NBER WORKING PAPER SERIES

# REVISITING AMERICAN EXCEPTIONALISM: DEMOCRACY AND THE REGULATION OF CORPORATE GOVERNANCE IN NINETEENTH-CENTURY PENNSYLVANIA

Naomi R. Lamoreaux

Working Paper 20231
http://www.nber.org/papers/w20231

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

This paper builds on collaborative work with Timothy Guinnane, Ron Harris, and Jean-Laurent Rosenthal. I am grateful for the comments of Jeremy Atack, Margaret Blair, William Collins, Stanley Engerman, Robert Margo, and participants in the NBER-Vanderbilt "Enterprising America" conference and the Symposium on "The New History of Capitalism" at University of California at Santa Barbara. Thanks too to Guillaume Frencia, Sasha Nichols Geerdes, Thao Nguyen, and Erinn Wong for their able research assistance and to the National Science Foundation, the University of California, Los Angeles, and Yale University for financial support. The views expressed herein are those of the author and do not necessarily reflect the views of the National Bureau of Economic Research.

NBER working papers are circulated for discussion and comment purposes. They have not been peer-reviewed or been subject to the review by the NBER Board of Directors that accompanies official NBER publications.

© 2014 by Naomi R. Lamoreaux. All rights reserved. Short sections of text, not to exceed two paragraphs, may be quoted without explicit permission provided that full credit, including © notice, is given to the source.

Revisiting American Exceptionalism: Democracy and the Regulation of Corporate Governance in Nineteenth-Century Pennsylvania
Naomi R. Lamoreaux
NBER Working Paper No. 20231
June 2014
JEL No. K2,N41

## ABSTRACT

The legal rules governing businesses' organizational choices have varied across nations along two main dimensions: the number of different forms that businesses can adopt; and the extent to which businesses have the contractual freedom to modify the available forms to suit their needs. Until the last quarter of the twentieth century, businesses in the U.S. had a narrower range of forms from which to choose than their counterparts in these other countries and also much less ability to modify the basic forms contractually. This article uses the case of Pennsylvania to argue that the sources of this "American exceptionalism" reside in the interplay between the early achievement of universal (white) manhood suffrage and elite efforts to safeguard property rights.

Naomi R. Lamoreaux
Department of Economics
Yale University
27 Hillhouse Ave., Rm. 39
Box 208269
New Haven, CT 06520-8269
and NBER
naomi.lamoreaux@yale.edu

# Revisiting American Exceptionalism: Democracy and the Regulation of Corporate Governance in Nineteenth-Century Pennsylvania

## 1. Introduction

The idea of American exceptionalism, particularly the notion that American institutions should be held up as a model to the rest of the world, has fallen out of favor among historians in recent decades. The idea had its roots in the Puritans' vision of their settlement in the Massachusetts Bay Colony as the "city on the hill" and in early-nineteenth-century Americans' belief in their "manifest destiny" (Murrin 2000; Onuf 2012). The Jacksonian historian George Bancroft, writing in the third quarter of the nineteenth century, and the Progressive historian Frederick Jackson Turner, writing at the century's end, transformed this belief into a story of the growth of democracy and the spread of liberty (Ross 1984; Tyrrell 1991). Although there was always a counter narrative that emphasized the limits of the achievement and the extent to which progress depended on hard-fought struggles waged by those on the bottom of society, the idea of American exceptionalism retained considerable influence on historical writing through much of the twentieth century. More recently, however, historians have stressed the dark side of these trends—the extent to which increases in the rights and status enjoyed by common white men came at the expense of women, blacks, native peoples, and immigrants. As a result, the notion that we should study American history for lessons that other countries might profitably emulate has largely disappeared from historical writing, despite the hold the idea continues to exert on the popular mind (Tyrrell 1991).

Economists are more likely than historians to hold the United States up as a model for the world to emulate, though they do not typically use the language of American exceptionalism.

Instead, economists usually discuss the American advantage as the product of a set of measurable characteristics that cross-country regressions have shown to be significantly related to economic performance. These characteristics include geographic factors that are largely outside history (such as climate or topography); institutional or cultural characteristics that, though they are products of history, are generally taken as givens (such as a country's ethnic or religious makeup); and institutional or cultural variables that, though they are products of history, could at least in theory be adopted by any country (such as democratic elections or a free press).[1] It is mainly this last category that leads economists to treat U.S. institutions as the standard to which other countries should aspire.

Cross-country regressions are necessarily crude, however. The need to collect the same types of measures for a large sample of countries means that key variables must often be represented by highly imperfect proxies.[2] Moreover, there is often an element of circularity in the choice of explanatory variables. Scholars start with knowledge of which countries are successful, pick variables that contemporary observation would suggest are causally associated with that success, and then see if the correlations withstand further scrutiny. But here they encounter the further problem that many of the variables that they hypothesize are important for economic development might also be endogenous products of that development or of other circumstances causally related to it. To deal with that possibility, economists search for some other variable that allows them to isolate causation—an "instrument" that is plausibly exogenous

[1] The literature is voluminous, but see for examples Barro 1997; Barro and McCleary 2003; McCleary and Barro 2006; Bloom and Sachs 1998; Gallup, Sachs and Mellinger 1999; Sachs and Warner 2001; Acemoglu, Johnson, and Robinson 2001; Rodrik, Subramanian, and Trebbi 2004; Papaioannou and Siourounis 2008.

[2] For example, Acemoglu, Johnson, and Robinson (2001) use an index of protection against expropriation that takes values ranging from 0 to 10 as a stand-in for the quality of institutions in recent times. The index was put together in 1991 by Political Risk Services as a guide for businesses, and the authors offer no analysis of its composition and quality or how it might differ from other possible metrics. Their instrument for institutional quality in the past is a measure of the mortality risk faced by settlers at the time of colonization. The measure was pieced together from scattered observations from two very different types of data sources and has been critiqued by Albouy (2012). See also Acemoglu, Johnson, and Robinson's response (2012).

and related to economic development only through the posited channel. That search typically leads to a measure that is either outside of history completely, such as a geographic indicator, or outside the historical processes being analyzed because it long predated them. What then all too frequently happens is that these "instruments" irresistibly become explanations in and of themselves, and the channels they were supposed to help identify fade into the background.[3] The result has been a flurry of "historical" studies in which history itself plays little or no role. Instead, these studies emphasize the persistent effects of the instrumental variable and treat what happened in the intervening centuries as if it was of little consequence.[4]

The larger purpose of this essay is to use the topic of corporate governance to show that historical processes matter. There is a large "law and finance" literature based on cross-country regressions that claims that countries with the good fortune to have entered the modern era with common-law legal systems have better growth prospects than those that inherited or adopted code-based legal systems, particularly those based on French law. According to this literature, common-law regimes offer external investors in corporations better protection against expropriation by corporate insiders and, as a consequence, countries that have them are able to support larger capital markets than code-law countries.[5] Much of this literature uses a simple one-zero coding scheme that treats all countries with common-law legal systems as if they are, and always were, alike.[6] But just a little digging in the statutes reveals that the legal rules governing corporations in the most economically successful of the common-law countries, the United States, were historically very different from those in Britain, which were themselves

[3] On this point, see especially Rodrik, Subramanian, and Trebbi 2004.
[4] Examples include Nunn 2008, Nunn and Wantchekon 2011, Alesina, Giuliano, and Nunn 2013.
[5] See especially La Porta, et al. 1997 and 1998. These articles sparked an enormous literature that has been surveyed in La Porta, Lopez-de-Silanes, and Shleifer 2008; and Roe and Siegel 2009.
[6] The standard technique in this literature is to "sweep out" differences in legal rules and histories among countries by including various kinds of controls and fixed effects.

more like the rules in civil-law countries. From the very beginning British company law imposed few constraints on the corporations formed under it. U.S. law, however, was both more restrictive about what incorporated firms were allowed to do and more prescriptive about the forms their internal contractual relations could take. As a consequence, corporate governance rules evolved along different paths in the two countries, with U.S. law offering minority shareholders significantly more protection at least until the mid-twentieth century (Harris and Lamoreaux 2010; Guinnane, Harris, and Lamoreaux 2013).

This difference between the U.S. and Britain resulted, I will argue, from the timing of the expansion of the franchise relative to the passage of general incorporation laws. In Britain (and also on the European continent), general incorporation predated universal manhood suffrage by many years. In the U.S. the timing was the reverse. The various U.S. states passed general incorporation laws in the context of a mass political movement aimed at preventing "the moneyed few" from using their political influence to gain unfair economic advantages. They also passed them in a context where elites were taking steps to prevent democratically elected legislators from tampering with property rights.[7] How these countervailing pressures played out on the ground varied from one state to the next. This essay focuses on the experience of Pennsylvania, where democratic politics kept the state's general incorporation laws remarkably restrictive, and where creditor-oriented (pro-property rights) courts hamstrung an early effort to create what Larry Ribstein (2010) has called an "uncorporation," essentially a limited liability company (LLC). It focuses in particular on the latter third of the nineteenth century in order to emphasize the importance of moving beyond initial conditions to examine the interaction of these forces over the long run.

[7] Though its details are different, the argument I am making is similar in spirit to Roe 1994.

There was no single, archetypal American story of the development of business institutions in the nineteenth century. Rather, there was a Pennsylvania story, a Massachusetts story, a New Jersey story, a Virginia story, an Ohio story, and so on. Nonetheless, the conflict over elite privileges versus property rights propelled by the early expansion of the franchise drove the evolution of business organizational forms throughout the United States in similar ways, and it continues to exert an effect on their development to the present day. It was this struggle over economic power that gave an important set of American business institutions their exceptional character. It also gave them characteristics that many scholars have since held up as models.

## 2. The Distinctive Character of the Corporate Form in the United States

Virtually everywhere in the world in the early nineteenth century, business people could only form corporations with the specific authorization of the state. By the end of the century, however, in the U.S. and most Western European countries, any group of business people who wanted to do so could form a corporation by a simple process of registration. General incorporation came earlier in the Anglo-American world than it did on the European continent, but this was mainly because the Napoleonic code gave businesses a wider menu of organizational forms that reduced the demand for corporate charters by enabling businesses to achieve some of the same benefits in other ways (Lamoreaux and Rosenthal 2005; Guinnane, et al. 2007). In France, for example, business people had two alternatives to the corporation. They could organize ordinary partnerships in which all the members participated in management and were unlimitedly liable. Or they could form additional limited partnerships in which managerial authority was concentrated in the hands of one or more general partners who bore unlimited

liability, with the limited partners risking only their investments and playing no role in running the company. Limited partnerships could even have tradable shares, which made them reasonable substitutes for corporations. In Britain, by contrast, the choices were much more restricted. Indeed, until 1907 the only alternative to the corporation that multi-owner enterprises could employ was the ordinary partnership.[8] In the U.S., most states passed laws in the early nineteenth century allowing businesses to organize limited partnerships, but the form never became widespread because creditor-oriented courts interpreted the law in ways that increased the risk that limited partners would be found unlimitedly liable (Lamoreaux and Rosenthal 2005; Guinnane, et al. 2007).

Although in both Britain and the United States the lack of alternatives to the ordinary partnership increased demand for the corporation, the different contexts in which the two countries came to enact general incorporation laws led to statutes that were poles apart in the way they functioned. In Britain, corporate charters were a rare and expensive commodity in the eighteenth and early nineteenth centuries because opponents were able to block each other in Parliament (Harris 2000). Business people responded to this difficulty by developing a work around: the unincorporated joint stock company (Freeman, Pearson, and Taylor 2012). This form was essentially a partnership whose governing contract allowed the company to concentrate managerial authority and function, for the most part, as if it were a legal person. Because unincorporated joint-stock companies lacked limited liability, however, they were a second-best solution to the problem of pooling capital. Moreover, after the passage of the Bubble Act of 1720, they operated in a legal grey area. When the courts handed down a series of decisions in

[8] In France, moreover, even ordinary partners could control the extent of their liabilities by writing contracts that restricted partners' ability to encumber the firm without the explicit approval of the other partners. Under the Napoleonic Code, such agreements were fully enforceable so long as they were registered. Under the British or American common law, by contrast, they were not enforceable against third parties that had not been notified in advance about their terms. See Lamoreaux and Rosenthal 2005.

the early nineteenth century that cast doubt on the companies' legitimacy, worried entrepreneurs deluged Parliament with petitions for charters, and Parliament repealed the Bubble Act in 1825 (Harris 2000). As the number of joint-stock companies surged over the next couple of decades, so did the number of companies that went bust. Support grew within the elite for legislation that would regulate the hodge-podge of private companies soliciting investments from the public without killing them off. The composition of Parliament had already shifted in favor of business interests in the wake of the Reform Act of 1832,[9] and Parliament finally responded to the growing demand for action by passing in 1844 an act granting corporate status, though not limited liability, to any company that registered, met certain minimal requirements, and promised to file regular financial statements. It completed the transition to general incorporation by adding limited liability in 1855 and 1856 (Harris 2000; Taylor 2006; Freeman, Pearson, and Taylor 2012).

Given the limited nature of the franchise in Britain during this period, it was mainly the interests of those involved in organizing and financing companies that shaped the content of the legislation. As a result, the statutes treated the relationship between a company's organizers and investors as contractual and left most aspects of the internal organization for them to decide. The original 1844 act had permitted founders of companies to add to the law's very basic governance template any "provisions for such other purposes (not inconsistent with Law) as the parties to such Deed shall think proper."[10] The 1856 law increased the extent of contractual flexibility by replacing the basic template with a set of default governance rules, included in a table appended to the act (Thring 1956). This table was formalized in 1862 as Table A. If a company did not

---

[9] The Reform Act only modestly expanded the franchise (less than one fifth of adult males could vote), but by redistributing representation to Parliament in favor of cities it had an important effect on British politics. See O'Gorman 1993 and Phillips and Wetherell 1995.

