Corporate Law and Divergent Business Organization in America and Europe, before 1914.¹

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(28 Hillhouse Ave, room 106, 2:30-3:50pm).

ABSTRACT

Sylla and Wright believe that the modern corporation penetrated the US business economy more extensively than Europe’s, while Guinnane, Harris, Lamoreaux and Rosenthal argue that Britain, Germany and France enjoyed alternative menus of organizational forms superior to America’s. Pre-1914 business census and tax data raise some doubts about both interpretations and we need to forge a more consistent account of corporate - and continental Europe’s alternative quasi-corporate - organizational options and divergent take-up. Incorporation regimes in Germany and France survived their modest liberalizations of 1863-71 with some restrictive biases intact. Compared with American and British permissiveness, this inhibited the growth of private (close) companies among SMEs, even after attempts at further liberalization, like the GmbH of 1892. On the other hand, the largely unregimented and undifferentiated US incorporation process was less favourable to the growth of stock exchange listings. Thus a higher portion of corporate capital was publicly-quoted in France, Germany and Britain, with a supporting “nudge” from their more restrictive corporate laws.

Note to the reader. If you are interested in “so what?” - but are familiar with the statistics or willing to take them on trust - flip through Tables 1-6, and then read the seventeen pages starting on page 28. Web links to cited but unpublished working papers are provided in the references at the end.

¹ I am grateful to my co-author James Foreman-Peck and teaching assistant Eric Golson for advice and to four anonymous referees for comments on earlier working papers, which raised some of the questions addressed here.
Business historians tell the story of the corporation in diverse ways, though one feature uniting (almost) all is their rejection of the “law and finance” hypothesis that common law was superior to civil law in developing stock exchanges, corporations and other “good” business institutions.² Dissent runs in many furrows: most corporate laws are hybrids of the civil/common dichotomy; even if systems are nonetheless forced into that straitjacket, historical correlations prove negative or insignificant; metrics of causes and consequences do not reflect what they purport; third unobserved factors explain close correlations; and forget all that anyhow: the outcome was corporate malfeasance and financial crisis, not progress. This fiercely critical - and often mutually contradictory - tide rises incessantly.³

Even Richard Sylla and Robert Wright (2006 and 2013) - who have prominently argued that American corporate development was exceptional, world-leading and beneficent - trace this not to a shared heritage of English common law, but to a distinctively modern post-independence political vision of the role of corporations in forging the nation’s future. Their celebratory Whig view of American corporations trouncing their former colonial masters - a trope which can be traced back at least as far as the Encyclopaedia Americana of 1830 and De Tocqueville - is tempered by doubts about later mistaken pathways, but others have been less cautious. The World Bank’s Doing Business index - a major plank of its recent developmental work - is explicitly based on the “law and finance” hypothesis and De Soto’s diagnosis of the deficient property rights of the poor.⁴ It notes that allowing American-style corporations to register easily and cheaply (a practice pioneered by and still easier in common law regimes) is now correlated with favourable national growth outcomes in poor countries. Yet the critics have struck back. Stung by France’s lowly ranking on the Doing Business index, French jurists launched a new defensive “Association…. des Amis de la culture juridique française” to expose the World Bank’s calumnies on French civil law (Fauvarque-Cosson and Kerhuel

³ Criticism has led to the reformulation of the hypothesis in, critics allege, virtually untestable form (La Porta et al 2008)
⁴ The index and supporting studies are at www.worldbank.org.
Simeon Djankov, the economist who led the relevant World Bank staff research (Djankov et al 2007) progressed to higher things in 2009, as Finance Minister of Bulgaria, but popular dissent forced his resignation earlier this year.⁵

A business history counterpart to this legal and political opposition to the “Washington consensus”⁶ adoration of the corporate form flourishes today in the cosmopolitan cultures of California, Connecticut and Israel, overcoming - with admirable large-mindedness - their three polities’ common historical debt to English common law. Continental civil law has been resolutely defended against dishonour by the redoubtable Four Musketeers from those parts: Timothy Guinnane, Ron Harris, Naomi Lamoreaux, and Jean-Laurent Rosenthal (hereafter Guinnane et al). In a refreshing counterblast to conventional American views, they (2007, 2008)⁷ extolled the historical superiority, especially for SMEs,⁸ of the European commandite (in which managing partners - gérants or commandités - had full liability, but sleeping partners - commanditaires - had limited liability). Again this trope has venerable nineteenth-century forebears, going back to Hunt’s Merchant’s Magazine, John Stuart Mill and beyond. Guinnane et al also commended the advantages of what they presented as a hybrid of such partnerships and the corporation: the German GmbH of 1892 and the French SARL of 1925 and even the British private limited company of 1907.⁹ They did not, of course, deny the usefulness - everywhere - of the classic public, quoted corporation in sectors like railways, but they insisted that both commandites and private companies - invented and widely embraced in Europe - offered more appropriately flexible tools for striking a balance between the

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⁵ He is now chairman of the European Bank for Reconstruction and Development.
⁶ American economists need not feel self-consciously apologetic about the modern term. The “Washington consensus” was before 1914 known as the “Manchester School” and - on its foundation as a bastion of interventionist economics - roundly condemned by the American Economic Association.
⁸ There were some large commandites: the largest European chemical business before 1914 – Belgium’s Solvay - was a commandite simple and France’s leading armaments manufacturer - Schneider - was an SCA (société en commandite par actions, i.e. with shares). On the other hand, it is clear that - wherever we can measure their size - commandites (and especially those without shares) were on average much smaller than corporations.
⁹ A central difference between my view, developed below, and theirs, is that I believe that, in the common law world especially, the private company long predated legislation formally permitting it and that there were actually more private (close) companies in the US than in all three other countries combined in 1910.
need to avoid minority oppression (inherent in many corporate forms) and the dangers of untimely dissolution (to which partnerships were more exposed). Their statistical evidence convincingly demonstrated (for the relevant three countries) the impressive flows of new private limited companies, relative to the modest flows of other entity formations. But I wonder whether they correctly characterized the incidence of this mutation and missed a trick in understanding that America had its own (arguably equally good and certainly more numerously adopted) alternatives.

Rather than tackle directly these divergent historical perspectives, it might be useful first to revisit some internationally comparative historical descriptive statistics on the extant stocks of enterprise forms, many neglected, misused or even (groundlessly) contradicted in the modern debate. This approach supports a middle way in international comparisons and suggests some new priorities for research. The focus is on the four countries - Germany, France, the UK and US – privileged by both sides in the debate, though the data on France are notably deficient.

Chronologically, attention centres on the decade before 1914. This was around a half-century after the period (roughly 1850 to 1871), when these countries permitted incorporation (and sometimes other forms of limited liability) without individual authorization by the legislature or executive, nationwide and in any industry (or, in the case of the decentralised US, in most states and most industries). Over the intervening decades, any advantages of one nation’s organizational menu (in the case of the US 46 state-level organizational menus) over others should have amply revealed themselves. This choice of date also has the merit that these countries were not yet afflicted by the destructive twentieth century gales of world wars and global depression that fundamentally disrupted business processes and set civil and common law countries on divergent politico-social development paths, thus distorting modern analyses, as Roe (2006) and Roe and Siegel (2011) have convincingly argued.¹⁰

¹⁰ Anyone who doubts that political revolutions affect corporatization should not only consider the relatively slow growth of German corporations in the state-dominated Kaiserreich (demonstrated in what follows) but
The basic characteristics of national businesses can be deduced from population censuses. Table 1 divides the workforce of four leading countries before 1914 (and of Japan, a little later) into two groupings: employers and the self-employed, and those paid a wage or salary. Even

**Table 1. Distribution of Civilian Working Population: Five Countries.**

<table>
<thead>
<tr>
<th>Country and Year</th>
<th>Employers and Self-Employed %</th>
<th>Salaried and Waged Employees %</th>
</tr>
</thead>
<tbody>
<tr>
<td>UK 1911</td>
<td>12.3</td>
<td>87.7</td>
</tr>
<tr>
<td>Germany 1907</td>
<td>26.1</td>
<td>73.9</td>
</tr>
<tr>
<td>US 1910</td>
<td>30.0</td>
<td>70.0</td>
</tr>
<tr>
<td>Japan 1920</td>
<td>32.9</td>
<td>67.1</td>
</tr>
<tr>
<td>France 1906</td>
<td>52.6</td>
<td>47.4</td>
</tr>
</tbody>
</table>

Sources: author’s calculations from Feinstein, p. 227; HSUS; Toutain (1963), Table 66; Woytinsky 1926, II, pp. 13-14; Bank of Japan 1966, p. 52.

in advanced industrial countries, a high proportion of the workforce remained in self-employment and the modal enterprise size was one person. The striking feature to a modern mind (in our world in which more than half - not, as in 1900, a mere 15% - of the world’s population are urban and many more are employees) is how little even the richest countries had yet displaced traditional, small-scale businesses in which a peasant-farmer, shopkeeper, merchant or craftsman had knowledge and control of his whole business. Small wonder, then, that there was distrust of large employers, not to speak of bourgeois fears that the wanton shrinkage of the creative realm of entrepreneurial sole proprietors would drive the masses to socialism (a fear which more than half the population of the world soon found all too real, though others were luckier). The UK had gone

also view the later Statistisches Jahrbuch evidence of a massively accelerated rise in new AG formations under Weimar democracy and a considerable absolute decline in the AG stock under National Socialist dictatorship.
farthest down this road: the proportion of its population who were employers and self-employed was less than half that of other nations. Such large gaps are unlikely to be accounted for by mere classification issues.

We can infer from Table 1 that the mean employer hired about one person (in addition to the proprietor) in France, two in America and Japan, three in Germany, but nearer seven in the UK (with lower medians, given the skewness of all firm size distributions).\textsuperscript{11} British business’s larger economic scale derived partly (but, as we shall see, not entirely) from its exceptionally high urbanization and small agricultural sector. Farms everywhere were mainly operated by sole proprietors, owning, renting or mortgaging their land, and employing themselves, family members and sometimes others. The large role of proprietors (many hiring no one but themselves) in the American, German, French and Japanese civilian workforce is suggestive of a smaller portion employed in multi-owner businesses (such as corporations and partnerships) than in the UK.

II

Appropriately, the UK generated the most comprehensive pre-1914 tax statistics showing where the corporate form already dominated its economy (Table 2). For 1909, the number of UK partnerships and sole proprietors making taxable returns (col 2) comfortably exceeded corporations (col 1) in all domestic sectors, as they did in all countries with available statistics. Partnerships alone (almost entirely unlimited and aggregated with sole proprietors in col 2) still outnumbered corporations,\textsuperscript{12} though corporates were, of course, significantly larger. With annual profits occasionally in seven figures of sterling - though averaging less than £6,000 - corporations overshadowed personally-owned, non-corporate entities, whose mean profits were under £500 (at a

\textsuperscript{11} figures derived by dividing columns 2 by column 1. It is true that in these countries the largest employer (the government) and many other large corporate employers of those in col 2 were significant but not counted, while multiple partners in col 1 might jointly own one business, but the appropriate adjustments to the denominator (col. 1) - with its enormous weight of sole proprietors - would be trivial and in opposite directions.

\textsuperscript{12} Stamp (1919, pp. 244-5) indicates that around 54,000 (which would be 13% of all assessments) were partnerships, with an average of 2.4 partners.
Table 2. Businesses assessed for UK Profits\textsuperscript{13} Tax, 1909.

<table>
<thead>
<tr>
<th>Sector</th>
<th>Number of Tax Assessments</th>
<th>Assessed profits</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Corporate</td>
<td>Non-Corporate</td>
</tr>
<tr>
<td>Adventures Overseas</td>
<td>2,419</td>
<td>794</td>
</tr>
<tr>
<td>Transport</td>
<td>2,871</td>
<td>5,921</td>
</tr>
<tr>
<td>Mining</td>
<td>1,578</td>
<td>4,337</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>19,736</td>
<td>43,735</td>
</tr>
<tr>
<td>Finance</td>
<td>2,700</td>
<td>17,041</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>7,448</td>
<td>31,252</td>
</tr>
<tr>
<td>Distribution</td>
<td>9,719</td>
<td>197,476</td>
</tr>
<tr>
<td>Professions</td>
<td>540</td>
<td>74,912</td>
</tr>
</tbody>
</table>

Total 47,011 375,458 472.0 61

Source, Worswick and Tipping 1967 (hereafter WT), pp. 30, 47 and appendices; author’s estimates from later data for finance and adventures overseas.

time when the basic unskilled annual wage was about £50).\textsuperscript{14} The corporate share in UK taxable profits varied markedly by sector, being near 100% in (UK-taxed) international operations and railways (where, if the personal supervision of a domestic sole proprietor conferred any competitive advantage, it was massively overwhelmed by other factors), but only a quarter of assessed profits in wholesale and retail distribution (many retail chains and wholesale warehouses incorporated, but corner shops and commission merchants rarely bothered). The share of corporations was close to zero among professionals - doctors, lawyers, architects etc. - trading on their own account, whose professional associations sometimes prohibited limited liability, even where personal responsibility and scale considerations did not.

