

**Shareholders of the world united? Organized labour's preferences on corporate governance under pension fund capitalism in the United States, United Kingdom and France**

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**Abstract:**

This article considers whether organized labour's engagement with shareholder activism represents a shift in unions' traditional stakeholder preferences on corporate governance under pension fund capitalism. It does so in light of recent critiques of the class power thesis of corporate governance which suggest greater fluidity and fragmentation in labour's approach. Adopting a diverse case study strategy to compare organized labour's actions in the United States, United Kingdom and France, the paper explains these activities as innovative strategies, similar to other revitalization initiatives, designed to advance traditional agendas by alternative means. The paper thus concludes that, while organized labour's shareholder activism is unexpected under the class power thesis, its core preferences remain largely unchanged.

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The increased involvement of trade unions in shareholder activism over the last two decades has been noted by scholars (Befferman, 2011; Fung et al, 2001; Ghilarducci, 1992; Jacoby, 2008; Lincoln, 2000; McCarthy, 2014; Marens, 2004). This activity has been most evident in the United States where unions have been credited by some as ‘leading’ the shareholder movement (O’Connor, 2001; 68). Here, unions have used their governance role in some occupational pension funds to, amongst other things, vote their shares at companies’ annual general meetings (AGMs), often forming alliances with other investors (eg the Council of Institutional Investors). Similar, if not always as extensive, activity has also been noted in Canada (Lincoln, 2000), the UK (Williamson, 2003: 527-8) and Germany (van der Zwan, 2013: 107-8).

These activities seem consistent with claims by a number of commentators (Callaghan, 2009; Cioffi & Höpner, 2006; Gourevitch & Shinn, 2005; Schwab and Thomas, 1997-98) that labour’s traditional conflict with shareholders (eg Roe, 2003) has softened in recent years; that increasingly labour is accepting global finance’s espousal of shareholder value, forming ‘transparency coalitions’ (Gourevitch and Shinn, 2005) to monitor corporate governance. This apparent willingness by labour to adopt cross-class positions on shareholder issues is driven partly it is suggested by the growth of shareholding among workers, particularly their membership of occupational pension funds (Cioffi & Höpner, 2006: 488-9; see also Gourevitch & Shinn, 2005: 208). Focusing mainly on the mediating role of workers’ *party* political representatives, shareholder activism is explained as a product of centre-left parties’ need to represent ‘worker-owner’ interest in the returns from their retirement savings. It also serves parties’ strategic interests because it undermines relationships between conservative politicians and corporate managers. Separate analysis of unions’ shareholder activism is largely absent in these studies but that which exists - on the USA - suggests a more complex picture (eg Beeferman, 2011; Marens, 2004). Yet, overall, explanations remain

undeveloped of unions' involvement in activities considerably outside their normal sphere (Culpepper, 2011: 6) while, comparatively, there is little analysis of cross-national differences in union's actions.

Against this background, this article explores on a comparative basis organized labour's involvement in shareholder activism. It seeks to establish whether this activity represents a compromise of unions' traditional stakeholder agenda in the face of the rise of pension fund capitalism. This traditional agenda demanded corporate decision-making focus not just on increasing shareholder value but also the interests of other company stakeholders (ie workers, suppliers and local communities); it was resistant to markets for corporate control and took a long-term and relational approach to corporate value (Freeman et al 2004).

The paper argues that, while organized labour is increasingly aware of the implications of 'worker-owners', its activities are best understood as innovative strategies to advance its traditional agenda by other means. They are similar in this respect, the article suggests, to other union revitalization strategies (see also Lincoln, 2000: 728-9) developed in response to the economic and social challenges unions face eg membership drives, community organizing and 'social movement' unionism (eg Frege & Kelly, 2003: 8-10). Like these other activities, unions' interest in shareholder activism has entailed organizational developments, political action, coalition-building and the establishment of international links, with the precise nature of these initiatives varying cross-nationally in relation to unions' institutional embeddedness (Baccaro et al, 2003), employer/state strategies, union identity and framing decisions (Frege & Kelly, 2003: 10-15 see also for example Gahan & Pekarek, 2013; Gumbrell-McCormick & Hyman, 2013; Ibsen & Tapia 2017).

To develop this argument the article focuses mainly on union federations conducting case studies of their organizational activities with respect to pension fund governance; their consequent involvement in shareholder activism (eg voting at company meetings); and the

development of voting principles on corporate governance to guide this activism. As will be explained below a diverse case strategy (Gerring, 2007) is adopted involving the USA, the UK and France. These cases have been chosen to provide, in combination with previous studies (ie van de Zwan, 2013), maximum variance along the main dimensions of theoretical interest.

The article contributes to recent debates about labour preferences and corporate governance. It supports recent institutionalist critiques of the class power thesis which emphasise the fragmentation of labour politics and the importance of mediating institutions in translating workers' preferences into the policy process. However, it shows organized labour's preferences nevertheless remain largely consistent with the expectations of the labour power model; that union's involvement in shareholder activism is in support of, rather than undermining, their traditional stakeholder agenda; and that while activism is more developed where employee pension membership is greater, organised labour has also explored it in less obviously conducive situations to supplement its traditional activities.

The article is structured as follows. In the next section, we more fully detail the theoretical debates outlined above and explain our argument. We then explain our methods and choice of case studies. Finally, we present our case studies, before reflecting on our findings and their implications for further research.

### **Theoretical debates**

The traditional labour power model of corporate governance politics regarded workers as having generally uniform preferences, clearly differentiated from other actors, and related unambiguously to concerns about job security, employment conditions and pay (Roe, 2003). These preferences were expected to conflict with minority shareholders, whose primary focus was on enhancing shareholder value. Labour's political representatives – centre-left parties and unions – transmitted uniformly these preferences into the policy process, with variations

in outcomes resting mainly on cross-national differences in power resources. Where labour's party-political and union representatives were strong, particularly in what are now labeled coordinated market economies (CMEs), workers managed best to influence corporate decision-making, through co-determination institutions (O'Sullivan, 2003) and strong, generally nationally-organised, collective bargaining arrangements. Where labour was weaker, particularly in so-called liberal market economies (LMEs), its influence relied on weaker collective bargaining arrangements and employment protection legislation.

