (2005–2006)	Protection	Breakdown of Protection	Breakdown of Protection	Protection

the Labor Party. The partisan argument predicts change because of the commitment of the Labor Party to reform, with support from the government. Both these expectations turn out to be incorrect. In the first case, the bill was never considered in parliament; in the second case a bill was never proposed by the government because of other priorities; and in the third case the government was defeated in a straight up-or-down vote. Three political modalities, one outcome: managerial victory.

Existing theoretical approaches fail to anticipate the success of managers in takeover politics because they do not sufficiently recognize the dynamics of quiet politics. The low salience of corporate control increases the usefulness of three tools of managerial influence: lobbying capacity, deference to informal policy-making bodies, and the ability to influence the tenor of press coverage. The rest of this chapter examines in detail the functioning of these mechanisms in the policy-making process.

### The Political Salience of Takeover Politics in the Netherlands

There are no public opinion data asking Dutch voters about their views of the relative importance of corporate control as a political issue. To assess those views, I conducted a search of all articles in the Dutch press dealing with hostile takeover protections between January 1, 1995 and December 31, 2006. A standard search protocol in LexisNexis identified all articles on this topic in the four most widely read newspapers in the Netherlands – *De Telegraaf*, *Algemeen Dagblad*, *De Volkskrant*, and *NRC Handelsblad*, as well as *Het Financieele Dagblad*, the business press equivalent of the *Financial Times* or the *Wall Street Journal*.<sup>21</sup> This is essentially the universe of the Dutch national

<sup>21</sup> Articles from *De Telegraaf* were only available through LexisNexis from 1999.



press.<sup>22</sup> These search terms initially yielded 2,727 articles, many of which were not relevant to the general issue of takeover protection in the Netherlands. Articles were classified as relevant if they made some mention of the existing Dutch rules on hostile takeover protection.<sup>23</sup> Roughly twenty-five percent of the articles (679 of the original 2,727) were relevant to the broader question of takeover rules in the Netherlands. All calculations in this chapter are made on the basis of this sample of 679 articles.

To compare the political salience of hostile takeover rules with that of other policy areas of Dutch politics during this time, I employed press searches over the same time period in three other domains of governance, as in Chapters 3 and 5: bargaining rules, the pension system, and vocational training.<sup>24</sup> Because we included as relevant only one-quarter of the articles found using our search terms for takeover protection, we also include in our comparative presentation only one-fourth of the articles retrieved by the other search terms. This probably underestimates the salience of the categories of pension system and vocational training rules, whose search terms appear to bring up a higher proportion of relevant articles than the takeover protection terms. The term “bargaining rules,” like “takeover protection,” brings up many articles about purely firm-specific rules rather than about the bargaining system more generally, so the twenty-five percent deflator may be more appropriate for that case. Even using this conservative procedure, it is clear from the data presented in Figure 4.1 that bargaining rules and the pension system are far more politically salient

<sup>22</sup> These are the four largest circulation newspapers and the leading business newspaper for a country with a population of 16.5 million people. By inexact analogy, one could compare this to a sample of articles for the New York metropolitan area in the United States – population 19 million – drawn from the *New York Times*, *New York Daily News*, *New York Post*, the *Newark Star-Ledger*, and the *Wall Street Journal*. This metric excludes free newspapers, which have only recently become an important press phenomenon in the Netherlands.

<sup>23</sup> Those articles eliminated as irrelevant to the Dutch takeover debate dealt either with entirely different subjects, with the takeover arrangements of one particular company without reference to the broader takeover rules in the Netherlands, or with takeover debates in other countries without making reference to Dutch takeover arrangements.

<sup>24</sup> In an attempt to create institutional categories that were as conceptually comparable as possible, the search relied on terms that would capture articles dealing with rules of governance in each issue area. The search terms used in LexisNexis were the following (Dutch original is followed by bracketed English translation):

*Takeover Protection*: “bescherming!” [protection\*] AND (overname! [takeover\*] OR bod [bid]).

*Vocational Training*: “Beroepsonderwijs” [vocational education] AND (leerbedrijf OR praktijkopleiding OR stageplaats OR werkend leren OR werkervaringsplaats! OR leerbanen OR leerbaan) [learning company OR practical training OR internship post OR work-learning OR work experience post\* OR learning jobs OR learning job].

*Bargaining Rules*: “(CAO OR collectieve arbeidsovereenkomst!)” [collective labor agreement\*, in either abbreviated or spelled-out form] AND (arbeids!) [labor\*].

*Pension System*: “Pensioen!” [pension\*] AND (systeem OR regeling) [system or regime].

The search and subsequent coding of articles were performed by a Dutch research assistant, David Vermijs, for whose help I am extremely grateful.

than takeover protection every year. Bargaining rules are especially widely covered, which is certainly consistent with the importance of bargaining between unions and employers through a variety of corporatist institutions in the Netherlands.

As in the previous chapter, we use the average level of press coverage of the pension system to provide a baseline (the Mendoza line) for the minimal amount of coverage we might expect a high salience issue to receive. Over this entire time period, there was not a single year when the number of articles published about the system of takeover protection reached the average annual number of articles about the pension system. Remember that this sample includes the articles from five newspapers; if there were only one article per month on takeover protection in each of the five papers searched, that would result in an annual figure of sixty articles. Any politically salient issue is going to get more coverage than one article per month, as we see every year for bargaining rules and the pension system. Even so, Figure 4.1 illustrates that there were only three years during which the media paid any attention at all to the issue of takeover protection: 1995, 1996, and 2006. During those three years, there was an average of 102 articles per year dealing with this topic. In all the other years, there was an average of only forty-one articles on the subject of takeover protection (the coverage of youth vocational training is of even lower salience than takeover politics in the Netherlands). Only in 2006 is the amount of press coverage of takeover protection remotely comparable to that received by the areas of bargaining rules and the pension system.

What was so special about those three years that caused the press to pay more attention to the issue of hostile takeover protection in Dutch companies? Interesting to note is that these points of relatively higher salience did not exactly correspond to the years when significant legislation was submitted to parliament on this issue.<sup>25</sup> If that had been the case, we would have expected peaks in 1997 (Takeover Compromise), 2003 (Tabaksblat Committee), and 2006 (EU Takeover Directive Implementation). Instead, there appear to be two different dynamics at work here. Zalm's initial political attack on protection mechanisms, which began in 1994 when his government first came to power, was big news. This was the first significant attempt by a politician to restrict protection mechanisms in the Netherlands, and it engendered a strong response from both supporters (representing shareholders) and opponents (representing management). It was in this sense newsworthy, and not only for the financial press.<sup>26</sup> In 2006, by contrast, the tenor of coverage did not center on the

<sup>25</sup> Nor does it correspond to the electoral years during the period when we might expect politicians to pay more attention to issues because voters will be evaluating their performance that year. For three of the major policy areas whose salience we measured, there was virtually no difference between election years and nonelection years. For bargaining rules, there were substantially more articles per year, on average, in nonelectoral years (288) than during years with national parliamentary elections (222).

<sup>26</sup> 1995 was the only year in which the business newspaper, *Het Financieele Dagblad*, provided as few as one-third of the articles in the total sample.

