

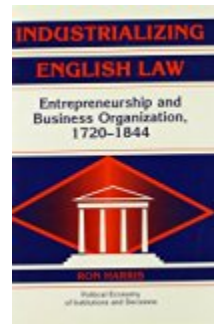
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in the Humanities & Social Sciences

Ron Harris. *Industrializing English Law: Entrepreneurship and Business Organization, 1720-1844*. Cambridge: Cambridge University Press, 2000. xvi + 331 pp. \$60.00 (cloth), ISBN 978-0-521-66275-8.

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No book-length study of English company formation during the Industrial Revolution has been published since the late-1930s. Many articles have appeared, mostly by legal historians, but by and large these have either been exercises in precedent-scouting or misguided attempts to apply public-choice theory to centuries-old legislation. Ron Harris's monograph on the legal, economic, and political history of the rise of the English company is therefore long overdue. By covering so many facets of the problem, moreover, he offers insights that will be useful to people working in a wide range of academic disciplines and historical specializations. He goes out of his way to engage directly with nearly all the various historical interpretations of the rise of the company that have appeared over the past several generations, and offers a new interpretation of his own. That view privileges interest-group politics and jurisprudential conservatism over strictly economic or "ideological" factors as the chief driving forces in determining the availability of the corporate form to entrepreneurs who wished to adopt it.

The first chapter of the book usefully, if somewhat laboriously, surveys the wide variety of legal forms available to seventeenth-century entrepreneurs. The real narrative starts in the second chapter, which covers the rise of chartered companies prior to 1700. As close readers of Adam Smith will recall, these companies primarily undertook foreign trade and included two types: firms like the East India Company which traded on a permanent joint stock, and "regulated monopolies" like the Levant Company which were guild-like aggregates of individual traders. Harris details the symbiotic (not to say parasitic) relationship between these companies and the revenue-hungry Stuart kings, who raised 100,000 pounds per year

in charter fees by doling out monopolies on ever-smaller segments of foreign and domestic trade. This source of revenue dried up during the English Civil War, to be replaced after 1680 by a more lucrative (and economically more rational) triumvirate of "moneyed companies" (the Bank of England, the South Sea Company, and the East India Company) whose primary purpose was to lend money to the state at interest.

Harris's third chapter (previously published in the *Economic History Review*), discusses the circumstances surrounding the Bubble Act of 1720. He locates that law firmly in the context of the British government's reliance on the new "moneyed companies" to lend it money after 1688. He argues that the act, which outlawed the formation of large unincorporated partnerships, was mainly an attempt by the state to divert funds from the "mushroom" companies that had sprung up in the 1710s into the South Sea Company's coffers. Just months before the bill was read, that company had won a government contract to consolidate the national debt, and its directors lobbied furiously for anti-competitive provisions that would further enhance their resulting profits. As political strategy, Harris notes that this campaign was "not a very well calculated measure" on the part of the Company's directors—but adds, correctly, that "many of the directors' actions were not well calculated" (p. 78). In the end, the speculative frenzy of the 1710s ran its course; South Sea shares sank to a level that permanently relegated it to third place among the "moneyed companies"; and the state got what it paid for, a consolidated debt. Little in this chapter will come as a surprise to those familiar with the political history of Augustan England, but the extra detail is a welcome addition to what is already known

about the period; and it is a valuable corrective to those who assume that the Bubble Act was actually intended to discourage speculation as opposed to merely rerouting it.

Part two of *Industrializing English Law* tracks the progress of large-scale business formation in the century after 1720. Harris steers between two conflicting schools of thought in this section. One claims that the Bubble Act effectively put a hold on new joint-stock companies in Britain until its repeal in 1825. The other claims that the Bubble Act was no match for the ingenuity of the Hanoverian entrepreneur, who muddled through with his lawyer's help by stretching the standard partnership deed to cover dozens or even hundreds of shareholders. Harris's middle position is that there was a good deal of new company formation in the eighteenth century, but that when a company formed as an oversized partnership it faced a wasp's nest of legal problems. These included unlimited liability, confusing governance issues, cumbersome litigation, excessive tax liability, and the prospect that an *inter se* suit might drag on for decades in Chancery. And the alternatives to partnership were even worse. The deed of trust, for instance, saddled trustees with so much liability that it only prevailed in companies that were not far removed from the traditional family firm. Given all these problems, a good eighteenth-century lawyer would certainly have understood why, in Harris's words, "the unincorporated company did not become a very popular and widespread phenomenon" prior to 1810 (p. 166).

Yet at the same time, Harris argues that "the weight of joint-stock organizations in the English economy as a whole was much greater than hitherto believed" (p. 169). One explanation for this apparent contradiction

is that Hanoverian company promoters either had bad lawyers, did not listen to their lawyers, or hoped they would not find themselves in court very often. This was apparently more or less what happened with the large number of unincorporated breweries and mills that Harris discusses in chapter 7. But Harris also points to other sectors where legal concerns were less likely to deter company formation. Chapter 4 focuses the transport sector, in which undertakers received statutory permission to improve waterways, then illegally parcelled off that privilege in transferable shares; and insurance, in which companies secured quasi-legal status for purposes of lawsuits and could achieve other forms of legal protection because nearly all their contracts were in writing. In both sectors, obstacles to initial formation were more severe than subsequent legal problems, since each new transport improvement or insurance office threatened existing vested interests. Harris tells a nice story about how the Sankey Brook canal company (which built England's first canal) managed to deflect opposition from landowners and turnpikes, by pretending to form for the purpose of widening a non-existent brook and adding incidental canal-cutting powers in a subordinate clause (p. 96). The second half of chapter 7 similarly discusses Hanoverian companies that existed outside the common law's domain, namely tin mines (which were subject to the obscure stannary courts) and shipowners, who answered to the Admiralty. These specialist courts were able to adapt more flexibly to the changing capital requirements of the industries in question. All these exceptions do add up to a substantial amount of joint-stock business activity in the eighteenth century – so substantial, in fact, that the fifty or so pages which Harris devotes to the business (as opposed to legal) side of their story only barely scratches the surface of a rich, but as yet mostly unwritten, history.

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