NBER WORKING PAPER SERIES

CONTRACTUAL FREEDOM AND THE EVOLUTION OF CORPORATE CONTROL IN BRITAIN, 1862 TO 1929

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Working Paper 20481
http://www.nber.org/papers/w20481

NATIONAL BUREAU OF ECONOMIC RESEARCH
1050 Massachusetts Avenue
Cambridge, MA 02138
September 2014

We have benefitted from the helpful comments we received from Leslie Hannah, Jean-Laurent Rosenthal, and participants in the Yale Economic History Lunch; the NBER Summer Institute (Development of the American Economy Group); the CIG-Project EVOBUSORG Conference on the History of Business Organization and Law at Dokuz Eylül University; the Toronto, Siena & Tel Aviv Law & Economics Workshop; The Small, Medium-Sized and Large Company in Law and Economic Practice Conference, Brussels; and seminars and lectures at Assumption University of Thailand; Queen's University, Belfast; Queen's University, Kingston; the Ratio Institute, Stockholm; Stanford University; the University of Auckland Law School; the University of Michigan Law School; the University of Minnesota Law School; UC Berkeley; UC Davis; and the Wharton School. We would also like to express our appreciation to our able research assistants Catherine Arnold, Anna Demaree, Mor Greif, Rachel Jones, Stephanie Kan, Adèle Rossouw, Kelli Reagan, Anne Ruderman, Lauren Talmor, Antonia Woodford, and Roy Zur. Richard Grossman kindly provided information from his work on the London Stock Exchange. This project was supported by grants from the National Science Foundation, the Israel Science Foundation, and the Yale Economic Growth Center. The views expressed herein are those of the authors and do not necessarily reflect the views of the National Bureau of Economic Research.

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NBER Working Paper No. 20481
September 2014, Revised October 2016
JEL No. G3,K22,N23,N24,N43,N44

ABSTRACT

British general incorporation law granted companies an extraordinary degree of contractual freedom to craft their own governance rules. It provided companies with a default set of articles of association, but incorporators were free to reject any part or all of the model and write their own rules instead. We study the uses to which incorporators put this flexibility by examining the articles of association filed by random samples of companies from the late nineteenth and early twentieth centuries, as well as by a sample of companies whose securities traded publicly. One might expect that companies that aimed to raise capital from external investors would adopt shareholder-friendly corporate governance rules. We find, however, that regardless of size or whether their securities traded on the market, most companies wrote articles that shifted power from shareholders to directors. We also find that there was little pressure—from the government, the financial press, shareholders, or the market—to adopt governance structures that afforded minority investors greater protection. Although there were certainly abuses, it seems that incorporators made an implicit bargain with investors that offered them the chance to earn high returns in exchange for their passivity. These findings have implications for the literature on corporate control, for the "law-and-finance" argument that corporate governance in common-law countries was more shareholder friendly than in civil-law countries, and for the debate about entrepreneurial failure in Britain during the late nineteenth and early twentieth centuries.

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Contractual Freedom and Corporate Governance in Britain in the Late Nineteenth and Early Twentieth Centuries

Most scholars of corporate governance agree on the normative principle that corporations should be managed in the long-run interests of their shareholders.[1] They also generally agree that Anglo-American legal rules do a better job of promoting shareholders' welfare than those in effect in most other countries.[2] These two claims come together in the so-called "law and finance" literature. Growing out of the work of Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer, and Robert Vishny (hereafter LLSV), this literature claims that external investors in corporations are better protected in countries with legal systems derived from British common-law than from European civil-law, in large measure because of the common law's superior flexibility.[3] Whereas the commercial codes put in place in France and elsewhere on the European continent in the nineteenth century locked businesses into a particular set of legal rules, the common law was able to evolve in accordance with the changing needs of business and the economy. For example, shareholder friendly corporate-governance rules emerged because managers had to be able credibly to commit not to exploit potential investors. Because of the common-law's superior adaptability, countries that inherited this type of legal regime or adopted

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[1] On the "triumph of the shareholder-oriented model of the corporation," see especially Henry Hansmann and Reinier Kraakman, "The End of History for Corporate Law," *Georgetown Law Review* 89 (Jan. 2001): 439-68. For a classic statement of the view by one of its chief architects, see Michael C. Jensen, "Value Maximization, Stakeholder Theory, and the Corporate Objective Function," *Business Ethics Quarterly* 12 (April 2002), 235-56.

[2] See, for example, Randall K. Morck, ed., *A History of Corporate Governance around the World: Family Business Groups to Professional Managers* (Chicago: University of Chicago Press, 2005).

[3] See especially LLSV, "Legal Determinants of External Finance," *Journal of Finance* 52 (July 1997): 1131-50; and LLSV, "Law and Finance," *Journal of Political Economy* 106 (Dec. 1998): 1113-55. These articles sparked an enormous debate that has been surveyed in La Porta, Lopez-de-Silanes, and Shleifer (LLS), "The Economic Consequences of Legal Origins," *Journal of Economic Literature* 46 (June 2008): 285-332; and Mark J. Roe and Jordan I. Siegel, "Finance and Politics: A Review Essay Based on Kenneth Dam's Analysis of Legal Traditions in *The Law-Growth Nexus*," *Journal of Economic Literature* 47 (Sept. 2009): 781-800.

it at some point in the past were able to achieve significantly higher levels of financial development by the late twentieth century than those with civil-law systems.[4]

This paper uses data on corporate governance practices in Britain during the late nineteenth and early twentieth centuries to challenge the connection between the greater flexibility of the Anglo-American legal regime and shareholder-friendly corporate governance. The general incorporation laws that Parliament enacted beginning in 1856 conferred a remarkable degree of contractual freedom on British companies. The statutes themselves included few provisions regulating corporate governance. Instead, Parliament provided companies with a model set of articles of association that applied only to firms that did not write their own articles. Although the model covered most aspects of corporate governance, its provisions were default rules. Companies could reject any or all parts of the model articles and write alternative clauses of their own choosing. They could even write substitute clauses that explicitly negated provisions in the model table. So long as the provisions were not illegal, whatever articles companies chose to adopt were enforceable as contracts in the courts.[5]

To explore the governance choices that incorporators made when they organized their businesses, we collected the articles of three random samples of companies formed in the late

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[4] On this last point, see LLSV, "Legal Determinants of External Finance." On the superiority of the common law, see LLS, "Economic Consequences of Legal Origins." LLS draw on an older legal tradition, especially Friedrich A. Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960); Richard A. Posner, *Economic Analysis of Law* (Boston: Little, Brown, 1977); Paul H. Rubin, "Why is the Common Law Efficient?" *Journal of Legal Studies 6* (Jan. 1977): 51–63, and George L. Priest, "The Common Law Process and the Selection of Efficient Rules," *Journal of Legal Studies* 6 (Jan. 1977): 65-82. See also Thorsten Beck, Asli Demirgüç-Kunt, and Ross Levine, "Law, Endowments, and Finance," *Journal of Financial Economics* 70 (Nov. 2003): 137-81; and Ross Levine, "Law, Endowments and Property Rights," *Journal of Economic Perspectives* 19 (Summer 2005): 61–88.

[5] In its contractual flexibility, British company law was actually more like continental law than the general incorporation statutes enacted by the various U.S. states, which were generally prescriptive than British company law. . See Timothy W. Guinnane, et al., "Putting the Corporation in its Place," *Enterprise and Society* 8 (Sept. 2007): 687-729; and "Pouvoir et propriété dans l'entreprise: pour une histoire internationale des sociétiés á responsabilité limitée," *Annales: Histoires, Sciences Sociales* 63 (janvier-février 2008): 73-110; and Ron Harris and Naomi R. Lamoreaux, "Contractual Flexibility within the Common Law: Organizing Private Companies in Britain and the United States," unpublished paper (2010).

nineteenth and early twentieth centuries. We also collected the articles of a sample of companies whose securities traded on the London Stock Exchange (LSE) and other major British exchanges. Contrary to the literature, we find that incorporators revised the model articles in ways that were anything but shareholder friendly. Whether companies were small or large or private or public, they tended to adopt governance structures that shifted power from shareholders to directors to such an extent that shareholders were for all practical purposes disenfranchised. These patterns, moreover, seem to have become if anything more pronounced over time.

Our findings contradict those of recent scholars who have argued for the shareholder-friendly character of British corporate governance in the late nineteenth and early twentieth centuries.[6] As we will show, an important reason we obtain different results is that we look at how the governance rules written into firms' articles of association worked in combination, whereas other studies either examine a narrower set of practices or do not pay adequate attention to the ways in which the various elements of a company's governance framework interacted with each other. In offering this corrective, however, we are not siding with scholars who have emphasized the more nefarious aspects of British corporate governance during this period.[7] Of

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[6] See especially Graeme G. Acheson, Gareth Campbell, and John D. Turner, "Common Law and the Origin of Shareholder Protection," QUCEH Working Paper 2016-04 (2016). But see also James Foreman-Peck and Leslie Hannah, "Some Consequences of the Early Twentieth-Century British Divorce of Ownership from Control," *Business History* 55 (issue 4, 2013), 543-64; Foreman-Peck and Hannah, " UK Corporate Law and Corporate Governance before 1914: A Re-Interpretation," in *Complexity and Crisis in the Financial System: Critical Perspectives on the Evolution of American and British Banking*, eds. Matthew Hollow, Folarin Akinbami, and Ranald Michie (Cheltenham, UK: Elgar, 2016), 183-213; Gareth Campbell and John D. Turner, "Substitutes for Legal Protection: Corporate Governance and Dividends in Victorian Britain," *Economic History Review* 64 (May 2011): 571-97; Janette Rutterford, "The Shareholder Voice: British and American Accents, 1890-1965," *Enterprise & Society* 13 (Mar. 2012): 120-53; and Colleen Dunlavy, "Corporate Governance in Late 19th-Century Europe and the U.S.: The Case of Shareholder Voting Rights," in *Comparative Corporate Governance: The State of the Art and Emerging Research*, eds. Klaus J. Hopt, et al. (Oxford, Eng.: Oxford University Press, 1998), 5-39.

[7] William P. Kennedy, *Industrial Structure, Capital, Markets, and the Origins of British Economic Decline* (Cambridge, Eng.: Cambridge University Press, 1987), esp. Ch. 5; Brian R. Cheffins, *Corporate Ownership and Control: British Business Transformed* (Oxford, Eng.: Oxford University Press, 2008); and James Taylor,

course there were plenty of examples of bad or even fraudulent management, but the practices that contemporaries complained about are not generally the ones we have uncovered. To the contrary, there seems to have been a general understanding at the time that corporations were entrepreneurial vehicles that offered external investors the potential to earn high rates of return in exchange for giving entrepreneurs a free hand in running their enterprises. Shareholders had voice, but they did not have much power within the enterprise, and there is little evidence that they pushed for more.

British Company Law and the Model Articles of Association

During the second half of the nineteenth century British businesses operated under what was arguably the most liberal general incorporation law in the world. At the century's beginning, however, they faced a much more restrictive environment. The Bubble Act of 1720 had made it illegal for joint-stock companies to operate without the explicit permission of the government in the form of a charter. Charters were not easy to secure, and so despite the law, many multi-owner businesses organized as unincorporated joint-stock companies. These companies were essentially large partnerships structured by contracts that enabled them to concentrate managerial authority and function, for the most part, as if they were legal persons. Mark Freeman, Robin Pearson, and James Taylor have scoured archival repositories in Britain and Ireland and have shown that there was a surge in the formation of such enterprises in the 1790s that lasted until a series of adverse court decisions in the second decade of the nineteenth century effectively brought the movement to a halt. As the number of companies formed without

Boardroom Scandal: The Criminalization of Company Fraud in Nineteenth-Century Britain (Oxford, Eng.: Oxford University Press, 2013).

charters fell off, entrepreneurs deluged Parliament with petitions for incorporation. Overwhelmed by the sheer volume of requests, Parliament responded in 1825 by repealing the Bubble Act. It was now legal to form joint-stock companies without charters and their numbers began again to rise.[8]

The unincorporated joint-stock company was still an inferior substitute for the corporation, however. Corporate privileges, such as right to sue and be sued in the company name and especially limited liability, were cumbersome to secure contractually and not reliably enforceable. It was still not clear, moreover, that the form was legal under the common law, and indeed the sitting Lord Chancellor made known his views to the contrary.[9] In 1834 Parliament authorized the Crown to grant joint-stock companies patents that conveyed some of the same privileges as charters of incorporation, particularly the right to sue and be sued as an entity. This move toward liberalization failed, however, because the Board of Trade, which was given responsibility for awarding the patents, adopted a set of policies that made them difficult to obtain. In 1837 Parliament made the Board's powers more explicit, granting it permission to extend any privilege, including limited liability, that "it would be competent" under "the rules of

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[8] Ron Harris, "Political Economy, Interest Groups, Legal Institutions, and the Repeal of the Bubble Act in 1825," *Economic History Review* 50 (Nov. 1997): 675-96. For the numbers of companies, see Mark Freeman, Robin Pearson, and James Taylor, *Shareholder Democracies? Corporate Governance in Britain & Ireland before 1850* (Chicago: University of Chicago Press, 2012), 12. The authors found records for over 1,400 joint-stock companies founded between 1720 and 1844. They selected for further study 514 companies that they considered representative. Only 73 of them were formed before 1800, but then the number of new companies accelerated. Business people organized 45 joint-stock companies from 1800–1809, 41 from 1810–1819, 109 from 1820–1829, 189 from 1830–1839, and 57 from 1840–1844. Most of these companies had charters, but 44 percent of the companies formed from 1800-1809, 48 percent from 1820-1829, and 54 percent from 1830-39 were unincorporated. See also Ron Harris, *Industrializing English Law: Entrepreneurship and Business Organization, 1720-1844* (Cambridge: Cambridge University Press, 2000).

[9] Henry N. Butler, "General Incorporation in Nineteenth Century England: Interaction of Common Law and Legislative Processes," *International Review of Law and Economics* 6 (Dec. 1986):169-88. For an overview of the disadvantages of the joint-stock form, see Harris, *Industrializing English Law*, Ch. 6. John Morley has a more positive view of the form but agrees that the legal environment of the early nineteenth century erected obstacles to its use. See "The Common Law Corporation: The Power of the Trust in Anglo-American Business History," *Columbia Law Review*, forthcoming. See also Ryan Bubb, "Choosing the Partnership: English Business Organization Law during the Industrial Revolution," *Seattle University Law Review* 38 (Winter 2015): 337-64, for the argument that unlimited forms were more advantageous for debt finance.

the common law" to include in a charter of incorporation, but the Board still did not relax its policies.[10]

In the face of the obstinacy of the Board of Trade, entrepreneurs pushed for legislation that would enable companies to secure charters of incorporation by a simple registration process. Parliament took a first step to meet their demands in 1844 by passing an act granting corporate status to most (non-financial) companies that registered and met certain minimum requirements. The act, however, did not grant shareholders limited liability, included quite significant disclosure requirements for the benefit of investors, and also imposed a standard governance structure on registered companies. At the same time, it declared unregistered joint-stock companies to be illegal and prohibited partnerships with more than twenty-five members.[11]

Entrepreneurs continued to campaign for limited liability, and in 1855 Parliament passed a bill permitting companies that complied with the 1844 law's registration requirements and met certain other financial criteria to choose to limit their liability. The revised Joint Stock Companies Act of the next year expanded that permission to include all registered companies. The 1856 statute also marked a major shift in the direction of laissez faire. It dropped the financial disclosures required by the 1844 act, as well as the detailed corporate governance rules it had mandated. Companies henceforth were to be governed by their articles of association. The 1856 act included as an appendix (Table B) a model set of articles of association with many of the provisions previously imposed by the 1844 law. These articles were now default rules,

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[10] H.A. Shannon, "The Coming of General Limited Liability," *Economic History* 2 (Jan. 1931): 267-91; Geoffrey Todd, "Some Aspects of Joint Stock Companies, 1844-1900," *Economic History Review* 4 (Oct. 1932): 46-71; Bishop Carleton Hunt, *The Development of the Business Corporation in England, 1800-1867* (Cambridge, Mass.: Harvard University Press, 1936), 57-60, 82-84; Harris, *Industrializing English Law*, 270-77.

