STATE INTERVENTION AS AN ANTECEDENT OF OWNERSHIP STRUCTURE IN TURKISH JOINT-STOCK COMPANIES[1]

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Abstract

Dispersed ownership is not the rule except for the US and UK. Instead, companies are concentrated in the hand of families in the rest of the world. It is stated that the quality of transparency is directly associated with the ownership structures. Thus, it is not possible to comprehend transparency practise followed by firms without understanding how their capital structure and dynamics of this structure affect their management. Previous studies have found that Turkish joint-stock companies have highly concentrated and centralized family based ownership structure but the foundations of having this ownership structure are rarely taken into consideration. This is particularly important in setting the standards for transparency. This study attempts to trace back the ownership structure of Turkish companies to explain why families are the dominant shareholders in this structure. The results show that heavy government intervention in business activities affects the complexity of organizational structures and the transparency practices of companies.

Keywords: *Ownership Structure, State Intervention, Corporate Governance*
Jel Code: *G32, G38*

TÜRK ANONİM ŞİRKETLERİNDE MÜLKİYET YAPISININ ÖNCÜLÜ OLARAK DEVLET MÜDAHALESİ

Öz

Dağınık mülkiyet yapısının yoğun olarak görüldüğü ABD ve İngiltere'nin aksine dünya çapında şirketlerde yoğunlaşmış mülkiyet yapısı görülmektedir. Şeffaflık kalitesinin, mülkiyet yapılarıyla doğrudan ilişkili olduğu göz önüne alındığında şirketlerin mülkiyet yapısını belirleyen dinamiklerin şirket yönetimini nasıl şekillendirdiği anlaşılmadan şeffaflık kavramını kavramak mümkün değildir. Daha önce yapılan çalışmalar, Türk anonim şirketlerinin yoğunlaşmış ve merkezi aile temelli mülkiyet yapısına sahip olduğunu ortaya koymuş ancak bu mülkiyet yapısına neden olan faktörler nadiren dikkate alınmıştır. Fakat bu faktörler şeffaflık standartlarının belirlenmesinde önem taşır. Bu çalışma Türk şirketlerinde yoğunlaşmış mülkiyet yapısının hakim olmasının nedenlerini ortaya koymayı amaçlamaktadır. Çalışmanın sonucu işletme faaliyetlerine ağır devlet müdahalesinin mülkiyet ve dolaylı olarak şeffaflık yapısına şekil verdiğini göstermektedir.

Anahtar Kelimeler: *Mülkiyet Yapısı, Devlet Müdahalesi, Kurumsal Yönetim*
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1. Introduction

Corporate governance, the procedures for managing the relationship between the corporation and its shareholders, can be said to be originated from the US. In the early twentieth century, in their ground-breaking study, Berle and Means (2007: 6) revealed that separated ownership and control is the characteristic of the US joint-stock companies and shareholders have little power to influence the management of these companies. They argued that there is a possibility that managers seek to maximize their own benefits by taking actions that are advantageous to themselves but detrimental to shareholders. Subsequently, Jensen and Meckling (1976) offered agency theory as a possible solution to principle-agent problem in their seminal work. Following this, corporate governance has flourished as a dominant field in the research of business and law. However, a significant turning point within corporate governance debate was marked by La Porta et.al. They examined the relation between the quality of investor protection laws and the ownership patterns of companies in certain states and their results changed the focal point of the research. They showed that dispersed ownership is not the rule except for the US and UK. Instead, companies are concentrated in the hand of families in the rest of the world (La Porta, et al., 1998). Accordingly, many companies face separation of ownership and control problem, *but not the one described by Berle and Means* (La Porta et.al., 1999b, 502). Their speculations on the more dispersed ownership the greater the level of transparency and investor protection led the researchers to question the role of ownership structure in providing transparency. Following this, some research focused on the degree of corporate governance in states where concentrated ownership is dominant. (Denis and McConnell 2003; Klapper and Love 2004; Kirch and Terra 2009; Negash 2013; Luan and Tien 2020)

