The Origins of the Market for Corporate Law

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Abstract

I study the origins of the market for corporate charters and the emergence of Delaware as the leader of this market. Specifically, I assemble new data on 19th and 20th-century corporations to evaluate two widely-held beliefs: (1) the U.S. Supreme Court is responsible for enabling a national market for corporate charters in the 19th century and (2) Delaware became the leader in this market only because New Jersey (the initial leader) repealed its extremely liberal corporate laws in 1913. I argue that both claims are false: The Supreme Court always opposed a national market for corporate charters, and New Jersey's decline began a decade before its 1913 repeal. It is more likely that the market for corporate charters emerged as a collateral consequence of interstate commerce and that New Jersey declined because Delaware and other states simply copied its laws.

Keywords Market for corporate law, interstate commerce, federalism, New Jersey, Delaware
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Introduction

American firms, regardless of their physical location, are free to incorporate under the laws of any U.S. state. But this was not always so. Two hundred years ago, such an idea would have offended basic principles of federalism, the Constitution, and common sense. No less than Alexander Hamilton, the champion of corporate America, believed that a corporation chartered in one state had no inherent power to operate in another.[1] The U.S. Supreme Court would later agree, for "a corporation . . . exists only in contemplation of [state] law" and therefore "can have no legal existence out of the boundaries of the sovereignty by which it is created."[2] Yet today most companies incorporate in Delaware and operate wherever they please.[3] How did this happen?

The traditional narrative paints a chain of causality that begins in the Supreme Court, moves to New Jersey, and ultimately settles in Delaware. According to this narrative, the key legal innovation came from the Supreme Court. In the 1868 case of *Paul v. Virginia*,[4] the Court held that Congress' power to regulate commerce under Article 1 Section 8 of the Constitution applies not only to "commerce carried on by individuals" but also to "commerce carried on by corporations."[5] This set the path – so the traditional narrative goes – toward a national market for corporate law because it implies that a firm could incorporate in one state and operate in another so long as it engaged in interstate commerce.

New Jersey was the first state to capitalize on this holding. Throughout the 1880s and 1890s, it relaxed long-standing restrictions on size and business combinations, enabling corporations to merge with each other (1888), to deal in each other's securities and thus act as holding companies (1889), and to operate outside New Jersey without express permission

[1]In the prospectus for his project to establish a national manufacturing firm, Hamilton advised investors to separately petition each state legislature for a charter. See Davis (1917, p. 352); Henderson (1918, p. 32). See also Bank of Augusta v. Earle, 38 U.S. 519 (1839) ("It is very true that a corporation can have no legal existence out of the boundaries of the sovereignty by which it is created.").

Even *federally* incorporated firms would acquire additional state charters to legitimize their local operations. There are examples both before and after the Constitution was ratified. The Bank of North America, chartered in 1781 to finance the war effort, held charters issued by both the Confederation Congress and the state of Pennsylvania; the Bank of the United States similarly held charters issued by the federal government and the state of Pennsylvania. Both were located in Philadelphia. See Wilson (1942).

[2]Bank of Augusta v. Earle, 38 U.S. 519, 520 (1839).

[3]This is true at least for public companies. See Sanga (2019).

[4]75 U.S. 168 (1868).

[5]Paul v. Virginia, 75 U.S. 168, 182 (1868) ("It is undoubtedly true, as stated by counsel, that the power conferred upon Congress to regulate commerce includes as well commerce carried on by corporations as commerce carried on by individuals.").

from New Jersey's legislature (1892).[6] Firms across the country incorporated in New Jersey to take advantage of these new laws. By the turn of the 20th century, New Jersey was the undisputed leader in the market for corporate charters.

Its reign, however, was brief. In November 1910, Woodrow Wilson was elected governor. Wilson argued that New Jersey's experiment in corporate freedom had only yielded corporate tyranny, as behemoths like Standard Oil, U.S. Steel, the International Mercantile Marine Company, and many others leveraged the holding company structure to monopolize one industry after another. "The corporation laws" of New Jersey, concluded Wilson, were "manifestly inconsistent with the [antitrust] policy of the Federal Government" and therefore "notoriously ... in need of alteration."[7] Wilson set New Jersey on a path toward undoing its great corporate law experiment, and its laws were eventually repealed in 1913.[8]

This repeal, so the narrative continues, opened the door for Delaware. Delaware had already established an identical system of corporate law. Its legislature had simply copied New Jersey's liberal statute,[9] while its Chancery Court further incorporated New Jersey's common law by establishing "the presumption that the [Delaware] legislature, in adopting the language of the New Jersey statute, had in mind the construction given to it by the New Jersey courts."[10] Combined with its physical proximity to New Jersey (and more importantly New York), this made Delaware the easy fallback. Delaware instantly became, and has since remained, the leader in the market for corporate law. So goes, at least, the traditional narrative.