[10] Companies Act 1844 7&8 Vict. C. 110 Section VII.

submit its own articles of association at the time of registration, the detailed governance rules in Table A applied. But a company could reject any or all of the clauses of the table and write its own rules from scratch. The only governance rules that the law mandated were that the company hold a general meeting at least once a year and that the articles of association be amendable by a three-quarters vote of the shareholders (Guinnane, Harris, and Lamoreaux 2013).[11]

The contractual flexibility that British company law made possible contrasted sharply with the more prescriptive statutes passed by the various U.S. states (Gower 1956, Harris and Lamoreaux 2010). These statutes were enacted in a very different political environment. In the decades following independence, state governments had faced insistent demands to provide their citizens with the infrastructure needed for economic development, from transportation improvements to financial services. Without sufficient revenue sources to finance these activities on their own, they granted corporate charters to private groups that promised to undertake them in their stead (Seavoy 1982, Majewski 2000). These charters commonly included an array of special privileges, sometimes as inducements to invest in projects of uncertain profitability and sometimes in response to the lobbying of politically well-connected incorporators.[12] The most common was the grant of market power. Charters for turnpike, bridge, and canal companies typically conveyed a monopoly right to levy tolls, as well powers of eminent domain. But there were many other boons as well. Perks granted to incorporators of the Society for Useful Manufactures (SUM), a textile company chartered in New Jersey in 1791, included permission to raise funds through a public lottery and exemptions for the company's employees from taxes and military service, except in the case of invasion (Maier 1993). Bank

[11] British law set the minimum number of incorporators at seven, but in many closely held companies at least some of the seven were nominal. This practice was upheld by the House of Lords in *Salomon v. A. Salomon and Co. Ltd* (1897) AC 22.

[12] Political officials were often large shareholders in early corporations. See, for example, Hilt and Valentine (2012) on New York.

charters conveyed the right to issue currency in the form of bank notes (Handlin and Handlin 1969; Lamoreaux 1994). This privilege turned out to be so valuable that control of entry into banking became an important way of solidifying political power in the years following the American Revolution. Whichever party dominated the legislature kept tight control of bank charters, awarding them exclusively to prominent political supporters (Lu and Wallis 2013, Bodenhorn 2006).

The privileges that legislatures awarded those to whom they granted corporate charters generated a tremendous amount of resentment, both among the members of the general population who bore the burden of the higher prices and among entrepreneurs seeking the chance to compete away some of the monopoly rents. In the context of an expanding franchise, this discontent led to significant institutional change. In some places (Massachusetts is a good example), legislatures responded to popular pressure by handing out additional charters. In 1828, for instance, the Massachusetts General Court granted a charter of incorporation to a company that proposed to build a bridge over the Charles River right next to one that had the original monopoly (Kutler 1971). Massachusetts also granted numerous charters for banks in competition with existing financial institutions—so many, in fact, that when the state finally passed a general incorporation law in 1851, almost no banks organized under it (Lamoreaux 1994, Lu and Wallis 2013).

In most states, however, popular pressure led directly to the passage of general incorporation laws. When the political turmoil that followed the Panic of 1837 dislodged New York's Democratic political machine (the Albany Regency) from power, the legislature passed the first "free banking" act (Bodenhorn 2006). A number of other states soon passed similar legislation, and the New York statute subsequently became the model for the National Banking

Acts passed by the U.S. Congress during the Civil War (Bodenhorn 2002). The first general incorporation act for manufacturing was enacted by the New York legislature as a way of encouraging domestic industry during the run-up to the War of 1812, but few states followed suit until the late 1840s. The Panic of 1837 and the depression that followed a second major financial crisis in 1839 led a number of states to default on their debts. The political realignments that followed led to major constitutional reforms and also to the spread of general incorporation laws, so that by 1860 the vast majority (27 out of 32) states and territories had enacted them for manufacturing (Hilt 2013, Wallis 2005, Hurst 1970).

These laws were enacted in a context where there was widespread outrage about corporate privileges and the advantages of size that corporations' greater ability to raise capital was thought to confer. Not surprisingly, therefore, many of the general incorporation laws passed during this period contained strict limits on what corporations could do, how big they could grow, how long they could last, and what forms their internal governance could take. The extent of these regulations varied from state to state, as Table 1 demonstrates. Thus Ohio's 1846 law and Massachusetts's 1851 statute put a ceiling on capitalization of $200,000, and Illinois's 1857 law put the ceiling at $500,000. But neither New York's 1848 statute nor Pennsylvania's 1849 law imposed a limit. Pennsylvania set the term of a corporate charter at 20 years, Ohio at 40 years, and New York and New Jersey 50 years, while Massachusetts allowed corporations perpetual life. All of these states except Ohio limited the amount of debt that corporations could take on to some multiple of their capital stock (usually one). Pennsylvania had the most generous multiple, but it severely restricted the amount of real estate that corporations could own. The Massachusetts and New Jersey statutes did not specify a voting rule for shareholders, but New York, Ohio, and Pennsylvania mandated one share one vote, and Pennsylvania added a

restriction that no shareholder could vote more than a third of the total number of shares. The laws generally prescribed the number of directors, sometimes requiring them to be shareholders and/or citizens of the state. The statutes also often imposed liabilities on shareholders beyond the amount of their investment under specified circumstances.

The flip side of this democratic concern about corporate privileges was elites' anxiety about the security of their property rights in a democratic polity. From the nation's earliest years, James Madison and other prominent political leaders had worried that if the poor had political power, they would use it to redistribute property from the rich (Nedelsky 1990). As late as 1821, in a speech to New York's constitutional convention, Chancellor James Kent had opposed abolishing property qualifications for voting for state senators on the grounds that "[t]he tendency of universal suffrage is to jeopardize the rights of property, and the principles of liberty." It was human nature, Kent declared, for the poor to covet the wealth of the rich, the debtor to wish to avoid the obligation of contracts, and "the indolent and the profligate to cast the whole burthens of society upon the industrious and virtuous." Democratic politics provided "ambitious and wicked men" with the opportunity "to inflame these combustible materials," so it was critical to preserve at least one branch of the legislature "as the representative of the landed interest" (New York 1821, 221). Legislatures were already bowing to popular demands to the disadvantage of the wealthy, enacting stay laws to protect debtors from foreclosure during financial crises and passing adverse possession laws that made it easier for squatters to claim the property of landowners with legitimate titles (Hartz 1848, Gates 1962, Aron 1992, de Soto 2000, Balleisen 2001, Van Atta 2008).[13] Expanding the franchise, conservatives like Kent worried, would only make the pressures worse.

[13] Elites, of course, also used their influence in legislatures to take property from farmers and other small holders using eminent domain proceedings. See Lamoreaux 2011.

Legislatures also responded to popular pressures by reneging on privileges that earlier bodies had imbedded in corporate charters. In Massachusetts, for example, complaints that the original 1784 charter of the Massachusetts Bank was too expansive led the General Court to pass an "Addition" in 1792 that placed greater limits on the bank's operations (Maier 1992). The Virginia legislature intervened in a dispute between urban and rural members of the incorporated Mutual Assurance Society against Fires on Buildings of the State of Virginia, passing an act in 1800 that helped the rural segment gain control of the company by declaring that legislators would represent all absent members at general meetings. With the assistance of these legislative representatives, the country members were able to reorganize the company so that it better suited their interests (Campbell 1975). After the Virginia assembly chartered the Richmond James River Company in 1804, a deluge of complaints led the legislature to amend the charter and, over the objections of the company, exempt small boats from having to pay tolls (Campbell 1975).

The Supreme Court temporarily put a stop to such actions with Chief Justice John Marshall's famous declaration in *Dartmouth College v. Woodward* (1819)[14] that a corporate charter was a contract that the state could not unilaterally abrogate, but legislatures quickly learned to imbed reservation clauses in charters that gave them the authority to alter the terms at will (Hartz 1948, Wells 1886). Moreover, under the leadership of Chief Justice Roger Taney, a Jacksonian Democrat, the Court moved to construe corporate charters in the narrowest possible terms. When the Massachusetts legislature authorized the construction of the second bridge across the Charles River at Charlestown, proprietors of the original Charles River Bridge sued to block construction. In the words of attorney Warren Dutton, chartering the new bridge was "an act of confiscation." If the courts allowed men "to deal with each other as this act deals with the plaintiffs, the very frame-work of our civil polity would be broken down; all confidence would

[14] *Dartmouth College v. Woodward*, 17 U.S. 518 (1819).

be destroyed; and all sense of security for the rights of persons and property would be lost."[15] This argument did not carry the day, however. Nor did Justice Joseph Story's dissenting claim that if the proprietors had foreseen "such a total insecurity of all rights of property" as the legislature's actions signified, "the project would have been dropped, still born," and the growth in commerce that the bridge had made possible would never have occurred.[16]

Wherever and whenever they could, conservative jurists used the power of the courts to protect the rights of creditors and of property holders more generally. One important consequence of these efforts was to compress further the menu of organizational forms available to business enterprises. As already noted, the Napoleonic code enabled French entrepreneurs to organize limited partnerships, but English common law did not permit an equivalent form. In an early attempt to reduce the extent of the privileges associated with the corporate form, most of the U.S. states passed enabling statutes for limited partnerships during the 1820s and 1830s (Kessler 2003, Hilt and O'Banion 2009). The courts soon eviscerated these statutes, however, interpreting them, in their zeal to protect creditors, in ways that potentially exposed limited partners to liability. For example, judges tended to view any deviation from the declarations contained in the partnership certificate as sufficient cause to hold all of the partners unlimitedly liable for the firm's debts—even partners who were innocent of error, and even if the substance of the deviation was inconsequential (Lewis 1917; Warren 1929, Ch.6; Howard 1934). Not

---

[15] *Charles River Bridge v. Warren Bridge*, 36 U.S. 420 (1837). The quotation is from pp. 73-74 of the 1837 U.S. LEXIS 180 edition of the case.

[16] *Charles River Bridge v. Warren Bridge*, 36 U.S. 420 at 615. Taney in turn constructed his decision against the monopoly as necessary for economic development. He conjured up a nightmarish vision of proprietors of old turnpike corporations "awakening form their sleep" to claim similar rights, putting in jeopardy "the millions of property which have been invested in railraods and canals" along adjacent routes. See pp. 552-53. For an extended analysis of this case, see Kutler 1971.

surprisingly, the form was used much more rarely in the United States than in France or elsewhere on the European continent.[17]

## 3. A Tale of Two Statutes: Pennsylvania in the Late Nineteenth Century

Distrust of corporations, on the one hand, and of democracy, on the other hand, continued to shape the organizational choices available to business people during the second half of the century. Pennsylvania is a good case to study these ongoing effects because the expansion of the franchise occurred there particularly early. The state was among the first to abolish property qualifications for voting, entering the new United States with a tax qualification that seems to have been quite minimal. Fully 71.5 percent of the state's adult white male population voted in the 1808 presidential election, and 77.4 percent voted in 1840 (Engerman and Sokoloff 2005). When a group of delegates to the 1837 state constitutional convention pushed to eliminate the tax qualification altogether, none of them claimed that it had kept otherwise qualified residents from voting. Instead, the argument they made for abolition was theoretical and abstract. Although the move to eliminate the tax qualification failed, the delegates did succeed in reducing the residency requirement for voting from two years to one—probably a more significant change given the highly mobile character of the population (Akagi 1924, Keyssar 2000, Pennsylvania 1837, Vol. 2, 470-96, 500-61, Vol. 3, 113-45, 148-73).

Corporations were a hot-button political issue in Pennsylvania as early as the 1780s, when controversy over the privileges granted to the Bank of North America led a hostile

[17] Hilt and O'Banion (2009) found "a surprising number" of limited partnerships in New York City in the early nineteenth century, counting 1,098 registrations between 1822 and 1858. However, Howard (1934) searched the records of five New Jersey counties from the 1830s until the 1930s and found registrations for only 140. I compiled a sample of partnerships reported in the R. G. Dun credit ledgers for Boston for the 1840s and 1850s and found that only 2 out of 164 were limited. For the details of the sample, see Lamoreaux 1997.

legislature to repeal its charter in 1785. Two years later a newly elected assembly granted the bank a second charter but with less generous provisions (Maier 1993, Hartz 1948, Hammond 1957, Schocket 2007). The reincarnated Bank of North America managed to stave off competing institutions until 1793, when the legislature chartered the Bank of Pennsylvania in Philadelphia and invested state funds in its stock. Over the opposition of the incumbents, however, two more banks were chartered in the city in 1804 and 1809 respectively (Schwartz 1987, Schocket 2007). The vehemence with which these four banks sought to block additional charters fueled the suspicion that their shareholders were both earning monopoly profits and benefiting from their privileged access to credit. As the political balance in the legislature changed in the wake of the War of 1812, this suspicion, coupled with the dire need for banking facilities in other parts of the state, led to the passage (over the governor's veto) of an omnibus bill chartering about two score new banks (Schocket 2007). Then the political winds shifted again, and the movement for additional charters stalled. The relatively few banks incorporated over the next several decades paid hefty bonuses to the state in exchange for their charters (Hartz 1948), leading to charges of a corrupt bargain between banks and the legislature and raising the specter of more nefarious bribery behind the scenes.[18]

This context provided the backdrop for Pennsylvania's constitutional convention of 1837 which opened in May, the same month as the financial panic of that year led banks to suspend specie payments. The financial crisis dominated the convention's debates, focusing attention on banks almost to the exclusion of other types of corporations. Nonetheless, in the give and take over banking corporations, delegates gave voice to all the same popular concerns that inflected discussions of corporations more generally—their dominance by the moneyed elite and the

[18] Critics raged about lobbyists they called "borers," who crowded into Harrisburg when the legislature was in session and "contrive[d] to procure the passage of laws for selfish and sinister purposes" (Pennsylvania 1837, Vol. 6, 92, 183, 258, 434).

unfair advantages that corporations obtained through their charters—but also elite fears about the security of property rights.

At the convention, the majority of the "Special Committee on the Currency, Corporations, Public Highways and Eminent Domain" reported that there was no need to change any of the existing constitutional provisions relevant to these topics. A minority of the members of the committee begged to differ, however, and proposed seven constitutional amendments. All of them pertained to banking, but the minority concluded its report with a diatribe against corporations more generally that resonated for the duration of the convention. "If the principles of the Declaration of Independence, and the Bills of Rights attached to each, and all of the several State Constitutions, are to be faithfully carried out in practice, if these charters of American liberty and equality are realities, things, not mere words," the minority insisted, all corporations "conferring privileges for gain, are unrepublican and radically wrong" (Pennsylvania 1837, Vol. 1 366).