Turkey is a state where ownership is highly concentrated. Yurtoğlu (2000) proved that Turkish firms possess highly concentrated and centralized family based ownership structures, with boards dominated by owners. Demirağ and Serter (2003: 41) analysed the investor protection level and ownership structure of 100 listed companies. They concluded that ownership concentration may be the major reason of poor investor protection in Turkey. This result is supported by Aksu and Kösedağ (2006: 279) who stated that transparency and full disclosure is of vital importance for Turkey. However, despite the incentives for disclosing information, the level of transparency in Turkish firms has always been low. It is also acknowledged in the Report of the Institute of International Finance (2005) that the protection of minority shareholder interests rests primarily on full disclosure and accurate financial reporting in Turkish companies. This suggests that when it comes to law and policy, the focus should primarily be placed on the implementation rather then enactment. This is because there is law and policy in place in Turkey; however, many of them are not enforced by the legal authorities such as corporate governance principles. Like most developing states, Turkey borrowed corporate governance structures from states, where the family business model of corporate ownership is absent. This results in the implementation of unsuitable corporate governance rules and principles in these emerging economies. Here, the main concern is not to have the law and policy enacted but implemented. The implementation of corporate governance principles is closely related to, and affected by, not only the enactment of laws but also the ownership and managerial structures of the prevailing corporate characteristics. This is supported by Kahveci and Wolfs (2019) stating that for listed companies, corporate governance principles are strictly regulated. However, in order to sustain their businesses successfully to the next generations, the implemenation of these principles should be encouraged. Besides, Poroy and Crowther (2008: 416-418) examined the extent of regulations and practice regarding corporate governance in Turkey. They found that Turkey initially based a corporate governance system similar to the Anglo Saxon model. Even though the developments of the corporate governance codes are parallel to the similar codes in the UK, the deviation becomes apparent when the extent of compliance is considered. They stated that this deviation can be explained by cultural components affecting the implementation of codes, such as ownership structure. A more recent study on the ownership structure and dividend policy of Turkish companies also supports the view

that ownership structure, as a cultural component, affects the dividend policy in a civil law originated market. (Al-Najjar and Kılınçarslan, 2016: 156)

It is not possible to comprehend corporate governance without understanding how capital structure and dynamics of this structure in companies affect company management. It is stated that law and policy determine the balance of power between the managers, controlling shareholders and non-controlling shareholders (Pagano and Volpin, 2001: 504; Bebchuk and Hamdani, 2017: 1294). Issues that constitute corporate governance such as transparency, accountability and investor protection are dictated by a historical imprinting of national law. Previous studies have found that Turkish joint-stock companies have aforementioned ownership structure but the foundations of having this ownership structure are rarely taken into consideration. This is particularly important in setting the standards for corporate governance. The preamble of the Turkish Commercial Code No.6102 stated the aim of achieving the widespread incorporation of corporate governance in the Turkish business culture. In order to achieve this aim, first of all, the reasons for having this ownership structure should be clearly defined and the legal arrangements should be made accordingly. However, the foundations of having certain ownership structure have received very little attention in the literature. This is the foremost motivation to undertake this research.

This descriptive paper will attempt to trace back the ownership structure of Turkish companies to explain family dominance in this structure and the way it affects the transparency culture in companies. The law originates within the political process. This paper works with an intension to give clarity on the context behind the state-businesses relations and the enactment of law. Several reasons have proven to be important in shaping companies' ownership structures, one of which is the intervention of the state on business affairs. (Fan, et al, 2001: 207) The remainder of this paper is structured as follows. The first part provides an overview of the importance of the ownership structure. This section explains why ownership research is actually being at the core of corporate governance research. The following part will explain the distinct effect of the state in the development of business activities. The findings show that heavy government intervention in business activities affects the complexity of organizational structures, the level of transparency and the corporate governance structure of companies. This research will compel the researchers in the field of business and economics to expand their research beyond business discipline onto the roots of law.

2. Theoretical Framework

Ownership, the state of being an owner, is a combination of rights and liabilities with respect to a property (Monks and Minow, 2008: 95; Dinler ve Çalışkan, 2019: 425). Shareholders of joint stock companies are generally referred as owners. Ownership of a corporation generally includes three elements; the right to possess and use of a property, the right to control the property and the right to transfer the property to others. The point of view of this paper is that the history of ownership matters because the ownership model regulates the relation between the owner and shareholder.

The seminal work of Berle and Means (1936) provides the basis for research investigating corporate ownership structures. Their view supports that the corporations are the property of shareholders. Therefore, the only aim of the company is to increase the profit of shareholders. The central premise of their work is that whenever the ownership is separated from the control, the shareholders lose the control over the company's management (Tore, 2017: 84). This results in a conflict of interest between the manager and the shareholders since the managers will not watch over shareholders' money with the same anxious vigilance with which they watch over their own money (Smith, 2010: 264). Thus, agency problems arise. Agency relationship is a contract under which the agents are engaged to fulfil some service on behalf of the principal which includes delegating some decision-making authority to the agent (Jensen and Meckling, 1976). According to agency theory the parties of a contract, the manager and the shareholders, have different

attitudes toward risk. The agents may take a different attitude towards risk than the principals which may lead to managerial decisions depart from shareholder preferences. This may result in less profit for the owners.