\textsuperscript{13} Schedule D income tax (on “business trading profits” only)
\textsuperscript{14} Non-corporate average profits are over-stated because of the exclusion of incomes under the exemption limit; corporate average profits are over-stated because the numerator is net of losses but the denominator includes only companies making profits.
This source does not distinguish private (close) from public or quoted companies, but public companies dominated. Around one-eighth of the total number of extant companies - about six thousand public companies with at least one security featuring in the LSE’s Stock Exchange Official Intelligence - accounted for two-thirds of the UK’s corporate capital before 1914 (Hannah 2011). The more numerous legally-defined public companies - from 1907 this meant those permitted (but not required) to appeal to the public for funds and issue stock to more than 50 shareholders, and also obliged to publish balance sheets - were in 1909 about equal in number15 to private companies, but larger. The UK Inland Revenue reported that corporations (both types together) had encroached on the share of profits earned by partners and sole proprietors by nearly one percentage point per year in the quarter-century of rapidly increasing industrial scale that preceded World War One: the corporate share in taxable (non-farm) profits rose from 39% in 1891/2 to 61% by 1914/5 (Feinstein 1972, p.157).

All these figures overstate the share of corporations, in that they make no allowance for profits below the £160 ($778) tax exemption limit, which applied only to unincorporated enterprises, with such exempt businesses being concentrated in clothing, retailing and hospitality (Feinstein 1972). Nor was any correction made for evasion: probably easier for unincorporated entities than large incorporated ones. The other major omission - agriculture, excluded because taxed under other schedules – was almost entirely personally owned,16 though it accounted for little more than 6% of UK domestic profits: derisory by global standards. It seems reasonable to conclude that, after accounting for omissions, UK corporations certainly approached - and probably had already crossed - the half-way mark: generating more than 50% of overall business profits before 1914. Adjusting for corporate profits being largely a return on capital (while sole proprietors’ and partners’ assessed

15 In April 1910, there were 25,930 public companies and 24,207 private ones in Britain, but many of the former (the default category under the 1907 legislation) had not yet bothered to re-register as private (Committee 1928, p.125). These data include only registered companies not statutory and chartered ones, which were larger, more likely to be publicly held and numbered several thousand.

16 In 1905 there were 515,800 farms in Ireland (averaging 39 acres) and 511,700 in Britain, with above 100 acres the norm (Woytinsky 1926, III, pp. 52-4).
“profits” mixed in a return on their own managerial labour), the share of corporations in more strictly-defined returns to capital in British business might have been three-quarters or more.\textsuperscript{17} For this reason – and because of their volatility\textsuperscript{18} – profits are not an ideal measuring rod, but they provide the only direct metric available for the share of corporates in all business for any of these four countries before 1914.

Judging from less comprehensive measures in other countries and guesses about sectors not covered, only UK businesses were this extensively corporatized before 1914. The US did not impose a federal income tax on business entities until 1913 and the IRS did not tabulate returns by organizational form until 1918, nor disaggregate them by sector until 1939. However, subsequent national income accounting reconstructions (partly based on such data) suggest US profits were mostly non-corporate. For example, Dale Johnson estimated that only 23% of US business profits in 1905-14 were corporate, barely half the UK level.\textsuperscript{19} The division of the non-corporate share between sole proprietors and partnerships is unclear, but doubtless sole proprietors dominated, perhaps even to the extent of still earning more than half of US business profits. Partnerships were common in both economies and those in the US averaged about the same number of partners as in the UK, around 2.4 per firm.\textsuperscript{20}

Johnson notes that the low corporate share was mightily influenced by the US agricultural sector: in 1910 there were 6,362,000 US farm operators, almost all non-corporate sole

\textsuperscript{17} Johnson (1954) estimated that in the US in this period 58% of farm profits and 65% of nonfarm profits of entrepreneurs (partners and sole proprietors) were returns to labour rather than capital. British analysts favoured a little more (e.g. Stamp, pp. 303-5). There is little grounding for either view.

\textsuperscript{18} In 1932 only 18% of US corporate tax returns showed any net profit (Rosa and Collins 1988, p. 84).

\textsuperscript{19} Johnson 1954, p. 178. This figure looks suspiciously low, relative to the first IRS published figure, for 1918, of a corporate share of 66% of taxable business profits (HSUS), though some profits below $5,000 and losses appear not to have been tabulated (Rosa and Collins 1988, p. 94), nor of course were any profits below the tax exemption limit, the latter certainly creating a large upward bias to the measured share of corporations.

\textsuperscript{20} The US manufacturing censuses reported a) the number of sole proprietors and b) the number of “firms” (i.e. partnerships) and - separately - c) the number of “proprietors and firm members.” Logically (abstracting from multi-establishment ownership by these entities reflected in the census count and partners in multiple firms) the average number of partners is c) minus a), the result divided into b); that is 2.32 in 1904, 2.44 in 1909 and 2.39 in 1914. Mining partnerships were fewer but had an average of 3.8 partners. For an economy-wide UK figure of 2.4 partners, see n. 13, above. I am not aware of similar German or French data on partnerships.
proprietors and more than any country in the world except China and India. This figure alone is nearly triple the number of employers and self-employed combined in the UK economy in all sectors, including farming. However, most American farmers were only modest capitalists: the average annual profit per farm in 1910 was just $652 (a dollar more than the average employee then earned in US manufacturing and well below the US tax exemption limit); some farmers were subsistence or part-time producers selling little or nothing in commercial markets. A case can be made for ignoring the US agricultural sector in making comparisons with Britain: after all, many US commercial farmers competitively sold the food, horses and cotton they produced to free-trading Britons, rather than to fellow-Americans. The non-agricultural economies of the two “Anglo-Saxon” countries were doubtless much closer together in their degree of corporatization.

Support for viewing the two countries as broadly similar can be found a quarter century later when US tax data disaggregated by sector and organizational form first became available. The UK data can be re-grouped to conform to the 1939 American Standard Industrial Classification and agriculture (excluded from the original UK data but included in the US) can be added from a supplementary source (Table 3). The UK figures shown in this table (for 1938) thus differ from the original British sector categories in Table 2 (for 1909), but the original classification shows that most sectors had become more corporatized in the interim (transport, where independent truckers were winning market share from corporate railways, being an exception). US data - available only for manufacturing - shows similarly increasing corporatization in the same period and by 1938/9 the concentration of American profits in sectors with low corporatization

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21 Most were owned, mortgaged or leased by their operators: only 58,000 operators were managers (some appointed by individual proprietors, some by corporate owners), their farms accounting for only 2.5% of improved land (Woytinsky, p. 90).

22 In 1922 the Irish Free State (southern Ireland) seceded, thus removing around half of the UK’s self-employed farmers, but only around 3% of its corporations.

23 The US manufacturing censuses show a rise in the corporate share of production workers from 70.6% in 1904 to 75.6% in 1909, 86.6% in 1919, moderating to 89.9% in 1929 and 89.4% in 1939, and similar rises for the corporate share in manufacturing value-added. The UK movements were not quite parallel, showing a sustained rise to 1909, a plateau (with a wartime upward blip) to 1929 and a resumed increase in the 1930s (WT, p. 31, Feinstein, pp. T4-6.) Comparison of the 1939 US manufacturing figures available by four different
Table 3. US and UK Profits by Sector and Ownership 1938/9.

<table>
<thead>
<tr>
<th>Sector</th>
<th>US 1939</th>
<th>UK 1938</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Profits</td>
<td>% of Total</td>
</tr>
<tr>
<td></td>
<td>$m</td>
<td>US profits</td>
</tr>
<tr>
<td>Mining</td>
<td>164</td>
<td>1.5</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>3,874</td>
<td>35.9</td>
</tr>
<tr>
<td>Transport/Utilities</td>
<td>1,240</td>
<td>11.5</td>
</tr>
<tr>
<td>FIRE26</td>
<td>1,196</td>
<td>11.1</td>
</tr>
<tr>
<td>Construction</td>
<td>218</td>
<td>2.0</td>
</tr>
<tr>
<td>Wholesale &amp; Retail</td>
<td>2,244</td>
<td>20.8</td>
</tr>
<tr>
<td>Miscellaneous27</td>
<td>1,655</td>
<td>15.4</td>
</tr>
<tr>
<td>Agriculture etc28</td>
<td>185</td>
<td>1.7</td>
</tr>
<tr>
<td>Total</td>
<td>10,177</td>
<td>100</td>
</tr>
</tbody>
</table>

Sources: US, HSUS; UK: WT, appendices, with author’s adjustments, based on Feinstein 1972, for British banks and agriculture.

measures suggests the results are broadly similar whichever measure is used, at least in that sector: 94.7% by corporate receipts and 92.1% by profits from the IRS figures and 89.4% by production workers employed and 92.3% by value-added from the census office. That was not necessarily the case elsewhere.

24 For the US we can also measure the distribution by receipts. Corporations in 1939 accounted for 94.7% of manufacturing receipts, 91.4% in mining, 96.5% in transport and utilities, 78.7% in FIRE, 66.0% in wholesale and retail, 38.3% in services and other, 26.9% in agriculture, forestry and fishing and 53% in construction, these generally being higher ratios than for profits (underlining the point that unincorporated enterprises generally had higher profit rates on sales, though the relative rate on capital is unknown).

25 In 1938 the sterling exchange rate was $4.89 and in 1939 $4.43.

26 Finance, Insurance and Real Estate.

27 including “services” as well as “all other industries.”

28 Including Forestry and Fishing.
(notably agriculture) - which drove the overall level down before 1914 - has disappeared, according to the sector shares in profit in cols 2 and 4.29 However, the depressed 1939 level of reported farm profits (leading to a negligible weighting, even lower than the UK’s) certainly does not reflect the true weight of US agriculture in terms of employment or sales in 1939.30

By 1938/9 (Table 3) the overall level of corporatization in the US was only a little ahead of where the UK had been in 1909 (Table 2) and it still lagged the UK in most sectors. Because of the somewhat capricious weighting by the volatile profits measure, it is best to focus on large, key sectors. In finance, transport/utilities, manufacturing and wholesale/retail - including the more dynamic sectors and accounting for most output – the gaps between the two countries were indistinguishable from statistical errors. Moreover, the overall UK lead was also insubstantial, relative to what separated both from continental Europe. The estimates made after the war for France31 and Germany32 by their first national income accountants did not separate sectors, but, in the aggregate, both countries show less than half the US and UK shares for corporate profits in 1938.

29 It has been suggested to me that this is because American farmers early learnt how to lie - undetectably - to the IRS. If this is true, I presume national income accountants were more aware of it than IRS statisticians, but I have not investigated the matter.
30 One might conclude from comparing Johnson’s US figure for pre-1914 (23%) with Table 3’s for 1939 (62.5%) that there had been a massive acceleration of corporatization between the two dates, driven by sectoral shift more than the change within sectors (measurable only in US manufacturing and apparently moderate), but that would be to be misled by the somewhat arbitrary effect of the volatility of profits (or relative farmer mendacity) on agricultural weighting.
31 The French national income accounts (Annuaire Statistique de la France 1952, p. 333) suggest that in 1938 investor returns were F45b (of which F16b was for rent (Levy-Leboyer and Casanova, 1991, p.152) and F29b on securities: government bonds and company securities), the reinvested profits of companies (sociétés in French) F14b, self-employed profits in agriculture and elsewhere F100m and public sector losses minus F14b. Ignoring the latter, securities returns and reinvested company profits together account for 30.1% of non-state business profits. Judging from Carré et al (1972, pp. 382-3) the French national income accounting convention was that sociétés included SAs (public companies), SARLs (private companies) and sociétés en commandite par actions (limited partnerships with shares), but not simple commandites (and some SARLs also chose to make tax returns as individuals). Correcting for this would increase the (corporate and limited liability) share, but removing government bond interest from both numerator and denominator would reduce it. It is difficult to know how to interpret Carré et al’s measure for corporate shares by other indicators in 1950 because the original French (1972) and the English translation (1975) do not coincide and it is unclear whether this is a result of mistranslation or authorial clarification to the translator.
32 Hoffmann (1965, pp. 503, 508) reports that in Gewerbe in 1938 AGs alone accounted for 23.8% of profits, and if we assume that in non-Gewerbe, all agricultural profits were private and all rail, post, telegraph and telephones profit corporate (as they were mainly state corporations), the overall ratio would be 24.7%. Adding GmbHs and quasi-corporate forms such as coops, Gewerkschaften and KGs would increase this figure (see Tables 4, 5 and 6, below), but hardly to Anglo-American levels.
Moreover, it was not until after World War Two that France or Germany attained the number of corporations already observed in the UK as early as 1910.\textsuperscript{33} By then, like Anglo-Saxons, they had largely abandoned older forms of liability limitation in favour of standard corporate forms.\textsuperscript{34}

As with Table 2, the data in Table 3 exaggerate the share of corporations.\textsuperscript{35} The IRS omitted millions of untaxed sole proprietorships, whose owners had total incomes below the US exemption limit of around $2,500. The UK data for 1938 exclude fewer non-corporates, since - already facing war finance problems that were not to hit America until later - its exemption limit (£125, or $611) was much lower. Thus the UK’s continuing overall “lead” is understated in the table.

