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Abstract

The consensus among legal and economic historians that British law between 1844 and 1914 provided little protection to corporate shareholders is based on formal provisions in the Companies Acts. In fact these Acts applied only to companies registered by the Board of Trade. Moreover corporate law for statutory companies was codified in the Companies Clauses Consolidation Act of 1845. We show that, while the governance rules of private companies were largely unconstrained, for most of the Victorian period most capital in quoted companies (which were mainly statutory) scored highly on the "anti-director" rights index under *mandatory* rules. When registered companies came to dominate stock exchanges, nearer the end of the nineteenth century, they *voluntarily* adopted similar rules, which professionals serving the stock exchange and IPOs recognised had advantages for raising capital. The main exception was the omission of tiered voting rules (whose record in protecting minorities was at best debatable), in favour of one-share-one-vote. Unlike the prevailing consensus, our re-interpretation is consistent with evidence on the large size of the London Stock Exchange and extensive divorce of ownership from control in listed UK companies before 1914.

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UK Corporate Law and Corporate Governance before 1914: a Re-interpretation

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The Global Financial Crisis (GFC) of 2008 induced much hand-wringing about the ethics of business, the governance of corporations, the complexities of regulation and the competence of regulators. There was naturally also discussion about two ways in which existing (or better future) laws might operate more effectively and certainly. First, laws should incentivise rational calculation and balanced behaviour, rather than the egregious hubris and judgmental error which had plainly been rewarded in some banks and other companies. Second, laws should punish a higher portion of those who perpetrated downright frauds and misrepresentations.

The latter approach – understandably politically popular - has focused on heavily fining institutions. Some felt that such penalties (usually stopping short of imprisonment) merely punished other victims of their crimes (their shareholders) rather than the perpetrators themselves (directors and managers). Others – in what we shall see has distinctly Victorian overtones - argued that shareholders were themselves responsible for governance failings: it was they who had given managers perverse incentives[1]. The GFC was one of the most massively damaging episodes of financial mismanagement the world has known, but there is, of course, a longer history of governments and societies dealing with financial innovations and the negative consequences they sometimes bring in their wake.

In this paper, we consider some evidence about how Victorians – in our view largely successfully – came to terms with the enormous new challenges of regulating the spread of joint-stock companies, a key innovation in an increasingly complex economy. These pioneers of the ubiquitous modern corporate form naturally faced considerable problems of agency and temptations to fraud implicit in the growing divorce of managerial ownership from shareholder control. There are prominent strands in an extensive literature suggesting that Victorians made a hash of it (Shannon 1932, Kostal 1994, Johnson 2010) and noting that British corporate law failed to mandate shareholder rights (Cheffins 2008, Franks et al 2010).

We show here that, on the contrary and from at least 1845, UK corporate law mandated a high level of investor protection for the bulk of capital quoted on stock exchanges. This applied only in *statutory* companies: those formed by individual private acts of parliament. Other, minimally-regulated, companies – those (more perfunctorily) *registered* with the Board of Trade under general company legislation from 1844 – came to dominate stock exchanges only toward the end of the nineteenth century. Yet registered company charters and by-laws ("memoranda and articles of association" as they were formally termed in the UK from 1856) also generally adopted the shareholder protections required for statutory companies. They did so *voluntarily* because it encouraged investors, familiar with such rules in the statutory sector, to subscribe to IPOs and then to keep their money invested in the companies. On average the adoption of good corporate governance clauses in charters accurately signalled propriety and was common even in the minority of large companies where (as more companies opted to be quoted) family owners still dominated and ownership was therefore still somewhat allied to control. Compliance with listing rules and broader professional standards also underpinned a culture of honesty and transparency, reinforcing the earlier legal mandating of shareholder protections to promote market efficiency. The principal minority protection favoured earlier- but only rarely adopted later - concerned tiered and capped voting rules. This was because experience had shown that their supposed advantages for minorities in fact offered little substantive investor protection.

The UK was arguably the first society to face the complex agency problems of the divorce of ownership from control in acute form (Foreman-Peck and Hannah 2012, Acheson et al 2014). Even before the First World War, the directors in several hundred of the largest British quoted companies had reduced their owning stakes to only 3.4% of the share capital. This was not only a higher level of divorce of ownership from control than that of other countries at the same time,[2] but also higher than that on today's stock markets, including those of the United States, Britain and Japan, which are now reckoned to have unusually high dispersion of shareholdings (though today larger institutional shareholders complicate inter-temporal comparisons).

For those who see modern protective laws as an essential precondition for these recent financial developments, this British precocity poses serious challenges. There is overwhelming agreement today among economists and legal analysts that shareholder rights providing investor protection were largely an achievement of the second half of the twentieth century and that government regulation was negligible earlier (Acheson at al 2014, Cheffins 2008, Roe 2006, Becht et al 2005). The claim of Franks et al (2010, p. 4010) is emblematic of the consensus: "At the beginning of the century, we find that the United Kingdom was devoid of antidirector rights provisions and protection of small investors;" and they couple this with the canonical case citation (*Foss v Harbottle 1843*) suggesting that this precedent rendered common law remedies as deficient as corporate statute law.[3] The contrary argument advanced here is that the law played a significant role in the nineteenth century corporate governance regime that led to the precocious development of the London Stock Exchange, though the majesty of the UK's corporate law was also supplemented by private order reinforcements, including networks of trust and moral and professional codes.

Anti-Director Rights: the Statutory Foundations

A standard tool in the modern finance literature for measuring investor protection is the "anti-director rights" index. Countries' legal systems are scored between zero and six, for legal provisions that help shareholders influence - or even over-rule - directors.[4] It is clear why, by this conventional standard, companies registered under the UK Companies Acts, for over a century after the first enabling act of 1844, are judged by legal historians to have offered exiguous investor protection (a score of one until 1900 and 2 until 1948). The six requirements are:

a) Shareholders are allowed to attend AGMs and other general meetings without first depositing their shares with the company. This irksome requirement was common in continental countries (where bearer shares were popular), but effectively unknown in Anglo-

Saxon ones (where shares were usually nominal and registered). Thus the UK scores at least 1 on the starting grid.

b) Minorities holding 10% or more of the shares can requisition an extraordinary general meeting, with or without the acquiescence of the board (a requirement introduced by the 1900 Companies Act,[5] bringing the UK score up to 2)

c) Shareholders can mail proxies rather than vote at the meeting in person (not required before the UK's 1948 Companies Act)

d) Shareholders have pre-emption rights: that is they have first refusal on new share issues, and that right can only be waived by a shareholder vote (required from the 1980 Companies Act, raising the UK's score to 4)

e) Shareholders holding 10% or more who object to fundamental changes (e.g. mergers, asset sales or changes to the articles of association) can challenge the decision in court or require the company to repurchase their shares (oppressed minorities were thus protected from 1985, bringing the UK Companies Act score to its modern peak of 5)

f) Shareholders have cumulative voting (a holder's multiple votes in board elections can be cast for just one candidate, rather than spread across a slate) or (in some versions) proportional representation through tiered voting. This is considered positive because it restricts the right of the majority to elect the whole board, enabling some minorities to gain representation. Although UK boards sometimes agreed to minority representatives, this has never been required by the Companies Acts, so the UK never scores the maximum of 6 points.

