The Bubble Act: Its Passage and Its Effects on Business Organization

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By surveying contemporary sources this article reveals direct evidence for the involvement of the South Sea Company in the passage of the Bubble Act. The dominant position of the Company and of its national debt conversion scheme in the affairs of England in 1720 support the conclusion that the act was in fact a piece of special-interest legislation for the Company. The short-term interest that motivated the enactment, together with the limited legal and economic effects of the act, minimized its significance as a turning point in the long-term development of the English joint-stock company.

For generations, historians have treated 1720, the year of the South Sea Bubble and the Bubble Act, as a watershed year in British history. They have described the year as one of fantasy, panic, folly, and grotesqueness, the act itself as "scream[ing] at us from the statute book," passed by "a panic-stricken Parliament," and ultimately "arrest[ing] the development of the joint-stock company" for more than a century.[1] When the bubble burst, South Sea stock plunged about 87 percent, one of the worst financial crashes in world history. The crash constituted the first international stock market bust. The crisis that followed threatened to unravel the whole web of English public finance. One historian went so far as to call 1720 the climax and end of one epoch and the beginning of a new one.[2]

Although historians seem to agree on the dramatic importance both of the bubble and of the Bubble Act (BA), they are vague about the relationship between the two. Contemporary observers may have understood how the bubble and the BA affected each other and the marketplace, but time has obscured their relationship. Two recent articles, one of them in this JOURNAL, have suggested a new explanation for the passage of the BA and reopened the debate on its rationale.[3] This

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[1] See Maitland, "Trust and Corporation," p. 208; DuBois, *English Business Company*, p. 437; Scott, *Joint-Stock Companies*, vol. 1, p. 438; and Holdsworth, *History of English Law*, vol. 8, p. 221, for a statement similar to Scott's.

[2] Carswell, *South Sea Bubble*, pp. v, 272; Neal, *Financial Capitalism*, p. 62; Brewer, *Sinews of Power*, p. 125.

[3] Patterson and Reiffen, "Effect of the Bubble Act," pp. 163–71; and Butler, "General Incorporation," pp. 169–87.

article re-examines the relationship between the act and the bubble and offers an explanation for the motives and aims behind the passage of the BA within the historical context.

HISTORIOGRAPHICAL BACKGROUND

Historians of the joint-stock company and legal and economic historians in general, from William Scott through H. A. Shannon and B. C. Hunt to A. H. Manchester, viewed the South Sea Bubble as a turning point in the history of business corporations. They note that joint-stock promotions were very successful in the last decade of the seventeenth and the early eighteenth centuries. Small bubbles of 1719 and 1720 were promoted by speculators who tried to free ride on the success of the South Sea Bubble and exploit the general feeling of optimism. When the market collapsed, the speculators, the small bubbles, and the joint-stock system were all seen as the causes of the disaster. The BA of that year cast a shadow on the joint-stock company as a form of business organization for more than a century and ultimately stopped its development. According to this interpretation, the South Sea Bubble was a watershed in the transformation of the incorporated company from the status of recognition and appreciation to one of mistrust and eclipse.[4]

Three explanations are found in the modern literature for the passage of the BA. The first is most closely associated with the aforementioned long-standing interpretation. It is the view most commonly held and most often quoted in textbooks and thus can be considered the orthodoxy on this issue. "The joint-stock system—'pernicious art of stock-jobbing'—was the sole and sufficient explanation for the miseries of the country," writes Scott in his trailblazing work on the early joint-stock companies.[5] According to this explanation, the act reflected hostility to speculation in the stock market and to joint-stock companies in general and attempted to limit both. Whereas Scott's more sophisticated version of this explanation portrays the BA as a preemptive measure that predated the burst, a cruder version presents the BA as a remedy that was motivated by the market collapse.

The second, more recent explanation for the passage of the act is held by political scientists and economists and starts from the public-choice approach and rent-seeking interpretation of the legislation. According to this approach, the legislators, as an interest group, transact in the market of legislative privileges with privilege-seeking entrepreneurs.

[4] Scott, *Joint-Stock Companies*, vol. 1, pp. 437–38; Holdsworth, *History of English Law*, vol. 8, pp. 219–21; Shannon, "Coming of General Limited Liability," p. 359; Hunt, *Development of Business Corporation*, pp. 6–9; Manchester, *Modern Legal History*, pp. 348–49.

[5] Scott, *Joint-Stock Companies*, vol. 1, pp. 436–37. It is cited, supported, and otherwise approved by Holdsworth, *History of English Law*, vol. 8, pp. 218–19; Shannon, "Coming of General Limited Liability," p. 359; Hunt, *Development of Business Corporation*, pp. 6–9; Manchester, *Modern Legal History*, pp. 348–49, to name a few.