This labour power model has been challenged in recent years, with doubts raised about the uniformity of workers' preferences, and the undifferentiated transmission role of labour's representatives (eg Hall & Soskice, 2001: 58). The most important contribution to this challenge with respect to corporate governance preferences has been Gourevitch and Shinn's work (2005). These authors argue workers' perception of corporate governance can change very profoundly with the development of private pension plans, particularly workers holding – via such plans – significant equity stakes in public companies. Consequently, workers are no longer merely wage-earners, but also become – at least indirectly – owners of capital (see also Callaghan, 2009; 737-738; Cioffi & Höpner, 2006; 477-8). To maximize returns and shield financial assets from abuse by dominant 'insider' stockholders and corporate managers, workers are said to have allied with other 'outsider' – institutional and individual – investors in 'transparency coalitions', pushing for increased minority shareholder protections (MSPs – see below); they regard corporate value, like other minority shareholders, predominantly in terms of immediate company returns (Gourevitch and Shinn 2005: 273; Lazonick & O'Sullivan, 2000).

Gourevitch and Shinn rarely consider the implications of these developments for the corporate governance preferences of labour's traditional representatives: their coalitional theory of political dynamics regards financial institutions as the main mediator of 'worker-

owner' views. However, students of party politics suggest these developments help explain the recent actions of some centre-left parties: where employee shareholding has been more extensive (Callaghan, 2009; Cioffi & Höpner, 2006) and workplace representation is less developed (Schnyder, 2011), centre-left parties have allied themselves closely with shareholder interests. This movement, they suggest, has been reinforced by party leaders' ambition to undermine 'opaque and strategically important relationships between conservative politicians and corporate managers' (Cioffi & Höpner, 2006; 488). Gourevitch and Shinn also fail systematically to incorporate evidence that even in financialised systems some minority shareholders are 'patient' ie concerned not just with short-term evaluations of shareholder value but increases in value over longer time periods (See Deeg et al, 2016; Dixon, 2014; Myners, 2001).<sup>1</sup> They do not recognise therefore that some worker's alliances with shareholders (ie those with more 'patient' institutional investors) might at least in part be consistent with a stakeholder agenda.

Corporate governance politics is thus viewed in the recent literature as more fragmented than implied by the traditional labour power model, involving a larger range of competing preferences. Yet, scholarly analysis of this new political environment has so far focused almost exclusively on the transmission role of parties, with no distinctive role identified for unions. Indeed, some scholars simply conflate the positions of centre-left parties and organized labour (Schnyder, 2011: 186). Cioffi and Höpner (2006: 479-80) imply unions are conflicted, but the nature of this conflict is not fully investigated. Only van de Zwan has systematically explored organized labour's approach in the context of the rise of 'worker-owners' (2013). Her study of Germany found the largest unions suspicious of shareholder activism even as financialization has increased. Such a finding is expected in a country seen as closest to the CME ideal type, with private pension funds undeveloped and a stakeholder model strongly entrenched. However, more surprisingly, van der Zwan also

found that in companies where employee share ownership exists, the adoption, real or threatened, of an overt shareholder value strategy, has led local labour activists to form employee shareholder associations (ESAs). These have become to varying degrees active shareholders, attending and voting at company AGMs. Importantly, however, this activism is in support of - not a replacement for - traditional union efforts to maintain labour's workplace influence (2013: 100-06)

How does the German situation compare with other settings more conducive to the development of 'transparency coalitions' (eg the USA and UK), where shareholder activism among mainstream unions has been more extensive? On the face of it, unions' actions here seem more consistent with the dynamics identified by Gourevitch and Shinn and the apparent shift of some centre-left parties. Driven by 'worker-owners' are unions entering cross-class alliances with former foes to protect members' pension returns? Or are they, like the German ESAs, using shareholding strategically to advance a traditional agenda by other means?

We argue for the latter and suggest that unions - as organizations with their own imperatives (Baccaro et al, 2003: 119-20; Davidsson & Emmenegger, 2013: 339-43; Frege & Kelly, 2003: 10-15) - are unlikely passively to succumb to the dynamics proposed by the 'transparency coalition' thesis. This argument is informed by the union revitalization literature, which in its comparative focus on unions as strategic actors (Frege and Kelly, 2003: 10) is crucial we suggest in explaining unions' interest in shareholder activism. This literature shows how unions in the face of external challenges have sought innovatively in recent decades to advance traditional objectives by other means; they have re-launched themselves as 'political subjects' to engage in 'the broader aggregation of political and social interests' (Baccaro et al, 2003: 119). This has involved attempts to: (i) enhance and maximise organizational resources; (ii) build coalitions with other actors (eg social movements); (iii) partner with employers; and (iv) extend international links (Ferge & Kelly, 2003: 9-10). The

precise nature of these activities, the literature suggests, has varied cross-nationally at a strategic level in relation to institutional and political variables eg the institutional embeddedness of unions (Bacccaro et al, 2003), the competing strategies of other powerful actors (state and employers), union structures and identity, and framing decisions (Ferge & Kelly, 2003; see also for example Gahan & Pekarek, 2013; Gumbrell-McCormick & Hyman, 2013; Ibsen & Tapia 2017). Institutional embeddedness refers here, for example, to collective bargaining arrangements and other means of entrenching unions in decision-making processes. Baccaro et al suggest unions which are more embedded will have less need to be strategically innovative (2003: 121). Union structures refers, for example, to relationships with other political actors (eg parties and social movements). Thus, unions with strong connections to a political party seem less likely to engage independently in political activity (Frege & Kelly, 2003: 11). Finally, framing highlights the importance of leaders - their willingness to innovate - and the inherited traditions and policy legacies of national union movements, their identities (Hyman, 1994: 132; Voss & Sherman, 2000). These are likely to determine whether unions treat external changes ‘as threats or opportunities’ (Frege & Kelly, 2003; 14), but are liable to be less clearly patterned between settings.