Sector relativities - according to Table 3 and some evidence to be presented later - were broadly similar internationally, so common factors were probably operating: surely including their differential susceptibility to economies of scale and wider markets and their relative needs for stock exchange listings or compulsory purchase rights (in American English “eminent domain” and usually granted in corporate form). Yet in the aggregate, countries varied remarkably: driven both by the differential development of their secondary and tertiary sectors (where the combination of high living standards with free trade policies drove Britain’s lead) and the speed with which any multi-owner organizations had diffused within all sectors with multi-ownership advantages (where the quality of their legal/organizational menus or some other national specificity presumably drove matters, though more in the US and UK than elsewhere).

One puzzle is that the US, despite slightly lagging the UK, consistently registers a higher number of corporations assessed for tax, even in per capita terms (by 1939 the US population

\textsuperscript{33} The Statistisches Jahrbuch shows only 37,955 AGs, KGaAs and GmbHs as late as 1937 and Gewerkschaften and other corporate forms might bring that to 40,000. After the introduction of the SARL, France had overtaken Germany, with 50,000 share companies (SAs, SCAs and SARLs) by 1937 (Risler 1938). The 1910 UK total (private, public, statutory and chartered companies combined) was already 55,747 (Hannah 2013b).

\textsuperscript{34} France’s Annuaire Statistique 1961 (p. 350) reports that in the Seine department in 1958-60, of 4,281 new registrations, 3,053 were SARLs, 1,013 SAs, 11 commandites simples, none SCAs and 204 unlimited partnerships.

\textsuperscript{35} an upper-bound correction (it includes self-employed profits below the exemption limit but omits British companies operating overseas) more suited for the German and French comparisons is Feinstein’s (p. T6) estimate of 55.2% corporate profits in public and private corporations in 1938.
was 2.75 times the UK’s). The US lead is partly an artefact of the tax statistics: in most countries a fifth to a half of companies at any one time were making losses and the UK source only reports the numbers of assessments recording profits (though the profits reported in Tables 2 and 3 in both countries are net of losses reported in all assessments). Correcting for the shortfall, using the Companies Registrar’s fuller count for the UK, still leaves the US with about 12% more corporations per capita than the UK in 1938/9, though the gap had been much larger in 1910 (135%). The British had, in the interim, followed the US in creating many more small private companies, but such minnows had only a modest effect on the corporate shares shown in Tables 2 and 3. How did the British organize businesses that were conducted in America by such small corporations? They had not especially favoured sole proprietorships (on the contrary, as Table 1 implied, America also had more of those), though they possibly made slightly greater use of unlimited partnerships for SMEs and many new inter-war incorporations were conversions from partnerships. Essentially, though, UK business was more concentrated. Because British companies were on average larger than US ones, they were able to encompass a larger slice of national business activity than America’s more numerous corporations, both in 1909/10 and in 1938/9.

III

Pre-1914 French and German profit data derived from taxation records and disaggregated by organizational form are not available, but the Imperial Statistical Office collected accounting data for 4,579 AGs and KGaAs in 1909, which showed that they generated 12.8% of Hoffman’s (1965) estimate for total German business profits in that year. Assuming compatible definitions and that the omitted AGs and KGaAs plus all GmbHs made profits at a similar rate on

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36 The gap between the numbers of assessments reported by WT (109,036) in 1938 and the number of registered companies according to the Companies Registrar (149,329) is larger than in 1909. The Registrar also excluded several thousand statutory and chartered companies at both dates (for a partial listing in 1937 see Stock Exchange Year Book 1938, pp. 3644-37). The UK thus had about 3,207 corporations per million people in 1938. For the US, the IRS reported 469,617 corporations in 1939, or 3,584 per million people (using the higher Ch13 not the Ch510 figure in HSUS). The figures for 1910 were 2,913 per million in the US, 1,241 per million in the UK (Hannah 2013b).

37 Kommanditgesellschaften auf Aktien (commandites with shares, the equivalent of French SCAs).
their known share capital, the total corporate share would have been 18.0%, somewhat below the American and well below the British levels. The smaller size of firms in France and Germany than in the UK (Table 1) and, at least in industry, than the US (Kinghorn and Nye 1996) also supports the conjecture that partnerships and sole proprietorships were of greater importance in both countries. I have not been able to find comparable profit statistics for France, though by the crude measure of corporate capital values as a ratio to GDP in 1910 (whether at market or par), it appears to be ahead of Germany - mainly due to French railways remaining in the private sector - but well behind the US and UK (Hannah 2013b). France also appears to have used the commandite simple (limited partnership without shares) more than Germany and thus these figures – including only SAs (corporations proper) and SCAs (commandites with shares) – may seriously understate the extent of limited liability in France. For Germany (but not the other three countries) we have a comprehensive census breakdown of employment (but not of profits, capital or output) by organizational form for most sectors (Table 4) and can measure the degree of understatement precisely.

Unsurprisingly, German corporate and limited liability establishments were larger than non-corporate and unlimited ones. German employment was also spread around a more eclectic range of quasi-corporate organizational forms. The average number of employees shown in the table for 1907 in the establishments of Gewerkschaften (akin to the virtually defunct British “cost book” mining associations) was 451, in AGs (public limited joint stock companies) 179 and in KGaAs (limited partnerships with shares) 141; the middle ground was occupied by KGs (limited partnerships without shares) with 79, GmbHs (private limited companies) with 49 and government (mainly state-owned firms) with 79, GmbHs (private limited companies) with 49 and government (mainly

38 Statistisches Jahrbuch 1911, p. pp. 406, 416-8. The 4,579 whose accounts were analysed had M13,004.0m, nominal capital, the 643 omitted ones M743.2m capital and 16,508 GmbHs M3,538.5m capital. Assuming the same profit ratio their total profits (net of losses) would have been M1,114.52m x 18,275.8/13,004.0 = M1,566.3m. This is 18.0% of Hoffmann’s estimates of total business profits for that year. Adding simple KGs, Gewerkschaften and coops would modestly increase the total including such “quasi-corporates” (compare their shares in Table 4, 5 and 6, below). As also implied there, it is not these, but rather state-owned firms, which would significantly increase the German corporate share. Hoffmann’s (1965, p. 800) estimate of all government entities’ profits from assets and businesses in 1909 is M1,170m.

39 Levy-Leboyer and Bourgignon (1990, p. 96) cite contemporary estimates of securities returns which were 36% of all returns to capital (including the self-employed but excluding returns to land and buildings), but the numerator needs to be increased by undistributed business profits and reduced by returns on government securities for the measure of the corporate share in business profits that we seek (compare note 27 above). Their original sources (e.g. Colson 1903, pp. 266, 295-7, 363) enable one to get only a little further.
### Table 4. Employment by Organizational Form in Gewerbe: Germany, 1895 and 1907.

<table>
<thead>
<tr>
<th>1895</th>
<th>1907</th>
</tr>
</thead>
<tbody>
<tr>
<td>Establishments*</td>
<td>Employees</td>
</tr>
<tr>
<td>No.</td>
<td>No.</td>
</tr>
<tr>
<td>AGs</td>
<td>4,749</td>
</tr>
<tr>
<td>Gewerkschaften</td>
<td>440</td>
</tr>
<tr>
<td>KGaA partnerships</td>
<td>334</td>
</tr>
<tr>
<td>KG partnerships</td>
<td>1,117</td>
</tr>
<tr>
<td>GmbHs</td>
<td>1,028</td>
</tr>
<tr>
<td>Coops etc41</td>
<td>3,900</td>
</tr>
<tr>
<td>OH partnerships42</td>
<td>55,289</td>
</tr>
<tr>
<td>Sole Proprietors</td>
<td>1,280,830</td>
</tr>
<tr>
<td>Total Classified</td>
<td>1,347,687</td>
</tr>
<tr>
<td>Unclassified</td>
<td>82,939</td>
</tr>
<tr>
<td>Total above</td>
<td>1,430,626</td>
</tr>
</tbody>
</table>

### Notes:

40 This term (variously - if un-informatively - translated as trade, business or industry) in the 1907 census included - for reasons obscure to me and unparalleled elsewhere or in other scholarly spheres - manufacturing, mining, quarrying, construction, transport, entertainment, hospitality, distribution, finance, market gardening, livestock breeding, fishing and some utilities, but not the liberal professions, railways, postal services, telegraphs, telephones, agriculture or forestry.

41 I have combined the smallest census classifications: Vereinen (associations), eingetragene Genossenschaften (registered co-operatives), Innungen (guilds) and andere privaten Unternehmungen (other private undertakings).

42 Offene Handelsgesellschaften (unlimited partnerships), referred to as Kompagniegesellschaften in the 1895 census.

43 Above this point the figures are confined to Gehilfenbetrieben, i.e. those which employed at least one worker or used power. The rest are Alleinbetrieben (the proprietor employed no worker and used no power).
Private Sector Total      3,144,977   10,269,269    100%        3,448,398     14,436,258      100%

Public Sector:
Reich                                         277           28,057       na                                  1,013            40,311        na
Federated States                    782         135,157      na                                   4,514          316,362        na
Other public bodies            2,184           25,398       na                                 16,900         216,157         na
Public sector Total                 3,243         188,612       na                                 22,427         572,830         na

Grand Total44 3,148,220   10,457,881       102%                      4,082,346     15,009,088      104%

Source: Statistisches Jahrbuch für das Deutsche Reich, various dates; Statistik des deutschen Reichs, Band 119 and 214-5

*Betriebe is sometimes translated as firm, business or enterprise but it is clear that here it means what in Anglo-Saxon censuses is conventionally called a plant or establishment (which may include two related factories on one site, or even, in the US, two separate factories under common ownership in the same city or county). There were only 5,148 extant AGs in 1907 (Woytinsky, 1926) and two years later, when there were 5,222, most were in Gewerbe, but more than 11% of them - the 3 in agriculture, 284 in railways and tramways and 306 “others” - were probably not (Statistisches Jahrbuch 1911). The 9,832 Gewerbe establishments reported as owned by AGs in this table thus indicate that the average AG had more than two plants.

municipal)45 plants with an average of 26 employees; while smaller establishments remained the domain of ordinary partnerships, coops and sole proprietors (with an average, respectively, of 7, 6 and 5 employees).46

44 all Gewerbe, public and private.
45 The government railways and post offices (including telegraphs and telephones) were omitted from this census, which was confined to Gewerbe. Had they been included, the average government enterprise would perhaps triple in size.
46 This part of the census excluded the self-employed with neither powered machinery, nor employees (Alleinbetriebe); assuming almost all were sole proprietorships, the average employment in the latter would have been below three.
The alleged importance of KGs (limited partnerships), whether with or without shares, is difficult to discern.\textsuperscript{47} Their share in employment was trivial and declining, though from 1892 they had a rival: the GmbH (private company) was the most rapidly expanding organizational form. By 1907 GmbHs had nearly three times as many employees as KGs of both kinds. Coops were smaller, though also expanding.\textsuperscript{48} It is unclear how to classify the small proportion of firms that the census authorities failed to classify, or which employed only one person (usually the proprietor himself), but these small businesses would overwhelmingly be sole proprietorships or unlimited partnerships. Assuming they all were (though reasonable alternative assumptions would not much change the conclusion), rising corporatization is evident. The combined share of corporations in the strict sense (AGs plus GmbHs) in employment increases from 8.4% to 15.9% between 1895 and 1907. If we add all quasi-corporate and limited forms (that is omitting only unlimited partnerships and sole proprietorships), the rise is slower: from 12.4% in 1895 to 19.3% in 1907. What is most striking is how little either process had yet advanced in a Germany that remained pre-eminently a land of ordinary partnerships and sole proprietors. Even as late as 1907, more than three-fifths of the German private sector labour force in this table still worked (for themselves or others) in sole proprietorships, not for any multi-owner business, incorporated or otherwise. There were also more partnerships in Germany than in the UK, an economy the same size,\textsuperscript{49} while the UK had more than twice as many corporations as Germany.\textsuperscript{50}

\textit{Gewerbe} (the mainly industrial, financial and trading sectors featuring in Table 4) grew faster and became more profitable than Germany’s other businesses, accounting for 45% of

\textsuperscript{47} Moreover the standard contemporary German economic reference work, the \textit{Handbuch der Staatswissenschaft}, featured no article on KGs (though did on KGaAs, AGs, and GmbHs).

