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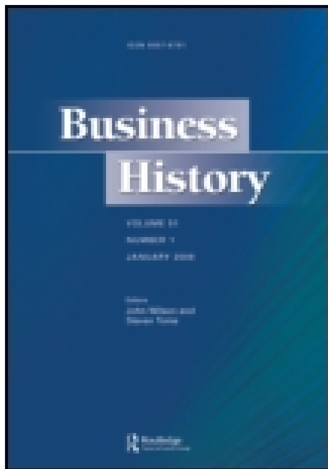

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Mariana Pargendler [a] & Henry Hansmann [b]
[a] School of Law, Fundação Getulio Vargas , São Paulo , Brazil
[b] Yale Law School , New Haven , USA
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A new view of shareholder voting in the nineteenth century: evidence from Brazil, England and France

Mariana Pargendler[a]* and Henry Hansmann[b]

[a]*School of Law, Fundação Getulio Vargas, São Paulo, Brazil;* [b]*Yale Law School, New Haven, USA*

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Business corporations in the nineteenth century often imposed limits on the voting rights of large shareholders. Economic historians have generally interpreted these voting restrictions as a contractual mechanism designed to protect small shareholders in a legal environment that afforded insufficient investor protection. This dominant account, however, fails to explain the variation in the incidence of voting restrictions across different industries and firm ownership structures, as well as their eventual disappearance from corporate charters over time. In this Article, we advance an alternative interpretation for these early voting schemes as efforts at *consumer* protection employed primarily by firms that were local service monopolies and collectively owned by their principal customers, none of whom wished the firm to come under the exclusive control of their competitors or of profit-maximising investors. We explore and test this proposition by analysing data on shareholder voting rights in the nineteenth century in Brazil, England, and France.

Keywords: business corporations; shareholder voting rights; voting caps; consumer protection

I. Introduction

A prominent feature of early business corporations that has recently attracted the attention of business historians is their peculiar allocation of shareholder voting rights. Unlike their modern counterparts, which typically grant one vote per share, business corporations in the nineteenth century often restricted the voting rights of large shareholders through either or both of two methods: capping the number of votes that any shareholder could cast, and providing that the number of votes that an individual shareholder could cast would increase less than proportionately to the number of shares owned. In recent years, prominent essays by several scholars have provided extensive evidence of the frequency with which these regressive voting rules appeared in nineteenth-century corporations, not just in the United States but also in Europe, Latin America, and beyond.

In her pioneering work on the topic, Colleen Dunlavy explained the incidence of voting restrictions in the nineteenth century as the result of a 'social conception of the corporation' that was more 'democratic' than the 'plutocratic' approach to governance represented by the rule of one share, one vote.[1] Subsequently, studies by economists and

*Corresponding author. Email: mariana.pargendler@fgv.br

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lawyers of various nationalities have generally come to interpret these restricted voting rules, more specifically, as an investor protection device that was 'designed to attract the participation of small shareholders by offering them some measure of protection from dominance by large shareholders'.[2] Under this view, voting restrictions – which were usually imposed by the corporation's own individual charter – provided 'the most important protection offered to early-nineteenth-century small investors', thus compensating for the weakness of the corporate law of the time in affording adequate minority shareholder rights.[3] This scholarship, adhering to the themes of the burgeoning 'law and finance' literature,[4] reflects the growing effort in business history to identify the legal and extra-legal mechanisms that protected investors, and therefore permitted the development of capital markets, before the development of modern corporate and securities law.[5]

By contrast, we argue that the restricted voting schemes of the nineteenth century served also – and perhaps primarily – to mitigate the main economic concerns of that era (monopoly) rather than of our own (agency). As we have observed in a companion paper focusing on the evolution of business corporations in the United States,[6] the US corporations that adopted voting restrictions were often local monopolies – such as turnpikes, canals and banks – that provided vital services to local merchants.[7] With surprising frequency, those merchants were simultaneously the principal customers and the principal shareholders of early business corporations, for two important reasons. First, local merchants had an interest in helping form and finance an element of economic infrastructure that would be important to the success of their business.[8] Second, this ownership pattern served to ensure that control over this element of the infrastructure did not fall into the hands of profit-oriented investors who would charge the merchant monopoly prices for its use, or into the hands of one of the merchant's competitors, who could use his control to discriminate against the merchant, and in favour of his own business, in terms of the price, quantity or quality of services that the firm would provide. Conversely, voting restrictions were comparatively rare among manufacturing firms, which commonly lacked market power and also had a dispersed and transient customer base that would have been difficult to organise as collective owners of the firm.

The explanation we offer for nineteenth-century voting restrictions is strongly at odds with the investor protection theory that has dominated scholarship. When a firm is a monopoly, there is a clear conflict of interest between the firm's investors and the firm's customers. The investors benefit most by having the firm charge monopoly prices, while the customers are best served by having the firm charge competitive prices – or, in fact, even prices that do no more than cover marginal cost, so that the firm effectively provides no return at all to the shareholders' investment. Consequently, if the firm is controlled by shareholders who are also customers of the firm, the shareholders may well prefer to keep the firm's prices low, and get the return on their investment in the form of low prices rather than high dividends. But this policy will not be attractive to shareholders who are not also customers of the firm, from whose perspective the firm's customer-shareholders are tunnelling out its (potential) profits through their other transactions with the company.