[11] The Joint Stock Companies Act, 1844, 7 & 8 Vict. C. 110. The act did not apply to banks and friendly societies. Railroad and insurance companies faced additional layers of regulation. See M. S. Rix, "1844 and To-Day," *Economic Journal* 55 (Jun.-Sept. 1945): 242-60; Hunt, *Development of the Business Corporation*, 90-101; Harris, *Industrializing English Law*, 282-84; and Freeman, Pearson, and Taylor, *Shareholder Democracies*, 34-38.

however, not statutory requirements. They would govern companies that did not write their own articles, but companies registering under the act had the option of rejecting the model articles and writing their own set of governance rules.[12]

This change to default rules seems to have been the handiwork of Robert Lowe, the new vice president of the Board of Trade, who introduced the bill into Parliament. Ideologically committed to the idea that business arrangements should be left to the free workings of the market, Lowe favored allowing incorporators to choose their own governance rules: "Having given them a pattern, the State leaves them to manage their own affairs, and has no desire to force constitutions upon these little republics."[13] The division he built into the 1856 statute between the text of the law, which included almost no provisions regulating companies' internal governance, and an appendix with a default set of governance rules was repeated in the consolidated Companies Act enacted in 1862 (that statute relabeled the model articles of association as Table A), and it continues to characterize British company law to the present day.[14]

Because the 1862 statute forms the legal backdrop for our study, we provide a brief overview here.[15] The text consisted of 212 sections spread over more than 55 pages of printed text, with more than 25 additional pages of schedules. Most of the statute dealt with regulations pertaining to the formation and winding up of companies and with the liabilities of the company and its shareholders towards creditors. There was very little in the law itself about how

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[12] Compare the Joint Stock Companies Act, 1844, 7 & 8 Vict. with the Joint Stock Companies Act, 1856, 19 & 20 Vict.

[13] Speech of the Rt. Hon. Robert Lowe, Vice-President of the Board of Trade, On the Amendment of the Law of Partnerships and Joint-Stock Companies, February 1st, 1856 [Unknown Binding], 39. See also G. R. Searle, *Entrepreneurial Politics in Mid-Victorian Britain* (Oxford, Eng.: Oxford University Press, 1993), 192–193.

[14] For the current model, see https://www.gov.uk/guidance/model-articles-of-association-for-limited-companies#table-a, accessed 1 Apr. 2016.

[15] The Companies Act, 1862, 25 & 26 Vict. C. 89.

companies should be run. The statute included only a few provisions that dealt with internal governance, and those mainly took the form of default rules. Thus section 52 stated, "In default of any Regulations as to voting every Member shall have One Vote." Section 49 required that the company hold a general meeting at least once a year, but left it to the company's articles to specify what was to be done at the meeting. The only rule in the statute that really mattered for internal governance was a provision enabling shareholders to amend their company's articles of association by "special resolution," that is, by a three-quarters super-majority vote of those in attendance at a general meeting called for that purpose, followed by a majority (confirming) vote at a second general meeting held from two weeks to one month later. Even in this case, however, the number of votes that each member of the company could cast was determined by the company's articles, not by the statute (see sections 50 and 51).

The Table A appended to the 1862 statute contained 97 provisions that covered such issues as the transfer and transmission of shares, the conduct of general meetings, the powers of directors, procedures for declaring dividends, and requirements for the maintenance of accounts, annual audits, and the provision of financial reports to shareholders. Because the drafters assumed that most companies would be public in the sense of raising capital from a broad group of investors, some of whom would own many shares and others only a few, they included a clause stating that shares would be freely transferable unless the owner was indebted to the company (Article 10). They also attempted to bolster the ability of smallholders to protect their interests by specifying a voting rule that allocated one vote per share up to the first ten shares, one vote for every five shares up to one hundred, and then one vote for every ten additional shares (Article 44). Perhaps to insure that there was continuity in the management of the enterprise, the model articles stipulated that board members would hold overlapping terms, with

one-third of the directors standing for reelection at every annual meeting (Article 58). Although this staggering of terms may have made it more difficult for shareholders to effect major changes in the composition of the board, Table A constrained the power of directors in important ways. Just one-fifth of the members of a company could force the directors to call an extraordinary general meeting (Article 32). Directors needed the approval of the general meeting to declare a dividend (Article 72) and increase capital (Article 26), with the latter requiring a three-quarters vote. The general meeting controlled directors' remuneration (Article 54) and could remove any director with a three-quarters vote, through a process of special resolution (Article 65). The company's accounts had to be checked annually by auditors chosen by the shareholders (Articles 83 and 84). Shareholders had to be provided with a copy of the balance sheet at least seven days in advance of the annual meeting (82). Moreover, shareholders had routine access to the company's accounts (Article 78).

Table A seems to have been intended as a model of good governance for companies to emulate. According to Lowe, its provisions were based on rules that Parliament had enacted to regulate recipients of special charters and also on the drafters' views of articles actually adopted by joint-stock companies.[16] To the extent that one can infer intentions from outcomes, it would seem that the drafters also aimed to lean against contemporary trends. Freeman, Pearson, and Taylor have collected detailed information on the articles of association of companies formed between 1720 and 1844 and found that governance practices were deteriorating. Table A sought to reform at least some of these practices, for example, by granting small shareholders voting rights that, relative to their ownership share, were proportionally greater than those of blockholders; making sure that all shareholders had access to the companies' books; mandating

[16] See Speech of the Rt. Hon. Robert Lowe. See also, the Companies Clauses Consolidation Act 1845 (8 & 9 Vict c 16).

that shareholders be provided annually with a detailed set of financial statements; and providing procedures for dismissing directors. According to Freeman, Pearson, and Taylor's calculations, companies that adopted Table A in its entirety gave their shareholders much more authority relative to directors than was common among joint-stock companies at the time.[17] It seems, moreover, that contemporaries viewed Table A as a good model. As late as 1894, an advice manual aimed at investors commented that Table A "very fairly fixed the balance of power" between shareholders and directors.[18]

The Datasets

It cannot be emphasized too strongly that the model articles of association published in Table A were simply default rules. Whatever the drafters intended to signal when they crafted its provisions, incorporators could (and, we will see, often did) reject the model in whole or in part. Companies were required to submit articles of association with their registration documents, so their choices are a matter of public record. In order to study the extent to which, and how, companies revised Table A, we collected from the National Archives in Kew random samples of companies registered in the years 1892, 1912, and 1927.[19] We also chose a sample of commercial and industrial companies from *Burdett's Stock Exchange Official Intelligence* for 1892 that were formed no earlier than 1888 and then collected their articles from the archives.

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[17] Freeman, Pearson, and Taylor constructed "a corporate governance index" that ranged in value from 0 to 18, with higher values meaning increased shareholder power. The average score of companies in their database dropped from about 14 in the late eighteenth century to about 7.5 in the 1840s, signaling an erosion of shareholders' position within companies. We calculate the 1862 Table A to have scored 13 on this scale, so if it had been widely adopted, the table would have reversed this trend to a considerable extent. Freeman, Pearson, and Taylor report the average values of their corporate governance index in percentage terms in *Shareholder Democracies*, p. 243. For the details of how they calculate the index, see p. 297, note 2.

[18] See J. D. Walker and Watson, *Investor's and Shareholder's Guide* (2nd edn.; Edinburgh: E. & S. Livingston, 1894), 142.

[19] We chose these dates to correspond to samples we were collecting of company registrations in France and Germany for our larger project. See Guinnane et al., "Putting the Corporation in its Place."

We read the articles of association that each company drafted, compared them to Table A, and hand-coded the deviations. Because the coding was so time-consuming, our samples are small. The target size for each was approximately 50 companies.[20] The appendix contains a description of our sampling procedures and possible sources of selection bias. We focus the body of our discussion on the two 1892 samples (we call them the "registration" and "*Burdett's*" samples in the discussion below) and use the later samples to highlight long-term trends in the kinds of governance rules that companies adopted.

The firms in our 1892 registration sample ranged across a major part of the size distribution of companies, and it is clear that a significant number of them aimed to raise capital from external sources (see Table 1). The smallest company in the sample had a nominal capital of only £100 and the largest £850,000 (near the top of the range of our sample from *Burdett's*). The median nominal capital of firms in the 1892 registration sample was £10,000, and the average was £40,200 (close to the average of £37,700 for all registrations in 1892).[21] The law required companies to record at least seven initial shareholders at the time of registration. Nearly half of the companies in the sample (26 of the 54) did exactly that, but the other half listed more than seven subscribers. Of this second group, nineteen listed 15 or more shareholders, including five companies (average nominal capital £42,400) with between 50 and 100 subscribers and four companies (average nominal capital £252,800) with 100 or more. There is good reason to believe, moreover, that at least some of those reporting only the required seven subscribers aimed to distribute their shares more widely. Although most of the companies in this group did

[20] As we discuss in the appendix, these sample sizes are completely adequate for the types of analyses we do in this paper. The smallness of the samples does prevent us from examining differences across industries, or other similar breakdowns, but there turned out to be so little variation in the kinds of revisions companies made to Table A that we did not think the cost of expanding the sample would be worthwhile.

[21] The number for all registrations is from the *General Annual Report by the Board of Trade under the Companies (Winding-up) Act 1890* (1892). See the Appendix for more information on how our registration samples compare to the general population of registrations.

not survive five years, six of the ten that still existed in 1897 increased their number of shareholders, and two moved into the 25-49 range.

Burdett's Official Intelligence did not report on any of the companies in the 1892 registration sample, suggesting that their securities were not traded on any of the country's exchanges. To check whether companies that were covered in *Burdett's* wrote articles of association that were systematically different from those in our 1892 registration sample, we collected the articles of a sample of commercial and industrial companies from the 1892 issue of *Burdett's* that were registered no earlier than 1888. Table 2 reports the distribution of capitalization of companies in the *Burdett's* sample, broken down by whether the company's securities were formally listed on the LSE, on another securities market, or neither. Not surprisingly, companies in the *Burdett's* sample tended to be much larger (average nominal capital £300,800) than those in the registration sample (average nominal capital £40,200). The companies in the *Burdett's* sample that were on the LSE official list were larger on average than the other companies in that sample, but there was considerable overlap in the size distributions of those listed in the London market with those listed on the regional exchanges or not formally listed at all.

One might expect that large companies, especially those that aimed to raise capital on formal markets, would write articles of association that looked very different from those of small closely held companies. The literature on corporate governance suggests that the desire to raise funds externally would induce companies to include provisions in their articles that reassured investors that they would be able to monitor and, if necessary, discipline corporate insiders.[22] By

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[22] The historical literature on this point includes Eric Hilt, "When did Ownership Separate from Control? Corporate Governance in the Early Nineteenth Century," *Journal of Economic History* 68 (Sept. 2008): 645-85; Aldo Musacchio, "Law versus Contracts: Shareholder Protections and Ownership Concentration in Brazil, 1890-1950," *Business History Review* 82 (Autumn 2008): 445-73; Howard Bodenhorn, "Voting Rights, Share

contrast, one might expect the articles of small closely held firms to be shaped by two very different calculations. On the one hand, members might want to minimize the costs of incorporation and so would simply adopt Table A as written. On the other hand, they might write articles that addressed matters that were of specific concern to them, such as the desire to vet new members of the company or pass on leadership positions to their heirs.[23]

Small companies do seem to have been more likely to accept Table A than other firms (see Table 3). Only four companies in the 1892 registration sample (7.5 percent) accepted the model table in its entirety (though even these companies wrote on average 26 additional articles). The median capital of these companies was just £3,000 (less than a third of the sample median), and their average capital was only £5,000 (an eighth of the sample average). Almost as small were the twelve companies (22.2 percent) for which there were no articles in the file (median capital £5,000, mean £6,600). As noted above, if a company did not write its own articles the default rules in the model table applied, so it is possible that these companies simply accepted Table A and did not write any additional articles. But it is also possible that the missing articles were simply lost. We will take this possibility into account in our quantitative tests.

Most of the companies in the 1892 registration sample rejected Table A in whole or in part. Ten (18.5 percent) accepted some of the articles in Table A but rejected others, writing on average 25 clauses to replace them. By far the greater number (twenty-eight, or 51.9 percent) rejected Table A in its entirety and wrote their own articles of association from scratch. These companies ranged across the size distribution, but they were on average substantially larger than

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Concentration, and Leverage at Nineteenth-Century US Banks," NBER Working Paper 17808 (Feb. 2012); and Gonzalo Islas Rojas, "Essays on Corporate Ownership and Governance," unpublished Ph.D. dissertation, University of California, Los Angeles (2007).

[23] On the contracting needs of small enterprises, see Guinnane et al., "Pouvoir et propriété dans l'entreprise: pour une histoire internationale des sociétiés á responsabilité limitée," *Annales: Histoires, Sciences Sociales* 63 (janvier-février 2008): 73-110.

the firms in the other groups and included the five biggest companies in the sample. Finally, it should be noted that all of the companies in the 1892 *Burdett's* sample rejected Table A in its entirety.

In the next section we turn to the content of the changes that companies made to Table A when they wrote their articles. We find some modest variation in the kinds of revisions made by companies of different types and sizes. What stands out above all else, however, is the high degree of uniformity in the provisions they wrote and the extent to which their changes were not of the sort generally regarded as shareholder friendly. More specifically, we observe a strong across-the-board tendency to rewrite the corporate governance rules in ways that increased the power of directors relative to shareholders, so that in large and small firms alike shareholders were for all practical purposes stripped of their power to check, and even to monitor, directors. With minor qualifications these changes were as (or more) prevalent in the *Burdett's* sample as they were in the general sample of 1892 registrants.