\textsuperscript{48} On German Sparkassen and Raffeisen credit cooperatives, see Guinnane (2002).

\textsuperscript{49} About 54,000 partnerships (of all kinds) were known to the UK tax authorities in 1909 (n. 13, above), though there would have been more not subject to schedule D tax. Table 4 shows 82,370 German OH plants owned by partnerships alone and there were more in lower sections of the table and outside \textit{Gewerbe}. Partnerships were probably overwhelmingly single-plant in both countries.

\textsuperscript{50} 55,747 against 25,346 in 1910, using the same “expansive” definition of German corporations as in the text above and including UK private companies (Hannah 2013b). By the same definition there were 21,683 plants owned by corporations in this table, but many corporations were multi-plant. Corporations outside \textit{Gewerbe} or constituting the net increase in 1907-10 would thus be considerably more numerous than the 3,663 difference between the two numbers might be taken to imply.
both business employment and profits in 1895, but 53% of employment and as much as 82% of
profits in 1907.\textsuperscript{51} We need also to allow for the 47% of the workforce (by 1907) in railways and other
utilities, the liberal professions, agriculture and forestry. Germany’s three\textsuperscript{52} post offices (including
telegraphs and telephones) were state-owned and employed 312,708 and Germany’s many railways
were mainly state-owned (the remainder being AGs) and employed 698,345.\textsuperscript{53} Added to the figure
for state enterprises in \textit{Gewerbe}, shown “below-the-line” in Table 4, these state (together with some
rail AG) entities - all, in one sense, corporate - employed 1,583,883 people in 1907. This is just 10%
short of the figure for employees in all AGs in Table 4 and well over twice the number of employees
in KGs, KGaAs and GmbHs combined, so would considerably boost the corporate share if all were so
counted. What significantly differentiated German from Anglo-Saxon business organization was not
so much \textit{commandites} and private companies (mainly SMEs) but rather the extent of state
ownership, of both large and small business entities.\textsuperscript{54} Moreover, as Kocka (1978) has suggested,
much of the culture of \textit{Beamte} (the state bureaucracy) rubbed off on \textit{Privatbeamte} (managers and
clerks in the private business sector), as they developed hierarchies to manage modern, large-scale,
capitalist enterprises.

What of the non-\textit{Gewerbe} capitalist business sectors? German professionals
(lawyers, doctors, architects etc) trading on their own account would further increase the numbers
employed by sole proprietors and partnerships; but utilities (only some of which appear to be
included in \textit{Gewerbe}) might balance that out (those not run by states or municipalities were almost

\textsuperscript{51} Hoffmann 1965, p. 205 for overall employment figures. It is not clear how comparable Hoffmann’s statistics
for \textit{Gewerbe} are, but profit was more volatile than employment: by 1913 the corporate share in profit was
down to 79%.
\textsuperscript{52} Bavaria and Württemberg retained post offices separate from the Reich’s.
\textsuperscript{53} Employment figures from \textit{Statistisches Jahrbuch 1909}, pp.112, 114, 117. The employment figures for
\textit{Kleinbahnen} and \textit{Strassenbahnen} are not given, so excluded from the rail total.
\textsuperscript{54} Of course the US Post Office and some local utilities were state-owned, but, critically, not railways,
telegraphs or telephones. In 1913 government profits from all business operations were M1,170.1 ($293m) in
Germany, F145.7m ($29m) in France, £33.9m ($165m) in the UK and $8.7m in the US (Woytinsky, 1926, 6, pp.
96, 102). All these figures include central government income but not that of counties and municipalities
(which are included in the German \textit{Gewerbe} employment data); \textit{Länder}/states are included for Germany but
not the US. Hoffmann (1965, p. 800) gives alternative figures for German state profits from its assets and
businesses of M,1,170m in 1909 and M1,490m in 1913.
entirely corporately owned). However it was the correction for agriculture and forestry that massively reduced the corporate portion. There were 5,558,000 farms in 1895 and 5,736,000 in 1907, almost as many as in the US and more than five times the number in the UK. With an average of only 5.6 hectares (under 14 acres) per farm, peasant proprietors worked less land more labour-intensively than American or British farmers.\textsuperscript{55} Employment in agriculture - including the self-employed (mostly sole proprietors, whether peasants or aristocratic owners of large Prussian estates) and family members or day labourers working for them - was still 15,169,500 in 1907\textsuperscript{56} (slightly more than Gewerbe, but less on alternative measures), reinforcing the observation that the sole proprietor remained overwhelmingly the dominant source of employment (and self-employment) in Germany. Making appropriate adjustments, the proportion in corporate or quasi-corporate forms could fall from 19.3\% in Table 4 to around a tenth of the whole private sector workforce. Only if all state enterprises were counted as corporate would the proportion rise again to around 15\%.

Of course profit shares (the measures we have economy-wide for the US and UK) and employment shares (known for Germany) do not necessarily coincide and divergences can go either way. Where, unusually, both ratios are available in the US for a later period for two sectors,\textsuperscript{57} their relation depends on whether the tendency of corporations to be more capital-intensive (thus generating higher profits than employment) is outweighed by the bias in non-corporate entities for profits to include a large return to entrepreneurial labour (with the opposite effect, accentuated in the smallest corporations). Both cross-cutting effects are likely to be operating in a big way in pre-1914 Germany, but the former probably slightly dominated,\textsuperscript{58} though not sufficiently to bridge the yawning gap between one-tenth of private business employment in Germany and one-half of business profits in the UK.

\textsuperscript{55} Since nearly half were less than one hectare (2.5 acres), it may be presumed that they produced a small income or only provided by-employment.

\textsuperscript{56} Woytinsky, 1926, Ill, p. 45. Hoffmann p. 205 gives a lower figure.

\textsuperscript{57} as in the US retail and wholesale sector in 1939.

\textsuperscript{58} See note 33, above, for the higher corporate profit share economy-wide in 1909.
We do not have economy-wide *employment* data disaggregated by organizational form for the three other countries, but census data appropriately disaggregated were (exceptionally) reported for American manufacturing and mining, and matched sector data can be abstracted from Table 4 for Germany, using the original Imperial Statistical Bureau report (Tables 5 and 6). Mining and manufacturing accounted for about a quarter of the labour force and, judging by Tables 2 – 3, tended to be more corporatized than the service sectors. Both censuses are truncated: the American by omitting hand trades and firms with output of less than $500, and the German by omitting *Alleinbetrieben* (those with no power or only one worker, usually the owner). The US omissions were fewer than in Germany, and so the numbers of sole proprietors (who dominated such small firms) are underestimated, and for Germany more than America. The US census does not disaggregate the 1.1 million salaried workers and working proprietors by types of ownership, so the 6.6m US employees shown for 1909 are all wage-earners (basically blue-collar workers). The German 1907 figure of 6.8m includes all employees, including salaried workers and the self-employed.

The average sizes (by employment) of different organizational forms in German manufacturing are not very different from those noted for all *Gewerbe* in Table 4, but re-grouping them to conform to the US categories, corporations generously defined (AGs, GmbHs, KGaAs and *Gewerkschaften* together) had an average of 145 employees, partnerships without shares (KGs and OHs) an average of 38 and sole proprietors an average of less than 5, though no figures are given

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59 Neither the French nor UK censuses provide data disaggregated by organizational form.
60 The omissions would perhaps increase the number of wage-earners by about 4% and total employees (including self-employed) by double that. Lebergott’s (1964, pp. 514,516) employment statistics are not compiled on the same basis as the manufacturing census, but provide a rough indicator of omissions due to census truncation, suggesting that in 1909 241,401 self-employed and 245,021 employees were omitted. As (in this size of enterprise) only a small number will be salaried employees (otherwise omitted from the US data), this implies that almost all the omitted business entities employed only one person (as is also suggested by the $500 output cut-off).
61 The German census shows 905,521 *Alleinbetrieben*, with one worker, increasing the German workforce in column 5 by 13%.
62 Salaried workers then numbered 12% of US manufacturing wage-earners.
63 Considerably below the figure indicated as an average by the table, because of the omission of unclassified and *Alleinbetriebe*. 
### Table 5: Employment by Organizational Form in US and German Manufacturing.

<table>
<thead>
<tr>
<th>Form</th>
<th>United States 1909</th>
<th>Germany 1907</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>plants</td>
<td>worker s</td>
</tr>
<tr>
<td></td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td></td>
<td>% of total</td>
<td>% of total</td>
</tr>
<tr>
<td>Corporations: public</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>: private</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>(:combined</td>
<td>69,501</td>
<td>5,002,393</td>
</tr>
<tr>
<td>Partnerships</td>
<td></td>
<td></td>
</tr>
<tr>
<td>:with shares</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>:limited</td>
<td>2,879</td>
<td>na</td>
</tr>
<tr>
<td>:ordinary</td>
<td>51,386</td>
<td>na</td>
</tr>
<tr>
<td>(:combined</td>
<td>54,265</td>
<td>794,836</td>
</tr>
<tr>
<td>Coops etc(^{64})</td>
<td>4,120</td>
<td>12,934</td>
</tr>
<tr>
<td>Gewerkschaften</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Sole Proprietors</td>
<td>140,605</td>
<td>804,883</td>
</tr>
<tr>
<td>Unclassified</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Total</td>
<td>268,491</td>
<td>6,615,046</td>
</tr>
<tr>
<td>Government</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>40(^{65})</td>
<td>32,519</td>
</tr>
</tbody>
</table>


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\(^{64}\) In the US these were mainly in dairying and printing. In Germany there were many more Genossenschaften than shown here but most were credit cooperatives and agriculture-related (Statistisches Jahrbuch 1908, p. 332) and seem not to have been counted as Gewerbe.

\(^{65}\) Only federal manufacturing plants noted by the census. It is clear from the 1900 census that this excludes many small federally-owned manufacturers, plus many owned by individual states and smaller government entities (many of these prisons, whose inmates were the workers).
for their output. US manufacturing corporations had an average gross output of $235,121 (employing 72 wage-earners), partnerships $40,249 (15 wage-earners) and sole proprietorships $14,521 (6 wage-earners). Thus the plants of US multi-owner businesses generally employed fewer people, even allowing for their figures only covering wage-earners, though, since American manufacturing productivity was higher than Germany’s, the American multi-owner businesses were probably not smaller by output. Some American censuses also break down capital and other indicators of size by type of ownership, but such measures are not available for Germany. The US data show labour productivity in corporations was not much higher than in sole proprietorships and partnerships66 - a tribute to its competitive economy, mobile labour, and restless rootlessness - but I suspect this was not the case in Germany.

With about the same overall number of manufacturing employees,67 the US had nearly eight times as many manufacturing plants owned by corporations proper as Germany (including its GmbHs as well as AGs) and these had four times the number of employees in total (the lower mean size of American corporations was driven by the denominator). More surprisingly, in the US three times as many plants were owned by limited partnerships68 than by Germany’s equivalent KGs.69 No US figure is available for their employment, but if we arbitrarily assume there were twice as many workers per limited partnership as in US unlimited partnerships (with which they are grouped),70 their employment would account for an identical (1.2%) share of US manufacturing

---

66 Corporations in 1909 employed 75.6% of US manufacturing wage-earners, but accounted for 79.0% of the gross value of output and 77.2% of value added by manufacture, implying only slightly higher output per worker, despite the probability that corporations were more capital-intensive. One difficulty of evaluating the apparent closeness of these ratios is that the labour input of proprietors contributes - via measured profits - to value added in smaller entities that is not captured in the wage-earner statistics, an even bigger issue in the nineteenth century data, on which there is a large literature (Margo 2013).

67 To the figures in the table have to be added American unwaged personnel and the truncations for both countries.

68 Unlike the case in Europe, some US limited partnerships were entirely limited: there were no “general” partners (Burdick 1908, p. 527).