The consumer protection account also predicts that the disappearance of voting restrictions would follow a shift from consumer to investor ownership of business corporations. We suggest that the nineteenth century witnessed precisely such a shift, for several reasons. First, government began to provide more of the infrastructure elements, such as canals and bridges, that were undertaken by many early corporations. Second, improvements in market competition and government regulation came to provide

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sufficient consumer protection to render customer ownership of the firm unnecessary in a greater number of industries. Third, in the areas where severe market failures continued to favour customer ownership of the enterprise, consumer-owned firms were increasingly organized as outright cooperatives and mutuals rather than as modified business corporations. Fourth, the development of capital markets reduced the cost of obtaining capital from persons, sometimes remote, who were interested only in a return on investment, thus increasing the opportunity cost of relying principally on local customers to capitalise enterprise. And fifth, regressive voting rules were at best an imperfect means for keeping control of a firm in the hands of its customers, subject to intentional evasion as well as a natural migration of shares over time into the hands of investors who did not otherwise do business with the firm. This evolution away from customer ownership permitted the law of business corporations to develop into a speciality area focused on the agency problems within an investor-owned enterprise, for which the rule of one-share-one-vote is generally most efficient.

The remainder of this essay explores the strength of the consumer protection theory of restricted voting by extending our inquiry beyond the United States. Although the bulk of our original data are from Brazil, we consider first the UK, which presents the issues in the clearest light. We then examine Brazil, and finally turn to continental Europe and particularly France. In each case we examine closely the available data on shareholder voting rights in nineteenth-century (and earlier) corporations, seeking to compare the patterns we observe with those that would be predicted by the several explanations for restricted voting that have been proposed. Overall, we find the data most consistent with the consumer protection theory, though we also find important ambiguities – particularly where voting restrictions were imposed by law – which are not clearly resolved by any of the principal competing theories.

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II. The United Kingdom

As noted by Brian Cheffins, ‘capped voting arrangements have a long historical pedigree in Britain’.[9] Freeman et al. find that the proportion of firms chartered with regressive voting rules does not fall below 80% of all firms chartered in any interval they examine between 1720 and 1844.[10] Following generally the same pattern as the one detected in the US,[11] early voting restrictions regularly appeared in the charters of canals, insurance companies, banks and utilities of the late eighteenth and early nineteenth century, while industrial companies typically came to adopt voting by shares.[12]

To a far greater extent than in the US, canal-building in the UK was the product of private enterprise. A few early canals were constructed and operated by individuals. The Duke of Bridgewater, for example, built the Worsley Canal on his own in order to connect his coalmines to Manchester.[13] Some other early river improvement projects were undertaken by not-for-profit conservancies.[14] Most commonly, however, adjacent merchants and landowners seeking lower transportation costs in the late eighteenth century formed a joint-stock company to pool capital and finance canal construction.[15] The Carlisle Canal, for instance, was never a profitable concern, as the cotton producers that controlled it favoured lower freight rates over dividend payments.[16] Consistent with their economic purpose and ownership patterns, a number of early joint-stock canals imposed voting and ownership restrictions. The charter of the Leeds and Liverpool Canal prevented any shareholder from owning more than 100 shares in the company, whereas the Stroudwater Navigation Company imposed not only an ownership limitation of 15 shares per shareholder but also a regressive voting scheme within that range.[17]

A strong overlap between users and shareholders of the firm was also apparent among the first gas lighting companies in the UK, established in the early nineteenth century. Most promoters and subscribers of gas lighting ventures were local merchants, manufacturers and professionals who were primarily interested in obtaining their own supply of gas; 'speculative' motives, by contrast, played a lesser role.[18] As noted by a historian of gas lighting in Britain, 'many millowners also recognized that by pooling resources the community could both share the cost of construction and at the same time take advantage of economies of scale in production and distribution to reduce the price'.[19] Indeed, protests against the lack of dividend payments were noticeably absent from early shareholder meetings.[20] The charters of early joint-stock gas lighting companies typically limited the voting rights of large shareholders.[21]

Consumer ownership of the firm and voting restrictions were also common among early joint-stock banks and insurance companies in Britain. There is growing evidence of overlap between the shareholders and borrowers of early nineteenth-century banks in both England and Scotland.[22] Similarly, a number of insurance firms in this period specifically required shareholders to insure assets at least equal to the value of their shares – a strategy that was 'not only a convenient means of expanding insurance sales, but [that] also gave shareholders a direct interest in the underwriting performance of the office'; by contrast, 'the passive investor was frowned upon'.[23] Consistent with the consumer protection account, regressive voting schemes were the norm among early insurance companies in the UK.[24]

Occasionally, ownership and voting restrictions also appeared in early manufacturing companies that were chartered to break into uncompetitive markets. The London Company for the Manufacture of Flour, Meal, and Bread, incorporated in 1800, purportedly sought to alleviate the artificial scarcity of bread 'caused by the wickedness of men of unwieldy fortunes, who, by monopolizing and forestalling, have kept back the corn from market, and thereby, as well as by regrating of the little brought there, kept the price up'.[25] The parliamentary debates preceding the charter grant showed concern that control of the company could get into 'few hands as to enable them to set their own price on their commodity'.[26] The company's charter – which also provided a dividend limitation of 10% – capped the number of shares per shareholder at 40 and the number of votes at four, and imposed a regressive voting scale up to that limit. A contemporary observer saw this 'equitable scale' as necessary 'not only for the benefit of the respective Proprietors, but also for the public, who are very nearly concerned with the questions agitated at their Meetings'.[27]

