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Elite Mobilizations for Antitakeover Legislation, 1982–1990

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Elite mobilizations play a key role in shaping the contours of social institutions. Prior research has demonstrated that mobilizations and the resulting struggles between competing elites shape the social structure of markets (Fligstein 1996), corporate governance regimes (Davis and Thompson 1994), and organizations (Fligstein 1990; Zald and Berger 1978). More recent examples in the popular press also demonstrate the use of the tactics of popular social movements by business elites. Corporate elites in the Philippines, dissatisfied with the loss of foreign direct investment and governmental corruption, supported throngs of protesters and helped them stage multiple demonstrations that led to the ouster of President Estrada (Frank 2000).[1] Demonstrations of similar magnitude (also led by the business elite) have recently taken place in Italy (Meyer and Tarrow 1998) and South Korea. A form of elite mobilization was previewed in the United States during the late 1980s, as institutional investors sought corporate governance reform and state legislatures across the country were pressed by coalitions among business and labor to pass legislation to limit hostile takeovers of local companies (Davis and Thompson 1994). In this chapter, we use a social movement framework to study this process as a movement/countermovement dynamic, focusing on the spread of state antitakeover laws among the fifty American states.

State laws regulating takeovers are highly contentious because hostile takeovers are almost always profitable for shareholders of the acquired

[1] It is important to differentiate the protests in the Philippines from our case of antitakeover legislation. In the Philippines, the business elite played a more indirect role of logistic and ideological support of a popular movement. In contrast, the business elite in the U.S. states played a much more direct role in effectuating change.

company, and because a regime of contestable corporate control is seen as essential for the vibrancy of the American corporate sector by many scholars of law and economics. In framing takeovers in terms of a "market for corporate control," Manne (1965) argued that takeovers typically happen to badly run businesses where outsiders see a chance to buy the business from its current shareholders at a premium and then rehabilitate it. The managers of the takeover target (who are presumably responsible for its poor performance) may resist the challenge to their control, but dispersed shareholders have few other remedies for bad management. Thus, the takeover market is seen as an essential selection mechanism in a system of shareholder capitalism. Without the possibility of takeovers, the self-aggrandizing empire builders contemplated by Berle and Means (1932) might overrun corporate America: "Protected by impenetrable takeover defenses, managers and boards are likely to behave in ways detrimental to shareholders. . . . The end result, if the process continues unchecked, is likely to be the destruction of the corporation as we know it" (Jensen 1988, p. 347). And yet forty state legislatures adopted laws restricting takeovers during the late 1980s, almost always at the behest of local businesses, often in coalition with local labor organizations.

The notion that corporate elites are politically influential is hardly new, as the venerable debate among pluralists, elite theorists, and Marxian structuralists shows (see Mizruchi 1992 for a review). Less recognized is the fact that the influence of the "American corporate elite" varies according to the relevant jurisdiction (cf. Scott and Meyer 1983 on nested levels within societal sectors). Corporate law is made at the state level, rather than the federal level. State corporate law includes the regulation of takeovers of domestic corporations (i.e., those incorporated within the state). Moreover, regardless of the locations of their operations, firms can incorporate in any state, implying that they are able to choose their corporate law regime. In this sense, law is a product, of which state legislatures are producers and corporate managers (and corporate shareholders) are consumers (Romano 1993). Thus, changes in corporate law may be driven by consumer preferences; the relevant question is whose preferences win out, and how. We utilize the three mechanisms of the social movement perspective described by McAdam et al. (1996b) – political opportunity, mobilizing structures, and frame alignment – to ascertain the conditions under which elites mobilize, the form of the mobilization, and the likelihood for success. We also embed the mobilization for antitakeover legislation as a countermovement in the historically rooted and ongoing

movement/countermovement between shareholders and managers (cf. Fligstein 1990; Useem 1996).

Our empirical context (the adoption of antitakeover legislation between 1982 and 1990 by U.S. states) is a particularly apt one for utilizing social movement theory, for four reasons. First, it provides an opportunity to extend the study of social movements to the conditions under which elites mobilize and to the factors influencing their success. Studying elite mobilization extends social movement theory beyond its focus on disenfranchised groups and grassroots mobilization and its assumption that elites primarily act as allies, sponsors, and providers of resources. Second, our sample is sufficiently large to quantitatively examine and test the role of political opportunity and threat, mobilizing structures, and framing alignment processes on movement outcomes. Third, it allows us to unpack a dynamic that remains underexplored in the social movements literature – movement/countermovement dynamics (Meyer and Staggenborg 1996). Lastly, it helps to bolster a growing segment of the social movements literature on social movements in and around (business) organizations (Creed and Scully 2000; Zald and Berger 1978).

We also examine state adoption of antitakeover statutes from 1982 to 1990 because it represents a clear example of the political processes surrounding the ongoing struggles and settlements over who controls the corporation. In this instance, the entrenched managerial elites were challenged at the heart of their power – the conception of control of the corporation (Fligstein 1990). That is, the finance conception of control, which emphasized diversification and conglomeration and largely entrenched management, was called into question and ultimately replaced by the "shareholder value" conception of control (Fligstein 1996) propagated by social movement–minded institutional investors (Davis and Thompson 1994). However, prior to the shift in the conception of control, managers partnering with unions, community leaders, and state legislatures were able to both forestall and change the form of its demise through the adoption of antitakeover statutes.

The Contractarian Perspective on Antitakeover Legislation

The contractarian or agency approach emphasizes that corporate structures are embedded in an institutional matrix, which insures that the structures that survive are those that maximize shareholder wealth (see Davis and Useem 2002 for a review). Relevant institutions include managerial