69 Kommanditgesellschaften, without shares, as in the US.

70 The ratio in Germany was three times. However for the US gross output for the two types was reported in the census (p.143) and, surprisingly, the mean limited partnerships produced slightly less output than the mean ordinary partnership, so the suggested adjustment of employment in the text may be unjustified. On the
employment as KGs in Germany. We can also only guess the extent of limited partnerships outside manufacturing, but they may have been at least as numerous in the US as KGs in Germany.\(^{71}\) The alleged importance of the limited partnership in Germany, relative to the US, thus remains a statistically unsupported hypothesis.\(^{72}\)

Table 5 confirms earlier indications from profit shares nationwide: even in manufacturing, sole proprietorships and partnerships remained the dominant form of enterprise in Germany. Corporations expansively defined (including AGs, GmbHs, KGaAs, Gewerkschaften and coops, but excluding KGs, OH partnerships and sole proprietorships) had only a 20% share of German manufacturing employment. This was no higher than for Gewerbe generally,\(^ {73}\) suggesting that (unlike the US and UK in Tables 2 and 3) Germany’s manufacturing was not more corporatized than its service industries.\(^{74}\) This figure was also very much lower than the 76% of US manufacturing employment controlled by corporations,\(^ {75}\) a differential larger than suggested by the profit data. This underlines the dual nature of the German economy, with a long-tail of employment in low-productivity and low-profit firms.\(^ {76}\) It seems likely, given their international competitiveness, that

\(^{71}\) Comparison with Table 4 indicates that other sectors of Gewerbe had slightly more KGS than manufacturing (861 against 775) but they employed fewer both absolutely and relatively (a mean of 49 per KG, against 113 in manufacturing) and there would have been some KGs unreported outside Gewerbe (e.g. in the professions or perhaps running small utilities). We have no 1909 data for the US, but in 1853 mercantile professions accounted for three times as many New York limited partnerships as manufacturing (Hilt and O’Banion, 2009, p. 630). Even if the US ratio was only half that by 1909, the US could still have considerably more non-manufacturing limited partnerships than Germany.

\(^{72}\) Guinnane et al claim that the commandite was more widely used in Europe, but also that it was a less secure and understood legal form in the US. It might nonetheless be equally popular there, because Americans had a massively greater overall taste for limited liability but directed it disproportionately to corporations, understanding the problems of US limited liability partnerships (as the clear and massive US lead in numbers of corporations suggests).

\(^{73}\) Compare Table 4, allowing for the fact that (unlike Table 5) that includes Alleinbetrieben.

\(^{74}\) The more highly corporatized sectors within Gewerbe appear to be banking, insurance and electric utilities, plus, as Table 6 suggests, mining. The Statistisches Jahrbuch suggests that a quarter of AG capital was in banking and insurance alone.

\(^{75}\) Including coops. Counting government plants as corporate in manufacturing would have less effect than it did economy-wide for Germany; for the US, see note 65 above.

\(^{76}\) Modern studies show that the best plants in backward countries can equal American performance: their backwardness is due to the laggards having a much longer tail of poorly performing plants. We have little evidence on the changing shape of such distributions before 1950, except for Japan and the US. With lower
Table 6. Employment in US and German Mining.

<table>
<thead>
<tr>
<th>Form</th>
<th>United States</th>
<th>Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1909</td>
<td>1907</td>
</tr>
<tr>
<td></td>
<td>operators</td>
<td>workers</td>
</tr>
<tr>
<td>Corporations</td>
<td>7,041</td>
<td>965,483</td>
</tr>
<tr>
<td>Gewerkschaften</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Partnerships</td>
<td>6,262</td>
<td>50,777</td>
</tr>
<tr>
<td>Individuals</td>
<td>6,387</td>
<td>41,908</td>
</tr>
<tr>
<td>Coops, etc.</td>
<td>225</td>
<td>7,115</td>
</tr>
<tr>
<td>Unclassified</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Total</td>
<td>19,915</td>
<td>1,065,283</td>
</tr>
</tbody>
</table>

Government                                                                                              487             85,163      +5.3

Source: US: mines census; Germany: as Table 4.

Germany's larger manufacturing establishments were nearer American standards, so that the proportion of output in corporations (though it was not measured) was probably nearer to the US level than the proportion of employment.

The mining comparison (Table 6) is subject to most of the qualifications noted for the manufacturing statistics. Mining was more corporatized than manufacturing in both countries and German mining was more corporatized than the rest of Gewerbe shown in table 4. Yet, even if we wages in Germany, smaller scale handicrafts (Handwerk) under sole proprietorship could have remained profitable and survived, despite lower productivity, as happened in Japan.

77 AGs and GmbHs, the latter accounting for 49% of mining corporations and 15% of corporate mining employment.

78 There was no truncation rule for US mines (as for manufacturing) though some small and idle mines were ignored. For Germany 8,292 Alleinbetriebe are omitted from the table.
include *Gewerkschaften* (a multi-owner form of medieval origin, concentrated in mining) and the Prussian and other state mines (shown “below the line” in Table 6), corporatization in German mining in 1907 remains well below US levels, with sole proprietors and partners retaining a large presence.

A curiosity of the German/American comparison is that the independently-compiled IRS sources (which from 1909 provide alternative estimates for the *numbers* of US corporations divided into five sectors) consistently show more *corporations* in industry (mining and manufacturing together) than the *establishments* owned by such corporations reported in Tables 5 and 6 (or in later censuses). In Germany the reverse applies, as one might expect, given that many corporations were multi-establishment. How could the IRS possibly identify many more American corporations than the number of corporate establishments in the same sectors known to the census authorities? US corporations, employing fewer workers than German equivalents, were perhaps less likely to own multiple plants and some US factories and mines were owned by corporations classified by the IRS to other industries. Many mine corporations were not producing. Some manufacturing corporations were also producing less than the $500 annual output (that is less than the average manufacturing worker earned) that led to exclusion from the US census. This underlines the IRS evidence that many US corporations remained small (in some cases vanishingly small) and some struggled to operate even one establishment (though, of course, there were also many large and profitable ones). Many similarly marginal firms in Germany were not incorporated; indeed many were below its high minimum threshold size for incorporation.

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79 On the relationship between German AG totals in the *Statistisches Jahrbuch* and those in the census, see the asterisked note to Table 4.
80 Mines not producing were not necessarily defunct: they may, for example, have been temporarily mothballed because of demand conditions or sinking new shafts.
81 In the year ended June 1914, slightly less than 60% of the 316,909 corporations reported any taxable profit, net of interest payments (IRS, *Annual Report*, p. 14).
82 an authorized capital of M7,000 ($1,750) for AGs and M20,000 ($5,000) for GmbHs. Only a quarter of the latter needed to be paid up, though if it were not, liability remained up to the full amount authorized. Many US corporations were smaller.
One may want to interpret the German lag in corporatization as a symptom of its hesitant embrace of “modernity,” embourgeoisement, or “capitalist liberalism:” plausible in a poorer, more traditional, aristocratic, and state-dominated society than the US or UK. Instead (or as well), the slow spread of the corporate form may be driven by the superior merits of non-corporate and unlimited forms in Germany, which America and Britain would have done well to emulate. The case for superior German organizational options should be sought not in private companies (which were more prolific in the US) or limited partnerships (which were of possibly equal - and certainly trivial - importance in both countries), as in the laws affecting the ordinary partnerships that Germany distinctively embraced. In German manufacturing, for example, OH (unlimited) partnerships had more employees than all AGs and GmbHs combined (Table 5), though their share in mining was smaller (Table 6). The plus-points of OHs may have been greater personal responsibility for their debts (the social advantage in allowing small businesspersons to defraud creditors is unclear) and the (differently weak) entity-shielding offered by the German simple (unlimited) partnership form, as hinted by Hansmann et al (2006).

V

How does all this relate to the controversial variety of views with which we started? At least in the German case, there is not much evidence of the rich continental European menu claimed by Guinnane et al leading to what might be expected if it had the claimed merits: greater take-up (other things equal) of multi-owner organizational forms. Perhaps Guinnane et al

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83 The literature generally views American forgiveness of bankruptcy, rehabilitation of defaulters, and easy limitation of liability even for small personal enterprises as positive in terms of encouraging risk-taking and serial entrepreneurship, though this clearly weakened creditor rights. The correct balance - especially for SMEs - is not self-evident, though Germany’s unknown Henry Ford evidently did not get his second chance (at least judging by the abysmally low pre-1914 motor output of the country which had invented the automobile).

84 They (pp. 1381, 1388) show that entity shielding in the US and UK was weak (creditors of partnerships had priority over the partners’ personal creditors from 1683, while from 1715 personal creditors had prior access to personal assets, with partnership creditors taking anything left) though the development of fixed-term partnerships (as an alternative to partnerships at will) and, in the US, judicial charging orders, later strengthened some entities’ shields. In Germany creditors had to pursue individuals for their debts before going for any (unlimited) partnership assets. I am not aware of any discussion of the relative merits of such rules in practice, for example when partners declared personal bankruptcy at the same time as their partnership declared bankruptcy.
should re-direct their claims for civil law menus away from Germany? No detailed evidence on France similar to that in Tables 2-6 is available, but the flow of *commandites* in France before 1914 appears higher than in Germany.\(^85\) France’s corporate capital/GDP ratio in 1910 also suggests that it “led” Germany (Hannah 2103b)\(^86\) though the exiguous information in Table 1 for 1906/7 suggests that it lagged in developing beyond single-owner enterprise. In Mexico, limited partnerships (with and without shares, on the continental European model) accounted for an impressive 15% of businesses and 9.5% of their capital between 1886 and 1936: a higher proportion than Germany\(^87\) (Gómez-Galvarriato and Musacchio 2012). Another poor country which underlines even more clearly the potential of limited partnerships is Japan, which had broadly copied German corporate law in 1899, while omitting to include the GmbH (until 1940). Unlike France or Mexico, Japan published annual data on the stocks - as well as flows - of multi-owner enterprise forms. In 1910 extant Japanese *goshi kaisha* (limited partnerships) were almost as numerous as *kabushiki kaisha* (corporations proper), but accounted for only 6.5% of capital (against 84% for KKs) in multi-owner businesses.\(^88\) I suspect their popularity - clearly mainly among SMEs - was not so much because of any attractive governance features but because (like the GmbHs that Japan had *not* explicitly copied) Japanese limited partnerships could maintain confidentiality of accounts, while corporations could not.\(^89\)

Five additional questions are suggested by these tables, some of which I have addressed in related papers:

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\(^85\) Jean-Laurent Rosenthal at Caltech is doing some work on this which appears to confirm a strong continuing flow of *commandites*, see also Jobert (1991). Compare the flow (for Prussia only, which was about the same economic size as France) shown in Guinnane et al.

\(^86\) I omit *commandites simples*, but, given their small mean size, their inclusion would probably only marginally increase the French lead over Germany.

\(^87\) It is much higher than the 2.2% of all multi-owner forms and 1.2% of employment in Table 4 (which probably overstates economy-wide KG penetration) and there is no reason to believe that German KGs were markedly less capital-intensive than the representative German enterprise in that table. On the other hand, the Mexican data are flows not stocks and partnerships may have lower survival rates than corporations.

\(^88\) The registration fee was also only three-quarters of the rate charged to corporations. Details of multi-owner businesses (which numbered 12,308 in 1910: 5,026 corporations, 4,783 limited partnerships and 2,499 unlimited partnerships) were published regularly in *Financial and Economic Annual of Japan*, these statistics for 1910 being in the 1912 issue.
A. In what did American “exceptionalism” in the development of the corporation consist?

There is a disconnect between Sylla-Wright’s count of corporations formed before 1860 – together with other work (Evans 1948) – suggesting a more substantial US embrace of the corporate form than anywhere in Europe throughout the nineteenth century and the evidence in Table 3 that the US still slightly lagged the UK in corporatization even as late as 1938/9. Part of the explanation is that the Sylla-Wright count of corporate formations is deficient (for largely Guinnane et al reasons): they omit many alternative multi-owner forms, which were important on the continent in their period. They also - following much earlier literature - exaggerate the extent to which the British suppressed deed-of-settlement companies and similar alternatives to parliamentary incorporation by the 1720 Bubble Act and other means. On the contrary, a case can be made that the core principle of the Bubble Act (that only the legislature could create a company) was more strenuously enforced in post-independence America than in the old country. Yet, when all is said and done and corrections made, Sylla-Wright’s central conclusion stands: the rate of creation of new multi-owner business forms was still proportionately greater in the US than in Europe (Hannah 2013a).