The main question to be asked at this point is when does ownership separate from control? First of all, the owners of the company must be willing to sell their shares and the second precondition is that investors must feel confident that their investment will not be expropriated (Paredes, 2004). Most individual equity investors are passive and do not have control power over the management of the invested company. They are deemed to be simply providers of capital, and are viewed as residual claimants. This means that they are last in line to receive return on their investment after other participants are paid (Fama and Jensen, 1983). Since they do not play an active role in the management of the company, they have to rely on decisions that managers make for the company. Investors expect managers to make decisions in the best interest of the company and to maximize their returns. This expectation may not always be met because the expectations of the investors can be different from that of the managers. There is always the possibility that manages maximize their own benefit, for instance by getting excessive payment or trading on insider information, instead of the shareholders'. In an investment environment where investor protection is low and law enforcement is less effective, expropriation may have negative consequences on investment decisions. Investors may withhold their capital if they are not protected by the possible agency problems (Min and Bowman, 2015: 147). Investors shy away the most from companies where expropriation is high (Leuz et.al., 2010). Therefore, the quality of the legal framework is relevant to investment decisions about whether or not to buy shares in certain companies. It has the capacity to provide a secure investment environment within which expropriation of investors can be limited and claims that comprise an investment can be exercised Thus for dispersed ownership to emerge, investors must be adequately protected from expropriation. This can only be achieved by strong legal protection that ensures transparency. Transparency is *sine qua non* of a quality legal framework to protect the interests of shareholders. Then the next question should be what the way of protecting the investors from expropriation is? The law protects investors, in particular minority investors, and thus plays a central role in influencing ownership structures throughout the world (Roe, 2000; Coffee, 2001). The '*law matters'* thesis assumes that the more the level of minority shareholder protection the more the dispersed ownership structure. However, what shapes the nationl law is political, cultural and historical reasons. Roe analysed the effects of politics on corporate structure and ownership. He stated that in some states political culture and history drove a wedge between the managers and shareholders which resulted in the severe agency problems, while in the others led to strong legal protection that assured shareholders the comfort that their investment will be less expropriated (Roe, 2000). The law matter thesis claims that the strength of legal protections provides confidence to investors engaging in transactions with strangers and rely less on personal and family relationships (Paredes,2004: 1064). In conclusion, strong legal protection constitutes the basis of the dispersed ownership structure because it is the *law* that converts the two preconditions for dispersed ownership into reality. An equally important implication to be made by this thesis is that less strong legal protection is a reason to have a concentrated ownership structure.

A series of seminal work of La Porta, et.al (1997, 1998, 1999 and 2000) have examined the determinant of the level of shareholder protection around nearly fifty countries. Their findings also support the view that investors value companies in states where investor protection and rule of law is stronger. This thesis revealed a riddle that had to be resolved; why do some states have dispersed ownership structure, while others have concentrated? The advocates of *'law matter'* thesis assert that there are key factors of dispersed ownership other than law, such as politics, history, culture etc. (Roe, 2003, Bebchuk and Roe, 1999) However, even the advocates of *'law matters'* view cannot put forth the reasons of certain factors affecting a particular state. The fact is that law plays a significant role in shareholder protection but it is not the only responsible of separation of ownership and control. Assuming that law matters, the challenge for lawmakers is to

make the right use of this view to adopt laws in accordance with the ownership structure of the companies. For this, the lawmaker must understand the factors affecting the ownership structure of the companies in the state where he is enacting laws. The purpose of the following section is to search for the basic factors of the intricate relationship between ownership structure and corporate governance understanding of Turkish joint-stock companies. The search will necessarily include the relations between the Turkish government and private sector, company owners and managers and the effect of these relations on the disclosure and transparency of businesses in Turkey.

3. Ownership Structure of Turkish Companies

3.1. The State as the Determining Factor in the Development of Business Activities

The Ottoman Empire was a world conqueror state. Until the declining stage of the Empire, booties gained after the wars constituted the backbone of the main income, which supported state operations and expenditures. Throughout that period trade did not form an important part of the Empire functions. There were foreign businessmen who came to the Empire to do business. However, Ottoman subjects who engaged in trade, were mostly high-level personages who had governing apparatus (Faroqhi, 2004: 137). Agriculture was the main activity on which the Ottoman Empire based its economy. There were not many commercial companies operating in 1850s, except for a few companies established by foreign investors who benefited the privileges given by the Ottoman Empire. Due to the agriculture based economic policy, the demand for a stock exchange in the Ottoman Empire did not emerge until late 19th century (Tore, 2015: 130). The economic policy applied together with the lack of stock exchange had resulted in the commercial companies not become a part of the national economic policy. Thus, in the context of joint-stock trade operations, Turkey could not become a rule maker.

The declaration of the Turkish Republic has brought new regulations in the economic field. It has been decided to terminate the privileges given to foreign states and nationalize companies with foreign capital. Indeed, the ownership structure of Turkish companies was shaped after the proclamation of the Republic in 1923. It has been argued that the relationship between the state and business in the early period of industrialisation shaped not only the role of the political authority as a guide for early entrepreneurs but also the future course of the relationship between these two actors (Buğra, 1994: 19). Therefore, it has become necessary to understand the legal effects of how the state-business relations shaped the financial market, ownership structure of companies and the related legislation in Turkey. Law is a result of a long political process (Pagano and Volpin, 2005: 1005; Caldeira et. al., 2010). Explaining the corporate governance structure of Turkey requires examining state intervention throughout the Republican period since state intervention made the ownership structure and regulatory frameworks develop in a particular way.

