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

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ABSTRACT

British general incorporation law granted companies an extraordinary degree of contractual freedom to craft their own governance rules. In this paper we study the uses to which this flexibility was put by examining the articles of association written by three samples of companies from the late nineteenth and early twentieth centuries. We find that incorporators consistently wrote rules that shifted power from shareholders to directors, that the extent of this shift became greater over time, and that Parliament made little effort to restrain it. Although large firms were less likely to enact the most extreme provisions, such as entrenching specific directors for life, they too wrote articles that gave managers essentially unchecked power. These findings have implications for the literature on corporate control, for the "law-and-finance" argument that the common law was more conducive to financial development than the code-based systems of civil law countries, and for the debate on entrepreneurial failure in Britain during the late nineteenth and early twentieth centuries.

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Contractual Freedom and the Evolution of Corporate Governance in Britain, 1862 to 1929

The general incorporation laws that Parliament enacted from 1844 to 1856 conferred a remarkable degree of contractual freedom on British companies. By the end of that period firms choosing to organize as corporations not only could decide whether to limit the liability of their members, they could determine almost all features of their governance structures. The 1856 act included a model set of articles of association that applied to any company that did not write its own rules. Although these articles covered most aspects of corporate governance, they were merely default rules. Companies could reject any or all provisions of the model articles and write alternative clauses of their own choosing. They could even choose substitutes that explicitly negated provisions in the model table.

Scholars have shown that the vast majority of business companies formed after 1856 opted for limited liability.[1] Much less is known, however, about the governance rules they chose to write, although it is easy to find out what they were. In this paper, we analyze the articles of association adopted by three samples of companies incorporated during the years 1892, 1912, and 1927 respectively.[2] Parliament published new versions of the model articles in 1862, 1906, and 1929, so we can compare the articles written by our sample companies to the then-current model to determine the extent to which the default rules influenced incorporators' governance choices. We can also explore the extent to which the Parliament revised the model table to

[1] H. A. Shannon, "The First Five Thousand Limited Companies and their Duration," *Economic History* 2 (1932): 396-424; H. A. Shannon, "The Limited Companies of 1866-1883," *Economic History Review* 4 (Oct. 1933): 290-316.

[2] This research is part of a larger study (with Jean-Laurent Rosenthal) of business organizational forms in four countries: Britain, France, Germany, and the United States. See Timothy W. Guinnane et al., "Putting the Corporation in its Place," *Enterprise and Society* 8 (Sept. 2007): 687-729. We chose these dates to correspond to samples we were already collecting of company registrations in France and Germany. The year 1892 corresponds to the year the GmbH form (*Gesellschaft mit beschränkter Haftung*) was introduced in Germany, and the year 1927 follows the introduction of the SARL (Société à Responsabilité Limitée) in France.

reflect actual practice or, alternatively, to encourage companies to adopt better corporate governance practices. Finally, we can assess whether firms that anticipated raising capital externally wrote articles that reassured investors by offering them greater protection.

The literature on corporate governance suggests that firms seeking to raise funds from external investors, especially from investors not personally known to the company's organizers, would design articles that limited the ability of insiders to extract private benefits of control.[3] Because companies that afforded investors such protections should have been able to raise capital at lower cost than those that did not, one might expect to observe large firms converging over time toward a standard set of articles that represented "good" corporate governance practices. By contrast, small closely held firms did not have to worry about appealing to the public for funds. Consequently, they should have been freer to design articles that met their owners' particular contracting needs, for example by enabling them to exit from the enterprise at will, vet new members of the company, pass on their positions to heirs, or differentially allocate income and control rights.[4] As the number of small firms that organized as corporations increased, one might expect to see a pattern emerge in which large firms adopted a standard set of articles that reflected "good" practices, and small companies made more heterogeneous choices.

[3] The historical literature on this point includes Eric Hilt, "When did Ownership Separate from Control? Corporate Governance in the Early Nineteenth Century," *Journal of Economic History* 68 (Sept. 2008): 645-85; Aldo Musacchio, "Law versus Contracts: Shareholder Protections and Ownership Concentration in Brazil, 1890-1950," *Business History Review* 82 (Autumn 2008): 445-73; and Howard Bodenhorn, "Voting Rights, Share Concentration, and Leverage at Nineteenth-Century US Banks," NBER Working Paper 17808 (Feb. 2012). For studies from the recent period showing that companies seeking external capital take advantage of opportunities to signal good corporate governance, see John C. Coffee, Jr. "Racing towards the Top? The Impact of Cross-Listings and Stock Market Competition on International Corporate Governance," *Columbia Law Review* 102 (Nov. 2002): 1757-831; William A. Reese, Jr. and Michael S. Weisbach, "Protection of Minority Shareholder Interests, Cross-Listings in the United States, and Subsequent Equity Offerings," *Journal of Financial Economics*, 66 (Oct. 2002): 65-104; and Craig G. Doidge, Andrew Karolyi, and René M. Stulz, "Why Are Foreign Firms Listed in the U.S. Worth More?" *Journal of Financial Economics* 71 (Feb. 2004): 205-38.

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

None of these expectations are borne out by our analysis. Although we find some variation in the kinds of modifications to the model table made by companies of different types and sizes, what stands out above all else is the high degree to which firms used similar substitute provisions and the extent to which these changes were not of the sort likely to reassure investors. In particular, we observe a strong across-the-board tendency to rewrite the corporate governance rules in ways that increased the power of directors relative to shareholders, so that in large and small firms alike shareholders were for all practical purposes stripped of their power to check, or even to monitor, directors. Also contrary to our expectations, we find that the government's changes to the model table for the most part ratified this trend. Although some of the government's revisions seem to have aimed (largely unsuccessfully) to moderate current practice in ways that offered shareholders some additional protection, the net effect of the changes was to reinforce the increase in directors' power.

Our findings contradict those of some recent scholars who have defended British corporate governance practices.[5] One reason for the difference in results is that these other studies focus on companies traded on the London Stock Exchange (LSE), whereas ours is based on a random sample of all companies incorporated in a given year and includes few, if any, companies that ever traded on the exchange.[6] Another is that we look at all the governance rules

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[5] See especially James Foreman-Peck and Leslie Hannah, "Some Consequences of the Early Twentieth-Century British Divorce of Ownership from Control," *Business History* 55 (issue 4, 2013), 543-64; and Gareth Campbell and John D. Turner, "Substitutes for Legal Protection: Corporate Governance and Dividends in Victorian Britain," *Economic History Review* 64 (May 2011): 571-97. But see also Janette Rutterford, "The Shareholder Voice: British and American Accents, 1890-1965," *Enterprise & Society* 13 (Mar. 2012): 120-53; and Colleen Dunlavy, "Corporate Governance in Late 19th-Century Europe and the U.S.: The Case of Shareholder Voting Rights," in *Comparative Corporate Governance: The State of the Art and Emerging Research*, eds. Klaus J. Hopt, et al. (Oxford, Eng.: Oxford University Press, 1998), 5-39. Views more in line with our own include Brian R. Cheffins, *Corporate Ownership and Control: British Business Transformed* (Oxford, Eng.: Oxford University Press, 2008); and James Taylor, "Privacy, Publicity, and Reputation: How the Press Regulated the Market in Nineteenth-Century England," *Business History Review* 987 (Winter 2013): 679-701.

[6] We looked up our sample companies in the LSE's price quotations for 1892-1929, and also in *Burdett's Official Intelligence* for relevant years, and found none of the companies listed under their original names. It is possible, however, that some of the companies were reorganized and traded under different names or were acquired

written into the firms' articles of association, whereas the other studies examine a narrower set of metrics, such as the number of votes each shareholder could cast in a poll, the number of directors on the board, or whether directors had to own a minimum number of shares. It is, of course, possible that an examination of the complete articles of association of large traded companies would show that their governance rules were systematically different from those of the companies in our sample. We think such a comparison is important to undertake and plan to do it in future work. But we also believe that it is important to understand the governance practices of companies that operated below the radar screen of *Burdett's Official Intelligence* and other similar sources about traded companies. Many enterprises did not aspire to list on the LSE. Indeed, after the 1907 Companies Act gave incorporators the choice either of organizing their firms as public companies or as private concerns that could not make any public offering of securities, the overwhelming majority of new companies (over 90 percent by the 1920s) opted to be private (see Figure 1).[7] Although companies that traded on the exchanges accounted for the lion's share of the total capitalization of British companies, they disproportionately consisted of railroads and other transportation companies, financial institutions, and utilities, and excluded the most technologically dynamic parts of the manufacturing sector.[8] Moreover, enterprises that chose to be private did not thereby give up the possibility of raising capital externally through private placements by banks and other intermediaries. As we will show, after 1907 many incorporators signaled their intention to raise funds in this way by including a provision in their

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by other companies whose securities traded. For example, one of the largest firms in our 1892 sample, the Pioneer Telephone Co., Ltd., was taken over later that same year by the New Telephone Co., a listed company.

[7] Guinnane et al., "Putting the Corporation in its Place"; and U.K. Board of Trade, *General Annual Report under the Companies (Winding-up) Act of 1890* (London: H.M.S.O., 1900-1921); and U.K. Board of Trade, *General Annual Report* (London: H.M.S.O., 1922-1930).

[8] Railways alone constituted fully 60.1 percent of the nominal value of non-government securities quoted on the LSE Official List in 1893 and had only fallen to 47.4 percent by 1920. In 1920, companies categorized as commercial/industrial, breweries/distilleries, and iron, coal, and steel still accounted for only 11 percent of the nominal value of non-government securites on the LSE. Ranald C. Michie, *The London Stock Exchange: A History* (Oxford: Oxford University Press, 1999), 89, 184.

articles of association enabling them to "pay a commission to any person for subscribing or agreeing to subscribe … for any shares in the Company or procuring or agreeing to procure subscriptions."[9]

Our finding that incorporators used the contractual freedom that British company law granted them to reduce shareholders' power relative to directors' is contrary to the so-called "Law and Finance" perspective of Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer, and Robert Vishny (hereafter LLSV).[10] According to LLSV, external investors in corporations are better protected in countries with British common-law systems than civil-law systems, in large measure because of the common law's greater flexibility. As we show, however, the companies in our sample overwhelmingly took advantage of the flexibility of British law to adopt practices that LLSV's indexes would classify as bad for investors.

Our findings also have implications for the long-running debate over the sources of Britain's relative economic decline during the late nineteenth and early twentieth centuries. An important strand of that literature has focused on failures in capital markets. William Kennedy has argued that the kinds of poor corporate governance practices our research has highlighted distorted British equity markets, encouraging investors to put their money overseas rather than in the new technology sectors of the domestic economy.[11] Michael Edelstein has challenged this view by pointing to the extensive trading in domestic securities on British regional exchanges

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

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

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

and by demonstrating that returns on the foreign and domestic securities that drove the flows moved inversely.[12] More recently, Benjamin Chabot and Christopher Kurz have shown convincingly that it was precisely the lack of correlation between foreign and domestic returns that explains why rational investors seeking diversified portfolios moved substantial amounts of capital overseas.[13] All of these studies analyzed data collected from securities markets, but, as we show, the overwhelming majority of new companies seeking external capital chose to raise funds by private placement rather than on an exchange. To determine the extent to which they were successful, one must find ways of studying these private investment channels and assessing their magnitude. Such an exercise is beyond the scope of this essay, and so we cannot take a position on the larger question of whether or not the governance practices that firms adopted in their articles helped or hurt the British economy. Either answer is theoretically possible. On the one hand, entrenching a particular set of managers protected them from demands for short-term profits that may have hobbled their innovative capacity.[14] On the other hand, entrenchment may also have locked in a particular set of ideas and practices, making it more difficult for firms to respond creatively to competitive challenges in the future.[15]

British Company Law and the Model Articles of Association

Before 1844, forming a corporation in Britain required the explicit permission of the state in the form of a charter, and it was relatively easy for coalitions of interested parties to block

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

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

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

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

chartering acts in Parliament.[16] Most large, multi-owner businesses, as a result, organized instead as unincorporated joint-stock companies.[17] These were essentially large partnerships structured by contracts that allowed them to concentrate managerial authority and function, for the most part, as if they were legal persons. After the passage of the Bubble Act of 1720, unincorporated companies operated in something of a legal grey area. Nonetheless, their numbers grew fairly steadily until the early-1820s, when the courts handed down a series of decisions that cast doubt on their legality. Parliament responded by repealing the Bubble Act in 1825, but after a surge in promotions of new companies during the 1830s climaxed in scandal, it moved to assert more control of the process of forming companies. In 1844, it passed an act granting corporate status, though not limited liability, to most (non-financial) companies that registered and met certain minimal requirements.[18] The act also declared unregistered joint-stock companies to be illegal and prohibited partnerships with more than twenty-five members. Parliament completed the transition to general incorporation by adding limited liability in 1855 and 1856.[19] Finally, in 1862, it combined these various acts with several others pertaining to companies in insurance and other industries into a consolidated statute that would remain the basis of corporate law in Britain for the next forty-five years.[20]

From the beginning, company law in Britain was characterized by a great deal of contractual flexibility. The original 1844 act had been drafted by a committee chaired by

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

[17] The articles of association of many of these have been collected by Mark Freeman, Robin Pearson, and James Taylor. See *Shareholder Democracies? Corporate Governance in Britain & Ireland before 1850* (Chicago: University of Chicago Press, 2012).