How Companies in the 1892 Registration and *Burdett's* Samples Modified Table A

Most empirical studies of corporate governance have followed one of two approaches: either they have focused on a few key aspects of companies' governance structures, such as voting rules or the procedures by which shareholders might call extraordinary general meetings; or they have constructed additive indexes that aim to summarize a more comprehensive set of governance rules.[24] Neither of these approaches captures the ways in which various provisions

[24] Examples of the former include Colleen Dunlavy, "From Citizens to Plutocrats: Nineteenth-Century Shareholder Voting Rights and Theories of the Corporation" in *Constructing Corporate America: History, Politics, Culture*, eds. Kenneth Lipartito and David B. Sicilia (New York: Oxford University Press, 2004), 66-93; and Dunlavy, "Corporate Governance"; Gareth Campbell and John D. Turner, "Substitutes for Legal Protection: Corporate Governance and Dividends in Victorian Britain," *Economic History Review* 64 (May 2011): 571-97; Graeme G. Acheson, et al., "Corporate Ownership and Control in Victorian Britain, *Economic History Review* 68

in a company's articles might interact with each other, however, and so they can both produce misleading results. For example, scholars have classified companies according to whether they awarded each shareholder one vote per share or imposed graduated scales that limited the number of votes that large shareholders could cast, but the importance of these different voting schemes for corporate governance could vary significantly depending on the issues on which shareholders were allowed to vote and the circumstances under which the formal voting rule came into play. Similarly, additive indexes are based by definition on the assumption that the provisions included in the formula are independent. However, if one provision never appears without another, counting them both will give that aspect of governance excessive weight. More importantly, if the way in which a particular provision functions depends on the wording of another clause, an additive index will fail to capture the interaction between the two rules.

We avoid these problems by studying how the provisions that companies wrote into their articles of association worked in combination. We begin by examining voting rules for shareholders' meetings because they have been the focus of much of the literature on corporate governance. As already noted, the 1862 model articles specified a graduated scheme that limited the number of votes large shareholders could cast. Very few of the firms in the 1892 registration sample for which we have articles (only 9 out of 42, or 21.4 percent) retained this or a similar schedule. More than three-quarters (78.6 percent) instead moved to one-share-one-vote (see Table 4).[25] The percentages in the *Burdett's* sample were almost the same: 81.3 percent of the

(Aug. 2015), 911-36; Leslie Hannah, "Pioneering Modern Corporate Governance: A View from London in 1900," *Enterprise and Society* 8 (Sept. 2007): 642-86; and Foreman-Peck and Hannah, "Some Consequences." Examples of the latter include Acheson, Campbell, and Turner, "Common Law"; LLSV, "Law and Finance"; and Freeman, Pearson, and Taylor, *Shareholder Democracy*.

[25] All of the percentages for the 1892 registration sample reported in this section of the paper include only the 42 companies for which we have articles.

companies adopted one-share-one-vote or a scheme that was even more advantageous to large shareholders.[26]

LLSV's corporate governance index treats one-share-one-vote as an improvement in corporate governance, and it may be that contemporaries felt that way as well. When the Board of Trade revised the model table in 1906, the default rule became one vote per share. However, it is also possible that incorporators made the change to insure that large investors retained control. Colleen Dunlavy has argued that the elimination of ceilings on large shareholders' voting power facilitated plutocratic control of corporations, and some contemporary treatise writers acknowledged this motive. For example, Charles E. H. Chadwyck-Healey advised readers of his manual on company law that one-share-one-vote should be substituted for the Table A rule if "the nature of a company is such as to make it desirable or necessary that its powers should be vested in the largest proprietors."[27]

Shareholders' voting rules cannot, however, be understood in isolation from other parts of a company's articles because the way elections worked in practice depended on the operation of other rules that could either magnify or diminish the significance of the voting scheme. The practice in British companies was to decide all motions in the first instance by a show of hands and only bring the voting rule into play if some threshold number of shareholders called for a poll.[28] This procedure might seem to be an egalitarian one; on a show of hands each shareholder

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[26] For example, one company gave ordinary shareholders one vote per share but gave holders of founders' shares fifty votes per share. Another established a voting rule of one vote per share but did not allow members with less than ten shares to vote.

[27] Charles E. H. Chadwyck-Healey, *Treatise on the Law and Practice Relating to the Articles of Association of Joint Stock Companies with Precedents and Notes* (London: William Maxwell & Son., 1875), 260. See Dunlavy, "From Citizens to Plutocrats"; and Dunlavy, "Corporate Governance in Late 19th-Century Europe and the U.S." See also Freeman, Pearson, and Taylor, *Shareholder Democracy*, Ch. 6.

[28] Table A did not make this practice explicit, but the articles of virtually all the companies in both of our 1892 samples did. The typical wording specified, "Every question submitted to a meeting shall be decided, in the first instance, by a show of hands .... At any general meeting, unless a poll is demanded by at least [five] members ... a declaration by the chairman that a resolution has been carried ... shall be conclusive evidence of the fact without

only had one vote. But, again, how it actually worked depended on other rules such as the size of the quorum required to take action at the general meeting and the procedure to be followed if shareholders demanded a poll.[29]

Table A's default rule for a quorum specified a threshold that rose with the number of shareholders. The quorum was five if the number of shareholders was ten or fewer, and then it increased in proportion with the number of shareholders until it reached a maximum of twenty (Article 37). Only four companies in the registration sample and only one in the *Burdett's* sample adopted the default rule. 78.6 percent of the companies in the registration sample specified a quorum that was as low as, or lower than, the default minimum of five members for companies with ten or fewer shareholders, and 88.1 percent specified a quorum of 10 members or less. 65.3 percent of the companies in the *Burdett's* sample had a quorum of 5 or below, and 91.8 percent of 10 or below.[30] Such low quorums meant that it was at least possible for directors to run a general meeting and decide all business amongst themselves with few if any other shareholders in attendance.

The rules governing the taking of polls also affected the way voting worked. All of the companies in our samples included a provision in their articles enabling some minimum number of shareholders (often a number that was the same or lower than the number required for a quorum) to demand a poll—that is, a formal ballot that followed the company's voting rule. According to Table A, if a poll was demanded, "it shall be taken in such manner as the chairman

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proof of the number or proportion of the votes recorded in favour or against such resolution." This version is from the model articles of association in Francis Beaufort Palmer, *Company Precedents for Use in Relation to Companies Subject to the Companies Acts 1862 to 1890* (5th edn.; London: Stevens and Sons Ltd., 1891), 285.

[29] None of the provisions that we show affected the way voting works in companies were coded by Acheson, Campbell, and Turner for their Shareholder Protection Index. See "Common Law," Table 3.

[30] Many companies allowed shareholders making up the quorum to be present by proxy instead of in person. Some companies had quorums that specified minimum proportions of shareholding in addition to minimum numbers of shareholders. These rules made it easier for large shareholders to constitute a quorum on their own.

directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting" (Article 43). A possible interpretation of this default rule is that the poll would be taken right away, but most companies specifically rejected that view.[31] Fully 71.4 percent of the companies in the registration sample and 93.9 percent of the *Burdett's* companies wrote substitute articles that allowed the chairman to adjourn the meeting and postpone the poll until some date in the future.[32] Such a rule allowed the directors to behave strategically and schedule the poll for a time that enabled them to round up the necessary votes or proxies to win. According to Table A, shareholders could vote either in person or by proxy (Article 48), and all of the sample companies adopted this provision or a close substitute. LLSV consider proxy voting to be a marker of good corporate governance and thus include it in their index, but contemporary newspaper accounts show that directors generally controlled shareholders' proxies and could, and did, use them strategically.[33]

The main item on which shareholders voted at general meetings, besides the annual dividend, was the election of directors. The model table let the company's founders (the subscribers to the original memorandum of association) choose the initial directors (Article 52). According to Table A, all the first directors would step down at the first general meeting, and shareholders would then have an opportunity to elect a new board. In every year thereafter, one-

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[31] Writers of contemporary business manuals cited case law saying that the language in Table A meant that the poll might be "lawfully taken then and there," not that it had to be. However, they recommended adding wording to the articles that specifically gave the chairman discretion over the time and place of the poll. They justified this ability to delay by referencing a principle in the case law that a poll was "an appeal to the whole constituency." Its purpose was "to give others besides those who are present when the poll is demanded power to come in and exercise their right of voting." See Palmer, *Company Precedents*, 286. See also C. E. H. Chadwyck-Healey, Percy F. Wheeler, and Charles Burney, *A Treatise on the Law and Practice Relating to the Articles of Association of Joint Stock Companies with Precedents and Notes* (3rd edn; London: Sweet and Maxwell, Ltd., 1894), 272-73.

[32] Some companies specified that the poll had to occur within some specified interval (a week, two weeks, or a month), but most left the length of the interval to the chairman.

[33] For examples, see the section below on "Contemporary Views of Companies' Governance Practices."

third of the board members would rotate off, meaning that the retiring directors would have to stand for re-election if they wished to continue on the board (Article 58). Today staggered boards are thought to reduce shareholders' power, but policy makers at the time may have thought them desirable for the purposes of preserving managerial continuity. In any event, only one firm in our two datasets (a company in the 1892 registration sample) sought to do away with the practice by requiring all the directors to stand for re-election at each annual meeting. Most of the other companies (73.8 percent of those in the registration sample and 91.8 percent of those from *Burdett's*) went in the other direction and started the fractional rotation at the first election, so that shareholders never got a chance to choose the full board. Many companies (45.2 percent of the registration sample and 53.1 percent of the *Burdett's*) also delayed the timing of the first election at least two years (and often longer).[34] In addition, many of the companies (50.0 percent of the registration sample and 75.5 percent of the *Burdett's*) added a provision that was not in Table A requiring anyone seeking the office of director, except a retiring director or somone chosen by the existing board, to provide advance notice of his intention to run. Presumably the directors wanted to be sure that they would have time to line up the votes to block anyone whom they did not favor from securing a seat on the board.

Many companies went further and included provisions in their articles that insulated at least some of their directors from the need for shareholders' approval. Eight companies in the registration sample (19.0 percent) and four in the *Burdett's* sample (8.2 percent) went so far as to

[34] Palmer claimed that the "promoters generally nominate the first directors, and it is considered only fair that they should have a reasonable time to try their policy." See *Company Precedents* (1891), 298. Another treatise writer, F. Gore-Browne, similarly explained that Table A's clauses "are intended to give the members control over the nomination of directors; but in practice where directors have been named in the prospectus the members will prefer to secure the retention in office of the persons on the faith of whose names they have applied for shares, and accordingly the direction that the whole board shall retire is omitted, and a date about two years distant is named for the commencement of the rotation." See *Concise Precedents under the Companies Acts* (2nd edn.; London: Jordan & Sons, Ltd., 1900), 151.

entrench certain named directors for a long period of years or, more frequently, for life. However, a much more common way of protecting directors from shareholders was to add a provision to the articles that enabled members of board to designate one or more of themselves "managing directors." There was no provision for a managing director in the 1862 Table A, but 64.3 percent of the firms in the registration sample and 91.8 percent in *Burdett's* added a clause to their articles that empowered directors to give themselves this title, either for a fixed term or "without limitation." In most cases, the clause also explicitly exempted managing directors from having to stand for reelection as part of the normal election rotation.[35] Thus, by designating themselves managers, directors could perpetuate their power indefinitely. Moreover, they could also control their own remuneration. Table A left the determination of directors' pay to the general meeting, though 40.5 percent of the companies in the registration sample and 73.5 percent from *Burdett's* limited shareholders' discretion by specifying at least a minimum annual payment. The remuneration of the managing directors, however, was set by the board and could take the form of salary, commission, and/or a proportion of the profits. In other words, directors could name themselves managing directors and take a share of their company's earnings off the top, before the calculation of profits for the purpose of setting dividends.[36]

At least in theory directors could be removed by the shareholders. The overwhelming majority of the companies (76.2 percent in the registration sample and 75.5 in the *Burdett's* sample) followed Table A in giving shareholders the authority to depose directors by a three-quarters vote (Article 65) or occasionally less. Whether the Table A rule was adopted or not was

[35] We did not include cases where the articles named a managing director for life (or for a long term) in the above count of companies that formally entrenched directors because any company could use the managing-director provisions to accomplish the same end without revealing it in the articles of association.

[36] It is worth emphasizing that Acheson, Campbell, and Turner ("Common Law") did not code clauses providing for managing directors or clauses that entrenched specific individuals as directors for their Shareholder Protection Index. See their Table 3.

of little importance, however, because by law the articles themselves could be amended by a three-quarters vote.[37] Most of the companies also made it easy to call extraordinary general meetings for this or any other purpose, either adopting Table A's provision that directors had to call such a meeting upon the request of one-fifth of the members of the company (Article 32) or substituting another provision that seemed equivalently accommodating. There was a lot of variation in such clauses, but only a few companies (23.8 percent of the registration sample and 8.2 percent of *Burdett's*) seem to have made calling an extraordinary general meeting clearly more difficult than the Table A rule.[38] Nonetheless, given the voting procedures we have already described and directors' control of proxies, it is clear that directors would face the threat of removal only under the most unusual circumstances.

As a practical matter, therefore, directors were difficult to dislodge. Yet most companies further modified Table A in ways that increased directors' power and, at the same time, limited shareholders' ability to monitor how that power was used. Besides voting for at least some directors, the most important item on the agenda at the annual shareholders' meeting was the declaration of dividends. Typically the directors recommended the amount of the dividend, and the shareholders simply approved their recommendation.[39] The powers of directors were even greater than this procedure would suggest, however. The articles of almost all companies

[37] To be more precise, the Companies' Act stated that articles could be amended by special resolution, and that was the procedure that Table A set for removal of directors. Some companies made removal somewhat easier by allowing it to be done by extraordinary resolution (the same three-quarters vote but without the second confirmatory shareholders' meeting).

[38] The only articles we defined as making it more difficult to call an extraordinary meeting were those that required a proportion of either members or share capital greater than one-fifth. Table A specified that one fifth of the members could call an extraordinary meeting, and a number of the companies instead changed that to members holding one fifth of the shares, but without knowing more about the distribution of shareholding and involvement in each company it is difficult to know whether this modification made it harder or easier to call an extraordinary meeting.

[39] These votes were so perfunctory that many companies set even lower quorums for voting for dividends than they did for other business at general meetings. Most articles of association further specified that shareholders could not vote dividends that were higher than those recommended by the directors.

specified that dividends could only be paid out of profits and delegated to directors the power to determine what those profits were and also to set aside in a reserve whatever portion they thought important for the ongoing needs of the enterprise. It was also the directors who determined the amount of revenues that would be taken off the top in the form of salaries and commissions to managing directors and other officers.[40]

Shareholders had very little ability to check or even to monitor those decisions. Although the articles of all of the companies in our samples required directors to lay some type of audited financial statement before the shareholders at each annual meeting, most companies (65.9 percent of the registration sample and 93.9 percent of *Burdett's*) watered down Table A's specific requirement that the statement "shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries and other like matters" (Article 80) and that the statement must be "made up to a date not more than three months before" (Article 79).[41] A significant number of companies (46.3 percent of the registration sample and 49.0 percent of *Burdett's*) also scrubbed Table A's commitment to send shareholders copies of the balance sheet at least seven days in advance of the annual meeting (Article 82).[42] Most companies, moreover, rejected Table A's requirement that directors keep the account books at a registered office of the company, where they "shall be open to the inspection of the members during the hours of business" (Article 78). 70.7 percent of the

[40] Again, Acheson, Campbell, and Turner did not code the relevant provisions in their Shareholder Protection Index. See "Common Law," Table 3.

[41] This is another change not captured by Acheson, Campbell, and Turner's coding scheme. See "Common Law," Table 3.