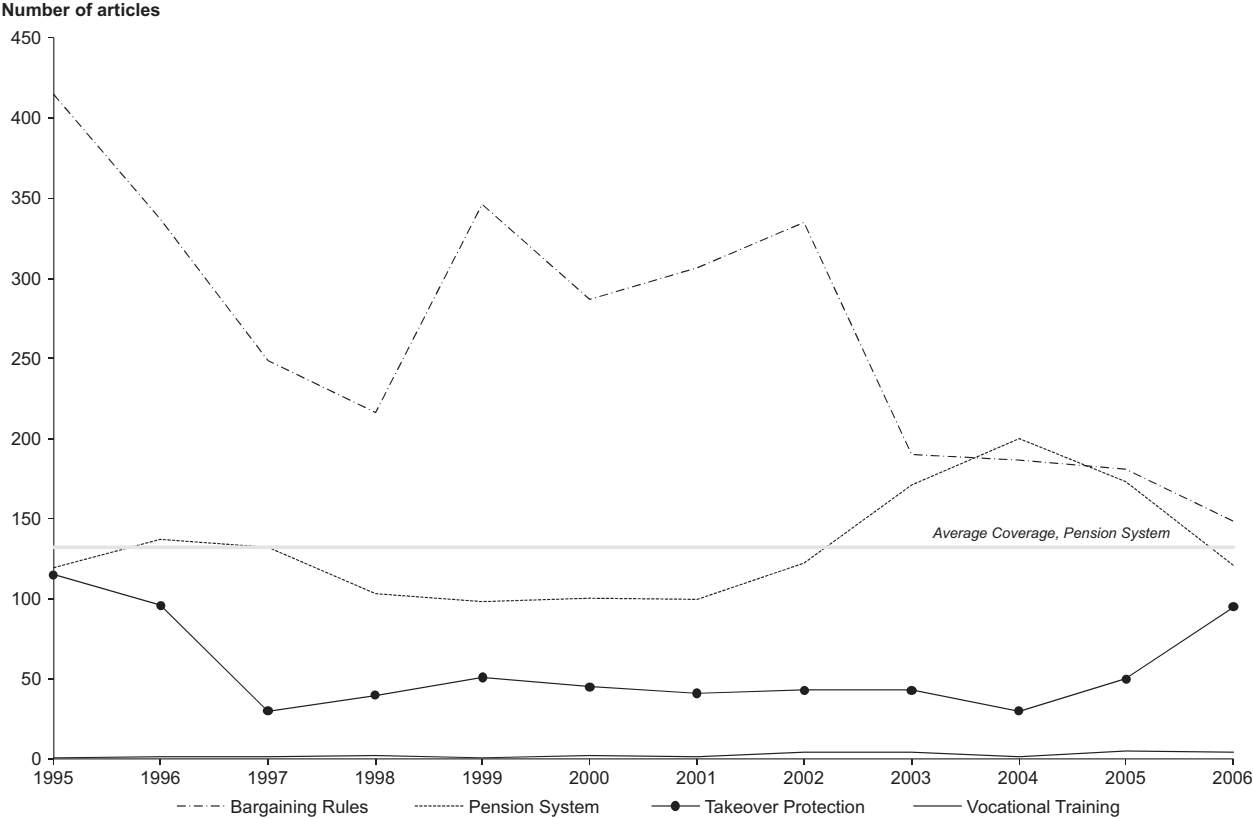


FIGURE 4.1. Political Salience of Issue Areas in the Netherlands, 1995–2006

political dispute between Zalm and the large companies, but instead on the situation of Dutch companies in international comparison: how easy are they for foreign companies to take over? Such a framing was helpful to managers; and as we shall see later in this chapter, managerial organizations influenced the tenor of this debate.

### *Political Parties, Unions, and Dutch Takeover Politics*

Although political scientists often concentrate only on the politics of one issue, governments in the real world are engaged in multiple areas of policy making at any one time. This simple observation poses a challenge for partisan approaches that try to explain changes in corporate governance politics by reference to the same structural sort of regularities that lead us to expect parties of the right to oppose income redistribution and parties of the left to favor it. Tax policies, which directly affect redistribution, are much more politically salient than any policy having to do with corporate governance. Partisan theorists such as Cioffi and Höpner elide this difference when they anchor their claims about partisanship in the deep preferences of parties.<sup>27</sup>

In the real world, other political issues can take priority over issues like hostile takeovers and corporate governance. Indeed, even for Finance Minister Gerrit Zalm, the political protagonist of every Dutch reform effort between 1994 and 2006,

the regulation of hostile takeovers was not an issue we expected to win or lose elections on. Of course, it was an important issue, but it never had a very high profile. . . . It was by far not my biggest issue. . . . I'm not even sure if this will be a subject in my memoirs, first because there are less interesting anecdotes [in this area]. It has been a subject where I consistently had a policy idea, but it was not one of my biggest issues.<sup>28</sup>

Zalm emphasized this issue more than any other politician in the Netherlands over the past two decades, and yet in his telling, this was a secondary issue.

It is possible that Zalm chose to downplay the subject not because it was of secondary importance, but because he repeatedly lost in trying to reform it.

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#### FIGURE 4.1. Political Salience of Issue Areas in the Netherlands, 1995–2006

*Source:* LexisNexis search of *Algemeen Dagblad*, *Het Financieele Dagblad*, *NRC Handelsblad*, *De Telegraaf*, and *De Volkskrant*. As noted in the text, this graph includes twenty-five percent of the articles found for each search term, which was the “noise deflator” originally developed for takeover protection. Definition of the search terms used for the issue areas is provided in footnote 24.

*Note:* The gray horizontal line shows the average number of articles per year published on the subject of the pension system, which is the less covered of the two high-salience issue areas depicted in this figure. This is one rough indicator of a minimal level of media coverage we might classify as being associated with an issue of high political salience.

<sup>27</sup> Cioffi and Höpner (2006: 464).

<sup>28</sup> Interview with Gerrit Zalm, July 31, 2007.

If that were the case, perhaps Zalm's opposite number at the Labor Party (PvdA) would tell a different story about the importance of the issue area. Kris Douma was the Labor Party's parliamentary spokesperson on corporate governance between 2002 and 2006. He led the party's position on this issue during both the Tabaksblat Committee and the EU Takeover Directive's implementation. I asked in an interview about his autonomy in setting party policy in this area:

I was the spokesperson for the topic, and the majority of PvdA parliamentarians were just not interested. It was technical, it was complex, and it had to do with finance. [Their opinion was,] 'if you think you know what you have to do, be our guest.' I think there were only three people who were interested: [Frank Heemskerk and Fred Crone, the two other PvdA parliamentarians with financial briefs]. And the third of course was Wouter Bos [the party leader], who was interested in this issue. And he asked me a number of times to give him the highlights of what I was doing, and checking to see if this was in accordance with his own views. And that was about it.<sup>29</sup>

Like their counterparts in the Liberal Party, members of the Labor Party were not that interested in takeover protection. Contrary to the view of partisan theorists, corporate governance reform in the Netherlands was perceived as a specialist issue, rather than a central concern of the party.

There are at least two groups that *did* care a lot about the politics of corporate governance. One is the managers whose political organizations have already been discussed. The other is minority shareholders' organizations. The largest and most influential shareholder organization in the Netherlands is the VEB.<sup>30</sup> Peter Paul de Vries headed the VEB from 1995 to 2007, and he was a member of the Tabaksblat Committee. If Gerrit Zalm led the political charge against takeover protections, De Vries was the most visible interest group representative of the shareholders who opposed these protection mechanisms.<sup>31</sup> In response to a question about the interest of voters in corporate governance, De Vries answered

Well, voters haven't cared. And it hasn't been an element in the elections. . . . We look in all programs of political parties for the words 'shares,' 'governance,' 'corporate governance,' and we find maybe one word or two words, and then sometimes 'share' means 'market-share' or something. That is really not an issue in any political battle.

What about unions, to whose influence Gourevitch and Shinn's work attributes much importance? In terms of their interests, by the late 1990s

<sup>29</sup> Interview with Kris Douma, July 30, 2007.

<sup>30</sup> VEB stands for Vereniging van Effectenbezitters, or Dutch Shareholders' Association. In addition to the VEB, the nonprofit group Eumedion has also been an active political voice for the rights of institutional shareholders in the Netherlands (Engelen et al. 2008).

<sup>31</sup> In an interview for this project, Tabaksblat named De Vries as one of the five most influential people in the debate about takeover protection in the Netherlands (Interview, October 11, 2006).

the pension funds of the unions had accumulated large investments in the market, leading them to behave mainly as institutional investors.<sup>32</sup> Gourevitch and Shinn argue that some of these funds have flowed abroad because of the inability of unions to exercise voice in the Dutch system. Even with their Dutch investments, however, there is no evidence that unions ever even tried to exercise such influence. Kris Douma, the Labor Party speaker on corporate governance, who in the 1990s was head of policy for the largest Dutch union, observed in an interview with the author that

there's hardly any proof of unions using their stake in pension funds to really influence the policy of the pension funds. . . . If you ask the top executives of the unions, they would say that [corporate governance issues] are important, but the fact is that they don't pay much attention to that and they have specialized people to run pension funds. . . . There is a sort of schizophrenia between them: the pension fund experts do their own business and see that there is maximum profit on the assets, and they don't rely very much on what the unions have as a general policy.<sup>33</sup>

In politics, moreover, Dutch unions act mainly through the Social and Economic Council, which is the government's advisory body for economic and social policy.<sup>34</sup> Beyond this statutory role, there is no evidence that unions have attempted to exercise voice in the politics of takeover protection. In one limited sense, Cioffi and Höpner are correct in their critique of Gourevitch and Shinn: it is the party of the left, rather than the unions, which is the political voice of the left in Dutch takeover debates. Yet the amount of attention that party devotes to this issue is, as with other parties, limited. Takeover politics carries little resonance with the general public, most of the time, and Dutch political parties act accordingly.