and director labor markets, compensation systems tied to corporate performance, markets for corporate equity and debt, a community of securities analysts and institutional investors acting as corporate watchdogs, the market for corporate law, and the market for corporate control. It is our belief that these interlocking institutions orient corporate managers toward the North Star of shareholder value. An essential insight of this approach is that corporate managers enter into this system because they are rewarded for doing so. Without the appropriate rewards this perspective assumes that managers use decision rules that are self-interested (Subramanian 2001). For example, they opt for structures that vouchsafe shareholder interests (e.g., taking on uncomfortable amounts of debt, or putting stern watchdogs on the board of directors, or leaving the firm open to hostile takeover) because shareholders will pay more to own shares in firms that are accountable than in firms where it is hard to get rid of bad managers (Easterbrook and Fischel 1991). Managers, in short, agree to be governed by a system that rewards them for maximizing shareholder value and punishes them for failing to do so. The system works because stock markets are good at placing prices on corporate shares (that is, markets are informationally "efficient"). These markets adjust to reflect the best information available about a given company at any moment, thus rendering true corporate performance intelligible. If internal control mechanisms fail (e.g., the board fails to adopt appropriate compensation policies to align the interests of management and shareholders), the share price will drop and leave the firm vulnerable to hostile takeover – assuming that such takeovers are possible. While corporate managements were largely protected from hostile takeover in the 1960s and 1970s through state-level practices making takeovers onerous, the 1982 *Edgar v. MITE Corporation* decision by the U.S. Supreme Court to outlaw these "first generation" antitakeover statutes ushered in a relatively unregulated market for takeovers. The result was an unprecedented wave of large hostile takeovers in which nearly one-third of the Fortune 500 faced a takeover bid (Davis and Stout 1992), ending only after a large number of states had adopted restrictive "second generation" takeover laws.

In order for agency theory to operate optimally in the realm of corporate law, two features are necessary, efficient capital markets and federalism. As previously noted, efficient capital markets weed out bad governance structures without the assistance of governmental regulation, by guiding voluntary adaptations by corporate managers. Federalism further reinforces efficiency by creating a market for corporate charters, which places states in competition with one another for corporate franchise revenues generated

by domestic corporations. The competition prevents states from overregulating organizational form because states with onerous corporate law will lose firms to more shareholder-friendly states (Easterbrook and Fischel 1991; Romano 1993). (Delaware has been particularly successful in this competition because of its enabling statute, its large body of precedents and sophisticated corporate bar, and its credible commitment to be receptive to corporate needs.) Reincorporation is also a plausible alternative because it is relatively inexpensive (approximately $70,000 in 2001) and typically qualifies as a tax-free reorganization (Subramanian 2001). Firms that incorporate in shareholder-hostile states (such as those with strong antitakeover regulation) are punished with share price declines. According to the contractarian perspective, then, why would a state enact an antitakeover statute? Contractarians offer two possible explanations. First, based on a simple public choice account, states adopting antitakeover statutes might do so based on the relative presence or absence of bidders and targets in their given state. States with more targets will enact antitakeover legislation, while states with more bidders will not. Although potentially plausible, this argument can be empirically rejected because using this logic we would expect Delaware and California (two of the largest incorporators) to have very strong antitakeover legislation. Contrary to this prediction, California has no statute and Delaware has a weak statute that was adopted relatively late and allows new firms to exempt themselves by specifying so in their corporate charters (Easterbrook and Fischel 1991). Second, and more plausibly, the amount of proportional revenue derived from franchise fees should be related to enacting an antitakeover statute. That is, if a state depends heavily upon incorporation franchise fees as a source of revenue it will be less likely to jeopardize these revenues by adopting statutes detrimental to shareholders. This leads to the following hypothesis representing the contractarian perspective:

H1: *The greater the percentage of tax revenues derived from franchise fees, the later a state will adopt an antitakeover statute.*

We argue that this account is incomplete because it ignores the role of collective action, especially elite mobilizations, in shaping how the institutional "rules of the game" are set. Consequently, by understating the role of collective action the contractarian perspective also slights the historically specific nuances that trigger mobilization, the networks undergirding it, and the frames and ideational elements which speed and broaden its impact.

Shareholders and Managers as Movement and Countermovement

At the heart of the conflict between managers and shareholders is the question, who controls the corporation? The answer has ebbed and flowed throughout the twentieth century as the first third of the twentieth century saw the rise of the Wall Street and powerful bankers which led to populist political action that fragmented finance and ushered in the ascendance of managerial capitalism (Roe 1994). The last quarter of the twentieth century saw the rise of the hostile takeover and shareholder activism.

The Shareholder Rights Movement Emerges

The rise of activist shareholders and institutional investors as a viable social movement has been well documented (Davis and Thompson 1994; Useem 1996). We briefly recapitulate how the shareholder activists resemble a social movement. Tarrow (1998: 2) defined a social movement as "sustained collective challenges against powerful opponents by people united by common purpose through underlying social networks and resonant collective action frames." The shareholder rights movement coincides with each component of Tarrow's definition as shareholders squared off against powerful opponents (managers), united by common purpose (pursuit of shareholder value), with underlying social networks and resonant collective action frames. The shareholder rights movement was born in the mid-1980s amid a free market–oriented Reagan administration, a sympathetic Securities and Exchange Commission, and a thriving market for corporate control enabled by the 1982 *Edgar v. MITE* decision – all of which created a welcoming *political opportunity structure* (McAdam et al. 1996). As public and private pension funds increasingly concentrated shareholdings, they became *mobilizing structures* that facilitated the aggregation of interests and collective action. Lastly, shareholder activists used resonant *cultural frames*, including emphases on corporate democracy, free markets, and economic efficiency as well as a populist characterization of corporate managers as overpaid and unaccountable plutocrats (Davis and Thompson 1994). The confluence of these factors resulted in a viable movement with a coherent agenda.

The Emergence of the Constituency Countermovement and State-by-State Battles

Countermovements exist only to the extent that they are dynamically engaged with an oppositional movement (Zald and Useem 1987). Thus, the

shareholder rights movement, which claimed that shareholders are the one true constituency for which corporations are operated, engendered a constituency countermovement asserting that corporations should consider shareholders in tandem with employees, customers, and communities (in the case of hostile takeovers). Three conditions support the rise of countermovements**:** the movement shows signs of success (e.g., through critical events such as a Supreme Court decision), the interests of some population are threatened by movement goals, and political allies are available to aid oppositional mobilization (Meyer and Staggenborg 1996). As argued above the shareholder rights movement showed many signs of success and had the continuing endorsement of the Reagan administration. However, its pursuit of an active market for corporate control replete with hostile takeovers explicitly threatened the interests of numerous constituencies in local communities including incumbent management, worker, and legislators. As such, there were numerous political allies from the outset.

Zald and Useem (1987: 247) characterized the dynamics of movement/countermovement interaction as following a "sometimes loosely coupled tango of mobilization and demobilization." As can be seen from the historical contestation over the separation of ownership and control in general and the regulation of mergers and acquisitions in specific, managers and shareholders have periodically faced off to renegotiate the balance of power in the public corporation. The emergence of the constituency countermovement provides an excellent example of Zald and Useem's "loosely coupled tango" because the managers and their allies mobilize only to the extent that there are acute concerns, an organized polity, and effective rhetoric.