[42] A small number sent the balance sheet out closer to the meetings, and a few gave shareholders the opportunity to come to the office to inspect the statement, but most of the rest required shareholders to attend the meeting to get financial information.

registration sample and fully 98.0 percent of the *Burdett's* gave the directors the power to determine whether and to what extent shareholders could examine the company's accounts.[43]

In addition to shifting the balance of power in favor of directors, most companies modified their articles of association in ways that made it possible for directors to siphon off returns by self-dealing. Table A included a strict rule precluding directors from being on both sides of a contract with the company (Article 57), but almost all the companies (90.5 percent of the registration sample and 95.9 percent of *Burdett's*) adopted a laxer standard and allowed directors to contract with the company. In most (though not all) cases, the articles specified that directors had to disclose their conflict of interest to the board and that they could not vote on matters in which they were interested. Provisions allowing directors to be on both sides of contracts are generally frowned upon in the corporate governance literature today, unless they are formally disclosed to, and approved by, the body of shareholders rather than the directors.[44] It is important to realize, however, that some relationships that look like conflicts of interest might actually be to the company's benefit. A manufacturing company, for example, might want to put a prominent wholesaler on its board as a way of inducing the wholesaler to make selling its goods a priority and also of insuring that the company would make the goods the wholesaler thought would be most marketable. Similarly, a railroad might want to have someone involved with steel-making on the board, as such a director would have technical and market expertise the railroad would otherwise have to pay for. In each case, the hypothetical director could use his

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[43] In many cases, shareholders could also resolve in General Meeting to grant access, but then all the voting hurdles described above came into play. As Palmer noted, "few companies allow members free access to the books." See *Company Precedents*, 314. Of course, there may have been good reasons for companies to limit shareholders' access to their books. Incorporators certainly worried that by buying a share in their company a competitor could gain access to information about the business that might give it some advantage.

[44] See, for example, Simeon Djankov, Rafael La Porta, Florencio Lopez-de-Silanes, and Andrei Shleifer, "The Law and Economics of Self-Dealing," *Journal of Financial Economics* 88 (June 2008): 430-65. Acheson, Campbell, and Turner's coding for self-dealing does not acknowledge that the reporting was to the directors, not the General Meeting. See "Common Law," 14-15.

position for self-dealing, but in each case, the firm could possibly profit from the relationship implied by this director's involvement.

This same ambiguity affects all of the provisions we have discussed in this section. Modifications to Table A that shifted power from shareholders to directors may have facilitated the extraction of private benefits of control. But it is also possible that they placed managerial control squarely in the hands of those with the expertise and entrepreneurial vision needed to make the enterprise a success. The provisions that incorporators wrote into their articles of association were a matter of public record. To the extent that investors believed that particular provisions enabled directors to expropriate returns, we would expect them to have shied away from putting their money in companies that had them. We would therefore expect that such provisions would appear less often in the articles of large companies than in small, closely held enterprises, and we would not expect to see them in the articles of companies whose securities traded on the exchanges. The high proportion of the companies adopting these provisions in both of our 1892 samples suggests that investors did not shy away from companies that included them in their articles. In the next section we test this observation formally.

Were Large Companies and Listed Companies Different?

Were large firms, or firms with securities listed on the LSE or other exchanges, less likely to modify Table A in ways that shifted power from shareholders to directors or that otherwise facilitated tunneling? In this section, we analyze quantitatively the variation in the articles written by companies in our two 1892 samples in order to answer this question more formally. Listing information comes from the reports in *Burdett's* for 1892. For firms in the *Burdett's* sample, size is the nominal capital recorded in that publication; for firms in the

registration sample, it is the amount reported by the company at the time of filing. Nominal capital is not, of course, the same thing as paid-in capital, for which unfortunately we do not have systematic information. In the first place, the company might not succeed in selling all of the shares it originally intended. In the second, subscribers typically paid in only part of the par value their shares at the time of purchase, paying off the rest in installments when called to do so by the directors. We think that nominal capital is a useful metric, however. By the late nineteenth century, its magnitude was a good indication of the incorporators' ambitions at the time they were drafting their articles of association and thus a good way to gauge the extent to which they planned to raise capital from the public.[45] Excessive optimism was costly because at the time of registration a company had to pay fees that were scaled by the magnitude of its nominal capital.[46] Moreover, because shareholders were liable for the full value of the shares, regardless of the amount they actually paid in, nominal value captures the magnitude of the obligation that they took on when they invested in the company.[47]

Whether companies that aimed to raise funds from the wider public adopted articles that reassured potential investors was entirely their own decision. As we have seen, Parliament explicitly left this choice to incorporators, and neither the London Stock Exchange nor the regional exchanges imposed much in the way of corporate governance rules.[48] When a company

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[45] We have data on paid-in capital for 27 of the companies in the 1892 registration sample. For these companies, the average ratio of paid-in to nominal capital was 33 percent. As shareholders typically paid for their shares in installments over time, we checked the 1897 reports of companies in the sample and found the value of paid-in capital for 17 (including 14 for which we had this information in 1892). The average ratio of paid-in to nominal capital for these 17 companies was 84 percent, suggesting that nominal values did indeed capture the organizers' ambitions. See also Ron Harris, "The Private Origins of the Private Company: Britain 1862-1907," *Oxford Journal of Legal Studies* 33 (Summer 2013): 339-78.

[46] Companies with a nominal capital of £2,000 or less paid a flat fee of £2. The fee increased by £1 for every £1,000 up to £5,000 and then by 5 shillings for every £1,000 in capital up to $100,000, and then by 1 shilling for every additional £1,000. See Table B of the First Schedule of the 1862 Act.

[47] Our analysis implicitly makes the (we think reasonable) assumption that the proportion of capital paid in did not vary systematically with the choice of articles.

[48] Brian R. Cheffins, *Corporate Ownership and Control: British Business Transformed* (Oxford, Eng.: Oxford University Press, 2008), 75-76.

applied to be quoted on the Exchange, the LSE's listing committee reviewed its articles of association and had to approve them for the company's securities to be quoted. If a company was not approved for listing, however, its securities could still be traded on the exchange under a provision called "special settlement," and many were.[49] Even so, the listing committee's criteria for approving articles seem to have been quite minimal. Although the committee did not issue any guidelines for incorporators until the twentieth century, William Jordan and F. Gore-Brown, authors of an important handbook on joint-stock companies, filled the information gap by extracting from the files of companies approved for listing the provisions they thought the committee required. The most important seem to have been that firms eschew purchasing their own shares with company funds and that they place limits on directors' ability to borrow on behalf of the company without the approval of the general meeting, regulate the amount that directors could call in on shares not fully paid up, and prevent directors from restricting the transferability of shares once they were fully paid in. The listing committee does not seem to have insisted on any provisions relating to voting rules or how often (or even whether) directors had to stand for election by shareholders.[50] Not until 1902 did the committee follow Table A's Article 82 and require companies annually to send out balance sheets to shareholders, and not until 1909 did it require companies to commit in their articles to present the members with an earnings statement at the yearly meeting (Article 79). Nor did it require companies to adhere to Table A's strict rule about conflicts of interest (Article 57). Indeed, according to Brian Cheffins, before 1902 it did not even insist that directors disclose conflicts of interest to the other members

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[49] To obtain a special settlement, a company had to submit a prospectus and details of its share capital to the exchange. Apparently, such applications were rarely refused. Cheffins quotes court testimony from an exchange member in 1910 claiming that "99 percent of the dealings in the shares of new companies were for special settlement." *Corporate Ownership and Control*, 196, 229. See also Ranald Michie, *The London Stock Exchange: A History* (Oxford, Eng.: Oxford University Press, 1999), 86-88.

[50] William Jordan and F. Gore-Browne, *Handy Book on the Formation, Management and Winding Up of Joint-Stock Companies* (18th edn.; London: Jordan & Sons, 1895), 289-94.

of the board and refrain from voting on contracts in which they had a personal interest.[51] In this laissez-faire environment only self-interest compelled incorporators to adopt shareholder-friendly corporate governance rules. Hence we would only expect to see them to write articles that enabled shareholders to check and monitor directors if they thought it would enable them to raise larger amounts of capital at lower cost.

To explore the extent to which the capital markets disciplined incorporators in this way, we coded the clauses we discussed in the previous section as dummy variables that took a value of 1 if the company modified Table A in ways that increased directors' power relative to shareholders. We then examined the companies in the 1892 registration sample to see whether large firms (that is, the firms we expected to be most dependent on external investors) adopted articles that were more shareholder friendly than small firms. For each clause, Table 5 reports two variants of the dummy variable. The first includes all of the companies in the sample. The second excludes the twelve whose files did not include articles of association. As already indicated, there is good reason to believe that most, if not all, of the companies without articles chose to be governed by Table A and hence that Variant 1 does a better job of capturing incorporators' decisions. But it is also possible that the articles were just missing. For each of the provisions of interest in the articles of association, Table 5 reports the number and percentage of companies that modified Table A so as to shift power toward directors. It also reports, for the two variants of each variable, the median nominal capital of companies coded 0 and 1

[51] Cheffins, *Corporate Ownership and Control*, 75-76, 196-97. Based on an analysis of listing applications made by American brewery companies seeking access to London capital markets in the late nineteenth century, Mary O'Sullivan argues that the approval progress was more rigorous than Cheffins and other scholars have claimed. But her account focuses on the requirement that two-thirds of the nominal capital be allotted to the public, and on other arrangements concerning the provision of capital, not on the corporate-governance rules with which we are concerned, and she admits that the LSE did not require financial disclosures to shareholders. See O'Sullivan, "Yankee Doodle Went to London: Anglo-American Breweries and the London Securities Market, 1888-92," *Economic History Review* 68 (Nov. 2015): 1365-87.

respectively and the results of the Mann-Whitney test for whether companies coded 0 were significantly different from those coded 1. If companies coded 1 are larger than those coded 0, the test will have a negative sign. The numbers in parentheses below the test statistic are the p-values for a two-tailed test of significance.[52]

For Variant 1, the differences between companies coded 1 and 0 are almost always statistically significant. This result is entirely expected, given that we know that small firms were disproportionately likely to be missing articles of association, perhaps because they were accepting Table A as written. What is surprising, however, is that the signs are in the opposite direction from what one would expect if shareholder-friendly rules mattered for companies' ability to raise capital.[53] The results for Variant 2 are similar in that the signs on the Mann-Whitney tests indicate that large firms more commonly shifted power away from shareholders.[54] Many of the coefficients are not statistically significant, suggesting that the choices that large firms made were not appreciably different from small and that neither adopted shareholder-friendly rules. The exceptions again suggest that large firms went further in shifting power away from shareholders toward directors. Large firms were significantly more likely than small firms to delay the first election of directors, to allow shareholders to elect only a proportion of the board at that first election, and to require outsiders seeking a seat on the board to announce their candidacy in advance. Large firms were also more likely to water down the financial statements

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[52] The Mann-Whitney test is a non-parametric alternative to the more familiar t-test. Two other approaches yielded essentially the same results. We ran Chi-square tests of the difference in medians. These tests are similar in spirit to the Mann-Whitney tests we report. We also estimated binary probit models for each clause, using nominal capitalization as the independent variable.

[53] The one exception, the provision about calling an extraordinary general meeting, is not statistically significant.

[54] In addition to the procedures for calling an extraordinary meeting, these exceptions are clauses related to voting rules and the quorum required for general meetings. None were statistically significant. The positive signs for voting and quorum rules are easily explained. In these cases Table A specified graduated scales. The only firms for which graduated scales had any meaning were those with large number of shareholders, so it makes sense that the relatively few firms coded 0 on this scale would be larger enterprises.

provided annually to shareholders at the general meeting and to set at least some of the directors' compensation in the articles rather than leave it entirely to the shareholders to determine.[55]

We have already seen that the companies in the *Burdett's* sample were generally more likely to shift power from shareholders to directors than the companies in the 1892 registration sample (Table 4). The enterprises in the *Burdett's* sample ranged considerably in size, from £25,000 in nominal capital at the small end of the spectrum to £1,600,000 at the other extreme (Table 2), but size does not seem to have much affected the kinds of articles that the companies wrote. As Table 6 indicates, the Mann-Whitney test statistics for the *Burdett's* sample are more likely to be positive than for the 1892 registration sample, but they are rarely statistically significant. Moreover, most of these cases where the tests are significant are not economically meaningful. Fewer large firms set quotas for general meetings of less than five members, but almost all of them specified less than ten—still a very small number for a big, publicly traded company. Similarly, large firms were statistically less likely to reject Table A's strict conflict of interest provision, but only two of the companies in the sample actually accepted it. Large firms were somewhat more likely than small to leave directors' remuneration to the shareholders, though fully three quarters of the companies in the sample embedded a compensation rule in their articles. Almost all of them, moreover, had a provision allowing the board to pay managing directors salaries, commissions, and/or a share of profits off the top.

Only 14 of the 49 companies in the *Burdett's* sample had a security listed on the LSE's official list and only 23 companies had a security listed on any British exchange. Table 6 reports the proportion of companies in these categories that altered Table A's clauses to shift power to directors and compares these proportions with those of all other companies in the sample. As a

[55] The only outcome measure we have is whether the company survived for five years. We ran the same tests and found no correlation between any of the Table A clauses of interest and a company's survival.

general rule, companies with at least one listed security less commonly adopted these changes, but the differences do not offer much comfort to those that believe that companies seeking to raise capital on the country's most liquid markets would adopt more shareholder-friendly governance rules. For example, firms with a security on the LSE's official list were significantly less likely to allow their chairman to delay the taking of a poll, but 86 percent of firms in this category still adopted this revision. Firms with securities listed on any exchange were significantly less likely both to water down their required financial reports and reject Table A's strict rule on conflicts of interest rule, but 87 and 91 percent of them respectively nonetheless made these changes.

The bottom line is that neither large firms, nor firms covered in *Burdett's*, nor firms with securities listed on an exchange (nor even firms with a security on the LSE official list) bucked the trend to write articles that shifted the balance of power from shareholders to directors. If incorporators were worried that investors would shy away from companies that effectively disenfranchised shareholders or if they were concerned that imbedding such rules into their articles would raise their cost of capital, one might expect them to break ranks and compete for funds by offering more shareholder friendly corporate governance. But we do not see anything of the kind happening. Moreover, as we show in the next section, the explanation cannot be that shareholders were ignorant of the potential consequences of giving directors so much power in their companies.

Contemporary Views of Companies' Governance Practices

The British financial press reported regularly on the annual meetings and other doings of companies whose securities traded publicly. Investors who read the *Economist*, or even more the

Financial Times, would frequently have come across articles that should have made them wary of the governance rules we have described.[56] Numerous accounts detailed the ways in which directors used their control of proxies and the voting process to outmaneuver discontented shareholders. For example, the chairman of the South American and Mexican Company blocked a move by shareholders to prevent a vote on a proposal by declaring a motion to adjourn defeated "on a show of hands, without the slightest pretence of a count." He then "with lightning speed put the substantive motion" to a vote, "declaring it carried by the same instantaneous method," and adjourned the meeting before the opposition had time to demand a poll.[57] When shareholders of the Lancashire and Yorkshire Water Gas Company rejected by a show-of-hands the directors' annual report and called for a committee of investigation, the directors demanded a poll and controlled enough proxy votes to defeat the resolution.[58] Similarly, when the shareholders of the Maxim-Nordenfelt Guns and Ammunition Company, Limited, expressed their disapproval of the board's management by rejecting its report in a show of hands, the directors called for a poll and used the proxies they had in hand to reverse the outcome.[59] The chairman of the Industrial and General Trust, Limited, kept a slate of unpopular directors in power by accepting calls for polls whenever one of them was defeated in a show of hands.[60]

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[56] The *Statist*, by contrast, mainly reproduced without comment the prepared summaries of annual meetings that companies submitted to the press. One should not, of course, automatically assume that the accounts in the *Economist* and the *Financial Times* of bad corporate behavior were all true. There was plenty of inaccurate or even fraudulent reporting in the press, and potential investors had as good reason to suspect the veracity of the papers' exposés as they did the puff pieces touting new investment opportunities. See Dilwyn Porter, "'A Trusted Guide of the Investing Public': Harry Marks and the Financial News, 1884-1916," *Business History* 28 (issue 1, 1986): 1-17; Vincent Bignon and Marc Flandreau, "The Economics of Badmouthing: Libel Law and the Underworld of the Financial Press in France before World War I," *Journal of Economic History* 71 (June 2011): 616-53; James Taylor, "Privacy, Publicity, and Reputation: How the Press Regulated the Market in Nineteenth-Century England," *Business History Review* 87 (Winter 2013): 679-701; and David Kynaston, *The Financial Times: A Centenary History* (New York: Viking Penguin, 1988), Ch. 1.