In view of the great variety of existing voting schemes, British law in the mid-nineteenth century adopted a middle-of-the-road solution.[28] Perhaps due to its prevalence among early joint-stock companies, regressive voting came to be the default rule under the Companies Act of 1862. In the 'very unusual case' of absence of company regulations on shareholder meetings, the rule of one vote per member applied.[29] In turn, the alternative default rules provided by Table A, which offered a model charter, specified a graduated voting scale granting one vote for each share up to 10, one vote for every five shares beyond that up to 100, and an additional vote for every 10 shares beyond the first 100 shares.[30] Still, British firms could, and most often did, depart from the regressive voting schemes embodied in both the statutory default rule and Table A to adopt some other voting rule of their choosing – including the increasingly dominant one-share-one-vote rule.[31]

In any event, voting restrictions were rapidly losing ground both in law and in practice as joint-stock companies came to be increasingly investor owned. A series of decisions by

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British courts in the 1870s held that shareholders had a ‘property right’ to transfer their shares prior to a shareholder meeting, even if with the clear purpose of evading voting restrictions in a firm’s charter – thereby rendering such provisions essentially non-binding in practice.[32] Gareth Campbell and John Turner find that, by 1883, nearly half of UK firms adopted proportional voting, while most firms still providing for regressive voting schemes were larger and established in prior periods.[33] By the turn of the twentieth century, proportional voting had become the standard voting for UK joint-stock companies.[34] In 1906, Table A was amended to provide a one-share-one-vote default.[35]

III. Brazil

As first documented by Aldo Musacchio, voting restrictions were also common practice among Brazilian corporations in the nineteenth and early twentieth centuries. In analysing this phenomenon, Musacchio subscribes to the view of maximum vote provisions as an investor protection device. In his words, the adoption of regressive voting schemes by Brazilian corporations reveals how ‘[i]n the absence of national laws protecting small investors, corporations can attract small investors by adopting their own democratic bylaws’.[36]

We use new data on voting patterns of nineteenth-century corporations in Brazil to examine the potential and limitations of the investor and consumer protection accounts of voting restrictions. On the one hand, several of the early Brazilian corporations adopting regressive voting schemes were consumer owned. On the other hand, there is reason to believe that voting restrictions were not always a product of shareholders’ and managers’ choice through private contract. We find evidence that the imperial government often imposed stringent voting caps on early corporations across the board, with little regard to a firm’s industry or ownership structure.

In Brazil, as elsewhere, a number of nineteenth-century corporations were owned by parties to whom they provided services. For instance, a number of early insurance corporations were, both in name and substance, mutual insurance companies. These firms generally provided fire or life insurance, including the insurance of slave lives. The Imperial Companhia de Seguro Mútuo contra Fogo, a fire insurance company, advertised itself as ‘more equitable, more economic, more secure, and more moral’ than its investor-owned counterparts.[37] Mutual companies typically adopted voting schemes that ranged from one vote per member to voting by shares subject to a low cap on the number of votes per shareholder.[38]

Other companies, although not branded as mutual, also had shareholders as their principal customers. The charter of Companhia de Seguros contra o Fogo Argos Fluminense, a fire insurance company, required shareholders to insure with the company assets in value at least equal to the price of their shares.[39] A number of maritime insurance companies were also a product of local merchants’ efforts to pool and spread risks. Their corporate charters frequently limited not only the number of votes that each shareholder could exercise, but also the amount of shares that they were allowed to hold. For instance, the Companhia de Seguros Marítimos Fidelidade required shareholders to own 5, 10, 15 or 20 shares, granting them one, two, three or four votes, respectively.[40] The charter of Companhia Manufactora de Pão, previously a bread consumer cooperative, assured that shareholders would receive a discount on the prices charged to the general public.[41]

Consumer ownership was also visible among some railroad corporations in Brazil. Foreign and public capital financed some of the first large railroads, but prospective users also sponsored a number of railroad companies. In the state of São Paulo, in particular,

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several railroads were incorporated by coffee planters (*fazendeiros*) who stood to benefit financially from improved means of freight transportation for their products.

The Companhia Paulista de Estradas de Ferro – celebrated by its founder as 'the first Brazilian corporation to abstain from alien capital and free itself from foreign commercial interests'[42] – sought to connect coffee plantations in the interior to the English-owned São Paulo Railway leading to the port of Santos. The Paulista railroad was the first of many *cata-café* ('catch coffee') companies, which were relatively small railroad corporations promoted by local planters seeking cost-effective means of transportation for their coffee production.[43] As put by Anne Hanley, 'the railroad shareholder and director lists read like the Who's Who of São Paulo planter families'.[44] These railroad companies, like other Brazilian railways of the time, usually enjoyed dividend guarantees from the central and provincial governments, and were subject, in return, to rate regulations.[45]

Nevertheless, the use of voting restrictions in this earlier period cannot be attributed solely to different industries or the degree of consumer ownership. The reason is simply that maximum vote provisions were nearly universal among Brazilian corporations prior to the advent of the first general incorporation law in 1882.[46] Table 1 summarises the industry and voting patterns of a sample of 494 incorporations between 1850 and 1882, which comprise virtually all companies chartered in Brazil during that period. Only about 5% of such corporate charters granted voting rights in direct proportion to share ownership, in the form of one vote per lot of three or five shares. The vast majority of charters contained regressive voting schemes, with nearly 76% imposing voting caps and 7.7% (mostly mutuals) granting one vote per member.