Threat and Political Opportunity

Political opportunities are the conditions that encourage, discourage, and shape the likelihood and success of mobilization. They both facilitate movement activity and constrain the range and form of possible action. Political opportunities are historically specific and change over time. They can engender action by creating grievances and incentives for action. Social movements often seek to change the political opportunity structure as occurred in the civil rights movement with the passage of the Voting Rights Act of 1965, which opened insider options as well as outsider tactics (McAdam 1982). Similarly, the constituency countermovement of corporations and unions sought to enact antitakeover legislation to provide management greater latitude of action to answer hostile takeovers and other shareholder

insurgencies. The shareholder rights movement also sought and succeeded in expanding political opportunity by altering the law on proxy voting during the 1980s so as to transform corporate governance in a way that counteracted the power of corporate managers (Davis and Thompson 1994).

While mobilization is often triggered by political opportunity, countermovements are primarily triggered by threats. In the context of movements, threats entail the costs a social group is likely to suffer if it does not take action (Goldstone and Tilly 2001). Threats also have an indirect effect by creating political opportunity for protective countermobilization. By viewing threats as the trigger for countermobilization, we are able to analyze why the attempts to enact national legislation precluding takeovers failed and local efforts largely succeeded. Antitakeover legislation on the federal level failed because the threat of hostile takeover was not perceived as a national threat. In fact, the prevailing opinion in the Reagan administration was that takeovers actually enhanced national economic performance and it threatened to refuse to enforce any law regulating takeovers. But as Meyer and Staggenborg (1996: 1645) asserted, "in a federal state where there are numerous institutional sites for making policy, movements often respond to a defeat in one venue by protesting in an alternative arena." The constituency countermovement responded exactly in this way as it moved the conflict to the states.

Managerial elites were much more successful at the state level because they could articulate hostile takeover as an acute threat that posed considerable risks to local jobs and community. Their claims were enhanced because managers could claim residence and played a more central role in the local economy whereas shareholder groups were widely dispersed. These threats also operated indirectly by creating political opportunity by opening the political system to mobilization and broadening the number of elite allies such as local legislators (McAdam 1996).

Protecting local industry was also a full-time job of the state legislatures as the economic crises (e.g., international competition, hostile takeovers, and recession) of the 1980s wreaked havoc on local economies. The effects of raiders and hostile takeovers, both real and imagined, were also being felt on a local level. For example, in Pennsylvania, an early adopter of aggressive antitakeover statutes, Gulf Oil had been taken over in the early 1980s by Chevron resulting in the closing of Gulf's Pittsburgh headquarters and the elimination of thousands of jobs. Tender offers and hostile takeovers are acute threats that make potential job loss salient (especially when a local company is at risk) and can catalyze dormant or otherwise occupied

organizations and networks. In general, a hostile takeover attempt of a local company – locally headquartered and therefore having a large effect on the local economy and locally incorporated in order to be governed by a state's corporate law – led to the proposal and adoption of antitakeover legislation because it locally punctuated the ongoing crises of American industry.

Similarly, high levels of unemployment and high bankruptcy rates signal ongoing threats to the workforce and business community and, as such, render states more susceptible to influence. To remedy these conditions, state governments actively seek legislative mechanisms supportive of job security without alienating business leaders. The higher these rates the more exaggerated the climate of insecurity and crisis. Therefore, we hypothesize that acute and ongoing threats contributing to economic crisis will create state political openness to measures perceived to reduce job loss.

H2a: *The greater the number of tender offers for firms incorporated and headquartered within a state, the sooner a state will adopt an antitakeover statute.*

H2b: *The higher the bankruptcy rate within a state, the sooner a state will adopt an antitakeover statute.*

H2c: *The higher the unemployment rate within a state, the sooner a state will adopt an antitakeover statute.*

It is important to note that while our measures approximate levels of objective grievances, political opportunity is theorized as seeing potential for action and is interpretive. While this is an important limitation of our data, in our sample the movement entrepreneurs (i.e., elites) and labor leaders comprising the constituency countermovement interpreted the threats proxied by our variables as threats immediately necessitating redress. For example, "when Dayton Hudson, a Minnesota company, became a target two months later, its managers got Minnesota to hold a special legislative session. Within hours, the state had a new antitakeover bill" (Roe 1991: 339).

While we did not specifically hypothesize an effect of governmental legitimation of a tactic as a source of political opportunity, the legitimation of second generation antitakeover statutes in the *CTS Corporation v. Dynamics Corporation* case shaped and directed other mobilizations because it rendered similar types of legislation constitutional and plausible. Similarly, the enactment of the Equal Employment Opportunity Act made legal mobilization a possible and fruitful tactic for advancing equality in the workplace (Burstein 1991), and numerous court decisions (e.g., *Brown v. Board of*

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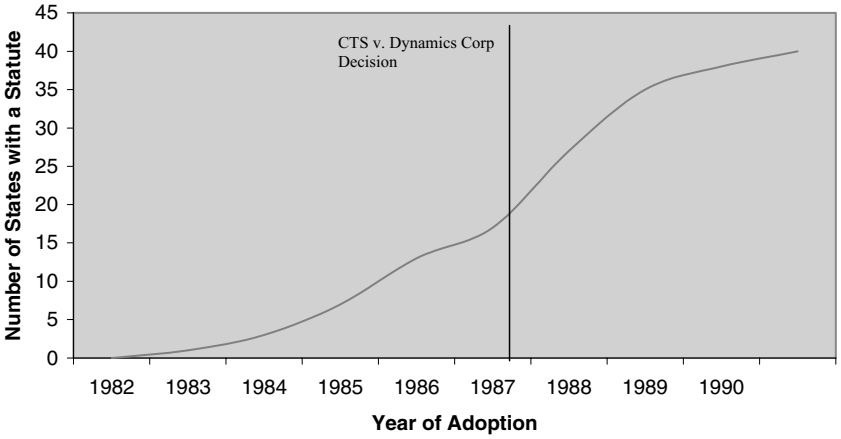

Figure 4.1 Cumulative Antitakeover Statues Adopted in U.S. States, 1982–1990.