> For the moment that two or more individuals are associated by act of law, and endowed with privileges which do not belong to them as individuals, all natural, social and political equality is destroyed for their advantage, and to the prejudice of the rest of the community. Equality is put an end to, and an aristocracy created, which although without titles, must be inconsistent with the genius and principles of free institutions.
> (Pennsylvania 1837, Vol. 1 366)

Supporters of the minority demanded that "the power corporations now exercised ... to the detriment of equal rights ... be limited or abolished" (Pennsylvania 1837, Vol. 1, 321)—that charters that perpetrated "a fraud upon the people" were "repealable" (Pennsylvania 1837, Vol. 6, 434). In the end, however, all they obtained from the convention was a provision in the 1838

constitution limiting future bank charters to twenty years and requiring that each charter contain a clause "reserving to the legislature the power to alter, revoke, or annul the same, whenever in their opinion it may be injurious to the citizens of the commonwealth," a directive that was softened by the addition of language requiring that any such action be accomplished in "such manner ... that no injustice shall be done to the corporators" (Section 25).[19]

Supporters of corporations were able to beat back the more radical proposal by arguing that to allow the state unilaterally to alter or repeal a charter's existing provisions would be an intolerable infringement on property rights. "We have a great deal of stock held in Pennsylvania by citizens of the commonwealth as well as strangers, and it was of great importance to the community at large, that they should know when they made an investment upon the faith of the government, that it would be secure and stable" (Pennsylvania 1837, Vol. 5, 507). Echoing the Supreme Court's ruling in the *Dartmouth College* case, supporters insisted that a corporation was a contract between the government and certain of its citizens, who "undertake, in consideration of the privileges bestowed, to do what the government is interested in having done" (Pennsylvania 1837, Vol. 5, 534). Corporations had been responsible for "the great improvements that have been made in the State" (Pennsylvania 1837, Vol. 1, 375), and tampering with charters would bring such progress to a halt.[20]

From the convention's opening there were several attempts (all unsuccessful) to bar the legislature from granting special charters of incorporation and move instead toward a system of general laws (see, for examples, Pennsylvania 1837, Vol. 1, 129, Vol. 2, 172, and Vol. 6, 384).

---

[19] The constitution was amended in 1857 to extend this clause to all corporations. The other major achievement of the convention was to bar the state from continuing to invent money in corporations. For the text of Pennsylvania's 1838 constitution and subsequent amendments, see the NBER/Maryland State Constitutions Project, http://www.stateconstitutions.umd.edu/index.aspx, accessed 8 June 2014.

[20] It should be emphasized that nearly two decades after the *Dartmouth College* decision, the issue was still so hotly contested that it took up approximately the last two hundred pages of Vol. 5 of the convention's proceedings and spilled over into other volumes. The dominant property rights argument was similar to the losing position in the *Charles River Bridge v. Warren Bridge*, 36 U.S. 420 (1837) See especially Justice Joseph Story's dissent.

Proponents argued that open access to the corporate form would counteract the inequality that the special charter system had exacerbated. "The principle of corporate or joint associations ... [had] enabled the many, with small means, to compete with the few who were wealthy," and it would improve their position even more "if the monopoly principle of our present corporations were abolished, and all men left free to associate with shares, large or small, at their pleasure" (Pennsylvania 1837, Vol. 1, 385). Such arguments did not carry the day, however. There was no aversion in Pennsylvania to the idea of general incorporation laws per se. As early as 1791 the legislature had enacted a statute enabling groups formed for "any literary, charitable, or for any religious purpose" to incorporate (Pennsylvania 1810). But the idea that access to bank charters could be opened up to all comers without undermining the soundness of the financial system was not yet widely shared. One delegate even blamed the law of 1814, which had granted charters to about 40 banks, for inflicting "on the commonwealth an evil of a more disastrous nature than has ever been experienced by its citizens" (Pennsylvania 1837, V. 5, 528).

Nor was there much experience with general laws for business corporations of any kind. New York had enacted the first such statute for manufacturing in 1811 to encourage domestic production during the embargo on trade with Britain and France.[21] Only Ohio and New Jersey followed suit, and both states later repealed their acts (Hilt 2013). Even in New York there was sufficient uncertainty about the principle of general incorporation for business that the 1811 statute was initially enacted for only five years, though it was subsequently renewed several times before being made permanent in 1821 (Kessler 1940, and Seavoy 1982). At the time of the Pennsylvania convention, New York's pioneering free banking law was still a year in the future (Bodenhorn 2006). Some states, like Massachusetts and Rhode Island, had already loosened

[21] "AN ACT relative to Incorporations for Manufacturing Purposes," passed March 22, 1811. There was sufficient uncertainty.

access to bank charters, but they had done so simply by regularizing the process of granting special charters, enabling the legislature to continue to vet incorporators' character (Handlin and Handlin 1969, Lu and Wallis 2013, Lamoreaux 1994). Pennsylvania would not adopt a general incorporation statute for banking until 1860 (Hartz 1948).

The year before the convention, Pennsylvania had begun to experiment with general incorporation laws for manufacturing. Given the uncertainties involved and the widespread popular distrust of corporations, it is not surprising that the first law was highly restrictive. It encompassed only companies that manufactured iron using processes fueled by coke or mineral coal and applied this limitation so strictly that not even other kinds of iron companies could avail themselves of the act.[22] As Section 7 emphatically stated, "nothing herein contained shall be construed to empower such corporation to manufacture iron which has not been manufactured from the ore, with coke or mineral coal." Not until 1852 was the act extended to companies manufacturing iron with charcoal.[23] Charters for companies organized under the 1836 act were limited to twenty-five years duration. The companies had to have a capital of at least $100,000 but not more than $500,000 and would forfeit their charter if at any time they contracted "debts to a greater amount than that of the capital subscribed." They could hold no more than 2,000 acres of land divided into no more than three parcels, all of which had to be in the same county or in "two counties which shall adjoin each other" (Sections 1, 3 and 6). Companies were to be managed by a board of directors elected by the stockholders according to a proportional voting rule that limited the number of votes large shareholders could cast (Section 3).

---

[22] "AN ACT To encourage the manufacture of Iron with Coke or Mineral Coal ..." 16 June 1836. All acts are taken from the Session Laws for Pennsylvania available on www.heinonline.org.

[23] It was extended to companies that made steel as well as iron in 1864. "A Further Supplement To an act to encourage the manufacture of iron with coke or mineral coal ..." 3 May 1864. See Eastman 1908, Vol. 1, p. 6.

The more general law "To encourage manufacturing operations in this commonwealth" that the legislature enacted in 1849 continued the prescriptive spirit of the 1836 act. It originally applied only to a limited set of companies formed "for the purpose of carrying on the manufacture of woolen, cotton flax, or silk goods, or of iron, paper, lumber or salt,"[24] but it was gradually extended over the next couple of decades to "the manufacture of glass" (1850), "articles made from salt, except in Philadelphia" (1851), "printing and publishing" (1851), "manufacture of enamelled and vitrified iron, and articles made of cast or wrought iron, coated with glass or enamel, within the County of Allegheny" (1852), "oil and other products of rosin" (1852), "mining and manufacturing of mineral paints and artificial slates and other articles made by the use of said painting materials except in Philadelphia" (1852), "manufacture of artificial manures, and of articles made out of iron and other metals, or out of wood, iron and other metals" (1853), "mining coal, mining, quarrying and preparing for market lime, marl, soda, hydraulic cement, or other minerals, smelting copper, lead, tin or zinc ores, quarrying marble, stone or slate, and manufacturing lumber" (1853), "manufacture of flour in Philadelphia and Beaver counties" (1853), "quarrying, preparing for market and vending marble, sandstone and other stone used for building purposes" (1853), "common carriers, without the capacity to hold real estate" (1854), "manufacture of leather in certain counties" (1859), "manufacture of oils, hydro-carbon fluids and all other products resulting from subjecting coal of any kind to the action of heat or the process of distillation" (1856), "manufacture of oil from mineral coal in Beaver County" (1859), "the mining, manufacturing and refining of carbon oil" (1860), "manufacture of fuel" (1860), "manufacture and preparation of lubricating oil and material, out of and from mineral oils, and other oils or fatty substances, whether mineral animal or vegetable"

[24] "AN ACT To encourage manufacturing operations in this commonwealth," 7 April 1849.

(1863), and the "manufacture of leather in the county of Elk" (1865) (Eastman 1908, Vol. 1, 8-9).

The 1849 act and its supplements imposed substantial limitations on the activities and internal governance structures of the companies chartered under them. Although companies faced no ceiling on capital and could have liabilities up to three times the amount of capital paid in, they could not hold more than 2,000 acres in real estate and their duration was limited to twenty years. They were to be managed by a board of 5 to 13 directors, the majority of whom must be citizens of the United States. The president had to be a director, but the secretary and treasurer could not be. Stockholders had one vote per share, but no individual stockholder could cast votes amounting to more than one-third of the issued shares. Directors had the power to make bylaws "subject however to the revision and approval of the stockholders." There were elaborate rules governing voting by proxy (for example, "no stockholder, females excepted, residing within ten miles of the place appointed for such general meeting or election, shall vote by proxy"), the powers of directors (they could not use the company's funds "for any banking purposes whatever, nor in the purchase of any stock in any other corporation," nor to make loans to any stockholder or officer on the security of the company's own stock), and for calling special meetings or holding meetings and votes to increase or decrease capital.[25]

The restrictive character of Pennsylvania's general incorporation laws encouraged companies to continue to seek special charters in the hopes of securing better terms. Five years after the passage of the 1849 law, less than a dozen companies had incorporated under it (Hartz 1948). Yet in 1855 alone the legislature passed 196 private bills chartering or amending the charters of for-profit business corporations. In 1868 there were 207 such bills. Focusing just on acts relating to iron companies, one can see that corporations were able to use special legislation

[25] "AN ACT To encourage manufacturing operations in this commonwealth," 7 April 1849.

to gain permission to do all kinds of things that were otherwise forbidden: to buy stock in other companies, to engage in related lines of business, such as building a railroad or a telegraph, to borrow money in greater amounts or in other ways than allowed by the general statute, to institute non-standard voting rules for shareholders in elections for directors, and even occasionally to escape the limits on real estate holdings.[26]

The legislature's continued willingness to grant special charters fueled charges of corruption and heightened antipathy to both corporations and the legislature. The issue came to a head in 1872 when it came time again for Pennsylvania to rewrite its fundamental law. As the delegates gathered in November of that year, it quickly became apparent that the central reform impulse of the convention would be to get the legislature out of the business of passing "local or special" laws of all types. First and foremost among the types of legislation singled out for banning were special charters of incorporation.

### 3.1. The 1872-73 Constitutional Convention

If businesses were no longer going to be able to secure special charters that met their needs, then the restrictive character of the state's general incorporation laws posed serious problems. Worried industrialists found a champion at the convention in the person of Henry C. Carey, the well-known writer on political economy. Carey, a Republican delegate at large, chaired the Committee on Industrial Interests and Labor, and he embedded his views in the

[26] See, for examples, "AN ACT To enable the Sharon Iron Company, of Mercer county, to subscribe to the Stock of the Pittsburg and Erie Railroad Company," 5 April 1855; "AN ACT to incorporate the Hopewell Coal and Iron Company," 7 May 1855; "AN ACT To incorporate the Saucona Iron Company, in the county of Northampton," 8 April 1857; "AN ACT To incorporate the Sullivan Coal and Iron Company," 2 March 1868; "AN ACT To incorporate the Emaus Iron Company," 11 March 1870; "AN ACT Relative to the Bloomsburg Iron Company, 12 March 1870; "A Further Supplement To an act, entitled 'An Act to incorporate the Emaus Iron Company ..." 2 April 1872. The evidence in many of the charters and supplements is contrary to Hamill's claim (1999) that special charters were generally little different in their salient features than charters obtained under general laws.

committee report he presented to the convention (Pennsylvania 1873, Vol. 5, 470-81). The new constitution, he proclaimed, should guarantee "the right of the people of the State to associate together for all lawful purposes, and for trading on principles of limited or unlimited liability" (Pennsylvania 1873,Vol. 5, 481). In other words, it should embody the principle that Douglass North, John Wallis, and Barry Weingast (2009) have called "open access," where the government no longer determines who can form such organizations or what the organizations can do.

Carey complained that in Pennsylvania, in contrast to Great Britain and a few of the other U.S. states, "the right of association, for any purposes of trade or profit, has never been admitted" (Pennsylvania 1873, Vol. 5, 479). He offered as an example a so-called general incorporation law enacted by the legislature the previous year. Not only was the statute restricted to iron and steel and other enumerated types of manufacturing enterprises, but it imposed significant disadvantages on enterprises that chose to limit their liabilities. Limited enterprises had to pay a higher "bonus" to the state at the time of their formation. In addition, their shareholders remained unlimitedly liable "for debts due for labor or services" (Pennsylvania 1873,Vol. 5, 480). Because Pennsylvania's general laws routinely imposed such taxes and liabilities on members of corporations that formed under them, they have "remained almost, if not absolutely, a dead letter." Businesses could get better terms by seeking to incorporate instead under special acts (Pennsylvania 1873, Vol. 5, 480).

Carey's committee did not have jurisdiction over the parts of the constitution that concerned corporations, so it overstepped its authority in making this recommendation in its report. The committee that did have jurisdiction, the "Committee on Private Corporations," had not included a similar statement in the article it initially drafted. However, on the article's

second reading, the committee's chair, George W. Woodward (Chief Justice of the Pennsylvania Supreme Court and a Democratic delegate at large), proposed an amendment that Carey accepted as a close substitute: "It shall be the duty of the Legislature to provide by general enactment that any five or more persons, citizens of this Commonwealth, associated for the prosecution of any lawful business, may, by subscribing to articles of association and complying with all requirements of law, form themselves into an incorporated company, with or without limited liability, as may be expressed in the articles of association, and such publicity be provided for as shall enable all who trade with such corporations as adopt the limited liability to know that no liability exists beyond that of the joint capital which may have been subscribed" (Pennsylvania 1873, Vol. 6, 17). After an extensive discussion, the convention agreed provisionally to a revised version of the amendment that cut the phrase about the legislature's duty and simply conferred the right of association on "any two or more persons, citizens of this Commonwealth" (Pennsylvania 1873, Vol. 6, 27).

This amendment, however, was stricken from the draft constitution on the third reading. Despite Woodward's support, it had been added to the article mainly with Republican votes. Republicans had overwhelmingly supported the measure on second reading, with 40 in favor and only 11 opposed, whereas the Democratic delegates had been evenly divided, with 23 for and 25 against (Pennsylvania 1873, Vol. 6, 27).[27] After the debate heated up on the third reading, Democrats voted to strike the amendment by a three to one margin, 33 to 11. The Republican vote was closer, but Republicans also favored striking the amendment by a vote of 27 to 23 (Pennsylvania 1873, Vol. 7, 779).[28]

[27] One Liberal Republican and two unaffiliated at-large delegates also voted for the amendment. Thirteen Democrats, seventeen Republicans, and 1 unaffiliated at-large delegate were absent at the time of the vote.
[28] One Liberal Republican voted to delete the amendment and three unaffiliated at-large delegates voted to keep it. Seventeen Democrats and eighteen Republicans were absent at the time of the vote.