In this paper, I evaluate two key claims from the traditional narrative: (1) that the Supreme Court is responsible for creating a national market for corporate charters and (2) that New Jersey's 1913 repeal led to New Jersey's decline and Delaware's rise. Both claims have been repeated throughout the literature.[11] I conclude, however, that both are false.

[6]An 1896 overhaul consolidated these and other enabling provisions. See Grandy (1989, p. 681). See also Freedland (1955) on New Jersey's holding company statute.

[7]See Seligman (1976, p. 681) (quoting 96 The Nation 91, January 23, 1913).

[8]The laws were repealed by Wilson's successor.

[9]See Seligman (1976, pp. 271–275).

[10]Wilmington City Railway v. People's Railway, 38 Del. Ch. 1, 23 (1900).

[11]It is not clear what the ultimate source of either claim is. On the first claim, see, e.g., Bainbridge (2009, pp. 9–10) ("A subsequent Supreme Court decision [Paul v. Virginia] implied that states could not exclude foreign corporations from doing business within the states provided that the business constituted interstate commerce under the Commerce Clause of the U.S. Constitution. These decisions effectively created a common market for corporate charters ... [in which, e.g.,] businesses [in Illinois] are free to incorporate in ... Delaware, while continuing to conduct business within Illinois."); Klein, Coffee and Partnoy (2007, p. 114) ("This competition [for corporate charters] was spurred by a Supreme Court decision in 1868 [Paul v. Virginia] that ultimately facilitated the ability of a corporation incorporated in one state to do business in another"). Some sources cite the later case of Santa Clara County v. Southern Pacific Railroad, 118 U.S.

Section 2 considers the first claim. It argues that the oft-cited holding from *Paul v. Virginia* has been taken out of context. The market for corporate law emerged in spite of – not because of – the Supreme Court. Throughout the 19th century and into the 20th century, states routinely discriminated against corporations with out-of-state (or "foreign") charters. And in case after case, the Supreme Court categorically affirmed this power. The Court only began to place minimal limits on it in 1910 – twenty years after foreign incorporation had become commonplace – and significant limits only in the 1940s. Thus, the Supreme Court did not promote a national market for corporate law in the 19th century. Its position, to the extent it espoused one, was squarely in opposition.

Section 3 considers the second claim, that New Jersey's 1913 repeal caused both its own decline and Delaware's rise. To evaluate this claim, I consult two publications from the early 1900s: *Moody's Manuals of Railroads and Corporation Securities* and *The Mines Handbook*. These two sources are described in detail in section 3.1. Using a combination of hand-coding and machine-coding techniques, I use these publications to create a database of the incorporation histories of approximately 21,000 firms. Analyzing these data, I find that nearly all of New Jersey's decline occurred over the decade leading up to the repeal. I also find that Delaware, and to a lesser degree other states, was gaining market share throughout the pre- and post-repeal periods. New Jersey's repeal was therefore not the cause of New

394 (1886). See, e.g., Seligman (1976, p. 268) ("Retaliation against [states issuing foreign charters] was impossible, for the United States Supreme Court had ruled in 1886 [in Santa Clara County v. Southern Pacific Railroad] that a corporation was a 'citizen' within the meaning of the privileges and immunities clause of the Constitution. This meant that a corporation chartered by New Jersey had the same right to do business in a second state as a corporation chartered by that state.").

On the second claim, see, e.g., Cary (1974, p. 664) ("Delaware, seeking new sources of revenue, copied very largely from the New Jersey act to establish its own statute. Then in 1913, at the insistence of Governor Woodrow Wilson, New Jersey drastically tightened its law relating to corporations and trusts with a series of provisions known as the seven sisters. Since Delaware did not amend its statute, it took the lead at that time and has never lost it"); Seligman (1976, p. 270) ("Such was the historical setting [New Jersey's liberalization and repeal] for the enactment of Delaware's General Corporation Law in 1899, and for [Delaware's] ascendancy, *after 1913*, to the role of state of incorporation for more large business corporations than any other state.") (emphasis added); (Grandy, 1989, p. 687); Bebchuk (1992, p. 1443) ("After restrictive amendments to its corporation law were made in 1913, New Jersey lost the leading role to Delaware, whose corporation law was at the time a close copy of New Jersey's original statute.") (citing Cary (1974, pp. 664–65) and Herzel and Richman (1990, F-1, F-2)); Romano (1993, pp. 42–43) (citing Grandy (1989)); Kaouris (1995, p. 970) ("Although the Delaware statute was more liberal than the New Jersey statute, the number of corporations incorporating in Delaware did not increase significantly *until 1913*. In 1913, Woodrow Wilson, then governor of New Jersey, proposed the 'Seven Sisters Act,' effectively outlawing the trust and holding company. *As a result of that Act*, many corporations sought a new home of incorporation in Delaware.") (emphasis added) (citing Moore (1994, p. H-11)); Freer and Moll (2013, p. 153) ("New Jersey became the dominant state for incorporation [after liberalizing its statutes] . . . [b]ut it ended in 1911 when Governor Woodrow Wilson led a charge to repeal the changes in New Jersey law.") (citing Kaouris (1995)). On the Supreme Court's role in corporate law generally, see Mark (1997).