Education) and new pieces of legislation during the U.S. civil rights movement made tactics plausible that had not been previously viable. Figure 4.1 illustrates the general pattern of adoption of antitakeover statutes, but also illustrates the significant impact of the legitimation of second generation statutes. Prior to the *CTS v. Dynamics* decision, only seventeen states had adopted a statute. Within a year of the mid-1987 decision, thirty-five states had adopted statutes.

Mobilizing Structures

Mobilizing structures are "collective vehicles, informal as well as formal, through which people mobilize and engage in collective action" (McAdam, et al. 1996). The mobilizing structures of managerial elites have been the subject of extensive attention, especially by class (e.g., Zeitlin 1974) and social network analysts (Swedberg 1994). Mobilizing structures have long been a cornerstone of social movement analysis because grievances, threats, and opportunities are necessary but insufficient conditions for effective collective action (McCarthy and Zald 1977). In the constituency countermovement both formal organizations such as local Chambers of Commerce and the Business Roundtable and social networks enabled local elites to mobilize quickly and effectively around issues that affect their interests. Many theorists have argued that upper-class clubs serve a similar function in creating cohesion and facilitating action (Domhoff 1998). A representative

quote from Romano (1992: 52) illustrates how coupling political opportunity with preexisting organizational capacity led to swift and successful action: "State takeover laws are typically sponsored by a local chamber of commerce at the behest of a local corporation that has become the target of a hostile bid. They are often enacted rapidly, sometimes over a few days in a special emergency session." The swift enactment of state antitakeover legislation in the vast majority of states reflects the depth and effectiveness of these networks and formal organizations. To represent the role of formal organizations in the adoption of takeover statutes we hypothesize:

H3a: *The greater the number of upper class clubs in a state, the sooner a state will adopt an antitakeover statute.*

The interlock network has a long history in the study of the diffusion of innovations (e.g., Davis 1991) and as a mechanism for creating cohesion and aggregating interests into collective action (see Mizruchi 1996 for a review). Interlocks increase cohesion by bringing individuals into closer contact with one another. When the networks are locally concentrated (connected firms headquartered and incorporated in the same state) they become a potentially powerful force in effectuating institutional change. The denser the interlock network among firms, the greater the capacity of firms to act in similar political ways (Mizruchi 1989). Prior research by Useem (1984) illustrated how the interlock network provided an important mechanism by which managers mobilized in response to political threats to their interests in the 1970s. Based on its ability to create shared interests, similar political action, and its importance in responding effectively to acute threats, we hypothesize

H3b: *The greater the number of interlocks between firms incorporated and headquartered in a state, the sooner a state will adopt an antitakeover statute.*

Relatedly, the interlock network also plays a powerful role as a source of information transmission and social influence. Interlocks with firms that have adopted an innovation generally lead to subsequent adoption by the interlocking firm because it gains fine-grained information about the innovation that helps it become more familiar with the benefits of adoption and the process for adopting. Ties to prior adopters have been associated with adopting poison pill defenses or securities issued by the board of directors in order to make hostile takeover more difficult by dramatically increasing the potential cost a hostile acquirer would have to pay (Davis 1991), investor relations departments (Rao and Sivakumar 1999), and acquisition

strategies (Haunschild 1993). Ties to prior adopters exert social influence by designating an innovation as normatively appropriate and desirable, thus exerting pressure to keep up with current innovations. Thus, when local elites are connected to firms incorporated and headquartered in a state that has previously adopted an antitakeover statute, they gain important information on the benefits of the statute and through processes of social influence come to see these statutes as correct and valid, both of which will lead the local elites to mobilize for antitakeover legislation. Thus, we hypothesize

H3c: *The greater the number of interlocks between firms incorporated and headquartered in a state and firms incorporated and headquartered in the state of a recent adopter, the sooner a state will adopt an antitakeover statute.*

Another vital component of quickly enacting antitakeover legislation was strong support by the other key constituency in the countermovement – labor unions. The participation of labor unions plays a crucial role in two ways: first, the rhetoric of saving jobs and preserving the local community institutions becomes more plausible to the extent that labor also participates in the countermovement: second, the greater the percentage of the workforce that is unionized the more readily workers can aggregate their interests in protecting jobs, wield local political clout, and mobilize to enact legislation. Wayne (1990: D1), reporting on Pennsylvania's statute at the time of adoption, stated "Pennsylvania business groups supporting the bill *are aligned with unions seeking to protect . . . their members* and local politicians worried about the impact of corporate takeovers on communities." This partnering of labor, management, and community generates credibility and urgency for adopting statutes. Thus, we hypothesize

H3d: *The greater the union density within a state, the sooner a state will adopt an antitakeover statute.*

Frame Alignment Processes

Both resource mobilization and political process approaches to the study of social movements and collective action have been critiqued for their inattention to linking the ideational and the structural (Snow et al. 1986). Frame alignment refers to shared schemata of interpretation regarding values, beliefs, and goals that facilitate collective action and help bridge the micro to macro linkage (Snow et al. 1986). Framing consists of three

components – diagnostic (constructing a problem in need of redress), prognostic (proposing a solution), and motivational (Snow and Benford 1988). Frames elicit action to the extent that they resonate – align with existing value and belief systems and have relevance to one's "phenomenological life world" (Snow and Benford 1988). The struggle between the shareholder rights movement and the constituency countermovement pitted two frames in direct opposition. The shareholder rights movement utilized frames that articulated free markets, economic efficiency, and corporate democracy and demonized corporate managements as "autocrats" and "feudal lords" to attract supporters. It diagnosed the problem as entrenched empire-building managements that ignored the concerns of shareholders. The solution to the problem was maintaining an active market for corporate control. The rationale for action was the moral inducement to maintain the free market and the promise of increased wealth. The movement also utilized expert testimonials to assist in inducing support (e.g., renowned scholars from the contractarian perspective, pension fund managers, and institutional investors). However, these frames failed to resonate with the public as high language regarding economic efficiency lacked relevance to the "life world" or experiential commensurability for participants and bystanders (i.e., the general public) (Snow and Benford 1988). The movement also lacked empirical credibility, as it is tough to test the claim that the economy is becoming more efficient (Snow and Benford 1988). Pension fund investor Greta Marshall amplified the point: "It's very easy to take a picture of someone out of work because of a takeover, it's very hard, though, to take a picture showing the U.S. economy as a whole becoming more competitive due to takeovers" (McGurn et al. 1989: 3).

