

Apathetic and outmanoeuvred by insiders. How true was this of stock and shareholders in mid-nineteenth century British and American public companies?

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## **Abstract**

This thesis investigates the nature of and factors affecting shareholder activism in 19th century railway companies. It supports the proposition in the literature that the course to management ascendancy was not linear.

It finds good contemporary understanding of agency risk and preparedness to incur agency costs to control it. However, there is also evidence in support of stewardship and stakeholder theories.

Data has been collected from extensive archival sources - state, parliamentary and company records, press material and personal correspondence - related to nine companies in Britain and New England.

Mid 19th century railway shareholders have been seen as a distributed, passive group struggling to hold management to account. However, the case studies evidence shareholder activism and challenge to insiders. Informed by an active railway discourse and assisted by statutory requirements, shareholders, usually prompted by declining financial performance, organised and appointed Committees of investigation (Cofl's). The nature of the shareholder body, alignment of shareholder incentives, activist board members, strategic pressures and campaigners all affected the level of shareholder activism.

Outcomes of activism included preventing the sale of the company and the removal of senior directors. Strategy and business policy remained with management, but shareholder activism set expectations about how companies should be run; bore down on conflicts of interest; promoted transparency in reporting and constraining managers by the threat of removal. It also educated shareholders through greatly enriching the railway discourse.

Indications are that the use of Cofl's in railway companies fell away after the period under review.

Bringing extensive archival data to bear, the thesis's chief contribution is to reveal and explain a distinct phase in the history of shareholder activism and corporate governance more generally.

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## **Author's Declaration**

I declare that this thesis is a presentation of original work and I am the sole author. This work has not previously been presented for an award at this, or any other, university. All sources are acknowledged as references.

Roger Coates

22 February 2022

## **Apathetic and outmanoeuvred by insiders. How true was this of stock and shareholders in mid-nineteenth century British and American public companies?**

### **Introduction**

The development of the public company in the nineteenth century is often described in terms of insiders - being directors and managers - gaining both financially and politically at the expense of shareholders. However, activism by the latter disrupted this process, secured change within companies and established standards for good corporate behaviour.

This research is based on case studies of mid-nineteenth century railway/railroad companies in Britain and America influenced by shareholder activism, usually associated with the establishment of shareholder appointed Committees of Investigation.

I will be seeking to answer the following research questions:

1. What elements facilitated, prompted or impeded mid-nineteenth shareholder activism?
2. How effective were the processes of mid-nineteenth century shareholder activism in identifying and analysing problems and what outcomes were they able to secure?
3. How do the findings comment on the longer run history of corporate governance; how do they support or refine present day theory and practice of corporate governance and what assistance are the latter in explaining the nature of mid-nineteenth century shareholder activism?

The thesis comprises chapters covering a literature review, methodology, legal and other elements affecting corporate governance, the case study railway/railroad companies and conclusions.

This thesis adopts the UK Corporate Governance Code definition of corporate governance as “the system by which companies are directed and controlled.”<sup>1</sup> Nineteenth century actors would have understood this definition so we use the term

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<sup>1</sup> The Financial Reporting Council, *The UK Corporate Governance Code*, July 2018, 1. Hereafter UK Code.

corporate governance as shorthand even though it appears to have originated as recently as the 1970s.

We use the terms “railroads” and “stockholders” in the New England case studies and “railways” and “shareholders” in the British. We use the latter terms in the non-case study chapters.



## Chapter 1: Literature Review

### Introduction

Little has been written on the clashes between shareholders and insiders in early British and New England railways beyond the career of railway magnate, George Hudson; or on the Committee of Investigation as a general topic. However, the literature on related subjects helps to shape the research.

Following a brief history of early British and New England railways to orient the reader, we consider the literature which offers an analysis of corporate governance in nineteenth century Britain and America. Given the important relationship between its subject and corporate governance, the literature on the pioneering role played by mid-nineteenth century railways in the development of management of large businesses is considered next.

An important element in corporate governance is the control of insider expropriation; and the literature on mid-nineteenth century British railway magnate George Hudson offers guidance on the emergence and control of irregular business behaviour.

The law is central to setting up and maintaining corporate governance so we next review the literature on the history of corporate law as it relates to the establishment and enforcement of the rights and duties of shareholders and directors.

We then review the literature on the long run developments in corporate governance such as the separation of ownership and control and the relationship between the company and society. It offers explanations which may help to illuminate the case studies and vice versa.

Finally we consider the modern theory and practice of corporate governance. This research aims to consider the resonances between them and the case studies to see if the latter offer any comment on the former and if the former can help to explain the latter.

## The history of early British and New England railways 1830-1865.

Both British and New England railways started and showed rapid growth in the second quarter of the nineteenth century partly based on civil engineering technology developed for earlier canal and road building and on steam technology which became feasible in the form of the Stephenson locomotive. Population and economic growth since the middle of the eighteenth century meant there was a ready demand for railway services. Large amounts of capital were needed for the high fixed capital element of railways but both Britain and New England had the resources to supply such funds and an established legislative process (already used for canals, roads and utilities) used to secure limited liability for investors and to require compulsory purchase of the land required for what, if approved, were considered projects to benefit the public.

Both saw rapid growth in the railway systems in the period to 1870 punctuated by periods of boom and bust. A promotion and construction boom from 1845 in Britain was known as the Railway Mania. Mileage increased from 2000 miles in 1844 to 7000 in 1852.<sup>2</sup> The Mania had considerable impact through, first, delivering a network which would contribute to Britain's economic growth;<sup>3</sup> and, second, through the development of the capital market.<sup>4</sup>

Virtually all British and New England railways were established by their own statute which set down the route, and capital to be raised and the key elements of corporate governance, the latter being more extensively covered in the British statutes.

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<sup>2</sup>H. .G. Lewin, *The Railway Mania and its Aftermath* (London: The Railway Gazette, 1936), 114 and map opposite 494

<sup>3</sup> B.R. Mitchell, "The Coming of the Railway and Economic Growth" in *Railways in the Victorian Economy*, ed M.C. Reed (Newton Abbot: David & Charles, 1969), 13-32. G.R. Hawke, *Railways and Economic Growth in England & Wales 1830-1870* (Oxford: Clarendon Press, 1970), passim. T.R. Gourvish, *Railways & the Economy* (London: Macmillan, 1980), 34-9. Timothy Leunig, "Time is Money: a Reassessment of the Passenger Social Savings from Victorian British Railways," *Journal of Economic History*, 66/3 (Sep 2006), 642-54.

<sup>4</sup> J.R. Killick & W.A. Thomas, "The Provincial Stock Exchanges, 1830-70," in *Economic History Review*, 23/1 (Apr 70), 96-111. M.C. Reed, "Railways and the Growth of the Capital Market," in *Railways in the Victorian Economy*, ed M.C. Reed (Newton Abbot: David & Charles, 1969), 162-83.

British railways and the case study New England railways were built without central planning or material amounts of state money; further, the scale of the projects meant that, with very few minor exceptions, railways had to raise their capital from the public. They had the chief characteristics of public companies as we understand them today.

Whilst each railway had a statute, there was initially little government enforcement of the terms of the approval given beyond inspection of the railway in Britain before opening to traffic. There were no accounting standards, hardly any professional auditors and a tendency for promoters to under-estimate construction costs and over-estimate earnings.<sup>5</sup> Further, a desire to pay dividends as soon as possible to satisfy investors and the time involved in building up traffic and revenue, led to financial pressures which in turn increased when railways sought to expand their networks in the face of prospective rival schemes. Irregularities of varying degrees soon emerged, the worst of which involved some of the railways run in Britain by George Hudson. Improper taking of funds, self-dealing and false reporting of profits were reported by the Committees of Investigation set up in 1849 to look into the affairs of the four railways involved.<sup>6</sup>

In Britain a period of steady network growth in the 1850s was succeeded by a further construction surge in the 1860s. Some was imprudently financed and some railways suffered severe financial problems in the years after 1866. The New England railroad network showed steady growth through the 1850s but financial performance was a cause for concern.

The rapidly gained importance of railways within the British and New England economies, the involvement of the public as investors, the separation of ownership and control ab initio, the existence of some state regulation but not a level to justify shareholder quiescence all support an interest in establishing what elements supported or otherwise shareholder interests and what actions they took when their interests appeared threatened by the action of insiders. The use of Committees of Investigation by shareholders is referenced in the literature and researching its use as a tool in the hands

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<sup>5</sup> J. F. Wilson, *British Business History 1720-1994* (Manchester: Manchester University Press 1995), 38.

<sup>6</sup> S. McCartney & A. J. Arnold, "A vast aggregate of avaricious and flagitious jobbing?' George Hudson and the evolution of early notions of directorial responsibility," *Accounting, Business & Finance History* 11/2 (July 2001), 117-43.

of shareholders may well assist in an understanding of the development of corporate governance in early public companies.

The development and key components of corporate governance in the nineteenth century and factors supportive of shareholder interests

*British and Irish companies*

A study on corporate governance by historians Mark Freeman, Robin Pearson and James Taylor is based upon a database of the constitutions of 514 British and Irish companies, including 60 railway companies, founded between 1720 and 1844. They identify two generic types of constitution. In the first, the general meeting is the source of all power within the company and it devolves power to directors, managers and employees; the second is based upon checks and balances where the general meeting oversees directors who have broad authority to manage the business and have authority over employees. The database shows a trend where the first type declines over the period and the second increases; the authors note that in the early nineteenth century some new corporations, especially railways, began to adopt the second type thereby divesting shareholders of large amounts of authority over their companies<sup>7</sup>. They see the trend as the intermediation of the space between the shareholder and the company with direct participation being replaced by various internal mechanisms such as proxies, auditors, and summary accounts and external mechanisms such as the press.<sup>8</sup>

Whilst detecting a general shift away from shareholder power and the retreat of companies into a private sphere<sup>9</sup> they also recognise that the railway shareholders' interests were partly protected by the involvement of local promoters qua shareholders who had a reputation to defend; and parliamentary requirements on the shareholder approval of proposed parliamentary bills and payment of capital and borrowing limits.<sup>10</sup> Further, they recognise that corporate scandals such as the West Middlesex Independent

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<sup>7</sup>M Freeman, R Pearson & J Taylor, *Shareholder Democracies? Corporate Governance in Britain and Ireland before 1850* (Chicago: University of Chicago Press 2012), 11-12.

<sup>8</sup> Ibid., 161-2, 222-4, 226-38.

<sup>9</sup> Ibid., 252.

<sup>10</sup> Ibid., 63-4

Insurance Company and the George Hudson railways caused shareholders to agitate with some effect.<sup>11</sup>

Other scholars have also considered some of the issues set out above which, apart from its constitution, support shareholder interests. A firm's record of dividends, if fairly calculated, was an important proxy for trust and helped build investor confidence.<sup>12</sup> The role of such intermediaries including the press in assisting investors to make more informed decisions has been recognised;<sup>13</sup> also the development of fixed dividend preference shares as an incentive to investors when ordinary shares would have been less marketable.<sup>14</sup> Law scholar Brian Cheffins, writing in outline about railways, notes these factors and a degree of shareholder intervention despite a timeless tendency to freeload or avoid the cost of intervention and contemporary complaints about passivity. He also notes that the dispersion of shares meant that dominant managers like Hudson and Huish were unable through any shareholding to block their removal when either the shareholders or fellow directors wanted rid of them.<sup>15</sup>

### *American corporations*

Analysis by historians Robert E Wright and Richard Sylla of the development of the American corporation in the period 1790-1860 describes a much more rapid adoption of the corporate form than in Britain. By 1860 some 22,000 corporations had been established mainly in transport infrastructure but also in finance, manufacture and mining.<sup>16</sup> Special acts were required for the greater part of the period but by 1860

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<sup>11</sup> Ibid., 247-8.

<sup>12</sup> Gareth Campbell & John D. Turner, "Substitutes for Legal Protection - Corporate Governance and Dividends in Victorian Britain," *Economic History Review* 64/2 (2011), 571-2.

<sup>13</sup> James Taylor, "Privacy, Publicity & Reputation: how the Press regulated the market in Nineteenth Century England," *Business History Review* 87 (Winter 2013), 679.

<sup>14</sup> George H. Evans, *British Corporation Finance 1775-1850. A Study of Preference Shares* (Baltimore: The John Hopkins Press, 1936), 5-6.

<sup>15</sup> Brian R Cheffins, *Corporate Ownership and Control* (Oxford: Oxford University Press 2008), 157-64. This work principally concerns the shift from owner management to the separation of ownership and control.

<sup>16</sup> Robert E. Wright & Richard Sylla "Corporate governance and stockholder/stakeholder activism in the United States, 1790-1860; new data and perspectives". in *Origins of Shareholder Advocacy* ed Jonathan G S Koppell (New York: Palgrave Macmillan 2011), 232.

general incorporation acts and limited liability were in place<sup>17</sup>. Stockholders were the residual decision makers in the period whereas after the Civil War through to the end of the twentieth century their influence declined<sup>18</sup>.

Elements underpinning stockholder influence in ante-bellum America were structural balances between themselves, directors and officers<sup>19</sup>; and stockholders checks on management through the election of directors. These voting rights were strongest when bolstered by rights to call meetings and set up Committees of Investigation, staged call up of capital and the supply of regular information<sup>20</sup>.

The case studies will be assessed with reference to first the trends in corporate constitutions and interactions between shareholders and directors observed by Freeman, Pearson & Taylor and Wright & Sylla; and second, the other elements supportive of shareholder interests observed by them and other scholars.

#### Increasing complexity and professionalism of railway management; and competitive pressures

The study of the large business corporation involves railways as they were among the first such entities. Alfred Chandler sets out how early large US railroads made pioneering steps in the 1850s by establishing a hierarchical structure with geographical division, staff and line functions and management information.<sup>21</sup> Historian Terry Gourvish credits Mark Huish, General Manager of the London & North Western Rly (LNWR) with developing management structures and information in Britain's largest railway in the 1850s as well as increasing the status of the salaried CEO.<sup>22</sup> The differences in roles held by Huish at the start and end of his railway career - that is between someone with no previous

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<sup>17</sup> Robert E Wright, *Corporation Nation* (Philadelphia: University of Pennsylvania Press 2014), 11-14 & 16. Hereafter Wright *Corporation Nation*

<sup>18</sup> *Ibid.*, 119 and Chapter 9.

<sup>19</sup> *Ibid.*, 121-32.

<sup>20</sup> *Ibid.*, 132-136.

<sup>21</sup> Chandler, *The Visible Hand*, 81-121.

<sup>22</sup> T. R. Gourvish, *Mark Huish & the London & North Western Railway* (Leicester: Leicester University Press, 1972), 256-67.

experience, low pay, limited status, vague responsibilities and highly skilled, high status, well paid specialist reflect the development of professional management in British railways between 1835 and 1860.<sup>23</sup> However, he often fought with the LNWR board and resigned in 1858 when his relationship with them had clearly broken down.<sup>24</sup>

Chandler observed that in the 1850s and 1860s the stockholders had a say in the raising and allocation of capital, financial policies and the selection of top managers only; and that, in time, management had almost as much influence as the owners in setting financial policies and the allocation of resources.<sup>25</sup>

Scholars Gareth Campbell and John Turner have challenged the proposition that Chandler-like criticism of British railway management can be applied to the rationality of expansion plans of existing railways at the time of the Railway Mania in the 1840s. They argue that expansion and merger in a period of rapid adoption of new technology may have been preferable to not expanding whilst competitors did.<sup>26</sup>

This research will examine the case studies for evidence that the developing complexity of railway management and competitive pressures may have affected shareholders' influence within companies.

#### Bad behaviour in mid-nineteenth century railway companies: George Hudson.

The boom and bust conditions of the Railway Mania in the 1840s has been characterised as a phase where irregular practices within companies began to be viewed as potentially criminal<sup>27</sup>. The career of railway magnate George Hudson was an important focal point for concerns about bad business behaviour.

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<sup>23</sup> Ibid., 257-8.

<sup>24</sup> Ibid., 172-8.

<sup>25</sup> Ibid., 87.

<sup>26</sup> Gareth Campbell & John D. Turner, "Managerial failure in mid-Victorian Britain? Corporate expansion during a promotion boom," *Business History* 57/8 (2015), 1248-50.

<sup>27</sup> Sarah Wilson, "Law, morality and regulation. Victorian experiences of financial crime" in *British Journal of Criminology* 46 (2006), 1077-78.

Hudson led four major railway companies and controlled about a third of railway mileage in Britain. The Mania added stimulus for Hudson to inflate dividends to maintain corporate power in a period of rapid network expansion and amalgamation; its aftermath probably helped uncover them. He fell from grace in 1849 having been exposed for taking of funds, self-dealing and falsification of accounts in order to pay dividends which could not be afforded<sup>28</sup>. Hudson was an MP and did not face criminal charges or exclusion from the House.. However, he was pursued through the Chancery courts for 20 years for restitution of funds by one of the railways he managed, had to decamp to France from time to time, had two spells in debtors' prison and generally lived out his life in reduced circumstances and esteem.<sup>29</sup> Yet historians have pointed out that the shareholders of his companies still had an asset in the various railways in substantial contrast to those with claims on failed financial institutions.<sup>30</sup>

Hudson's companies all appointed Committees of Investigation in 1849; these promptly laid bare in twelve reports his misdemeanours which seemed proportionate to the extent of his control of the companies and funds available to abstract. Historians Tony Arnold and Sean McCartney observed this and concluded that if Hudson was only able to perpetrate misappropriation and accounting cover up where his power was absolute, they find it difficult to accept the argument that his behaviour was necessarily representative of directorial practice more generally without more systematic examination of the evidence than has occurred to-date.<sup>31</sup>

This research will examine the corporate governance of the case studies to see if the problems arising in Hudson's companies were facilitated or hindered. The case studies may also reveal what lessons had been learned from his irregular behaviour; and how representative it was of business practice.

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<sup>28</sup>Sean McCartney & A. J. Arnold, "George Hudson's Financial Reporting Practices: Putting the Eastern Counties Railway into Context," *Accounting, Business & Financial History*, 10, no. 3 (Nov. 2000), 293-316 passim. Sean McCartney & A. J. Arnold, "A Vast Aggregate of Avaricious and Flagitious Jobbing? George Hudson and the Evolution of Early Notions of Directorial Responsibility," *Accounting, Business & Financial History*, 11, no.2 (Jul.2001), 117-143 passim

<sup>29</sup> Taylor, *Boardroom Scandal*, 89.

<sup>30</sup> Taylor, *Boardroom Scandal*, 121-2.

<sup>31</sup> McCartney & Arnold, "A Vast Aggregate," 143.



## The legal background

Whilst the railways' individual statutes set down much of the corporate governance framework, there were other aspects of the law which had a potential effect on shareholder activism. The following review is based around the content and enforcement of directors duties; and liability in the case of accidents.

### *Directors' duties*

Legal scholars have traced the development of company directors' duties in respect of liability to legal sanction. Case law has developed over 150 years often drawing on older concepts from the law of trusts. The duties have now been restated in the Companies Act 2006 ss171-76. It has been the practice to see the duties in two categories- first the common law duty of care and skill and second the fiduciary duties and the 2006 restatement follows this division<sup>32</sup>. Directors' duties have been seen as being owed to the company and this is restated in s170 of the above Act but with the rider in s172 that directors should have regard to the long term impact of decisions, the interests of employees, suppliers and customer and the impact upon on the community and the environment in assessing how best to promote the success of the company<sup>33</sup>.

### *Fiduciary duties - conflicts of interest.*

A core fiduciary duty relates to directors avoiding a conflict between their interests and those of the company. The duty to avoid a conflict came to the fore in the eighteenth century with the emergence of the family trust. The practical problem was that the beneficiary under a trust was at an almost impossible disadvantage when trying to prove a breach of duty short of outright theft and same problem arises in companies as directors can often make facts appear as they want them to appear. For centuries the courts' solution has been that the trustee or director cannot benefit from the conflict or only after protective procedures have been complied with. The courts apply a presumption that fiduciary duty is broken if a conflict looms. This was so in *Keech v*

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<sup>32</sup>J Lowry & A Reisberg, *Pettet's Company Law. Company Law & Corporate Finance* (Harlow: Pearson Education 2012), 158. Hereafter Pettet.

<sup>33</sup> Companies Act 2006 at [legislation.gov.uk](http://legislation.gov.uk). Accessed 19 January 2022.

Sandford 1726. The court was being asked to allow a trustee who was holding a lease as trust property to renew the lease for his own benefit, on the genuine basis that the lessor had refused to renew it for the trust. The court found for the trust and the trustee had to account for the profits of the lease to the beneficiary. The judge, Lord King LC noted in his judgment that ‘if a trustee, on the refusal to renew might have a lease for himself, few trust estates would be renewed for the benefit of the trust.’ Translated into company law, the doctrine holds that any situation inherently likely to lead to a breach of the duty of good faith should automatically be treated as if a breach had occurred. Whether directors acted in good faith or not would be not an issue.<sup>34</sup> Railway companies in the mid nineteenth century would have been aware of the reassertion of the rule in the case of *Aberdeen Railway Co. v Blaikie* (1854).<sup>35</sup> The House of Lords voided a contract for the supply of rails to the railway by a firm related to its chairman.

To illustrate conflicts of interest in railway companies, historian Geoffrey Channon uses the case of the GWR sourcing of coal in the 1850s and 1860s from parties connected with management to illustrate the complications arising from a move to internalise activities. The board was split in a dispute which ran on for several years and involved changes in management arrangements and personnel. Channon describes this case as evidence that the course to management ascendancy in railway companies was not linear; and adds that conflicts of interest between an individual’s professional duties and private ventures has not been systematically studied for UK railways.<sup>36</sup>

### *Duty of reasonable care, skill and diligence*

This common law duty, set out in s174 of the Companies Act 2006, comprises two elements, the first calls for the general knowledge, skill and experience reasonably expected of a person carrying out the functions carried out by the director in relation to

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<sup>34</sup> Pettet, 170-2

<sup>35</sup> *The Aberdeen Railway Company v Messrs Blaikie Brothers* 1854 1 Paterson 394.

<sup>36</sup> Geoffrey Channon, “The Business Morals of British Railway Companies in the Mid-Nineteenth Century”, *Business and Economic History*, Vol.28/2, Fall 1999, 69-79.

the company; and the second calls for the general knowledge, skill and experience which the director has<sup>37</sup>. The first element is more objective than the second.

This duty appeared in a Companies Act for the first time in 2006 but represents the culmination of cases and other statute over the years. Until around 1990 the duty had been less onerous but a move to a more objective standard arose from Lord Hoffmann's judgments in two cases where he imported the standard of care in s214(4) of the Insolvency Act 1986 upon which s174 of the Companies Act 2006 was closely modelled<sup>38</sup>.

Prior to this recent phase this duty had been set at a lower level and reflected the courts' disinclination to get involved in deciding on the quality of management decisions and not to regard management as a profession. Scholars have commented that compared to professional judgments, business decisions are of limited justiciability and that this has affected courts' attitudes to directors' negligence.<sup>39</sup>.. Also that the courts were informed by a view that mismanagement could and should be controlled by shareholder supervision; and that if shareholders had control over the board to regard them as partly responsible for any losses and not deserving of court aid.<sup>40</sup>

Historically the courts' standards as to diligence of directors has been seen as comically low as evidenced in cases where directors had failed to supervise fellow directors or managers who were defrauding the company.<sup>41</sup> In litigation following the failure of Overend & Gurney, the ordinary prudent man standard was applied to directors who were accustomed to business. The House of Lords held that for the directors to have been negligent in the purchase of an insolvent broker they would have had to have been aware of circumstances that no men with any ordinary degree of prudence acting on their own behalf would have made the purchase. This suggests to some that the boundaries of acceptable behaviour lie beyond unreasonableness in perversity. It was not inconceivable

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<sup>37</sup> s.174 Companies Act 2006 at [legislation.gov.uk](http://legislation.gov.uk). Accessed 22 January 2022.

<sup>38</sup> Pettet, 169.

<sup>39</sup> J E Parkinson, *Corporate Power and Responsibility: Issues in the Theory of Company Law* (Oxford: Clarendon Press 1993), 107-8. Hereafter Parkinson.

<sup>40</sup> Parkinson, 105.

<sup>41</sup> Parkinson, 98.

that the broker could have been returned to prosperity so the court thought it improper to substitute its own judgment as to whether it was wise to proceed for that of the directors. Thus the court's role was merely to act as a longstop<sup>42</sup>.

The first case in which director's duties in this area were laid out in any way was in *Re City Equitable Fire Insurance Co Ltd (1925)*, where directors other than the chairman (who had already been convicted of fraud and imprisoned) escaped liability because of an exculpatory clause in the articles. The judge found that a director need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge and experience; that a director is not bound to give his continuous attention to the affairs of the company but should attend board meetings whenever, in the circumstances he is reasonably able to do so; and that if matters may be properly left to another official a director is, in the absence of grounds for suspicion, justified in trusting that official to perform such duties honestly<sup>43</sup>.

This duty has been seen of little content partly because of the difficulty in making law which covers both the trustee where the object to is protect and preserve the assets in the trust and the dynamic entrepreneur whose duty to maximise profits for shareholders.<sup>44</sup>

#### *Enforcement of directors' duties -*

#### *Punishment of Frauds Act*

We have seen above how mid nineteenth century British railway companies could have observed clear guidance by the civil courts on the avoidance of conflicts of interest involving directors....A further constraint on director behaviour came in the form of "*an Act to make better provision for the punishment of frauds committed by trustees bankers and other persons entrusted with property*" passed in 1857<sup>45</sup>. Its short name is the

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<sup>42</sup> Parkinson, 103-4.

<sup>43</sup> *Re City Equitable Fire Insurance Co.*, 1925 Ch. 407.

<sup>44</sup> Parkinson, 108-9 and Pettet 158.

<sup>45</sup> 20 & 21 Vic. c. 54.

Punishment of Frauds Act but it is also known as the Fraudulent Trustees Act. It applied to trustees and other parties entrusted with people's property including directors of all companies whether established by registration, special or general Acts. It provided that any company director who fraudulently made personal use of any money or property of the company or made false entries in the books or destroyed company records would be guilty of a misdemeanour. It also provided that any publication or concurring in publishing any written statement or account which a director knew to be false in any material particular with intent to deceive or defraud for certain desired outcomes would be a misdemeanour. The outcomes included inducing a person to become a shareholder and securing advances in money or other property.<sup>46</sup>

Law scholar Sarah Wilson sees the Act as part of the response of Victorian society to changed economic and social circumstances and its attempt to develop answers to legal problems in a period of great change<sup>47</sup>. The law on the one hand sought to accommodate capitalism through general incorporation Acts and legal judgments which had the effect of requiring little in terms of corporate good behaviour. On the other hand from time to time it sought a more community oriented approach as in the case of this Act and the two criminal cases on failed banks preceding it which sought to enforce against wrongful acts causing harm to others rather than leaving such matters to private suit with the unlikely restoration of money the only remedy.<sup>48</sup>

Anxieties about misconduct in business leading to material damage to the public at large formed the background to the Act. Bank failures in the mid 1850s had been the proximate prompt but concerns about bad business behaviour had been raised by the railway boom and bust in the 1840s. Both had involved the inappropriate use of company property but much of the misconduct in the railway boom had fallen sort of outright embezzlement and involved false statements about profitability and business prospects<sup>49</sup>. In one of the bank trials in the mid 1850s the judge had said that the

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<sup>46</sup> Sarah Wilson, "Tort law, Actors in the 'Enterprise Economy', and Articulations of Nineteenth-century Capitalism with Law: The Fraudulent Trustees Act 1857 in context" in T Arvind & J Steele, *Tort Law and the Legislature* (Oxford: Hart 2012), 368-9. Hereafter Sarah Wilson Tort Law.

<sup>47</sup> Sarah Wilson, Tort Law 380.

<sup>48</sup> Ibid., 355-6, 359, 366-7.

<sup>49</sup> Ibid., 363-4, 368.

conduct of the directors in falsely representing the bank as a flourishing concern was beyond being mere breach of contract between the bank, its shareholders and customers but was conduct with great public mischief<sup>50</sup>.

Whilst criminal sanctions were extended to certain forms of corporate behaviour, criminal liability under the Act required knowledge of falsehood and an intention to deceive<sup>51</sup>.

Whilst the parliamentary debates on the measure were clearly concerned about bad business behaviour and occasionally hinted at concerns about standards of behaviour short of dishonesty, there was very little, if any, discussion about directors in companies other than banks or explicitly about standards in office.<sup>52</sup>

### *Shareholder actions: Foss v Harbottle (1843)*

The British legal framework for actions by which shareholders could seek civil remedies is relevant to corporate governance. The rule which emerged from *Foss v Harbottle* (1843)<sup>53</sup> and *Mozley v Alston* (1847)<sup>54</sup> was that in respect of a wrong done to the company, only the company could sue. These cases brought by minority shareholders on behalf of themselves and other shareholders in respect of wrongs alleged to be done by certain directors failed. . They are described by present day legal scholars as foundations of the doctrine in *Foss & Harbottle*<sup>55</sup>. Over time this was articulated in two parts, first that the court will not interfere in the internal management of companies and second that for wrongs done to the company the proper claimant is the company itself. Absent rules for a larger majority, a bare majority in general meeting was sufficient to ratify directors' acts. Exceptions to the rule arose in the event of unratifiable ultra vires or illegal acts, the existence of personal rights and so called fraud on the minority<sup>56</sup>. The Companies Act 2006 Part XI has

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<sup>50</sup> Ibid., 365.

<sup>51</sup> Ibid., 374, 378.

<sup>52</sup> Ibid., 378-9.

<sup>53</sup> *Foss v Harbottle* 2 Hare 461 67 ER 189-208

<sup>54</sup> Victoria Barnes, "Judicial Intervention in Early Corporate Governance Disputes: Vice-Chancellor Shadwell's Lost Judgment in *Mozley v Alston* (1847)" *American Journal of Legal History*, Volume 58, Issue 3, September 2018, 394–413,

<sup>55</sup> Pettet, 238.

<sup>56</sup> Pettet, 238-41.

established a statutory procedure for derivative actions although has not replaced the substantive rule in *Foss & Harbottle*<sup>57</sup>. There is scholarly doubt about whether these arrangements will lead to any significant extension of the circumstances in which they will be allowed<sup>58</sup> although since the Companies Act 1985 minority shareholders have been able to raise an action for unfair prejudice<sup>59</sup>.

### *Liability for accidents*

An important influence on the management of early British railways set out by Rande Kostal was that the courts generally required them to compensate passengers in the case of accidents. In this period, the opposite was true for railway workers who were deemed to accept the risk associated with the job when taking employment. Passenger compensation was a likely constraint on financial retrenchment.<sup>60</sup>

This research will examine the case studies to see whether shareholders in early railways were relatively sensitive to conflicts of interest as the above sections on fiduciary duties might suggest; and how successful they were in dealing with them. The level of skill and care expected of directors whether by themselves or by shareholders will be considered as well any changes which might have been secured. The extent to which the case study companies and activism therein were constrained or assisted by the companies' own Acts and the legal remedies available will also be examined, as will any constraints arising from liabilities for passenger compensation.

The history of the company - the separation of ownership and control, the company's place in society and the longer view.

Academic research on the shifting relationships over the long run both within companies and between companies and wider society is relevant to this thesis.

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<sup>57</sup> Explanatory notes to Companies Act 2006 s485 and s.491. Accessed at [legislation.gov.uk](http://legislation.gov.uk) 18 January 2022.

<sup>58</sup> Pettet, 281.

<sup>59</sup> Pettet, 283.

<sup>60</sup> Rande Kostal, *Law & English Railway Capitalism 1825-75* (Oxford: Oxford University Press 1994), 256.

### *Separation of ownership and control*

Berle & Means, writing about large American corporations over the century to 1930, describe a revolution in private property whereby direct ownership and control of assets was changed to the receipt of the wages of capital without control - they describe the unity of property as having been destroyed.<sup>61</sup> A corporation controlled by its owners and tightly regulated by the state as to the basics of governance had been succeeded by a corporation where many deliver capital into the hands of 'control' (whether a group of shareholders with effective control in general meetings or management if no such group exists). However, they acknowledge that checks and balances, some legal and some economic had come into existence in the meantime.<sup>62</sup> Overall, the quasi-public corporation had acquired enormous power, a trend set to continue and the authors suggested that the balancing of the various stakeholder interests in the corporation might be an appropriate policy response.<sup>63</sup>

This thesis will examine the case studies for evidence related to Berle & Means view of the initial nature of the corporation, evidence for the loss of control and the emergence of checks and balances.

### *Corporate irresponsibility*

Law scholar Paddy Ireland's view also favours stakeholder interests but has greater focus on the provenance of the company. He argues that the British joint stock company with limited liability did not develop as an economic necessity to serve an industrialising society which was, in fact, dominated by the sole trader and partnership forms for some time after the introduction of general incorporation laws and limited liability. Rather it was a political creation for the benefit of rentier investors who had no interest in managing the companies in which they invested and in time sought to diversify their portfolios. This approach was facilitated by limiting risk to the paid up value of the shares. The effect

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<sup>61</sup> Adolf A. Berle Jr. & Gardiner C. Means, *The Modern Corporation & Private Property* (New York: Macmillan, 1933), 5-7.

<sup>62</sup> *Ibid.*, 127.

<sup>63</sup> *Ibid.*, 352-7.



was the same separation of ownership and control together with corporate irresponsibility - that is shareholders need not concern themselves with how their dividends are earned and have no responsibility for corporate malfeasance or for failure beyond their initial investment<sup>64</sup>.

Whilst railway companies started as companies with dispersed shareholdings rather than as partnerships or sole traders, we shall examine the case studies for evidence of rentier investor behaviour as defined by Ireland.

### *The company's relationship with wider society*

A further view of the company is that of an entity within the market based economic realm and so much seen as the natural order of things that it is largely insulated from its broader political and social environment. It has also been described as divorced from the old moral economy based on unlimited liability. However, shocks such as the 2008 financial crisis can expose the boundaries between the economic, political and social realms and call into question the market based model; for example as where support for the banking sector is socialised in the financial crisis but the resultant market appears impervious to wider accountability<sup>65</sup>. The law is seen as reinforcing the separation of this economic realm by way of limited liability and the disinclination of the courts to become involved in the internal substantive issues affecting companies as epitomised by the Salomon case<sup>66</sup>. Thus the recognition of stakeholder interests by s172 of the Companies Act 2006 can be seen as a challenge to this market based economic realm and a move to internalise societal and political considerations within company affairs<sup>67</sup>.

The above analysis draws partly on the work of economic historian Karl Polanyi who described a self-regulating market enshrining principles of economic liberalism developing in the nineteenth century which required its own institutional sphere quite separate from the political sphere. . However, given the social cost there developed a

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<sup>64</sup> Paddy Ireland, "Limited liability, shareholder rights and the problem of corporate irresponsibility", *Cambridge Journal of Economics*, Vol.34, No.5, 838-46.

<sup>65</sup> Gary Wilson, "From black box to globalised player? Corporate personality in the 21st century and the scope of law's regulatory reach", *Northern Ireland Legal Quarterly*, Vol. 63, No.4 (2011), 434-5 & 440.

<sup>66</sup> *Ibid.*, 442-3.

<sup>67</sup> *Ibid.*, 446-9.

reaction largely involving workers to re-embed the economic sphere within society. Polanyi called this interaction the “double movement”. Given analytical issues in Polanyi’s work, legal scholar Gary Wilson prefers to read his main proposition as a more iterative constitutive notion of the “double movement” as mediating the relation of the economic within the social and in which the state has a central role.<sup>68</sup>

Legal scholarship has also considered the influence on nineteenth century British life of ideas about individualism, laissez faire and freedom of contract and how these have been in tension with the growth of regulation and administrative government. Philip Atiyah argues that laissez faire ideas were influential in the nineteenth century. There was a concern that government, especially central government, was prone to corruption and inefficiency. Adam Smith’s arguments for the removal of obsolete controls and restrictions on the free market were influential. However, he argues it was not true that either any influential body of people ever believed in laissez faire as a system of government confining itself to defence and law and order. Atiyah sees laissez faire ideas as useful cliches for use against government action rather than a coherent and systematic philosophy.<sup>69</sup>

Laissez faire did not prevent a vast new body of law from emerging in response to social problems. Further, this was not administered by lawyers at all but by administrative staff, professional experts and magistrates. Meanwhile, the law of contract was made increasingly pure by excluding all new regulatory law - everything not part of the general principles of contract law based on the free market was simply defined as not being part of the law of contract but of some other special and exceptional body of law<sup>70</sup>.

Whilst railways had a fuller relationship with the state at this time than did many other economic actors, we shall examine the case studies for the evidence of connections with the social realm and for the balance of laissez faire and regulatory influences.

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<sup>68</sup> Ibid., 436-9.

<sup>69</sup> Philip Atiyah, *The Rise & Fall of Freedom of Contract* (Oxford: Clarendon Press 1979), 232-4.

<sup>70</sup> Ibid., 234-7.

## Present day corporate governance theory and practice

### *The theoretical background.*

#### *Agency theory*

Agency theory sets out the potential divergence of interests between principal and agent and its consequences. In the corporate context the principals are the shareholders who provide the equity capital and the agents are the managers who run the company on their behalf. From this basic definition agency theory has been explained in various ways. First, within a legal context, it has been described in terms of the rights and duties arising in the relationship between principal and agent. These are closely related to the rights and duties arising between trustee and beneficiary. Second, within an economic context, it is described in terms of rational economic actors seeking to maximise their own utility. The shareholder principals want to maximise their return and the agent managers wish to maximise theirs and can do so at the expense of the shareholder by various ways short of stealing. Therefore, arrangements need to be put in place to control this risk. The costs of agency have been described as the monitoring costs of the principal, the bonding costs of the agent and the residual loss to the firm caused by the divergence of interests.<sup>71</sup>

Various ways have been suggested for bearing down on agency costs, including improved corporate governance, the benefit of having large shareholders and the threat of hostile takeover.<sup>72</sup>

#### *Stewardship theory*

Agency theory has been the dominant theory within corporate governance but an alternative approach has been suggested in stewardship theory. This is based on

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<sup>71</sup> M C Jensen & W H Meckling, "Theory of the firm: managerial behaviour, agency costs and ownership structure", *Journal of Financial Economics*, 3 (1976), 308. M. Freeman, R. Pearson & J. Taylor, *Shareholder Democracies? Corporate Governance in Britain and Ireland before 1850* (London: University of Chicago Press, 2012), 4.

<sup>72</sup> Oliver Hart, "Corporate Governance: some theory and implications," *the Economic Journal*, 105 (May 1995), 681-6.

research on human motivation and particularly sees people as having a range of motivations such as achievement, responsibility and task satisfaction beyond the mere economic. It is also associated with collective rather than individualistic behaviour. It holds that, in the right circumstances, principal and agent interests are aligned rather than inherently antagonistic and subject to costly control.<sup>73</sup>

The steward is a manager whose behaviour is ordered such that pro-organisational behaviours have higher utility than individualistic self-serving behaviours.. Rather than the controls and monetary incentives underpinning an agency view, stewardship is promoted by developing the management philosophy and culture conducive to collective yet self-actualising behaviour. <sup>74</sup>

Stewardship theorists, however, concede that there are circumstances, such as where an ambition for stewardship is not shared by shareholders and managers, when an agency approach may be the safer though non-optimal approach. An important preference of stewardship theorists as it affects corporate governance is the preference for dual capacity leadership - that is for an individual to be both chair of the board and chief executive; and a board majority for specialist directors.<sup>75</sup>

### *Stakeholder theory*

Stakeholder theory defines organisations as multilateral agreements between the enterprise and its stakeholders whether internal (employees, managers and owners) or external (customers, suppliers, competitors and special interest groups. These relationships are defined by formal and informal rules. Additionally, government sets legal and formal rules within which businesses must operate<sup>76</sup>. Companies are regarded as social rather than private institutions and a key element is that stakeholders are brought within the corporate structure either by direct representation or indirectly, as in the UK, where directors have to have regard to their interests within their overall duty to

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<sup>73</sup>J H Davis, F D Schoorman & L Donaldson, "Towards a Stewardship Theory of Management," *Academy of Management Review*, 1997, Vol. 22 (No.1), 20-24 & 27.

<sup>74</sup> *Ibid.*, 25 & 32-38.

<sup>75</sup> *Ibid.*, 26 & 38-40. T Clarke "Introduction: Theories of Governance", T Clarke, *Theories of corporate governance* (London: Routledge, 2004), 9. Hereafter T Clarke.

<sup>76</sup> T Clarke, 10-11.

promote the success of the company<sup>77</sup>. However, the U K Corporate Governance Code does allow for workforce board representation<sup>78</sup>. Also the company is encouraged to have regard for the interests of the community and environment.<sup>79</sup>

*The self regulatory background: Self regulation of corporate governance in present day large UK public companies.*

Current statutory or self regulation of corporate governance in the UK contains elements drawing on agency, stewardship and stakeholder theories. For large UK public companies self-regulation in the form of the UK Corporate Governance Code, agency theory is to the fore. The guidance is that least half the board excluding the chair be independent, that the chair be independent and not also chief executive, that audit, nomination and remuneration matters be in the hands of independent directors and that all directors be re-elected annually<sup>80</sup>. There is also fairly detailed guidance on setting executive pay.<sup>81</sup> Developed over 30 years the guidance has progressively offered more controls by the independent directors over the executive partly prompted by high profile governance failures from Maxwell through to the financial crisis in 2008<sup>82</sup>.

Nonetheless the Code acknowledges stewardship theory by reference to assessment and monitoring of culture and ensuring alignment of policy, practices or behaviour throughout the business with the company's purpose, values and strategy.

Successful stakeholder relationships are particularly promoted by the Code which says that "to succeed in the long term directors and ...companies...need to build and maintain successful relationships with a wide range of stakeholders". More specifically it calls for

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<sup>77</sup> Companies Act 2006, clause 172.

<sup>78</sup> Financial Reporting Council, *The U K Corporate Governance Code* (July 2018), 5 para 5. Accessed 14 January 2022. Hereafter U K Code.

<sup>79</sup> Companies Act 2006, clause 172(e).

<sup>80</sup> UK Code, 6,7,8,10,11,13.

<sup>81</sup> *Ibid.*, 13-15.

<sup>82</sup> For example guidance for a de facto non-executive majority dates from 2003 and for annual election of directors of FTSE 350 companies dates from 2010. *History of the UK Corporate Governance Code at [frc.org.co](http://frc.org.co)* -accessed 14 January 2022.

companies to ensure effective engagement with and encourage participation from shareholders and stakeholders; and more specific engagement with the workforce via a director, advisory panel or designated non -executive directors<sup>83</sup>.

The Combined Code stands alongside the UK Stewardship Code which calls for engagement by shareholders and asset managers with companies in which they invest and as necessary collaboration with other investors and escalation. It also calls for the active exercise of rights and responsibilities including voting rights<sup>84</sup>.

Given the present day and mid-nineteenth century public companies have similar core characteristics, this research will examine whether these theories or practice help to explain the case studies; and, in turn whether and how the latter can help to assess, advance or refine the former.

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<sup>83</sup> U K Code, 1 & 5.

<sup>84</sup> Financial Reporting Council *The UK Stewardship Code 2020* Principles 9-12. Accessed at [frc.org](https://www.frc.org.uk) 20 February 2022.

## Chapter 2: Methodology

### Case study selection criteria

This research is based on case studies and study of the archive related to those cases. The companies involved are railway companies operating in the period 1840-1865. They have been chosen with the purpose of explaining the development of corporate governance in early public companies, and of considering what comment they might offer on present day theory and practice of corporate governance<sup>85</sup>. The criteria are as follows:

1. The existence of material and publicly aired corporate governance issues in the company is the first criterion. Typically shareholder appointed Committees of Investigation looked into these issues and made recommendations. The issues may have related to strategic direction, financial performance, competence of management, insider expropriation or information asymmetries.
2. The companies are of sufficient size so as to be reasonably independent and not completely tied to other railway companies. This criterion also tends to mean that the company's affairs would have been covered by the local and the specialist railway press.
3. The corporate governance issues of the company have not been covered in the literature or only partially so.
4. The companies examined in depth have been British but some New England railroad corporations appointing Committees of Investigation in the same period have been looked at in outline.

Four British case studies have been chosen and are compared with a sample of five American cases from the same period. The cases are:

Bristol & Exeter Railway

Eastern Counties Railway.

Oxford, Wolverhampton & Worcester Railway

West Hartlepool Harbour & Railway Company

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<sup>85</sup> Kathleen M Eisenhardt, "Building Theories from Case Study Research," *Academy of Management Review*, Vol. 14 (1989), No.4, 537.

Boston & Maine Railroad  
Boston & Providence Railroad  
Fitchburg Railroad  
Northern Railroad of New Hampshire  
Old Colony Railroad

The cases have been selected from a population of railway companies which helps to control extraneous variation and helps to define the limits for generalising the findings.<sup>86</sup> The number of cases is within the range observed by Eisenhardt<sup>87</sup> and the list includes cases with both strong and weak financial performance over a number of years. Eisenhardt considers it sensible to include so called polar cases so that the generalisability of findings can be extended.<sup>88</sup>

As well as primary sources, secondary material has been researched in order to provide an understanding both of the context within which the case studies played out and of the coverage and findings of scholars studying the same or related areas from both historical or theoretical points of view. In historically as opposed to social science oriented research, secondary sources can also corroborate primary sources or plug gaps left by incomplete or fragmentary primary sources.<sup>89</sup>

### Archives researched

#### *Company records*

The archives have been examined to provide as rounded a picture as possible of each case. The foundation of the body of material is the company's own business records which for English and Welsh railway companies are found in the National Archives. For

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<sup>86</sup> Ibid., 537.

<sup>87</sup> Ibid., 535.

<sup>88</sup> Ibid., 537.

<sup>89</sup> Matthias Kipping, R Daniel Wadhvani & Marcelo Bucheli, "Analyzing & Interpreting Historical Sources: a basic methodology," in *Organisations in Time History, Theory & Method* (hereafter *Organisations in Time*), ed. Marcelo Bucheli & R Daniel Wadhvani, (Oxford: Oxford University Press, 2014), 318.



early and mid Victorian companies these records mainly comprise minute books for general meetings, the board and board committees; ledgers and accounts; and legal papers such as contracts for the construction of the line and legal advice. The findings of and sometimes the evidence taken by Committees of Investigation (Cofl's) are also found there. Correspondence of the company whether internal or external, however, often appears not to have survived. Some of the public papers - that is material sent to shareholders - have also survived in other archives, largely county record offices (often via the donation of private or solicitors' archives) as well as in the press.

### *American cases*

In order to consider whether American cases might provide material relevant to the research questions, a search was made for Reports of Committees of Investigation appointed by or for American railroads. There appears to be a concentration of these in New England, mainly Massachusetts, railroads, namely:-

Boston & Maine Railroad	1849 & 1855
Boston & Providence Railroad	1856 & 1857
Fitchburg Railroad	1856
Northern Railroad (New Hampshire)	1850
Old Colony Railroad	1849

These roads appear suitable for comparison both between themselves and with the British case studies as they are generally of a similar size, are funded by private capital and are geographically concentrated around a well established albeit rapidly growing local centre of Boston. There are not the complications arising from, say, western and transcontinental railroads where substantial Federal land grants were essential to their promotion.

The American reports have been considered with a view to comparing British and American experience. Further, outline evidence has been sought on the links between the American and British railroad/railway markets.

### *Private papers*

The private papers of the individual actors - when to hand - are also an important source. These include their copies of company papers and correspondence on the railway which provides material to supplement the often formal and brief descriptions of decisions recorded in the minute books of the company.

### *Press and pundits*

The content of the local press and specialist railway journals is largely record rather than comment. However, the press was an important battleground where correspondents for and against management would argue the issues affecting the company. The press, principally the specialist railway press, also offered its own comment on these controversies.

Other comment sources are the writings of pundits in the 1850s such as Herbert Spencer who criticised the tendency of British railway companies to work against the interest of shareholders and Henry Varnum Poor, who enunciated principles for the sound running of American railroad companies.

### *Parliamentary, government and court papers*

A company's Act(s) as supported by the various general Acts particularly the Companies Clauses Consolidation Act of 1845<sup>90</sup> are an important source for study of a railway's corporate governance in the early Victorian period, as are the Select Committee Minutes of contested railway bills found in the Parliamentary Archive.

In the absence of active regulation, railway companies sometimes had to go to court to pursue previous management charged with misdemeanours. The court records, Law Reports and press reports are a helpful source in these cases as are occasionally the recorded opinions of the government law officers.

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<sup>90</sup> 8 & 9 Vic. c.16.

American railroads also required an Act and both the individual Acts and general railroad legislation for the Massachusetts case study roads are to hand in the state's legislative archive, although it has not been possible to find petitions or legislative committee papers.

### Periodisation

The case studies are drawn from the period 1840 to 1865 which was the early period of railway and public company development. Case studies taken from the same limited period have certain variables in common which renders the identification of their individual characteristics more straightforward. The period chosen also covers a formative one for railways and corporate governance - new challenges were being faced and new lessons being learned. Periodisation has also been described as one solution to researching a topic which has too large an archive for a single piece of research - it sets up a period most likely to yield material relevant to the research questions.<sup>91</sup>

### Structure of gathering evidence in case studies

Evidence was gathered to cover common elements in the case studies although the mixed survival of the archive yielded differing amounts of material. The broad structure of enquiry was as follows:

#### Nature of the company

- competitive position

- financial position

  - earnings

  - capital structure

- corporate governance

  - nature of shareholder body

  - nature of management body

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<sup>91</sup> Stephanie Decker, "The silence of the archives: business history, post-colonialism and archival ethnography," in *Management & Organisational History*, 2013, Vol.8, No.2, 168.

rules of corporate governance.

Nature of corporate governance issue arising whether related to insider expropriation (whether by theft, onerous transactions or contracts) or issues of accounting, vires, policy or competence.

Nature of investigation into issue

Outcomes of investigation whether related to changes in people, policy, reputation or performance

### Approach to secondary sources

#### *Railway history*

Secondary sources on the history of railways and on the individual case study railways (where available) have been consulted for the general and specific contexts of the case studies.

#### *History of fields related to corporate governance and company law.*

General histories of corporate governance and company law, and on the development of the capital markets in Victorian Britain has been studied including the development of securities exchanges and of particular financial instruments. Secondary material on Victorian financial crime and the development of concerns about business morality have also been consulted as well as studies of the development of the law of insolvency in nineteenth century England.

#### *Present day theories & practice of corporate governance*

Present day theories and practice of corporate governance have been studied to see what light may be shed on them by the case studies and vice versa.

## Citation

References to sources whether primary or secondary will be made by footnote so that the reader may check not only that it is fairly represented but also that the interpretation based on it is plausible.

## Methodology of source handling and interpretation.

### *Sources, triangulation and source criticism*

The picture the sources give may be influenced by the motives of the actors in either their creation or retention<sup>92</sup>. The writer of documents may sometimes have meant something other than a simple reading might imply, because of either differences in general meaning between then and now, prevailing courtesies or fear of suit or mere poor drafting. These risks attend all historical research. In this research, some mitigation comes from the studies being publicly contested events which also attracted third party commentators.

The sources may not be complete and the gaps can lead to 'silences.' These could arise where the evidence generated by an institution does not directly cover the experiences of all those subject to the institution. In this case the evidence should be read against the grain. It is also possible an institution may destroy or withhold documents it does not wish to see the light of day. Otherwise 'silences' can appear through the institution having no interest in the retention of archives or through the researcher having to select from an archive which is too large. Using a range of sources may help to reduce the 'silences'.<sup>93</sup>

Using the range of sources described above helps in the assembly of a more reliable body of evidence. First, it can provide corroboration thus mitigating the risk of relying on one source which may be incomplete or biased. Second, a range is sometimes needed to fill gaps in particular parts of the archive. Third, it allows for the discovery of

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<sup>92</sup> M Rowlinson, J Hassard & S Decker, "Research Strategies for Organisational History," *Academy of Management Review*, Vol. 39 (2014), No.3, 255.

<sup>93</sup>Stephanie Decker, "The silence of the archives: business history, post-colonialism and archival ethnography," in *Management & Organisational History*, 2013, Vol.8, No.2, 156,159 & 163.

contradictory sources which are often very useful in building a fuller picture and advancing understanding.<sup>94</sup>

Triangulation thus is part of the process of assessing the reliability of individual archival sources - so called source criticism.<sup>95</sup> Historians including those of organisations tend to agree that a leading principle for assessing the quality of a source should be proximity - this prefers a written source prepared by eye witnesses/involved actors at the time. The researcher should also assess whether or not the source has been written for posterity and whether it was produced for external or internal consumption. Both may be useful. They may reveal the narrative the company wanted to tell on the one hand. On the other they may reveal private material not intended for publication and because not specially written for that purpose may reveal information unintentionally.<sup>96</sup>

### *Interpretation*

Moving from the sources to interpretation, this writer does not approach the research with a particular set of theoretical priors or a particular view on the history of the period in which the case studies are sited. Set out below are certain methodological approaches; some have been challenged, but the author finds them useful and does not regard them as exclusive.

Thinking “historically” or “seeing things their way” is an approach where the meaning of the source created by actors in the past is partly derived from what it was doing, say in a conversation, correspondence, debate or discourse, as well as what it was saying<sup>97</sup>. Among its proponents have been historians of ideas seeking to return texts to their

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<sup>94</sup>Matthias Kipping, R Daniel Wadhvani & Marcelo Bucheli, Analyzing & Interpreting Historical Sources, *Organisations in Time*, 317-8.

<sup>95</sup> Ibid., 313-16.

<sup>96</sup>Stephanie Decker, “The silence of the archives: business history, post-colonialism and archival ethnography,” in *Management & Organisational History*, 2013 Vol.8, No.2, 166. Michael Rowlinson, ‘Historical Analysis of Company Documents,’ in *Essential Guide to Qualitative Methods in Organisational Research*, ed C. Cassell & G Symon (London: Sage Publications Ltd, 2004), 306. Kenneth Lipartito, ‘Historical Sources and Data’ in *Organisations in Time*, 288-91.

<sup>97</sup>Quentin Skinner, *Visions of Politics. Volume I. Regarding Method* (Cambridge: Cambridge University Press 2009. Ch 1. “Seeing things their way” is the title of the chapter.

formative contexts and reacting against meanings forced upon them by a focus on “perennial issues” in the history of Western thought<sup>98</sup>.

In response to the charge that this approach rendered the history of thought merely antiquarian, it has been argued that the relevance of such studies lies in their capacity to help us stand back from our own assumptions and beliefs and thereby to test our present situation against alternative possibilities. Doing this may assist in attaining a certain level of objectivity in appraising rival systems of thought; and, through greater understanding of elements of cultural diversity, enlarge present horizons rather than fortify local prejudices<sup>99</sup>. This approach seems as applicable to how historic actors perceived the governing of companies as it is to the history of ideas more generally; and this research will attempt to follow it.

Thinking “historically” is reflected in John Tosh’s analysis of the uses of history. Historical difference is at the heart of history’s claim to be socially relevant. History provides a memory bank - an inventory of alternatives - of what is unfamiliar and alien and a means of entering into a different form of experience not possible in our own lives. It reminds us that there is more than one way of responding to a situation and that the choices open to us are more varied than we supposed. It also helps us to distinguish between the enduring and the transient when considering present day issues<sup>100</sup>.

Tosh describes historical process as the relationship between events over time which endows them with more significance than if viewed in isolation. It concerns the big story of how we got from “then” to “now”. Tosh describes process as a trajectory though there may be more than one trajectory relevant to the explanation of a particular historical question. Present day actors are situated on a trajectory which gives some purchase on the future. This might yield modest but useful predictions as long as they are sequential rather than repetitive<sup>101</sup>.

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<sup>98</sup> Ibid., 2-3, & 125.

<sup>99</sup> Ibid., 88-9 & 124-7.

<sup>100</sup> John Tosh, *The Pursuit of History* 7th Edition (Abingdon: Routledge 2022), 27-8.

<sup>101</sup> Ibid., 34-6.

Tosh, mindful of the risk of political manipulation, argues that “history for its own sake” is a worthy enterprise so long as it seeks to explain the past as well as recreate it. It offers insights into the human condition, increases self-awareness and empathy with others<sup>102</sup>. However, he concludes that history should be recognised as a hybrid straddling the humanities where “history for its own sake” has tended to be the norm and social science which promises practical guidance; and that history does provide a perspective on present day problems<sup>103</sup>. This research will attempt to examine such inventory of alternatives as can be drawn from the case studies and see whether they offer a perspective on present day theory and practice of corporate governance and vice versa. It will also attempt to draw material from the case studies to explain the historical process of corporate governance.

As this research bridges history and social science (in the form of management science), we next consider possible methods which could suit both the temporalities and multiple causality favoured by the former<sup>104</sup> and the causally powerful structural features favoured by the latter<sup>105</sup>. William Sewell, who has experience of both camps, favours a sharing of methods between historians and those in social science, such as historical sociologists, where sharing is feasible<sup>106</sup>. His approach is exemplified by his study of nineteenth century Marseille dockworkers who retained a privileged position for much longer than might have been expected. He examines the case through trends (long run changes in social relations), routines (taken for granted activities that in large part tend to be produced and maintained by institutions) and events (temporally concentrated sequences of actions that transform structures, vary routines and affect trends). Describing this work as a theoretically informed case study and using both quantitative and interpretive methods, Sewell describes how the unevenness of social temporalities, human agency, contingency and inexorable social processes were twisted together in a surprising

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<sup>102</sup> Ibid., 38-40.

<sup>103</sup> Ibid., 44-5.

<sup>104</sup> William H Sewell Jr., *Logics of History: Social Theory & Social Transformation* (Chicago: University of Chicago Press, 2009), 6-11.

<sup>105</sup> Ibid., 14-15.

<sup>106</sup> Ibid., 13.



economic sequence<sup>107</sup>. This research will consider whether the case studies can be better explained by reference to trends, routines and events as defined by Sewell.

Whilst it is debatable whether Sewell's Marseille study qualifies as micro-history, the latter offers some guidance. It typically involves work based on sources whether qualitative or quantitative related to a single community, small groups or individuals ; within those constraints the sources could be voluminous or fragmentary<sup>108</sup>. There has been debate among micro-historians connected with the respective influence of structures, typically expressed through long run social trends, and of human agency. Some have looked to comment on the "big" historical questions implied by the former, whilst others have eschewed that ambition and looked to frame their findings within a narrower context<sup>109</sup>. In any event the micro-historian is recommended to have a good knowledge of the context of their source<sup>110</sup>. This research will aim to be alert to the potential significance of particular events or documents which may prompt new insights into the behaviour of the actors involved and add to the tools available to examine questions of general interest<sup>111</sup>. It will also attempt to explain the case studies in terms of their more immediate context; with nine case studies in hand , it may prove possible to comment more widely on 'big' corporate governance questions.

Within the management field a method set out by Maclean, Harvey and Clegg has elements in common with the material set out above. Central to their approach is the principle of "dual integrity" which is defined as historical veracity and conceptual rigour: a related principle is "context sensitivity" or attentiveness to historical specificities. They see it as important in distinguishing between general and particular forces in change processes and useful in identifying contingencies that shape particular outcomes<sup>112</sup>.

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<sup>107</sup> Ibid., Ch. 9 including 316-7.

<sup>108</sup> S. G. Magnusson & I. M. Szijarto *What is microhistory? Theory & practice*. (Abingdon: Routledge, 2013), 4.

<sup>109</sup> Ibid., 10.

<sup>110</sup> Ibid., 65 and exemplified in Ch.5.

<sup>111</sup> As exemplified by research extending out from a single letter written by Josiah Wedgwood. Robin Holt & Andrew Popp, 'Emotion, succession, and the family firm: Josiah Wedgwood & Sons', in *Business History*, 2013, Vol. 55, No. 6, 892-909.

<sup>112</sup> Mairi Maclean, Charles Harvey, Stewart R Clegg, "Conceptualising Historical Organization Studies," *Academy of Management Review*, 2016, Vol.41, No.4, 616.

Maclean, Harvey and Clegg set out four ways in which the study of historic organisations can assist in developing and refining organisational theories.<sup>113</sup> This research is planned to be most like their “History as Narrating” that is in “explaining the form and origins of significant contemporary phenomena”. They see theory as being largely offstage with propositions and arguments emerging inductively from the accumulation, ordering and analysis of historical evidence. There is a high level of context sensitivity.<sup>114</sup> The selection of case studies, which are not only bunched as to timing and industry type but also part of a discourse between companies, shareholders and commentators, help to secure context sensitivity hence historic credibility. The consideration of case studies from a particularly formative period in the career of the publicly owned joint stock company means that narration of this phase has the potential to yield arguments relevant beyond an assessment of the period itself <sup>115</sup>.

Another of the four conceptions of history in organisation studies set out by Maclean, Harvey and Clegg is “evaluating” or history used in testing and refining theory and arguments. This research will seek to apply the learnings from the case studies to the agency and stakeholder theories of corporate governance.<sup>116</sup>

The approach taken may also be consonant with “analytically structured history,” a research strategy set out by Rowlinson, Hassard and Decker.<sup>117</sup> This involves the taking of a conceptual construct as the subject of the research rather than the corporate entity as in the case of single corporate histories. However, a narrative approach - that is a narrative approach of logically and chronologically related events organised by a coherent plot -based on archival sources is used in this approach. Account is also taken of historical context in selecting the period covered - so called periodisation. This strategy sits between what Rowlinson et al describe as “corporate history” - that is the narrative history of a single corporation using sources and “serial history” which uses larger

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<sup>113</sup> Ibid., 619-22.

<sup>114</sup> Ibid., 621-22

<sup>115</sup> Mairi Maclean, Charles Harvey, Stewart R Clegg, “Conceptualising Historical Organization Studies,” *Academy of Management Review*, 2016, Vol.41, No.4, 616.

<sup>116</sup> Ibid., 620

<sup>117</sup> Rowlinson, Hassard & Decker, “Research Strategies for Organisational History,” 263-5.

amounts of historical data within an analytical framework.<sup>118</sup> The present research appears to match this description. Its subject is the development of a concept, corporate governance, through a number of cases looked at through the archive and sited in a particular early phase of corporate development.

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<sup>118</sup> Ibid., 260-3 & 265-6.

## **Chapter 3: Legal and other Elements affecting the Governing of early British Railway Companies**

Before moving onto the British case studies, we set out the governance rules applicable to them. We also consider in outline expectations of the shareholders' role, the railway discourse and strategic pressures; with the rules they make up a good part of the background to shareholder activity in the firm.

### Statutory Rules

Railway investors, directors and commentators had certain expectations of how the company would be governed. These are mainly based on requirements in the company's parliamentary Acts but those less formally based developed over time. Until the mid 1840s the company's Act was the sole source of these rules. However, with the onset of the Mania, the Railway, Land and Companies Clauses Consolidation Acts were passed in 1845 to save drafting and time; and railway Acts thereafter adopted these and other general railway Acts wholesale save for individual matters specially legislated for. Arrangements for governing companies were set out in the Companies Clauses Consolidation Act 1845 (CCCA). The main elements of this act and the individual Acts for the UK case study railways are set out below. To an extent railway Acts borrowed from earlier Acts for companies such as canals.

The Acts reviewed for rules on general meetings, directors and other officers, records and accounts, audit and financial matters are:

Bristol & Exeter Railway Act 1836 (6 Will. IV, c.36) (BERA)

Eastern Counties Railway Act 1836 (6 & 7 Will, IV c.106) (ECRA)

Stockton & Hartlepool Railway (first West Hartlepool company) Act 1842 (5 & 6 Vic., c.90) (S&HRA)

CCCA 1845

Oxford, Worcester & Wolverhampton Railway (CCCA adopted) 1845 (8 & 9 Vic., c.184) (OWWRA)

West Hartlepool Harbour & Railway Company (CCCA adopted) 1852 (15 & 16 Vic. c.,142) (WHHRCA).

By way of comparison the following canal Acts have been reviewed:

Tavistock Canal Act 1803 43 Geo. III, c.130 (Tavistock Act); and  
Wey & Arun Junction Canal Act 1813 53 Geo. III, c.19 (Wey & Arun Act).

### *General meetings*

Matters reserved to general meetings of shareholders by the CCCA were:

the election and removal of directors and auditors;

the increasing or reducing of the number of directors;

setting the pay of directors, auditors, secretary and treasurer

receiving and adopting the directors' report and accounts;

the raising of new capital and borrowing on mortgage or bond;

the declaration of dividends; and

the confirmation of the forfeit of shares for non-payment of calls.<sup>119</sup>

These powers were also reserved in the other railway Acts save for the BERA and ECRA where directors set the treasurer's and secretary's pay.<sup>120</sup> Proper notice of meetings had to be given. Ordinary General Meetings were to be half yearly in each case save for West Hartlepool where they were annual, a significant difference.<sup>121</sup> The WHHRC (but not the

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<sup>119</sup> CCCA cl. 91

<sup>120</sup> BERA cl.145 & ECRA cl. 144.

<sup>121</sup> S&HRA cl. 73 & WHHRCA cl. 72.

S&HR) directors had the power to declare the half year dividend falling between the annual meetings.<sup>122</sup>

The Tavistock Act reserved very little to the general meeting of proprietors, probably due to the involvement of the landowner, the Duke of Bedford. It could elect a replacement member of the Committee of Management from three names put forward by the Duke. It could also approve borrowing on mortgage but so could the Committee of Management which had power to confirm forfeit of shares and make bye-laws.<sup>123</sup> On the other hand, the Wey & Arun Act reserved to the general meeting of proprietors the election of the Committee of Management and treasurer, borrowing by mortgage and the making of byelaws but not the forfeit of shares.<sup>124</sup>

The shareholders of the following specified minima could call extraordinary general meetings if the directors refused or neglected to do so:

BER	3.3% of capital (100 shareholders holding 500 shares in aggregate).
ECR	0.8% of capital (20 shareholders holding 500 shares in aggregate).
OWWR	10% of capital represented by 20 shareholders (CCCA).
West H	To 1853 - 16.6% of capital (20 shareholders holding 200 shares in aggregate). From 1853 10% of capital represented by 20 shareholders (CCCA). <sup>125</sup>

At the Tavistock the right to requisition a special general meeting lay with the committee of management whereas at the Wey & Arun the committee of management or ten shareholders each holding five shares had the power.<sup>126</sup>

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<sup>122</sup> WHHRCA cl. 72.

<sup>123</sup> Tavistock Act cl. 6, 13 & 24.,

<sup>124</sup> Wey & Arun Act cl. 61, 66, 70, 81 & 84.

<sup>125</sup> BERA cl. 131; ECRA cl. 131; S&HRA cl. 77; CCCA cl. 70.

<sup>126</sup> Tavistock Act cl. 22. Wey & Arun Act cl. 83.

The shareholder requisition of a special general meeting in October 1856 as part of Malins' led agitation at the ECR is the sole example found in the case studies.<sup>127</sup> The Malins led requisition for a meeting to replace four directors was replaced by a meeting to fill only the vacancy caused by Waddington's resignation. Malins also failed to get elected. However, the provision for requisition at least allowed shareholders to secure an earlier election than a reluctant ECR board wanted.

In all four companies decisions in general meeting with rare specified exceptions were by majority with the chairman having a casting vote in the event of a poll. Voting either in person or by proxy was by a graduated scheme:

BER	First 20 shares 1 vote per share; thereafter 1 vote per 5 shares.
ECR	First 20 shares 1 vote per share; thereafter 1 vote per 5 shares.
OWWR	First 10 shares 1 vote per share; thereafter next 90 shares 1 vote per 5 shares; thereafter 1 vote per 10 shares (CCCA).
West H	To 1853 individual shareholding limited to 150 shares (12.5%) of total. From 1853 no apparent limit on individual shareholdings.
	Voting: to 1853, 5-10 shares 1 vote; thereafter 1 vote per ten shares with maximum 7 votes per shareholder. From 1853, 1 vote per £50 of stock for first £3,000 of stock and 1 vote per £100 thereafter. <sup>128</sup>

In comparison the Tavistock Act limited shareholdings to 50 shares (12.5% of total) and votes to 20 (1 vote per share for the first 20); but the Wey & Arun proprietors had 1 vote per share without limit on either.<sup>129</sup>

It is difficult to assess the impact of these arrangements, say in comparison to a one share one vote scheme, on the course of events at these firms, partly because there is no

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<sup>127</sup> Railway Times 18.10.1856, 1237; & 1.11.1856, 1308.

<sup>128</sup> BERA cl. 134; ECRA cl. 134; CCCA cl. 75; S&HRA cl. 24 & 82; WHHRCA cl. 74.

<sup>129</sup> Tavistock Act cl. 2 & 4; Wey & Arun Act cl. 63.

evidence to hand of shareholders or directors/managers raising them as a benefit, problem or otherwise. Eric Hilt, who has studied graduated voting schemes in New York state in the period 1790-1825 suggests that they may have been introduced to encourage smaller investors by reducing the influence hence risk of expropriation by larger investors who would tend to become directors.<sup>130</sup> This seems a sensible suggestion particularly if graduated schemes are looked at together with other protections included in the case study companies' Acts.

Quorums for general meetings for the case study companies including the CCCA were in the range of 12 to 50 shareholders holding between 1% and 16% of capital. The WHHRC quorum of 12 shareholders with £10k of stock which amounted to some 1% of total voting stock was an outlier and worthy of mention as the ordinary meetings were annual; and, as we shall see below, the press had not been accustomed to attend.<sup>131</sup>

#### *Directors and other officers*

The initial list of directors was contained in the Act which required the first general meeting to elect all the directors - it could continue with or replace some or all of them. Thereafter, directors retired by rotation at regular general meetings over a 3-4 year period but were eligible for immediate re-election.<sup>132</sup> Rotation on this basis favoured insiders more than the annual election now seen in listed UK companies<sup>133</sup> but allowed directors time to develop their skills and make a contribution. These rules helped the ECR to resist the Malins campaign to replace four directors in autumn 1856 as set out above.