More specifically, in the case of the BA, the government or Parliament "intended to prevent non-chartered firms from using the formal market," and they did so, according to Margaret Patterson and David Reiffen, to "enhance the importance of charters" and to protect their ability "to raise revenue through the issuance of charters."[6] Or, as Henry Butler put it, "the Bubble Act was a government-created entry barrier designed to put out of business (and hinder development of) all business associations which were competing with Parliament's chartering business."[7]

The third explanation has been more of a proposition than a fully proven thesis. According to this explanation, the South Sea Company (SSC) initiated the BA because it believed that the wave of small bubbles competed with the company's conversion scheme and could endanger the blowing of its own bubble. According to this view, the act was an attempt to hinder alternative investment opportunities and to divert more capital to South Sea shares.[8] Yet scholars holding this view were interested in other aspects of the period and thus occupied themselves neither with a detailed examination of the passage of the act, nor with a search for specific evidence to support their more general impressions. I conclude in this article that this third explanation is the only one that is viable from all perspectives.

My conclusion is based on a firmly documented historical foundation using a close examination of the act, the parliamentary proceedings that led to its passage, and other contemporary sources. This explanation regarding the intention of the framers, together with the legal and economic effects of the act, minimizes the role of the BA as a turning point in the development of the joint-stock company. I shall not, however, discuss the spreading of the joint-stock form of business organization nor the impact of the BA on economic growth, both of which require evidence of the economy as a whole not included in the present article.

FROM BILL TO ACT

The committee that eventually recommended to the House of Commons the bill that led to the BA was formed on February 22, 1720.[9] At

[6] Patterson and Reiffen, "Effect of the Bubble Act," pp. 163, 171.

[7] Butler, "General Incorporation," pp. 172–73. For the theoretical framework of this approach see also Butler, "Nineteenth-Century Jurisdictional Competition," pp. 130–33. In fact, only the Crown was granting charters, whereas Parliament was passing specific incorporation acts. Butler and Patterson and Reiffen must have wanted to include both in their explanations.

[8] Carswell, *South Sea Bubble*, pp. 117, 139; Dickson, *Financial Revolution*, pp. 147–48. See also Cooke, *Corporation, Trust, and Company*, pp. 82–83.

[9] In this article references to days and months are based on the contemporary Julian calendar, whereas references to years are based on the modern calendar year, which begins on 1 January and not on 25 March, as was the case until 1752. See note 28 for further clarification.

that point the SSC's scheme for converting the national debt was well on its way. The company's final tender, which had beaten the Bank of England's offer, was on the table, and its details were debated in Parliament and in the London press. By the time John Hungerford reported from the committee on April 27, 1720, the South Sea Act (6 Geo. I, c. 4) that authorized the scheme had already received the royal assent. By May 27, when the Committee of the Whole reported on the amended version of the bill, the scheme was unfolding rapidly, and two money subscriptions and one offer of exchange had been completed. Furthermore, by late May a new matter was included in the bill: the incorporation of two marine insurance companies, the Royal Exchange Assurance and the London Assurance. The two insurance projects that had previously been under investigation by the committee for alleged improper private subscription received renewed positive attention because they were now supported by the Crown, after having offered £300,000 each to pay off the King's Civil List debt.[10] The final version of the bill, including these two unrelated and somewhat contradictory matters, was rushed through both houses and received the royal assent on June 11. The King, eager to leave for Hanover, closed the session that same day, having approved no less than 18 acts. By early June the price of SSC shares reached £750, more than five times its January value. Shares were yet to reach a peak of £1050 on June 24th, after the BA was passed, and to linger around £950 to £1000 until the end of July, before their one-way journey downward began in early August. The SSC was able to complete its fourth subscription in mid-August, but this did not prevent its share prices from declining to less than £800 by the end of August, to collapse to £300 by the end of September, and to drop below £200 by the end of the year. The entire market followed the collapse.[11] This sequence of events makes it clear that the act was passed more than two months before the beginning of the market collapse—not as a reaction to the crash of the bubble, as some mistakenly believe—and it originated about six months before the crash.

The full title of the so-called Bubble Act (6 Geo. I, c. 18) was "An Act for better securing certain Powers and Privileges, intended to be granted by His Majesty by Two Charters, for Assurance of Ships and Merchandize at Sea, and for lending Money upon Bottomry; and for restraining several extravagant and unwarrantable Practices therein mentioned." It is evident that only the latter part of the title refers, and only implicitly,

[10] Supple, *Royal Exchange*, pp. 30–32.

[11] Price quotations are approximate because there was no standard trade or reporting system. For versions of South Sea share prices see Neal, *Financial Capitalism*, figures 5.3 and 5.4; Scott, *Joint-Stock Companies*, vol. 3, chart inserted in a back cover pocket; Roseveare, *Financial Revolution*, p. 57. See the text that accompanies Neal's figures for an explanation for some of the variations between the different sources.

to the phenomena at which the Act is assumed to be directed: bubbles and speculations. The term "Bubble Act" is rarely found in eighteenth-century sources, and the nickname became popular only in the early nineteenth century. Modern use of the term Bubble Act led many to assume that this title indicates that the framers of the act perceived it as dedicated solely to fighting the bubbles. In addition, the use of the singular form, "bubble," gave the mistaken impression that the act was directed specifically against the most famous bubble of 1720, that of the SSC, rather than the small bubbles.