### **Lobbying and Expertise**

It is not so hard anymore to lobby. Look, Zalm is not mindless, he just doesn't have any practical business experience. So you offer him your expertise there. Because they are not mindless, you can clarify it for them. . . . They don't understand anything in the Hague about how markets work in a company.

Former Senior Official of the VEVO<sup>35</sup>

These legislators don't know what happens in real life; they have very little industry experience. So we try to educate them a little by showing examples. We can show what they think might happen that does not happen and vice versa. A great

<sup>32</sup> Gourevitch and Shinn (2005: 179).

<sup>33</sup> Interview with Kris Douma, July 30, 2007.

<sup>34</sup> The Social and Economic Council (SER) is the central corporatist advisory body in the Netherlands with equal union and employer representation.

<sup>35</sup> Interview, September 4, 2006.

thing about the Dutch MPs is that they are very reasonable people. . . . Whether you see things from the right or the left, it is the rational that counts.

Official of the VNO-NCW<sup>36</sup>

Managerial representatives in the Netherlands think of their great comparative advantage as lying in information. Government proposals are typically transmitted to the social partners for comment before being submitted to parliament. Sometimes, as in 1995 and 1996, the government negotiates directly with the VEUE or the VNO-NCW. Moreover, these organizations can directly lobby parliamentarians over whom governments have limited control.<sup>37</sup> In this section, I use evidence from interviews with actors directly involved in the political process to illuminate how the VEUE saw its own lobbying efforts, and how it was seen by the major players in the Dutch politics of hostile takeovers. Few people in politics like to admit that they changed their mind in response to lobbying, and it is difficult to know exactly what might have happened in the absence of the advocacy of the VEUE. A senior figure in the managerial lobbying group nicely summed up the social scientific problem of showing the causal effect of lobbying: “Recently, a minister wanted to talk. . . . Well, we dropped by, he listened well, and later it turned out that his speech contained a number of elements that we brought up. These [elements] may also have been brought up by others, as he spoke to a variety of people.”<sup>38</sup> Where I can show that positions changed after the lobbying in the direction intended by managerial lobbyists, I take this as important evidence in favor of the proposition that lobbying was indeed an important causal mechanism in determining political outcomes in the Netherlands.

For the large member companies of the VEUE, as for one of its former leaders interviewed for this book, the organization’s goal was straightforward: “Together with the three top lawyers, our main policy was keeping as many protection constructions intact as possible [ . . . ] The three lawyers knew the judicial language and had contact with the government officials. They knew where we [member companies] stood, and others could let us know what they thought they needed. It worked really well.”<sup>39</sup> Another senior official of the VEUE expanded on this statement of the importance of these three expert lawyers:

Most of our work has to do with legislative processes. . . . That is why it is important that we as the VEUE have lawyers of name and fame. That the opinion we bring forth carries some authority. [When] Eisma, Maeijer, and

<sup>36</sup> Interview, two VNO-NCW officials with responsibility for corporate governance issues, August 17, 2006.

<sup>37</sup> Recall that in the Netherlands members of government do not sit in parliament and cannot pilot bills through parliament, as in many other parliamentary systems. So the two stage process provides two discrete opportunities for lobbyists to influence the content of bills.

<sup>38</sup> Interview, October 11, 2006.

<sup>39</sup> Interview, September 1, 2006.

Raaijmakers had a certain opinion, then that carried a lot of weight. You have to stand strong in your shoes to disagree with them.<sup>40</sup>

Another VEUE leader described the legal process and the potential points of influence it presented to his organization in the following terms:

[after receiving a legal proposal] we have a legal committee, which consists of three persons, highly qualified jurists, to look at it.<sup>41</sup> This committee then writes a comment. I put my signature on the comment, although it is often too technical for me. This then goes to the Finance or Justice department. . . . But we also visit Members of Parliament.<sup>42</sup>

The way in which the VEUE construes lobbying as a two-stage process – of legal consultation (from the government) and then direct lobbying of potential allies (in parliament) – looks no different than does the lobbying strategy of any well-connected interest group in Washington, DC. Yet in working as a single-issue lobbying group, the VEUE stands outside the normal corporatist coalition to which coalitional theorists attribute causal primacy in Dutch politics.

The VEUE works closely with the more broad-based peak association of business (the VNO-NCW), but its *raison d'être* lies in defending protection constructions. The preference definition of managers of large firms is influenced by this organizational history. A former high official interviewed for this book underlined the clarity of the VEUE's goal: "The VEUE has principally concentrated itself on the protection constructions. That was also what it was designed to do. If we wouldn't have succeeded there, it would all have been finished."<sup>43</sup> In 1995–1996, representatives of the VEUE negotiated a compromise bill directly with Zalm and the stock exchange under which a shareholder that acquired seventy percent of shares could, after one year, go to court to override the existing protection mechanisms.<sup>44</sup> Whereas the VNO-NCW's broader policy interests and repeated interactions with the government may have given it more incentive to hold to an agreement negotiated with the finance minister, the single purpose of the VEUE leaves it free to fight in a no-holds-barred manner that hardly resembles a corporatist compromise. Finance Minister Zalm summarized the bargain and its political aftermath in the following terms:

[the representatives of the government and of the VEUE] sat at the table and they agreed more or less to this compromise, but I suppose at the same time they were lobbying in the parliament because [the proposed law] was

<sup>40</sup> Interview, September 4, 2006.

<sup>41</sup> In 2005, when the VEUE elected a new chairman, the three experts on the legal committee also stepped down. They were replaced by Harm Jan de Kluiver, Sven Dumoulin, and Mick den Boogert.

<sup>42</sup> Interview, October 11, 2006.

<sup>43</sup> Interview, September 1, 2006.

<sup>44</sup> Verbracken (1996).



too far-reaching. In that sense, they were not very loyal partners in making deals. . . . Probably with the VNO-NCW we could have done business more easily, because they are used to compromise and sticking to compromise.<sup>45</sup>

For the VEVO's former high official, who does not consider the organization a corporatist group, all means are fair game in lobbying: "If you start wrestling, then you also get punches under the belt. That is how it goes."<sup>46</sup>

I observed in an earlier section that the corporatist compromise might account for the failure of the Takeover Compromise in 1997 because corporatism depends on the existence of many institutional veto points to induce moderate compromise from competing actors. Yet, in practice, there was only one side actively lobbying against the bill – managers – and they were lobbying against the same compromise they had struck with the government. This is how many bills die in Washington, DC, but it is not a legislative trajectory that is typical of a corporatist compromise.

In the case of the European Takeover Directive in 2005 and 2006, Zalm proposed maintaining the breakthrough rule, which would have rendered all mechanisms temporary. The VEVO's initial lobbying failed to remove this provision from the government's draft of the law implementing the directive in 2005. This is where the second stage of lobbying began, with members of parliament. According to a VEVO leader, "we visited the VVD, CDA, and PvdA, and they did not like the sound of our story. But CDA and PvdA have picked up something, and went on to do something with it, and this helped remove elements in the takeover directive that we did not like."<sup>47</sup>

This is a vague account from an interlocutor who might be interested in overstating the effect of his organization's lobbying. To understand what this meant in detail, I spoke to someone with no interest in showing the effect of lobbying: Kris Douma, the spokesperson of the Labor Party (PvdA) for issues of takeover protection. Douma had come out clearly in favor of using the EU takeover directive to make all protection mechanisms temporary in June 2004, even as a member of the opposition. Yet he and the PvdA switched sides in March 2006, defeating the government's bill in a parliamentary vote. Douma justified his party's vote in terms that resonated with the theme of the foreign takeover threat but also in light of new information. The PvdA had been in favor of dismantling protection, but reversed its position because "other countries do nothing [about protection] either. And I have been persuaded by experts that current law and jurisprudence work well enough."<sup>48</sup> In an interview with Douma, I asked about his source of expert legal advice:

During the period that I was in parliament there was a group of about ten experts with sympathies for the PvdA that I consulted on a number of

<sup>45</sup> Interview with Gerrit Zalm, July 31, 2007.

<sup>46</sup> Interview, September 4, 2006.

<sup>47</sup> Interview, October 11, 2006.

<sup>48</sup> FD (3/30/06).

issues. . . . There were a couple of lawyers, like Harm Jan de Kluiver who is a real expert on corporate law in the Netherlands. And he was one of the people in this group of ten that I consulted. . . . But I rely most on Harm Jan de Kluiver.<sup>49</sup>

Harm Jan de Kluiver was also one of the three expert lawyers on the VEUO's Legal Committee. This evidence, while indirect, does suggest that Douma, who set the Labor Party's position on this issue, was exposed to the legal point of view stressed by the VEUO in its lobbying campaign, which was the same legal reasoning cited in his justification before parliament of the *volte-face* of the PvdA.

