The promotion and foundation of joint stock companies in Britain and Ireland before 1844[1]

by

Robin Pearson (University of Hull), Mark Freeman (University of Glasgow), James Taylor (University of Lancaster)

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Between the famous Bubble Act of 1720, which outlawed the issue of transferable shares and the limitation of liability without a royal charter or a parliamentary act of incorporation, and the introduction of a national system of company registration in 1844, entrepreneurs in Britain and Ireland, who wished to launch a new business on a joint-stock basis, faced a number of important decisions, many of which would have a profound effect on the character and prospects of their concern. The decision whether or not to seek incorporation was perhaps the most fundamental. Incorporation offered legal security for the property invested in a company, and could ensure that the liability faced by shareholders would be limited, but the process was expensive and uncertain to succeed. Companies seeking to follow this route needed to obtain substantial support among politicians and local economic interests. Beyond this, new companies needed to develop strategies for winning the right kind of investors. Prospectuses and other literature issued by the company had to position it in such a way as to stress both the public benefit and the private gain to be derived from the scheme. In addition, the size and capital structure greatly influenced the kind of proprietary a new venture would attract. There were also other mechanisms open to companies to help regulate the type of investors a company would attract, ranging from directorial control over share transfers to time restrictions on the payment of the first dividend. All these decisions were enshrined in the company constitution. Drawing on a new database - the largest ever compiled for this period - this paper explores the processes by which joint-stock companies were promoted and formed and their constitutions drawn up, and discusses the factors that determined the initial success of a company start-up.

The database

As Dubois correctly argued some time ago, the principal effect of the Bubble Act was to encourage entrepreneurs seeking to raise large capitals to seek incorporation by a parliamentary act, or – where powers of eminent domain or the right to levy tolls were not needed – to form voluntary unchartered shareholding partnerships of uncertain legality.[2] The stock company organisation with transferable shares, both incorporated and unincorporated, appeared in a remarkable range of British industries during the course of the eighteenth and early nineteenth centuries, and dominated some of them. The survey of business records carried out for our forthcoming book, revealed companies for overseas trade, river navigation, canals, docks, quays, harbours, bridges, tunnels, roads, railways, sail and steam shipping, coach and ferry services, waterworks, gasworks, insurance, banking, financial investment, land improvement, colonial settlement, commercial property development, public baths, cemeteries, reservoirs, fisheries, mining, quarrying, the timber trade, brewing, distilling, flour milling, bread baking, sugar refining, and the manufacture of salt, glass, porcelain, pottery, brass, rope, boats, guns, silk, hemp, linen, cotton and woollen cloth.[3] Altogether we identified over 1,400 stock companies operating between 1600 and 1844, and this is certainly an undercount. Ron Harris has estimated that about £18m was tied up in the capital of stock companies in 1740 and £210m by 1840, an increase that considerably outpaced the growth of the economy as a whole.[4]

The acts of incorporation in Britain and Ireland specified the capital that was authorised to be raised by shares, bonds or loans, regulated the business operations of the company, and outlined its system of governance. Companies that failed to obtain incorporation, or that did not even try, included many of the same governance regulations in their private deeds of association or articles of co-partnership. We constructed a dataset of governance provisions from the constitutions and by-laws of 514 joint-stock companies founded in Britain and Ireland between the Bubble Act of 1720 and the Companies Registration Act of 1844, which marked the first general attempt at company regulation. Our dataset included only those businesses with a minimum of 13 partners holding transferable shares. This is an organisational, rather than legal, definition of a joint-stock company that draws upon Charles Munn's distinction between unincorporated Scottish co-partneries with more than 13 partners and ordinary partnerships with fewer. The larger co-partneries, Munn argues, were most likely to have an elected committee to run their day-to-day affairs and thus to experience a separation of powers between managers and proprietors. Incorporated and unincorporated English stock companies can also be distinguished from small partnerships in this way.[5] Our dataset probably represents about one-third of all stock companies formed in Britain and Ireland in this period. Fifty-six per cent of our companies were incorporated by acts of parliament or royal letters patent, the rest were unincorporated ventures, constituted by private articles and deeds of association or copartnery. **Table 1** shows the distribution of companies in the database across 12 economic sectors and by date of foundation. **Figure 1** shows the chronological distribution of all the companies in the database. The pattern generally mirrors the familiar cycles of stock company promotion: the burst of canal and dock foundations in the 1790s, the minor boom of the late 1800s, and the major upswings in stock company flotations in the early 1820s and the mid-1830s (especially in gas, railways, insurance and banking). From this dataset of company constitutions, plus the business records of about 160 other firms founded between 1720 and 1844, we are able to reconstruct the processes by which companies were promoted and formed in this evolutionary period for the corporate economy.

Foundation and promotion

The establishment of most joint-stock companies in the eighteenth and early nineteenth centuries commenced with a series of private meetings between individual projectors. This was often accompanied by a personal canvas of potential investors and key patrons, including county landowners and neighbouring gentry, and leading merchants and professional men in or around the home town of the projectors. Initial discussions often were held in inns or coffee houses. Following such initial meetings and private canvassing, a promotion committee was usually formed from some or all of the original projectors, depending on their numbers. Frequently at this point, even before the venture had been publicly advertised, a minute book would be opened and a secretary or clerk appointed whose first task would be to record the proceedings of the promotion committee. The task of the committee was to decide the object of the venture, to specify the fields of business that were to be entered, to decide the structure of the capital stock, the denomination of the shares, the procedure and terms of the issue, and to instruct a legal counsel to draft a constitution, either in the form of a deed or articles, or in the form of a bill of incorporation. Promotion committees often provided most of the members of a company's first board of directors. The directors were usually appointed at one of the early 'public' meetings of the promoters, to which other interested parties - patrons and potential investors - were also invited.

As businesses that commonly found it difficult to obtain acts of incorporation, many insurance companies looked to advertise the presence of noblemen and members of parliament on their boards or as trustees. This, it was believed, increased the prospects of a successful petition for incorporation and also lent éclat to a new venture. The trustees of the

County Fire Office included the Duke of Rutland, the Marquis of Buckingham, and the Earls of Buckinghamshire, Upper Ossory and Northampton, who had been assured by the company's promoter, John Barber, that the deed of settlement 'will be so framed as to preclude any trouble or active duty to the noblemen who consent to become trustees'.[6] Canals, railways, and other infrastructure projects that required corporate privileges, particularly found the support of landowners and MPs indispensable, as they often suffered from expensive battles between powerful interests, including rival companies, supporting and opposing their schemes. This is discussed further below.