Jersey's decline or Delaware's rise.

If the traditional narratives are wrong, then what explains the emergence of the market for corporate charters? And the switch from New Jersey to Delaware?

Section 4 offers an alternative explanation. In my view, the market for corporate charters was not an intentional "creation" by any federal or state authority, but rather an inevitable consequence of interstate commerce. Notwithstanding the Supreme Court's defense of states' power to exclude out-of-state firms, corporations increasingly operated across state lines throughout the 19th century. For these interstate firms, the benefit of incorporating "at home" (i.e., in their state of headquarters) as opposed to anywhere else decreased as their share of out-of-state business increased. Indeed, for a firm that operates equally in every state, there is no such benefit because the firm's share of foreign business is the same no matter where it incorporates.[12] Thus, the demand for foreign charters implicitly emerged the moment the first corporation operated across state lines, while the growth in this demand was driven principally by the increasing returns to operating in multiple states.

Section 4 also offers an alternative explanation for New Jersey's decline. Though one cannot say for certain, New Jersey was likely a victim of its own success. New Jersey's liberal corporate laws were specifically designed to attract out-of-state firms.[13] Having clearly achieved that goal, they were then simply copied by other states. For example, New Jersey's holding company statute – its signature creation – was copied by Pennsylvania, Maine, West Virginia, Ohio, and others within a few years.[14] Sections 3.2 and 3.3 show that these states took a large share of the holding company charter business from New Jersey well before it repealed its statute.

Finally, why does this matter today? This matters today because the traditional narrative's claim that New Jersey's repeal caused its own demise has led scholars to draw the wrong historical lesson. The lesson of New Jersey's experience is not that some corporate laws attract charters while others repel them (true as this statement may be). Rather, the lesson of New Jersey's experience is that states will free-ride legal innovations that are easy to copy. Thus, a free-rideable innovation such as New Jersey's liberalizing experiment can only lead to short-term gains in the charter market. Only innovations that are costly to copy are capable of yielding lasting gains.

[12]This is all the more so given that state courts had established the internal affairs doctrine long before foreign chartering became commonplace. The internal affairs doctrine is a conflicts-of-law rule which provides that intra-corporate disputes shall be governed by the law of the state of incorporation, regardless of where the suit is brought. See Tung (2006). See also Levmore (1983) and Buccola (2018).

[13]See Seligman (1976, p. 265–269).

[14]See, e.g., Seligman (1976, p. 269–270) for other statutory examples.

The rest of this paper is organized as follows. Section 1 surveys the debate over the role of federalism in corporate law during colonial times and the immediate post-Independence period. Section 2 examines the Supreme Court's role in this debate and specifically considers the claim that the Court contributed to the creation of a national market for corporate law. Section 3 examines the claim that New Jersey's 1913 repeal led to its decline and Delaware's rise. Section 4 presents alternative explanations for the emergence of the market for corporate charters and the demise of New Jersey. Section 5 concludes.

1 Colonial Origins

For the modern scholar, the debate over the role of federalism in corporate law is mostly a debate over the role of Delaware: Whether its dominance in the market for corporate charters could be challenged by other states, whether the threat of such a challenge influences Delaware's corporate law, and whether any of this affects shareholder value or social welfare.[15] These are the issues of our time.

The influence of federalism on American corporate law, however, has been debated for at least four hundred years.[16] Indeed, corporate law is itself partially responsible for the federal organization of the United States, as several of the original thirteen colonies were initially organized as private corporations under European laws. The Virginia Company of London, for example, was chartered by James I of England in 1606 and tasked with settling "that part of America commonly called Virginia."[17] The Company established Jamestown, the first English settlement in the Americas, in 1607. It also established the office of Governor (1609) and the House of Burgesses (1618),[18] both of which have continuously governed the Company of Virginia (1607–1624), the Colony of Virginia (1624–1776), and finally the Commonwealth of Virginia (1776–present).[19] England similarly chartered other corpora-

[15]See, e.g., Kahan and Kamar (2000, 2002); Bebchuk and Hamdani (2002); Roe (2003); Romano (2006); Hadfield and Talley (2006); Romano and Sanga (2017); Romano (2017).