Can we possibly reconcile such findings – not to speak of the multiple references in the literature to the US leading the UK in corporatization in the nineteenth century (e.g. Harris 1990) - with what is demonstrated above: that the US did not end up more corporatized than the UK? The possible explanations (assuming America did not establish an initial “lead” which it soon relinquished) are that American corporations were smaller and/or that they were less “successful” than those in the UK (in the sense that they were more prone to disappear and/or expanded more slowly relative to the growth of their economy). We have no evidence on relative corporate growth rates, though there is some indication that corporations formed in the nineteenth century had a one-in-four chance of surviving to 1914 in the US, a one-in-three chance in Britain and about one-in-two on the continent, probably because greater monopoly privileges protected continental
incorporations. When free incorporation led to German corporate bankruptcy rates in the 1870s that were nearer to US levels, a moral panic ensued, resulting in the repressive legislation of 1884.90

One reason for their higher mortality is that US corporations were smaller in 1860, not only than UK corporations, but than Prussian and French ones, judged by extensive sampling, especially in banking and railways (Hannah 2013a). Fifty years later, with fuller official data, UK corporations were still more than a third larger (nationwide all-industry means of $290,540 share capital at par against $214,234, with a bigger gap at market prices, see Hannah 2013b). The US was probably creating more corporations than the UK at least as early as the 1830s, but the relatively capital-poor country (Field 1983) still had a much lower ratio of corporate capital to GDP in 1860 and only gradually closed the gap.91 What happened between the US civil war (1861) and the European one (1914) was American catch-up industrialization, within the context of (faster) absolute growth, while maintaining levels of real GNP per head slightly higher than the UK’s (both countries remaining comfortably richer than France or Germany).92 In that period, the US converged on Britain’s unusually high (and still increasing) levels of corporatization at the large enterprise level - reflected in the corporate capital/GDP ratio - but its distinctive achievement was chartering many more small limited liability corporations, which had a more modest impact on that ratio. It thus “forged ahead” only in corporate numbers, not by its relative level of corporatizing all enterprises, whether the latter is measured by the rough-and-ready method of the ratio of corporate capital to GDP93 or the (more conceptually appropriate) ratios shown in the above tables.

90 A large part of the reason for the 1892 legislation for GmbHs was that de facto private companies in the AG form had become so trammeled by this legislation aimed at cleaning up public companies that an alternative de jure form of private company was required.
91 Hannah 2013a estimates that the ratio of corporate capital at par to GDP in 1860 was around 41% in the US (and perhaps a little lower in France and Prussia), but above 64% in the UK, though much literature assumes the US was then leading the UK too. By 1910 the US was a little ahead at par and the UK substantially ahead at market, with both far ahead of France and Germany by either measure.
92 I favour Lindert and Williamson (2011) over Maddison here.
93 This theory-free measure (comparing a stock with a vaguely related flow) has become a mainstay of the literature essentially because economists have slightly more faith in the international comparability of GDP measures than of capital stock measures (the latter being the more appropriate denominator when corporate capital stock is the numerator).
American “exceptionalism” thus consisted in having a multitude of unusually small corporations,⁹⁴ more prone to bankruptcy. That is a refrain which does not sing well to many American business historians (Whiggery about heroic large corporations dies hard), but it whistles better to the (market-orientated, evolutionary, entrepreneurial and cheerful) tunes of 1980s-vintage Scranton and Lamoreaux - stressing flexibility and variety as the genius of the US corporate form and sceptical of large-scale mergers - than to anything found in the standard 1980s Chandlerian - or modern Sylla-Wright - hymnals of corporate praise.

B. Was American corporate law so inflexible?

The fundamental problem with the Guinnane et al thesis about restrictive American corporate law and the superiority of continental European commandites and private companies is that the quantitative results did not match their qualitative tour de force exposition of the merits of these forms. There is no evidence that limited partnerships were more common in Germany than America and overwhelming evidence that private (close) companies - with many apparently similar characteristics to GmbHs - were more widespread in the US than Germany: as is suggested by the ubiquity of corporations in the tables and can also be confirmed independently. There were in 1910, according to IRS figures, 270,202 US companies with $57,886,430,519 paid-up capital at par in all sectors (Commissioner 1912, pp. 75, 81). Only about 25,000 of these – accounting for about one-third of the paid-up capital - appeared in Moody’s Manual, which aimed to list all companies traded on any US stock exchange or OTC markets, but explicitly excluded close companies.⁹⁵ This suggests there were 245,202 de facto private companies⁹⁶ in the US with an average capital of $236,076, ⁹⁴ actually in 1910 more than half of all corporations in the world.

⁹⁵ In numbers terms, Moody’s listings of banks - many of which were small and de facto close or with a very narrow local market for their shares - dominated. This anomaly explains why the mean share capitals at par of public and private companies were surprisingly close together by this measure and definition.

⁹⁶ Of course, the lack of the precision offered by a separate legal form in the UK and Germany (and, from 1925, France) makes US estimations hazardous. However, it seems likely that most such corporations had fewer than 50 shareholders, did not openly appeal to stock markets for funds, and did not publish annual balance sheets: in other words, they could comfortably have registered as a British private company.
compared with only 25,346 German companies of all measurable\textsuperscript{97} kinds with M20,262,000,000 share capital at par in 1910, an average of M799,416 ($194,258) per company. GmbHs (formally private companies) were numerically dominant (19,650 or 78% of the total), but accounted for only 19% of the share capital, with an average size of M197,491 ($47,990). Even if we added the several thousand AGs that were \textit{de facto} private (in the sense of not being quoted on a German stock exchange), that would not fundamentally change the picture, since many of these were also small.

The US (an economy only twice Germany’s size) thus had more than ten times Germany’s number of companies in absolute terms and about seven times even in \textit{per capita} terms (in 1910 2,903 per million people against 403).\textsuperscript{98} The disparity was even larger for private (close) companies. These – independently derived - observations are entirely consistent with the findings on the distribution of employment in a significant part of their business sectors in Tables 5 and 6.

That raises thorny questions about the savour of national legal menus for SMEs. If the GmbH form was so mouth-wateringly appealing on the menu, why was it so much less widely ordered by German SMEs than the (informal) close corporation dish appearing on the US menu? My suspicion is that US corporate law was more serviceable and flexible (and German law less so) than Guinnane et al allow. The fundamental concessions in the 1892 German corporate legislation authorizing GmbHs were that the new close corporations (unlike AGs) were not required to publish accounts or appoint a supervisory board. I do not know of any American state that mandated the appointment of two corporate boards, while only a minority of states required the publication of accounts. Even there, corporations keeping their accounts secret, in defiance of the law, were not always assiduously pursued by state registrars\textsuperscript{99} and, in any case, American accounting was then

\textsuperscript{97} Including AGs, GmbHs, \textit{Gewerkschaften} and KGaAs, but not KGs, on which no aggregate data exists. However, Tables 4-6 suggest adding the latter would not fundamentally change the picture.

\textsuperscript{98} To be clear, these totals include only corporations proper plus a few old-style joint stock associations treated similarly by the IRS (but exclude US limited partnerships) and include AGs, GmbHs, KGaAs and \textit{Gewerkschaften} (but not KGs) for Germany. Again, judging from Tables 4-6, including all limited liability entities leaves the picture largely unchanged.

\textsuperscript{99} The IRS investigated state registries when imposing the new excise tax on corporations in 1909 and reportedly found the records of tens of thousands of defunct and uninformative registrations (Commissioner 1910).
sufficiently unprofessional for it to be possible for directors to publish a bland sheet of numbers, meaningless to shareholders and competitors alike. For secretive American businesspersons unluckyly encountering the holy trinity - wise state laws, punctilious registrars and diligent accountants - it was a simple matter (obligingly facilitated by competitive company registration agents) to register by post in a more easy-going or less efficient state.

So we need to establish whether any other need then existed in America that a German-style GmbH could appropriately have addressed. The specific contracting advantages of German and French organizational forms highlighted by Guinnane et al were the ability that they offered minorities to avoid oppression by a voting majority of shareholders, while retaining some of the advantages of the corporate form in respect of avoiding the untimely dissolution risks of partnerships. For stock exchange listed companies there were, indeed, serious weaknesses in American corporate law, but how many shareholders in the great majority of America’s numerous close corporations – owned by family and acquaintances and not traded – stayed awake at night worrying about majority oppression? I suspect not many, if only because in many cases one (or very few) director-owners were the nearly 100% majority and the only minority were dummy shareholders nominated and controlled by them (a fiction necessary for some very closely-held companies in states that required more than two shareholders). The evidence produced by Guinnane et al from difficult legal cases is - naturally - the product of extreme dysfunction and lack of agreement among multiple shareholders, not of everyday SME close corporation experience.

Moreover, why could SMEs concerned *ex ante* about encountering any problem not fix it? After all they had (at least after the ruling in favour of interstate chartering in *Paul vs Virginia*) a form of *commandite* available under pseudo-French civil law rules in Louisiana? And was it

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100 There was also from 1867 a statutory option in the UK of having a registered company with directors with unlimited and shareholders with limited liability, a *commandite* to anyone but a corporate lawyer. Perhaps, in both the US and UK, such corporate and equivalent partnership forms were little used, not because judges disconcertingly meddled with their terms (Guinnane et al), but because financiers could achieve similar non-third-party effects by *ad hoc* private contract, requiring small limited liability company directors (but not shareholders) personally to guarantee loans at fixed or variable interest.
beyond the wit of other US corporate lawyers to create specific remedies - against whatever was feared - in their charters and by-laws, which in many industries and states did not have mandatory governance templates? The New Jersey corporation law of 1898 specified (if that word does not traduce the content) that certificates of incorporation “may contain any provision which the incorporators may choose to insert” and Delaware copied this in 1899 (Larcom 1937, p. 29). It requires imagination beyond my powers to interpret this as more restrictive than French corporate law (Lamoreaux and Rosenthal 2006) or as offering a narrower range of governance options than the GmbH (Guinnane et al 2008).\textsuperscript{101} As far as an unschooled amateur lawyer like I can see, it was in principle possible in the US (as in England\textsuperscript{102}) to restrict the sale of shares or to give specified minority shareholders – or, alternatively, only a super-majority that protected certain minorities - the right to dissolve the company, modifications which Guinnane et al present as valuable means of countering majority oppression available to partners or GmbH shareholders. However, incorporators might wisely have hesitated before adopting minority dissolution rights since that risked subverting fundamental advantages of the corporation (Blair 2003 and Hansmann et al 2006) and also of the many commandites which also chose to restrict partners’ dissolution rights (Lamoreaux 1998, p. 69n4; Lamoreaux and Rosenthal 2006). The GmbH did not resolve that enduring dilemma, nor offer choices - on the spectrum of compromises between premature dissolution and majority oppression - that were unavailable in America.

It is suggested that US state judges were pig-headed in refusing to enforce some corporate and partnership mutations with which they were actually presented, especially from out-of-state (Guinnane et al). Were the US judges whose gauntlet innovative provisions had to run really uniformly unfriendly to supporting private contracts agreed by the relevant parties and affecting no public interest? I am no expert on American (or any) law but one American academic lawyer was

\textsuperscript{101} though in practice it was used to subvert shareholders’ rights, more than to reinforce them.

\textsuperscript{102} Under English law such contractual freedom had also been the norm for non-statutory companies long before the 1907 private company legislation, though it was a little more constrained than normal in 1844-56 and 1900-07.
clear that the common law close corporation was “the creation of business men and their counsel rather than of the courts and the legislatures” (Kramer, 1953, p. 433), well before formal legislation for S-corporations. American lawyers were not world-famed for being unwilling to deliver what business clients wanted, however outrageous their bending of rules to subvert the fundamental regulatory principles involved. Indeed such an unprofessional deviation from public purpose and legal principle is precisely what defenders of civil law regimes condemn as encouraged by imaginative lawyers and their tamely compliant elected judges under American common law.

It is time to revisit the question of what exact provisions in continental civil law were really unattainable in America: whether simply by laying low and hoping registrars would not notice, by judicious forum-shopping, by successfully adding provisions to corporate charters and by-laws, or just (especially in SMEs) by emotional and other non-legal pressures within the family (or among friends) to the same business effect. If none of these apply, then we remain in need of a convincing explanation of why so many more American SMEs chose the (private) corporate form, despite its alleged horrors relative to the (strangely less popular) GmbH.

C. Was the civil law a hindrance for France and Germany or did something other than common law promote more extensive corporatization in the US and UK?