[57] *Financial Times* (15 July 1893): 2.

[58] *Financial Times* (17 Dec. 1892); 2.

[59] *Financial Times* (4 Feb 1893): 5.

[60] *Financial Times* (28 Apr. 1894), 3.

Regular readers of the *Economist* and the *Financial Times* would also have encountered numerous stories of directors taking advantage of weak corporate governance rules to enrich themselves at shareholders' expense. The *Economist* republished an item from a Johannesburg newspaper indicating that several "life governors" of De Beers had palmed off on the company securities that one of them admitted were worthless for more than £66,000. These securities were then lumped with others on the company's balance sheet without any explanation of what was in the category, let alone a justification of the valuation given.[61] Directors of companies ranging from the famous to the obscure—from Nobel Dynamite Trust to United Horse Shoe and Nail Company to the Voigt Brewery—stood accused of pocketing excessive salaries and fees and profiting from contracts in which they had a conflict of interest.[62] As a shareholder in the Shenango and Mercer Coal Company complained bitterly, "Everybody concerned gets something except the shareholders. And so it will go on, I doubt not, until the shareholders make themselves masters of their own business, and insist upon a radical reform."[63]

These critical comments were echoed by at least one contemporary advice manual, the *Investor's and Shareholder's Guide*.[64] The *Guide* cautioned those thinking of buying shares in a venture to read the articles of association carefully because "in them often lurk most mischievous provisions" regarding corporate governance.[65] Shareholders who did not carefully review the articles of association might well later discover that the rules had "been so devised as to deprive them of their just rights" by "unrestrictedly vesting in the directors all the powers of the

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[61] *Economist* (8 Sept. 1894), 1103.

[62] See for examples, *Economist* (19 Aug. 1899), 1195; *Financial Times* (22 Aug. 1893), 3; and (4 July 1893), 2.

[63] *Financial Times* (15 Feb. 1893), 3.

[64] J. D. Walker and Watson, *Investor's and Shareholder's Guide* (2nd edn.; Edinburgh, Scot.: E. & S. Livingston, 1894).

[65] Walker and Watson, *Investor's and Shareholder's Guide*, 101.

company,"[66] and that the articles conferred "unreasonable powers, and the right to excessive remuneration upon the directors, and sometimes appoint[ed] officials for a long term of years, or even 'irremovably,' at high salaries."[67] Even when directors were technically removable, shareholders might find that the privilege of voting by proxy gave members of the existing board a powerful "weapon" that they could use "to shield mal-administration, to balk inquiry, to thwart reform."[68]

Such warnings notwithstanding, there seems to have been little interest in reforming corporate governance rules. In 1895, Parliament appointed a committee headed by Lord Davey "to inquire what amendments are necessary in the Acts relating to Joint Stock Companies incorporated with limited liability, especially with a view to the better prevention of fraud in relation to the formation and management of Companies …"[69] The comments and recommendations the committee collected focused much more on "formation" than on "management." Respondents wrote at length about the problem of fraudulent promotions but paid little attention to internal governance. In the end, the committee recommended that Table A be "amended so as to make it conform more closely to modern practice and business requirements," but it did not specify *how* the articles should be revised, and neither the Board of Trade nor Parliament took any action.[70] Parliament did, however, respond seriously to the committee's recommendations to curb fraudulent promotions of new companies. The resulting Companies Act of 1900 required each company issuing shares to the public to publish a prospectus that would provide investors with detailed information about the allocation of shares

[66] Walker and Watson, *Investor's and Shareholder's Guide*, 143.
[67] Walker and Watson, *Investor's and Shareholder's Guide*, 101
[68] Walker and Watson, *Investor's and Shareholder's Guide*, 148.
[69] Report of the Departmental Committee to inquire what Amendments are Necessary in the Acts relating to Joint Stock Companies incorporated with Limited Liability under Companies Acts, 1862–1890 (C 7779, 1895) vii para 12 (Davey Committee Report), v.
[70] *Davey Committee Report*, xviii.

and debentures, the sources of capital, and other issues related to the public offering. The law restricted companies' ability to allocate shares except in exchange for cash and required them to register all mortgages and other charges on assets for the protection of creditors. It also made directors and officers criminally liable for any false statements on these reports. Aside from requiring auditors to examine annual balance sheets and report to shareholders at the general meeting, however, the 1900 reforms contained no provisions relating to internal governance.[71]

The same lack of interest in corporate governance can be seen in the coverage of the companies from our *Burdett's* sample in the *Economist* and the *Financial Times*. It is easy to find reports on the formation of these companies, as well as on their subsequent annual meetings. Most of the articles, however, consisted of straightforward accounts of the details of the organization and the companies' performance. Such critical coverage as there was mainly concerned the initial promotions. For example, letters to the *Financial Times* rebuked incorporators of The Earl of Dudley's Round Oak Iron and Steel Works, Limited, a company formed to acquire the Round Oak Iron Works, for not responding to calls to disclose the profit history of the firm being acquired.[72] A shareholder in Joseph Robinson and Company, Limited, wrote in to denounce the technique company promoters had used to pump up share values artificially.[73] A committee of the shareholders of Ingall, Parsons, Clive & Company, Limited exposed the excessive valuation of assets and goodwill transferred from predecessor companies and managed to secure substantial clawbacks from the transferees.[74]

Shareholders had voice, and when earnings were unexpectedly low, they used the annual meetings as forums to complain about the misguided business strategies or poor management

[71] Companies Act of 1900 (63 & 64 Vict. c. 48).
[72] "Round Oak Iron and Steel Works," *Financial Times*, 25 April 1891 and 28 April 1891.
[73] "Precocious Premiums," *Financial Times*, 27 April 1889.
[74] "Ingall, Parsons, Clive and Company, Limited," *Financial Times*, 5 Sept. 1890.

practices they thought were responsible.[75] Their criticisms focused on particular people and actions, however, not on the governance structures that might facilitate bad behavior. Indeed, complaints about the concentration of power directors' hands were especially rare.[76] Shareholders seem to the contrary to have willingly granted directors control in exchange for the promise of high earnings. Although the terms of this bargain were never spelled out explicitly, their traces can be seen in the firms' commitment to maintain high and steady dividends.[77] They can also be seen in the rituals associated with the annual general meeting. Shareholders could be very vocal about their unhappiness when the earnings they expected did not materialize, and directors often implicitly acknowledged they had not lived up to their implicit bargain by responding with appropriately sacrificial gestures. For example, shareholders were furious when the Joseph Robison and Company, Limited, sunk money into an alabaster mine that did not initially pay off. The directors promised not to take their fees until the company was able to declare a dividend of at least 5 percent, and the controversy faded when the mine began to

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[75] See, for example, coverage of shareholders' complaints about J. Nunneley & Co., Ltd., in the *Financial Times*, 11 Nov. 1889, 18 Nov. 1889, 28 Nov. 1889, 9 Dec. 1889, 19 Dec. 1891, and 21 Dec. 1891; and the National Explosives Company in *Financial Times*, 26 Nov. 1892. Some innovative new companies were not expected to earn profits for some time, and shareholders were generally patient and supportive. See, for example, "The Linotype Company, Limited," *Financial Times*, 28 Aug. 1890. Shareholders could also be supportive when they thought that low earnings were not the managers' fault. See, for example, "Shareholders' Questions," to the Millom and Askam Hematite Iron Co., Ltd., in *Financial Times*, 30 Dec. 1899. On the role of annual meetings more generally, see Rutterford, "Shareholder Voice." Rutterford claims that the meetings were well attended in this period, though it not clear what evidence she has for this statement. We do not have any information on the attendance at general meetings for companies in our sample.

[76] One does, however, find complaints about lack of transparency in annual financial reports. See, for example, "National Explosives Company," *Financial Times*, 26 November 1892. Rutterford acknowledges that shareholders rarely raised corporate governance issues at annual meetings, but offers an incorrect explanation (see "Shareholder Voice," 122). She asserts that shareholders could "dismiss directors by a simple majority," whereas almost all companies in our samples followed Table A and required a three-quarters vote (and in most cases a second confirming meeting) to dismiss a director.

[77] For quantitative evidence on this point, see especially Gareth Campbell and John D. Turner, "Substitutes for Legal Protection: Corporate Governance and Dividends in Victorian Britain," *Economic History Review* 64 (May 2011), 571-97. See also Brian R. Cheffins, "Dividends as a Substitute for Corporate Law: The Separation of Ownership and Control in the United Kingdom," Washington and Lee Law Review 63 (Fall 2006): 1273-1338.

produce.[78] Similarly, directors of the Fowler-Waring Cables Company, Limited, refused their fees when the company did not earn enough in its first year of operation to pay dividends.[79]

Another ritual of the general meeting was to end with a resolution of thanks to the directors for their hard work on behalf of the company.[80] When earnings were high, these resolutions could convey enthusiastic approval. Shareholders of the Charles Baker and Company, Limited, applauded a resolution thanking the board and singled out the managing directors in particular "for the very satisfactory balance-sheet which had been produced that day."[81] Sometimes shareholders awarded directors bonuses for particularly good performance.[82] In a number of cases, moreover, this kind of quid-pro-quo structure was built into the articles of association. Sixteen of the 49 companies in the *Burdett's* sample specified extra compensation for directors whenever earnings exceeded a particular threshold.

Trends in Law and Practice in the Early Twentieth Century

The 1900 Companies Act raised the cost of organizing all types of corporations, whether they issued securities to the public or not. Not surprisingly, the result was a sharp drop in the number of companies that registered under the act (from 5,082 in 1897 to 4,849 in 1900 to 3,343 in 1901 to 3,725 in 1904) and a flood of complaints.[83] Parliament responded in 1905 by appointing the Warmington Committee to recommend changes in the law.[84] The committee's

[78] "Joseph Robinson and Company," *Financial Times*, 8 Mar. 1890.

[79] "The Fowler-Waring Cables Company," *Financial Times*, 6 Aug 1890 and 16 September 1890.

[80] See, for examples, "B. Birnbaum and Son," *Financial Times*, 10 March 1891; "New Wire Wove Roofing," *Financial Times*, 9 July 1892; "Stroud Brewery Company, Limited," *Financial Times*, 18 June 1890.

[81] "Charles Baker and Co.," *Financial Times*, 3 April 1894. See also 1 April 1896 and 5 April 1898.

[82] See, for example, "George Angus and Company," *Financial Times*, 12 January 1891.

[83] U.K. Board of Trade, *General Annual Report under the Companies (Winding-up) Act of 1890* (London: H.M.S.O., 1923).

[84] The committee was initially chaired by R. T. Reid, 1st Earl Loreburn, but when Loreburn became Lord Chancellor in December of 1905, C. M. Warmington became chair. We use the name Warmington Committee throughout to avoid confusion. *Report of the Company Law Amendment Committee* (Cd 3052, 1906) 104.

investigations resulted in the passage of a new statute in 1907 that gave incorporators the choice of organizing their companies as public or private enterprises. In essence, the law offered business people a tradeoff. If they organized their corporations as public companies, they had to conform to the strict disclosure requirements of the 1900 Act. But they could escape most of those requirements (all save the obligation of providing their members each year with an audited balance sheet) by organizing instead as private companies. To signal this choice all they had to do was include in their articles of association clauses that 1) prohibited their company from making public offerings of shares or debentures, 2) limited the number of shareholders in the company to fifty (not including employees), and 3) restricted the transferability of shares in some way.[85] 16,172 existing companies converted to private companies in 1908, 19,329 in 1909, and on average of 15,100 a year from 1910-19 and 12,000 a year from 1920-29.[86] As Figure 1 shows, moreover, incorporators of new firms increasingly and disproportionately chose the private company form so that, by the early 1920s, more than 90 percent of all new companies were private.[87] Enterprises that opted to be private could still raise capital externally, but they had to use private intermediaries to place their securities. As we will show, many incorporators signaled their intention to raise funds in this way by including a provision in their articles of association enabling them to "pay a commission to any person for subscribing or agreeing to subscribe … for any shares in the Company or procuring or agreeing to procure subscriptions."[88]

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[85] Companies Act of 1907 (7 Edw. 7 c. 50). See Guinnane et al., "Putting the Corporation in its Place," 605-6.

[86] U.K. Board of Trade, *General Annual Report* (1900-21); and *Report* (1922-30).

[87] Of course, the average size of public companies was much larger, so Figure 1 would look different if the numbers were weighted by capitalization. In 1915, the average nominal capital of public companies was £85,900, as opposed to £9,300 for private companies, in 1922 £122,300 for public and £10,100 for private and in 1929 £250,500 for public and £9,100 for private. *Financial Times*, 28 Jan. 1916, 4; 11 Jan. 1923, 4; and 8 Feb. 1920, 316.

[88] This particular wording comes from clause 2 of the Articles of Association of the Rapide Detachable Wheel Syndicate, Limited, filed in 1912.

At the same time as Parliament offered companies the choice of being private or public, it provided them with a new default set of articles of association. The 1862 Companies Act had given the Board of Trade the authority to revise the model table as needed, with the revisions acquiring the force of law upon publication in the *London Gazette*.[89] Decades elapsed, however, and the Board took no action until finally, in 1906, the Warmington committee undertook a revision. The committee considered, and rejected, two alternatives to updating Table A. One was to give up altogether on the idea of model articles of association and simply leave it to each company to draft its own rules. The committee recognized, however, there were "a considerable number of small companies ... which adopt Table A with a few small variations, simply in order to save expense in printing," and the members thought it important to keep the setup costs for these entities low. The committee also considered whether to impose uniform compulsory regulations on all companies, an alternative that would have required an act of Parliament. In the view of the members, there were important reasons to allow companies of different sizes and types to draft articles that suited their specific business needs. The committee chose not to recommend such legislation on the grounds that it would "be wholly inconsistent with the use now made of the freedom which companies enjoy" to draft their own articles.[90]

Instead, the Committee commissioned barristers R. J. Parker and A. C. Clauson to draw up a new model table. It then circulated the draft for comments and discussed it at a subcommittee meeting that included Francis Beaufort Palmer and Sir Francis Gore-Browne, both

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[89] The Companies Act 1862, 25 & 26 Vict. C. 89 sec. 71.