In the first years of the Republic, there was no developed industry in the state. The state appeared as the determining factor in the development of business life in Turkey. The link between the state and private sector actors is direct and important. The involvement of the Turkish state in the economy was very heavy. According to Ökçün (1971), Turkish joint-stock companies founded between the years 1920-1930 assigned some of the Turkish National Assembly members as co-founder or board member in order to establish organic bonds with political decision of the government. In 1930, the Great Depression broke out. This had a severe effect on the Turkish economy. These severe effects made it necessary for the government to create an economic policy to accelerate industrialization. The government planned to provide incentive to the domestic capital owners for industrialization. Being a mainly agricultural economy with almost no capital accumulation and low growth rate, individuals did not have any incentive to invest (Uğur, 1999: 57). In addition, the existing businessmen were also in the turmoil of the economic crisis. Consequently, they could not react positively to the incentives. By reason of the inability of the private actors to invests, most of the investment had to be undertaken by the state (Uğur, 1999: 57). The capital market and financial organisations were underdeveloped. Altun (2008) reported

that the government had no option other than establishing and operating factories through public institutions to accelerate industrialization. Under such an economic environment, the state had to undertake the duty of the private sector to initiate economic development. As a result, the state not only interfered the business activities by regulating the economic environment and undertaking large projects but also it became the major producer, employer, contractor, investor and the provider of necessary capital since the 1930s (Uğur, 1999: 56).

The state economic enterprises (SEEs) were established under the management of central government departments to provide technological and trained labour base to the business environment during the 1930s (Aysan, 2008). The aim of establishing state-owned enterprises was twofold: to close the investment gap due to the low level of private sector investment; and to encourage a few wealthy families to invest in areas of future growth which the state chose to leave to the private sector. The state aimed to structure the development of the private sector based on the large multi-activity companies established by these families. Accordingly, the state-business relations were mostly in relation to one particular group of capital owners: businessmen (Uğur,1999: 59). One of the most important outcomes of the relation between the state and private sector is that entrepreneurs with political ties found it much easier to establish their businesses by quickly developing multi-activity holding companies. This relation, on the one hand, increased the non-transparent links between the state and capital owners. On the other hand, this resulted in a typical business form in Turkey: business groups. This situation had an obvious setback. It limited the ability of the family-owned companies to see the broader picture of the trade to gain income. The capital owners focused on the company strucutures that they can have the control in their hands instead of sharing the control power with external financers to grow. Thus, this typical business form resulted in cross-ownership, the controlling minority structure and privileged ownership structures in Turkish companies. More importantly, these links restricted the delegation of control to professional managements because solving problems became much easier when the owner was in direct contact with political authorities. In other saying, state intervention restricted the separation of ownership from control. Therefore, the owners remained as the managers and dominant shareholders of companies.

3.2. The Reflection of State-Business Relations on Business Activity

In the Republic period, the origin of enterprises dates back to 1930s. The SEEs, which initiated the industrialization process, compensated for the lack of the business elites at the time and maintained their importance during the course of 1980s (Öniş, 1991: 163). The SEEs were set up by the state. The state hold at least 50 per cent shares of these enterprises. The state's being the underlying owner of these enterprises eventually affected the allocation of control power across different ownership types. Thus, it was actually the state who directed and controlled the enterprises.

The ownership structure evolves over time. The emergence of new forces in the political environment could contribute to this evolutionary change by limiting the effect of the state on business activities (Buğra,1994: 28). Turkey was a single-party regime until the 1950s. Etatism, which was an impediment to an private capitalist industrialization, was one of the principles of the only party in power (Uğur, 1999). In addition to this, the lacking of opposition party increased the tendency of the government in power regard its political power as absolute, monopolising state power and fully controlling the legal system. As a result, the legal system was subject to the economic strategy objectives set by the government. Frequent changes in policy orientation resulted in uncertainty and limited the role of law to maintaining a stable economic policy. Uncertainty in the business environment resulted in the lack of confidence (Uğur,1999: 59-60). Entrepreneurs tried to avoid the risk which stemmed from the government-set economic strategies by trusting more in their personal relationships and maintaining family control instead of employing professional management in their companies.

In the absence of an opposition party, foreign corporations can be an alternative force in political environment. They have the potential to change the dynamics of the relationship between the state and businessmen. However, Turkey implemented a closed economic regime until 1980s. Foreigners were allowed to establish business only with domestic partners and up to a share rate determined by the state. These restrictions had caused foreign investors not to prefer Turkey as an investment destination. Private sector became increasingly important after 1980s as transition to a market-based economy period accelerated in Turkey. Before that, ownership of foreign investors were kept under control by the SEEs. Thus, foreign investment played a limited role in shaping the Turkish economy (Tore, 2015). Therefore, foreign capital and ownership did not emerge as a factor to affect the political context of business activity and limit state intervention. The comparative unimportance of foreign owned companies in the national economy has prevented the ties between the state and big corporations from being weakened. Such foreign control over corporations would have limited state intervention in business activities and weakened family dominance in business management. However, this has not been possible since the state was the main actor putting in place the dynamics of the relationship between Turkish businessmen and foreign investors (Buğra, 1994: 67). The state's attitude towards foreign investment has been protectionist (Tore, 2015). Moreover, the complicated laws regulating business activities have increased the power of Turkish businessmen in comparison with their foreign business associates, who have not been able to operate alone in this complicated regulatory environment. Since relations with foreigners were subject to extensive state control, each connection with foreign associates also involved an encounter with the state authority. In this sense, businessmen who had strong ties with the state had an advantage. Buğra (1994: 167) stated that the state had the tendency to disregard legal provisions for practical purposes. On the one hand, foreign investors were heavily dependent on the discretion of government authorities yet, on the other, foreign investment played a role in increasing the state dependency of the business community instead of contributing to the Turkish economy. In this case, state intervention in the economy was a disincentive for foreign investors since it made both the investors and the company owners dependent on the state's discretion instead of providing them with property and investor protection rights.