However, the use of voting restrictions cannot be the consequence of an ingrained 'democratic conception' of early Brazilian corporations. Approximately 85% of Brazilian corporations in this period embraced the anti-democratic rule of denying the right to vote to shareholders owning shares below a certain threshold (usually five or 10 shares).[47] Nor was restricted voting due to a widespread conviction among shareholders and entrepreneurs that this was an essential element of good corporate governance. We find several instances in which voting caps were imposed or strengthened by the imperial government as a condition for the grant of a corporate charter. Indeed, it is not even clear

Table 1. Voting rights of Brazilian corporations by industry (1850–82).

Industry	Proportional to stock ownership (%)	Uncapped graduated scale (%)	One vote per member (%)	Ownership cap (%)	Voting cap (%)	Charter is silent (%)	No. of charters
Insurance	5.3	–	25.3	30.7	29.3	9.3	75
Banks	6.8	–	3.4	–	86.4	3.4	59
Railroad	1.9	–	–	–	94.4	3.7	54
Navigation	4.9	1.6	1.6	–	91.8	–	61
Public works	–	2.9	–	–	97.1	–	34
Manufacturing	15.7	–	7.9	2.6	71.0	2.6	38
Transportation	–	4.5	–	–	95.5	–	44
Entertainment	13.6	13.6	13.6	–	54.5	4.5	22
Agriculture	4.7	–	–	–	85.7	9.5	21
Colonization	–	12.5	–	–	75.0	12.5	8
Other	5.3	–	12.8	–	73.0	8.9	78
Total	5.2	1.6	7.7	4.8	75.9	4.7	494

Source: Coleção de Leis Brasileiras (1850–82).

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from the available data that Brazilian corporations were free to grant voting rights in strict proportion to shareholdings prior to 1882.

Between the enactment of Brazil's Commercial Code in 1850 and the general incorporation law of 1882, the grant of corporate charters was subject to discretionary approval by the central government.[48] In evaluating requests for incorporation, however, the imperial government frequently modified the terms of draft charters submitted by corporate promoters, including the content of governance provisions. Although the Commercial Code was silent as to shareholder voting rights, the government amendments in our sample were invariably to cap the number of votes per shareholder or to make existing caps more stringent, never to relax them.

For example, the changes to the charter provisions of Companhia de Transportes a Vapor, a steam navigation company, replaced a one-share-one-vote rule with a maximum of 10 votes per shareholder.[49] The government amendments to the charter of Banco Nacional decreased the voting cap from 200 to 15 votes per shareholder, and also reduced the minimum share ownership as a qualification for director eligibility from 500 to 100 shares.[50] In denying a request from the Banco Commercial do Rio de Janeiro to loosen the existing voting maximum from 20 to 40 votes per shareholder, the Council of State noted that 'the proposed maximum is excessive and at odds with the regime adopted in the almost totality of charters of associations of the same nature, and of others of lesser scale'. It reasoned that such maximum-vote provisions are designed to avoid

> the inconveniences that could result from the great preponderance in elections and other important decisions in favor of a small number of shareholders to the detriment of most interested parties only because the latter, if individually considered, hold a smaller quantity of shares.[51]

All of this is to say that voting restrictions in early Brazilian corporations, as in other countries during this period, were not merely a product of private contract. In fact, governmental influence was probably more important than private contracting in this respect; since all corporate charters were publicly available, it is reasonable to assume that incorporators tended to submit draft charters containing standard terms acceptable to the government. This is so especially because – in Brazil, as elsewhere – large shareholders dissatisfied with voting restrictions found ways around them by transferring their shares to friends and relatives in anticipation of a shareholders' meeting. As described by C. Ottoni, a representative in Brazil's Chamber of Deputies,

> in almost all Rio de Janeiro corporations shareholders have become used to regarding as their right the temporary transfer of their shares to persons who will vote them in shareholder meetings in their place and later return them. This practice is certainly illegal, but has been sanctioned by general usage.[52]

This of course raises the question of the government's motives for imposing voting restrictions. One possibility is that the goal was to protect small investors. This would be a variation of Musacchio's investor protection account, but with the government providing the voting restrictions rather than having them (always) adopted by the incorporators themselves. A second possibility is that the government was trying to avoid the worst effects of monopoly in the provision of goods and services to the public. But dispersed voting rights in themselves do not remove the incentive for monopolistic behaviour in consumer markets; the small shareholders, as much as the big shareholders, would benefit from such behaviour. Consequently, if regressive voting schemes in non-consumer-owned monopolistic firms benefit consumers, it presumably must be because fragmented voting increases managerial autonomy from shareholder interests, and managers have less

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personal incentive to exploit consumers than do shareholders.[53] A third possibility, related to the second, is that the early corporations commonly had shareholders who were also consumers and willingly adopted voting restrictions for anti-monopoly purposes. This came to be thought of as a naturally important feature of corporations (and particularly in those that had an element of monopoly to them), so the government reflexively kept imposing voting restrictions even where they served no particular purpose. A fourth possibility is that the government wished to avoid excessive concentrations of economic power – or, more precisely put, that the elite interests controlling the government wished to avoid (competing) concentrations of economic power.

Ascertaining the motive for the adoption or imposition of voting restrictions in Brazil remains a difficult and speculative task. But an examination of voting patterns following the advent of general incorporation casts further doubt on the prevailing view of maximum vote provisions as an investor protection device. Table 2 below shows that the incidence of voting caps fell sharply as soon as corporations had a real choice as to voting rules. In the eight years following the 1882 law – under which most corporate charters no longer required prior governmental approval – the percentage of new incorporations that placed an upper limit on the number of votes or shares per shareholder fell from roughly 88% to 51%, while the use of proportional voting schemes increased from 5.2% to more than 41.3% of firms in the sample. Moreover, the corporations that did specify voting caps in the post-1882 period frequently opted for less stringent restrictions, commonly capping at 30, 50 or 100 the amount of votes per shareholder, compared to a typical maximum of 5, 10 or 20 votes per shareholder in the previous period.