The first 17 clauses of the act regulated the incorporation of the two marine insurance companies, and indeed most contemporaries referred to the act as "the act for establishing the two insurance companies." Only in clause 18 are the evils to be remedied described and the norm set, first in general terms and then specifically:

> All undertakings . . . presuming to act as a corporate body . . . raising . . . transferable stock . . . transferring . . . shares in such stock . . . without legal authority, either by Act of Parliament, or by any Charter from the Crown, . . . and acting . . . under any charter . . . for raising a capital stock . . . not intended . . . by such Charter . . . and all acting . . . under any obsolete Charter . . . for ever be deemed to be illegal and void.

Clauses 19 to 21 set the penalties and remedies. Clauses 22 and 25 limited the extent of the new norm, which was not to apply to any undertaking established before June 24, 1718, nor to legally done "trade in partnership." Clauses 23, 24, 26, 27, 28, and 29 protected various interests of the SSC, the East India Company, and the two newly established insurance companies. Out of a total of 29 clauses, only 6, if any, deserve the moniker "Bubble Act." These clauses were ambiguous in some respects and their interpretation was problematic, as I will discuss later. On the other hand, the clauses relating to the two insurance companies and the SSC were unambiguous. My impression from the wording of the act is that most of its clauses compromised between two competing interest groups—the promoters of the two marine insurance undertakings and the directors of the SSC—and only a few represented an ambivalent attempt to confront some of the speculative activity of other undertakings.

Clause 27, which was only added to the bill on the day of the third reading, has been overlooked by many historians; yet it deserves special attention in the present context.[12] This clause stated that any subscription made by the SSC would be valid. The clause was cited shortly after the burst in a pamphlet attributed to John Blunt, a knowledgeable South Sea director, as proof that all actions of the directors were approved by Parliament, and thus the directors should not be punished for their role in the scheme:

[12] *Commons' Journal*, vol. 19, p. 368, May 31, 1720.

> Parliament were pleased to pass a clause in the Act for establishing the two insurance companies, confirming not only the subscription taken out but also all such subscriptions as should after be taken . . . assignable in law, which they would not have been without authority of Parliament.[13]

Thus, through the back door, the South Sea directors could legalize their departure from the original scheme.[14] This clause supports the explanation that the SSC was behind the BA, or at least substantial parts of it.

IMMEDIATE INVOLVEMENT IN THE PASSAGE OF THE ACT

The South Sea directors believed, whether justifiably or not, that the "traffic [of bubbles] obstructed the rise of the South Sea stock."[15] They did not limit themselves to verbal concerns and took action regarding this legislation. On May 6, the Court of Directors instructed the company's solicitor, the Committee of Correspondence, and all the directors who were Members of Parliament at the time, to follow the bill and represent the interests of the company regarding that bill.[16] And indeed they had many channels through which they could represent their interests and exercise their wishes.

Examination of the motives of the individuals most actively involved in this legislation points to close ties between them and the SSC. The chairman of the committee on the bill, John Hungerford, was known by contemporaries to be connected to the company. The best evidence for his commitment to the company and its scheme can be found in his call, in September 1720, in the Company's Court of Proprietors, for a vote of confidence in the directors.[17] If he still supported them after the crash, when many deserted this sinking ship, he must have served the company's interests while chairing the committee. The committee ranks included, among others, James Craggs the younger, who introduced and piloted the South Sea scheme in Parliament; Charles Stanhope, who was involved with Craggs in negotiating the scheme and drafting the South Sea Bill; and Fisher Tench, former director of the company and speaker for its interests in the Commons. Several other members of the committee received stock and speculated in it, or were kinsmen of

[13] *A True State of the South Sea Scheme* (1722), p. 24.

[14] That act authorized only the conversion scheme and not new subscriptions. See Dickson, *Financial Revolution*, p. 129, for a discussion of conflicting opinions on the question of whether the increase in capital by the company was legal. An assumption that contemporaries saw the point as controversial would probably be reasonable.

[15] Anderson, *Origin of Commerce*, vol. 2, p. 289. Anderson can be taken in this case as direct firsthand evidence, because he was a South Sea clerk at the time of the bubble. See also *A True State of the South Sea Scheme* (1722), p. 42, for a similar statement. This anonymous pamphlet is attributed to John Blunt, a senior director, and thus also based on insider's knowledge.

[16] Minutes of the Court of Directors, cited by Gower, "South Sea Heresy?", p. 217.