[16]Dari-Mattiacci, Gelderblom, Jonker and Perotti (2017) offer an account of the emergence of the corporate form in the 17th century. In their view, new trading opportunities in Asia required a business form that could lock in long-term capital and thus disable skittish investors from either withdrawing their funds or controlling the business. The corporate form was the legal innovation that enabled this arrangement.

[17]See Hening, ed (1823b, p. 57). The original charter created a pair of corporations, each tasked with settling different parts of the East Coast.

[18]See "Instructions to George Yeardley" by the Virginia Company of London (November 18, 1618). Available at https://www.encyclopediavirginia.org/.

[19]The boundary between Company and Colony was so fluid that after James I converted the Company to a Colony by revoking its charter, he simply reappointed the Company's then-governor as the first colonial governor.

tions whose settlements would later be reorganized as the colonies of Massachusetts, New Hampshire, and Connecticut.[20] Other European powers, including the Netherlands, Sweden, France, and Russia, also adopted similar corporate strategies for colonizing North America.[21]

The American Colonies themselves chartered only a handful of business corporations.[22] William Penn chartered the first in 1682, hailing it "a great and prudent body ... the Friend of the Widdow and the Ophan."[23] In truth, however, it was a venal scheme to monopolize trade and government offices. The scheme sparked bitter and lasting resentment among the non-Quaker settlers of Pennsylvania's lower counties (Sussex, Kent, and New Castle), and eventually inspired them to break off to form their own government of Delaware Colony. The second corporation, chartered by Connecticut Colony in 1732, was also a disaster.[24] It failed within a year and precipitated a statewide financial crisis.[25] Like the other colonies, Connecticut was never quite sure whether it even possessed the authority to incorporate businesses.[26] In the wake of its first corporation's crisis, however, the Connecticut legislature concluded that even if it did possess such authority, it better not exercise it, for "such a society of merchants, whose undertakings are vastly beyond their own compass [would come to] depend on the government for their supplies and money."[27]

The market for corporate law in colonial America, it seems, was a nonstarter. The corporate form was either misused (as in Connecticut) or abused (as in Pennsylvania) for

[20]The grant establishing the Dorchester Company was issued in 1623; the charter for the Massachusetts Bay Company was issued in 1628.

[21]These include the Dutch West India Company (Netherlands, chartered in 1621, settling parts of present-day New England); South Swedish Company (Sweden, chartered in 1626, settling along the Delaware River); Compagnie d'Occident ("Company of the West," France, chartered in 1718, settling along the Mississippi River). After independence, Russia also used a corporation (the Russian-American Company, chartered 1799) to settle parts of present-day Alaska.

[22]To be sure, the colonies routinely incorporated non-business corporations such as civic and philanthropic entities (i.e., towns and schools) as well as self-regulating guilds. By my count, however, there were only four business corporations. Two were failures and are discussed below; two were relatively successful corporations that developed the wharfs at New Haven and Boston. See Baldwin (1903); Davis (1917); Wright (2015). Wright (2015) lists eight pre-Independence corporations. I exclude four of them from my count: one Pennsylvania insurance company (chartered in 1768) because it was structured as a mutual company (i.e., owned by its policy holders) rather than a stock company (i.e., owed by investors), and three waterworks chartered by Rhode Island throughout the 1770s, which were also structured as mutual companies.

[23]See Nash (1965, p. 155).

[24]The New London Society United for Trade and Commerce, chartered in 1732. See Davis (1917, vol.2, p. 331).

[25]See Newell (1998, p. 184); Henderson (1918, p. 15).

[26]It put the question directly to its legislature: "Whether it be within the authority of this government to make a society of merchants [i.e., a corporation]?" and concluded that "it is, at least, very doubtful." Hoadly, ed (1823, p. 449).

[27]Hoadly, ed (1823, p. 449).

private gain. But this was nothing new. Penn's Free Society was cast from the European mold, which used the corporate form to endow a privileged few with economic and political monopoly rights. Though some contemporary scholars tried to distinguish these monopoly rights on the one hand from the corporation as an organizational form on the other,[28] the association between the two cloaked the corporate form with an aura of colonial oppression that proved difficult to shake.[29] The House of Burgesses, for example, cited the oppressive force of trading monopolies in its opposition to a 1642 proposal to revive the Virginia Company's charter.[30] One hundred and thirty-five years later in Philadelphia, delegates at the Constitutional Convention cited the same concerns in their opposition to James Madison's proposal to grant Congress express chartering powers.[31] Thus, as of the end of the Revolution, the American colonies and states had chartered only five business corporations over 175 years. The legacy of European corporate law, which essentially equated "the corporate form" with "the oppressive monopoly right," had stifled the colonial market for corporate charters.