[18] The Joint Stock Companies Act, 1844, 7 & 8 Vict. C. 110. The act did not apply to banks and friendly societies. Railroad and insurance companies faced additional layers of regulation. See Harris, *Industrializing English Law*; and Freeman, Pearson, and Taylor, *Shareholder Democracies*. On political discussions surrounding the move toward general incorporation, see James Taylor, *Creating Capitalism: Joint-Stock Enterprise in British Politics and Culture, 1800-1870* (Woodbridge, Suffolk: Boydell Press for the Royal Historical Society, 2006).

[19] The Limited Liability Act, 1855, 18 & 19 Vict C. 133; The Joint Stock Companies Act, 1856, 19 & 20 Vict. C.47.

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

William Gladstone, then president of the Board of Trade under Prime Minister Robert Peel. The early years of Peel's administration were the heyday of free trade and laissez-faire, and the act that came out of Gladstone's committee permitted incorporators 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."[21] The 1856 statute 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. Companies could use the table as written, adopt only the parts that suited their needs, or else start from scratch and write their own rules. According to Robert Lowe, the vice president of the Board of Trade who introduced the bill in Parliament, the drafters based the table of default rules on provisions that they observed joint-stock companies frequently adopting and also on the principles embodied in an earlier act governing companies chartered by Parliament.[22] The actual choice of rules was left to the incorporators, however. As Lowe put it, "Having given them a pattern, the State leaves them to manage their own affairs, and has no desire to force constitutions upon these little republics."[23] British company law to the present day starts with a set of model governance rules that are separate from the statutory requirements of the act and that incorporations can freely accept, reject, or alter to suit their needs.[24]

The 1862 Companies Act was long: 212 sections spread over more than 80 pages of printed text. Only a few of the sections dealt with internal governance, however. Most pertained

[21] Companies Act 1844 7&8 Vict. C. 110 Section VII. For the historical background see Harris, *Industrializing English Law*, 278-286, and the references therein.

[22] This act was the Companies Clauses Consolidation Act 1845 (1845 CHAPTER 16) which specified the default governance rules for companies that were incorporated by acts of Parliament. There were altogether 165 rules in this template of bylaws. In the post-1844 period the template applied mostly to railway and utility companies.

[23] Speech of the Rt. Hon. Robert Lowe, Vice-President of the Board of Trade, On the Amendment of the Law of Partnerships and Joint-Stock Companies, February 1st, 1856 [Unknown Binding], p. 39.

[24] For the current model, see http://www.companieshouse.gov.uk/about/tableA/index.shtml, accessed 15 Mar. 2013. See also R. C. Nolan, "The Continuing Evolution of Shareholder Governance," *Cambridge Law Journal* 65 (Mar. 2006): 97-127.

to the formation and winding up of companies and to the liability of the company and its shareholders towards creditors. The few clauses that touched upon internal governance mainly concerned voting rules and the proportion of votes required for various types of decisions. In keeping with the spirit of the legislation, however, the determination of who could vote and how many votes each member could cast was left to the incorporators in their articles of association. Thus section 52 stated, “In default of any Regulations as to voting every Member shall have One Vote.” Similarly, section 51 specified, “In computing the Majority under this Section, when a Poll is demanded, Reference shall be had to the Number of Votes to which each Member is entitled by the Regulations of the Company.”

To emphasize, the statute itself imposed almost no governance rules on companies but rather offered incorporators a model set of articles of association. These articles were default rules that applied only if incorporators did not adopt their own set of articles. The model appended to the 1862 statute contained 97 provisions. Labeled “Table A,” it specified the default rules for such issues as the transfer and transmission of shares, the conduct of general meetings, the powers of directors, procedures for declaring dividends, and requirements for the maintenance of accounts, annual audits, and the provision of financial reports to shareholders. Because the drafters assumed that most companies would be public in the sense of raising capital from a broad group of investors, some of whom would own many shares and others only a few, they mandated that shares would be freely transferable unless the owner was indebted to the company (Article 10). They also attempted to bolster the ability of smallholders to protect their interests by specifying a voting rule that allocated one vote per share up to the first ten shares, one vote for every five shares up to one hundred, and then one vote for every ten additional shares (Article 44).

Perhaps to insure that there was continuity in the management of the enterprise, the model articles stipulated that board members would hold overlapping terms, with one-third of the directors standing for reelection at every annual meeting (Article 58). Although this staggering of terms may have made it more difficult for shareholders to effect major changes in the composition of the board, Table A constrained the power of directors in important ways. Directors needed the approval of the general meeting to declare a dividend (Article 72) and increase capital (Article 26), with the latter requiring a three-quarters vote. The general meeting controlled directors' remuneration (Article 54) and could remove any director with a three-quarters vote (Article 65). The company's accounts had to be checked annually by auditors chosen by the shareholders (Articles 83 and 84). Shareholders had to be provided with a copy of the balance sheet at least seven days in advance of the annual meeting (82). Moreover, shareholders had routine access to the company's accounts (Article 78). In other words, Table A created a governance system that subjected the most fundamental decisions of the board to shareholders' oversight and gave shareholders the tools they needed to monitor the board's activities.

To the extent that one can infer intentions from outcomes it would seem that the drafters' aim was to offer incorporators a model that would embody contemporary notions of good governance. This inference is borne out by recent scholarship by Mark Freeman, Robin Pearson, and James Taylor. For their book, *Shareholder Democracies? Corporate Governance in Britain & Ireland before 1850*, Freeman et al. constructed a "corporate governance index" to assess trends in governance practices in British joint-stock companies between 1720 and 1844. Their index assigns points for provisions in a company's articles that bolstered shareholders' power and then combines the points additively. It includes nine variables with a maximum value of two points each, so the index ranges from 0 to 18, with higher scores meaning increased shareholder power. The average score of companies in their database dropped from about 14 in the late eighteenth century to about 7.5 in the 1840s. If we assess the 1862 Table A on the same scale, its score would be 13 out of 18 points. Table A lost two points because it did not require more than one ordinary general meeting each year, two points because the provision for a staggered board made the normal term for a director three years, and one point because it did not specify whether shareholders or directors had the power to appoint managers.[25] One could debate the relative importance of these various provisions and the values that Freeman, Pearson, and Taylor assigned to them. The clear implication, however, is that companies that adopted Table A in its entirety gave their shareholders much more authority relative to directors than was common among joint-stock companies at the time Parliament enacted the first general incorporation law. In this sense Table A represented an attempt by the government to use the signaling power of the statute to encourage new firms to adopt better corporate governance practices. It seems, moreover, that contemporaries viewed Table A as a good model. As late as 1894, an advice manual aimed at investors commented that Table A "very fairly fixed the balance of power" between shareholders and directors.[26]

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[25] Freeman, Pearson, and Taylor report the average values of their corporate governance index in percentage terms in *Shareholder Democracies*, p. 243. For the details of how they calculate the index, see p. 297, note 2. Table A does not perform as well on current indexes of corporate governance. For example, it would receive only two points of a possible six on the LLSV index (see "Law and Finance"), compared to the five points that the United Kingdom scored during the mid-1990s. But ideas about what constitutes good corporate governance have changed considerably since the mid-nineteenth century. For example, LLSV treat as a sign of poor governance any provision that placed ceilings on, or otherwise limited, the number of votes a shareholder could cast. In 1862, however, limits on large shareholders' voting power were thought to protect small holders' interests.

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

The 1892 Sample

Table A consisted of default rules. Whatever the drafters thought they were signaling through its provisions, incorporators could and did reject it in part or as a whole. In order to study the extent to which (and how) companies revised Table A, we collected from the British National Archives the documents filed by a sample of 54 limited companies registered in 1892.[27] Most scholars writing in the law-and-finance tradition have examined the content of formal (particularly statutory) legal rules rather than the rules that companies adopted for their own governance. As already noted, the relatively few studies that look at what firms actually did tend to examine companies whose securities were publicly traded. A sample of publicly-traded firms allows easy access to performance information available from stock-market listings and the financial press. This additional information comes at a steep price, however. Few firms were publicly traded, so this strategy amounts to looking closely at a small (albeit important) proportion of all British firms formed. For the purposes of this study, we have deliberately collected a sample from the entire population of newly formed companies. Although the consequence is that we are not able to assess the effect of the choice of governance rules on any

[27] We excluded cooperatives and mutuals from the sample. The sample was taken from the records of companies no longer in existence. Approximately twenty years after the dissolution of a company, its records were transferred from Companies House (the repository for filings by active companies) to the National Archives according to a sampling rule based on date of dissolution. At least in theory, the National Archives obtained the records of a 100 percent sample of companies that were formed in England and Wales between 1856 and 1931 and that dissolved before 1933. For companies that dissolved between 1933 and 1948, the National Archives received only a one percent sample, and for companies that dissolved after 1948, it received 100 percent of the records of public and non-exempt private companies, along with a one percent sample of exempt private companies (that is, private companies with twenty or fewer shareholders, none of which was a corporation). Using a table of original running registration numbers, "Last Company Number for each Calendar Year," available at Companies House, we collected approximately every fortieth company registered in 1892. Although our methods may over-sample short-lived companies, we do not expect the bias to be significant for the 1892 sample given that the archives received a hundred percent sample of firms that dissolved as far out as forty years after. Forty-two percent of the firms in our sample lived less than five years, and 31 percent lived at least twenty years. Only 3 percent of all companies that registered in 1892 were still in existence in 2005. BT 31, Board of Trade: Companies Registration Office: Files of Dissolved Companies, National Archives, Kew, United Kingdom.

indicator of a company's performance except survival, we can assess whether large firms tended to make governance choices that were systematically different from those made by small firms.[28]

The firms in our 1892 sample range across a major part of the size distribution of companies, and it is clear that a significant number of them aimed to raise capital from external sources, even if none of their securities traded on an exchange. The smallest company in the sample had a nominal capital of only £100 and the largest £850,000 (within the range of companies that traded on the LSE but below well the average size of listed companies).[29] The median nominal capital of firms in the sample was £10,000, and the average was £40,200 (the average for all registrations in 1892 was £37,700).[30] The law required companies to record at least seven initial shareholders at the time of registration. Nearly half of the companies in the sample (26 of the 54) did just that, but the other half listed more than seven subscribers (see Table 1). Of this second group, only 9 listed less than 15 shareholders (the average nominal capital of these companies was £28,800). Four of the companies (with average nominal capital of £252,800) listed more than 100 subscribers, and 5 (average nominal capital £42,400) listed between 50 and 100 subscribers. There is good reason to believe, moreover, that at least some of those reporting only the seven minimum subscribers required by the law aimed to distribute their

[28] We focus in this paper on firm size because that indicator turns out to be much more informative than other characteristics we can measure that might potentially reveal a company's strategy or the concerns of its organizers, such as the nominal value of its shares or whether it had multiple classes of shares, which do not vary much across firms. Unfortunately, we cannot reliably categorize our firms by industry (or even by sector). Because companies' could not amend their statements of business purposes, many incorporators wrote them so broadly that the firm could engage in virtually any conceivable type of economic activity. For example, the Memorandum of Association of the Land and Timber Concession Syndicate, Limited listed as one of its 14 business objects "To seek for and secure openings for the employment of capital in any part of the world ..." Similarly, Beer, Trant, Balkwill and Trant, Limited included as one of its 27 objects "To carry on in Great Britain, or elsewhere, the trade or business of manufacturers or dealers (wholesale, retail, or on commission) of every class, kind and description of goods that the Company may deem expedient."

[29] Data on the average size of listed companies are from Investor's Monthly Manual database made public by the International Finance Center at the Yale School of Management. We thank Richard Grossman for helping us with this source.

[30] The number for all registrations is from the *General Annual Report by the Board of Trade under the Companies (Winding-up) Act 1890* (1892).

shares more widely. The initial nominal capital of these companies ranged from £100 to £120,000, and of the ten that survived until 1897, there were four with significant numbers of shareholders (15, 16, 28, and 48 respectively).

Our goal in the following analysis is to test whether large firms tended to write different kinds of articles from small. As we have noted, the literature suggests that the need to raise funds from equity markets would discipline incorporators of large firms, so they would include in their articles provisions that offered investors assurances that their earnings would not be siphoned off by insiders. By contrast, one might expect the articles of small closely held firms to be shaped by two very different calculations. On the one hand, members might want to minimize the costs of incorporation and so simply adopt Table A as written. On the other hand, they might want to write articles that specifically addressed matters of concern to them, trading off provisions allocating income and control rights for others enabling them to exit from the enterprise at will, vet new members of the company, or pass on their interests to heirs. A priori, therefore, one might expect large firms' articles to be more homogenous than those of smaller companies and to include standard checks on the powers of managers and directors. One would expect small firms either to adopt Table A in its entirety or to be relatively idiosyncratic in the mix of articles they wrote.