Save for the S&HRA, the railway Acts reviewed and the CCCA did not provide for the removal of any or all directors at will by the general meeting as has been available since the Companies Act 1948<sup>134</sup>. Under the S&HRA, a general meeting called for the purpose could remove any director for misconduct or any other other cause which the deemed

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<sup>130</sup>Eric Hilt, "When did Ownership Separate from Control? Corporate Governance in the Early Nineteenth Century," *Journal of Economic History* 68/3 (September 2008), 659-60.

<sup>131</sup> BERA cl. 142; ECRA cl. 141; S&HRA cl. 73; CCCA cl. 72; WHHRCA cl. 73.

<sup>132</sup> BERA cl. 139-41; ECRA cl. 139-40; S&HRA cl. 89; CCCA cl. 88; OWWR cl. 21-2; WHHRCA cl. 76.

<sup>133</sup> Financial Reporting Council. *The UK Corporate Governance Code July 2018*. Accessed at [frc.org.uk](http://frc.org.uk)

<sup>134</sup> Companies Act 1948 s. 184.



sufficient but this clause lapsed when the amalgamation into the WHHRC adopted the CCCA<sup>135</sup>.

The shareholding qualification for directors for the case study railways were as follows:

BER            10 shares of £100 each

ECR            20 shares of £25 each

OWWR        20 shares of £50 each

West H        To 1853 10 shares of £50 each; from 1853 £500 of stock.

CCCA        A shareholder only (1 share) unless otherwise prescribed.<sup>136</sup>

These qualifications tended to align the interests of the directors and the company and to incentivise honesty and industry in company affairs to avoid personal financial loss.

However, the great size of railway company capitals as well as graduated voting schemes schemes meant that these thresholds represented very small percentages of ownership and control. Thus the incentives were moderated and much less than directors would have in running any businesses of their own.

Whilst general meeting venues and notices usually had some rules about locality, there were no residence requirements for directors or shareholders. By contrast the Tavistock Act, which allowed for a Committee of Management rather than directors, required its members, apparently elected for the duration, to hold 2 or more shares and to live within 10 miles of Tavistock. The Wey & Arun also had a Committee of Management elected annually with a 5 share qualification but no residence requirements.

All the Acts reviewed were as one in forbidding anyone holding an office or place of trust or profit under the company or anyone interested in any contract with the company from becoming or remaining a director or committee member. The CCCA offered the only

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<sup>135</sup> S&HRA cl. 95. WHHRC cl.1 & 5.

<sup>136</sup> BERA cl. 139; ECRA cl.139; S&HRA cl. 89; WHHRC cl. 78; CCCA cl. 85.

exception allowed which was that if the director was a shareholder in another company with a contract with the firm of which he was a director he was not disqualified but could not vote on matters related to the contract. This rule appeared to reflect a clear intention to prevent improper gains by conflicted insiders at the expense of members of the public who were investing in a firm given wide powers including raising a very large sum of money in return for the provision of a public benefit. This very clear and widely understood requirement was at the centre of a general sensitivity to conflicts of interest which we shall see emerge frequently in the case studies.<sup>137</sup>

Directors were given the powers of the company save on those matters reserved for general meetings, and were allowed to set up committees with full powers. Minimum and maximum numbers of directors were generally enacted as well as the quorums for directors and directors' committee meetings. The directors were to select a chairman and deputy chairman from their number who were to have a casting vote in directors' meetings.<sup>138</sup> (The Acts do not refer to boards.) The pre-CCCA railway Acts and the CCCA held that directors were to be personally harmless for lawful acts done for the company which indemnified them.<sup>139</sup>

Keeping the company's funds safe appears to be the motive behind the Acts' requirements on other officers. Security could to be sought from the treasurer and other officers charged with custody of the company's money. The Acts preceding the CCCA (BER, ECR, S&HR) all require the separation of the roles of treasurer and secretary/clerk whereas the CCCA and Acts adopting it (OWWR and WHHRC) are silent on the matter. Another arrangement designed to protect the company's funds and found in all the Acts reviewed was that of holding officers to account. The company could demand that an officer make up an account of his dealings on behalf of the company and pay over any balance owing and had a range of sanctions up to imprisonment in support. In the meantime the company retained its rights against any surety for the officer in question.

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<sup>137</sup> BERA cl. 144; ECRA cl. 143; S&HRA cl. 89; CCCA cl. 85. Tavistock Act cl. 11; Wey & Arun Act cl. 66.

<sup>138</sup> BERA cl. 139, 145-7 & 150-1. ECRA 144 & 147. S&HRA 97-104. CCCA cl. 92-6. OWWR cl. 15 & 25. WHHRC cl. 75-9.

<sup>139</sup> BERA cl. 238-9. ECRA cl. 224. S&HRA cl. 107-8. CCCA cl. 100.

The two canal Acts allowed for the taking of security from the treasurer and others handling money and the Wey & Arun Act for holding officers to account.<sup>140</sup>

### *Records and accounts*

Railway Acts called for general, directors, and directors' committee meetings to be minuted and for the minutes to be signed by the chairman.<sup>141</sup> A list of shareholders and their addresses was to be kept which was open to inspection by shareholders and copies or extracts could be taken for a small fee (typically 6d per 100 words).<sup>142</sup> The two canal Acts call for a share register but are silent on the rights of proprietors to inspect it.

Railway companies were required to keep accounts and to appoint a book keeper. The directors were to make up the accounts for the general meeting and chairman or deputy chairman was to sign them. The BER Act required that this be done for half years ended June and December but that they be laid before the general meeting rather than in advance.<sup>143</sup> The ECR Act also required half yearly accounts but also provided that shareholders could examine them at any time in the 14 days prior to the general meeting.<sup>144</sup> The S&HR Act which called for annual accounts allowed shareholder access to the books for both 14 days before the meeting and 1 month afterwards.<sup>145</sup> The CCCA called for books to be balanced and a balance sheet prepared 14 days before the general meeting unless otherwise specified and for the books and balance sheet to open for inspection by shareholders for a specified period and if none were specified for 14 days before and 1 month after the meeting.<sup>146</sup> All the railway Acts provided that at all reasonable times the accounts be open to inspection by mortgagees and obligees.<sup>147</sup>

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<sup>140</sup> BERA cl. 145, 153-4. ECRA cl. 146. S&HRA cl.123-5. CCCA cl. 109-14. Tavistock cl. 18. Wey & Arun cl. 72-3.

<sup>141</sup> BERA cl.145 & 148. ECRA cl. 144. S&HRA cl. 105. CCCA cl. 98.

<sup>142</sup> BERA cl. 158-60. ECRA cl. 156. S&HRA cl. 12. CCCA cl. 10.

<sup>143</sup> BERA cl. 149 & 156.

<sup>144</sup> ECRA cl. 170.

<sup>145</sup> S&HRA cl. 126-30.

<sup>146</sup> CCCA cl. 116-17.

<sup>147</sup> BERA cl. 149. ECRA cl. 150. S&HRA cl. 130. CCCA cl. 55.

The ECR and BER Acts said simply that the accounts should cover all payments received and made.<sup>148</sup> The S&HR and CCCA Acts were very similar in calling for an exact balance sheet drawn up to show a true statement of the capital stock, credits and all property belonging to the company and debts due by the company at the balance sheet date; and a distinct view of the profit and loss arising from the transactions of the company over the the previous half year.<sup>149</sup>

The canal Acts reviewed provide for the committee of management at the annual meeting (or more frequently as necessary) to “call for, audit and settle” accounts covering all payments received and made on behalf of the company; and for the company to record all payments made and received, contracts and bargains in books open to inspection by proprietors. Unlike the railway Acts they do not enlarge on these requirements.<sup>150</sup>

### *Financial rules*

The two canal and various railway Acts set out the amount of capital to be raised, the number of shares and the amount due on each share. Railway companies were typically allowed to borrow either by mortgage or bond up to one third of their capital once half the capital was paid in; and the case study firms were all subject to such a rule.<sup>151</sup> Borrowing had been allowed by canal Acts but apparently on a somewhat less generous basis as the Tavistock and Wey & Arun were allowed to borrow only around 20% and 9.5% respectively of their capital.<sup>152</sup> Companies could raise share capital instead of borrowing under its allowance. There seemed to be varying rules on pre-emption rights. The ECR Act required existing shareholders to have first refusal; the BER clause on raising capital rather than debt is silent on pre-emption and the S&HRA and CCCA called for pre-emption rights only if the shares were at a premium.<sup>153</sup>

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<sup>148</sup> BERA cl. 148. ECRA cl. 150.

<sup>149</sup> S&HRA cl. 126-7. CCCA cl. 115-16.

<sup>150</sup> Tavistock act cl. 18 & 20. Wey & Arun act cl. 72 & 79.

<sup>151</sup> BERA cl. 3 & 247. ECRA cl. 3 & 246. S&HRA cl. 49. OWWRA cl. 3 & 9. WHHRCA cl. 85.

<sup>152</sup> Tavistock act cl. 4-6. Wey & Arun cl. 60-1.

<sup>153</sup> ECRA cl. 252. BERA cl. 248. S&HRA cl. 67-71. CCCA cl. 58-60.

Funds were to be applied first to the cost of securing the Act; and second to carrying the purposes of the Act into execution.<sup>154</sup> The route of the railway was set out in the Act and associated papers and any extension or branch or the raising of funds beyond the capital limit required a new Act of parliament. This was an important check on railway managers and was relevant to shareholder activism in the case studies.

All the railway Acts contained requirements that no dividend should be paid which reduced or impaired the capital of the company. Nor was a dividend to be paid to a shareholder any of whose shares had calls in arrear. The BER and ECR Acts said a dividend could be declared out of clear profits but not more often than quarterly and that the dividend should not exceed clear profits nor reduce nor impair capital.<sup>155</sup> The S&HR Act additionally said that general meetings were not obliged to accept directors' proposed dividend and allowed a fund to be proposed by directors to meet contingencies for enlarging or improving the works or to prevent fluctuations in dividend.<sup>156</sup> The CCCA also repeated that the company shall not make any dividend among the shareholders whereby their capital stock will in any degree be reduced. It also allowed for a contingency/works fund to be set up before apportioning profits to be divided. It also permitted a return of capital to be made by a special general meeting with the consent of all mortgagees and bond creditors.<sup>157</sup> Whilst the canal Acts reviewed referred to keeping accounts which proprietors could inspect, only the Wey & Arun Act refers to the calculation of "clear profit".<sup>158</sup> The two canal Acts refer to the claims of proprietors by way of dividend or interest upon the company, but neither elaborates on the process of declaration nor specifically forbids dividend payments which would reduce or impair capital.

This was an important requirement in the railway Acts aimed against what was typically described as paying dividends out of capital. Allegations concerning this practice were material elements in shareholder activism in the case studies.

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<sup>154</sup> For example BERA cl. 4.

<sup>155</sup> BERA cl. 157. ECRA cl. 171.

<sup>156</sup> S&HRA cl. 134-7. WHHRCA cl. 72 forbids paying dividends which would reduce capital.

<sup>157</sup> CCCA cl. 120-3.

<sup>158</sup> Wey & Arun Act cl. 58.

Problems with the accounts occurred frequently in the case studies and largely reflect the lack of rules or guidance beyond that quoted above. However, powers of inspection together with those on audit and shareholder committees below helped to surface these problems.

### *Audit*

The two canal Acts do not provide for auditors. Nor does the BER Act but it allows for a general meeting if dissatisfied with the accounts to appoint a committee of five proprietors each holding a minimum of 10 shares to prepare a report for an adjourned or future general meeting. The company was to provide the committee or any three of them with accounts, vouchers and documents.<sup>159</sup> The ECR Act provides for the same save for a qualification of 20 shares and the committee's ability to appoint accountants at the expense of the company. Auditors, however, as we shall see below, were in place at the BER by 1843 and at the ECR by Waddington's time as chairman when they were supported by accountants Quilter Ball. The S&HR Act called for three auditors to be appointed by the general meeting with the same qualification as directors and holding no office or interest in the firm save for the shares. They were to rotate annually. Their duties were to receive the accounts and balance sheet to be presented to the general meeting at least 14 days before the meeting and examine them. They could appoint accountants or others at the expense of the company. They could make a special report on the accounts or simply confirm them with either to be read at the general meeting. The CCCA provided for the same (save for setting a minimum of two auditors) - it is probable that the S&HR Act followed standard wording then current on auditors which in time found its way into the CCCA.<sup>160</sup>

### *Powers to establish and the process surrounding Committees of Investigation*

None of the Acts give a power to the general meeting to establish Committees of Investigation (CofI) but no evidence has come to hand of the setting up of committees been thwarted by reference to the company's Act. The pre-eminent authority of the general meeting; the power of shareholders to inspect the books; and, in certain cases, to

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<sup>159</sup> BERA cl. 156. ECRA cl. 170.

<sup>160</sup> S&HRA cl. 107-18. CCCA cl. 101-8.

the right of a general meeting to establish a shareholder committee in the event of dissatisfaction with the accounts appear to be legal elements facilitating the appointment of Cofl's .

The establishment of the committee and the appointment of its named shareholder members was by resolution of the general meeting. Sometimes the general meeting was adjourned pending the receipt of the written report of the committee; on other occasions the report was taken at the next scheduled comment general meeting. In either case the general meeting would receive and discuss the report and make such resolutions as it considered appropriate. Whilst the background to the appointment of the committee would, in practice, focus its attention on certain areas, the formal scope of matters to be investigated was generally wide, if not unlimited, as was access to directors and employees and documentation. Some committees also interviewed parties outside the company. They were generally permitted to engage professional or expert assistance at the company's expense. Typically a Cofl had three to six members.

In each case study we shall comment on the establishment of the committees, the level of authority implied by their members and their diligence.

### *By-laws*

It has not been possible to locate by-laws relating to corporate governance of the British case study companies. By-laws of the Old Colony and Fitchburg Railroads are to hand and are discussed in the New England railroad chapter below.

### *Summary of corporate governance rules*

The rules on how railway companies were to govern themselves afforded several protections for shareholders. The limitation of the Acts to a particular capital amount and a particular line of railway allowed shareholders, competitors, parliament and the state to challenge directors with growth ambitions. The shareholders in general meeting were sovereign and the very size of railway companies together with graduated voting schemes and clear rules on conflicts of interest militated against the power of large shareholders and directors and the risk of insider expropriation. However, the other side

of this coin was that the incentives on directors to manage the business as if it were their own were reduced. The half yearly provision of audited accounts and opportunity to raise matters at a general meeting backed by access to the books offered the prospect of shareholder oversight. Gearing and dividend rules were aimed at securing financial stability and offering protection to creditors albeit the lack of accounting and reporting standards afforded directors considerable scope to avoid these financial rules.

Overall these rules offered shareholders a framework within which they had a fair prospect of protecting and promoting their interests. However, before turning to the case studies, it is worth rehearsing briefly the other elements affecting their chances.

### Parliamentary Process and Board of Trade Regulation

Shareholders seeking to challenge management were afforded some opportunities by the system of parliamentary approval of railway schemes which amounted to a contested licensing system. Potential opportunities for shareholders to block directors' action arose from the need for a new Act to extend the line, raise new capital, regularise borrowing powers or amalgamate. Under parliamentary standing orders shareholders generally had to hold a so-called Wharnccliffe meeting to approve the bill, which thereafter might be contested by opposing railways, local landed or mercantile interests or dissenting shareholders such as Coleman, a campaigner shareholder of WHHRC, before a House of Commons Committee.

The reform party at the ECR in 1855-6 tried to influence the course of the company's bill which aimed to define the company's borrowing powers and also to legalise the loans made without authority to the Norfolk and Eastern Union Railways, but the company largely secured its objective and without the need for a Wharnccliffe meeting. Nor did the parliamentary or legal process always bow to the will of shareholders as when the OWWR shareholders voted for a deal with the LNWR. The court threw it out and otherwise for an extended period the GWR was able to frustrate the OWWR's attempts to set aside its obligations to lay broad gauge track.

Such regulation as existed could assist shareholders in challenging management. An ad hoc Board of Trade (BoT) inspection of the Norfolk Railway made adverse findings which



damaged Waddington's case. The BoT's role in advising parliamentary committees on bills appeared to impact WHHRC which withdrew its capital bill in 1860 after the BoT advice raised some difficult questions. The BoT and parliament also collected data from each company on traffic and capital and loans, which could be used, as by Coleman with the WHHRC, to identify inconsistencies with the figures reported in the company's half yearly reports.<sup>161</sup>

### Other elements affecting railway shareholders' ability to influence company affairs

#### *How shareholders were expected to behave*

Shareholders at this period were generally described collectively as proprietors. The BER, ECR and S&HR Acts and the two canal Acts described them as proprietors or as proprietors of shares. However, the CCCA describes them throughout as shareholders. The press tended to refer to proprietors or the proprietary. These descriptions, suggesting ownership of assets rather than of some marketable claim on profits, tend to chime with Berle & Means's analysis of mid nineteenth century perceptions of ownership before the destruction of the unity of property set in. They tended to imply an active approach by shareholders to looking after their property. The disappointment expressed by some commentators at perceived shareholder inertia could partly stem from these expectations.

The press covering the case study incidents described below generally encouraged engagement by shareholders at general meetings either in person or by proxy.

#### *Railway discourse*

Railway shareholders of the day could benefit from the extensive discourse on the progress of both the industry generally and individual companies. Share prices were regularly reported and financial benchmarks on dividend rates and working expenses

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<sup>161</sup> Traffic data were collected under the authority of the Railway Regulation Act 1840 3 & 4 Vic c.97 cl. 3. For example data for the half year ended 30 June 1859 can be accessed at <https://parlipapers.proquest.com/parlipapers/docview/t70.d75.1859-035653/usgLogRstClick!!?accountid=15181>. Capital and loans data were collected by order of the House of Commons. For example the 1857 return can be accessed at <https://parlipapers.proquest.com/parlipapers/docview/t70.d75.1857-034653/usgLogRstClick!!?accountid=15181>.

ratios were soon established. Whilst the case studies involve particular problems and disputes which attracted publicity, there was extensive coverage in the railway press of the financial performance of relatively untroubled companies and of the industry as a whole.

The discourse was also enriched by publicity given to the Railway Mania and its aftermath. The competition between railway companies for territory induced directors to offer guarantees to branches and extensions which in many cases reduced returns to shareholders of the trunk line. The rapid expansion of the network and poor trading conditions led to reduced returns and dividends. These issues also may have been partly responsible for the multifarious wrong doing associated with George Hudson as well as their exposure in 1849. Railway shareholders also learned about a range of wrongful acts committed against companies from the dozen reports of committees of investigation at the four railways which he led.

Commentators such as Herbert Spencer and Henry Varnum Poor added to the discourse through their analysis of the problems facing railway shareholders. Spencer argued that, as a dispersed group of limited resource, small permanent shareholders had little chance of matching a well co-ordinated group of directors with greater resources. Small shareholders intended to trust railway directors too much and a major error of the former was to assume that the latter's holding of shares meant their interests were aligned. Directors often had local business interests for which the indirect benefits of branches and extensions (Spencer's main concern) were greater than the cost of reduced returns on the main road's shares caused by guaranteed returns of branches and extensions. Larger shareholders were better able than small ones to invest in preference stocks offered to existing shareholders and leave the smaller shareholders with reduced returns as branches and extensions were not covering the preference stock coupon. He also warned against wrongful accounting and sharp practice in the running of general meetings. He also accepted that shareholders sceptical about management would often prefer to sell rather than risk activism which could depress the share price.<sup>162</sup> Spencer did not charge shareholders with idleness but offered the above analysis of their predicament.

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<sup>162</sup> Herbert Spencer, *Railway Morals & Railway Policy* (London: Longman, Brown, Green & Longmans, 1855), 6, 7-9, 25-9, 30-6.

Henry Varnum Poor was somewhat more robust, arguing that the most important cause of suffering in both British and American railroads came from the inability of stock and bond holders to exercise a personal oversight of the expenditure of their money. He added that there was the same tendency in both countries on the part of owners of railroad property to indifference and carelessness as to its management.<sup>163</sup>

They offered different remedies. Spencer wanted the original contract to build a particular railway enforced by the courts against attempts to branch or extend.<sup>164</sup> Poor's remedies were local involvement in railroad building to keep construction costs down and proper information flows to incentivise and monitor management's performance.<sup>165</sup> Spencer's remedy was not taken up - perhaps Poor's were more useful. However, their analysis of issues affecting railway shareholders would have helped the latter identify potential risks and consider organising to deal with them.

The discourse was international as the US and British specialist press covered material on both markets as well commenting from time to time on continental European railways. For example Spencer and Poor published the copy of the other. The former printed articles cited above from the American Railroad Journal (ARJ) as appendices to *Railway Morals*; and the latter as editor of the ARJ printed *Railway Morals* over two issues in late 1854.<sup>166</sup>

Overall, the railway discourse was a major factor in educating railway shareholders, who by the mid 1850s had a more cynical and knowing attitude than in the pre-Mania days.

### *Strategic and existential issues*

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<sup>163</sup> American Railroad Journal, November 25 1854 & December 9 1854. Printed as an appendix to *Railway Morals*.

<sup>164</sup> Spencer, *Railway Morals*, 57.

<sup>165</sup> American Railroad Journal, December 2 1854 and December 9 1854. Printed as an appendix to *Railway Morals*

<sup>166</sup> American Railroad Journal, November 25 & December 2, 1854, 745-7 & 754-7.

A major element of the railway discourse concerned the great competition between the various companies particularly over adjacent territory as yet without railway accommodation. The 1840s and 1850s saw great consolidation in the industry; and there was a widespread view that, unless a company was prepared to compete over territory, the existing line would lose business or not grow it at the rate previously hoped for; and that amalgamation on unfavourable terms might follow. This arguably forced directors into proposing transactions often at short notice where shareholders had to weigh potential longer term benefits against more certain shorter term costs. The case studies reveal several situations of this type.

We now turn to see how shareholders fared in the case study firms. They were expected to show active ownership, were armed with statutory protections and powers, and informed by the railway discourse. However, the latter was often pessimistic about their ability to protect their interests; and they often faced difficult sometimes urgent choices about the future of the firm.

## **Chapter 4: Bristol & Exeter Railway Case Study**

### Introduction

The Bristol & Exeter Railway (BER), a medium sized railway company, saw considerable shareholder activism in the period 1845-50 and meets the selection criteria through shareholder revolts, first over the attempted sale of the company to the Great Western Railway (GWR) in 1845; and second over perceived conflicts of interest in 1849-50. Both revolts involved well organised campaigns. The former prevented the sale from proceeding; the latter saw a change in policy on goods traffic, caused the resignation of the Deputy Chairman and led to some governance improvements arising from a Committee of Investigation. Both campaigns led to shareholder activist leaders becoming directors.

This case study will show that shareholder activism was facilitated by a railway discourse intensified variously by boom and bust market conditions and corporate scandal. It also benefitted from a shareholder body which had material local and, separately, so-called expert representation. Prompted by an existential proposal on the one hand and the emergence of conflicts on the other, substantial outcomes, as described above, were secured by shareholder activism. By way of the Committee of Investigation Report, it recommended administrative improvements which added to the railway discourse and guided shareholders, directors, managers and auditors as to good practice.

Agency theory is supported by the case study. The shareholders as principals perceived the agency risks, assumed the agency costs of monitoring themselves in the two phases of activism and mitigated the risks as they saw them. They also proposed administrative improvements which would involve the incurring of future agency costs whilst bearing down on agency risks. However, the ambiguities of conflicts of interest are evidenced in the uncertainty as to which goods rate policy better served the company. Also, it proved difficult to arouse shareholder interest on administrative shortcomings absent any evidence of actual loss.

The goods customers involved in the activism could be described in present day terms as stakeholders and as having benefitted from the activism. The case study thus has some resonance with stakeholder theory.

Board size and director rotation rules played a part in limiting the outcomes of activism in 1846.

### History of BER

BER was in existence between 1836 and 1876 with a system based around an important trunk line from Bristol to Exeter in south-western England. It was associated throughout its life and had an end-to-end junction with the GWR, whose main line ran between London and Bristol. BER's line of double track on the broad gauge was completed in 1844 having been open to Bridgwater from Bristol in 1841, which coincided with the opening of the GWR from London to Bristol. The construction of both was engineered by Isambard Kingdom Brunel and the companies eventually amalgamated in 1876.<sup>167</sup>

However, they were separate companies with hardly any board members in common and were in conflict from time to time particularly over the development of a more direct route from London to Exeter (than that of the GWR and BER via Bristol), which was one of the most contested projects in early Victorian railways.<sup>168</sup> A more direct route was completed by the narrow (now standard) gauge competitor, the London & South Western Railway in 1860.

BER was operated under lease by the GWR from opening until 1849. The attempt by management in 1845 to grant a permanent lease (equivalent to a sale) to GWR was defeated by shareholder action. An attempt to renew the lease also failed and BER commenced independent operation on 1 May 1849.<sup>169</sup> The decisions associated with taking the line into their own hands also prompted shareholder action against the new

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<sup>167</sup> Andrew Roden, *Great Western Railway A History* (London: Aurum Press, 2010), 37, 40 & 45-6.

<sup>168</sup> Roden, op. cit., 45-6. E. T. Macdermot, *History of the Great Western Railway, Vol.1 1833-63* (Shepperton: Ian Allan, 1964), 144-6.

<sup>169</sup> Colin Maggs, *A History of the Great Western Railway* (Stroud: Amberley Publishing 2015), 62-3. Macdermot, *History of the Great Western Railway*, 144-6 & 156. Roden, *Great Western Railway*, 45-6.

goods tariff and the perceived conflicts of interest of the Deputy Chairman, John Browne, who was an important customer as a carrier of coal and other goods. Browne was forced out, the goods tariff changed and a Committee of Investigation established in March 1850. This unearthed some irregularities, mainly of process, and made consequent recommendations on governance. In terms of the relationships between shareholders and management, the BER had by the end of 1850 moved into calmer waters.

BER was financially quite strong. During construction there had been some strains as when the GWR lent BER £20,000 to tide it over, but the line was built quite cheaply at £26,000 per mile compared to over £50,000 per mile for the GWR and an estimate of £33,000 for early British railways generally.<sup>170</sup> This meant that BER was not struggling with a bloated capital base for the dividend to service. Nor was BER encumbered by guarantees to sponsored railways forming branches or extensions in contrast to some railways in the 1840s and 1850s. The dividend record was satisfactory in contemporary terms for the period under review with payments in the range of 3.5/4.5%.<sup>171</sup>

### BER shareholders

Analysis of the ownership of BER is hampered as the share registers have not survived, nor does the press coverage describe the overall voting strengths of the opposing groups in either 1845-6 or 1849-50. There are shareholder data for 1845 from the returns made to parliament amounting to some £230,000 (about 10% of the BER's capital) for "branches".<sup>172</sup> The data reveal an overall predominance of Bristol and West Country investors but a substantial share held by investors from Lancashire who had the geographic largest share of those subscribing over £2,000.

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<sup>170</sup>TNA/ZPER3/9, 28, Herapath's 3 January 1846. TNA/ZPER6/4, 104, Railway Record, 31 January 1846. T. R. Gourvish, *Railways & the Economy 1830-1914* (London: Macmillan, 1980), 16.

<sup>171</sup> TNA/ZPER3, Herapath's Various Dates.

<sup>172</sup> Return of Alphabetical List of Names of Persons subscribing to Railway Subscription Contracts deposited in the Private Bill Office, 1845, House of Commons Papers 1845, Vol. XL.1, 153. Ditto for 1846, House of Commons Papers 1846, Vol. XXXVIII.1.

**Table 4.1 Distribution of 1845 subscribers to BER branches.**

<b>Investors over £2000</b>	<b>Bristol/West Country</b>	<b>Lancashire</b>	<b>London</b>	<b>Elsewhere</b>	<b>Total</b>
<b>Number of investors</b>	15	13	3	0	31
<b>Amount subscribed £</b>	51,196	59,929	11,533	0	122,258
<b>%subscribed by geography</b>	42	49	9	0	100

<b>Investors up to £2000</b>	<b>Bristol/West Country</b>	<b>Lancashire</b>	<b>London</b>	<b>Elsewhere</b>	<b>Total</b>
<b>Number of investors</b>	172	13	21	5	211
<b>Amount subscribed £</b>	91,532	7,798	11,491	4,766	115,587
<b>% subscribed by geography</b>	79	7	10	4	100

<b>Combined</b>	<b>Bristol/West Country</b>	<b>Lancashire</b>	<b>London</b>	<b>Elsewhere</b>	<b>Total</b>
<b>Number of investors</b>	187	26	24	5	242
<b>Amount subscribed £</b>	142,728	67,327	23,024	4,766	237,845
<b>% subscribed by geography</b>	60	28	10	2	100

A list of names and addresses of shareholders printed in December 1875, maybe ahead of the amalgamation with the GWR, is also to hand.<sup>173</sup> A 11% sample<sup>174</sup> of the 1875 list gives a geographical distribution of shareholders in the following table.

<sup>173</sup> TNA/RAIL 75/71 *Bristol & Exeter Railway Shareholders Address Book* dated 1 December 1875.

<sup>174</sup> Sample comprises shareholders on pages 3, 13, 23 and so on to 63. Whole list comprises 65 pages.



**Table 4.2 Indicative 1875 distribution of BER shareholders (11% sample).**

	Number of shareholders	% share of sample	Note
<b>Bristol</b>	82	17.6	
<b>London</b>	75	16.1	
<b>Devon</b>	68	14.7	
<b>Somerset</b>	45	9.7	
<b>Glos/Wilts</b>	31	6.7	
<b>Northern England</b>	27	5.8	11 of 27 Lancashire
<b>Other</b>	136	29.3	
<b>Total sample</b>	464	100	

The 1875 list also marks 419 shareholders (c. 10% of total) who are eligible to be directors and these (sample of 100%) are distributed as follows:

**Table 4.3 Distribution of 1875 shareholders eligible to be directors (100% sample).**

	Number of shareholders	%share of sample
<b>Bristol</b>	91	21.7
<b>London</b>	89	21.2
<b>Devon</b>	64	15.3
<b>Southern England</b>	55	13.1
<b>Northern England</b>	46	11.0
<b>Somerset</b>	34	8.1
<b>Glos/Wilts</b>	13	3.1
<b>Wales</b>	17	4.0
<b>Scotland</b>	8	2.0
<b>Ireland</b>	2	0.5
<b>Total</b>	419	100

The total number of shareholders in the 1840s remains somewhat elusive as it not stated in terms in the archive researched. The 1875 list contains about 4200 names including about 20% of holders of preference shares which began to be issued just after the events of the case study. The implied 1875 ordinary shareholder total of say 3,300 is most probably materially higher than the 1840s base given the raising of capital for various branches thereafter as well as BER's good financial performance which would have attracted investors looking for a steady return. In early 1846 it was estimated at a meeting of London shareholders that there were about 180 shareholders resident in the city. Applying the 1875 distribution to the 1846 estimate of the number of London shareholders would give an estimate of around 1,100 for the number of shareholders in the mid 1840s.

The 1875 name and address list is far removed in time from the period of shareholder activism of the case study but offers some broad indication which appears to be borne out by the narrative evidence of the 1840s. That is the centre of gravity of the proprietary was local to the line but that there were important groups of shareholders in London and northern England. The data from the 1845 parliamentary return broadly support this proposition. It is possible that the shareholder base became somewhat more geographically spread over time as the BER's satisfactory financial return attracted investors seeking a steady return but no active involvement at shareholder meetings.

## The Attempted Sale of the BER to the Great Western Railway (GWR) in 1845

### *Introduction*

At the height of the railway mania in October 1845, the directors of BER announced a provisional agreement with the directors of the GWR for a perpetual lease (effectively a sale). This proved very unpopular with the shareholders, who overwhelmingly rejected the proposal at a special general meeting in November 1845. Further shareholder agitation led to the election to the board of some of its leaders at the half yearly general meeting in March 1846. In considering the attempted sale we shall provide a narrative, the background of the railway mania and then some elements of the activism. These are

organisation, the role of the press, the engagement of the shareholders with analysis of the BER's value and prospects, the ambiguities of the GWR/BER relationship and, finally, the provision of information relevant to the decision.

### *Narrative*

Following the opening of the BER to Exeter in 1844, the railway seemed to be making good progress paying a regular dividend of around 4% and the directors reporting a steady increase in underlying revenues. Shareholder meetings were supportive of management and peaceful.<sup>175</sup> However, the onset of the railway mania led to the promotion of new railways in competition with established lines all over England. In the south west these took the form of direct London to Exeter lines and the senior and larger incumbent GWR sought to respond to defend its territory and offered the BER the chance to build or participate in the building of a blocking line. The BER board declined but, fearful of losing traffic to a direct line competitor, announced in October 1845 a provisional agreement for a perpetual lease to the GWR. Its terms were as follows:

- i) a rent of 5% p a from 1.1.46 to 1.1.49;
- ii) a perpetual rent of 6% p a from 1.1.49;
- iii) a clawback of 0.25% on the 6% in the event of a narrow (ie standard) gauge direct line to Exeter gaining parliamentary sanction in the period to 1.1.49;
- iv) a differential treatment of the different share classes (whole shares and third shares) where the whole shares were to be paid up in 1849 and the 3rds in 1852; and
- v) all BER assets including its shares in other railways, notably lines from Exeter to Plymouth and Barnstaple, were to be included.<sup>176</sup>

The company announced the terms but no supporting analysis or arguments for the agreement ahead of a stormy general meeting on 7 November which overwhelmingly rejected it.<sup>177</sup> Such was the strength of the opposition that suggestions of an attempt to improve the terms of the bargain were mooted but not pressed at the meeting. The shareholders had started to organise before the meeting but extended such organisation

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<sup>175</sup> For example TNA/ZPER 2/9, 1379-80 *Railway Times* 28.8.45.

<sup>176</sup> TNA/ZPER 2/9, 2061, *Railway Times*, 25 October 1845.

<sup>177</sup> TNA/RAIL75/51, *Minutes of BER Shareholder Meetings*, 129-31. *Bristol Mercury*, 8.11.45.

after it, with committees set up in Bristol and Manchester and meetings held elsewhere including London. Debate continued around the strategic and financial value and prospects of the company and what changes should be pressed for in the directorate to ensure a voice for the disaffected shareholders. It seems also the activist shareholders were determined to scotch any resurrection of the GWR agreement other than on much improved terms. Perhaps affected by the end of the boom phase of the mania and a continuing relationship through the existing lease to 1 May 1849, no further offer from the GWR saw the light of day. Although the provisional agreement had been rejected in November, debate around prospects and value continued in the run up to and at the half yearly general meeting of March 1846 fuelled partly by the fear that the board might try again, and partly by the board's issue of a Special Report in February 1846<sup>178</sup> seeking to justify its support for the provisional agreement. The report, however, did not seek to resuscitate the deal, nor did the general meeting.

The activist shareholders tried to have some of their leaders elected to the board in March 1846 with the aim of securing a majority for their views on company value. Under the original Act of parliament sixteen directors were to be elected but there was no reference to maximum or minimum board size, just a quorum of eight. The shareholder activists argued that a more recent Act allowed the board size to increase without limit and proposed elections to fill it up to nineteen. Perhaps this was the CCCA which permitted the company to increase or reduce board size within specified limits and there were no specified limits.<sup>179</sup> Two opposing legal opinions had been secured by BER and it was agreed that the opinions of the government law officers be obtained to help settle the matter. The decision of the general meeting was between:

- i) the directors' wish to have a board (16) of 9 non-retiring directors, 4 re-elected retiring directors and 3 new men put forward by the shareholders; and
- ii) the shareholder committees' wish to have a board of (19) of 9 non-retiring directors, 2 re-elected directors (the shareholders' preferred 2 of the 4) and 5 new men put forward by the shareholders making 16 and provisionally (pending the law officers' opinion)

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<sup>178</sup> TNA/ZLIB15/8, *Special Report of the Directors to the Proprietors of the Bristol & Exeter Railway*, Bristol: printed at the Mirror Offices by John Taylor, signed by James Gibbs, Chairman, 18.2.46.

<sup>179</sup> BERA cl. 139. CCCA cl. 82.

electing the other 2 retiring directors (whom the shareholders liked less) and 1 further new man.

After the directors won on a show of hands and the opposition demanded a poll, a compromise was reached whereby the list acceptable to the directors (i above) was elected with a commitment to get the law officers opinion and then to elect more if the shareholders wished.<sup>180</sup> The three new directors which had been nominated by the shareholders were William Rawson, chairman of the Manchester Committee, John Stone, chairman of the Bristol Committee and John Fussell, a large shareholder associated with the Bristol Committee.<sup>181</sup>

At this point peace was declared by the railway press and a quieter phase followed until 1849.<sup>182</sup> The plan for a larger board appears to have been fairly quickly killed off. The first law officers opinion was permissive of a board without numeric limit but the BER sought a second opinion from the law officers on the prudence of the move. This came back in the negative and a special general meeting in May 1846 approved the status quo without any reported opposition either at or before the meeting.<sup>183</sup> We now turn to the elements behind this phase of shareholder activism at the BER.

### *The background of the Railway Mania*

The first element of the Mania relevant to our case was the development of great interest in investing in railways and of the means to support it via local stock exchanges and the local and specialist press. Investors in the BER were part of an investing community with sources of information both of which pre-dated the mania. However, the ability of the press, notably the specialist railway press, to scale up and communicate the mass of information arising from railway company promotion and activity, was an important pre-

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<sup>180</sup> TNA/RAIL75/51, 132-44, *Minutes of BER Shareholder Meetings. Bristol Mercury*, 7 March 1846.

<sup>181</sup> Bristol Mercury, 7 March 1846. Bristol Times, 15.11.45. Railway Record, 22 November 1845.

<sup>182</sup> For example, TNA/ZPER3/9, 343, *Herapath's Railway & Commercial Journal*, 7 March 1846.

<sup>183</sup> TNA/RAIL 75/51, 147-51, *Minutes of BER Shareholder Meetings. TNA/ZPER6/4*, 562, Railway Record, 23 May 1846.

condition for shareholder activism.<sup>184</sup> The main types of activity typically reported were as follows. First, the massive boom in promotion was reported including all the new projected railways. Many of these were so-called direct lines, including over more feasible and undeveloped routes such as London to York or London to Exeter. 1845 was the boom year for promotion with parliamentary approval sought in 1846.<sup>185</sup> The shareholders of existing railways such as the BER and GWR were forced to face the prospect of competition from these new direct lines and those in their territory would have looked more threatening than many of the unfeasible looking schemes swelling the railway press. Second, the press was reporting mergers of railways particularly those comprising parts of trunk routes with end-to-end junctions. The formation of the Midland Railway under the guiding hand of George Hudson out of three component railways in 1844 was the most notable example and was soon made close to home with the Midland outbidding the GWR to lease the line between Birmingham and Bristol.<sup>186</sup> The GWR and BER were joined end to end and on a common gauge so were natural amalgamation candidates.

The third element was the boom in the value of railway securities to bubble proportions. The bubble began to deflate in late 1845 but only slowly - the GWR/BER provisional agreement was conceived when it was at its height and share prices were still at historically advanced levels during the period of the BER debates over value in late 1845/early 1846.<sup>187</sup> Some shareholders would be disinclined to accept a bid which appeared short in terms of current values. Fourthly, the desire of existing railway companies to extend their geographical areas of operations, whether offensively or defensively inspired, was beginning to be reported as achieved through offering a dividend guarantee to the shareholders of the branch or extension involved in return for a permanent lease. At the height of the mania such guarantees were bid up by competition for extensions or branches in contested territory. These arrangements became fairly common and as we

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<sup>184</sup> The railway papers researched are Herapath's Railway & Commercial Journal hereafter Herapath's (TNA/ZPER3), The Railway Times (TNA/ZPER2) and The Railway Record (TNA/ZPER6).

<sup>185</sup> Harold Pollins, *Britain's Railways: An Industrial History* (Newton Abbot: David & Charles, 1971), 39-40.

<sup>186</sup> H. J. Dyos & D.H. Aldcroft, *British Transport. An Economic Survey from the Seventeenth Century to the Twentieth* (Harmondsworth: Penguin Books, 1973), 138-9.

<sup>187</sup> Pollins, *Britain's Railways*, 39-41.

have seen later attracted the opprobrium of some commentators such as Herbert Spencer. A fifth aspect of the mania was promotion and trading for short term profit rather than for investment.<sup>188</sup> There is little evidence of this in the BER case - the story appears to concern long term investors arguing over the fundamental value of their line. However, the excitement and confidence induced by the mania might have emboldened shareholders to activism or at least made them sensitive to the need for prompt action if their future interests seemed threatened. These and the various risks and opportunities of competition, merger, burgeoning share prices and perpetual leases would have been potentially in the minds of BER shareholders when the board announced the provisional agreement with the GWR.

### *The elements of BER shareholder activism*

#### Organisation

The activist shareholders appeared well organised. Prior to the November 1845 special meeting, opposition seems to have spread quickly amongst the shareholders, who were reported as organising meetings in various places and writing many letters expressing opposition to the railway press. After the general meeting, committees with the formalities of an elected chairman and secretary and subscriptions raised to defray expenses were set up in Bristol<sup>189</sup> and Manchester<sup>190</sup> to continue the fight. They issued statements setting out their case and urged shareholders either to attend the general meeting of 4 March 1846 or to give them their proxies if unable to do so.<sup>191</sup> Whilst the Manchester and Bristol Committee issued different projections of future dividends and the former took a more diplomatic approach and seemed to have lesser ambitions on securing board representation, they continued to announce they were united in purpose and approach and stressed that a proxy for either committee would be used in the same cause. A formal London Committee was not established but William Rawson, a leading

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<sup>188</sup> Rande Kostal, *Law and English Railway Capitalism 1825-1875* (Oxford: Clarendon Press, 1994), 28-52.

<sup>189</sup> TNA/ZPER2/9, 2,073-4, *Railway Times*, 25 October 1845.

<sup>190</sup> TNA/ZPER6/3, 1842, *Railway Record*, 6 December 1845.

<sup>191</sup> TNA/ZPER6/4, 156, *Railway Record*, 7 February 1846.

light of the Manchester Committee, chaired a meeting in London to recruit shareholders based there.<sup>192</sup>

### Use of the press

The Committees made full use of the press. Notices appeared in the Bristol papers - that is the Bristol Times<sup>193</sup> and the Bristol Mercury<sup>194</sup> - of the outcome of the Committee meetings to give the headline messages such as the resolutions passed and the arrangements for proxies. Fuller descriptions of the proceedings in the Committee meetings including the detailed exposition of various evaluations of actual and projected financial performance tended to appear in the specialist railway press whose readers would thereby be able to engage in the debate over the value of the company. Letters from shareholders generally, but not always, offering support to the Committee line tended to be published in the specialist rather than the Bristol press. Whether or not these letters were organised by the Committees has not been discoverable, but the press evidence does bear witness to an active discourse, with which the shareholders generally could engage.

### Press comment

The specialist press was more inclined to editorial comment than the Bristol press perhaps because of its greater knowledge of the issues affecting railway company investors, say, including comparable cases elsewhere in the country, and perhaps because the issues involved were relatively novel. The Bristol press was to be much fuller in its editorial comment on BER affairs in 1849-50 than it was in 1845-6.

The specialist press researched was split on the issue. The Railway Times (RT) was substantially supportive of the directors and of a deal as it saw the BER and GWR as natural allies. However, it conceded before the 7 November meeting that somewhat better terms would be needed and that it was unlikely the GWR would acquire the BER for

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<sup>192</sup> TNA/ZPER6/4, 104, *Railway Record*, 31 January 1846.

<sup>193</sup> *Bristol Times & Bath Advocate*, 25 October and 15 November 1845.

<sup>194</sup> *Bristol Mercury*, 15 November and 6 December 1845.



5%.<sup>195</sup> However, it regretted the shareholders' decision on 7 November saying they had got carried away by boom conditions; and recommended another meeting and trying again.<sup>196</sup> The RT also found the directors' Special Report of 18 February 1846 (which it printed) to be "admirable";<sup>197</sup> and in reporting the 4 March general meeting said Rawson for the opposition had made a lot of assertions and proved nothing to RT's satisfaction.<sup>198</sup> RT, however, offered no reasoned case in support of the board at any time. Maybe it initially believed terms would have to be improved but that they would emerge following a more measured shareholder response in November; and that by the time the Special Report had been published, it was too late to resurrect the GWR deal.

The Railway Record (RR) was a vigorous advocate of the Manchester Committee urging its readers to send it their proxies ahead of the March 1846 general meeting. The present board, it said, was incapable of running the company.<sup>199</sup> RR was confident of the result - "that the result will correspond with the hopes of those who desire to rescue a fine property from the control of glaring imbecility (to use no harsher phrase) there can, we think, be no reasonable doubt."<sup>200</sup>

Herapath's was more nuanced; in October 1845 it declared against the provisional agreement as undervaluing the company,<sup>201</sup> but it was unhappy with the triumphalism of some of the shareholders at the November meeting, did not support a replacement of the board and hoped that a line of communication be kept open with the GWR.<sup>202</sup> However, in early 1846 it supported the businesslike approach of the Manchester Committee and declared against the BER tying itself to the GWR.<sup>203</sup> The specialist press comment reviewed on balance supported the shareholder activists; and it was an important though

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<sup>195</sup> TNA/ZPER2/9, 2,061, *Railway Times*, 25 October 1845.

<sup>196</sup> TNA/ZPER2/9, 2,282-3, *Railway Times*, 22 November 1845.

<sup>197</sup>TNA/ZPER2/10, 311-14, *Railway Times*, 28 February 1846.

<sup>198</sup> TNA/ZPER2/10, 355-6, *Railway Times*, 7 March 1846.

<sup>199</sup> TNA/ZPER6/4, 82, *Railway Record*, 24 January 1846.

<sup>200</sup> TNA/ZPER6/4, 146, *Railway Record*, 7 February 1846.

<sup>201</sup> TNA/ZPER3/8, 2,305, Herapath's, 25 October, 1845.

<sup>202</sup> TNA/ZPER3/8, 2,581-2 & 2,605, *Herapath's*, 22 & 26 November 1845.

<sup>203</sup> TNA/ZPER3/9, 307, *Herapath's*, 28 February 1846.

not the only component in a discourse based on meeting reports, statements, correspondence and editorial which included sufficient detail and analysis to allow shareholders to make some sort of an assessment of the issues involved.

### The strategic and financial issues debated

The board, shareholder activist leaders, shareholders and the specialist press debated the strategic issues affecting the BER and its likely financial prospects. The RR succinctly described the contest as between those fearful of extension of railway accommodation into the west of England and who wanted to throw themselves into arms of the GWR, and those who wanted to preserve the BER's independence and take steps to protect their territory from invasion.<sup>204</sup> The board stated baldly in its Special Report that it was seized with the conviction that a direct London to Exeter line would be built by one company or another and that this belief, more than any other, had led it to the acceptance of the GWR's terms. This would threaten not only eastern traffic but potentially northern traffic as well.<sup>205</sup>

Whilst one or two correspondents supported this view<sup>206</sup>, most saw the BER to be an important trunk route being fairly direct and close to the Bristol Channel coast; a competitor would be hard pressed to compete for northern traffic by a parallel route.<sup>207</sup> A shareholder correspondent noted that he was much less concerned about competition than he would have been had the Bristol Channel been land rather than sea. The shareholder activists professed not to fear a direct line as the BER could channel traffic to it or the GWR from the feeder lines still in the course of construction west of Exeter.<sup>208</sup> They considered the GWR to be more at risk from the BER competition given the great size of its territory and saw the BER having greater flexibility than its larger ally in

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<sup>204</sup> TNA/ZPER6/4, 264-5, *Railway Record*, 7 March 1846.

<sup>205</sup> TNA/ZLIB15/8, *Special Report of the Directors to the Proprietors of the Bristol & Exeter Railway*, Bristol: printed at the Mirror Offices by John Taylor, signed by James Gibbs, Chairman, 18.2.46.

<sup>206</sup> For example TNA/ZPER2/9, 2,318 & 2,369, *Railway Times*, 22 November & 13 December 1845.

<sup>207</sup> TNA/ZPER3/8, 2270, *Herapath's*, 22 October 1845

<sup>208</sup> TNA/ZPER2/9, 2,317-8, *Railway Times*, 22 November 1845. TNA/ZPER2/9, 2,103, *Railway Times*, 25 October 1845.

converting to narrow or mixed gauge if the need arose.<sup>209</sup> Herapath's pointed out ahead of the March 1846 general meeting that the probable adoption by the government of the recommendations of the Royal Commission on Railway Gauge that all new lines be built on the so-called narrow (now standard) gauge would make it less attractive for the BER to tie itself completely to the GWR.<sup>210</sup> Others argued flexibility would be afforded by the period of lease ahead of independent working to choose the plant best suited to run the line.<sup>211</sup> Finally, the opponents of the provisional agreement saw its shaving of the perpetual dividend by only 0.25% in the event of a narrow gauge line to Exeter gaining parliamentary sanction within three years as confirmation of their own view of the impact of competition.<sup>212</sup>

Opponents of the board also spoke of the strengths of the BER which arose from its relative cheapness of construction at around £25,000 per mile compared with the GWR figure of over £50,000.<sup>213</sup> This in turn meant that the capital account was not overburdened with unproductive items and that the mix of capital and debt was sustainable. Whilst it had invested in feeder lines in Devon, it was not encumbered by guarantees of dividend as were other trunk lines. There was, therefore, for the opposing shareholders, no grounds for a distressed sale or for some any kind of sale; for them, if any railway was capable of handling the challenges of competition, it was the BER. This view was reinforced by three further arguments. First, the rapid growth of a railway's revenues in its early years had yet to fully play out at the BER.<sup>214</sup> Second, the competition, if it ever materialised, would take some time, say 3/4 years, to be established on the ground. Third, the shares in branches and investments in feeder lines had been in other cases, particularly in the north of England, gone to a large premium.<sup>215</sup> The opponents of the provisional agreement with the GWR argued that it would give most

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<sup>209</sup> TNA/ZPER2/9, 2,073-4, *Railway Times*, 25 October 1845.

<sup>210</sup> TNA/ZPER3/9, 307, *Herapath's*, 28 February 1846.

<sup>211</sup> TNA/ZPER6/4, 104, *Railway Record*, 31 January 1846.

<sup>212</sup> TNA/ZPER3/8, 2,270, *Herapath's*, 22 October 1845.

<sup>213</sup> TNA/ZPER3/9, 28, *Herapath's*, 3 January 1846. TNA/ZPER6/4, 104, *Railway Record*, 31 January 1846.

<sup>214</sup> TNA/ZPER3/9, 220-1, *Herapath's*, 14 February 1846.

<sup>215</sup> TNA/ZPER6/4, 104, *Railway Record*, 31 January 1846.

of the benefit arising from these to the GWR.<sup>216</sup> These arguments swayed many shareholders to prefer an independent future; however, the GWR had offered the directors a deal and the shareholders still had to assess whether it fairly valued the company.

With the benefit of hindsight the offer of the GWR was a good one as the press reflected during the controversies of 1850. It noted that if BER secretary Badham's advice been taken in 1845, the shareholders would now be enjoying a dividend twice what they were currently getting.<sup>217</sup> The company as set out in its Special Report was probably prudent to stress the possible impact of the reduction of fares, of the trade cycle and of the need to depreciate plant. It also commended the value of an assured sum from a large and secure company.<sup>218</sup> The opponents effectively backed the above arguments on fundamentals by contemporaneously plausible projections which on a more optimistic basis far exceeded 6% and on a more prudent basis clearly exceeded it. The Manchester Committee projected dividends rising to over 11% by 1850 and to 8% on a more cautious basis. The points of difference between the parties were as follows:<sup>219</sup>

- i) revenue growth: the board projected 30% over 4 years or 7.5% per annum whereas the Manchester Committee projected 10% pa for its 11% prediction; the Special Report contained data on 9 railways which tended to support the lower figure;
- ii) working expenses ratio: the board projected 38% whereas the Manchester Committee projected 35%; the data on the 9 railways suggested that the Manchester Committee was nearer the mark on this element;
- iii) interest and depreciation on plant: the board projected 10% on £200,000 whereas the Manchester Committee had nothing in its 11% predicted dividend calculation and 10% on £150,000 on its 8% prediction;
- iv) capital gearing: the board calculated the dividend on the full capital of £2.1mn (the full cost of the railway) whereas the Manchester Committee assumes debt of £0.75mn at 4% in its 11% prediction and £0.85mn at a blended rate (between 4 & 5%) in its 8%

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<sup>216</sup> TNA/ZPER3/9, 307, *Herapath's*, 28 February 1846.

<sup>217</sup> TNA/ZPER2/14, 875, *Railway Times*, 31 August 1850.

<sup>218</sup> TNA/ZLIB15/8, *Special Report of the Directors to the Proprietors of the Bristol & Exeter Railway*, Bristol: printed at the Mirror Offices by John Taylor, signed by James Gibbs, Chairman, 18.2.46.

<sup>219</sup> TNA/ZLIB15/8, *Special Report*, for the board's analysis; and TNA/ZPER6/4, 104, *Railway Record*, for the Manchester Committee's analysis.

prediction. The latter is probably more realistic as it would be fair to assume that an independent BER would continue to have some debt on the balance sheet.

By the March 1846 general meeting the Manchester Committee was rowing back from 11% prediction and focussed on its 8% prediction which used the same revenue growth and working expenses ratio as the board's Special Report, the difference lying in the charge for interest and depreciation of plant and the capital gearing.<sup>220</sup> It is difficult to comment meaningfully on the various numeric predictions not least as both soon appeared over optimistic but it is probably fair to say that they were influenced by the boom conditions of the mania. Opponents of the provisional agreement, as when challenged on revenue growth predictions, would accept that whilst a particular railway in the north of England had achieved only moderate revenue growth its shares had burgeoned in value.<sup>221</sup> A further argument of the opponents was that in other cases better terms had been secured than those originally offered by potential perpetual lessees.<sup>222</sup> On top of the good fundamentals and high predicted dividends, the fate of the provisional agreement was also influenced by suspicion of the GWR on the one hand, and concern that a board determined to get its way was not providing the shareholders with information on the other.

#### The GWR - friend or foe?

The perpetual lease may have had a greater chance of success had the lessee not been the GWR. There was a suspicion that as the senior partner in the development of railways to the west, it secretly manipulated the management of the BER, which danced to its tune.<sup>223</sup> Shareholders would no doubt accept that the companies were natural allies<sup>224</sup> and in soberer moments acknowledge that the existing five year lease to the GWR was helping to establish the company and to accept Herapath's comment that, if

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<sup>220</sup> TNA/ZPER6/4, 257-61, *Railway Record*, 7 March 1846 (report of Half Yearly General Meeting).

<sup>221</sup> Ibid.

<sup>222</sup> TNA/ZPER6/4, 104, *Railway Record*, 31 January 1846.

<sup>223</sup> Ibid.

<sup>224</sup> TNA/ZPER2/9, 2,059, *Railway Times*, 25 October 1845.

there had been no lease originally, there would have been no line.<sup>225</sup> However, there were suspicions of connections. The companies had an engineer, I K Brunel, in common, and perhaps the most violent reaction when the provisional agreement was announced was that Brunel was to be umpire in the event of differences over its completion.<sup>226</sup> Brunel was regarded as a GWR man through and through and his appointment as umpire drew scorn and outrage in similar measure as well as more sober calls for him to withdraw from his BER role.<sup>227</sup> The companies were reasonably separate in fact but the suspicion remained otherwise. One correspondent, W, writing to the RT claimed that there were two BER directors on the GWR board; the companies had an engineer and solicitors in common; that the BER secretary, who would lose £700 pa and an easy berth, was amazingly in favour of the agreement hence must have had some inducement; that several of BER directors held shares in GWR; and that there was a pre-emption clause in favour of the GWR in the present lease, which would have bound the BER hand and foot had it not been discovered in time.<sup>228</sup> A Shareholder of 9 Years Standing sent the RT a reply to W and supplied his name and address in confidence as a pledge of his correctness. This could well have been Badham. The reply stated that Ricketts was the only member of both boards and for a long time past has taken scarcely any part in the business of the BER board. Brunel was the engineer of the GWR when appointed by the BER and he had been of great value to the company. However, the BER did not have to rely upon his judgment to assess the value of the line which could be done by men of business as well as by engineers. The secretary earned £600 not £700 and was looking after shareholder interests. Only two BER directors out of 13 had shares in the GWR and one of these to a much less extent in the latter. Finally, the present lease did not have nor ever had had a pre-emption clause in favour of the GWR.<sup>229</sup> Even if the shareholders reading the RT were corrected on these details they may still have been impressed by Herapath's view that the GWR was "cleverly" managed and had been mean when offering lease terms on other lines such as the Birmingham and Bristol where George Hudson

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<sup>225</sup> TNA/ZPER3/9, 182, *Herapath's*, 7 February 1846.

<sup>226</sup> TNA/ZPER2/9, 2,061, *Railway Times*, 25 October 1845.

<sup>227</sup> TNA/ZPER2/9, 2,073-4, *Railway Times*, 25 October 1845. TNA/ZPER3/8, 2225, *Herapath's*, 18 October 1845

<sup>228</sup> TNA/ZPER2/9, 2,317-8, *Railway Times*, 22 November 1845.

<sup>229</sup> TNA/ZPER2/9, 2,338, *Railway Times*, 6 December 1845.

overbid and the Wilts, Somerset and Weymouth.<sup>230</sup> The GWR was also implicated in charges that the board did not provide the information necessary for a proper assessment of value.

The GWR records reviewed reveal little more about the permanent lease proposal which was approved at a special general meeting on 7 November 1845. The GWR directors' aim was to develop railway communication south of the GWR and whilst it would have preferred to wait to assess the true value of the BER, the matter of the direct London Exeter route could no longer be deferred. Reporting the failure of the proposal to the half yearly meeting on 12 February 1846, the directors noted that the proposal had only been agreed in deference to the opinion of the BER directors on the equitable claims of its shareholders<sup>231</sup>. The GWR board at this period, it seems, met only before half yearly meetings and its minutes are silent on the proposal<sup>232</sup>.

#### Information shortfalls

The existing lease to the GWR meant the BER did not report the revenue account of an independent line. The BER received a fixed rent and a toll based upon the number of passengers and tons of goods carried one mile. The figure for gross revenues had been supplied by the GWR and reported to shareholders for the half year ended 31 December 1844 but not for the half year ended 30 June 1845, the latest accounting period ahead of the announcement of the provisional agreement. The failure to do this was criticised by opponents of the permanent lease as rendering it difficult to establish a base for the projection of revenues especially as there was an expectation that the revenues in the early career of a railway company grew quite rapidly.<sup>233</sup> The board considered that a fairly accurate estimate could be made from the toll which was disclosed for the half year, although the matter was complicated by the disclosure that an increase in business had been associated with a reduction in fares by the GWR. This benefitted the BER as the toll was based on traffic rather than revenues but would, as the board tried to show in the

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<sup>230</sup> TNA/ZPER3/9, 2,305, *Herapath's*, 25 October 1845.

<sup>231</sup> TNA/RAIL250/3.

<sup>232</sup> TNA/RAIL250/65.

<sup>233</sup> TNA/ZPER6/4, 156, *Railway Record*, 7 February 1846.

Special Report, impact on real revenue growth.<sup>234</sup> Whilst relevant to projections of dividend, the exact details of traffic increase and fare reductions were not available nor was the mix of local and through business which may have assisted in an assessment of traffic to be lost to a direct line. The Manchester Committee said such information would help an assessment but it was not available and not included in the Special Report.<sup>235</sup> Whilst the provision of such information would have been unusual in the 1840s and particularly in the rather frenzied year of 1845, the lack of information left the board somewhat on the back foot. Further, many shareholders were angry at the bald announcement of a near fait accompli ahead of the November special meeting and would have preferred some prior opportunity to consider and discuss the issues.<sup>236</sup> The discussion of the deal oddly came after the decision to reject it, though it was possible that in other circumstances a deal could have re-emerged and the BER shareholders would have been better placed to assess it.

It is not known whether the board regretted not preparing the shareholders better for the provisional agreement. The latter were certainly scandalised at the March 1846 general meeting when a letter from Badham to a shareholder was read out by Henry Brittan, secretary of the Bristol Committee. Badham wrote that it would have been impossible for the directors to come to terms with the GWR if the shareholders had been consulted first - some would have wanted 10%, some 9%, some 7% and some 6% preferring a moderate certainty to a great uncertainty. A few years would prove the lease would have been fair and equitable. The idea of a direct London to Exeter line absurd only two years earlier was now certain and would be worth 1.5% off the dividend. Badham described some of the opposition as disappointed jobbers in the 3rd shares, attorneys looking for promotion and secret haters of the GWR. This last section naturally caused an uproar at the meeting but the shareholders may have been more concerned about Badham's low regard for shareholder decision making and his disinclination to consult.<sup>237</sup> The publication of the Special Report forced by the committees' campaign seems to have been largely aimed at re-establishing the board's reputation for competence with the

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<sup>234</sup> TNA/ZLIB15/8, *Special Report*.

<sup>235</sup> TNA/ZPER3/8, 2,687, *Herapath's*, 6 December 1845. TNA/ZPER6/3, 1,842, *Railway Record*, 6 December 1845. TNA/ZPER6/4, 156, *Railway Record*, 7 February 1846.

<sup>236</sup> TNA/ZPER6/4, 104, *Railway Record*, 31 January 1846.

<sup>237</sup> *Bristol Mercury*, 7 March 1846, Report on Half Yearly General Meeting.



shareholders. The whole episode offered lessons on the benefits to railway boards of providing shareholders with a reasoned case at the right time.

## 1849-50 Conflicts of interest and a Committee of Investigation

### *Background & narrative*

The BER began independent operation on 1 May 1849. From 1847 the Chairman of the company was James Wentworth Buller (Buller of Downes), who had an estate near Exeter. A one time fellow of All Souls and Whig/Liberal MP for Devon seats 1830-4 and 1857-65, he was to remain in the chair until his death in 1865.<sup>238</sup> John Badham was still Secretary and would remain so until 1857. Thomas Seccombe who had been appointed one of BER's auditors in 1846 remained in post and was also to survive the following 15 months of conflict. New senior officers included George Harriott, Superintendent of the Line; William Harwood, Chief Accountant; and Mr Williams, Head of Stores. Harriott was in conflict with Browne over the tariff and, despite being on the winning side on that subject, was effectively sacked in late 1850 for reasons as yet unknown. Williams was sacked in mid 1850 for irregularities in the stores unearthed by the Committee of Investigation (CofI). Harwood, in contrast, survived and succeeded Badham as secretary in 1857.

In 1849 the Deputy Chairman was John Browne, who had substantial business interests in Bridgwater which was conveniently placed about half way between Bristol and Exeter for company stores and workshops. Browne's company, Browne and Co, was a major carrier on the BER of coal, culm (coal dust) and lime. Coal and culm were shipped in from south Wales to a wharf at Dunball near Bridgwater and shipped on down the line in Browne & Co's own trucks. The BER had only a small number of trucks. The wharf at Dunball had been built by Browne & Co some years earlier at its own expense after the BER and GWR had declined to make the investment. The company was also an

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<sup>238</sup> Buller's biographical details can be found on the History of Parliament website, [historyofparliamentonline.org](http://historyofparliamentonline.org), accessed 20 October 2017. These were originally published in *The History of Parliament: the House of Commons 1820-32*, ed D R Fisher (Cambridge: Cambridge University Press, 2009).

important manufacturer of bricks, including the patented Bath Brick, which was used for household scouring.<sup>239</sup> Browne's brother, William, was also a director of the BER.

As part of the move to independent operations, the BER had to settle on a tariff, effectively whether to carry on with or replace the GWR tariff applying to 30 April 1849. Apparently under the influence of John Browne, it chose a tariff for bulk items, principally coal, which increased the base tariff but allowed substantial rebates for aggregate amount carried. The GWR tariff had been similar with a higher base and rebates allowed but was different in its precise details. The alternative to be pressed by Harriott and eventually adopted was have a much lower base tariff to attract a wider range of carriers including from new pits being developed near the BER just south west of Bristol and to compete with sea borne coal at Exeter. By late 1849 some customers and shareholders were beginning to agitate against Browne and the new tariff.<sup>240</sup> A Committee of Shareholders was established in Bristol led by a Michael Castle, whose late father had been a Director of the BER.<sup>241</sup> A competitor carrier of Browne, a Mr Richard Stone, wrote long and detailed letters to the press alleging that Browne & Co had an unfair advantage and using its principals' positions in the BER to disrupt competitor (ie his) access to BER freight facilities.<sup>242</sup> By the beginning of 1850 the Committee had secured a statement from the board saying first that carriers on the line should not in future be elected to the board and second prefiguring the adoption of a lower base tariff.<sup>243</sup> William Browne resigned from the board in early 1850;<sup>244</sup> and Castle and two colleagues from the Committee were elected to the board at the half yearly general meeting in March 1850. Whilst John Browne mounted a vigorous defence of the tariff and his conduct, he

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<sup>239</sup> Note on Bath Brick on Bridgwater Town Council website, [bridgwatertowncouncil.gov.uk](http://bridgwatertowncouncil.gov.uk), accessed 20 October 2017.

<sup>240</sup> TNA/ZPER6/7, 1021,1038 and 1070, *Railway Record*, letters to the editor published on 27 October, 3 November and 17 November 1849.

<sup>241</sup> *Bristol Times & Bath Advocate*, 15 December 49 and *Bristol Mercury*, 22 December 1849.

<sup>242</sup> *Bristol Times & Bath Advocate*, letters from Richard Stone to BER shareholders published on 12 January, 9 February and 2 March 1850.

<sup>243</sup> TNA/RAIL75/13: *BER Board Minutes*, 29 December 1849 & 2 January 1850.

<sup>244</sup> *Ibid*: *BER Board Minutes*, 16 January 1850.

resigned as a director in May 1850.<sup>245</sup> Thus ended the first phase of the shareholder agitation of 1849-50.

The second phase comprised the work<sup>246</sup> and report of a Committee of Investigation (CofI) appointed at the March 1850 general meeting.<sup>247</sup> With the resignation of Browne, the CofI gave up investigation of the allegations against him but carried on to report in June 1850 on a number of governance issues and what it saw as the excess of power wielded by Badham.<sup>248</sup> The board published a robust response in August<sup>249</sup>, and the general meeting at the end of that month both thanked the CofI for its work and expressed full confidence in the board.<sup>250</sup>

We now consider the various aspects of the shareholder agitation: first, the influence of contemporaneous developments in the railway world, the role of the press and local shareholder loyalties. Second, the cases for and against Browne and his alleged conflicts of interest are considered.

*National investment anxieties, the role of the press and local shareholder loyalties*

First, as in 1845-6, there was a national awareness of the trends and fortunes of the British railway industry, which were communicated through the general and specialist press. There were particular local factors which prompted shareholder agitation in the BER, but the widely felt contemporary anxiety in railway shareholders arising from disclosure of the insider expropriation and false accounting by George Hudson as well as

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<sup>245</sup> Ibid: BER Board Minutes, 24.4.50 & 8. 5.50. Browne's letter of resignation is in the Chairman's papers, Devon Heritage Centre: Buller of Downes Collection (hereafter DHC Buller), 2065M/SS1/9, letter dated 1 May 1850.

<sup>246</sup> TNA/RAIL75/152, Transcript of the Evidence taken by the Committee of Investigation (hereafter Evidence taken by Committee). Documents stated in the evidence to have been supplied to the Committee are not with the transcript and appear not to have survived.

<sup>247</sup> *Western Times*, 9 March 1850, Report of the BER Half Yearly Meeting held on 5&6 March 1850.

<sup>248</sup> *Report of Committee of Investigation appointed at the General Meeting of 5/6 March 1850* (hereafter *Report of Committee*), printed in supplement to *Bristol Mercury*, 15 June 1850.

<sup>249</sup> *Answer to the Report of the Committee of Investigation appointed at the General Meeting of the Company held 5 & 6 March, 1850* (hereafter *Answer to the Report*), Exeter: printed by T Latimer, 1850.

<sup>250</sup> *Bristol Mercury*, 31 August 1850, Report of BER Half Yearly Meeting held on 28 August 1850.

the depressed financial returns of railways generally was reported by these papers. It could well have reduced reluctance to raise concerns about the management of the BER once questions about Browne and his tariff began to circulate locally. Additionally, once the agitation of phase one culminated in the half yearly general meeting of the BER in March 1850, a Committee of Investigation was a likely outcome given such bodies had been reported as disclosing serious issues in other cases.

The press was an element enabling activist shareholders to operate with success. As well as providing benchmarks, it provided a means of communication. Both the Committee of Shareholders of the BER and John Browne used the press to make their respective cases. Shareholder activism was also facilitated by a body of like minded shareholders located in one place, in this case, Bristol. This aided practically for getting people together; and, it seems, in developing a loyalty derived from their shared home city. Browne coming from Bridgwater, part way down the line where he was to be able to benefit from coal shipped over from south Wales, is, despite activist protestations about sticking to the issues and not personalities, perhaps seen as an outsider. Exact details on the shareholdings of the groups respectively for and against the board are not to hand. The evidence adduced above about the geographically local bias of the shareholder body remains relevant, but, in contrast to the attempted sale and aftermath in 1845-6 when a Manchester Committee of shareholders was set up, there is nothing in the evidence to suggest that in 1849-50 there was other than a dispute between local investors and local management. In some other cases, shareholder activism was made less likely by the lack of a local body of shareholders with information flows benefitting from proximity and a stake whose size made it worth defending. It is not known what share of the BER capital was owned by the activist group but it was clearly sufficient for it to be more than a constant nuisance. In line with some commentators in Britain and north America, the Bristol men clearly regarded engaged local shareholders as tending towards sound management and shareholder supervision.<sup>251</sup> Shareholder engagement in the half yearly general meetings in March and August 1850, which both lasted for over six hours, was numerous and vociferous.<sup>252</sup>

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<sup>251</sup> For example, Herbert Spencer (Herbert Spencer, *Railway Morals & Railway Policy*, {London: Longman, Brown, Green & Longmans, 1855}, 52-3) and Henry Varnum Poor (Alfred Chandler Jr., *Henry Varnum Poor* (Cambridge: Harvard University Press, 1956), 133-4.