The constituency countermovement did not have any of the same troubles, as it articulated specific threats to the local economy – hostile takeovers – as the problem. The proposed solution to the problem was enacting legislation to protect domestic firms from unwanted takeovers. The rationale for action articulated by the framing efforts across the states was the protection of local jobs and local companies from foreign raiders desiring to break up a company and slash jobs for short-term gains. Romano suggested that the frames utilized by the constituency countermovement possessed greater salience for the average constituent because "a news story on a takeover resulting in unemployed workers will . . . be vividly remembered and considered evidence of the negative effects of acquisitions" (1993: 82). In other words, by design, the frames employed by the constituency countermovement resonated because they were empirically credible (i.e.,

job loss is easier to observe) and experientially commensurable (i.e., the loss of jobs and/or the destruction of community institutions has great impact on one's "life world"). In addition, the constituency countermovement portrayed shareholder activists and corporate raiders as "rapacious" (Hirsch 1986) and interested only in short-term personal gain.

Given the strong resonance of the constituency countermovement's frames, its proposed solution should be enacted to the extent it is deemed plausible. Plausibility should be most readily conferred in states where there are culturally and politically available repertoires. Repertoires are most available in states where a first generation statute, struck down by the *Edgar v. MITE* decision, was adopted. Thus, we hypothesize

H4: *States adopting a first generation antitakeover statute will adopt a second generation antitakeover statute sooner.*

Methods

Sample

We collected data on the adoption of antitakeover statutes between 1982 and 1990 for all fifty states. We chose this time frame because it is analytically meaningful for the phenomenon under study. The starting date of June 23, 1982, is immediately following the *Edgar v. MITE* decision that both initiated the large wave of acquisitions and hostile takeovers and outlawed first generation takeover statutes. The end date is also theoretically significant because by 1991 (i.e., the end of 1990) forty of the states had adopted some form of antitakeover legislation and acquisitions had reduced to a trickle: seventeen between 1991 and 1996 with only five classified as hostile (Davis and Robbins 2005). Data on the timing and form of antitakeover statute adoption comes from the Investor Responsibility Research Center (IRRC).

Dependent Variables

Given that we had exact dates for the adoption of each statute we utilized time to adoption as our dependent variable. Specifically, we measured the time from June 23, 1982, until either the adoption of an antitakeover statute or, if a state did not adopt a statute, the end of the study time frame (December 31, 1990). The statutes in our analysis are the following: "control share statutes," which require a vote of "disinterested" shares

before an offer can be consummated; "fair price statutes," which prevent an acquiring firm from effectuating a two-tiered acquisition, whereby an acquirer pays a high price to gain control of the corporation and then pays a lower price for the remaining shares; "other constituency" or "directors' duties" provisions, which require consideration of other (nonshareholding) constituencies in the tender offer process; "poison pill endorsements," which allow companies to adopt the poison pill antitakeover defense (Davis 1991); and "freeze out" provisions which institute a waiting period for subsequent business combinations of, most commonly, two, three, or five years. All data on dates of adoption and number of statutes adopted were collected from the IRRC's *State Takeover Laws*.

Independent Variables

Political Opportunity/Threat We operationalized three measures that we believe capture a state's potential susceptibility to elite mobilization – the *number of first tender offers for fully domestic firms* (i.e., firms incorporated and headquartered within the same state), the *bankruptcy rate*, and the *unemployment rate*. All three of these variables were updated for each year under study (1982–90). The tender offers data was collected from *Compact Disclosure* and includes every first tender offer from 1985 to 1990. For the 1982–84 period we have data on first tender offers for the Fortune 500 (Davis and Stout 1992). While this component of the tender offer data is not as exhaustive, this is not problematic because the takeovers that triggered the adoption of antitakeover statutes were those of the large firms included in these data. Because of the skewed distribution of tender offers, we measured tender offers as the natural log of the number of first tender offers plus unity. Adding unity created valid values for states with zero tender offers. The bankruptcy rate was calculated as the number of bankruptcies in a state (data from Dun and Bradstreet's *Business Failures and New Business Incorporations*) divided by the number of nonfarm firms in a state (data from the Bureau of the Census). We took the natural log of this variable to account for skewness in its distribution. The unemployment rate was collected from the Bureau of Labor Statistics.

Mobilizing Structures We argued that four variables – *fully domestic ties*, *ties to fully domestic prior adopters*, *the number of upper-class clubs and social registries*, and *union density* – help aggregate interests and mobilize collective action through formal networks and formal organizations, respectively.

Fully domestic ties were measured as the total number of interlocks between firms incorporated and headquartered within the same state. Ties need to be fully domestic for four reasons. First, corporate law governs firms based on their state of incorporation; therefore, antitakeover statutes are applicable only to firms incorporated in a state. Second, sharing a headquarters state reflects the fact that interlocks are likely to generate local political action only to the extent that both the business and the local citizenry stand to suffer from a hostile takeover. Third, firms headquartered and incorporated in a state are also likely to have stronger ties with a community and, consequently, these firms are likely to wield more influence. Lastly, these conditions minimize the impact of statistical outlier Delaware. Because of the extremely skewed distribution of the number of interlocks within a state, we measured interlocks as the natural log of the number of ties plus unity. Adding unity created valid values for the numerous states with no fully domestic interlocks. We measured board of director interlocks using the same set of firms described in Davis (1991) and at one point in time – 1986. Prior analyses of the interlock network have demonstrated that the total number of interlocks is highly stable over time (Mariolis and Jones 1982). Thus, a point-in-time measure should be representative of the whole period under study. Ties *to prior adopters* were measured as the number of a fully domestic focal firm's interlock partners that were headquartered and incorporated in a state that had adopted an antitakeover statute in the previous year, updated annually. Again, because this measure is extremely skewed, we used the natural log of the number of ties to prior adopters plus unity. The number of upper-class clubs and social registries was coded as the sum of all clubs and registries in a state and collected from Domhoff (1998). We measured union density as the proportion of a state's workforce that belonged to a labor union. Union density was measured for 1983 1986, and 1987. Data were drawn from the Bureau of National Affairs' *Union Membership and Earnings Data Book*.