One problem we face in exploring these hypotheses is that there were no articles in the file for 12 of the 54 companies in the sample. By law if a company did not write its own articles the default rules in the model table applied, so it is likely that these companies simply accepted Table A and did not write any additional articles. But it is also possible that the articles of these companies were lost or never filed. In our quantitative analysis, we allow for both of these eventualities.

Most of the 42 companies for which we have articles modified Table A substantially. Only four accepted Table A in full, ten accepted some of the articles and rejected others, and 28 rejected Table A in its entirety and wrote their own governance rules from scratch. The articles that these 28 companies drafted contained on average 129 provisions. The ten companies who accepted part of the table wrote on average 30 clauses of their own, and even the four who accepted the entire table wrote on average 29 additional provisions.

The high proportion of companies rejecting the whole model table in 1892 is not at all surprising. Thirty years had elapsed since Table A was put together, and ideas about corporate governance had undoubtedly changed substantially in the interim. The kinds of firms being formed under the Companies Act were also becoming much more varied, with many small closely held firms adopting the corporate form.[31] There was a growing sense that Table A needed to be revised to bring it more in line with contemporary practice.[32] But what was this practice? And how did it vary across different types of firms? In order to answer these questions, we focus on provisions that were clearly important for corporate governance, such as those regulating voting procedures, the powers of directors, conflicts of interest, shareholders' access to their companies' accounts, and the removal of directors.[33]

[31] See Ron Harris, "The Private Origins of the Private Company: Britain 1862–1907," *Oxford Journal of Legal Studies* 33 (Summer 2013): 339-78.

[32] See for example the recommendations in "Report of the Departmental Committee to Inquire what Amendments are Necessary in the Acts Relating to Joint Stock Companies Incorporated with Limited Liability under Companies Acts, 1862–1890" (hereinafter Davey Committee Report), C 7779 B.P.P. LXXXVIII (1895), sec. 61, p. xviii.

[33] A large number of the provisions in Table A were purely technical and non-controversial in the sense that companies that rejected Table A in its entirety wrote substitute clauses that did essentially the same thing.

How Did the 1892 Companies Use their Contractual Freedom?

We begin with voting rules because they are the focus of much of the literature on corporate governance. As already noted, the 1862 model Table A specified a graduated scheme that limited the number of votes large shareholders could cast. Very few of the firms for which we have articles (only 9 out of 42, or 21.4 percent) retained this or a similar schedule. More than three-quarters (78.6 percent) moved to one-share-one-vote.[34] LLSV would consider this change an improvement in corporate governance, and it may be that contemporaries did as well. When the model table was revised in 1906, the default rule became one vote per share. However, it is also possible that incorporators were aiming to insure that large investors retained control. Colleen Dunlavy has argued that the elimination of ceilings on large shareholders' voting power facilitated plutocratic control of corporations,[35] and some contemporaries acknowledged this motive. For example, Charles E. H. Chadwyck-Healey advised readers of his manual on company law that one-share-one-vote should be substituted for the Table A rule if "the nature of a company is such as to make it desirable or necessary that its powers should be vested in the largest proprietors."[36]

The literature on shareholders' voting rules typically treats such provisions in isolation from other parts of a company's articles, but how elections worked in actuality depended on the operation of other rules that could either magnify or diminish the significance of the voting

[34] All of the percentages reported in this section of the text include only the 42 limited-liability firms for which we have articles. See Table 2 for alternative calculations that include the 12 firms without articles.

[35] See Colleen Dunlavy, "From Citizens to Plutocrats: Nineteenth-Century Shareholder Voting Rights and Theories of the Corporation" in *Constructing Corporate America: History, Politics, Culture*, eds. Kenneth Lipartito and David B. Sicilia (New York: Oxford University Press, 2004), 66-93; and Dunlavy, "Corporate Governance in Late 19th-Century Europe and the U.S." See also Freeman, Pearson, and Taylor, *Shareholder Democracy*.

[36] Charles E. H. Chadwyck-Healey, *Treatise on the Law and Practice Relating to the Articles of Association of Joint Stock Companies with Precedents and Notes* (London: William Maxwell & Son., 1875), 260.

scheme.[37] The practice in British companies was to decide all motions by a show of hands and only bring the voting rule into play if some threshold number of shareholders called for a poll.[38] This procedure might seem to be an egalitarian one; on a show of hands each shareholder only had one vote. But again how it actually worked depended on how other rules operated, for example the size of the quorum required to take action at the general meeting and the procedure to be followed if shareholders demanded a poll. The default rule in the model table specified a quorum that rose with the number of shareholders. The quorum was five if the number of shareholders was ten or fewer and then increased in proportion to the number of shareholders until it reached a maximum of twenty (Article 37). However, few companies in our sample (only 16.7 percent) adopted the default rule or another similar provision.[39] All of the rest (83.3 percent) specified a fixed quorum for general meetings that was as low as or lower than the default minimum for companies with ten or fewer shareholders.[40] Such a low quorum meant that it was at least possible for directors to run a general meeting without the presence any other shareholders, deciding everything amongst themselves by a show of hands.

The rules governing the taking of polls also affected the way voting worked. All of the companies in our sample included a provision in their articles enabling some minimum number

[37] That corporate governance rules were not independent of each other casts doubt on the value of additive indexes such as those of LLSV and Freeman, Pearson, and Taylor. If a particular provision almost never appears without another provision, counting them both might overweight what is really one governance choice relative to others. More importantly, as in the case of voting rules, the effect of any particular provision on governance might vary according to the presence or absence of other provisions.

[38] This procedure was implicit in the relevant provision of Table A: "At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry in the book of the proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against that resolution" (Article 42). Nineteen of the firms in our sample made the show-of hands procedure explicit, and when the model table was revised in 1906, it included the explicit provision.

[39] This figure includes one company with a fixed quorum that was higher than the minimum in Table A's default rule.

[40] Some of these companies had quorums that specified minimum proportions of shareholding, as well as minimum numbers of shareholders. We include them in this category because the rules appeared to favor blockholders.

of shareholders (often, though by no means always, a number that was the same or lower than the number required for a quorum) to demand a poll—that is, a formal ballot that followed the company's voting rule. According to Table A, if a poll was demanded, "it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting" (Article 43). A possible interpretation of this default rule is that the poll would be taken right away, but most companies specifically rejected that view.[41] Fully 71.4 percent of the companies wrote substitute articles that allowed the chairman to adjourn the meeting and postpone the poll until some date in the future.[42] Such a rule allowed the directors to behave strategically and schedule the poll for a time at which they maximized their chances of winning. For example, they might need time to round up the necessary number of proxies. According to Table A, shareholders could vote either in person or by proxy (Article 48). All of the sample companies adopted this provision or a close substitute. Indeed, if anything, they made the provision more liberal. Table A required the proxy to be deposited at the company's office 72 hours in advance, but most companies specified 48 hours or less. Although LLSV consider proxy voting to be a sign of good corporate governance, contemporaries bitterly complained that directors used proxies strategically to solidify their dominance.[43]

[41] Contemporary legal experts cited case law saying that the language in Table A meant that the poll might be "lawfully taken then and there," not that it had to be. However, they recommended adding wording that specifically gave the chairman discretion over the time and place of the poll. They justified this ability to delay by referencing a principle in the case law that a poll was "an appeal to the whole constituency." Its purpose was "to give others besides those who are present when the poll is demanded power to come in and exercise their right of voting." See Francis Beaufort Palmer, *Company Precedents for Use in Relation to Companies Subject to the Companies Acts 1862 to 1890* (5th edn.; London: Stevens and Sons, 1891), 286. See also C. E. H. Chadwyck-Healey, Percy F. Wheeler, and Charles Burney, *A Treatise on the Law and Practice Relating to the Articles of Association of Joint Stock Companies with Precedents and Notes* (3rd edn; London: Sweet and Maxwell, Ltd., 1894), 272-73.

[42] This percentage excludes one company that did not include any provisions on this topic. We assume that Table A's default rules applied in this case. Some companies specified that the poll had to occur within some specified interval (a week, two weeks, or a month), but most left the question of timing open.

[43] For examples, see the discussion below of the press's coverage of companies' general meetings.

The main item on which shareholders voted at general meetings, besides the annual dividend, was the election of directors. The model table let the company's founders (the subscribers to the original memorandum of association) choose the first directors (Article 52). According to Table A, these designees would all step down at the first general meeting, and shareholders would then have an opportunity to elect a new board. In every year thereafter, one-third of the board members would rotate off, meaning that the retiring directors would have to stand for re-election if they wished to continue on the board (Article 58). Today staggered boards are thought to reduce shareholders' power, but policy makers at the time may have thought them desirable for the purposes of preserving managerial continuity. In any event, only one firm in our 1892 sample sought to do away with the practice by modifying Table A to require all directors to stand for re-election at each annual meeting.[44] Most of the other companies (74.8 percent of the total) started the fractional rotation at the first election, so that shareholders never even got a chance to choose the full board.

Many companies included provisions in their articles that insulated directors from the need for shareholders' approval. For example, nearly half (45.2 percent) delayed the timing of the first election, with about a third of the total postponing it from two to four years and the rest even longer.[45] Eleven companies in the sample (26.2 percent) went still further and specified in their articles that certain named directors would serve for a long period of years or even for life. However, a much more common way of protecting directors from shareholders was to add a

[44] Article 23 of the Sussex Horticultural Company Limited's articles of association mandated that all directors retire at each annual general meeting.

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

provision to the articles that enabled the board to designate one or more of its members as "managing directors." There was no provision for a managing director in the 1862 Table A, but nearly two-thirds (64.3 percent) of the firms in our 1892 sample added a clause to their articles that empowered members to give themselves this title, either for a fixed term or, as it was usually phrased, "without limitation." It was not clear from this wording alone whether managing directors whose appointments extended beyond their normal term on the board would have to stand for reelection by shareholders, but nearly two-thirds of the firms that adopted this clause also explicitly exempted managing directors from the normal election rotation. By designating themselves managers, therefore, directors in these firms could perpetuate their power indefinitely. Moreover, they could also control their own remuneration. All of the companies in the 1892 sample either left the directors' pay to the determination of the company in general meeting or set it in their articles. The pay of the managing directors, however, was set by the board and could take the form of salary, commission, and/or a proportion of the profits. In other words, directors could name themselves managing directors and take a share of their company's earnings off the top, before the calculation of profits for the purpose of setting dividends.

Directors at least in theory could be removed by the shareholders. The overwhelming majority of the companies with articles in the 1892 sample (76.2 percent) followed Table A in giving shareholders the authority to depose directors by a three-quarters vote. Most of the remaining companies did not include such a provision, made removal more difficult, or explicitly exempted their managing or entrenched directors from this threat. Such modifications were largely meaningless, however, because by statute the articles themselves could be amended by a three-quarters vote.[46] Most of the companies also made it easy to call extraordinary general

[46] To be more precise, the law stated that articles could be amended by special resolution, and that was the procedure that Table A set for removal of directors. Some companies (23.8 percent) made removal somewhat easier

meetings for this or other purposes, either adopting Table A's provision that directors had to call such a meeting upon the demand of one-fifth of the members of the company, or writing another provision that was just as (or even more) accommodating. Only 38.1 percent of the companies made calling an extraordinary general meeting more difficult that the Table A rule. Nonetheless, it is clear that only under the most unusual circumstances would directors face the threat of removal.

As a practical matter, therefore, directors were difficult to dislodge. Yet most companies further modified Table A in ways that increased directors' power and, at the same time, limited shareholders' ability to monitor how that power was used. For example, almost all companies allowed directors to block transfers of shares under important circumstances. Table A gave directors that power only in cases where shareholders were indebted to the company, but just three of the sample companies adopted that rule or something equivalent. Fully 54.8 percent gave the directors absolute authority to block transfers to people of whom they did not approve. Moreover, in only seven instances (16.7 percent) did the articles include procedures for insuring that a shareholder who wanted to exit was able to do so at a fair price.[47]

To give another example, Table A included a strict rule mandating that directors could never be on both sides of a contract with the company. Almost all the firms in the sample (90.4 percent) adopted a laxer standard and allowed directors to contract with the company. In most, though not all, cases the articles specified that directors had to disclose their conflict of interest to the board and/or that they could not vote on matters in which they were interested. Provisions

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by allowing it to be done by extraordinary resolution (the same three-quarters vote but without the second confirmatory shareholders' meeting).