During the foundation phase of many new companies, as projectors moved from private meetings into the public sphere, the first committees were often given powers to co-opt new members, because their function was largely promotional rather than governmental. Promotion was commonly accompanied by the distribution of printed circulars, prospectuses and notices in newspapers. As a result of the extended geographies of their operations, insurance companies and railway companies were great advertisers. In 1843, for instance, the directors of the Lancaster and Carlisle Railway Company ordered their prospectus to be published in fifteen newspapers in Edinburgh, Glasgow, London, Liverpool, Manchester, Carlisle, Kendal, Gateshead, and 'the two Railway Papers' (the Railway Magazine and the Railway Times).[7]

This sequence – private meetings; personal canvassing of influential patrons; appointment of a promotion committee; drafting a plan, sometimes in conjunction with an engineer or surveyor as well as a lawyer depending on the type of business the company was entering; advertisement of that plan in newspapers, by circular and by prospectus; followed by one or more public meetings to attract prospective investors – was common to the establishment of most joint-stock companies in the late eighteenth and early nineteenth centuries. The object was always to construct a public 'body corporate and politic' out of a private initiative. The line between the private sphere of projectors' discussions and the public sphere of subscribers' meetings was easily crossed. Companies had to perform a fine balancing act when advertising a scheme, stressing the benefits that would ensue to both the public interest and the private interests of those who chose to invest in it. We find this, for instance, in many of the early joint-stock banks. Thus, a circular of the Birmingham Banking Company claimed that the bank 'would tend greatly to the advantage of the mercantile and other classes of the town and neighbourhood, and afford a sufficient remuneration to the parties whose capital might be employed'.[8] The prospectus of the Stirlingshire Banking Company claimed that the scheme would, 'besides forming a profitable investment for capital, greatly promote the prosperity of the district by affording a judicious and uniform support to trade, agriculture, and manufactures'.[9]

There were other steps that promoters could take to reinforce the public nature of their company. Insurance companies in county towns in Shropshire, Kent, Wiltshire and Worcestershire, as well as those in Norwich, Newcastle, Manchester, Leeds, Liverpool and Birmingham were 'quasi-public' in nature, with intimate links to the magistracy, local officeholders and corporations and guilds in the area. Company insignia were sometimes based on the town arms, premises would be taken up in the high street, and as described above, prominent local figures would be encouraged to hold shares and sit on the board of directors. This blending of the public and the private can be seen throughout the joint-stock economy. Where local taverns had insufficient space for the initial 'public' meetings of companies, other quasi-public buildings were found such as the Newcastle Assembly Rooms, Cutlers' Hall, Sheffield, the Liverpool Exchange and the Royal Exchange, Leith.[10] Frequently, the connection with the public life of the community was made more explicit, especially when companies met in town halls. The Blandford Gas and Coke Company held their first meeting at Blandford Town Hall; the shareholders of the Tunnel under the Thames Company met in Gravesend Town Hall; those of the Lancaster and Carlisle Railway Company met in Kendal Town Hall.[11] Sometimes local authorities could be directly instrumental in the promotion of a company. The first committee of the Blandford Gas and Coke Company, for instance, consisted of the local town council, together with nine other directors.[12] Companies continued to embed themselves in the public sphere after they were formed, making charitable donations to schools, churches and hospitals.[13]

At the same time, companies had to stress the private benefits that would accrue from investment in the scheme, persuading potential investors of the riches that they stood to obtain. While the prospectus of the Metropolitan Marine Bath Company focused on the public benefits that new bathing facilities would bring, it also suggested that the return on capital invested 'at a moderate estimate, cannot be less than 14 per cent'.[14] The Plymouth and Devonport Banking Company pointed to 'the high premiums, borne without any known exception' by the shares of other joint-stock banks already formed in England and Wales.[15] General predictions of future profitability were not necessarily enough to get a new company off the ground. Well after the initial phase of private canvassing by promoters, prospectuses, and the share issues that they advertised, were often targeted at those whose support the company wished to attract. Several insurance companies reserved blocs of shares to sell in particular localities, or prioritised certain groups as investors by carefully controlling the distribution of shares.[16] Walter Cassels, London agent for the Northern and Central Bank of England, recounted that when that bank was formed, the board held back a number of shares, so ‘that the directors should have it in their power to give shares to influential shareholders in the immediate neighbourhood’.[17] The practice, however, could provide an opportunity for the misappropriation of shares, a problem to which the directors of the General Steam Navigation Company alluded at its first general meeting. The directors had made £8,309 from the sale of shares that had remained undistributed after the company’s launch in 1825. ‘Disclaiming all comment upon the conduct of other Directors in other concerns in the self-appropriation of this incidental advantage’, the directors felt that ‘they are the trustees of the Shareholders, especially appointed to guard and promote their general interests.’ They therefore recommended that, once the expenses incurred in the formation of the company had been paid, the rest of this money be distributed among the shareholders.[18]

Incorporation

English companies that decided to incorporate could face a long, uncertain, and expensive process to secure their objective. Before 1844, two main routes were open: applying to the crown for a royal charter of incorporation, or applying to parliament for an act of incorporation. After the Glorious Revolution the latter process became the more favoured path. The process by which parliament dealt with local bills was gradually standardised during the late seventeenth and early eighteenth century, in an attempt to ensure that all applications were responses to genuine local needs, and were dealt with consistently by the legislature. In 1685, a standing order was passed requiring private bills to be introduced by means of a signed petition stating the aims of the project. An order of 1699 specified that there would be at least three clear days between each reading of a bill, and a week between the second reading and the commitment, so that legislation could not be sneaked through parliament. In 1717, a further standing order made it compulsory for bills involving the levy of tolls to be referred to a select committee before they could progress.[19] The legislative loads experienced by parliaments after 1688 were sufficiently light to ensure that these rules changed little well into the eighteenth century. The volume of legislation, however, increased dramatically in the reign of George III: the average number of acts per session rose from 58 under George I to 254.[20] While the increase in enclosure and turnpike acts accounted for much of the increase, the number of new infrastructural projects in the late eighteenth century, particularly the ‘canal mania’ of the 1790s, also played its part. Indeed, the flurry of bills put before parliament by the supporters of canal projects led in 1794 to the imposition of new rules regulating applications for incorporation. These were designed to protect the public, and more particularly landowners, from a glut of new schemes that involved encroachment on private land. New standing orders required that notices of all applications for bills be inserted three times in the London *Gazette*, and in one newspaper in every county through which the canal would pass. Further safeguards included the requirement that petitioners for a bill contact all owners of land through which the canal would pass before the application, and establish whether they supported or opposed the scheme. The names of all subscribers, and the amounts they had subscribed, also had to be included with the application.[21]

Given these rules, winning the support, or at least consent, of local landowners was essential. Directors of concerns which were likely to impinge upon vested interests had to be industrious in securing local support. Directors of canal and railway companies had to keep a close eye on public meetings held in towns and villages through which their line would pass, and sometimes sent delegations of directors to talk to residents and defuse opposition.[22] Companies did their best to emphasise the public benefits rather than the self-interest of their enterprises to persuade landowners of their necessity, but bribes often proved more effective. These sometimes consisted of reserving shares for sceptical landowners. A complementary strategy was to hand over considerable power within the company to local patrons whose support was considered crucial to the company's success. In 1826, for example, the Marquess of Stafford was persuaded to drop his opposition to the incorporation of the Liverpool and Manchester Railway in return for 1,000 of the company's 5,100 shares, and the right to elect three of the company's 15 directors for as long as he kept his shares.[23]