<sup>252</sup> *Western Times*, 9 March 1850; and *Bristol Mercury*, 31 August 1850.

### *The ambiguities of conflicts of interest*

Early railway companies were sensitive to conflicts of interest, not least because safeguards were contained in their Acts of parliament. Some time before the shareholder agitation started, the BER board sought its lawyers' advice on whether a carrier on the line could sit on the board. They replied in February 1849<sup>253</sup> that, although the company's Act banned contractors from sitting on the board, on the presumption that the director had no contract with the company but only used the line at the rates and tolls prescribed for the public, such use could not create a disqualification. It suggested the board consider the cases of Mr Chaplin and Horne, chairman and director respectively of the London & South Western Railway and Messrs Coffin and Powell, directors of the Taff Vale Railway, who were all major carriers in their own right. There is no evidence the board made such enquiries and unsurprising that, for the moment, it soldiered on with the status quo. Nonetheless, Badham seemed to sense trouble ahead when he wrote to the chairman on 29 October 1849 just as the first hints of shareholder agitation were beginning to appear in the press. He believed that "sooner or later the question will arise, whether the two Messrs Browne value mostly highly their seats on the board, or their trade upon the line; for without considerable modification of the latter, it will not be easy to retain both."<sup>254</sup> The board was already aware there would be a case to answer over Browne's potential conflicts of interests.

BER's tariff for the carriage of coal lay behind the dispute. Established when it began independent operations after the lease to GWR ended in May 1849, the tariff was based on a high rate per ton per mile but with rebates of up to 30% if more than 30k tons per year were carried. It seems that deputy chairman Browne promoted the tariff and it was soon been criticised by other carriers and coal merchants not connected to him. It was alleged that, although the tariff was open to all, it favoured Browne as only he had the volume of business to qualify for the highest rebates and thus gained a monopoly of the traffic. With higher prices of coal by rail (compared to seaborne), BER traffic would remain limited in size. Critics of the tariff favoured a reduction in its general level to

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<sup>253</sup> TNA/RAIL75/142: *Bundle of Legal Opinions for year of 1849.*

<sup>254</sup> DHC Buller: 2065M/SS1/10, letter dated 29 October 1849 from Badham to Buller.

encourage business and this was introduced on 1 May 1850 in response to the initiative of the superintendent, Harriott, and the shareholder agitation.<sup>255</sup>

Browne was also accused of:

- i) improperly influencing company servants to assist in a campaign of effectively disrupting competitors' access to railway facilities and of overcharging them<sup>256</sup>;
- ii) underpaying the BER for freight on coal through charges based on distances 1 mile short and unweighed loads<sup>257</sup>;
- iii) favouring a nephew of his in the procurement of stores; and
- iv) profiting from the sale of land at Bridgwater to BER.<sup>258</sup>

He mounted a determined defence in the press,<sup>259</sup> in the half yearly general meeting of 5/6 March 1850<sup>260</sup> and in giving evidence to the Cofl.<sup>261</sup> First, he had invested personally in facilities which greatly benefitted the railway. The coal wharf he had built at Dunball near Bridgwater at a cost of over £10k was erected after both the BER and GWR had declined to make the investment themselves. He had provided these facilities as well as trucks to bring a profitable business to BER and deserved better than to be criticised for it. He also claimed that the coal tariff was bringing in more revenue for the BER from his company and other coal business than did the old GWR tariff, and he added he was not passing on the increase to his customers. He denied, perhaps with only partial success, the charge of unduly influencing officers to favour his business and disrupt others; asserted that the company's surveyor had set the price of land sold to the company at Bridgwater; and brought forward figures which seemed to demonstrate that the claims of his opponents on the favouring of his nephew over stores were probably exaggerated.

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<sup>255</sup> TNA/RAIL75/152, 39-41, 46-8, 50-7, 60 & 64, Evidence (of Harriott) taken by Committee.

<sup>256</sup> TNA/RAIL75/152, 60-6 & 74-9, Evidence (of Harriott, Ward and Stone) taken by Committee.

<sup>257</sup> TNA/RAIL75/152, 102-9, Evidence (of Harriott) taken by Committee.

<sup>258</sup> TNA/RAIL75/152, 114-6, Evidence taken by Committee (Recital of Charges against Browne).

<sup>259</sup> *Bristol Mercury*, 26 January 1850, Notice from J Browne & Co Bridgwater dated 23 January 1850 addressed to shareholders in the BER.

<sup>260</sup> *Western Times*, 9 March 1850, Report of Half Yearly Meeting of BER held 5/6 March.

<sup>261</sup> TNA/RAIL75/152, 147-57, Evidence (of John Browne) taken by Committee.

Some of these issues affected early railway companies more generally. First, the investment of third parties could be helpful in building the traffic of a railway and Browne's undoubtedly did so in the early career of the BER. Second, there were many calls for railways to increase fares and goods tariffs in the late 1840s when their financial returns were declining. Third, like many companies, the BER was in its operational infancy in 1849, so there would be a temptation for boards to follow policies of one who had played an important role in the company's affairs since its formation and with a longer business track record than of those recently recruited company officers who were promoting an alternative plan for growing traffic. These three factors would all have brought pressure on the Board to accept that, on balance, Browne's policy was advantageous to the company at that point in its development.

Nonetheless, the more fluid situation of the BER launching into independent operation provided an opportunity not only to Browne but also to the shareholder activists which they did not pass up. There were sufficient competitors to Browne, alternative sources of coal coming on stream in north Somerset and doubts about the value of a high tariff policy for the supply of coal to the western end of the line to underpin the demands for change. Further, the great bulk of BER revenue at this time came from passengers so taking calculated risks with the mineral traffic revenue could be more safely entertained. There was, after all, no other railway Browne could use. Finally, sufficient shareholders who saw the Board as trustees of their invested money saw the conflicts of interests in Browne's position as a greater risk to the company than the loss of his expertise - they could not believe, as stated by one of the activists, Michael Castle, that Browne invested in his railway related facilities for the interests of the BER rather than his own.<sup>262</sup>

Such pressure led to Browne's resignation. The Cofl took evidence on the allegations against Browne but gave up on looking into them once he resigned. It limited itself to saying he took a wise course in resigning but found that rebates to Browne had not been calculated according to the rules, that Browne had not paid a siding charge at Taunton and that he had been charged on mileages which were 1 mile short.<sup>263</sup> The board, however, was keen to exonerate Browne where it could and its reply to the Cofl argued that the allegations against him on incorrect mileages, sidings charges and train load

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<sup>262</sup> *Western Times*, 9 March 1850, Report on BER Half Yearly Meeting held 5/6 March.

<sup>263</sup> *Report of Committee*, paragraph 7.

sizes were false. They reasserted their view that the first independent tariff was honestly adopted as being in the company's interests; and now waited to see whether the new tariff promoted by the Superintendent and backed by many shareholders was successful.<sup>264</sup> Some considerable criticisms of the Cofl were drafted but not delivered; some appear below in the section on the Cofl. A draft speech to the Half Yearly General Meeting of 28 August 1850 survives in the Chairman's papers but he did not deliver all of it as he omitted several quite sharp criticisms of the Committee of Investigation and opponents of Browne.<sup>265</sup> To the latter he omitted to say that the directors regretted that experience since 1 May 1850 did not encourage the slightest hope of Harriott's pledges on the coal traffic being realised and that the coal traffic was in considerable jeopardy. He would have added that, whilst the directors did pass a resolution against carriers on the board, they had neither asked for nor wished for Browne's resignation. It seems that the Chairman was wrong in his fears for the new tariff, as a scrap of manuscript in his papers shows that bulk goods carried from Bridgwater increased in volume or value in 1850 over 1849, although the major share of it shipped through Dunball fell quite sharply.<sup>266</sup> Buller may have been rightly indignant in stressing that Browne had played by rules properly considered by the company to be in its best interests but the principle against carriers on the board (already conceded by it) together with hints of disrupting competitors and a tariff contestable on business grounds were more powerful factors.

#### *Committee of Investigation (Cofl): Pressure for appointment and membership*

The Cofl was appointed by resolution at the turbulent general meeting of 5/6 March 1850. Even though the coal tariff had been changed and significant changes of the directorate had been secured, the appointment of the Cofl was unsurprising given the background both at the industry and company level. The BER chairman, Buller, spoke against its appointment but a show of hands was 65 to 3 in favour and demands for a poll were dropped<sup>267</sup>. The resolution appointing the committee sought an examination of the

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<sup>264</sup> *Answer to the Report*, 8-10.

<sup>265</sup> DHC Buller: 2065M/SS1/7, speech to shareholders.

<sup>266</sup> DHC Buller: 2065M/SS1/25, manuscript item.

<sup>267</sup> *Western Times* 9 March 1850.



questions affecting the company's management particularly with reference to the allegations against Browne<sup>268</sup>.

The composition and conduct of the Cofl meant it would not produce a whitewash of management. The Cofl chairman was John Sillifant, a county magistrate<sup>269</sup> who presided over the diligent conduct of interviews<sup>270</sup>. He was also credited with making a thorough presentation of the findings to the general meeting of 28 August 1850<sup>271</sup>. Two of its members, Henry Brittan and C E Bernard had been leaders of the 1845 shareholder revolt and were again actively involved in the Bristol Committee which campaigned against John Browne. Only one member, Mr Abraham King of Bridgwater, stood out against its stance on Browne and other findings.

The Cofl took evidence over 17 days between March and May 1850 and produced its report in June<sup>272</sup>. The longer standing directors circulated a reply in August<sup>273</sup> ahead of the general meeting when it was discussed.

*Issued raised by the Cofl on matters not directly related to the Browne and freight*

The power of the secretary, John Badham.

The Cofl's concerns here were amplified by Badham's clear antagonism to its operation. He regarded it as troublesome and was determined to limit the flow of information to it by taking a narrow view of the scope of the Cofl which he took as the management of the traffic.<sup>274</sup> He sought legal advice on blocking information and was partially successful by securing a majority for this on a divided board on the matter. However, director W D Wills

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<sup>268</sup> Bristol Mercury, 9 March 1850.

<sup>269</sup> Bristol Mercury, 1 September 1849.

<sup>270</sup> TNA/RAIL75/152, 1-179, Transcript of evidence taken by the Committee.

<sup>271</sup> Bristol Mercury 31 August 1850.

<sup>272</sup> *Report of Committee.*

<sup>273</sup> *Answer to the Report of the Committee of Investigation appointed at the General Meeting of the Company held 5 & 6 March, 1850* (hereafter *Answer to the Report*), Exeter: printed by T Latimer, 1850.

<sup>274</sup> TNA/RAIL75/152, 3, 33, 37, 58 & 167-8, Evidence (of Badham) taken by Committee.

changed his mind and the Cofl was advised that the board had now resolved that it could have what it asked for.<sup>275</sup> By then, however, it appears it had decided it could proceed no further with what it had and had moved on to the drafting of its report.<sup>276</sup> The Cofl made much of Badham's refusal to co-operate with it and contrasted his attitude with the other officers of the company, who had been much more helpful.<sup>277</sup>

Badham's power to run his own bank account to make various mainly small payments whereas all other cheques required three signatures was regarded as a gross abuse of power by the Cofl but it failed to impress the general meeting which seemed to support management's view that this was an operational necessity run without fault and well controlled by the board, albeit after the event.<sup>278</sup> There was a similar account for the engineer but the amounts were smaller. It seems the practice continued despite the strictures of the Cofl.

Badham was also charged by the Cofl with effectively running the railway with a small group of directors.<sup>279</sup> However, the detriment of this perceived concentration of power was mainly related to John Browne and there appeared to be an acceptance among the shareholders of management's claim that the board needed power to run the railway properly. They also seemed to understand that the risks of concentrated power and managerial staleness could be mitigated by the infusion of new blood into directorate as was secured in both 1846 and most lately in March 1850.

## Stores

Prompted by the allegations on the one hand that Browne has favoured his nephew and the counter allegations that the first head of stores, Kesterman had been unfit for the task, the Cofl took particular interest in this area and took some of its evidence at Bridgwater,

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<sup>275</sup> TNA/RAIL75/15, 17-8, 20 & 27, Minutes of Board Meetings dated 1, 8 & 15 May 1850.

<sup>276</sup> TNA/RAIL75/152, 168, Evidence taken by Committee.

<sup>277</sup> *Report of Committee*, Introductory Remarks.

<sup>278</sup> *Answer to the Report*, 5.

<sup>279</sup> *Report of Committee*, Concluding Remarks.

the location of the stores. They found that the storekeeper, Williams, having obtained authority from the board to acquire stores via the submission and agreement of entries in a book, had afterwards entered other items within (so-called interlineations) the approved items. In a couple of store items, metal files and paper, BER had acquired amounts far in excess of its requirements. Stores such as brushes, glass cloths and silk tassels had also been improperly issued and a storeman had spent a lot of time tending the private garden of the head of stores using BER owned tools.<sup>280</sup> The Cofl passed on its findings on the stores to the board directly upon reaching them; the board then summoned Williams and two of his staff and having considered the case sacked the former and reprimanded the latter for not bringing the board's attention to these irregularities.<sup>281</sup> The board's response to the Cofl did not cover stores so we may assume that it accepted the general finding that there had been insufficient supervision of that area. Whilst the board had acted promptly in removing Williams and there is the question of whether the Cofl should have spent more time on matters more important than the odd brush and shovel, its enquiries in this area discovered a problem which led to remedial action and a greater understanding of how stores might be managed in the future. This was probably the Cofl's main contribution.

#### Conduct of the board and communication with officers

The Cofl found a number of issues of moderate risk in this area; they surfaced process gaps but not that those gaps had been actually exploited to the detriment of the company. Their specific points were as follows.

The Finance Committee was a 'secret committee' and until lately there was only one board committee. <sup>282</sup>

The first allegation rested on the evidence of a director opposed to the leadership of BER, Mr King, who described the Finance Committee as a secret committee; and on the evidence of the new insurgent director, Michael Castle, who said that having asked

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<sup>280</sup> TNA/RAIL75/152, 80-101, Evidence (of various parties) taken by Committee.

<sup>281</sup> TNA/RAIL75/15, 5-6 & 12, Minutes of Board Meetings held on 17 & 24 April 1850.

<sup>282</sup> *Report of Committee*, paragraph 1.

Badham for the Finance Committee minutes upon joining the board, had been given them only after hesitation.<sup>283</sup> The board's response that the minutes of the Finance Committee were often read and that the minute book was always available to the main board seemed to satisfy the shareholders as did their assertion that there was another board committee in 1849 comprised of people not on the Finance Committee which had inspected the BER's line and buildings.<sup>284</sup>

The seal had been improperly in the possession of Badham when it was required by the BER's Act of parliament to be in the possession of the chairman.<sup>285</sup>

The board reported that the seal was now with the chairman, but noted that all debentures and loan notes required the signatures of both the chairman and the secretary as well as the seal, which was not attached until the funds were received.<sup>286</sup>

Board meetings were too infrequent<sup>287</sup>

This charge appeared to rest upon the allegation of new director, Michael Castle. The board simply replied that its meetings were usually fortnightly but were held as needed and that attendance was as good as any railway.<sup>288</sup>

Directors' travelling expenses were an evil as was the daily director allowance of 3 guineas per day when on company business in London.<sup>289</sup>

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<sup>283</sup> TNA/RAIL75/152, 34-7, Evidence (of King & Castle) taken by Committee.

<sup>284</sup> *Answer to the Report*, 4.

<sup>285</sup> *Report of Committee*, paragraph 8.

<sup>286</sup> *Answer to the Report*, 10.

<sup>287</sup> *Report of the Committee*, paragraph 3.

<sup>288</sup> *Answer to the Report*, 4.

<sup>289</sup> *Report of the Committee*, paragraph 3.

The board agreed to limit future expenses to those actually incurred and noted that board deputations to London would be rare in future.<sup>290</sup>

The Cofl recommended a draft minute book owned by the company rather than the loose sheets which Badham had claimed were private.<sup>291</sup>

The chairman was reported at the August 1850 general meeting that a draft board minute book was now in use.<sup>292</sup>

Board not communicating decisions to officers.

The Cofl reported that Chief Accountant Harwood and Superintendent Harriott were not receiving board resolutions relevant to their work - they had received one and zero respectively. The notable example had been the Browne tariff document.<sup>293</sup> The board reply said general practice since independent working had been for the board to discuss each department in the presence of its head and it was presumed all were kept aware. Occasional omissions were inevitable but precautions (not detailed) had been taken to prevent a recurrence.<sup>294</sup>

Investments in other transport enterprises and secret investments of cash surplus.<sup>295</sup>

The Cofl complained that some directors and the secretary had got a £5 premium for each Exeter & Crediton (E&C) share when selling them to the BER. These transactions were described as illegal and improper and the Cofl believed that influence over the E&C could have been secured without the sale of shares to the BER. It had been advised that

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<sup>290</sup> *Answer to the Report*, 4-5.

<sup>291</sup> *Report of Committee*, paragraph 6.

<sup>292</sup> Bristol Mercury, 31 August 1850.

<sup>293</sup> *Report of the Committee*, paragraph 7.

<sup>294</sup> *Answer to the Report*, 8.

<sup>295</sup> *Report of Committee*, paragraph 14.

these funds could be recovered from the directors. The board's response was that the purchase of E&C shares was done for the benefit of the BER and had been agreed by the shareholders at the general meeting of 1 September 1848. A much greater profit would have been had if the shares had been sold to the rival London & South Western Railway which was battling with the BER over the provision of railway accommodation in Devon.<sup>296</sup>

The shareholders appear to have taken this in their stride as well as the ostensibly more alarming revelation that in the period 1838-48 cash surpluses of the BER had been loaned out at 4-5% rather than deposited in the bank for less interest. In aggregate, £329,000 had been advanced against securities to parties unknown to all but a subcommittee of the board including Badham. All documentation had been destroyed and the Cofl was refused disclosure of the parties lent to. All loans including interest had been paid back and the board assured the shareholders that no advance had been made to a director or officer of the company and the only speculation had been in the company's own shares which had later been sold at a profit.<sup>297</sup> The shareholders appeared to accept all this on the grounds of its financial success - the ends appear to have justified the means. Maybe they believed that large future cash surpluses were unlikely as the railway was now built and the capital account nearing closure; also that, with the growing attention on accounting and audit and the disclosure of secret and improper transactions in other railways, such secrecy would not be attempted again.

#### Accounting recommendations

The Cofl recommended that the Chief Accountant, Harwood, be given control over all the accounts.<sup>298</sup> The board responded that this was planned, that he had been in post only since May 1849 and was fairly new to railway accounts. It had been sensible for him to assume responsibility in stages.<sup>299</sup>

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<sup>296</sup> *Answer to the Report*, 13-14.

<sup>297</sup> *Answer to the Report*, 15-17.

<sup>298</sup> *Report of Committee*, paragraph 5.

<sup>299</sup> *Answer to the Report*, 6-7.

The Cofl recommended that the accounts be more detailed but did not offer anything specific other than complaining about the concealment of payment of a high rate of interest, 6% on a loan by accounting for 1% of it separately as commission.<sup>300</sup> The board was unrepentant saying in a time of tight money, it was better to borrow on this basis than call on the shareholders.<sup>301</sup>

The Cofl recommended the closure of the capital account though noted that the capital was within the figures specified in the company's Acts.<sup>302</sup> The board wished to close it and it would soon be necessary as there would be no further capital to spend. However, it pointed out that the Cofl had miscalculated the capital through ignoring £117,000 of forfeited shares.<sup>303</sup>

### *Proxies*

The Cofl complained that the directors had issued proxies to be voted by the chairman to only a portion of the shareholders ahead of the March 1850 general meeting in order to influence the election of directors and had charged the cost to the company. However, following the intervention of the Cofl and the auditor, the cost of these of some £98 had been assumed by the directors personally.<sup>304</sup> The board's response acknowledged that the unusual circumstances in which the proxies had been issued and their subsequent use withheld had caused it to assume the expense personally. It noted, however, that this course of action was not necessarily a precedent for the future.<sup>305</sup>

The use of proxies by incumbent directorates to perpetuate themselves was an issue for some shareholders at the BER as elsewhere. Many including the BER

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<sup>300</sup> *Report of Committee*, paragraph 17.

<sup>301</sup> *Answer to the Report*, 19.

<sup>302</sup> *Report of Committee*, paragraph 18.

<sup>303</sup> *Answer to the Report*, 19-20.

<sup>304</sup> *Report of Committee*, paragraph 13.

<sup>305</sup> *Answer to the Report*, 13.

Cofl thought that the board should not interfere in the election of directors and that it militated against the infusion of new blood that boards needed from time to time. Some also believed that those shareholders attending the general meeting should be sovereign rather than those shareholders voting in a poll.

### *Auditor powers*

The Cofl baldly stated that the auditor had insufficient powers but abstained from further comment in anticipation of legislative action on railway auditing.<sup>306</sup> Legislation did not come as initiatives in parliament for the audit of railways by the state were beaten off, but the publicity surrounding poor accounting probably did lead to the greater professionalism of auditors after 1849 and give them greater power to challenge. The BER board sidestepped the issue in its response saying that the election of the auditor was a matter for the shareholders themselves, whilst stressing its confidence in the assiduity and ability of the incumbent, Thomas Seccombe.<sup>307</sup>

Seccombe's hand was probably strengthened by the Cofl process and from the particular revelation made at the August 1850 general meeting by Sillifant (chair of Cofl) that in 1843 the then auditor, Mr Fletcher, had resigned after he was refused information about the secret investment account.<sup>308</sup>

### *Reaction to and outcomes of the BER Cofl*

The press set the scene for the BER general meeting of 28 August 1850 which was largely given over to consideration of the Cofl report and the reply of the long standing directors. It described two groups, sitting at separate tables, competing for the support of the shareholders. The Cofl had criticised the incumbent management in specific and general terms; and, although its language was hedged somewhat, called for further changes in the board and implicitly for the removal of Badham. It failed to achieve this. The meeting

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<sup>306</sup> *Report of Committee*, paragraph 9.

<sup>307</sup> *Answer to the Report*, 11.

<sup>308</sup> *Bristol Mercury*, 31 August 1850, Report of BER Half Yearly Meeting 28 August 1850.



passed a resolution thanking the committee but expressing its entire confidence in the integrity and honour of the directors.

The chairman took a low key approach at the meeting which effectively consisted of an extended address by the Cofl's chairman, Sillifant, and speeches and comments from the floor. It seems the chairman was wisely biting his lip as his draft speech, already referred to above, contains harsh criticism of the Cofl.<sup>309</sup> It accused the Cofl of partial or biased taking of evidence, of a failure to consider the general policy of the company and of questioning witnesses on matters they knew little of. In response to the Cofl's desire for BER to dispose of unneeded spare land, Buller would have said that the company was dealing with it - the task "would have been accomplished had not the time and attention of the directors been distracted by the discussion which for months has been going on to the serious injury of the company." Buller may have considered upon reflection or been advised that such argumentation was unnecessary, might provoke shareholder sympathy for the Cofl and that the board's case had already been briskly made.

The railway press generally backed the directors. The pro-activist Railway Record wrote an editorial after the publication of the Cofl report that the allegations if sustained reflected a very serious situation at the BER.<sup>310</sup> However, as the board mounted its spirited and substantially successful defence, the Railway Record limited itself to factual reporting of the reply and the general meeting.<sup>311</sup> Herapath and the Railway Times, however, did not spare the Cofl. Herapath carried a pro-Badham piece on 16 June<sup>312</sup> and later described the board's response as "crushing".<sup>313</sup> Knowing the evil in the railway system, Herapath was generally in favour of Cofl's, but each had to be judged on its merits and this one appeared to contain many blunders and misrepresentations. Following the general meeting, Herapath allowed that the Cofl had laid out correct principles but the facts made little of a case for it. It ended by reminding readers that some of the present activists, Brittan, Fussell and others on the Cofl had been involved

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<sup>309</sup> DHC Buller: 2065M/SS1/7, speech to shareholders.

<sup>310</sup> TNA/ZPER6/8, 404-5, *Railway Record*, 15 June 1850.

<sup>311</sup> *Ibid.*, 535 & 588, *Railway Record*, 10 and 31 August 1850.

<sup>312</sup> TNA/ZPER3/13, 578, *Herapath's*, 15 June 1850.

<sup>313</sup> *Ibid.*, 770-1, *Herapath's*, 10 August 1850.

with the very optimistic dividend predictions in 1846, and asked, given the actual dividends paid, what credence the authors of such statements are entitled to.<sup>314</sup> The *Railway Times* was equally scathing. It said the forthcoming general meeting would extinguish the last and most unscrupulous of the interfering committees - some had uncovered problems or made recommendation but that of the BER had been “barren in everything except noise and folly.”<sup>315</sup> After the general meeting it also attacked the men behind both agitations of 1845-6 and 1849-50 - “if defeat and dishonour have any effect, BER shareholders will hear less of Messrs Bernard and Brittan, charges will be less frequent or, if made, better sustained than hitherto”.<sup>316</sup>

The London based railway press maybe had an investor bias and perhaps saw the Cofl as purely depressive of shareholder value especially as it had surfaced no major issues. The local Bristol press comment was more balanced. In August 1850 the *Bristol Times* deemed worthwhile the agitation as a whole including the removal of Browne, the new tariff and the administrative improvements arising from the Cofl. The directors were being made to feel they were under sharp supervision. If Mr Hudson’s and other lines had shareholders to take the trouble that the committee has, thousands would have been saved from loss and many from ruin. A bold claim, but, in more measured terms, the *Bristol Times* hoped for quieter times, “nevertheless, the timely breeze which has taken place will be found to have been not the less necessary on this account.”<sup>317</sup> The *Bristol Mercury* also supported the Cofl against the view that it was injured traffic and scared off capitalists. “Winds of heaven may cause a temporary ruffle but purify the atmosphere and give free progress to the light of truth.” It ended with an endorsement of Badham, who though “occasionally getting a leg over the traces,” was “a truly valuable servant” and it was now clear that blame lay with the directors rather than their organ.<sup>318</sup> The greater balance of the local press probably resulted from the fact that the agitation had been Bristol led and represented important continuing interests in the city.

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<sup>314</sup> Ibid., 852, *Herapath’s*, 31 August 1850.

<sup>315</sup> TNA/ZPER2/14, 843-4, *Railway Times*, 24 August 1850.

<sup>316</sup> Ibid., 875, *Railway Times*, 31 August 1850.

<sup>317</sup> *Bristol Times & Bath Advocate*, 31 August 1850.

<sup>318</sup> *Bristol Mercury*, 31 August 1850.

## **Chapter 5: Oxford, Worcester & Wolverhampton Railway (OWWR) Case Study**

### Introduction

This case study concerns the activity of shareholders of the OWWR, mainly evidenced through the work of five shareholder committees in the period 1849-56. These operated against a background of long construction delays, extreme financial embarrassment, and conflict both internal and with other railways, government and parliament. The final CofI of 1856, however, helped to set the OWWR up for its independent operational phase; it was also associated with some change in the company's leadership. The work of the shareholder committees, together with the issues and internal disputes associated with the company's leadership, justify its inclusion as a case study. The case study will show that there were a number of elements affecting the corporate governance of OWWR.

First, there were considerable constraints on the company's freedom of action, whether initiated by shareholders or directors, arising from its Act and the sponsorship, minority holding and board representation of the Great Western Railway (GWR). The company was in dispute with the GWR for most of period until 1856 over the construction and gauge of the line and over its operating alliance with the London and North Western Railway (LNWR). This antagonism was based on the GWR's commitment of financial support of the OWWR being much less than it had been understood to be. Involvement of shareholders by way of Committees of Investigation in 1849 and 1851 was part of an iterative process to decide on whether and how the OWWR might best ally with either the GWR or LNWR. These were decisions which would normally involve the shareholders and particularly so if the company was as beset with difficulties as the OWWR.

Second there was the transition of the company from the construction to the operational phase and the shareholders' setting up the 1856 Committee of Investigation, which had input from professional railway managers helping to guide this process. It proposed a fresh start with the ending of disputes with the GWR. It was also associated with a decision by directors to waive their fees whilst the preference share dividends were in arrear; and the securing of a general meeting resolution to waive the rotation rules and have a general election of directors. Whilst the 1856 Committee of investigation Report

was largely about professionalising the management of the railway, there is some evidence of OWWR directors' diligence and skill in the period preceding its appearance. The directors' interviews with the 1856 Cofl reveals some considered ideas about growing the OWWR's business, making the board more effective and professionalising management. These interviews and the waiving of fees reflect behaviours associated with stewardship theory.

Third, there were the public disputes within the OWWR's independent director group which involved charges of irregular behaviour by Parson, deputy chairman and de facto leader of the company. He survived these probably because his role in completing construction outweighed concerns about self-dealing and unauthorised purchases of assets. Parson remained on the board after 1856 but stood aside as deputy chairman. His skills were less suited to the running of the railway and his antagonism towards the GWR was out of step with a resolve for better relations.

Finally, the introduction of contractor finance and influence into the OWWR affected the transparency of corporate governance. Contractors could not sit on the board and it appears in this case that they exerted influence through Parson. Some contemporaries criticised contractor finance as coming at an unknown and potentially high cost, however the shareholders probably understood that without it there would be no line.

The OWWR shareholders were sensitised to agency risk by concerns about Parson, by the involvement of contractors in the councils of the firm; and, earlier on, the failure of directors to advise shareholders of the true extent of GWR's promise of financial support. To an extent the OWWR is a less powerful example of agency theory as its problematic career meant that the shareholders were more regularly involved in decision making. Nonetheless, such involvement did bear down on agency risk and the 1856 Cofl Report was a substantive and detailed setting of the course for the company. It was a clear plan delivered by the principal to the agent.

The OWWR general meeting waived its rotation rules first in 1850 to allow the election of directors nominated by a Committee of Selection; and second in 1856 as set out above.

OWWR's strategic position

The OWWR had a fairly sound basis for promotion serving areas either without railway accommodation or offering a share of business in the Black Country where the London & North Western Railway(LNWR) and Midland (MR) were competitors. However, the chief strategic factor was that OWWR was positioned between the two major systems of, first, the LNWR which connected London with the West Midlands and the north of England; and, second, the GWR which connected London with the west and south west of England and Wales. This gave the OWWR some limited leverage as neither major system could afford to ignore the main railway which lay between them in what was in effect contested territory. However, it proved impossible for the OWWR to settle sound relationships with either until peace was declared with the GWR in the late 1850s.

The OWWR's problems were intensified through being on the frontline of the so called gauge war between the broad gauge (7 feet 0.25 inch) GWR and certain connecting lines on one side, and, to all intents and purposes, the rest of British railways or narrow (now standard) gauge interests on the other. Parliament settled its preference for the narrow gauge in 1846 but grandfathered existing broad gauge commitments. Whilst the broad gauge survived on the GWR until 1892, the gauge war was effectively over by the early 1860s with the progressive conversion to narrow gauge of large amounts of its system thereafter.

The OWWR was projected and gained parliamentary sanction as a broad gauge line but never ran as one. It was projected and sanctioned as an ally of the GWR but for many years they were at war over the gauge.

The OWWR also suffered greatly from its history intersecting with that of the Railway Mania and its aftermath; it was particularly vulnerable to the reduction both in sources of finance in the late 1840s and in the appetite of large railway companies to buy up smaller ones.

## History of the OWWR 1844-1860<sup>319</sup>

The OWWR secured its Act in August 1845. It was sponsored by the GWR and won out over a rival London & Birmingham (later LNWR) scheme. The Act entrenched certain rights for the GWR and gave the OWWR power to lease to the GWR but it did not specify the terms. The Act gave the GWR the power to complete construction of the line if the OWWR failed to do so and it was obliged to do so if asked by the Board of Trade.<sup>320</sup> This clause was inserted by a House of Lords Committee perhaps doubtful about engineer Brunel's estimates.

The lease to the GWR was never executed and this failure was an important element in the history of the OWWR. The original proposal was a guaranteed 3.5% (of a fixed sum of the statutory capital of £1.5mn) and half the profits. This was subject to four conditions only one of which was met but GWR carried on with the parliamentary contest and subscribed for 7,500 shares equivalent to £375,000 or a quarter of the total.

It soon became clear that OWWR would need more capital and the GWR agreed in early 1846 to 4% on a sum not exceeding £2.5mn and half the profits. This was communicated to OWWR shareholders without mention of the limit, and the impression developed among them that GWR stood guarantor for whatever the railway ended up costing.

The next few years saw an inability to raise funds beyond the original capital and stop/start construction with none of the railway open. Matters worsened when the limit of GWR's guarantee emerged at the August 1848 OWWR half yearly general meeting. This was a shock to shareholders who had to date been collecting interest of 4% on capital paid in. Interest payments to shareholders ceased in early 1849. The GWR would not help out to complete construction. Efforts in early 1850 by the Railway Commissioners to

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<sup>319</sup> This section is drawn from E.T. MacDermott, *History of the Great Western Railway Volume I, Part 2* (London: Great Western Railway Company, 1927), 457-526; C Hamilton Ellis, *British Railway History 1830-1876* (London: George Allen and Unwin 1954), 212-20; and Henry Parris, *Government and the Railways in Nineteenth-Century Britain* (London: Routledge & Kegan Paul, 1965), 163-7

<sup>320</sup> OWWR Act, 8 & 9 Vic. c. 184, cl. 131.

have it complete the line came to nothing, although legal proceedings to enforce it were withdrawn in mid 1851 as construction had resumed.

In the meantime OWWR had gained powers in 1850 to raise funds authorised in 1848 by way of preference shares and in late 1850 and early 1851 saw changes in the company's management. Contractors Peto & Betts tendered to complete the section of line between Oxford and Worcester in 18 months and Treadwells that between Worcester and Tipton. These contractors put up capital in return for some control in the management of the company. A solicitor, John Parson, who was associated with the contractors, became the company's legal adviser in November 1850 and was soon effectively in charge. An alliance with the London and North Western (LNWR) and Midland (MR) was negotiated by Peto and Parson and a 21 year lease agreed by those railways' general meetings in early 1851. However, this was set aside by an injunction obtained in May 1851 following the application to the court of some OWWR shareholders on behalf of the GWR. This asserted that the deal was in breach of the OWWR's original Act of parliament. A similar arrangement with GWR was then agreed by OWWR shareholders but made subject to a condition that GWR buy out OWWR shareholders after four years at £30 per £50 ordinary share, a figure considerably above the current price. This was promptly declined by GWR.

Over the next five years OWWR fought a number of battles with GWR and the Board of Trade both in court and in parliament. It eventually made an operating alliance with LNWR and MR in September 1853 which stopped short of a lease and was in legal terms no more than a gentleman's agreement. It was involved in trying to develop a direct line between Oxford and London and while this failed it was able to link up with the LNWR and its allies north of Oxford. This gave an alternative narrow gauge route to London but it was circuitous and not successful.

Whilst these disputes were proceeding, OWWR gradually opened its line. The first section opened in October 1850) and the line was finally fully opened in December 1854.

As a permanent lease to either GWR or LNWR appeared to be unavailable, OWWR under Parson's leadership chose a policy which preferred the narrow gauge LNWR and MR. The gauge choice was justified on operational grounds and in the longer term by its

adoption in preference to the broad gauge required by the company's Act. However, OWWR's efforts to avoid laying the broad gauge led to prolonged legal and parliamentary battles with GWR as well as conflict with the Board of Trade which had power to refuse the opening of the line if not built in accordance with the company's Act. This policy may have avoided OWWR in some expense but continual conflict and financial embarrassment and a further failure in 1855 to strike a deal with LNWR and MR led to a decision in 1856 to spend some money on the broad gauge and the most promising branches and to attempt to run the railway more efficiently. Parson, whose skilful legal manoeuvres and delaying tactics had intensified ill feeling and personal animus between the leaders of OWWR and GWR, stepped down from the position of deputy chairman in June 1856 as part of an overall remodelling of the board in support of this new policy.

The financial position of OWWR improved from mid 1856 and after prolonged negotiations peace was made with GWR in February 1858. The broad gauge south of Priestfield in the Black Country was dispensed with. In 1860 it amalgamated with the Newport, Abergavenny & Hereford Railway and the Worcester & Hereford Railway thus forming the West Midland Railway which amalgamated with the GWR in 1863.

### OWWR Shareholder Base

The OWWR share registers appear not to have survived, but, as it was promoted in the Mania when parliament collected data<sup>321</sup> on those subscribing railway capital, some sense of the OWWR shareholder base can be gained. The following table derived from the parliamentary returns reveal a geographically dispersed shareholder body

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<sup>321</sup>Return of Alphabetical List of Names of Persons subscribing to Railway Subscription Contracts deposited in the Private Bill Office, 1845, House of Commons Papers 1845, Vol. XL.1,153.



**Table 5.1 Distribution of 1845 subscribers to OWR.**

	No of Investors	% of total	Amount Subscribed	% of total
<b>Oxford</b>	3	0.9	6,000	0.5
<b>Worcester</b>	29	9.2	20,650	1.6
<b>Wolves/Bham</b>	40	12.7	56,050	4.5
<b>North West</b>	33	10.4	99,000	7.9
<b>London</b>	68	21.6	391,600	31.2
<b>North Other</b>	73	23.1	93,670	7.5
<b>South Other</b>	69	21.8	211,650	16.9
<b>Sub total</b>	315	99.7	878,620	70.1
<b>GWR</b>	1	0.3	375,000	29.9
<b>Total</b>	316	100	1,253,620	100

There was a moderate level of subscriptions from those resident near the line - only 22.8% by number and 6.6% by amount. London makes a much more substantial contribution, materially more than the often influential railway investment centres of Liverpool and Manchester (North West above). Nearly a quarter of total subscriptions was made by parties in the north and south of England; only a handful of subscribers were based in the UK outside of England and are included in the 'Other' categories by geography. Otherwise, the locations of the subscribers in these "Other" groups are well spread and bear witness to the national market in railway securities. The other main feature of the list is the presence of the GWR which had added its subscription in late

1844 to fill it up and render it fit for submission to parliament. The GWR later sold part of its stake and retained £181,000 of stock.<sup>322</sup>

As was typical of early Mania promotions, OWWR shares went to a premium <sup>323</sup>and it is likely that there was some profit taking by railway investors in, say, London or the North West. That said, the names and addresses of those involved in the election of the whole OWWR board in 1856 include a number of people from those traditional centres of railway investment.<sup>324</sup> From the data to hand, it appears that the BER had twice the level of local investment of the OWWR. This could be because of the clearer perceived prospects of a trunk route with no present competition over an important route but one where the greatest potential lay at one end where traffic was subject to competition. It may also be relevant that the BER served a major provincial centre, Bristol, with its own business community with a stake in the railway and a ready voice on issues affecting it. The rallying of local investors appears to have had no material part in the history of the OWWR.

Further, the financial soundness of the BER gave its shareholders greater opportunity to make decisions - it could accept or reject the GWR permanent lease or press for Browne's removal or defend him. The alternatives available to OWWR shareholders were greatly constrained by its distressed financial condition and the GWR link.

#### Board of Directors and Company Leaders

##### *Schism between independent and GWR appointed directors*

The operation of the Board of OWWR was largely influenced by the company's Act which called for a board of 16 directors made of 10 independent and 6 appointed by the GWR. As OWWR and GWR were in some form of dispute for most of the former's existence, the board did not function as a single body working in the interests of the railway. By 1854, for example, the independent directors of OWWR were conducting business through

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<sup>322</sup> MacDermott, Vol I, Part 2, 458-9

<sup>323</sup> Ibid.

<sup>324</sup> Herapath's Commercial Journal 24 May 1856, 547. Railway Times 24 May 1856, 505. Page numbers for bound and indexed editions by calendar year.

board committees on traffic, finance and management comprised of and voted for by the independent majority and from which the GWR directors were excluded. The minutes of these meetings then came to the main board and were duly adopted by a independent majority over the GWR who sent along a varying number of their directors to vote against them and register their protest.<sup>325</sup>

### *Company chairmen*

Leadership of the company did not necessarily rest with the Chairman as with the BER, ECR or WHHRC. A Francis Rufford, a Stourbridge banker, was chairman from 1845 to November 1850 and eventually left the board in following the failure of his bank in mid 1851.<sup>326</sup> Perhaps the OWWR's loss of £24,000 in this failure affected its memory of Rufford, who was described as a dictator but also as a man of straw by one director in his evidence to the 1856 Cofl.<sup>327</sup> The defining issue of Rufford's chairmanship was the relationship with the GWR and it appears Rufford should have been franker with the shareholders over the nature of the GWR guarantee. However, the latter morally if not legally had let the OWWR down in not coming up with a more valuable guarantee or offer to build out the line. Rufford looks more to be a victim of circumstance than one looking to gain wrongly at the shareholders' expense or to lead the OWWR into disastrous policies.

Rufford was succeeded as Chairman by Lord Ward of Dudley, an owner of businesses and property in the Black Country. However, his accession coincided with the introduction of contractor influence into the OWWR and the striking of a deal with narrow gauge interests. He objected to this as counter to the company's Act hence illegal, argued this unsuccessfully before the shareholders and resigned. It is not known what connexion Lord Ward had with the GWR; but, whilst his objections to the narrow gauge deal helped to publicise the issue, the GWR soon went to law to block the deal and most likely would have done so regardless of Lord Ward's stance.<sup>328</sup>

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<sup>325</sup> TNA/RAIL558/2 OWWR Board Minutes 1851-8.

<sup>326</sup> MacDermott, Vol I, Part 2, 481-2.

<sup>327</sup> Ibid. Thorpe evidence to the 1856 Committee of Investigation TNA/RAIL 558/32, 267-8

<sup>328</sup> MacDermott, Vol 1, Part 2, 475-8.

Ward was replaced as chairman by Captain Rushout, landowner in and MP for East Worcestershire (through which the railway ran), who remained in post until the board election of 1856. Rushout had substantial other commitments as an MP and with his regiment, and it appears was neither a strong chairman nor one with experience of railways. The view of his fellow independent directors given to the 1856 Cofl was variously was that it would have been better if Rushout had been able to give more time to the OWWR, that he took very little on himself and that the line needed a new chairman thoroughly conversant with the businesses identified with the interests of the line and with the energy and antecedents to succeed.<sup>329</sup> John Parson made similar points about Rushout in his evidence to the 1856 Cofl although went further to say that he lacked force in expressing himself in a meeting and did not keep order at the board.<sup>330</sup> Parson maybe had reason to speak thus to justify the need for him to step in to run the company, but there does seem to be a range of evidence to suggest that Rushout was something of a cipher.

Rushout was replaced in 1856 by William Fenton, a banker from Rochdale. He was associated with the move to re-establish OWWR's relationships with all its neighbours and to focus on the operation of the railway and the professionalisation of its management. Once chairman he did away with all but ad hoc board committees and transferred their business to the board itself. Whilst this did not end all voting on independent/GWR lines, it tended to an easing of tension between these groups.<sup>331</sup>

#### *Other company leaders - contractors*

Rushout's lack of vigour as chairman was perhaps more suited to a situation where power within the OWWR shifted with the introduction of contractor influence. Contractor finance became a feature of British railway construction from about 1850 when it was no longer possible for some railways to raise funds by the issue of securities to the public as before. The market in railway securities was much depressed in the aftermath of the Mania as traffic took time to build up to service the great capital works in train or just finished.

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<sup>329</sup> Evidence to the Committee of Investigation 1856 TNA/RAIL 558/32: Pakington, 231; Thorpe, 268; and Grisewood 279.

<sup>330</sup> Ibid, Parson, 241-3.

<sup>331</sup> TNA/RAIL558/2 OWWR Board Minutes 1851-8.

Contractors, however, had accumulated wealth from the building phase and were prepared to recycle funds into new schemes or struggling old ones to keep their contracting business going. The contractor might put a little cash in, but the main mechanism was for the contractor to take payment for work done in company securities rather than cash. They naturally wanted some influence over the management in return for this. Contractor finance reached its apogee in the railway boom in the 1860s but also its demise as the crash of 1866-7 saw many of the major contractors fail.

In the case of the OWWR, Sir Samuel Morton Peto, of contractors Peto & Betts had offered in 1850 to complete the line from Oxford to Worcester (together with Treadwells for the Worcester Tipton section) and provide some of the capital for this in return for some control in the company. Thus a conflict of interest arose as the company's counsels were now influenced by a party with separate and potentially conflicting interests - most likely over contract price and terms - to those of the railway. As the company's Act by adopting the CCCA banned the election of contractors to the board, there was the need for someone, in this case, John Parson, to act on Peto's behalf. The last was only elected to the board in 1856 once his contract, which was nearly complete, had been transferred to a 3rd party.

With contractor finance came lack of transparency as to who was controlling the company and as to the benefits and costs of contractor involvement to the shareholders who had seen dividends reduced. Funds were very difficult to raise if unraisable otherwise so contractor finance would assist in completing the railway and getting revenue to flow. However, shareholders wanted to know whether the cost of this was fair and that they would not need to wait longer for their dividends than was necessary. Contractor finance, therefore, was a negative influence on good corporate governance, but it was much commented on so shareholders knew to be watchful.

*Other company leaders - John Parson - background and policy.*

John Parson (1816-74), a railway lawyer, became involved with OWWR as legal advisor in late 1850.<sup>332</sup> He joined the Board in 1854 and became deputy chairman. In 1856 he

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<sup>332</sup> Biographical detail in obituary in Proceedings of the Institution of Civil Engineers 1875 accessed via [gracesguide.co.uk](http://gracesguide.co.uk) 20 April 2019.

stood aside from the latter role but remained on the board thereafter and eventually joined the GWR board upon its amalgamation in 1863 with the West Midland Railway of which the OWWR was a part . At that time he was also chairman of the Hammersmith & City Railway Company and was accused by a shareholder of buying an estate through which the planned course of the railway ran for about £800 per acre and then asking the railway for £10,000 per acre for the two acres needed out of the 130 acre estate. Parson gained only nominal damages when he raised a libel suit but also scathing remarks on his conduct from the Lord Chief Justice and he eventually withdrew from both railway companies in 1864.<sup>333</sup>

Parson's policy whilst at OWWR was essentially two pronged. The first element was to promote the alliance of the railway with the narrow gauge LNWR and MR companies. In this he was regularly frustrated by the GWR both in parliament and the courts. Although the GWR was not prepared to buy out the company, it was always able to rely upon the original OWWR Act of parliament which set it up as a GWR client company to frustrate any attempt to sell the company to narrow gauge interests. The most, therefore, which Parson could achieve was a gentleman's agreement with LNWR/MR which was no more than moderately profitable for the OWWR. However, the completion of the railway was achieved against a background of straitened finances. Further, Parson was able to secure £100,000 of funding from the LNWR on quite good terms. The second prong was to attempt to delay the installation of broad gauge track on the OWWR until such time as it would no longer be required. Whilst the correct policy in practical terms and one vindicated by the agreement in 1858 which set the requirement for broad gauge aside, it involved several years of bitter dispute in parliament and resulted in a perception that the OWWR should shift its focus to running a successful railway in good relations with its neighbours and that Parson was too deeply involved in the disputes to lead such a reorientation of policy.

Parson's career at OWWR and its implications for corporate governance.

Parson claimed in his evidence to the 1856 Cofl that he had been responsible for policy since late 1850:-<sup>334</sup>

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<sup>333</sup> MacDermott, Vol I, Part 2, 553-4.

<sup>334</sup> Parson evidence to Committee of Investigation 1856 TNA/RAIL558/32, 239.

“ ...I think myself responsible for acts before I became vice-chairman. I am responsible for the policy of the company since I became its solicitor in November 1850”

He also used language which suggested that he regarded himself as being thoroughly in charge. Often using the first person singular when reference to the company might have been more appropriate, he speaks of having to watch over the company as a cat watches a mouse; stresses that he has spent a great deal of time and effort in trying to advance the company's interests and that he will not give up his position until it can be passed into safe hands.<sup>335</sup>

That he held his position and policy for some years might suggest that he was unconstrained. However, there were several elements offering the shareholders a potentially critical view of Parson:-

1. Estranged sponsor - GWR's challenges to OWWR in the courts and parliament publicly tested his assertions. The courts, for example, began to doubt his word on the funds available for the broad gauge. He had twice given affidavits that funds were available but when nothing was done to install it, he then gave one pleading the company's poverty.<sup>336</sup>
2. The regulatory environment - The Board of Trade also pursued the OWWR over its failure to install the broad gauge and imposed sanctions.<sup>337</sup>
3. The press - Parson had his supporters including Herapath, which described him in 1854 as the OWWR's "gifted regenerator".<sup>338</sup> It also spoke in September 1854 of a very harmonious Half Yearly General Meeting chaired by the man who saved the company from ruin.<sup>339</sup> On the other hand the Railway Times (RT) took a very critical

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<sup>335</sup> Ibid, 245, 255-6.

<sup>336</sup> MacDermott, 488-9, 492-4, 501.

<sup>337</sup> Ibid, 501, 503.

<sup>338</sup> Herapath, 20 May 1854, 512.

<sup>339</sup> Ibid, 2 September 1854, 900.

line on Parson and his alleged sponsor Peto. Whilst the readers of the day would have identified the RT as a very pro-GWR paper and might have suspected that the GWR provided the material behind its leaders on the OWWR, they would still have received a different view with which to test Parson's statements and record. In 1854 RT accurately reported the board's handling of accusations made by co-director Jessell against Parson (see below) when such handling was not publicly reported by OWWR. In spring 1856 the RT wrote a number of leaders pleading with shareholders to take this final opportunity offered by the election of the whole board to choose between redemption or oblivion.<sup>340</sup> The election result seemed to indicate oblivion in the RT's terms although in fact it seemed to cause a step in the opposite direction.

4. Fellow directors - Criticism of Parson fell into two categories -first there were specific allegations of wrong doing made in 1854 by fellow independent director, Jessell, which he managed to beat off; and second, there were more general concerns expressed to the Cofl of 1856. These did not allege any wrongdoing as such but raised doubts whether the architect of the existing failing policy had a realistic chance of executing a different policy focussed on diplomacy and improving the running of the line. They turned out to be the more dangerous for Parson:

#### Allegations raised by Jessell in 1854.

Jessell raised his allegations at a general meeting held on 18 May 1854 to discuss the company's bills.<sup>341</sup> On 31 May 1854 the OWWR board appointed a committee to investigate. It comprised Rushout, Thomas (on behalf of Parson) and Thorpe (on behalf of Jessell) and was to look into charges made or to be made by Jessell by 7 June 1854; it was granted full access to OWWR papers and people and any two members could agree fresh matters to be looked into. The committee reported to the board of 21 June as follows:-<sup>342</sup>

- a) Accusation of jobbing. Jessell had accused Parson first of misleading shareholders as to his holding. Parson had told general meetings he was a very large shareholder

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<sup>340</sup> Railway Times 17 May 1856, 592 & 595; 24 May 1856, 618-19.

<sup>341</sup> TNA/RAIL558/27 Minutes of Special General Meeting 18 May 1854.

<sup>342</sup> TNA/RAIL558/2 Minutes of Board Meetings 29 May, 31 May, and 21 June 1856.



holding 3,000 shares when he was in fact registered for only 30. Second, he accused Parson of jobbing in the shares (via friends if they were not registered to him) on the basis of information gained through his position as legal adviser to the company. The committee tabled an account of Parson's purchases and sales in company shares to date. It shows Parson acquiring 265 shares in late 1850 at prices ranging between £12/2/6 and £12/10/-. For transactions thereafter price details appear to be largely redacted but suggest there was consideration; no details of counterparties to these transactions were available. In 1852-3 Parson acquired 915 shares and sold 1160 so that on 30 June 1854 he held just 20 shares. The committee found that Parson was the registered owner of only 20 shares but added that he had told the committee that he was largely interested in shares not registered to him. As to jobbing, the committee reported that Parson had made purchases and sales in OWR stock but that it had no evidence of his having used knowledge gained as a professional adviser for his own benefit.

- b) Unauthorised land purchases. Jessell's charge made at the general meeting concerned the purchase of a coal wharf at Camden for £1,250, which he claimed Parson had contracted to buy without proper authority. The committee found that there had been much misunderstanding over this deal which had not in the end been proceeded with but that Parson was not to blame. A second charge raised with the committee was that the Norton Hall Estate had been purchased by Parson for £21,000 in 1853 without authority and afterwards improperly cast upon the company. The estate was apparently a valuable means of blocking a potential rival line from Stratford to Worcester. The committee found against Parson for acting without proper authority but noted that he had acted with the agreement of the company's engineer and surveyor.
- c) Legal bills and fees for personal services. Jessell charged Parson with claiming £2,800 for his own personal services in addition for legal fees for his firm and that he received £2,500 in securities which he then transferred not to himself but to his firm. The committee reported that the solicitors' bills amounting to £19,411 had been carefully examined by a committee set up for the purpose and recommended for payment to the Finance Committee. These bills had not included Parson's services via attendance at board meetings and other important services rendered in the period 1851-3. He estimated these at £2,800 which figure had been adjusted to £2,500 by Mr Freshfield. Jessell had appeared to attend three Finance Committees at which this

matter was discussed and he had not appeared to object. The £2,500 had been rolled up with other legal fees due and issued to Parson as debentures for £5,800 in his name.

- d) Invalid agreements with LNWR. Jessell's charge that Parson had induced the OWWR into invalid agreements with the LNWR by misrepresenting the latter's intentions were given short shrift by the committee which reported that no evidence had been offered in support of this charge.

The committee reported to the Board on 5 July 1854<sup>343</sup> which split largely on independent/GWR lines. An initial motion exonerating Parson was followed by an independent amendment that Jessell had failed to prove jobbing by Parson during either his time as legal advisor or director but agreeing with the finding on Norton Hall. A further GWR amendment was that the investigation had satisfied the directors of the need for re-adjustment of the board with a view to avoid personal disputes and to prevent a recurrence of the purchase of Norton Hall and other matters; accordingly it called for the report and evidence to be put to a general meeting. This was lost 7/4 and the first amendment passed 5/4. Jessell raised his charges again at the next half yearly meeting, although one press report of the meeting merely reports Jessell repeating the charges he had made before. As mentioned above the RT accurately reported the board discussions at the time of the half yearly meeting in late August 1854.<sup>344</sup>

Jessell's charges and Parson's responses are typical of railway management or governance disputes of the day. Accusations of jobbing, dictatorship and overcharging of professional fees were made regularly at this time and their impact might have been blunted somewhat as a result. Parson's response was that as a major shareholder he had a real stake in the company and that his personal interests were aligned with those of the OWWR. He made the point that Jessell in contrast had very few shares. He also noted that Jessell was connected with interests remote from this company, hinting, it seems, that he was connected to the GWR, the enemy within. Indeed, the whole affair could have been seen as yet another attempt by the GWR to disrupt the OWWR in its endeavours to rescue itself from its sorry position. On the jobbing charges, Parson did not feel it necessary to do more than assert that his interest was large and that how it was

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<sup>343</sup> TNA/RAIL558/2 Minutes of Board Meeting 5 July 1854.

<sup>344</sup> Railway Times 26 August 1854, 948-9.

held was his business and he would not disclose it. In the absence of insider trading rules or laws, Parson did not have to say more. The RT in its piece of 26 August 1854 seems to acknowledge this by saying that it is not concerned whether Parson profited or lost from his OWWR share trades. No evidence has emerged to date as to whether Parson was holding shares on behalf of others or vice versa.

On the other hand, the RT was right to point to the reputational risk to Parson as an insider in gaming on the OWWR's fortunes; and through potentially taking personal advantage of the company's troubled times. Further, there might have been some shareholder unease about the legal/personal fees as they had been adjusted downwards by the independent reviewer and as Parson's firm remained the legal adviser whilst he was deputy chairman of the company. There might also have been concern over Parson over-reaching himself as evidenced by the unauthorised land deals and that that accounted for the development of independent director concern (ie in Jessell and Thorpe) about his behaviour rather than them being part of some GWR plot. Overall, this affair was probably only marginally damaging for Parson and the plan to remove him clearly failed, but the language of the GWR directors amendment about remodelling the board to avoid personal disputes is remarkably similar to the language used in the policy and personnel shifts of 1856. Some extra doubts might have been sown in the minds of shareholders especially if financial improvements from his general policy were not secured soon.

#### OWWR Committees of Shareholders/Investigation 1849 & 1851

A committee of shareholders was appointed by a resolution of the special general meeting on 8 June 1849 when OWWR directors revealed the extent of the GWR guarantee. The meeting received the directors' report but appointed a committee whose investigation was to cover all such transactions, matters and things in the past and present management of the company as the committee thought proper to enquire into. It was also to consider alternatives for the OWWR's future including its relationship with neighbouring companies. It was given full access to people and documents and was

empowered to employ professional or expert assistance. The OWWR was to meet the expenses of the committee<sup>345</sup>.

The committee of seven included James Capel<sup>346</sup>, a London stockbroker; Anthony Kington Baker, a Cheltenham solicitor and later a GWR director and, briefly, an OWWR director appointed by the GWR<sup>347</sup>; Ezekiel Edmonds Jnr, a woollen manufacturer from near Bath<sup>348</sup>; and John Blackie Jnr, a publisher and bookseller from Glasgow<sup>349</sup>. The committee appeared to have enough business standing and experience to conduct the investigation.

It seems the committee did not emerge from a great shareholder revolt, but the disclosure of the limited extent of the GWR guarantee would have caused shareholder concern. Also committees of shareholders were popular at the time following the Hudson revelations in early 1849. The committee's findings covered some of the usual matters raised about railway companies at the time. Taking a general anti-GWR line, the committee provided some detail of potential GWR director profit taking by comparing original allocations of OWWR shares when they were at a premium with current holdings when the price was languishing.<sup>350</sup> Perhaps, given the disclosure of accounting problems in the Hudson companies, the committee looked at this area and found poor practice in OWWR but no evidence of fraud. It also reflected on the evil of the high cost of legal services, land and rails.<sup>351</sup> The committee approached the GWR about securing some accommodation but was rebuffed. It also criticised the OWWR board for not dealing with the relationship with the GWR in timely fashion.<sup>352</sup> Practical recommendations as to retrenchment included use of the Stour Valley line at the northern end of the OWWR and concentrating on building lines round Worcester linking with the MR on the narrow

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<sup>345</sup> TNA/RAIL558/4 Minutes of General Meetings, 41.

<sup>346</sup> Oxford Dictionary of National Biography- entry by Michael Reed.

<sup>347</sup> TNA/RAIL 558/2 entries for 16.1.56 and 2.5.56.

<sup>348</sup> Extract of Hunt Directory 1848 at [www.bradfordonavonmuseum.co.uk](http://www.bradfordonavonmuseum.co.uk). Accessed 4.2.2022.

<sup>349</sup> Grace's Guide to British Industrial History - entry for Blackie & Son. Accessed at [gracesguide.co.uk](http://gracesguide.co.uk) 4.2.2022.

<sup>350</sup> Ibid, 62.

<sup>351</sup> Ibid, 63-4.

<sup>352</sup> Ibid, 65-8.

gauge.<sup>353</sup> It also suggested the election of three new directors, Messrs Capel, Edmonds and Baker and the general meeting did not adopt the committee's recommendations but urged serious consideration of them by the board.<sup>354</sup>

It seems that the 1849 committee did not advance shareholders interests much and the difficult situation of the company probably limited alternatives for action. However, its focus on potential director expropriation and accounting issues may have had a mild deterrent effect on future bad behaviour in those areas. It helped to air industry wide problems, including bearing down on legal and engineering costs, but, given the phase of the company's development, these were to remain an issue for some years.

Two committees of shareholders were appointed in 1851 to consider the future of the company in the wake of Lord Cranworth's judgment to block the lease to LNWR. The directors had proposed a deal with the GWR on similar terms but an extraordinary general meeting on 15 July 1851 had refused to accept it and appointed a committee to consider and report what course the OWWR might take to the adjourned general meeting<sup>355</sup>. The committee had six members including James Capel and London banker Matthew Uzielli<sup>356</sup>. The GWR having declined to improve its offer, the committee reported its confidence that a better deal was available with the narrow gauge companies. The board responded to the committee by saying that the GWR deal was as good as that with LNWR/MR and it offered legal certainty. The adjourned general meeting passed a resolution for a deal with GWR subject to a buyout by the latter after a number of years at £30 per share. After the GWR refusal to accept this, an extraordinary general meeting on 28 October 1851 appointed another committee of shareholders which included William Thompson MP, iron master, railway company investor and director and one of the leading figures in the City of London<sup>357</sup> and Uzielli. This committee also recommended an arrangement with LNWR/MR and such was made in 1852.

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<sup>353</sup> Ibid, 75.

<sup>354</sup> Ibid, 80.

<sup>355</sup> TNA RAIL 558/4. Minutes of General Meetings of Proprietors.

<sup>356</sup> Uzielli was a director of the London & South Western Railway at the time of his death in 1860. Exeter & Plymouth Gazette 28.12.1860.

<sup>357</sup> Oxford Dictionary of National Biography - entry by Martin Dauntton.

It is hard to gauge the influence of these 1851 committees as OWWR general meetings were already taking decisions to overturn the directors' recommendations. Maybe their appointment formed part of a plan by Parson to secure an alliance with LNWR/MR. In 1851 committees of shareholders were an established mechanism and the OWWR experience may be further evidence of that. Existential issues were at stake and it may indeed have been sensible to refer them to shareholder committees rather than to boards of mixed experience and quality.

#### Variations of the rotation rules in elections of the OWWR directors

In this period there were two examples of shareholder action which bypassed the rotation rules on elections to the board. The OWWR Act contained no power for the general meeting to remove all or any directors at will beyond the first general meeting nor does the CCCA which the OWWR Act adopts<sup>358</sup>. Its rotation rules made all directors subject to rotation over a 4 year period with the board choosing the order. All retiring directors were eligible for re-election<sup>359</sup>.

Some time before the regular general meeting on 8 February 1850, a group of OWWR shareholders based in Leeds had tried to requisition a special general meeting to consider a vote of no confidence in the board but had failed to meet the CCCA threshold<sup>360</sup>. Nonetheless, the general meeting on 8 February appointed a shareholder committee of selection (of seven members) to nominate four directors for retirement and four candidates to replace them as well as two new auditors. An adjourned general meeting 22 March duly confirmed the committee's nominations which included five of its own members. The committee of selection's report noted that it had had "considerable difficulties in selecting fit and proper persons to fill the very responsible situations of directors"<sup>361</sup>.

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<sup>358</sup> 8 & 9 Vic. c. 144, clause 1. Clause 18 of the OWWR Act did, however, allow for 4/5 (80%) of directors to remove a director for misconduct or for 6 months of non-attendance.

<sup>359</sup> *Ibid.*, clauses 21 & 22.

<sup>360</sup> At least 20 shareholders holding at least 10% of the capital - CCCA clause 70.

<sup>361</sup> TNA/RAIL558/4 Minutes of General Meetings of Proprietors.

Whilst there was some unsuccessful challenge at the general meeting to two of the nominations, the process itself does not appear to have been called into question. Given the very distressed situation of the OWWR at this period and the difficulty in finding people, it is possible that this process would have been seen by shareholders and directors alike as being more of a recruitment drive than a coup d'état.

The second case of setting rotation rules aside was in the general election of directors as proposed by the 1856 Committee of Investigation. This is discussed below. Both cases contrast with the experience of the ECR in 1855-6 when rotation rules came under pressure but were successfully defended.

### 1855 Shareholders' Committee and 1856 Committee of Investigation

#### *Background*

Prompted principally by a desire to reduce costs by sharing them with others, in late 1855 OWWR negotiated an arrangement with the LNWR and MR for them to operate its traffic for a fixed percentage working charge. All three boards and a committee of shareholders, set up by the OWWR's general meeting of 28 August 1855 to consider the deal, agreed to it. The committee of six included Sir Moreton Peto and William Fenton, a Rochdale banker, railway investor and deputy chairman of the Caledonian Railway<sup>362</sup>; so appeared to have the experience for the task it was set.

Under this arrangement the OWWR would continue to develop and control the traffic but the others would run it. However, it foundered on the MR insistence upon a Traffic Committee which would give control of the traffic to LNWR and MR. This would have put the OWWR in a position which would justify an absolute guarantee which was not available. Thus the OWWR board and the committee of shareholders agreed that the deal could not proceed as the MR wanted a greater control of the management of OWWR than the Board deemed to be in the interest of shareholders to give<sup>363</sup>. Having decided

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<sup>362</sup> Stockholders of the South Eastern Railway Company (London: C Roworth & Sons 1861), 32. Bradshaw's Shareholders' Guide, Railway Manual and Directory 1855 (London: W J Adams 1855), 33. Hereafter Bradshaws Almanack.

<sup>363</sup> TNA/RAIL558/970 Report of the Committee of Shareholders

also to terminate at the start of 1856 the contract of Williams to run the OWWR trains, the company had an urgent need to develop its operations. The company's finances were also in a very poor state and the committee of shareholders summed up by describing the company as being in crisis and recommending the appointment of another Committee of Investigation as it would need to consider more issues than the present one had. It stated that this implied no hostility to the present board but an attempt to recruit shareholder confidence preferably unanimously to the course recommended<sup>364</sup>. This recommendation was accepted without much debate at the half yearly meeting of 26 February 1856.<sup>365</sup> Appointment of the committee was a natural step when it became clear the OWWR would need to run its own railway and to do efficiently and cost effectively. This committee comprised five of the members of the earlier committee including Peto and Fenton and it recruited Edward Watkin and Mr Swarbrick, respectively General Manager and Accountant of the Manchester Sheffield & Lincolnshire Railway to provide expert assistance<sup>366</sup>. The committee appeared to have sufficient resources for its task. Other Cofl's may have appeared less well resourced; but, in contrast to the OWWR, the ECR, and to a more limited extent the BER, had the expertise of their own officers to draw on.

*Evidence taken by the 1856 Cofl from the OWWR directors*

Evidence was taken from independent directors only; and was not taken from the GWR appointees. There was a good level of acceptance that the OWWR would need to improve its relations with the GWR. Grisewood argued that those against an amicable arrangement with the broad gauge should no longer have an influence at the board; the chairman and deputy chairman should not be wedded to any particular policy but deal with the company as they find it. He favoured freedom of action in setting traffic arrangements with neighbouring companies.<sup>367</sup> Highfield, who was a newish director with northern affiliations, favoured an agreement with both GWR and LNWR and proposed

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<sup>364</sup> Ibid.

<sup>365</sup> RAIL 558/5 Minutes of General Meetings of Proprietors 1855-63.. Herapath's Commercial Journal, 1 March 1856, 246-51.

<sup>366</sup> Bradshaw's Almanack 1855, 166 & 177.

<sup>367</sup> TNA/RAIL558/32 Report of and evidence to Committee of Investigation 1856, 279-80.



how the various traffic feeds could be apportioned.<sup>368</sup> Pakington, a recently appointed director, saw the broad gauge as a great blunder but believed that good relations with GWR were needed and proposed further talks with them. He added that a great deal of personality and personal bad feeling was mixed up in the dispute with the GWR and as long as that feeling existed there was not much chance of an amicable settlement.<sup>369</sup> Longer standing independent directors Busby and Lewis spoke in favour of the alliance with the LNWR, although the latter spoke of money wasted on litigation and quarrels.<sup>370</sup> Parson in his evidence was unsurprisingly silent on improving relations with the GWR.<sup>371</sup>

The second main stream of evidence was that taken on how management might be improved, there being general agreement, including by Parson, that it should be. Parson said that the finances needed to be in the hands of those with more time and that costs should be examined. He added that until 1855 he had been little involved with finance as he thought it indelicate given he was a great investor and the solicitor. Parson admitted to being only on the threshold of a knowledge with regard to the working of railways; he stressed that he was giving his attention to reducing costs and making train operation more efficient.<sup>372</sup> The Cofl asked each director for their views on appointing a first rate candidate to the role of general manager. Most were open to the idea but several said that the current traffic officer Adcock had improved greatly over the past two years. Thorpe wanted senior officers of high calibre to be able to deal with the senior managers of the neighbouring major systems.<sup>373</sup> Johnson wanted a managing director on the board but the Cofl was not interested in this idea.<sup>374</sup> Grisewood and Pakington both believed the board to be too large - the former thought a board of 5-7 would be best and the latter considered that a small board focussed each individual's attention to their duty.<sup>375</sup>

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<sup>368</sup> Ibid, 193-5.

<sup>369</sup> Ibid, 235.

<sup>370</sup> Ibid, 175 & 203-4.

<sup>371</sup> Ibid, 237-56.

<sup>372</sup> Ibid, 237, 238-9, & 240.

<sup>373</sup> Ibid, 274.

<sup>374</sup> Ibid, 228.

<sup>375</sup> Ibid, 281 & 231.