[17] *The Proceedings of the Directors of the South Sea Company*, p. 28; and generally on Hungerford see Sedgwick, *History of Parliament*, vol. 2, pp. 161–62.

directors and others with direct interest. Richard Hampden, Treasurer of the Navy, who speculated with Navy funds in South Sea stock for personal profit, is an example of a member who, though not directly involved with the company, was willing to do whatever it took to serve its interests on the committee, as his fortune and career were at risk.[18]

Turning from the immediate circle of the committee to the political establishment as a whole, personal interest in the scheme is seen everywhere. Twelve directors, or immediate past directors, of the SSC were sitting in the Commons in 1720, and many other directors held government and city offices. But that was only the tip of the iceberg.[19] The number of M.P.s of both Houses taking part in at least one of the subscriptions of the company is amazing: 578, of total subscriptions valued at over £3,500,000. The government was also well represented in the subscriptions. Nine ministers added their names to at least one of the subscriptions valued at over £650,000. It was later discovered that at one point the company offered £574,500 of its stock in favored terms to men of influence in order to gain political support for its legislation, while making sure that these stock transfers were not recorded in its books so as not to identify the politicians involved.[20] The SSC even made inroads into the Royal Court. Some of the King's favorite German mistresses acquired South Sea stock at irresistible terms through the services of Secretary James Craggs, and King George could have been severely embarrassed had the bubble burst and the facts come to light.[21]

In addition to asking who was actually involved in the passage of the act, one can also ask who could be expected to be involved in initiating the act if it were indeed intended to check speculations and bubbles rather than to serve the interests of the SSC. The most likely candidate to introduce a bill to that purpose in 1720 was certainly not John Hungerford, who was involved in the grand speculation of the SSC, but rather Archibald Hutcheson. Hutcheson was the most prominent speaker in the House of Commons against speculation in exchange-alley bubbles, warning that they would divert the English people from productive activities and lead to the country's destruction. He was also a major opponent of the SSC scheme from its initiation, saying that it was miscalculated and speculative, and calling for alternative solutions to the burden of public debts. In addition to his parliamentary activity, starting in 1717 Hutcheson published numerous pamphlets in an effort to bring his opinions to a wider audience.[22] Yet Hutcheson had reserva-

[18] See the corresponding entry for each of the above M.P.s in Sedgwick, *History of Parliament*.

[19] The number and names are derived from the bibliographical appendix in Carswell, *South Sea Bubble*, pp. 273–85.

[20] Dickson, *Financial Revolution*, pp. 105–12, especially tables 10 and 11.

[21] See Sedgwick, *History of Parliament*, vol. 1, the entry for Craggs; and Carswell, *South Sea Bubble*, p. 115.

[22] Archibald Hutcheson was the author of at least 34 pamphlets between 1717 and 1723—14 in 1720 alone—all concerning the public debt, the South Sea Company, and the ongoing speculation

tions about the concept of the BA. He attempted to prohibit speculative stock dealings with proposed amendments, which would eliminate future transactions, require a minimum term of ownership before a stock could be resold, and mandate the logging of all stock assignments in company record books. He said:

> I am fully persuaded, that [such clauses] would have . . . suppressed all bubbles effectually . . . without the help of any penalty whatever; and it would also have prevented the turning of the stocks of companies, established by Acts of Parliament or Charters for better purpose, into real bubbles, destructive to the public.[23]

To his disappointment, though he sat on the committee that drafted the bill, he found himself isolated in his opposition to the strong SSC interest in the committee. The other committee members had no objection to the SSC's stock becoming a bubble. A last-minute attempt to add a clause "for restraining stock-jobbing" to the final amendments in the House itself, after the Committee stage, also failed.[24] Hutcheson had no real influence, and his concerns found no expression in the final version of the BA, which served different motives and aims. As a critical contemporary observer noted, "the South Sea managers were resolved to have the whole game of bubbles (so exceedingly profitable) to themselves only," and the act was "manifestly designed for its [the SSC's] service."[25]

THE BROADER PERSPECTIVE

The very extensive pamphlet literature of 1720 reveals a public agenda shaped by the South Sea scheme. The debates evolved first around the advantage of this scheme compared with other schemes for managing the national debt, then around the profitability for investors and public creditors of each stage of the unfolding scheme. After the crash, the issues focused on the personal responsibility of the directors and politicians, their proper punishment, and on who would pay for reconstruction. The small bubbles received only minor attention in the pamphlet discourse of the period, and there is no indication that they were high on anyone's agenda. To the extent that they were mentioned, it was in the form of moral condemnation or satirical literature, not suggestions for concrete legal and economic measures.[26]

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in stocks. See Sperling, *South Sea Company*, for a list of pamphlets at four major collections, with references to Hutcheson's pamphlets.

[23] Hutcheson, *Calculations and Remarks*, p. 67.

[24] *Commons' Journal*, vol. 19, p. 367, May 27, 1720.

[25] Thomas Gordon, "A Complete History," pp. 63–64.

[26] The most comprehensive list of contemporary publications can be found in Sperling *South Sea Company*. A simplified quantitative analysis of the printed publications, mainly pamphlets, that were included in this list for the years 1720 to 1721 (pp. 57–76) displays the following classification of items: the public debt in general, 28; the South Sea conversion scheme, 61; investment in South

The government and Parliament were committed to the success of the scheme as it was approved by Parliament in the South Sea Act of April 1720, just two months before the passage of the Bubble Act. This interest was considerable, as the scheme was to restructure the national debt to the state's advantage. The scheme offered to solve the problem of pressing irredeemable debt, from which the government had no other creditable way to disengage itself. It also promised payments by the company to the treasury of over £4 million, a sum that could reach as much as £7.5 million if the conversion offer turned out to be well received by the public creditors. And it would substantially reduce the interest paid by the state. The ministry and the nation as a whole had a lot at stake when the South Sea scheme unfolded, and every reason to contribute to its success. No other issue was as high on the public's list of priorities in the first half of 1720 as the national debt and the scheme to reduce it, and no measure would have been taken to endanger its solution.