Another aspect of the parliamentary process of incorporation which had a profound effect on company formation strategies was the composition of the select committees appointed by the legislature in order to consider bills. These committees were always made up of politicians with local interests, and bills of incorporation, as in the case of the Worcester Canal in 1786, might be subject to the 'strictest scrutiny'.[24] This feature of the incorporation process attracted much condemnation: the radical MP Joseph Hume was 'strongly impressed with the impropriety' of the system of 'canvass and influence' which this rule brought about.[25] The Whig Henry Brougham thought that as well as interested voting, the system also encouraged 'jobbing' in votes: that is, MPs selling their vote on the committee to the highest bidder.[26] The rule, however, also had plenty of supporters who

claimed that interested voting was too complex a problem to legislate away.[27] It was not until 1844 that the Commons switched to a system of impartial committees in which local interests could not dominate, first for railways, and then in 1855, for all local bills.[28]
The make-up of committees imposed certain requirements on companies. Rather than having to persuade an impartial jury of the public merits of a scheme, they had to marshal sufficient local political power to bludgeon their measure through parliament. As Hume put it, 'every projector of a new company' found it 'absolutely necessary to have among his subscribers a certain number of members of parliament; without whose aid he could entertain little or no hope of getting his bill passed.'[29] In return, MPs received shares on preferential terms 'to sell at a profit in the Bubble-market', in the words of one critic.[30] Without sufficient political backing, companies were vulnerable to ambush by rival firms, but it could be an expensive process. The Great Western Railway secured its act of incorporation on 31 August 1835. At the general meeting two months later, shareholders were told that £88,710 of their money had been spent so far, the bulk of this on legal costs: construction had not yet even begun.[31] Even once the initial cost had been borne, there could be future payments necessitated by subsequent approaches to parliament to revise existing powers. These could prove a substantial imposition on the capitals of smaller companies, sufficient to dissuade many of them from even trying to obtain incorporation.[32]

The growing importance of incorporation to companies, however, can be seen in the number of unincorporated companies making explicit provision in their constitutions for a subsequent approach to the state for corporate powers. In our sample only two of the unincorporated companies established before 1820 made this provision. From the early 1820s, however, the provision became common. The insecurities and legal difficulties faced by unincorporated companies drove a clear majority to include this provision in the period up to the companies' legislation of 1844. Those that did not were likely to be small companies, indicating that for many modest ventures, incorporation was simply too expensive an option ever to contemplate. Just 12 per cent of very small companies made the provision as opposed to 76 per cent of large companies.

Unincorporated companies

A key characteristic of the corporation was that it was established in perpetuity, and therefore outlived its founder members, unlike the private partnership, which had no legal existence distinct from its members. Unincorporated companies occupied a grey area between these two legal points. A majority of them (77 per cent), however, were established for an indefinite duration. Just 51 (23 per cent) imitated private partnerships in specifying a fixed life span that usually ranged from seven to 99 years, with the modal figure being 21 years (13 companies). The fixed term could insulate unincorporated companies against claims that they were imitating corporations by establishing perpetual bodies without state sanction, but could prove a problem when it came to incorporation by registration, following the reforms of the 1840s to 1860s. For example, the Shotts Iron Company was established for a fixed term of 25 years in 1824, and in 1849 was renewed for a further 25 years. When, in 1871, the company decided to seek incorporation, they were 'advised that in consequence of the copartnership being limited [in duration] … they cannot obtain incorporation in perpetuity by registration' under the Companies Acts of 1862 and 1867, and instead they were required to obtain a special incorporating act of parliament.[33]

An important constitutional decision that companies faced was whether or not to have trustees, and, if so, to specify the rules regulating their appointment and behaviour. Unsurprisingly, given their greater legal fragility, unincorporated companies resorted to trustees far more frequently than did corporations. English trust law had been significantly developed in the later seventeenth century with a view to protecting the entailment of landed property.[34] It provided useful elements of perpetuity and joint holding. A ruling in 1673, for instance, stipulated that assets held on trust could not be claimed by the trustees' creditors. Thus, by vesting their assets in a number of named trustees through a deed of settlement, unincorporated companies could try to limit the liability of individual shareholders to their shares in the company.[35] Trustees were often a small group - the modal number was three - of the wealthiest shareholders of a concern, but they could also be local notables with no direct connection with the company. The trust, however, was by no means a perfect device. Trusts were not recognized at common law, and litigation in Chancery could be expensive. There was also the question of the liability and obligations of trustees to shareholders. Under equity a trust could not fail on account of the deficiency of a trustee, but any negligence or misuse of entrusted funds by trustees certainly made their personal estates liable for compensation.[36] Furthermore, trust law did not cover the question of transferable shares. Despite these handicaps, of the 224 unincorporated companies in our database, no fewer than 209 adopted the trust device.

Nearly 90 per cent of all companies making provision for trustees stipulated how they would be appointed. In 38 companies, all but four of them Scottish or Irish, the board and/or salaried officers acted as trustees, with no process of appointment set out. This inferred that the shareholders would have no say over who possessed this responsibility. In a further 106 companies (48 per cent), the directors were explicitly given the power to appoint trustees. In only 54 companies (24 per cent) were shareholders given some say over the process. Here, as elsewhere in joint-stock company governance, the extent of participation by shareholders was determined chiefly by the size of the company. The shareholders in 55 per cent of very small companies were granted the right to appoint trustees, but this fell to five per cent in very large companies. Geography was also important. Shareholders had rights of appointment in one third of English companies, but in only 12 per cent of Irish and eight per cent of Scottish companies, largely because many of the latter appointed their boards of directors as trustees. This suggests that very different cultural and legal contexts existed north and south of the border, and across the Irish Sea, when it came to the role and status of trustees in joint-stock companies.

Close attention was paid to the rules regulating the appointment and composition of trustees in company constitutions as, in addition to their legal role, they were intended to provide an extra security to the shareholders against the actions of directors. The value of this security, however, was limited. Investments ordered by directors typically had to be authorised by the trustees, but, according to a group of actuaries giving evidence to the Select Committee on Joint Stock Companies in 1843, trustees usually signed whatever they were ordered to by the board.[37] Trustees had no real discretion over the actions of the directors, and rarely featured prominently in the disputes between directors, managers and shareholders.