Frame Alignment It would be more plausible for a state to enact a second generation antitakeover statute to solve the "problem" of hostile takeovers if legislation had been previously enacted to curb hostile takeovers. Therefore, we measured the plausibility of enacting a new law based on whether or not a state was one of the forty that had adopted a first generation antitakeover statute, which were struck down by the *Edgar v. MITE* decision in 1982. We created a dummy variable for whether a state adopted a first generation statute or not (1 if the state adopted a prior statute, 0 otherwise).

The Contractarian Perspective The contractarian perspective argues that the adoption of antitakeover statutes results from competition for franchise fees. Those states most dependent on franchise fees should adopt the weakest bundle of statutes, later or not at all. We measured dependence on franchise fees as the franchise fees received by a state divided by total tax revenue. This approach has also been used in prior work that is representative of the contractarian perspective (Romano 1993). This variable was updated annually and we used the natural log to correct for skewness in its distribution resulting from a large outlier – again, Delaware. The data were collected from the Bureau of the Census, *State Government Tax Collections*.

Control Variables

Several factors not included in our hypotheses are likely to correspond with the timing of adopting a statute. Thus, we account for multiple alternative explanations for our hypothesized effects through three control variables that fit broadly under the rubric of state capacity and through the political composition of the state legislatures. State capacity implies that states that are more innovative, larger, and better organized are more likely to adopt any type of legislation irrespective of the other factors in play. We control for state innovativeness using the *Walker innovation index*, which accounts for a state's proclivity to adopt novel legislation (Walker 1969). The Walker innovation index is measured as reported in his seminal article.[2] State size is accounted for by a variable measuring the *number of nonfarm firms* in a state. We use this variable as a control to ensure that our measures of mobilizing structures are not merely a proxy for the size of the business community. The data was collected from the Bureau of the Census and is updated annually. In all the analyses we take the natural log of the variable to correct for skewness. The number of *registered lobbying organizations* is another potential explanation for why a state might adopt an antitakeover statute more quickly. That is, states with better-developed lobbying infrastructures provide formalized channels of influence (i.e., lobbying is likely to be recognized as a legitimate means of shaping public policy) and specific organizations act as mechanisms that facilitate the aggregation of interests and collective action. This variable utilizes data from Gray and Lowery

[2] In the original article Hawaii and Alaska were unranked. We imputed the mean to ensure all fifty states had data.

(1996) on the number of registered lobbying organizations in 1990. We use the 1990 cohort of data because prior to that time the data are incomplete. Using the 1990 data is not problematic because although the absolute number of registered lobbying organizations grows dramatically over time, the relative rankings of states remain largely the same between 1980 and 1990. Lastly, the Republican Reagan administration's strong free market stance thwarted multiple attempts by the Business Roundtable to enact federal legislation regulating takeovers. To the extent that Republican-controlled state legislatures share a similar stance with respect to economic issues in general and takeovers in specific, they should be less likely to adopt antitakeover statutes. If an antitakeover statute is adopted, it should be adopted later and the number of laws adopted smaller. We control for *party composition of the state houses* using two dummy variables, one for the state house and one for the state senate (1=Republican-controlled, 0 otherwise). Nebraska, however, has a unicameral nonpartisan legislature. Therefore, we substituted data on the party controlling the state delegation in the national House and Senate, respectively. In the event of an evenly divided state house or state senate, we utilized the party controlling the state delegation in the national House or Senate to break the tie. The data were collected from the *U.S. Statistical Abstract* and updated every election cycle.

Statistical Method

We model the rate of adopting an antitakeover statute using event history analysis. The particular method we employ is the Cox proportional hazards model with time varying covariates. We utilize the Cox model because it does not specify the exact form or distribution of event times and "in the judgment of many, it is unequivocally the best all-around method for estimating regression models with continuous-time data" (Allison 1984: 35). This model assumes that the first event is a fatal event, irrespective of which type of statute is adopted. Thus, for example, poison pill endorsements are treated as equivalent to control share acquisition statutes. While some subtlety is lost, as there are differences in the level of protection from takeovers among the different types of statutes, our second set of analyses using the strength of protection as a dependent variable helps to overcome this limitation. Because we had complete data on adoption dates from the first adoption in this population, there is no problem of left censoring.

Furthermore, our sample contained only a moderate amount of right censoring; 20 percent of the states in our analyses had not adopted a statute by the end of the sample period. This level of right censoring is adequately accounted for by the partial likelihood estimation technique used in Cox models.

Our general modeling strategy was to model adoption of the current year (e.g., 1986) as a function of the previous year's data (e.g., 1985) for our time, varying covariates (bankruptcy rate, unemployment rate, union density, number of businesses, interlocks with prior adopters, and franchise fees/total tax revenue). The other covariates (interlocks, first generation statute dummy, registered lobbying organizations, Walker innovation index, and upper-class clubs) were fixed values that were the same for each state in every model. Lastly, since many statutes were adopted during a hostile takeover attempt, this variable is measured during the same year as the dependent variable. Similarly, the composition of the state legislature of the current year should be most relevant to the adoption of a statute. Thus, this variable also is measured during the same year as the dependent variable.

Moreover, given that there is only a small sample of states (n = 50), we are required to use a methodological technique that compensates for the information deficit problem. Following Mintz and Palmer (2000), we utilize a four-step procedure to maximize comprehensive testing of all relevant variables while minimizing the demands on our small sample size in our final models. The procedure is as follows: 1) enter theoretically related variables (e.g., political opportunity), 2) enter all the significant variables from step one into a provisional multifactor model, 3) enter all the significant variables from step two and reenter (individually) each variable dropped after step one into a second-stage multifactor model, and 4) enter the significant variables from step two and step three into a final model. The results for all these analyses are reported in Table 4.2.

Results

Table 4.1 contains the descriptive statistics and correlation matrix for all the variables used in our statistical analyses. Many of the variables are significantly correlated with each other (as would be expected with time series data) and some are highly correlated with each other. However, regression diagnostics (i.e., the variance inflation factor) yielded no values greater than 3, which makes multicollinearity less of a concern.