The atmosphere at the time of the passage of the BA is best manifested by the King's speech at the close of the session, on June 11, just after giving Royal assent to the Bubble Act:

> The good foundation you have prepared this session for the payment of the national debt, and the discharge of a great part of them, without the least violation of the public faith, will, I hope, strengthen more and more the union I desire to see among all my subjects; and make our friendship yet more valuable to all foreign powers.[27]

To substantiate his satisfaction, on that same day King George made baronets of two South Sea directors—John Blunt, the financial mastermind behind the scheme, and William Chapman. He then left to spend the summer in Hanover and did not return, or summon Parliament, before the crash.

WHY WAS THE BUBBLE ACT PASSED AFTER ALL?

The first explanation for the passage of the BA, in its cruder manifestation, places the BA after the crash and as a reaction to it. This explanation, which may have originated from the inconsistent use of the old and new English calendars, has a long tradition.[28] It can be found as

Sea stock, 27; personal responsibility of individual South Sea directors and officers, 64; postcrash financial reconstruction schemes, 32; events in France and Holland, 14; poems and satires on bubbles and speculations, 14; stock-jobbing and Exchange Alley, 11; and small bubbles specifically, 5. The value of this quantitative analysis is obviously limited, because classification of such items is tentative, there is no evidence of the circulation of different pamphlets, and some of the items appear several times in only minor variations. For additional, more limited lists, see also *Goldsmiths'-Kress Library of Economic Literature: A Consolidated Guide*, and Adams and Averley, eds., *A Bibliography of Eighteenth Century Legal Literature*.

[27] *Lords' Journal*, vol. 20, p. 359.

[28] By an act of 1751 England adopted the Gregorian Calendar, which was 11 days ahead of the

early as the 1760s in the famed legal writings of William Blackstone, in the turn-of-the-twentieth-century work of F. W. Maitland, and even in some of the modern textbooks.[29] Yet this explanation is chronologically baseless.

In its more advanced version, this explanation perceives the BA as a preemptive attempt to contain the speculation in the stock market and to prevent future disaster. The roots of this explanation are found not in contemporary sources but in the early nineteenth century when this explanation first appeared. At that point, the BA resurfaced on the public agenda because of a new speculative mania, and judges and pamphleteers used the crash of 1720 and the BA as a warning to their own generation not to engage in joint-stock speculation.[30] In the early twentieth century, the authoritative work of Scott gave new force to this explanation, and subsequent generations of scholars accepted his argument without close examination. This interpretation fueled the misconception that the title "Bubble Act" reflected contemporary intentions.

There were indeed some contemporaries who were deeply concerned with the unprecedented wave of new projects, subscriptions, and speculations in shares. There were those who were alarmed by the developments in France, where John Law's Mississippi scheme seemed to be getting out of control—though it had not yet burst—in the spring of 1720. There were others, including Hutcheson and to some degree Sir Robert Walpole, who believed the South Sea scheme was a mistaken and miscalculated approach to the national debt burden. But they were a small minority compared with the huge number of investors who, at least until the summer of 1720, crowded Exchange Alley from dawn to dusk and made fortunes by investing in anything from the smallest bubble to shares of the monied companies. In the days that preceded the BA's passage, the public notion was not of alarm in the face of a coming calamity, but rather of general optimism that was best reflected in the King's speech, the bullish market, and the success of the debt conversion scheme. This explanation places the marginal phenomenon of small bubbles in the center and fails to connect it to the wider context, especially to the dominant position of the SSC and the extreme importance attributed to a solution of the national debt crisis.

Julian Calendar. Until 1751 the year had begun on March 25th; this was changed by the same act to January 1st. The SSC won the bid for the conversion scheme and started blowing the bubble in February 1719, whereas the BA was passed in June 1720. In the contemporary calendar these were only four months apart, but some later writers mistakenly placed the BA in the year that followed the bubble.

[29] See Blackstone, *Commentaries*, vol. 4, p. 117; Maitland, "Trust and Corporation," p. 208; Plumb, *England in the Eighteenth Century*, p. 26; Pawson, *Early Industrial Revolution*, p. 89, for examples of this confusion, as it was repeated by different generations.

[30] See *An Account of the South Sea Scheme* (1806); *The South Sea Bubble* (1825); *Rex v. Dodd*, 9 East 515 (1808); and for discussion of later cases and of the debates in Parliament before the repeal of the BA in 1825: Hunt, *Development of Business Corporation*, pp. 14–55.