After the Revolution, however, the American corporation flourished as states rebranded the corporate purpose from private to public. The states chartered 260 corporations over the first 25 years after independence. Of these, 80 percent were public works projects such as roads, turnpikes, bridges, and canals.[32] By 1800, states had chartered over 200 corporations; by 1810, over 1,000.[33]

Yet the practice of chartering out-of-state firms did not become commonplace for almost another century. Why? In light of the colonial experience, this should not be surprising. The foreign corporations of colonial days came from Europe and were instruments of oppression. After Independence, the foreign corporations came from sister-states, but American courts nevertheless applied the same logic of oppression when evaluating the powers of these corporations under the Constitution.[34] Such sentiments may be alien to modern courts and corporate law scholars for whom the corporate charter is analogous to a private contract between investors and managers. In the 18th century, however, corporate charters were authored by state legislatures, and so courts and scholars analyzed them as *public* contracts

[28] For example, Alexander Hamilton. See Henderson (1918, pp. 21–22).
[29] See, generally, Hurst (1970).
[30] See Hening, ed (1823a, pp. 230–235).
[31] See Henderson (1918, pp. 15–16).
[32] Author's calculations using the data from Wright (2015). Most of the remaining 20 percent were banks and insurance companies.
[33] Author's calculations using the data from Wright (2015)
[34] See section 2.

among investors, managers, *and the state*.[35] Perhaps the most authoritative statement of this idea comes from Chief Justice Marshall, who in 1819 held that the charter of Dartmouth College was "plainly a contract to which the donors, the trustees and the [British] crown [i.e., investors, managers, and the state] . . . were the original parties."[36] Thus, the idea that one state could charter a firm with power to operate in another state was self-evidently repugnant to any theory of federalism, for just as each state's legislative power is necessarily confined to its own borders, so too must its chartering power be confined.

2 The Supreme Court's Role

What, then, initiated the national market for corporate charters? What innovation encouraged firms to obtain out-of-state charters? According to the traditional narrative, the innovation came from the U.S. Supreme Court. In the 1868 case of *Paul v. Virginia*,[37] the Court held that Congress' power to regulate commerce under Article 1, Section 8 of the Constitution applies to both "commerce carried on by individuals" as well as "commerce carried on by corporations."[38] This set the path toward a national market for corporate law because it implies – so the traditional narrative goes – that a firm could incorporate in one state and operate in another so long as it engaged in interstate commerce. This oft-cited holding from *Paul*, however, has been taken out of context.

In reality, the Supreme Court categorically opposed a national market for corporate law throughout the 19th and early 20th centuries. The Court's first express statement opposing a national market comes from the 1839 case of *Bank of Augusta v. Earle*.[39] In *Earle*, the Bank of the United States had sent agents to Alabama to redeem bills of exchange. After the makers of these bills refused to pay, the Bank sued for breach of contract, but its suit was dismissed on the grounds that the Bank, being incorporated in Pennsylvania,[40] had no power to conduct business in Alabama. It was undisputed that individual citizens of Alabama had

[35] As corporate statutes became more "enabling" over the 20th century, the state's role has vanished from the corporate contract. *Compare* Lawson v. Household Corp., 17 Del. Ch. 343, 352 (1930) *with* Airgas, Inc. v. Air Products & Chemicals, Inc., 8 A.3d 1182, 1188 (Del. 2010). See also Easterbrook and Fischel (1989), which exposits a modern charter-as-contract theory, yet with virtually no mention of the state.

[36] Trustees of Dartmouth College v. Woodward, 17 U.S. 518, 643-44 (1819).

[37] 75 U.S. 168 (1868).

[38] Paul v. Virginia, 75 U.S. 168, 182 (1868) ("It is undoubtedly true, as stated by counsel, that the power conferred upon Congress to regulate commerce includes as well commerce carried on by corporations as commerce carried on by individuals.").

[39] 38 U.S. 519 (1839).

[40] The Bank previously also had a federal charter, but it expired in 1836 after President Jackson famously vetoed the bill that would have renewed it.

power to conduct the business at issue. Thus, the question before the Supreme Court was whether the Constitution entitles firms incorporated outside Alabama to engage in the same business as citizens of Alabama.

Daniel Webster, representing the Bank, argued in the affirmative. The provision of the Constitution that entitles "citizens of each state . . . to all privileges and immunities of citizens in the several states" requires Alabama to permit the Bank's individual members (citizens of Pennsylvania) to engage in the disputed transactions. By extension, continued Webster, Alabama must permit citizens of Pennsylvania to accomplish the same transactions through a corporation. This last step, which essentially equates a corporation's rights with those of its underlying members, was partially supported by precedent. The Court had previously applied the same logic to establish federal diversity jurisdiction; the rule there was to use the citizenship(s) of the corporation's underlying members (rather than the corporation's legal domicile) to determine whether parties were diverse.[41] Citing that case, Webster urged the Court to apply the concept more generally and thus look to the rights of the corporation's members to determine the rights of the corporation itself.