Indeed, the use of voting caps declined even further in subsequent periods. Musacchio's study reveals that only 26% of Brazilian corporations operating in 1909 had some form of maximum vote provision in place.[54] This relatively small incidence of capped voting during this period seems inconsistent with his view that these clauses 'may have most effectively encouraged investment in Brazil's traded corporations'.[55] Moreover, the timing of the disappearance of voting restrictions further calls into question the investor protection account. According to Musacchio, '[t]he early development of stock markets in Brazil was accompanied by relatively strong investor protections in the bylaws of many midsized and

Table 2. Voting rights of Brazilian corporations by industry (1883–90).

Industry	Proportional to stock ownership (%)	Uncapped graduated scale (%)	One vote per member (%)	Ownership cap	Voting Cap (%)	Charter is silent (%)	No. of charters
Insurance	–	–	–	–	100	–	2
Banks	35.5	20.0	5.0	–	40.0	–	20
Railroad	50.0	–	–	–	50.0	–	4
Navigation	–	–	–	–	100	–	1
Public works	16.7	–	–	–	83.3	–	6
Manufacturing	45.0	5.0	–	–	50.0	–	20
Transportation	75.0	–	–	–	25.0	–	4
Entertainment	–	–	–	–	–	–	–
Agriculture	50.0	–	–	–	50.0	–	14
Colonization	–	–	–	–	–	–	–
Other	42.3	–	–	–	50.0	7.7	26
Total	41.3	5.3	1.3	–	49.3	2.7	97

Source: São Paulo Archives and National Archives (Rio de Janeiro).

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larger corporations',[56] of which voting caps are the foremost example. By contrast, Tables 1 and 2 show that, similarly to other jurisdictions, the use of voting restrictions in Brazil declined sharply precisely at the same time as capital markets developed in the late nineteenth and early twentieth century, suggesting, if anything, an inverse correspondence between the use of voting caps and the ability of corporations to raise capital in financial markets.

IV. Continental Europe

Deviations from the one-share-one-vote rule were pervasive in continental Europe throughout the nineteenth century, but the extent to which the consumer protection account can explain the rise and fall of voting restrictions in the European context remains an open question.[57] Testing the strength of this theory will require a careful examination of the ownership structure and economic function of early business firms across Europe – which should encompass not only the national equivalents of business corporations (*société anonyme*, *Aktiengesellschaft*, *società per azioni*, as may be the case), but also tradable limited partnerships, which were evidently the primary organisational form for large-scale enterprise at least in France.[58] It is also important to bear in mind that continental Europe was by no means monolithic in its historical treatment of shareholder voting rights. By the late nineteenth century, Belgium mandated voting restrictions, Italy provided a graduated voting scale as a default rule, and France left the choice of a voting scheme entirely up to the corporation's charter.[59]

The consumer protection theory is particularly difficult to confirm or refute in countries that imposed voting caps across the board without regard to the purpose or ownership structure of the affected companies. Take, for instance, the case of France, where until 1867 a *société anonyme* could only be formed upon the express authorisation of the Conseil d'Etat in a decree to be signed by the emperor.[60] The process for obtaining a corporate charter was both protracted and uncertain as to the outcome; even though the *société anonyme* did not confer monopoly privileges, seemingly arbitrary denials of charter applications were common.[61] The Conseil d'Etat held strong views about governance provisions and customarily rejected draft charters that deviated from its preferred terms.[62]

Even though the *Code de commerce* was silent on shareholder voting rules, French legal practice was hardly flexible in this area.[63] Almost all early *sociétés anonymes* formed under the *Code de commerce* in the first part of the nineteenth century contained stringent caps of four or five, or even fewer, votes per shareholder.[64] At least until the Second Empire and the rise of railroad companies, the Conseil consistently curtailed attempts by prospective companies to relax these strict voting ceilings; only in the 1850s did it begin to regularly accept more flexible maximums of 10 or 20 votes per shareholder.[65]

But if the French experience in the early nineteenth century poses difficulties to the consumer protection account of voting restrictions, it creates even greater challenges to its competing theories. The voting schemes imposed by France's Conseil d'Etat are not easily reconcilable with a 'democratic conception' of the *société anonyme* or the goal of giving greater voice to small investors to protect their interests. In fact, the Conseil d'Etat typically limited shareholder voting rights at both ends of the spectrum: it not only capped the voting rights of large shareholders, but also consistently disenfranchised small shareholders by imposing minimum stock ownership requirements for attending and casting votes in shareholder meetings. For example, the Conseil d'Etat raised from 20 to 40 the number of shares required for a vote in the Société Générale Algerienne.[66] The Conseil seemed particularly wary of wide shareholder participation in annual meetings, which, in its view, 'could hinder the proper administration of the company'.[67]

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In its reserved approach to the rights of small shareholders as such, France did not differ significantly from Britain. Freeman et al. find that more than one-third of firms chartered in Britain and Ireland between 1720 and 1844 denied voting rights to persons holding less than a stated minimum number of shares.[68] The distribution of these minimum shareholding requirements, moreover, is roughly consistent with the consumer protection theory: they are conspicuously uncommon in firms – such as bridge companies, canal companies and gas companies – that are likely to have a degree of monopolistic power, not just over a handful of merchants, but over a substantial segment of the local population.