Otherwise, in response to the Cofl's question, all directors agreed to forego their fees until the fixed charges of the company were met. Parson summed up his performance as not having done much good but having prevented much evil and kept the company relatively straight over the past two years.<sup>376</sup>

### *The Cofl's Findings*

#### Overall Findings

The 1856 Cofl had a wider scope than earlier committees and employed professionals in Watkin<sup>377</sup> and Swarbrick to assist. Its overall recommendation was for the OWWR to look forward not back. It had specifically avoided consideration of the causes of dissent that had been a feature of the past, noting only that the company had suffered through litigation and various mistakes. These, however, were not further described.<sup>378</sup>

The Cofl saw three main ways to secure progress. First, making peace with neighbouring railways should be the OWWR policy. The restoration of relations with the GWR was recommended, although it described those with LNWR/MR as fruitful. There should be an end to litigation and parliamentary contests which were bad for all companies involved. Whatever the merits/demerits of double gauge, the OWWR should spend not more than the sum of Brunel's estimate of £150k to complete it.<sup>379</sup> Second, the OWWR should improve its efficiency of operation, secure economies in expenses and improve its accounting systems as described further below; in other words the management of the OWWR should be professionalised.<sup>380</sup> Third, the whole board should put itself up for re-election. The evidence taken by the Cofl had led to the conclusion that the present constitution of the board was unsatisfactory as the complete harmony and confidence so essential to a company's affairs was not present. To avoid "crimination" and invidious distinctions and with a full sense of past service given, the best course was for all

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<sup>376</sup> Ibid, 255-6.

<sup>377</sup> Edward Watkin 1st Baronet 1819-1901. Chairman Manchester Sheffield & Lincolnshire, Metropolitan and South Eastern Railways. MP 1864-68 and 1874-95. Channel Tunnel promoter.

<sup>378</sup> TNA/RAIL558/32 Report of and Evidence to Committee of Investigation 1856, 3.

<sup>379</sup> Ibid, 6.

<sup>380</sup> Ibid, 8-9.

directors to submit themselves for re-election.<sup>381</sup> The Cofl was confident in the prospects of the OWWR. With the population and industry at the northern end of the line and with proper management and development it could not “fail to become one of the largest both for passenger and goods traffic in the kingdom.<sup>382</sup> It concluded by calling for a united effort to secure the advantages desired.<sup>383</sup>

#### Specific findings on investment, operation and finances

The 1856 Cofl covered a wider range of issues than earlier committees. It found that the OWWR needed £350k of new funding not the £781k recommended by the directors; no doubt with reference to Parson’s policy of presenting impoverishment as a means of securing the company’s bills in parliament. It proposed the raising by a new preference stock of £350k to be spent on the mixed gauge (£150k) and other essential works (£200).<sup>384</sup> It further put forward specific proposals for compensating the existing preference stocks for any postponement of dividend arising from the new preference stock.<sup>385</sup> Of the four branches for which the OWWR had powers to build, the Cofl proposed the building of two (branch to the Severn at Worcester and branch to the canal at Kingswinford) as providing links to water transport and in the latter case to many factories. Branches to Stratford and Stourbridge were to be deferred and otherwise a strict economy was recommended including shareholder approval for all new works even when the credit of the company had been restored.<sup>386</sup>

Specific recommendations on accounting and cost control were included in the section of the report headed Watkin and Swarbrick Report. Whilst no very major loss emerged from their review, some material accounting issues emerged. First, there had been an over-estimate of revenues due to an under-estimate of what was due to other companies; and

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<sup>381</sup> Ibid, 11.

<sup>382</sup> Ibid, 4.

<sup>383</sup> Ibid, 12.

<sup>384</sup> Ibid, 9.

<sup>385</sup> Ibid, 10.

<sup>386</sup> Ibid, 7-8.

this over-estimate had persisted despite the correct figure having been identified within the accountant's office at the time. Second, debtors amounted to some four months of revenue and 10% of them were likely to be bad. Third, there were £65,000 of sundry assets which were of doubtful quality; and the reviewers assessed a revenue debit of £29,000 arising from these two categories. If the company could not account for the quality of these items, the 1st preference dividend for the half year ended 31 December 1855 ought to have been deferred. Fourth, whilst traffic and capital accounts appeared to be properly kept, no locomotive accounts in the proper sense yet existed. Various elements were kept in various places but no classified account in detail of locomotive expenditure was kept and without a stock take accompanied by preparation of repairs accounts, neither the working cost of the department nor the correctness of uncharged stock of stores on hand could be exactly ascertained. The same was true of carriage and wagon repairs. Fifth, as a result, the form and detail of the Half Yearly statements were seen as extremely defective; and, save for last two, none had contained exactly the same items under the same headings.<sup>387</sup>

Watkin and Swarbrick also provided useful benchmarking information in their consideration of future revenues and expenses. Whilst the historic accounts were not of sufficient quality on which to base predictions, they reckoned that the OWWR could increase its revenues by 7% p.a. for the next few years and by more with branches and extensions.<sup>388</sup> It also identified the scope to reduce expenses by reference to the expense ratios achieved by other companies and estimated that they could be reduced from £96,000 to £83,000 p.a or from 55% to 50% of revenues. The OWWR had started to consider staff reductions at major stations; in addition Watkin and Swarbrick suggested abolishing the distinction between passenger and goods staff at stations, doors on goods sheds, greater mechanisation of printing, running one rather than two guards, and reducing the working day from 24 to 13-15 hours. They also suggested that savings could be made as the same train mileage could be run with fewer engines in steam and fewer staff; they also saw potential for reducing train mileage.<sup>389</sup>

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<sup>387</sup> Ibid, 15-18.

<sup>388</sup> Ibid, 17.

<sup>389</sup> Ibid, 18-20.

## Events consequent to Cofl report

A general meeting on 9 May passed a contested resolution for a general election thus setting aside the rotation rules<sup>390</sup>. It seems that there was some disquiet in the anti-Parson and Peto camp about the setting aside of the rotation rules but there is no evidence of an attempt to go to law in support of them and it campaigned vigorously in the election. Perhaps it believed that those inclined towards the GWR interest had enough support in the GWR appointed directors and the likely views of the courts and parliament to avoid more of the litigation which had bedevilled the OWWR.

Thus the independent directors resigned en bloc and a poll was held and declared on 4 June 1856.<sup>391</sup> Two groups advertised for proxies in the RT. The first made up of north western investors, dubbed the Liverpool party by RT, called for the healing of past differences and sound management. Its notice made no reference at all to arrangements with neighbouring railways. Proxies were called for the re-election of six of the retiring directors and the election of William Fenton, banker of Rochdale, Peto, Edward Watkin, railway manager of Timperley and a director (to be selected) of the South Eastern Railway, which which it was hoped to offer traffic via the narrow gauge link to be built between Oxford and Reading.<sup>392</sup> The second group, comprising mainly parties based in London took a stand against the evils of misgovernment, parliamentary warfare and Chancery litigation. It saw the agreement with the LNWR as the main cause of the OWWR's problems and argued that traffic should flow freely to neighbouring lines. Its main priority was to exclude contractors and their nominees and agents from the board and its second was to get the best men. It sought neither the violent overturning of the agreement with the LNWR nor did it want an exclusive agreement with the GWR - the OWWR should rather deal with both to secure mutual advantage. The candidates supported reflected probity and sound business habits, qualities, their notice alleged, hitherto not always seen in appointments to the board.<sup>393</sup>

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<sup>390</sup> Herapath 10.5.56, 515-16. Railway Times 10.5.56, 568.

<sup>391</sup> Herapath's Commercial Journal 7 June 1856, 597-8.

<sup>392</sup> Railway Times 24 May 1856 505-6.

<sup>393</sup> Ibid.

The RT considered that the first group would win but pressed hard in its leaders in support of the second group and saw the vote as sealing the fate of the OWWR one way, redemption, or the other, oblivion.<sup>394</sup> The vote was won by a substantial margin by the first group and the RT said it could not better sum up the result than to say that three parties, Rushout, Thorpe and Grisewood, who had stood up to the contractors and their agents, had been replaced by Peto, Fenton and Watkin.

However, the RT noted that the losers had been quite pleased with the result.<sup>395</sup> With a new GWR agreement and the dropping of the old LNWR agreement, the ultimate result seemed to be almost the reverse of what the RT had expected. There were straws in the wind in that there was agreement between the two manifestos about finding peace with neighbours and there was a small overlap in the tickets. The recent failure of another attempt to tie up with LNWR/MR made that solution less likely. Otherwise, the RT was concerned that Fenton as deputy chairman of the Caledonian Railway (which had an end on link to LNWR) and Watkin as General Manager of the Manchester, Sheffield & Lincolnshire Railway (“another pensioned company of the LNWR”) would favour the LNWR<sup>396</sup>. This fear did not appear to be realised; maybe because they were in such positions, they were mindful of the need for - and experienced in - securing their own company’s interests in negotiations with their larger ally.

The new board soon took steps to bolster the management of the company. A sub committee formed of Fenton, Peto and Watkin reported to the board in July 1856.<sup>397</sup> Its main recommendation was that a General Manager or Chief Officer be appointed with full powers and fixed reporting to the board only and with a fixed salary together with a percentage of profit increase in order to give him a partner’s interest. A C Sherriff, General Traffic Manager of the North Eastern Railway, secured the position and his appointment at a fixed salary of £1,300 and 2% of net revenue increase was announced at the half yearly meeting at the end of August. The report of the sub committee was published with the half yearly report in August no doubt to report to shareholders

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<sup>394</sup> Railway Times 17 May and 24 May 1856, 595 & 618-9.

<sup>395</sup> Ibid, 7 June 1856, 665.

<sup>396</sup> Ibid, 24 May 1856, 618-19.

<sup>397</sup> TNA/RAIL558/2 Minutes of Board Meeting 2 July 1856

progress in remodelling the management.<sup>398</sup> It was also proposed that the role of Secretary be abolished and merged with that of Superintendent with pay to be also a mixture of fixed salary and profit percentage. A schedule of 16 returns representing a full set of management information was tabled by the sub committee along with some forms to show what was required. Board meetings were to be held in Worcester absent special circumstances and board committees other than for ad hoc commissions were to be dispensed with for the present.<sup>399</sup> The old secretary left in July with Adcock the former traffic manager taking over the combined role of secretary and superintendent and a Mr Wilson was appointed locomotive and permanent way engineer in August. Messrs Swarbrick and Underdown were commissioned in July to advise on the re-organisation of the Accountant's office on Manchester, Sheffield and Lincolnshire Railway principles.<sup>400</sup>

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<sup>398</sup> Herapath's Commercial Journal 6 September 1856, 931-4.

<sup>399</sup>TNA/RAIL558/2 Minutes of Board Meeting 2 July 1856.

<sup>400</sup> TNA/RAIL558/2 Minutes of Board Meetings of 24 July and 15 August 1856.

## **Chapter 6: Eastern Counties Railway (ECR) Case Study**

### Introduction

The case study concerns the activism among shareholders of the ECR, the main railway company in East Anglia, in 1855-6. A Cofl reporting in November 1855 raised many issues about the management of the company. Although the incumbent executive chairman, David Waddington, mounted a robust defence, a new leadership of the firm emerged by the end of 1856. The ECR is suitable as a case study because it was an independent railway, had a large body of shareholders and experienced well publicised shareholder action against its leaders. This chapter covers the history of the ECR; the shareholder body, Waddington and the ECR board; the issues raised by the Cofl; the shareholder activity arising in the aftermath of the Cofl including the role of William Malins and the Railway Proprietors Association.

The case study will show that ECR shareholders were sensitised to likely problems by the railway discourse which was partly shaped by the company's own problems in failing to build the route as originally planned and by the falsification of the accounts under George Hudson's regime. The likelihood of shareholder activism was also affected by the company's federated structure whereby the board comprised directors elected by ECR shareholders and directors appointed by four East Anglian railways operated by the ECR. Whilst Waddington might have gained power from the appointed directors concentrating too narrowly on the interests of their own companies, they were an entrenched minority and prompted activism in 1855.. However, one of these companies, the Northern & Eastern, had less incentive to monitor or agitate as their dividend was paid in priority to that of the ECR. Reduced dividends and refusal by some appointed directors to pass the accounts led to the appointment of the Committee of Investigation in 1855.

A 118 page report including evidence from 71 witnesses reported wide-ranging problems. in a number of broad areas. The first covered a number of initiatives to increase business deemed ill-considered, wasteful or unfair to some customers. The second concerned self-dealing and conflicts of interest mainly concerning the locomotive superintendent,



Gooch. There was also a concern that Waddington was favouring outside parties including contractors at the ECR's expense. The third concerned manipulated information flows whether by the overstatement of profits or transactions concealed from shareholders. Finally, the permanent way had been neglected; there had been fraud in the stores and examples of poor administrative and accounting practice had been uncovered. The Cofl saw this as amounting to a condemnation of Waddington's management.

The case study will evidence the complexity for shareholders in deciding whether Waddington's part in securing the ordering of East Anglian railways with the ECR at the centre and building the latter's business was worth the problems unearthed by the Cofl and their perhaps temporary impact on profits. In other words were the advantages gained by his energy, business acumen and entrepreneurship greater than the problems created by the corners he cut.

In any event, he laid out a spirited defence in a 108 page document centred around the business initiatives where he appeared to have the better of the argument. This may have helped him, through a shareholder vote in his favour in February 1856, to survive the attempts of the activist allies of the Cofl to remove him. However, pressure on him continued partly exerted by William Malins, a campaigner for railway shareholders' rights, and partly by further bad news on some of the Cofl issues, and he resigned in August 1856. By early 1857 Horatio Love, the chairman of the Cofl was chairman of the company. Otherwise, the outcomes of shareholder activism were more nuanced.

The case study will reveal the role played by the company's rules in protecting Waddington and the ECR from the disorder which could have arisen when the activists tried to remove him in December 1855 absent a poll of shareholders. Rotation rules also helped frustrate the Malins-led attempt to replace four directors in late 1856.

The ECR had its share of transactions alleged to be ultra vires, but systemic governance seemed not to bite. Whilst shareholders would have been concerned that Waddington undertook these transactions without director and/or shareholder approval, the Cofl and Malins appeared to gain little traction with them otherwise. Neither the state nor the shareholders as a whole pursued the ECR over them.

The case study will show that agency risk was crystallised in Gooch's contract and conflicts of interest, and in Waddington running the ECR without always consulting the shareholders and overstating its financial condition to support the dividend. Whilst the shareholders may have conspired in the latter by continuing to vote the dividend after doubts about the accounts had already been aired, they were prepared to incur the monitoring costs involved in the Cofl and its aftermath. They appeared to have played a major part in bearing down on agency risk through securing new leaders of the firm and learning lessons for future practice.

As with the BER, the coal merchants involved in the activism could be described in present day terms as stakeholders and as having benefitted from the activism. The ECR changed its tariff in the wake of the Cofl to accommodate their concerns, although had to change it again when the merchants won their case in the court. The case study offers some resonance with stakeholder theory but also illustrates the difficulties which can arise in reconciling the interests of different sets of stakeholders.

#### History of the ECR<sup>401</sup>

Founded in 1835 and gaining its Act in 1836, the ECR was promoted to build a railway from Bishopsgate in the City of London to Norwich via Colchester. However, costs overran and the line was built no farther than Colchester, reached in 1843. In the meantime, the ECR had de facto amalgamated with the Northern and Eastern Railway which was promoted to run from London to Cambridge. Thus the ECR was based around these two main routes both originating at Bishopsgate station (a short distance from Liverpool Street which eventually replaced it) and running to a junction at Stratford where the lines diverged.

As the ECR failed to reach its planned terminus in Norwich other promotions had to fill the gap, although the ECR's holding of the main routes from East Anglia into London gave it a strong strategic position. The gap between Cambridge and Norwich via Ely was filled by

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<sup>401</sup>The chronology of the development of the Eastern Counties and associated railways is taken from the Cecil J Allen, *The Great Eastern Railway*, Shepperton: Ian Allen, 1975, Chapters 1-4.

the ECR and the Norfolk Railway with an end on junction at Brandon. The Norfolk Railway (NR) also built a branch to Great Yarmouth and later acquired one to Lowestoft. The gap between Colchester, Ipswich and Norwich was filled by the Eastern Union Railway (EUR). East west rail communication around Cambridge, Newmarket and Bury St Edmunds was completed by 1858. By 1848 central and west Norfolk was served by the East Anglian Railway (EAR) which ran from an end on junction at Ely to Kings Lynn and whose other main work was a 25 mile line from King's Lynn to Dereham.

The ECR's affairs were also heavily influenced by neighbouring lines. The first on the ECR's western flank was the Great Northern Railway (GNR), a direct line towards York from Kings Cross via Peterborough. This had been promoted in the mid 1840s in the face of strong opposition from George Hudson (chairman of both the Midland and the ECR) who was concerned about loss of traffic from the Midland Railway and no doubt also concerned about incursions into what the ECR would consider its territory. Such threats were focussed around access to Cambridge via Hitchin on the GNR and access to Norfolk from points in the Huntingdon and Peterborough area. In the meantime the ECR had strengthened its position by building a line from Ely via March to Peterborough which opened in 1847. The second area was that between the ECR main line and the Thames in east London and south Essex. The chief railway here was the London & Blackwall Railway which ran from a terminus at Fenchurch Street to Blackwall via West India Docks.

The various arrangements between the ECR and these railways were important elements in the background from which the disputes of 1855-6 sprang. In respect of the railways in East Anglia, they were as follows:

the ECR and Norfolk Railway (NR) agreed amalgamation in 1848 and the ECR operated the NR from then; in 1849 parliament ratified the operating arrangements but not the amalgamation and NR remained a separate company;

the ECR purchased the Newmarket Rly over the period 1852-4;

the ECR, NR and Eastern Union Railway (EUR) amalgamated in 1854 whereby the ECR operated the whole system and shared the profits 5:1:1 having deducted 46% from the

gross receipts of the NR and EU. The Act of Parliament sanctioning this arrangement required the companies to put forward plans for complete fusion by 1861.

the ECR and EAR agreed that from 1852 the former would run the latter subject to a net revenue floor and payment of a toll for running “ECR” trains over EAR metals.

In the meantime, the ECR had made progress in making agreements with its out of territory neighbours. In 1852 it agreed with the GNR that both companies would not compete over a line drawn between Kings Cross and Peterborough; that the ECR would operate the GNR line between Hitchin and Shepreth and that there would be co-operation in the transit of coal from the GNR to the ECR at Peterborough. In the London area the ECR joined with the Blackwall Company and the contractors Peto, Brassey and Co in promoting the independent London Tilbury & Southend Railway which opened in stages between 1854 and 1856. ECR operated the railway.

Whilst the above chronology maps out a gradual extension of railway accommodation in East Anglia and eventual consolidation of providers in the GER, the history of the ECR's direction and management was marked by occasional turbulence probably mainly stemming from its early failure to meet its objective of building a line to Norwich. In 1845 it turned to George Hudson who controlled much of the railway system in the midlands and north of England to advance its fortunes. He accepted on the basis he had full control of the management. His deputy and traffic manager was David Waddington. Whilst Hudson's long term impact on the strategic position of the railway may not have been as damaging as might have been thought, his egregious and notorious manipulation of the accounts in overstating profits by an aggregate of £355,000 over 3 years caused great damage to the financial and reputational position of the railway.<sup>402</sup> Hudson and Waddington left in 1849 and steps were taken to stabilise the finances of the company including, as was done by other railways, the creation of a reserve for the renewal of permanent way. However, by March 1851 the ECR was again at a low ebb and it appointed Waddington as Executive Chairman on £2,000 per annum.

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<sup>402</sup> Sean McCartney & A J Arnold, “George Hudson's Financial Reporting Practices: putting the Eastern Counties Railway in context,” *Accounting Business & Financial History*, Vol 10, No 3 (11/2000), 293-316.

The ECR had had a fairly troubled career but by 1855 was apparently in better financial shape. However, problems emerged early in the year in the stores area; and the ECR directors appointed by the East Anglia Railway (EAR) and the auditors objected to the accounts to be tabled at the August half yearly meeting. The latter appointed a Committee of Investigation (CofI) which reported in November 1855 and found against Waddington for mismanagement. In a very public battle it tried to remove him but he won the backing of shareholders in early 1856. However, both Waddington and his main antagonist, Bruce of the EAR, retired later in the year. Horatio Love, the chairman of the CofI, then narrowly beat off the challenge of William Malins of the Railway Proprietors Association in the election of November 1856 for director to fill the vacancy left by Waddington. Love was directly elected chairman, serving until 1863.

The ECR eventually fused with its partner railways in 1862 to form the Great Eastern Railway (GER). A map of the system published in Waddington's response in December 1855 is below.<sup>403</sup>

**Figure 1 Eastern Counties Railway system (overleaf).**

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<sup>403</sup>David Waddington, *The Eastern Counties Railway Company: the Chairman's Answer to the Report of the Committee of Investigation Issued 24.12.55*, London: W S Johnson, 1855.

# EASTERN COUNTIES RAILWAY SYSTEM.

## NOTE.

- |  |        |      |  |
|--|--------|------|--|
| The Eastern Counties Lines are colored | RED    | thus |  |
| The Norfolk Lines                      | BLUE   |      |  |
| The East Anglian Lines                 | YELLOW |      |  |
| The Eastern Union Lines                | GREEN  |      |  |
| The Norwich Lines                      | PURPLE |      |  |
| The Halesworth & Beccles               | ORANGE |      |  |
| London, Tilbury & Southend             | BLACK  |      |  |



**ENLARGED PLAN  
OF THE  
JUNCTIONS AT STRATFORD.**

## Shareholders, Waddington and the ECR board

### *The shareholder body*

The ECR's shareholder register appears not to have survived and the 1845-46 Returns to Parliament only hint at the nature of the shareholder body.<sup>404</sup> They give some indication that the ECR shareholder body had a strong London component with Lancashire investors making up a smaller but material part. There is little evidence of influential pockets of ECR shareholders along the line in East Anglia. Some railway investors in outer East Anglia looking for a local opportunity may have invested in the NR, EUR and EAR because of the failure of the ECR to build to Norwich. However, the linkages between these companies and the ECR meant that such investors would have an indirect influence on ECR affairs.

### *David Waddington*

Waddington (1810-1863) was born in Manchester and by 1836 he was running his own mill. He became a director in a George Hudson railway promotion in 1837. In 1845 he accepted an offer to become chairman of the ECR but later in the year George Hudson took on the role and Waddington became deputy chairman with responsibility for traffic.<sup>405</sup>

Waddington resigned as director in the immediate aftermath of Hudson's fall in early 1849. The ECR Cofl reporting in April 1849 lay responsibility for falsification of the accounts (as outlined above) squarely on Hudson. Waddington was not directly criticised by the Cofl but it was critical of the company's internal administration under which Hudson and Waddington had the whole management of the firm in their hands. The Cofl also identified a number of payments to Waddington, some apparently for services

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<sup>404</sup>Return of Alphabetical List of Names of Persons subscribing to Railway Subscription Contracts deposited in the Private Bill Office, 1845, House of Commons Papers 1845, Vol. XL.1,153. Ditto for 1846, House of Commons Papers 1846, Vol.XXXVIII.1.

<sup>405</sup>Graham Dalling, "Enfield's Railway King, David Waddington, and the Great Pew Controversy," *Edmonton Hundred Historical Society*, Occasional paper no 38, 1978, 3.

rendered including on parliamentary business, without clear explanation or authority. Further, Waddington and Duncan, the ECR's solicitor, were explicitly coy about the exact nature of some £9,000 of parliamentary expense. Readers were left by the Cofl to draw their own conclusions. The report also shows Waddington trying to distance himself from adjusting the accounts by saying he advised against it.<sup>406</sup> His close association with Hudson would make some wary of Waddington but his return to the ECR in 1851 appeared to evidence shareholder respect of his skills as a railway promoter and manager.

Waddington was Conservative MP for Maldon (1847-52) and later Harwich (1852-7) but Hansard contains only one speech from him in 1849 when he followed George Hudson in taking issue with the 1849 ECR Cofl report.<sup>407</sup> He gained some notoriety in his first election in 1847 for recruiting workers, including many ostensibly unfit for physical work - so called Waddington's Guinea Pigs - on the Witham to Maldon branch on which work ceased within the week following the poll. A report published after his election in Harwich in 1852 was critical of certain aspects of his election in 1847.<sup>408</sup> After he departed the ECR, Waddington was briefly involved in the unsuccessful promotion of a railway in competition with the ECR in the south east Lincolnshire/ northwest Norfolk area.<sup>409</sup>

### *The board of directors and related committees*

The federated nature of the ECR whereby a number of relationships were built up but the companies absorbed operationally remained legally and financially separate did offer challenges for the operation of the ECR board as the 1855 Cofl (hereafter Cofl) complained. It noted that one cause of losses was the constitution of the board; and

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<sup>406</sup> *Report of the Committee of Investigation to the Shareholders of the Eastern Counties Railway Company* (London: Waterlow & Sons Printer), 12-14, 19, 23-5, 26-7.

<sup>407</sup> House of Commons Hansard for 17 May 1849, Vol 105, Col 587. [hansard.parliament.uk](http://hansard.parliament.uk) accessed 3 May 2019.

<sup>408</sup> P Goldsmith, "The Witham to Maldon Branch," *Great Eastern Journal*, no 11 July 1977, 6.

<sup>409</sup> D I Gordon, *A Regional History of the Railways of Great Britain. Vol V The Eastern Counties*, Newton Abbot: David & Charles 1968, 219-220.



reported that of a board of 15, only 8 represented the interests of the ECR. 5 were from the Northern & Eastern Counties Railway (London to Cambridge line) which had a fixed dividend before any dividend was paid to the ECR shareholders. 2 more were from the EAR who, said the Cofl, were interested in keeping overall costs down but who were not affected by the share out formula for the associated companies, ECR, Norfolk and EUR.<sup>410</sup> Further, the Cofl noted, the affairs of the three associated companies were run by a joint committee of 4, 2 and 2 respectively which “needed watching”.<sup>411</sup> Reduced incentives such as priority as to dividend and a board made up of certain elements which would tend to limit their interest to checking that their ‘home’ company’s interests were not being prejudiced did not tend towards sound governance of the ECR.

The directors representing the other companies were appointed by them. . In late 1851 during the establishment of the arrangements to operate the EAR, the ECR board resolved that the EAR representatives should be elected though did not specify by whom. However, in early 1852 following the receipt of letters from the EAR and the ECR’s lawyers, the ECR board agreed to accept appointees as the EAR representatives<sup>412</sup>. The Act passed later in the year sets out the position. The representative directors would serve until they resigned, died, or were disqualified through either leaving their home company board or failing to hold the ECR shares necessary to qualify a director. The usual rotation rules, therefore, did not apply<sup>413</sup>.

Nor was it served by the delegation of much business to committees.<sup>414</sup> Not only was there the joint committee of the associated companies but the four standing committees of the ECR board had full legal power to act. Whilst the directors were evenly distributed among these committees, Waddington was on all of them and his recommendation of appointments to them was generally approved. Whilst there is evidence that some larger decisions were taken at board level, there is also evidence that some, which should have been, were not. The Cofl also complained about the Officers Committee which comprised only one director, Waddington and the department heads (goods manager,

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<sup>410</sup> TNA/RAIL186/62 Report of Committee of Investigation together with Evidence taken, iv.

<sup>411</sup> Ibid., v.

<sup>412</sup> ECR Board Minutes TNA/RAIL186/10.

<sup>413</sup> The Eastern Counties & East Anglian Railways Act, 1852 - 15 Vic. c.108 clauses 10-11.

<sup>414</sup> Ibid., Evidence of Owen, Company Secretary on board committees, qq 413-28, 10-11.

locomotive superintendent, coaching superintendent, outdoor manager, engineer and for a time storekeeper).<sup>415</sup> The ECR company secretary, Owen, reported to the Cofl that this was formed in George Hudson's time and to a very great extent assumed the functions of the directors.<sup>416</sup> The Cofi also complained that this committee was responsible for many additions to the capital account ostensibly through recommendations which in most cases were adopted and looked like the resolution of the directors.<sup>417</sup> It seems that the concentration of power was similar to that in Hudson's time where the 1849 Cofl reported that it had been reinforced by the board meeting monthly and the Finance and Traffic Committees chaired by Hudson and Waddington respectively meeting weekly.<sup>418</sup> There does not appear to be any mention for or against an Officers Committee in the company's Act or in the CCCA. The Cofl criticism is strangely worded- it does not charge the usurping of the board's authority in terms.

Thus Waddington had the great power that his appointment as Executive Chairman on £2,000 per annum was no doubt entitled to give him. It would not be fair to say that the ECR having given George Hudson full control of the management in the hope he would revive its fortunes did the same with Waddington with the same ultimate outcome. His appointment was an early example of an attempt to professionalise the direction of a railway company. On the other hand the ECR's governance arrangements were not sufficiently robust to prevent irregularities occurring.

#### Issues raised by the 1855 Committee of Investigation and Waddington's Answers

##### *Powers, membership and output.*

The Cofl was appointed by the half yearly general meeting of 28 August to investigate the affairs of the company and with access to people and papers. Apart from its chairman Love, a stockbroker, who went on to be chairman of the company, its members included an MP, Edward Ball, Henry Soper who went on to be auditor of the GER and Jeremiah

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<sup>415</sup> Ibid., x.

<sup>416</sup> Ibid., Evidence of Owen as above.

<sup>417</sup> Ibid., x.

<sup>418</sup> *Report of the Committee of Investigation to the Shareholders of the Eastern Counties Railway Company* (London: Waterlow & Sons Printer), 14.

Pilcher, a magistrate and merchant<sup>419</sup>. The Cofl appeared to have the standing and experience to do its job; and there were activist directors keen to give their view of the company's problems.

The Cofl report and its aftermath gave the shareholders plenty of material to consider. The Cofl interviewed 71 witnesses and asked them 3,965 questions; its report ran to 118 pages of report, evidence and appendices. Waddington's Answer of 22 chapters and 8 appendices ran to 108 pages. In January 1856 a further exchange was made by way of the Cofl's Observations on the Answer and the Chairman's Final Answer to the Cofl. Shareholders could also peruse a detailed report of the problems in the stores department as well as Board of Trade Inspector, Colonel Wynne's report on the permanent way. Debate ranged over a large range of issues raised by the Cofl.

*Conflicts of Interest, potentially improper influence and accusations of insider expropriation*

Gooch and the coal contract.

The most serious claim made by the Cofl about conflicts of interest concerned the Locomotive Superintendent, John Viret Gooch.<sup>420</sup> It emerged that he had been a partner in the Norfolk & Eastern Counties Coal Company (NECCC) until late 1854. NECCC had an arrangement to supply and carry a great deal of coal on the ECR and also was a major supplier of coal to the ECR for its own use. The Cofl and Gooch/Waddington disagreed about how much coal Gooch had certified for payment,<sup>421</sup> but Waddington, who, as agreed by the Cofl, had found out about Gooch's involvement with NECCC after the arrangement with them was struck, was not happy with this conflict and said he would probably not have gone into the arrangement had he known of Gooch's connection.<sup>422</sup>

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<sup>419</sup> Ball is described as an MP on the face of the Cofl Report. Love is described as a stockbroker by Geoff Ashton in "GER Incorporation & early changes" in *GER Journal*, Vol 154, 28. Soper is quoted as GER auditor in Herapath's 28.2.63 edition, p221. Pilcher is described as a magistrate and merchant at [wikitree.com](http://wikitree.com) (accessed 15.2.2022).

<sup>420</sup> Ibid, vii & viii.

<sup>421</sup> Ibid., vii & Eastern Counties Railway Company: The Chairman's Answer to the Report of the Committee of Investigation Issued 24 December 1855 (London: W S Johnson, 1855), 59-60.

<sup>422</sup> The Chairman's Answer, 59-60.

Whether or not Gooch had personally certified coal does not clear him of the conflict given his power within ECR and the Cofl made much of the benefits accruing to the NECCC hence Gooch from the coal carrying arrangement including having its wagons mended in ECR shops and rebates being made to NECCC. Waddington tried to fend off these accusations by stressing the NECCC was charged for wagon repairs and that the rebate was fair but the concern about Gooch's conflicts would have remained particularly when it became known that he was also an owner of coal trucks and had interests in steamships bringing coal to Lowestoft where the company's coke ovens were sited. He was also accused of using company facilities for repairs made to these steamships.<sup>423</sup> Gooch admitted to working as part of NECCC to secure rates which were fair and profitable for them.<sup>424</sup> Waddington was able to distance himself somewhat from this problem given Gooch's involvement with ECR predated his chairmanship and his agreed unawareness of Gooch's partnership in NECCC when the latter made its carrying agreement with ECR. However, the conflict remained whatever Waddington's responsibility for it and the Cofl's work would have highlighted the dangers of such conflicts to ECR shareholders and the railway world more generally.

#### Contractor influence and Sir Samuel Morton Peto

The Cofl hints at the improper influence of the great railway contractor Sir Samuel Morton Peto in the affairs of the ECR. This is first seen in suggestions that the contracting firm Peto, Brassey et al had done well at the ECR's expense in the Tilbury and Southend line which was leased to the contractor. The Cofl was particularly concerned that the lessees had the right to set rates over the ECR and Blackwall lines into their respective Bishopsgate and Fenchurch Street terminals.<sup>425</sup> Waddington responded that the lessee would want some safeguards to which the Cofl responded that the Tilbury's company's Act provided safeguards which had been signed away by the ECR in its agreement with the lessee. Waddington's Answer made a convincing enough case for the ECR's involvement in the Tilbury & Southend and the Cofl seem to concede that the line was a

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<sup>423</sup> Report & Evidence of the Cofl, qq 3322-46, p71 & q3372, p72.

<sup>424</sup> Ibid., qq3347-53, p71.

<sup>425</sup> Report & Evidence of the Cofl, v-vi.

fair prospect but that the ECR (which shared the direction with the Blackwall Railway and provided motive power and rolling stock) should have been getting a fuller return.<sup>426</sup>

Peto was also an owner of property in Lowestoft and promoter of the town. He had introduced the NECCC to the town as coal merchants. Further, he was chairman of the Norfolk Railway which the Cofl accused the ECR of favouring; and he also had steamboat interests. Finally, he was active in promoting the East Suffolk Railway which the Cofl opposed as a competitor for traffic and which Waddington saw as a project for a later date. Peto was not interviewed by the Cofl, but Waddington published a letter from Peto to the Times in his Answer. This rejected the Cofl criticism but would have done little to sway his supporters or enemies from their existing views. He specifically stated that whilst he had introduced Messrs Prior (NECCC) to Lowestoft he did not offer them exclusive facilities there nor advantageous terms.<sup>427</sup>

By the mid 1850s there was much public criticism of how railway investors had been harmed by contractors, lawyers and engineers running railways for their own benefit. In the ECR case, a good example of anti-contractor material, *Petovia*, was published in early 1857 to oppose Peto's scheme to build a parallel route to London from East Suffolk by promoting a line from Colchester to Pitsea via Maldon.<sup>428</sup> His aim was to force the ECR to treat with the East Suffolk system which he was promoting<sup>429</sup> as well as assisting his London, Tilbury & Southend Railway (LTSR);<sup>430</sup> and the promotion offered a 6% guarantee to shareholders over a lease period of 21 years, a typical contractor and Peto offer.<sup>431</sup>

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<sup>426</sup> The Chairman's Answer, 12-18. Observations of the Investigation Committee on Mr Waddington's Answer found in *Railway Times* 19 January 1856, 67.

<sup>427</sup> The Chairman's Answer, Appendix II, 97-8.

<sup>428</sup> *Petovia* being a Review of a Scheme for a Railway from Pitsea to Colchester and an Exposure of the Motives which Prompted it, the Absurdities which Characterise it and the Inevitable Failure which Awaits it. Dedicated to its Promoters and their Victims; By a Tooth of the Dragon. London: Effingham Wilson, 1857.

<sup>429</sup> *Ibid.*, 48-9.

<sup>430</sup> *Ibid.*, 17-19.

<sup>431</sup> *Ibid.*, 11-12.

The financial structures of Petoism were the main complaint of Petovia. Contractors were overpaid for work done at the expense of a deceived and plundered proprietary.<sup>432</sup> Using figures from the London Tilbury & Southend and the current promotion the author attempted to show how the very large profits from the construction were only partly used by the contractors in support of the 6% guarantee to shareholders. The contractors still secured good profits.<sup>433</sup> At the end of the 21 year lease period, the shareholders would inherit a run down asset without rolling stock paying only 2-3%. In the meantime the shareholders were exposed to an increased credit risk on the contractors having to pay the guaranteed return on a number of railways paying much less than the guaranteed rate.

The author saw the ECR as having been a prime victim of Petoism, It had been as good as a bank to Peto who had got the best of its board members<sup>434</sup>. However, the author was confident that ECR was now changed and would not bail Peto out of his LTSR and East Suffolk problems even to secure the abandonment of the Pitsea scheme; Waddington was no longer chairman<sup>435</sup>.

In the event Peto's Pitsea scheme was withdrawn, the ECR having taken the precaution of submitting plans to parliament in 1857 for extensions including a line from Maldon to Pitsea<sup>436</sup> However, Peto's biographer writes that the Pitsea scheme was only withdrawn once the ECR agreed to drop opposition to the East Suffolk scheme (where Peto was contractor and lessee) and run it once built.<sup>437</sup> The elements of the East Suffolk amalgamated and opened as a system in 1859 and then became part of the Great Eastern merger in 1862 where its shareholders received £340k of 4% debentures and

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<sup>432</sup> Ibid., 30-1

<sup>433</sup> Ibid., 15-17 & 24-8.

<sup>434</sup> Ibid., 28.

<sup>435</sup> Ibid., 49.

<sup>436</sup> Parliamentary Archive: HL/PO/PB/3/plan1857/E7

<sup>437</sup> John Cox, 'Railway Contractor becomes Railway Financier. Peto in the 1850s'. *Journal of the Railway & Canal Historical Society*, Vol. 35, No. 191 (March 2005), 23-4.

£335k of 4.5% preference shares. The LTSR contractor lease ran its 21 years until the mid 1870s and the line remained independent thereafter<sup>438</sup>.

The Cofl findings and shareholder activism in its aftermath appeared to stiffen somewhat the resolve of the ECR in its dealings with Peto but maybe the greater impact was in turning shareholder sentiment against Waddington. In terms similar to those used later in Petovia, Peto was cast as a bogey figure with a hold over Waddington and whose interests the latter was favouring at the expense of the ECR shareholders.

#### Appropriation of LTSR shares to individual directors.

The Cofl made one specific charge of improper expropriation against Waddington and three other ECR directors. It concerned 1091 unallocated shares in the LTSR which the joint committee (comprised of the four above and four from the Blackwall Company) allocated to the four in 1851. They retained the shares, which stood at a £2 premium at the time, for themselves (having only to pay calls which would ultimately amount to par). The Cofl was convinced that these should have been allocated to the ECR as the four were members of the joint committee solely as representatives of ECR. Waddington was equally convinced that the joint committee had a right to allocate the shares as they wished and he stressed that he had not asked for them. Whilst the allocation appears to have been within the power of the joint committee to make, the Cofl thought the appropriation by the four directors to be wrong and no doubt so too did many ECR shareholders who considered Waddington to be well enough paid already.<sup>439</sup>

#### Gooch's Contract of Employment

The ECR's Locomotive Superintendent from 1850 to 1856 was John Viret Gooch, an engineer from a noted northern family of engineers. Gooch had been engineer on the London & South Western Railway from 1843-50 and he joined the ECR for a fixed term of 5 years with 12 months' notice on either side thereafter.<sup>440</sup> Gooch received 5% of annual

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<sup>438</sup> Ibid, 23.

<sup>439</sup> Report & Evidence of Cofl, v.

<sup>440</sup> Biographical details taken from: Jerzy Swieszkowski, 'Personal Profiles 6: John Viret Gooch,' Great Eastern Journal no. 130 (July 2005), 36.

savings in excess of £10,000 measured against a baseline of 17.84d per train mile. Additionally he was to receive a fixed salary of £600 but this was dependent upon him making the £10,000 savings against the baseline.; and on the engines and rolling stock being maintained in the same condition as he found them. The contract stated that there was nothing in the agreement to prevent the ECR dismissing Gooch for misconduct nor Gooch from recovering damages if discharged without legal cause but damages were not to involve any fixed salary after the date of dismissal.<sup>441</sup>

In 1851, faced with a claim from Gooch of £2,202 for savings in his first year in addition to his fixed salary of £600, the ECR sought the advice from accountants Quilter Ball who found that there was an insurmountable difficulty in safely managing the contract caused by the failure to get an independent valuation or survey of the locomotive and rolling stock when Gooch started. Further, actual expenditure in the year suggested that the savings for the year were not £54,904 as alleged by Gooch but in fact were £32 in excess of the baseline. The savings claimed by Gooch arising from new stock charged to capital could not be checked nor the impact of certain engines previously standing idle being refurbished and used for spares.<sup>442</sup> The matter went to arbitration by Robert Stephenson who found for Gooch and the ECR having taken legal advice decided it had to continue, not only in 1851 but later when it emerged that Gooch was involved in the NECCC. Gooch's Articles of Agreement were also deemed to cover the Eastern Union when the ECR took over its operation in 1854.<sup>443</sup>

In mid 1855, Waddington gave 12 month's notice to exit the arrangement and the payments to Gooch were paused.<sup>444</sup> Subsequent arbitration saw payments to Gooch for the balance of his contract roughly equivalent to what he had received before. In the meantime the ECR had appointed a Robert Sinclair, formerly of the Caledonian Railway, as Locomotive Superintendent on a fixed salary of £1,200 per annum.<sup>445</sup> The Cofl

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<sup>441</sup> A copy of the Articles of Agreement with Gooch dated 31.5.50 is appended to the Report & Evidence of the Cofl, 94.

<sup>442</sup> A copy of Quilter Ball's report dated 8 October 1851 is appended to the Report & Evidence of the Cofl, 95-6.

<sup>443</sup> Waddington's evidence, Report & Evidence of Cofl, qq3620-31, 77. Waddington's Answer, 65-6.

<sup>444</sup> Waddington's Answer, 64.

<sup>445</sup> Railway Times 23 August 1856, 974. Swiezkowski, Coal, Coke & Scandal, 10.



reported that Gooch had been paid nearly £20,000 in percentages ( the 5% of savings) on top of his fixed salary and had passed on only a small amount of this to his staff.<sup>446</sup>

Gooch was paid as follows:<sup>447</sup>

1851	£3,604
1852	£4,237
1853	£4,937
1854	£6,614
1855	£6,581
1856	£600

As well as the absence of a baseline survey of the locomotive department's stock, there was no independent check on the allocation of expenditure between capital and revenue. The more that Gooch could put to capital (meant for net additions) as opposed to revenue (meant for repairs and renewals) the better his percentages would be.

Neither was the contract properly monitored nor it seems after 1851 monitored at all. The evidence taken by the Cofl also appeared to show there was no central checking of the accounts Gooch put in for his department. The bookkeeper confirmed that his checking of Gooch's percentages just amounted to seeing that the arithmetic calculation of them from the train miles actually run was correct.<sup>448</sup>

The contract pre-dated Waddington's time as Chairman, he said he did not like it and would not have entered into it; and also gave notice to end it as the earliest opportunity. However, it seems less to his credit that, once the ECR was stuck with paying Gooch's percentages, it did so in a way not to arouse the ire of the shareholders. The fixed salaries of the locomotive department were disclosed in the accounts but the percentages were not identified separately but distributed amongst the various categories

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<sup>446</sup> Report & Evidence of Cofl, viii.

<sup>447</sup> Report & Evidence of Cofl, q241, 7. Jerzy Swieszkowski, "John Viret Gooch", *Great Eastern Journal*, no. 130 (July 2005), 38-9.

<sup>448</sup> Report & Evidence of Cofl, qq244-5, 7.

of departmental expense. The book-keeper estimated that locomotive department salaries including percentages as disclosed for 1854 were some £5,000 short of actual.<sup>449</sup> Full disclosure revealing that Gooch was getting paid very large sums and considerably in excess of those paid the Executive Chairman himself would likely have caused outrage. Waddington maybe hoped to get through to the end of Gooch's contract, quietly learn the lessons and move on.

The ECR had a good accident record in Gooch's time; and, in contrast to the permanent way, there did not appear to be a need to spend heavily on the stock to bring it up to standard after he left. Waddington asserted that Gooch had been one of the ECR's most efficient officers and a man of invention and experience; he also noted that his predecessor had had difficulty in finding someone.<sup>450</sup>

Nonetheless, Gooch's contract did not reflect well on ECR management given its imperfect set-up, its ineffective on-going monitoring and control and the failure to declare its true cost to shareholders. Whilst Waddington was not responsible for it and tried to protect the ECR's interests, it was seen by many shareholders as insider expropriation on a serious scale.

### *Business policy*

The Cofl attacked Waddington's business policies, but comparing the Cofl report and his Answer, he appears to have had a firmer grip on some of these than his critics.

### *Cattle*

The Cofl complained that ECR charged 5s per head for Danish cattle from Lowestoft to London whilst cattle from Norfolk or Cambridgeshire were charged 12s per head. This is described as an injustice to English agriculturists and was a complaint commonly raised by railway customers, generally described as traders, in debates about railway rates up to

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<sup>449</sup> Report & Evidence of the Cofl, qq256-63, 7.

<sup>450</sup> Waddington's Answer, 66.

1900.<sup>451</sup> Waddington provided an early version of the railway response that the rates of such traffic were effectively set by the generally cheaper sea rates to the ultimate destination. In this case Waddington explained that the Schleswigers had developed a good system for the rapid fattening of cattle and there was good demand for the product in London. There were two shipping companies involved, one shipping direct from Tanning to London and one shipping via Lowestoft and for the second to compete the rates had to be set as they were otherwise all the trade would go direct by ship. Notwithstanding the fineness of the per head rate the business was yielding the ECR over 5s per train mile compared to an average of 4s 9d. Waddington warned that the shareholders might suffer a diminution of dividend if this business were discontinued.<sup>452</sup>

## Coal

The Cofl took evidence from several coal merchants who complained that the preferential rates agreed between the ECR and the Norfolk & Eastern Counties Coal Company (NECCC) had severely harmed their business and had given the NECCC an effective monopoly.<sup>453</sup> Further, the proximate cause of the breach between Waddington and his EAR antagonists was the latter's resolution that mileage rates for goods and coal be equalised between King's Lynn, Yarmouth and Lowestoft to all parts of the ECR system. In his Answer Waddington does not wonder at the trade complaints as the effect of the agreement with the NECCC has been to reduce the price of coal in the district by 20%. Further, Waddington claimed that volumes and receipts from coal traffic had risen dramatically in recent years. He argued that, for traffic to be profitable, coal needed to be placed on the line in large and certain quantities at fixed and regular periods and subject to railway control in a manner that small dealers could not undertake.<sup>454</sup> In business terms this may have been logical enough though it seems the ECR had gone too far. Two of the coal merchants interviewed by the Cofl (Ransome and Geard) applied for an injunction under the Railway & Canal Act of 1854 restraining the ECR from increasing tolls per mile from both Ipswich and Maldon above the level charged NECCC. The action was

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<sup>451</sup> Report & Evidence of the Cofl, iv.

<sup>452</sup> Waddington's Answer, 23-4.

<sup>453</sup> Report & Evidence of Cofl, qq786-91, 20-1; qq883-7, 23-4; qq1838-43, 38; & qq1947-8, 41.

<sup>454</sup> Waddington's Answer, 55-6 & 60.

successful in the Court of Common Pleas in 1858.<sup>455</sup> Although the Cofl called for the end to exclusive arrangements on the coal traffic, the merchants were not satisfied with the adjustments made and continued with their action.<sup>456</sup>

### Lowestoft

The Cofl was opposed to the ECR having taken on the harbour at Lowestoft on grounds of cost and taking trade from Yarmouth. It said it would be happy for the former harbour to silt up.<sup>457</sup> Waddington's Answer stressed that, before the ECR became involved, the development of Lowestoft Harbour was well advanced by the Norfolk Railway which had met with difficulties in Yarmouth with high harbour dues and conflicting interests.<sup>458</sup> For Waddington the significant item of expenditure in the harbour was £14-15,000 for the graving (ship repair) dock which, as the only such facility between the Thames and the Humber, would enhance the value of Lowestoft as a harbour of refuge and railway terminus as rail traffic always tended to benefit when ships came in for repair. As to taking trade from Yarmouth, he put forward figures showing that trade at both ports had increased materially in recent years.

He then turned to the claim of the Cofl that the harbour was loss making by reference to the calculation of its receipts and costs which were similar but after the profit sharing mechanism incurred a material loss to the ECR. Waddington seems to have a point in mocking the Cofl in dealing with witnesses in taking evidence over this. He claimed they did not know when asked about receipts and costs. When asked again they provided the figures including the loss to the ECR and one suspects with Waddington that they were given a paper, on which the evidence is silent, from which to read the answer. More substantively Waddington noted that the Cofl had included in its figures only the receipts from the Harbour and not the benefit of the traffic on the line. Lowestoft was a terminus and station on the ECR and nearly all stations were loss making on that basis;

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<sup>455</sup> Jerzy Swieszkowski, "Coal, Coke and Scandal on the Eastern Counties Railway in the 1850s", *Great Eastern Journal*, April 2007, no.130, 10.

<sup>456</sup> Memorial of Ipswich Coal Merchants printed in *Railway Times* 20 December 1856, 1507.

<sup>457</sup> Report & Evidence of the Cofl, vi.

<sup>458</sup> Waddington's Answer, 19.

Waddington would be very pleased and the ECR would be very profitable if all stations made the same loss which Lowestoft did.<sup>459</sup>

Waddington added that Lowestoft was a growing town and becoming a watering place; also its good fish traffic had been ignored by the Cofl. He then moved on to the Cofl's insinuation that the coke ovens in Lowestoft were built as a favour to the place and would have been better at King's Lynn. It was 26 miles from Ely at the centre of the ECR system whereas the distance from Lowestoft was 76 miles. If the coke went from King's Lynn, the ECR would have to pay the EAR a toll; and whilst King's Lynn was more central than Lowestoft it also had harbour dues and slightly heavier coal freights. Waddington would always prefer distance over toll and noted that the railway board would always tend in the interests of shareholders to place the aggregate of business at the point where most may be got for it.<sup>460</sup>

The Cofl in its Observations agreed there was fish traffic but that the coal traffic had largely migrated to Peterborough - therefore reflecting Waddington's point on the location of traffic. It added that Waddington had understated the capital spent and exaggerated the gross receipts at Lowestoft. It summed up by saying the ECR did not need ports only 8 miles apart and that Yarmouth could accommodate all the traffic.<sup>461</sup>

Whilst there were other issues such as contractor influence and coal contracts related to Lowestoft assailing Waddington, its worth to the ECR and its prospects were sufficiently sound. It certainly seemed not to deserve the Cofl's wish that it silt up and Waddington seemed to have had the better of the exchange on its fundamentals.

#### *Suspected fraud in stores department*

In early 1855 suspicions developed about the storekeeper, Alfred C Williams, paying considerably inflated prices for stores. It soon became clear that this was true, Williams left in May and ECR was then considering legal action against two major suppliers. It

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<sup>459</sup> Ibid, 20-2.

<sup>460</sup> Ibid., 22-6.

<sup>461</sup> Observations of Investigation Committee on Mr Waddington's Answer, Railway Times 19 January 1856, 67-8.

appears also that some pristine stores were sold as old stores at an undervalue. It also became clear that the stores department maintained its own accounts and that these were not properly balanced nor were they properly checked by either the central bookkeeper, the internal or external auditors.<sup>462</sup> Both the Cofl and Waddington are somewhat guarded about the details of the alleged fraud as legal action was being considered. They agreed that a serious problem had been uncovered but disagreed about its potential financial impact and who on the board was to blame. The Cofl considered the loss on stock on hand was £4,000 and Waddington preferred the £1,000 estimate made by the stores accountant. The Cofl were disinclined to believe the estimate of someone in the stores department and made the valid point not directly addressed by Waddington in his Answer that the loss mainly arose in inflated costs rather than merely an adjustment to the value of stock on hand.<sup>463</sup> The Cofl estimated an overall cost of £10-40k assuming an overpayment in the range of 10-40%. It also recommended an adjustment to the revenue for the June 1855 half year of £4,000 as estimated above.<sup>464</sup>

The Cofl tried to damage Waddington's reputation by saying that Williams had been his private secretary and protege and that Waddington had initially tried to block the enquiry in early 1855.<sup>465</sup> He argued in return that, as soon as specific allegations were raised, he was happy for an enquiry to proceed. He also believed that he was right to leave matters with Williams given his assistance in dealing with some stores frauds back in 1851, also with Gooch who was well acquainted with stores prices, also with the other members of the stores committee including Bruce. Indeed Waddington stated that no member of the directorate had less to do with these transactions in the stores than him and he declined the responsibility which Bruce has tried to shift from himself. If a director was culpable, Bruce was more especially implicated.<sup>466</sup> It is doubtful that many supported Waddington in this argument as he was in full control of the management and was paid to provide

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<sup>462</sup> Reports of Stores Examination Committee published in Railway Times January & February 1856, 39-40, 63-4, 64-5, 127 & 159.

<sup>463</sup> Observations of Investigation Committee on Mr Waddington's Answer, Railway Times 19 January 1856, 69-70.

<sup>464</sup> Report & Evidence of Cofl, ix & 101.

<sup>465</sup> Report & Evidence of Cofl, q523 & 528-30, 12-13.

<sup>466</sup> Waddington's Answer, 67-72. The Chairman's Final Answer to the Committee of Investigation, Railway Times 26.1.56, 96-8.

oversight of an area which was notoriously susceptible to fraud, including at the ECR when he took over.

### *Unauthorised and illegal acts*

A main theme of the Cofl's case was that Waddington had committed the ECR to various transactions without securing proper authority from directors or shareholders. These included:

#### ECR funding of Norfolk Railway capital works

The Cofl charged Waddington with providing some £69,000 of capital expenditure to the Norfolk Railway in contravention of the agreement of the amalgamation that the Norfolk was to find its own capital. This agreement had been confirmed by Act of Parliament and Waddington had lent the money and then placed the items in the ECR capital account. He had not sought ECR board approval and the only minute which was to hand was a joint committee one in May 1855 which post dated much of the expenditure which covered the rate of interest to be charged on intercompany debt but had not mentioned any particular transaction. No ECR shareholder authority was sought and the item was not explicitly reported in its inception as a capital item.<sup>467</sup>

Waddington's response was that the ends justified the means. Soon after the amalgamation the Norfolk required money spent on facilities so that traffic could be developed but its capital was spent and its borrowing powers were exhausted. So the ECR stepped in to provide funds knowing that any gain would be shared largely in its favour through the 5/1/1 formula. As the amalgamation was in perpetuity and on fixed terms, it was immaterial, he said, who provided the money so long as the Norfolk paid for it. The greater risk was not in the ECR providing the money but that the Norfolk would refuse to spend on facilities as it would only get the 1/7th. The advance was temporary as the Norfolk hoped to apply for an Act for extra capital and expenditure would be charged to a joint fund together with interest at 4% which would be deducted from earnings before any division of receipts between the three companies. Waddington

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<sup>467</sup> Report & Evidence of Cofl, iv & v. Company Secretary Owen's evidence, qq1949-55, 42.

asked whether the Cofl would prefer such arrangement over one where the ECR got a 0.5% interest margin from the advance.<sup>468</sup>

Loan of £200,000 to the EUR.

Whilst it was mentioned in the published evidence rather than in the covering Cofl report, the Cofl in their Observations described this loan as illegal and without shareholder authority.<sup>469</sup> Again Waddington describes this as a good transaction for the ECR. He says it originated in the amalgamation negotiations with the EUR which as a non-dividend paying line was struggling to find the money to redeem some preference shares on favourable terms. It had an Act for this but it was time limited. ECR, however, had borrowing powers in hand and good credit with the public. At the time the negotiations were deadlocked with EUR wanting 1/6th of the overall share-out and expenses deducted at 45% and ECR wanting 1/7th and expenses deducted at 46%. The provision of this loan allowed both deals to proceed with the latter on the ECR's terms. He reported that the chairman of the EUR, J C Cobbold, had been good enough to write to him saying that Waddington should remind his shareholders of the real nature of the transaction which was intended as benefitting both companies; and that a strong minority on the EUR board, which was holding out for 1/6th and 45%, considered "you had done us whatever your shareholders think now". Waddington noted that the difference in terms was worth about £30,000, that security had been taken for the loan and that the EUR was applying for an Act to raise capital - there was little doubt they would get it and then would repay the ECR.<sup>470</sup>

In neither of these cases does the evidence given to the Cofl shed light on exactly how and by which officers these loans were made, although Waddington accepts responsibility and does not dispute the charges of lack of board or shareholder authority. The charge of illegality made by the Cofl is general and makes no reference to any particular regulations being broken. It may be that the charge derives from the limitation

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<sup>468</sup> Waddington's Answer, 85-6.

<sup>469</sup> Observations of the Investigation Committee on Mr Waddington's Answer, Railway Times 19 January 1856, 70.

<sup>470</sup> Waddington's Answer, 86-7.



on the powers of the company to spend the capital on building and equipping the works specified in its Acts, and not by way of loan facilitating the same for other railways. Waddington may have reckoned that, as these loans were to allied railway companies which were enjoined by the Act of 1854<sup>471</sup> to present a bill for amalgamation before 1862, the charge would have less purchase with the shareholders.

#### Purchase of steamboats from the EUR.

The Cofl complained that Waddington had caused the ECR to acquire eight steamboats engaged between Ipswich and Harwich and Ipswich and London from the EUR as part of the stock acquired in the amalgamation. The boats were valued at £24,000 out of the total of £149,000 but were not separately identified to the ECR board or shareholders and their purchase was not authorised by them. In the Cofl's opinion the boats should be returned to the EUR and the purchase money returned to the ECR.<sup>472</sup> Waddington's response was that the boats had been used by the EUR to compete with the ECR and upon amalgamation they had been acquired to prevent them falling into the hands of an independent competitor. Whether that could have materially damaged the ECR is a moot point, particularly as Waddington also stresses that in the context of the negotiations with the EUR over amalgamation the ECR would have found it very difficult not to take them.<sup>473</sup>

The Cofl's Observations speak of the purchase being illegal and suggest that the purchase would have been from the EUR for railway stock and from individuals for the boats.<sup>474</sup> Whilst this hints at the purchase of the boats being ultra vires the ECR's Act, the Cofl does not make this charge in terms. The general rule was, unless specifically provided for, railway companies had authority in their Acts to build and run only the railway facilities (which might include a dock and pier but not the boats) specified in the Act. Thus there was a tension between railway companies which wished to develop traffic from new facilities built at ports and the law which did not permit them to own the boats. By 1870 there was a general move to allow railway companies to run boats partly

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<sup>471</sup> 17 & 18 Vic., c.220, clauses 19-21.

<sup>472</sup> Report & Evidence of the Cofl, vi-vii.

<sup>473</sup> Waddington's Answer, 38-41.

<sup>474</sup> Observations of the Investigation Committee, 68.

because the playing field between railway and shipping interests had been levelled by the making of limited liability generally available. In 1855, however, the position was probably still legally difficult and that may be why the Cofl limited itself to saying the purchase of the boats (which were loss making) was made without proper authority and should be unwound.

The ECR was not the only railway company which undertook transactions beyond its Acts and without prior authority and sought shareholder and parliamentary approval to regularise matters later. Whilst one might speculate whether the steamboats were worth what the ECR paid for them, these transactions were with related railway companies and ostensibly justified in business terms. Some shareholders would have taken this view and thanked Waddington for taking the legal risk on their behalf. Others would have seen them as further examples of his acting beyond his powers; and, perhaps more powerfully, as part of the pattern of surrendering ECR interests to other railways and contractors.

### *Permanent way*

A major problem for Waddington was that after years of clean reports from the engineer and reduced expenditure on renewals/repair the permanent way now needed £150k spending on it.<sup>475</sup> Waddington and the new engineer were of the view that £50k could be capitalised and £100k charged to revenue through a suspense account over 10 years with an annual charge of £12.75k.<sup>476</sup> In early 1856 added pressure on Waddington came from a very critical report by a Board of Trade Inspector, Colonel Wynne on the Norfolk Railway's permanent way.<sup>477</sup> As Peto was chairman of the Norfolk Railway and builder of the line, this report further demonised him in the eyes of many ECR shareholders with consequent problems for Waddington whom many considered to be under his influence. The prognosis of the Cofl was proved right as by mid 1856 £175k had been spent by the ECR on permanent way repairs and renewals.<sup>478</sup>

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<sup>475</sup> Report & Evidence of Cofl, ix.

<sup>476</sup> Waddington's Answer, 49 & 80.

<sup>477</sup> An example of coverage of ECR in the general press is the lampooning in the Spectator of 29 March 1856 of an attempted rebuttal of Wynne's report by engineer Bidder on behalf of the ECR.

<sup>478</sup> Report of half yearly meeting of 29 August 1856 in Railway Record of 30 August 1856, 552.

## *Accounting Issues*

The Cofl carried forward the agitation which had begun at the board over the accounts of ECR for the half year ended 30 June 1855. At a board meeting in August 1855, Bruce had objected to the proposed dividend and the as yet unaudited accounts on which they were based. Subsequently the company auditors declined to agree the accounts and this judgment was backed by the retained external accountants, Quilter Ball. Of the £55,000 declared available for dividend, the Cofl made deductions of around £35,000. Around £13,000 was for renewals and repairs to the permanent way, £4,000 for shortfall on stores, around £3,000 for steamboat losses set down as an asset and £11,000 was for sundry debts and other assets deemed bad or worthless.<sup>479</sup> The Cofl also charged Waddington with depleting the permanent way renewal fund set up in 1849 to pay dividend.<sup>480</sup> He in turn argued that the permanent way renewal fund could carry the renewals for the period, that the shortfall on stores was really £1,000 and that the steamboat accounts should not be made up for a further 6 months in order to cover the full season. He further contended that the sundries loss would be much less if anything and that the Cofl was signalling to debtors that they need not pay.<sup>481</sup>

Further concerns were expressed by the Cofl over the accounting controls in the ECR. Despite having company and external auditors the accounts in the Stores and Locomotive Department appeared to have been taken at face value by the company's bookkeeper in making up the half yearly accounts and by the auditors.<sup>482</sup> Quilter Ball's audit, which involved a visit of a few hours every six months was described by the Cofl as 'perfectly useless'.<sup>483</sup> Whilst the ECR's original Act called for a committee of shareholders to be appointed by the general meeting in the event of concern rather than standing auditors, by 1851 the latter were being elected by and reporting to the general meeting<sup>484</sup>. Unusually among the case studies they were supported by professional accountants, in

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<sup>479</sup> Report & Evidence of Cofl, iii-iv, x & 101.

<sup>480</sup> Observations of the Investigation Committee, 66.

<sup>481</sup> Waddington's Answer, 80-2.

<sup>482</sup> Report & Evidence of Cofl, evidence of stores accountant Britten, qq233-4, 6.

<sup>483</sup> *Ibid.*, x.

<sup>484</sup> TNA/RAIL 186/1 Eastern Counties Railway Minutes of Proprietors Meetings.

the ECR's case, Quilter Ball. We have been unable to identify when or how auditors were first appointed nor the role of the general meeting in calling for professional support but it is possible that the regular involvement of Quilter Ball may have arisen following the egregious manipulation of the ECR's accounts when George Hudson ran the company. Their involvement is first in evidence in 1850 thus before Waddington's appointment in March 1851<sup>485</sup>.

Overall, it appears that the ECR, having had regular financial difficulties over the years and a business with moderate rather than strong fundamentals, was more prone to aggressive or irregular accounting in trying to meet shareholder expectations for a dividend. The absence of accounting standards and requirements on the presentation of annual accounts helped facilitate this.

### *Other issues*

Other issues raised by the Cofl included complaints about loss making continental steamers rented by the ECR to ply between Harwich to Antwerp, a loss making investment in the company's own cabs at its Bishopsgate terminus, the erection of a dancing saloon on third party land to encourage traffic on the Woolwich branch and the mixing by the treasurer of the company's money with his own in his personal bank account arising from his collecting funds on cheques drawn on country bankers.<sup>486</sup> The last was a modest perquisite for the treasurer which was safest ended but which had involved no loss to the ECR. The other ancillary activities would have split shareholders between those supporting Waddington's endeavour to grow the business and those seeing them as a waste of money better spent on keeping up the permanent way.

### Shareholder activism at the ECR following the Cofl Report

The ECR shareholder body, as those of other railways, was quieter when dividend expectations were being met and more turbulent when they were not. It had also been

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<sup>485</sup> Ibid., The minute book, which was rebound in 1955 on account of its dilapidated condition, starts in the middle of a letter from Quilter Ball which is an apparent fragment of a letter signed by auditors James Reeves and William Mayhew dated Aug 16 1850.

<sup>486</sup> Report & Evidence of Cofl, vii, ix, vi & x.

made sensitive to problems through the difficulties of failing to meet its initial objective of reaching Norwich, the financial misdemeanours of Hudson and the handling of relationships with the other East Anglian and neighbouring out-of-territory railways.

The shareholders were informed and exhorted by the railway press which regularly covered the ECR and fully so through the crises of 1855-6. It carried the documents put out by both sides as well as reports of the general meetings, numerous letters from shareholders and leaders. It is likely that the warring factions placed much material with the railway press. The Railway Times and Railway Record remained supporters of the Cofl but Herapath's fell behind Waddington on the basis of his Answer. As in other cases the railway press provided the shareholders with material on which to make their own judgment as well as providing some analysis and ready made judgments if shareholders were minded to heed them.

The shareholder activism following the Cofl Report falls into two phases. The first is the failed attempt to remove Waddington in late 1855 and early 1856. The second is the intervention of William Malins and the Railway Proprietors Association from early 1856 until November 1856. The other key event is Waddington's resignation in August 1856.

#### *Failed attempt to remove Waddington*

It is worth rehearsing these events which shed some light on governance arrangements of the day. Following the publication of the Cofl Report the general meeting adjourned pending its production was held on 7 December 1855 only just over a week after publication. The report had caused quite a stir. The Railway Record called it a remarkable document and one more calculated to rivet the attention of railway proprietors of the United Kingdom had never been laid before the public.<sup>487</sup> The general meeting was rowdy,<sup>488</sup> the directors, according to one report, being met by a perfect hurricane of uproar.<sup>489</sup> Waddington insisted on staying in the chair having been advised by Maynard, the company's solicitor that he was the chair under the ECR's Act. It seems this advice

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<sup>487</sup> Railway Record 1 December 1855, 768.

<sup>488</sup> Herapath 8 December 1855, 1256.

<sup>489</sup> Railway Record 8 December 1855, 788-9, from which the other details of the general meeting of 7 December are taken.

stems from clause 102<sup>490</sup> which provides that the chairman or deputy chairman of the directors shall chair general meetings and in their absence any proprietor could be selected by the meeting. He proposed an adjournment to a date after 24 December when his response to the Cofl would be published. He was barely heard through the jeering; and the meeting passed various resolutions designed to remove Waddington and put the Cofl effectively in charge of the company until the next half yearly general meeting in February 1856. These included stopping Waddington's pay as chairman and requesting him to resign as a director; and requiring that no order given by Waddington was to be attended to at the present time. At one point Waddington demanded a poll but the idea was dropped as according to the Railway Record "it would not have mended anything." Maybe he feared losing before he was able to muster his defence.

The railway press despite its general support for the Cofl was somewhat wary about the wisdom of this attempted coup d'état. There was confusion about whether the resolutions were legal or sensible. The ECR general meeting had no jurisdiction over the Northern & Eastern and EAR directors who would carry on and there was doubt whether Waddington could be removed in this fashion ahead of his time to retire by rotation. Further, there were doubts whether a railway company Act allowed for putting a Cofl in charge. There was also growing support for the view that Waddington should be allowed time to mount his defence. The Railway Record printed a story from the Railway Gazette which rehearsed several of these points and noted that the "shareholders have issued their fiat - it remains to be seen what authority it carries".<sup>491</sup> The ECR, which had duly published the carried resolutions, sought to calm the public a few days later by issuing a notice saying that the executive officers continued to carry on the day-to-day running of the railway with the same efficiency as before; that the board remained legally constituted and some of its members attended daily for the direction of its affairs; and arrangements for the safe and regular conveyance of passengers and goods were unchanged.<sup>492</sup> The governance arrangements of the ECR thus prevented the summary removal of Waddington and required a more orderly approach.

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<sup>490</sup> ECR Act 6 & 7 William IV c. 106, cl. 102.

<sup>491</sup> Railway Record 8 & 15 December 1855, 784-5, 796

<sup>492</sup> Railway Record 15 December 1855, 802.

Two polls in early 1856 confirmed Waddington's position as Chairman. The first arose from a special general meeting on 25 January where the Cofl group proposed that the Cofl continue until the half yearly meeting and the Waddington group put forward an amendment that the Cofl be dissolved. The Chairman's group organised and with major shareholder James Goodson to the fore solicited proxies. The Cofl group did not solicit proxies which drew criticism from its supporters in the railway press<sup>493</sup>. The result, as set out in the table below, was a clear win for Waddington and appeared to reflect his persuasive Answer and the well organised recruitment of proxies.<sup>494</sup> Using similar terms to those used by Herbert Spencer in *Railway Morals*, the *Railway Record* had hoped that Waddington's compact support would not prevail over the diffuse and neutral majority of the ECR proprietorship.<sup>495</sup> The *Railway Times* printed similar sentiments and noted without comment that £2,379k (26%) of £9,000k of stock and 1,395 (23%) out of 6,000 shareholders had voted.<sup>496</sup>

**Table 6.1 ECR Poll Result January 1856**

for amendment			
personal votes	160	£277,340	4,111
proxies	552	£1,174,880	17,014
total	712	£1,452,220	21,125

<sup>493</sup> *Railway Record* 2 February 1856, 68.

<sup>494</sup> Result of poll taken from *Railway Record* 2 February 1856, 61.

<sup>495</sup> *Railway Record* 26 January 1856, 52.

<sup>496</sup> *Railway Times* 2 February 1856, 143.

vs amendment			
personal votes	508	695,980	11,710
proxies	175	231,500	3,994
total	683	927,480	15,704

Supporters of the Cofl organised more purposefully for the poll for the election of directors following the half yearly meeting of 29 February 1856 and the result was much closer. Waddington and Packe who retired by rotation were re-elected along with Goodson who replaced Paget who stood down. The three candidates on each ticket polled very similar amounts and the results for Waddington and Orr (pro-Cofl) are given below<sup>497</sup>.