Constitutions

The constitutions of both unincorporated and incorporated companies were crucial in defining the relationships between directors, managers and shareholders, and therefore in distributing power within the company. As the primary safeguard for shareholders in a new venture, they also had the power, when published in full, or in abstract, or as extracts in circulars, prospectuses and advertisements, to attract or repel potential investors in often highly competitive capital markets. Unsurprisingly, therefore, they were usually long and often complicated documents, and their drafting was typically delegated to a solicitor with experience in the field. The Equitable Gas Light Company assured its subscribers that the draft deed had been prepared by Baker and Hodgson, solicitors, under the advice of Mr Wilde, a gentleman of great eminence at the Bar, 'and particularly conversant from his extensive practice with deeds of a similar nature'.[38] It was common for deeds to borrow phrases and sometimes even whole clauses from earlier deeds. Interlocking networks of company promoters and directors drawn from the same urban elite reinforced this tendency, as did the imitation of company deeds within individual sectors and even across different sectors. The deeds establishing the Warwick Gas Light Company (1822) and the Warwick and Leamington Brewery Company (1833), for instance, were very similar in several respects, which is unsurprising given that many of the same individuals were involved in both companies.

Lawyers, however, were not usually left on their own to draw up company constitutions, which may help explain the persistent heterogeneity of the latter throughout our period. Solicitors worked in conjunction with promoters and company officers to ensure that the constitution met the company's needs. The extent to which shareholders were involved in this process varied greatly from company to company. The Lyme-Regis Gas and Coke Company, for instance, resolved 'that a Committee of five shareholders should be appointed for the purpose of assisting the professional Gentlemen in drawing up rules for the future Guidance of the Company'. When this was done, the draft deed 'was read from the Chair and each clause separately discussed, when the same was finally settled and approved of by the shareholders'.[39]

Constitutions could be drafted very early in the promotion process, but this did not necessarily preclude shareholder input. For example, a circular of the County of Devon Banking Company, issued before any subscribers' meeting had taken place, contained nineteen clauses outlining the key features of the constitution from the franchise to the rotation of directors. The circular stated that these regulations were 'submitted for the consideration of the public; but it will, of course, be competent for any individual interested in this measure, to suggest alterations, by which the objects of the company may be more effectually or beneficially promoted'.[40] The prospectus of the Plymouth and Devonport Banking Company also contained a nineteen-point outline constitution, though it was noted that the clauses were 'subject to such modifications as the Proprietors may hereafter determine on.'[41] These clauses were not always presented as a fait accompli. Indeed, it is noteworthy how much space in such prospectuses was taken up with constitutional information, suggesting the importance placed upon a careful analysis of the same by potential investors. There is evidence that early shareholders were able to challenge the clauses drawn up by promoters and secure their revision. The first meeting of subscribers of the Plymouth and Devonport Banking Company, for example, insisted on a more 'democratic' franchise, and a lower share qualification for directors, than had been set out in the prospectus, revisions which were promptly incorporated in the second version of the document.[42]

This consultative approach, however, was not the norm, More typically, deeds were framed entirely in private by solicitors and directors, and were then presented to the general meeting for approval, and finally deposited in the company office awaiting the signatures of the shareholders. Minute books rarely reveal dissent over the clauses imposed by the directors, and active input from shareholders seems to have been non-existent in many cases.[43] The lack of shareholder involvement could have significant consequences. One merchant, who had experience both as a shareholder and a director, argued that the constitutions of many companies were profoundly flawed: 'the directors, when they have the deed of settlement drawn up, take good care to give the shareholders as little power as possible'. Shareholder impotence was a significant factor behind subsequent failures, he believed.[44] Minute books indicate that shareholders sometimes asked for an abstract of the deed of settlement before signing it, but rarely did they take the time to plough through the whole thing.[45] Even if shareholders did read the deed, this only applied to the original shareholders, who might after a few years make up only a small proportion of the entire proprietary. Those transferring into a company would never encounter its constitution unless they deliberately sought it out, for the share transfer document did not contain the provisions of the deed of settlement, though it did bind the shareholders to observance of its regulations.[46]

The increasing complexities of the constitutions and the affairs of unincorporated joint-stock companies, and the legal uncertainties to which they were often subject, encouraged those who wrote the constitutions to provide for means of settling disputes that avoided recourse to the law courts. As **figure 2** shows, provision for arbitration between shareholders, which was comparatively rare among unincorporated companies in the eighteenth century, became the norm by the 1810s, and appeared in more than 80 per cent of constitutions after 1825. These long and convoluted clauses often referred disputes to named arbiters. For example, differences between shareholders of the Glasgow and Liverpool Royal Steam Packet Company (1844) were referred by the contract of copartnery to 'the amicable decision, final sentence, and decree arbritral' of Archibald Alison, sheriff-depute of Lanarkshire, or, failing him, one of a number of named individuals, mostly prominent Glasgow merchants.[47] In most sectors, provision for arbitration was the norm, although it was especially predominant in banking (92 per cent of unincorporated banks had arbitration clauses), insurance (80 per cent), gas (78 per cent) and shipping (76 per cent), whereas a minority of manufacturing and property companies made the provision. Provision for arbitration was almost unknown among corporations.

The acts of incorporated companies, which contained the company's constitution, were drawn up by specialist solicitors or parliamentary agents: as the standing orders with which applicants for incorporation had to comply became increasingly complicated and demanding, it was essential that the drafting was done by experts.[48] This left little room for shareholder involvement, and there is minimal evidence of mechanisms of shareholder approval being used, and even less of shareholder participation in the framing of the constitutions of incorporated companies. Sometimes subscribers to companies seeking incorporation would in effect renounce all rights to shape the constitution of the company. A subscription contract between the Dundee and Perth Railway Company and its subscribers to form a new company, the Kinross Junction Railway Company, authorised the directors 'to do all things which may be necessary in relation to the said Undertaking or the intended application to Parliament in respect thereof as to them shall seem expedient'.[49] Opportunities for shareholder involvement increased in 1846 when an amendment to the House of Lords standing orders required that so-called 'Wharncliffe meetings' be held.[50] No second reading would be given in the Lords to a company's bill unless there was a meeting of shareholders, and directors provided evidence that this had approved the bill. This was, according to Clifford, 'to prevent directors of companies from promoting Bills without the knowledge or sanction of shareholders'. From 1858, the same requirement was introduced to the House of Commons.[51]

If shareholder oversight of the process of incorporation was largely absent in our period, the state's scrutiny could compensate for it. In the pre-1844 climate, when incorporation was seen as a privilege rather than a right, would-be corporations faced the possibility that the state might modify or limit the powers they sought. Admittedly, the state's main concern was to protect the public from over-powerful companies rather than shaping the internal relations between shareholders and management. Thus, particular concern was shown to protect landowners from the depredations of canal and railway companies, by trying to ensure that they were adequately compensated for land lost, and to protect the public by stipulating maximum rates of tolls. Nevertheless, the state's concern to protect the public could also influence its response to a company's governance provisions. This was evident both in private bill committees and in open sessions of parliament. Heated parliamentary debates frequently took place on various aspects of company constitutions. This was most obvious when companies applied to limit the liability of their shareholders.