[47] Most of the rest gave directors absolute authority in cases where the share had not been fully paid in (probably most cases). Giving directors this authority where shares were not fully paid in could be considered a protection for creditors because wealthy shareholders who thought their company was in danger might seek to escape liability for future calls by selling off their shares. See Palmer, *Company Precedents* (1891), 273. It should be noted, however, that this provision gave discretion over such transfers to the parties most likely to have inside information about the company's prospects.

allowing directors to be on both sides of contracts are generally frowned upon in the corporate governance literature today,[48] but it is important to realize that some relationships that look like conflicts of interest might actually be to the company's benefit. For example, a manufacturing company might want to put a prominent wholesaler on its board as a way of inducing the wholesaler to make selling its goods a priority and also of insuring that the company would make the goods the wholesaler thought would be most marketable. Similarly, a railroad might want to have someone involved with steel-making on the board, as such a director would have technical and market expertise the railroad would otherwise have to pay for. Both examples illustrate the basic issue: In each case, the hypothetical director could use his position for self-dealing, but in each case, the firm could possibly profit from the relationship implied by this director's involvement. The question drafters of articles faced was how to allow beneficial deals to proceed without creating an opening for tunneling. The solution most of the 1892 companies adopted was to require directors to disclose deals in which they had conflicts of interest to the other directors. Whether that was sufficient protection, given the entrenched nature of these boards, is an open question.[49]

There is no evidence that incorporators deliberately modified the articles so as to encourage tunneling or cover up fraud. The 1862 model table contained provisions requiring directors to provide shareholders with annual financial statements (Articles 79-81), mandating that the accounts be audited annually (Article 83), and protecting the independence of the

[48] For example, Simeon Djankov, La Porta, Lopez-de-Silanes, and Shleifer argue that the main danger that shareholders face from those in control of a corporation is tunneling—that is, the extraction of returns through self-dealing and other similar techniques. See Simeon Djankov, Rafael La Porta, Florencio Lopez-de-Silanes, and Andrei Shleifer, "The Law and Economics of Self-Dealing," *Journal of Financial Economics* 88 (June 2008): 430-65.

[49] Djankov, La Porta, Lopez-de-Silanes, and Shleifer argue that conflicts of interest should be disclosed to, and approved by, the shareholders, rather than the directors. See "Law and Economics of Self-Dealing."

auditors (Articles 84-88). Companies rarely modified these provisions in significant ways.[50] Nonetheless, they did make it more difficult for shareholders to monitor directors at other times. Thus, more than half (53.7 percent) of the companies in our sample significantly weakened Table A's requirement that directors keep the account books at a registered office of the company, where they "shall be open to the inspection of the members during the hours of business" (Article 78), by granting the directors the authority to determine the extent to which, and even whether, members could examine the books.[51]

There may have been good reasons for companies to limit shareholders' access to their books. Incorporators certainly worried that by buying a share in their company a competitor could gain access to information about the business that might give it some advantage.[52] But, again, such considerations need to be placed alongside the evidence we have presented about other clauses important for corporate governance. It is difficult to escape the conclusion that an overwhelming majority of the companies in the 1892 sample consistently modified the model table in ways that shifted the balance of power from shareholders to directors.

[50] On this point, see also J. R. Edwards and K. M. Webb, "Use of Table A by Companies Registering under the Companies Act 1862," *Accounting and Business Research* 15 (Summer 1985): 177-96. There were nevertheless ongoing complaints that the auditor "practically drifted into the position of a mere official of the company. In fact so entirely have the origins and purpose of his office, as a sort of 'Devil's Advocate' on the shareholders' behalf, been forgotten, that it is not at all uncommon for even the formality of his appointment to come from the directors' side of the table." The quotation is from Walker and Watson, *Investor's and Shareholder's Guide*, 151.

[51] In most but by no means all cases where the directors had discretion, the general meeting could also authorize access. But of course such a resolution would encounter all the problems associated with low quorums, polls, and proxy voting described above. According to Palmer, "few companies allow members free access to the books." *Company Precedents* (1891), 314.

[52] Some companies elaborated to reinforce the point. For example, article 81 of F. King and Co., Ltd., added that "the Board may decline to give any information concerning the business and affairs of the Company, the publication whereof would in their opinion, be detrimental to the interests of the Company." Others added additional restrictions on directors to protect proprietary information. For example, article 61 of the South London Cleaning Co., Ltd., specified that directors cannot be engaged in or have any interest in the leather trade.

Comparing the Articles of Large and Small Firms

In this section, we analyze quantitatively the variation in the articles written by companies in our 1892 sample to test whether large firms wrote articles that signaled their adoption of "good" corporate governance practices or whether small firms wrote articles that suited their more heterogeneous contracting needs. Our main indicator of size is the nominal capital a company reported at the time of registration—that is, the number of shares of all types the company planned to issue multiplied by the par value of each type of share.[53] Nominal capital is not, of course, the same thing as paid-in capital, for which unfortunately we do not have systematic information. In the first place, the company might not succeed in selling all of the shares it originally intended. In the second, subscribers typically paid in only part of the par value their shares at the time of purchase, paying off the rest in installments when called to do so by the directors. Nonetheless, we think that nominal capital is a useful metric. The magnitude of the planned investment is an indication of the incorporators' ambitions at the time they were drafting their articles of association and is thus a good way to gauge the extent to which they planned to raise capital from the public. Excessive optimism was costly because at the time of registration a company had to pay fees that were scaled by the magnitude of their nominal capital. Above a capitalization of £100,000, for example, the fee was 1 shilling per £1,000 of capital.[54] Moreover, because shareholders were liable for the full value of the shares, regardless

[53] Most firms (45 of 54) issued only one class of (ordinary) shares. Of the rest, one firm had a second class of ordinary shares, five had one class of preferred shares, four had founders' shares, and two had deferred shares. The amount of share capital in these other classes was very small. 96.5 percent of the total nominal capitalization of companies in the sample was in ordinary shares.

[54] See Table B of the First Schedule of the 1862 Act.

of the amount they actually paid in, the nominal value of capital captures the magnitude of the obligation that they took on when they invested in the company.[55]

To explore our hypotheses we coded the clauses discussed in the previous section as dummy variables that took a value of 1 if the company modified Table A in ways that increased directors' power relative to shareholders (or blockholders' power relative to small shareholders). For each clause, Table 2 reports two variants of the dummy variable. The first includes all of the 54 limited-liability firms in the sample. The second excludes the twelve companies whose files in the national archives did not include articles of association. Variant 1 assumes that companies without articles deliberately chose to be governed by Table A. Variant 2 assumes that the articles were just missing and drops these companies from the analysis.

There is good reason to believe that most, if not all, of the companies without articles chose to be governed by Table A, and hence that Variant 1 does a better job of capturing incorporators' decisions. First, among the companies for which we have articles, those that accepted Table A in its entirety all wrote additional provisions of their own, so it is plausible that companies that were simply going to accept Table A without adding other clauses would not bother to reproduce the document when they registered. Second, even though small firms might have more heterogeneous contracting needs than larger enterprises, they might also be less able to bear the extra costs of writing their own articles. Consistent with this possibility, the companies without articles in the file are smaller on average than other companies in the sample. The mean nominal capital of companies with articles was £49,848, compared to £6,608 for those without, and the medians were £10,015 and £5,000 respectively. Not only is this difference significant statistically, but the cumulative distribution of nominal capital for companies without

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

articles lies to the left of that for companies with articles. As Figure 2 shows, if we ranks firms in ascending order by their nominal capital, the level of capital that includes 50 percent of the companies without articles includes only about 30 percent of the companies with articles. (The horizontal axis is demarcated in logs but that median value corresponds to a nominal capitalization of about £5,000.) Similarly, the level that includes 90 percent of the firms without articles includes only slightly more than half of the firms that have them.[56]

Table 2 reports, for each of the provisions of interest in the articles of association, the number and percentage of companies that modified Table A so as to shift power toward directors or blockholders (that is, the number and percentage for which the dummy variable for this provision was coded 1). It also reports, for the two variants of each variable, the median nominal capital of companies coded 0 and 1 respectively and the results of the Mann-Whitney test for whether companies coded 0 were significantly different from those coded 1. If companies coded 1 are larger than those coded 0, the test will have a negative sign. The numbers in parentheses below the test statistic are the p-values for a two-tailed test of significance.[57]

For Variant 1, the differences between companies coded 1 and 0 are almost always statistically significant. Where they are not significant for Variant 1, they are also not significant for Variant 2, and the reasons are easy to explain. In the case of voting and quorum rules, Table A specified graduated scales. The only firms for which graduated scales had any meaning were those with large number of shareholders, so it makes sense that the relatively few firms coded 0 on this scale would include some large enterprises. Moreover, regardless of size, most

[56] This pattern satisfies the criterion of first-order stochastic dominance. That is, the distribution of nominal capital for the firms without articles is less than the distribution for firms with articles. The p-value (two-tailed) for the Mann-Whitney test is 0.016.

[57] The Mann-Whitney test is a non-parametric alternative to the more familiar t-test. Throughout the paper, our cut- off for statistical significance is the 90 percent confidence level. We also ran Chi-square tests of the difference in medians and probits on each of these variables with essentially the same results.

companies adopted the Table A rule that directors could be removed by a three-quarters vote of the shareholders. There was little reason to deviate from the default rule in this case because the statute mandated that shareholders could amend the articles by the same three-quarters vote. Also regardless of size, most companies made it relatively easy for shareholders to call extraordinary general meetings, though what happened at those meetings was another matter entirely.

The large number of significant results for Variant 1 is entirely expected, given that we know that small firms were disproportionately likely to be missing articles of association, perhaps because they were accepting Table A as written. What is surprising, given our hypotheses, is that for companies that did have articles (Variant 2), there is no evidence that large firms were more likely than small to adopt rules friendly to external investors. To the contrary, the signs on the Mann-Whitney tests indicate that large firms more commonly disadvantaged shareholders. (The main exceptions were the clauses specifying voting rules and quorums for general meetings for the reasons discussed above.) In the case of two of the variables, the results were statistically significant. Thus large firms were significantly more likely than small firms to delay the first election of directors and to allow shareholders to elect only a small proportion of the board at that first election. For the rest of the variables, the differences between small and large firms are not statistically significant, but that in itself is an important result. There is no evidence that small firms made fundamentally different contracting choices from large firms. Moreover, the need to raise capital from external investors does not seem to have disciplined the choices of large firms in any important way. The one exception was clauses that entrenched specific individuals as directors. Only eleven firms had such provisions, and, as Figure 3 indicates, they were concentrated in the middle range of the size distribution. The largest firms rarely went so far as to name directors for life.

The results in Table 2 indicate that companies did not expect to be punished by investors for redistributing power from shareholders to directors, except perhaps in cases where they entrenched specific directors. An interesting question is why. It is possible that investors focused their attention on other signals of the quality of corporate governance. For example, Gareth Campbell and John Turner have suggested that an important metric was the extent to which directors had "skin in the game," which they proxy by the value of shares that directors had to own to qualify for office.[58] We explore this possibility using their cut-off value of £1,000 for a director's qualification for office. The point estimates in Table 2 indicate that large firms in our sample more frequently imposed this qualification on their directors than did small firms, but the difference is not statistically significant and in fact only six firms had this requirement. If we lower the cut-off to £100, the results become significant, but it is not clear that this figure represented a substantial amount of skin in the game. Moreover, although directors were liable for full amount of the qualification so long they continued to hold the shares, they may only have paid a fraction of the total into their company treasuries.

The implication of the results in Table 2 is that any signal that the company sent by requiring directors to invest in the enterprise had to be sufficiently strong to drown out the many other negative signals imbedded in the articles. Of course, it is possible that investors were not aware of the extent to which companies were writing articles of association that stripped them of important powers. In its weekly summary of new registrations, the *Financial Times* called attention to cases where a company's articles entrenched specific directors, but it did not automatically include details about any of the more subtle ways in which incorporators insured

[58] Campbell and Turner, "Substitutes for Legal Protection."

their ongoing control.[59] As we will show, however, there was plenty of reporting on these kinds of provisions, and there were also lots of horror stories in the press about the consequences that might follow from adopting bad corporate-governance rules. If investors were ignorant, they must have been willfully so.

Contemporary Views of Companies' Governance Practices

The British financial press reported regularly on the annual meetings and other doings of companies whose securities traded publicly. The impression investors took away from such coverage depended, however, on which journal they consulted. On the one hand, reports of general meetings published in the *Statist* mainly reproduced without comment the prepared summaries that companies submitted. On the other hand, subscribers to the *Economist*, or even more the *Financial Times*, would find numerous accounts that confirmed the allegation of a prominent inventors' manual that the shareholders' meeting had become "little better than a farce."[60] As reported in the *Statist*, annual meetings appeared for the most part to be decorous occasions. By contrast, accounts in the *Economist* and the *Financial Times* played up the rowdiness and general tawdriness of these affairs.[61]

The differences in the coverage of these journals can be seen starkly in their respective accounts of a controversial annual meeting of the shareholders of the London General Omnibus Society. In advance of the gathering, the *Statist* published an article summarizing the company's worsening financial condition, but attributed its declining performance mainly to heightened competition. The article noted that there had been a move by the directors to fire the managing

[59] For a couple of examples, see *Financial Times* (19 Dec. 1892), 3; and (8 Nov. 1893), 3.
[60] Walker and Watson, *Investor's and Shareholder's Guide*, 148.
[61] For an overview of press coverage of financial news, see Taylor, "Privacy, Publicity, and Reputation."

director, a man named R. G. Hall, and an ensuing investigation by a committee of shareholders, but it merely observed, "without entering into the merits of the controversy," that the recommendation to require any future managing director to "give his whole time and services to the Company" was sound.[62] The *Statist* did not follow up this article with a report on the meeting itself, but the *Economist* and *Financial Times* did, recounting with relish the details of an assembly that lasted more than seven hours and exposed much "dirty linen" in "need of washing."[63] The raucous nature of the meeting comes through clearly in the following short extract from the *Financial Time*'s account:

> Mr. EDGAR FIGGES, who spoke amidst loud cries of "Time" and "Vote," referred to the details of the accounts, asserting that they were calculated to mislead the shareholders as to the real position of the company.
>
> After further discussion the CHAIRMAN put the amendment [to create a new committee of investigation to a voice vote], which amidst loud cried of "Carried" he declared to be lost, the majority against it being large.
>
> A SHAREHOLDER: You can declare it as lost, of course.
>
> Another SHAREHOLDER: Will you give the figures?
>
> The CHAIRMAN: I decline to give the figures. (Loud cries of "Oh!")
>
> The SHAREHOLDER: I will press for the figures.
>
> The CHAIRMAN: You may press, but I shan't give them to you.
>
> Mr. BACK demanded that the figures should be given, but the CHAIRMAN adhered to his decision.
>
> A SHAREHOLDER remarked that the chairman's conduct was very discourteous.