The introduction of a multi-party political system at the beginning of the 1950s was a major political turning point. As important as that the foundation of the Turkish organised labour movement had an incontrovertible effect on the Turkish corporate governance structure in this period. Again, state intervention was a major factor that shaped the character of labour activities in the business structure. The authoritarian structure of Turkish governments has also manifested itself in the balancing of the developmental needs of labour, both in the one party and multi-party era. It is clearly seen in the Labour Code of 1936 Article 72 that the government preferred individual protection of labour by law instead of the recognition of collective rights. The rules on collective labour relations of the Act were quite restrictive and banned unions and any kind of strike action. The previous research provides evidence on the reluctance of the government to enforce the provisions of the Labour Code on private businesses (Doğan, 2010). It is worthy to note that in the transition towards a multi-party system process, two socialist parties were established. The establishment of numerous trade unions followed the foundation of these parties. However, the socialist parties connected unions flourished very rapidly and when their members went up to thousands within a few months, the martial law commanded the close of both the socialist parties and the trade unions in 1946 (Man, 2013). The enforcement of a new regulation generally creates the expectation of improvement. However, the following legal reform of labour activities was more restrictive, as it declared illegal all associations based on community, religion, family or class interests (Kuş and Özel, 2010). Hence, unionisation was demolished *de facto* and *de jure*. This change holds a quite important position in Turkish labour history because it removed all the legal means by which workers could organise themselves. Individual protection of the rights was restricted by law and the workers facing problems in claiming their rights demanded legislation to guarantee their future implementation on the collective benefit of labour. This demand

constituted the mainstay of unionisation activity in Turkey. Even though this demand opened the way to organise trade unions again, it only lasted for a short time.

With the transition into a multi-party system, state-labour union relations took a slightly new turn. The political authority made an arrangement to define their limits clearly to control the labour unions. The ban on forming class-based associations was lifted with the amendment of the Associations Act in 1947. Finally, Turkey's first Trade Unions Act was accepted. This Act recognised the principles of union freedom and voluntary unionism. The Act was by no means trivial, as it highlighted the state-dependent characteristic of business. The rationale of the state was to keep the labour unions collaborating with the state. One of the ways of union-state collaboration was providing ownership of the privatized SEEs to the labour. By this way, it was aimed to change the ownership structure and understanding of the companies while spreading the state's control power on companies to labour (Ersöz, 2003). Although the labour union right was accepted, workers could not get powerful enough to affect to political agenda because of political instabilities that resulted in military interventions. In Turkish case of unionization supported by privatization, not surprisingly, the ownership plan that provides financial resources to businesses through the participation of labour did not end up as expected. It should also be noted that a legal framework that regulated labour-partnership system did not emerged. Thus, transition to multi-party system and it is economic results, namely unionization and privatization ensured neither the spread of capital to the society nor a change in the ownership structure of companies.

Concerning the role of the state in shaping the structure of private businesses, it can be argued that the most devastating experience was that the state was reluctant to recognise other associations, such as labour unions. Under these circumstances, the owners of companies found themselves in a situation in which they were the only agent of the interests of third parties, such as small business and labour. The state, by designing a rule based on their own political objectives, affected the balance between the owners and other company related parties, such as shareholders and workers, which resulted in an asymmetry of interest representation between controlling owners and other interest groups. Since the largest part of the industrial establishments were owned by the state, state-owned enterprises set minimum standards of conduct for private businesses.

It is worth briefly mentioning that the first formal formation of stock exchange took place in the last quarter of the 19th century. However, the severe political and economic effects around the World destroyed the economy and the stock exchange was closed and resuscitated several times until 1980s. As a result, the stock exchange could not become an element of the national economic policy. Additionally, due to the lack of regular existence of the stock exchange, no regulation has been made until 1980s (Adıgüzel, 2017: 6-7). The rapid conglomeration process that took place between the years 1960-1980 caused many companies to issue stocks in order to meet their capital needs, which triggered the adoption of the first Capital Market Law in 1981 and establishment of stock exchange in 1986. For the shareholders, one of the most important activities of the stock exchange is monitoring. This is because monitoring on the one side assists in ensuring that an adequate and appropriate system of control operates within companies and on the other side allows shareholders to evaluate managerial performance by imposing transparency and disclosure rules. As a result, it reduces information asymmetry (Hassan, 2017: 21-22). This brief history of the Turkish stock market shows that Turkish companies could not benefit from the monitoring role of the stock market until the 1990s. The lack of stock market increased the role of banks in providing capital to the private sector. However, the banks did not perform a monitoring role when it comes to company management. However, the banks did not perform a monitoring role when it comes to company management. This shows that even though there were the forces of financial integration supporting the view that stock markets provide a market for corporate control, there were also country-specific practices that eschewed shareholder rights. Consequently, the lack of monitoring leaded to potential issues of expropriation.