We focus mainly on union peak organisations below and show below how viewing them as strategic actors is vital in understanding organized labour’s response to shareholder activism. Rather than simply resisting this development (the labour power thesis) or embracing it in line with the rise of ‘work-investors’ (the ‘transparency coalition’ thesis), union federations have sought creatively to shape it to maintain and promote their traditional stakeholder agenda. To do this, the paper shows they have developed a threefold plan of action. First, they have sought to strengthen organised labour’s role as shareholders, particularly by improving unions’ position in the governance of pension funds; secondly they have sought to become active shareholders, often on the basis of strategic alliances with



shareholder groups more sympathetic to their stakeholder concerns (eg ‘patient’ institutional investors); thirdly they have framed their actions using a unifying narrative that reconciles workers’ potentially conflicting interests in achieving high investment returns and securing decent work (Ghilarducci et al, 1997). This strategy has varied cross-nationally in relation to institutional and political context, but its underlying principles remain broadly consistent between settings.

In the next three subsections, we first explain our choice of cases and methods. We then analyse the development of union federations’ engagement with shareholder activism and the organizational and political initiatives taken on pension fund governance to facilitate this. Finally, we assess the positions on corporate governance adopted by organized labour to guide this activity highlighting the contrast with mainstream MSPs.

### **Case study and methods**

We have chosen three main cases - France, the United Kingdom and the United States based on a diverse case selection strategy (Gerring, 2007). These cases display significant variance with respect to relevant causal features both between themselves and with van der Zwan’s study of Germany. They thus provide a good basis, in combination with existing work, from which to explore how and under what conditions variables of theoretical interest interact to impact on organised labours’ shareholder activism. In line with Gerring’s recommendations, our cases thus include one case, the USA, which is at the opposite extreme theoretically from van der Zwan’s German study (2007: 98). The other two cases lie between these two extremes, the UK closer to the USA and France closer to Germany. We focus below first on conditions in our cases with respect to the ‘transparency coalition’ thesis. We then turn to union variables (eg institutional embeddedness, union structure and identity), given our interest in unions’ strategic actions.

The USA is an extreme case because circumstances here seem among the most conducive to the development of ‘transparency coalitions’. This is for three reasons. First, large numbers of ‘worker-owners’ would be anticipated among US union members given large private occupational pension funds, the investment value of which amounted to 81 per cent of GDP in 2016 (OECD, 2017). These ‘worker-owners’, according to Gourevitch and Shinn, will be interested in investment returns, as well as their position as company stakeholders, meaning unions would be expected to have moved on shareholder issues at least partially in the same direction.

Secondly, corporate governance is strongly shareholder-oriented in the USA with minority shareholders increasingly pressing since the early 1990s for protection (Cioffi & Höpner, 2005; Gourevitch & Shinn, 2005). A strong shareholder movement exists, with which unions could ally should they decide to (Davis & Thompson, 1994; 158). This process has been supported legislatively by the 2002 Sarbanes-Oxley Act which required, for example, that the majority of company directors and auditing committees be independent of management (Cioffi & Höpner, 2006; 481-2). The 2010 Dodd-Frank Act reinforced this trend by permitting greater shareholder influence over directors’ nomination (see below).

Finally, US corporate decision-making structures have provided little “voice” to firms’ stakeholders: workers have had no statutory rights for employee board representation, and unions have seen no prospect of this changing. Consequently, and unlike in CMEs, unions in developing corporate governance strategies have no institutional position to defend (see Schnyder, 2011), meaning shareholder activism does not threaten existing positions of influence.

The UK situation is similar to the US, with regard to pensions funds and corporate governance. Pension fund development has been extensive, such that UK funds’ investment value amounted to 95.3 per cent of GDP in 2016 (OECD, 2017). Corporate governance has

been strongly shareholder-oriented (Armour et al, 2003; Davies, 1998), though managerial accountability has traditionally rested predominantly on a highly active market for corporate control (Deakin & Slinger, 1997). From the early 1990s, MSPs were enhanced by quasi-voluntary reforms summarized in the 1997 Combined Code of Corporate Governance (Solomon, 2004; 313-33). This Code recommended, for example: the division of Chair and Chief Executive Officer (CEO) roles; independent non-executive directors; improved financial information; and transparent remuneration committees with shareholder involvement. Finally, UK unions' corporate influence has, like in the USA, been very low, with no formal process entrenching labour's views within firms. However, unlike in the USA, this issue has intermittently entered the mainstream political agenda (see below) and in recent years even the Conservatives have raised the prospect of worker-directors (BBC News 2016).

Our other main case, France, is situated closer to the 'median' in relation to the 'transparency coalition' thesis, particularly given developments in recent years. A large public earnings-related pension system has meant pension fund capitalism is under-developed, with the investment value of funds amounting only to 0.6 per cent of GDP in 2016 (OECD, 2017). Consequently, there are few 'worker-owners'. Moreover, up until the early 1990s, French corporate governance was quite strongly statist, with equity-based financing less prevalent (Zysman, 1983: 99-170). French managers enjoyed considerable autonomy, troubled little by minority shareholders. Workers were ostensibly incorporated into this system through works councils, which provided important informational resources, but they had few effective powers (Milner & Mathers, 2013; also Goyer & Hancké, 2005). However, significant reforms in France in the last two decades might be expected to have improved the prospects for 'transparency coalitions'. First, public pension retrenchment was accompanied by attempts to develop funded private pensions as compensation (Naczyk & Palier, 2011). Secondly, French corporate governance has been transformed (Culpepper, 2006, 2011: 48-81;

Howell 2009; O'Sullivan, 2007), with a gradual state withdrawal from economic decision-making. Anglo-American institutional investors are a growing presence on French capital markets and cross-shareholding networks have diminished signaling French corporate elites' embrace of international equity financing and shareholder value.