On the basis of a score of only 1 in the nineteenth century, the conventional conclusion that Victorian shareholders in public companies (not only in the UK but in most other economies of the time) lacked fundamental legal protections is perfectly understandable.

But it is wrong. This score applies only to the legal requirements for companies registered under the Companies Acts: the corpus that modern legal historians use to elucidate the evolution of modern English corporate law (and virtually identical Scottish corporate law, under its separate civil law system). Yet - as nineteenth-century lawyers were more aware - most company capital quoted on UK stock exchanges was initially subject to quite different governance rules. "Statutory" companies - those individually authorized by special act of parliament - were subject to the clauses required by private bill committees and "chartered" companies were subject to (rather similar) specifications in their individual "royal" letters patent, issued by the executive with parliamentary approval. Private acts being passed in their hundreds (notably for turnpikes, canals and enclosures) were naturally the first to be standardised and in 1774 standing orders specifying procedure were adopted; standard templates were extended to railways[6] and bridges before the end of the eighteenth century, with model governance clauses increasingly specified (Innes 1998, Williams 1948). The new parliamentary private bill office of 1810 further bureaucratized the process and a major additional source of standardisation was the sixth Earl of Shaftesbury, who ruled House of Lords committees from 1814 to 1853 with an iron fist (Sharman 1986).[7] No promoter of private acts of incorporation could hope to succeed without statutory clauses conforming to his exacting (and occasionally arbitrary) standards. Procedures were increasingly streamlined and this process was crowned in 1845 by the passage of the Companies Clauses Consolidation Act (hereafter CCCA), which prescribed corporate governance and liability rules for all subsequent statutory incorporations in 164 model clauses.[8] Such standardisation had long been discussed, but the weight of railway bills in 1844 meant that reform could no longer be avoided without legislative gridlock (Sharman 1986). These clauses codified the emerging practice of earlier decades and (together with those specified in successor CCCAs) were almost invariably adopted *in extenso* in subsequent incorporations by private act.[9]

The implications are substantially ignored by both legal and economic historians,[10] but the importance of the CCCA -especially for shareholder protection in stock exchange quoted companies - was well understood by contemporary professionals (Gatty, no date, p. 87, Godefroi and Shortt 1869, Chambers 1878, pp. 81-7, Pixley 1881, Clifford 1887, Street 1890, Barnes 1900, Head 1910; Sutcliffe 1924*)*. In the early 1860s - nearly twenty years after the first general Companies Act provided for simple bureaucratic registration with the Board of Trade - around 90% of corporate capital in the UK remained in the several thousand extant statutory and chartered companies (overwhelmingly subject to the CCCA or similar earlier requirements) that were building Britain's urban and transport infrastructure. Very little had yet been invested in the (slightly less numerous and smaller) new registered companies subject to the Companies Acts, whose governance provisions dominate the analytical literature (Hannah 2014, p.877-8). Even as late as 1884, the statutory and chartered companies *not* opting for simplified Companies Acts registration accounted for around three-quarters of all the capital of UK corporations with securities quoted on a stock exchange (Essex-Crosby 1937).[11]

In the eighteenth century perhaps no more than a dozen companies had in excess of a thousand shareholders, but the first (1855) official railway shareholding survey showed that the London & North Western Railway already had 15,115, two others had above 10,000 and thirty more above 1,000 (Anon 1856). There were also then perhaps a dozen financial institutions with above a thousand shareholders, and others in canals, trading companies and other industries (Wortley 1845, pp. 4-5 *Banking Almanac*, 1851-6; Pearson, *Insuring*, p. 250) Of course many companies - even those quoted on stock exchanges - had fewer shareholders (average numbers among a sample of *registered* quoted companies rose from only 312 in 1853-68 to 595 in 1900-02, Acheson et al 2014, p.9) and most mid-Victorian companies known to have more than a thousand shareholders were statutory or chartered. Thus the great majority conformed to the rules of the 1845 and subsequent CCCAs, rather than the 1844 Companies Act and its successors. Even before 1845, moreover, such provisions had been widely used in statutory companies and even in many not so regulated. Freeman et al, for example, show that 93% of the 514 companies in their 1720-1844 sample (which includes "deed-of-settlement" and chartered companies as well as statutory ones) had an "anti-director" provision for shareholders to requisition an extraordinary meeting (Freeman et al 2012, p. 165).

Other terms specified in the CCCA of 1845 were routine and undemanding, or incorporated rules on subscriptions, access to shareholder lists, regular re-election of directors (who had to be shareholders and could not be managers, employees or contractors),[12] half-yearly shareholder meetings, registration of mortgages (not required for registered companies until a half-century later) and procedures for liquidation, election of auditors (who could not be employees or directors), circulation of accounts etc. The clauses prescribed did not emerge from theoretical bureaucratic discussion: many had been found useful by experienced corporate users (some of whom were legislators) for decades.

In the field of "anti-director" rights, clauses prescribed in the CCCA naturally allowed attendance at general meetings of shareholders whose names were on the register, without the deposit of shares (clause IX), thus scoring one on the index. In contrast to the lax Companies Acts, shareholders under the CCCA had mandatory pre-emption rights to new shares if existing shares stood at a premium to par value (clause LVIII);[13] otherwise new shares could be issued without pre-emption rights only if these and other terms were approved by the "Company" (clause LX, clause XCI clarifying that this meant the general meeting of shareholders), increasing the score to two. Holders of at least one-tenth of the share capital (provided that they numbered at least twenty) could requisition an extraordinary general meeting, if the directors failed to do so within 21 days of a formal request (clause LXX), increasing the score to three. Proxy votes were routinely allowed on a standard prescribed form, if the nominated proxy was also a shareholder (clause LXXVI), raising the score to four. A tiered voting scale of one vote per share up to ten, one for every five shares thereafter up to 100, and one vote for every ten for the remainder in principle strengthened minorities (similarly to cumulative voting) and was the default rule if the promoters of any special act did not specify an alternative (Clause LXXV). In fact these tiers - or proportional rules with slightly modified scales - were so widely adopted, that it appears parliament did not permit significant deviation from this voting principle in statutory companies until later in the century.[14] Such voting rules were probably intended to protect minorities against majority oppression, though there are other interpretations.[15]

A more severe rating might conclude that only two CCCA provisions strictly conform to the requirements of the modern anti-director rights index, but, ignoring trivial shortfalls,[16] UK *statutory* companies under the 1845 CCCA scored five out of six on the anti-director rights index. As noted above, this was a level not legally required in the UK *registered* company sector until the last quarter of the twentieth century.[17] The only canonical anti-director right not explicitly included in the CCCA was item e) on the above list: the power of a minority to object to a major change in the nature of the business, such as a merger or asset sale (required in the UK Companies Acts only from 1985). Yet even this shortfall might be considered negligible. Boards of CCCA companies wishing to modify their statutes had to obtain parliamentary approval, deterring directors from attempting prejudicial changes and giving shareholders an opportunity to lobby against them. The mandatory provisions for removing directors and requisitioning extraordinary general meetings also made boards reluctant to engage in other major strategic moves (even if already permitted within their private act) without first preparing the ground at a shareholders' meeting, usually including a vote.