One cannot base a case against a generic legal system on a sample of four nations, even four that collectively accounted for more than 40% of world real GDP. Yet data similar to that in the tables presented here are simply not available for most countries before 1914. However, in a related paper I have provided more accessible data for 82 countries, accounting for all but a small portion of the world’s population in 1910: simply counting the numbers of corporations per head of population (Hannah 2013b). Capitalization data (par values of share capital) are also available for a minority

\[103\] Data limitations prevented the inclusion of all commandites (and I have also excluded the equivalents in countries on which we do have some data), though commandites with shares- KGAs and SCAs - are generally included. I estimate these omissions lead to my undercounting the global total of limited liability entities by no
of these countries. Both measures appear to offer striking support for the “law and finance” hypothesis (Table 7, cols. 1 and 2), with the notable exception that Scandinavian civil law seems to outrank common law in increasing the numbers (but not the value) of corporations.

Table 7. Law and the Spread of Companies c 1910

<table>
<thead>
<tr>
<th>Legal system</th>
<th>Companies per million people</th>
<th>Par value of share capital/GDP</th>
<th>Average tariff</th>
<th>Exports per head</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scandinavian civil</td>
<td>1,255</td>
<td>48.2%</td>
<td>9.5%</td>
<td>$41</td>
</tr>
<tr>
<td>Common law</td>
<td>750</td>
<td>156.5%</td>
<td>12.9%</td>
<td>$51</td>
</tr>
<tr>
<td>French civil</td>
<td>184</td>
<td>51.7%</td>
<td>16.0%</td>
<td>$30</td>
</tr>
<tr>
<td>German civil</td>
<td>207</td>
<td>31.6%</td>
<td>16.4%</td>
<td>$10</td>
</tr>
</tbody>
</table>

Countries in sample 54
29 46 53

Source: Foreman-Peck and Hannah, forthcoming 2014. (Note: less than the full sample is used: work on-going)

However, my co-author and I suspect that other forces are at work here: corporatization in common - and Scandinavian civil - law countries was closely correlated with, but not driven by, their legal systems. Alternative political and cultural drivers have been suggested by modern critics of the “law and finance” hypothesis, but our initial economic modelling shows that their favoured alternative causes - proportional representation, democracy, religious culture, literacy, British dominion status, etc - played little, or no, part in determining the level of corporatization in 1910. Rather the fundamental driver was an open and competitive economic system, proxied by the variables in the last two columns of Table 7. Liberalism\(^{104}\) and free trade were not closely correlated with democracy but were a normal consequence of British Empire more than 15%, understating French civil law countries disproportionately, but not sufficiently to account for the wide disparities of Table 7.

\(^{104}\) in the European (not modern American English) sense.
membership\(^{105}\) (from which the only large former member had not entirely freed itself, at least internally) and were also shared by Britain’s north-west European neighbours: their small size required trade openness. Such countries - the Netherlands, Belgium and Switzerland - out-performed Germany and France in corporatization, like Scandinavians, because, while adopting versions of (French or German) civil law, they ran the system with fewer restrictions. Although I am not aware of any evidence of German self-doubt on the matter, contemporary Frenchmen were aware of their distinctive disadvantage: those at home frequently cast an admiring glance at looser Belgian corporate law, while those sipping their breakfast *cafés-au-lait* on the Rue Catinat in Saigon wondered why electricity and streetcar companies had not materialized there as fast as they had in (British) Singapore and Penang. Restrictive corporate regimes were more favoured in the statist and protectionist regimes of France and Germany (and their colonies) and in many independent nations, most of which emulated or modified French or German civil law. We argue that it was their lack of a liberal tradition and general partiality for state direction – and *not* civil law - that drove their choice of laws – and, just as crucially, administrative practices - less favourable to the establishment and growth of capitalist corporations than Anglo-Saxon laissez-faire regimes. Where Anglo-Saxon liberalism sometimes came unstuck was in the development of stock markets, where more regimented regimes sometimes offered better investor protection.

But how exactly was this restrictiveness manifested? Surely France and Germany had freed up their incorporation laws, like other successfully industrializing countries, in 1863-71?

Answering that requires further research. Modern analyses suggest inhibitions such as bureaucratic

\(^{105}\) Empire government was, of course, profoundly undemocratic (except for the white dominions and non-white colonials migrating to Britain), but also (until 1932) moderately free-trading (with similar exceptions, including colonial administrators needing tariff funding to compensate for tight imperial purse-strings). Colonies and dominions also did not *automatically* follow British corporate law. It is sometimes said that civil law spread more than common law because the former was codified, and so more easily transplanted, but this cannot be the explanation: the Imperial Companies Act was also available as a statutory template for colonies (or, indeed, had they been so inclined, any other country) and was sometimes adopted. Yet Empire countries and their provinces more frequently anticipated or modified it for local purposes, or retained local laws, including, in the cases of Malta, Scotland and Quebec, civil law (though companies operating there sometimes chose to register in nearby common law jurisdictions). Companies registered under British law were also sometimes preferred to local civil law offerings by some residents of independent Asian and South American countries (including, notably, Japan, China, Argentina and Brazil).
requirements for permissions and checks, documentation by notaries with a customary or state-enforced monopoly and fees to match, and postponed information requests, which could increase registration and re-registration times from a day to a month or even – where bureaucracies were corrupt - several years. It is already clear that French and German corporate registrations before 1914 were far more expensive than those in New Jersey or much of the British Empire, but more work is required on this.\footnote{To register a $5m corporation cost 0.02% of the capital in NJ. Although NJ fees were in principle open to all in the US, most chose to pay - usually higher - fees in their home state. Corporations elsewhere - for example, in Canada, Australia, Russia, China, Norway, Hong Kong and Singapore - could register about as cheaply, or even more cheaply, than in NJ, though corruption appears to have raised the effective cost in China and Russia and some systems, like Canada’s, required a month or more to complete registration. Metropolitan Britain was faster (one day) but a little more expensive: 0.26%. There was nothing inherent in civil law that required corporate registration to cost even more than this higher British rate, but in Germany, registering such an AG cost around 6% of the capital (though GmbHs were cheaper) and, even after registration, an IPO had to wait at least a year. In France and Japan, fees (at 0.6% and 0.4% respectively) were below the high German rate, but there was no relief for private companies (though in Japan limited partnerships had a 25% discount). Some states varied the cost by corporate size, others had flat fees or a constant percentage rate, and it is not easy to capture this variety in a single econometric variable.} We also need to know more about tax discrimination among organizational forms.\footnote{There were wide differences, with corporations sometimes paying less and sometimes more tax than partnerships, but as often as a by-product of arcane rules as deliberate policy, and taxes being levied variously on profits, capital or share transactions and annually or one-off. Again, it is not easy to capture this variety in a single econometric variable.} And of course some industries were not open to entrepreneurs because the state ran them itself or rationed eminent domain orders (for tramways, electricity etc.) or operating licenses (common for banks, insurance companies etc.) to privilege incumbents over newcomers. Small retailers in Germany were successful earlier and more comprehensively than their Anglo-Saxon equivalents in legally throttling department stores and retail chains, which were more likely to be corporate (Vahrenkamp 2011, p. 13). The legislation most obviously restricting corporations was the Zollverein’s 1879 tariff and the French Méline tariff of 1892, which confirmed continental Europe on its path of agricultural protectionism, preserving a personally-owned non-corporate sector that was largely disappearing in Massachusetts and Lancashire. Of course, the US was then even more protectionist than France and Germany, but its constitutionally-mandated \textit{internal} free trade meant
that Massachusetts went the way of free trade Lancashire.\textsuperscript{108} Such factors may, in principle, have had nothing to do with common or civil law, but there was an association - manifest in Table 7 - perhaps through a \textit{mentalité} favouring an active role of the state (Smith 1990). The civil law caricature - “what is not expressly permitted is forbidden”\textsuperscript{109} - did not have much resonance for Anglo-Saxons\textsuperscript{110} and America had largely abandoned its early socialist tendencies.\textsuperscript{111}

It is possible that continental governments delivered value in disseminating information about registered businesses and preventing fraud and that fewer, better corporations were more beneficial to their economies than the promiscuous corporate profusion of the US and UK. Perhaps corporate systems got what they paid for, as French lawyers arguing the merits of a civil law regime argue today against Anglo-Saxon cowboys at the World Bank? But what exactly did a German AG before 1914 get from Berlin that it would not - given the freedom\textsuperscript{112} - have preferred to buy from New Jersey? Two boards rather than one and compulsory accounting disclosure were among the “benefits,” though they might not be so perceived by managers (or even shareholders), nor be thought worth paying a fee three hundred times New Jersey’s. After all, nothing prevented a New Jersey corporation exercising the same corporate “privileges” – that is publishing accounts or setting up an executive management committee to supplement a largely non-executive board - without having to pay for an expensive government license; indeed some Jersey corporations did so. Today, with Brussels restoring intra-European corporate mobility as effectively as \textit{Paul vs Virginia} eventually

\textsuperscript{108} Also US \textit{external} tariffs actually discriminated in favour of (corporate) manufacturing and against (non-corporate) agriculture.
\textsuperscript{109} A pertinent example is the slow development of the preference share in France, because it was not explicitly allowed before 1902, though other civil law (and, of course, common law) countries developed preferred securities without explicit statutory authority.
\textsuperscript{110} And actually the French young occasionally tire of it: witness the \textit{soixante-huitard} street slogan “Défense de défendre!” and the numerous recent French graduates, exiled from French regulation, working in London corporations today.
\textsuperscript{111} manifested, for example, in the construction of the Erie Canal (and, more recently, and even more exceptionally, the Panama Canal). British equivalents were built and operated by the private sector (though the British government had later bought the Egyptian government’s 40% share of Suez, originally paid to that government for eminent domain rights etc. by private French contractor-entrepreneurs).
\textsuperscript{112} English corporations were preferred by some German enterprises before 1914, but I have come across no cases of American ones being used. The European legal freedom of foreign corporations to operate in other countries (some traditional, some regulated by treaty) was increasingly restricted in the decades before 1914.
promoted Delaware, we have a more eloquent indicator. Germans now register thousands of companies in the cheaper and faster UK, which has become Europe’s “Delaware” (Becht et al 2008).

D. But was the Franco-German regulatory order not at least useful for stock exchange companies?

Yes, and that may be why Rajan and Zingales (2003, and compare Sylla 2006 and Hannah 2011) were able to show that the French and Germans could more than hold their own in stock market “securitization,” even though they could not in the (public and private) corporatization measured here. The American numerical lead was in its myriad of small, closed corporations, not in listed companies (indeed Paris and Berlin - as well as London - listed more companies in 1884 than the NYSE in 1914). The quality-control role of the banks and stock exchange listing committees as intermediaries was sometimes reinforced by continental states, occasionally to positive effect, as were matters such as the publication of corporate accounts (Fohlin 2012).

The big puzzle in all this is that one Anglo-Saxon common law country shared many (apparently - in relation to stock exchange development - dysfunctional) American characteristics: sloppy, regulation-light, corporate law and a commitment to laissez-faire market capitalism. Yet the London Stock Exchange (LSE) was the largest exchange in the world in the early twentieth century, bigger than Paris and Berlin combined. A much higher portion of the capital of UK companies was quoted (on any exchange or informally) than in the US (about two-thirds of all corporate capital compared with one-third in the US). The UK’s two-thirds ratio was also the norm on the continent and much of the rest of the world (Hannah 2103b). The US appears to have been unique before 1914 in having the reverse: two-thirds of its corporate capital in private (close) companies, though that is now the global norm (Mayer 2013). At least in the case of the UK, the pessimistic interpretation of the consequences of Europe’s (especially Britain’s) higher proportionate use of stock exchanges advanced by some (Kennedy 1987, De Long 1990) is not justified. In fact not only was the divorce of

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113 as we might characterize company public flotation, as opposed to “corporatization,” which includes private companies. The modern use of the term refers more narrowly to the securitization of contractual debt.
ownership from control greater in the UK before 1914 than in the US in the 1990s, but its domestic shareholder protection and corporate governance worked more in shareholders’ interests too (Foreman-Peck and Hannah, 2013). British investors also appear to have had the information and skills to devise effective diversification strategies, by the standards of modern portfolio theory (Goetzmann and Ukhov 2006).