[90] See Appendix 18 to the *Report of the Company Law Amendment Committee*, p. 103. The committee solicited the views of chambers of commerce across the country. Most responded that Table A was out of date and should be revised, with some like that of Manchester suggesting specific changes. The Nottingham chamber proposed making key provisions of the table unalterable. See Appendix 18, pp. 66-69. See also Sir Francis Gore-Brown's preface to David Ground Hemmant, *Table A (Revised, 1906) with Introduction, Notes, and Comments* (London: Jordan & Sons, 1906).

prominent barristers who published handbooks for incorporators.[91] After a few small and mostly technical changes to the draft, the Warmington Committee appended the new Table A to its report of June 18, 1906.[92] The Board of Trade published the table in the *London Gazette* on July 31, 1906, as required by law, and the revised version came into force on October 1, 1906.[93] With the exception of a last article concerning notifications by post, the new Table A was appended verbatim to the Companies Act in 1908.[94]

The committee made some changes to Table A in response to shifts in business practice. For example, the new model table included a couple of clauses (Articles 3 and 4) recognizing that it had become increasingly common for companies to issue multiple classes of shares with different income and/or voting rights. Other revisions aimed to insure that the articles of a company accepting the model table would automatically comply with the standards for listing on the London Stock Exchange. Hence there was now a clause in Table A forbidding directors to use a company's funds to purchase its own shares (Article 8), as well as one setting limits on the extent to which directors could borrow on behalf of the company without the approval of the general meeting (Article 73).[95]

What is most striking about the revised Table A, however, is the extent to which it embraced the provisions shifting power from shareholders to directors that so many of the 1892

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[91] Palmer's *Company Precedents* and *Company Law: A Practical Handbook for Lawyers & Business Men* and Gore-Browne's *Concise Precedents under the Companies Act* and *Handbook on the Formation, Management and Winding Up of Joint Stock Companies* went through multiple editions in the late nineteenth and early twentieth centuries.

[92] Table A (Revised 1906), Companies Acts, 1862-1900, National Archives, BT 58/17/COS/1705.

[93] S.R. &O. 1906 NO. 596L.15 http://www.companieshouse.gov.uk/about/tableA/comm1Oct06orderoftheboardoftrade30July1906_P1.pdf, accessed 17 July 2016.

[94] Companies (Consolidation) Act 1908, 8 Edw. 7 Ch. 69, First Schedule, Table A. We use the 1908 version in this paper.

[95] The revised Table A met all the criteria for listing described in Jordan and Gore-Browne, *Handy Book*, Appendix A.

companies had written into their articles. For example, the 1862 model table had specified a quorum for general meetings that increased with the number of shareholders, starting from a minimum of five. Most firms in our 1892 samples changed this provision so that the quorum was smaller than the Table A minimum, and the 1908 model table followed suit, lowering the quorum to just three members personally present (Article 51). Similarly, in the event that the chairman or the requisite number of shareholders demanded a poll, the 1862 model table did not specify when the vote would be taken, but the implication was that it would be held immediately. Most of our 1892 firms wrote articles allowing the chairman to delay the vote until another day, and the 1908 model table copied this change (Article 59). The new Table A also shifted the default voting rule to one vote per share (Article 60). As we noted above, there was no provision in the 1862 model for a managing director. The 1908 table not only followed common practice and added such a clause to the model articles but also explicitly exempted managing directors from having to stand for reelection during their terms of service, which of course the directors themselves set (Article 72). The 1908 table revised the default rules to enable directors to restrict shareholders' access to the company's books (Article 105). It also watered down the financial information that directors were required to provide shareholders at the annual meeting, no longer specifying the content of the financial statement and balance sheet and allowing these documents to be made up as much as six months in advance of the meeting, rather than the three months that the 1862 version had mandated (Articles 106 and 107).

In a few cases, the 1908 model table maintained some of the 1862 rules that large numbers of companies discarded. Thus the 1908 revisions did not alter Table A's strict conflict-of-interest rule, even though the vast majority of our 1892 firms rejected it (Article 77). Nor did it revise the expectation that shareholders should have the opportunity to elect a full board of

directors at the first annual meeting of the company (Article 78). In some cases, moreover, where the changes to Table A followed common practice, the new model table included qualifications that moderated the resulting shift in power toward directors. For example, the 1908 table included a sentence, not found in any of our 1892 articles, enabling the company in general meeting to terminate the appointment of a managing director (Article 72).

We explore the effect of the revisions to Table A on corporate governance by examining the articles of association written by random samples of companies registered in 1912 and 1927. The companies in these two samples were smaller on average than those in the 1892 registration sample. Although we cannot entirely rule out a role for selection bias, the change more likely reflects a shift in the size distribution of firms adopting the company form (see the appendix). As we have seen, one of the motives of the Warmington Committee in seeking to bring Table A more in line with current practice was to keep the costs of organizing small companies low by giving incorporators a model set of articles they could adopt off the shelf. In this goal the Board seems to have been partially successful (see Table 7). Although none of the firms in our samples simply adopted Table A as written, many fewer companies rejected it completely and drafted a full set of articles from scratch—only 24 percent in 1912 and 12 percent in 1927, compared to 52 percent of the 1892 registration sample. Most companies picked and chose among the provisions of the model table, rejecting some clauses and substituting alternatives in their stead. Most also added extra clauses of their own devising. In 1912 companies that rejected at least one but not all clauses in Table A on average rejected 19 clauses and wrote 30 substitute or new provisions. The equivalent companies in 1927 on average rejected 19 clauses and wrote 28 provisions of their own.

Many of the changes that companies made to the model table continued the shift in the balance of power toward directors that we observed in 1892 (see Tables 8 and 9). Of course, incorporators no longer had to revise Table A in order to institute a low quorum, though 48 percent of the 1912 companies and 82 percent of the 1927 companies set the quorum even below Table's A's minimal level of three shareholders personally present. Table A now diluted the financial information that they were required to provide annually to the general meeting, though 35 percent of the 1912 companies and 52 percent of the 1927 still rejected the provision that balance sheets be distributed at least seven days in advance. Almost all companies rejected Table A's prohibition of conflicts of interest (96 percent in 1912 and 90 percent in 1927). Moreover, many continued to go beyond Table A in protecting directors from having to face reelection by shareholders. Many (49 percent in 1912 and 67 percent in 1927) denied shareholders the opportunity ever to elect a full board of directors, though it was now less common for firms to delay the first election for two or more years (only 22 percent of the companies did this in 1922 and 6 percent in 1927). Table A permitted directors to exempt one or more of their number from the regular election rotation by naming them managing directors, but 55 percent of the 1912 companies and 38 percent of the 1927 companies went further and deleted Table A's provision giving the general meeting the authority to terminate the appointment of managing directors. Now, moreover, companies began to add a clause to their articles that was not in Table A allowing directors to choose their own alternates when they were out of the country or for another reason could not attend board meetings for an extended period of time, with 18 percent of companies including this provision in 1912 and 36 percent in 1927. More

strikingly, the number of cases of outright entrenchment of directors increased sharply. By 1927 the proportion of companies naming one or more directors for life had increased to 46 percent.[96]

Only eight of the companies in the 1912 registration sample, and only three in the 1927 registration sample, chose to be public companies. Public companies on average were somewhat larger than private companies. In 1912 the median capital of public companies was £11,000 and the mean £41,200, as opposed to £3,000 and £11,000 for private companies. In 1927 the median and mean for public companies was £1,500 and £57,500, compared to £1,000 and £3,700 for private. But the size distributions of public and private companies overlapped, and in neither year were large firms significantly more likely to be public.[97] As we noted above, companies that chose to be private did not give up their right to raise capital externally. Indeed, 58 percent of the 1912 companies and 64 percent in 1927 included in their articles a clause allowing them to pay a commission to individuals who found buyers for their shares (see Tables 8 and 9). These firms tended to be larger on average than those that did not, and in 1912 the difference was marginally significant.

As was the case for the 1892 sample, however, larger firms were not more likely to adopt shareholder friendly corporate governance rules in either 1912 or 1927. To the contrary, in Tables 8 and 9 the signs on the Mann-Whitney test are mostly negative (and mostly statistically significant), indicating that large firms more often wrote rules that shifted power to directors. In the few cases where the signs were positive, the tests were not significant. Nor is there any evidence that companies that chose to be public aimed to reassure investors by giving

[96] We are not including people named as permanent managing directors in this calculation, because the managing-director clause allowed any firm to give such a director a lifetime appointment without having to specify it in the articles.

[97] The sign of the Mann-Whitney test statistics suggested that public companies were generally larger than private in both years, but the differences were not statistically significant. The two-tailed p-value for 1912 was 0.57 and for 1927 0.25.

shareholders power to check or monitor investors. The number of public firms in the 1912 and especially the 1927 registration samples is so small that it is difficult to generalize, but it is clear from the proportions that it was still very common for incorporators of public companies to write articles that gave directors largely untrammeled control.

Conclusion

British company law granted incorporators a great deal of freedom to write governance rules for the enterprises they founded. Parliament provided a model set of articles of association, but its provisions were merely default rules that prevailed only if firms did not write articles of their own. As we have seen, only a relatively few companies, all small and private, accepted the model table as written, so it is important to ask what the vast majority of firms did—what kinds of governance rules they embedded in their articles. To answer this question, we studied the articles written by three samples of companies drawn from the Board of Trade's registration lists, as well as by a sample of public companies whose securities traded on the exchanges. We analyzed the ways in which the various provisions that companies wrote into their articles interacted to shape how governance worked on the ground. Contrary to recent scholarship that does not examine such interactions, we found that the vast majority of companies adopted articles whose provisions collectively shifted power away from shareholders to directors. As a practical matter, shareholders in British corporations, large and small, public and private, had little ability to check or even to monitor what the directors were doing with their investments.

A few contemporary observers expressed concern about this lack of power, but shareholders themselves seem not to have been much phased. Complaints about bad corporate behavior for the most part focused on the misleading or even fraudulent statements of promoters

of new issues, not on the governance practices of existing companies. Parliament responded to this pattern of grievances by enacting reforms in 1900 that tightened oversight of public offerings, but it did not take any action to mandate better governance rules. To the contrary, when a Parliamentary committee finally, in 1906, rewrote the model articles of association last revised in 1862, it largely ratified contemporary practices that shifted power toward directors. Now that the model table more closely reflected what companies were actually doing, fewer companies rejected it in its entirety, but as we have shown, they continued to rewrite its provisions in ways that further enhanced directors' autonomy.

Companies could, of course, have bucked this trend and revised Table A in ways that increased shareholders' ability to monitor and check directors. One might expect them to have done so if they could thereby have lowered their cost of capital, but we found no evidence for such a strategy either among our sample firms or in the financial press.[98] To the contrary, the idea that companies should be run in the interests of their shareholders seems not yet to have been in people's minds. If one reads history forward rather than backward, if one tries to understand what people at the time thought they were doing rather than interpreting their behavior in late-twentieth-century terms, then it seems that shareholders in the late nineteenth and early twentieth century did not expect to exercise much more than voice. When they bought shares in a corporation, they were gaining the chance to earn returns that were much higher than those available from government bonds and the like. Returns were higher because the investments were riskier. But they were also higher because of the knowledge and skills of the entrepreneurs running the companies, and shareholders seem to have been content to leave these

[98] There is thus little evidence in our data for the proposition that firms chose governance attributes endogenously as discussed, for example, in Renée B. Adams, Benjamin E. Hermalin, and Michael S. Weisbach, "The Role of Boards of Directors in Corporate Governance: A Conceptual Framework and Survey," *Journal of Economic Literature* 48 (Mar. 2010): 58-107.

men in charge. Of course, sometimes entrepreneurs failed to live up to the terms of this implicit bargain of high returns for a lack of control. When shareholders suspected that low dividends were a result of bad faith, they could become very vocal about their discontent and move beyond voice to action, organizing to overthrow management or take the perpetrators to court. These kinds of incidents take up many pages in the financial press of the period. But they seem to have been exceptional. If one starts, as we do, with a sample of companies and then searches for reports on them in the press, what stands out is the absence of drama. The bargain seems to have been reasonably enough upheld to the satisfaction of the parties involved.

Nonetheless, the counterfactual question remains of whether investment would have been higher if corporate governance had been more shareholder friendly. A number of years ago William Kennedy opened up a new front in the scholarly war over the sources of British economic decline by arguing that poor corporate governance practices encouraged investors to put their money overseas rather than in the new technology sectors of the domestic economy.[99] Michael Edelstein quickly challenged this view by demonstrating the responsiveness of capital flows to relative rates of return.[100] More recently, Benjamin Chabot and Christopher Kurz have shown convincingly that it was precisely the lack of correlation between foreign and domestic returns that explains why rational investors seeking diversified portfolios moved substantial amounts of capital overseas.[101] An important limitation of all this kind work, however, is that it

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[99] See William P. Kennedy, "Institutional Response to Economic Growth: Capital Markets in Britain to 1914," in *Management Strategy and Business Development: An Historical and Comparative Study*, ed. Leslie Hannah (London: Macmillan, 1976), 151-83; and Kennedy, *Industrial Structure, Capital, Markets, and the Origins of British Economic Decline* (Cambridge, Eng.: Cambridge University Press, 1987), esp. Ch. 5.

[100] Michael Edelstein, "Realized Rates of Return on U.K. Home and Overseas Portfolio Investment in the Age of High Imperialism," *Explorations in Economic History* 13 (July 1976): 283-329; and Edelstein, *Overseas Investment in the Age of High Imperialism: The United Kingdom, 1850-1914* (New York: Columbia University Press, 1982).

[101] Benjamin R. Chabot and Christopher J. Kurz, "That's Where the Money Was: Foreign Bias and English Investment Abroad, 1877-1907," *Economic Journal* 120 (Sept. 2010): 1056-79.