The second explanation—that the act was intended to raise revenue—departs from modern theoretical frameworks and does not stem from thorough research of historical sources. There is no direct contemporary evidence to support it. This explanation does not specify clearly the identity of those who were to benefit from the passage of the BA. Potentially these might have been either the English state (through Parliament or the Crown), by increasing its budgetary income, or the M.P.s personally, by putting additional revenues into their own pockets. In any event, this explanation relies on the premise that there were potential gains to be made by forcing unincorporated companies to apply for incorporation by way of an act or a charter. Both the social-benefit and private-benefit interpretations will now be examined.

Could an increase in the volume of incorporation petitions increase in any substantial manner the revenue of the state? In the Elizabethan and early Stuart reigns, companies were essential contributors to public finance through a variety of channels. The most important of these was the monopoly system in which the joint-stock companies played a central role. The Crown granted incorporation in a charter together with monopolistic privileges in return for payments of various kinds. However, the Civil War, the Interregnum, and the Restoration diminished the monopoly system and, at the same time, new sources of revenues developed. Thus, by 1720 expenses on a new scale, a new tax base relying more on the excise, and a growing national debt made all joint-stock companies, with the exception of the three monied companies—East India, Bank of England, and South Sea, almost irrelevant from the perspective of public finance.[31] Small undertakings could not have paid for the privilege of incorporation in amounts remotely significant to the unprecedented needs of the Hanoverian state and could not match the huge sums that the monied companies offered the state. Thus, to say that the act was intended to increase public revenue by blocking entry for those lacking charters, does not fit the contemporary context of public finance in which the major revenues and loans came from totally different sources.

Could a boost in the volume of incorporation petitions increase in any substantial manner the private earnings of individual M.P.s? The nature of the legislative process in this period led to a variety of payments and costs in each stage that a bill had to pass. These included payments to the speaker, clerks of Parliament, counsel, solicitor-agents, printers,

[31] For the importance of business companies in Elizabethan and early Stuart public finance see especially Deitz, *English Public Finance*; Scott, *Joint-Stock Companies*; Ashton, *City and Court*; Ashton, *Crown and Money Market*. For the changes in the structure of revenues and debts after the Civil War, the Restoration, and the Glorious Revolution, the decline in the importance of the joint-stock companies in general to public finance, and the rise of the monied companies see Chandaman, *English Public Revenue*; Dickson, *Financial Revolution*; Mathias and O'Brien, "Taxation in England"; O'Brien, "Political Economy"; Brewer, *Sinews of Power*.

witnesses, and others. The total expenditure of a typical incorporation bill could have been £120, and there is no evidence that Members of Parliament were high on the list of those who shared these amounts among them.[32] In any case, neither before the passage of the BA nor afterward were bills of incorporation a significant business with potential for high private gains. Furthermore, the number of bills of incorporation around 1720 was negligible compared with bills of enclosure, turnpike trusts, naturalization, and estates. The real potential for private gains of M.P.s could be found in these bills and not in bills of incorporation.

Turning from the absence of potential increase in revenues to be derived from incorporation around 1720, to the actual effects of the BA, the same conclusion holds. The act did not cause entrepreneurs to stand in line with applications for charters or acts of incorporation, and the number of incorporation bills remained as low after the enactment as it had been in previous years. Furthermore, the BA was followed by a policy of limiting the number of grants of incorporation, both by an explicit decision of the Lords Justices to suspend chartering and by a reluctance of Parliament to pass further acts. To achieve the aim of increasing incorporation revenues they would have had to create an atmosphere to attract petitioners by simplifying procedures, by representing positive attitudes toward petitions, and by encouraging a wider stock market and investment in shares. Yet none of these occurred, and the number of petitions to Parliament did not rise substantially following the act's passage. The BA could not and did not increase in any significant way the income of the state or the private gains of M.P.s, as much as they are obtained from acts of incorporation. Thus, its passage cannot be explained as an attempt to increase these gains.[33]

The Patterson-Reiffen version of this second explanation argues that "Parliament lost wealth that it might otherwise have captured because parties that could have successfully petitioned for corporate status chose instead to obtain used charters."[34] The rise of the charter resale market and the attempt to restrict this market are seen by Patterson and Reiffen as a major motive for the passage of the BA. However, the ancient writ of *scire facias* could be used to annul any charter that was abused, and no additional legislation was needed for that purpose. Indeed, when actions were taken shortly after the passage of the BA against charter abuses, they were based on the ancient writ and not on

[32] Brewer, *Sinews of Power*, p. 237. The South Sea Company, Bank of England, East India Company, and a few other large-scale enterprises paid much higher sums, but these were paid as part of a package that included monopolistic privileges and interest-bearing loans to the English state.

[33] For the business of Parliament, procedures and quantities of private bills, and costs and earnings in legislation see Lambert, *Bills and Acts*; Williams, *Clerical Organization*; Williams, *Private Bill Procedure*; Thomas, *House of Commons*; Brewer, *Sinews of Power*.