Our cases thus vary significantly on pension fund and corporate governance variables. This is also the case on union variables likely to influence organized labour's strategic decision-making (eg institutional embeddedness, union structures and identity and framing decisions). Thus, in the USA and UK, unions' institutional embeddedness, in terms of bargaining and membership, has been low and declining for most of the last three decades. This, Baccaro et al suggest, leads to greater interest in strategic innovation (2003: 121). In France, in contrast greater institutional embeddedness, in terms of bargaining at least, would lead one to expect a more passive approach. Union structures also vary, most significantly with respect to political embeddedness and union divisions. UK unions are the most politically embedded, given their strong institutional and individual affiliations with the Labour Party. This, as has been seen, might be expected to dissuade them from undertaking independent political action. Union divisions, along various dimensions, are evident in all cases. These would be expected, to a lesser or greater extent, to disrupt strategic initiatives emanating from union leaderships and peak organizations (Voss & Sherman, 2000). Finally, union identity and leadership also vary but because these are more nationally contingent their impact is more difficult to predict (Frege & Kelly 2003; Voss & Sherman, 2000).

In what follows, we provide theoretically-informed narratives of unions' developing involvement in shareholder activism in our three case studies. We focus mainly on unions' peak organizations because this is where most activity has occurred, but indicate where significant differences exist within countries. We rely on in-depth analysis of empirical evidence, collected through electronic newspaper archives, anonymous interviews conducted

in 2013 and 2014 with officials from the main national peak organizations and a selection of national unions, and consideration of union federations' policy documents. We emphasise the strategic choices made by organised labour, highlighting its organizational and ideological efforts to shape shareholder debates in line with a traditional stakeholder-oriented agenda, and detail the impact of national factors eg union embeddedness and structure, state and employer strategies, union identity and framing processes. We then consider organized labour's positions on MSPs - control rules, oversight, information and managerial incentives - as recommended in each country by union peak organizations or other representative bodies. We rely analytically on Gourevitch's and Shinn's theoretical discussion of minority shareholders' interests, which suggests MSPs are demanded particularly by shareholders concerned 'to maximise the value of the shareholders' stock' (2005;42-7). Union federations' positions on them are thus a good test of the extent to which they have accepted shareholder value. We also consider union federations' positions on corporate value. Thus, according to Gourevitch and Shinn minority shareholders view *control* mainly in financial terms, with all shareholders – i.e. both minority and large ones – given equal voting rights (one-share, one-vote rule); they propose *oversight* be more devolved to outside directors, independent of management; they generally suggest more stringent accounting and audit procedures, to ensure reliable *information* on firm finances; and finally, they seek controls on *managerial pay* aligning managers' interests with theirs.

## **Unions' pension governance initiatives and shareholder activism**

### *United States*

Up to the 1980s, US unions tended to side with management against shareholders' attempts to exert more control over companies (Schwab & Thomas, 1997/98; 1021). This alliance was informal given the almost complete absence of employee representation within the firm, a

situation unions felt unable to challenge. Union interest in shareholder activism was slight, notwithstanding the steady post-war growth of public and private sector occupational pensions (McCarthy, 2014; Hacker, 2002). This ambivalence was reinforced by two further factors. First, labour lacked influence in pension fund governance. Most pension funds were ‘corporate’ (or ‘single-employer’) plans, unilaterally created, sponsored and administered by employers (Ghilarducci, 1992; 38-41; see also Hacker, 2002; 126-134; McCarthy, 2014). Only ‘multi-employer’ (‘Taft-Hartley’) plans gave unions a management role, consisting of fifty per cent of trustee seats on the funds’ boards. In the public sector, some plans were directed by a single non-union trustee while others granted employees board representation. Secondly, union shareholder activism was inhibited by regulatory restrictions concerning the issue of trustees’ fiduciary duty (McCarthy, 2014). Both the 1947 Taft-Hartley Act and the 1974 ERISA legislation clearly stipulated trustees should act *only* in the interest of scheme members.<sup>2</sup>

Since the mid-1980s, and particularly early 1990s, unions have become much more active, ‘leading’ an emerging US shareholder movement (Schwab & Thomas, 1997/98). This change was initially instigated politically: the Carter presidency, influenced by broader interest in labour’s investment role in the late 1970s (see Rifkin and Barber 1978; 13; see also Drucker, 1976), proposed a tripartite board to oversee pension fund investments to revitalize de-industrialised areas (McCarthy, 2014). The AFL-CIO reacted positively, strongly encouraging unions to increase representation on *public sector* pension funds’ boards, including the largest by assets, the California Public Employees’ Retirement System (CalPERS) (Barber, 1982; 50). Unions controlling Taft-Hartley plans started targeting companies and submitting social- or corporate-governance-issue shareholder resolutions at AGMs (Ghilarducci, 1992; 45-7; Marens, 2004; 111-13). The AFL-CIO also sought coalition partners, taking a leading role in the establishment of the Council of Institutional Investors

(CII) in 1985 (CII, 2013). Momentum stalled with the Republicans' domination of the 1980s White House (McCarthy, 2014), but was revitalized in the 1990s, as part of broader labour revitalization efforts instigated by John Sweeney the AFL-CIO's new president (Hurd et al, 2003; Milkman, 2013). The AFL-CIO sought to co-ordinate unions' shareholder activism in the same way it was seeking at this time to oversee labour's other emerging political and coalition-building activities (Hurd et al 2003: 103-108). Thus, a Capital Stewardship Program was launched in the mid-1990s which sought to encourage a unified Taft-Hartley plan voting bloc and gain greater leverage on public pension funds (see O'Connor, 2001; 77-80; see also Beeferman, 2011). To improve pension fund trustees' advice, training, research and technical support, it created in 1997 a non-profit entity called the Center for Working Capital (Reuters, 1997). It also issued the AFL-CIO's first Proxy Voting Guidelines (see below) which sought to encompass unions' views on issues raised during shareholders' AGMs. The AFL-CIO also started publishing annual surveys of asset managers' voting on union-sponsored shareholder resolutions to identify 'labour's friends and enemies on Wall Street' (Swoboda, 1999).