Thus, for all the alleged faults of the 1840s railway boom, the LSE-listed companies that emerged had been through a parliamentary winnowing process that ensured they conformed to standards considered appropriate in well-developed securities markets of today. The explicit requirement to adopt CCCA statutory corporate governance clauses can have left directors in little doubt about the formal powers of shareholders. Directors thus generally behaved with a circumspection reflecting this and some of those who did not, including the prominent and admired George Hudson, were ejected and investigated. The UK's corporate governance advantages inspired investor confidence then, as similar safeguards do today, even though only rarely used. Of course, rogue directors could do a lot of damage before they were ejected and some of the problems to which Berle and Means drew attention in 1930s America were surely already present in mid-

Victorian Britain. Similar complaints that boards of directors were essentially self-perpetuating oligarchies, inclined to treat shareholders as inconvenient nuisances not owners, were certainly already heard (Phillips 1877). The thousands of shareholders in many companies considerably attenuated the practicalities of their proactively using their theoretical powers to participate in governance or discipline directors. Monitoring of directors was costly but the benefits were non-appropriable: they accrued to all shareholders not just to those who intervened, so there was a strong temptation to remain passive and free ride on others' surveillance.

This may explain why some historians have been dismissive of the outcomes, accusing parliamentary barristers promoting special railway acts as running an overpaid protection racket (Kostal 1994). Certainly shareholders did not always have an easy task in controlling lawyers' or directors' rapacity.[18] The fundamental principle behind the law – which, after all, was passed by politicians struggling to reconcile a dominant *laissez-faire* ideology with the practicalities of organizing a rapidly changing urban and industrial society, using largely private capital - was *not* that the state would nanny shareholders; rather that it would give them powers to take matters into their own hands, especially if things went wrong.[19] Ownership carried clear responsibilities as well as rights, for which the state was a poor (and reluctant) substitute.[20] It seems unlikely that the powers provided (even to investors that Pollins (1954) and Campbell and Turner (2012) agree were pretty savvy about what they were getting into) were anything more than a backstop, inclining boards to act somewhat in the interest of shareholders, while dissuading them from too visibly lining their own pockets. Much would surely also depend on the calibre and ethics of those elected to directorships and there is likely to have been considerable diversity of outcomes in CCCA corporations, though all were nominally subject to identical governance rules.

One Asian observer of the west took it as axiomatic that British regulation was distinctive: "the United States has never attempted any strict regulation of railway finance, while England has always regarded the regulation of this branch of railway enterprise as essential" (Wang

1918, p. 10; see also pp. 10-14, 23-7, 37-9, 65-6). In late nineteenth century America, state laws also tended to weaken the position of shareholders and strengthen that of boards, in marked contrast to the UK (Roy 1997, p. 155). Unlike the shareholder rights literature that underpins the present discussion, neo-Chandlerians argue that such managerial power and shareholder quiescence could be positively beneficial to corporate development (Lazonick 2007, O'Sullivan 2000), but this is not the place to debate that alternative perspective.

UK railways dominated the statutory sector from the 1840s until well into the twentieth century. Despite the superior CCCA protections embedded in all these railways, economic historians have been critical of their poor strategy and direction in later decades (Dodgson 2011). Yet it is noteworthy that the last serious bankruptcies of UK railways were in the 1860s, while in America a large portion of railway capital entered receivership each decade for more than half a century more, during which their supremacy for inland interurban transport was still unchallenged (Giesecke et al 2010). Some of this contrast may be explained by the higher standards of UK corporate governance, bolstered by the tough and very "modern" CCCA requirements, though this did not, of course, guarantee wise decision making. Moreover, it is possible that the CCCA rule requiring proportional voting rights, intended to protect smaller shareholders, eventually disadvantaged them, by entrenching incumbent management and inhibiting the development of takeover bids, which from the 1890s facilitated managerial and financial reorganisations of railways in the US (Hannah 2011b).

The Puzzle of Voluntarism: the Rise of Registered Companies

Technically, if the anti-director rights index is scored on its universality within one legal jurisdiction, then the UK - despite the rigours of CCCA clauses - must be rated poorly. This is because the CCCA was virtually contemporaneous[21] with the less stringent option available to companies registering under the ordinary Companies Acts. The CCCA's "mandatory" clauses were thus *never* mandatory on the whole universe of new companies. It was impractical to set up outside the CCCA in some industries, like railways or canals, because they usually required compulsory purchase rights. Such undermining of established private property rights for quasi-public purposes was only obtainable by private act of parliament (or provisional order) and hence subject to the CCCA. In other sectors (like finance and liner shipping) either corporate regime was an option and in some (like breweries and retailing) the CCCA was hardly ever (if at all) used. Moreover, the dominance of statutory companies operating under CCCA rules declined rapidly in the later decades of the nineteenth century, when there were hundreds of IPOs for large companies registered under the Companies Acts. These clustered less in public utilities (where the CCCA was the norm) and more in manufacturing, distribution, finance and other industries in which technical and market changes were increasing optimal scale (Foreman-Peck and Hannah 2012, p. 1222). By 1914 the proportion of the share capital of all London-quoted companies that was in *registered* companies had grown to 61% of par values: statutory and chartered companies (mainly in railways and other public utilities) had become a minority of quoted corporate securities.[22]

Table A of the Companies Acts (in the major statutory consolidation of 1862, see Guinnane et al 2014, p. 11) provided a model set of articles of association for registered companies (the equivalent of the statutory clauses prescribed in the CCCA) which numbered only two-thirds of the CCCA's, but substantially replicated the latter's major anti-director provisions. In the case of the Companies Acts, however, these were not mandatory (as was the CCCA for statutory companies), but default rules, as in much modern American corporate law.[23] There is a growing literature on policy more generally, the so-called "Nudge"theory (Thaler and Sunstein 2008), that suggests that such templates, even if only defaults, often have success in influencing behaviour in desirable directions, while appropriately preserving flexibility. However, in this case their direct influence was limited, for many companies either rejected them completely or adopted them only with modifications and additions (Edwards and Webb 1985). It is thus certain that the once-dominant *legally-mandated* corporate governance protections in the UK inexorably gave way to a regime offering less *mandatory* legal protection to the representative investor. Even the 1900 Companies Act (obliging registered companies to offer minorities the right to requisition meetings without the directors' consent) was a pale reflection of the fuller CCCA shareholder protections, raising the score to only 2 on the "anti-director rights" index. If legal compulsions were the main source of good governance, then the quality of corporate governance would surely have deteriorated considerably in the later nineteenth century and only slightly improved again in the early twentieth.