[34] Patterson and Reiffen, "Effect of the Bubble Act," p. 168.

the new act. Furthermore, only a very limited number of companies—probably no more than six—allegedly used charters for purposes other than those prescribed in their original grant. One of these companies, the Sword Blade Company, acted as a banker to the SSC in 1720. There was no intention to direct or enforce the BA on it, an action that could wreck the entire South Sea scheme. Another was the Royal Exchange Assurance that won the King's favor after taking on itself payment of his debts, and that was legally incorporated by the first part of the BA. The role of the four other companies—York Buildings, Lustering, English Copper, and Welsh Copper—in the active market of 1720 was negligible. Furthermore, when *scire facias* proceedings for abusing charters were taken against the four later in the year, no basis was found to forfeit any of their charters, and the proceedings were abandoned.[35] Thus, none of these six cases of charter abuse could serve as an incentive for passing a major piece of prohibitive legislation such as the BA.

The second explanation is also not supported by any direct historical evidence. It does not acknowledge the dominance of the conversion scheme and of the SSC over the affairs of the bubble year. It does not offer a plausible account of the way in which revenues could be increased substantially by enacting the BA, other than those revenues that were linked directly to the debt conversion scheme or to the South Sea stock. This explanation does not fit into the great complexity of the bubble year and the wider perspective of that period.[36]

In truth, the BA did not divert substantial capital into investment in South Sea stock, contrary to its intended aim according to the third explanation. It did not attempt to bar investment in East India or Bank of England stock, the two major alternatives to South Sea stock. It did not prevent the speculation in bubbles of legally incorporated companies, including the two newly established insurance companies. The act could not prevent the movement of capital to foreign markets, most notably to Amsterdam. The impact of the act was only on a limited section of the market, and even there speculative investments did not cease following its passage.

From the point of view of the South Sea directors, the BA was only one attempt out of many to further blow their bubble. It was not a very well-calculated measure, but many of the directors' actions were not well calculated, as they found themselves dealing with a highly complex

[35] DuBois, *English Business Company*, pp. 6–10.

[36] The theoretical framework upon which this explanation was based, the analysis of rent-seeking and interest groups, could serve the third explanation here adopted as well or even better. After all, the identification of the rent seekers and of their methods is not determined by the theory but must be left to the detailed historical research. See Baumol, "Entrepreneurship," pp. 893–921; Krueger, "Political Economy," pp. 291–303.

scheme on an unprecedented scale. The scheme unfolded rapidly and soon grew out of control. Thus, the fact that the act did not serve the interests of the South Sea company should not be seen in retrospect as an indication that the company was not the prime force behind its passage. It was.

Thus the wording of the act and the contemporary context of interests and discourses favor the third explanation: that the BA was a special-interest legislation for the SSC, which controlled its framing and its passage.

THE BUBBLE ACT—A TURNING POINT?

There are several weaknesses in the commonly held interpretation that the bubble year was a decisive turning point in the history of the joint-stock company, from a period of progress toward an era of eclipse.

The substance of the BA raised a series of doubts and questions among contemporary jurists and lawyers that diminished its effects. Unincorporated undertakings were not recognized as corporations in common law. Thus, they could not enjoy the capacities and privileges that corporations embodied as legal entities, including perpetual succession, to sue and be sued in the corporate name, and the ability to purchase land.[37] It was not the act that deprived the bubbles of these privileges, but rather common law. It was even argued that acting as a corporate body without incorporation by charter or act was indeed deemed illegal by common law prior to the act. As mentioned above, abuse of charters was prosecutable by the ancient common law writ of *scire facias*. To a considerable extent the BA only added new procedure and punishment to what had been sanctioned long before its passage. The wording of the act was very broad and general. This led to interpretational uncertainties: Which stock is considered transferable? What about private subscription of shares? How would previously issued stock be divided? How would existing companies issue additional stock?[38]

The legal ambiguity of the BA, together with a weak enforcement mechanism, a harsh criminal sanction that it embodied, and a widespread disregard of it by businessmen, made it practically a dead letter. There is only one reported case of criminal prosecution based on the act in the eighteenth century, that of *Rex v. Caywood* in 1722, in which a project was floated to promote the trade to the North Seas, a project

[37] See Blackstone, *Commentaries*, vol. 1, pp. 475–80. See also Coke, *Institutes of the Laws*, vol. 2, p. 250. The question of whether limited liability was, by 1720, an integral part of the privileges of incorporation is controversial; however, this controversy is not material to the present argument.

[38] See DuBois, *English Business Company*, pp. 3–5 for a discussion of some of these points.

whose similarity in name to the infamous South Sea bubble was enough to ensure its failure.[39] The act was revived in the early nineteenth century, more than 80 years after its enactment, by a new generation of law officers and judges, in a different setting of ideas and interests, and in the dynamic economic and legal context of the early industrial era.