As with Brazil's Conselho de Estado, which exercised its powers in similar fashion, the motives of France's Conseil d'Etat in imposing voting caps remain subject to speculation. One possibility, again, is that voting restrictions are a legacy of a time in which most business corporations were essentially consumer cooperatives. The Conseil d'Etat's insistence that the *sociétés anonymes* should be reserved to 'large enterprises of public utility' and could not engage in more than one line of business suggests that this may be a plausible explanation.[69] Moreover, the early rules of one vote per shareholder were almost always limited to insurance or public works companies,[70] further hinting at their possibly mutual or cooperative character. But voting restrictions might also have served to prevent concentrations of power that were independent of the state, or more generally as an anti-takeover device to prevent the state's preferred owners and managers from being displaced. The Conseil d'Etat gave significant weight to the identity and business reputation of corporate promoters in authorising *sociétés anonymes*. It justified the imposition of term limits on corporate charters explicitly in terms of the need to reassess the character and trustworthiness of the firm's main shareholders over time, suggesting that voting restrictions might have served to ensure that these government-trusted (and also arguably well-connected) merchants would remain in control of the enterprise.[71]

In decline since the 1850s, France's system of mandatory voting caps came to an end with the adoption of the general incorporation statute of 1867, which granted significant leeway to shareholders in specifying a voting rule of their choosing in the corporation's charter. Voting restrictions were rapidly becoming a feature of only historical interest. A twentieth-century historian of the *société anonyme* described the one-share-one-vote principle as 'almost absolute' in the nineteenth century, compared to the widespread incidence of restricted voting schemes in the previous periods.[72] The primacy of the one-share-one-vote rule in France would not be long-lasting, however, as non-voting and multi-voting stock would come to dominate the landscape in France and its European counterparts in the early twentieth century.[73]

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V. Conclusion

Regressive schemes of corporate shareholder voting were common throughout the industrialising world in the early nineteenth century. We have argued here that it is anachronistic to view these schemes primarily as investor protection devices. Rather, they appear best understood as a means of protecting firms' customers from monopolistic exploitation in – or exclusion from – the product market. The firms involved were, in effect, consumer cooperatives whose customers – commonly local merchants and landowners – were in substantial part also their shareholders. Regressive voting helped to avoid or delay the transfer of control to shareholders interested only in a pecuniary return on their investment of capital.

Restricted voting schemes were, to be sure, often not the result of private contract but rather the product of governmental intervention. And the governmental motives for

imposing regressive voting rules remain unclear, and are consistent with different interpretations of the purposes served by those rules. Nevertheless, two considerations – the common practice of accompanying regressive voting schemes with minimum shareholding requirements to vote, and the disappearance of voting restrictions when capital markets matured – cast substantial doubt on the plausibility of the investor protection account. While we cannot rule out investor protection as a motivation for corporate voting restrictions prior to the twentieth century, consumer protection seems to have been the dominant purpose.

Modern scholars of corporate law and economics are familiar with the separation of ownership and control that became widespread in the early twentieth century, and with the agency costs to which that separation gives rise. It is important to realise as well, however, that the nineteenth century brought an equally profound transformation in corporate governance, which was the separation of ownership and consumption.

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Notes

1. Dunlavy, "Social Conceptions of the Corporation," 1347; Dunlavy, "Corporate Governance in Late Nineteenth-Century Europe and the U.S." Dunlavy's view of the rise and fall of regressive voting in business corporations as a reflection of popular political ideology rather than narrowly economic factors has been adopted more recently in Freeman, Pearson and Taylor, *Shareholder Democracies?*
2. Hilt, "When Did Ownership Separate from Control." For additional accounts of restricted voting schemes in the nineteenth century in terms of minority investor protection in different jurisdictions, also see Musacchio, "Laws versus Contracts"; Miwa and Ramseyer, "Corporate Governance in Transitional Economies"; Wright and Sylla, "Corporate Governance and Stockholder/Stakeholder Activism in the United States"; Rojas, "Finance Without Law"; Neves and Reis, "Corporate Law vs. Company Charter"; Bodenhorn, "Voting Rights."
3. Hilt, " When Did Ownership Separate From Control."
4. For a few representative works, see Rafael La Porta et al., "Law and Finance"; La Porta et al., "Investor Protection and Corporate Governance." Admittedly, subsequent work has questioned the strength of these initial results. See, for example, Spamann, "The 'Antidirector Rights Index' Revisited." For more recent work that uses a revised index and corroborates the law-and-finance thesis, see Djankov et al., "The Law and Economics of Self-Dealing."
5. See, for example, Cheffins, "Dividends as a Substitute for Corporate Law" (arguing that dividends served as a substitute for legal investor protection in the UK); Musacchio, *Experiments in Financial Democracy* (attributing the development of capital markets in Brazil in the nineteenth century to both legal requirements and contractual practices).
6. Hansmann and Pargendler, "The Evolution of Shareholder Voting Rights."
7. ibid.
8. See, for example, Chandler, *The Visible Hand*, 28 (describing the creation of early US corporations by merchants interested in obtaining 'essential specialized ancillary services to support their profit-making commercial activities').