If Republican delegates had continued to support the proposition in the original proportions, the amendment would have passed, but on third reading Democratic opponents of corporations shrewdly played on Republic fears about the security of property rights. When the amendment had been originally proposed during the article's second reading, a few Democratic delegates had spoken against it on the grounds that it was "class legislation in favor of capitalists" (Pennsylvania 1873, Vol. 6, 23). On the third reading, however, these opponents moved beyond their general antipathy to corporations to expound on the dangers to creditors of making limited liability so broadly accessible to small firms. Thus S. C. T. Dodd warned that "we shall have no more partnerships; individuals cannot do business; it will all be done by corporations … and every one knows that the moment men form themselves into a corporation they lose their moral responsibility in their business" (Pennsylvania 1873, Vol. 7, 765).[29] These expressions of concern for creditors of small businesses were somewhat disingenuous. As the convention's subsequent actions make clear, the positions of many of the Democratic representatives were driven by fears about the economic power of large-scale business and the wealthy individuals who dominated them. Their warnings about the dangers of limited liability resonated, however, with a certain type of Republican worried about protecting creditors' rights. As one Republican delegate who had originally supported the amendment fretted, the clause would enable any two persons to "set up a grocery on the corner in any town, advertise that they have put in a thousand dollars, spend it all, and leave their creditors minus" (Pennsylvania 1873, Vol. 7, 763). As a consequence, the vote on striking the amendment was much less split along party lines than other votes on corporations.

---

[29] Ironically, about a decade later, Dodd would, as lawyer for Standard Oil, engineer the formation of the Standard Oil Trust.

Not only did Democrats in the convention oppose embodying in the constitution a right freely to form corporations, but they went further and imbedded in that document rules that restricted what corporations could do and how they could be governed. These rules were of a specificity that one normally might expect to be a matter of statute (British law left them for the incorporators to determine in their articles of association), but they signaled the continued hold of the idea that the corporate form facilitated a dangerous concentration of economic power and therefore had to be controlled. Hence the 1873 Constitution specified that a corporation could not hold real estate beyond what was "necessary and proper for its legitimate business" (Article XVI, Section 5), that "no corporation shall issue stocks or bonds except for money, labor done, or money or property actually received" (Article XVI, Section 7), and that increases in capital within the ceilings allowed by law required "the consent of the persons holding the larger amount in value of the stock" obtained at a meeting "held after sixty days notice" (Article XVI, Section 7). The constitution even imposed a uniform voting rule for "all elections for directors or managers of a corporation," mandating that "each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer" (in other words, cumulative voting) (Article XVI, Section 4).

The most vocal supporters of including these restrictions in the constitution spoke about the evils of corporate privileges and their corrupting influence on the legislature. Thus Charles R. Buckalew, a Democratic delegate from a largely rural part of the state, countered an objection that the imposition of cumulative voting would bypass the legislature and strip it of its regulatory authority by claiming that legislators had been so corrupted by large corporations that they could not be trusted to use their powers for the public good:

> Yes, sir, it does take away the power from the Legislature to give undue power to dominating men or cliques who undertake to run corporations in their own special interests and to the disadvantage of the stockholders. It is a check upon the Fisks and the Vanderbilts of the country in manipulating Legislatures to the injury of the general stockholders of a company; and that is all the effect that it has. The Legislature ought not to have this subject in charge. It ought to be settled as one of the fundamental arrangements concerning these corporate bodies. (Pennsylvania 1873, Vol. 5, 759)

Rallying to this kind of Jacksonian rhetoric, Democratic delegates voting overwhelmingly (37 to 7) in favor of inserting into the constitution a requirement that corporations adopt cumulative voting. A large majority of Republican delegates opposed the measure (the Republican vote was 14 to 27), but that was not sufficient to prevent its passage on second reading (Pennsylvania 18773, Vol. 5, 768).[30] The provision easily withstood a motion to delete it on the third reading of the bill (Pennsylvania 1873, Vol. 7, 760-61).

Pennsylvania's 1873 Constitution stripped the legislature of much more than the right to regulate voting procedures in corporations. The revulsion that Delegate Buckalew expressed about the corrupt use of legislative power permeated the entire convention. As a result, Article III, Section 7 contained a long list of categories of special legislation that the legislature was henceforward prohibited from enacting, ranging from the political (laws "locating or changing county seats, erecting new counties or changing county lines," "creating offices, or prescribing the powers and duties of officers in counties, cities, boroughs, townships, election or school districts," "fixing or changing the place of voting, laws changing the venue of civil or criminal cases") to the judicial (laws "changing the venue in civil or criminal cases" or "regulating the

---

[30] The one Liberal Republican voted for cumulative voting, and two unaffiliated at-large delegates voted against. One unaffiliated at-large delegate was absent at the time of the vote, as were 17 Democrats and 27 Republicans.

practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding") to the personal (laws "changing the names of persons or places," "authorizing the adoption or legitimation of children," or "granting divorces"). Prominent on the list was the prohibition against special charters of incorporation: "The General Assembly shall not pass any local or special law … Creating corporations, or amending, renewing or extending the charters thereof [or] Granting to any corporation, association or individual any special or exclusive privilege or immunity ..."[31] No longer would the legislature have the power to enact private bills that enabled corporations to evade the restrictive provisions of the general laws.

### 3.2. Pennsylvania's 1874 General Incorporation Law

Now that there was no longer any escape hatch through private legislation, the content of the public laws governing corporations became critically important. When the new legislature convened in early 1874, it immediately got to work on a revision of the state's general incorporation law. The senators who first tackled the assignment understood the stakes involved. As one member put it, "while we agree that the prohibition against special legislation creating corporations is wise, we also agree that we must be careful of the ground upon which we are walking." He went on to warn against writing a statue that will "build up a Chinese wall around our great State" that will scare off foreign capital (Pennsylvania 1874b, 541). The Speaker of the Senate, Butler B. Strang (a Republican from Tioga County) put the matter even more bluntly. Referring to the undeveloped parts of the state, he proclaimed, "[I]n my judgment, the question [is] whether that provision of the new Constitution ... is to operate so as to entirely blot out the enterprise and the investment of capital" (Pennsylvania 1874b, 541).

[31] Many other states enacted similar constitutional prohibitions around the same time. See Hennessey and Wallis 2013.

Although Republicans dominated both houses of the Pennsylvania legislature in 1874, the statute that finally passed on April 29, 1874 fell dramatically short of what Carey and his allies in the constitutional convention had wanted.[32] Rather than a liberal statement of the right of association, the statute restricted access to corporate charters to a list of specifically enumerated types of enterprises.[33] Rather than simply granting members of corporations limited liability, it continued to burden them with additional liabilities. Rather than a statute that allowed incorporators a great deal of contractual flexibility like the British law Carey so admired, the act mandated important aspects of every corporation's governance structure. In addition, the law placed strict limitations on the size of many types of corporations, as well as the extent of their real estate holdings and indebtedness.

More specifically, the statute directed that the business of any manufacturing, mining or quarrying companies must "be confined exclusively to the purposes ... specified in its charter, and no such company shall manufacture or sell any commodity or articles of merchandise other than those therein specified" (section 43).[34] Shareholders were subject to double liability. That is, in addition to their investment, they were individually liable "to the amount of stock held by each of them, for all work or labor done, or materials furnished, to carry on the operations" of their company (Section 14). Shareholders in iron and steel companies were fully liable as individuals for "debts due to the laborers, mechanics, or clerks, for services" provided in the past six months (Section 38). Those in manufacturing companies more generally were jointly and

---

[32] See "AN ACT To provide for the incorporation and regulation of certain corporations," enacted 29 April 1874.

[33] Section 2 listed the types of "Corporations Not for Profit" that could be formed under the act and also the types of "Corporations for Profit." The latter included narrow categories such as "the supply of ice to the public," or "the construction and maintenance of a bridge over streams within this state," but also broad categories, such as "the carrying on of any mechanical, mining, quarrying or manufacturing business." "The manufacture of iron or steel" was listed separately from other manufacturing activities and the statute imposed some different rules on corporations in this category, as it did for other separately listed types of corporations.

[34] Legislators were especially concerned to prevent corporations from establishing company stores, and the section went on to restrict buying and selling on company premises and to prohibit companies from withholding employees' wages in payment for goods.

severally liable for the company's debts "if any part of the capital stock ... [was] withdrawn and refunded to the stockholders." Directors were personally liable for dividends declared when the company was insolvent or if they encumbered the enterprise beyond the statutory ceiling (Section 39).

Corporations could enact bylaws for their governance, but the statute specified that the business of every corporation "shall be managed and conducted by a president, a board of directors or trustees, a clerk, a treasurer," and such other officers as the corporation authorizes. Directors or trustees were to be chosen annually by the stockholders. There must be at least three, and a majority had to be present for the board to act (Section 5). As mandated by the state constitution, stockholders had the right to cumulate their votes for specific directors or trustees (Section 10). Corporations could borrow money but, except as otherwise provided by the act, only to an amount "not exceeding one-half of the capital stock ... paid in, and at a rate of interest not exceeding six per centum" (Section 13). Corporations could issue preferred stock with the "consent of a majority in interest of its stockholders, obtained at a meeting to be called for that purpose" (Section 16). The law required a similar majority vote of the stockholders to increase or decrease a corporation's capital and specified in elaborate detail the method of conducting such a ballot (Sections 19-21).

With a few exceptions, corporations chartered under the act were limited to $1 million in capital (Section 11). Iron and steel companies could have a capital of up to $5 million and could issue bonds amounting to three times paid-in capital ("bearing interest not exceeding six per centum"), but they could not hold more than 10,000 acres of land within the state, "including leased lands" (Section 38). As a general rule, it was not lawful for corporations to use their funds to purchase stock in any other corporation "or to hold the same, except as collateral

security for a prior indebtedness" (Section 11), but iron and steel companies were specifically exempted from this prohibition (Section 38). "Companies incorporated ... for the carrying on of any mechanical, mining, quarrying, or manufacturing" business also faced a ceiling on capital of $5 million dollars, but these companies, upon the vote of three quarters of their stockholders, could also issue a second kind of stock called "special stock" up to two-fifths of their total capital. Special stock resembled bonds in that it was "subject to redemption at par, after a fixed time to be stated in the certificates." It also bore a fixed rate of dividend, "not exceeding four percent." Holders of special stock bore no personal liability beyond their investment. Mechanical, mining, quarrying, and manufacturing corporations could hold real estate, but only so much as was "necessary for the purpose of its organization," and they could borrow up to the amount of their paid-in capital (Section 39).

The prescriptive features of the bill were present when it was first reported out of committee (as Senate Bill No. 44) on February 11, 1874, and they survived the amendment process largely intact. Most of them did not even generate any discussion. One exception was the provision limiting the amount of land that iron and steel companies could own or lease to 10,000 acres. Thomas Chalfant, a Democratic senator who represented Columbia, Montour, Lycoming and Sullivan counties, proposed an amendment that would reduce the figure to 5,000 acres, and his motion generated a heated exchange about the need to attract capital to develop the state's resources versus the danger of allowing corporations to monopolize those resources. Chalfant's motion was defeated by a vote of 15 to 10 (eleven Republicans and one Liberal Republican voted against the amendment and six Republicans voted in favor of it). What is most striking, however, is that no one in this Republican-dominated Senate argued that the limitation

on land holdings should be removed altogether. Rather the debate was over whether the provision should be even stricter.[35]

### 3.3. Pennsylvania's 1874 Statute for Partnership Associations

The Republicans, it seems, had something else up their sleeves, for a few days after the legislature passed the new general incorporation law, it began consideration of an enabling statute for another form of limited liability company that would not be called a corporation and hence would not push any of the same political buttons. Senate Bill No. 295, "An act authorizing the formation of partnership associations ..." was introduced in the Senate on May 4 and became law on June 2.[36] The legislation passed with overwhelming bipartisan support and generated little debate in either house en route to passage.[37]

In many respects the bill was opposite in spirit to the general incorporation act. It was only three pages long, as opposed to thirty-five pages for the corporation bill, and the business form it enabled was remarkably flexible. The bill's simple language allowing "any three or more persons ... to form a partnership association, for the purpose of conducting any lawful business or occupation within the United States or elsewhere" was similar to Carey's original proposal to the constitutional convention. Although the term of a partnership association was limited to a maximum of twenty years, there were no ceilings on capital or on the amount of real estate that

---

[35] Three Republicans were absent. The Democrat vote was 4 in favor, 3 opposed, and 5 absent. For the vote, see Pennsylvania (1874b), 542. The party affiliations of the senators are from Smull (1874).

[36] As will become clear, the new form was much like a modern LLC. See "AN ACT Authoring the formation of partnership associations, in which the capital subscribed shall alone be responsible for the debts of the association, except under certain circumstances" 2 June 1874. As Edward H. Warren later cynically commented, "it would seem to be probably that those who favored the principle of liability limited to the capital subscribed thought that the legislature would be more likely to pass a law sanctioning such a limitation if the term 'corporations' were avoided in framing the law." See Warren (1929), 512.

[37] In the senate, Republicans voted 14 to 1 in favor (5 absent) and Democrats, 6 to 2 in favor (4 absent. In the House, Republicans voted 74 to 2 in support of the bill (8 absent), and Democrats, 23 to 13 (7 absent). For the roll call votes, see Pennsylvania (1874b), 1982. Party affiliations are from Smull (1874).

could be owned and no restrictions on the types of business in which the firm could engage, the state of citizenship of the incorporators, or where the company could conduct its business (so long as it maintained a headquarters in Pennsylvania). Any three people could form a partnership association simply by registering with a local county official (Section 1). A supplementary act passed on May 1, 1876 allowed capital to be paid in "in real or personal estate, mines or other property, at a valuation to be approved by all the members subscribing ...."

The main difference between the bill and Carey's proposal was a provision that linked the new form to the ordinary partnership by enabling the founding members of a partnership association to determine whether or not to admit new members. Section 4 of the act provided that interests in a partnership association, like those in a corporation, were to be considered "personal estate" and hence transferrable, but it also specified that "no transferee of any interest … shall be entitled thereafter to any participation in the subsequent business of said association, unless he or she be elected thereto by a vote of a majority of the members in number and value of their interests …." The statute thus explicitly allowed (indeed, required) members of partnership associations to do something that members of corporations could not easily do at this time—control the identity of their associates.[38] In Pennsylvania, as elsewhere in the late nineteenth century, courts did not permit corporations to enact by-laws that impeded the transferability of shares. They generally refused to uphold rules that limited in any way shareholders' ability to sell their property, including those that required shareholders to give each other a first right of refusal.[39]

---

[38] A supplementary statute enacted on 25 June 1885 enabled organizers of a partnership association to opt out of this provision.