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[62] *Statist* (18 Mar. 1893), 298.
[63] *Financial Times* (21 Mar. 1893), 2.

The CHAIRMAN: I should like to give them to you very much, prompted by my own gentlemanly feelings—("Oh!" and laughter)—but I cannot. It's nearly 2 to 1. ("Oh!")

Mr. HEROLD demanded a poll.[64]

After Herold's demand, the chairman declared that the poll would be taken immediately. The directors controlled a large number of proxy votes, so the measure lost by a wide margin. The directors did not control quite enough votes to force Hall from the board (that required a three-quarters vote), but they did succeed in stripping him of his position as managing director.[65]

The main features of this account—the directors' strategic use of proxy votes for the purposes of control and the chairman's manipulation of the choice of voting by show of hands versus by poll—appeared in many other reports of annual meetings. For example, the chairman of the South American and Mexican Company blocked a movement by shareholders to prevent a vote on a proposal by declaring a movement to adjourn defeated "on a show of hands, without the slightest pretence of a count, and with lightning speed put the substantive motion, declaring it carried by the same instantaneous method." The chairman then adjourned the meeting before the opposition had time to demand a poll.[66] When shareholders of the Lancashire and Yorkshire Water Gas Company by a show-of-hands rejected the directors' annual report and called for a committee of investigation, the directors called for a poll and controlled enough proxy votes to defeat the resolution.[67] Similarly, when the shareholders of the Maxim-Nordenfelt Guns and Ammunition Company, Limited, expressed their disapproval of the board's management by rejecting its report in a show of hands, the directors called for a poll and used the proxies they

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[64] *Financial Times* (21 Mar. 1893), 2.

[65] *Financial Times* (21 Mar. 1893), 3. For a similar, but less colorful account, see the *Economist* (25 Mar. 1893), 354-55.

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

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

had in hand to reverse the outcome.[68] The chairman of the Industrial and General Trust, Limited, kept a slate of unpopular directors in power by accepting calls for polls whenever one of them was defeated in a show of hands.[69]

Regular readers of the *Economist* and the *Financial Times* would also have encountered numerous accounts driving home the lesson that weak corporate governance mattered—that it empowered directors to enrich themselves at shareholders' expense. The *Economist* republished an item from a Johannesburg newspaper indicating that several "life governors" of De Beers had palmed off on the company some securities that one of them had admitted were worthless for more than £66,000. These securities were then lumped with others on the company's balance sheet without any explanation of what was in the category, let alone a justification of the valuation given.[70] Directors of companies ranging from the famous to the obscure—from Nobel Dynamite Trust to United Horse Shoe and Nail Company to the Voigt Brewery—stood accused of pocketing excessive salaries and fees and profiting from contracts in which they had a conflict of interest.[71] As a shareholder in the Shenango and Mercer Coal Company complained bitterly, "Everybody concerned gets something except the shareholders. And so it will go on, I doubt not, until the shareholders make themselves masters of their own business, and insist upon a radical reform."[72]

Of course, one should not leap to the conclusion that all such charges were true and that the many newspaper articles highlighting bad corporate behavior were accurate. There was plenty of fraudulent reporting in the press, and potential investors had as good reason to suspect

[68] *Financial Times* (4 Feb 1893): 5.
[69] *Financial Times* (28 Apr. 1894), 3.
[70] *Economist* (8 Sept. 1894), 1103.
[71] See for examples, *Economist* (19 Aug. 1899), 1195; *Financial Times* (22 Aug. 1893), 3; and (4 July 1893), 2.
[72] *Financial Times* (15 Feb. 1893), 3.

the veracity of the papers' exposés as they did the puff pieces touting new investment opportunities.[73] Nonetheless, anyone reading the financial papers would have found it difficult not to worry that the governance rules commonly in effect enabled insiders to capture a disproportionate share of company profits. As Walker and Watson reminded investors in their *Guide*, "Self-preservation ... is the first law of nature, and shareholders owe their first duty to themselves."[74] They cautioned those thinking of buying shares in a venture to read the articles of association carefully because "in them often lurk most mischievous provisions" regarding corporate governance.[75]

Walker and Watson's *Guide* would have been a more reliable source than any of the commercial newspapers because the authors did not discuss individual companies and hence could not be accused of running specific securities up or down for purposes of profit. As they warned, shareholders who did not carefully review the articles of association before investment might well later discover that the rules had "been so devised as to deprive them of their just rights" by "unrestrictedly vesting in the directors all the powers of the company,"[76] that the articles conferred "unreasonable powers, and the right to excessive remuneration upon the directors, and sometimes appoint[ed] officials for a long term of years, or even 'irremovably,' at high salaries."[77] Even when directors were technically removable, shareholders might find that

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[73] See Dilwyn Porter, "'A Trusted Guide of the Investing Public': Harry Marks and the Financial News, 1884-1916," *Business History* 28 (issue 1, 1986): 1-17; Vincent Bignon and Marc Flandreau, "The Economics of Badmouthing: Libel Law and the Underworld of the Financial Press in France before World War I," *Journal of Economic History* 71 (June 2011): 616-53; Taylor, "Privacy, Publicity"; and David Kynaston, *The Financial Times: A Centenary History* (New York: Viking Penguin, 1988), Ch. 1.

[74] Walker and Watson, *Investor's and Shareholder's Guide*, 152.

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

[76] Walker and Watson, *Investor's and Shareholder's Guide*, 143.

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

the privilege of voting by proxy gave members of the existing board a powerful "weapon" that they could use "to shield mal-administration, to balk inquiry, to thwart reform."[78]

Investors who followed the financial press, particularly the *Economist* and the *Financial Times*, would have come across numerous examples of tunneling and excessive remuneration to directors. We are agnostic on how much bad behavior there actually was.[79] The point we would like to emphasize is that the news reports gave investors much to worry about that should have induced them to pay attention to the governance rules imbedded in articles of association. As we have seen, however, companies made little or no effort to distinguish themselves by writing articles that protected investors against expropriation by insiders. To the contrary, the trend was in the opposite direction, even after the British government finally revised the model table.

The 1906-08 Revision of Table A

The 1862 Companies Act gave the Board of Trade the authority to revise the model table as needed. The revisions did not have to be enacted by Parliament but would acquire the force of law upon publication in the *London Gazette*.[80] However, decades elapsed, and the Board took no action. In 1895 a parliamentary committee chaired by Lord Davey proposed that Table A be "amended so as to make it conform more closely to modern practice and business requirements."[81] Still the Board took no action. Ten years later, another parliamentary committee

[78] Walker and Watson, *Investor's and Shareholder's Guide*, 148.

[79] Scholars have taken very different positions on the pervasiveness of fraud by company insiders. For the negative view, see James Taylor, *Boardroom Scandal: The Criminalization of Company Fraud in Nineteenth-Century Britain* (Oxford: Oxford University Press, 2013); Taylor, "Privacy, Publicity, and Reputation"; George Robb, *White-Collar Crime in Modern England: Financial Fraud and Business Morality, 1845-1929* (Cambridge, Eng.: Cambridge University Press, 1992); and Cheffins, *Corporate Ownership and Control*. For a positive view, see Foreman-Peck and Hannah, "Some Consequences of the Early Twentieth-Century British Divorce of Ownership from Control"; Janette Rutterford, "'Propositions Put Forward by Quite Honest Men': Company Prospectuses and their Contents, 1856 to 1940," *Business History* 53 (Oct. 2011): 866-99; and Rutterford, "The Shareholder Voice."

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

[81] Davey Committee Report (1895), p. xviii sec. 61.

headed by Cornelius Warmington came to a similar conclusion, pointing out that "the regulations in Table A having now been in force unaltered for more than forty years, … in practice they require considerable alteration to make them available for the usual requirements of a company."[82] Finally, the Warmington committee itself undertook to revise the model table in 1906.

The committee considered and rejected two alternatives to updating Table A. One was to give up altogether on the idea of model articles of association and simply leave it to each company to draft its own rules. The committee recognized, however, there were "a considerable number of small companies ... which adopt Table A with a few small variations, simply in order to save expense in printing," and thought it important to keep the setup costs for these entities low.[83] The second alternative the committee considered was to impose uniform compulsory regulations on all companies. This alternative, which was advocated by prominent defenders of investors' interests, would have required an act of Parliament.[84] The committee showed no interest in recommending such legislation, however. In the view of its members, there were important reasons to allow companies of different sizes and types to draft articles that suited their specific business needs. Such legislation would "be wholly inconsistent with the use now made of the freedom which companies enjoy" to draft their own articles.[85]

The Warmington Committee commissioned R. J. Parker and A. C. Clauson, both barristers from Lincoln's Inn, to revise the model table. It then circulated the barristers' draft for comments and discussed it at a subcommittee meeting that included Francis Beaufort Palmer and Sir Francis Gore-Browne, both prominent barristers who published handbooks for

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[82] 1906 Report p. 21 sec. 59.

[83] Appendix 18 to the 1906 Report. See also Sir Francis Gore-Brown's preface to David Ground Hemmant, *Table A (Revised, 1906) with Introduction, Notes, and Comments* (London: Jordan & Sons, 1906).

[84] See, for example, Walker and Watson, *Investor's and Shareholder's Guide*, 74, 101-2.

[85] Appendix 18 to the 1906 Report.

incorporators.[86] After a few small and mostly technical changes to the draft, the Warmington Committee appended the new Table A to its report of June 18, 1906.[87] The Board of Trade published the table in the *London Gazette* on July 31, 1906, as required by law, and the revised version came into force on October 1, 1906.[88] With the exception of a last article concerning notifications by post, the new Table A was incorporated verbatim into the 1908 Companies Act.[89]

The most significant revisions that the Board of Trade made to Table A are summarized in Table 3. Some of these modifications were clearly necessitated by changes in business practice. For example, in the more than half century after 1862 it had become more common for companies to issue multiple classes of shares with different income and/or voting rights. The new model table acknowledged this change and laid out a rule that protected the rights of members of the different classes by requiring any changes or new issues that impinged on their rights to be approved by each of the affected classes by a supermajority of at least three-quarters. Other changes aimed to insure that the articles conformed to the standards required for listing on the London Stock Exchange so that the articles of a company that accepted the model table would automatically comply.[90] Hence Table A now included a clause forbidding directors to use a company's funds to purchase its own shares, as well as one setting limits on the extent to which directors could borrow on behalf of the company without the approval of the general meeting.

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[86] Palmer's *Company Precedents* went through thirteen editions between 1877 and 1930. A comparison of the text of articles of association in our 1892 sample with the model Palmer touted in his treatise suggests that incorporators followed Palmer's model more closely than Table A.

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

[88] S.R. &O. 1906 NO. 596L.15 http://www.companieshouse.gov.uk/about/tableA/comm1Oct06orderoftheboardoftrade30July1906_P1.pdf.

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

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

What is most striking about the revised Table A, however, is the extent to which it embodied the provisions shifting power from shareholders to directors that so many of the 1892 companies had written into their own articles (see Table 4). For example, the 1862 model table had specified a quorum for general meetings that increased with the number of shareholders up from a minimum of five. Most firms in our 1892 sample changed this provision so that the quorum was smaller than the Table A minimum, and the 1908 model table followed suit, lowering the quorum to just three members personally present. Similarly, in the event that the chairman or the requisite number of shareholders demanded a poll, the 1862 model table was not specific about the timing of the vote, but the implication was that it would be held immediately. Most of our 1892 firms wrote articles allowing the chairman to delay the vote until another day, and the 1908 model table copied this change. There was no provision in the original Table A for a managing director. The 1908 statute not only followed common practice and added such a clause to the model but also adopted language that some, but not all, companies in the 1892 sample had written into their articles, explicitly exempting managing directors from having to stand for reelection. Finally, the 1908 model table followed common practice in revising the default rules so that directors could restrict shareholders' access to the company's accounts.