**Table 6.2 ECR Poll Result March 1856**

Waddington	voters	stock	votes
personal	162	317,520	4,424
proxies	1273	1,836,300	31,430
total	1435	2,153,300	35,854

Orr	voters	stock	votes

<sup>497</sup> Results of poll taken from Railway Record 15 March 1856, 157.



<b>personal</b>	346	538,040	9,699
<b>proxies</b>	1486	1,191,660	24,113
<b>total</b>	1832	1,729,700	33,812

Assuming that there was minimal voting across tickets, it appeared that turnout increased to over 50% of voters and to over 40% of stock, a significant advance on the first vote. In both the effect of the graduated voting scheme can be observed, the winning side of the first vote polled 51% of those voting, 61% of the stock and 57% of the votes. In the second vote Waddington polled roughly 44% of those voting, 55% of the stock and 51% of the votes.

### *Waddington's resignation*

Whilst Waddington had retained his place, the railway press saw his position as more precarious. The Railway Times said he had been put back in by contractors and jobbers who had bought up shares for the purpose; it saw him as an animated corpse animated solely by the shock of speculative wires and doomed to extinction whenever that influence was withdrawn or overcome. His future could depend on the fate of the company's bills or the audit of the next half yearly accounts.<sup>498</sup> Herapath, a supporter of Waddington by this time, reported before the election of directors that he had reportedly told the Goodson committee that if shareholders re-elected him for a further four years he would resign at the end of any year within his term if they desired it.<sup>499</sup> The Railway Record and the Railway Gazette saw shareholder apathy as being responsible for the sorry state of the ECR and urged the agitators to carry on their work. They even spoke of a sale to the government as a possible outcome though they did not favour it.<sup>500</sup>

In the event Waddington announced his resignation on 10 July claiming that the past few months had shown him that the legal constitution of the board was ill devised to secure a united and energetic management and that he did not want to inflict a permanent injury upon shareholders' property by occupying a position the responsibilities of which are

<sup>498</sup> Railway Times 15 March 1856, 365.

<sup>499</sup> Herapath, 9 February 1856, 145.

<sup>500</sup> Railway Record 15 & 22 March 1856, 164-5 & 176 (reprint of Railway Gazette item).

beyond control.<sup>501</sup> It seems that Waddington had proposed a more generous handling of relations with the East Suffolk than his fellow directors were prepared to accept and this would have involved the loss of some of his erstwhile supporters.<sup>502</sup> It is also possible that he would have some sense of the poor figures including items on matters complained about by the Cofl to be announced at the upcoming half year.<sup>503</sup>

Waddington bade farewell at the half yearly meeting on 29 August 1856 to loud cheers. He commented that dividends were the curse of railways because directors knowing that the shareholder's grand aim was the dividend on many occasions had strained the dividend to gain shareholder approval. The consequence was that the evil day was kept from shareholders instead of it being brought forward and manfully met at the time.<sup>504</sup>

### *William Malins and the Railway Proprietors' Association*

This group was formed in early 1856 and focussed its activities upon promoting reform at the ECR. Malins, who had been chairman of the Metropolitan Railway and had had a varied and not entirely successful business career in iron, railways and shipping, was chairman and dominant force within the Association.<sup>505</sup> He had made a number of interventions at GWR and LNWR general meetings in the couple of years before he set up the Association and turned its attentions to the ECR. Malins held meetings to establish the Association in London and Liverpool in January 1856. Attendance at these was described as limited but influential. A committee was appointed and a minimum subscription of 10/6 (half a guinea) set.<sup>506</sup> The size of the membership was not disclosed and ambitions of some of its members to establish branches round the country were not realised.

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<sup>501</sup> Notice printed in the Railway Times 12 July 1856, 789.

<sup>502</sup> Railway Times 19 July 1856, 836.

<sup>503</sup> See half yearly report in Railway Times 23 August 1856, 974-9.

<sup>504</sup> Railway Record 30 August 1856, 552-3.

<sup>505</sup> Malins career is debated in some detail in his correspondence with George Tate in the Railway Times in September and October 1856. Railway Times 6 September 1073-4, 13 September 1105-6, 4 October 1194-6 and 11 October 1226-7. Malins suspected that Tate was a *nom de plume* for his enemies in the affairs of the ECR.

<sup>506</sup> Railway Times 26 January 1856, 98-101 & 124; and 2 February 1856 128-9.

The Association's activism with ECR was in two phases. First, it raised a petition against the ECR's bill to regularise its capital and borrowing powers. An increase in borrowing powers was sought as well ratification of the loans to NR and EUR. The latter was dropped, perhaps in response to the Association's opposition. Malins managed to secure attendance at a parliamentary committee to consider the matter but the amended bill passed which effectively secured the ECR's objective of clarifying its capital on its preferred terms and securing new borrowing powers.<sup>507</sup> Second, Malins took control of a shareholder committee of consultation appointed by the ECR half yearly meeting of 29 August 1856 to discuss with the board the changing of up to four directors. At that meeting he had failed to be elected director having lost to another reform candidate Walters who had been unsuccessful in March.<sup>508</sup> The negotiations failed as the ECR board claimed that its Act of Parliament prevented it from acceding to this request and in the event there was an election for just one place to replace Waddington.<sup>509</sup> Malins stood on his reform ticket which was as follows:

1. separate the capital and revenue accounts and place them in separate custody or at separate banks;
2. establish a more satisfactory audit which would be continuous and founded on sound mercantile principles;
3. present the half yearly accounts to the most simple and approved plan;
4. abolish partial and preferential rates alike injurious to the pecuniary interests of proprietors and merchants in the district;
5. revise the scale of rates on coal and minerals now carried at less than half a farthing per ton per mile under special contract thus neutralising the profits from passenger traffic; and
6. enforce strictest economy in purchase of stores and other commodities and in working expenses consistent with the safety and convenience of the public.<sup>510</sup>

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<sup>507</sup> Railway Times 12 April 1856 464, 19 April 488-9, 26 April 513 & 517-19, 17 May 592 & 594 and 24 May 616.

<sup>508</sup> Railway Record 30 August 1856, 552-3.

<sup>509</sup> Railway Times 4 October 1856 1193 and 1 November 1308.

<sup>510</sup> Railway Record 8 November 1856 701.

The central plank of his programme was to improve returns to shareholders by properly costing all rates to yield a 4% return. Very low rates for coal and minerals were a particular concern. The failure to understand the profitability of traffic was a growing concern at and after this period for the UK railway industry.

The problem for Malins was that Love, the Chairman of the 1855 Committee of Investigation and also with a reform agenda, made a late decision to stand and won the poll but only by 28,473 votes to 26,098.<sup>511</sup> Thereafter, it seems that the Association broke up with Malins bemoaning the supine qualities of railway shareholders.<sup>512</sup>

The Association rode the wave of disaffection about railway securities in the mid 1850s and the particularly stressed position of the ECR. However, Malins was never quite able to beat off the charge that he was inexperienced in railway and ECR affairs, certainly in contrast to Love. Attempts through letters to the press to throw mud at Malins's business career probably harmed him less than the apparent conflict between promoting reform and seeking office. He would have been better served withdrawing from the election, which he had indicated throughout he might do, in the presence of another reform candidate.

Nonetheless, in December 1856 the poll was between reform candidates only compared to February 1856 when the Waddington ticket narrowly prevailed. Malins and his Association helped to maintain the momentum of the reform movement after its setback at Waddington's initial victory. His poll result seems to reflect how disillusioned the ECR shareholder body had become. The Association's wider ambitions were not met; and it ended being little different in substance from other avowedly company specific reform tickets such as found at the BER and OWWR. However, it is further evidence of organisation within shareholder activism in this period.

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<sup>511</sup> Railway Record 6 December 1856 765.

<sup>512</sup> Railway Times 20 December 1856, 1512; and 27 December 1856, 1542.

## Chapter 7: West Hartlepool Harbour and Railway Case Study

### Introduction

The West Hartlepool Harbour and Railway Company (WHHRC) was a mid sized railway and dock company based on the port of West Hartlepool and its coal field hinterland. When amalgamated with the North Eastern Railway (NER) in 1865, it had about 60 miles of railway, docks and storage 130 acres in area and had raised about £4mn of capital and loans. West Hartlepool itself by then had a population of 16,000.<sup>513</sup> The driving force of WHHRC was Ralph Ward Jackson, a lawyer from a local landed family turned railway entrepreneur and manager. Involved in these companies since 1838, he was de facto in charge by 1850 and increasingly dominant and unconstrained thereafter.

The WHHRC docks and railway later went onto to be an important part of the NER system. However, much of the WHHRC's capital raised was taken by unauthorised, ultra vires and costly investments in collieries and steam boats designed to promote the business of the railway and dock. Further, this and more was financed by debt very large as a proportion of total by contemporary standards and very considerably in excess of limits contained in the company's Acts. These ultra vires investments and borrowings were concealed from shareholders and creditors by accounts adjusted to show borrowings to be within parliamentary limits. Eventually, under pressure from adverse sentiment largely created by an outsider Benjamin Coleman who was involved in public, Chancery and parliamentary battles with Jackson from 1858, the company was unable to put its own house in order and had to pause interest payments in early 1862. Under a new regime the company was reconstructed at a moderate cost to the equity shareholders and sold to the NER. Legal proceedings between WHHRC/NER and Jackson and his associates began in 1863 and dragged on largely inconclusively for 15 years.<sup>514</sup> In the meantime, Jackson served as Conservative MP for Hartlepool from 1868 to 1874.

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<sup>513</sup> W W Tomlinson, *The North Eastern Railway* (Newton Abbot: David & Charles 1967), 602-3.

<sup>514</sup> Some of the legal papers are in TNA/RAIL730/30 & 31.

The case study will show that the WHHRC and its predecessor companies were always weaker than its local competitors but there was a shortage of port facilities at the mouth of the Tees which Jackson was able to fill a gap by developing the port of West Hartlepool. He was also able to take advantage of the discovery of large ironstone reserves in Cleveland to develop a railway there albeit in competition with the Stockton & Darlington Railway. Competitive pressures could well have sunk the WHHRC or its predecessor companies but a mixture of energy, enterprise, good fortune and the irregular raising and investing of funds kept them going. Jackson created a valuable asset but, when revealed, the financial context of its creation was regarded by contemporaries as most unusual.

This case study will also show that Jackson was effectively unconstrained by the company's governance arrangements. WHHRC's shareholder body had very little influence as it lacked an engaged local element but did include a large part with a prior claim on the earnings of the company hence having less need to monitor the company's affairs. General meetings were annual rather than semi-annual and until 1859 the press did not attend. There were directors who might have restrained him but they were compromised by distance, personal relationships and Jackson's force of character. Shareholder and director influence were also reduced by unusually large asymmetries of information as the ancillary activities and true financial condition of the company were concealed from the world. Even when a Committee of Assistance was set up in 1859 following the first public allegations about the company's condition, it was for the benefit of directors and did not report the full picture. It did, however, secure the transfer of the collieries from Jackson to the company, perhaps the only contribution made by shareholders to shareholder interests..

It is unsurprising then that an outsider should start the process of revealing the true state of affairs. Having bought £100 of WHHRC Consolidated Stock carrying 2 votes, Coleman attended the WHHRC general meeting to raise his concerns and attempted to inspect the books, and started a Chancery case on behalf of himself and other shareholders against the company and its directors. The Board of Trade and the parliamentary process, in which Coleman was represented, also played a role through respectively raising difficult questions and emasculating company bills which otherwise might have helped Jackson

to avoid or at least postpone a financial crisis. The Chancery case was, it seems, allowable as an exception to the rule in *Foss & Harbottle* as matters ultra vires the company hence unratifiable were alleged. The case dragged on in the face of Jackson's stalling tactics but generated some difficulties for him. The issue was eventually forced by a stoppage of payments in early 1862 and the appointment of a receiver. There was a good number of actors - Coleman, the Board of Trade, Parliament, the courts as well as creditors - involved in bringing the WHHRC to a crisis.

Contemporaries were shocked by the failure of the WHHRC and the scale of matters concealed from the public. However, some considered that Jackson's acts however ill-judged were done for the benefit of the company and were honest. The law officers in 1864 considered prosecuting Jackson and believed there was a case for his having breached s8 of the Punishment of Frauds Act. They decided against prosecution as they thought the evidence would be hard to find and were uncertain whether the state should prosecute such a case. By this time the WHHRC had started an action against Jackson and the company had been reconstructed.

The case study lends support to agency theory. The shareholders for many years were unprepared to assume the costs of monitoring the principal partly because half of them had little incentive to do so. Nor were the other directors able to constrain Jackson. However, Coleman was prepared to incur the monitoring costs and with some effect. Agency risk also arose from the information asymmetries arising from Jackson's wilful failure to keep the principals properly informed as to the state of their property. The conflict of interest and the risk of expropriation of the principal by the agent arising from WHHRC lending to Jackson's collieries was a considerable one, not least because it was uncontrolled and eventually involved a considerable loss for the WHHRC.

The strategic position

WHHRC and its component railways were always weaker than their competitors, the Stockton & Darlington Rly (S&DR) and the NER, but they took opportunities and built up

a system which survived until the final phase of consolidation of railways in north east England in the 1860s. The first component railway of WHHRC was the Clarence Railway (CR), an east west route, which was built in the early 1830s to compete with S&DR in connecting the Auckland coalfield in south Durham with the sea at the mouth of the Tees. The CR was always much weaker than the S&DR in terms of business and financial performance; it did not pay its first dividend until 1845 and was managed for a time by the Exchequer Loan Commissioners. The second was the Stockton & Hartlepool Railway (S&HR) which connected the CR to Hartlepool in 1841. S&HR leased CR in 1844 for 7 years and perpetually in 1851. Dock development at West Hartlepool began in 1844 under the Hartlepool West Harbour & Dock Company (HWHD) and continued apace in the 1850s. . WHHRC was established in 1853 as the company holding and running the whole system and comprising CR, S&HR and HWHD. It then promoted the Cleveland Railway which opened in 1861 to serve ironstone traffic from the Cleveland Hills. In the southern half of County Durham the picture was completed by a dock in old Hartlepool and a connecting railway (to collieries north west of the town) opened in 1835 and the north-south route from York between Darlington and Newcastle opened in 1844. The latter was controlled by George Hudson and the former under his influence. Both became part of the NER system.

The S&DR had first mover advantage in access to the Auckland coalfield but there was a prospect of business for a railway to a port at the north of the Tees (Port Clarence) given the difficulty of navigation to Stockton, the original terminus of the S&DR. Interests associated with the S&DR developed Middlesbrough as a more suitable port on the south bank of the Tees but again the relative difficulty of navigation offered opportunities to a development of dock facilities clear of the mouth of the Tees at a site south of (old) Hartlepool. This was vigorously developed from 1844 and became known as West Hartlepool. It quickly developed as a port as Middlesbrough burgeoned as an iron making centre following the discovery of extensive ironstone deposits just to the south and east of the town in the late 1840s. Jackson was able to compete with S&DR in providing railway accommodation to the Cleveland ironstone area, although parliamentary limits were breached to build the line.

Connecting the port of West Hartlepool to the wider north of England was a strategic priority from the point of its development. This was first achieved via the link at Stockton

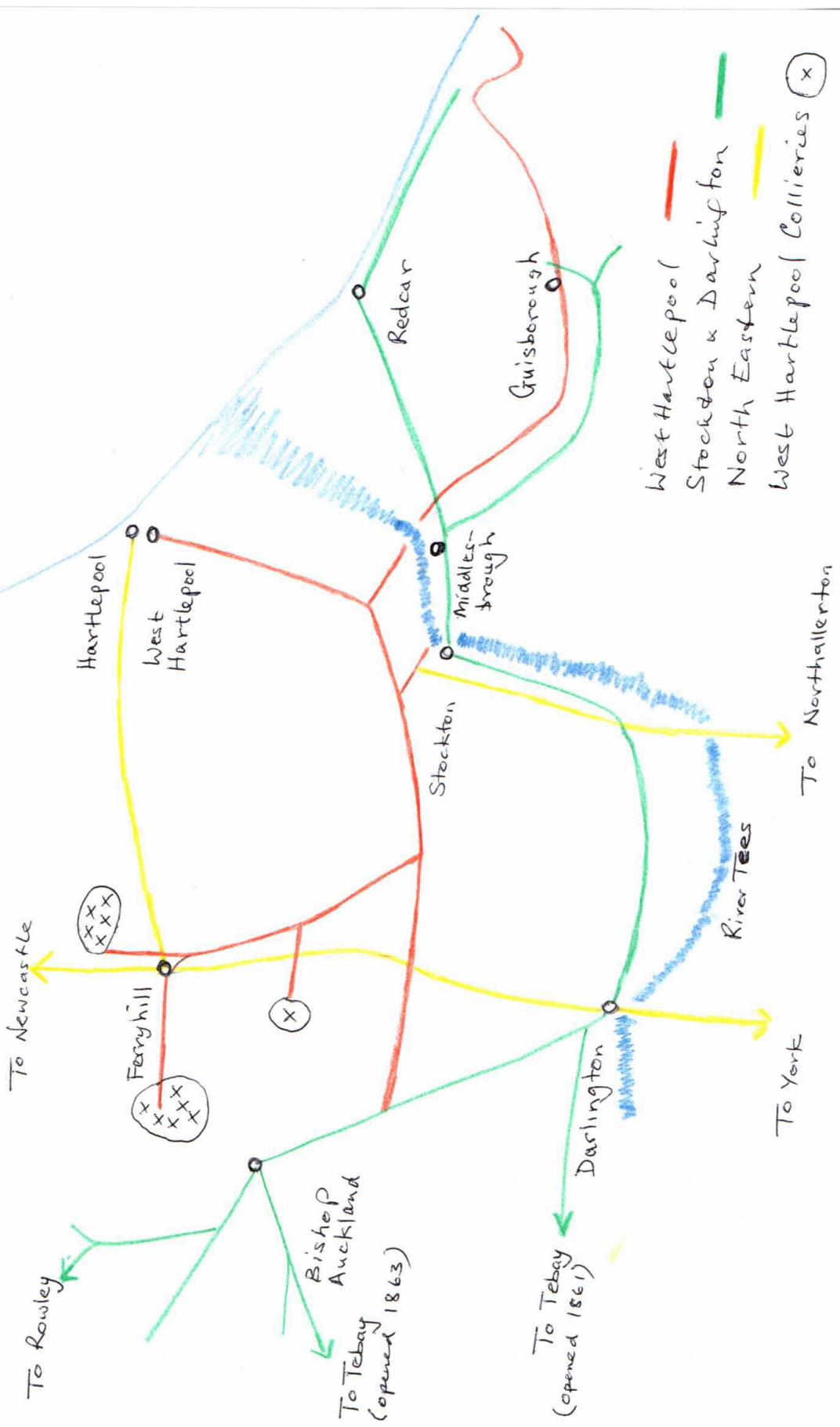


with the Leeds & Thirsk, later the Leeds Northern Railway made in around 1850. Attempts from the mid 1850s to secure access to the north west by the trans-Pennine Stainmore route, made viable by the development of the iron industry on Teesside and west Cumberland/Furness, were frustrated by the successful rival S&DR scheme; and initiatives for the London & North Western Railway (LNWR) to invest in facilities at West Hartlepool and in the WHHRC were lost as the pressures mounted on the Jackson regime in 1861.<sup>515</sup> A map of railway systems in south Durham and Cleveland including the location of Jackson's/WHHRC's collieries is below.

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<sup>515</sup> The general history is largely taken from Tomlinson and M W Kirby, *The Origins of Railway Enterprise:- the Stockton & Darlington Railway 1821-63* (Cambridge: Cambridge University Press, 1993).

# RAILWAY SYSTEMS IN SOUTH DURHAM & CLEVELAND 1862



## The collieries

Given the extent of the Great Northern Coalfield and the importance of transportation by rail in the absence of canals, it is unsurprising that coal owners had interests in railways. The Pease family, the promoters of the S&DR, were also owners of some pits served by the railway. However, railways could not own pits. Whether the S&DR favoured Pease-owned pits through rates or generous credit terms for their payment is not known, but there is no evidence in the literature that it de facto owned pits and its generally good profitability much reduced any motive to force business.

The Clarence Railway (CR) had been associated with colliery investment since the 1830s and Jackson as its solicitor was involved in negotiations with coal owners. A group led by Charles Barrett, a Darlington bank manager and later colleague of Jackson in WHHRC, launched a joint-stock coal company, the Durham County Coal Company (DCCC), to develop collieries along projected CR branch lines, whose parliamentary bills were lost. DCCC then agreed to complete the Byers Green branch of the CR before parliamentary approval lapsed in 1837; and in turn CR agreed to fund Barrett's lawsuit against overcharging by the S&DR. DCCC could only develop the Byers Green branch to a basic level and launched an ostensibly separate enterprise, the Northern Coal Mining Company (NCMC), to develop collieries on the branch. By the late 1840s several of the collieries on the Byers Green branch remained part of the NCMC and others seemed to have been run by partnerships of corporate shareholders.<sup>516</sup> There are differing accounts of the Hartlepool companies assistance to pits adjoining the Clarence system south of Durham City. Stokes argues that in 1847 the collapse of the Newcastle Joint Stock Bank put these collieries at the mercy of rivals just as the new dock was opening at West Hartlepool. At this point the HWHD gave these pits financial assistance to assure traffic and at the same time took over a contract to supply coal to Europe and associated shipping. Tomlinson, historian of the Northern Eastern Railway, says the move occurred in 1848 and was intended to defend West Hartlepool traffic from Hudson lines. Hudson had obtained parliamentary approval to lease the lines from old Hartlepool which linked to

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<sup>516</sup> Winifred Stokes, Ralph Ward Jackson, Public benefactor or fraudulent businessman?, *Cleveland History*, 91 (Winter 2006, 29-39).

the Clarence system from the east and had acquired a preponderant interest in the West Durham railway which joined from the west.<sup>517</sup>

Help was given either by long term credit for railway dues or by medium term loan. Two of the latter for £5k each recorded in the S&HR/WHHRC board minutes in January 1853 and May 1855 respectively were for opening out collieries and were repayable by annual instalments over ten years after a two year holiday.<sup>518</sup> Lending company securities which could be given as collateral was a third mechanism alleged by one of the 1859 pro-Coleman pamphlets critical of the opacity of the WHHRC finances. It quotes Jackson when examined before a House of Commons Select Committee in 1851 about two bonds each of £34K issued by the Hartlepool West Harbour & Dock Company and the Stockton & Hartlepool Railway Companies respectively and in favour of two mining engineers. These had not been returned to parliament and were described by Jackson as given as collateral securities to preserve the independence of the local owners. The tract found it odd that the recipients of the bonds owned five collieries which were owned by Jackson by 1857.<sup>519</sup> An 1860 pro-Coleman tract returned to the topic and quoted Jackson as saying in 1851 “ we made no engagement whatever as to a lengthened period for the traffic and every farthing of the money that is due has been paid on those securities, but not by the companies, and repaid specifically by the owners of the property” The debentures had not been returned to parliament in 1849 according to Jackson because it was not considered a debenture as no consideration had been received except by way of business and they were liable to be paid off at any moment. At the end of his evidence in 1851 Jackson said: “whatever we have done has been done for the assistance of the coal owners as well as assistance to the traffic; you may find if you like a few little irregularities, but it is done for the benefit of the traffic, and it has answered this good purpose that there have been no liabilities. We have not invested any moneys at all in any other concerns”. It is not clear what transaction was involved here. Maybe a railway

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<sup>517</sup> Tomlinson, 590.

<sup>518</sup> TNA/RAIL 668/4.

<sup>519</sup> *The Past & Present Financial & Commercial Position of the West Hartlepool Harbour & Railway Company Considered*. London: Baily Bros. Undated but appears to be mid 1859.

company bond was issued to Jackson or one of his associates which was in turn lent to the coal owner who could use it as collateral.<sup>520</sup>

That Jackson was a coal owner with extensive interests was well known in the north east in the 1850s and the fact was recorded in contemporary surveys of the local industry.<sup>521</sup> It was also well known which collieries shipped via Newcastle, Sunderland, the Tees and West Hartlepool. As Jackson's some dozen properties marked on the map above made over half the West Hartlepool group, it was a short step to asking questions whether any financial links existed between WHHRC and the collieries. In early 1859 Coleman told share and bond holders of the WHHRC that it was "rumoured and ... broadly stated that the company's capital and credit have been improperly used for the purchase of collieries and steamboats etc by which you and others have personally benefitted".<sup>522</sup>

Whilst the financial assistance to the collieries could not be disclosed in the published accounts, the course of colliery debt can be traced from the internal accounts of WHHRC.

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<sup>520</sup> *The Past & Present Financial & Commercial Position of the West Hartlepool Harbour & Railway Company Considered 1860*. London: Baily Bros.

<sup>521</sup> Such as W Fordyce, *A History of Coal, Coke, Coal Fields ... particularly in reference to the Great Northern Coalfield...* (Newcastle-upon-Tyne: W Fordyce, 1860), 96.

<sup>522</sup> TNA/RAIL730/33 Coleman's letter to preference share, stock and bondholders of the West Hartlepool Dock (sic) & Railway Company 12 January 1859.

**Table 7.1 WHHRC financial support to collieries**

Year	Colliery debt to WHHRC £000	Gibson & Co debt to WHHRC £000	WHHRC debt to collieries £000	Total capital account £000	Colliery & Gibson debt as %age of total capital account
06/53	30	8	no figure	1305	3
06/54	54	9		1465	4
12/54	44	no figure	7	1563	3
12/55	89	9	1	1764	6
12/56	132	9	no figure	2037	7
12/57	198	10	no figure	2178	10
12/58	306	17	1	2543	13
12/59	406	16	1	2543	17

Note: As no full balance sheet was in the surviving accounts until 1859 (total assets £3341k), the total of the capital account has been taken to show the relative scale of financial assistance to the collieries.<sup>523</sup>

The cost to WHHRC for its so-called “nursing” of the collieries was considerable. After the company paused interest payments in early 1862, accountants Quilter Ball were hired to examine the books of the company and report on its financial condition. Having examined the books of WHHRC and those of the collieries in trust, it assessed the balance of outlay on these to be £312,000 after the writing off of ascertained losses for years prior to 1861 of £271,000 and those of 1861 of £31,000. Quilter Ball assessed 49% of the book value of the collieries to be irrecoverable. The colliery write downs represented 61% of the ascertained deficiency calculated by Quilter Ball to be £490,000. This represented the combined balances on revenue and profit and loss account and which the company and stakeholders would have to decide how to dispose of in the accounts. It also noted that that in 1861 the coal revenue of collieries in trust amounted to £45,000 or 40% out of a total coal revenue of £112,000 and total traffic revenue of £211,000.<sup>524</sup>

<sup>523</sup> The accounts are in TNA/RAIL 730/95.

<sup>524</sup> Quilter Ball’s report is attached to the Director’s Report of April 1862 in TNA/RAIL1111/42.

However, by then the WHHRC had the collieries in their possession and would be able to dispose of them whereas prior to 1860, they were in the hands of Jackson. Their transfer was the main achievement of the Committee of Assistance of five non-director shareholders under chairman Thomas Sturge set up in early 1859 to look into matters arising from Coleman's allegations. The Committee's Report was produced in December 1859 and published in February 1860. It seems there were public and private versions but it has not been possible to find an original copy of either in the WHHRC archive or elsewhere, but the public version was published, for example, as an appendix to one of the pro-Coleman pamphlets.<sup>525</sup> It runs to about a page and contains neither the financial data nor other evidence which were usually attached to such reports. Whilst it refers to "errors of judgment" owing to "too sanguine a view" of prospects for revenue, also to assistance for collieries and steamboats as well as to borrowing in excess of powers, it assured the share and bondholders that they were well covered. The Committee reported on the collieries that "the Directors, mainly in the infancy of the undertaking deemed it necessary to assist certain collieries ... in order to secure the large revenue arising... Although this assistance has been large, yet the Committee believe that the collieries afford an adequate security for payment of the interest and ultimate repayments of the principal of the money advanced."

The collieries were placed in trust for the benefit of the company by Jackson on 23 February 1860 with Jackson and two others becoming trustees. There was much legal wrangling over the following 15 years over the respective rights of WHHRC/NER and Jackson to the proceeds of the collieries when sold. These fell well short of the written down amounts and no funds were paid to Jackson. At the time of the settlement it was agreed that the claims of the parties in respect of collieries were as follows:<sup>526</sup>

WHHRC	£467,079	or 84.7%	of total
Jackson	£ 43,216	or 15.3%	of total

The documents and securities executed in February 1860 do not appear to have survived but a later affidavit from Jackson covering the various suits states that the Committee of Assistance did not want his claim to be described as prior or *pari passu* with the

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<sup>525</sup> *Past & Present Position 1860*, Appendix H.

<sup>526</sup> Legal papers in TNA/RAIL730/30 & 31.

company's. Nor did the documentation specifically allow for repayment which caused one court to decline Jackson's claim on those technical grounds. Jackson later complained that the 1863 WHHRC capital bill which led to its financial reconstruction did not include his claim but had he been concerned about this issue he could have included it in the capital bill for 1861.<sup>527</sup> This, however, could not be done as the investment was large, beyond the WHHRC's parliamentary powers and of doubtful recoverability as well. He later sued unsuccessfully the WHHRC/NER for the £43,216.<sup>528</sup>

It seems, therefore, that the Committee of Assistance did something to safeguard the company's assets; it also revealed the company's investment in collieries and steamboats and the over-issue of debentures. However, it failed to reveal to the shareholders the true extent of these issues and that these had been systematically concealed from shareholders. Another two years would pass until pressure from Coleman, parliamentary reverses and the financial fragility of the company led in early 1862 to the stopping of paying interest on its debt, full disclosure of its financial condition, a changed management and moves towards financial reconstruction.

A possible explanation for this partial disclosure arises from, first, the terms of the Committee of Assistance's appointment in March 1859; it was to assist the directors in dealing with the surplus property and to co-operate generally with the directors for the interests of the company.<sup>529</sup> That Sturge took his duty as being to the directors rather than to the shareholders is borne out by his evidence before the Commons Select Committee considering WHHRC's running powers bill in June 1861. When asked "if it was your object to inform the directors what they ought to do for the future rather than to inform the shareholders what had been done for the past", he replied he had not been appointed by the shareholders to assist them but by the directors to assist them; and that he believed he had done great service in bringing their attention to everything that was wrong. A second explanation is that in the same evidence he revealed he did the vast bulk of the work himself. He admitted that he had looked at steamboat losses only for 1858 whilst conceding the previous year's loss had been greater; he noted that if had gone back in time he would have had two or three years' work. Thirdly, his evidence

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<sup>527</sup> Ibid.

<sup>528</sup> Legal papers TNA/RAIL 730/30 Box 1.

<sup>529</sup> TNA/ZPER 3/22 *Herapath's Journal* 1859 volume, 250.



reveals that he was heavily concerned about the honesty of the transactions - that is that they were not made for personal profit - and he had satisfied himself on that. Whilst he said the collieries were good security for the advances made, the reader gains the impression that clearing the honesty question and transferring the collieries to the company was a higher priority for Sturge than recoverability. Finally, Sturge's own investment in the company benefitted from priority over its debt. Thus, the terms of Sturge's appointment, his resources and priorities and the relative safety of his own position financially accounted for the partial output of his committee.<sup>530</sup>

### Corporate governance of the West Hartlepool companies

#### *Body of shareholders*

WHHRC as well as its predecessors were affected by a shareholder base lacking the local concentrations which could bring well-informed and timely influence to bear in defence of proprietorial interests. Shareholder registers of WHHRC survive. The following tables shows the holdings and voting rights of the largest shareholders in WHHRC and of some former directors and their families as of February 1863<sup>531</sup>.

**Table 7.2 Substantial WHHRC shareholders 1863.**

Name	Economic Holding £	Number of Votes Held	Votes as % of total	Notes
<b>George W Rowley</b>	73,370	763	6.0	Former director of the Clarence Rly. Based in St Neots.
<b>Thomas Sturge</b>	18,390	213	1.7	Based in Gravesend.
<b>George Sturge</b>	16,450	194	1.5	Based in Gravesend. Others called Sturge £4,700/89 votes
<b>John A. T. Smyth</b>	27,260	302	2.4	Based in London.
<b>Admiral Cator</b>	6,196	91	0.7	Based in London. Others called Cator £3950/72 votes
<b>HF &amp; C Makins</b>	9,500	90	0.7	Based in London.
<b>Total</b>	151,166	1653	13.0	

<sup>530</sup> Parl. Archive. Evidence before HofC Sel Cttee WHHRC Running Powers Bill 14.6.61, 180 et seq.

<sup>531</sup> WHHRC Share Register TNA/RAIL 730/14

**Table 7.3 Holdings and voting rights of certain former WHHRC directors 1863**

Name	Economic Holding £	Number of Votes Held	Votes as % of total	Notes
<b>Ralph Ward Jackson and family</b>	17,239	215	1.7	
<b>Charles Swainson and family</b>	62,960	366	2.9	Jackson's father-in-law; calico dyer based in Preston.
<b>Robinson Watson</b>	39,440	225	1.8	Jackson's Stockton based ally and active director
<b>Dr E.D. de Vitre and family</b>	11,384	115	0.9	Lancaster based medical doctor.
<b>Total</b>	134,023	921	7.2	

Otherwise ownership was well dispersed. There are 633 names in the register of which only 137 (21.6%) were domiciled in Northumberland, Durham or the North Riding of Yorkshire.

The incentives of shareholders to monitor the performance and management of the company were also materially dulled by the preference afforded Clarence Railway shareholders as part of the formation of the WHHRC in 1853 when the Clarence Railway, the Stockton & Hartlepool Railway and the Hartlepool West Harbour and Dock amalgamated. Not only the Clarence preference shares but also its ordinary shares were afforded preference over not only the ordinary shares of the WHHRC but also all its debt save for a remaining loan of some £25k to the Public Works Loan Commissioners.<sup>532</sup> The votes remained attached to these successor preference shares which totalled some £504k. In 1863 these represented 63% of voting capital, with the WHHRC ordinaries of £292K, the only true equity propping up a balance sheet of some £4mn accounting for the rest.<sup>533</sup> This state of affairs naturally gave rise to comment once the true situation of the company became known in 1862.<sup>534</sup> Nonetheless, the priority of these successor Clarence preference shares was confirmed in the 1863 Act which reconstructed the

<sup>532</sup> 15 & 16 Vic., cap. 142, clauses 93-8.

<sup>533</sup> WHHRC Share Register TNA/RAIL 730/14.

<sup>534</sup> For example Herapath 6 September 1862, 949. The Spectator 11 July 1863, 9-10.

WHHRC's capital by converting debt into capital.<sup>535</sup> The disincentive to oversee their investments affecting such a large group of voting shareholders arising from these arrangements was a major factor in the failure of corporate governance at the WHHRC.

Thomas Sturge, Chairman of the Committee of Assistance and George W Rowley had substantial holdings of the Clarence preference shares. Rowley when giving evidence to the Commons Select Committee in June 1861 was not sure whether recent capital issues had altered the priority but hoped it remained in place. Apart from £1k in the dock company all his investment was in Clarence Stock and he had not invested since 1847. Otherwise Rowley expressed complete confidence in the Directors and advised he had been aware of and approved of the assistance to the collieries all along but was unaware of the form of assistance. He noted that the Clarence in his day had lacked traffic and it had amalgamated with the West Hartlepool companies to secure the good local knowledge which he could not supply.<sup>536</sup> Coleman reported that in his correspondence with Sturge in 1859, the latter said he was safe but that he was working for the bondholders for whom he could see 15s in the £.<sup>537</sup>

Finally, the February 1863 shareholders register represents a total of £1.023mn of capital or only 25% of total assets of £4.076mn reported as at 30 June 1863. Had WHHRC's financial structure been conventionally geared, there would have been many more shares to be represented at general meetings with potentially more probing over the years and especially when Coleman started raising concerns at the beginning of 1859. It was not until late 1861 that bondholders began to launch serious investigations into WHHRC's finances and not until early 1862 that they organised and took control of the company.

### *Quality of the Board of Directors*

Ralph Ward Jackson

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<sup>535</sup> 26 & 27 Vic., cap. 154, recital and clauses 22-24.

<sup>536</sup> Parl Archive. Evidence before HofC Sel Cttee on WHHRC Capital Bill 18 June 1861, 127 et seq

<sup>537</sup> Coleman letter to shareholders dated 28 June 1861 in RAIL730/33.

The evidence points to Ralph Ward Jackson (Jackson) being a dominant chief executive whom the other directors were unable to constrain. Some of his correspondence has survived, for example that with his fellow director and ally, Robinson Watson, from the late 1840s through the 1850s,<sup>538</sup> and his correspondence when in London with the Company Secretary's office in West Hartlepool from March 1859 to December 1861.<sup>539</sup>

Jackson was a man of great energy; his letters reveal him travelling to London on parliamentary business or to Lancashire and other parts of northern England and occasionally Scotland to meet and canvass investors and lenders. He seemed energised by the battles of railway business whether in parliamentary promotion or in his long running competition with the S&DR. From 1862 more or less till his death in 1880, he was active both in business and in protesting his good name in litigation and public statements.

He also had an appetite for detail. His correspondence reveals him giving instructions on specific transactions, often bond maturities, and on how items were to be posted in the books. He provides drafts for replies to 'difficult' incoming letters and asks his managers to correct the prices of WHHCC stock on share sheets, giving them what he considers the current prices to be. On three occasions addressees apparently ignored Jackson's request on the face of the letters that they be burned. Two of these to Robinson Watson dated 23 and 24 December 1858 cover a number of issues but the sensitivity could relate to the buying in of Clarence stock where Jackson stresses the need for the company rather than directors as individuals to act.<sup>540</sup> A third to Basnett dated 25 November 1861 advised him that Coleman may send a detective to West Hartlepool and asked him to ensure that nothing incautious be said.<sup>541</sup>

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<sup>538</sup> These letters are in the papers, now deposited in the Durham County Record Office, of Newby Robson & Cadle, Solicitors of Stockton-on-Tees. Watson's son was admitted to partnership of a predecessor firm in the 1850s which presumably accounts for Watson senior's papers being deposited there. The correspondence with Jackson is mainly found in DCRO/NRC/14 with some items in DCRO/NRC1.

<sup>539</sup> These letters, some 90 in number, were transcribed for evidence in one of the post 1862 suits and are found in RAIL730/30 (Box 2).

<sup>540</sup> DCRO/NRC/14.

<sup>541</sup> TNA/RAIL 730/30 Box 2.

Further evidence comes from the affidavit of Thomas Walker, book-keeper to the suit examining whether Jackson had taken too much from the company for his services. Walker said that “during the time that I was in the service of the Dock company, (Jackson) was chairman, principal director, manager, treasurer and secretary of that company, and exercised paramount influence and control over all the officials of that company, and also over the manner in which the accounts were kept...” Whilst Walker’s evidence was against Jackson, it is consonant with the latter’s instructions in 1861 on how certain items should be posted. Additionally, Walker gave evidence that the Dock company kept three cash books. One was kept by Jackson for large payments and the receipt of monies from debentures, the second by Mr Salmon, the land agent and Jackson’s private clerk and the third was kept by Walker, who entered items from the other two.<sup>542</sup> The existence of multiple records might or might not be suspicious but this evidence does point to Jackson’s detailed involvement in the company’s accounting.

A lawyer by training, he was a doughty negotiator and litigant. From the start his career involved legal battles such as with the S&DR over rates for the carriage of coal. Over many years he went to parliament to promote his railways and argue against competitor projects. His correspondence reveals a combative streak and desire to win, an arguably essential quality given the regular existential threats to early Victorian railway companies. He was generally confident of success and there is only occasional room in his letters for levity. Many would have taken the financial embarrassment of WHHRC in 1862 and the revelation that its true financial condition had been concealed from the world as cues to quit the public scene. He did not and whilst his general argument that the ends justified the means can and has been raised, his assertions, say, that shareholders had agreed to everything do stretch credulity. This is raised not in overall judgment of Jackson but to demonstrate an element of his character which may have been relevant in the corporate governance of WHHRC.

It is difficult to assess the balance of agency and circumstance in a manager’s reputation for strategic planning. However, the rapid expansion of West Hartlepool in the 1850s, the “forcing” of business to sustain and develop the port and the promotion of the Cleveland Railway to handle the newly discovered ironstone were driven forward by Jackson. These policies caused financial strain and its concealment which others within the company

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<sup>542</sup> TNA/RAIL730/30 (box 3).

failed to prevent. Jackson's strategic vision thus was a major influence upon WHHRC's corporate governance.

Jackson was determined to fight his corner physically, if necessary, although it should be stressed so were his opponents. The first example is the so called "Battle of Christ Church" in summer 1856 between its vicar, John Burges and Jackson described by Eric Waggott.<sup>543</sup> The second example was the so-called "Battle of the Tees" of July 1860 where Jackson's men cleared obstructions placed in the way of his planned pier on the Tees by S&DR interests, the Tees Conservancy Commissioners (TCC) and twice fought off attempts by the TCC to re-occupy the site.<sup>544</sup> Whilst Jackson had grounds to defend his interests, particularly in the second case, the vigour of his responses suggest that a similarly purposive approach could have been taken in the internal counsels of WHHRC.

Contemporaries saw Jackson as the driving force in the West Hartlepool companies. One wrote that Jackson was left in charge when the local landowners and merchants withdrew in panic from the company in the mid 1840s and was then in charge for about 20 years. He added that "all offices ... in fact everything connected with the company vested in him."<sup>545</sup> Tomlinson wrote of Jackson and the West Hartlepool companies interchangeably. He compared him to George Hudson in terms of his constructive energy and administrative skill and described him as a an admittedly great man.<sup>546</sup> Even allowing for the Victorian tendency to over-estimate agency in individuals, Jackson did appear to be seen to be more responsible for the course of the West Hartlepool companies than the leaders of other railways.

These qualities are to be found in what would now be called dominant chief executives and it appears that the rest of the board of directors were unable to constrain him.

#### Other active directors

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<sup>543</sup> Eric Waggott, *Jackson's Town* (Hartlepool: Hartlepool Borough Council, 1980), 16-83.

<sup>544</sup> Tomlinson, 573.

<sup>545</sup> An Inhabitant of Barnard Castle (known to be Thompson Richardson), *History of the Darlington & Barnard Castle Rly* (London: W Kent & Co, 1877), 73.

<sup>546</sup> Tomlinson, 600-602.

First, there were Robinson Watson and Charles Barrett who were with Jackson for many years and who were involved in the collieries. Barrett had been a main mover in the joint stock companies, the Durham County Coal Company and the Northern Coal Mining Companies which were closely allied to the Clarence Railway and owned collieries which ended up in the hands of Jackson and later WHHRC. Both these companies had complex histories and eventually failed. Jackson had been involved in Clarence Railway circles from 1838; and there is much to be said for the view of historian, Winifred Stokes, that the background to Jackson's business career "explains if not excuses much of his devious business practice". Stokes, however, focusses on Jackson's early career rather than the post 1850 phase.<sup>547</sup>

Robinson Watson seems from Jackson's letters to have been a confidant for many years and seems to have co-operated with Jackson after 1862 in litigation with WHHRC/NER. Whilst many letters from Jackson to Robinson Watson survive in his papers, copies of those from Watson to Jackson are few but of interest. In the late 1850s Watson wrote occasionally to Jackson expressing concerns about colliery and steamboat investments. In March 1858 he wrote asking for a list of colliery debt and for Barrett's statement showing the advantage of a screw steamer over a sailing vessel which could be useful for working out the collieries. He feared a great loss arising from them at some time. In May 1858 he saw the amount wanted monthly by the collieries as "fearful" and unless they raised a large sum they were headed for a "lock". In July and December 1858 prompted by further investment or rumour of further investment in steamboats, he cautioned against further investment as they should not try to carry everyone on the back of the railway company and it would risk first difficulties (July) and then ruin (December). Jackson does not seem to have replied substantively in writing on these concerns until December when he said he wanted to bring outlay to an end and develop traffic.<sup>548</sup>

A reply was called for by Robinson's letter of 13 February 1858 in which he said, after a sleepless night, that they must see Charles Swainson, director and Jackson's father-in-law (see below), before declaring a dividend. He argued that the true balance sheet should be put before directors; and if they wanted to pay, he would not object although

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<sup>547</sup> Winifred Stokes, 'Ralph Ward Jackson, Public Benefactor or Fraudulent Businessman,' *Cleveland History*, 91, Winter 2006, 29.

<sup>548</sup> DCRO/NRC/14.

the proceeding was anything but correct in his opinion or truthful. Jackson replied directly to say Watson need not worry as he had written again to Swainson and wrote again a couple of days later to say he was perfectly satisfied that “ if you study every word attentively of the report ... the language is strictly and technically correct as to our position and the policy is in reality sound. Revenue would accomplish much; but in such an undertaking there is no untruth as I have described the matter in the report”. Adjacent to this letter is a single sheet in Jackson’s hand which refers to a Times report which shows the NER ostensibly in excess of borrowing powers; Jackson has written again to Jones (Preston broker) to ask Swainson if he would prefer 4.25%. Jackson concludes that the “report does not give it as paid out of revenue. - neither do I call it dividend.<sup>549</sup>”

There is very little evidence on Barrett’s career with the WHHRC in either the company records or individual correspondence. Perhaps because he had been a bank manager and involved in the mining company promotions, it has been hinted that he was financial brains of the operation and that Jackson missed him after he left the company in 1858 with ill health.<sup>550</sup> This may be so though the concealment of the true financial picture appeared to shift in scale rather than nature after his departure. Whilst Watson’s or Barrett’s responsibility for Jackson’s policy is a matter of speculation, neither appeared to have constrained him though there is evidence of Watson trying.

### Other Directors

Second, there were the WHHRC directors based in the Preston and Lancaster district who were recruited through their relationship with Jackson’s father-in-law and West Hartlepool director, Charles Swainson (1780-1866). He owned and ran a calico printing works and has been described as “an important force in the Preston cotton trade”., Swainson tried to take his duties as a West Hartlepool director seriously and his experience of owning and running a substantial business gave him relevant experience. However, he was growing old, was geographically remote and, as Jackson’s father-in-law, the impact upon his daughter may have reduced his appetite for challenging her husband’s business policy. Perhaps, the most substantial of the Lancashire directors

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<sup>549</sup> DCRO/NRC/14. Jackson’s underlining.

<sup>550</sup> Stokes, Public Benefactor, 38.



was Dr E D de Vitre (1806-78) who was director of WHHRC 1853-8. de Vitre is best remembered for his role in establishing a mental hospital in Lancaster, was twice mayor of Lancaster and in 1863 became the first chairman of the Lancaster Railway Carriage & Wagon Company.<sup>551</sup> The circumstances of his retiring in 1858 are not known and he disposed of his shares in 1859<sup>552</sup>. The other Lancashire directors were B P Gregson, Swainson's business partner and JP, and John Winstanley a Preston lawyer. The other WHHRC directors were Cuthbert Wigham (1780-1860), who had been involved with WHHRC and its predecessors for many years and Richard Fenwick of Tynemouth, about whom no evidence has yet been found.

These directors seem to have the business and professional experience and status to have played a full part in the affairs of WHHRC. However, five were fairly remote and Jackson did not seem to favour the involvement of the Lancashire directors and for unknown reasons by 1859 they had retired save for Swainson. This left the WHHRC with a small board for a railway company. Coleman called this a weakness - the board of five now comprised Jackson, his son and father-in-law, Watson and Wigham, and of these Swainson and Wigham were very old.<sup>553</sup> By May 1861 Jackson was proposing in the capital bill to reduce the board size to three, but this was rejected by the House of Commons Select Committee. Given Coleman's criticism, Jackson told his staff in March 1861 to advise enquirers that all companies were reducing working directors to a small efficient number who would attend daily to the concern; and to add that WHHRC also had a Committee of Assistance of four members two of whom were local. They were also to advise enquirers that the alliance with the LNWR and possible other companies would render it unnecessary to have a large number of nominal West Hartlepool directors.<sup>554</sup> Jackson may have been right about the trend toward smaller professional management groups, but whether enquirers were reassured by reference to the Committee of Assistance, whose work, largely the work of Sturge only, ostensibly ended a year earlier with only the briefest report, is moot.

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<sup>551</sup> The Victorians: directory of the Cotton Mills of South Ribble, at [south-ribble.co.uk](http://south-ribble.co.uk), accessed 11 June 2019. British Medical Journal, 9 November 1878, 711-12. List of former mayors of Lancaster at [lancaster.gov.uk](http://lancaster.gov.uk), accessed 11 June 2019. Note on Lancaster Wagon Works at [LancasterCivicSociety.files.wordpress.com](http://LancasterCivicSociety.files.wordpress.com), accessed 11 June 2019.

<sup>552</sup> Sale of shares from WHHRC running consolidated stock share register, TNA/RAIL730/23.

<sup>553</sup> Coleman letter to the share and bondholders of WHHRC 12.1.59. TNA/RAIL/730/33.

<sup>554</sup> TNA/RAIL730/30.

### *Board and shareholder meetings*

Victorian railway company records can give some indication of the quality of corporate governance. Most board and board committee minutes record those attending and decisions taken. In some cases the amount of detail beyond recording the decisions taken can help the reader identify how issues were analysed and resolved. None of the surviving board minutes for the Hartlepool West Harbour and Dock (HWHD) or the S&HR/WHHRC are in the latter category. This is unexceptional, but board decisions on more important issues such as agreeing the annual reports and accounts which firms tended to record are not to be found in the West Hartlepool board minutes. They are notable first for recording two long term loans to collieries and second for revealing that none of the Lancashire directors attended any meetings after 1851<sup>555</sup>.

WHHRC was unusual in having shareholder general meetings annually rather than half yearly before 1861; and in not having the press attend the general meetings. Jackson told a shareholder meeting in March 1859 that it had not been through any wish of the directors in past years that the press had not been admitted.<sup>556</sup>

### *Jackson's interaction with the board*

In the surviving correspondence of Robinson Watson, there is some evidence of concerns being expressed by the Lancashire directors about Jackson; and of his suspicion of interference by them. There is also some evidence of Jackson's manipulative approach to board affairs. Further, there are the concerns raised by Watson on collieries, steamboats and dividend as described above.

In the early 1850s Watson was an occasional correspondent with Charles Swainson of Preston, Jackson's father-in-law and fellow director, on West Hartlepool company affairs. Swainson, who relied on Watson to watch and report, felt responsible for the investors in the Preston area he represented and some of these are quoted either on specific matters such as non-receipt of dividends or on more general matters. Swainson expressed

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<sup>555</sup> TNA/RAIL/730/2. TNA/RAIL668/4. TNA/RAIL730/5 & 7.

<sup>556</sup> Herapath's Journal 1859 vol, 250.

concerns to Watson about Jackson being too sanguine - in 1853 he wrote “no-one admits Ralph’s activity and zeal more than I do but unless these qualities are accompanied with prudence and discretion, they become of little value.” However, he seemed disinclined to take Jackson on directly as he later complained that, contrary to his intention, Watson had shown Jackson his letter and that both Jackson and his daughter “who is much distracted” had both written. Swainson gives no further detail but the correspondence tails off after this point and one might speculate that Jackson had beaten off an attempt to rein him in.<sup>557</sup>

Swainson reported concerns from local investors that the company was reckless and always in financial difficulties. In September 1851 in response to Watson writing for help to ease cash flow pressures, Swainson replied that he was surprised the company was short of funds and that he felt ignorant about the state of the company. This last was a recurring theme; early in 1853 he was complaining he felt uncomfortable as friends locally relied on him to tell them that all was well but there was no communication from West Hartlepool unless he asked for it and he was only aware of the need for money at the last minute. Swainson also had two specific concerns: first he wanted the books and accounts to be properly kept. In August 1850 he said he was glad to hear that a Mr Powell would soon be with the company and would “assist in getting the books into a correct state”. He also wanted to see a proper balance sheet drawn up and audited as was done in other similar companies he had been involved in; and to see a balance settled between the railway and the dock. The lack of a balance sheet would assist in later years in the concealment of the company’s true financial position. Second, Swainson was concerned about reports that the directors had bought a coalfield and wrote that local investors were inclined to sell. He had been unaware of such a transaction, was confident it was not by the company though thought it could be on a private account. There had been a general report and Swainson recollected Willy Jackson saying something and being checked by his father. He asked for an explanation and Watson replied that “none of the directors were coal owners neither is the company... the company has given temporary assistance to induce traffic and this has been enough to get talking those envious of the company’s success”.<sup>558</sup> Watson did not disclose that the board had just minuted the lending to Nicholas Wood £5k repayable after 12 years to

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<sup>557</sup> DCRO/NRC/14.

<sup>558</sup> DCRO/NRC14.

open out a colliery.<sup>559</sup> Thus, well ahead of the company's failure, Swainson identified two key areas of concern - however, they do not appear to have been followed up and the risks which eventually grew and crystallised were not contained.

Jackson seems to have been suspicious of and opposed active participation by the Lancashire directors. In January 1854 he asked Watson to write a letter to Barrett in terms of the draft which he attached. The draft said that time should be set aside to discuss colliery matters and that Barrett should provide a detailed account of each colliery, its production and costs so that a proper discussion may be had on the way forward. Jackson asks Watson to say that it "was desirous for Jackson, the company and our own characters to have all these matters put into such a shape as we may understand them and be able to answer any enquiry which I am sure will be made of us by our Lancashire friends and directors and especially as we cannot avoid having Mr Carson, who Dr de Vitre wishes so much to come to us - I fear we would give offence if we show any disinclination". It is not clear what happened next. Later in July 1854 Jackson was still concerned to keep the Lancashire directors at arms length. In Watson's papers is a copy of a note from Watson to Barrett in favour of selling Whitworth Colliery. In Jackson's hand across the note is written "I am very anxious to put a stop to any enquiry that might be made by Dr de Vitre or Gregson".<sup>560</sup> Again it is not clear what happened next.

This material probably reflects a desire by Jackson to secure proper information on the collieries to facilitate proper management of the relationship. It also indicates on Jackson's part a recognition that Lancashire interests at least needed handling probably because they were an important source of funding. On the other hand, the predominant impression is that he regarded them as interfering and best kept at arms length.

#### Jackson's remuneration and transactions with the West Hartlepool companies

Jackson was voted a salary as Managing Director of £800 per annum by the board of HWHD on 29 September 1851 and this remained unchanged until his departure from the company. The same meeting voted him a sum of £10k for his services as solicitor of the

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<sup>559</sup> TNA/RAIL668/4.

<sup>560</sup> DCRO /NRC1.

company from 1844 to date. The company was to settle this by giving him company debentures.<sup>561</sup> It seems that through a clerical error debentures amounting to only £8k were handed over though another £8k were allowed him in 1854 and from 1851 to 1855 he received another £1,200 per annum for services rendered. None of this was agreed by the shareholders in general meeting as required by the Acts applicable to the companies<sup>562</sup>. Jackson acknowledged that there had been no formal shareholder votes for the debentures but claimed the HWDH shareholders knew about them and that they had been passed by the auditors annually<sup>563</sup>. Jackson had the practical power to make payments or issue securities without restraint.

The NER refused to register Jackson's shares when they amalgamated with the WHHRC and charged him with taking £26k of stock to use as collateral for funding a colliery. This case was eventually lost but the NER's claims for Jackson's remuneration as set out above amounting to some £21,000 were upheld as they had not been agreed by shareholders as required by the Acts applicable to them<sup>564</sup>.

Otherwise the WHHRC Stock Register shows 20 entries for Jackson over the period 1853-62 which could indicate he was on occasion prepared to make a market for shareholders looking to buy or sell.<sup>565</sup> However, no charges were made that Jackson profited from this sort of transaction.

Given the WHHRC's difficulties, contemporary censure of its management and 15 years of suit and counter suit between the WHHRC/NER and Jackson, the reader may ask to what extent, if any, he made improper gains at the expense of the West Hartlepool companies. Contemporary government law officers did not see a need for criminal prosecution and the lengthy litigation ultimately did not settle the matter. His salary was not unusually high, say, compared to David Waddington whose salary was £2,000, and his claims for recompense for past legal work do not seem unreasonable either. There is no doubt that he worked very hard for the WHHRC. There remains uncertainty about

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<sup>561</sup> HWDH Board Minutes of meeting on 29.9.51 in TNA/RAIL/730/2.

<sup>562</sup> S&HRA cl.98; HWHD Act 10 Vic., c.16, clause 33, CCCA clause 91.

<sup>563</sup> 1862-3 correspondence between WHHRC's and Jackson's solicitors quoted in Waggott 144-7.

<sup>564</sup> Legal papers TNA/RAIL 730/30 Box 3. Waggott, 156.

<sup>565</sup> TNA/RAIL730/23.

whether the equity position he had in the collieries already existed or was made possible only by the provision of company funds ten times as large.

The focus of this research, however, has been to examine the corporate governance aspects of the case rather than to establish whether Jackson made improper gains or not. Failure to refer matters reserved to shareholders properly to them was further evidence of poor corporate governance.

### The concealment of the company's true financial condition

A remarkable aspect of the WHHRC case was the misleading presentation of the published accounts. The Chancery Bill of Complaint of bond holder Northern Assurance, which was a major trigger of the crisis of 1862, pointed to false presentation by comparing items in the books with those published.<sup>566</sup> The true picture was fully revealed by a professional accountants' report in spring 1862 after the appointment of a bondholders committee and the suspension of debt service. It appears that the underlying accounts were satisfactorily kept as the professional accountants, Quilter Ball, were quickly able to construct the proper picture and noted that every facility had been afforded to them at West Hartlepool. There is no indication in the surviving evidence of who devised the scheme but it does show that Jackson was deeply involved in the company's accounting matters. The summary accounts of the company between 1853 and 1860 survive and they reveal that the policy of concealment was undertaken at least from the end of 1855.<sup>567</sup> In this and subsequent years, the main elements of the misrepresentation, being adjustments to the capital account, are actually set out in a separate analysis attached to or on the face of the accounts which are signed off by the auditors. Whilst these records appear not to suggest that there was any attempt to destroy evidence, Northern Assurance, who managed after months of wrangling to gain partial access to the books at the end of 1861, noted in their Chancery complaint that they were not allowed to see the balance book.<sup>568</sup> This may have revealed the full picture painted by Quilter Ball a few months later.

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<sup>566</sup> TNA/C16/91/8

<sup>567</sup> TNA/RAIL730/95.

<sup>568</sup> TNA/C16/91/8, 22.

The published accounts were designed to show compliance with the company's parliamentary powers both as to how its capital was structured and how it had been spent.<sup>569</sup> WHHRC was far from unique in raising ultra vires loans as construction costs often overran budget and railways borrowed pending raising further capital via a further act. However, WHHRC had vastly more loans than capital stock and had spent material sums on collieries, steamboats and extra land in West Hartlepool. Steamboat expenditure was moderate at around £100k but that of over £500k in collieries was much more material. Finally, the rapid growth in investment in West Hartlepool in the mid to late 1850s nearly all financed by debt whether recruited directly or via brokers in various centres round the country took the gearing of the company to very high levels. By 1860-1 there was such pressure on the revenue account that it had to be adjusted to avoid the charge that the company was illegally paying dividends out of capital.<sup>570</sup>

The adjustments were:

- the gross amount owed by the company was netted against amounts owing to it and the resulting amount was divided between Bonds and Debentures (those within powers), Convertible Bonds (within capital stock), and various other accounts with a variety of names such as Land Account and Current Account. Quilter Ball calculated that the 1861 accounts which had real balance sheet footings of some £4.0mn had been netted down by £0.46mn.
- WHHRC issued bonds convertible by the holder into consolidated stock. By the end of 1859 these amounted to £527K. These were described as issued “by virtue of WHHRC’s 1852 Act” which gave no specific authority for such. Very little if any of these were converted into consolidated stock as the latter languished well under par.
- Quilter Ball reported that “a material circumstance, as bearing on the position of the capital entitled to Interest and preference dividends, is the small amount of Consolidated Stock as compared with the total capital raised, namely £292,170/6/8 out of £3,733,393/16/7”. With preference stock added capital was £988K and Quilter Ball calculated that WHHRC had raised aggregate capital £933k in excess of parliamentary

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<sup>569</sup> These rules for WHHRC are to be found in 15 & 16 Vic., cap. 142, clause 85.

<sup>570</sup> WHHRC’s Act, 15 & 16 Vic., cap. 142, clause 72.

powers and gross loans £2044k in excess of powers.<sup>571</sup> Jackson tried to argue that there was some ambiguity in the company's Acts which allowed some of this but if that were so why were the company's accounts set up to indicate compliance with the limits from which Quilter Ball made their calculations of excess.

- The revenue account had also been adjusted to show a much better picture than actually existed. During their examination of the books in late 1861, Northern Assurance found that the 1860 accounts reported a surplus after expenses, rates and taxes of £73k whereas the books had information which should have suggested a deficit of £20k. Revenue had been taken for work done by the company for the company (£16k), various revenue items including steamboat losses had been treated as capital (£18k) and the interest bill was offset by so called interest accrued (not received) on effectively the company's 'surplus' assets in works still being developed, surplus land and colliery advances (£48k). Convertible bond interest had been omitted and treated as dividend and Northern Assurance had not made an allowance in the above estimated deficit figure for the recoverability of revenue from the nursed collieries counted as revenue in the year but all rolled up as debt (£43k).<sup>572</sup>
- Quilter Ball with full access to the books and people at West Hartlepool filled out substantially the same picture. For 1861's trading they calculated a deficit of £153k on revenue account and on the so-called profit and loss account a deficit of £336k of which the principal item was the write down of the colliery advances for the years before 1861 of £254k. With an accumulated deficit of £490k Quilter Ball came to the view that "the Interest and dividends of every class which have been paid in past years have, to a very large extent, been paid out of capital".

Jackson complained later that value was needlessly lost as a result of the creditors' intervention in 1862 and that it would have been possible to work out the colliery and steamboat positions satisfactorily over time.<sup>573</sup> Those in charge of restoring company fortunes laid low by others often want to bring out all the bad news. The write down of assets without a ready and deep market is a matter of informed judgment; and, if values

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<sup>571</sup> Quilter Ball report TNA/RAIL1111/42.

<sup>572</sup> TNA/C16/91/8, 31-3.

<sup>573</sup> TNA/RAIL730/30.



can be fairly justified as being in a range, it is difficult to complain too much if the company's general financial situation influences what figure within the range is taken. On the other hand, the write down was 44% and justified by the great difficulty in selling the collieries over the next few years.

A further element of WHHRC's approach to presentation was to emphasise the Custom House figures for the trade through West Hartlepool. Growth was so rapid as to make it the fourth busiest port in Britain. In reality, these figures had been secured at material cost to WHHRC.

Most if not all the mechanisms used to adjust the accounts had been used before. Many railway companies did not depreciate their assets in the accounts and other railways had used the capital account to reduce the pressure on revenue account hence the ability to pay dividends. Such became notorious and was a secondary reason for the call from the late 1840s for capital accounts to be closed. Further, there were no specific rules about the form of railway accounts. However, the scale of misrepresentation at WHHRC was regarded as unusual at the time; and, whilst there were no detailed rules on form, WHHRC broke the two main principles on which railway accounts were supposed by contemporaries to be based - that is to describe fairly how the company's capital and loans had been raised and spent; and to pay dividends out of revenue and not out of capital.<sup>574</sup>

However, the need for parliamentary approval to regularise ultra vires borrowing gave the opportunity to opponents of the railway to oppose and give evidence; further the Board of Trade briefed the Select Committees on railway bills focussing on compliance with previous bills and Standing Orders; a moderate overrun on powers would have likely been accepted but in 1860 WHHRC's overrun was very large and in the face of Board of Trade questions on the matter,<sup>575</sup> the WHHRC's 1860 capital bill was withdrawn. In 1861 two bills designed to extricate WHHRC from its problems were passed, but, largely due to Coleman's opposition and further Board of Trade questions, in such emasculated form as

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<sup>574</sup> Sean McCartney & A J (Tony) Arnold, 'George Hudson's Financial Reporting Practices', *Accounting Business & Financial History*, Vol. 10, No.3, 11/2000, 293-316 sets out a range of accounting issues arising in railways in the 1840s.

<sup>575</sup> Board of Trade Report dated 26 January 1860 on Railway and Canal Bills 15-CXLVI.

to be have been effectively lost. The LNWR was also denied power to make its proposed investment in West Hartlepool.<sup>576</sup>

### Coleman's Chancery suit.

Coleman followed up his pamphlet attack by securing representation at parliamentary committees to argue against the company's bills and by raising a case in Chancery in April 1860 in his name and those of all other shareholders other than the defendants against the WHHRC and its directors. The bill of complaint alleged activities ultra vires the company in the collieries and the boats and the raising of funds beyond parliamentary powers. It noted that, such was Jackson's influence with shareholders, Coleman was unable to get a fair hearing at the general meeting and his request for a list of shareholders had been met by refusal or dilatory excuses. Hence Coleman had to file a bill which called for an injunction against the holding of collieries and boats and against the issue of bonds until the company was within its powers. It also called for the defendants to make good or be liable for the moneys involved in these illegal acts<sup>577</sup>.

The case dragged on through 1860 and 1861 and then was de facto superseded by creditor action. Coleman secured an injunction against further investment in steamboats or collieries and gained some further information from looking at some of the WHHRC's books<sup>578</sup>. However, he was prevented from revealing the full picture of the WHHRC's financial condition by Jackson's delaying tactics despite several court orders. These tactics included the refusal to supply the books because of a variety of excuses but also seemed to involve physical intimidation when Coleman visited West Hartlepool to inspect the books in November 1861<sup>579</sup>. Jackson won on two matters settled by the court in this case. First, he secured an injunction against Coleman publishing details of the Chancery

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<sup>576</sup> Board of Trade Report dated 15 February 1861 on Railway and Canal Bills 29-CXXXIV. Benjamin Coleman, *Revelations in Parliament. Letter to Shareholders dated 28 June 1861*. Copy in TNA/730/33. Tomlinson, 595.

<sup>577</sup> Some but not necessarily all of the Chancery Bills of Complaint, affidavits and interrogatories for this case are to be found in TNA/C18/3/11 and TNA/C15/739.

<sup>578</sup> Daily News, 26 February 1861.

<sup>579</sup> Leeds Times 9 November 1861. The Standard 15 November 1861. Exeter & Plymouth Gazette 6 December 1861.

action in a manner likely to prejudice the public whilst it was in course<sup>580</sup>. He also able to deny access to the books by an accountant appointed by Coleman as the case had not been made out that Coleman himself was not competent enough to examine them himself<sup>581</sup>. Coleman also secured a rule of mandamus from the Court of Queen's Bench in November 1861 requiring the WHHRC to elect a fifth director hence meet the minimum number of directors set out in its Act<sup>582</sup>.

Coleman's Chancery suit had less influence in precipitating the crisis at the WHHRC than the effective loss of the company's 1861 bills and the intervention of creditors once bonds started becoming overdue in late 1861 and early 1862. Nonetheless, it did grant an injunction against further investment in steamboats and collieries; and, through the reporting by the press of its various orders, it gave a strong hint that Jackson's concealing of information at almost any cost suggested that the WHHRC was in very serious difficulty. The very existence of the suit given that it was raised on behalf of shareholders generally is also worthy of mention not least because the latter as a body supported Jackson through this period. Whilst the court papers are silent on the matter, it appears that the case was seen as an exception to the rule in *Foss & Harbottle* because it concerned illegal and ultra vires matters which were incapable of ratification. The securing of the mandamus rule was a further example of court action open to shareholders. It had some value in itself in securing management resources to the company; and demonstrated the greater chances of success in the court where assessment of the evidence was more mechanical than judgmental<sup>583</sup>.

### Contemporary response to the crisis at the West Hartlepool Company

Following the crisis of early 1862, contemporary reaction suggested that the West Hartlepool case was seen as unusual in its scale. Herapath on 12 April 1862 admitted to being "astounded" and reflected upon the "deep injury which must be inflicted on the property of numerous families in addition to the heavy blow on railway securities in general". Herapath's regular contributor 'Northern Railways' thought the new

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<sup>580</sup> The Law Times Vol 36.(1860), O. S. : 2 N.S., 766-7.

<sup>581</sup> Hereford Journal, 19 June 1861.

<sup>582</sup> Daily News 26.11.61.

<sup>583</sup> Parkinson, 105.

management's policy of reducing expenses and curtailing colliery and steamboat losses should help but noted that its task was of "no ordinary character". Later in June 1863 Herapath commented that "the falsification of the accounts certified as correct by the auditors appears to be the most unblushing that can be conceived"<sup>584</sup>. The Spectator said 'it seems hard to believe that violations of the (WHHRC's) Act so enormous, so various and so long persisted in, can possibly have been committed in ignorance"<sup>585</sup>.

The response of parliament and the government was mixed. The bill to agree the financial reconstruction of WHHRC came before parliament in mid 1863 and the Lords Select Committee, chaired by Lord Donoughmore, considering it took the unusual steps:

- (i) of publishing a Special Report,<sup>586</sup> detailing the charges against Jackson and the companies together with Jackson's responses; and
- (ii) given the special circumstances, of bringing the report before the whole house, the Select Committee having decided to recommend against the bill.