Table 4.1. *Descriptive Statistics and Correlations for Variables Used in Analyses*

Variable	Mean	S.D.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Date of adoption	0.13	0.34															
Tender offers (log)	0.18	0.44	0.19*														
Bankruptcy rate (log)	−2.76	0.60	0.10†	0.06													
Unemployment rate	7.59	2.41	−0.08	−0.16*	0.38*												
Upper-class clubs	0.90	1.79	0.05	0.40*	0.08	0.06											
Number of interlocks (log)	0.56	1.05	0.15*	0.23*	−0.09	0.00	0.48*										
Ties to prior adopters (log)	0.23	0.54	0.12*	0.22*	−0.13*	−0.02	0.28*	0.57*									
Union density	16.43	6.17	0.05	0.02	0.04	0.36*	0.34*	0.34*	0.26*								
First generation statute	0.69	0.47	0.12*	0.07	0.07	−0.08	−0.03	0.25*	0.18*	−0.14*							
Franchise revenues (log)	−1.34	1.84	0.01	0.04	−0.04	0.05	−0.09	−0.10†	0.04	−0.22*	0.15*						
Walker innovation index	0.44	0.08	0.07	0.26*	−0.10†	−0.04	0.57*	0.61*	0.37*	0.56*	0.01	−0.30*	−0.22*				
Lobbying organizations (log)	6.10	0.60	0.09	0.40*	0.17*	0.05	0.52*	0.43*	0.21*	0.18*	0.15*	−0.05	−0.05	0.37*			
Number of businesses (log)	10.97	0.98	0.12*	0.49*	0.25*	0.13*	0.69*	0.52*	0.34*	0.09	0.23*	0.14*	0.08	0.46*	0.75*		
Republican-controlled house	0.35	0.48	−0.04	−0.08	−0.15*	−0.39*	−0.31*	−0.21*	−0.10†	−0.23*	0.01	−0.26*	−0.03	−0.10†	−0.24*	−0.43*	
Republican-controlled senate	0.33	0.47	−0.01	−0.11†	−0.05	−0.18*	−0.14*	−0.08	−0.06	−0.08	0.00	−0.34*	−0.19*	−0.01	−0.15*	−0.36*	0.62*

N = 308 †p < .10, *p < .05

The results of the event history analyses of the rate of adopting an antitakeover statute are displayed in Table 4.2. Models 1 through 5 represent step one in the Mintz and Palmer (2000) procedure where clusters of theoretically related variables (contractarian, political opportunity, mobilizing structures, frame alignment, and controls) are entered individually. These models reveal that only two variables are statistically significant (local interlocks and first generation statute) while two others are marginally significant (bankruptcy rate and union density). Also, only Model 3 and Model 4 are significant as a whole. Model 6 is the provisional multifactor model described as step two by Mintz and Palmer (2000). In step three we ran models with the four significant variables from step two (bankruptcy rate, local interlocks, union density, and first generation statute) and individually reentered each variable dropped after step one. Due to space constraints, we do not report these ten models individually. However, none of the variables individually reentered reached even marginal levels of statistical significance ($p < .10$). As such, the final model (Model 7), comprised of significant variables from steps two and three is identical to Model 6. We evaluate our hypotheses using Model 7 with all the excluded variables considered statistically insignificant.

Hypothesis 1 posited that states dependent upon incorporation franchise fees would adopt statutes later or not at all. Our results find no support for this hypothesis nor any statistically significant relationship between dependence upon incorporation franchise fees and rate of adopting an antitakeover statute. We also hypothesized that acute economic crises – tender offers for local companies, high bankruptcy rates, and high unemployment – that threaten local businesses and jobs should result in a greater likelihood of adopting antitakeover legislation (Hypotheses 2a, 2b, and 2c, respectively). We found no support for Hypothesis 2a as we found no relationship between the number of first tender offers for local firms and the rate of adopting an antitakeover statute. We discuss this unexpected finding in the next section. Furthermore, we found no support for Hypothesis 2c, which argued that higher unemployment rates would speed adoption of an antitakeover statute. While this finding was unexpected, it likely results from the fact that aggregate unemployment rate imperfectly gauges perceived need to mobilize. Attributions of an acute threat that can readily be redressed as a result of collective action are more likely to result from more sudden (and unexpected) and concentrated threats of unemployment such as downsizings and plant closings. Hypothesis 2b, higher bankruptcy

Table 4.2. *Regression Results Cox Proportional Hazards Regression of the Rate of Adopting an Antitakeover Statute*

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6	Model 7
Contractarian Perspective							
Franchise revenues (log)	1.01 (0.09)						
Political Opportunity							
Tender offers		1.06 (0.12)					
Bankruptcy rate (log)		1.52† (0.46)				1.61* (0.39)	1.61* (0.39)
Unemployment Rate		0.95 (0.10)					
Mobilizing Structures							
Upper-class-clubs			0.90 (0.09)				
Local interlocks (log)			1.66* (0.37)			1.42** (0.21)	1.42** (0.21)
Ties to prior Adopters (log)			0.95 (0.40)				
Union density			1.05† (0.03)			1.06* (0.04)	1.06* (0.04)
Frame Alignment							
First generation statute				2.79** (1.18)		2.92* (1.50)	2.92* (1.50)
Controls							
Number of businesses (log)					1.03 (0.33)		
Number of lobbying organizations (log)					1.44 (0.59)		
Walker innovation index					5.64 (12.79)		
State House – Republican					0.62 (0.27)		
State Senate – Republican					1.41 (0.56)		
Likelihood ratio	–133.40	–132.09	–125.97	–129.82	–130.10	–121.77	–121.77
Wald χ	0.01	2.29	23.22***	5.89*	5.20	27.18***	27.18***
N	308	308	308	308	308	308	308

Notes: Significance tests are two-tail for controls and one-tail for hypothesized effects.

Robust standard errors are in parentheses.

All models utilize robust standard errors with clustering to account for non-independence of observations.

†p < .10, *p < .05, **p < .01, ***p < .001

rates lead to faster adoption of an antitakeover statute, was supported ($B = 1.61$, $p < .05$). According to our model, for each percent increase in a state's bankruptcy rate, the rate of adopting an antitakeover statute increases by 0.06 percent. States with a 9.9 percent bankruptcy rate (the seventy-fifth percentile) adopted at a rate 2.4 percent greater than those with a 1 percent bankruptcy rate.[3] The low effect sizes suggest that while bankruptcy rate has a statistically significant effect on the rate of adoption, its effect is largely indirect. The indirect effect of threats and political opportunities, however, is largely consistent with a social movement perspective which argues that perceptions of threats or opportunities encourage, discourage, and channel mobilization (Campbell, this volume).