In a few cases, the 1908 model table maintained some of the 1862 rules that large numbers of companies discarded. Thus the vast majority of our 1892 firms rejected the 1862 table's strict provisions about conflicts of interest, but the 1908 table did not alter the rule. Nor did it give way in its insistence that shareholders have the opportunity to elect a full board of directors at the first annual meeting of the company. Even in some cases where the revisions to Table A followed common practice, moreover, the new model table included qualifications that moderated the shift in power toward directors. For example, the Board added a last sentence to the provision regarding managing directors, not found in any of our 1892 articles, enabling the company in general meeting to end the term of a managing director. Similarly, the provision granting directors greater authority to disapprove transfers of shares applied only to shares that had not been fully paid in, not to all shares as did many of the 1892 articles.[91]

Despite these moderating provisions and the additions designed to meet the standards of the London Stock Exchange, the new Table A generally adopted clauses that were in common use by the late nineteenth century. Its central thrust, therefore, was to reinforce the shift in the balance of power from shareholders to directors that was already occurring in practice. Perhaps this result is not surprising, given that the Board of Trade's stated purpose was to bring the model articles more in line with what companies were actually doing, and given that it turned for advice to barristers like Palmer who were deeply involved in shaping that practice. Parliament, of course, could have forced firms to adopt particular governance rules if it had wanted to, but it chose not to act. Reformers urged Parliament at the very least to require companies raising funds from the public to include in their prospectuses a summary of the powers "conferred on the directors by the articles ... beyond those comprised in 'Table A.'"[92] But Parliament did not move to mandate such disclosure when it stiffened the requirements for the prospectus in its 1900 reform legislation, nor when it gave companies the choice of whether to be public or private in 1907.

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[91] In this case, however, the moderation might have been dictated by the LSE because this restriction was the only one on transferability that the listing committee would accept. See Jordan and Gore-Browne (1895), Appendix A, pp. 290-92.

[92] Walker and Watson, *Investor's and Shareholder's Guide*, 74. See also "The South American and Mexican Company," *Economist* (10 Feb. 1894): 172.

Trends in Companies' Articles of Association after the Revisions to Table A

We explore the effect of the revisions to Table A on corporate governance by examining the articles of association written by samples of companies registered in 1912 and 1927. The companies in these two samples were smaller on average than those in the 1892 sample, but this change to a large extent reflected a shift in the size distribution of firms adopting the company form (see Table 5).[93] As we have seen, one of the motives of the Warmington Committee in seeking to bring Table A more in line with current practice was to keep the costs of organizing small companies low by giving incorporators a model set of articles they could adopt off the shelf. In this goal the Board seems not to have been completely successful. None of the firms in our samples simply adopted Table A as written, and the one firm (in 1912) that accepted Table A in its entirety wrote seven additional clauses. At the same time, however, many fewer companies completely rejected Table A and drafted a full set of articles from scratch—only 24 percent in 1912 and 12 percent in 1927, compared to 52 percent in 1892. Most companies picked and chose among the model provisions, rejecting some and substituting alternatives in their stead. Most companies also added extra clauses of their own devising. In 1912 the companies that rejected at least one but not all clauses in Table A on average rejected 19.0 clauses and wrote 30.3 substitute or new provisions. The equivalent companies in 1927 on average rejected 19.2

[93] The target size of each sample was fifty companies. As a result of the changes in the procedure for depositing company records in the archives (see above), short-lived firms may be overrepresented in these samples. Such over-sampling could affect our results if the characteristics that led firms to shape their articles in a particular way were either the same as, or correlated with, the characteristics that led them to dissolve relatively quickly. For example, we know that our 1927 sample has proportionally more very small firms than our 1912 sample. One might worry, therefore, that we over-sampled these firms in 1927 because smaller firms had shorter lives. However, a comparison of the size distribution (in terms of nominal capital) of companies in our 1912 and 1927 samples with the size distribution of the population of companies registered during these years provides some reassurance. Our 1927 sample does over-sample firms with a nominal capital of less than £1,000, but not dramatically, and the figures for all firms suggest that the large number of very small firms in our 1927 sample relative to 1912 faithfully captures the shift in the overall size-distribution of firms that was occurring during this period.

clauses and wrote 27.6 provisions of their own. It should be noted that the most frequently rejected clauses included those that we have singled out as important for internal governance.

One change that the Warmington Committee made to Table A was to add the clauses required by the London Stock Exchange for listing. Very few of the sample companies aspired to list on the LSE; 84 percent chose to be private in 1912, and 94 percent in 1927. To the extent that the clauses required by the LSE represented more generally applicable notions of good corporate governance, one might nonetheless expect to see them widely adopted. Most companies, however, did not follow the LSE guidelines.[94] Only 51 percent of the companies in the 1912 sample and 28 percent of those in the 1927 sample imposed any limits on the independent borrowing authority of directors, giving them instead untrammeled authority to encumber the enterprise. Even fewer companies (8 percent in 1912 and 6 percent in 1927) adopted the LSE's preferred clause limiting the directors' authority to block transfers of shares to cases where the shares were not fully paid up. Moreover, most of the companies in the samples chose to limit the transferability of shares in ways that gave the directors complete discretion, empowering them to refuse to allow transfers without giving any reason. In only 24 percent of the cases in 1912 and only 36 percent in 1927 did incorporators build in protections for shareholders who wanted to exit by adopting rules that set up a process for valuing shares and limited the period during which directors could block a transfer.

Firms that opted to organize as private companies did not automatically give up the right to raise capital externally. They were required by law to include in their articles a clause prohibiting them from offering shares or debentures for public subscription, but they could still

[94] The one exception was that virtually all of the companies in the two post-1908 samples (98 percent in both 1912 and 96 percent 1927) included in their articles a rule prohibiting them from purchasing, or lending on, their own shares. Inclusion of this restriction was not all that meaningful, however, because the House of Lords had ruled in an 1887 case (*Trevor v. Whitworth*) that it was not permissible for a company to purchase its shares with company funds. See Walker and Watson, *Investor's and Shareholder's Guide*, 165.

raise funds from outside investors through private sales. That a significant proportion of the sample companies aspired to raise capital in this way is suggested by their inclusion of a provision in their articles allowing them to pay commissions either to those who subscribed to shares or to agents who procured subscribers for them. British law required companies to sell their shares at par value, so by offering such a commission companies could effectively adjust the price of their equities to its market value and, at the same time, reward private bankers and other agents for soliciting buyers. In 1912, 58.0 percent of the companies included this clause in their articles (57.1 percent of private companies and 62.5 percent of public companies). The corresponding numbers in 1927 were 64.0 percent for all companies, 66.0 percent for private companies, and 33.3 percent for public companies.

Given that so many incorporators of private companies had the foresight to build this flexibility for raising capital into their articles, one might expect them also to have put in place governance procedures to reassure external investors that corporate insiders would not siphon off their returns. There is little evidence of this kind of market discipline, however. Although the 1908 Table A continued the strict rule that directors could not be on both sides of a contract, presumably to prevent tunneling, few of the companies in either of the two samples adopted it. The vast majority of companies (95.9 percent in 1912 and 90.0 percent in 1927) explicitly allowed directors to contract with the company. In 1912 firms permitting directors to be on both sides of contracts typically specified that they had to disclose their interest to the board and could not vote on contract to which they were parties. By 1927, however, 44.0 percent of all companies allowed directors to vote on matters in which they were interested, so long as they disclosed, and 4.0 percent did not even require disclosure. Similarly, all companies now allowed directors to restrict shareholders' access to their company's accounts (the default Table A rule), and the trend was also for fewer companies (65.3 percent in 1912 and only 48.0 percent in 1927) to send shareholders copies of the balance sheet in advance of the annual general meeting.

In the case of voting, the 1912 and 1927 samples no longer included any examples of articles with graduated scales. All the companies adopted a one-vote-per-share rule, except that more had multiple classes of shares with different voting rights. As in 1892, the formal voting rule only came into play in the event that a poll was demanded, and all the sample companies now followed Table A in giving the chairman the power to determine the timing of the poll—whether it would be taken immediately or after an adjournment.[95] Although fewer companies (22.4 percent in 1912 and 6.3 percent in 1927) delayed the first election beyond the first ordinary general meeting, a significant proportion (49.0 percent in 1912 and 66.7 percent in 1927) still denied shareholders the opportunity ever to elect the full board of directors. Moreover, many companies (47.9 percent in 1912 and fully 82.0 percent in 1927) modified Table A's already minimal quorum for general meetings so that votes could occur with only two members of the company in attendance.

In its revisions to the model table, the Board of Trade followed current practice in adding a provision that enabled directors to name one or more of their number managing director(s) whose remuneration was set by the board rather than by the shareholders. The model provision explicitly exempted managing directors from having to stand for reelection during their term, and virtually all of the sample companies followed Table A in this respect. The Board of Trade did, however, attempt to moderate this shift in the balance of power toward directors by including a provision that made managing directors subject to removal by the general meeting. 44.9 percent of the companies in 1912 and 62.0 percent in 1927 adopted this provision. However, companies

[95] One company, the Ford Paper Mills Limited (1927), even specified that "no notice need be given of any poll whether taken immediately or not" (clause 63).

began to add a new clause to their articles, not part of the model table, that shifted power back the other way by enabling directors to appoint alternates (with the approval of the board but not the shareholders) who would exercise all their powers if they could not be in attendance. In 1912, 16.3 percent of the companies had this provision, and in 1927, 36.0 percent. Moreover, a growing proportion of companies (36.7 percent in 1912 and 52.0 percent in 1927) eschewed such subtle means of maintaining control and simply entrenched specific individuals in the articles, in most cases making them directors for life.

As was the case for the 1892 sample, the patterns in 1912 and 1927 are not consistent with our hypotheses about the different kinds of articles that small and large firms would write. Table 6 repeats the tests displayed in Table 2 for the 1912 and 1927 samples.[96] Large firms were not more likely to write articles that offered protections to external investors. To the contrary, the articles written by small and large firms were for the most part statistically indistinguishable. In the few cases where there were significant differences, large firms were the ones more likely to shift power from shareholders to directors. Thus in 1912, large firms less frequently imposed limits on directors' ability to encumber the company without the approval of the general meeting, more often delayed the first election of directors, and more commonly blocked shareholders from ever having the opportunity to elect a full board. In both 1912 and 1927, it was disproportionately large firms that made it more difficult for shareholders to remove the managing director and that allowed directors to nominate their own alternates without shareholders' approval. Moreover, large companies as well as small were exhibiting the increased tendency to entrench specific directors for life.[97]

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[96] In Table 6 there is no need for two variants because there were articles in the file for all of the sample companies in 1912 and 1927.

[97] Some of the differences between 1912 and 1927 might result from the downward shift in the size distribution of companies between these two samples. To explore this possibility, we estimated binary probit

Implications

Our analysis of the articles of association written by companies in our 1892, 1912, and 1927 samples indicates that incorporators used the contractual freedom that British law afforded them to tilt the balance of power in their enterprises from shareholders to directors. Through a variety of devices, ranging from low quorums for general meetings to voting rules that favored blockholders, to exempting managing directors from having to stand for reelection, to outright entrenchment of specific directors, companies reduced the ability of shareholders to discipline directors. At the same time, they increased directors' discretionary powers, for example by giving them absolute authority to encumber the company and to refuse to transfer shares that members wished to sell. They also made it more difficult for shareholders to find out what their directors were doing, for example by restricting their access to company accounts.

The British government did little to reverse these trends. The original 1862 Table A had represented an improvement over the governance habits of most joint-stock companies on the eve of the passage of the first general incorporation law. But when Parliament revised Table A in 1906, it largely ratified contemporary practice, lowering quorums for general meetings, giving directors the ability to schedule polls to their advantage, allowing the appointment of managing directors who were exempt from having to stand for reelection (though this provision was moderated by the inclusion of clause allowing shareholders to remove managing directors at a

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models for which the dependent variables are the binary codings reported in Table 6. We combined the 1912 and 1927 samples and used as regressors the natural log of capital and its square, as well as a dummy variable equal to one for firms formed in 1927. In most cases we find that the 1927 dummy is statistically significant, suggesting that there was a trend in governance practices that was independent of the change in the size distribution of firms. Indeed, the coefficient on the 1927 dummy implies as much as a one-third difference in the probability that the dependent variable is one. For example, the model for whether there are limits on directors' borrowing authority implies that firms were 25.6 percent more likely to reject the default rule in 1927 than in 1912, even for firms of the same size. (The "z" score is 2.25; these are bootstrap standard errors.) Note the limitation of such models: in holding size constant for firms created in 1912 and 1927, we can account for the changes in the actual size distribution of companies between the two years but cannot overcome the problems of sample selection caused by changes in the archives record-keeping rules. See above.

general meeting), and acquiescing in restrictions on shareholders' access to their company's books. Although the new model Table A included several provisions that aimed to prevent directors from abusing their positions—most notably, it still prohibited directors from contracting with their own company—such clauses were frequently rejected when companies wrote their articles. Indeed, the shift in the balance of power continued despite the moderating provisions in Table A. It even became more and more common for companies to entrench specific directors in their articles.