However, two factors have constrained US unions' approach. First, state and employer strategies on fiduciary duty have been used repeatedly by legislators and employers to question unions' role in this area (Schwab & Thomas, 1997/98: 1049-51, 1075-82). This continues to inhibit unions' actions (interview AFL-CIO official), notwithstanding advice suggesting regulatory restrictions are being exaggerated (e.g. Snow Spalding et al, 1997; see also Marens, 2004; 113). Secondly, this problem has been complicated by labour divisions. Differences over the broader revitalization agenda led in 2005 to the disaffiliation from the AFL-CIO of three of the four biggest unions – Service Employees International Union (SEIU), the Teamsters, and United Food and Commercial Workers International Union (UFCW) –and the formation of the rival Change to Win (CtW). This split made the development of an overall union strategy more difficult, particularly given that differences

over capital stewardship between individual unions had always existed, with some (eg SEIU) wanting to more rigorously challenge fiduciary constraints, and others more cautious (interview US union federation official). The formation of CtW was accompanied by the closure of the Center for Working Capital and currently the two organizations run separate capital stewardship programmes.

### *United Kingdom*

UK unions have also become more interested in shareholder activism, but more recently and hesitantly than in the US. This is a consequence of inhibitions relating to union identity and structure. Traditionally, indeed, unions' challenge to the UK's shareholder- and manager-dominated corporate governance system focused on pressure for institutional change in the workplace (Gold, 2005). The UK's main union federation, the Trades Union Congress (TUC), concerned in 1973 that collective bargaining was insufficient to protect workers' interests, proposed equal employer/union representation on supervisory boards (Gold, 2005; 50; TUC, 1973). The TUC's strong connections with a Labour Party close to the peak of its post-1951 power, generated confidence lobbying could bring about change. A new Labour government duly established a committee of inquiry in 1975. However, splits among the TUC's constituent unions and strong employer resistance, prevented change up to 1979, when Margaret Thatcher's election ended any chance of progress for eighteen years.

With Labour so long out of office and engaged anyway by the mid-1990s in a 'Third Way modernization' process, the TUC undertook its own re-consideration of strategy (Heery et al 2003). Like the US, this led to greater emphasis on organizing, coalition-building and employer partnerships (Heery et al 2003). UK unions also began to explore shareholder activism from the early 1990s. Such an approach had been considered intermittently since the 1970s, but unions' governance position in pension funds was weak (Naczyk, 2013a;). Most



private-sector and public-sector funded schemes were controlled by employers or financial companies (Bridgen & Meyer, 2011: 282-3). Union trustees had influence only in a small number of schemes set up by large – often nationalized – companies such as British Telecommunications. Attempts to improve this situation in the early 1980s were discouraged when the National Union of Mineworkers’ attempts to influence investments by the miners’ scheme was ruled in breach of trustees’ fiduciary duties (UNEP Asset Management Working Group, 2005: 88-90). Interest was reignited in the 1990s, in the context of the TUC’s broader reconsideration of strategy. This was facilitated at least in part by strategic changes by other powerful actors. First, pension governance reforms, introduced in 1995 in the wake of the Maxwell scandal, allowed members to claim one-third representation on occupational pension trustee boards, a situation which was made compulsory by the 2004 Pensions Act (Bridgen & Meyer 2011: 283-6). This also sanctioned government to further increase representation to 50 per cent. Secondly, broader political interest in longer-term investment largely neutralized fiduciary concerns (eg Myners, 2001), reassuring unions that shareholder activism was feasible (interview with Pensions and Investment Research Consultants (PIRC)). Consequently, the TUC reactivated a network of union trustees set up in the 1980s to support shareholder activism, providing technical support, organizing training conferences, and issuing newsletters (interview PIRC). On policy, the TUC joined forces with PIRC, a shareholder ethics research and pressure group, in 1998 to publish corporate governance guidelines for member-nominated trustees. These became the Trade Union Voting and Engagement Guidelines in 2013, when the TUC and its two largest affiliated unions, UNISON and Unite, united as Trade Union Share Owners, to coordinate their staff pension funds’ shareholder activities (see below). In addition, like US union federations, the TUC sought to influence pension fund managers publishing an annual Fund Manager Survey, which focused particularly on executive pay (TUC, 2003a; 2003b). These developments were

reinforced during 2011-2012 negotiations with the Conservative-liberal coalition government over public sector pension reform, when organized labour secured equal representation on the Local Government Pension Scheme trustee board, the largest public-sector pension fund.

However, despite this greater interest in shareholder activism, UK unions remain warier than US counterparts. This mainly reflects differences in union structure and identity. Unions' close relationship with Labour means they still place most faith in political lobbying to advance their corporate governance agenda. This has been reinforced by a significant increase in union influence since the party's move leftward under Jeremy Corbyn. Meanwhile, ideologically, unions still identify strongly as opponents of the shareholder model rather than advocates for its reform. 'Worker power will never be delivered by shareholders,' one union federation official told us, 'We want a diminution of their rights ...Shareholders aren't going to abandon their own primacy' (Interview, UK union official).

### *France*

French unions' interest in shareholder activism is more recent and embryonic as would be expected given the traditionally smaller role of occupational pensions in France (Naczyk, 2013b). It has developed in the last two decades as part of a more general review by French union federations, particularly the social-democratic CFDT (the second largest union federation) of their political and organizational positions (Milner & Mathers, 2013). This review has occurred in the face of corporate governance transformation (see above), severely declining membership and a weakening of unions' national bargaining position (Milner & Mathers, 2013). Organizing activity in response to these challenges has been limited due to French unions' weak membership position and very divided structure (Milner & Mathers 2013: 128). Instead, the focus has been on public mobilization, where French unions have traditionally been strong at alliance-building on national issues (Milner and Mathers 2013:

132). French unions have also sought to find innovative ways of improving their workplace position.