The House of Lords discussed the matter on 23 June 1863. The supervening issue was that earlier disagreements between the share and bond holders had been settled and the greater desire was to reconstruct the company, resume interest payments and give the company a settled position from which to progress or more likely to amalgamate. There was concern among investors and the investor press such as Herapath about the risk of repudiation of ultra vires bonds. Great financial distress would arise if parliament refused to agree reconstruction (which would render such bonds within powers) on the grounds that it left the company unpunished for their issue and would not deter future ultra vires issues. Investors were justified, they argued, in relying upon the offer of bonds to include a warranty that they were within powers; and repudiation would allow the company to profit from its own misconduct from not having to pay interest and principal on such bonds. Repudiation had been a concern from 1860 when WHHRC had admitted the issuance of debt beyond its powers and had failed to secure parliamentary approval in

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<sup>584</sup> TNA/ZPER/3/25, 398 & 400, Herapath's 12 April 1862. TNA/ZPER3/26, 673, Herapath's 27 June 1863.

<sup>585</sup> The Spectator 11 July 1863, 9.

<sup>586</sup> *Special Report from the Select Committee of the House of Lords on the West Hartlepool Harbour & Railway Bill with an appendix. Ordered to be printed 1 June 1863.* A copy is in TNA/RAIL730/31.

1860 and 1861 to bring such an amount within powers. Thus it had sought and published counsel's opinion in July 1861 that all bonds either over or under the one third limit were "good and binding securities at law and in equity" and "for which the undertaking and properties of the company are liable".

The reconstruction bill of 1863 was passed but Lord Donoughmore told the Lords that a criminal offence may have been committed in concealing the true state of the company's affairs in its annual accounts. The other matters he considered "startling yet not of a criminal nature". It would be unwise to "let directors guilty of gross mismanagement just come to parliament and make an appeal ad misericordiam in order to undo all the fraudulent acts done in the past and thus encourage others to follow in the same course". Lord Donoughmore's proposal to refer the report and evidence to the Attorney General to look into the alleged conduct of the late directors and auditors and consider a prosecution was agreed.<sup>587</sup>

In late 1863 /early 1864 the government's legal department, Treasury Solicitors (TSols), gave its advice to the Attorney General on these matters. As proceedings had commenced both in law and in equity against Jackson on the charge that he had wrongly taken £25k from the company for his own purposes, it was considered premature to start criminal proceedings on that element. A hint of sympathy for Jackson in the TSols advice was that if the sums alleged to be made by a successful solicitor or parliamentary agent in a single session approach the truth and are honestly earned, the sum appropriated to Mr Jackson for his many years service "does not at first sight appear preposterous" The advice rules out prosecution for borrowing for fraudulent or dishonest purposes as the funds appear to have been used for the benefit of the company and cites the Committee of Assistance findings and statements of the Commons Select Committee considering the WHHRC 1861 capital bill not attaching any criminality to Jackson in support. On false accounting TSols quoted evidence to Lord Donoughmore's committee from accountant Ball who said in "some respects the books were kept irregularly but on the whole they were kept so as to enable us to develop the true state of affairs; although not kept in perhaps in the most convenient manner, but they seemed on the whole to be truly kept". TSols considered that a prosecution on exceeding borrowing powers may be capable of

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<sup>587</sup> House of Lords Hansard 23 June 1863, Vol 171, Cols 1295-1305. [hansard.parliament.uk](http://hansard.parliament.uk) accessed 11 June 2019.

legal proof but questioned how much it was a crime and how far a fit subject for prosecution by the government. They noted that few large railway companies were alleged to be within the terms of their Acts and there could be sound reasons why loans were taken out for a period to keep the amount on which dividends were permanently paid within moderate limits. If loans were taken out for bona fide purposes and disclosed they may or may not be indictable, and, if the former, may not be a proper case for indictment.

TSols also considered three specific allegations from bondholders that they were mis-sold bonds by Jackson and Abraham Basnett, WHHRC Company Secretary. Whilst allowing that Jackson or Basnett represented the company in “too favourable color” or “even knowingly”, it would be at least difficult to sustain, especially as the sales were made as far back as 1856, that money had been made under false pretences. Even if that was possible, there was still the question whether the government should interfere in such a case or whether the prosecution should be carried on, as was usual, by the person allegedly defrauded.

The file then passed to the Attorney General with a request to advise the Lord Chancellor. The Attorney General, Roundell Palmer, a noted Victorian jurist, gave two pieces of advice. In the first dated 2 February 1864, he considered there was an indictable offence under s8 of the Punishment of Frauds Act 1857(20/21 Vic. cap. 54)<sup>588</sup> by Jackson and fellow directors by the publication of the accounts in 1858, 1859 and 1860 in which it was made to appear that the stock of the company much greater and debenture debt of the company much less than they actually were but having regard to:

the time lapse;

the fact that misrepresentations did not appear to have been made for the purposes of personal fraud;

the existence of civil remedies for those who may have altered their position;

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<sup>588</sup> The Act had been repealed and incorporated in the Larceny Act 1861, but Palmer, in common with other contemporaries, continued to refer to the 1857 Act. See Wilson, Tort Law, 360.

the general position of the company; and

the other charges vs Jackson having no probability of success,

concluded that it was “not on the whole, necessary for the purposes of justice, or advisable, that any prosecution should be initiated by HMG in this case.<sup>589</sup> In the second piece of advice dated 10 February 1864, Palmer does not think that by the over issue of debentures an indictable offence has been committed capable of proof, or which ought, under actual circumstances, to be prosecuted by HMG.<sup>590</sup> The decision not to prosecute was advised to Lord Donoughmore in the Lords on 26 February 1864.

The advice of TSols and the senior state law officers reflected the disinclination of the state to get involved in what it considered to be private matters especially as those appeared to have been substantially resolved by the reconstruction covered by the WHHRC 1863 Capital Act. It is noteworthy that Palmer was prepared to consider that there had been an offence under s8 of the Punishment of Frauds Act but perhaps unsurprising that he advised against prosecution by the state. There is a ready desire to exonerate Jackson from improper personal gain by reference to statements of the chair of the 1861 Common’s Select Committee, a body which did not take the evidence to assess the matter and had doubtful capacity to settle it.

The TSols advice was at least concerned to consider the cases of potential mis-selling of individual investments and to advise that it appeared that Jackson and Basnett had made exaggerated claims. However, the charges were quickly dismissed as too difficult to prosecute and as the funds appear to have been spent for the railway’s benefit may not have been successful. TSols may have had in mind the practical benefit of all parties of a particular class being treated alike and in the WHHRC case the bondholders had come out relatively unscathed. The state could argue that following the crisis of early 1862 the company had been able to take remedial action and put its house in order; and on whether Jackson had taken funds improperly from the company the evidence tended against systematic expropriation; and, in any event, it could wait and see how the private suits came out.

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<sup>589</sup> TNA/TS25/1312.

<sup>590</sup> TNA/TS25/1313.

This response was consonant with the general position that investors and lenders would have seen the protections offered by the parliamentary process and state as partly helpful but most often only as providing prompts to their own vigilance and fora for their own actions.

The view that dishonesty in business and the criminal sanctions arising from it required wrongful personal gain is reflected in the attitudes not only of parties involved with the WHHRC such as Thomas Sturge, the chair of the parliamentary committee and the law officers but also in some of the discourse surrounding the passing of the Punishment of Fraud Acts<sup>591</sup>.

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<sup>591</sup> Wilson, Tort Law, 374-5.



## **Chapter 8: Five New England Railroads Case Study**

### Introduction

This case study covers five railroads in New England which appointed Committees of Investigation (CofI) in the period 1849-1857:-

Boston & Maine Railroad (B&M)

Boston & Providence Railroad (B&P)

Fitchburg Railroad (FRR)

Northern Railroad of New Hampshire (NR(NH))

Old Colony Railroad (OCRR) (from 1855 Old Colony & Fall River RR)

This chapter will set out the legislative background to railroad promotion and operation in Massachusetts and compare it with that of Britain. They were similar with both requiring special Acts and both states having reserve powers to buy the railroads. The Massachusetts legislative framework left more freedom to railway companies and their directors and managers compared with the British. On the other hand it required the disclosure of much more data on the road, its traffic and finances.

The chapter will show that stockholder engagement was promoted by a good level of representation close to the road. The New England stockholders were more local than those in the British case studies because of shareholders in the latter from geographically remote centres of railway investment in London and Lancashire. Press coverage appears to have been somewhat fuller in Britain than in New England though better disclosure levels in the latter and high levels of investment from the local metropole Boston were compensating factors. There was also mutual transatlantic awareness of railway and railroad financial performance. Thus the stockholders benefitted from the railroad discourse.

Stockholders were given fairly prompt warnings of problems via the dividend, an important proxy for trust. The Committees of Investigations (CofI's) were appointed in

the periods 1849-50 and 1855-7 when either dividends had been passed or when there were concerns about profitability.

The make up of New England railroad boards may have made stockholder activism less likely than in Britain; they were smaller and did not contain directors appointed by other railways who could prompt activism from within as at the OWR and ECR. Only the OCRR appeared to evidence material intra-board tensions before the Cofl was appointed. In New England, service on more than one board seemed more commonplace than in early British independent railways. This may have stemmed from the concentration of a relatively large number of roads in a moderate sized district and a limited pool of appropriately skilled and experienced people in a new type of business. This may have improved director performance through the flow of good practice between roads. There did not appear to be concerns about competing directors.

Such evidence as can be found on Cofl members suggests that within their number there was sufficient status and ability for them to do the job. Further, their operation appeared to reflect a thorough approach with no limitation to access or scope, an orderly process of discovery and the production of detailed and structured reports which allowed stockholders to assess the condition of their property. This was also generally true of British Cofl's.

Outcomes were mixed. In New England only the OCRR Cofl was instrumental in removing the president and other directors. Only one Cofl member became a director of a road within two years of Cofl service. However, the FRR and NR(NH) had seen the departure of directors associated with problems reported by the Cofl's before the Cofl sat and reported.

The Cofl's proved least effective in dealing with issues related to the market for rail services and its impact on financial performance. It may have seemed relatively straightforward in theory to increase fares and reduce costs and restore dividends to historic levels but more difficult in practice. The Cofl's at least recognised that cutting staff numbers and pay and risking safety was not a wise policy and limited their recommendations to bearing down on egregious waste and free passes as well as

establishing an expectation that stockholder interests should be balanced with those of the public. In these areas Cofl's made a positive if moderate reinforcing contribution.

The New England case studies Cofls yielded two main benefits to stockholders. First, the level of detailed disclosure and analysis contributed to educating stockholders in railroad economics, accounting and performance benchmarks. In this area they were ahead of the British case study Cofi's. Second, there was the identification of conflicts of interest and insider expropriation and poor financial and accounting controls particularly by the OCRR and NR(NH) Cofl's. They evidenced a broad range of circumstances in which failure of controls, conflicts and insider expropriation could arise and helped to establish standards of and expectations for good practice and behaviour.

A brief note on early New England railroads will include the reasons for taking these railroads as a case study. Thereafter, a brief description and history of each railroad will be set down together with what is known about the shareholder body, the boards of directors. and the Cofl's. The findings of and outcomes arising from the Cofl's will then be set out under the broad headings of business policy, governance (including conflicts of interest), and financial/operational controls.

It seems that shareholders in New England railways did not appoint Cofl's after the 1850s and there is no great evidence of British railway shareholders doing so either. A brief note about this is at the end of the chapter.

### Early New England Railroads

Railroad building began in New England around 1830 and was characterised by rapid growth and a large number of individual companies. The following table of railroads open by the end of 1850 shows the scale of overall development.<sup>592</sup>

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<sup>592</sup> Data from H V Poor, *History of the Railroads & Canals of the United States of America* (New York: John H. Schultz & Co., 1860).

**Table 8.1 New England 1850 railroad mileage and capital investment.**

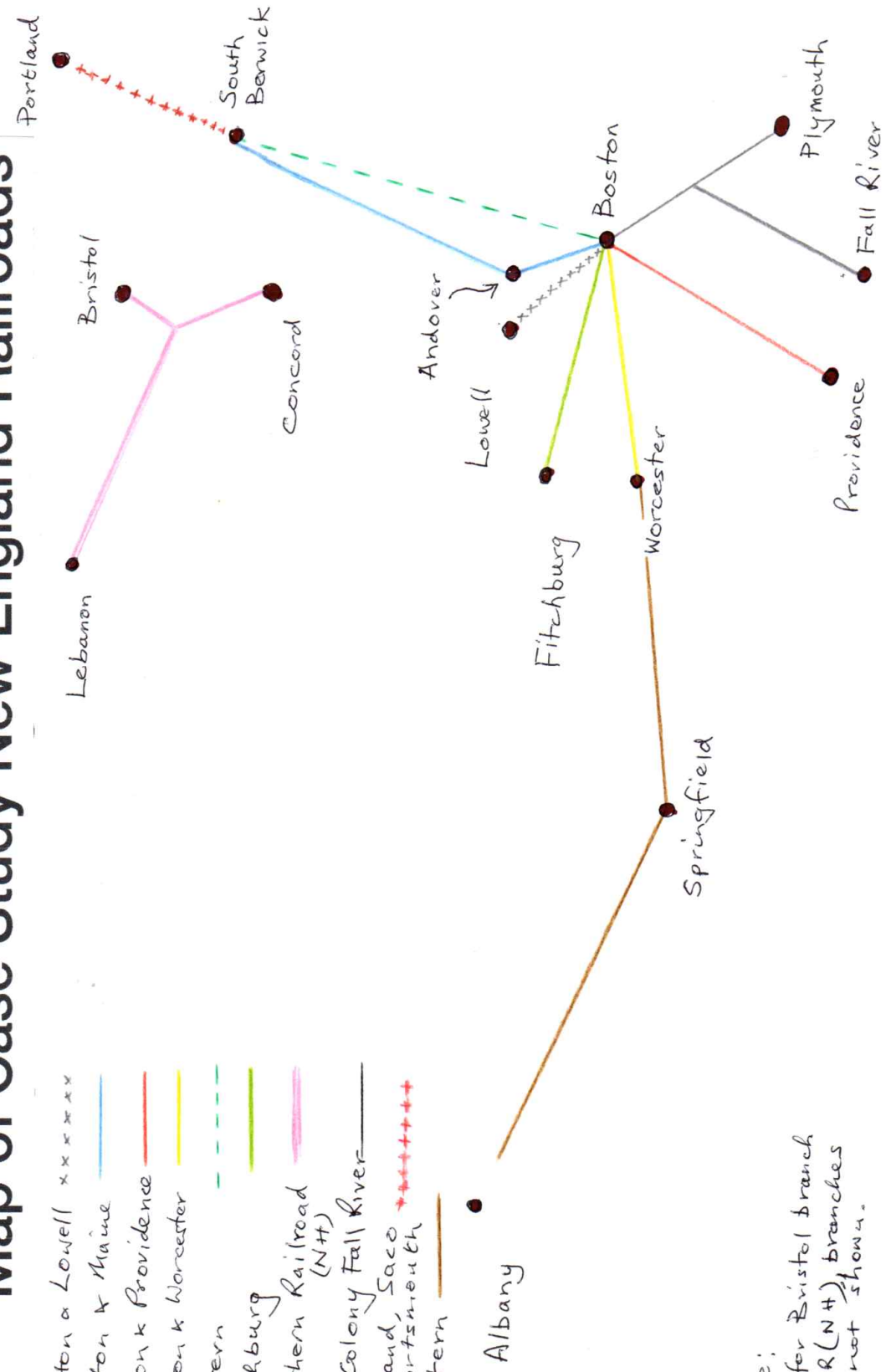
State	Number of railroads open	Capital \$mn	Debt Smn	Mileage	Cost (Capital & debt) per mile \$	1850 Dividends/ Capital X100
Maine	5	4.0	3.3	112	65,178	
New Hampshire	13	10.6	4.4	415	36,144	
Vermont	5	8.6	1.9	240	43,750	
Massachusetts	36	40.8	12.2	1125	47,111	5.1
Rhode Island	1	1.3	0.7	50	40,000	
Connecticut	5	10.1	3.8	408	34,068	

The main part of the system and the larger railroads radiated from Boston, the largest city in New England. Four of the case study companies, the Old Colony Railroad Corporation (OCRR), the Boston & Maine Railroad (B&M), the Boston & Providence Railroad (B&P) and the Fitchburg Railroad (FRR) had termini in Boston. These companies were private companies with capital supplied by private investors. There was not in New England the level of state or federal government financial support, whether by way of funding, guarantee or land grant, found in other parts of the country. Generally, the New England railroads resembled British railways; they were too costly to be built without the raising of funds from a large group of private investors but not too costly that they required state support for the raising of funds. A map showing the case study roads is below.

**Figure 3 Map of case study New England Railroads (overleaf).**

# Map of Case Study New England Railroads

- Boston & Lowell xxxxxxxx
- Boston & Maine ———
- Boston & Providence ———
- Boston & Worcester ———
- Eastern - - - - -
- Fitchburg ———
- Northern Railroad (NH) ———
- Old Colony Fall River ———
- Portland, Saco & Portsmouth ++++++
- Western ———



Note:  
 Save for Bristol branch  
 of NR(NH), branches  
 are not shown.

## Statutory and Regulatory Background

### *Individual Company Acts*

The legislative and regulatory system in Massachusetts through which four of the case study roads ran was similar to that found in Britain in the period up to 1850. It was run at the state rather than federal level. Each prospective railroad corporation required an Act from the Massachusetts legislature. For example the OCRR's Act was enacted by the state Senate and House and approved by the Governor on 16 March 1844. It is a short document of three pages and eight sections and covers:<sup>-593</sup>

the names of the promoters;

the description of the route;

the capital of \$1mn in 10,000 shares of \$100 each;

the ability of the legislature after four years to reduce tolls and profits to a base return of 10%;

the time limits of the Act;

the power of the legislature to approve access of other railroads to OCRR but not their motive power unless the OCRR refused to supply it.

Further equally short Acts in the following years were passed to cover the building of branches and extensions and increases of capital and eventually in 1854 to approve the merger of OCRR with the Fall River Railroad.<sup>594</sup> It has not been possible to locate records of proceedings of the Massachusetts legislature nor of the petitions or supporting papers submitted by OCRR or of any opponents in relation to these Acts.

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<sup>593</sup> 1844 Chap. 0150 (pp249-252 in original record of session acts) An Act to Establish the Old Colony Rail-road Corporation. Accessed at [archives.lib.state.ma.us](http://archives.lib.state.ma.us) 4 February 2020.

<sup>594</sup> 1845 Chap. 0241 (p571), 1846 Chap 0178 (p125), 1847 Chap. 0085 (pp366-7), 1848 Chap. 0084 (648-50) & 1854 Chap. 0133 (p85). Accessed at [archives.lib.state.ma.us](http://archives.lib.state.ma.us) 4 February 2020.

## *General Legislation*

General legislation is contained in the Commonwealth of Massachusetts Revised Statutes of 1835, a consolidation and reissue of the statute book;<sup>595</sup> and in additions to these up to 1849.<sup>596</sup> The main elements on railroads, which were contained in Chapter 39 of the Revised Statutes (which also covered turnpikes and canals), related to promotion, relations with various parties, safety, corporate organisation and the provision of information.

Petitions for charters were to be accompanied by an engineer's report on the route, its feasibility and the probable cost of construction. Notice was to be given to allow affected parties to appear and object.<sup>597</sup> The process for settling compensation for land taken by the railroad was set out including the reference of any dispute in the first instance to the county commissioners who were elected officials undertaking various duties, and, in the second instance, to a jury.<sup>598</sup> The respective rights attending the intersection of railroads and turnpikes and duties to build fences and maintain bridges were set out.<sup>599</sup>

Railroads gained certain protections including against trespass and non-payment of fares. The latter was punishable by a fine in the range \$5-20 and those without a ticket had no right to travel: but in the same statute the railroads were required to furnish "reasonable" accommodation for passengers with a fine of \$5-20 in the event of wilful neglect to

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<sup>595</sup> *The Revised Statutes of the Commonwealth of Massachusetts passed November 4 1835 & amendment Act of February 1836* (Boston: Dutton & Wentworth State Printers, 1836). The amendment Act did not contain amendments on railroad Acts. Hereafter *Revised Statutes 1835*.

<sup>596</sup> *Laws of the Commonwealth of Massachusetts passed subsequently to the Revised Statutes 1836-1849 inclusive*, eds Metcalf and Cushing (Boston: Dutton & Wentworth, State Printers, 1849). Hereafter *Laws passed subsequently*.

<sup>597</sup> *Revised Statutes 1835*, Chap. 39, Sect. 46-7, p342.

<sup>598</sup> *Revised Statutes 1835*, Chap. 39, Sect. 55-64, pp343-5.

<sup>599</sup> *Ibid.*, Chap.39, Sect. 66-72, pp345-6.

provide the same<sup>600</sup>. In the period to 1850, the legislature passed a number of safety promotion measures<sup>601</sup>.

The Revised Statutes set out some rules on the organisation of the railroad corporation. There was to be a board of not less than five directors chosen by the members of the corporation. Directors were to hold their office until others were duly elected in their place. The directors were to elect one of their number president and also elect a clerk and a treasurer, the latter to give bonds to the corporation for the faithful discharge of his trust. Voting at general meetings was to be on the basis of one vote per share but a member was limited to voting for 10% of the whole capital of the corporation. Meetings were to be called and notified according to the by-laws of the corporation.

Shares were deemed personal estate and could be transferred by record in the corporation's books and the issuance of a new certificate. Assessments (calls for payments) on shares were to be made equally on all shares. Failure to pay an assessment for over 30 days past a notice from the treasurer would lead to the sale of shares at public auction with the original shareholder liable to pay a shortfall or receive a surplus.<sup>602</sup> There were no additions or amendments to this group of rules until 1849 save for an 1840 law which prevented any salaried officer, save the president, of a railroad receiving state credit from becoming a director.<sup>603</sup>

The railroad had the right to set tolls but the legislature retained the right to reduce tolls to a level where the corporation had a 10% return.<sup>604</sup>

An important part of Massachusetts general railroad legislation was the requirement to provide an annual return under oath of activity, receipts and expenditure; also the books of the corporation were at all times to be open for inspection by the legislature. The fine

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<sup>600</sup> *Revised Statutes 1835*, Chap. 39, Sect. 77 & 85-6, pp347 & 85-6. *Laws subsequently passed*, 1849 Chap. 191, Sect. 2.

<sup>601</sup> *Revised Statutes.*, Chap.39, Sect. 78-80, pp347-8. *Laws subsequently passed*, 1837 Chap. 226 Sect.7, 8 & 9-10; 1849 Chap. 161 & 172, p586.

<sup>602</sup> *Revised Statutes 1835*, Chap.39, Sect. 49-53, pp342-3.

<sup>603</sup> *Laws subsequently passed*, 1840 Chap.83, p166.

<sup>604</sup> *Revised Statutes 1835*, Chap.39, Sect. 83, p348.



for non-compliance with the duty to report was a hefty maximum of \$5,000.<sup>605</sup> Over time more detailed reports of road and rolling stock, traffic, miles run, and income and expenditure were required. By 1849 railroads were required to report 150 items in 9 sections.<sup>606</sup>

The main changes in the 1850s to the Massachusetts legislation related to the issue of bonds which had not been provided for earlier. 1851 saw the first railroad Act to allow for bonds, although some had been issued by railroads earlier and one had been ratified by the legislature. In 1854 a general law allowed all Massachusetts roads to issue bonds up to the amount of the capital with majority stockholder approval. The maximum term allowed was 20 years and the maximum coupon 6%. The disclosure requirements were further extended to cover assets and property beyond the costs of the road as well as the cost of renewing worn out rails. The railroad related law was incorporated in a reissue of the General Statutes 1860 as Chapter 63. Another relevant law in Chapter 63 was that proxies were limited to those less than 6 months old and that a proxy was limited to casting 50 votes unless they were a proxy for a single stockholder and an officer of the company was limited to casting 20 votes<sup>607</sup>.

### *By-laws and corporate governance practice*

The legislative rules on the cap on voting rights, minimum board size and senior officers were supplemented by by-laws setting out how the company was to be governed. Those of the FRR and the OCRR are to hand; they are short documents comprising 18 and 9 articles respectively<sup>608</sup>. The regular general meetings were to be advertised, occur at a set date annually and receive a report from directors. Thresholds were set for stockholders to requisition meetings in the meantime<sup>609</sup>. The FRR by-laws called for the annual election of directors. The OCRR by-laws do not mention the annual election of

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<sup>605</sup> *Revised Statutes 1835*, Chap.39, Sect. 82, p348.

<sup>606</sup> *Laws subsequently passed*, 1837 Chap. 226, Sect. 5 & 6, pp48-9; 1841 Chap. 69, p188; 1846 Chap.251, pp175-9; 1849 Chap. 191, pp540-4.

<sup>607</sup> E M Dodd, *American Business Corporations until 1860 with special reference to Massachusetts* (Cambridge: Harvard University Press 1954), 337-345.

<sup>608</sup>Fitchburg RR Act of Incorporation together with additional acts and by-laws, 13-23. Hereafter FRR by-laws. Records of Old Colony RR, By-laws, 12-14. Hereafter OCRR by-laws.

<sup>609</sup> FRR by-laws 13-14. OCRR by-laws, 12.

directors though do give the general meeting the power to act on any subject within the powers of the corporation<sup>610</sup>. However, the OCRR's first regular meeting minutes refer to the election of all directors for the ensuing year; and the corporation records for the period 1844-51 evidence the annual election of all directors<sup>611</sup>. Press reports of annual meetings in other firms also suggest that the annual election of all directors was the usual practice.<sup>612</sup> Both sets of by-laws allowed for proxies<sup>613</sup>.

The by-laws set down board size and quorums. Directors were given the power to run the company and declare dividends<sup>614</sup>. The FRR specified that directors could settle the pay of officers<sup>615</sup>. The OCRR by-laws are silent on this but its practice was the same. Both sets of by-laws were silent on the reservation of any power to the general meeting on settling the pay of directors including the president. The Old Colony Railroad (OCRR) board set pay including that of directors and the president having received recommendations from a board salary committee <sup>616</sup>.

The FRR by-laws required a director to stand down if they ceased to be a stockholder<sup>617</sup>. The OCRR by-laws are silent on the matter, although it appears from the history of the road that directors were stockholders<sup>618</sup>. Kirkland noted that there was sometimes no requirement for directors to hold stock although as a rule they made a small investment<sup>619</sup>. By-laws related to the president was limited to declaring them chair of the board and general meetings and setting down alternates should they be unavailable<sup>620</sup>.

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<sup>610</sup> FRR by-laws 13. OCRR by-laws 12.

<sup>611</sup> Records of Old Colony RR, 22-3.

<sup>612</sup> Andover Advertiser reporting on Boston & Maine board elections 6 October 1855 and 13 September 1856. Boston Evening Transcript reporting on Boston & Providence board elections 2 February 1856

<sup>613</sup> FRR by-laws 14. OCRR by-laws 12.

<sup>614</sup> FRR by-laws 14-15, 15-18. OCRR by-laws 13.

<sup>615</sup> FRR by-laws 15-16.

<sup>616</sup> Records of Old Colony RR, 16,47-8,65 & 104.

<sup>617</sup> FRR by-laws 15.

<sup>618</sup> OCRR Cofl Report, E H Derby interrogatories 142-4, N Carruth interrogatories 1-3 and U Crocker interrogatories

<sup>619</sup> Edward Chase Kirkland, *Men, Cities and Transportation* Vol I (Cambridge: Harvard University Press 1948), 435.

<sup>620</sup> FRR by-laws 13. OCRR by-laws 12.

The by-laws describe in greater detail the appointment, bonding and role of the Treasurer and Clerk<sup>621</sup>. Otherwise they focus on administrative matters affecting stockholders such as assessments and stock certification and transfer; and the powers of officers to bind the company<sup>622</sup>.

The FRR by-laws reserved only the annual election of directors and mortgaging the railroad and the amendment of the by-laws to the general meeting<sup>623</sup>. Whilst the OCRR did elect directors annually, the only specific matter reserved to the general meeting was the amendment of the by-laws<sup>624</sup>.

The by-laws are brief documents and are silent on subjects seen in British Acts such as contractors, gearing rules, paying dividends out of capital or audit. Massachusetts legislation gave the Commonwealth but not the stockholders access to the books. The material reviewed does not give a right to establish Cofl's. Audit arrangements seemed to vary. The OCRR general meeting appointed an audit committee of three which reported to the annual meeting<sup>625</sup>. The Boston & Maine 1855 Annual Report contained a note confirming the correctness of the Treasurer's accounts. The note by J S Eaton, formally in response to an instruction from the President, also sets out brief details of checks undertaken in recent years which, save for 1852, had not been reported in the Annual Report. A J S Eaton is listed in the same Annual Report as the Season Ticket Clerk. His salary was \$720 compared with \$2,400 for the Treasurer. Stockholder reassurance arising from his check may have been tempered by knowledge of his lack of independence<sup>626</sup>.

Wright in his survey of American corporations in the period 1790-1860 sets out various so called investor checks and considers that voting rights were strongest when bolstered by rights to call meetings, the ability to set up Cofls', pay for shares by instalments and

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<sup>621</sup> FRR by-laws 18-20. OCRR by-laws 14.

<sup>622</sup> FRR by-laws 21-3. OCRR by-laws 12-13.

<sup>623</sup> FRR Acts & by-laws, 13, 16 & 23.

<sup>624</sup> OCRR by-laws 14.

<sup>625</sup> Records of Old Colony RR, 108, 161, 218.

<sup>626</sup> Boston & Maine Annual Report 1855, 32.

receive regular information<sup>627</sup>. Massachusetts railroad stockholders had all of these advantages; it appears that there was no explicit right to establish Cofl's but this did not seem to prevent their appointment.

*Comparison of Massachusetts and British corporate governance frameworks.*

The Massachusetts legislation was less detailed with very short individual Acts and a compact body of general legislation. However, as in Britain, supplementary Acts were required for new capital, branches, extensions and mergers. A similar approach appeared to be taken to compulsory purchase or eminent domain regards land needed for the railway. In both jurisdictions there was the same idea of granting a privilege to a private corporation for the provision of a public benefit but with safeguards against excessive profits. In both there was the ability of the state to buy the railways in at a future date allowing for a 10% per annum return to the railway company.

Massachusetts Acts allowed railroad corporations to set fares and rates but retained the right to reduce them to a level which would allow a 10% return. By contrast British individual railway Acts set specific maximum fares and rates but it is hard to say that any real difference in fares/rates emerged from this legislative difference.

On safety Britain required a Board of Trade Inspector to approve the railroad for opening whereas Massachusetts appeared not to have such a procedure. Otherwise, both jurisdictions raised measures to promote safety in the 1830s and 1840s no doubt largely in response to issues arising from operational experience.

The legislative and byelaw framework of corporate governance was less extensive in Massachusetts than in Britain. In the former matters such as the President's treasurers and clerk's pay as well as declaring dividends was in the hands of directors whereas in Britain the equivalent powers were usually reserved as to the general meeting<sup>628</sup>. However, the annual election of directors, being roughly equivalent to a power to remove them at will, was an important aid to stockholder influence in contrast to Britain where

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<sup>627</sup> Wright, *Corporation Nation*, 136.

<sup>628</sup> CCCA cl. 91.

rotation rules applied. On the other hand, British railway shareholders had the opportunity to challenge directors at regular general meetings every six months.

Massachusetts did not have the rules found in Britain forbidding the payment of dividends out of capital or forbidding parties with a contract with the company to serve as directors. Early Massachusetts rules did not allow for long term debt at all but adopted more liberal rules than Britain in the 1850s. We shall see below that railroad stockholders were in practice sensitive to the problems underpinning those rules<sup>629</sup>. Both Massachusetts and Britain aimed to bear down on the tyranny of large shareholders through a voting cap on one side and graduated voting on the other. It is not clear whether either had much practical impact. Finally, Massachusetts required a much greater disclosure of data about the railroad, its performance and finances than did the British authorities.

In summary the Massachusetts corporate governance framework gave more freedom to railway companies and their directors and managers compared with the British, but required more disclosure about the road, its traffic and finances.

### *State planning & financial involvement*

There appears to have been no attempt by the state to plan the Massachusetts railroad network, nor in this early period were there the railroad commissioners which other states appointed. The Massachusetts legislature did pass an Act in 1845 to appoint a Board of Rail-Road Commissioners to review petitions for railroad charters but repealed it in April 1846.<sup>630</sup> It seems from the pace of promotion and building that the state authorities were disinclined to disturb the promotion of railroads emerging locally. This was funded predominantly by private capital with the Commonwealth of Massachusetts providing credit to railroads only in a small number of cases. It provided substantial credit to the Western Railroad in 1838-41<sup>631</sup> which created an important interstate link to Albany; and a much smaller amount to the struggling Eastern Railroad in 1839 to help it complete its

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<sup>629</sup> For example see Wright, *Corporation Nation*, 145-6.

<sup>630</sup> Chap. 0252 1845 and Chap. 0190 1846 accessed at [archives.lib.state.ma.us](http://archives.lib.state.ma.us) 12 August 2021.

<sup>631</sup> Poor, *History of the Railroads*, 160-3.

construction.<sup>632</sup> The Commonwealth did, however, retain within its general legislation the power to purchase the railroads to which it had granted charters. This power was available at any time after 20 years from the charter and the price would be so as to yield a return of 10% per annum to stockholders. This power was in the Revised Statutes from 1835 or some years before a similar power was adopted in Britain.<sup>633</sup>

A main area of political contention in this period in New England as well as in other parts of the US were so-called improvements, typically infrastructural, which were supported by Whigs in the face of Democrat opposition who feared the growth of large business and its impact on the small farmer and business owner. These debates surrounded both federal and local projects. For example, during the so-called Railroad War, New Hampshire passed an Act in 1840 forbidding eminent domain (the right to compulsory purchase) for railroads. This Act was not fully repealed until 1845 when state railroad commissioners were appointed to approve the route and compensation to landowners; railroad profits were also capped.<sup>634</sup>

### The case study railroads

#### *Boston & Maine Railroad (B&M)*

The B&M was formed in 1842 by the merger of four railroads opened at various times from 1836. These ran from near Lowell, a mill town in Massachusetts north of Boston, through New Hampshire to just over the state line into Maine at South Berwick. In 1845 a direct line for the last 15 miles into Boston was opened. In 1843 in partnership with its rival the Eastern Railroad (the adjacent spoke running north from Boston along the coast), it leased the Portland, Saco and Portsmouth which gave access from South Berwick to Maine's main centre and port at Portland. In 1848 it gained access to Lawrence, another mill town in northern Massachusetts and thereby to traffic to and from Manchester, a mill town in New Hampshire. Its route mileage was 83 in 1849, which figure remained

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<sup>632</sup> Michael J Connolly, *Capitalism, Politics & Railroads in Jacksonian New England* (Columbia, Mo.: University of Missouri Press, 1976), 128-131.

<sup>633</sup> *Revised Statutes 1835*, Chap. 39, Sect. 84, p. 348.

<sup>634</sup> Connolly, *Capitalism, Politics & Railroads*, chapter 2.

unchanged through 1859. Built at a cost of around \$4mn or \$48k per mile (1850 figures), it was a profitable railroad with a good dividend record averaging 6.6% for the period 1841-59. Passenger receipts predominated, accounting for some 2/3rds of total from opening to 1859.<sup>635</sup> Later in the 19th century the B&M became the dominant railroad in northern New England.

During the period under review, the B&M stockholders appointed a Cofl in 1849 and a follow-up Committee of Supervision.<sup>636</sup> This reported in 1850 and raised some points of criticism whilst being generally supportive of B&M management over the previous year. A further Cofl was appointed in 1855 associated with stockholder activism.<sup>637</sup> In its aftermath three candidates promising reform were elected and the board size increased to accommodate them. The board split after their accession and they published a criticism of the the majority's 1856 Annual Report.<sup>638</sup> The minority group lost their seats on the board at the ensuing general meeting.

#### *Boston & Providence Railroad (B&P)*

The B&P secured its Massachusetts Act in 1831 and built a main line 43 miles long from Boston to Providence. Traffic was carried for various branches and connecting roads and by 1859 the B&P ran or leased 55 route miles. The main line cost \$1.5mn to build in the early 1830s (\$35k per mile) and by 1859 the construction account stood at \$3.16mn. Revenue from passengers predominated though by the late 1850s freight accounted for over 40% of total receipts. Financial performance was sound with an average dividend to 1859 of 5.5% and limited recourse to debt. However, dividends suffered in the mid 1850s with only 3% paid in 1854 and none in 1855. The road was independent till 1888.

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<sup>635</sup> Information relating to period up to 1859 from H V Poor, *History of the Railroads & Canals of the United States of America* (New York: John H. Schultz & Co., 1860), 99-102. Hereafter Poor 1860.

<sup>636</sup>Boston & Maine Railroad. *Report of the Committee of Investigation appointed by the Stockholders ... May 28 1849*. Boston: Eastburn's Press, 1849. Boston & Maine Railroad. Hereafter B&M Cofl Report 1849. *Report of the Committee of Supervision ... appointed by the Stockholders September 12 1849*. Boston: Damrell & Moore, 1850. Hereafter B&M CofS Report 1850.

<sup>637</sup>Boston & Maine Railroad. *Report of the Investigating Committee ... to the Stockholders September 29 1855*. Boston: Dutton & Wentworth, 1855. Hereafter B&M Cofl Report 1855.

<sup>638</sup>Boston & Maine Railroad. *Report of the Minority of the Directors of the Boston & Maine Railroad to the Stockholders' Annual Meeting at Exeter NH September 10 1856*. Boston: J H Eastburn's Press, 1856. Hereafter B&M Minority Report 1856.

The B&P Act (1831Ch.056 s.10) had a voting cap of 25% compared with 10% for the later incorporated Massachusetts case study roads. Two separate Committees of Investigation were appointed which reported in 1856<sup>639</sup> and 1857<sup>640</sup> respectively. The first was prompted by reduced dividends and the general depression of railroad stock prices including that of B&P. The second was appointed to investigate specific allegations of payroll irregularities but also consider all other matters pertaining to the business of the road and it followed up on certain issues raised by the earlier committee. No management changes appeared to be associated with these committees. The unusually long lived and little changing leadership of the B&P continued to serve.

### *Fitchburg Railroad (FRR)*

The FRR secured its Act in 1842 and built a line from West Cambridge to Fitchburg completed in 1845. When the mainline was extended into Boston in 1847 it was 50.9 miles long. Including branches the total route mileage was 67.8 miles from 1851 through 1859. The road cost \$3.6mn or \$53.6k per mile (1852 figures). The FRR was more of a freight line than the OCRR, B&M or B&P with passenger receipts on average 42% of total for the period 1844-59. A report on the line's prospects by a board committee correctly judged that mineral, lumber and wooden products traffic would benefit the road.<sup>641</sup> It was a profitable railroad paying dividends averaging 5.8% in the period 1844-59.<sup>642</sup> Later in the 19th century the FRR extended west and north. It was leased to the B&M in 1900.

In January 1856 the stockholders appointed a Cofl which reported in December of that year.<sup>643</sup> The Cofl's findings suggest it was prompted by the passing of the dividend in

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<sup>639</sup>Boston & Providence Railroad. *Report of the Committee for investigating the Affairs of the Boston & Providence Railroad Corporation appointed by the Stockholders on January 9 1856.* Boston: Eastburn's Press, 1856. Hereafter B&P Cofl Report 1856.

<sup>640</sup>Boston & Providence Railroad. *Report of the Committee for investigating the Affairs of the Boston & Providence Railroad Corporation appointed by the Stockholders January 14 1857.* Boston: Henry W Dutton & Son, 1857. Hereafter B&P Cofl Report 1857.

<sup>641</sup> *Report of a Committee of the Directors of the Fitchburg RR Company on the Statistics and Prospects of the Proposed Railroad* (Boston: Dutton & Wentworth's Print, 1842), 6-9. Report signed by E H Derby and Alvah Crocker.

<sup>642</sup> Poor 1860, 123.

<sup>643</sup> Fitchburg Railroad. *Report of the Committee of Investigation appointed at the Annual Meeting ... January 29 1856.* Boston: Henry W Dutton & Son, 1857. Hereafter Fitchburg Report.



1855. No great board or senior management changes followed the publication of the report. The major management change occurred in 1854-5 with the departure of President Jacob Forster and his associates which included E Hasket Derby.

#### *Northern Railroad [NR(NH)]*

The NR(NH), which secured its Act in 1844 and opened in 1847, ran for 69 miles from Concord New Hampshire north west to West Lebanon New Hampshire. A 12 mile branch from Franklin to Bristol opened in 1848 firstly under lease to NR(NH) ahead of the companies merging under an Act of 1849. The combined railroads cost \$2.8mn or \$33.8k per mile (1850 figures). The railroad was profitable but more moderately so than the B&M, B&P and FRR. It passed dividends in 4 years between 1848 to 1859, paying an average of 2.2% over that time. However, it had a more cautious dividend policy than other roads distributing just 46% of net earnings over the period compared to 73% at the FRR and 79% at the B&M. The NR(NH) formed part of a rail route between Boston and Montreal and Quebec and eventually became part of the B&M system in 1890.<sup>644</sup>

In May 1849, the stockholders of the NR(NH) appointed a Cofl which reported in May 1850.<sup>645</sup> No major changes in management appeared to be made as a consequence of the Report but two directors, Carruth and Russell, subject to adverse findings by the Cofl, had already left the corporation.

#### *Old Colony Railroad (OCRR)*

Opened in 1845, the OCRR served the area south east of Boston with its mainline to Plymouth. By 1850, it had extended to a new terminus in central Boston, added two branches and had leased two small railroads in the area south of the city. Further, it had an agreement with the feeder Fall River Railroad, which was an important link in a New York to Boston part water, part rail route.

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<sup>644</sup> Poor 1860, 60.

<sup>645</sup> Northern Railroad (New Hampshire). *Report of the Committee of Investigation of the Northern Railroad to the Stockholders May 1850*. Concord: Asa McFarland 1850. Hereafter NR(NH) Report.

The OCRR was a medium sized railroad with 45 miles of track and capital stock of \$1,956k. The all in cost of the road, buildings and equipment was \$2,292k or \$51k per mile. Earnings in 1849 were \$275k, expenses \$235k and net earnings \$39k. Passenger traffic predominated, accounting for some 75% of the total receipts in the period 1846-53.<sup>646</sup>

The OCRR did not occupy the most profitable railroad territory in Massachusetts. Its area was less populous and had less trade and industry than others. Moderate earnings together with the cost of extension into central Boston, building a branch it probably did not need and adding extra capacity to accommodate Fall River traffic put pressure on net income and the dividend was passed in 1849 and 1850.

A Committee of Investigation (Cofl) reported in April 1850 and raised a broad range of business and control issues.<sup>647</sup> It was unique amongst the case study railroads in publishing the transcripts of its interviews and appeared to reach a little more deeply than the others into the day-to-day finances and workings of the railroad. It was critical of the OCRR senior management including its president E Hasket Derby. A noisy and extended General Meeting also in April 1850 saw Derby, who had published a rather angry response to his critics,<sup>648</sup> voted off the board along with others. The Cofl report was probably the main factor in their removal, although there had been signs of board dissent to Derby's regime in preceding months.

The OCRR returned to moderate financial health in the early 1850s, merged with the Fall River RR in 1854 and remained independent until 1893.

### Railroad Stockholder Discourse

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<sup>646</sup> Hereafter Poor 1860, 142.

<sup>647</sup> *Report of the Committee for Investigating the Affairs of the Old Colony Railroad Company appointed by the Stockholders 26. 12. 49*, (Boston: Eastburn's Press, 1850). Hereafter OCRR Cofi Report.

<sup>648</sup> E H Derby, *Brief Reply. Report of the Investigating Committee of the Old Colony RR Corpn. By the President of the Company. April 12 1850*. Boston: Damrell & Moore Printers. Hereafter Derby Reply to Cofl.

Stockholders secured information from railroad company Annual Reports, although, as we shall see they often had little time to digest them before the Annual Meeting. Local papers reported proceedings of railroads' General Meetings but, from the evidence I have been able to find, only from time to time. Comment from local press appeared to be infrequent. The Boston press did cover the OCRR meetings of December 1849 and January and April 1850 probably because of the financial difficulties signalled by the passing of the dividend.<sup>649</sup>

Share prices were carried in the local and specialist press. For example the Boston Daily Evening Transcript carried a weekly report on share sales and prices at the Boston Stock & Exchange Board. On the Saturday before the general meeting on 16 April 1850, it reported the OCRR price to have receded to 50 on the back of the publication of the Cofl report.<sup>650</sup> The American Railroad Journal reported prices in Boston, New York and Philadelphia, the three major financial centres in the country.<sup>651</sup>

Specialist press coverage and comment included the American Railroad Journal (ARJ) edited from 1849 to 1861 by Henry Varnum Poor, Hunt's Commercial Journal (HCJ) which contained longer pieces carrying individual bylines and the American Railway Times (ART) edited in 1850 by John A Haven. The weekly ARJ and ART carry reports, comments and advertisements and are of similar length and format to British journals such as Herapath and the Railway Times. However, they appear not to report on Annual Reports and General Meetings as regularly as their British counterparts. It is striking that the ARJ carried a good deal of copy from the British weeklies and regularly compared and contrasted British and US practice and performance. In an issue where the ARJ might have - but did not - report on the OCRR 1848 Annual Meeting, it carried items on the mixed gauge at Cheltenham and on the rapid growth of trade at Grimsby.<sup>652</sup>

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<sup>649</sup> Boston Daily Advertiser 16, 17 & 18 April 1850 (From microfilm held by Cambridge University Library). Boston Herald 27 December 1849 & 16, 17 & 18 April 1850. (From [infoweb.newsbank.com](http://infoweb.newsbank.com) accessed at Cambridge University Library); Boston Herald 16 April 1850.

<sup>650</sup> Boston Daily Evening Transcript, 13 April 1850, p. 2 (From [infoweb-newsbank-com](http://infoweb-newsbank-com))

<sup>651</sup> For example in American Railroad Journal (ARJ) 20 November 1847, vol.III/47, p 738. (From HathiTrust)

<sup>652</sup> ARJ 8 January 1848, vol.IV/2, p 18 & 20.

A further source for those interested in Massachusetts railroads were the annual returns to the legislature described above. They were published in the specialist press which prepared comparative analyses.<sup>653</sup> These would have been helpful given there was a number of similar sized railroads radiating from Boston worthy of comparison.

### The stockholder bodies

Whilst it has not been possible to locate the stockholder registers for the case study railroads, the Cofl Reports for three roads, in contrast to the British examples, include some data on the stockholder bodies as summarised in the following tables.

**Table 8.2 OCRR, B&M and NR(NH) stockholders by residence.**

#### Number of Stockholders by Residence

	Boston	Other Mass	New Hampshire	Maine	Other	Residence not given	Total
<b>Old Colony 1850</b>	316	335	37	6	19	607	1,320
<b>Boston &amp; Maine 1849</b>	494	670	697	69	51	222	2,203
<b>Northern RR NH 1850</b>	Not given: in Other Mass	760	1,087	19	23	315	2,204

#### Stockholders by Residence %

	Boston	Other Mass	New Hampshire	Maine	Other	Residence not given
<b>Old Colony 1850</b>	24	25	3	0	2	46
<b>Boston &amp; Maine 1849</b>	22	31	31	3	3	10
<b>Northern RR NH 1850</b>	Not given: in Other Mass	34	49	1	2	14

<sup>653</sup> For example ARJ 31 March 1849, vol. V/13, pp 198-201.

Shares by Residence %

	Boston	Other Mass./ Mass. total	New Hampshire	Maine	Other	Residence not given
<b>Old Colony 1850</b>	45	24 (other Mass.)	3	0	2	27
<b>Boston &amp; Maine 1849</b>	43	25 (other Mass.)	20	4	3	5
<b>Northern RR NH 1850</b>	Not given	50 (Mass. total)	37	1	3	9

The OCRR Cofl report set out the number of stockholders and shares by town/city in each of Massachusetts, Maine, New Hampshire, Rhode Island and Connecticut.<sup>654</sup> The B&M report did likewise for Massachusetts, Maine and New Hampshire<sup>655</sup> whereas the NR(NH) report limited its town/city list to New Hampshire.<sup>656</sup>

The stock of these railroads was overwhelmingly held by those living in New England. This would improve corporate governance for Wright as local stockholders were more likely to be well informed and participate<sup>657</sup>. There was practically no investment at all from, say, New York, Philadelphia or overseas. All railroads have some investors whose residence was unknown or not given, although this is only a material number in the case of the OCRR where 46% of stockholders were of unknown residence. No explanation for this is given in the Cofl report or other OCRR papers for this and we can only speculate that these stockholders either paid assessments and collected their dividends in person or through some intermediary such as a broker or attorney. There is no evidence in the history of the OCRR of dominant large stockholders and in any case Massachusetts law, as we have seen, limited a stockholder to voting 10% of the total at a general meeting. Further, the number of shares of unknown residence at the OCRR was much lower at 27%.

There is evidence of stockholders resident along the routes of the railroads. Some 7-8% of stockholders and shares in the OCRR, for example, were resident in Plymouth and the

<sup>654</sup> OCRR Cofl Report, 155-6, Appendix D.

<sup>655</sup> B&M 1849 Cofl Report, 10-12.

<sup>656</sup> NR(NH) Cofl Report Appendix, 64.

<sup>657</sup> Wright, Corporation Nation, 163.

adjacent Kingston at the end of the line. Concord, Boscawen, Lebanon and Franklin were important stops on the NR(NH) and together accounted for 14% of stockholders and 13% of shares. Reading, Andover and Haverhill in Massachusetts and Exeter, Durham and Dover in New Hampshire were important stops on the B&M and together accounted for 26% of stockholders and 21% of shares. Save for Boston, these were not in very large concentrations but were sufficient to provide a basis for agitation if necessary.

Bostonians accounted for nearly half the shares in the OCRR and B&M. It is not known what part of the 50% of shares in the NR(NH) held by Massachusetts residents were held in the metropolis but it is likely to be substantial as it was a feeder railroad for Boston terminating lines and given the involvement of Bostonians Gilmore and Carruth in its promotion and early operation. Boston had a substantial pool of capital to invest and this is reflected in a higher average of shares held.

**Table 8.3 Bostonian investment in B&M, NR(NH) and OCRR.**

	Average shares per stockholder	Average shares per Boston or Massachusetts stockholder
<b>Boston &amp; Maine 1849</b>	16.14	31.18 (Boston)
<b>NR(NH) 1850</b>	12.56	18.37 (Massachusetts)
<b>Old Colony 1850</b>	14.88	27.87 (Boston)

An indication of the homogeneity and local nature of stockholder bodies is given in the 1857 B&P Cofl Report; whilst not giving any detail, it considered that as the stockholders of the Boston roads were to a considerable extent the same, there was a prospect of concerted action on the evil of free passes.<sup>658</sup>

<sup>658</sup> B&P 1857 Cofl Report, 14.

It has not been possible to see how the shares are distributed between holdings of differing size and how much the results of General Meeting votes depended upon stockholders with the largest holdings. A number of factors point towards a fairly wide distribution and away from dominance by a small number of stockholders. First, there were a large number of very largely local stockholders - the B&M and NR(NH) had over 2,000 stockholders and the OCRR over 1,300. Second, the turnover of railroad directors and the appointment of Committees of Investigation seemed to reflect a stockholder body capable of challenging and changing the railroads leaders. It is certainly possible that a group of large stockholders, say part of the Boston mercantile elite, kept control and changed its mind on leaders and policy as circumstances demanded. However, there is no particular evidence for this and it seems unlikely at least that there was any such group associated with these railroads from their promotion capable of dominating votes at General Meetings given the turnover of directors over time. Overall, the evidence on the stockholders of these railroads suggest broad local groups without dominating cliques hence open to agitation.

#### Prompts for stockholder action

Difficult trading conditions in the economy at large and weakened financial performance by the railroads themselves tended to be the major factors behind stockholder action. 1848 and 1849 were poor years for trade in New England as elsewhere and railroad dividends were falling, partly because of this and partly because on a long run basis they had probably been too high in the mid 1840s. Revelations emerging in 1849 about false accounting and insider expropriation at some of George Hudson's railways in Britain may also have prompted New England stockholders to check that their properties had not been similarly afflicted. New England railroad finances came under pressure in the mid 1850s partly through some poor years for the economy generally and weakening cost income ratios from generally rising costs and relatively static fare and rate structures. A number of Cofl's were appointed then mainly for these reasons, but stockholders were likely keen to check they were unaffected by the type of fraud perpetrated on the New York & Haven RR by its president Robert Schuyler. This came to light in 1854, cost the

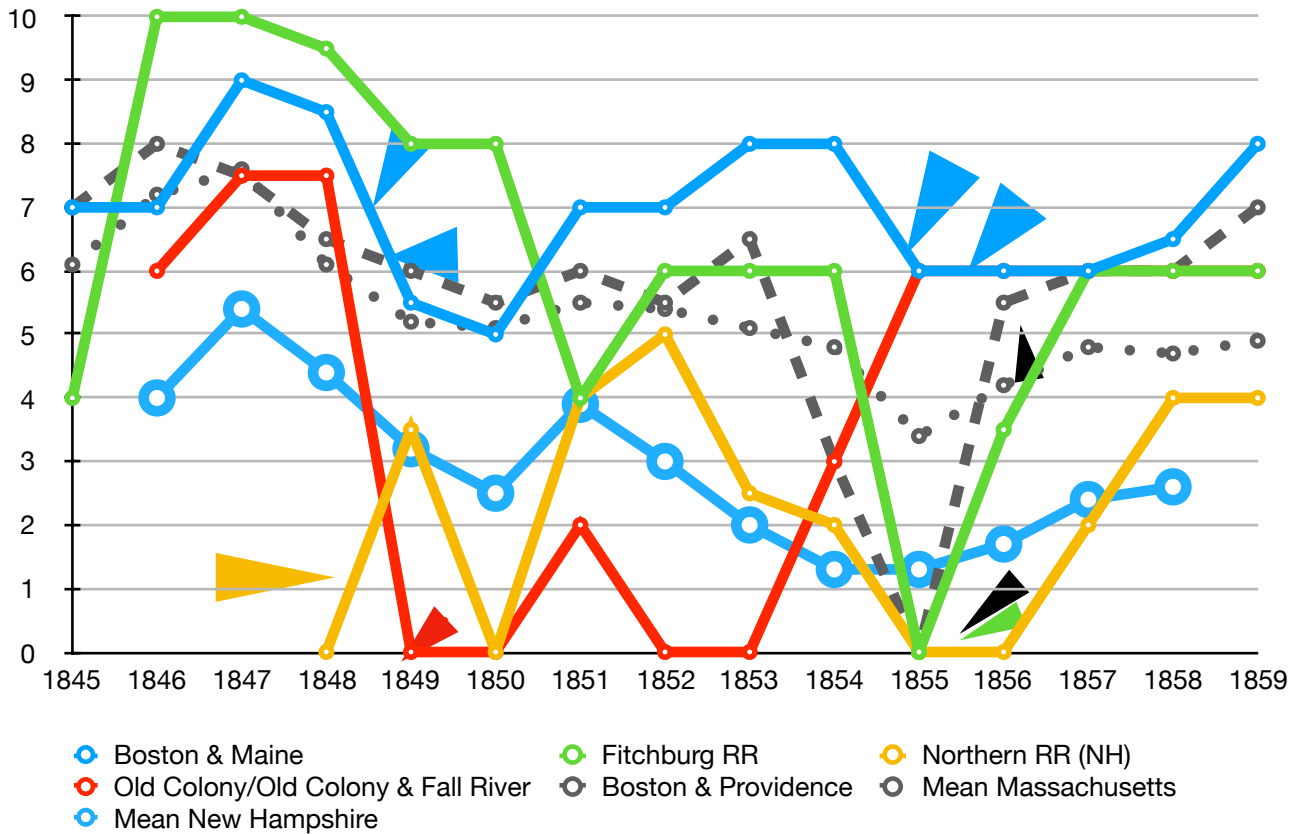
road \$2mn and shook the railroad world. It is discussed below under Stock Account and Registration.

The B&P, OCRR, Fitchburg and NR(NH) Cofl's were called at a time when the roads were not paying dividends. The B&M was a much more profitable railroad and paid substantial dividends but it too appointed Cofl's to consider issues bearing on financial pressures on railroads. These were set up in 1849-50 and 1855-7 when there was general concern about the return on railroad stocks and the remedial steps which might be taken. Please see the chart below of the dividend records and appointment dates of the Cofl's of the case study roads.



**Figure 4**

**Dividends paid % and date of appointment of Committees of Investigation at New England case study roads**



**Notes on chart:**

1. dividend data from H V Poor, History of the Railroads & Canals of the United States of America (New York: John H. Schultz & Co., 1860; the mean Massachusetts dividend is calculated from the aggregate capital and dividends of railroads in the state on page 93.
2. years are year ends so NR(NH) Cofl appointed May 1849 and OCRR Cofl appointed December 1849.
3. the final B&M arrowhead represents the publication date of a report of a minority of the board disagreeing with elements of the Annual Report; it is included as an example of organised dissent from prevailing management policy

## Boards of Directors

### *Comparison between New England & British Boards - the role of President*

The Boards of the New England case study railroads were quite small with 6 to 9 members. Each had a President who was Chairman of the board. They also had a Treasurer, a Clerk (equivalent to Company Secretary) and a Superintendent, who was responsible for the operation of the road. A few of these officers were full Board directors; generally they were not but their names were typically advertised in the Boston Directory. There are some differences between the British and American case study boards. First, whilst we have been looking at the case study railroads in their early operational rather than construction phases, there appears to be less evidence of the ongoing role and status of the person responsible for the engineering of the New England roads. Second, the American boards are smaller than the British perhaps because the roads were shorter and there were fewer places to represent; further, New England did not seem to follow the British practice of having larger boards including local persons of substance to encourage investor confidence and improve the prospects of successful promotion of the line. Third, the British lines did not have the position of President.

The British Chairman of the Board had an equivalent role to President in terms of Board process. However, whilst the Presidents of Massachusetts roads were not full time executives in the 1830s and received a director's modest pay at that time, by 1850 they were becoming more so and commanding salaries of similar scale to those of Superintendent and Treasurer.<sup>659</sup> The following table derived from a comparative table appended to the NR(NH) CofI Report give senior officer salaries for 1849-50:

#### **Table 8.4 Senior officials salaries 1850.**

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<sup>659</sup> Charles J Kennedy, 'The Early Business History of Four Massachusetts Railroads - III', *Bulletin of the Business Historical Society*, Vol.25/3 (Sep 1951), 201-203.

	Boston & Providence	Boston & Maine	Northern Railroad	Old Colony	Fitchburg
President	2,000	2,000	1,200	1,500	1,500
Superintendent	3,000	2,000	2,000	1,800	2,500
Treasurer	1,500	1,500	say 1,100	1,000	say 1,500

Notes on table

Data from NR(NH) comparative analysis sheet appended to NR(NH) Cofl report. NR(NH) and FRR estimates as figures on sheet include Treasurer's clerk(s). OCRR figure in NR(NH) report also includes treasurer's clerk so actual taken from OCRR Board Minute Book 175-6.

After 1850 of these roads it has been possible to find disaggregated data for senior officer salaries for the B&M only:<sup>660</sup>

**Table 8.5 B&M senior officials salaries.**

	1849	1855	1857	1862
President	2,000	3,500	3,000	2,700
Superintendent	2,000	2,500	2,000	2,250
Treasurer	1,500	2,400	2,400	2,250

By 1850, the President was paid much more than other directors if the NR(NH) is typical. He had a salary of \$1,200 whereas directors received \$3 per day and expenses so assuming a fortnightly board they would receive \$72 per annum. However, the President was not necessarily the highest paid officer and at this time the role was evolving. In time the development of professional management and growth in the scale of operations would lead to a more settled distribution of responsibilities between the Board and officers in both America and Britain. However, around 1850, whilst the position of President in US railroads was still evolving, its very existence and more advanced development in New England gave a clearer focus than existed in Britain on where responsibility lay for the management and performance of the railroad. If the B&M and

<sup>660</sup> From B&M Annual Reports. Accessed at [babel.hathitrust.org](http://babel.hathitrust.org) 15 July 2021.

the OCRR (where the new president in 1850, Crowninshield, was paid a salary of \$3,500) are typical, after 1850 the president became the highest paid officer in the company.

*Residence of directors*

The evidence points to practically all directors of the New England case study railroads being resident in New England in the period 1845 to 1860. None is described as from outside the region and only two or three are unknown.

It has been possible to find the residence of directors for some roads for some years. The following tables show a rough split between Boston residents and those living close to the line.<sup>661</sup>

**Table 8.6 New England railroad directors by residence.**

Northern Railroad Residence of Directors

NR(NH)	1846	1847	1848	1849	1850	1851	1852	1853	1854	1855	1856	1857	1858	1859	1860
<b>Boston</b>	3	3	3	3	3	3	4	4	4	4	4	4	4	4	4
<b>Other Mass</b>				1	1	1									
<b>New Hampshire</b>	4	4	4	3	3	3	3	3	3	3	3	3	3	3	3

Residence of Old Colony RR Directors

OCRR	1845	46	47	48	49	1850	51	52	53	54	55	56	57	58	59	1860
<b>Boston</b>	3	3	3	4	4	4	4	4	3	3	2	3	3	3	3	3
<b>Plymouth /Kingston</b>	4	4	4	4	3	1	2	2	1	1	1	1	1	1	1	1
<b>Fall River</b>											1	1	1	1	1	1
<b>Unknown</b>						1		1	1	1	2	2	2	2	2	2

<sup>661</sup> Sourced from listings placed by the roads in the *Boston Directory* and *The Massachusetts State Record & Yearbook* and from road specific evidence.

### Residence of Boston & Maine Railroad Directors

Boston & Maine	1845	46	47	48	49	50	1851	1852	1853	1854	1855	1856	1857	1858	1859
<b>Boston</b>							4	4	5	5	5	5	3	3	3
<b>Other Mass</b>							1	1	1		1	3	3	3	3
<b>New Hampshire</b>							1	1	1	1	1	2	2	2	2
<b>Unknown</b>							2	2		2	1				

Fitchburg Railroad	1845	1846	1847	1848	1849	50	51	52	53	1854	1855	1856	1857	1858	1859
<b>Boston</b>	4	4	4	4	3										3
<b>Fitchburg, Waltham, Concord</b>	3	3	3	3	3										3
<b>Other Mass</b>	4	3	2	2	2										
<b>Other N Eng</b>	2	1													
<b>Unknown</b>			1	1	1										

Pundits such as H V Poor saw the engagement of investors and directors from along the road's route as an important element in securing a railroad to meet local needs and built at a cost free of excess profit paid to outsiders.<sup>662</sup> Some of the rhetoric around the contests for B&M board places in 1855-6 sought to promote a proper level of representation for places along the route, and, it may have helped in securing a board in 1856, as the above table shows, containing fewer Bostonians.<sup>663</sup>

<sup>662</sup> American Railroad Journal 2.12.1854 quoted in Spencer, *Railway Morals*, 101-3.

<sup>663</sup> Boston Courier 17 September 1855 and Andover Advertiser 15 September 1855.

### *Boston business elite and service on multiple boards*

A Boston business elite with fortunes partly based in trading between Boston and Canton, the so-called China Trade, began to invest in railroads from around 1840. Its career in developing railroads first in the mid-west and later transcontinentally is described in Johnson & Supple's study.<sup>664</sup> This work cites in turn an 1846 publication "Our First Men", an anonymous list of Bostonians "credibly reported" to be worth at least US\$100k. Johnson & Supple cite the revised edition but both this and the original edition, also of 1846, are to hand.<sup>665</sup>

Several of directors of the case study railroads appear in "Our First Men" - they are mostly in the second rank, are in a variety of businesses and have reported fortunes well below of the China traders such as Forbes and Perkins, who went on to make substantial investments in western railroads.

Some directors served on a number of boards of independent corporations including those of the case study roads.<sup>666</sup> Some examples are:

Nathan Carruth served on the boards of the OCRR and NR(NH) simultaneously in the late 1840s.

E H Derby served on the boards of the OCRR and FRR simultaneously in the late 1840s. He had been a director of the Western Railroad in the early 1840s.

William J Walker served on the boards of the B&M, NR(NH) and OCRR in the 1850s with periods of simultaneous service on two of them.

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<sup>664</sup> Arthur M Johnson and Barry E Supple, *Boston Capitalists and Western Railroads* (Cambridge: Harvard University Press, 1967).

<sup>665</sup> "Our First Men:" *A Calendar of Wealth, Fashion and Gentility ... a list of those Persons Taxed in the City of Boston... Worth One Hundred Thousand Dollars, with Biographical Notices of the Principal Persons* (Boston: Published by All the Booksellers, 1846). Original and Revised Editions available at [www.hathitrust.org](http://www.hathitrust.org).

<sup>666</sup> Sourced from listings placed by the roads in the *Boston Directory* and *The Massachusetts State Record & Yearbook* and from road specific evidence.

F B Crowninshield served as President of the OCRR 1850-4 and remained on the board until at least 1860. He was also President of the Boston & Lowell RR board from 1856 until at least 1860.

Addison Gilmore was treasurer of the OCRR in 1846-7 and worked on commission for NR(NH) in 1846. He served as president of the Western RR, another line terminating in Boston, in 1847-1850.

Josiah Quincy junior was Treasurer of the Western Railroad 1845-7, was director of the OCRR with responsibility for finance in 1847-8 and was Mayor of Boston in 1846.

Service on more than one board, which seems more commonplace than in early British independent railways, may have stemmed from the concentration of a relatively large number of roads in a moderate sized district and a limited pool of appropriately skilled and experienced people in a new type of business. A potential negative effect could have been management stretch. A more positive likely effect would have been the facilitation of the flow of ideas between roads.

### *Length of service*

The length of service of the directors and officers of the case study railroads, and, by way of comparison, those of the Eastern and Western Railroads for the period 1845-60 (1846-60 for the NR(NH)) reveals the following:

**Table 8.7 New England railroad directors and officers by length of service.**

<b>Railroad</b>	<b>Average service of President</b>	<b>Average service of Treasurer</b>	<b>Average service of Directors inc President</b>
Western	3.5	8.0	3.5
Boston & Maine	3.2	8.0	4.2
Old Colony	3.1	5.3	5.5
Eastern	4.0	5.3	6.7
Northern (NH)	7.5	7.5	5.3
Fitchburg	4.0	8.0	7.9
Boston & Providence	8.0	16.0	7.5

The figures<sup>667</sup> reveal a fairly stable overall picture. It seems that once a Treasurer had established his integrity and competence he would remain in post for some while. People generally served for a few years. Only 8 of the 188 directors and senior officers (treasurer, superintendent and clerk) in post for the seven roads served throughout the period and only 13 (excepting 5 in 1845 and 1860 who may have served earlier or later) served for only one year.

Within the overall picture there was significant rotation of directors in 1849-50 and 1854-6 around the time when Cofl's were appointed.

In April 1850 following the publication of the Cofl report the OCRR stockholders voted in four new directors, one of whom F B Crowninshield became President. In March 1850, the much criticised Treasurer, Fletcher, was replaced by J M Washburn who served until at least 1860. Through the 1850s there was relatively little change in the board of the OCRR save for the appointment of three new directors upon the amalgamation with the Fall River RR in 1854.

At the NR(NH) in 1849-50 there were three new directors and a Treasurer appointed to replace the previous Treasurer, Nathan Carruth and directors, Russell, Wildes, Fisk and David. Carruth and Russell were criticised in the Cofl Report but we have yet to discover the circumstances surrounding the retirement of the other three. Thereafter, three new directors appeared in 1853-4. Again the circumstances of their accession are not known. Having been Superintendent in 1850-1, Onslow Stearns, renowned New England railroad leader and future Governor of New Hampshire, had in 1852 begun his 26 year term as President.

The Fitchburg saw only one major change of board members in 1853-4 when President Jacob Forster and six directors including E H Derby retired and three new directors acceded including new President Thomas Whittemore and his successor after a year, John J Swift. These changes were associated with the financial pressures on the road as evidenced in the passing of the dividend. The Cofl, which reported in late 1856, had

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<sup>667</sup>Sourced from listings placed by the roads in the *Boston Directory* and *The Massachusetts State Record & Yearbook* and from road specific evidence.



received material in defence of Forster and his associates but had ruled that the actions of the previous board were outside the scope of its investigation. However, it noted that it did not question their integrity.<sup>668</sup>

The B&M saw a turnover of directors and officers in 1849-50 at the same time as a Cofl was reviewing various elements including retrenchment and capital raising. By the General Meeting of September 1855, there was considerable stockholder concern about the B&M's performance and a challenger ticket for board places promising reform was put up. The general meeting was adjourned pending the production of the Cofl Report. Following a well attended and heated adjourned meeting, the election saw ten candidates exceed the 50% plus 1 of votes cast "necessary to a choice." These included three of the challenger group including Francis B Hayes, the chair of the OCRR Cofl. It was soon decided to confirm the election of ten rather than limit the board size to its usual seven.<sup>669</sup> The following year saw the board regularly split five to four in favour of the previous incumbents. In September 1856 the Annual Report published by the majority was followed by the publication of a minority report by the other four. The election at the General Meeting of 10 September 1856 the old guard narrowly prevailed and the board size reverted to seven.<sup>670</sup> On balance the stockholders seemed to prefer to remove the insurgent group for causing internal strife and did not regard the criticisms raised by the minority group as being of sufficient gravity. The resignation of the old President may also have helped waverers to believe that changes for the better were in prospect.

The B&P was somewhat unusual in the stability of its leadership in this period. Its treasurer, Henry Dalton and clerk, Edward Pickering served throughout the period as did two of its directors. A third director served for the whole period save for 1855. It had two presidents during the period with Charles Warren holding the post from 1847 until his retirement in 1867. The board and officers survived the two Cofl reports of 1856 and 1857. The Annual Meeting was adjourned in early 1856 for the Cofl to report. The

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<sup>668</sup> Fitchburg Cofl, Report, 40-2.

<sup>669</sup> Boston Semi-Weekly Courier 17 September, 4 & 8 October 1855. Andover Advertiser 15 September, 6 & 13 October 1855.