The financial press frequently chastised shareholders' for their passivity in the face of this shift in the balance of power within companies, but the lack of response cannot be because of lack of information. The large number of horror stories in the *Financial Times* and other similar journals makes it difficult to believe that shareholders were so completely in the dark. Moreover, the fact that we do not find companies attempting to lower their cost of capital by signaling their superior governance practices suggests that investors were not very sensitive to these matters. Perhaps they were right to be. Given the nature of our source, we only have one rough measure of a firm's performance, which is the number of years it remained in operation. As one might expect, the magnitude of a firm's initial nominal capital was a strong predictor of its longevity, but none of the governance decisions discussed in this paper were significantly correlated with survival.[98]

[98] We run this analysis on the 1892 sample, because the selection methods used by the National Archives meant that the 1912 and 1927 samples were more likely to be biased toward short-lived firms. See above. We measure a firm's lifespan with a dummy variable that equals one if the firm reported having any shareholders at least five years after incorporation. We assess correlation with the governance measures in two ways. First, we used chi-squared tests in a two-by-two contingency framework. Second, we estimated binary probit models in which the regressors were the log of capital and its square. The capital measures show a strong, quadratic relationship with firm survival; the survival probability increases up to a capitalization of about £22,000 after which it declines. We then estimated a series of binary probit models, adding to the capitalization variables a single governance variable. Adding the dummies did not materially affect the capitalization variables, but none of the dummies were different from zero at conventional significance levels.

Although understanding shareholders' decision-making calculus is beyond the scope of this paper, it may be that investors understood very well that buying equities in new companies was a high-risk business. Poor governance practices were likely to have the greatest impact on shareholders on the downside, but then the worst outcome shareholders faced was the loss of their investment. It is possible that they willingly bore this risk for the chance of earning upside returns that dwarfed the meager rates they could earn at the time on government bonds or other relatively riskless securities. Moreover, the securities of most new companies formed after 1907 could only be sold through private placement, and it is likely that the brokers who handled these sales were able to transmit private information about the prospects of the businesses and the character of the people involved.[99]

Whatever the explanation, our findings are not consistent with the assertion in the law-and-finance literature that the superior flexibility of the common law led to corporate governance practices that offered protection to external investors and thus encouraged the growth of equities markets. Of course, it is possible that investors were better protected in Britain by the mid-1990s, when LLSV collected the data for their cross-country regressions.[100] Such a view would be consistent with recent arguments by Christopher Bruner and others that shareholders in Britain today possess extraordinary power to discipline directors. This change has little to do with the virtues of the common law, however, and much to do with a statutory change imposed by the Labour Party in 1948 that gave shareholders the power to remove directors by a simple majority vote.[101]

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[99] Julian Franks, Colin Mayer, and Stefano Rossi have argued that private information played an important role in overcoming governance weaknesses in public firms. See "Ownership: Evolution and Regulation," *Review of Financial Studies* 22 (Oct. 2009), 4009-56.

[100] See LLSV, "Legal Determinants of External Finance," and "Law and Finance."

[101] See Christopher M. Bruner, *Corporate Governance in the Common-Law World: The Political Foundations of Shareholder Power* (Cambridge, Eng.: Cambridge University Press, 2013); and Bruner, "Power and Purpose in the 'Anglo-American' Corporation," *Virginia Journal of International Law* 50 (Spring 2010): 579-653 R.

Finally, our results have implications for the longstanding debate over British entrepreneurial failure. As we have shown, returns from the London Stock Exchange and other similar markets cannot be used to determine whether British institutions misallocated investment capital. The vast majority of companies formed after 1907 voluntarily gave up the right to issue securities on any of the exchanges, and our 1892 sample indicates that private placement played a large role in marketing securities even before companies had to make such a stark choice. Although the largest companies tended to list on the exchanges, the new registrants include many enterprises in the high-tech sectors of the time. Until some way is found to trace private investment flows, therefore, little can be said about whether such innovative ventures were starved for investment capital during this period.

As we have also shown by our analysis of the sample articles of association, the paramount concern of the organizers of most new corporations during the late nineteenth and early twentieth centuries was control. Shareholders could attend annual meetings and laugh and jeer at the managing directors, but they could only challenge the directors' authority in the most extraordinary circumstances and, unless they could command a super majority of more than three-quarters of the votes, perhaps not even then. The consequences of this degree of control are difficult to gauge. Rules protecting managers from shareholders' demands for short-term returns can be good for innovation. But they can also protect incompetence. Scholars have long debated whether British industrialists lacked entrepreneurial skills and ambition, in particular whether they failed to take advantage of new cost-saving technologies that had been developed elsewhere.[102] Peter Lindert and Keith Trace long ago raised an important question for this

C. Nolan, "The Continuing Evolution of Shareholder Governance," *Cambridge Law Journal* 65 (Mar. 2006): 97-127; and Cheffins, *Corporate Ownership and Control*.

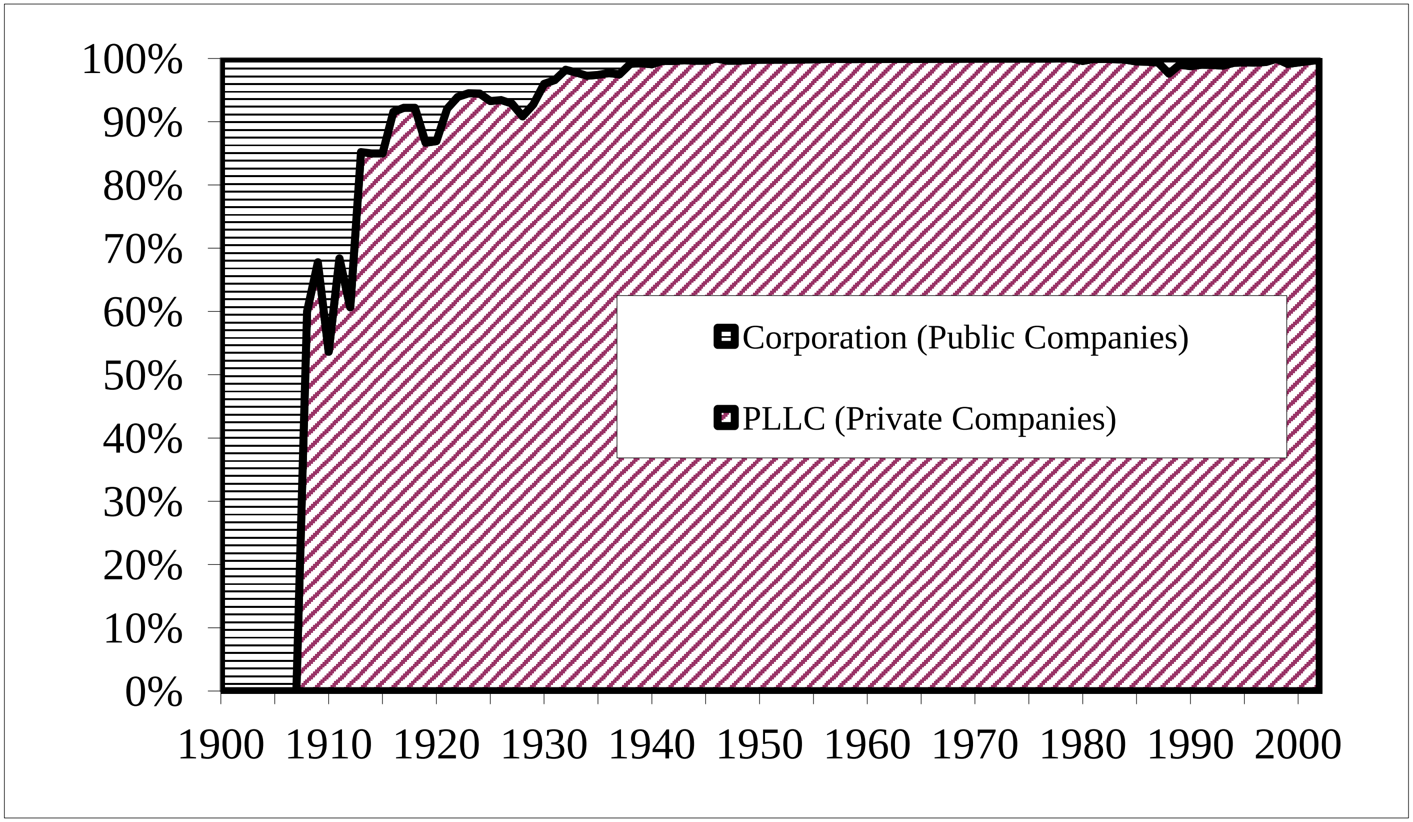
[102] The literature is voluminous, but see David S. Landes, *The Unbound Prometheus: Technological Change and Industrial Development in Western Europe from 1750 to the Present* (Cambridge, Eng.: Cambridge

literature: If the people managing British firms were so incompetent, why did shareholders not throw them out?[103] Although we cannot pretend in this paper to have made any general contribution to the debate about Britain's relative decline, our findings suggest a partial answer to this query. British law allowed managers, even incompetent ones, to entrench themselves, and gave them a number of tools with which to frustrate shareholders' efforts to improve their company's leadership. It is worth exploring whether the pervasive shift in power from shareholders toward directors that we have observed affords more general insight into the sources of British entrepreneurial weakness.

University Press, 1969); William Lazonick, "Factor Costs and the Diffusion of Ring Spinning in Britain Prior to World War I," *Quarterly Journal of Economics* 96 (Feb. 1981), 89-109; Lazonick, "Industrial Organization and Technological Change: The Decline of the British Cotton Industry," *Business History Review* 57 (Summer 1983): 195-236; and Tom Nicholas, "Clogs to Clogs in Three Generations? Explaining Entrepreneurial Performance in Britain Since 1850," *Journal of Economic History* 59 (Sept. 1999): 688-713. For criticisms of the entrepreneurial failure hypothesis, see Donald N. (Deirdre) McCloskey and Lars G. Sandberg, "From Damnation to Redemption: Judgments on the Late Victorian Entrepreneur," *Explorations in Economic History* 9 (1970-71), 89-108; Robert C. Allen "Entrepreneurship and Technical Progress in the North-East Coast Pig Iron Industry, 1850-1913," *Research in Economic History* 6 (1981): 35-72; Gary Saxonhouse and Gavin Wright, "New Evidence on the Stubborn English Mule and the Cotton Industry, 1878-1920," *Economic History Review* 37 (Nov. 1984): 507-19.

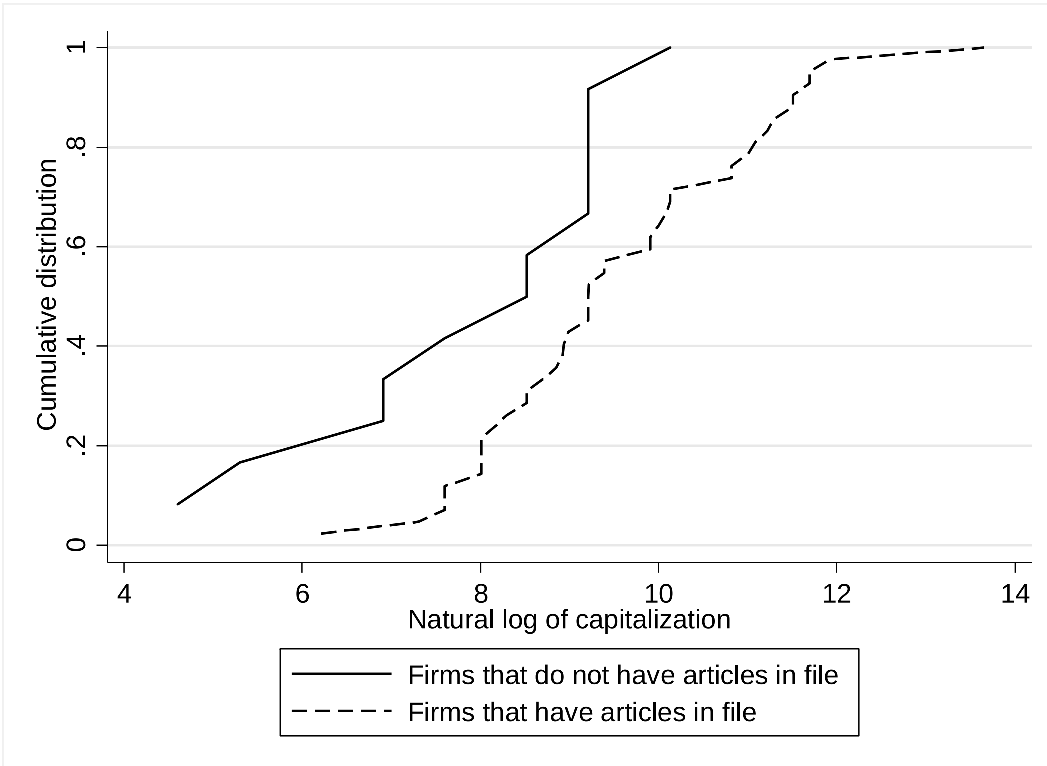
[103] Peter H. Lindert and Keith Trace, "Yardsticks for Victorian Entrepreneurs," in *Essays on a Mature Economy*, ed. Donald (Deirdre) N. McCloskey (London: Methuen, 1971), 239-74.