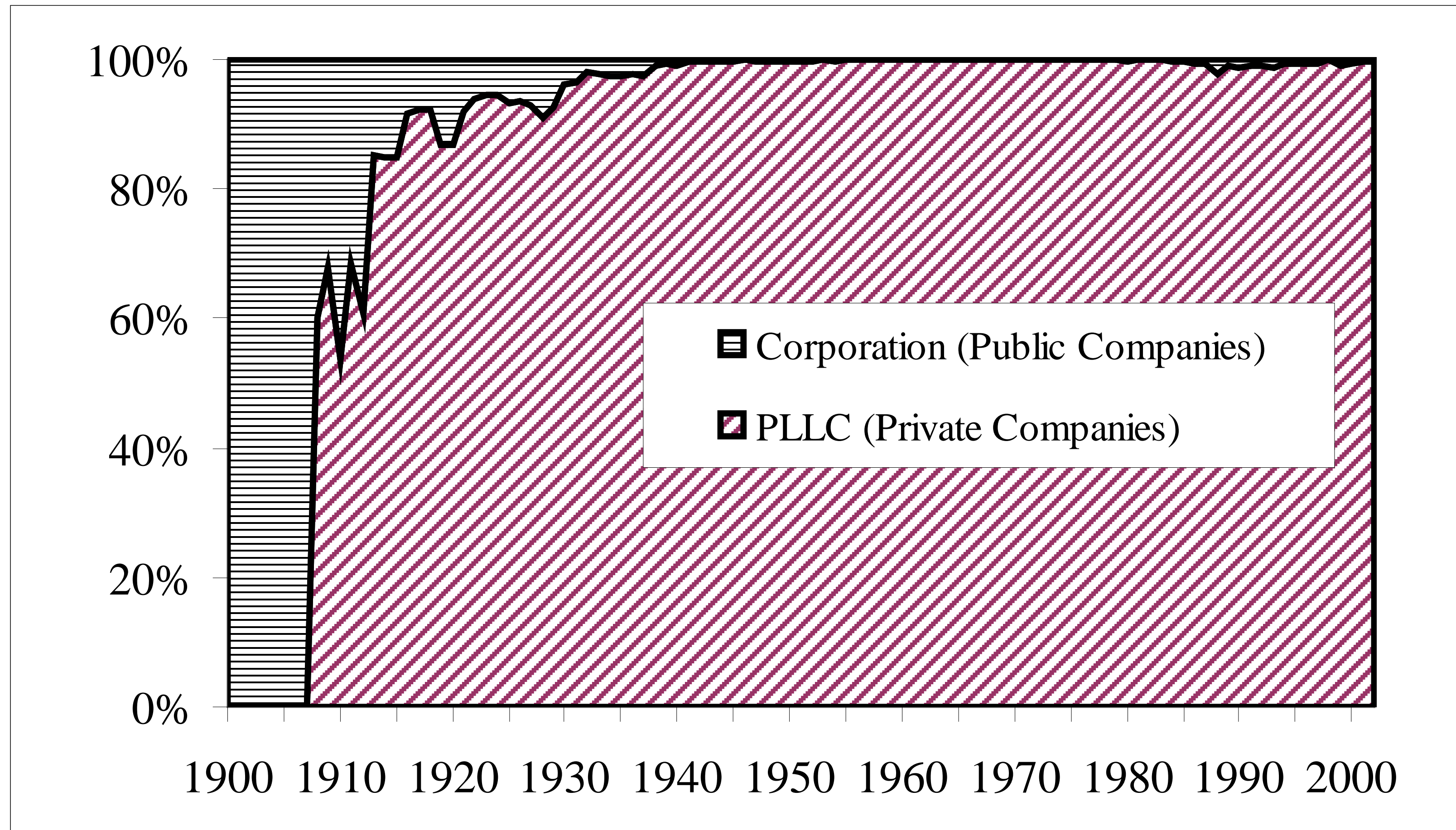
is based on data collected from the public securities markets. As we have shown, the overwhelming majority of new companies seeking external capital in the early twentieth century chose to raise funds by private placement rather than on an exchange. If scholars are truly to answer the counterfactual question, therefore, they must find ways of studying these private investment channels and assessing their magnitude.

Finally, there is the question of how the entrenchment of directors, whether de facto or de jure, affected firms' ability to innovate. On the one hand, entrenchment may have protected managers from demands for short-term profits that constrained their capacity to develop new technologies.[102] On the other hand, the high dividends that directors had to pay out in exchange for their autonomy may have made it more difficult to finance needed investments. By locking in managers, moreover, entrenchment may have locked in particular sets of ideas and practice, preventing companies from responding creatively to the competitive challenges they would face in the future.[103]

[102] On the dangers of too much shareholder control, see for example William Lazonick, "The US Stock Market and the Governance of Innovative Enterprise," *Industrial and Corporate Change* 16 (Dec. 2007): 983-1035.

[103] See Richard R. Nelson and Sidney G. Winter, *Evolutionary Theory of Economic Change* (Cambridge, Mass: Harvard University Press, 1982).

Figure 1. Ratio of New Private Companies to All New Limited Companies in Britain, 1900-2000



Sources: U.K., Board of Trade, *General Annual Report* (1900-21) and *Report* (1922-2000).

Table 1. Distribution of Companies in the 1892 Registration Sample, by Nominal Capital and Number of Shareholders in 1892 and 1897

Number of shareholders c1892	Total firms in category c1892	Average nominal capital of firms in category c1892 (in £)	Total number of firms in each size category of shareholders c1897						Number of firms no longer in existence c1897
			7	8-14	15-24	25-49	50-99	100+	
7	26	21,877	4	2	2	2	0	0	16
8-14	9	28,789	1	4	0	0	0	0	4
15-24	6	13,333	0	0	1	0	0	1	4
25-49	4	10,508	0	0	0	0	3	0	1
50-99	5	42,400	0	0	0	0	3	1	1
100+	4	252,750	0	0	0	0	0	1	3
All	54	40, 239	5	6	3	2	6	3	29

Source: See the Appendix for a description of the 1892 registration sample.
Notes: We counted the number of shareholders reported at the time of registration and also the number reported five years later (or as close to that date as possible.

Table 2. Distribution of Nominal Capital of Companies in the 1892 *Burdett's* Sample, by Market on Which Listed

Market in which Listed	Number of Companies	Minimum Capital (in £)	Maximum Capital (in £)	Median Capital (in £)	Average Capital (in £)
London Stock Exchange	14	100,000	1,600,000	222,500	375,500
One or More Regional Exchanges	9	150,000	790,000	300,000	341,500
None	26	25,000	1,100,000	145,000	246,500
All Companies	49	25,000	1,600,000	200,000	300,800

Source: *Burdett's Official Intelligence* (1892). See the Appendix for a description of the sample.

Table 3. Distribution of Nominal Capital of Companies in the 1892 Registration Sample, by Stance on Table A

Stance on Table A	Number of Companies	Average Number of Articles Written	Minimum Capital (in £)	Maximum Capital (in £)	Median Capital (in £)	Average Capital (in £)
No Articles in File	12	0	100	25,000	5,000	6,600
Accepts Table A	4	26	2,000	12,000	3,000	5,000
Modifies Table A	10	25	500	100,000	15,000	31,700
Rejects Table A	28	130	2,000	850,000	11,000	62,700
All Companies	54	74	100	850,000	10,000	40,200

Source: See the Appendix for a description of the sample.
Notes: The count of companies rejecting Table A includes two firms whose articles did not specifically reject (or accept) the table but included at least 100 new clauses.

Table 4. Percentage of Companies Revising Table A in Specified Ways

Revision to Table A	Registration Sample	*Burdett's* Sample
Graduated scale replaced by one-share-one-vote or a rule that disadvantaged small shareholders.	78.6	81.3
Graduated scale replaced by a fixed quorum of at most five shareholders.	78.6	65.3
Graduated scale replaced by a fixed quorum of at most ten shareholders.	88.1	91.8
On demand for a poll, chairman could delay vote until another day.	71.4	93.9
Shareholders never got to elect a full board.	73.8	91.8
First election for directors delayed at least two years.	45.2	53.1
Candidates for director had to give advance warning.	50.0	75.5
Entrenched one or more named directors.	19.0	8.2
Directors could name one or more of their body Managing Director.	64.3	91.8
Directors' minimum remuneration specified.	40.5	73.5
Extraordinary meeting clearly harder to call.	23.8	8.2
Information required in financial statements not specific.	65.9	93.9
Balance sheet not distributed to shareholders at least seven days in advance of general meeting.	46.3	49.0
Shareholders' access to company accounts restricted.	70.7	98.0
Conflict of interest allowed.	90.5	95.9

Source: For descriptions of the samples, see the appendix.
Notes: Percentages for the registration sample pertain only to the 42 companies with articles in the file. For the variables relating to financial accounts, the number of observations for the registration sample is only 41 because we are missing the relevant page of the articles for one of our companies. There are 49 companies in the *Burdett's* sample, but the observation for the first variable is missing for one company.

Table 5: Extent of Revisions to Table A that Shifted Power to Directors, by Nominal Capitalization of the Company (1892 Registration Sample)

Clause	Number of firms coded 1	Percent of firms coded 1	Median values		Mann-Whitney test	
			Variant 1	Variant 2	Variant 1	Variant 2
			(1)	(2)	(3)	(4)
Voting rule for poll (no graduated scale)	33	78.6	0: £8,000 1: £10,030 N: 54	0: £10,000 1: £10,030 N: 42	-1.600 (0.11)	0.015 (0.99)
Quorum for general meeting (fixed quota ≤ 5)	33	78.6	0: £8,000 1: £10,030 N: 54	0: £10,000 1: £10,030 N: 42	-1.618 (0.11)	-0.015 (0.99)
Quorum for general meeting (fixed quota ≤ 10)	37	88.1	0: £7,500 1: £10,030 N: 54	0: £10,000 1: £10,030 N: 42	-1.717 (0.09)	0.330 (0.74)
Timing of poll when demanded (chair chooses)	30	71.4	0: £7,500 1: £10,015 N: 54	0: £11,000 1: £10,015 N: 42	-2.006 (0.04)	-0.794 (0.43)
First election (shareholders never elect full board)	31	73.8	0: £3,000 1: £20,000 N: 54	0: £3,000 1: £20,000 N: 42	-3.391 (0.00)	-2.463 (0.01)
First election (delayed at least two years)	19	45.2	0: £7,500 1: £22,000 N: 54	0: £7,600 1: £22,000	-2.604 (0.01)	-1.897 (0.06)
Candidates for directors had to give warning	21	50.0	0: £7,600 1: £25,000 N: 54	0: £10,000 1: £25,000 N: 42	-2.995 (0. 00)	-2.304 (0.02)
Entrenchment of specific directors	8	19.0	0: £9,000 1: £11,015 N: 54	0: £10,000 1: £11,015 N: 42	-1.329 (0.18)	-0.721 (0.47)
Managing director (directors specify)	27	64.3	0: £5,000 1: £12,000 N: 54	0: £5,000 1: £12,000 N: 42	-2.340 (0.02)	-1.235 (0.22)
Directors' remuneration (minimum set)	18	42.9	0: £7,500 1: £24,000 N: 54	0: £7,600 1: £24,000 N: 42	-2.612 (0.01)	-1.975 (0. 05)
Extraordinary general meeting (harder to call)	10	23.8	0: £10,000 1: £8,500 N: 54	0: £12,000 1: £8,500 N: 42	0.223 (0.82)	0.990 (0.32)
Financial reports (details watered down)	27	65.9	0: £5,500 1: £12,000 N: 53	0: £6,750 1: £12,000 N: 41	-2.772 (0.01)	-1.720 (0. 09)
Distribution of Balance Sheets	19	46.3	0: £7,300 1: £12,000 N: 53	0: £8,815 1: £12,000 N: 41	-1.514 (0.13)	-0.497 (0.62)

(not sent out 7 days in advance)						
Shareholders' access to books (directors control)	29	70.7	0: £5,500 1: £12,000 N: 53	0: £8,000 1: £12,000 N: 41	-2.640 (0.01)	-1.506 (0.13)
Conflict of interest (allowed)	38	90.5	0: £5,000 1: £11,015 N: 54	0: £4,500 1: £11,015 N: 42	-2.837 (0.00)	-1.587 (0.11)

Source: See the appendix for a description of the 1892 registration sample.
Notes: We coded the clauses listed in the left-most column as dummy variables that took a value of 1 if the company modified Table A in the ways indicated. The percentage of firms coded 1 is relative to the N for Variant 2. For each clause we test two variants of the dummy variable. Variant 1 includes all of the 54 limited-liability firms in the sample. Variant 2 excludes the 12 companies whose files did not include articles of association. For the variables relating to financial accounts, the number of observations is smaller because we are missing the relevant page of the articles for one of our companies. In the columns marked (1) and (2), the figures 0:£X and 1:£X are the median values of nominal capital for companies coded 0 and 1 respectively on the variable. N: is the number of observations for the cell. Columns (3) and (4) report the Mann-Whitney test statistics and, in parentheses, the p-values for a two-tailed test. The value of the test statistic is negative if firms coded 0 on the variable have smaller capitalization values than firms coded 1.

Table 6: Extent of Revisions to Table A that Shifted Power to Directors, by Nominal Capitalization of the Company and Whether It Was Listed on an Exchange (1892 *Burdett's* Sample)

Clause	Proportion of firms coded 1	Nominal Capitalization: Median values	Nominal Capitalization: Mann-Whitney test (probability)	Proportion of Firms Coded 1 (Number of firms in category): Firms on the LSE official list (A)	All other firms (B)	Probability (A < B)	Firms on any list (C)	All other firms (D)	Probability (C < D)
Voting rule for poll (no graduated scale)	0.81	0: £230,000 1: £200,000 N: 48	0.582 (0.56)	0.79 (14)	0.82 (34)	0.38	0.74 (23)	0.88 (25)	0.11
Quorum for general meeting (fixed quota ≤ 5)	0.65	0: £230,000 1: £180,000 N: 49	1.924 (0.05)	0.50 (14)	0.71 (35)	0.08	0.52 (23)	0.77 (26)	0.03
Quorum for general meeting (fixed quota ≤ 10)	0.92	0: £200,000 1: £202,000 N: 49	0.000 (1.00)	0.86 (14)	0. 94 (35)	0.16	0.91 (23)	0.92 (26)	0.45
Timing of poll when demanded (chair chooses)	0.94	0: £220,000 1: £200,000 N: 49	0.501 (0.62)	0.86 (14)	0.97 (35)	0.07	0.91 (23)	0.96 (26)	0.24
First election (shareholders never elect full board)	0.92	0: £195,000 1: £202,000 N: 49	0.183 (0.85)	0.93 (14)	0. 91 (35)	0.57	0.87 (23)	0.96 (26)	0.12
First election (delayed at least two years)	0.53	0: £200,000 1: £201,000 N: 49	0.853 (0.39)	0.64 (14)	0.49 (35)	0.84	0.52 (23)	0.54 (26)	0.45
Candidates for directors had to give warning	0.76	0: £201,000 1: £200,000 N: 49	-0.198 (0.84)	0.64 (14)	0.80 (35)	0.12	0.70 (23)	0.81 (26)	0.18

Entrenchment of specific directors	0.08	0: £200,000 1: £354,098 N: 49	-2.084 (0.04)	0.07 (14)	0.09 (35)	0.43	0.13 (23)	0.04 (26)	0.88
Managing director (directors specify)	0.92	0: £180,000 1: £202,000 N: 49	-0.183 (0.85)	0.86 (14)	0.94 (35)	0.16	0.87 (23)	0.96 (26)	0.12
Directors' remuneration (minimum set)	0.74	0: £300,000 1: £185,000 N: 49	2.721 (0.01)	0.79 (14)	0.71 (35)	0.70	0.61 (23)	0.85 (26)	0.03
Extraordinary general meeting (harder to call)	0.08	0: £200,000 1: £152,500 N: 49	0.676 (0.50)	0.07 (14)	0.09 (35)	0.43	0.04 (23)	0.12 (26)	0.18
Financial reports (details watered down)	0.94	0: £200,000 1: £201,000 N: 49	0.480 (0.63)	0.93 (14)	0.94 (35)	0.43	0.87 (23)	1.00 (26)	0.03
Distribution of Balance Sheets (not sent out 7 days in advance)	0.49	0: £230,000 1: £200,000 N: 49	0.941 (0.35)	0.50 (14)	0.49 (35)	0.54	0.43 (23)	0.54 (26)	0.23
Shareholders' access to books (directors control)	0.98	0: £150,000 1: £201,000 N: 49	-0.637 (0.52)	1.00 (14)	0.97 (35)	0.74	0.96 (23)	1.00 (26)	0.14
Conflict of interest (allowed)	0.96	0: £770,000 1: £200,000 N: 49	2.150 (0.03)	0.93 (14)	0.97 (35)	0.25	0.91 (23)	1.00 (26)	0.06

Source: For descriptions of the samples, see the appendix.
Notes: We coded the clauses listed in the left-most column as dummy variables that took a value of 1 if the company modified Table A in the ways indicated. There are 49 companies in the *Burdett's* sample, but the observation for the first variable is missing for one company. In the column for "Median Values," the figures 0:£X and 1:£X are the median values of nominal capital for companies coded 0 and 1 respectively on the variable. N: is the number of observations for the cell. The next column reports the Mann-Whitney test statistic and, in parentheses, the p-values for a two-tailed test. The value of the test statistic is negative if firms coded 0 on the variable have smaller capitalization values than firms coded 1. The last six columns report information on differences in the

proportion of articles coded 1 for companies that had at list one security on the LSE Official List (A) versus all other companies (B), and companies with at least one security listed on any British exchange (C) versus all other companies (D). For each comparison, we also provided the p-values for a one-tailed test of the hypothesis that firms with listed securities were less likely to modify Table A in a way that shifted power toward directors.