In addition to the familiar entrepreneurial failure literature casting doubt on the general performance of late Victorian and Edwardian businesses, some recent literature specifically fingers weak regulation as a possible source of that poor business performance. For example, Guinnane, Harris and Lamoreaux examine samples of around 100 companies newly registered under the Companies Acts in 1892 and 1912, reporting "that incorporators consistently wrote rules that shifted power from shareholders to directors, that the extent of this shift became greater over time, and that Parliament made little effort to restrain it. Although large firms were less likely to enact the most extreme provisions, such as entrenching specific directors for life, they too wrote articles that gave managers essentially unchecked power" (Guinnane et al 2014, p. 1). However the relevance of their findings to the development of the quoted sector, based as they are on a random sample (and hence mainly private rather than public companies) is moot.[24] Given that in some private companies the directors and shareholders were identical (or virtually so, when family ties are considered), their micro-analysis of the rights of the latter against the former takes on an at times surreal air. Nonetheless Guinnane et al's hints that some of their companies - none of which are identifiable in comprehensive contemporary directories as quoted - intended eventually to make public issues of capital, does raise questions.[25] Their concerns also distantly mesh with some recent findings on (clearly quoted) companies that apparently also sailed close to the wind (Burhop et al, forthcoming). Burhop et al do not explicitly examine governance provisions, but they do find that performance differed between two groups of companies. The large fringe of (mainly smaller) companies making IPOs on the London Stock Exchange between 1900 and 1913, but only applying for (perfunctorily vetted) "special settlement" status, performed much less well than those applying for "official-listing," that is opting for a more thorough review process by the exchange's Listing Committee.[26]

However, such findings are a two-edged sword: implying that requirements of the LSE for official listing *did* provide a valuable signal to putative shareholders, though special settlement did not. If investors were aware of the advantages of official listing, this would have resulted in easier fundraising and/or better p/e ratios at IPO for officially-listed securities, thus providing a financial incentive for firms going public to opt for the more stringent qualification. The possibility that private order rules substituted for state regulation is widely admitted (Franks etal 2014)[27] and it has been claimed that the New York Stock Exchange or bankers like J P Morgan provided some sort of quality filter for US quoted companies (Davis and Neal 2005, De Long 1990, Hilt and Frydman 2014)[28] The case for the LSE having somewhat stronger rules has recently been bolstered by Mary O'Sullivan (2014). However, neither her study nor the formal listing rules show any explicit LSE requirement to compel the wholesale adoption of schedule A or other anti-director rights in non-CCCA companies. Perusal of the changes registered companies actually made prior to applying for official listing suggests good governance rules were nevertheless considered helpful. Boards seeking to diminish shareholder rights after listing were sometimes rebuffed by the shareholders or by the stock exchange itself. The LSE also *explicitly* required other safeguards: for example, directors were required to have a minimum shareholding, forced to disclose private contracts with the company and barred from using corporate resources to buy the company's own shares.[29]

It is possible that LSE brokers (who introduced all aspirants for quotation to the Listing Committee) and/or the lawyers, accountants and bankers with whom such aspirants also often worked on IPOs, were part of an ethical culture of good practice which informally steered aspirants to adopting good corporate governance rules. Even the lowly intermediaries known simply as company promoters - most commonly fingered by contemporaries for IPO villainies - have recently been given a cleaner bill of health than offered by many historians (Nye 2010). Various other mechanisms - including network effects, trust-based relationships, an informed (though occasionally corrupt) press, quality signalling by reputed directors, brand reputation, professional standards and prosecution of prominent fraudsters - have been suggested by which positive investor outcomes might have been encouraged in London (Hannah 2007, Cochrane 2009, Foreman-Peck and Hannah 2013). Such assessments lack any explicit analysis of how these mechanisms might have influenced the governance rules actually adopted by quoted companies subject to the Companies Acts. Nonetheless, it is unlikely that the CCCA system, which provided common-sense shareholder safeguards and appeared to be working tolerably well,- would have been completely ignored by IPOs. The precedents were well understood and investors and intermediaries had practical experience of the value of CCCA anti-director rights.

The 1890 flotation of the family-owned Scottish sewing cotton multinational, J & P Coats -soon to become Europe's largest industrial - exemplifies one possible outcome. The family registered a new company to acquire their assets and offer securities to the public, attracting 15,000 public subscriptions, simply by advertising the offer, after taking basic professional advice but without using a specialist promoter or other IPO intermediary.[30] As with many large IPOs at this time, Coats had a long track record of successful private operation before official listing,[31] but its flotation enabled the family owners to realise most of their large accumulated business assets for current consumption and portfolio diversification (they retained only one-third ownership). The IPO also provided a means of funding further expansion, so it was important - not only for their new investors but for the continuing family part-owners - to ensure good governance. The new memorandum and articles of association of Coats met many of the canonical "anti-director" requirements, even though "anti-director" in this context actually meant "anti-Coats family and their professional manager appointees" (that is, it notionally restrained the men who actually hired the lawyers who drafted the articles).Coats's articles did not require prior share deposit to qualify for voting, accorded proxy voting and pre-emption rights to all shareholders, authorised owners of 5% of the shares (a more minority-friendly hurdle than the CCCA's 10%) to call an extraordinary general meeting, and empowered any shareholder to submit a resolution to a general meeting, where a majority of shareholders could summarily replace any director by extraordinary resolution.[32] So

Coats's rating on the "anti-director" rights index was 4 – close to the rating of CCCA companies - rather than the 1 minimally required at that time by the ordinary Companies Acts.