<sup>670</sup> Boston Evening Transcript 27 & 30 August, 1, 9, 11 & 15 September 1856. Andover Advertiser 30 August, 6, 13 & 20 September 1856.

adjourned meeting of 6 February 1856 was well attended and heated. Several tickets were in circulation including the incumbents described as “Regular” and some incumbents and some non-incumbents described as “Reform.” The press reported before the election result was announced that it was expected that the “Regular” ticket would prevail by a small majority. Whilst I have been unable to find the election result, it is clear from the directory entries that the “Regular” ticket was successful and were re-elected in 1857.<sup>671</sup>

The Eastern RR board appeared to move through three stable phases 1845-9, 1850-55 and 1856-60 with material changes of personnel between them. The road also had a new President, Treasurer and Superintendent in 1856. The Western RR was unusual in having two directors who served the whole period but also 16 out of the 42 (total of the seven roads) who were directors for one or two years only. Some stability arose from the service of the Clerk, Loring 1845-57, the Treasurer, Fairbanks 1848-60 and President, Chapin, 1854-60. Otherwise directors came and went more regularly than in the other six roads. The circumstances behind changes at these two roads have not been researched.

### Committees of Investigation (Cofl's)

We shall look at the membership of Cofl's and how they worked.

#### *Membership*

The case study Cofl's had three to five members who were stockholders. The members seemed less senior in the railroad world than the boards as only five of the 25 appointed also served either before or after as directors of the same road. Only two or three (the third allowing for a variation in spelling) appeared in “Our First Men”. However, only one of the case study Cofl's, the B&M 1849, had neither a future or past railroad director nor a listee in “Our First Men”. This Cofl, however, made a thorough investigation and did not hold back from making its recommendations on retrenchment and closure of the Construction Account.

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<sup>671</sup> Boston Evening Transcript 6 February 1856.

The Cofl's did not appear to have members who went on immediately to take up director posts. Francis B Hayes, who was a member of the B&M 1849-50 Committee of Supervision, became a director of the B&M but not until 1855-6. Peter T Homer was a member of the B&M 1855 Cofl Committee and became a director from 1856. He appeared in "Our First Men" as a partner in a firm of dry goods importers with an estimated worth of \$100k and had been a member of a Cofl appointed by the stockholders of the Western RR in 1842. The other two Cofl members who had also been directors were Thomas West, immediate former president of the B&M, who served on the 1849-50 Committee of Supervision and John Flint, a member of the 1855 B&M Cofl who had been a director 1847-53. An exception to this rule was Nathaniel Whiting who was a member of the OCRR Cofl and went on the board in April 1850 for 2 years. Whiting later served on the B&P 1856 Cofl.

Perhaps the most illustrious and prolific Cofl member was Francis B Hayes (1819-84), who was chair of the OCRR Cofl and a member of the 1849-50 B&M Committee of Supervision. He was also a member of the board minority which publicly challenged, as a Cofl might, the B&M board majority Annual Report in 1856. Hayes began practising law in the 1840s with a focus on corporations and railroads. He was chair of the OCRR Cofl aged only 30 and was reported in a later press article as having been employed by the NR(NH) as counsel to investigate the actions of certain parties connected with it. Whilst not mentioned in the NR(NH) Cofl report, Hayes's involvement is plausible given the reputation gained from the OCRR work and the involvement of Carruth and others in both roads. After his involvement with the B&M in the mid 1850s, Hayes served as a director on railroad boards - for example as a director of the OCRR from 1864 until at least 1882<sup>672</sup>. Hayes was also a politician in later life serving as a Representative and Senator in the Massachusetts legislature in the 1870s. In 1875 he was elected state director of the Boston & Albany RR and issued a report charging improper administration which was supported by the legislature which ordered a further investigation. He was also credited with recommending successfully that the road's dividend be cut from 10% to 8% with reduced fares benefitting the public.<sup>673</sup>

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<sup>672</sup> Boston Directory OCRR Advertisements.

<sup>673</sup> Biographical details are taken from 'Francis B Hayes. Candidate for Congress in the Fifth District. Sketch of an Honourable Public and Private Career,' an article in the *Cambridge Chronicle*, 19 August 1882. Hayes was not elected.

Much of the above is taken from a press pre-election testimonial for Hayes. Nonetheless, these later career events show his willingness to challenge railroad boards and managers and to promote a balance between the interests of customers, stockholders and the state.

Whilst the quality of the Cofl's must mainly be judged by the issues identified and outcomes secured, such evidence as can be found on their members suggests that within their number there was sufficient status and ability for them to do the job set for them.

### *Cofl's ways of working*

The Cofl's were appointed by and reported to stockholders general meetings. Some, such as the OCRR, B&M 1855 and B&P 1856, were asked to report in short order to an adjourned general meeting. Otherwise, the reports were delivered to the next regular meeting; the FRR Cofl had the power to summon stockholders in advance of the regular meeting but found no need to do so.<sup>674</sup>

The Cofl's had a broad scope to report on the condition, finances, management and prospects of the road. There has does not appear to have been any haggling at the general meetings to limit scope. In addition, the 1849 B&M Cofl was charged with assessing what capital was needed to complete planned works and leave the corporation free of debt.<sup>675</sup> The FRR Cofl scope included checking if any reduction in the salary of officers could be made.<sup>676</sup> The 1849-50 B&M Committee of Supervision's scope was to supervise the doings of the road from time to time and examine the books of account and to report at the next general meeting.<sup>677</sup> With only three members this was a committee of oversight rather than one of investigation and seemed to be set up partly to check whether the recommendations of the 1849 Cofl had been adopted. Whilst we have seen British shareholder committees of assistance set up to advise on a specific issue, the

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<sup>674</sup> FRR Cofl Report, 3-5.

<sup>675</sup> B&M 1849 Cofl Report, 4.

<sup>676</sup> FFR Cofl Report, 3-5.

<sup>677</sup> B&M CofS 1850, 3.

B&M 1849-50 Committee of Supervision seems at least unusual in US or British experience as a committee of oversight. It appeared to exist for just the one year.

Each Cofl had a clerk who did much of the work in seeking and gathering information and recording interviews. No information is to hand as to how much they were paid, although a considerable commitment was required of the NR(NH) clerk, Levi Marsh, who put in 163 days or part days.<sup>678</sup> It seems that the Cofl members were not paid (other than expenses) though only the OCRR Report made the specific point that the Cofl members were not seeking payment even though the scope had permitted them some compensation.<sup>679</sup> Much of the burden was carried by the officers of the road in providing information to the Cofl. All but the OCRR thanked the officers for giving ready written and oral answers and access to papers.

The information gathering process seemed to work satisfactorily in all cases but for the OCRR Cofl where initial difficulties in getting answers and information led to the use of written interrogatories.<sup>680</sup> The FRR and B&M 1855 Cofl's canvassed in the press for complaints from the public; the FRR said it had advertised for malcontents and fault finders. Both reports dealt with complaints received cursorily and none were taken up by the Cofl.<sup>681</sup> There appeared to be no attempt to seek out disaffected customers with issues which tuned with those of the Cofl as in the case of the ECR.

Whilst management responses to the NR(NH) and B&M 1849 Reports included comparison of financial performance with other roads, only the OCRR and B&M 1849 Cofl's had visited other roads and companies on areas of major concern at home. A sub-committee of the OCRR Cofl had visited the Western RR and the Boston & Worcester RR to see how they kept their accounts and books and the B&M Cofl had visited engine and car shops in the Boston area. In the latter case the smaller size and greater productivity of these shops was argued; in the former the Cofl limited itself to praising the departments of the Western RR it had visited but carried no detail as to accounting or

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<sup>678</sup> NR(NH) Cofl Report, 4.

<sup>679</sup> OCRR Cofl Report, 8 & 83.

<sup>680</sup> OCRR Cofl Report, 10-11.

<sup>681</sup> FRR Cofl Report, 38-42. B&M 1855 Cofl Report, 22-3.

administrative practice at these roads it might adopt.<sup>682</sup> Perhaps this was because the OCRR accounts had been so badly kept, specific reference to good practice elsewhere was unnecessary; the OCRR's accounting arrangements needed complete reform.

Railroad investors wanted to know that their property was in good condition. They saw themselves as owning part of the road's real assets and wanted reassurance in the face of difficult or depressed stock prices that their funds provided to build and equip a profitable railroad had been properly spent. The B&M 1849, OCRR and NR(NH) Cofl's provided a great amount of detail in their reports including extensive information on the road's workforce and its cost; inventories of the corporation's land and operating assets; a detailed breakdown of earnings by station for passengers and freight; and an analysis of the residence of stockholders. In response the B&M and NR(NH) Boards themselves provided information including comparisons of their performance with those of other roads both generally and in response to specific matters such as on the B&M car and engine shops. Whilst the Annual Reports to Stockholders and Annual Returns to the Commonwealth required roads to be able to provide this sort of information, these three reports reflect the ability of road officers to provide the information and the Cofl's willingness to publish so much of it. They would have helped to establish expectations of stockholders on the sort of information roads should be providing.

Only the OCRR Cofl published transcripts of the evidence it had taken from interviewees who were mainly current directors and officers. However, former directors such as Carruth and Quincy agreed to be interviewed. There appeared to be no common practice as to allowing a right of reply before publication. The B&M board's defence to the 1849 Cofl report said that if it had been given an earlier right of reply, it could have corrected some inadvertent errors in the engine and car shop numbers. The NR(NH) Cofl reported the views of the officers on some of the key issues addressed and noted that it was prepared to accept them for the present.<sup>683</sup> At the OCRR certain of the issues raised by the Cofl were actioned by the board prior to the issuance of the report and Derby's response.

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<sup>682</sup> OCRR Cofl Report, 10 & B&M Cofl Report, 42-3.

<sup>683</sup> NR(NH) Cofl Report, 23.

The Cofl's operation appeared thorough with no limitation to access or scope, an orderly process of discovery and the production of detailed and structured reports which allowed stockholders to assess the condition of their property.

## Issues and Outcomes

### *Fares and retrenchment*

As Cofl's were often appointed at times of poorer financial performance with reduced or passed dividends, the remedies sought by both Cofl's and railroad boards and managers were aimed at boosting revenue and reducing costs. We shall examine fares policy, free passes, and operational cost cutting.

#### Fares policy

There were regular complaints that passenger fares were too low. The OCRR Cofl supported the railroad's recent increase in the passenger tariff but was careful to balance the interests of the travelling public with those of stockholders. The community should not require the stockholders to lose their investments in providing a service but the public should not be made to suffer through mismanagement of a property especially dependent on public patronage. The public would pay more without complaint if a judicious management could not afford to carry passengers or freight. It was unwise to have very low passenger fares where there were few travellers or too high fares when there were many. It recommended no season tickets for less than a 3 month period and fixed start dates of 1 January, April, July and October.<sup>684</sup>

Whilst the B&M 1849 Cofl limited its fare related comments to free passes, the 1855 Cofl noted that the B&M had not followed other roads in raising the price of seasons as it wished to encourage settlement on its line. The Cofl recommended economising by either reducing the service or raising fares. It was also in favour of increasing special

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<sup>684</sup> OCRR Cofl Report, 78-9.

rates for coal and iron as these involved greater handling facilities, monthly credit and free passes. The B&M was party to a quintuple agreement of the so-called lower roads converging on Boston for the handling of western grain. Rates were very competitive to match seaborne competition and the Cofl discouraged heavy B&M involvement and investment in a potentially unprofitable traffic.<sup>685</sup> The NR(NH) Cofl Report commented on fares and rates only in passing but suggested that the directors should not hesitate to adjust the tariff should business not grow as anticipated in order to secure a proper return to stockholders.<sup>686</sup>

The Fitchburg Cofl Report likewise commented briefly on the serious evils in competition, unprofitable branches and suicidal reductions of prices for railroad services; it noted the road been widely condemned for its attempts to make its tariff remunerative. It rehearsed much the same arguments as the OCRR Cofl about balancing public and stockholder interests and that neither was paramount to the other. The railroad should exercise all proper economy in expenses when setting its tariff; but, if the cost of labour and materials were rising, an intelligent public could not complain if the tariff rose accordingly.<sup>687</sup>

There are some fares and rates data in commonly formatted railroad advertisements in the Boston Directory for the period 1849-60.<sup>688</sup> Not all railroads with directory entries advertised fares and rates and fewer still advertised standard freight tariffs (typically around 3.5-4.0 cents per ton mile) and then only up to about 1850. The OCRR and Fitchburg did not advertise passenger fares in all years.

The advertisements reveal a general move to increase fares between 1849 and 1850. Each of the OCRR, Fitchburg, B&M and the Boston & Lowell (neighbouring road to the B&M) increased single fares with 5/6 mile journeys advancing from a range of 10-12.5cts to a range of 15-20cts, and 25/26 mile journeys advancing from a range of 50-60cts to a range of 60-70cts. Half the three month seasons for these journeys were unchanged and half advanced in the range 7-20%. In 1849 the OCRR was alone of the four roads in

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<sup>685</sup> B&M 1855 Cofl Report, 13-16 & 19.

<sup>686</sup> NR(NH) Cofl Report, 31.

<sup>687</sup> Fitchburg RR Cofl Report 27-31 & 36-7.

<sup>688</sup> The Boston Directory for the years 1849-1860 (published in July) can be found at Hathi Trust [babel.hathitrust.org](http://babel.hathitrust.org) having been digitised by various American universities.



offering one and two month seasons but it had dropped both by 1851. Thereafter in 1851 and 1852 there was very little change with only one of the above fares changing. In 1853 and 1854, the Fitchburg increased these fares in the range 14-40%. The Boston & Lowell reduced one fare by 3% and increased others in the range of 15-41%. The B&M made more moderate advances in the range 13-27%.

Data for 1855 and 1856 are available for the B&M, the Boston & Lowell and the B&P. B&M made no changes in 1855 nor for the single fares in 1856 but advanced its seasons in 1856 in the range of 22-31%. The Boston & Lowell in 1855 did not change the single fares but increased the seasons in the range 4-26%. In 1856 it left one single fare unchanged but advanced the other three in the range of 17-20%. The years 1857 to 1859 saw a decline the B&M in the range of 17-29% (one unchanged) and at the Boston & Lowell in the range of 17-27% (one unchanged).

The B&P 1856 CofI report focussed on passenger fares and particularly on season tickets where it recommended a 50% increase.<sup>689</sup> The president said at the general meeting that season tickets had been increased 25% and whilst 50% might be desirable he was against an iron rule being placed upon the board. He preferred a recommendation from stockholders that fares be increased but for details to be left to management. The meeting then resolved that all transient (non-season) passenger fares be increased 20% and that freight rates be increased but with discretion given to the board as to details.<sup>690</sup>

Advertised fares for the B&P reveal that transient fares did rise by 20% on the main line and that seasons rose by 50% on the Taunton branch between the 1855 and 1856 directory listings. Fares were unchanged in 1857 but from 1858 seasons were reduced by about 15% although 6 and 12 month seasons were withdrawn. Transient fares were reduced by 10-15% in aggregate during 1859 and 1860.

Data for the OCRR resume in 1857 (at a level of 20-66% above 1851) and show only 1 fare change ( a fall of 17%) in the period to 1860.

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<sup>689</sup> B&P 1856 CofI Report, 4-6.

<sup>690</sup> Boston Evening Transcript, 6 February 1856.

The fare increases of 1849-50 and in the mid 1850s were both made in periods when railroads were responding to financial pressures. They were devised and implemented by the roads' boards and senior officers rather than by Cofl's. Whilst the B&P 1856 Cofl made specific recommendations on passenger fares and appeared to have some of them adopted, the evidence points to Cofl's setting general stockholder expectations on the setting of fares rather than initiating specific changes. They were seeking against a background of reduced investor returns to encourage management to set fares with stockholder as well as public interests in mind. They recognised they did not have the time nor necessarily the expertise to make specific recommendations on fares and rates, a progressively more complex issue which were for the Board and senior officers to deal with.<sup>691</sup> Also, the Cofl's terms of reference stress their investigative and supervisory capacities; they were appointed to lay out the position of the railroad before the stockholders and make recommendations. They were not appointed to run the railroads. In summary the Cofl had a secondary reinforcing role in the setting of fares; after the spate of Cofl's in 1849-50 and 1855-7, managements may have been more careful, at least for a time, about setting aggressively low fares for fear of appointment of further Cofl's.

### Freight rates

Cofl's regularly complained that freight rates were too low and did not give the roads a sufficient return.<sup>692</sup> However, no more than general recommendations were made as at the B&P above and little, if anything, was done by way of follow-up. The B&P 1857 Report for example was silent on freight rates. It seems that, with a multiplicity of rates,<sup>693</sup> pooling arrangements for certain classes of traffic and deals with connecting roads,<sup>694</sup> the subject was too complex not only for the Cofl's but also, one senses, for meaningful unilateral action by an individual road. This is an area which would benefit from further research but it can be safely stated that the Cofl's made little impact beyond

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<sup>691</sup> For examples of this see B&M 1855 Cofl Report, 16-18; OCRR Cofl Report 82-3 and NR(NH) Cofl Report, 31.

<sup>692</sup> B&P 1856 Cofl Report, 7-8; B&M 1855 Cofl Report, 13-16; FRR Cofl Report 27-9.

<sup>693</sup> B&P 1856 Cofl Report, 10

<sup>694</sup> B&M 1855 Cofl Report, 13-18.

rehearsing some aspects of the problem which was aggravated by the uncertainty arising from ignorance of the actual costs of passenger and freight operations respectively.

### Free passes

Common complaints of Cofl's were the unfairness and cost of the issuance of free passes. This was part of the broader concern about the need for economy and retrenchment and was raised by all the Cofl's save the FRR.

The practice had developed to issue free passes to a greater or lesser extent to directors and employees of the railroad and their families, stockholders of the railroad, senior officers of other railroads under reciprocal arrangements, objects of charity, parties related to connecting boat and stage services and parties contractually entitled to them.

The Cofl reports did not give reasons for the growth of free passes but the following factors may have been relevant. Remuneration practices were new and still developing. The ostensibly strong financial performance of railroads up to 1847-8 may have promoted the view that free passes could be afforded. Stockholder participation in general meetings encouraged by free passes was thought to benefit the road. Reciprocal free passes may have had administrative benefits. Some free passes were issued under contractual arrangements with large freight customers. These may have been offered rather than a further reduction in the freight rate in the hope that the pass would be lightly used. There were, therefore, some ambiguities about free passes.

None of the roads or Cofl's attempted to estimate the cost of free passes maybe because their main concern was fairness. The following table suggests the cost of free passes was relatively modest overall but worth bearing down on.

**Table 8.8 New England railroad free passes.**

Railroad	Free journeys	Share of passenger journeys %	Estimated loss of revenue from free journeys \$K	Dividend paid	Potential dividend if all free journeys paid for
<b>B&amp;M 1848</b>	38,000 est	3.6	12.0	8.5%	8.90%
<b>B&amp;M 1855</b>	23,000 est	1.2	6.5	6.0%	6.16%
<b>NR(NH) 1849</b>	2,926 act	2.3	3.5		
<b>NR(NH) 1849 AGM</b>	1,000 est	0.8	1.2		
<b>NR(NH) Total</b>	3,926 est	3.1	4.7		

## Notes on table

1. B&M's 1849 Cofl reports 5,016 free journeys in May 1848 including free passages to the general meeting, 3,199 in June 1848 and 2,390 in July 1848. Assume average 4k per month H1 1848 and 2.4k per month H2 1848 - eligibility tightened in May 1848. Gives 38,400, say 38,000.<sup>695</sup>
2. B&M's 1855 Cofl reports 65 free journeys per day. Assuming a 365 day year including weekends free journeys are 23,700 say, 23,000.<sup>696</sup>
3. B&M: Actual passenger journeys, passenger revenues and dividend paid figures as reported in the annual returns to the Commonwealth of Massachusetts, with the same share of journeys applied to the revenues.<sup>697</sup>
4. NR(NH): Actual number of free journeys in year, total passenger journeys and passenger revenues in Cofl report. Free journeys exclude any for taking the 2,024 stockholders to the annual meeting. 1,000 attendees at AGM most likely an over-estimate but is taken to give a sense of the likely upper bound.<sup>698</sup>

<sup>695</sup> B&M Cofl Report 1849, 52.

<sup>696</sup>B&M Cofl Report 1855, 20.

<sup>697</sup> *Annual Reports of the Railroad Corporations in the State of Massachusetts, for 1848* (Boston: Dutton & Wentworth, 1849), 20, 21 & 22. *Annual Reports of the Railroad Corporations in the State of Massachusetts for 1855* (Boston: William White, 1856), 26, 27 & 28.

<sup>698</sup> NR(NH) Cofl Report, 19, appendix 1, 8, 9, 43 & 64.

The Cofl complaints were tempered by an acceptance that free passes could not be eliminated. The NR(NH) Cofl saw the practice as very open to abuse but had to be tolerated to some extent till there was a general move to end it in New England; in the meantime a judicial use could advance the business of the railroad.<sup>699</sup> The OCRR and B&M Cofl's each recognised the system could not be eliminated.<sup>700</sup>

Nonetheless the Cofl's recommended reducing the number of free passes. The B&M board had in May 1848 already reduced the number of free pass categories from 18 to 7 but the 1849 Cofl still recommended further limiting of the free pass list to the directors of the B&M and connecting roads and parties having the right by contract.<sup>701</sup> The NR(NH) report believed the railroad had avoided the worst abuses of free passes but recommended that they should not be given to families either of NR(NH) employees or of employees of rival organisations. It hinted that stockholders should give up the privilege of travelling free to general meetings.<sup>702</sup> The OCRR Cofl report did not hedge. It recommended that free passes be limited to the President and Superintendent, employees at work and those eligible under a contract. It wanted directors to pay and then claim back travel costs when travelling on the OCRR on its business. It argued that directors should get adequate pay for what they did and that this should be set more equitably than making it depend on how much they used free passes on the OCRR or on other railroads which reciprocated. The Cofl also recommended the abolition of free passes for general meetings as there should be no unequal privileges granted to directors and stockholders; rather all the earnings of the road should be husbanded to pay an equal dividend to stockholders in proportion to stock held.<sup>703</sup>

Outcomes were mixed with the evidence pointing to Cofl's reinforcing or advancing measures already taken by railroad boards to limit and reduce the number of free journeys. The B&M had tightened its eligibility criteria ahead of the 1849 Cofl. Further,

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<sup>699</sup> NR(NH) Cofl Report, 19.

<sup>700</sup> OCRR Cofl Report, 75-8. B&M Cofl Report 1849, 52-4. B&M Cofl Report 1855, 20.

<sup>701</sup> B&M Cofl Report 1849, 53-4.

<sup>702</sup> NR(NH) Cofl Report, 19-20.

<sup>703</sup> OCRR Cofl Report, 75-8.

the 1855 Cofl's report's complaint that there many free passes issued to officers of other roads suggests that the 1849 Cofl's report wish to restrict the issue of free passes to its directors and those of connecting railroads had been ignored.<sup>704</sup> The OCRR had also taken steps to reduce free passes before the Cofl. <sup>705</sup> However, the stockholders went further and limited free passes to those parties recommended by the Cofl as set out above.<sup>706</sup> A public notice on 23 April 1850 announced the changes.<sup>707</sup>

The B&P Cofl's' view and the board's response encapsulated many aspects of this issue. The 1856 Cofl reported that at least 3,000 free journeys had been made involving loss and the dissatisfaction of fare paying passengers. It recommended that only officers of the main road, employees on the business of the road and those having a free pass by contract should travel free.<sup>708</sup> The annual meeting of February 1856 unanimously resolved to adopt the recommendation but allowed the board power to authorise free passes.<sup>709</sup> The 1857 Cofl reported that the board had not implemented this recommendation which it substantially repeated subject to the stockholders of the Boston & Worcester and Old Colony Fall River railroads resolving likewise.<sup>710</sup> It has not yet been possible to establish the fate of this recommendation.

Whilst New Hampshire and Rhode Island passed laws in the 1850s to limit the groups eligible for free passes<sup>711</sup>, the problem of free passes persisted in the USA after the period under review. They were a notorious example of Gilded Age corruption being

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<sup>704</sup> B&M Cofl Report 1855, 20.

<sup>705</sup> Records of Old Colony RR, 182-5; minutes of board meetings of 20.7.49, 1.8.49 & 23.8.49.

<sup>706</sup> Ibid, 240, 247-9, 251, 252-3; minutes of Stockholders' Meeting 16-18.4.50 and of board meetings 18.4.50, 22.4.50 and 25.4.50.

<sup>707</sup> Reproduced in Charles E. Fisher, *The Story of the Old Colony Railroad* (apparently self published: Taunton 1919), 24.

<sup>708</sup> B&P 1856 Cofl Report, 17 & 18.

<sup>709</sup> Boston Evening Transcript, 6 February 1856.

<sup>710</sup> B&P 1857 Cofl Report, 14-19.

<sup>711</sup> Edward Chase Kirkland, *Men, Cities & Transportation* (Cambridge: Harvard University Press 1948), 348-50

frequently issued to press and politicians. They continued to be issued despite an ICC ban in 1887<sup>712</sup>.

Free passes were an industry issue so unilateral action was difficult though it was taken by the OCRR in 1850. Free passes were an easy target for Cofl's and general meetings supported their recommendations only for directors to drag their feet. The detriment of free passes was probably not of the scale which would render unilateral action worth the risk. Cofl's did, however, at least help to contain the problem through raising it in their reports.

### Operational cost cutting

Whilst all the Cofl reports made general calls for economy, not a great deal of waste or excessive expenditure was identified where remedial action was not already in train. The OCRR Cofl report with many other priorities made hardly any reference to economy whereas Derby's response claims he wanted to reduce the pay of firemen and brakemen to B&M rates in 1849 but the board had not supported him.<sup>713</sup> The Fitchburg Cofl made a general call for economy but recommended that salaries be not cut and limited itself to suggesting that work at larger stations be outsourced to the station agent.<sup>714</sup> The B&M 1855 Cofl reported that costs had appeared high in the last year but its recommendations were on other matters including care in taking on business at fine margins.<sup>715</sup>

The 1849 B&M Cofl's main recommendation (along with free passes) was that the road should reduce its engine and car facilities by closing one of its two sites and stopping manufacture of cars and engines save when permitted by the repair schedule.<sup>716</sup> The road raised a spirited defence of its investment in these facilities, contesting the scale of the expense as calculated by the Cofl and arguing that compared to other Boston roads it

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<sup>712</sup> Richard White, *Railroaded. The transcontinentals and the making of modern America* (New York: W W Norton & Co., 2011), 119-20.

<sup>713</sup> E. H. Derby, *A Brief Reply to the Report of the Investigating Committee of the Old Colony RR Corpn: by the President of the Company. April 12 1850* (Boston: Damrell & Moore Printers 1850), 6.

<sup>714</sup> Fitchburg Cofl Report, 31-2.

<sup>715</sup> B&M 1855 Cofl Report, 3 & 16-19.

<sup>716</sup> B&M 1849 Cofl Report 32-45.

had been more economically built and spent less on repairs than did others. It also said that it did not regard the principle of buying in cars and engines as proven and argued that it was able to better assure itself of quality of product when self building. However, it accepted that it may have over invested in its facilities and so had reduced the labour force ahead of the appointment of the Cofl.<sup>717</sup> The Cofl also published a full list of employees and their pay, but, whilst it said the stockholders would be able to find examples of excessive expenditure, it did not make specific recommendations save on endorsing recent moves by the road to rationalise clerical staff.<sup>718</sup> It is not clear whether the B&M closed the Boston maintenance/rolling stock facility as recommended by the Cofl but it appears from B&M Annual Reports in the following years that the workforce employed on cars and engine maintenance/construction was smaller than that reported by the Cofl.

The NR(NH) Board was prompted by the B&M Cofl's findings on its car and engine shops to appoint a committee to enquire into the practicability of reducing the expenditure in their own shops. The head of the shops argued vigorously that given the nature of the road and a high level of freight traffic it would be wrong to reduce his expenses and the Cofl was prepared to defer to his judgment.<sup>719</sup> The Cofl also considered expenses generally which amounted to a large sum and would seem capable of reduction. However, they had been convinced by the arguments of Superintendent, Onslow Stearns, that in order to sustain a heavily graded and curved road with a higher level of freight than the Boston roads and passing through a more lightly populated district meant it would not be easy to reduce expenses but that two or three times the current business could be done on the same expense base. The Cofl was also impressed by the comparative table produced by Stearns which revealed a higher average cost of labour per day than other roads but better income per mile run and per man and a lower expense ratio than the other roads chosen (B&M, OCRR, Fitchburg and Boston & Providence). However, they also considered that maintenance costs on the relatively recently opened NR(NH) were likely to rise in the future.<sup>720</sup>

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<sup>717</sup> B&M Annual Report 1849, 7-14.

<sup>718</sup> B&M 1849 Cofl Report, 45-52.

<sup>719</sup> NR(NH) Cofl Report 22-23.

<sup>720</sup> Ibid, 24-26.



The NR(NH) Cofl also considered whether salaries or jobs should be cut and gave an eloquent exposition of the dangers of cutting which would entail the reduction in the quality of employees and increase the risk of accidents which could cost the road dear. Whilst isolated cases might justify reduction or severance, a general policy would be “disastrous”. Further, such matters should be left to the board and officers whose daily familiarity with the duties and capacities of each individual allow them to make a proper assessment of their value to the road. Interference by those not so acquainted “would be worse than useless - must be positively injurious”.<sup>721</sup> Whilst the other Cofl reports did not speak in such bald terms none took material issue with the sentiments expressed.

### *Conflicts of Interest/ Insider Expropriation*

The OCRR and NR(NH) Cofl’s raised a number of matters under this heading covered by category below. The two railroads were not connected and served quite separate districts, but several of their respective issues concerned one individual, Nathan Carruth. He was President of the OCRR for 2 years (financial years 1846 and 1847) and Treasurer and Director of the NR(NH) from the start in 1845 to May 1849. Concerns under this heading at the OCRR were also laid at the door of George N Fletcher, who was Treasurer of the OCRR from December 1846 until February 1850, having been clerk to his predecessors, Addison Gilmore and Uriel Crocker. He was also linked to Carruth serving as his private clerk for 18 months in 1847-8. Gilmore, although not apparently on the NR(NH) board, was also involved in its promotion and construction, including arranging the supply of iron.

### Potential conflicts arising in the promotion of railroads

Concerns by stockholders of the mother road that branches and extensions were favoured at their expense as set out above were common both in New England and the UK. For the OCRR in 1850 the greatest concern of this sort was the Dorchester & Milton Branch Railroad (Dormil), a short branch running through developing districts just to the south of Boston. OCRR stockholder approval was obtained in December 1846 to lease

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<sup>721</sup> Ibid, 15-17.

Dormil for 5 years at 6% with the right to buy at cost. Operation commenced in 1847. The Cofl reported early problems at Dormil with the line costing a third more than budgetted. OCRR was losing some \$11.5k per annum on Dormil. Further, the various financial arrangements seemed to the Cofl to be oppressive for the OCRR. It had guaranteed \$30k of Dormil bonds without receiving any collateral and when Dormil raised some funds on mortgage the OCRR's guarantee was not given the benefit of the mortgage. Moreover, the Cofl regarded it as unusual that Dormil rather than the OCRR had the right to extend the lease another 5 years if the OCRR did not buy in Dormil at the expiry of the first lease term. Dormil's accounts had not been examined by the OCRR until the Cofl looked at them and it found that the base on which the rent was paid contained items which should have been excluded.<sup>722</sup>

The Cofl notes that Carruth was president of OCRR in 1846-7, was keen to promote the construction of Dormil and negotiated and executed the lease. It also notes that he was now a director of Dormil. Carruth's evidence to the Cofl confirms that Dormil's option to renew the lease for a further 5 years at 6% was agreed as being in the interests of the OCRR; and that Dormil had declined to include OCRR's guarantee in the mortgage as it was within its rights to do so and the saleability of the mortgage bonds would be improved. He also asserted that whilst there were no directors in common of OCRR and Dormil at the time of the lease, all or nearly all OCRR directors then held shares in Dormil.<sup>723</sup> Evidence taken from other directors of the OCRR expressed surprise at the Dormil option to renew the lease<sup>724</sup>. The Cofl concluded by describing the lease and guarantee as oppressive<sup>725</sup>.

#### Conflicts arising in the supply of goods and services to railroads

Railroad boards and stockholders were particularly sensitive to potential conflicts arising from the involvement of insiders in the supply of goods and services. A range of goods

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<sup>722</sup> OCRR Cofl Report, 34-43.

<sup>723</sup> OCRR Cofl Report, evidence of Nathan Carruth, interrogatories 14-23.

<sup>724</sup> OCRR Cofl Report, evidence of U Crocker, interrogatory 64; evidence of EH Derby, interrogatories 84-91; evidence of JL Hedge, interrogatory 85; evidence of J Sever, interrogatories 14-17 & 29; evidence of W Thomas, interrogatories 2-3.

<sup>725</sup>OCRR Cofl Report, 43.

were involved but in our cases two important items predominated: the supply of railroad iron (rails), often imported at this period from the United Kingdom, and wood as fuel for locomotives.

### Iron Purchases

A range of conflict related issues arose at the NR(NH) out of its purchase of iron. The NR(NH) united in 1849 with the Franklin & Bristol RR (F&B) which branched from it; and the Cofl covered issues arising from both companies prior to merger.<sup>726</sup> In June 1847 the F&B board authorised its president C T Russell and NR(NH) treasurer, Nathan Carruth, to purchase the iron necessary to build the railroad which, says the Cofl, seems to have been 1,200 tons. Additionally, in July 1847 the NR(NH) board authorised Carruth to purchase 200 tons of iron. It appears that 1,800 tons were ordered by Carruth of Thompson & Foreman in UK, 1,200 tons for F&B and 600 for other roads with which Carruth was connected with delivery dates until March 1848. In the event the order was reduced to 1,200 as purchases had been made locally but Thompson & Foreman had already shipped and in all 1,441 tons were shipped and paid for by NR(NH) and F&B. Carruth subsequently sold 220 tons of this iron on, 200 tons to the Norfolk County RR and 20 tons to the Nashua Railroad at a loss to NR(NH)/F&B of \$3,190 or \$14.50 per ton or 21% of cost. The Cofl also claimed that the NR(NH) had not been credited with the import duties of \$2,608 in respect of the on-sale to Norfolk County RR, which appears to have paid NR(NH) the nett of duties figure. Russell and Carruth were paid 2.5% commission (\$1,839 in total) on 1,200 tons of these iron purchases.<sup>727</sup>

The NR(NH) Cofl also commented on the payment of \$3,576 of commission to Addison Gilmore for the purchase of iron in 1846. Due process was observed as the board minutes authorised a committee to contract with someone to purchase iron for the whole road. The committee employed Gilmore who was to receive 1.25% or half the sum usually paid as commission. Gilmore had stated that it was understood that he was receiving this commission in consideration of work done in promoting the railroad. The Cofl found that Gilmore's services were valuable and that he received only an adequate

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<sup>726</sup> NR(NH) Cofl Report, 6-7.

<sup>727</sup> NR(NH) Cofl Report, 11-12, 14. Accounting entries and supporting information about the iron purchase are in the Report's Appendix, 53-6.

remuneration for them. However, apart from noting that due to a clerical error Gilmore was paid \$94 too much, the Cofl thought it would have been better had his bill for services rendered been presented and approved in the usual way.<sup>728</sup> Gilmore had also been in receipt of a commission for buying iron for the OCRR but the board had agreed and the Cofl did not comment further.<sup>729</sup>

Carruth and Russell attracted much keener criticism from the NR(NH) Cofl. It acknowledged the latter's candour when he admitted that he had taken no part in the purchase of the iron but had the commission to compensate him for loss of earnings arising from leaving his private business to manage the railroad. The Cofl deplored the practice of paying commission to salaried officers - the President of the one railroad and the Treasurer of the other - who had obtained extra pay on the back of the credit and money of the railroad. It was "wrong in principle, unjust and unequal and therefore pernicious in practice".<sup>730</sup> Carruth appeared not to comment on the iron allegations. As we shall see, other matters were raised in the Report about him and the Report's Appendix contains correspondence with him on some of these. None refer to the iron allegations.<sup>731</sup> A letter from Carruth of 6 May 1850 to the Cofl opened with a statement that he had been sent a copy of the Report by the directors.<sup>732</sup> It appears, therefore, that he had seen the iron allegations; and, if a simple explanation were to hand, it perhaps surprising that he chose not to put the record straight. One is left agreeing with the Cofl who could find nothing in the corporation's records giving authority to purchase the 220 tons of iron sold on<sup>733</sup> and that the purchase was unauthorised. It appears that Carruth had bought beyond the authority given and left NR(NH)/F&B with an unnecessary cost of over \$5,500 as well as taking what appears to be a generous albeit duly authorised commission.

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<sup>728</sup> NR(NH) Cofl Report, 12-14.

<sup>729</sup> OCRR Cofl Report, 62.

<sup>730</sup> NR(NH) Cofl Report, 14.

<sup>731</sup> NR(NH) Cofl Report Appendix 49-53.

<sup>732</sup> NR(NH) Cofl Report Appendix 49-50.

<sup>733</sup> NR(NH) Cofl Report, 11-12.

## Wood and Other Supplies

The OCRR had persistent problems with the quality and cost of its wood. There were potential conflicts as it bought wood from one of its directors, I L Hedge. The Cofl found that Hedge had acted disinterestedly. Hedge in his evidence stressed that he paid himself the same as he paid others for the same quality wood, that the woodlands he had sold to others were not related to sales to the OCRR and that he had had no commission or other charge for buying wood for the road.<sup>734</sup>

The OCRR Cofl looked into potential conflicts involving Nathan Carruth and the supply of cars and engines. It wrote to three suppliers asking whether they had any inducement to invest in Dormil. The first, Osgood Bradley, replied he had made a bargain with Carruth to receive payment in stock for cars supplied to OCRR and NR(NH). Before the contract was completed NR(NH) stock rose to par and Carruth asked Bradley to take Dormil stock and eventually he took \$4k in stock and \$1k in cash. The second, Hinkley & Drury, took 30 Dormil shares in 1847 with Carruth having pitched it as a 6% stock; and reported no inducement save Carruth's statement that more machines would be wanted by the OCRR as the latter would be operating Dormil and that when engines were needed they would get a call. The third, Davenport & Bridges, invested in Dormil in 1847 but reported no inducement.<sup>735</sup> Carruth, in his evidence to the Cofl, denied any contracts for engines and cars were had with these parties in connection with their subscription of shares in Dormil.<sup>736</sup>

The Cofl summed up by referring to conflicts - equipment had been contracted for under an agreement by which some party other than the OCRR has profited, probably to the injury of the corporation. It added that all such bargains were to be depreciated as, although no loss may have arisen, there was a great danger of speculation if its officers used their official position for any other object than to advance the interests of those who engaged them. The Cofl had decided against proposing a rule against the corporation

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<sup>734</sup> OCRR Cofl Report, evidence of J L Hedge, interrogatories 1-16.

<sup>735</sup> OCRR Cofl Report Appendix, 137-8.

<sup>736</sup> OCRR Cofl Report, evidence of Nathan Carruth, interrogatories 14-23.

making a purchase of a director but was very much against the practice except in an emergency.<sup>737</sup>

### Problems in the Stores

The OCRR Cofl looked into alleged abuses in the paint shop and found that the foreman had sold or used company materials in his private business and these had not been promptly accounted for at the time. It also accused them of working on a Sunday to take advantage of the double rate. Following briefing from the Cofl, Derby and Superintendent Moore re-examined the foreman and his son and sacked them.<sup>738</sup> Derby, in his riposte to the Cofl, charged it with wanting a sacrifice and that the sacking had been for the Cofl's benefit and had been for lack of promptitude than for moral delinquency as it involved taking of money for stores from staff and delaying passing the money on.<sup>739</sup> Derby may have been right to suggest that in other circumstances the result for the foreman may have been different, but, at a time when business ethics were both developing and under pressure at certain points, the Cofl was keen to bear down on the risks of potentially improper behaviour.

### Raising of loans

With railroads costing more to build and equip than planned and the need to moderate calls on the stockholders, in both United Kingdom and New England short term loans were raised to bridge the receipt of longer term funds or the earnings of the road. From time to time directors of railroads had to add their personal guarantee and endorsement to the notes or bills raising the funds. In none of the case studies, British or American, is there any evidence of directors having lost money arising from their personal liability. Nonetheless, easing funding pressures and keeping rates paid down was a valuable service when directors added their credit to company paper.

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<sup>737</sup> OCRR Cofl Report, 61.

<sup>738</sup> OCRR Cofl Report, 72-3.

<sup>739</sup> *Brief Reply. Report of the Investigating Committee of the Old Colony RR Corporation. By the President of the Company. April 12 1850* (Boston: Damrell and Moore Printers), 13.

The NR(NH) reported an issue involving Carruth and the raising of loans. When the road asked him to settle the balance of his account when he resigned as Treasurer in May 1849, he raised a counterclaim for commission for endorsing corporation paper. He claimed some \$11k being 2.5% on notes endorsed of \$446k.<sup>740</sup> This compared with the \$10.8k which the Cofl considered was due to NR(NH) from Carruth. As the whole matter was in dispute, the Cofl limited itself to noting it was remarkable that a corporation whose funds were supposed to be so abundant should have been compelled to have borrowed so much on endorsed paper.<sup>741</sup> It is certainly surprising that the railroad and Carruth had not agreed in advance how much it needed his endorsement and how much it was prepared to pay for it and that Carruth had not claimed this commission other than in circumstances when the railroad was claiming a similarly sized sum from him.

At the OCRR there were various suggestions made by the Cofl that the raising of short term loans by directors for the road may have involved commissions. It asked former Treasurer Josiah Quincy whether he had borrowed \$50k from the Western Railroad at 5% and lent it on to the OCRR at 6%, a charge which he denied.<sup>742</sup> It also considered that Derby's duties included financial management of the company so he did not deserve the 0.5% (\$70) commission he had charged for raising a loan; Derby stressed he had not charged for adding his name to paper but repaid the \$70.<sup>743</sup>

#### Other services

There were private profits to be made in the provision of services related to dealings in the stock of the road. Fletcher admitted that, whilst Treasurer, he had received brokerage from third parties for the purchase and sale of stock of the OCRR. The Cofl asserted that these earnings were at least equal to his salary but offered no further detail.<sup>744</sup> In

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<sup>740</sup> NR(NH) Cofl Report Appendix, 53.

<sup>741</sup> NR(NH) Cofl Report, 10-11.

<sup>742</sup> OCRR Cofl Report, evidence of Josiah Quincy, interrogatories 8-12.

<sup>743</sup> OCRR Cofl Report, 62 & evidence of E H Derby, interrogatories 74-80.

<sup>744</sup> OCRR Cofl Report, 69 & evidence of G N Fletcher, interrogatories 6-7.

February 1848 the F&B authorised its Treasurer to sell 400 shares of its capital stock at not less than \$90 per share. Subsequently, 300 of those shares were transferred to Carruth who gave a note for them at \$90 per share and paid cash as the stock was sold by him from time to time. The Cofl states that some of the board thought that this arrangement, which yielded him a profit of some \$900-1000, was in violation of the understanding that these shares were to be sold for the benefit of the corporation. The Cofl had chosen not to enquire further given there was authority to sell at \$90. It chose to give no opinion but apparently wished to air the view that a less costly arrangement for the road might have been reached.<sup>745</sup>

Both Fletcher and Carruth were providing a service to the road through respectively facilitating liquidity in and the distribution of corporation stock. As we have seen in British case studies, there was ambiguity around selling shares or stock for the benefit of the corporation and whether it was for the sole benefit of the corporation or the substantial benefit of the corporation with some private benefit to insiders. The contemporary concern was that these private profits were excessive as they were provided off the back of the corporation's prospects and credit and made by those already in receipt of a salary; and that a more transparent assessment of the value of the service was called for.

#### Speculation in corporation stock

This was not a major issue for the New England case study Cofl's but three matters pursued at the OCRR bore witness to investor sensitivity to the subject.

First, Carruth, in response to the Cofl's question, said he and fellow director Crocker took 100 shares each in a company run by Boston broker P P F Degrand to speculate in OCRR stock by delivering short. Carruth had lost money and regretted having invested. He thought he had done so for patriotic reasons but did not elaborate.<sup>746</sup> Crocker and Fletcher recalled little more than the scheme existed in the period 1845-7 and that

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<sup>745</sup> NR(NH) Cofl Report, 15.

<sup>746</sup> OCRR Cofl Report, evidence of Nathan Carruth interrogatories 48-50.



Carruth was involved.<sup>747</sup> The Cofl did not carry any findings into its report perhaps because it had not enough evidence to give a clear view on a matter which was historic and had appeared to end in failure.

Second, Derby was asked whether he had sold 56 shares in late 1848 knowing the OCRR was about to issue at \$75 per share. He said he had sold as he needed the money but added that it was not yet settled whether to proceed with the issue. Adding that he had never speculated in OCRR stock whether alone or in concert, he noted that he had taken some of stock issued at \$90 not taken up.<sup>748</sup> Again, the Cofl did not take this matter forward into its Report perhaps accepting that his motivation in the late 1848 sale had been driven by necessity.

Thirdly, Fletcher conceded that he had sold stock for his private account and issued certificates and afterwards purchased stock to make his stock account good in the stock ledger. He was unable to give details as to amounts and dates and conceded that these transactions had not appeared in the stock register.<sup>749</sup> This time the Cofl did report this to stockholders adding that Fletcher had placed the sale proceeds in a drawer but that there was no evidence of the funds been used for the corporation's benefit. It added that the certificate book was kept so badly that it was impossible to see the full extent to which Fletcher had issued stock for his own personal accommodation.<sup>750</sup> The Cofl seem to suggest its main concern here was in Fletcher improperly raising funds perhaps through some sort of sale and repurchase arrangement rather than speculating in the fall of the company stock price by selling short. However, contemporaries would have recognised the latter practice as it had become established in US securities markets by this time.

Loss or potential loss arising from the Treasurer owing money to the railroad.

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<sup>747</sup> OCRR Cofl report, evidence of George Fletcher, interrogatories 89-94 and Uriel Crocker interrogatories 22-3.

<sup>748</sup> OCRR Cofl Report, evidence of E H Derby, interrogatories 142-4.

<sup>749</sup> OCRR Cofl Report, evidence of George Fletcher, interrogatories 83-4.

<sup>750</sup> OCRR Cofl Report, 69.

Potential losses at the OCRR and the NR(NH) arose from debts due from Treasurers when they left the post. Fletcher owed the OCRR \$2,875 and Carruth the NR(NH) \$5,048, both substantial sums given a typical Treasurer salary of some \$1,000 per annum and an allowance of a further \$500 for clerk hire. Carruth explained that this balance had most likely arisen out of the accumulation of small errors made in the processing of very many payments amounting to millions of dollars whether assessments (calls on stock) received or dividends and interest paid. In mitigation, he claimed that a small office and pressure of work including other duties for the NR(NH). He did not appear to dispute the sum though did deny the claim of a further \$678 for interest; and proposed arbitration for the whole matter. Otherwise he raised a counterclaim for commission for raising funds as described above.<sup>751</sup> The NR(NH) pursued Carruth for the monies owed and reported in 1853 that they had recovered \$12,250 (less the costs of pursuit over three years and amounts already held in suspense) as well as \$1,000 less costs of pursuit from Russell.<sup>752</sup>

The NR(NH) Cofl said it did not charge Carruth with any intentional wrong<sup>753</sup>; and whilst the OCRR considered Fletcher guilty of official neglect and misconduct on a wide range of issues, it also said it would not impeach his integrity. At the time of the Cofl investigation, Fletcher began to counter claim in respect of clerk hire and financial services rendered but in the face of a further demand gave the OCRR a six month note for \$2,875 plus interest whilst reserving his rights to counterclaim.<sup>754</sup> The pressure upon Fletcher might have been greater given his admission that he mingled his cash with that of the corporation. He also conceded that he had borrowed .occasionally from the OCRR, although not to any great amount. Further, whilst he did not recall being involved in lending interest free funds for a few days to Carruth, he would have been prepared to do so.<sup>755</sup> A further incentive to pay back the road would have been that Fletcher had provided a \$30k bond with sureties when taking up the post of Treasurer.<sup>756</sup>

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<sup>751</sup> NR(NH) Cofl Report, appendix 49-53.

<sup>752</sup> *8th Annual Report ... of the Northern Rail-Road ... May 1853* (Boston: Crocker & Brewster, 1853), 5. (Available at [babel.hathitrust.org](http://babel.hathitrust.org))

<sup>753</sup> NR(NH) Cofl Report, 12.

<sup>754</sup> OCRR Cofl Report, 68-9.

<sup>755</sup> OCRR Cofl Report, evidence of George Fletcher, interrogatories 11, 35-6 & 77-9.

<sup>756</sup> OCRR Cofl Report, evidence of E H Derby, interrogatories 34-6.

Overall, it appears that the efforts of various parties, such as Carruth, Derby and Josiah Quincy, to raise funds for the OCRR in the difficult market conditions of the late 1840s were on balance beneficial but there remained a concern that the cost was not transparent and perhaps higher than it might have been. Quincy was a director in 1846-7 and ran the financial affairs of the OCRR in 1847 as chair of the Finance Committee. He raised a great deal of money via loans though was indemnified for adding his name to paper. It was something of a surprise to the Cofl that Quincy had borrowed from the OCRR as well as lending to it. He admitted owing the OCRR a balance which he settled in 1848 but stressed that he had never held much corporation money and he was indebted to it without his knowledge.<sup>757</sup>

### *Capital structure and dividends*

In New England as in Britain in the 1840s and 1850s, there were no accounting standards for the railroads to follow. Accounts were presented to demonstrate that the capital paid in to build and equip the road had been properly spent on such purposes and that the dividend had been fairly earned out of the income account and not paid out of capital. Railroads were exemplars for Wright in their willingness to provide information to stockholders but it amounted to “selective disclosure”; and accounting whilst improving over the first half of the nineteenth century tended to be sanguine<sup>758</sup>. The following sections lend support to his view.

### *Closing construction accounts*

By 1849 investors in Massachusetts railroads were seeing difficult trading conditions for the roads, tight money, reduced dividends and languishing stock prices. There was a widespread concern to reverse the fall in dividend rates. Stockholders worried that

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<sup>757</sup> OCRR Cofl Report, evidence of E H Derby, interrogatories 62-6 & evidence of Josiah Quincy Jr interrogatory 26.

<sup>758</sup> Wright, *Corporation Nation*, 139-41 & 144-6.

unnecessary capital expenditure or costs improperly posted to construction account (for the purpose of boosting the income account) would lead to increased debt or the issue of new stock. Interest due on debt would reduce net income hence dividends and new stock would reduce the dividend rate per share. The solution recommended by many was to close construction accounts and then to contain the consequent risk to net earnings by advising economy or retrenchment and in certain cases fare increases.

The OCRR Cofl's recommendation of the closure of the Construction Account was endorsed by a stockholder resolution at the April 1850 General Meeting.<sup>759</sup>

The B&M 1849 Cofl recommended that the corporation issue some 6k shares for the completion of necessary works, the subsequent closure of the Construction Account and to free it from debt.<sup>760</sup> The Committee of Supervision reported in August 1850 that closure had failed to the extent of a new charge of \$77k, albeit largely due to amounts which had been unknown to the Cofl or which were subject to change. However, the Committee noted that stockholder approval should have been sought for the charge.<sup>761</sup>

The B&M 1855 Cofl noted that management's assumption of debt in apparent contravention of the 1849 resolutions was based on its assumption that a stockholder vote in 1851 repealed the 1849 resolutions. The Cofl, however, noted that no liabilities were immediately pressing. This Cofl was also concerned that, having had plentiful funds only 18 months previously, the road had had to borrow to cover part of the payment of a recent dividend.<sup>762</sup> The Board Minority Report of September 1856 complained that management had charged to Surplus (i.e. capital) Account around \$70k of infrastructure expenditure which the stockholders in 1849 had desired to be charged to income.<sup>763</sup>

The NR(NH) Cofl did not recommend the closure of the Construction Account but the road's 1851 Annual Report stated that the stockholders voted for it at the 1850 General Meeting. It goes on to report that this had been achieved by crediting (reducing) the

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<sup>759</sup> OCRR Cofl Report, 13-14. Records of Old Colony RR, 243-4; minutes of general meeting of 17.4.50.

<sup>760</sup> B&M 1849 Cofl Report, 54-5.

<sup>761</sup> B&M CofS Report, 5-7.

<sup>762</sup> B&M 1855 Cofl Report, 4-8

<sup>763</sup> B&M Minority Report, 4-5.

Construction Account with \$248K charged to income. This had the effect of limiting the Construction Account to the actual par value of the shares paid in with the \$248K being described as roughly equivalent to the deterioration of the road since completion. The passing of dividends in 1848 and 1850 gave the NR(NH) the capacity to take this step. In doing so it seemed to deal with one of the acknowledged problems of capital accounts drifting up which was that additions were made without charging to income the loss on capital assets replaced.<sup>764</sup>

#### Dividends paid out of capital

There was the same concern in New England as in Britain about the wrongful boosting of dividends from posting income items to construction account to the extent that dividends were being paid out of capital. The OCRR Cofl reported that its 1848 dividend had been paid out of capital.<sup>765</sup> Derby denied this and the point is probably moot - the road stopped paying dividends in 1849 before the Cofl was appointed.<sup>766</sup>

#### Aversion to debt

There was also a general aversion to debt which extended to a view that a corporation should not borrow to pay a dividend upon earnings which had been fairly calculated.<sup>767</sup> In the 1850s the case study roads were concerned to show in their accounts that short term debt was covered by liquid assets and some Cofl's made challenges on that issue.<sup>768</sup>

#### Dividend rates and policy

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<sup>764</sup> *6th Annual Report ... of the Northern Rail-Road ... May 1851* (Boston: Crocker & Brewster, 1851), 4 & 7. (Available at [babel.hathitrust.org](http://babel.hathitrust.org))

<sup>765</sup> OCRR Cofl Report, 54-5.

<sup>766</sup> OCRR Derby's Reply, 10-11.

<sup>767</sup> B&M Cofl 1855, 4-7.

<sup>768</sup> Fitchburg RR Annual Report 1856. B&M Minority Report, 9-14.

Some contemporaries recognised that dividends in the early years, often having been set on a capital base not yet fully paid in and before the railroad was fully operational and with a policy of full distribution without thought for contingency or depreciation were too high.<sup>769</sup> The FRR Cofl calculated in the mid 1850s that if it had distributed a level 6% from the start rather than the average 7.55% paid, it could have continued to pay 6% rather than having to pass the dividend.<sup>770</sup>

The FRR Cofl was unusual in calling for a stock dividend when the corporation had been reluctant to make one. The former stressed that to withhold favoured future owners of the stock to the detriment of current owners. More generally as mentioned above it favoured a cautious dividend policy; the experience of the FRR and other roads showed it was not safe to divide annually the whole income after current expenses and ordinary repairs. It recommended that the Boston roads co-operate to set a depreciation rate and that this amount be set aside each year whatever effect it had on the dividend.<sup>771</sup>

The closure of Construction Accounts was a thorny issue for railroads as it was always going to be difficult to charge all capital expenditure to income and such excessive caution could frustrate a fair dividend policy. Absent a settled policy on depreciation, however, the policy did tend towards a more realistic view of a road's assets. Cofl's seemed to do little to offer remedies in this area but were useful in flagging the issue and having management explain their position to stockholders.

#### *Information for stockholders*

To give the stockholders time to digest the Annual Report, the OCRR Cofl recommended that future annual meetings be moved from late December to the 2nd Wednesday in February and that a copy of the Annual Report be available for collection by stockholders at least 10 days before the meeting. Up to 1849 they appeared to be circulated at times

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<sup>769</sup> Alfred D Chandler Jnr., *Henry Varnum Poor* (Cambridge Mass: Harvard University Press, 1956), 49.

<sup>770</sup> Fitchburg Cofl Report, 25.

<sup>771</sup> Fitchburg Cofl, 19-24; 26-7.

which allowed very little time for them to be digested. In 1846 its Report was agreed by the board the day before the Annual Meeting.<sup>772</sup> The road made the change.

The Cofl's also made specific recommendations about the content of future Annual Reports to Stockholders. The B&M 1849 Report called for receipts by station and details of the workforce and its pay in future Annual Reports.<sup>773</sup> These changes were implemented. The B&M 1855 report called for a split between assets available for the payment of the road's debts and the rest; a breakdown of earnings and expenses by different types of train including traffic carried for connecting roads; a full list of motive power and cars; and the numbers of free passes issued.<sup>774</sup> These appear in subsequent Annual Reports save for passenger and ton miles and expenses and miles run by different types of train. The request for expenses by different type of train may have proved rather difficult as such was beyond the capacity of UK railways in the 19th century. Some information on aggregate passenger and ton miles and miles run was available in the Annual Returns to the Commonwealth.

### Ancillary activities

Ancillary activities were not a particular focus for the New England case study Cofl's with the OCRR alone raising the issue with respect to Samoset House, a luxury hotel built by the railroad at Plymouth. The stockholders had approved expenditure of \$40k but by 1850 it had cost \$51k and was not profitable.<sup>775</sup> It seems that support for the project came from stockholders and directors at the Plymouth end of the line; and that it was built to develop both traffic and Plymouth as a resort. Profit sharing arrangements were made with successive managers which were not entirely satisfactory, not least as the OCRR was owed \$600 by two departing managers who were not considered able to

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<sup>772</sup> Records of Old Colony RR, p.75: board minutes 29 December 1846.

<sup>773</sup> B&M 1849 Cofl Report, 63-4.

<sup>774</sup> B&M 1855 Cofl Report, 25.

<sup>775</sup> OCRR Cofl Report, 21-4.

pay.<sup>776</sup> The OCRR board appeared to be ready to sell<sup>777</sup> before the Cofl and the stockholders respectively recommended<sup>778</sup> and resolved that it be sold.<sup>779</sup> The New England Cofl's did not raise the sorts of issues arising from railroads owning steamboats that beset the ECR and the WHHRC; these, however, might have been in prospect as in 1851 the OCRR established a committee to consider buying a steamboat to run from Cape Cod to Plymouth to connect with the railroad.<sup>780</sup>

### *Financial and administrative systems and controls*

#### Accounting Records

Given the problems already reported about the Treasurers of the OCRR and NR(NH), it is unsurprising that the Cofl's found fault with their accounting records. The books of the Treasurer of the F&B lacked regularity and method and contained a few errors but were much less deficient than those of the Treasurer of the NR(NH) where there were considerable sums in the Treasury on which no interest had been earned and it was difficult to find out what had been lent to whom and at what rate. A large number of errors were discovered as well as the cash deficiency described above.<sup>781</sup> It seems that the accounting records were now well in hand at the NR(NH) as the Cofl made no recommendations to improve them.

The position at the OCRR appeared worse. The Cofl found the books very untidy and short of detail. There was no cash book and the cheque book was irregularly kept with no correspondence between its entries and those in the journal. The schedule of notes receivable and payable was unreliable with omissions amounting to \$0.5mn. There was no book for purchases, no letter book, and no regular filing of letters. Entries were out of

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<sup>776</sup> OCRR Cofl Report, evidence of J L Hedge, interrogatories 25-31.

<sup>777</sup> OCRR Minute Book, 147-60, 1848 Annual Report.

<sup>778</sup> OCRR Cofl Report, 21-4.

<sup>779</sup> OCRR Minute Book, 243-4, adjourned AGM 18 April 1850.

<sup>780</sup> OCRR Minute Book, 283-5 Board Meeting 13 February 1851.

<sup>781</sup> NR(NH) Cofl Report, 5 & 9.



date order and there were alterations and transfers between accounts without explanation. Differences between cash at bank and the trial balance varied in the range \$5k-120k.<sup>782</sup> The Cofl's recommendation that the Treasurer's records be rewritten was adopted by a General Meeting resolution and committed by the board to a new director, Nathaniel Whiting, presumably to work with the newly appointed Treasurer, John Washburn.<sup>783</sup>

The FRR Cofl found unspecified errors in the May and November 1855 inventories of purchases for the loco and car shop; it advised that the system needed reform but noted that it did not have the practical experience to advise particular measures.<sup>784</sup>

### Financial Controls

The Cofl's reported some weaknesses and sometimes recommended a particular remedy. The B&M 1855 Cofl had a particular concern about the safety of some recent investments of the road's surpluses and recommended that future loans be on demand with a maximum rate of 6% and with specified collateral (either B&M stock with a 20% margin or public funds).<sup>785</sup>

The FRR Cofl was concerned about the risks of the road's Purchasing Agent which it regarded as a unique arrangement. The post had been established under the present board and had the support of the President but board records for the period 1854-6 showed no vote for the appointment of the Agent or for fixing his pay. The Cofl deferred to the professional skill of the President but suggested adherence to the principle that all purchases should be sanctioned by the officer whose authority was needed to pay and that the treasurer should not pay otherwise. It was particularly concerned about the

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<sup>782</sup> OCRR Cofl Report, 63-4, 67 & 70.

<sup>783</sup> Records of Old Colony RR: minutes of General Meeting 18.4.50, 243-4; minutes of Board Meeting 22.4.50, 251.

<sup>784</sup> FRR Cofl Report, 15-17.

<sup>785</sup> B&M 1855 Report, 24.

Purchasing Agent's separate bank account and believed that all payments should be made by the Treasurer or through an account with the Treasurer.<sup>786</sup>

### Stock Account/Registration

The FRR and B&M 1855 Cofl's both examined the arrangements for the issuance of stock, probably in response to the fraud perpetrated upon the New York & New Haven RR, by its President and Transfer Agent, Robert Schuyler, Discovered in July 1854, it was much the greatest perpetrated against US railroads in the 1840s and 1850s. Schuyler had sold \$1.954mn of stock for his own private account; this was in addition to the authorised total of \$3mn. Schuyler was not subject to any meaningful supervision, maintained three sets of accounting books and was charged with embezzling an additional \$137k from the road.<sup>787</sup>

The FRR Cofl had looked at the stock account as recent frauds in other railroads and the passing of dividends since 1854 had made people feverish. Whilst the checks made by the Cofl were not exhaustive, the stock account was considered to be in order.<sup>788</sup> The B&M 1855 Cofl found it good practice that the President could not sign blank certificates but recommended that he keep a duplicate of the broker's account.<sup>789</sup>

The risks attached to the issue and registration of stock were already understood. The OCRR Cofl complained that the President had always signed stock certificates in blank and trusted the Treasurer as to their issue; further that no check existed on the latter issuing stock to an unlimited extent. The Cofl recommended that a record of the transfer

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<sup>786</sup> FRR Cofl Report, 10-15.

<sup>787</sup>Details taken from Sidney Withington, 'The Strange Case of Robert Schuyler', *The Railway and Locomotive Historical Society Bulletin*, No. 98 (April 1958), 32-46; & Robert B Shaw, 'The Great Schuyler Stock Fraud', *Railroad History*, No. 141 (Autumn 1979), 5-18.

<sup>788</sup> FRR Cofl Report, 17-18.

<sup>789</sup> B&M 1855 Cofl Report, 20.

and issue of stock should be kept by both officers of the company signing certificates.<sup>790</sup> Nor was the matter a purely theoretical risk at the OCRR as there had been an over issue of shares. In late 1846 it had been agreed that 2,500 shares be created to be used by the Treasurer as collateral for loans taken out by the road. The Cofl found that, allowing for a further 499 shares which were available for the purpose, an excess of 1,570 had been issued to four parties including two local banks and two directors, Josiah Quincy and Nathan Carruth.<sup>791</sup> There was general concern about over-issue as there were the risks of exceeding legal capital limits, of losing money if payment for the shares were diverted (as in Schuyler's case) and of dilution occurring if the shares were taken up in respect of loans taken out for legitimate but avoidable or wasteful expenditure. As described above Fletcher had also been issuing stock for his own accommodation but the Cofl were unable to discover to what extent. The Cofl did not accuse Fletcher of taking the funds due the road for these shares or those overissued as collateral but said that "all must see that serious losses might occur to a company under so loose a management of its business."<sup>792</sup>

#### Other Records

Recommendations included the NR(NH) Cofl calling for the duplication of key records for retention in the treasurer's safe in case the originals were lost when being conveyed by the clerk from place to place; and for the creation of an indexed book describing the real estate of the road with the original deeds to be kept by the treasurer.<sup>793</sup> The 1855 B&M Report complained that agreements and contracts with connecting roads and freight customers had not been recorded. It noted that the "concealment which may protect an officer today by destroying evidence which charges him may tomorrow cost his corporations thousands of dollars". It also called for the 1849 Cofl recommendation to create books recording real estate plots and abstracts of title to be implemented as

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<sup>790</sup> OCRR Cofl report, 59.

<sup>791</sup> OCRR Cofl Report, 58.

<sup>792</sup> OCRR Cofl Report, 59.

<sup>793</sup> NR(NH) Cofl Report, 7 & 22.

nothing had been done in the interim.<sup>794</sup> Through these recommendations the Cofl's were helping promote good administrative practice in New England railroads.

### *Operation of the Board*

The FRR Cofl found that the board minutes did not report the findings of board committees when they reported; and added that if reports were verbal the minutes should record such detail as to present an intelligible statement of votes passed by the board or committee. Otherwise the board committees minutes or reports should be made in writing and filed. Finally, it recommended that whilst a committee might have discretionary powers in negotiations, when such negotiations were approved by the board, a permanent and intelligible record should then be made of the result.<sup>795</sup> This recommendation was not linked to a particular incident or issue but was likely to have been a common complaint if minutes were as brief as those of the British case studies.

The board minutes of the OCRR for the period 1844-51 reveal good attendance by directors. In earlier years they record bare decisions and details of leases of branches. Only when financial pressures began to build on the OCRR in 1848-9 did the board begin to engage more in discussion of income and expenditure. Whilst there was a standing finance committee and a committee appointed annually to examine and close the accounts, most business was remitted to ad hoc committees including many committees of one. The reports of the committees to the main board were rarely quoted in the minutes.

### *Quality of management*

The Cofl's rarely commented directly on the quality of the directors, though the NR(NH) and FRR Cofl's may well have done had not some of the previous directors left.

The OCRR Cofl was unusual in squarely blaming the board for the road's problems. The road's losses were mainly due to the injudicious system of management and the president

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<sup>794</sup> B&M 1855 Cofl Report, 20-2.

<sup>795</sup> FRR Cofl Report, 15.

and the board had allowed defects to exist when they could have been easily remedied. Lack of board oversight of the Superintendent and particularly the Treasurer had permitted bad practice to persist. It acknowledged Derby's claim that the board had not given him enough support whilst reporting that directors alleged that Derby had not given the job enough time. Director Hunnewell, in his interview with the Cofl, noted that the president devoted as much time to the corporation as could be expected for the amount he was paid; and reported that he had voted against the reduction of Derby's salary from \$1800 to \$1500. The Cofl was quite clear. The board had been unable to discharge its trust when the corporation should have been governed by one able man devoted mainly if not entirely to its interests. The board should be vigilant guardians of the property entrusted to their care but should not try to manage the railroad in detail. This should be done by a competent and amply remunerated president who supervised all subordinate officers and was to be held strictly responsible to the board and stockholders. He might consult them but they should not impede him so long as he zealously and judiciously strove to discharge his duties.<sup>796</sup>

In the event the stockholders removed Derby and other directors and he was replaced as president by Francis Crowninshield on a salary of \$3,500. He served until 1855 and the fortunes of the road recovered somewhat. Derby mounted a sturdy, if somewhat bad tempered, defence both by way of a reply to the Cofl circulated to stockholders and speeches made at the April 1850 General Meeting. He argued that the Cofl had not given him sufficient credit for his work for the road nor had allowed for the impact of poor trading conditions and past errors made by Massachusetts railroads generally. Administrative problems had been exaggerated. He remained opposed to closing the Construction Account, increasing fares and a full time president.<sup>797</sup>

Derby was ousted by the stockholders in 1850 although his 36% share of the poll suggests that some of his defence appealed to stockholders.<sup>798</sup> We should recall that the role of President was evolving in New England railroads at the time and recognize that the OCRR Cofl's call for full time management by one man was not contemporaneously a universally settled orthodoxy. Hayes and his colleagues were sticking their necks

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<sup>796</sup> OCRR Cofl Report, 66, 71, 80-2; Hunnewell's Evidence Interrogatories 29-34.

<sup>797</sup> Derby Reply to Cofl, 3-15.

<sup>798</sup> Records of Old Colony RR, 240-2. Minutes of General Meeting 16-17 April 1850.

somewhat and Derby's assertion that a full time president was not required would have appeared a more plausible view in Boston in 1850 than it does now. It is possible that in other circumstances the rest of the OCRR leaders could have covered the gap left by the level of Derby's contribution and the risks of pinning too many hopes on one individual were understood by some at the time. Nonetheless, given the reduced returns and financial pressures together with the evidence of lack of oversight at the OCRR and Derby's insistent advocacy of part time leadership combined to make a more powerful case for having a full time president and giving him the right incentives through a high salary. The OCRR Cofl gave a nudge towards the development of president as chief executive.

### Declining use of the Cofl by railway companies after 1860

#### *British case studies*

The literature's mention of British railway Cofl's tends to centre on those appointed in 1849 by the four companies run by George Hudson.<sup>799</sup> The Cofl does not seem to appear much in a railway context after 1870. Of 70 entries in the British Library catalogue for Cofl's only one in 1877 dates from after 1870. Of 59 entries for 16 railways for 1800-99 in the UK National Archives catalogue only two date from after 1870, the latest being 1878.