There is no evidence to demonstrate conclusively that the PvdA switched its vote on the takeover directive as a direct result of the VEUO's lobbying campaign.<sup>50</sup> Yet the existence of the lobbying campaign and the fact that the press was focusing on the threat of foreign takeovers raised by managerial heavyweight Aad Jacobs are demonstrable, as we will see. Of course, politicians are likely to frame their decisions in ways that are politically useful, but that very fact suggests the improbability of the mechanisms emphasized by the coalitional literature. If the real reason for the PvdA's decision were to protect employment and the role of labor stakeholders as a member of a corporatist coalition, a statement emphasizing these aspects of takeover protection would be a more likely vote-winner for a Labor Party politician. Moreover, if the party had the deep antipathy to ownership protection attributed to it by partisan theorists, the party's turnaround on this issue would make no sense at all. The most parsimonious explanation that is consistent with the historical record links the intense interest of the VEUO in defeating this proposal with its assiduous lobbying capacity and its close ties to the country's best legal expertise.

### Managers and Informal Bodies of Policy Making

The most important argument to do it yourself instead of through a legislative track is, it does not have to take years like legislation does. [Also], we prefer to participate in steering, rather than letting someone else, the lawmakers, determine what is going to happen. We think that we have a good feel for what is going on in real life, while the civil servants are in a sort of ivory tower.

Official of the VNO-NCW<sup>51</sup>

<sup>49</sup> Interview with Kris Douma, July 30, 2007.

<sup>50</sup> Following my interview with Kris Douma, I emailed a clarifying question about the reasons behind the PvdA's change of position in 2006. He explained the legal reasoning that had been presented to him at length, and then said, "This is the technical/juridical information that made me change my mind, though I must admit that two other factors influenced me in making this change. One was the fact that for me it became clearer and clearer how many protection mechanisms are used in the United States and there would be no level playing field. Second, public opinion already became more protective, elections were coming nearer and (since I was in the opposition) there was a chance to defeat the coalition, which caused a slight change towards a more opportunistic approach."

<sup>51</sup> Interview, August 17, 2006.

Managers in the Netherlands rely on legal protections, not informal arrangements among owners, to defend their companies from hostile takeovers. Yet Dutch managers, like their counterparts elsewhere, also use their positions in informal advisory bodies as a means of shaping or delaying government intervention in the field of corporate governance. In both 1996–1997 and 2005–2006, Zalm's attempted policy reforms were undermined after lobbying by the VEUO. In both instances, legislative action was only one regulatory track pursued by the government. The second was the convening of informal groups, dominated by management representatives, whose mandate was to draw up new codes of corporate governance. However, the connection of these groups to the dominant political line of the VEUO was very different. The Peters Committee, assembled in 1996, fell directly in line with the political strategies of the VEUO and had no effect on the corporate governance practices of companies.<sup>52</sup> The Tabaksblat Committee, whose formation was announced days after the outbreak of the Ahold scandal in 2003, would pose serious challenges to the protection mechanisms of VEUO members. How did these two committees come to have such different outcomes?

The Peters Committee, chaired by the former CEO of Aegon, Jaap Peters, comprised representatives of the VEUO, the Amsterdam Stock Exchange, and pension funds.<sup>53</sup> There was no union representation. The committee's brief was to establish a voluntary code of best practice in corporate governance, along the lines of the earlier Cadbury Report in the United Kingdom.<sup>54</sup> Like the Cadbury Report, the goal of the Peters Committee was self-regulation, although Finance Minister Zalm raised the possibility of legislative response if companies ignored the committee's recommendations. Yet the explicit goal of self-regulation was to allow market forces as the mechanism of generating compliance.<sup>55</sup> The Peters Committee released its list of forty propositions for good corporate governance in June 1997. Studies have found no observable impact of the Peters Committee on corporate governance practice, and that the Dutch market actors were skeptical that the committee would have any effect.<sup>56</sup> The committee's own monitoring report, published in December 2002, confirmed a widespread failure of Dutch firms to comply with the recommendations of the Peters Committee.

<sup>52</sup> De Jong et al. (2005).

<sup>53</sup> De Jong et al. (2005: 474). The initial compromise between the VEUO and Zalm and the formation of the Peters Committee were both announced in February 1996. According to Jaap Peters, the Committee "grew out of a conversation between Zalm and the VNO-NCW and that conversation dealt with protection constructions. And the result was that they would establish us [the committee]" (interview, August 21, 2006). According to Gerrit Zalm, the law on protection constructions and the Peters Committee were not directly related. The Peters Committee "came from the same attitude, you could say. Both intended to give more influence for shareholders at the cost of management" (interview, October 11, 2006).

<sup>54</sup> Groenewald (2005: 300).

<sup>55</sup> De Jong et al. (2005: 474–475).

<sup>56</sup> Akkermans et al. (2007), De Jong et al. (2005).

Scholars of corporate finance point to the Peters Committee as a textbook example of the failures of self-regulation of business without any legal enforcement.<sup>57</sup> Yet from the viewpoint of the managerial interests that dominated the committee, its results were consistent with their highest political priority: to defend protection mechanisms. In general terms, the VEUO is able to influence the likely findings of such informal committees not only by selecting the managerial representatives, but also by influencing the “independent scholars” who participate. According to a former leader of the VEUO, “What they also always want is a number of scholarly gentlemen, so the key was, how would they think? [...] The scholars were on that side, entrepreneurs were clearly on that side. We did the same thing with the Peters Committee.”<sup>58</sup>

After the finding of widespread noncompliance with the Peters Committee recommendations in 2002, the government reiterated the threat of legally binding regulation, calling for the formation of another committee to put together a more effective code on corporate governance.<sup>59</sup> As with the case of the Peters Committee, the VEUO exercised important input on the constitution of the new informal group. However, Zalm and the Finance Ministry under Minister Hans Hoogervorst also took a prominent role in negotiating the composition of the group, and particularly its chair.<sup>60</sup> According to Zalm, “There were problems of who should be in and who should be out. So we had to use some force sometimes against the VNO-NCW, stating that: ‘if you don’t agree that on we do it like that, we’ll do it on our own.’”<sup>61</sup> Using the leverage of a potentially government-constituted committee, Zalm and Hoogervorst convinced the VNO-NCW and the VEUO to nominate the former CEO of Unilever, Morris Tabaksblat, to head the new committee.<sup>62</sup>

Although the VEUO and the VNO-NCW failed to control the leadership nomination process, they attempted to constrain the new group by sharply restricting its mandate. For the former high official of the VEUO, the most important issue of the Tabaksblat Committee was “Protection walls [against hostile takeovers], so that American situations would certainly not emerge.”<sup>63</sup> A VNO-NCW official echoed this emphasis: “look, eventually what matters

<sup>57</sup> De Jong et al. (2005).

<sup>58</sup> Interview, September 1, 2006.

<sup>59</sup> Groenewald (2005: 301).

<sup>60</sup> The formation of the Tabaksblat Committee coincided with the time when Zalm was the parliamentary delegation leader of the Liberal Party, while his colleague Hans Hoogervorst was Finance Minister. The two worked closely together on this issue.

<sup>61</sup> Interview with Morris Tabaksblat, October 11, 2006.

<sup>62</sup> Asked why the VEUO would nominate someone like Tabaksblat, who was a known maverick in the business community, a VEUO leader said in interview, “That was mainly the Ministry of Finance.... It was also by the initiative of Zalm, or the government, that it became a committee; that had not been the case with the Peters Committee” (interview, September 1, 2006). Tabaksblat, asked in an interview why managerial organizations would accept his nomination, said, “Because I was known as reasonably independent. They knew I knew a lot about the subject” (interview, October 11, 2006).

<sup>63</sup> Interview, September 1, 2006.

is, what task do you set for the committee? Some parties, especially the VEB [the shareholders' organization], specifically wanted the committee to make direct recommendations for adjustments of the law, including guidelines for takeovers. We thought, 'No way!' You should only self-regulate where there is no law, and we can only give advice as to how to make laws which facilitate self-regulation."<sup>64</sup> Thus, the formal charge of the committee was indeed to take existing laws as given; it was forbidden to propose new laws.