[39] For Pennsylvania cases recognizing that the transfer rules for partnership associations was different than for corporations, see *Eliot v. Himrod*, 108 Pa. 569 (1885); and *Carter v. Producers' Oil Co., Ltd.*, 182 Pa. 551 (1897). A Maryland Court of Appeals articulated the general principle in 1896, when it ruled that any such bylaws constituted "an unreasonable and a palpable restraint upon the alienation of property." See *Bloede Co. v. Bloede*, 84 Md. 129 (1896) at 141. For further discussion and additional case citations, see Harris and Lamoreaux (2010).

In other respects, the enabling act for partnership associations was highly permissive with respect to internal governance. The act specified procedures for winding up the company, required partnership associations to hold at least one general meeting each year at which the membership would elect three to five managers, including a chairman, a secretary, and a treasurer (or a chairman and a secretary-treasurer) (Section 5), and forbid a partnership association from lending "its credit, its name or its capital" to any of its members (or to anyone else without "the consent in writing of a majority in number and value of interest") (Section 7). Otherwise, all governance rules were up to the members until bout two decades later, when the legislature imposed a voting rule of a "majority in value of interest" for the choice of managers and a "majority in number and value of interest" to adopt bylaws.[40] But by then the popularity of the form was on the wane.

The limit on the transferability of shares should have made it more difficult for partnership associations to raise capital from external investors and thus may have been what made the form palatable to Democrats fearful of concentrations of capital. Intriguingly, however, the greater flexibility of the form seems to have heightened its appeal to some very large enterprises. Although there are no general counts of the numbers and types of firms that adopted the form,[41] I collected the registrations of all partnership associations filed in the county of Philadelphia for every fifth year beginning in 1877. As Table 2 shows, most of the firms adopting the new form were small, but especially early on a significant number of larger enterprises found the partnership-association form appealing. As late as 1887, approximately a

[40] See the Supplementary Act of 8 June 1895.

[41] Partnership associations initially had more advantageous tax treatment than corporations, but the legislature eliminated that difference in 1879 (Freedley 1883). There are tax ledgers in the state archives beginning in 1880 that include partnership associations, but I could not find in them many of the partnership associations that I know existed. See State Treasurer, Capital Stock Tax Ledgers, 1876-1900. These records were indexed in two volumes mislabeled as Corporate Endorsement Index, Nos. 7-8, 1909-13. For later years, see Bonus Ledgers for Limited Partnerships and Associations, No. 1, 1914-16. These volumes are all in Record Group 28, Records of Treasury Department, Pennsylvania State Archives, Harrisburg, Pennsylvania.

fifth of the registrants had capitalizations of $100,000 or more, and several had considerably more.

An important example of a large partnership association (not registered in Philadelphia) was the Carnegie Steel Company, Limited, capitalized at $25 million. At the time of its organization in 1892, the company included four major steel plants, several iron furnaces and mills, two coke works, and an assortment of other properties. The appeal of form resulted from Andrew Carnegie's dominant position in the company. A few years earlier Carnegie had been so seriously ill that it appeared he would die, and his partners in the company's predecessor firms (all ordinary partnerships) had faced the dire prospect that the companies would be bankrupted by the cost of settling his estate. Although they could have protected themselves by organizing their enterprise as a corporation, Carnegie was not willing to go along. He wanted to be able to control who could be a member of the firm, reward talented managers with ownership shares, and rid the firm of partners who did not share his strategic vision. The solution, the so-called "Iron Clad" agreement, was possible under the flexible partnership association statute but not under the Pennsylvania's general incorporation law. In the event of Carnegie's death, his partners got the right to buy out his interest at book value over an extended period of time (fifteen years). In exchange, Carnegie got a clause that enabled him (upon the vote of three-quarters of the members in number and value of shares) to force a partner to sell out his interest in the company at book value.[42]

Another example of an important firm that took the partnership association form was the Bessemer Steel Company, Limited, the patent pool that controlled the process of making

[42] The threat of Carnegie's death gave all the partners an interest in keeping the company's book value below market value, so the agreement had considerable bite. The details of the agreement became public when Carnegie tried to force Henry Clay Frick out, and Frick sued to get the company revalued. See Wall 1970, 491-93; Livesay 1975, 171-72; and Bridge 1903, 336-38.

Bessemer steel in the United States. It registered in Philadelphia in 1877 with a capital of $825,000 and a membership consisting of five individuals (the association's managers) and eleven major steel companies. Members of the association had the right to use the patents held by the pool at the cost of a specified royalty per ton of steel produced. Profits from the royalties were then divided among the members in the form of dividends. The partnership association form allowed members of the pool to develop a set of enforceable rules to control access to steel technology. Members that did not adhere to the rules, that failed to give a proper accounting of their production, or that refused pay royalties they owed could be expelled by a two-thirds vote of the "members present at a meeting called for the purpose ... and shall thereafter have no rights in the Association or in the property which it owns and controls."[43]

The ability to control access to valuable property also explains the attractiveness of the form for the Producers' Oil Company, a partnership association created by an organization of oil producers (the Producers' Protective Association) with the aim of liberating well owners from their dependence on the Standard Oil Trust. The whole purpose of the enterprise was to gain control of oil supplies and keep them out of Standard's hands. If the company had been organized as a corporation, the producers would never have been able to prevent some of their number from selling out to Standard; they had suffered such defections before. The partnership-association form gave them the necessary means, however, because the simple purchase of shares was not sufficient to convey membership in the company (Tarbell 1904, Vol. 2, Ch. 15). Transferees also had to be voted in by the continuing membership. In fact, parties associated with Standard managed to buy up a huge block of the shares in the Producers' Oil Company, but they were not admitted to the company. John J. Carter, a member of the company who took

---

[43] Articles of Association of the Bessemer Steel Company, Limited, 1 March 1877, in Limited Partnerships, F. T. W., 1873-1879 (LP4), Partnership Books, 1836-1955, RG 5.23, City Archives, City of Philadelphia, Department of Records.

possession of these shares on behalf of the Standard interests, sued to be allowed to the vote the additional interest, but he was not successful. On appeal, the Supreme Court of Pennsylvania ruled in favor of the partnership association. "We cannot assent," the justices declared, "to the plaintiff's claim that the defendant company is a corporation restricted, in the adoption of by-laws, rules and regulations for its government, to such as it is within the power of the latter to prescribe. It may be conceded that the defendant company has some of the qualities of a corporation, but it is nevertheless a partnership association, governed by the statutes and articles under which it was organized."[44] Under Pennsylvania law corporations had to adhere to governance rules imposed by the statute and could not restrict the transferability or voting rights of shares. But partnership associations had much more contractual flexibility, and by means of carefully worded bylaws the Producers' Oil Company was able to prevent Standard Oil from buying control.[45]

The courts' willingness to treat partnership associations differently from corporations could also be a disadvantage, however. In an 1885 debt case involving the Keystone Boot and Shoe Company, Limited, the Pennsylvania Supreme Court used this same feature of partnership associations to justify piercing the veil of limited liability and holding the members unlimitedly liable as general partners. Although for convenience partnership associations were "clothed with many of the features and powers of a corporation," the court ruled that in a partnership association, unlike a corporation, "no man can purchase the interest of a member and participate in the subsequent business, unless by a vote of a majority of the members in number and value of

[44] *Carter v. Producers' Oil Co., Ltd.*, 182 Pa. 551 (1897) at 573-74.

[45] The company had adopted a bylaw prohibiting any member from selling or transferring "any interest in capital or shares of stock to any person not a member in good standing of the Producers' Protective Association, unless with the approval in writing of a member of the board of managers." The bylaw also specified that "no transferee of any interest in capital or shares of stock shall be entitled to participate in the subsequent business or profits of the association, or to vote on such interest or shares so transferred, unless elected to membership therein by a vote of a majority of the members in number and value of their interests." *Carter v. Producers' Oil Co., Ltd.*, 182 Pa. 551 (1897), "Prior History."

their interests." Partnership associations were thus in a fundamental way different from corporations. Moreover, the state did not grant a charter to a partnership association; its privileges rested entirely on the statement submitted at the time of registration. Because a corporation was a chartered entity, its "existence and ability to contract [could not] be questioned" in a suit brought against a corporation for payment of a debt. But the legitimacy of a partnership association rested on the truthfulness of its filing. As a result, it was "competent" for a plaintiff suing for payment of a debt "either to point to a fatal defect" in the statement "or to prove that an essential requisite, though formally stated, is falsely stated."[46]

This type of pro-creditor judicial reasoning had earlier, as noted above, severely curtailed the appeal of the limited-partnership form, and the lower court judge who first heard the case had made a valiant attempt to prevent the partnership-association form from suffering the same fate. Counsel for the plaintiffs had cited the case law on limited partnerships in support of their claim that the members of Keystone Boot and Shoe Company, Limited should be considered general partners who were individually liable for the company's debts. But the judge did not accept this line of reasoning, instead ruling that the 1836 enabling act for limited partnerships was so different from the 1874 act for partnership associations, "that the decisions under the former are not to be taken as conclusive of the rights and liability of the parties under the latter Act." For example, the 1836 act explicitly listed a set of circumstances in which failure to conform to the terms of the statute would cause limited partners to be held fully liable, but the 1874 statute included no similar provisions. "We must presume," the judge declared, "that the Act of 1836 and the decisions under it were well known to the law-makers at the time the Act of 1874 as passed," so the omission of similar penalties "is good reason for concluding that no such liability was intended." The 1874 act authorized the formation of partnership associations in which the

[46] *Eliot v. Himrod*, 108 Pa. 569 (1885) at 580.

capital subscribed "shall alone be liable for the debts of the association except under certain circumstances," and the judge pointed out, "in no instance do the excepted circumstances impose a liability as general partners on the members of the association."[47] The Pennsylvania Supreme Court, however, reversed the judge's decision on appeal. The high-court justices acknowledged that the Act of 1874 bore "little resemblance to the Act of 1836" and was far less stringent in its terms. Rushing to the defense of creditors, however, they insisted "that the statute demands a true statement of capital" at the time of registration, because the filing is what informs the public "of the strength of the association."[48]

This idea that creditors could rely on the initial statement of capital for information about the credit worthiness of companies that potentially lasted twenty years is dubious to say the least and certainly formed no part of the jurisprudence on corporations, even though their capital could also be paid in real or personal estate.[49] Nonetheless, the Pennsylvania Supreme Court enforced this principle increasingly stringently in a series of decisions holding members of partnership associations liable for their company's debts.[50] Most of the opinions were written by James P. Starrett, an upright Republican justice from Alleghany County, who first joined the court in 1877. The composition of the court seems to have shifted in Starrett's favor during the late 1880s with four new justices (out of a total of seven) elected in 1887 and 1888. Three were Republicans and one was a Democrat. Two of the justices leaving the court had dissented in the first case holding members of a partnership association unlimitedly liable because of a defective filing.[51] With them gone, Starrett faced little opposition to his strict construction of the statute.

[47] *Eliot v. Himrod*, 108 Pa. 569 (1885).
[48] *Eliot v. Himrod*, 108 Pa. 569 (1885) at 579.
[49] See, for example, Section 17 of Pennsylvania's 1874 general incorporation act.
[50] See *Hill, Keiser & Co. v. Stetler*, 127 Pa. 145 (1888); *Vanhorn v. Corcoran*, 127 Pa. 255 (1889); *Sheble v. Strong*, 128 Pa. 315 (1889); *Gearing v. Carroll*, 151 Pa. 79 (1892); *Haslet v. Kent*, 160 Pa. 85 (1894); *First National Bank of Danville v. Creveling*, 177 Pa. 270 (1896); and *Lee & Bacchus v. Burnley*, 195 Pa. 58 (1900).
[51] See *Maloney v. Bruce*, 94 Pa. 249 (1880).

The court began rigorously to assess registration filings to determine whether creditors looking at a statement of capital could "form any estimate of its quantity, character or value"[52] and hold members of partnership associations unlimitedly liable as general partners in cases where the statements of real or personal estate paid in were insufficiently detailed. Above all, the court insisted, property put into an association as capital had to be accurately described. That was more important than valuing it precisely because if the valuation "is excessive, the creditor can decline to give the company credit." By contrast, "if the description be so defective or inaccurate that the creditor may be misled, he has no means of forming an accurate judgment."[53]

As a result of this emphasis on an accurate description of personal estate paid in as capital, the registration documents filed for both limited partnerships and partnership associations grew longer and longer in the early 1890s. The most extreme example was the filing for Wanamaker's department store, a limited partnership, which took up an entire ledger volume and part of a second and seems to have included a complete inventory of the store's goods. But many other registrations went on for scores of pages.[54] Moreover, even the most painstaking filing was no guarantee against creditors' attempts to pierce the veil, as members of the National Electric Company, Limited, found to their chagrin. At the time of its registration in 1890, the company had a capital of $8,500, most of which had been paid in as items of personal estate. Although it filed a long inventory that included such detail as 109 8" Flat Porcelain Shades valued at 13 cents each, and 34 boxes of no. 8 screws valued at 35 cents each, the trial judge did not find the inventory sufficiently detailed and ruled in favor of the creditors suing the

---

[52] *Vanhorn v. Corcoran*, 127 Pa. 255 (1889) at 266.
[53] *Cock v. Bailey*, 146 Pa. 328 (1892) at 340. See also *Rehruss v. Moore*, 134 Pa. 462 (1890).
[54] The Wanamaker's filing was in Limited Partnership, Vols. 10-11 (LP10-LP11), Partnership Books, 1836-1955, RG 5.23, Philadelphia City Archives. I examined all registrations of limited partnerships and partnership associations filed during every fifth year and found no long inventories before the 1890s. This time pattern suggests that the already strict construction of the limited partnership statute was becoming even stricter as a result of the litigation over partnership associations.

members personally to recover a debt. This time, however, the Pennsylvania Supreme Court reversed. Justice J. Brewster McCollum, a Democrat, wrote the opinion. Noting that company's filing "consisted of a hundred and fifty-one items, the integrity and valuation of which were not questioned," he ruled that "this schedule was sufficient to enable parties dealing with the company to readily ascertain the kind, amount and value of the property contributed to its capital" and that "the defendants in forming the National Electric Company, Limited, honestly sought to comply with the statutes."[55]