The typical big business form in Turkey is the large multi-activity companies in company groups. These company groups generally include their own banks (Yurtoğlu, 2006: 189). Activities in the banking sector are especially important as a determinant of the transparency. As the companies grew, their need for external finance was increasing. Given the underdeveloped capital market and the family ownership structure of companies, owning a bank in the company group has been regarded as an attractive strategy to access low interest rate loans. However, it is crucial not to overlook the direction of company-bank relations. Turkish companies do not have organisational forms that are closely connected with each other around a strong bank. In other words, the bank is not assigned to coordinate group activities but instead the main company manages the whole group including the bank (Gündüz and Tatoğlu, 2003: 48; European Commission Turkey Report, 2019: 56). Therefore, the banks cannot monitor the management based on superior insights into the company's operations. In addition, as banks and companies began to have strong ownership ties, companies did not need any alternative ways to raise capital. This explains why the need for a stock exchange did not emerge until the late 1980s. Even later, as the banks in company groups satisfied the capital needs of companies, the owners did not issue more than half of the company shares to the public in order not to lose their control power over the management. As a result of all these, investors did not have a strong enough voice in public company managements to affect their decisions. This has affected the underlying logic of corporate governance in Turkish companies.

Even though the state has historically played a crucial role in the Turkish economy up until the 1980s, it has been suggested that such state intervention in business relations had the effect of destabilising the business environment (Heper, 1991). The economic development has been based on the state's efforts to utilize national capital and putting the foreign capital in an inferior position (Öniş, 2010). The legal regulations and bureaucracy are often subject to the requirements of social and economic policy objectives set by the government in power mainly for their own political objectives. Ersel (2012) stated that this was a solution that put the state in complete control of the decision making process. With the aim of minimising government intervention in the business environment and liberalising the Turkish economy, policies began to come into force at the beginning of the 1980s. These policies were based on export, the private sector and competition-oriented free market conditions, and aimed to create incentives for foreign capital to be implemented instead of import-substitutional. Despite the efforts to liberalise the economy, the state still has a regulatory role among market actors (Demirağ and Serter, 2003: 41). The overview of institutional change in Turkey provides a picture that the state has made significant movement in regulation (Atiyas, 2012). However, the policies, which were implemented, have not been adequate and rarely present a coherent perspective for the stability and liberalisation objectives of the government. As a result, stability in the economic environment has not been achieved.

3.3. The Reflection of Ownership Structure on Transparency

Political process shapes financial architecture by designing and enforcing legislation that affects the structure of companies in a way that reflects the dominant political principles prevailing in its society (Dine and Koutsias, 2013: 64). Such legislation affects the allocation of power among companies' shareholders and stakeholders (Pagano and Volpin, 2001: 506). To the extent that the relevant legislation reflects the underlying corporate culture, it can be argued that the politics is a factor that influences the way companies are run. Companies are the outcomes of a political process (Zingales, 2017). Therefore, the patterns of corporate transparency are reflections of the political process of the states within which they operate. This observation is consistent with the situation in Turkey that, to a large extent, as Turkey has had a poor culture of transparency due to its political and legal infrastructure.

The State interfered to the economy during the early periods of the Republic. Deployed state intervention had serious effect on the Turkish economy ranging from the prohibition of transactions in foreign currency to ownership structure of companies. This has clearly influenced

the transparency and disclosure philosophy in the Turkish business culture. As a result of this protectionist attitude of the State to foreign corporations and investment, foreign investors did not play any significant role in Turkish economy until the late 1980s when Turkey switched to a liberal economy. The protectionist approach towards foreign equity investment resulted in closing down Borsa Istanbul and reopening it several times before 1986. As the activities of foreign investors were largely restricted, the need for legislation to ensure investors a reliable investment environment which would provide them transparency and protection did not arise until the early 1990s.

The relative strength of the State in structuring the private sector at the early periods of the industrialization process created a very important role in shaping the transparency related legislation in Turkey. The afore-detailed state-business relations resulted in highly concentrated family ownership and non-transparent links between the state and capital owners. These links prohibited the separation of ownership from control and business groups became the typical large business form. In most of these businesses, family members became insiders, who keep the majority control of the company and hold key managerial positions in the central management unit and the affiliated companies. Controlling insiders, who are active in management, had credible and adequate information about the company. However, assessing whether these controlling shareholders have the ability to expropriate minority investors requires knowledge of politics, banking, family and social status connections among the business elites. This opaque nature of insider control created information problems for investors, which minority investors are less likely to have (Leuz et al, 2009: 3247).