It is in this context, that French union federations' interest in shareholder activism has arisen. Thus, French organized labour reacted creatively to public pension retrenchment from the 1990s, supporting private pension expansion both to top up pay-as-you-go pensions, and engineer greater influence on French companies (Häusermann, 2010: 99-125; Morin, 2000; O'Sullivan, 2007; Palier, 2007). Pension privatization was framed as an opportunity to argue for the development of existing "salary savings" (*épargne salariale*) plans. Since the 1960s, these plans allowed workers to accumulate tax-free savings helped by their company, and consisted of "company savings plans" (*plans d'épargne entreprise*), profit-sharing and bonuses linked to company performance. Organized labour backed their expansion provided they became a mandatory collective bargaining item and that unions increased representation on their supervisory boards. When the right-wing Raffarin government decided in 2003 to create proper "collective retirement savings plans" (*PERCO – Plans d'épargne-retraite collectifs*) (Naczyk & Palier, 2011: 98-100), organized labour ensured unions nominated at least 50 per cent of board members, an arrangement replicated in a new mandatory pension fund for all civil servants (called *ERAFP – Etablissement de Retraite de la Fonction Publique*).

Efforts have also been made to develop members' capacity to intervene in corporate governance debates. The *Institut de Recherches Economiques et Sociales*, a union think tank, researched the functioning of *épargne salariale* (apRoberts *et al.* 2001) and the activist strategies of American unions (Montagne, 2000; Sauviat & Pernot, 2000; Sauviat, 2001). CFDT sponsored study trips to North America and helped launch an "inter-union committee on salary savings" (*CIES - Comité intersyndical de l'épargne salariale*) with three other union federations, including the formerly communist CGT. To influence pension fund

managers' investment policies, the CIES developed a "quality mark", awarded to approved asset management products (e.g. CIES, 2007). Company unions or industry-level federations negotiating collective agreements are encouraged to pick certified products when choosing an asset manager. Reflecting the embryonic nature of French pension funds and union federations' involvement in this field, none of the confederations or the CIES have yet issued proxy voting guidelines and direct engagement in shareholder activism is still rare. However, the CIES started formulating explicit voting recommendations from 2008, and union federations were also very closely involved in the definition of the ERAFP's guidelines, which were first published in 2012. These activities have operated closely in conjunction with legislative advances on workplace representation (e.g. the 2001 *Nouvelles réglementations économiques* – NRE - law), which have strengthened employees' board representation in large companies.

### **A Stakeholder View of Corporate Governance**

The previous section has shown organized labour in our three countries innovatively engaging in, or exploring, shareholder-related activities relating to pension fund governance and shareholder activism based on organizational initiatives and coalition-building. Shareholder activism is most well developed in the US with union federations establishing quite close relationships with institutional investors at least in part to shield them from questions about fiduciary concerns. In the UK, unions' commitment is less developed mainly because organized labour remains hopeful Labour will legislate to increase worker representation on companies' boards. In France, developments are more embryonic, but organized labour has sought to convert into an opportunity the threat posed by pensions

reform: greater shareholder influence is increasingly viewed as a method to reinforce unions' workplace position, a similar approach to the German ESAs.

In this section we detail how union peak organizations, in developing these activities, have framed them on the basis of a traditional stakeholder agenda. We focus on the positions they have adopted on MSPs and show that, even if some labour preferences have partly aligned with minority shareholders, such alliances have mainly been with the more 'patient', usually institutional investors. Union federation leaders have thus continued pressing for institutional arrangements consistent with a stakeholder view of the firm (table one). We explain cross-national differences of emphasis in this regard in relation to the national circumstances outlined in the previous section.

Table one about here

### *Corporate value*

Union federation leaders in all three countries reject shareholder returns as the best way to establish corporate value, framing shareholder activism instead in terms of expected improvements in long-term company performance and returns. American union leaders have developed a distinctive 'worker-owner' perspective critical of capital markets' short-term assessments of company value (eg Silvers et al 2001; 206-07); the UK's TUC contrasts its activities with the 'short-termist, low-investment and low-productivity approach to business' (Williamson, 2003; also TUC, 2013); and French union leaders argue consideration of social and environmental issues is necessary to 'get a good return on their assets' in the long-term (Théry, 2002; 75-76).

Differences reflect the national factors outlined above. The AFL-CIO, reflecting fiduciary constraints, emphasizes the primacy of returns, with social issues only considered a factor when choosing ‘among investment alternatives of equal economic value’ (AFL-CIO, 2012). Less restricted, the TUC is more assertive, claiming ‘the way companies are run is inextricably linked to ... labour standards, job security, social and environmental responsibility’ (TUC, 2013). Similarly, French CFDT officials suggest activism can “change the company to the benefit of its employees, [and] of other stakeholders ...” (Bonnand, 2006: 144; see also Berducou & Mermet, 2013; Notat, 2003).

### *Control*

Organized labour’s strong criticism of mergers and takeovers in all settings has softened, with corporate control markets now regarded as potentially useful to hold managers to account (CIES, 2011; Schwab & Thomas, 1997/98: 1021). Yet, stakeholder protections remain primary. Fiduciary concerns mean the AFL-CIO cautiously calls for case-by-case ‘independent and thorough cost/benefit analys[e]s’ of mergers, but it strongly criticizes disruptions to ‘the stability and continuity of the corporation’ and emphasizes the importance of long-term business planning (AFL-CIO, 2012; 17). The TUC suggests takeovers be supported only when they make ‘the long-term success of the company [the] priority rather than the short-term interests of shareholders’ (TUC, 2013; 28; also Williamson, 1997; 157) and impact is minimized ‘on the terms and conditions of employment ...’ and jobs (TUC, 2013; 28). Similarly, the French CIES views a takeover’s ‘determining criteria’ as its ‘consequences on employment, the economic sustainability of the companies, the sustainable development of .... employees’ interests, etc.’ (CIES, 2007; 4).