Table 7. Summary of Modifications to Table A Made by Companies in the 1892, 1912, and 1927 Registration Samples

	Companies registered in		
	1892	1912	1927
Number that reject:			
No clauses	4	1	0
All clauses	29	13	6
1-10 clauses	8	6	6
11-20 clauses	1	16	19
21-30 clauses	1	13	15
31-40 clauses	0	1	4
No articles in file	12	0	0
Number of companies in sample for that year	55	50	50
Total number of clauses in operative Table A	97	114	114
Average number of clauses written by companies who accepted all of Table A	29	7	NA
Average number of clauses written by companies who rejected 1-20 clauses	24	28	24
Average number of clauses written by companies who rejected 21-40 clauses	42	34	33
Average number of clauses written by companies who rejected all of Table A	129	135	136

Source: For descriptions of the samples, see the appendix.
Notes: The list of 1892 companies rejecting Table A includes two firms whose articles did not specifically reject (or accept) the entire table but included at least 100 clauses. The 1912 cell for "Average number of clauses written by companies who rejected 1-20 clauses" is based on only 49 companies because we are missing the last page or pages of the articles for one company and so only can see 16 of its clauses. If the number 16 is included for that firm, the average drops to 27 clauses.

Table 8. Extent of Revisions to Table A that Shifted Power to Directors, by Nominal Capitalization of the Company and Whether the Company Chose to be Public or Private (1912 Registration Sample)

		Nominal Capitalization		Proportion Coded 1 (Number)		
Clause	Proportion of firms coded 1	Median values	Mann-Whitney test (probability)	Public Firms (A)	Private Firms (B)	Probability (A < B)
Could offer a commission to sell shares	0.58	0: £2,000 1: £4,500 N: 50	-1.730 (0.08)	0.63 (8)	0.57 (42)	0.61
Directors' authority to borrow (limit on weakened or eliminated)	0.49	0: £2,000 1: £4,750 N: 49	-1.973 (0.05)	0.50 (8)	0.49 (41)	0.53
Quorum for general meeting (fixed quota < 3)	0.48	0: £3,000 1: £3,000 N: 48	0.260 (0.80)	0.50 (8)	0.48 (40)	0.55
First election (shareholders never elect full board)	0.49	0: £2,000 1: £5,500 N: 49	-2.345 (0.02)	0.88 (8)	0.41 (41)	0.99
First election (delayed at least two years)	0.22	0: £2,000 1: £15,000 N: 49	-2.870 (0.00)	0.50 (8)	0.17 (41)	0.98
Managing director (deleted provision for removal)	0.55	0: £2,000 1: £6,000 N: 49	-2.681 (0.01)	0.63 (8)	0.54 (41)	0.68
Directors' remuneration (minimum set)	0.39	0: £2,000 1: £11,000 N: 49	-3.315 (0.00)	0.63 (8)	0.34 (41)	0.93
Directors could choose own alternates	0.18	0: £2,000 1: £30,000 N: 49	-3.210 (0.00)	0.50 (8)	0.12 (41)	0.99
Conflict of interest (allowed)	0.96	0: £1,500 1: £3,000 N: 49	-1.221 (0.22)	0.88 (8)	0.98 (41)	0.09
Distribution of balance sheets (not sent out 7 days in advance)	0.35	0: £2,753 1: £5,000 N: 49	-0.740 (0.46)	0.38 (8)	0.34 (41)	0.57
Entrenchment of specific directors	0.24	0: £4,500 1: £2,000 N: 49	1.205 (0.23)	0.13 (8)	0.27 (41)	0.19

Source: See the appendix for a description of the 1912 registration sample.
Notes: We coded the clauses listed in the left-most column as dummy variables that took a value of 1 if the company modified Table A in the ways indicated. There are 50 companies in the sample, but we are missing the last page or pages of the articles for one company and so only can see 16 of its clauses. For one other firm, there was no quorum rule in the articles. In the column for "Median Values," the figures 0:£X and 1:£X are the median values of nominal capital for companies coded 0 and 1 respectively on the variable. N: is the number of observations for the cell. The next column reports the Mann-Whitney test statistic and, in parentheses, the p-values for a two-tailed test. The value of the test statistic is negative if firms coded 0 on the variable have smaller capitalization values than firms coded 1. The last three columns report information on differences in the proportion of articles coded 1 for companies that chose to be public (A) versus companies that chose to be private (B). The last of the three columns shows the p-values for a one-tailed test of the hypothesis that public firms were less likely than private to modify Table A in a way that shifted power toward directors.

Table 9. Extent of Revisions to Table A that Shifted Power to Directors, by Nominal Capitalization of the Company and Whether the Company Chose to be Public or Private (1927 Registration Sample)

Clause	Proportion of firms coded 1	Nominal Capitalization		Proportion Coded 1 (Number)		
		Median values	Mann-Whitney test (probability)	Public Firms (A)	Private Firms (B)	Probability (A < B)
Could offer a commission to sell shares	0.64	0: £1,000 1: £1,250 N: 50	-1.213 (0.23)	0.33 (3)	0.66 (47)	0.13
Directors' authority to borrow (limit on weakened or eliminated)	0.72	0: £1,250 1: £1,000 N: 50	0.730 (0.47)	0.67 (3)	0.72 (47)	0.42
Quorum for general meeting (fixed quota < 3)	0.82	0: £1,500 1: £1,000 N: 50	0.968 (0.33)	0.67 (3)	0.83 (47)	0.24
First election (shareholders never elect full board)	0.67	0: £1,000 1: £1,050 N: 48	-1.500 (0.13)	0.33 (3)	0.69 (45)	0.10
First election (delayed at least two years)	0.06	0: £1,000 1: £500 N: 48	0.193 (0.85)	0.00 (3)	0.07 (45)	0.32
Managing director (deleted provision for removal)	0.38	0: £1,000 1: £3,000 N: 50	-3.497 (0.00)	0.67 (3)	0.36 (47)	0.85
Directors' remuneration (minimum set)	0.28	0: £1,000 1: £3,000 N: 50	-1.939 (0.05)	0.67 (3)	0.26 (47)	0.94
Directors could choose own alternates	0.36	0: £1,000 1: £4,500 N: 50	-2.588 (0.01)	0.67 (3)	0.34 (47)	0.87
Conflict of interest (allowed)	0.90	0: £100 1: £1,000 N: 50	-2.152 (0.03)	1.00 (3)	0.89 (47)	0.72
Distribution of balance sheets (not sent out 7 days in advance)	0.52	0: £1,000 1: £1,050 N: 50	-0.303 (0.76)	0.00 (3)	0.55 (47)	0.03
Entrenchment of specific directors	0.46	0: £1,000 1: £1,000 N: 50	-0.824 (0.41)	0.00 (3)	0.49 (47)	0.05

Source: See the appendix for a description of the 1927 registration sample.
Notes: We coded the clauses listed in the left-most column as dummy variables that took a value of 1 if the company modified Table A in the ways indicated. There are 50 companies in the sample, but two companies failed to include provisions for the timing of the first election and the start of the rotation, though they opted out of the relevant Table A provisions. In the column for "Median Values," the figures 0:£X and 1:£X are the median values of nominal capital for companies coded 0 and 1 respectively on the variable. N: is the number of observations for the cell. The next column reports the Mann-Whitney test statistic and, in parentheses, the p-values for a two-tailed test. The value of the test statistic is negative if firms coded 0 on the variable have smaller capitalization values than firms coded 1. The last three columns report information on differences in the proportion of articles coded 1 for companies that chose to be public (A) versus companies that chose to be private (B). The last of the three columns shows the p-values for a one-tailed test of the hypothesis that public firms were less likely than private to modify Table A in a way that shifted power toward directors.

Appendix

In order to study the extent to which (and how) companies revised Table A, we collected from the British National Archives the registration documents of three random samples of companies that were formed in 1892, 1912, and 1927.[104] The target size of each sample was 50 companies. We excluded from the analysis companies organized as cooperatives and mutual, as well as companies whose shareholders lacked limited liability.

The National Archives holds the records of companies that are no longer in existence and have been dissolved for more than twenty years. The files of currently active or recently dissolved companies registered in England and Wales are kept in Companies House in Cardiff. Twenty years after the dissolution of a company, its records are either transferred to the National Archives in Kew or destroyed according to a sampling rule that has changed over time. At least in theory, the National Archives obtained the records of a 100 percent sample of companies that were formed in England and Wales between 1856 and 1931 and that dissolved before 1933. For companies that dissolved between 1933 and 1948, the National Archives received only a one percent sample, and for companies that dissolved after 1948, it received 100 percent of the records of public and non-exempt private companies, along with a one percent sample of exempt private companies (that is, private companies with twenty or fewer shareholders, none of which was a corporation). We estimated the preservation rate in the National Archives to be 91.3 percent for companies registered in 1892, 72.3 percent for companies registered in 1912, and 33.9 percent for companies registered in 1927.

[104] BT 31, Board of Trade: Companies Registration Office: Files of Dissolved Companies, National Archives, Kew, United Kingdom.

Files in the National Archives are organized, as they are received, by date of dissolution rather than by date of registration. Using a table of original running registration numbers, "Last Company Number for each Calendar Year," available at Companies House, we collected approximately every fortieth company registered during the three years. As a result of the changes in the procedure for depositing company records in the archives, short-lived firms may be overrepresented in these samples. We are confident that the 1892 sample is reasonably representative of the population of companies registered in that year. As a check, we randomly selected two hundred firms from the complete list of companies formed in the year 1892. See Table A1.

There may, however, be selection problems with the 1912 and especially the 1927 samples. One possible source of bias is that more of the firms registered in the latter two years were still in existence when we took our samples in 2005. The records of approximately 6 percent of the firms registered in 1927 were still in Companies House in 2005, as opposed to about 4 percent of the firms registered in 1912 and about 3 percent of the firms registered in 1892. Another possible source of bias comes from the relationship between the firm's date of dissolution and the probability that Companies House sent a firm's records to the National Archives. We calculate that the National Archives has records for only 34 percent of the companies formed in 1927 that were not still in Companies House in 2005, compared to 72 percent of those formed in 1912, and 91 percent of those formed in 1892. More importantly, the Archives' 1927 (and to a lesser extent, 1912) holdings over-represent companies with comparatively short lives, and as a result so do our samples from these years. Sixty-six percent of the companies in the 1927 sample formally dissolved within four years, compared to 44 percent of those in the 1912 sample and 42 percent in 1892. Similarly, 92 percent of the

companies in the 1912 sample dissolved within their first nineteen years, compared to 69 percent of the 1892 firms.[105]

This over-sampling of short-lived companies could affect our results if the characteristics that led firms to shape their articles in a particular way were either the same as, or correlated with, the characteristics that led them to dissolve relatively quickly. For example, we know that our 1927 sample has proportionally more small firms than our 1912 sample. One might worry, therefore, that we over-sampled small firms in 1927 because smaller firms had shorter lives. However, a comparison of the size distribution of companies in our 1912 and 1927 samples with the size distribution of the population of companies registered during these years provides some reassurance (here size is measured as nominal capital). As Table A1 shows, our 1927 sample does over-sample firms with a nominal capital of less than £1,000, but not dramatically, and the figures for all firms suggest that the large number of very small firms in our 1927 sample relative to 1912 faithfully captures the shift in the overall size-distribution of firms that was occurring during this period. The apparent discrepancies between the sample and the population can be attributed to sampling variability. The proportion of all firms with a capitalization of less than £1,000 in the 1927 sample is 0.36. This proportion has a standard error of 0.068. The population proportion is 0.26, and thus a simple confidence interval around the sample mean would include the population mean (the confidence interval would be approximately the mean plus or minus two times the standard error). Similarly, the sample proportion for firms of size 1000-5000 in 1912 is 0.56 while the population proportion is 0.40. But the standard error for the sample is

[105] Some of these differences may have resulted from exogenous economic conditions (the 1927 firms, for example, suffered the Great Depression), from changes in the kinds of companies that were incorporated, from changes in voluntary liquidation procedures that made it easier to dissolve, or from other changes that made it more costly not to dissolve inactive companies.

approximately 0.071, so once again the population proportion would be included within the confidence interval.

Our sample sizes are small, and we originally thought of them as pilot studies. But we found that the modifications that companies made to the model articles were so similar across the board that it was not necessary to go back to the archives and increase the size of our samples. The small sample sizes pose no statistical issues for the tests we report in the paper; univariate nonparametric tests such as the Mann-Whitney can be used with much smaller samples. The sample sizes do, however, limit our ability to explore more complex hypotheses using regression models.

We did, however, want to check whether companies whose shares traded publicly had articles of association that were systematically different from the (mainly private) companies in our registration samples. Because of the small number of public companies formed after 1907, we focused on our 1892 dataset and chose for comparison purposes a sample of about 50 companies for which financial information was reported in *Burdett's Official Intelligence* in that year and which had been organized no earlier than 1888. We restricted our attention to firms listed in the sections entitled "Commercial and Industrial" and "Iron, Coal, and Steel." Many firms listed under other headings are either financial firms (such as banks and insurance companies) or have some of the traits of a local monopoly (such as canals, waterworks, or gas and lighting enterprises). Businesses of this type face unusual regulatory and governance issues that should be pursued in separate research. We randomly selected our firms from each section, skipping those that were obviously foreign in the sense that they had registered in Britain but their operations were elsewhere. We also skipped firms whose only listing was debentures as

opposed to equity. We located the articles of the resulting companies in the National Archives and coded their articles in the same way as we did for the samples of all registered firms.

Table A1. Distribution of Nominal Capital of Companies Sampled in 1892, 1912, and 1927 Compared to All Companies Registered in Those Years (column percentages)

Nominal capital (£)	1892 registration sample	1892 sample of 200 from all companies	1912 registration sample	1927 registration sample	All companies, 1890	All companies, 1912	All companies, 1927
<1000	6	4	6	36	0	13	26
1000-5000	24	24	56	40	31	40	42
5000-10,000	17	17	14	8	14	16	13
10,000-20,000	18	16	6	10	11	13	9
20,000 and more	35	37	18	6	43	18	10

Sources: See the text of the appendix for a description of the 1892, 1912, and 1927 registration samples. The figures for all firms for 1890 are from "Statement No. 2: Companies Registered in 1890 (New Limited with Capital)," *Davey Committee Report*, Appendix, 63. The figures for 1912 and 1927 are from U.K. Board of Trade, *General Annual Report*, for those years. Columns do not always sum to 100 because of rounding.