The choice of Tabaksblat as chairman of the committee would prove to be important and extremely threatening to the legal protections against hostile takeover favored by the VEVO and VNO-NCW. This outcome was not foreseeable as of early 2003 when the group's composition was being negotiated. In many respects the composition of the committee (with thirteen members) was led by the VEVO and VNO-NCW, who ensured strong representation for their interests: executive board members of both organizations were named to the committee, including Rob Pieterse, who would become chairman of the VEVO in 2005. The committee also included Jan Kalff, former chairman of the board of ABN Amro, who had led the defense against Zalm's first attack on protection mechanisms during the Takeover Compromise.<sup>65</sup> There were no union representatives on the committee. Indeed, other than the fact of the government's greater involvement in selecting the chair of the committee, there is nothing about the composition of the committee that should have raised alarm bells at VEVO headquarters in December 2002. What changed the effect of the committee was the timing of the committee's first announcement and an initiative of Tabaksblat.

The composition of the Tabaksblat Committee was formally announced on March 10, 2003, just after the Ahold scandal became public. Tabaksblat himself credits Ahold with changing the nature of the discussion:

It started with Ahold. . . . People started to see that a number of Dutch companies were on the wrong track. And then it became clear that also in the Netherlands we have our [governance] problems. So at that moment, I was asked to lead that committee. When we started out the extent of the problems weren't that clear yet. But by the time we finished the Royal Oil Company [Shell] was the exemplar of a Dutch company with problems. And all of this led to the acceptance of the code. I think that acceptance of the code would have been difficult in a different time, when the economy would have been rising, when the mutual feeling would have been that all was fine in the Netherlands.<sup>66</sup>

In the opinion of the Labor Party's spokesman, too, Ahold gave corporate governance broader resonance: "Ahold was the thing that really got the thing moving here in the Netherlands and made it into a public issue."<sup>67</sup>

<sup>64</sup> Interview, two VNO-NCW officials with responsibility for corporate governance issues, August 17, 2006.

<sup>65</sup> Frentrop (2002).

<sup>66</sup> Interview with Morris Tabaksblat, October 11, 2006.

<sup>67</sup> Interview with Kris Douma, July 30, 2007.

The Ahold scandal may have influenced public opinion, but it did little to change the opposition of leading managerial organizations to limiting the protections of Dutch companies, and several of their prominent representatives sat on the committee. Yet once the group met, Tabaksblat deliberately broke with the normal practice of widespread consultation characteristic of Dutch corporatism:

We made a deal [amongst members of the committee] that nobody was to speak to his supporters. . . . I said that if we wanted to complete the work within half a year, everyone had to take responsibility [without consulting their supporters] and decide what we thought was acceptable for the Netherlands. In the end this worked very well. But it is a very unusual way to do things because normally everyone is just a representative. The way we did it was also better than working with a committee with only independent people because then nobody would feel committed to the recommendations. Now at least all the participating organizations had to say that they got the best possible result for them. The VEUE for example was very angry with Pieterse, because they were not content with the result but had to accept it because Pieterse had participated as their spokesman.<sup>68</sup>

Both the VEUE and VNO-NCW reacted strongly against the initial recommendations of the committee, although they had themselves been complicit in its formation, and their members sat on it. Asked about why these two organizations allowed this to happen, Tabaksblat said,

There was no way back for them. They never expected what happened in the summer of 2003. They insisted that we should make a draft to hand out to interested parties. We did this, and put it on the internet, so that everybody stepped in. We got 256 reactions. For comparison, Higgs in the UK, where a much more heated debate took place, did not get more than 100 [reactions]. That [number of reactions] surprised everyone. It was summer and there was not much going on in the Netherlands. So every news report, every news channel, paid attention. The newspaper, *Het Financieele Dagblad*, used this code as the saving piece of their summer. They really kept the attention going.<sup>69</sup>

As we will see in the next section of this chapter, however, the prominent coverage in the business newspaper did not spill over into the general press. Its low priority on the government's legislative agenda allowed the moment to pass without any legislation being proposed. The Tabaksblat Code succeeded in adopting the "comply or explain" principle in several issues of corporate governance dealing with board composition and financial accounting.<sup>70</sup> Yet in the area of takeover protections, it was the great nonevent of Dutch politics, as the VEUE's opponents did not convert their tactical advantages into legislative

<sup>68</sup> Interview with Morris Tabaksblat, October 11, 2006.

<sup>69</sup> Ibid.

<sup>70</sup> Akkermans et al. (2007).

accomplishments.<sup>71</sup> In the view of Morris Tabaksblat, this was an opportunity missed: “we had a window of opportunity [to make takeover defenses temporary] and if Zalm had acted a bit faster, it could have been dealt with by now.”<sup>72</sup>

Instead of using the political momentum of the Tabaksblat report to push immediately for a law making all protection measures temporary, the Finance Ministry concentrated first on passing unrelated laws that unified the system of financial supervision. When asked about the reasons for the delay, Zalm responded,

First . . . we had a lot of legislation going on at the time, because there was a lot of legislation on supervision of the financial sectors[, and] it was a very large operation. So there were more parts of the legislation which came into some kind of delay. Also, a second issue is that – and that’s a more political one and probably they are intertwined – we foresaw more difficulties [with passing a law regulating takeover protections]. . . . Although I cannot imagine for myself that seeing political problems would be a motive for delay, but maybe in the cabinet it took longer.

Faced with the likelihood of stiff managerial opposition to any attack on takeover protections, the government preferred to take on an easier issue: that of financial supervision. This, despite the fact that the new government was still early in its term, had support on the issue from the opposition Labor Party, and faced an elite and public discourse after Ahold and Tabaksblat that was favorable to reform.

The significance of the Tabaksblat episode lies in the limits it reveals in the capacity of managerial organizations to impose their preferred outcomes in politics. It highlights two potential weaknesses in the façade of managerial power: intramanagerial political difference and the possibilities that scandals undermine business claims to expertise. The figure of Morris Tabaksblat, former CEO of Unilever – which is listed on both the London and Amsterdam stock exchanges – is emblematic of a minority of managerial activists in the Netherlands who favored the limitation of protection mechanisms. Gerrit Zalm was only able to impose Tabaksblat as the leader of the committee after the

<sup>71</sup> A law reforming supervisory board structure and appointments – the so-called structure regime – took effect in 2004, but its legal passage in 2003 predated the Tabaksblat Code, and it did not directly affect takeover protection. The law allowed works councils to propose one-third of the members of supervisory boards in Dutch companies, while workers simultaneously lost the right to object to other appointments to the board (Groenewald 2005: 299–300). Asked in an interview about the possibility of using appointment powers to the supervisory board as a shareholder disciplining mechanism, Peter Paul de Vries of the VEB said “in practice [a shareholders’ representative] will never have the chance to come up with a proposal of a supervisory board member” (interview, July 30, 2007). The sentiment of de Vries is consistent with that of scholars who judge the reform of the structure regime a minor event, one in which works councils gained more than shareholders (Schnyder forthcoming).

<sup>72</sup> Interview with Morris Tabaksblat, chairman of the 2003 Corporate Governance Committee, October 11, 2006.



failure of the Peters Committee to induce any change in corporate behavior. And the committee itself was only able to make such sweeping recommendations because the Ahold scandal created an environment in which managers were on the defensive. Managers benefit from the deference of politicians and the press to their superior knowledge of how things work in the economy. An accounting scandal such as Enron or Ahold directly undercuts such claims of expertise and the deference associated with it. This constellation of interests and events turned the normal managerial advantage of self-regulation into a potential source of weakness for the VEUEO.

### The Framing of Hostile Takeover Politics in the Dutch Press

Managerial lobbying groups benefit by keeping low salience issues off the radar of most citizens, so as to maximize the effect of their influence through lobbying and participation in informal bodies of policy making. Every representative of the VEUEO interviewed for this book made this point in some form or other:

The discussion in the papers focuses on who is right and who is not. I don't think that is really relevant. What we focus on is transparency. [This is] a neutral subject, which keeps the discussion away from the good-bad discussion. But traditionally our preference is to work behind the scenes, and it still happens that way for a minimum of seventy percent. Sometimes publicity may help creating a certain atmosphere, but you have to be careful with that.<sup>73</sup>

Another VEUEO leader noted that proinvestor interest groups such as the VEB of Peter Paul de Vries “are very visible; they like to get attention from the press. We do this to a lesser extent, [since] our members have very different backgrounds. . . . We are much more from the background of silent diplomacy. We think you can exert more influence like that than by being on the front page of *Het Financieele Dagblad* every day.”<sup>74</sup>

Managers cannot control whether or not issues become politically salient. They can, though, attempt to influence the character of coverage on the occasions when the press and public opinion do pay attention to the topic of corporate control. To gauge the tenor of press coverage in the Netherlands and its variation over time, I used the sample of press articles discussed earlier in this chapter to analyze the dominant rhetorical frames of articles that appeared on the subject of corporate control. As in the French press analysis discussed in the previous chapter, different rhetorical “frames” were associated with the arguments of different interest groups. The notable difference between the two countries was that the framing pursued by managerial organizations in the Netherlands was diametrically opposed to the one pursued by their counterparts in France. Dutch managers employed a “foreign threat” frame, which linked their interest in takeover protection to national interests

<sup>73</sup> Interview, September 4, 2006.