### *Oversight*

Labour federations in all settings also differentiate themselves from short-termist shareholders on directors' accountability and company boards', with UK and French union leaders maintaining support for worker representation. American federation leaders, moving beyond the 2002 Sarbanes-Oxley Act (Hochberg et al, 2007), call for independent board chairs (AFL-CIO, 2013; 3); for two-thirds of company directors to be independent, rather than 51 per cent under Sarbanes-Oxley; and for greater women and minority representation (AFL-CIO, 2012; 8-9). On independent directors, the AFLCIO's focus on director elections by shareholders (considered more feasible to increase union-friendly voices in boardrooms) was partially accepted by the 2010 Dodd-Frank Act, which increased shareholders' powers over director nomination (Schumer, 2009). The TUC urges shareholder activism to encourage extension of the UK Combined Code on the division of chair and CEO responsibilities and the role of non-executive directors, but most importantly demands meaningful levels of worker representation on company boards (TUC, 1995 and 2013; Williamson, 1997 and 2003; interview UK union federation official). French union leaders' position on employee directors is even stronger (CIES, 2011; 2). They propose the use of shareholder activism to reinforce legislative advances (e.g. the 2001 *Nouvelles réglementations économiques* – NRE - law) strengthening employees' board representation in large companies. They have also used influence over director nominations to ensure boards uphold French company law in considering firms' 'social' (*intérêt social*), as well as shareholder interest (ERAFP, 2013; 10).

### *Information*

Union federations in all settings favor significantly extending reporting stipulations, particularly on companies' social impact. The AFL-CIO is again most cautious. It argues current reporting rules (ie the Generally Accepted Accounting Principles (GAAP) on companies' social relationships are insufficient but uses a returns-oriented argument i.e. that

better reporting would improve ‘human capital management’ (interviews AFL-CIO, CtW and Teamsters union official; Silvers et al, 2001). On corporate social responsibility (CSR), the AFL-CIO is largely supportive, suggesting only the desirability of more disclosure from management to shareholders. The UK TUC links more explicitly social disclosure to a stakeholder agenda. It urges significant extensions of the Combined Code on companies’ information about relationships with stakeholders, and calls for companies to be judged on “employee representation and involvement” (TUC, 2013; 23-24). On CSR, it calls for more systematic assessment of its worth (TUC, 2013; 22). French federations are similarly distrustful of unilateral social reporting as recommended under the 2001 NRE and 2008 *Grenelle Environnement* Law, favouring worker representative involvement in the reporting of non-financial issues (interview CFDT official).

### *Managerial incentives*

In all settings, unions have placed executive pay firmly on the agenda, but in their approach to executive/employee pay ratios and performance-related pay they go further than other minority shareholders. US unions built their shareholder campaign on executive pay, achieving some success in the 2010 Dodd-Frank Act, which accepted many union proposals on transparency and accountability (Davis & Thompson, 1994; 166-168; Ertimur et al, 2011; O’Connor, 2001: 76-7; Schwab & Thomas, 1997/98: 1086-8). The Dodd-Frank reform also included action on the pay ratio, by stipulating disclosure of the ratio between company employees’ median annual total compensation (excluding the CEO) and CEO annual total compensation. However, lukewarm support among other minority shareholders (see for example CII, 2013) meant this stipulation was delayed until 2017. On executive performance measurement, the AFL-CIO demands compensation be linked to long-term performance, judged on stakeholder management and social responsibility (2012; 16) as well as ‘traditional



financial measures'. The UK TUC demand action on company pay distribution, by grade and in terms of the ratio between directors and the median and lowest paid employee. Like their American comrades, they are highly sceptical of performance-related pay, particularly annual bonuses, and argue for long-term incentive structures (TUC, 2013; 15-16). Finally, French federation leaders have also emphasized the need to link executive pay to non-financial performance criteria (Berducou & Mermet, 2013; 5). The ERAFP recommends stock options be phased out and performance-related pay limited to 'three times the base salary (fixed remuneration) to avoid promoting excessive risk-taking or remuneration' (2013; 14-15).

Differences are evident on whether a target should be set for pay ratio and, if so, what it should be. The TUC is the most radical: it calls for 'an aspirational goal' of a 20:1 maximum/minimum pay ratio (TUC, 2013). Other socially concerned UK shareholder activists such as PIRC support a 200:1 ratio (interview PIRC). The TUC also demands the payment of a 'living wage', significantly above the statutory national minimum (TUC, 2013; 16). Institutionally, UK union leaders link executive pay explicitly to worker representation calling for employee inclusion in company remuneration committees (interview PIRC). US union officials regard the UK target as completely unfeasible in the American context and have not set one (eg interview Teamsters official). To maximize institutional shareholder support, they base their case on human resource management arguments (eg employee productivity and morale) rather than social equity ones (O'Connor, 2001: 90-1; see also AFL-CIO, 2011). In France, consideration has been given to a more general target ratio i.e. '100 times the minimum salary in force in the country in which its registered office is located' (ERAFP, 2013; 14-15).

## **Discussion**

The three case studies above show organized labour to be to varying degrees a participant in shareholder activism, a process facilitated by unions' strengthening of their position in pension fund governance. However, evidence is thin that this constitutes a change in organized labour's preferences in response to the rise of 'worker-owners', as the 'transparency coalition' thesis suggests. Rather, shareholder activism should be understood as a supplementary tactic used by unions in weak or weakening circumstances to maintain or increase their influence. Wherever unions have taken such action they have sought concertedly to defend and promote a traditional stakeholder view of the firm (see table two). They have developed a conception of company value that challenges the short-termist shareholder value model. Reflecting this approach the main union federations in each country have taken positions on the four main MSPs significantly different from those of most minority shareholders, including at times institutional investors. They have maintained a strong commitment, particularly in France and the UK, to workplace representation. As expected, some variation is evident, caused both by differences in pension fund and corporate governance arrangements in the three countries, but also because of cross-national differences in union's institutional embeddedness, structure, identity and leadership. Activism is greatest in the US, where unions have managed best to gain leverage over pension fund governance and have had very limited alternatives to exert influence. Here, organized labour has moved closest to the adopting the positions of institutional shareholders, given the need for allies in a generally hostile context, but its positions remain clearly distinct from short termist investors. Activism is less developed in the UK due mainly to unions' strong political embeddedness via its connections with the Labour Party. It is least developed in France, due to the relatively recent development of funded pensions. However, the fact that French organized labour has begun to engage at all in shareholder activism supports the argument that the rise of 'worker-owners' is not the primary dynamic for such developments. 'Worker-owners' remain very

few and far between in France and unorganized. The actions of French union federations thus seem similar to those of the German ESAs studied by van der Zwan: in response to financialization and the concomitant challenge to stakeholder institutions, French labour has, like the ESAs, engaged in ‘creative experimentation with new forms of political activism to protect the legacies of a pre-existing economic order’ (2013: 108).