In fact, the justices had begun to back away from their extreme position in 1892, declaring that "it was never intended" that the filing requirements "should be used as a trap to catch persons who have honestly complied with their substantial requisites, and impale them upon a meaningless technicality."[56] But the damage was done. As the cost of filing mounted along with the length of the required descriptions, the popularity of the partnership-association form declined. As Table 2 shows, in Philadelphia use of the form peaked during the 1890s and then dropped precipitously, so that by the 1920s hardly any partnership associations were being registered.[57] This decline was not likely a result of a lack of desire to form private limited liability companies. When similar types of entities were introduced in Germany and France, they quickly established themselves. Within two decades of the passage of enabling legislation in Germany more than one third of all new firms registered as private limited liability companies, and in France more than seventy-five percent (Guinnane et al. 2007 and 2008). Moreover, in the U.S. today, LLCs are quickly becoming the form of choice for the majority of new enterprises,

[55] See *Robbins Electric Co. v. Weber*, 172 Pa. 635 (1896) at 644-45.
[56] *Cock v. Bailey*, 146 Pa. 328 (1892) at 342. See also *Laflin & Rand Co. v. Steytler*, 146 Pa. 434 (1892).
[57] 53 percent of the partnership associations registered in Philadelphia registrations during the 1892 and 1897 had capital paid in the form of personal or real estate. The proportion fell to 36 percent in 1902 and 1907. None of the few partnerships registered in the 1920s had capital in this form.

even though the corporate form is now much more flexible than it was in Pennsylvania in the late nineteenth century.[58]

If the partnership association form was so useful, why did contemporary business people not demand that the legislature fix the problem? In part, I think, the answer is that the small-scale enterprises that made the greatest use of the form did not yet constitute an organized interest group capable of lobbying for such changes in the law. It would not be until the second half of the twentieth century, when high income-tax rates encouraged them to unite and make common cause, that small businesses would join together and lobby for changes in the menu of organizational forms (Lamoreaux 2004 and 2006). But another part of the answer is federalism. Only a small number of states followed Pennsylvania's lead and passed enabling legislation for the partnership-association form: Virginia in 1874, Michigan in 1877, New Jersey in 1880, and Ohio in 1881 (Warren 1929, Stransky 1956, Schwartz 1965, Gazur and Goff 1991). There was consequently a great deal of uncertainty about how partnership associations would be treated by courts in other states. An 1897 case in which a Massachusetts court held a Pennsylvania partnership association to be an ordinary partnership helped kill off interest in the form.[59]

The corporate charter-mongering competition that developed at the end of the nineteenth century also undercut the form. Before this rivalry erupted in the 1890s, nearly all corporations obtained charters from the states in which they originated. New Jersey's famous amendments to its general incorporation laws in 1888 and 1889 broke the pattern. Under existing state laws corporations generally could not own stock in other companies, and two corporations could merge only if one of them dissolved and the other purchased its assets. The New Jersey revisions not only created a streamlined process for mergers but facilitated the creation of holding

[58] For the number of registrations of LLCs relative to corporations in each state, see the International Association of Commercial Administrators, *Annual Report of Jurisdictions*.
[59] *Edwards v. Warren Linoline & Gasoline Works*, 168 Mass. 564 (1897).

companies by allowing one corporation to own shares in another (Grandy 1989). Over the next two decades, enterprises involved in the period's successively larger waves of mergers switched to New Jersey charters, and the state, which taxed corporations on the basis of their authorized capital stock, found its revenues soaring. New Jersey's flush treasury inspired a number of other states (most notably Delaware, but also West Virginia, Maryland, Maine, and New York) to compete for the business of chartering corporations by enacting still more liberal laws (Butler 1985, Grandy 1989).

Although the literature has focused on the advantages of New Jersey's amendments for consolidations formed by merger, the charter-mongering competition also highlighted other advantages of New Jersey's general incorporation laws. Like Pennsylvania, New Jersey had revised its generation incorporation law in the mid-1870s in response to a new constitutional ban on special charters (Cadman 1849). New Jersey's general incorporation act was much less restrictive, however. It allowed corporations to be formed for any lawful purpose and placed no limits on the amount of capital they could raise, the sums they could borrow, or the acreage of real estate they could own. Incorporators also had more freedom to shape the governance structure of their companies. The act included a number of default rules, but the certificate, charter, or by-laws could specify alternatives. For example, each member of a corporation had one vote for each share owned, unless otherwise specified (Section III. 38). The quorum for stockholders' meetings was a majority of the shares, unless the bylaws indicated otherwise (Section II. 21). Similarly, although the New Jersey law required a two-thirds vote to increase a corporation's capital beyond the amount specified in its certificate, issue a new class of preferred shares, or voluntarily dissolve the corporation, the certificate could specify a different voting threshold to move into a new line of business or decrease capitalization (Section II. 33). More

significantly, the certificate could include "any limitation upon the powers of the corporation, the directors, and the stockholders that the parties signing the same desire," so long as these limitations did not "attempt to exempt the corporation, the directors, or the stockholders, from the performance of any duty imposed by law" (Section V). Hence large corporations in Pennsylvania or elsewhere that wanted more contractual flexibility than their state allowed could take out charters in New Jersey instead. There was no need any longer to battle their legislatures for more permissive laws.[60]

### 4. Pennsylvania in Comparative Perspective

Distrust of corporate power and of the domination of large-scale corporations by the financial elite continued to shape the evolution of general incorporation statutes in the early twentieth century. Even some of the charter-mongering states were affected. Progressive political movements in New Jersey and Maine induced those states to repeal some of the most permissive features of their laws. Although New Jersey reversed course yet again, its flip-flop allowed Delaware to emerge victorious from the charter-mongering competition (Grandy 1989, Rutledge 1937, Wells 2000). In Delaware, on the other hand, it seems that the influx of charter revenues so reduced the need for other kinds of taxes as to swamp whatever opposition there was to the state's liberal general incorporation law, especially given that so many of the companies that took advantage of it were located elsewhere (Grandy 1989). Like Pennsylvania, Delaware had broadened the franchise in the late eighteenth century by shifting from a property to a tax

[60] For the text of the act, see Corbin (1881). To explain New Jersey's charter-mongering initiative, Grandy (1989) focuses on state's Civil War debt and on the railroads' resistance to bearing the resulting property tax burden. But this explanation, which hinges on events of the mid-1880s, cannot explain why New Jersey's 1875 general incorporation act was already less prescriptive than the one that Pennsylvania enacted in 1874.Yablon (2007) uses the number of corporations chartered in New Jersey in the 1880s relative to other industrial states to argue that New Jersey was already attracting out-of-state charters at that time.

qualification for voting (Engerman and Sokoloff 2005). As in Pennsylvania, moreover, opposition to corporate privileges was an important democratic rallying cry early in the century. Indeed, strong anti-corporate feeling in Delaware led to a tough provision in the state's 1831constitution requiring a two-thirds vote in both houses of the legislature to charter a corporation.[61] Delaware did not even enact a general incorporation law until an amendment to the state's constitution in 1875 specially authorized one, and even then the procedure it set up was so cumbersome that few businesses took advantage of it and instead turned to paid lobbyists (and perhaps bribery) to get special charters through the legislature.[62] Delaware's 1899 general incorporation law was thus for all practical purposes its first. Enacted in response to a ban on special charters embodied in the state's new 1897 constitution (itself a response to what was perceived to be a corruption of the legislative process), it seems to have been shepherded through the legislature by a group of individuals alert to the revenue possibilities of charter-mongering, as well as to the profits that could be earned by serving as local agents for out-of-state corporations. It essentially copied the New Jersey statute but charged lower fees, and the resulting flow of revenues changed the course of the state's corporate politics (Arsht 1976, Larcom 1937).

As more and more large firms took out charters in New Jersey, Delaware, and the other chartermongering states, legislatures elsewhere reacted to the resulting loss of revenue by liberalizing their own general incorporation statutes, generating fears of a regulatory race to the bottom (U.S. Commissioner of Corporations 1904). The response to this competition, however,

---

[61] Such a measure was repeatedly proposed by delegates to Pennsylvania's 1837 constitutional convention but did not succeed. See, for example, Pennsylvania 1837, Vol. 2, 224-25.

[62] Under Delaware's 1875 general incorporation law the application for a charter had to be filed with the local county judge and notice of the filing published for three weeks in a newspaper. The judge then determined whether the application was lawful and the corporation not injurious to the community. If the decision was positive, another period of public notice followed before the ruling could take effect. An 1883 revision of the law streamlined the process somewhat but still required the local judge's approval. See Arsht (1976).

was less full-throttled than is generally recognized. Some states responded by undertaking complete revisions of their statutes. Massachusetts, for example, created a special commission in 1902 that concluded that Massachusetts's general incorporation law was "unsuited to modern business conditions" (Massachusetts 1903a, 7, 19, 20). The commissioners drafted a completely new statute which the legislature adopted in 1903 almost as proposed (Massachusetts 1903b). The act eliminated a number of the old law's most restrictive provisions, including ceilings on the amount of capital a corporation could raise, but it retained other provisions that provided more substantial protection for shareholders than Delaware's law (Dodd 1936).

Other states (Pennsylvania is a good example) did not undertake a complete revision of their general incorporation statutes until much later, instead meeting the charter-mongers' challenge with a series of amendments that gradually moved the law in the new direction. For example, a supplement to Pennsylvania's 1874 law passed in 1901 authorized a corporation "to buy and own the capital stock of, and to merge its corporate rights, powers and privileges with and into those of, any other corporation."[63] Another amendment removed all ceilings on the capital or indebtedness of corporations chartered in the state.[64] However, most other features of the 1874 remained in effect until Pennsylvania finally adopted a new statute in 1933. Only then did the state drop the list of types of businesses that could avail themselves of the law and eliminate most, but not all, of the special regulations imposed on different industries. But even then, the act retained a number of governance prescriptions from the 1874 act, including the

[63] "AN ACT Supplementary to an act, entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved the twenty-ninth day of April, one thousand eight hundred and seventy-four; providing for the merger and consolidation of certain corporations," 29 May 1901.

[64] "AN ACT To amend section one of the act, entitled 'An act to provide for increasing the capital stock and indebtedness of corporations,' approved the ninth day of February, Anno Domini one thousand nine hundred and one; authorizing corporations to increase their capital stock and indebtedness ..." 22 April 1905. For other changes, see Whitworth and Miller (1902 and 1905).

requirement, still mandated by the state constitution, that shareholders be able to cumulate their votes in elections for directors (see Pennsylvania 1931).

When states revised their general incorporation statutes, moreover, they often deliberately distinguished them in important respects from Delaware's (Wells 2000). Illinois touted its 1933 law as offering superior safeguards for investors (Dodd 1936, Wells 2000), and the committee that drafted the Modern Business Corporation Act based its 1946 model on the Illinois statute, bragging that "not a single member of the committee thought it desirable to use the Delaware statute as a pattern" (Campbell 1956, 100). The model act deviated from the Illinois statute as well. In particular, it eschewed one of the Illinois law's most prescriptive features—a prohibition against the creation of shares with limited voting rights deriving from the legislature's "interpretation of a provision in the Illinois constitution" (Campbell 1956, 101).

Thus decades after New Jersey's opening salvo in the charter-mongering competition, the general incorporation statutes of Pennsylvania, Illinois, and other states retained important vestiges of the democratic politics of the nineteenth century, often in the form of restrictions on corporate governance that had been written into their constitutions. Hence, when the famous British company-law scholar, L. C. B. Gower, visited the United States in the mid-1950s, he was struck by the differences between British and American corporate law. "Whereas the American statutes tend to lay down mandatory rules," he noted, "the British Companies Act ... [provides] a standard form which applies only in the absence of contrary agreement by the parties." The British corporation is "essentially contractual"; the American, "much less flexible" (Gower 1956, 1372, 1376). Even Delaware's statute remained puzzlingly more prescriptive than its British counterpart. "To an Englishman," Gower observed, "it seems strange that corporate codes, such as that of Delaware, which are notoriously lax in failing to provide important safeguards against

abuses, should nevertheless be strict in matters which seem to us to be essentially for the parties themselves to settle" (Gower 1956, 1377).

These differences mattered. Gower's complaint about the lack of safeguards in the Delaware statute notwithstanding, British company law allowed corporations to disenfranchise shareholders to an extent that was inconceivable in the U.S., even in Delaware. Timothy Guinnane, Ron Harris, and I have collected the articles of association filed by three random samples of British companies (from 1892, 1812, and 1927 respectively) to observe how incorporators used the contractual freedom that British company granted them (Guinnane, Harris, and Lamoreaux 2013). We found a growing tendency over time for British companies to write rules that isolated the directors from shareholders' oversight. In most companies, for example, directors obtained the power to name one or more of their number "managing directors" who served at the pleasure of the board and did not have to stand for election by the shareholders during their term of service. Moreover, an increasing proportion of the companies (fully half of the firms in the 1927 sample) named in their articles one or more permanent directors who never had to stand for election. A good example is Dymock's Patent Twine Company, Limited, registered in 1912. Clause 21 of the company's articles of association specified that it would have two to five directors. Clause 22 named three of them (a majority), declaring that they "shall be permanent Directors of the Company, and each of them shall be entitled to hold such office so long as he shall live" and meet certain basic qualifications. The articles then went on to lay out procedures that allowed the men's executors to choose successors in the event of their death, again without needing to secure shareholders' approval.[65]

[65] Company #124849, BT 31, Board of Trade: Companies Registration Office: Files of Dissolved Companies, National Archives, Kew, United Kingdom.