Our variables representing mobilizing structures generally received support and had a strong practical impact on the rate of adopting an antitakeover statute. First, the number of local board of directors interlocks significantly increased the rate of adoption (Hypothesis 3b, $B = 1.42$, $p < .01$). For states with two fully local interlocks (the seventy-fifth percentile), the rate of adoption is 268 percent higher than a state with no local interlocks. However, upper-class clubs (Hypothesis 3a) and ties to prior adopters (Hypothesis 3c) did not influence the rate of adoption. Greater union density (Hypothesis 3d, $B = 1.06$, $p < .05$) also significantly speeds the adoption of antitakeover statutes. This finding indicates labor's participation in the constituency countermovement significantly aided in the adoption of antitakeover legislation. That is, the rhetoric of saving jobs and preserving the local community may have been critical in swaying legislators (i.e., an effective frame), but the actual participation of labor leaders in articulating the frame and mobilizing their membership was also critical. Our variable for frame alignment also received support. Adopting a first generation statute created an available repertoire that later legislatures could effectively capitalize upon (Hypothesis 4, $B = 2.92$, $p < .05$). The general pattern of support for the social movement hypotheses, when coupled with the lack of empirical support for the contractarian perspective, highlights the importance of collective action in the adoption of corporate

[3] The estimated effects on the expected rate of adoption is calculated by $y = \exp\{b_1 z\}$ where y is the multiplier of the rate, z is the natural log of the variable of interest, and b_1 is the parameter associated with the logged variable. For variables that are not logged, the percentages are calculated by exponentiating (i.e., e^B) the coefficients of the regression equation.

law and the inability of the contractarian perspective to account for collective action either theoretically or empirically.

Discussion

Our results indicate that elite mobilization can be usefully studied using a social movement framework. Differences in the threats to established local interests (more bankruptcies) made state legislatures more prone to adopt antitakeover legislation early on, and states' dependence on franchise revenues influenced their corporate law agendas. While the number of tender offers for local companies did not contribute to the rate of adoption of antitakeover statutes, qualitative analysis of individual state histories indicates that tender offers for local companies, especially large corporations often classified as "good corporate citizens," often triggered the process for adopting a statute. For example, several specific takeover battles spurred the adoption of antitakeover provisions; Burlington Industries in North Carolina, Greyhound in Arizona, Dayton-Hudsons in Minnesota, Aetna in Connecticut, and Gillette in Massachusetts. Thus, we still argue that political opportunities created by discrete events that disrupt the extant power structure strongly shaped the pattern of adoption. This much might have been expected from a standard public choice account. But what distinguishes a social movement account is its attention to frames and social structures. Movement activity over time bears relatively modest relation to "objective" variation in grievances (Tilly 1978). The world is full of potential grievances, and events taken to be normal in one period are intolerable in other periods. It is when changes in incentives (e.g., from the political opportunity structure) are collectively interpreted as a cause of action by a well-organized set of actors that significant movements arise. Thus, the better organized the local corporate elite (as indicated by the number of corporate board interlocks), the faster the state legislature was to adopt management-friendly legislation regulating hostile takeovers. Labor played a key role in framing the struggle as raiders versus communities and denoting takeovers as prologues to widespread layoffs. Labor also directly participated in creating the legislation as unions mobilized to encourage states to adopt statutes more quickly. Having the available repertoire of a prior statute also facilitated adopting a second generation antitakeover statute.

Given the relatively rapid and widespread diffusion of antitakeover legislation, why didn't the partnership between labor, management, and local

communities continue? Romano (1992: 52) noted that "a close examination of the political process of takeover legislation raises serious questions whether employee welfare is a concern in the first place. Business lobbying groups that are the moving force behind takeover statutes uniformly and vigorously oppose plant-closing legislation." That is, the coalition coalesced around a very narrow and specific issue – the hostile takeover – and not a new approach to the corporation. With the combination of the drastic decline of takeover activity in the 1990s (Davis and Robbins 2001) and a healthier economy, a stronger shareholder rights movement weakened the urgency and viability of the countermovement and its coalitions rapidly dissolved. In addition, with antitakeover legislation as the solution the constituency countermovement was not able to extend the frame to other settings (Snow and Benford 1992). More generally, it is likely that countermobilizations (or mobilizations) that coalesce to redress specific threats may be especially fragile. This is akin to what social movement scholars have termed "consensus movements" (McCarthy and Wolfson 1992). These movements enjoy widespread support, and are typically local and geographically bounded, but are typically short lived. In our case, labor and management rapidly banded together and state legislatures nearly unanimously passed antitakeover legislation, but once the perceived threat of hostile takeovers was largely eliminated, the issues that motivated the coalition's formation were ostensibly redressed and demobilization ensued.

While the coalitions of labor and management may have dissolved, the statutes themselves have been remarkably resilient given the contention surrounding their adoption. Thus, the constituency countermovement may provide some insight into what enables institutional settlements (Burton and Higley 1987; Rao 1998) to endure – a diverse movement constituency wielding resonant frames. The adoption of antitakeover legislation has also had lingering effects on the tactics employed during interactions between shareholder activists and managers. After being defeated in state legislatures across the United States, shareholder rights activists changed their discourse and tactics to become mutualistic instead of antagonistic. The relations that have emerged between investors and managers in the United States are now reliant on an ongoing negotiated relation that "serves to achieve what takeover threats, proxy battles, and other blunt forms of 'communication' between owners and companies failed to do in the past . . . neither shareholders nor companies could assert unlimited sovereignty over the other" (Useem 1996: 207).

Conclusion

We note two things in closing. First, although we have advocated and found support for a social movement perspective on elite mobilization, our argument has clear affinities with neoinstitutionalist perspectives. Networks are a critical mechanism for the spread of norms and practices among organizations in institutional theory (DiMaggio and Powell 1983), and it is a small step from networks to political mobilization (e.g., Mizruchi 1992). Moreover, while our approach highlights the fragmentation of corporate law in a federated system, Scott and Meyer (1983) noted long ago the importance of specifying the appropriate jurisdiction for the process of institutionalization. As other chapters in this volume indicate, neoinstitutionalism and the study of social movements stand to benefit from closer integration (e.g., Lounsbury, and Scott and McAdam, this volume). Second, as our opening paragraph indicates, the use of the rhetoric and tactics of grassroots social movements, like the more general rhetoric of populism, rebellion, and revolution, has proven to be readily adopted by business for its own purposes (cf. Frank 2001). We await with interest the business response to the anti-globalization movement.