Members of both houses were quick to oppose companies that sought 'exclusive privileges' to compete unfairly with those whose liability was unlimited.[52] Politicians could also take upon themselves the responsibility to control the capital, and therefore the scale and power, of joint-stock companies in order to protect the public from monopolistic corporations. In 1833, opponents of the St George Steam Packet Company portrayed it as an 'unnatural coalition' of ship owners whose huge capital would drive competitors out of business. They also objected to the powers the company's bill would give them to subsequently increase their capital by £30,000, and to form a sinking fund of £80,000, seeing this effectively as a means of bypassing the standing orders of parliament, which required a proportion of the capital to be subscribed.[53] MPs could even object to the franchise proposed by a company. In a debate on the Manchester Gas-Light Bill in 1824, for instance, a Mr Stanley mocked the petitioners' stated aim of breaking up the existing 'monopoly' of gas supply in the town, pointing out that the 'monopolists' (the current municipal gas committee) were elected by up to 20,000 residents in Manchester – all those possessing or occupying property to the value of £30 a year. 'Of these every one had an equal vote, while, under the bill, the petitioners proposed to give votes to the proprietors of shares, whether resident or not in Manchester, according to the amount of shares, with liberty to vote by proxy.'[54] This voting system would serve to create monopolies, not break them down. Thus, while MPs sometimes complained, especially during speculative 'manias', of objectionable bills being 'smuggled' through parliament, the heavy scrutiny that was part of the process of incorporation tended to encourage higher levels of transparency in incorporated company constitutions than were found in unincorporated companies. As quasi-public bodies deriving their authority from the state, business corporations constructed their constitutions, for all their individual variety, from a model in which the general meeting of shareholders was the principal source of governance power. Transparency was a fundamental building block in this. Unincorporated companies, far less open to official scrutiny, had the option of drawing upon a more republican, 'checks and balances' model of constitution, in which greater power was accorded to the executive, with the GM acting as a passive, sometimes nearly invisible, monitor of managerial actions.[55]

Share capital

Of all the decisions that had to be made at the birth of a company, the most important included the amount of share capital to be issued and the denomination of the shares. Large nominal capitals increasingly came to be viewed as an indicator of the solidity and respectability of the firm. In promotional literature, companies paraded their capitals as prominently as possible. For example, the prospectus of the Stirlingshire Banking Company proclaimed 'CAPITAL, £400,000' in type nearly as large as the name of the company itself.[56] A tendency to hyperbole in this regard, however, bred a degree of cynicism among the public. The tendency, even among honest firms, to over-inflate nominal capitals was a contributory factor behind the loss of confidence following several commercial crises. As the banker William Newmarch explained in the aftermath of the crisis of 1866, 'a company which really required only 1,000,000l., formed itself, with a great flourish of trumpets, two years ago, with a capital of 2,000,000l., and now it finds its shares entirely unsaleable in the market', because no one was willing to take on the amount of overhanging liability.[57]

Setting the value of the share denomination was also recognised to be of prime importance in the process of company formation. The value of shares adopted had direct implications for the class of investors attracted. All but four of our companies specified a share denomination in their constitution. Ninety-three per cent of the companies that did specify a share value opted for one of seven values: £5, £10, £20, £25, £50, £100, or £500, with £100 shares being the mode (161 companies). The average share denomination of all 510 companies was slightly lower, at £93. Shannon and Jefferys each have traced the decline in share denominations after the 1850s, and the eventual adoption of the £1 share as standard from the 1880s.[58] As Cottrell has pointed out, however, share denominations varied according to the trade cycle, tending to rise with trade booms and usually falling during slumps, when investment capital was scarcer and needed to be coaxed.[59] Our data support this argument to some extent. During the trade boom of 1807-10, the average share denomination in our sample rose incrementally from £55 to £160, then fell away again to £53 by 1814. In the early 1840s, when the railway mania triggered a wider enthusiasm for joint-stock shares, denominations rose rapidly from £18 in 1842 to £101 in 1844. In the booms of the mid-1790s, mid-1820s, and mid-1830s, however, average denominations did not behave in so clear-cut a fashion.

More recently, Alborn has argued that we need to take into account society's changing attitudes to notions of participatory democracy to fully understand the factors behind the adoption of particular share denominations. Alborn claims, for instance, that the joint-stock banks formed after 1825 were launched on a tide of democratic rhetoric which stressed participation and inclusion and lower share denominations to facilitate investment by wider groups of society. However, the mania for joint stock banks in the mid-1830s led to fears that this policy had got out of hand. These fears led to new policies of exclusion, centred on raising the share denomination.[60] In our dataset, the denomination of bank shares clearly fell after 1825. The average for the dozen banks in our database formed before 1826 was £297, while it fell to £74 for the 32 banks formed between 1833 and 1836. According to Alborn, this experiment in participatory democracy did not last long. Citing evidence given before the secret committees on joint-stock banks in 1836-7, he concludes that there was a fundamental rejection of the principles of inclusion at this time. Certainly, some witnesses presented low share denominations as undermining the solidity of company constituencies. If the shares were set as low as £5, 'butlers, ladies' maids, and all sorts of persons, will get in; it will be composed of the lowest classes', opined one banker.[61] As well as leading to 'a very inferior constituency', in the view of another, small shares also led to 'gambling to a certain degree in the community'.[62] Shares of at least £100 were required for the purposes of 'preserving a respectable proprietary'.[63] Some of the older insurance offices at this time were also rather sniffy about the type of investors attracted to newly established insurance companies offering low denomination shares.[64] These views, however, did not seem to have quickly influenced the practice of new banking companies. Nine banks in our database were formed in 1837-40, with an average share denomination of just £25, considerably lower than the average share value of the banks in 1833-6. It seems that, contrary to Cottrell's thesis, new banks were inclined to reduce their share denomination as far as possible, in order to attract new investors in an increasingly competitive market for shares, and that this aim overrode the fears highlighted by Alborn, that this would undermine the quality of the shareholder base. It was the legislature, and not the banks themselves, which eventually initiated an end to cheap shares. Peel's Joint-Stock Banks Act of 1844 stipulated that all new bank promotions adopt a share denomination of at least £100, which certainly did not reflect current practice in the banking sector.[65]

Trends in banking and insurance were not entirely representative of behaviour in other sectors. Denominations varied greatly across the sectors of the joint-stock economy, as **table 2** shows. While unincorporated companies set their share denominations nearly twice as high as their incorporated counterparts (£127 as opposed to £67), this was probably determined primarily by significant sectoral differences. Unincorporated insurance and banking companies opted for the largest share denominations, in part because these shares were never intended to be fully paid up – the uncalled portion acting as security for creditors and depositors in the event of losses. Five of the six companies with share denominations of £1,000 or over were insurance companies or banks. At the other end of the scale, denominations were much lower. Significantly, the only two companies in our sample established before the 1840s that issued £1 shares, the Birmingham Flour and Bread Company (1796) and the Bristol Flour and Bread Concern (1800), were small concerns established to provide cheap and unadulterated provisions to the people in their communities, and were intended to be as inclusive as possible, with subscribers also being the principal customers, obliged as they were to buy their bread from the company.