9. Cheffins, *Corporate Ownership and Control*, 32. Indeed, voting restrictions were present even among the first joint-stock trading companies in England, such as the East India Company. See Scott, *The Constitution and Finance*.
10. Freeman, Pearson and Taylor, *Shareholder Democracies?*, Table 6.2.
11. Hansmann and Pargendler, "“The Evolution of Shareholder Voting Rights."
12. Hannah, "The Divorce of Ownership" (noting that most industrial companies in Britain adopted a one-share-one-vote rule); Freeman et al., "A Doe in the City" (finding voting caps in 21 out of a sample of 30 early nineteenth-century banks).
13. Ward, *The Finance of Canal Building* (noting that the Duke's compensation for the canal came in the form of greater volume and profitability in coal sales).
14. Duckham, "Canals and River Navigations," 113–14 (noting that the joint-stock company became the dominant form of canal financing).
15. ibid., 103 (denying that 'a significant proportion of canal finance came from sources more interested in dividends than in the actual results of transportation'). Duckham reports that, until the Canal Mania of the early 1790s, most canal subscriptions came from local merchants and landowners who were primarily interested in improved means of transportation. Ibid., 104. Also see Evans, *British Corporation Finance*, 11 ('[t]he promoters of the early canals and railways were for the most part men whose properties or business interests were likely to be benefited by an improvement in transportation facilities').
16. Ferguson, *A History of Cumberland*, 279. But see Ward, *The Finance of Canal Building*, 133 (arguing that other canals came to pay lavish dividends and, while the interests of subscribers of early canals were mixed, financial motives were 'powerful').
17. Evans, *British Corporation Finance*, 29.
18. Wilson, *Lighting the Town*, 86–90 (stressing the 'intimate relationship between those sectors which bought most of the shares and those which used most of the gas'); Falkus, "The British Gas Industry" (attributing the first gas companies to 'local initiative and capital').
19. Wilson, *Lighting the Town*, 85.
20. ibid., 90.
21. ibid.
22. Newton, "The Birth of Joint-Stock Banking"; Acheson and Turner, "Investor Behavior."
23. Pearson, "Shareholder Democracies?"
24. ibid., 854.
25. Prince, *Observations on the Act*.
26. *The Parliamentary History of England*. Also see Harris, *Industrializing English Law*, 180 (describing the opposition to the bill).
27. Prince, *Observations on the Act*, 17.
28. Freeman et al., "The Politics of Business," 11 (noting that their sample of 30 banks formed between 1827 and 1839 reflected 30 different voting schemes).
29. Fitzpatrick and Fowke, *The Secretary's Manual*, 137.
30. Table A's graduated voting scale first appeared in the Companies Clauses Consolidation Act of 1845. In any event, these voting rules only applied in case shareholders requested a poll; otherwise votes were to be counted by a show of hands. Dunlavy, "Social Conceptions of the Corporation" (for France and Germany).
31. Dawson, *The Accountant's Compendium*, 421 (noting that "the "scale" system [provided by Table A] … is not generally adopted, the articles of association generally conferring one vote for every share held").
32. Machen, *A Treatise on the Modern Law of Corporations*, 1014; *Cannon* v. *Trask*, 20 E. 669 (1875); *Scranton Iron Co.*, 16 Equation 559 (1873); *Moffat* v. *Farquhar*, 7 Ch. D. 591 (1878).
33. Campbell and Turner, "Substitutes for Legal Protection."
34. Cheffins, *Corporate Ownership and Control*, 33.
35. Dunlavy, "Social Conceptions of the Corporation," 1360.
36. Musacchio, "Laws versus Contracts," 473. Throughout this paper, we translate the Portuguese term *estatuto* as corporate charter, not bylaws, in contrast to the usage adopted by Musacchio. While the board of directors typically has authority to amend bylaws, changes to *estatutos*, like corporate charters, require a shareholder vote (and, prior to general incorporation, governmental approval).