The actual effects of the passage of the BA on the stock market were very limited. The speculation frenzy ended, not because of the BA, but because of the crash that was brought about by a combination of complex economic factors: an overextended money market, tight credit, and external drains of capital to the Low Countries, to mention a few, together with the nervous behavior of inexperienced investors.[40] The BA did not prevent crashes and financial scandals in the longer term either. It neither altered the mechanism of the market nor the practices of stock jobbers and stock brokers. A series of repeated attempts by Parliament to limit the growth of the stock market, to regulate it, and to check speculation took place between the 1690s and the 1770s.[41] Acts of 1697 (8 and 9 Wm. III, c. 32), 1708 (6 Anne, c. 68), 1734 (7 Geo. II, c. 8), and 1737 (10 Geo. II, c. 8) are the most significant of these attempts. The BA cannot be seen as part of this trend because it did not intervene in the market itself, as Hutcheson thought it should. It aimed at some of the companies whose shares were traded in that market, but not others. Thus, the BA should not be seen as a major attempt to regulate the stock market.

The BA was only one measure out of many that shaped the structure of business organization and the market for joint-stock shares. The decision of the Lords Justices, acting as Regents, to dismiss further petitions, limit the granting of charters in the following years, and prosecute abusing charters by *scire facias*, was legally unrelated to the BA and was a matter of policy rather than of new law or new interpretation of the law.[42] This new policy was introduced in midsummer 1720 in a different context, by different individuals, and with different motives from those behind the BA. The structure of business organization in the financial sectors was considerably shaped by two other causes: the corporate duopoly in marine insurance granted to the Royal Exchange and London Assurance in 1720, and the corporate monopoly on issuing short-term notes, granted to the Bank of England in 1708, that excluded from this major aspect of banking not only joint-stock companies, but also partnerships of more than six persons.[43]

[39] 1 Stranger, 472 (1722).

[40] For a full analysis of the reasons for the burst of the bubble, an analysis not attempted in this article, see Neal, *Financial Capitalism*, pp. 106–12.

[41] Dickson, *Financial Revolution*, pp. 516–20.

[42] Gower, "South Sea Heresy?", pp. 218–20.

[43] 6 Anne, c. 22 (1708).

It was not the act alone but rather a combination of measures serving different interests and purposes that shaped the map of business organization.

Modern historical research has shown that 1720 was not as disastrous a year in English history as Scott and his disciples wanted us to believe. As shown recently by Julian Hoppit, the number of bankruptcies did not jump following the bubble, and "For the business community as a whole, through the length and breadth of England, the Bubble was not a catastrophe."[44] In J. H. Plumb's political perspective, the events of 1720 began an age of political stability at home and peace abroad.[45] According to Peter Dickson and John Brewer, who examined the public finance perspective, the South Sea scheme was, after all, executed successfully, solving the pressing problems of the national debt by lowering interest payments, putting the debt on a funded basis, and attracting new public creditors. The trauma sent English public finance into a new era—more efficient, more financially sound, and less corrupted by private interests.[46] Taking an international capital market perspective, Larry Neal and Eric Schubert came to the conclusion that the South Sea Bubble advanced the links between various financial markets in Western Europe, especially London and Amsterdam. It thus facilitated, in the long run, the emergence of an integrated and efficient international financial market.[47] Thus, from other political and economic perspectives, even the bubble itself may not have retarded economic development.

In conclusion, the BA was intended by its formulators to serve the interests of the SSC, as has been shown in detail above. It was therefore intended to have an immediate short-term impact on the events of the coming weeks rather than to introduce a long-term change of course. The legal effects of the BA were not as radical as had been assumed. Insofar as there was a change in the legal framework of business organization, it accrued from a variety of measures, most of them unrelated to the act. The BA was not as well-defined a turning point as

[44] Hoppit, "Financial Crises," pp. 39, 47–48. The long-run count of bankruptcies faces some data and method problems; yet in the short run one could expect a sharp rise in the number of bankruptcies throughout England had the bubble been a catastrophe. For an evaluation of the economic effects of the crash that suggests a more mixed picture and even a depression, see Mirowski, *Birth of the Business Cycle*, pp. 231–35. His evaluation is based primarily on profit rates and share prices, rather than on bankruptcy records.

[45] Plumb, *Growth of Political Stability*, especially pp. 176–77, and *Walpole*, vol. 1, chap. 8.

[46] Dickson, *Financial Revolution*, pp. 134, 197–98; and Brewer, *Sinews of Power*, pp. 125–26.

[47] Neal, *Financial Capitalism*, chaps. 4 and 5, particularly pp. 79–80; Schubert, "Innovations," pp. 299–306. It is appropriate to mention in this context that, according to Mirowski, the English domestic share market peaked in prices, complexity, and efficiency in 1720. That year was a turning point, and from then on for the remainder of the century the market devolved and retreated. However, Mirowski does not relate the turning point to the bubble or the passage of the BA. Mirowski, "Rise (and Retreat)," pp. 559–77.

many have argued, and its impact on the developments up to the close of the eighteenth century was minimal.[48]

[48] For a fuller discussion of the impact of the BA in the 105 years in which it was in force before its repeal in 1825, as well as of the long-term development of the English joint-stock company, see Harris, "Industrialization."

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