Transparency and disclosure practices mitigate agency problems and protect the rights of investors from the possible expropriation of insiders based on their superior information. Precisely, transparent and accountable disclosure regimes are key factors to separate ownership from control because this is the way to increase investor confidence. The fundamental issue for policy-makers should be to set and maintain standards that increase trust and confidence in the investment environment in order to deepen the economic integration by international investment, supported by domestic investment. However, as a consequent of being dominated by family control, the demand for transparency and financial reporting rules to reduce information asymmetry became low in Turkish companies. The high concentration of ownership reduced the need for higher transparency. In family controlled companies, detailed and periodic reports were not prepared unless there was a dispute between shareholders since the controlling shareholder had adequate information about the company (Pulaşlı, 2012).) Additionally, since there was not a regulated stock exchange in Turkey, companies did not have too many dispersed shareholders. Nevertheless, depending on the general business culture, there was not a pressing need for distribution of information to shareholders. Therefore, the mandatory provisions regarding accounting principles and financial statements were very limited. Since there was no pressing need for distribution of information from stakeholders, the regulatory bodies did not need to ensure transparency by closing loopholes and by ensuring better enforcement of accounting standards. The already existing regulatory framework on financial reporting and disclosure posed considerable challenges related to the enforcement. The absence of effective regulation and inadequate enforcement has been the real problem in the Turkish business culture that has led to poor transparency practices. Evidently, the State intervention and its overall regulatory approach became an impediment to improve the transparency culture in Turkish joint-stock companies.

The lacking of regulation resulted in various imperfections in the regulations related to transparency and shareholder rights. Companies' articles of associations constitute concrete examples for these imperfections. Before the reformation of the TCC in 2012, the main document that constituted the basis of shareholder rights was the Articles of Association. Any activity that were not prohibited by law could be stated in the articles of association. Such deficiencies in the regulatory framework made it possible to eliminate the provisions that make controlling shareholders less effective. This allowed principles to adopt the articles of association in order to

increase the power of controlling shareholders. Article of associations were determined by the directors of companies, who also have the last word about informing shareholders. Eventually, the articles of associations were used as a means to maximize the benefits of controlling shareholders which could contradict with non-controlling ones. In addition, it was stated by the Obsolete Turkish Commercial Code Law No. 6762 Article 362-363 that financial statements to be disclosed to the public should be made available to the shareholders at least fifteen days prior to the general assembly meeting. The previous TCC regulated the right to obtain information in a passive way. This means that the provision did not allow for the active acquisition of information by investors by addressing questions to the BoD or auditors of the company. They could only obtain information disclosed to them by the company fifteen days before the general assembly. This passive way of obtaining information is a result of the act that allowed the controlling shareholders to regulate the activities that were not prohibited by law in the articles of association. There was no provision on procedures for obtaining information and examining the documents in technical terms outside the general assembly. The law provided that the articles of associations could include more detailed regulation on obtaining information if the company prefers so. Yet, the last word was again given to controlling shareholders. Shareholders were kept informed periodically but not continuously. Thus, the regulation itself made it much easier for companies to hide information from shareholders. Since law is a result of a political process, state intervention made the ownership structure and regulatory frameworks develop in a particular way. It can be stated that the state intervention resulted in a business culture in which is the possibility of the inappropriate exercise of control by majority shareholders cannot always be prohibited by the Articles of Association.

Another concrete example of state intervention on transparency culture of companies is seen on groups of companies. Groups of companies are of great importance for the Turkish economy. In terms of scale, groups of companies dominate Borsa Istanbul. However, until recently there has not been any legal regulation that refers to family groups in Turkey. The legislation did not contain any rules regarding their legal status quo. As a result of their structuring, parent companies could enjoy certain control rights over the affiliated companies' assets and use their rights to exert influence over decision-making processes in these companies (Johnson et. al., 2000: 26; Lopes et. al., 2020). Additionally, there was no specific law to protect shareholders from the abuse of control rights by the parent company. Ineffective protection of shareholders resulted in high potential for expropriation. Controlling shareholders were able to impose arrangements that went against the interests of the company as a whole, and minority shareholders in order to protect the interests of the parent company. Unavailability of information about the groups of companies due to lax transparency and disclosure rules and weak enforcement in Turkish legislation has led to information asymmetry between the controlling shareholders and investors within a group structure. It can be stated that as there was no pressing demand for transparency rules, the relations between parent companies and their affiliates have never become the subject of a uniform set of principles and policies. This two example show that state intervention shaped the corporate ownership. The intervention, indirectly, resulted in internal relations and arrangements become less transparent. As a consequence, the state intervention took place in the early periods of the Republic not only affected the corporate ownership structure of the companies but also the corporate governance approach.