These distinctions between sectors shaped practice more than geography or size of company. Geographically, there was little difference between English (£95) and Scottish (£102) companies, though Irish and Welsh companies set their share denominations significantly lower at averages of £80 and £49 respectively, taking into account the relative paucity of affluent investors in these poorer countries. Interestingly, overall share capital is not a reliable guide to share denomination. While medium-sized companies had much higher average denominations than small companies (£160 versus £76), large and very large companies in fact opted for smaller denominations – £79 and £138 respectively. This suggests that larger companies needed to attract capital from a wide variety of sources and were therefore more likely than medium-sized companies to reduce denominations in order to secure a broader investment base.

As **figure 3** shows, there was undeniably a tendency for share denominations to decline over time, indicating that fears to be found in some quarters of banking and insurance were not generally held. While the average denomination for all sectors in the 1720-1825 period was £142, by the late 1830s it had fallen to just £47. More important than the trend towards small shares, perhaps, was the establishment of the medium-sized share between £15 and £50 as the norm across the joint-stock economy. Shares in this range made up just 18 per cent of the total in 1720-89, but were adopted by 61 per cent of all companies established in 1840-44. For Jefferys, the key factor in the trend towards the issue of smaller shares in the late nineteenth century was 'the entry of the middle classes into the market for shares'.[66] Our data seems to provide evidence that this process began much earlier than Jefferys suggests. Companies were increasingly catering to middle-class investors: no longer relying on the large surplus capitals of the extremely rich, and not yet soliciting the meagre resources of the masses.

Control over shares

Fixing the share denomination was not the only means by which the make-up of a joint-stock company could be influenced. A more direct method was directorial control over the purchase of company shares. Indeed, some believed this to be a far more potent tool than share denominations. Walter Cassels, London agent for the Northern and Central Bank of England which issued £10 shares, was one:

> I never cared much about the nominal amount of the shares; I think it was much the same to have a nominal share of 100 l. or 10 l. … it might be said that it was liable to the objection that persons with a trifling sum of money might become the proprietors…but the invariable view of the directors was to avoid taking those very weak persons, and their applications were scarcely ever listened to.[67]

One hundred and eighty-one of the company constitutions in our sample explicitly reserved to their directors the right to control access to the company, 35 per cent of the total. Nearly all of these were unincorporated companies. As **table 3** shows, nearly all banking and insurance companies made this provision, and a considerable majority of shipping companies. The practice was also relatively common in manufacturing, gas and colonial companies. Much rarer was the requirement for proprietors to approve purchasers of shares, featuring in just nine company constitutions, four of them Scottish. Other steps that companies could take in order to attract the right kind of investor included imposing a geographical restriction on subscribers. While only 13 companies enshrined this in their constitutions, many more imposed the requirement on their initial subscribers. When the Ashby-de-la-Zouch Canal Company opened its share subscription, for example, its committee of management decided that subscribers must reside within five miles of some part of the intended canal, and resolved 'that speculation shall be as much discouraged as possible and to that end strict attention shall be paid to the responsibility of the proposed subscribers'. No share was to be transferred until £15 was paid up. Their physical presence was also required: all subscribers had to attend a general meeting soon after subscription to sign the parliamentary petition, subscription paper and pay the deposit on their shares.[68]

As this example suggests, some companies were keen to dissuade 'speculators' from buying their shares, particularly in boom times. Many strategies were open to them to accomplish this. For example, 125 constitutions, 24 per cent of the total, stipulated a delay between the establishment of the company and the first dividend payment, thus dissuading those who were primarily seeking a swift return on capital. This delay could last a fixed number of years, or until a certain event, such as the completion of the project, or the achievement of a certain amount of paid-up capital. Such a step, of course, would not prevent speculators from 'bulling' shares: buying them cheaply and selling them on again quickly at a premium. But there were other means of dealing with this. One was to impose a restriction on when shares could be transferred, which 67 companies (13 per cent of the total) did. This restriction fell into two principal types. The first specified a length of time before shares could be transferred. The second stipulated that a certain amount had to be paid up on a share before it could change hands. Some constitutions left scope for directorial discretion, but clearly anticipated that shares would be mostly paid up before transfers could take place. The deed of the Rochester and Chatham Gas Light Company (1819) stated that no shareholder could transfer out until ‘the whole of his or her subscription or such part thereof as may be deemed by the said company to be necessary for carrying the said concern or undertaking into execution shall be fully paid and satisfied’.[69]

Another, simpler, method was to require the payment of high initial deposits on shares. Such a step, however, would not put off speculators at times when the potential short-term gains were far greater than the deposit. In December 1843, when interest in railways as lucrative investments was rapidly growing, the directors of the Leeds and Bradford Railway Company had more applicants than they needed for their preliminary share issue. In such cases, some of the applicants might be ‘speculators’, but directors were able to filter through applications and select the most promising investors.[70] In the railway booms of the 1830s and 1840s, issues were often hugely oversubscribed. In 1837 the New Gravesend Railway received 80,000 applications for its 30,000 shares; the Direct Western Railway had 1,400,000 applications for 120,000 shares in 1846.[71] Companies were not always so well positioned, however, and while they were keen to discourage speculation in their shares, they often had to weigh this against the necessity of securing sufficient subscribers. This was particularly important for companies seeking privileges from parliament. Standing orders of the House of Lords in 1813 first imposed rules regarding the amount of capital required to be subscribed before a company’s bill could be read for a second time, and these were extended in 1824 in order ‘to provide against the mischief which was now going on with respect to Joint-Stock Companies’.[72] The new orders stipulated that three-quarters of the company’s capital should be paid up and deposited in the Bank of England or invested in Exchequer Bills, before a bill could be introduced into the Lords, though subsequent debates revealed that the rule was not always applied.[73] The House of Commons imposed far less punitive rules six years later, insisting that a bill could not pass its second reading until half of the capital had been subscribed. This was extended in 1837 under the pressure of railway business so that one-tenth of the capital had to be paid up and deposited in the Bank of England or invested in government securities, a rule which applied to all acts of incorporation.[74] In light of these rules, insufficient evidence of investor support could undermine a company’s application to parliament. The directors of the Great

Western Railway Company doubted in 1833 that it could raise a sufficient subscription for the whole line, so they decided to apply to parliament for permission to construct the line at its two extremities only (the London and Bristol ends) in the first instance. But even with these reduced ambitions, the company struggled to fill the share list, and the bill was defeated in the Lords.[75] When the directors regrouped after this reverse, they resolved to halve the deposit required on their shares to just £2 10s. The minute books report fewer problems in generating interest in the shares on these terms, and the bill passed through parliament the following year.[76]

Conclusions

The problems initially faced by companies which, like the Great Western Railway Company, had to incorporate, were largely 'political' in nature – having to win sufficient backing from investors and local powers to overpower local opposition from interested parties and ensure that the bill of incorporation would pass through parliament. Indeed, in many senses the problems facing all companies, whether incorporated or not, were political. All had to secure the support of local investors, all had to don the clothing of a 'public' interest, for throughout this period, the public good was the justification for most kinds of joint-stock endeavour. All faced critical decisions on the type of investor they wanted to attract. The share denomination was usually seen as the most effective tool in shaping the proprietary. Too low, and a new concern would be overwhelmed with irresponsible and unrespectable speculators; too high, and it risked being starved of capital. This issue was seen as so significant that it attracted the attention of legislators by 1844. The process of company formation also sheds light on the political relationships within the company. The extent to which shareholders were invited to participate in the process by which the founding constitution was drawn up varied considerably from firm to firm, and where shareholder interventions are noted in company records, these usually had the effect of increasing shareholder rights and participation.