How much power shareholders in corporations should have over management is a hotly debated issue to the present day. Scholars from both ends of the political spectrum have advocated shifting the balance toward shareholders—both on democratic grounds and on the principle that companies should be run in the interest of their shareholders.[66] But others have argued that too much shareholder control leads to pressure for short-term gains that discourages executives from developing firm-specific human capital and more generally is detrimental to innovation.[67] Whatever the merits of these different views, I would suggest that the balance of power between shareholders and directors in corporations has been determined more by political forces in the larger society than by any dispassionate assessment of these ideas (see Roe 1994). In particular, the early achievement of universal (white) manhood suffrage in the United States shaped the evolution of corporate law in a way that gave American shareholders considerably more power in corporations than their counterparts in Britain (and elsewhere in Europe) in the nineteenth and early twentieth centuries. Intriguingly, the achievement of universal suffrage in Britain in the early twentieth century helped to reverse the shift in power away from shareholders that occurred in the late nineteenth and early twentieth centuries. When the Labour Party finally took control of the government in the years following World War II, it enacted a revised Companies Act that gave shareholders the ability to dismiss directors by simple majority vote at a meeting called for that purpose. Scholars have recently touted this provision as granting shareholders in Britain extraordinary power to discipline directors, but it is important to

[66] The literature ranges from Berle and Means (1933) Bebchuk (2007) to La Porta, et al. (1997 and 1998) and Baker and Smith (1998).
[67] See, for examples, Lazonick 2007 and Stout 2007.

recognize the extent to which this law was a product of the new democratic politics that followed from an expansion of the right to vote (Bruner 2013, Nolan 2006, Cheffins 2008).[68]

To reiterate, the early achievement of universal (white) manhood suffrage in the U.S. shaped American corporation law in an exceptional way. I have developed this argument in this essay by focusing on the case of Pennsylvania. In the early nineteenth century, a mass political movement formed around opposition to the special privileges that the state legislature had granted to corporations. One result of the movement's success was the early adoption of general incorporation laws but also the embodiment in those laws of a number of restrictions on what corporations could do and how they could be governed. Businesses attempted to escape these restrictions by lobbying the legislature for special charters, but this practice only ensured that corporate privileges would continue to be a hot-button political issue until the state constitution outlawed such private bills. Pennsylvania's general law remained restrictive, however, and an attempt to make an end run around the law in the form of an enabling statute for partnership associations, an early form of LLC, ran afoul of a court system whose vigilant defense of creditors' rights was another consequence of the democratic politics of the nineteenth century.

The general outlines of the Pennsylvania story were essentially the same as those of other states, but the political pressures played out in each in ways that varied according to local circumstances. As a consequence, general incorporation statutes in the U.S. were on the whole much more prescriptive than those in Britain, but they were still quite heterogeneous in the extent and type of their prescriptions. Although it is beyond the scope of this essay to analyze the determinants of these differences and how they came to shape the evolution of the law, I would caution against approaching the problem by running cross-state regressions that put the

[68] Similar changes in the political environment in Germany led to requirement of labor representation on corporate boards. See O'Sullivan 2001 and Roe 1994.

timing of the expansion of the franchise and other initial conditions on the right-hand side. The states were not the independent actors that such statistical techniques require; they interacted with each other over the course of history, sometimes copying each other's innovations, sometimes engaging in outright competition, but always constrained by their common heritage of democratic politics and the national party system within which they operated. As the different histories of Pennsylvania and Delaware's general incorporation statutes suggest, moreover, initial conditions are not fate.

**References:**

Acemoglu, Daron, Simon Johnson, and James A. Robinson. 2001. "The Colonial Origins of Comparative Development: An Empirical Investigation." *American Economic Review* 91 (December): 1369-1401.

Acemoglu, Daron, Simon Johnson, and James A. Robinson. 2012. "The Colonial Origins of Comparative Development: An Empirical Investigation: Reply." *American Economic Review* 102 (October): 3077-110.

Akagi, Roy H. 1924. "The Pennsylvania Constitution of 1838." *Pennsylvania Magazine of History and Biography* 48 (issue 4): 301-33.

Albouy, David Y. 2012. "The Colonial Origins of Comparative Development: An Empirical Investigation: Comment." *American Economic Review* 102 (October): 3059-76.

Alesina, Alberto, Paola Giouliano, and Nathan Nunn. 2013. "On the Origins of Gender Roles: Women and the Plough." *Quarterly Journal of Economics* 28 (May): 469-530.

Aron, Stephen. 1992. "Pioneers and Profiteers: Land Speculation and the Homestead Ethic in Frontier Kentucky." *Western Historical Quarterly* 23 (May): 179-98.

Arsht, S. Samuel. 1976. "A History of Delaware Corporation Law." *Delaware Journal of Corporate Law* 1 (issue 1): 1-22.

Baker, George P., and George David Smith. 1998. *The New Financial Capitalists: Kohlberg Kravis Roberts and the Creation of Corporate Value*. New York: Cambridge University Press.

Balleisen, Edward J. 2001. *Navigating Failure: Bankruptcy and Commercial Society in Antebellum America*. Chapel Hill: University of North Carolina Press.

Barro, Robert J. 1997. *Determinants of Economic Growth: A Cross-Country Empirical Study*. Cambridge, Mass.: MIT Press.

Barro, Robert J., and Rachel M. McCleary. 2003. "Religion and Economic Growth." *American Sociological Review* 68 (October): 760-81.

Bebchuk, Lucian A. 2007. "The Myth of the Shareholder Franchise." *Virginia Law Review* 93 (May): 675-732.

Berle, Adolf A., and Gardiner C. Means. 1933. *The Modern Corporation and Private Property*. New York: Macmillan.

Bloom, David E., and Jeffrey D. Sachs. 1998. "Geography, Demography, and Economic Growth in Africa." *Brookings Papers on Economic Activity* 1998 (issue 2): 207-73.

Bodenhorn, Howard. 2002. *State Banking in Early America: A New Economic History*. New York: Cambridge University Press.

Bodenhorn, Howard. 2006. "Bank Chartering and Political Corruption in Antebellum New York: Free Banking as Reform." In *Corruption and Reform: Lessons from America's Economic History*, eds. Edward L. Glaeser and Claudia Goldin, 231-57. Chicago: University of Chicago Press.

Bridge, James Howard. 1903. *The Inside Story of the Carnegie Steel Company: A Romance of Millions*. New York: Aldine Book Co.

Bruner, Christopher M. 2013. *Corporate Governance in the Common-Law World: The Political Foundations of Shareholder Power*. Cambridge, Eng.: Cambridge University Press.

Butler, Henry N. 1985. "Nineteenth-Century Jurisdictional Competition in the Granting of Corporate Privileges." *Journal of Legal Studies* 14(January): 129-66.

Cadman, John W., Jr. 1949, *The Corporation in New Jersey: Business and Politics, 1791-1875* Cambridge, Mass.: Harvard University Press.

California, State of. 1850. *Statutes of California, Passed at the First Session of the Legislature*. San Jose: J. Winchester.

Campbell, Bruce A. 1975. "John Marshall, the Virginia Political Economy, and the *Dartmouth College* Decision." *American Journal of Legal History* 19 (January): 40-65.

Campbell, Whitney. 1956. "The Model Business Corporation Act." *Business Lawyer* 11 (July): 98-110.

Cheffins, Brian R. 2008. *Corporate Ownership and Control: British Business Transformed*. Oxford, Eng.: Oxford University Press.

Corbin, William H. 1881. The Act Concerning Corporations in the State of New Jersey Approved April 7, 1875 with all the Amendments to January 1, 1881. Jersey City, N.J.: Frederick D. Linn & Co.

De Soto, Hernando. 2000. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York: Basic Books.

Dodd, E. Merrick, Jr. 1936. "Statutory Developments in Business Corporation Law, 1886-1936." *Harvard Law Review* 50 (November): 27-59.

Eastman, Frank M. 1908. *A Treatise on the Law Relating to Private Corporations in Pennsylvania*. 2nd edn.; Philadelphia: George T. Bisel Co., 2 vols.

Elmer, Lucius Q. C. 1855. *A Digest of the Laws of New Jersey: Containing All the Laws of General Application, Now in Force, from 1709 to 1855, Inclusive, with the Rules and Decisions of the Courts*. 2nd edn.; Philadelphia: J. B. Lippincott & Co.

Engerman, Stanley L., and Kenneth L. Sokoloff. 2005. "The Evolution of Suffrage Institutions in the New World." *Journal of Economic History* 65 (December): 891-921.

Freedley, Angelo T. 1883. *The Limited Partnership Association Laws of Pennsylvania*. Philadelphia: T. & J. W. Johnson & Co.

Freeman, Mark, Robin Pearson, and James Taylor. 2012. *Shareholder Democracies? Corporate Governance in Britain & Ireland before 1850*. Chicago: University of Chicago Press.

Gallup, John Luke, Jeffrey D.Sachs, and Andrew D. Mellinger. 1999. "Geography and Economic Development." *International Regional Social Science Review* 22 (August): 179-232.

Gates, Paul W. 1962. "Tenants of the Log Cabin." *Mississippi Valley Historical Review* 9 (June): 3-31.

Gazur, Wayne M., and Neil M. Goff." 1991. "Assessing the Limited Liability Company." *Case Western Reserve Law Review* 41 (issue 2): 387-501.

Gower, L. C. B. 1956. "Some Contrasts Between British and American Corporation Law," *Harvard Law Review* 69 (June): 1369-1402.

Grandy, Christopher. 1989. "New Jersey Corporate Chartermongering, 1875-1929." *Journal of Economic History* 49 (September): 677-92.

Guinnane, Timothy W., Ron Harris, and Naomi R. Lamoreaux. 2013. "Contractual Freedom and the Evolution of Corporate Governance in Britain, 1862 to 1929." Unpublished paper.

Guinnane, Timothy W., Ron Harris, Naomi R. Lamoreaux, and Jean-Laurent Rosenthal. 2007. "Putting the Corporation in its Place." *Enterprise and Society* 8 (September): 687-729.

Guinnane, Timothy W., Ron Harris, Naomi R. Lamoreaux, and Jean-Laurent Rosenthal. 2008. "Pouvoir et propriété dans l'entreprise: pour une histoire internationale des sociétiés á responsabilité limitée." *Annales: Histoires, Sciences Sociales* 63 (janvier-février): 73-110. (An English-language version is available as "Ownership and Control in the Entrepreneurial Firm: An International History of Private Limited Companies," Yale University Economic Growth Center Discussion Paper #959 [December 2007].)

Hamill, Susan Pace. 1999. "From Special Privilege to General Utility: A Continuation of Willard Hurst's Study of Corporations." *American University Law Review* 81 (October): 81-180.

Hammond, Bray. 1957. *Banks and Politics in America: From the Revolution to the Civil War*. Princeton, N.J.: Princeton University Press.

Handlin, Oscar, and Mary Flug Handlin. 1969. *Commonwealth: A Study of the Role of Government in the American Economy*. Rev. edn.; Cambridge: Harvard University Press.

Harris, Ron. 2000. *Industrializing English Law: Entrepreneurship and Business Organization, 1720-1844*. Cambridge: Cambridge University Press.

Harris, Ron, and Naomi R. Lamoreaux. 2010. "Contractual Flexibility within the Common Law: Organizing Private Companies in Britain and the United States." Unpublished paper.

Hartz, Louis. 1948. *Economic Policy and Democratic Thought: Pennsylvania, 1776-1860*. Chicago: Quadrangle Books.

Hennessey, Jessica L., and John Joseph Wallis. 2013. "Corporations and Organizations in the United States after 1840." Unpublished paper.

Hilt, Eric. 2013. "General Incorporation Acts for Manufacturing Firms, 1811-1860." Unpublished paper.

Hilt, Eric, and Katharine O'Banion. 2009. "The Limited Partnership in New York, 1822-1858: Partnerships Without Kinship." *Journal of Economic History* 69 (September): 615-45.

Hilt, Eric, and Jacqueline Valentine. 2012. "Democratic Dividends: Stockholding, Wealth, and Politics in New York, 1791-1826." *Journal of Economic History* 72 (June): 332-63.

Howard, Stanley E. 1934. "The Limited Partnership in New Jersey." *Journal of Business* 7 (October): 296-317.

Hurst, James Willard. 1970. *The Legitimacy of the Business Corporation in the Law of the United States, 1780-1970*. Charlottesville: University Press of Virginia.

Illinois, State of. 1857. *Laws of the State of Illinois, Passed by the Twentieth General Assembly Convened January 5, 1857*. Springfield: Lanphier & Walker.

Kessler, Amalia D. 2003. "Limited Liability in Context: Lessons from the French Origins of the American Limited Partnership." *Journal of Legal Studies* 32 (June): 511-48.

Kessler, W. C. 1940. "A Statistical Study of the New York General Incorporation Act of 1811." *Journal of Political Economy* 48 (December): 877-82.

Keyssar, Alexander. 2000. *The Right to Vote: The Contested History of Democracy in the United States*. New York: Basic Books.

Kutler, Stanley I. 1971. *Privilege and Creative Destruction: The Charles River Bridge Case*. Philadelphia: Lippincott.

Lamoreaux, Naomi R. 1994. *Insider Lending: Banks, Personal Connections, and Economic Development in Industrial New England. New York: Cambridge University Press*.

Lamoreaux, Naomi R. 1997. "The Partnership Form of Organization: Its Popularity in Early-Nineteenth-Century Boston." In *Entrepreneurs: The Boston Business Community, 1750-1850*, eds. Conrad E. Wright and Katheryn P. Viens, 269-95. Boston: Massachusetts Historical Society.

Lamoreaux, Naomi R. 2004. "Partnerships, Corporations, and the Limits on Contractual Freedom in U.S. History: An Essay in Economics, Law, and Culture." In *Constructing Corporate America: History, Politics, and Culture*, eds. Kenneth Lipartito and David B. Sicilia, 29-65. New York: Oxford University Press.

Lamoreaux, Naomi R. 2006. "Business Organization." In *Historical Statistics of the United States: Earliest Times to the Present*, eds. Susan B. Carter, et al., Vol. 3, 477-582. Millennial edn.; New York: Cambridge University Press.

Lamoreaux, Naomi R. 2011. "The Mystery of Property Rights: A U.S. Perspective." *Journal of Economic History* 71 (June): 275-306.

Lamoreaux, Naomi R., and Jean-Laurent Rosenthal. 2005. "Legal Regime and Contractual Flexibility: A Comparison of Business's Organizational Choices in France and the United States during the Era of Industrialization." *American Law and Economics Review* 7 (Spring): 28-61.

La Porta, Rafael, Florencio Lopez-de-Silanes, and Andrei Shleifer. 2008. "The Economic Consequences of Legal Origins." *Journal of Economic Literature* 46 (June): 285-332.

La Porta, Rafael, Florencio Lopez-de-Silanes, Andrei Shleifer, and Robert W. Vishny. 1997. "Legal Determinants of External Finance." *Journal of Finance* 52 (July): 1131-50.

La Porta, Rafael, Florencio Lopez-de-Silanes, Andrei Shleifer, and Robert W. Vishny. 1998. "Law and Finance." *Journal of Political Economy* 106 (December): 1113-55.

Larcom, Russell Carpenter. 1937. *The Delaware Corporation*. Baltimore: Johns Hopkins Press.