The Court rejected this idea precisely because it would generate a national market for corporate law. "It is true," wrote Chief Justice Taney, "that in a question of jurisdiction [the Court] might look to the character of the persons composing a corporation . . . [b]ut the principle has never been extended any farther."[42] A constitutional requirement that each state admit the business of any sister-state corporation "would deprive every state of all control over the extent of corporate franchises . . . [and enable] corporations . . . chartered in one [state] to carry on their operations in another."[43] This being out of the question, the Court conclude that "It is impossible upon any sound principle to give such a construction to the [privileges and immunities clause of the Constitution]."[44]

Paul v. Virginia only reaffirmed this position. In that case, Virginia had enacted special requirements for insurance companies incorporated outside Virginia. Paul, an agent of a New York insurance corporation, did not comply with these requirements but nevertheless issued a policy to a person in Virginia. Paul offered a dormant commerce clause argument

[41]See Bank of U.S. v. Deveaux, 9 U.S. 61 (1809). *Deveaux* was later overruled by Louisville, C. & C.R. Co. v. Letson, 43 U.S. 497 (1844) (for the purposes of diversity jurisdiction, a corporation is a citizen of its state of incorporation). See also § 28 U.S.C. 1332(c)(1)(expanding *Letson* to include both state of incorporation and principal place of business) and Hertz Corp. v. Friend, 559 U.S. 77 (2010) (defining principal place of business as the state of executive headquarters).

[42]Bank of Augusta v. Earle, 38 U.S. 519, 586 (1839).

[43]Bank of Augusta v. Earle, 38 U.S. 519, 586-87 (1839).

[44]Bank of Augusta v. Earle, 38 U.S. 519, 587 (1839).

to invalidate Virginia's policy: The constitutional provision that empowers Congress "to regulate commerce . . . among the several states" simultaneously disempowers Virginia to regulate commerce between itself and New York. Paul lost this argument. However, it was not because the Court expressly disagreed with his logic. Instead, Paul lost because the Court held, perhaps surprisingly to the modern scholar, that for the purposes of the Constitution, the insurance business was not "commerce."

But what if the Court had held that insurance was commerce?[45] Would Virginia have then been required to permit Paul, via his New York corporation, to sell insurance on the same terms as Virginia corporations? For scholars who claim that *Paul v. Virginia* was the first step toward a national market for corporate law, the answer would seem to be yes.[46]

In reality, however, the answer is no. *Paul v. Virginia* rejected the idea that corporations' rights are the same as their members' for the simple reason that "corporations are not citizens."[47] Virginia's special regulations therefore did not violate the privileges and immunities clause of the Constitution. The oft-cited "holding" of *Paul* – that the Commerce Clause covers commerce effected by corporations – was merely an acknowledgement of an uncontested fact. It was not used to enable or encourage a national market for corporate law. Neither was it used to suggest or even hint that the Commerce Clause, on its own, limits states' power to exclude or discriminate against foreign corporations. On the contrary, the *Paul* court reaffirmed the "compromise" solution from *Bank of Augusta v. Earle*, which expressly acknowledges states' power to exclude, but for the sake of comity merely *presumes* that a foreign corporation's operations are legal so long as no express state law forbids them.[48]

The *Paul* court, moreover, was deeply suspicious of a national market for corporate law, and characterized any potential market as an affront to state sovereignty. As explained in section 1, this idea is older than the United States. Corporations, it must be recalled, were fundamentally creatures of state legislatures. Thus, warned the Court, if "corporate powers and franchises [secured in one state] could be exercised in other States without restriction," then "extra-territorial operation would be given to local legislation." The consequences would be "utterly destructive of the independence and the harmony of the States . . . [because] the principal business of every State would, in fact, be controlled by corporations created by

[45]Seventy-five years later, the Court did just that. United States v. S.-E. Underwriters Association, 322 U.S. 533 (1944).

[46]See footnote 11.

[47]Paul v. Virginia, 75 U.S. 168, 177 (1868).