<sup>74</sup> Interview, October 11, 2006.



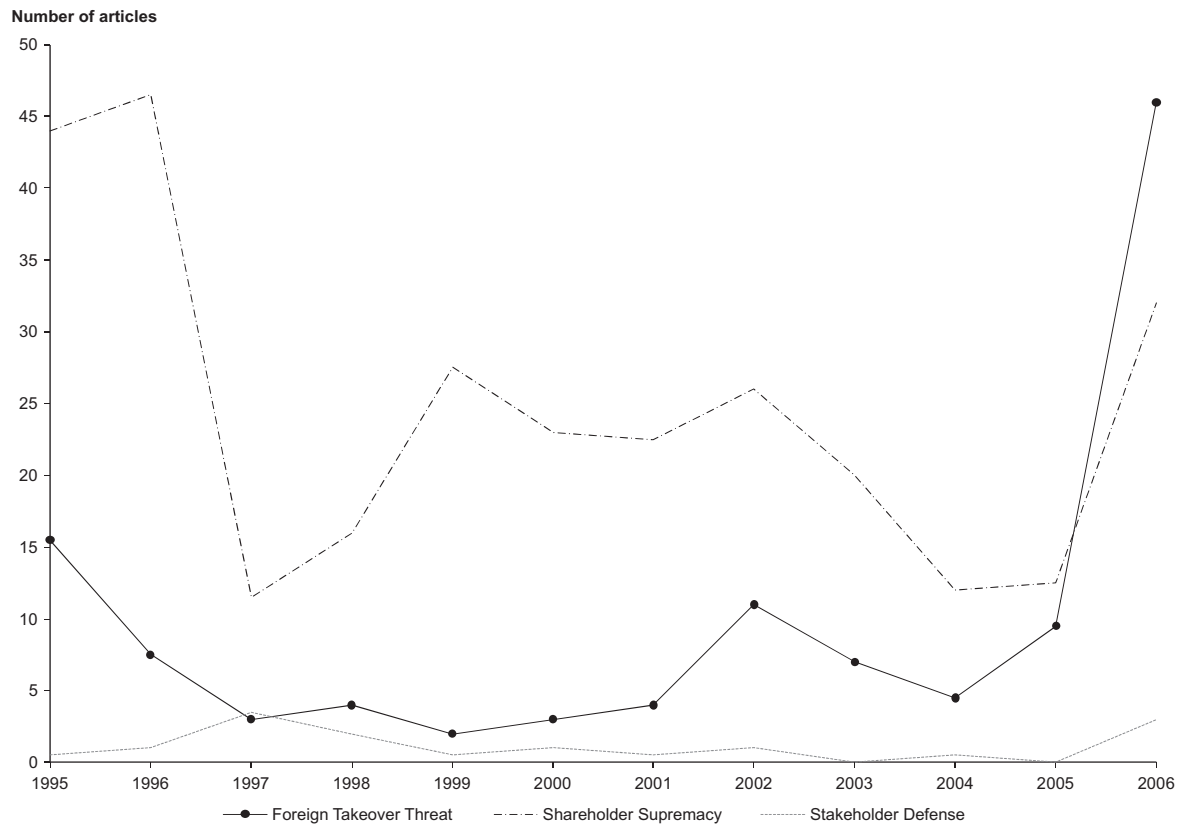


FIGURE 4.2. Dominant Frames of Articles Dealing with Dutch Takeover Politics, 1995–2006

in keeping Dutch companies under Dutch control.<sup>75</sup> Articles with this frame emphasize one of two features of takeover regulation. The first feature is the claim that a relaxation of protection would make national firms vulnerable to acquisition by foreign predators. The second feature is the claim that market rules in other countries make takeovers more difficult there than in the Netherlands (defending takeover protections as necessary to ensure a level-playing field). The other two frames used in the Netherlands were similar to those used in France. Members of the investor coalition, such as institutional investors and members of the Liberal Party (VVD), tended to argue in terms of shareholder supremacy. The “shareholder supremacy” frame emphasizes market efficiency, minority shareholder rights, shareholder value, and transparency.<sup>76</sup> Dutch unions and Christian Democrats tended to frame arguments in terms of

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FIGURE 4.2. Dominant Frames of Articles Dealing with Dutch Takeover Politics, 1995–2006

*Note:* The LexisNexis search of articles in the area of takeover protection yielded 679 relevant articles between 1995 and 2006 from *Algemeen Dagblad*, *Het Financieele Dagblad*, *NRC Handelsblad*, *De Telegraaf*, and *De Volkskrant*. A Dutch research assistant coded all those articles based on one of three frames, or assigned them to the category “no dominant frame” (many articles were short factual accounts). The three frames were Foreign Takeover Threat (or level playing field), Shareholder Supremacy, and Stakeholder Defense. Articles could be coded as having a maximum of two dominant frames. Where we coded an article as having two frames, each frame counts as 0.5 of an article. The headline and first three paragraphs of the article, as well as the last paragraph, were given priority in assigning frames to the articles, although the whole article was analyzed. We coded 293.5 articles as Shareholder Supremacy; 117 as Foreign Takeover Threat; and 13.5 as Stakeholder Defense (the coding protocol for this exercise is included as an appendix). The remaining articles were coded as having no dominant frame. We coded as Foreign Takeover Threat any article that characterized takeovers as a threat for Dutch firms, as indicated by the use of negative phrases such as predator (to describe foreign firms) or prey (to describe Dutch firms), or any article that referred to the need for maintaining takeover protections to maintain a “level playing field” between the Netherlands and other countries. We coded as Shareholder Supremacy any article that referred to the stakes in takeovers as affecting shareholder value, shareholder rights, one-share one-vote, market functioning, transparency as a value for shareholders, or a high share price as its own best defense. We coded as Stakeholder Defense any quotation that characterized takeovers affecting a broader group than just shareholders, including employees, unions, long-term owners, customers, and local communities. See the appendix to this chapter for a longer discussion of the procedure used to identify article frames.

<sup>75</sup> Frentrop (2002).

<sup>76</sup> In the Dutch political context, the argument that a high share price was the best defense was employed mainly by opponents of takeover defenses, and we coded it as falling under shareholder supremacy. This was different from the French case, where managers used the idea of share price as their best defense in order to advocate largely neoliberal rules of transposition of the takeover directive.

stakeholder defense. The “stakeholder defense” frame highlights the importance of the broader community of stakeholders in a firm, as opposed to the narrow community of shareholders, or the potential employment losses associated with the possibility of liberalizing takeover rules. I identified a number of typical keywords associated with the given frame. The headline and first three paragraphs of each of the 679 articles in the sample, as well as the last paragraph, were given priority in assigning frames to the articles, though the whole article was analyzed (this coding procedure is discussed at greater length in the appendix to this chapter).

Between 1995 and 2005, the dominant framing of articles about hostile takeover defenses in the Netherlands was that of “shareholder supremacy.” This was true of both left-wing and right-wing papers, and of the financial as well as the general press. The two figures below demonstrate this latter point by showing how the framing of articles in the financial paper, *Het Financieele Dagblad* (FD), was fundamentally similar to the framing in the nonfinancial press. As we would expect on a financial subject like hostile takeovers, the FD ran more stories per year on this topic than did the other four newspapers combined. Of the total of 679 articles in my sample, slightly more than half (353) appeared in the FD. As illustrated by the two figures below, the financial newspaper and the nonfinancial press followed similar trends in coverage.<sup>77</sup> Moreover, and perhaps more surprising, the general press showed the same “shareholder supremacy” dominance in framing as did the FD, even though we would expect the business press to be somewhat politically more predisposed to the shareholder supremacy view (Figure 4.3). Indeed, in its coverage of hostile takeovers, the FD turned to a “foreign takeover threat” frame one year *earlier* (2005) than the general press (Figure 4.4). By 2006, both the financial and the nonfinancial press had moved to a “foreign takeover threat” framing. By way of contrast, this coding of articles showed very little reliance on the employment and worker defense tropes associated with the “stakeholder defense” frame in either the general or the business press.