Coats's articles (drawn up jointly by the top City solicitors, Linklaters, and Dunns, their local Scottish lawyers) were not particularly original, but were loosely based on the model articles ("Table A") of the Companies Acts. Specialist corporate lawyers serving the IPO market had a professional pride (and taste for fee income) which made them disinclined merely to copy Table A or other existing articles (while the CCCA *obliged* them to adopt standard clauses for *statutory* companies). They thus invariably incorporated their own favourite tweaks for adoption by registered companies seeking a broad ownership base through official listing, often slightly reformulating the "anti-director" protections. Coats were well rewarded for their good corporate governance and for solid, consistently rising, dividends based on a branded product with a strong market position worldwide (paralleling that of the Singer sewing machines which depended on their product's reliability). In 1896 the company was able to take over two major rivals, using as the acquisition currency its highly rated ordinary shares, then already quoted at six times par and so yielding only a little over 3%, suggesting investor confidence near to that accorded to the British government.[33]

How typical was Coats? Of course, not all companies had such a strong global product market position or stock market rating, but many adopted similar shareholder-friendly governance rules. Investor-friendly articles were so familiar to intermediaries and the informed investing public that companies exercising their legal right to *omit* such protections would be sending an uncomfortably transparent negative signal to the market, reducing their access to capital or raising its price. Foreman-Peck and Hannah showed that there was no discernible difference in the performance of the large quoted companies in 1911, whether, like Coats, they had devised their own governance rules when registering under the Companies Acts or had mandatorily adopted the statutory clauses of the CCCA (Foreman-Peck and Hannah 2013). A survey of the articles of association of other large *registered* companies (i.e. those which still had a choice) submitted to the

London Stock Exchange Listing Committee shows high scores on the anti-director rights index, even though the Companies Acts did not require it.[34] There is little sign[35] of anything approaching the lax rules found by Guinnane et al in their (largely private and small)[36] company sample. The freedom to attend meetings without prior share deposit and proxy voting were universal in the large quoted sample, and only two companies failed to provide for minority rights to requisition a meeting. Pre-emption rights were more varied, but the general requirement for shareholders to sanction any increase in capital usually gave those without explicit pre-emption rights the power to insist on them as a condition of any issue. Thus many scored four (or, on a stricter interpretation of pre-emption rights, three) on the anti-director rights index.[37]

Only one "anti-director right" was markedly more absent in the registered than in the statutory sector. After 1900, it was unusual for large registered and quoted companies to adopt anything other than equal voting for all the shares that voted. Tiered voting, despite being compulsory in the CCCA and recommended by Table A's "nudge" until 1907, became much rarer in articles being adopted by large registered companies in the later nineteenth century, as did capped voting (except in some banks and insurance companies), which had similar effects of diluting majority voting. Campbell and Turner (2011, p. 574) note 70% of companies registered in 1862-1883 already striking out the Table A provision for tiered voting.[38] The proportion of registered and quoted companies with such nonlinear voting rules supposedly favouring minorities declined (in samples of over a hundred registered *and quoted* companies) from 69% in the 1850s to only 19% in the 1890s (Acheson et al, p. 16). This is perhaps the exception that proves the rule. These corporate governance choices were not rooted in immovable convention or dictated by inertial copying or re-phrasings of Table A, but rather only preserved rules that were considered effective by experienced investors and intermediaries (Campbell and Turner 2011, pp. 589–92).[39] By inhibiting takeover bids, proportional voting rights may in some cases have actually damaged the interests of shareholders (p. 12, above)

This conclusion is based on a small sample biased to larger listed corporations, though the minimal variation suggest it is representative of such corporations. More worryingly, it excludes smaller quoted companies and is based on a narrow indicator of shareholder protection, but soon an important project of Professor John Turner and his colleagues will provide a fuller assessment of the content of the articles of association adopted by earlier registered companies that were quoted, including many smaller companies (Leverhulme Trust grant no. F/00203/Z, see also Acheson at al 2014). This should give us a much better idea of how UK shareholder protections (more broadly defined than the anti-director rights index) varied over time, between industries and by firm size and listing status. Perhaps it will offer further clues to the mechanisms (other than compulsion under the CCCA) which lay behind the adoption (or non-adoption in some cases) of good corporate governance rules. In other areas - notably independent auditing - there is already some evidence that voluntarism can lead to the adoption of informative (if imperfect) reporting practices, with nudges (falling short of today's "box-ticking" mandatory - but also distinctly imperfect - requirements) reducing asymmetries between directors and shareholders. In the UK, most quoted companies sent independently audited accounts to shareholders, even before the 1900 Companies Act, which extended the CCCA's 1845 accounting provisions from statutory to registered companies, prohibiting directors or employees from acting as auditors. In-house auditing remained possible in many overseas jurisdictions: for example, in 1900 most US corporations' annual reports did not have professional auditors, while the overwhelming majority of British quoted companies did (Watts and Zimmerman 1983, Hannah 2007)

Conclusion and Qualifications

For many decades now, historical, legal and economic literature has largely ignored the role of the CCCA in mandating extensive shareholder protections for the statutory companies, which - until toward the end of the nineteenth century - accounted for the great bulk of capital quoted on UK stock exchanges. The traditional view that legal compulsion played no role is only sustainable for the companies which later came to dominate stock exchanges: those registered under the much laxer Companies Acts. Yet evidence is now emerging that even these companies commonly adopted governance rules very similar to those mandated by the CCCA for statutory companies, but, in their case, voluntarily. The brokers, accountants, lawyers and bankers guiding them through the IPO process were likely influenced by the "nudge" provided by the earlier legislation and the default table A of the Companies Acts. On both main counts, then, the role of law in spreading good corporate governance practices in British quoted companies has been underestimated.

Statutory corporate laws and nudges toward good governance clauses were not the only protections for shareholders within the common law legal system, despite the ritual citation of *Foss vs Harbottle* by legal scholars emphasising that minority investors had little chance of redress in the civil courts against majority oppression. Taylor (2013) has insisted that (in marked contrast to the perpetrators of frauds and misrepresentations in the current GFC) many pre-1914 company promoters and directors were successfully prosecuted and imprisoned for breaking the broader *criminal* law in the course of their activities. Such evidence is never easy to interpret: for the pessimist, a proliferation of fraud cases merely shows the tip of an iceberg of corrupt commercial practice deeply engrained in a mis-governed capitalism; while, for the optimist, it demonstrates that the minority of business rogues who succumbed to temptation were detected and punished. Taylor (in this volume) also sees criminal law playing a positive role in the development of British corporate banks. The fact that shareholder protections were widely adopted by quoted companies even when not required by law does, however, underline that all laws operate within a social, cultural and ethical framework in which good practice was encouraged by transparency and positive precedent as well as the threat of penalties. Without such a framework creating a culture of compliance, even mandatory laws - whether requiring governance rules or outlawing fraud - might have had little practical effect. As Guinnane (2005) has emphasized, the concept of trust can be over-used, because when one scratches the surface of such explanations for cooperative, positive-sum behaviour one often finds very real sanctions underpinning trust. The lesson for dealing with our present discontents is *not* that only the rigorous application of stringent laws will do, but that law and an ethical culture with institutional reinforcements do a better job together. The solution is not "Either/Or?" but "Both/And."