The promotion and foundation of joint stock companies in Britain and Ireland before 1844

Tables and Figures

Table 1: Companies in the database, by sector and sub-period.

	1720-99	1800-09	1810-19	1820-24	1825-29	1830-34	1835-39	1840-44	TOTAL
Banking	3	2	2	2	10	15	28	2	**64**
Bridges	5	6	4	3	5	6	5		**34**
Canals	42	3	6		5		3	1	**60**
Colonial	1			1	4	2	4		**12**
Gas			5	11	8	10	17	9	**60**
Harbours	3	2	8	1	3	2	8	3	**30**
Insurance	5	15	2	11	6	3	9	11	**62**
Manufacturing/trade	13	2	1	3	5	2	9	1	**36**
Property		2	1		1	6	15	5	**30**
Railways		3	6	3	7	8	19	14	**60**
Shipping	1	1	4	2	6	1	6	5	**26**
Water		9	2	2	10	4	7	6	**40**
TOTAL	**73**	**45**	**41**	**39**	**70**	**59**	**130**	**57**	**514**

Source: Constitutional database.

Table 2: Average share denomination by sector

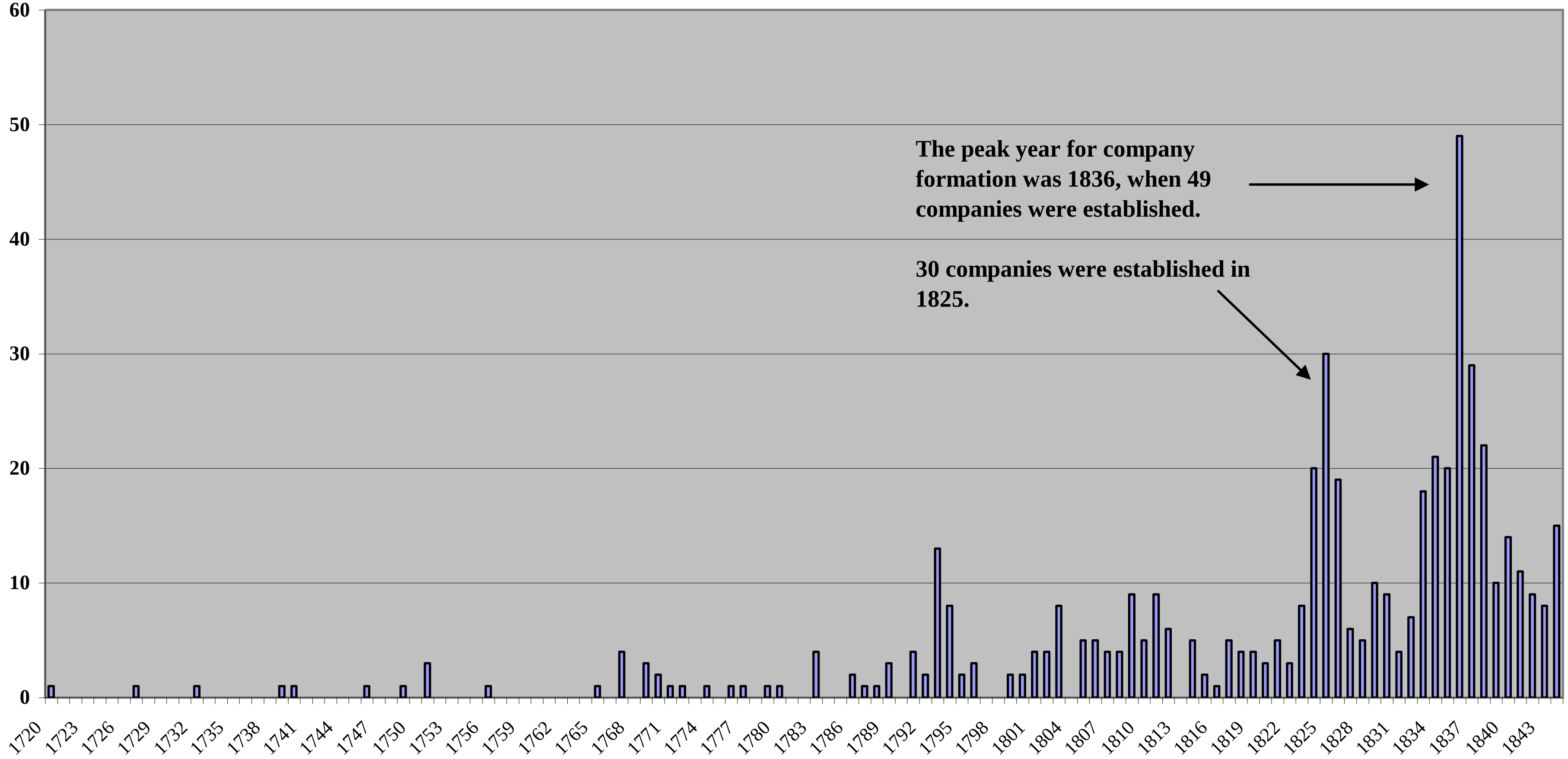
Sector	Average share denomination (to nearest £)
Insurance	244
Banking	128
Shipping	94
Canals	91
Manufacturing/trade	83
Harbours	74
Railways	65
Colonial	59
Bridges	58
Water	53
Property	30
Gas	28

Source: Constitutional database

Table 3: Percentage of companies in each sector permitting directors to control access to shares

Sector	**Percentage**
Banking	92.2
Insurance	91.9
Shipping	73.1
Manufacturing/trade	36.1
Gas	35.0
Colonial	25.0
Property	13.3
Water	7.5
Harbours	3.3
Canals	1.7

Figure 1: Number of companies in the database, by date of establishment, 1720-1844 (N=514)



Source: Constitutional database

Figure 2: Percentage of unincorporated companies providing for arbitration between shareholders, by sub-period (N=224)