If these indicators accurately reflect both the salience and the ideological tenor of press coverage of hostile takeovers in the Netherlands, then Gerrit Zalm’s real window of opportunity may not have been at the end of 2003, as suggested by Tabaksblat, but instead in 1996. In the second half of 2003, many of the articles in *Het Financieele Dagblad* about protection were about the Tabaksblat Committee, and they were conducted in language that was propitious to reformers. However, the general press failed to pick up any of these articles. The FD ran thirty-two articles in 2003 that dealt with hostile takeovers; the rest of the press ran only nine articles, the least of any year between 1995 and 2006. While the Ahold scandal generated outrage and corresponding press coverage about accounting systems and executive pay in the Netherlands, the general press never linked the Ahold scandal to the issue of takeover defenses.

<sup>77</sup> The correlation coefficient between the number of articles on hostile takeovers per year in the *Het Financieele Dagblad* and in the nonfinancial press is 0.54.

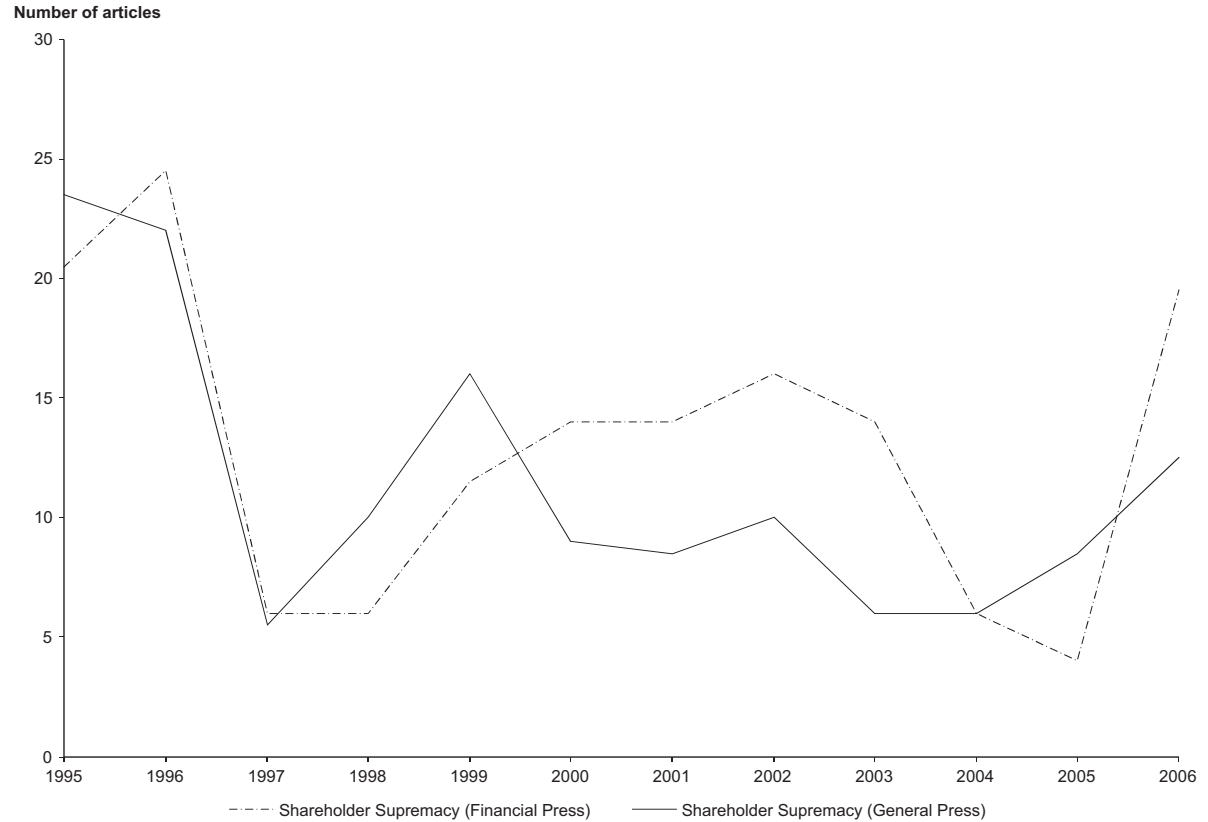


FIGURE 4.3. Financial Press vs. General Press, Use of Shareholder Supremacy Frames, 1995–2006. See Figure 4.2 for sources and explanation of coding procedure.

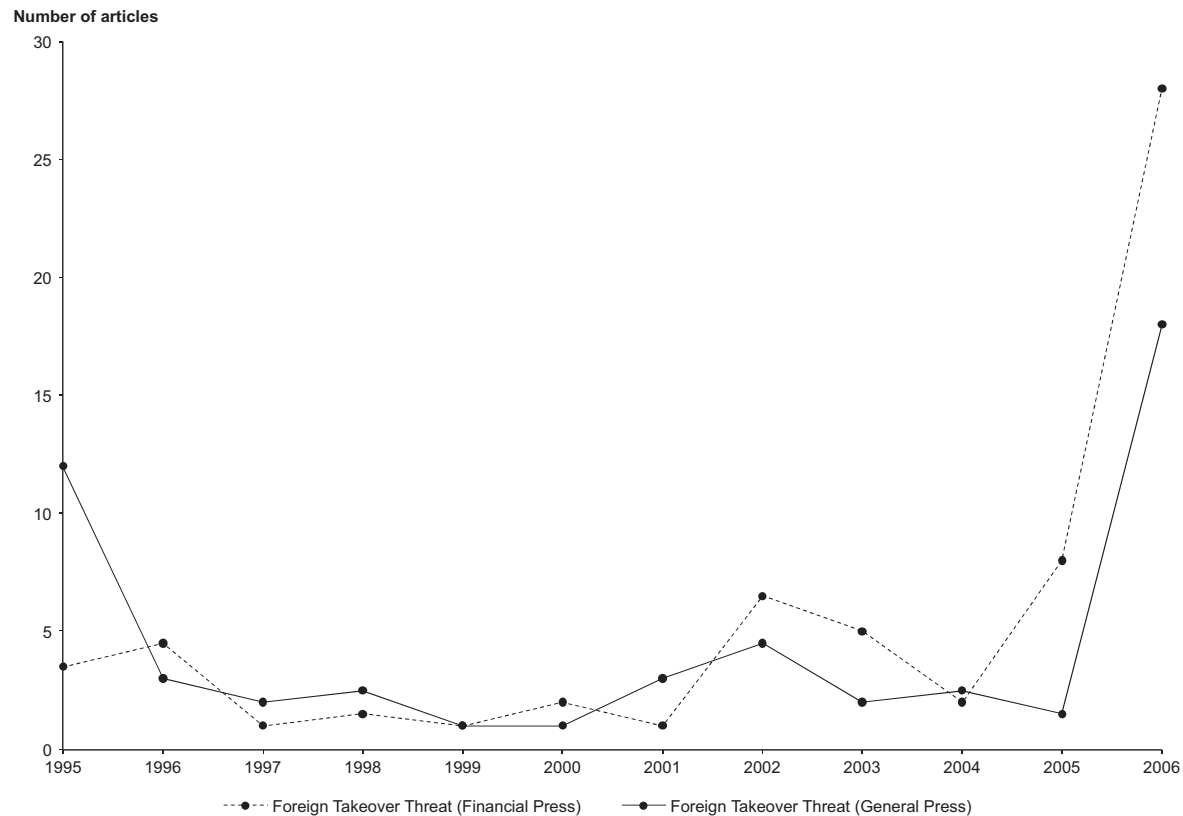


FIGURE 4.4. Financial Press vs. General Press, Use of Foreign Takeover Threat Frames, 1995–2006. See Figure 4.2 for sources and explanation of coding procedure.

The Tabaksblat Committee did deal with both issues, but the focus on protection never captured general media attention. In contrast, both the financial and the general press had been paying attention to the issue of hostile takeover protection in 1996, and the overwhelming majority of that coverage was conducted on terms favorable to reformers: shareholder rights, transparency, and efficiency were the watchwords of the debate. Representatives of managerial organizations, which in 1994 and 1995 had experienced at least some success in injecting notions of the potential threat of foreign takeovers into the debate in the popular press, found that these frames picked up very little traction in press coverage in 1996.