[48]See Bank of Augusta v. Earle, 38 U.S. 519, 592 (1839) (laying out this presumption) and Paul v. Virginia, 75 U.S. 168, 181 (1944) (favorably citing this presumption).

other States."[49]

Far from being the legal "origin" of the market for corporate law, *Paul v. Virginia* was but one in a long line of cases that opposed a national market and empowered states to discriminate against foreign corporations. Both before and after *Paul*, the Supreme Court condoned all kinds of elaborate and creative forms of discrimination. It permitted states to criminalize their operations[50] and to play favorites among the states by discriminating against one state's corporations but not another's.[51] From 1876 to 1922, the Court even upheld state statutes penalizing out-of-state corporations for removing suits to federal court.[52] In 1903, the Court sustained a state tax on an interstate passenger train service on the theory that the tax was levied only on the *intra*-state portion of the journey.[53] The power to exclude or discriminate against foreign corporations was seemingly absolute.[54]

Given its consistent position throughout the 19th and early 20th centuries, I conclude that the Supreme Court had nothing to do with the emergence of the market for corporate law. If anything, the Court was one of the principal barriers. Even today, the Court affirms states' power to exclude or discriminate against foreign corporations.[55] The difference, however, is that this power has been significantly checked by the expansion of Commerce Clause, a process that began only in 1942,[56] well after the national market had emerged.[57]

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[49] Paul v. Virginia, 75 U.S. 168, 181-82 (1868).

[50] Hooper v. California, 155 U.S. 648 (1895).

[51] Philadelphia Fire Association v. New York 119 U.S. 110 (1886).

[52] See Doyle v. Continental Insurance, 94 U.S. 535 (1876) (sustaining a state law penalizing removal); Terral v. Burke Const. Co., 257 U.S. 529 (1922) (overruling *Doyle*).

[53] Pullman v. Adams 189 U.S. 420 (1903). See also Osborne v. Florida 164 U.S. 650 (1897).

[54] See, e.g., National Council, U.A.M. v. State Council of Virginia, U.A.M., 203 U.S. 151, 163 (1906) ("The state of Virginia had the undoubted right to exclude the Pennsylvania corporation and to forbid its constituting branches within the Virginia boundaries. As it had that right before the corporation got in, so it had the right to turn it out after it got in.").

[55] See, e.g., Wheeling Steel Corp. v. Glander, 337 U.S. 562, 571 (1949) ("The State may arbitrarily exclude [foreign corporations] or may license them upon any terms it sees fit, apart from exacting surrender of rights derived from the Constitution of the United States.").

[56] See Wickard v. Filburn, 317 U.S. 111 (1942). See also Gonzales v. Raich, 545 U.S. 1 (2005).

[57] Henderson (1918) also identifies the year 1910 as a turning point for the application of the Commerce Clause to foreign corporations. In a series of cases beginning that year, the Supreme Court established "(1) That a so-called 'unconstitutional condition' to the admission of a foreign corporation cannot be enforced by expulsion or indictment. (2) That a foreign corporation, being a person, is protected against arbitrary expulsion by the due process clause of the Fourteenth Amendment. (3) That a foreign corporation may, under certain circumstances, become a 'person within the jurisdiction' entitled under the Fourteenth Amendment to a certain degree of equality of treatment with domestic corporations." Henderson (1918, p. 111). These developments curtailed state power to discriminate against foreign corporations, but they did not eliminate it. They also occurred after the market for corporate law had emerged.

3 The Rise and Fall of New Jersey

To evaluate the second claim – that New Jersey's 1913 repeal caused its decline and Delaware's rise – I use publications from the early 1900s to create a database of the incorporation histories of 19th and 20th-century firms. Section 3.1 describes the data collection process. Sections 3.2 and 3.3 present the results.

3.1 Data Collection

The data collection process generated two samples of firms. I refer to these samples as the "Moody's sample" and the "Mining sample." This section describes each in turn.

Firms in the Moody's sample come from historical volumes of *Moody's Manual of Railroads and Corporation Securities*. The Moody's Manuals were published annually beginning in 1899 and describe themselves as "an annual statistical publication . . . the standard reference book for American Investment Securities of every nature, embracing information on practically all the Industrial, Gas, Electric Light, Electric Railway and Steam Railroad Corporations in the United States, Canada and Mexico."[58] The vast majority of firms in the Moody's Manuals are based in the United States.[59]

Each entry in the Moody's Manual describes the history, operations, and financial statements of a particular firm. If the firm is a corporation, it also includes the year and state in which it was originally incorporated. I used machine-coding methods to extract year and state of incorporation, along with the name of the firm. I was able to obtain electronic copies of the 1900, 1903, 1904, 1905, 1908, 1911, 1913, 1919, and 1922 editions of Moody's Manuals. Thus, the Moody's sample includes all firms that were ever included in at least one of these nine editions. I used a fuzzy matching algorithm to prevent double-counting of firms that appeared in multiple volumes over the years.[60]

It is possible to use the Moody's sample to study the corporate law market throughout the 19th century. Many of the firms in the Moody's sample were incorporated well before 1900 (the year of the first Moody's edition in my sample). A few were incorporated as early as 1799. However, statistics for years prior to 1900 are prone to survivorship bias because

[58] See Moody's Manual of Railroads and Corporation Securities (1904 edition).

[59] In a hand-coded sample of 1,633 firms (described in more detail below), over 95 percent were domiciled in a U.S. state.