#### *New England case studies*

There are indications in the literature that the New England case study Cofl's may have represented a high watermark for stockholder participation. Edward Chase Kirkland in his history of nineteenth century (1820-1900) New England transportation held that until the civil war there was an expectation that stockholders would hold directors to a strict accountability and that this was a reasonable expectation as most of the stockholders were local. He reports the establishment of committees which he describes as special rather than Cofl's but they are the same. However, he notes that the 1850s saw the last

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<sup>799</sup> As in Arnold & McCartney

effort of stockholders to participate in management and notes that thereafter this form of stockholder participation fell away<sup>800</sup>. Kirkland also describes the 1850s as the “railroad crisis” within greatly reduced stock values and reduced and passed dividends and the 1860s as a period of extraordinary prosperity for New England railroads<sup>801</sup>.

Wright’s focus is on corporations in the period 1790-1860 when he sees stockholder interests as better protected<sup>802</sup>; and he describes a decline in stockholder influence in American corporations since the civil war<sup>803</sup>. The Cofl appointed in 1874 by the stockholders of the Pennsylvania Railroad (one of America’s largest) is an early example of this decline. Prompted by the 1873 panic and depression and the payment of a dividend in stock, the Cofl reported on major extensions undertaken without stockholder approval and proposed a board restructuring to contain the power of the President. This was side-stepped and a return to cash dividends saw stockholder concern subside. Historian James Ward describes stockholders as being reduced to virtual impotency by the road’s professional managers<sup>804</sup>.

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<sup>800</sup>Edward Chase Kirkland, *Men Cities & Transportation* (Cambridge: Harvard University Press, 1948), Vol I, 425-6, 427-8, 432.

<sup>801</sup>.Ibid., 332-3 & 344.

<sup>802</sup> Robert E Wright, *Corporation Nation*, 2-5

<sup>803</sup> Ibid., Ch 9.

<sup>804</sup> James A Ward, “Power & Accountability on the Pennsylvania Railroad 1846-78” in the *Business History Review*, Vol.49/1 (1975), 37-59.

## Chapter 9: Conclusions

The research questions are taken in turn.

### **What elements facilitated, prompted or impeded mid-nineteenth shareholder activism?**

#### *Summary*

Shareholder activism was conducted within a checks and balances constitutional framework in common with that described by Freeman, Pearson and Taylor. The elements, such as audit, summary accounts, proxies and the press, which they saw as intermediating the space between shareholders and directors can also be observed in the case studies. They also reflect the structural balances and stockholder checks observed by Wright. The constitutional and regulatory frameworks were greater for railways than for other kinds of business. Whilst they were not so powerful to avoid detriment to shareholders, especially that arising from misleading information flows and an embryonic audit function, they offered some support to shareholders through the reservation of certain matters to them or the state and offering a number of fora, such as the general meeting, membership of a Cofl or parliamentary committee as well as the courts, in which they might participate.

Activism was more likely to arise in a shareholder body with properly aligned incentives and with a good level of local representation together with a leavening from centres of railway investment such as Lancashire, London or Boston. The railway discourse was a powerful tool for educating the shareholder and providing a mechanism by which activism might be organised. The importance of proxies for trust and the press as proposed by Freeman et al, Cheffins and Taylor are evidenced in the case studies.

Activism could arise from the shareholder body but was sometimes initiated by activist directors including by those appointed by allied railways or by lone campaigners.



### *The constitutional framework*

Clear statutory rules on capital gearing, paying dividends out of income and preventing office holders and contractors from sitting on the board offered some protection to shareholders of British railways through the promotion of financial prudence and discouragement of conflicts. The Massachusetts constitutional framework was less detailed but gave stockholders more influence through the annual election of directors rather than by the British practice of rotation every three or four years.

The British case study companies had graduated voting systems whilst those in Massachusetts had one unit of stock one vote with a 10% cap. Both systems may have been designed to encourage small investors as Hilt argues by moderating the possible tyranny of large shareholders who might become directors. The ECR polls in early 1856 show that its graduated scheme show a noticeable difference between the economic and actual results; but there is no evidence in the case studies of contemporary comment on either the impact or suitability of the voting systems in place.

Whilst activists and commentators did not complain about graduated voting systems, they regularly criticised the proxy system as favouring incumbent directors. In the 1850s the Massachusetts legislature limited the number of votes a proxy could cast unless they were a proxy for a single stockholder. There was evidence of manipulation at the BER when its directors repaid £98 after the Cofl criticised them for the circulation of proxies at company expense to certain shareholders only. However, perhaps because the system was recognised as properly supporting shareholder voice given a large number of dispersed shareholders, there was no evidence in the case studies or general literature that abolition or prevention of its use by directors was seriously considered. The system was used by incumbents and activists alike as in the BER, OWWR and ECR election battles described above.

Case study constitutions did not allow specifically for Cofl's but they were not invoked to thwart their appointment by the general meeting.

Having recourse to Cofl's could be seen as a reflection of the weakness of corporate governance in early railway companies. The routine of the interaction of shareholders and directors/managers appeared unable to prevent issues of such magnitude arising that arrangements not specifically allowed for in their constitutions had to be used. The revelations in 1849 about Hudson's misdemeanours would have fuelled contemporary concerns about the ability of companies to govern themselves.

Often a failure to generate substantially accurate information lay at the root of the problems. This was an issue which checks and balances between shareholders and directors/managers struggled to control in an early learning phase of public companies in the absence of reporting standards and embryonic auditing. The appointment of the Cofl did, however, evidence a shareholder body sufficiently engaged to assume responsibility for the investigation and remedy of problems and employ a mechanism to animate and reinforce the checks and balances as existed in their constitutions. Cofl's helped to illuminate the particular vulnerabilities of the corporate form and suggest how they might be mitigated.

### *The regulatory framework*

Shareholders seeking to challenge management were afforded some opportunities by the system of parliamentary approval of railway schemes which amounted to a contested licensing system. Board of Trade reports to select committees on railway bills could assist shareholders in challenging management as in the case of the WHHRC. An ad hoc Board of Trade inspection of the Norfolk Railway's physical condition made adverse findings which damaged Waddington's case. The Board of Trade and parliament also collected data from each company on traffic and capital and loans, which could be used, as by Coleman with the WHHRC, to identify inconsistencies. In both Britain and Massachusetts the state's recognition of the power and importance of railways led it to take reserve powers to take them in to public ownership. The relationship between the railways and the state was always stronger than for most other types of company.

Generally speaking the maximum fares and rates inserted in companies' Acts were not a matter of contention between shareholders and management, although the overall level and equality of charging between customers were important as in the BER and ECR

cases where dissenting shareholders sought to make common cause with dissatisfied customers.

The main regulatory interest in the UK at this period was in safety with inspection of the railway before it opened and reports on accidents. The courts also required railways to compensate passengers affected by accidents. This was an important factor in heading off calls for heavy retrenchment and staff and pay cuts when railway returns were reduced in the late 1840s. This probably had a moderately beneficial effect on corporate governance through advancing the concepts of care and prudence and reducing the incentives to cut corners or worse arising from salary cuts in the clerical areas. However, save for safety, the state's general policy was not to interfere in enforcing compliance with railway Acts but to leave it to affected parties to agitate or go to law.

The US case studies do not reveal the stockholders or Coff's having particular recourse to the state legislature or any regulatory body. Massachusetts had no railroad commission at this period and stockholder activists in the case study roads appeared to limit their efforts to getting reform candidates voted onto the board. However, the state's requirement for the annual filing of data on the road, its traffic and finances gave the stockholder and commentators material on which to form opinions about the performance of the industry and individual roads.

Overall, the regulatory environment offered some support to shareholders' influence and interests.

### *Shareholder body*

It seems that activism was assisted by having a good number of shareholders local to the line; and in a centre where proximity and existing networks and loyalties could help with organisation. The Bristol shareholders in the BER were such a group which organised well and gained successful outcomes. It appears from statements made in the shareholder battles of 1855-56 that the City of London was well represented in the ECR shareholder body. On the other hand, the OWR and the WHRC appeared to have

materially less local investment. The ownership of the US case study roads was predominantly local.

Apart from investors local to the line, all the British case study railways had investors based in known centres of railway capital, that is London, Liverpool and Manchester. Those from the latter two centres were particularly respected in the south of England as having particular expertise in railways as evidenced by their greater length of experience and the good returns secured by railways in northern districts. Lancashire investors were involved in the first BER agitation and at various times in OWR and ECR proceedings. They were also involved in the WHHRC. Whilst the US case studies did not have relatively remote identifiable investor groups, there was a perception among some non-Bostonian stockholders that the influence of the local metropole needed to be balanced by those of other areas served by the road; and surviving evidence suggests that a rough balance existed on boards between Bostonians and others from along the line.

On the other hand the interests of ECR and WHHRC shareholders as a whole were not served by sections having priority in dividend and thus having less incentive to be actively involved in monitoring directors.

#### *Railway shareholders' discourse*

Railway shareholders had regular flows of information. Active investors would have been acquainted with railway company prospectuses though would soon have become careful in accepting their claims about the cost of construction and operating return. They would then have settled into a six monthly routine of receiving the directors' half yearly report and attending the half yearly meeting and also special general meetings to approve bills going into parliament for new capital, branches and extensions. New England railroads had a similar routine but the regular general meetings were annual.

Even when railways were performing reasonably well, there would tend to be interventions at general meetings from shareholders critical of some part of the company's performance. If, however, there were matters of contention as in our case studies, the meetings were well attended, often lasted several hours and at times were

extremely rowdy. They were extensively if not necessarily fully reported in the press; reports extended to several columns and large sections were reported verbatim.

The press included London and local general newspapers and the specialist railway press. The last published Saturday weekly and contained company notices and half yearly reports, reports of company meetings, railway share prices, correspondence, news lines and leaders as well as advertisements. They could take up fairly trenchant yet differing positions on the controversies such as arose in the case studies. They were also used extensively by opposing groups to put and advance their cases in these disputes. The American Railroad Journal and American Railroad Times were also weekly and covered much of the same ground as the British specialist railway press. There was good interest in British railway circles in American railroads and vice versa.

The active shareholders also had access to share price information and as time progressed a sense of the benchmarks - such as dividend, rates paid for fixed interest securities, and working expenses ratio - by which to judge an individual railway company's performance. Otherwise, some investors would be aware of the commentary on the railways by such thinkers as Herbert Spencer, Henry Varnum Poor, Dionysus Lardner, railway specialists such as Robert Stephenson and campaigners such as William Malins.

By 1855 through these sources the shareholder had learned of the perils arising from the short history of railway investment. Latterly it had been a story of diminished dividends and share values as the huge capital invested in the expansion of the network had yet to be fully utilised. Further, the well publicised and fortunately rare examples of egregious fraud and false accounting perpetrated by George Hudson and Robert Schuyler made the investing public more wary. The case studies support Arnold & McCartney's view that the extent of the leader's power (in their study George Hudson) was related to the scale of the problem. However, the case studies also show that some of the issues with which Hudson was associated existed more widely.

Finally, the findings of Committees of Investigation and sometimes the published evidence taken by them fed into this discourse.

Railway investors benefitted from a rich and diverse railway discourse; it was a good foundation for shareholder activism.

### *Information flows*

#### *Dividends*

Financial performance as expressed in the dividend paid was probably the major determinant of shareholder mood and the cause of the appointment of Cofl's particularly in Massachusetts. In the period to 1860 it could be impacted by guaranteed dividends, capital structure, perceived insider expropriation and price setting. It was an important proxy for trust and a helpful signal for shareholders when fairly calculated.

#### *Accounting and audit*

Shareholders were poorly served by accounting and audit. In Britain a paucity of accounting rules and the absence of prescribed presentation of accounts until the Regulation of Railways Act of 1868 meant shareholders and commentators were regularly frustrated by changes in presentation and aggressive/improper adjustments to support the dividend. Such usually involved charging revenue items to the capital account or including impaired assets at full value. Manipulation of the accounts was facilitated by biddable and ineffective auditors which was typically undertaken by two shareholders of no great authority or expertise.

Following the revelations of accounting problems in George Hudson's railways in 1849 and failed attempts to introduce a statutory audit, there was a greater awareness of accounting issues. However, at the ECR in 1855, where the appointed auditors were assisted by professional accountants Quilter Ball, there were still gaps in the audit work.

The WHHRC accounts were particularly misleading as they were designed to conceal ultra vires investments and borrowings.

## *Initiators of activism*

### *Activist directors including those appointed by other railways*

Whilst at the BER there did not appear to be activist directors involved, minority elements on the board were a potential source of opposition to the dominant management group elsewhere. Whilst Jackson was able to fend off dissenting directors, those at the ECR and OWWR were more successful in seeding and promoting a movement for reform. Those at the OWWR were among the independent directors rather than those appointed by the GWR who were in regular opposition to the company's leaders. Those at the ECR were ex officio directors appointed by other railways to the ECR board. They had a sound base for activism as the shareholders of the host company could not remove them, but Parson and Waddington gained some support for their claims that with some justification that these directors served outside interests.

The split boards arose either as part of the establishment of the railway as in the case of the OWWR or from the de facto merging of railways not being effected directly by a full amalgamation where one company and one set of corporate securities emerged but where for a time, as in the case of the ECR, the component railways retained their corporate forms and securities. In the case of the WHHRC the predecessor companies were dissolved but some of their securities survived with priority attached. The split board arrangements probably assisted shareholder interests through giving minorities well informed and motivated agents which they might otherwise not have had. It has not been possible to assess how common such arrangements were. The case of the ECR hints that they may not have been so common. Had its line been built to Norwich as originally planned the Norfolk and Eastern Union Railways would not have been developed in the form they assumed or may not have been developed at all.

In the New England case studies, Derby's ousting in 1850 was preceded by board resistance to some of his policies. On the other hand a minority group in the Boston & Maine RR which agitated for reform ahead of the 1856 annual meeting narrowly failed to convince the stockholders of their case and lost their seats. No examples of split boards were found in the New England case studies.

## *Campaigners*

Benjamin Coleman's campaign to reveal the true state of the WHHRC was eventually successful when in 1862 there was a financial stoppage, Jackson resigned and the full picture of the company's assets and finances emerged. There was speculation at the time that he was really acting on behalf of competitor railways, but the available evidence does not shed any light on this allegation. He appeared to be a lone campaigner. Whilst the financial pressure upon the WHHRC was likely to have led at some point to the stoppage and Jackson's ousting, Coleman was largely responsible for them occurring as and when they did.

The ECR was the other case study where a campaigner new to the company, William Malins, was involved. He failed to get elected to the board in late 1856 but only narrowly against another reform candidate, the chairman of the Cofl. His call for railways to understand their costs better, set charges to secure a fair return for shareholders and improve audit seemed to chime with many shareholders; and his narrow loss reflected the low regard shareholders had for the condition of the ECR. Malins was subject to personal attacks in the press, but some shareholders would have detected a conflict in a campaigner running for director. Malins joined the activism at ECR well after it started but his involvement gave the ultimately successful reform element some extra momentum once he did.

The US case studies do not appear to have involved outsider campaigners such as Coleman or Malins.



## **How effective were the processes of mid-nineteenth century shareholder activism in identifying and analysing problems and what outcomes were they able to secure?**

### *Summary*

The range of outcomes of shareholder activism was constrained by strategic pressures, the professionalisation of railway management and, if the case studies are representative, the diligence of railway directors. Nonetheless, with one exception, the case study Cofl's had full powers of investigation, appeared well staffed and produced thorough reports.

The size and nature of railway operation of themselves favoured a unified management; and in the case studies, save perhaps at the BER, strategic and broad business policy issues remained effectively in management's hands. However, shareholder activism largely by way of the Cofl's was able to set standards and expectations about how companies should be run. It helped to build safeguards for shareholders in promoting discipline and transparency in financial and business accounting and reporting; in bearing down on conflicts of interest; and constraining managers by the threat of removal. It also educated shareholders through greatly enriching the railway discourse.

The outlier case study of the WHHRC showed that the civil courts could assist shareholder activists and potentially deter bad director behaviour. The circumstances surrounding the state's considering but declining to prosecute Jackson reflect on the tensions for the law between accommodating business and bearing down on cases causing great public damage. These tensions are as described by Sarah Wilson in an analysis of the discourse around the passage of the Punishment of Frauds Act 1857<sup>805</sup>.

### *Elements reducing shareholder agency*

#### *Strategic pressures*

Shareholder interests and influence were on the whole adversely affected by certain factors which tended to depress returns but were difficult for shareholders to avoid.

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<sup>805</sup> Sarah Wilson, Tort Law 374-79.

First, railways often turned out to cost significantly more than planned whether due to the high cost paid for land or engineering related overspend. In order to secure such funds often in times when traffic was still building, they had to offer preference capital at high fixed rates to investors. As well as not receiving the return promised on their shares, original ordinary shareholders often saw their dividends reduced further as a result.

Second, as the British railway network was not centrally planned, promotion was used by both established railway companies and newcomers to extend and defend territory. This often took the form of established railways securing territory by guaranteeing to the shareholders of a new branch or extension a high fixed rate of dividend on its shares. This rate often exceeded the return of the guaranteeing party causing dissatisfaction amongst its shareholders. In Massachusetts the legislative background, lack of central planning and concern about extensions and branches were similar to the British experience. Massachusetts railroad stock holders were also concerned that their return would be reduced by the assumption of debt partly incurred to meet commitments for branches and extensions.

Third, competition from more powerful neighbours could force railways into riskier ventures as in the case of the WHHRC. The pressure of this competition accounted partly for the weak financial condition of WHHRC and probably influenced the course Jackson took in the development of ancillary activities in coal mines and shipping. In the longer term, S&DR weakened WHHRC but other agents were more involved in the proximate causes of Jackson's downfall.

The ECR, BER and WHHRC case studies lend support to Campbell & Turner's argument that expansion by railways in the 1840s was a rational response, albeit associated with declining financial performance, given the authorisation of competing schemes and the stronger performance of the largest firms.. At the ECR Waddington adopted an expansive approach with some success and with some shareholder approval. The BER had to promote extensions in the 1840s to protect its territory. At WHHRC Jackson had an successful expansionary policy in developing the port of West Hartlepool and in the Cleveland iron ore field and an attempted though failed attempt at a cross Pennine link. Competitive pressures and the race for territory could have had an adverse effect on

corporate governance as company leaders sought to secure existential ends without properly consulting shareholders.

There is less evidence from the New England Cofl's that the relationships with other independent railroads were behind major issues reported by the Cofl's.

### *Professionalisation of railway management*

The OWWR and ECR cases partly concern the professionalisation of railway company management, the first where the Committee of Investigation of 1856 were seeking to promote it and the second where Waddington argued with some power that he had made progress in that direction. These efforts coincided with development of railway management by Huish at the LNWR as observed by Gourvish and the Erie and Pennsylvania Railroads as observed by Chandler. The shareholders do not play a major role in these accounts but there were signs in these case studies that medium sized railways were undergoing a similar process to what Gourvish and Chandler were seeing in the larger ones. The likely longer run effect would be to reduce shareholder influence.

### *The diligence ,care and skill of directors*

The diligence of railway directors in the case studies is evidenced in the minutes by good attendance at board and board committee meetings which were generally held at least fortnightly and quite often more frequently. The outlier was the WHHRC where the Lancashire directors did not attend for several years. Railway directors were often actively associated with the promotion of the line and/or were in business, finance or the law. Very few if any, were so-called "West End" directors who were recruited merely to give the impression of respectability to companies and who had neither the relevant skill nor the time to offer<sup>806</sup>. Apart from the WHHRC the case study directors would appear to have discharged the duties called for in *Re City Equitable Fire Insurance Co Ltd* and otherwise met the "comically low" standards for directors' duties as described by Parkinson.

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<sup>806</sup> Wilson, Tort Law 378-9.

### *The appointment, membership and work of the Cofl's*

Save at the WHHRC, the Cofl's were appointed by and reported to the general meeting with a wide scope and full access to the company's papers and people. Their members had between them the standing and business experience to do the job set for them and they usually benefitted from the information provided by the company's officers at interview and sometimes from officers of other railways. Their reports evidence a thorough approach. As in other aspects the WHHRC Committee of Assistance is an outlier. The report was to assist the board rather than shareholders and its brevity and sparing disclosure mark it out. However, its process assisted shareholder interests through securing the transfer of the collieries from Jackson to the company.

### *Issues raised by and outcomes of shareholder activism*

#### *Financial performance, business strategy, retrenchment and fares/rates*

Save for the BER shareholders' rejection of the permanent lease to the GWR, this was an area where shareholders made only a modest and reinforcing impact.

The New England Cofl's priorities were on how business policy might secure better returns; they recommended fare and rate increases as well as retrenchment where particular measures, such as scaling back the B&M engine and car shops, could be identified. Across the board retrenchment was, however, wisely rejected as a false economy and compromising safety. Some of the US case study roads increased passenger fares following reasonably specific Cofl recommendations but there is little evidence that general Cofl calls for increased freight rates were taken up. The unilateral increase of fares and rates other than in quite difficult trading circumstances such as the mid 1850s would be problematic. Such evidence as exists on fares shows general increases in 1849-50 and 1855-7 by the Boston roads followed by moderate declines in 1858-60.

Some like Malins and the B&P 1856 Report called for proper costing to allow traffic to be priced to secure a fair return to shareholders, but little was done in this area in the mid 1850s nor indeed, at least as far as Britain was concerned, in the following decades.

Time and resource constraints, the complexity of the issue and the Cofl's role of investigating rather than running the company weakened its ability to advise on fares and rates. Cofl's had only limited influence against a competitive market for railroad services but did help to lend weight to the argument that, whilst a railroad should not overcharge the public to pay for inefficient operation, its stockholders were entitled to a fair return for providing the capital for an efficient service.

The US Cofl's highlighted several accounting issues reflecting stockholder concerns that their interest was being compromised or diluted. The principal concern was that construction accounts were creeping up having been posted with items which properly belonged to the income account and that this was being funded by debt interest upon which reduced stockholder dividends. Accordingly, there were repeated Cofl calls for the closure of construction accounts which went unheeded although postings to them probably slowed down for a while.

The US Cofl's were particularly exercised by the scale of free passes, not only on grounds of cost (though none attempted to calculate it) but also on grounds of fairness. They were an easy target where resolutions to reduce their issue would always pass at general meetings. Cofl's made some progress in bearing down on the problem - the OCRR banned them in 1850 - but other managements dragged their feet probably estimating that unilateral action would have a net cost.

The British Cofl's were more focussed on dealing with particular problems affecting the company rather than considering how profits and dividends could be restored in generally difficult trading conditions. However, shareholder activism linked to customer complaints led to rates changes at the BER and at the ECR.

### *Disclosure: reassurance and analysis*

Depressed dividends and share values as well as major frauds perpetrated by such as George Hudson and Robert Schuyler encouraged shareholders to check that first their property was intact and second that it was capable of yielding a fair return in the future. The B&M 1849 and NR(NH) Cofl reports in particular described in great detail the real estate, buildings, equipment, motive power and rolling stock of the roads. In so doing they were describing the stockholders' property and confirming to them that their money had been properly spent. Other reports such as the OCRR, whilst finding great fault with the road's financial systems and controls, did seek to reassure stockholders that no major losses had arisen. The ECR, OWR and B&M (minority board) Cofl reports found that some adjustment to the accounts was necessary in respect of impaired assets but the reader would have judged such to be of only moderate impact. Only in the case of the WHHRC would losses arising from impaired assets have been a shock.

Having been reassured that their property was more or less intact, the shareholders looked for the Cofl to report on the railway's prospects. The US reports tended to offer more detail and analysis than the British. The B&M 1849 and NR(NH) reported fully on the workforce and its pay. Whilst no great recommendations arose, the information would have given stockholders benchmarks and the ability to compare roads. Both reports and management responses sought to compare performance with that of other New England roads. Some stockholders would have been educated by the B&P 1856 report which contained comparative analysis of costs and earnings per passenger and ton mile. To protect the share price, the reports tried to avoid talking down the roads' prospects and spoke fairly well of them. However, in both Britain and New England, they generally provided enough supporting information to allow the reader to make a reasonably informed assessment.

### *Governance & systems and controls - faults found and recommendations made.*

Governance issues such as the operation of the board were identified in all British cases studies and improvements proposed. The ECR, OWR and WHHRC leaders were charged with taking decisions without due board or shareholder approval. Cofl's secured some improvements at the OCRR related to the role of treasurer and at the BER in the

management of stores. The BER 1849 and ECR 1855 Committees of Investigation, especially the former, raised problems of process but where no actual loss had been sustained. These matters seemed to gain less traction with shareholders, perhaps because the main objective of the agitation was elsewhere. However, management did adopt remedies for certain of the points raised and expectations were raised for future practice in others.

### *Conflicts of interest and insider expropriation*

Conflicts of interest and insider expropriation on balance worked against shareholder interests. In some cases a clear cost emerged, and in those where it might be plausibly claimed that the railway company was a net gainer, shareholders probably often felt that absent the conflicts it could have gained even more. Shareholders were also concerned that the opacity of these arrangements, particularly where contractors were involved, made it difficult to calculate their value or cost. Only at the OWWR could a particular potential conflict, in that case related to contractors, be clearly argued to have benefited the company.

Conflicts were the real subject of the 1849-50 BER agitation and probably the dominant concern of ECR shareholders in 1855-6. These particularly surrounded Gooch, the company's overpaid locomotive engineer, whose relationship with the company seemed nearer to that of conflicted contractor than salaried employee. There were suspicions at the OWWR that Parson's buying and selling of the company's stock was based on insider information; or, if not, that he should have concentrated on running the company rather than trading in its shares. The involvement of contractors in the financing and management of the company or related companies were issues at the ECR and OWWR.

At the BER and ECR an important element of shareholder activism arose from concerns that mineral, principally coal, traffic was priced to favour major carriers on the line giving them effective monopolies. There were conflicts of interests involved but also ambiguities arising from these arrangements building traffic on these railways; and, in the ECR's case, providing cheaper coal to consumers.

Whilst of the US reports only the OCRR and NR(NH) raised material issues in this area, they ranged broadly across areas of the business.

One area where conflicts could play out was activities beyond the powers of the company. The outstanding example of ultra vires activity was the WHHRC's concealed loans to Jackson's collieries which clearly went well beyond nursing a railway's customers through a difficult spell and ultimately involved the company in a substantial loss.

Material conflicts of interest were identified and removed at the BER, OCRR and WHHRC; and identified and mitigated at the ECR. Directors at the NR(NH) had already begun to deal with conflicts and insider expropriation but the Cofl amplified the concerns and added to the railroad discourse in this area. No charges were made by the US Cofl's against contractors.

The case studies contain several examples similar to the GWR coal contract described by Channon and suggest that the British experience had some echoes in the US as Berle & Means describe the American courts as being robust on the standard of conduct required of management and in dealing with conflicts of interest.

#### *Ultra vires activities*

Although in the British case studies it seems the shareholders could do little to prevent or reverse ultra vires activity, it did, once revealed, harm management's reputation as it was usually loss making and often seemed to benefit insider interests. Concern about ultra vires activity was, therefore, partly responsible for the ending of Waddington's and Jackson's regimes.

#### *Removal of company leaders*

Whilst specific improvements came out of the spells of activism, their most substantial achievements were the removal or sidelining of the leaders of the four British case study railways and the OCRR, although purposive and sometimes quite lengthy campaigns were necessary to remove them. Parson was sidelined and Browne, Waddington, Jackson and Derby were removed.



### *Legal remedies and criminal sanctions*

Whilst the courts were reluctant to become involved in internal company affairs, a Chancery case involving the WHHRC illustrated that minority activists were able to raise something with the look of a derivative action. Coleman's case on behalf of himself and other shareholders against the company and its directors appeared to proceed as an exception to the rule in *Foss v Harbottle* as illegal ultra vires acts incapable of ratification by the general meeting were alleged. Whilst the case dragged on in the face of Jackson's delaying tactics and was eventually overtaken by events, it did secure some further information for Coleman on the finances of the WHHRC and its reporting in the press was likely to have been seen as damaging to the reputation of Jackson and the credit of the company.

A similar reluctance to interfere is seen in the decision of the law officers in early 1864 not to prosecute Jackson and the company secretary of the WHHRC, despite considering an indictable offence under s. 8 of the Punishment of Frauds Act to have been committed through holding out a misleading view of the firm to potential lenders and investors. The grounds for not proceeding included the condition of the company (where a reconstruction had been secured offering a not too damaging outcome for creditors and shareholders); the existence of civil remedies for those who had altered their position and the fact that the misrepresentations had not been made for the purposes of personal gain. This disinclination to consider criminality beyond dishonest personal gain was also seen in the discourse surrounding the passage of the Punishment of Frauds Act and in the attitude of Sturge when conducting the WHHRC Committee of Assistance. It was, however, an example of the state considering director and manager behaviour against a higher standard than formerly; and, in the circumstances of a less favourable likely outcome for creditors and in the absence of knowledge that the WHHRC had raised a suit to recover funds from Jackson, a different decision cannot be ruled out.

Jackson may have avoided prosecution but he was pursued through the courts by the WHHRC and NER for 15 years which may have deterred irregular corporate behaviour in others.

**How do the findings comment on the longer run history of corporate governance; how do they support or refine present day theory and practice of corporate governance and what assistance are the latter in explaining the nature of mid-nineteenth century shareholder activism?**

### *Summary*

The case studies support the views of those who see a non-linear path to management ascendancy and safeguards for shareholders developing along the way; but also those who note the appearance of the rentier investor.

They appear to identify a phase in the development of corporate governance. In response to reduced returns and notorious malfeasance, activism associated with Cofl's flourished for a while then faded away. It was associated with shareholders learning and setting norms for and expectations of director behaviour. The Cofl's also considered matters later the subject of regulation.

The case studies reveal that agency risks and costs were well understood by mid-nineteenth century corporate actors. The companies were established with these in mind and shareholders were sensitive to conflicts of interest. There was a tendency for shareholders to conspire in elevating agency risk but once aroused in this phase they could organise to investigate and remedy problems. Some of the mitigants cited as assisting corporate governance such as large shareholders and fear of takeover appeared to be less powerful. Indicators of increased agency risk arising from the case studies were asymmetries of information and the novelty of the shareholder experience.

Stewardship and stakeholder theory help to identify certain aspects of the case studies where the behaviours associated with those theories were displayed. The benefits yielded to the company and the community by the leaders of the case study railways might argue for not adding to agency controls but reliable information flows to the shareholder would be a necessary pre-condition. Stakeholders by way of customers

were brought into the Cofl process in some cases although they evidenced the potentially divergent interests of different sets of stakeholders and the difficulties of reconciling them.

There are resonances between the case studies and present day corporate governance of U K public companies which help to illuminate which issues are more enduring.

Shareholder engagement and the means of promoting shareholder interests within the company but beyond the general meeting appear to be among them.

### *The longer run history of corporate governance*

#### *Separation of ownership and control*

The case studies offer some insights into the long run history of corporate governance and offer support to the views of Berle & Means and Channon that the road to management ascendancy was not a simple linear process and that safeguards for shareholders developed along the way. The case studies and railway discourse bear out the starting point for property which Berle & Means describe; that is from ownership of a real asset with control to wages of capital without control. In the 1840s and 1850s the term “proprietors” is used interchangeably with those of share or stock holders and contemporaries talks of this group managing its property when attending general meetings. The great complaint of press and pundits about the supineness and inertia of railway proprietors probably stems from disappointed expectations of how actively they should manage their assets.

The separation of ownership and control as a long term trend is supported by the case studies. Although ownership and control were separated from the start in railways, the ability of shareholders to influence business policy was initially reduced by operational complexity requiring a single command structure and later by the market for railway services constraining discretion in setting prices. The New England case studies where the Cofl’s focussed on business rather than governance lapses particularly evidence this; and render it less surprising that Kirkland reported that New England railroads did not appoint Cofl’s after the 1850s.

The rentier investor uninterested in managing their property is associated with the separation of ownership and control and the case studies lend some support to Ireland's view of their development in the nineteenth century. Absent problems with the dividend, there would likely have been fewer Cofl's appointed and contemporaries complained about the general apathy of shareholders. Selling their shares was generally a trouble free alternative to activism. Cofl concerns about governance lapses, which did not involve a crystallised loss, seemed to gain less traction with shareholders.

However, the outcomes of the activism set out above, however, bear out the qualifications of Berle & Means and Channon about a non-linear process and safeguards for shareholders appearing along the way.

### *The evolution of the corporate governance framework*

As seen through three lenses, the Cofl appears to fall into a distinct phase of the history of corporate governance. First, using Sewell's terms, the "event" was the Railway Mania and its aftermath where a boom in railway promotion and construction had been followed by a steep fall in the value of railway securities in the late 1840s, together with the disclosure of large scale malfeasance by railway magnate George Hudson. This disrupted existing "routines" by interposing the Cofl into the governance of some railways, added some "routines" to the benefit of shareholders and decelerated for a time the "trend" which was the erosion of shareholder influence. The importance of the agency of certain individuals noted by Sewell in Marseille is also paralleled in the case studies.

Second, using Tosh's idea of a process in thinking about the longer run, the phase of the Cofl could be characterised as follows. Shareholders invested in a new technology and, for most of them, in a new type of business organisation, the limited liability company, where ownership and control were separated to a material extent from the start. They then learned from the Mania and its aftermath; and, in some cases, appointed Cofl's to seek reassurance about the state of their property and guidance as to future leadership, business policy and administration. In doing so shareholders added to the learning process and dealt with a number of issues, some better understood and more tractable such as conflicts of interest than others such as pricing. The Cofl secured a range of

outcomes and helped to establish norms for proper corporate behaviour. Thereafter, their use declined as railways moved into a more mature phase with more moderate network growth, a greater emphasis on funding by fixed interest securities and professionalised management. Some issues considered by the Cofl's became the subject of state regulation. The process for the shareholder could thus include these stages: facing a novel situation, learning about the risks involved, setting and enforcing norms and withdrawing to a less active rentier role.

Thirdly, there is the advance of regulation in the nineteenth century as observed by Atiyah. Laissez faire ideas did disincline the state and the courts from interfering in company matters considering the parties involved as able to look after themselves. However, the state had sanctioned not only the railways with some detailed rules on governance but also the general corporate form. It added to regulation in the face of issues arising with railway companies; and following bank failures extended criminal sanctions for company directors. The Cofl's had aired and tackled some of the issues such as disclosure and pricing which were later to be subject to further state regulation<sup>807</sup>. The growth of state regulation may have reduced the need for Cofl's but the latter made some contribution to the former's development.

### *Agency theory*

Under agency theory the shareholders as owners of the railway were the principals and because of the size and complexity of the business had to employ the directors as their agents to run it for them. The directors were to run the railway for the benefit of the principals, but, because of human nature tending directors to pursue their own personal financial interests at the expense of the principals, agency risk arose and controls were needed to protect the principals' interests.

Agency risk was well understood in the mid-nineteenth century and a framework for its mitigation was part of railway company constitutions. Whilst they were public companies from the start, it could not be anticipated exactly how agency problems might arise in

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<sup>807</sup> For example the Railway & Canal Traffic Act 1854 on rates and the Regulation of Railways Act 1868 on disclosure.

railway companies and to what extent shareholders would actually use the framework to mitigate them.

The shareholding qualification for directors mitigated the agency risk by making directors principals as well as agents. However, the effect was only moderate as the very size of railway company capital meant the qualification only represented a very small percentage of the capital hence influence in a general meeting. Holding shares might deter directors from more reckless courses of action but not from courses which could involve short term pain for shareholders. Such might include investment in expanded facilities which would benefit the local economy and thereby directors' other business interests but would take some time to show through in the profits and dividends of the railway. There could be agency risk here but equally the opposing interests could be the present and future principals as opposed to principals and agents.

The case studies reveal a number of causes of increased agency risk in a number of areas. First, the companies had only a rudimentary "amateur" audit function and whilst shareholders and creditors had rights of access to the books it seems it was rarely used. Shareholders may have benefitted from incurring greater monitoring costs by having the company spend more on audit. Second, the natural information asymmetries arising between the directors and shareholders of large and complex firms were made larger by manipulative presentation of financial performance. There was some mitigation from the shareholders having the company's history and industry benchmarks to fall back on but there remained the risk, as at the WHHRC, that the manipulation would present performance as meeting benchmarks and give no indication of deteriorating trends until the company halted service on its obligations.

Thirdly, some shareholders seemed to conspire in elevating agency risk by taking the dividend without complaint even if they suspected it was not fairly earned; or if they were concerned about the company they sold their shares rather than agitate. There was a material disinclination shared by shareholders and directors to avoid the damage to the firm's reputation and share price which internal strife or shareholder activism could cause. It often needed a clear and announced deterioration in financial performance or the emergence of a particular problem to bestir shareholders to check whether their property was in good shape.

The case studies revealed a willingness by shareholders once roused to incur monitoring costs. They established shareholder committees paying subscriptions to defray costs and more importantly gave time to develop a case and organise proxies. They attended in great numbers at the general meetings where the emerged issues were to be discussed. They served on the Committees of Investigation appointed by some of those general meetings.

Evidence in the case studies of the elements cited by Hart as mitigants to agency risk - that is improved corporate governance, large shareholdings and threat of takeover - are mixed. Some improvements bearing on corporate governance were secured through activism. Shareholdings appeared to be widely spread and there is scant evidence on the share of the shareholder base represented by the largest holdings. There was no market for corporate control as it is currently understood. There appears to be no evidence in the literature of contested takeovers of railway companies in the period and activists seemed to be existing shareholders or campaigners rather than new investors seeking to influence management. The uncertainty surrounding legislative approval of an investment in or an amalgamation with another railway also militated against the fear of risk of takeover, but did not eliminate it. Most mid-sized railway company directors and managers of the period would have recognised that gross mismanagement was likely to bring amalgamation with a neighbouring railway sooner rather than later on worse rather than better terms and probable loss of position.

Whilst the case studies have been chosen with agency theory in mind, they do shed light on the forms of agency risk and the elements influencing its growth or containment. Given the sensitivity of railway shareholders to conflicts of interest, they also show the core of the theory to be well understood. They provide two potential pointers for agency theory. First, there appears to be a greater agency risk in novel situations. In their relatively new role, railway shareholders were learning how best to promote their interests within the company framework. Second, attention should be paid to securing meaningful and substantially accurate information flows from the agent. Inconsistent and manipulated data impaired shareholders' ability to act as engaged principals.

### *Stewardship theory*

Stewardship theory sees human behaviour as composed of a wider range of motives than implied by agency theory, regards shareholders and directors' interests as being more aligned given certain conditions and is less concerned about the role separation and monitoring implied by agency theory.

It rests largely on views of motivation at work which are difficult to observe in surviving evidence of mid-nineteenth century actors. However, as it argues that a combined chair and CEO can best drive the company forward with fewer checks and balances if the objectives and culture of shareholders and managers are aligned, we could examine our case studies to see what benefit the leaders secured for their companies. Some alignment arose through the shareholding qualifications of directors and the latter's desire to maintain their reputation in the community for running a service for the community. The state and investing community were prepared at the coming of the railways to accept the separation of ownership and control and entrust control of the railway to the directors- in other words they were trusted to put the interests of the shareholders first.

Browne, Parson, Waddington, Jackson and the leaders of the New England roads could argue with some force that their policy was to advance the interests of the firm and shareholders. If collateral irregularities arose from these policies, the prime motive had been to benefit the railway and the ends justified the means. Most of the US case studies saw the survival of the incumbent management; and conflicts were an issue in only two of them. The company leaders could always point to the railway or port as evidence that they had been not only a faithful trustee but also a contributor to the well being of the district.

Thus the case studies evidence something akin to stewardship; and suggest that an increase in agency controls and costs might not always advance shareholder interests. They also evidence support for the proposition that a good level of substantially accurate information flows is an important pre-condition to the operation of stewardship theory. Whilst activism secured some improvements in this area, manipulation by directors and a lack of reporting standards remained a problem in some cases.



## *Stakeholder theory*

Stakeholder theory defines organisations as multilateral agreements between the enterprise and its stakeholders whether internal (employees, managers and owners) or external (customers, suppliers, competitors and special interest groups). Companies are regarded as social rather than private institutions and a key element is that stakeholders are brought within the corporate structure either by direct representation or indirectly. Also the company is encouraged to have regard for the interests of the community and environment.

Whilst mid-nineteenth century corporate actors did not speak of stakeholders, there are elements within the case studies which tune with aspects of stakeholder theory.

The broader responsibility to the community is reflected in the set-up of the railway which was granted privileges by the state in return for providing a service to the community. To an extent community action was involved by people organising in towns to acquire a rail link. Thus there was a connection to the community stronger than many other local businesses could claim.

Customer hence stakeholder interests were protected by railway Acts setting maximum charges for passengers and goods. Goods customers were brought within the company, albeit for a short while, by being interviewed by the BER and ECR Cofl's. Whilst rate changes were made, the Ipswich coal merchants involved in the ECR Cofl did not find them sufficient and went to law to secure further changes. This exemplified the transience of alliances and potential opposed interests of shareholder activists and customers. It also highlighted the potential conflicts between sets of customers as the rates complained of by the Ipswich coal merchants were alleged to have benefitted consumers through lower prices. These case studies illustrate the antagonisms which could arise between different sets of stakeholders and the potential difficulties in reconciling them.

There is no evidence of involvement of the workforce beyond senior officers and book keepers in the shareholder activism of the case studies. Some collateral benefit or at

least protection from detriment arose from Cofl's resisting calls for reductions in pay on grounds of maintaining the quality of the workforce and promoting safety.

*Resonances between present day and mid-nineteenth century corporate governance in UK public company practice*

Whilst stewardship and stakeholder theory are reflected in current practice, arrangements to manage agency risk are to the fore both in present day and mid-nineteenth century companies, largely having developed as a reaction to major corporate governance failures. Current practice in a sense seeks to reassert the authority of the general meeting not only through encouraging shareholder/fund manager engagement through the Stewardship Code, but also through internalising the check on executive directors by way of a Non-Executive Director (NED) board majority and annual elections. This somewhat parallels nineteenth century practice where there annual elections (in New England at least) and a board majority of part time modestly paid directors<sup>808</sup>. However, given the much tighter definition of NEDs' independence and the specific roles assigned to them, they represent something akin to a standing Cofl. The Stewardship Code evokes mid-nineteenth century complaints about shareholder apathy. Also the engagement, co-operation, escalation and the exercise of rights and responsibilities sought by the Code were exactly the phases of activism associated with the Cofls... The objective of present day arrangements is the embedding and sustaining of shareholder influence which shareholder activism exercised more sporadically in the mid-nineteenth century.

*Contribution*

Bringing extensive archival data to bear, the thesis's chief contribution is to reveal and explain a distinct phase in the history of shareholder activism and corporate governance more generally.

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<sup>808</sup>Present day NEDs are better paid than nineteenth century directors but earn much less than executives.

## Bibliography

### Abbreviations

ARJ - American Railroad Journal.  
B&M - Boston & Maine Railroad.  
B&P - Boston & Providence Railroad.  
BER - Bristol & Exeter Railway.  
CCCA - Companies Clauses Consolidation Act.  
CofI - Committee of investigation  
Dormil - Dorchester & Milton Branch Railroad  
DCRO - Durham County Record Office.  
ECR - Eastern Counties Railway.  
F&B - Franklin & Bristol Railroad  
FRR - Fitchburg Railroad.  
GWR- Great Western Railway.  
Herapath - Herapath's Commercial & Railway Journal.  
LNWR - London & North Western Railway  
MR \_ Midland Railway  
NECCC - Norfolk & Eastern Counties Coal Company  
NER - North Eastern Railway  
NR(NH) - Northern Railroad (New Hampshire)  
OCRR - Old Colony Railroad  
OWWR - Oxford, Worcester & Wolverhampton Railway.  
RR - Railway Record  
RT - Railway Times  
S&DR - Stockton & Darlington Railway.  
S&H - Stockton & Hartlepool Railway.  
TNA - The National Archive.  
WHHRC - West Hartlepool Harbour & Railway Company.

### **Papers in the National Archives (England & Wales):**

Bristol & Exeter Railway Company - TNA/RAIL 75.

Eastern Counties Railway Company - TNA/RAIL 186.

Oxford Worcester & Wolverhampton Railway Company - TNA/RAIL 558.

West Hartlepool Harbour & Railway Company & predecessor companies - TNA/RAIL 117, 668, 730.

Parliamentary evidence of various railway companies - TNA/RAIL 1067

Prospectuses of various railway companies - TNA/RAIL 1075.

Accounts of various railway companies - TNA/RAIL 1111.

Reports of Committees - TNA/RAIL 1124.

Papers of the Treasury Solicitors - TNA/25.

**Papers in the UK Parliamentary Archive:**

Acts of Parliament

General Acts

The Railway Clauses Consolidation Act, 8 & 9 Vic., c. 20.

The Companies Clauses Consolidation Act, 8 & 9 Vic., c. 16.

Company Acts

Bristol & Exeter Railway, 6 & 7 William IV, c. 36

Eastern Counties Railway, 6 & 7 William IV, c. 106.

Oxford, Worcester & Wolverhampton Railway c. 184.

Stockton & Hartlepool Railway 5 & 6 Victoria I, c. 90.

West Hartlepool Harbour & Railway Act, 15 & 16 Victoria I, c. 142.

West Hartlepool Harbour and Railway (Capital) Act 1863 Local Act 26 & 27 Vic., c. 154.

Tavistock Canal Act 1803 43 Geo. III, c.130.

Wey & Arun Junction Canal Act 1813 53 Geo. III, c.19.

Minutes of House of Commons Select Committees on Bills.

Minutes of House of Lords Select Committees on Railway Bills.

Special Report of House of Lords Select Committee on West Hartlepool Harbour & Railway Company.

Special Report of House of Lords Select Committee on North Wales Railway Company.

Return of Alphabetical List of Names of Persons subscribing to Railway Subscription Contracts deposited in the Private Bill Office, 1845, House of Commons Papers 1845, Vol. XL.1,153.

Ditto for 1846, House of Commons Papers 1846, Vol.XXXVIII.1.

**Papers in other archives:**

Durham County Record Office:

Newby Robson & Cadle papers (DCRO/NRC)

Baker Library Harvard Business School

Old Colony RR Stockholder & Board Minute Book 1844-52

Northumberland Archives

Wm Armstrong & Sons (Chartered Surveyors, Mining Engineers & Mineral Valuers) Report Book (NRO 725/B)

Teesside Archives

Cleveland Railway papers (U/CR)

Devon Heritage Centre

Buller of Downes papers (2065M)

**Press and Directory Archives:**

UK

Bristol Mercury

Bristol Times & Bath Advocate  
Daily News

Exeter & Plymouth Gazette

Herapath's Commercial & Railway Journal

Hereford Journal

Leeds Times

Morning Post

Railway Record

Railway Times

South Durham & Cleveland Mercury

The Spectator

The Standard

Western Times (Exeter)

The Times

### USA

American Railroad Journal

American Railroad Times

Andover Advertiser

Boston Courier

Boston Daily Atlas

The Boston Directory

Boston Evening Transcript

Boston Post

Hunt's Merchants' Magazine & Commercial Review

The Massachusetts Register/State Record

### **Other sources**

#### Books and papers pre-1900

Anonymous. *Petovia being a Review of a Scheme for a Railway from Pitsea to Colchester...Dedicated to its Promoters and their Victims. By a Tooth of the Dragon.* London: Effingham Wilson, 1857.

Anonymous. *"Our First Men:" A Calendar of Wealth, Fashion and Gentility; containing a List of those Persons taxed in the City of Boston, credibly reported to be worth One Hundred Thousand Dollars with Biographical Notices...* Boston: All the Booksellers, 1846 (first and revised editions).

Boston & Maine Railroad. *Report of the Committee of Investigation appointed by the Stockholders ... May 28 1849.* Boston: Eastburn's Press, 1849.

Boston & Maine Railroad. *Report of the Committee of Supervision ... appointed by the Stockholders September 12 1849.* Boston: Damrell & Moore, 1850.

Boston & Maine Railroad. *Report of the Investigating Committee ... to the Stockholders September 29 1855.* Boston: Dutton & Wentworth, 1855.

Boston & Maine Railroad. *Report of the Minority of the Directors of the Boston & Maine Railroad to the Stockholders' Annual Meeting at Exeter NH September 10 1856.* Boston: J H Eastburn's Press, 1856.

Boston & Maine Railroad. *Annual Reports.*

Boston & Providence Railroad. *Report of the Committee for investigating the Affairs of the Boston & Providence Railroad Corporation appointed by the Stockholders on January 9 1856.* Boston: Eastburn's Press, 1856.

Boston & Providence Railroad. *Report of the Committee for investigating the Affairs of the Boston & Providence Railroad Corporation appointed by the Stockholders January 14 1857.* Boston: Henry W Dutton & Son, 1857.

Boston & Providence Railroad. *Annual Reports.*

Eastern Counties Railway. *Report of the Committee of Investigation to the Shareholders of the Eastern Counties Railway Company.* London: Waterlow & Sons, 1849.

Eastern Counties Railway. *Report of the Committee of Investigation and the Minutes of Evidence taken...* London: Waterlow & Sons, 1855.

Eastern Counties Railway. *The Chairman's Answer to the Report of the Committee of Investigation issued on 24 December 1855.* London: WS Johnson, 1855.

Evans, D. Morier. *The Commercial Crisis.* London: Letts, Son & Steer, 1848.

Fitchburg Railroad. *Report of a Committee of the Directors of the Fitchburg Rail-road Company on the Statistics and Prospects of the proposed rail-road.* Boston: Dutton & Wentworth, 1842.

Fitchburg Railroad. *Act of Incorporation together with additional Acts and By-laws of the Fitchburg Railroad Company.* Charlestown: Wm W Wheildon, 1854.

Fitchburg Railroad. *Report of the Committee of Investigation appointed at the Annual Meeting ... January 29 1856.* Boston: Henry W Dutton & Son, 1857.

Fitchburg Railroad. *Annual Reports.*

Fordyce, William. *A History of Coal, Coke, Coal Fields, Iron, Its Ores & Processes of Manufacture etc.* Newcastle-upon-Tyne, 1860.

Francis, John. *A History of the English Railway, its Social Relations & Revelations 1820-45.* London: Longman, Brown, Green & Longmans, 1851.

Lardner, Dionysius. *Railway Economy* 1850.

Lyttelton, Hon. & Rev. Canon, *Sins of Trade & Commerce.* Printed by Taylor & Co, Lincoln's Inn Fields, 1874.

New-York & Erie RR Coy. *Report of the Committee appointed to investigate the railroad addressed to Hon L. S. Chatfield, Speaker of the state of New-York signed 31 December 1841.*

Morrison, James. *The Influence of English Railway Legislation on Trade & Industry.* London: Longman, Brown, Green & Longmans, 1848.

Northern Railroad (New Hampshire). *Report of the Committee of Investigation of the Northern Railroad to the Stockholders May 1850.* Concord: Asa McFarland 1850.

Northern Railroad (New Hampshire). *Annual Reports.*

Old Colony RR. *Report of the Committee for Investigating the Affairs of the Old Colony RR Appointed by the Stockholders 26 December 1849.* Boston: Eastburn's Press, 1850.

Old Colony RR. *Brief Reply to Report of the Investigating Committee of the Old Colony RR by the President of the Company, April 12 1850.* Boston: Darnell & Moore Printers.

Old Colony RR. *Annual Reports.*

Owen, Revd J. B., *Business without Christianity with some Statistics & Illustrative Incidents.* A Lecture delivered before the Young Men's Christian Institute of Manchester 4 December 1855.



Pennsylvania Railroad. *Report of the Investigating Committee of the Pennsylvania Railroad Company appointed by Resolution of the Stockholders at the Annual Meeting held March 10 1874*. Philadelphia: Allen Lane & Scotts Printing House, 1874.

Philadelphia & Reading RR Company. *Report of a Committee of Investigation into the affairs of the Philadelphia & Reading RR*. Boston: Eastburn's Press, 1846.

Phillips, Edwin. *The Railway Autocracy: a Question of vital Importance to Shareholders and Directors, hitherto overlooked*. London: Longman, Green & Co, 1877.

Spencer, Herbert. *Railway Morals & Railway Policy*. London: Longman, Brown, Green & Longmans, 1855.

Spencer, Herbert. *The Morals of Trade*. Printed by Taylor & Co, Lincoln's Inn Fields, 1874.

Stockton & Durham County Banking Company. *Deed of Settlement*. Stockton-on-Tees: Robert Swales, 1839.

West Hartlepool Harbour & Railway Company and Benjamin Coleman

Coleman Benjamin, Letters to Shareholders of the West Hartlepool Harbour & Railway Company dated 12 and 24 January 1859.

West Hartlepool Harbour & Railway Company. *Letter from Ralph Ward Jackson (Chairman) to the proprietors 18 January 1859*.

Coleman, Benjamin. *Correspondence between Ralph Ward Jackson Esq. ... and Mr Benjamin Coleman...; addressed to the Preference Share, Stock & Bond Holders of the West Hartlepool Dock & Railway Company*. London: Benjamin Coleman, 1860.

Anonymous (Coleman) *The Past and Present Financial and Commercial Position of the West Hartlepool Harbour & Railway Company*. London: Baily Bros, undated (but mid 1859).

Ditto second edition 1860.

Coleman, Benjamin. *An Address to the Proprietors & Debenture Holders of the West Hartlepool Harbour and Railway Company, with correspondence, etc. (Second edition.)* London : Benjamin Coleman, 1860.

Coleman, Benjamin. *Revelations in Parliament... Letter to Shareholders of the West Hartlepool Harbour & Railway Company dated 28 June 1861*.

## Books 1900 and after

### General railway and business histories.

Casson, Mark. *The World's First Railway System; enterprise, competition & regulation on the railway network in Victorian Britain*. Oxford: Oxford University Press, 2009.

Chandler, A.D. Jnr. *The Visible Hand. The Managerial Revolution in American Business*. Cambridge, Mass.: Belknap/Harvard U. P., 1977.

Cochran, Thomas C. *Railroad Leaders 1845-1890*. Cambridge: Harvard University Press, 1953

Connolly, Michael J. *Capitalism, Politics and Railroads in Jacksonian New England*. Columbia Mo: University of Missouri Press, 2003.

Dyos, H. J. & Aldcroft, D. H. *British transport: an economic survey from the seventeenth century to the twentieth*. Harmondsworth: Penguin Books, 1974.

Evans, George H. *British Corporation Finance 1775-1850. A Study of Preference Shares*. Baltimore: the John Hopkins Press, 1936.

Freeman, M J. & Aldcroft, D. H.(ed). *Transport in Victorian Britain*. Manchester: Manchester University Press, 1988.

Gourvish, T. R. *Railways & the Economy, 1830-1914*. London: Macmillan, 1980.

Hawke, G. R. *Railways and Economic Growth in England and Wales, 1830-1870*. Oxford: Clarendon Press, 1970.

Hunt, B.C. *The Development of the Business Corporation in England 1800-1867*. Cambridge, Massachusetts: Harvard University Press, 1936

Johnson, Arthur M. & Supple, Barry E. *Boston Capitalists and Western Railroads*. Cambridge MA.: Harvard University Press, 1967.

Kirkland, Edward Chase. *Men, Cities & Transportation*. Cambridge: Harvard University Press, 1948.

Lester, V. Markham. *Victorian Insolvency, Bankruptcy, Imprisonment for Debt and Company Winding Up in the Nineteenth Century*. Oxford: Clarendon Press, 1995.  
Lewin, H.G. *The Railway Mania and its Aftermath* London; The Railway Gazette, 1936.

Parris, Henry. *Government & the Railways in Nineteenth-century England*. London: Routledge & Kegan Paul, 1965.

Pollins, Harold. *Britain's Railways: an Industrial History*. Newton Abbot: David & Charles, 1971.

Reed, M. C. (ed). *Railways in the Victorian Economy*. Newton Abbot: David & Charles, 1969.

Simmons, J. & Biddle, G. *The Oxford Companion to British Railway History*. Oxford: Oxford University Press, 1997.

White, Richard. *Railroaded. The Transcontinentals and the Making of Modern America*. New York: W W Norton & Company, 2011.

Wilson, John F. *British Business History 1720-1994*. Manchester: Manchester University Press, 1995

Wilson, John F. and Thomson, Andrew. *The Making of Modern Management. British Management in Historical Perspective*. Oxford: Oxford University Press, 2006.

#### Histories of individual lines/ railway leaders

Allen, Cecil J. *The Great Eastern Railway*. Shepperton: Ian Allen, 1975 Edn.

Arnold, A. J. & McCartney, S. *George Hudson. The Rise and Fall of the Railway King: a study in Victorian Entrepreneurship*. London: Palgrave Macmillan, 2004.

Cox, J.G., *S. M. Peto*. Oxford: Railway & Canal Historical Society, 2008.

Gordon, D.I., Thomas, D. St J. & Patmore, J. A., ed. *A Regional History of the Railways of Great Britain - Volume 5: The Eastern Counties*. Newton Abbot: David & Charles, 1977.

Gourvish, T.R. *Mark Huish and the London & North Western Railway*. Leicester: University Press, 1972

Hodgkins, D. *The Second Railway King. The Life & Times of Sir Edward Watkin 1819-1901*. Cardiff: Merton Abbey Press, 2002.

Kirby, M.W. *The Origins of Railway Enterprise*. Cambridge: Cambridge University Press, 1993.

McDermott, E.T. *History of the Great Western Railway*. London: Great Western Railway Company, 1927.

Maggs, Colin. *A History of the Great Western Railway*. Stroud: Amberley Publishing, 2015.

Martin, Maj. R. *Historical Notes and Personal Recollections of West Hartlepool and its Founder with Chronological Notes*. West Hartlepool; Robert Martin Limited, 1924.

Roden, Andrew. *Great Western Railway A History*. London: Aurum Press, 2010

Tomlinson, W.W. *The North Eastern Railway*. Newton Abbot: David & Charles, 1967.

E. Waggott, *Jackson's Town*. Hartlepool: Hartlepool Corporation, 1981.

#### Histories of Victorian business, crime and thought

Alborn, Timothy L. *Conceiving Companies. Joint-stock Politics in Victorian England*  
London: Routledge, 1998.

Elliott, Geoffrey. *The Mystery of Overend & Gurney*. London: Methuen, 2006.

Freeman, M. Pearson, R. & Taylor, J. *Shareholder Democracies? Corporate Governance in Britain and Ireland before 1850*. London: University of Chicago Press, 2012.

Robb, George *White Collar Crime in Modern England* Cambridge: Cambridge University Press, 1992.

Searle, G. R., *Morality & the Market in Victorian Britain*. Oxford: Clarendon Press, 1998.

Taylor, James. *Boardroom Scandal*. Oxford: Oxford University Press, 2013.

#### Chapters in Books

Gourvish, T. R. "Railways 1830-70: the Formative Years" in *Transport in Victorian Britain*. ed. M.J. Freeman & D.H. Aldcroft (Manchester: Manchester University Press, 1988).

Pollins, H. "Railway Contractors and the Finance of Railway Development in Britain" in *Railways in the Victorian Economy*, ed. M. C. Reed (Newton Abbot: David & Charles 1969).

#### Theses

Gordon, D. I., *The East Anglian Railways Company: a study in railway and financial history*. PhD thesis, University of Nottingham, 1964.

#### Articles & Papers

- Acheson G., C. Hickson, J. Turner & G. Ye. "Rule Britannia! British Stock Market Returns," *The Journal of Economic History*, 69 (2009), 1106-36.
- Campbell, Gareth & Turner, John D., "Managerial Failure in mid-Victorian Britain? Corporate Expansion during a Promotion Boom." *Business History* 57/8 (2015), 1248-76.
- Campbell, Gareth & John D. Turner. "Dispelling the Myth of the Naive Investor during the British Railway Mania 1845-6." *Business History Review*, 86, iss. 1 (2012), 3-41.
- Chandler, Alfred D Jnr. "Patterns of American Finance, 1830-50." *Business History Review*, Vol,28, No.3 (Sept 1954), 248-63.
- Dalling, Graham. "David Waddington - a Great Survivor," *Great Eastern Journal*, No.19 July 1979., 20-1.
- Glynn, J.J. The Development of Railway Accounting 1800-1911, in *Accounting History, some British Contributions*. Edited by RH Parker and BS Yarney. Oxford: Oxford University Press, 1994.
- Goldsmith, P. "The Witham to Maldon Branch," *Great Eastern Journal*, No. 11 (July 1977), 4-17.
- Holt, Robin & Popp, Andrew. 'Emotion, succession, and the family firm: Josiah Wedgwood & Sons', in *Business History*, 2013, Vol. 55, No. 6, 892-909.
- Kennedy Charles J. "The influence of government regulations on the management decisions of 45 New England railroads 1830-1900" in *The Railway & Locomotive Historical Society Bulletin* No. 105 October 1961 pp 6-22.
- Killick, J. R. & W.A. Thomas. "The Provincial Stock Exchanges, 1830-70." *The Economic History Review*, 23, no. 1 (Apr.1970).
- Leunig, Timothy. "Time is Money: A Re-Assessment of the Passenger Social Savings from Victorian British Railways." *The Journal of Economic History*, 66, no. 3 (Sep. 2006), 642-50, 651-654.
- McCartney, Sean & A. J. Arnold. "George Hudson's Financial Reporting Practices: Putting the Eastern Counties Railway into Context." *Accounting, Business & Financial History*, 10, no. 3 (Nov 2000), 293-316.
- McCartney, Sean & A. J. Arnold. "A Vast Aggregate of Avaricious and Flagitious Jobbing? George Hudson and the Evolution of Early Notions of Directorial Responsibility." *Accounting, Business & Financial History*, 11, no. 2 (Jul. 2001), 117-143.
- McCartney, Sean & A. J. Arnold. "Financial Reporting in the Context of Crisis: reconsidering the Impact of the Mania on Early Railway Accounting." *The European Accounting Review*, 11, no. 2 (2002), 401-17.
- Michie, R. C. "The London Stock Exchange and the British Securities Market, 1850-1914," *The Economic History Review*, 38, no.1 (Feb.1985), 61-82.

Odlyzko, Andrew. "The Collapse of the Railway Mania, the Development of Capital Markets and the Forgotten Role of Robert Lucas Nash." *Accounting History Review*, 21, issue 3 (Nov 2011), 309-45.

Shaw, Robert B. 'The Great Schuyler Stock Fraud', *Railroad History*, No. 141 (Autumn 1979), 5-18.

Stokes, W. "Ralph Ward Jackson (1806-80); Public benefactor or fraudulent businessman?," *Cleveland History*, Vol. 91 (Winter 2006), 29-39.

Swieszkowski, J. "Personal Profiles 6: John Viret Gooch," *Great Eastern Journal*, No. 123 (July 2005), 36-9.

Swieszkowski, J. "Coal, Coke and Scandal on the Eastern Counties Railway in the 1850s", *Great Eastern Journal*, No. 130 (April 2007), 3-15.

Taylor, James "Privacy, Publicity & Reputation: how the Press regulated the Market in 19th century England." *Business History Review* 87 (Winter 2013), 679-701.

Ward, James A. "Power and Accountability on the Pennsylvania Railroad, 1846-1878". *Business History Review*, Vol. 49 No.1 (Spring 1975) 37-59

Wilson, Sarah. "Law, Morality and Regulation. Victorian Experience of Financial Crime". *British Journal of Criminology* (2006) 46, 1073-90

Withington, Sidney. 'The Strange Case of Robert Schuyler', *The Railway and Locomotive Historical Society Bulletin*, No. 98 (April 1958), 32-46.

### **Works on Law and Corporate Governance**

Acheson GG, Campbell G, Turner, JD and Vanseera N. "Corporate Ownership and Control in Victorian Britain". *Economic History Review* 68, 3 (2015), 911-36.

Berle, Adolf A. Jnr. & Means, Gardiner C. *The Modern Corporation and Private Property*. New York, Macmillan, 1933.

Atiyah, P. S. *The rise and fall of freedom of contract* Oxford: Clarendon Press, 1979.

Bloomfield S., *Theory and Practice of Corporate Governance - an integrated approach* Cambridge: Cambridge University Press, 2013.

Cadbury, Sir Adrian and others. *Report of the Committee on the Financial Aspects of Corporate Governance 1 December 1992 (the Cadbury Report)*. Accessed at [ecgi.global](http://ecgi.global) via University of Cambridge Judge Business School (holder of Sir Adrian's archive of papers related to the committee) website ([cadbury.cjbs.archios.info/report](http://cadbury.cjbs.archios.info/report)).

Campbell, Gareth & Turner, John D., "Substitutes for Legal Protection - Corporate Governance & Dividends in Victorian Britain." *Economic History Review* 64/2 (2011), 571-97.

Cheffins, Brian R. *Corporate Ownership & Control*. Oxford: Oxford University Press, 2008.

Clarke, Thomas ed. *Theories of corporate governance: the philosophical foundations of corporate governance*. London: Routledge, 2004.

Dodd, E. M. *American Business Corporations until 1860 with special reference to Massachusetts*. Cambridge:Harvard University Press, 1954.

Donaldson L. & Davis J H. "Stewardship theory or agency theory: CEO governance and shareholder returns." in *Australian Journal of Management*, 16, 1, June 1991, 49-64.

Dunlavy, Colleen A., "Corporate Governance in late 19th century Europe and US: the case of Shareholder Voting Rights" in *Corporate Governance* ed K.J. Hopt et al. Oxford: Oxford University Press, 1998.

Financial Reporting Council. *The UK Corporate Governance Code July 2018*. Accessed at [frc.org.uk](http://frc.org.uk).

Financial Reporting Council. *The UK Stewardship Code 2020*. Accessed at [frc.org.uk](http://frc.org.uk).

Guinnane T.W., Harris R. & Lamoreaux N. R. *Contractual Freedom and the Evolution of Corporate Control in Britain 1862-1929*. NBER Working Paper 20481 0914

Hart, Oliver. "Corporate Governance: Some Theory and Implications". *The Economic Journal* 105, No. 430 (May 1995), 678-689

Hilt, Eric. "When did Ownership separate from Control? Corporate Governance in Early 19th Century". *Journal of Economic History*, Volume 68, September 2008, No. 3, 645-685

Kostal, R. W. *Law and English Railway Capitalism 1825-1875*. Oxford: Clarendon Press, 1994.

La Porta, R., Lopez-de-Silanes, F., Shleifer, A., Vishnu, R. "Investor Protection and Corporate Governance". *Journal of Financial Economics* No. 58 (2000), 3-27

Lamoreaux, N.R. "Scylla or Charbydis? Historical Reflections on two basic problems of Corporate Governance". *Business History Review*, Volume 83, No. 1, 9-34.

Lowry, John & Reisberg, Arad. *Pettet's Company Law: Company law and corporate finance 4th edn*. Harlow: Pearson, 2012.

Maltby, J., & Wilkinson, R., "UK Corporate governance in Historical Perspective." *Global Economic Review* 26/3 (1997), 37-58.

Napier, T. B. 'The history of joint stock and limited liability companies' in *A century of law reform*, Council of Legal Education, London: Macmillan, 1901, 379- 415.

Parkinson, J. E. *Corporate Power & Responsibility: Issues in the theory of company law*. Oxford: Clarendon Press, 1993.

Wilson, Gary "From black box to glocalised player? Corporate personality in the 21st century and the scope of law's regulatory reach", in *Northern Ireland Legal Quarterly*, Vol. 63, No.4 (2011), 433-49

Wilson, Gary, "Business, state and community: Responsible risk-takers, New Labour and the governance of corporate business" in *Journal of Law and Society*, 27 (1), pp. 151-177.

Wilson, Sarah "Tort law, actors in the 'enterprise economy', and articulations of nineteenth century capitalism with law: the Fraudulent Trustees Act 1857 in context" in *Tort law and the legislature: common law, statute and the dynamics of legal change*. Ed. T. Arvind & J Steele, Oxford: Hart, 2012.

Wright Robert E. *Corporation Nation*. Philadelphia: University of Pennsylvania Press, 2014.

Wright Robert E. & Sylla Richard. "Corporate governance and stockholder/stakeholder activism in the United States, 1790-1860; new data and perspectives". in *Origins of Shareholder Advocacy* ed Jonathan G S Koppell. New York: Palgrave Macmillan 2011.

### **Works on methodologies**

Carr E. H., *What is History?* Harmondsworth, Penguin Books 1964.

Decker S. "The silence of the archives: business history, post-colonialism and archival ethnography." in *Management & Organizational History*, 2013, Vol. 8, No.2, 155-73.

Eisenhardt K. M., "Building Theories from Case Study Research," in *Academy of Management Review*, Vol. 14 (1989), No.4, 537.

Lipartito K. "Historical sources and data." in *Organisations in Time - History, Theory, Methods* ed M Bucheli & R Daniel Wadhvani: Oxford OUP 2014, 284-304.

Maclean M, Harvey C & Clegg S R, "Conceptualising Historical Organization Studies," in *Academy of Management Review*, 2016, Vol.41, No.4, 609-32.

Magnusson S. G. & Szijarto I. M. *What is microhistory? Theory & practice*. Abingdon: Routledge, 2013.

Rowlinson M., Hassard J. & Decker S., "Research Strategies for Organisational History," in *Academy of Management Review*, Vol. 39 (2014), No.3, 250-74.

Sewell Wm. H. Jr., *Logics of history*. Chicago: University of Chicago Press, 2009

Skinner Quentin. *Vision of Politics Vol I Regarding Method*. Cambridge: Cambridge University Press, 2002.

Tosh John. *The Pursuit of History 7th Edition*..Abingdon: Routledge, 2022.



Usdiken B. & Kipping M. "History and organisation studies: a long term view." in *Organisations in Time - History, Theory, Methods* ed. M Bucheli and R Daniel Wadhvani: Oxford OUP 2014, 33-55.

Wadhvani R. Daniel & Jones G. "Schumpeter's plea: historical reasoning in entrepreneurship theory and research" in *Organisations in Time - History, Theory, Methods* ed. M Bucheli & R Daniel Wadhvani, Oxford: OUP 2014, 192-216.