Gerrit Zalm and the VVD's final assault on Dutch takeover protection followed the adoption of the EU takeover directive at the end of 2003. Zalm, who was by now both finance minister and deputy prime minister in the Netherlands, favored a law implementing the EU directive which would include the breakthrough rule (article 11). The breakthrough rule, as legally interpreted in the Netherlands, would in case of a hostile takeover bid in which the acquirer passed an ownership threshold, have cancelled all protective mechanisms after a period of six months. The breakthrough rule had its political origins in the same reformist coalition that supported the Tabaksblat Committee. Jaap Winter, a member of the Tabaksblat Committee, chaired the Expert Group that had proposed the rule during the EU deliberations over takeover reform in January 2002, and Frits Bolkestein, who had preceded Zalm as the leader of the Liberal VVD Party in the Netherlands, had fought against the compromise version of the EU directive that made the breakthrough rule optional.

The Dutch law transposing the EU takeover directive was presented to the social partners for consultation at the beginning of 2005. The VEVO and the VNO-NCW led the opposition to the bill, focusing their fire on the breakthrough article. As Figure 4.2 shows, there was a sharp increase in the press usage of idiom related to the foreign takeover threat in 2006. This upsurge of articles actually began in late 2005 in *Het Financieele Dagblad*, shortly before the bill was formally presented to parliament in December, and it was later picked up by other newspapers.<sup>78</sup> On February 15, 2006, an article in the FD quoted Aad Jacobs, the former chairman of the board of Royal Dutch Shell, warning that Dutch companies would all become branches of foreign companies if the government's proposal passed.<sup>79</sup> Of the seven articles that appeared on the subject of takeover protections between that date and the parliament's ultimate rejection of the draft law at the end of March, four of them mentioned Jacobs by name and three reprinted his reference to the likely "branchification" of Dutch companies. The VEVO was successful in dominating the news cycle

<sup>78</sup> Thus, articles under the following three headlines appeared in December in the FD: "Dutch Listed Companies are Wild Takeover Prey" (12/6), "The Hunters and Dutch Prey" (12/6), "A Qadafi can take over Schiphol" (12/15) [Schiphol is Amsterdam's airport].

<sup>79</sup> Shell is the largest company in the Netherlands and one of the largest in the world by revenue. Aad Jacobs was one of the most well-known Dutch executives, and he had been a prominent defender of Dutch takeover protections since the early 1990s.

in 2006. According to an official of the VEUEO at the time, “the outcome [of the Takeover Directive episode] was not clear from the start. We as VEUEO did think, [when] there were voices in the newspaper from prominent Dutch people like Aad Jacobs and Kalff,<sup>80</sup> that our chances were greater. . . . You sense in politics and the media that there is a tipping point, and then it is a good moment to see if you can benefit from that.”<sup>81</sup> It is impossible to demonstrate a conclusive causal link between the press coverage of takeover protection and the decision of the PvdA to switch sides and vote the bill down. But the ability of managerial representatives to influence Dutch press coverage of takeover protections at this time cannot have hurt them politically.

## Conclusion

At the end of 2006, the VVD was voted out of office after twelve straight years of serving in the governing coalition. Fewer Dutch companies have multiple protection mechanisms than they did in 1993, but those protections they do enjoy have not been limited in duration. And as a former leader of the VEUEO was quick to point out in an interview, when it comes to protection mechanisms, “you only need one, one is enough.”<sup>82</sup> As we saw in Chapter 2, a majority of Dutch companies had preference shares in 1993, and a majority of companies still maintained those protections in 2007. The legislative onslaught led by Gerrit Zalm and the Liberal Party, which aimed to make these legal protections automatically expire after six months in the event of a hostile takeover, failed. The takeover compromise of 1997 was subverted following an intensive lobbying campaign by the VEUEO, because parliament refused to consider it. The Tabaksblat Committee’s recommendations on making all protection temporary were not converted into law in 2004, even though the opposition Labor Party and the governing Liberals strongly supported these recommendations. In 2005–2006, when the government finally did attempt to implement the EU Takeover Directive, including the optional breakthrough clause, it was defeated in parliament. The Labor Party, which had supported such a change in 2004 and 2005, reversed its position, again in the wake of a strong lobbying campaign of the VEUEO.

By tracing the perceptions of the central political actors involved in this process as well as the press coverage of it, this chapter has illustrated how the low salience of corporate control converts the expertise of managers into a powerful political weapon. Dutch managers in the VEUEO are keenly interested

<sup>80</sup> Jan Kalff, the former chairman of ABN Amro and a highly visible executive in the Netherlands, had led the challenge to Zalm’s first reform effort, beginning 1994. “I am concerned about Minister Zalm’s [proposals to limit the mechanisms] companies use to protect themselves from undesirable takeovers. . . . I consider it extremely important that the market should come up with balanced measures in this regard, so that legislation is not required.” Such measures, he added, risked creating an “uneven playing field” in which “attractive Dutch companies” could be sold to foreigners (Frentrop 2002: 375).

<sup>81</sup> Interview with senior VEUEO official, September 4, 2006.

<sup>82</sup> Interview, September 1, 2006.

in preserving the protection mechanisms that serve them so well. Dutch political parties and unions, by contrast, have much less of a clear material interest in the issue. Zalm pursued these reforms as part of his party's program of liberalizing regulation the Netherlands. But for him, it was never an issue of overriding importance: "I would never make a cabinet crisis on a corporate governance issue. I *would* make a cabinet crisis on budgetary policy or social insurance or tax reforms." The Labor Party shifted position on this issue – it was split in 1997, and favored making protection temporary between 2003 and 2006, until its sudden reversal of position in the parliamentary vote of March 2006. This shifting position makes sense only in the context of an issue in which the party did not have a strong view which its voters monitored.

The defining political feature of the Dutch regime of corporate control is not its defense by a corporatist coalition of managers and unions, but its low political salience. Both coalitional and partisan theories are anchored in views of the world in which voters and parties have a clear understanding of the way in which the politics of corporate control relates to their own material interests, and that this view is important in determining their political priorities. This perspective is a serious distortion of the political reality of Dutch corporate control. Most of the time, most voters do not care about corporate governance or hostile takeovers. They care about salient material issues such as taxes and salient symbolic issues such as immigration. Only when an issue achieves high visibility do voters begin to pay attention to how politicians act on it. When issues are of low salience, the lobbying capacity of managers and the deference to their expertise by politicians and the press are important assets. These assets best explain the surprising durability of the institutions of takeover protection in the Netherlands.

#### Appendix 4.1: Coding Scheme for Dutch Newspapers, 1995–2006

There are three potential codes, as well as "none of the above":

- Foreign Takeover Threat
- Shareholder Supremacy
- Stakeholder Defense

#### Coding Protocol

*Foreign Takeover Threat*: any article that characterized takeovers as a threat to Dutch firms, as indicated by the use of words such as predator (to describe foreign firms) or prey (to describe Dutch firms), or any article that referred to the need for maintaining takeover protections to maintain a "level playing field" between the Netherlands and other countries.

Examples:

"We should guard against becoming a country of branches. The Netherlands does not want to become like Belgium where all companies were bought up and their headquarters moved abroad."



“The Netherlands should not want to be the teacher’s pet. It is unwise to force companies to break down protection where other countries leave the protection of their companies untouched.”

“The predators are coming and Dutch companies are easy prey for them.”

*Shareholder Supremacy*: any article that referred to the stakes in takeovers as affecting shareholder value, shareholder rights, one-share one-vote, market functioning, transparency as a value for shareholders, or a high share price as its own best defense.

Examples:

“In the end the ‘Dutch Discount’ is bad for the attractiveness of the Dutch economy to investors.”

“Such measures contribute neither to transparency of the company nor to the beneficial input by shareholders and capital markets.”

“A higher price/profit ratio contributes to better financing terms and is thus a competitive advantage. It is also a market-conforming way to protect firms from takeovers.”

*Stakeholder Defense*: any quotation that characterized takeovers affecting a broader group than just shareholders, including employees, unions, long-term owners of the firm, and local communities.

Examples:

“A firm belongs not just to its shareholders, but also to its workers.”

“There is a group of owners who have demonstrated a commitment to the long-term strategy of the firm. We should give them proportionally more voting rights.”

“The major criteria for evaluating the effect of a takeover must include the potential unemployment effects of a merger, which can have major ramifications for local communities.”

*Examples of quotations that fit none of the above:*

“The Tabaksblat Code is an attempt to bring companies to good corporate governance through self-regulation.”

“Legally, remuneration and stock options are subject to approval by the shareholders’ meeting.”

“This law is a minor question. We must stay focused on the major problems of the economy, not technical details.”

“When one says the directive is neoliberal inspiration, this ignores the fact that the United Kingdom and the United States, both neoliberal countries, have very different rules for takeovers.”