Although legal historians generally agree that in weakly-regulated British corporations the law can have had little or nothing to do with any of this - for example, most anti-director rights were not legally enforced until the second half of the twentieth century - they are wrong. The requirements of the UK Companies Acts of 1844 to 1907 were, indeed, nearly as low as New Jersey’s, but they applied to registered companies only. The quite separate Companies Clauses Consolidation Act of 1845 (and its successors) provided an alternative template for statutory and royally chartered companies, that is those created by individual act of parliament and thus more carefully scrutinized. Parliament always required such companies to adopt governance rules which scored between three and four on the “anti-director” rights index, higher than New Jersey or Berlin. And until near the end of the nineteenth century - though legal historians failed to spot it - most share capital quoted on the LSE was in statutory and chartered - not registered - companies.\(^\text{114}\)

It is true that few shareholder protections were similarly mandated under the ordinary Companies Acts for the larger registered companies that dominated LSE listings by the 1890s, other than the improved disclosure rules and insistence that directors could not be auditors of 1900. However, well before then, professional advisers and the LSE listing committee appear to have “nudged” registered companies in the same direction as had long been mandatory for statutory companies. In a sample of forty registered companies with £1m ($5m) or more share capital achieving official listing on the LSE before 1911, only two did not score three or more on the anti-

\(^{114}\) companies opting for the less regulated registered form were often de facto private companies, where a light regulatory touch was arguably perfectly appropriate.
director rights index.\textsuperscript{115} Thus the law set initially high mandatory standards for one set of large (and often quoted) companies (many with a quasi-public purpose and requiring compulsory purchase powers), but the overwhelming majority \textit{not} subject to these rules (including most manufacturers and distributors) chose to adopt them \textit{when seeking an LSE listing}.\textsuperscript{116} Why? Any company floating on the LSE hired a stockbroker to represent it at the listing committee and doubtless also consulted other professional advisers: at least two among its lawyer, accountant, company secretary and banker. The “nudge”\textsuperscript{117} administered by such professionals to include anti-director rules in the memorandum and articles of association (one British English term for corporate charter and bylaws)\textsuperscript{118} was based on what City experts knew already worked in statutory companies.\textsuperscript{119}

But why would professionals (many working on their own account and profit-driven) risk giving advice favouring future external shareholders (who were \textit{not} - in the matter in hand - their direct clients) to British business plutocrats consulting them on an IPO but unaccustomed to brook outside interference in their business? Perhaps professional standards mattered, but the cost of exploring the favoured governance rules considered likely to make the issue successful was also small. If there were a negative reaction, they could either sail closer to the wind with an official

\textsuperscript{115} author’s current joint research with James Foreman-Peck. Proxy voting and the right to attend meetings without share deposit were universal; and the right of a minority to requisition a meeting was absent in only two cases (see note 121, below). Pre-emption rights and voting rules favouring minorities, though rarely in the form specified by the modern anti-director rights index, were common in alternative forms, raising the anti-director score to four or five, on generous definitions, for many listed companies. Research by John Turner (University of Belfast) and his associates seems to be producing broadly similar results for an earlier period.

\textsuperscript{116} Cheffins et al (2013, p. 609) distinguish between enabling, default and mandatory standards. Britain had no need of enabling legislation: anti-director rights were widely implemented before any general incorporation statutes (Pearson et al 2012). For statutory companies from 1845 (and in practice often before) anti-director rights were mandatory; for registered companies they were the default rule under the (little-used) Schedule A of the Companies Acts.

\textsuperscript{117} In a different context, “nudge” has recently become voguish, compared with legal compulsion (Thaler and Sunstein 2008). The “nudge” did not extend to wholesale adoption of the voluntary draft corporate charter in Schedule A of the Companies Acts. Professional pride (or the prospect of higher fees, or the special needs of clients) normally drove lawyers to offer their own re-drafting, which could be justified by the (then generally agreed) need to omit Schedule A’s tiered voting provision (finally ditched by statute for registered companies only in 1907).

\textsuperscript{118} Others were “statutory clauses” and “deed-of-settlement,” depending on the type of company.

\textsuperscript{119} Most businesses were in the provinces and most financiers in London, but provincial lawyers had networked connections: they cooperated with the major City specialists in this kind of business. For two unusual case studies of London firms’ dealings with the merchant bank Hambros on their IPOs, showing the operation of lawyer/broker/banker inter-relations and market norms for pricing, underwriting and preference and debenture terms (though it is silent on other governance issues), see Rutterford 2006.
listing application and risk failure\textsuperscript{120} or offer the virtual certainty of an LSE “special settlement:” the junior LSE market in which regulation was very close to zero. Given suspicions about the latter among investors, based on its greater incidence of failure, downgrading from official listing might carry the unpalatable penalty of a lower p/e on ordinary capital at IPO, but it was often favoured by medium-sized companies issuing only debentures and/or preferences, whose fixed interest offerings limited such concerns.\textsuperscript{121} The financial structure of such companies resembled what we now call “leveraged buy-ins.”\textsuperscript{122} Often the publicly-issued securities conferred no votes (never mind anti-director rights) and control was firmly retained by the owner-managers, but the latter now had two quite different performance-drivers: more leveraged profit incentives on the ordinary capital and the negative threat of take-over if bondholder interest payments were missed. The governance rules and anti-director rights normally adopted by companies with officially-listed ordinary shares were thus largely irrelevant in companies with that financial structure.\textsuperscript{123}

This fits Coffee’s (2001) notion that pluralistic societies work out diverse contractual ways of protecting securities-holders and that this - rather than\textsuperscript{124} (inevitably more heavy-handed) centrally-imposed laws - drives securitization. That goes some way to explaining both the favourable outcomes for investors and the unusually large size of the LSE before 1914. Corporate norms (and the trusting, networked commercial culture of London that made acceptance of them and the law real) could be as effective as corporate laws in a liberal, \textit{laissez-faire}, economy. Such non-mandatory standard-setting provided clear public (and private) benefits, increasingly appreciated over decades.

\textsuperscript{120} Anti-director rights were not among the shareholders’ protections formally \textit{required} by the listing committee, though the fact that they were so commonly adopted suggests they were understood to help.

\textsuperscript{121} Particularly if they conformed to the market norm of \textit{perpetual} debentures and \textit{cumulative} preferences (still relatively rare in the US). Such owner-controlled companies could even gain official listing if they issued \textit{no} ordinary shares to the public: the LSE liquidity rule requiring that at least two-thirds be issued to the public, applied to each \textit{security}, not each \textit{company}. Anglo-Argentine Tramways and Debenhams (department stores) - the two exceptions in our large-company sample of forty (n. 115, above) - did not issue ordinary shares to the public, so also had these alternative incentive structures.

\textsuperscript{122} These now usually involve professional managers taking a public company (or part of one) private. Differently, the LSE version was part of an IPO process for existing private owners.

\textsuperscript{123} By contrast, medium-sized firms were effectively barred from the NYSE and such US securities were more likely to be traded regionally, informally or on the OTC.

\textsuperscript{124} or, in this case, “as well as.” Professor Coffee’s explicit treatment of the London market is, however, misinformed.
of evolutionary experiment. Note that the US also eventually arrived at the same outcome - though mandatorily - with the introduction of the SEC in 1934: effectively a federal takeover of investor protection from sloppy state corporate law, imposing the higher governance standards already largely attained in the UK.125

E. Did it Matter?

Much of the debate on the corporation is explicitly (World Bank) or implicitly (Sylla, Wright, Guinnane et al) normative. Our interest in these matters - even if sometimes unconsciously - derives from the search for the Holy Grail of institutions promoting investment, economic growth or some other desired objective. When writing of one country “leading” another in corporatization in this essay, I have, nonetheless, often used quotation marks to signal that I am indulging in positive economics, describing a measured relativity, not normatively implying a clearly superior outcome on any dimension.

Yet it is difficult to ignore the fact that the corporation is a phenomenally successful economic institution, judged by the numbers and size of its modern manifestations, even in ex-communist economies. That would surely not have happened if it were totally dysfunctional. The only institution that the editors of the Economist (Micklethwait and Wooldridge 2003, p. 2) are willing to concede might have had more success is the family (though - as Marx and Engels long ago pointed out - neither are perfect). The history of corporations is notably more characterized by path dependencies, punctuated equilibria, and great reversals and the “survivor” test is not a decisive proof of its optimality. Historians are uniquely equipped to widen the range of experience that goes into questioning whether something better can be designed, as is being shown, for example, by work

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125 And to some extent, by 1934 achieved also on the NYSE, which from 1910 eliminated the unlisted department and forced most listed companies to publish accounts, as on the LSE much earlier. I am not aware of any study of US corporate charters (of, say, NYSE-listed companies compared with those on the NY curb) and whether they also adopted anti-director rules; but our hypothesis would be stronger if investigation showed that they did so less than LSE-listed companies.
on alternative liability regimes to overcome the problems of today’s dysfunctional banks (Mayer 2013). Historians surely should promote such critical questioning, as have Guinnane et al. However, they should also note that there is a correlation between the extent of corporatization before 1914 and subsequent economic growth, after accounting for other factors (Foreman-Peck and Hannah 2014). A doubling of the numbers of companies in 1910 (easily feasible for most civil law countries, judging from Table 7) is associated with increased GDP twenty years later of 7%. Those civil law countries that - in the century following 1910 - liberalized and otherwise changed their corporate laws and administrative procedures to be more recognizably “Anglo-Saxon” may not have been making a terrible mistake.

There is surely also some substance to the World Bank view that the quick fixes induced by its Doing Business Index - like cheap and easy incorporation - are sensible for countries trying to catch-up. Economic history shows how difficult it is for poor countries to move onto a sustained development path and the empowerment of new, risk-taking enterprises can sometimes help – innovatively, competitively and diversely – to clear the well-known logjams created by established elites that inhibit development. However, it is equally clear from modern mutations, like Russia (which arguably now has the finest corporate law in the world), that legal statutes alone are insufficient (Pistor et al 2002), and, in the case of China, that “good” institutions (promoting market efficiencies and consensual political stability) may - at least for a time - arise with neither democracy nor an equitable and independent legal infrastructure.

By the same token, we need to set any analysis of corporate law mutations before 1914 in the perspective of broader features of economies and polities. Tardiness in spreading the corporate form probably did not egregiously damage French or German business, nor did Americans suffer grievously from developing a centralized stock exchange more slowly than Europeans, while Britons, despite advantages on both dimensions, did not forge ahead, perhaps because of their burden of acting as global policeman while financing a rapidly ageing population (a combination
which America was not to experience until after World War Two). Germans had a large deficit of limited liability relative to all Anglo-Saxons, but they focused the fewer corporations that they did have (or state-owned substitutes) where they offered the clearest benefits: railways, banks, insurers, utilities, large-scale manufacturing etc. Elsewhere, there was probably little practical difference - either way - between the potential contributions of a tiny personally-owned US corporation and a German sole proprietor (indistinguishable except for her unlimited liability). Moreover, within its commercially restrictive polity, Germany had grown the world’s finest research universities and largest reinsurance industry, so was hardly devoid of alternative spurs to innovation and risk-sharing. Americans also had other means, in addition to their modestly-sized and rail-dominated NYSE, of directing capital to innovative industries (Lamoreaux, Levenstein and Sokoloff 2007). Despite (or perhaps, sometimes, because of126) their divergent ways of organizing business, neither the US nor Germany were renowned for a lack of dynamic new industries nor for irredeemably sluggish SMEs. All four countries considered here - unlike most others - were getting too many other things right for “omissions” in their organizational menus - or hiccups in delivering some of their best dishes - to have brought them to their knees. Nonetheless, my contention is that all four (and especially Germany and France) might have done even better if they had implemented spicier organizational menus from proven contemporary recipes, or even experimented more and developed alternatives that as yet remain unknown.127

These are controversial issues, on which there is still lively disagreement, accentuated by the political salience during the GFC of issues raised by “law and finance” debates. New historical

126 It is far from obvious that arms-length stock exchange financing was superior to the hand-on processes described by Lamoreaux et al 2007 or that allowing small retailers to incorporate with limited liability is better than forbidding it for all retailers (as in Pennsylvania until 1901, Evans, Business Incorporations, p. 33) or via a minimum size requirement (as in Germany).
127 What do I mean by the latter? By definition, I cannot possibly know. One hint (its distinctiveness is virtually unknown) is the “Corporation” of Lloyd’s in London, which developed a highly successful insurance mutation. This conferred on its members – all sole proprietors and partnerships, none with limited liability - many of the scale and reputational advantages of the corporate form, while preserving personal ownership incentives and also (more dangerously) leveraging them. The result was a British insurance industry that was more innovative and risk-taking, yet less corporatized, than insurers elsewhere. Consider also some of today’s post-GFC discussions of new corporate forms (Mayer 2013) or Robert Schiller’s impressive animadversions.
research is currently being undertaken, driven by the increasing availability both of financial databases (not least at Yale’s International Center for Finance) and of archived corporate charters (such as those of all LSE-listed - British and foreign - companies at the Guildhall Library, London).

That research is more likely to reach definitive and useful conclusions if it is rooted in a properly-grounded understanding of historical national differences, rather than in the unsupported myths or uncritical corporation-worship that have characterized some of the recent debate.

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