We should, however, not exaggerate the influence of corporate governance laws and practices on which we (and legal historians) have focused. There is a lot more to corporate performance than good governance. We have already noted that the efficiency of British railways (despite their being the major beneficiary of the CCCA) left something to be desired. Equally, commercial and industrial companies adopting good corporate governance rules, could, of course, offer no guarantee to investors of extraordinary business success. At the opposite end to Coats on the performance scale was Waring & Gillow, an 1897 merger of two old established furniture manufacturers in Lancaster and Liverpool with London showrooms.[40] The rights of shareholders in this company's articles of association were almost as exemplary as those of Coats[41] and the quality of their furniture was also legendary (it still commands premium prices in salesrooms). They furnished many luxury hotels, yachts and ocean liners, as well as the homes of individuals of taste and discernment who appreciated the company's design services and competitive prices based on large turnover. However, the chairman, Samuel Waring, embarked on a disastrous expansion plan, with more factory acquisitions, extensive advertising, new stores in Paris, Johannesburg, Madrid and Buenos Aires and a palatial Oxford Street emporium bigger than its business could support. Unfortunately he had no way of limiting strong competition from Maples, Heals and other, more conservatively managed, Tottenham Court Road rivals. (His empire-building in a sister enterprise, the Waring-White Building Company, which built the Ritz Hotel and Selfridge's Department Store, was also disastrous). Desperate to conceal emerging losses, he accepted payment from hotel companies in their own securities rather than cash, overvaluing their paper on the balance sheet.

Despite signs of declining profits and proliferating credit difficulties, no shareholder group took the actions provided in the governance rules to unseat the directors implementing this disastrous strategy. By the end of 1910, free cash flow was insufficient to pay even the debenture interest, so it was the debenture holders - not the shareholders - that finally forced the firm into liquidation. The liquidator found that the securities portfolio was largely unrealisable and that (after paying secured and unsecured creditors) there would be nothing for the shareholders and even the secured debenture holders would only be repaid in part. Yet the enterprise clearly had more reputational value as a going concern than in a fire sale of assets. Eventually, after lengthy arguments among the debenture holders, inconsequential debates about prosecuting the directors and auditors for past misleading accounts and failure to find a going-concern buyer, a reconstruction was in 1912 agreed between the liquidator and the debenture holders. Saemy Japhet, an immigrant merchant banker backed by local millionaires Cassel and Zaharoff, underwrote a new debenture issue (with a prior charge) of £500,000, to pay off creditors and provide working capital. Old debenture holders (and shareholders) but not the public could subscribe, giving them also preference shares and ordinaries, which permitted them a more distant hope of sharing any future profits (Japhet 1931, pp. 112-3). The new controlling team were rewarded with management shares giving them half of profits after the preference dividend had been paid.

There was thus no joy for the original ordinary holders in this liquidation, except the right to subscribe to new capital at a fair price (which many did not find attractive: the underwriters were left with half the debenture issue). Profits returned to satisfy the preference holders (helped by wartime diversification into aircraft manufacture, directed by none other than Samuel Waring). In the 1920s dividends were even briefly paid on the new ordinaries, but the furniture business remained too competitive for the reconstructed company consistently to make super-profits. In 1923 Samuel, Lord Waring (elevated to the peerage in the notorious “cash for honours” scandal of 1922) was back as chairman of the eponymous company, taking advantage of the returned prosperity to issue new securities. Extraordinarily, Waring’s speculative dealings and personal borrowings from the company led to his second resignation in 1930, soon followed by another receivership: the creditors and debenture holders again had to reconstruct the company. Lord Waring's obituary ten year later (*Times* 1940) mentioned that he had no recreations save rescuing the modern English home from tasteless Victorianism and that "He lived, thought and worked in the grand manner," omitting to mention that his charmed life was partly built on the consecutive ruination of two generations of shareholders.[42] He appears to have been passionately and duplicitously wedded to growth rather than profitability, and perhaps not deliberately fraudulent, but the consequences could be equally dire. The remedies that good corporate governance rules in principle provided for shareholders to question board policies and replace directors were in practice useless if shareholders trusted an icon and realised things were going wrong too late.

It was, nonetheless, surely better to have the opportunity for redress that many articles of association provided than not. There were numerous positive cases in which shareholder interventions in AGMs, EGMs and shareholder investigation committees did result in the ejection of incompetent or duplicitous directors before they could do so much damage or in orderly reconstruction of capital and/or management rather than uncontrolled descent into bankruptcy. For example, in Allsopps Brewery incompetent owner-directors were ejected and in the Calico Printers Association a poorly-performing and excessively large board was decimated by a shareholder investigation committee (Macrosty 1907). Of course, most directors were not subject to such interventions and – as today - most shareholders were passive. Yet there would have been many more Lord Warings without the shareholder protections that not only gave capitalists like the Coats the confidence to reduce their ownership, but also supported a generalised belief among participants in IPOs that boards, while they certainly needed watching, could usually be expected to pay some attention to shareholder interests. In 1901 J P Morgan - the leading Wall Street banker, who claimed to a Congressional inquiry that banking success was based on high character - asked John Ellerman, a 36-year-old British venture capitalist involved in many IPOs and investment trusts, to recommend a takeover bid to the shareholders of the Leyland shipping firm that he chaired, offering in return the kickback of a higher price for Ellerman's personal holding. In the recent US Steel merger Morgan had found American millionaire corporate directors willing to accept similar quasi-bribes, but Ellerman (who was to leave Britain's largest ever personal fortune of £33 million on his death in 1933) refused, insisting that all shareholders receive the same price (Hannah 2011a, p. 130). Not all British directors were as scrupulous (Hannah 1974, p. 72), but Franks et al (2009, p. 4045), suggest that, while ethical behaviour may not have been universal, it was the norm. As the *Economist* explained, "Many things which are perfectly legal in this country are not the acts of a gentleman and are 'just not cricket'" (*Economist* 1937).

Yet finance offers exceptional opportunities for misappropriation and the temptation to make a fast ungentlemanly buck was ever-present in the City of London, driven forward by vigorous competitive pressures and held back by the strategic value of reputation. The complexity of financial transactions enabled some to get away with fraud and mis-representation, suffering only public shaming and forced restitution of ill-gotten gains (the "Randlord" Sir Joseph Robinson)[43] or even getting away scot-free (Lord Farquhar),[44] or, like the stockbroker Frances Bevan, evading capture by fleeing abroad (Jeremy 1984-6). However, exile did not save Whittaker Wright, who was extradited and chose suicide rather than face imprisonment for his crimes (Hannah 2007). Yet others like Horatio Bottomley MP and Sir Ernest Hooley brazenly re-offended on their release from prison (Jeremy 1984-6). It helped any waverers with less than wholesome urges - and Ellerman himself was occasionally accused by the press of wavering - that British law by then required that any payments such as Morgan's bribes be divulged in prospectuses, whereas US law did not.