Table two here

These findings thus suggest the ‘transparency coalition’ thesis is weak as a predictor of unions’ behavior under pension fund capitalism. Some unions, in some settings have supported campaigns and positions seemingly out of line with labour’s traditional concerns, making allies in the process with unusual bed-fellows, but the evidence strongly suggests that for the most part such actions are strategic; they do not imply any fundamental shift in labour’s first order preferences as outlined by the labour power model.

However, this does not mean the labour power thesis is an unproblematic guide to union behavior. Our findings also show its limitations in explaining recent developments, particularly its assumption that labour’s preferences will be transmitted untarnished into the policy process (Pagano & Volpin, 2005; Roe, 2003). Like other institutionalist accounts (eg Schnyder, 2011), we highlight the strategically-informed transmission role of mediating institutions and confirm that for individual unions and union federations, as well as centre-left political parties, this has involved activities wholly unexpected by the labour power model. The particular contribution of our paper in this respect is that it highlights the need to consider the mediating role of organized labour as distinct from that of centre-left parties, with the former more strongly attached to a traditional stakeholder agenda than it has been suggested centre-left parties have been.

Finally, the fragmentation of labour politics raises important questions about corporate governance policy formation on the centre-left given most commentators regard unions as a continuing and significant influence (eg Simoni, 2013). How, are differences, where they exist, negotiated between the industrial and political wings of the centre left to arrive at an agreed position? Empirical analysis is required on this matter, but our expectation would be that centre-left parties would pay greater heed to trade unions' stakeholder conception of corporate governance in multi-party systems, where electoral incentives press them to be more receptive to the preferences of their core - working-class - constituencies as articulated by trade unions; in two-party systems, where centre-left parties have a greater incentive to cater to the interests of the median voter, unions' specific views are less likely to be heard (Iversen & Soskice, 2006; Cusack et al, 2007). More research is required to test these predictions. However, what seems certain is that a better understanding of the politics of corporate governance will only be possible if full consideration is given to the impact of a more diverse range of political organizations than has been considered heretofore.

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## Tables

**Table 1 – Diverging perspectives on pension fund investment policies and corporate governance**

	<i>Minority shareholders</i>	<i>Trade unions</i>
<i>Corporate Value</i>	- Shareholder value - short term	- Stakeholder value - long term
<i>Control rules</i>	- Takeover bids determined by financial impact	- Takeover bids determined in relation to social impact
<i>Oversight</i>	- <i>Duties:</i> boards responsible to shareholders - <i>Composition:</i> minimum number of outside directors	- <i>Duties:</i> boards responsible to all stakeholders - <i>Composition:</i> minimum number of independent/worker directors
<i>Information</i>	- Independent financial audit	- Independent financial and non-financial audit
<i>Managerial incentives</i>	- Allied to interests of shareholders	- Allied to long-term financial and non-financial goals - Limiting managerial/worker pay differentials

Sources: Gourevitch and Shinn (2005: 42-47; 221-223); Vitols (2011: 24-30)

**Table 2 – Union federations' approaches to shareholder activism in the USA, UK and France**

	<i>USA</i>	<i>UK</i>	<i>France</i>
<i>Corporate Value</i>	Critical of short-termist approaches but priority given to returns - social issues considered when choosing 'among investment alternatives of equal economic value'	Understood in relation to long-term 'labour standards, job security, social and environmental responsibility'	Long-term approach to benefit all company 'stakeholders'
<i>Control</i>	Case-by-case, cost/benefit approach to mergers	Mergers only supported when benefit long-term success of company and minimise impact on employee conditions	Mergers judged on 'consequences on employment, the economic sustainability of the companies, the sustainable development of .... employees' interests, etc.'
<i>Oversight</i>	Demand independent board chairs; two-thirds of company directors to be independent; and for greater women and minority representation	Demands meaningful levels of worker representation on company boards	Regard shareholder activism as means to reinforce legislative advances strengthening employees' board representation in large companies
<i>Information</i>	Uses a returns-oriented argument that better social reporting would improve 'human capital management'	Urges more information on companies' relationships with stakeholders, and for companies to be judged on them	Demand worker involvement in companies' social reporting
<i>Managerial incentives</i>	Demand company publication of pay ratio and that compensation be linked to long-term performance, judged on stakeholder criteria	Calls for 'an aspirational goal' of a 20:1 maximum/minimum pay ratio; worker representation on remuneration committees and performance-related pay to be related to long-term	Favours phasing out of stock options and limitations on performance-related pay. Consideration given to 100:1 maximum/minimum salary
<i>Sources</i> : USA: Silvers et al 2001; AFL-CIO, 2012; AFL-CIO, 2013; UK: TUC, 1995 and 2013 ; France: Bonnand, 2006; CIES, 2011; ERAFP, 2013			

## Notes

<sup>1</sup> Gourevitch and Shinn do recognise differences among minority shareholders but do not incorporate them into their overall thesis (2005: 116-8).

<sup>2</sup> Thus, ERISA requires that shareholder activism is only pursued on the basis that trustees discharge their duties solely in the interests of the plan participants and beneficiaries (ERISA 404(a)(1)(A)) In doing this, they must act prudently in relation to the following: portfolio diversity; current and projected returns relative to plan liabilities; and possible returns from alternative investments with similar risks (See Snow Spalding et al, 1997: 3)