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



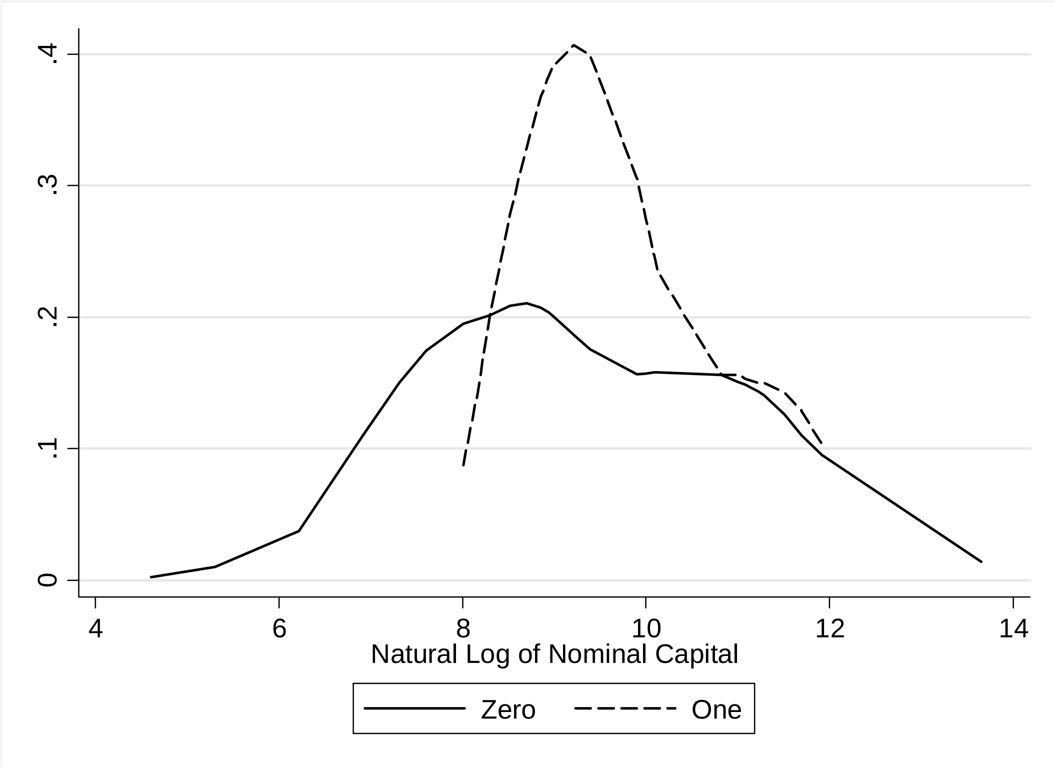
Source: U.K. Board of Trade, *General Annual Report* (1900-2000).

Figure 2. Cumulative Distribution of Nominal Capital for Companies in the 1892 Sample with Articles of Association Compared to Companies with no Articles



Source: See text for a description of the 1892 sample.

Figure 3. Density of Nominal Capital of Companies in the 1892 Sample by Whether the Company Entrenched One or More Directors (Includes Only Companies with Articles in the File)



Notes and Sources: See the text for a description of the 1892 sample. Companies coded 1 entrenched at least one specific individual on the board of directors. All other companies with articles are coded 0.

Table 1: Distribution of Firms in the 1892 Sample, by Number of Shareholders in 1892 and 1897

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

Notes and Sources: See the text for a description of the 1892 sample. We counted the number of shareholders reported by the companies at the time of registration and also the number reported five years later.

Table 2: Content of Articles Important for Corporate Governance by Nominal Capitalization of the Company (1892 Sample)

Clause	Number of firms coded 1	Percent of firms coded 1	Median values		Mann-Whitney test	
			Variant 1	Variant 2	Variant 1	Variant 2
			(1)	(2)	(3)	(4)
Quorum for general meeting	35	83.3	0: £10,000 1: £10,000 N: 54	0: £20,000 1: £10,000 N: 42	-1.443 (0.15)	.405 (0.68)
Voting rule for poll	33	78.6	0: £8,000 1: £10,030 N: 54	0: £10,000 1: £10,030 N: 42	-1.600 (0.11)	.015 (0.99)
When poll taken	30	71.4	0: £7,500 1: £10,015 N: 54	0: £11,000 1: £10,015 N: 42	-2.006 (0.04)	-.794 (0.43)
Rotation starts at first election	31	73.8	0: £3,000 1: £20,000 N: 4	0: £3,000 1: £20,000 N: 42	-3.391 (0.00)	-2.463 (0.01)
Timing of first election for directors	19	45.2	0: £7,500 1: £22,000 N: 54	0: £7,600 1: £22,000 N: 42	-2.604 (0.01)	-1.897 (0.06)
Rule for calling extraordinary general meeting	16	38.1	0: £10,000 1: £7,550 N: 54	0: £16,000 1: £7,550 N: 42	0.009 (0.99)	.920 (0.36)
Managing director	27	64.2	0: £5,000 1: £12,000 N: 54	0: £5,000 1: £12,000 N: 42	-2.340 (0.02)	-1.235 (0.22)
Transfers of shares	38	90.5	0: £6,000 1: £11,015 N: 54	0: £13,500 1: £10,015 N: 42	-2.268 (0.02)	-.579 (0.56)
Conflict of interest	38	90.5	0: £5,000 1: £11,015	0: £4,500 1: £11,015	-2.837 (0.00)	-1.587 (0.11)

			N: 54	N: 42		
Access to accounts	29	70.7	0: £5,500 1: £12,000 N: 53	0: £8,000 1: £12,000 N: 41	-2.640 (0.01)	-1.506 (0.13)
Removal of directors	10	23.8	0: £9,000 1: £10,015 N: 54	0: £1,100 1: £10,015 N: 42	-1.194 (0.23)	-.517 (0.60)
Entrenchment of specific directors	11	26.2	0: £8,000 1: £12,000 N: 54	0: £10,000 1: £12,000 N: 42	-1.635 (0.10)	-.916 (0.36)
Qualification of Directors	6	11.1	0:£10,000 1:£43,500 N:54	0:£10,000 1:£43,500 N:42	-1.779 (0.07)	-1.421 (0.15)

Note and Sources: See the text for a description of the 1892 sample. We coded the clauses listed in the left-most column as dummy variables that took a value of 1 if the company modified Table A in ways that increased directors' or blockholders' power relative to shareholders. The one exception is "Qualification of Directors." We code this variable 1 if the directors had to hold at least £1,000 in shares. The percentage of firms coded 1 is relative to the N for Variant 2. For each clause we test two variants of the dummy variable. Variant 1 includes all of the 54 limited-liability firms in the sample. Variant 2 excludes the 12 companies whose files did not include articles of association. In the columns marked (1) and (2), the figures 0:£X and 1:£X are the median values of nominal capital for companies coded 0 and 1 respectively on the variable. N: is the number of observations for the cell. For the variable "Access to Accounts," the number of observations for Variant 2 is smaller than 42 because we are missing the relevant page of the articles for one of our companies. Columns (3) and (4) report the Mann-Whitney test statistics and, in parentheses, the p-values for a two-tailed test. The value of the test statistic is negative if firms coded 0 on the variable have smaller capitalization values than firms coded 1.

Table 3. Major Changes to Table A, 1862 and 1908 Compared

Subject	1862 Rule	1908 Rule
Classes of shares	No provision	3. Company can by three-quarters vote issue special classes of shares. 4. Cannot change rights of a class without three-quarters vote of class.
Shares and company funds	No provision	8. Company cannot use its funds to buy (or lend on the security of) its shares.
Transfer of shares	10. Company can decline to transfer shares of member indebted to it.	20. Directors can decline to transfer shares not fully paid up.
Quorum for general meeting	37. Increases with number of members.	51. Three members personally present.
Timing of poll	43. Implication is immediately.	59. Chairman can delay until another day.
Votes of members	44. Graduated voting scale.	60. One vote per share.
Managing director	No provision	72. Directors can appoint one or more of their number managing director and determine remuneration. Managing directors do not have to stand for election during their terms.
Borrowing powers	No provision	73. Directors can borrow on behalf of company up to issued share capital without approval of general meeting.
Members' access to accounts	78. Accounts shall be open to inspection of members.	105. Directors determine whether members have access to accounts.

Sources: The Companies Act, 1862, 25 & 26 Vict. C. 89; and The Companies (Consolidation) Act, 1908, 8 Edw. 7 Ch. 69

Table 4. Comparison of the 1908 Table A with the 1862 Table A and with the Modifications Made by the Greatest Number of Companies in the 1892 Sample

Rule	1862 Table A (Clause Number)	Modal Modification by 1892 Companies	1908 Table A (Clause Number)
Votes of members	Graduated scale (44)	One vote per share	One vote per share (60)
Quorum for general meeting	Increases with number of members (37)	Fixed number at or lower than the Table A minimum	Fixed at lower number than the Table A minimum (51)
Timing of poll if demanded	Implication is immediately (43)	Can be put off to another day	Can be put off to another day (59)
Timing of first election for directors	First annual meeting (58)	Delayed at least two years	First annual meeting (78)
Proportion of the board elected at the first general meeting	Entire board (58)	Only part, usually one-third	Entire board (78)
Managing director	No provision	Directors can appoint one or more of their number managing director	Directors can appoint one or more of their number managing director and exempt from re-election during term (72)
Removal of directors	Three-quarters vote (65)	Three-quarters vote	Three-quarters vote (86)
Transfer of shares	Directors can refuse if member indebted (10)	Directors have greater power to refuse transfers	Directors have greater power to refuse transfers (20)
Conflict of Interest	Directors cannot contract with company (57)	Directors can contract if disclose	Directors cannot contract with company (77)
Limits on borrowing	No provision	No limits on borrowing	Borrowing beyond issued share capital must be approved by general meeting (73)
Access to accounts	Members can inspect (78)	Directors control access	Directors control access (105)
Audit	Independence of auditors protected (84)	Independence of auditors protected	Protections moved from Table A into the statute

Notes and sources: See Tables 2 and 3 and text.

Table 5. The Distribution of Nominal Capital of Companies Sampled in 1912 and 1927 Compared to the All Companies Registered in Those Years

Nominal capital (£)	1892 sample (column %)	1912 sample (column %)	1927 sample (column %)	All firms, 1890 (column %)	All firms, 1912 (column %)	All firms, 1927 (column %)
<1000	6	6	36	0	13	26
1000-5000	24	56	40	31	40	42
5000-10,000	17	14	8	14	16	13
10,000-20,000	18	6	10	11	13	9
20,000 and more	35	18	6	43	18	10

Sources: See the text for a description of the 1892, 1912, and 1927 samples. The figures for all firms for 1890 are from "Statement No. 2: Companies Registered in 1890 (New Limited with Capital)," Davey Committee Report (1895), Appendix, p. 63. The figures for 1912 and 1927 are from U.K. Board of Trade, *General Annual Report*, for those years.

Table 6: Content of Articles Important for Corporate Governance by Nominal Capitalization of the Company (1912 and 1927 Samples)

Clause	Number of firms coded 1		Median values		Mann-Whitney test	
	1912	1927	1912	1927	1912	1927
	(1)	(2)	(3)	(4)	(5)	(6)
Limit on directors' borrowing authority	24	36	0: £2,000 1: £4,750 N: 49	0: £1,250 1: £1,000 N: 50	-1.973 (.05)	.730 (.47)
Commission to sell shares	29	32	0: £2,000 1: £4,500 N: 50	0: £1,000 1: £1,250 N: 50	-1.730 (.08)	-1.213 (.23)
Quorum for general meeting	23	41	0: £3,000 1: £4,500 N: 48	0: £1,500 1: £1,000 N: 50	.010 (.99)	.968 (.33)
Number of directors retiring at first election	24	32	0: £2,000 1: £5,500 N: 49	0: £1,000 1: £1,050 N: 48	-2.345 (.02)	-1.500 (.13)
Rotation starts at first election	11	3	0: £2,000 1: £15,000 N: 49	0: £1,000 1: £500 N: 48	-2.870 (.00)	.193 (.85)
Removal of managing director	27	19	0: £2,000 1: £6,000 N: 49	0: £1,000 1: £3,000 N: 50	-2.681 (.01)	-3.497 (.00)
Directors' can name alternates	8	18	0: £2,000 1: £30,000 N: 49	0: £1,000 1: £4,500 N: 50	-2.736 (.01)	-2.588 (.01)
Transfers of shares	46	47	0: £15,500 1: £3,000 N: 50	0: £1,000 1: £1,000 N: 50	.288 (.77)	.062 (.95)
Conflict of interest	47	45	0: £1,500 1: £3,000	0: £100 1: £1,000	-1.221 (.22)	-2.152 (.03)

			N: 49	N: 50		
Distribution of financial statement to shareholders	17	26	0: £2,752.5 1: £5,000 N: 49	0: £1,000 1: £1,050 N: 50	-.740 (.46)	-.303 (.76)
Entrenchment of specific directors	18	26	0: £4,500 1: £2,000 N: 49	0: £1,000 1: £1,050 N: 50	.866 (.39)	-1.459 (.14)

Note and Sources: See the text for a description of the 1912 and 1927 samples. We coded each of the clauses listed in the left-most column as dummy variables that take a value of 1 if the company modified the 1908 Table A in ways that increased directors' or blockholders' power relative to shareholders. See Table 2 and the text for an explanation of data and statistical tests. For several variables, the number of observations is smaller than the sample size because we are either missing the relevant page of the articles or the company opted out of the Table A provision but inexplicably neglected to write a substitute.