Lazonick, William. 2007. "The US Stock Market and the Governance of Innovative Enterprise." *Industrial and Corporate Change* 16 (December): 983-1035.

Lewis, William Draper. 1917. "The Uniform Limited Partnership Act." *University of Pennsylvania Law Review* 65 (June): 715-31.

Livesay, Harold C. 1975. *Andrew Carnegie and the Rise of Big Business*. Boston: Little Brown.

Lu, Qian, and John Wallis. 2013. "Banks, Politics, and Political Parties: From Partisan Banking to Open Access in Early Massachusetts." Unpublished paper.

Maier, Pauline. 1992. "The Debate over Incorporations: Massachusetts in the Early Republic." In *Massachusetts and the New Nation*, ed. Conrad Edick Wright, 75-81. Boston: Massachusetts Historical Society.

Maier, Pauline. 1993. "The Revolutionary Origins of the American Corporation." *William and Mary Quarterly* 50 (January): 51-84.

Majewski, John. 2000. *A House Dividing: Economic Development in Pennsylvania and Virginia before the Civil War*. New York: Cambridge University Press.

Massachusetts, Commonwealth of. 1836. *The Revised Statutes of the Commonwealth of Massachusetts, Passed November 4, 1835*. Boston: Dutton & Wentworth.

Massachusetts, Commonwealth of. 1854. *General Laws of the Commonwealth of Massachusetts Passed Subsequently to the Revised Statutes*. Boston: Dutton & Wentworth.

Massachusetts, Commonwealth of. 1903a. *Report of the Committee on Corporation Laws, Created by Acts of 1902, Chapter 335*. Boston: Wright & Potter.

Massachusetts, Commonwealth of. 1903b. *Acts and Resolves by the General Court of Massachusetts*. Boston: Wright & Potter.

McCleary, Rachel M., and Robert J. Barro. 2006. "Religion and Political Economy in an International Panel." *Journal for the Scientific Study of Religion* 45 (June): 149-75.

Murrin, John M. 2000. "The Jeffersonian Triumph and American Exceptionalism." *Journal of the Early Republic* 20 (Spring): 1-25.

Nedelsky, Jennifer. 1990. *Private Property and the Limits of American Constitutionalism: The Madisonian Framework and Its Legacy*. Chicago: University of Chicago Press.

New York, State of. 1821. *Reports of the Proceedings and Debates of the Convention of 1821, Assembled for the Purpose of Amending the Constitution*. Albany: E. and E. Hosford.

New York, State of. 1848. *Laws of the State of New-York Passed at the Seventy-First Session of the Legislature*. Albany: Charles Van Benthuysen.

Nolan, R. C. 2006. "The Continuing Evolution of Shareholder Governance." *Cambridge Law Journal* 65 (March): 97-127.

North, Douglass C., John Joseph Wallis, and Barry R. Weingast. 2009. *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*. New York: Cambridge University Press.

Nunn, Nathan. 2008. "The Long-Term Effects of Africa's Slave Trade." *Quarterly Journal of Economics* 123 (February): 139-76.

Nunn, Nathan, and Leonard Wantchekon. 2012. "The Slave Trade and the Origins of Mistrust in Africa." *American Economic Review* 101 (December): 3221-52.

O'Gorman, Frank. 1993. "The Electorate Before and After 1832." *Parliamentary History* 12 (June): 171-83.

Ohio, State of. 1846. *Acts of a General Nature Passed by the Forty-Fourth General Assembly of the State of Ohio, Begun and Held in the City of Columbus, December 1, 1845*. Columbus: C. Scott and Co.

Onuf, Peter S. 2012. "American Exceptionalism and National Identity." *American Political Thought* 1 (Spring 2012): 77-100.

O'Sullivan, Mary. 2001. *Contests for Corporate Control: Corporate Governance and Economic Performance in the United States and Germany*. New York: Oxford University Press.

Papaioannou, Elias, and Gregorios Siourounis. 2008. "Democratization and Growth." *Economic Journal* 118 (October): 1520-51.

Pennsylvania, Commonwealth of. Various years. *Laws of the General Assembly*. Harrisburg: various printers.

Pennsylvania, Commonwealth of. 1810. *Laws, Statutes, etc., 1700-1800.* 4 vols. Philadelphia: Bioren.

Pennsylvania, Commonwealth of. 1837-38. *Proceedings and Debates of the Convention to Propose Amendments to the Constitution*. Harrisburg: Packer, Barrett, and Parks. 14 vols.

Pennsylvania, Commonwealth of. 1873. *Debates of the Convention to Amend the Constitution of Pennsylvania*. Harrisburg: Benjamin Singerly, State Printer. 9 vols.

Pennsylvania, Commonwealth of. 1874. *The Constitution of the Commonwealth of Pennsylvania Adopted December 16, 1873*. Harrisburg: Benjamin Singerly, State Printer.

Pennsylvania, Commonwealth of. 1874. *The Legislative Journal for the Session of 1874*. Harrisburg: Benjamin Singerly, State Printer. [Available on microfilm at the Pennsylvania State Library in Harrisburg.]

Pennslvania, Commonwealth of. 1931. *Proposed Business Corporation Law Prepared by the Department of Justice*. Harrisburg: n.p.

Phillips, John A., and Charles Wetherell. 1995. "The Great Reform Act of 1832 and the Political Modernization of England." *American Historical Review* 100 (April): 411-36.

Priest, Claire. 2006. "Creating an American Property Law: Alienability and its Limits in American History." *Harvard Law Review* 120 (December): 385-459.

Ribstein, Larry E. 2010. *The Rise of the Uncorporation*. New York: Oxford University Press.

Rodrik, Dani, Arvind Subramanian, and Francesco Trebbi. 2004. "Institutions Rule: The Primacy of Institutions over Geography and Integration in Economic Development." *Journal of Economic Growth* 9 (June): 131-65.

Roe, Mark J. 1994. *Strong Managers, Weak Owners: The Political Roots of American Corporate Finance*. Princeton: Princeton University Press.

Roe, Mark J., and Jordan I. Siegel. 2009. "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 (September): 781-800.

Ross, Dorothy. 1984. "Historical Consciousness in Nineteenth-Century America." *American Historical Review* 89 (October): 909-28.

Rutledge, Wiley B., Jr. 1937. "Significant Trends in Modern Incorporation Statutes." *Washington University Law Quarterly* 22 (April): 305-43.

Sachs, Jeffrey D. and Andrew M. Warner. 2001. "The Curse of Natural Resources." *European Economic Review* 45 (May 2001): 827-38.

Schocket, Andrew M. 2007. *Founding Corporate Power in Early National Philadelphia*. DeKalb, Ill. Northern Illinois University Press.

Schwartz, Anna J. 1987. "The Beginning of Competitive Banking in Philadelphia, 1782-1809." In *Money in Historical Perspectiv*e, ed. Schwartz, 3-23. Chicago: University of Chicago Press.

Schwartz, Edward R. 1965. "The Limited Partnership Association—An Alternative to the Corporation for the Small Business with 'Control' Problems?" *Rutgers Law Review* 20 (Fall): 29-88.

Seavoy, Ronald E. 1982. *The Origins of the American Business Corporation, 1784-1855: Broadening the Concept of Public Service during Industrialization*. Westport, Conn.: Greenwood Press.

Smull, John A. 1874. *Rules and Decisions of the General Assembly of Pennsylvania, Legislative Directory, Together with Useful Political Statistics, List of Post Offices, County Officers, &c.* Harrisburg: Benjamin Singerly, State Printer.

Stout, Lynn A. 2007. "The Mythical Benefits of Shareholder Control." *Virginia Law Review* 93 (May): 789-809.

Stransky, George E., Jr. 1956. "The Limited Partnership Association in New Jersey." *Rutgers Law Review* 10 (Summer): 701-15.

Tarbell, Ida M. 1904. *The History of the Standard Oil Company*. New York: McClure, Phillips & Co. 2 vols.

Taylor, James. 2006. Creating Capitalism: Joint-stock Enterprise in British Politics and Culture, 1800-1870. Woodbridge, Eng.: Royal Historical Society/Boydell.

Thring, Henry. 1856. *The Joint Stock Companies Act, 1856: With an Introduction, Practical Notes, and an Appendix of Forms*. London: Stevens & Norton.

Tyrrell, Ian. 1991. "American Exceptionalism in an Age of International History." *American Historical Review* 96 (October): 1031-55.

U.S. Commissioner of Corporations. 1904. "Report." House Doc. 165, 58th Cong., 3rd Sess. Washington, DC: Government Printing Office.

Van Atta, John R. 2008. "'A Lawless Rabble': Henry Clay and the Cultural Politics of Squatters' Rights, 1832-1841." *Journal of the Early Republic* 28 (Fall): 337-78.

Wall, Joseph Frazier. 1970. *Andrew Carnegie*. New York: Oxford University Press.

Wallis, John Joseph. 2005. "Constitutions, Corporations, and Corruption: American States and Constitutional Change, 1842 to 1852." *Journal of Economic History* 65 (March): 211-56.

Warren, Edward H. 1929. *Corporate Advantages without Incorporation*. New York: Baker, Voorhis & Co.

Wells, Harwell. 2000. "The Modernization of Corporation Law. 1920-40." *University of Pennsylvania Journal of Business Law* 11 (Spring): 573-629.

Wells, William P. 1886. "The Dartmouth College Case and Private Corporations." In *Report of the Ninth Annual Meeting of the American Bar Association*, 229-56. Philadelphia: Dando.

Whitworth, John F., and Clarence B. Miller. 1902. *Statutory Law of Corporations in Pennsylvania, Including Annotations and a Complete Set of Forms*. Philadelphia: T. & J. W. Johnson & Co.

Whitworth, John F., and Clarence B. Miller. 1905. *The Corporation Laws of Pennsylvania, 1903-1905, ..., Being a Supplement to Statutory Law of Corporations*. Philadelphia: T. & J. W. Johnson & Co.

Yablon, Charles M. 2007. "The Historical Race: Competition for Corporate Charters and the Rise and Decline of New Jersey: 1880-1910." *Journal of Corporation Law* 32 (Winter): 323-80.

Table 1. Restrictions on Manufacturing Corporations in Early General Incorporation Statutes

| State | Year of Statute | Restrictions on capital stock | Restrictions on borrowing or assets | Restrictions on duration | Governance Structure | Voting Rule | Shareholders' Liability |
|---|---|---|---|---|---|---|---|
| Massachusetts | 1851 | Must be at least $5,000 but not more than $200,000 | Debts cannot exceed paid-in capital | None | Managed at least 3 directors, one of whom is president; must also elect clerk and treasurer | None | Stockholders jointly liable for all debts until capital is fully paid in; then for debts to workers |
| New York | 1848 | None | Debts cannot exceed amount of capital stock | 50 years | Managed by 3 to 9 trustees, one of whom is president | One vote per share | Stockholders individually liable for debts up to amount of subscription until capital is fully paid in; jointly liable for debts to workers |
| New Jersey | 1849 | Must be at least $10,000 | Debts cannot exceed paid-in capital | 50 years | Managed by at least 3 directors who must be stockholders; | None | Stockholders liabilities limited to amount of subscription |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | | | majority must be residents of state; president must be a director and resident of state | | |
| Pennsylvania | 1849 | Must be at least $20,000 | Liabilities cannot exceed three times paid-in capital; can't own more than 2000 acres of land | 20 years | Managed by 5 to 13 directors; majority must be citizens of state; president must be a director; treasurer and secretary elected by stockholders but cannot be directors | One vote per share, but no shareholder can vote more than one third of total | Stockholders jointly liable for amount of for debts up to amount of subscription until capital is fully paid in |
| Ohio | 1846 | Must be at least $5,000 but not more than $200,000 | None | 40 years | Managed by 3 to 7 directors; president chosen by directors | One vote per share | Stockholders liability limited to amount of subscription except are fully liable for debts to |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | | | | | workers |
| Illinois | 1857 | Must be at least $10,000 but not more than $500,000 | Debts cannot exceed the amount of capital stock. | 50 years | Managed by 3 to 7 directors who must be stockholders; directors choose other officers | One vote per share | Stockholders liable for debts up to amount of subscription until capital is fully paid in |
| California | 1850 | None | Debts cannot exceed amount of paid-in capital | 50 years | Managed by 3 to 9 trustees, one of whom chosen president | One vote per share | Unlimited individual proportional liability, also jointly liable for debts to workers |

*Sources*: Massachusetts (1854), Vol. 1, 660-64; Massachusetts (1836), 327-34, 362-66; New York (1848), 54-61; Elmer (1855), 456-62; Pennsylvania (1849), 563-69; Ohio (1846), 37-40; Illinois (1857), 161-65; California (1850), 347-76.

Table 2. Number and Size of Partnership Associations Registered in Philadelphia County, 1877-1927

| Year | Number of Firms | Percent with 3 Owners | Percent with 4-9 Owners | Percent with 10+ Owners | Average Capital in $$ | Percent with Capital ≤ $10,000 | Percent with $10,000 < Capital < $100,000 | Percent with Capital ≥ $100,000 |
|---|---|---|---|---|---|---|---|---|
| 1877 | 31 | 45.2 | 45.2 | 9.7 | 113,300 | 35.4 | 38.7 | 25.8 |
| 1882 | 47 | 59.6 | 36.1 | 4.3 | 43,700 | 46.8 | 38.3 | 14.9 |
| 1887 | 59 | 57.6 | 37.3 | 5.1 | 69,600 | 45.8 | 32.2 | 22.0 |
| 1892 | 69 | 69.6 | 29.0 | 1.4 | 111,800 | 56.5 | 37.7 | 5.8 |
| 1897 | 65 | 69.2 | 27.7 | 3.1 | 48,400 | 67.7 | 18.5 | 13.8 |
| 1902 | 30 | 83.3 | 13.3 | 3.3 | 6,400 | 80.0 | 20.0 | 0.0 |
| 1907 | 12 | 75.0 | 16.7 | 8.3 | 8,000 | 83.3 | 16.7 | 0.0 |
| 1912 | 5 | 80.0 | 20.0 | 0.0 | 6,000 | 100.0 | 0.0 | 0.0 |
| 1917 | 0 | na | na | na | 0 | na | na | na |
| 1922 | 1 | 0.0 | 100.0 | 0.0 | 10,000 | 100.0 | 0.0 | 0.0 |
| 1927 | 2 | 50.0 | 50.0 | 0.0 | 2,700 | 100.0 | 0.0 | 0.0 |

*Source*: Partnership Books, 1836-1955, RG 5.23, City Archives, City of Philadelphia, Department of Records.