Victorians did not rely exclusively on a culture of business morality and reciprocal trust, nor solely on the long arm of the law: they understood that, in a complex commercial society, "Both/And" was best. Much time in parliamentary committees as well as in commercial businesses was spent on the difficult conundrum of getting the balance right. This was not a process in which the optimal balance was obvious, any more than it is today, when the theoretical effects of any regulation often go both ways *ex ante* and the net gain or loss is only knowable empirically (if at all) *ex post*. The workably efficient outcomes we have noted emerging were among the reasons why the London Stock Exchange remained the largest in the world before 1914 and why its complement of companies with ownership substantially divorced from control was comparable to today. As that comparison reminds sufferers from the GFC, this is far from saying that Victorian governance was perfect, but nineteenth century anti-director protections for shareholders were not as different from today's as legal analysts have suggested. Victorians may even have been somewhat more assiduous in effectively pursuing and deterring individual miscreants. This goal has perhaps become more difficult with the increasing ubiquity and complexity of modern financial transactions, and perhaps greater crony capitalist links of larger financial institutions with politicians, than Victorian financial intermediaries were able to achieve.[45]

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Endnotes

[1] Though for a convincing critique of the latter view in today's conditions, see Mayer 2013.

[2] The only statistical study of foreign data to raise questions about this conclusion of which we are aware (Hilt 2014) examines 31 Massachusetts manufacturing corporations (mainly textile companies) of 1875 that were listed on the Boston Stock Exchange, reporting averages of only 10% director ownership and 267 shareholders. "Oldham Limiteds," also mainly in cotton, at that time appear to have had even more "democratic" ownership. Hilt reports that Boston was then the US's largest market for industrials whereas Oldham was a tiny fraction of the much larger LSE and provincial markets for quoted industrials in a country then about the same size as the US.

[3] It is also clear (idem, p. 4020) that their explicandum of rising share dispersion in the twentieth century is based on a sample selectively drawn from sectors representing only 3% of stock market

capitalisation in the early twentieth century and that is quasi-randomly sampled from all registered companies, so includes small and medium-sized companies. Thus their early reported director ownership shares include quite a lot of *de fact*o private companies. Their longitudinal sample (p. 4029) in manufacturing, domestic, shipping and distribution registers 93% board ownership in 1900 and 54% in in 1910, whereas a fuller sample confined (like their Japanese sample) to large scale companies in similar industries quoted at the time registers much lower board ownership in 1911.

[4] Spamann (2010) has questioned the calibration of this index, but it is a convenient indicator, correlated with fuller alternatives, and has been widely used in the literature. Nonetheless some" shareholder protections," like proxy voting, could in some circumstances be hijacked to entrench directors (Hilt 2014, p. 16) and we share reservations about according equal value to each provision.

[5] For contemporary criticism that this act did not go far enough, see Barlow (1901)

[6] Early railways were horse-drawn coal lines or provided infrastructure only, in the manner of turnpikes.

[7] He is less celebrated than his son, the philanthropic seventh Earl. It is said that the latter acquired his lifelong sympathy for the oppressed from the domestic conduct of his austere, and obsessively standardising, father.

[8] Related acts were the Railway Clauses Consolidation Act 1845 (whose 150 model clauses prescribed rules specific to railways), the Lands Clauses Consolidation Act of 1845 (whose 160 model clauses laid down standard rules for compulsory purchase: eminent domain in American English), and three parallel Scottish acts (unlike the 1844 Companies Act, the CCCA and its complements applied nationwide). Their use as a template reduced the typical railway bill from 500 or 600 to a mere 50 clauses. Model clauses specific to other industries soon followed (for example, the Gas Works Clauses Act of 1847) and the CCCA itself was updated and improved in 1863, 1869, 1888, 1889 and 1908. Colonial legislatures passed similarly motivated, though not identical, acts.

[9] We are not aware of any post-1845 statutory incorporation where they were not followed. Later in the century private acts were sometimes replaced by "provisional orders," a simplified administrative procedure, but also potentially subject to parliamentary scrutiny.

[10] Honourable exceptions include Pollins (1954), Campbell and Turner (2011, p. 573); Freeman et al (2012, p. 34)

[11] Essex-Crosby's figures include only registered companies, including those traded by "special settlement" and some provincial and other issues in which London brokers dealt as well as the LSE official list. Comparable estimates for statutory and chartered companies are the authors' based on totals in the *Economist* supplements for specific sectors and in *Burdett's Official Intelligence*. An even higher share of debentures were probably in statutory companies. In home railways alone (all of which were statutory) there were £164m debentures compared with only £86.8m in quoted registered companies. Of course, a much higher portion of private (unquoted) companies was in the registered sector, while only a modest portion of the statutory sector capital remained unquoted for very long.

[12] It is arguable that such rules (like some modern corporate governance codes) put too much emphasis on board independence and not enough on board competence. Professional engineers and managers could not serve on their employing corporation's board unless they resigned their management position or retired. Such corporate officers attended board meetings, clearly helping formulate policy and strategy, but could not vote.

[13] Clifford (1887, p. 130) commented that this aimed "to secure for the proprietary an equal distribution of shares, as it was thought they were sometimes unfairly monopolized by directors and their friends."

[14] When many utilities were registered under the Companies Acts, but given additional "provisional orders" by the Board of Trade, without a formal special act in parliament, though any member of parliament could object to such orders, thus triggering a fuller debate.

[15] Campbell and Turner (2011, pp. 589–92) are sceptical about its effectiveness in 1880s Britain and Pargendler and Hansmann (2013) argue that tiered voting was not a mechanism to protect shareholders, but rather consumers (who dominated early shareholding in many of the companies adopting such rules).

[16] Those requiring a fellow shareholder rather than any nominated person as proxy, requiring a minimum of 20 shareholders to requisition an EGM, and requiring tiered voting with similar (but not identical) effects to explicitly cumulative voting.

[17] The 1845 CCCA is available online at www.proquest.com. For later changes, see Browne and Theobald, 1911, pp.96-97, 131-2, 516-7.

[18] The 1845 CCCA does not appear in the index of Kostal's searingly critical analysis, though he repeatedly cites the lax 1844 Companies Act, under which railway promoters registered provisionally while raising capital to convince parliament they could build a railway. In their subsequent private act they were *required* to convert to the CCCA's statutory clauses (or until 1845 predecessor conventions); they could *not* proceed to final registration under the 1844 Act.

[19] This was also the driver of judicial refusal to intervene in internal company disputes (as in the frequently cited *Foss v Harbottle* case of 1843). Yet - if directors breached their articles or equitable rules, or engaged in fraud or misrepresentation - the courts did offer remedies.

[20] Shareholders' rights to request the appointment of Board of Trade inspectors were used only a few times per year and aggrieved shareholders sometimes found public prosecutors reluctant to initiate fraud cases.

[21] The first Companies Act took effect in England, Wales and Ireland from November 1844 (Scotland from 1855); the first CCCA applied to UK statutes from May 1845. Neither were revolutionary: each codified earlier practice in, respectively, "deed-of-settlement" and statutory companies

[22] All these figures are at par values, but as home railway shares (the largest statutory sector) had then fallen well below par, this probably understates the rise of *registered* companies on the

exchange in market value terms. Registered companies had also reversed the situation in debentures: home railway debentures totalled £330.2m at par in 1914, while those of quoted, registered companies accounted for £698.4m (Essex-Crosby 1937).