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37. *Almanak Administrativo, Mercantil e Industrial do Rio de Janeiro*, 401 (arguing that investor owned insurance companies were riskier and more subject to abuses than a mutual insurance company).
38. See, for example, the Companhia Mútua de Seguro de Vida de Escravos (created by Decree 2,078, 16 January 1858), a mutual slave life insurance company, and Companhia de Seguro Mútuo contra o Fogo Aliança (Decree 3,068, 9 April 1863), a mutual fire insurance company. Both of these companies covered only two municipalities and provided one vote per shareholder.
39. Decree 2,079, 16 4January 1858.
40. Decree 1,060, 3 November 1852. Also, see Decree 2,080, 16 January 1858, for the charter of Companhia de Seguros Marítimos Nova Permanente (requiring shareholders to hold between 5 and 30 shares), Decree 1,151, 13 April 1853, imposing a limit of 20 shares per shareholder of fire insurance company Companhia de Seguros Contra Incêndios Interesse Público; Decree 4,318, 13 January 1869, providing that no shareholder can own more than 25 shares, or fewer than 5 shares, in the maritime insurance company Companhia S. Salvador de Campos.
41. Decree 6,942, 22 June 1878 (granting one vote per share subject to a cap of 5 votes per shareholder).
42. Debes, *A Caminho do Oeste*, 12.
43. De Matos, *Café e Ferrovias*, 49 et seq.; Summerhill, *Order against Progress*, 45 ('shares of stock for the Paulista were peddled virtually door to door in the interior of the province. ... The very fazendeiros who stood to gain so much from the reduction in transport costs were prominent among the company's investors'); Musacchio, "Laws versus Contracts," 466 (noting that 'railways were owned by their main beneficiaries, in this case coffee planters').
44. Hanley, "Is It Who You Know?," 199.
45. Musacchio, "Laws versus Contracts," 461; Summerhill, "Market Intervention in a Backward Economy."
46. Law 3,150, 4 November 1882 (Brazil). For a more thorough description of corporate laws in nineteenth-century Brazil and the political economy of such corporate law reforms, see Pargendler, "Politics in the Origins."
47. This practice of conditioning voting rights on the ownership of a minimum number of shares was also pervasive among French corporations at the time. See part IV.
48. Brazil had no corporation statutes prior to 1849; the few corporations formed until that date received special charters. For a description of the corporate law regime in the Brazilian Commercial Code and how it compared to the law of other jurisdictions at the time, see Pargendler, "Politics in the Origins."
49. Decree 6,839, 16 February 1878.
50. Decree 4,819, 18 November 1871. Over half of the corporations chartered between 1850 and 1882 also provided for a minimum share ownership requirement as a condition for director eligibility. The purpose of these provisions was most likely to ensure that directors had some economic stake in the firm, rather than to limit managerial posts only to the largest shareholders, as the minimum holding requirements were, by and large, relatively low.
51. Resolution of 30 November 1878 (on the reform of certain charter provisions of Banco Commercial do Rio de Janeiro). In: Imperiaes Resoluções, 236.
52. Anais da Câmara dos Deputados, Session of 28 July 1862, 274 (speech of Sr. C. Ottoni).
53. This is akin to the rationale for giving ownership of a firm to its consumers even when those consumers are, as a practical matter, in no position to exercise effective control over the firm's management, or for organizing a firm as a non-profit organisation – that is, with no owners at all. See Hansmann, *The Ownership of Enterprise*, 46–9.
54. Musacchio, *Experiments in Financial Democracy*, 99.
55. Musacchio, "Laws versus Contracts," 460 (citing the importance of voting restrictions and dividend guarantees by the government to capital market development in Brazil).
56. Musacchio, *Experiments in Financial Democracy*, 194.
57. Dunlavy, "Social Conceptions of the Corporation," 1354 (for France and Germany).
58. Guinnane et al., "Putting the Corporation in Its Place" (describing the use of tradable limited partnerships as a surrogate for incorporations in France); Coquelin, "Des sociétés commerciales en France et en Angleterre" (arguing that due to difficulties in obtaining governmental authorization, sociétés anonyms were a 'rarity' and only of secondary importance to France).

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59. Piret, *L'évolution de la législation belge*, 54 (noting that, according to the 1873 statute, no shareholder could vote more than one-fifth of issued shares or two-fifths of shares voting in a given meeting, a system that persisted well into the twentieth century); Vivante, *Trattato di Diritto Commerciale* (describing art. 157 of the Italian Code, which provided as a default rule a graduated voting scale granting one vote per share up to five shares, one vote per five shares up to 100 shares, and one vote per 25 shares beyond that); Dunlavy, "Social Conceptions of the Corporation."
60. Freedeman, *Joint-Stock Enterprise in France*, 14. This approach is similar to that taken in Brazil, discussed above, which in this respect followed the French model. Brazil's nineteenth-century organizational law did, however, deviate from French law in other important respects. Tradable limited partnerships were conspicuously absent from the Brazilian Civil Code and were expressly outlawed by a government decree in 1854. Pargendler, "Politics in the Origins."
61. Freedeman, *Joint Stock Enterprise in France*, 14 (citing multiple instances of denial of charter applications throughout his work).
62. ibid., 35.
63. For an argument to the contrary, see Lamoreaux and Rosenthal, "Legal Regime and Contractual Flexibility" (arguing that, considering all organisational forms, French law was more flexible than that of the US in the nineteenth century).
64. Lefebvre-Teillard, *La société anonyme au XIXe siècle*, 370.
65. ibid., 371.
66. Freedeman, *Joint Stock Enterprise in France*, 128.
67. ibid., 129 (quoting the Conseil d'Etat). Moreover, subsequent attempts to prevent large shareholders from circumventing voting caps led to the imposition of minimum holding periods or share deposit requirements in advance of shareholder meetings, which in practice may have further discouraged voting by the smallest shareholders. See Lefebvre-Teillard, *La société anonyme au XIXe siècle*, 372 (describing the measures to prevent avoidance of voting caps).
68. Freeman, Pearson and Taylor, *Shareholder Democracies?*, Table 6.3.
69. Freedeman, *Joint Stock Enterprise in France*, 124. Fredeeman also describes the resistance to chartering of corporations engaging in 'multiple operations of a diverse nature', such as a retail trading company. Likewise, early insurance companies could only insure against one type of risk. ibid., 126.
70. Lefebvre-Teillard, *La société anonyme au XIXe siècle*, 369.
71. Freedeman, *Joint Stock Enterprise in France*, 21 (quoting the Conseil d'Etat in stating that 'the confidence merited by the initial founders of a société anonyme is one of the matters taken into consideration by the government at the time when authorization is accorded ... It is in the public interest that, to continue, the enterprise be expressly authorized at the end of its term, and submitted again to the approval of the government, in order that the government can refuse authorization if the new shareholders do not appear worthy of confidence').
72. Levy-Bruhl, *Histoire juridique des sociétés de commerce*.
73. See, for example, Mazeaud, *Le vote privilégié*.

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Notes on contributors

Mariana Pargendler is Professor of Law at Fundação Getulio Vargas School of Law in São Paulo (Direito GV).

Henry Hansmann is the Oscar M. Ruebhausen Professor of Law at Yale Law School.

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