4. Concluding Remarks

It is not possible to understand corporate governance without understanding corporate ownership structure. The main aim of this paper is to search the foundations of Turkish companies having concentrated ownership structure. For this aim, first of all, it askes under which conditions does the ownership separates from control. The research shows that, theoretically, ownership diverse when the possibility of expropriation is low. This means that shareholders prefer to invest in companies with less agency problems. Then, one of the main factors that make shareholders to invest is the quality of the legal framework. However, it is by no means easy to design a system

that strikes the right balance between the subjects of a company. This balance is affected by various factors and it is debatable whether law matters more than politics, history, culture, or any other factor. The *law matters* thesis predicted that the convergence would be under dispersed ownership around the world. It was supposed to be the role of law to protect the rights of minority shareholders under dispersed ownership. However, as mentioned in the previous parts, the predicted convergence has not occurred worldwide. In economies other than the US and UK, concentrated ownership replaced legal protection of shareholders. Controlling shareholders, have considerable influence over the company as to monitor the management (Paredes, 2004: 1067). Thus, for the answer of which factors affect the legal framework most, stating that politics matter more than law in explaining the separation of ownership and control, at least in Turkey, would not be wrong. In other words, the government's visible hand in shaping ownership structure of companies cannot be ignored.

A state's starting point strongly influences its ownership structure; in other words, politics matters (Bebchuk and Roe, 1999). In the early years of the Republic, the state played a dominant role in shaping the economy and strongly influenced the structure of the financial system. Even further, the state had the control of the private sector for few decades. This limited the ability of private capital to a large extent to take place in the economy. Afterwards, the state intervention encouraged capital owners to establish family-owned companies and holding companies. The state regarded big companies as a means to industrial development. The holding structure, which owns its own bank as well, enabled these companies to access bank credit easily. This led to two important outcomes. First, the banks, as creditors, did not have the role of monitoring the companies because they were also affiliated to the main company in which all the decisions were made by the dominant shareholders. Second, since the holding companies satisfied their external finance needs from their own banks, the establishment and development of the stock market was delayed. Thus, no pressing need for regulation occurred. As a result, no ground emerged for diverse ownership. Insufficient laws and enforcement prevented companies from going public. Even if they satisfy their financing needs from external sources, less than half of the company shares were issued, because the controlling shareholders did not want to lower their cash flow and lose control over their management. Even though some big companies issued more than half of their shares, the owners held the majority of shares by a pyramidal shareholding. As a result, non-family shareholders lacked majority and therefore the means to put their opinions forward. Just as with the banks, the role of investors in monitoring the company decisions became limited. Strong relations with the state gave the owners the opportunity to lobby the politicians in their regulatory efforts. Currently, the size and power of these companies enable them to present their interests to the government without a unionised channel. However, labour force could not interact with the state through lobbying by unions because these activities had been made illegal. The means to affect the policy that were available to businessmen were not available to labour. Consequently, all the stakeholders became part of less cohesive groups, which made them insignificant in both the regulatory process of the state and management of companies. This suggests that, due to the inefficiency of banks, capital market and investors in addition to the limited unionisation of interest groups, the ownership structure of companies resulted in an owner-oriented model in Turkey.

In Turkey, family owned companies constitute a large percentage of the companies in the market, conservative families wishing to protect their status in the company can undermine the quality of legislation. As a result, the corporate law regime could not shift the control to shareholders. The regulation for more shareholder participation in company's business affairs did not emerge because on the one hand demand from shareholders to be more active has never came and on the other hand the lobby activities of controlling shareholders has never allowed so. This situation could be averted by legislation but the power of the capital owners did not allow doing so. However, at least in theory, these are the key motivation why ownership and control separate. It would not be wrong to say that the legal system could not become a motivation for dispersed ownership and moreover, the legal system with the state's intervention gave rise to concentrated

ownership structure which at the end resulted in less transparency in the management of companies.

At bottom, politics, history and law matter in shaping ownership structure. It is very difficult, if not impossible, to change the business culture and ownership structure in a state. However, a better business environment can be provided by effective legislations. As a solution to successfully reform the business structure, it is essential to enact laws appropriate for that business culture. The challenge for lawmakers ultimately is looking at the past to understand the corporate culture. The lawmakers should take the business culture and its foundations into consideration while revisiting corporate law to accommodate the evolving needs and concerns of shareholders to ensure transparency. Eventually, to increase the transparency in companies, effective rules must come into force and these rules must be regulated regarding especially family dominance in business management. This is to say more regulation on limiting the power of dominant shareholder is needed. Moreover, the transparency problems that minority and foreign shareholders can face must be taken into consideration. Unionisation activities must be supported to enable all stakeholders to have a collective voice in management.

Last to mention, this paper used reasoning to scrutinize ownership structure of Turkish companies on the transparency culture and how the state involved in it by searching for relevant literature. The literature shows that more empirical study is needed on this subject. The inter-disciplinary research methodology should be utilized to derive more empirical results over the aspects of business and law. Qualitative research that reflects the views of the owners and managers of companies on the subject will contribute to the literature.

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