[23] In the context of modern Delaware corporation statutes, Hansmann (2004) suggests a plausible rationale for default rules rather than mandatory provisions and reasons why they are nonetheless often preferred to permitted contractual modifications.

[24] Their suggestion that railways dominated the quoted sector (p. 4) is based on all official listings on the LSE, which were dominated by *foreign* railways. *Domestic* UK companies had ceased to be dominated by railways in the period they examine. Their 1892 sample of 54 companies includes only 9 companies (17%) with more than 50 subscribers on registration (part of the formally legislated dividing line between public and private companies from 1907) and nine of the 25 that survived to 1897 (36%) had at least that number of shareholders by the latter date.

[25] A few of their firms had over a hundred shareholders, possibly raising capital privately from local and professional networks though not appearing in public directories of quoted shares, but their study does not report whether such companies with dispersed shareholdings already had above-average governance rules. Many LSE listing files (MS 18000, Guildhall Library, London) show that companies routinely changed obviously offending or egregiously pro-director articles when applying for a more formal LSE official listing, or contented themselves with less rigorous (and less marketable) "special settlement."

[26] On the other hand, official listing appears uncorrelated with ownership dispersion in the Victorian registered quoted company samples of Acheson et al (2014, p. 2021)

[27] Franks, Mayer and Miyajima argue that trusted intermediaries, not anti-director rights (on which Japan scored only 1), encouraged the wide dispersion of shareholdings in Japan, though they classify as "wide" a mean of 675 shareholders in 1907 and 1,060 in 1914 in 50 manufacturing companies,

compared with a median (which was below the mean) in 58 UK manufacturing companies in 1911 of 4,300 shareholders (Foreman-Peck and Hannah 2012).

[28] The yardstick against which DeLong judged Morgan directors exemplary was all companies listed on the NYSE, so (if accurate) his findings would imply that governance of the *majority* of NYSE firms was poor, though he is sometimes cited as proving the opposite. For a sceptical appraisal even of his pro-Morgan findings, see Hannah 2011a.

[29] Now commonplace, this was considered at that time to be an undesirable market manipulation.

[30] They used solicitors, accountants and bankers for basic advice and receiving subscriptions and (necessarily) used brokers for obtaining official quotations on various exchanges, but - as was then common - organised the IPO themselves.

[31] Burhop et al (forthcoming) show that officially-listed IPOs of 1900-1913 had an average pre-IPO life of 22.5 years. Some smaller official listings (e.g electricity companies) were nearer start-up and special settlement IPOs averaged only 5.9 years old.

[32] The bar to exercising this right effectively was *de facto* high in a company like Coats, where the family retained one-third of the votes (and total when new board members added a further sixth after an 1896 merger). Yet this was untypical: most owners gradually reduced their shareholdings post-IPO, and so the clause had an option value. The point is not that shareholder intervention rights were frequently used, but that in any such companies they could be used in the event of its becoming necessary.

[33] *Economist*, 11 July 1896, p. 911, 25 July 1896, p. 984, 17 October 1896, p. 1352. Widely available bank loans or acceptance credits at the time charged 5% annual interest and some companies could issue debentures at 3-4%, but for ordinary shares to have such a low yield (before the “cult of the equity” reversed the dividend/interest return on equity and debt) was remarkable.

[34] Using the conveniently indexed LSE listing records (MS 18000/1, Guildhall Library) rather than Companies House records (in TNA or Cardiff) has the advantage of pinpointing the state of the

memoranda and articles at the critical time: when they faced external scrutiny by the LSE's listing committee, because applying for a quotation. The files show some companies with shareholder-unfriendly governance rules changed them at the point of applying for an official listing.

[35] Exceptions include multiple voting shares entrenching boards in Maple & Co and the Pekin Syndicate, but the Listing Committee required the watering down of more explicit director entrenchment in the case of Maples.

[36] *None* of their companies exceeded £1m share capital or were officially listed; *all* Foreman-Peck's and Hannah's had at least that capital and the great majority were officially-listed. Given that company size distributions were highly skewed, the latters' several hundred £1m+ companies alone accounted for over three-quarters of the share capital of all the 10,000 or so UK companies which in 1914 had quoted securities in the *Stock Exchange Official Intelligence*.

[37] Survey of forty companies under a Cardiff Business School grant. We are grateful to Peter Sims for carrying out this survey.

[38] After 1900 closer to 100% of registered companies in the authors' sample of companies whose articles appear in a broader LSE listing file sample eschewed tiered voting.

[39] They also perhaps derive from greater desire for continuing autocratic control by partners floating established businesses as public companies, as is also suggested by their increasing tendency to issue preference shares, with restricted or no voting rights.

[40] This account is based on indexed references in the *Times* and *Economist* (online version accessed 12 February 2014).

[41] See its articles of 1896/7 in MS18001/88B/77 Guildhall Library, London. Share capital increases had to be authorized by a general meeting, which could also require pre-emption rights, holders of one-tenth of the issued capital could requisition an EGM, proxies were allowed, no prior deposit was required to exercise a vote, and the directors could be removed by ordinary resolution. The 1912

articles (MS 18001/176B/903) were more restrictive, entrenching new directors and financiers who had rescued the company from bankruptcy on the board for ten years.

[42] Our negative judgment, appropriately in context, reflects the shareholder perspective, but in capitalism they also serve who make losses. Whether Lord Waring's (unintendedly) low-profit services in a competitive industry to affluent consumers with good taste contributed more to global consumer welfare than Coats' highly profitable oligopolistic exactions from sewing cotton consumers remains a moot point.

[43] In 1905 Joseph Robinson defrauded the shareholders of Randfontein Estates by personally buying some mines, then selling them to the company (which he then controlled) at a massive (undisclosed) mark-up. In 1915, its new owners sued him and he was ordered by the South African High Court to repay more than £500,000, a civil judgment upheld on appeal to the judicial committee of the UK Privy Council. His actions - judged "wholly inconsistent with the obligation of good faith" - did not provoke criminal prosecution, and, before he was exposed, his Boer friends in South Africa successfully proposed him for a baronetcy, though his attempt to buy a peerage for £30,000 in 1922 pushed his luck even further than the House of Lords could stomach (*HC Deb*, 22 June 1922, vol 50, cc 1126-40, 29 June 1922). When he died, he was reviled for leaving nothing to charity, in marked contrast to other "Randlords:" Rhodes, Beit and Wernher.

[44] Farquhar married into Parr's Bank money and traded influence in royal and party circles, but, on his death in 1923, his creditors found he was bankrupt.

[45] Though, as the extensive literature on "gentlemanly capitalism" implies, Victorian financiers were not without influence in the corridors of power.

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