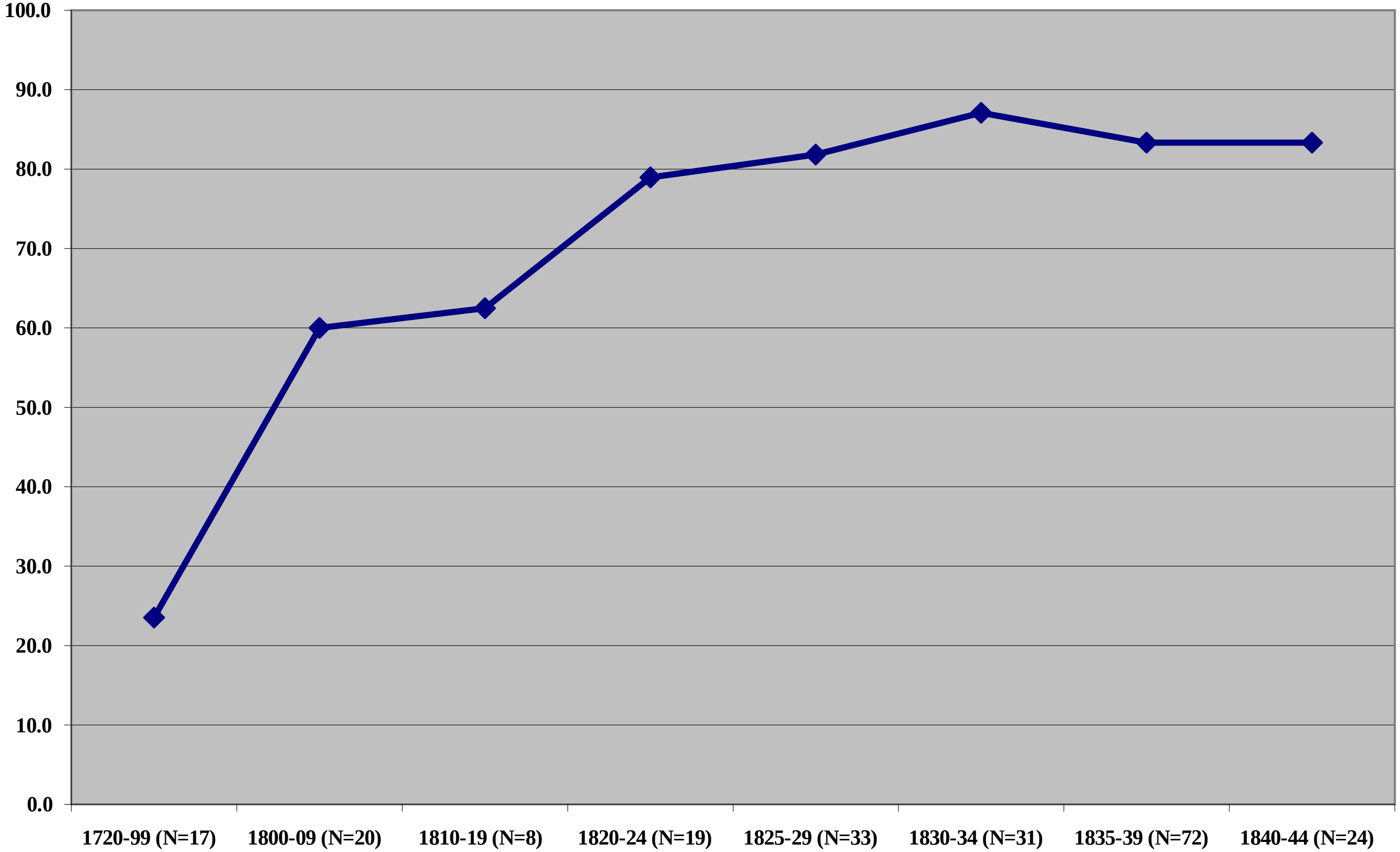
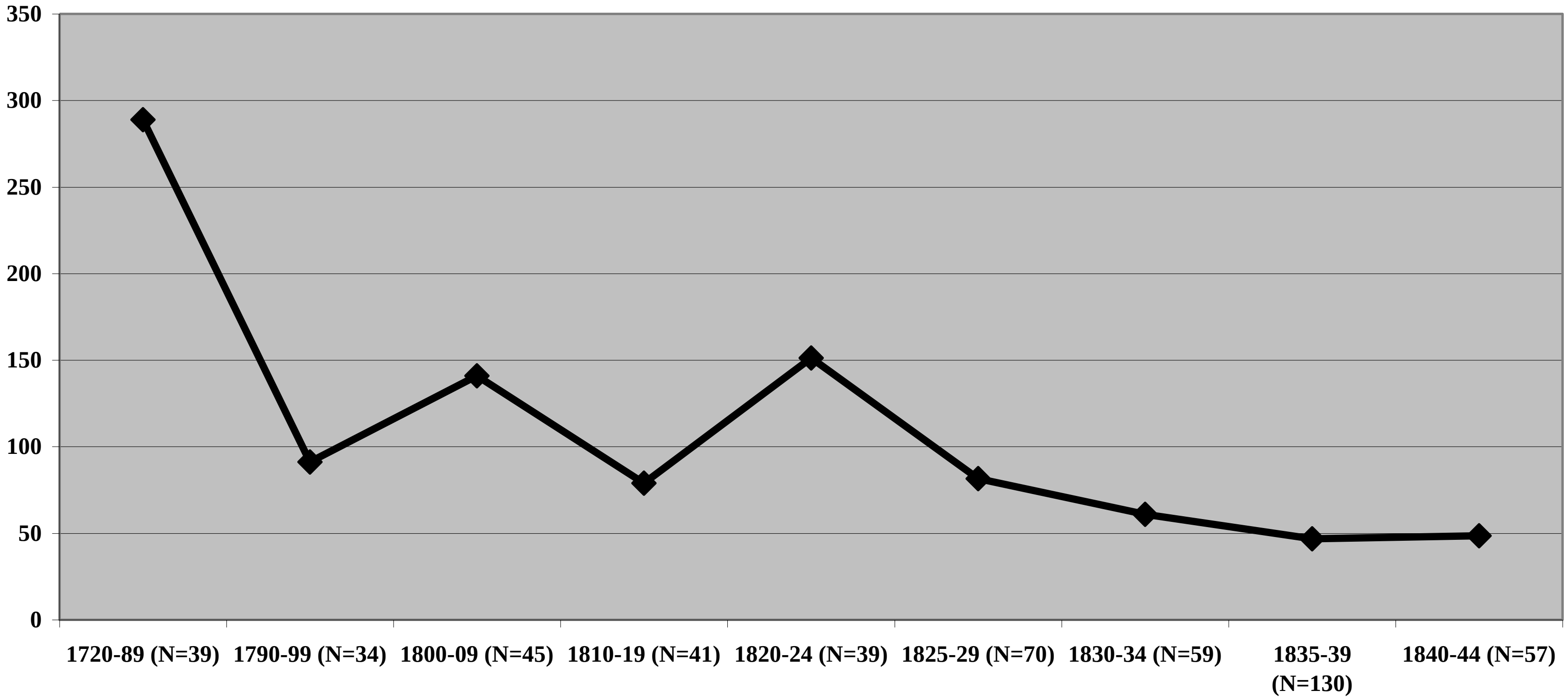


Figure 3: Average share denomination in £, all companies, by sub-period



Notes

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