[60] Specifically, I considered one entry as a duplicate of another if it (1) comes from a different Moody's volume, (2) has the same year of incorporation, (3) has the same state of incorporation and (4) has the same company name (ignoring spaces, punctuation, and capitalization).

they are computed using firms that survived until at least 1900. The pre-1900 market shares should therefore be interpreted as states' 19th-century market shares of corporations that survived into the 20th century.

Finally, I hand-coded a subsample of the Moody's firms. I use this subsample to validate the machine-coding process and to collect additional information, including the firm's state of headquarters and whether it is a holding company. I chose to hand-code the industrials section of the 1908 Moody's Manual. I chose the industrials section because it is the largest section and covers a broad spectrum of firm types. I choose the year 1908 because it was the first year (among the editions that I obtained) that was before Woodrow Wilson's 1910 campaign for governor. The year 1908 would therefore be, according to the traditional narrative, the zenith of New Jersey corporate law.

Firms in the Mining sample come from the 1918 edition of *The Mines Handbook*. Updated editions have been published either annually or biennially since 1900. The 1918 edition advertises itself as "A Manual of The Mining Industry of the World" and aims to be an exhaustive survey of all metal mines in the United States. It also includes, in its own words, "the more important foreign mines."[61] Like the Moody's Manuals, each entry includes a short history of the company. If it is incorporated, the history includes both the year and state of incorporation. I used machine-coding techniques to extract the year and state of incorporation, as well as the physical location of the mine.

I chose the 1918 edition because of its comprehensiveness and because it is particularly convenient for studying the foreign charter market. All editions before 1916 were titled "The Copper Handbook" because they only included copper mines. The 1916 edition was significantly enlarged to cover all metal mines.[62] However, the next edition (1918) is more convenient for my purposes because it was reorganized in a way that makes it easy to determine the physical location of the mine – and therefore to determine whether the mine has a foreign charter. The 1918 edition also includes "most of the *inactive* mining corporations."[63] This inclusion attenuates survivorship bias for estimates of pre-1918 market shares. A mine that was established in, say, 1915, would likely be included in this volume even if it were no longer producing ore.

[61] Weed (1918, p. v).

[62] From its table of contents, these include: aluminum, antimony, arsenic, bismuth, cadmium, chromium, cobalt, copper, gold, iridium, iridosmine, iron, lead, manganese, molybdenum, nickel, palladium, platinum, pyrite, quicksilver, radium, uranium, vanadium, selenium, silver, tin, titanium, tungsten, uranium, vanadium, and zinc.

[63] Weed (1918, p. 249) (emphasis added).

3.2 Summary Statistics

Table 1 summarizes the Moody's sample. The Moody's sample includes 19,298 corporations. The top six jurisdictions are, in order, New York (13 percent), Pennsylvania (10), New Jersey (10), Ohio (7), Massachusetts (6), and Delaware (5). Much of this ordering reflects economic conditions of the early 20th century, as most large corporations (i.e., the kind that would be included in Moody's Manuals) were concentrated in the Northeast. Table 1 also separately computes market shares by firm type. The distribution of firm types is roughly 50 percent industrials, 20 percent railroads, and 30 percent utilities.

Table 2 summarizes the hand-collected Moody's sample. It ranks states according to their market shares in four categories: all charters, holding company charters, non-holding company charters, and foreign non-holding company charters.[64] New Jersey was the leader across all four categories. Its dominance, however, was particularly concentrated in holding companies. Its share of holding companies was more than half (53 percent), while its share of all charters was 22 percent. New Jersey was also dominant in foreign charters (39 percent), but there was significant competition from several states, including Maine (17 percent), New York (9 percent), West Virginia (8 percent) and Delaware (8 percent). This is significantly more competition than exists today. For reference, among public companies, Delaware's share of foreign charters as of 2010 was 87 percent; the next-closest was Nevada at 3 percent.[65]

Table 3 summarizes the Mining sample. It ranks states according to their shares in four categories: non-holding company charters, foreign charters, national (holding company) charters, and mine locations. There are 1,712 corporations total. The top six jurisdictions for corporate charters are Arizona (26 percent), Utah (13), Nevada (8), Colorado (6), Washington (6), and Maine (5). With the exceptions of Washington and Maine, this reflects the distribution of metal mines in the early 20th century, as most were concentrated throughout the Interior West. The foreign charter market for mining companies was led by Arizona (21 percent), followed by Maine (14), and Delaware (12). New Jersey was only the sixth-largest at 4 percent. However, New Jersey was the most popular state among the handful of national mining companies (4 out of 11 total companies). The national mining companies are all also holding companies; they have their own section in *The Mines Handbook* and are labeled "national" companies because they operate in multiple states. The national companies include

[64] The Moody's entry (typically) expressly describes companies that hold a controlling interest in another firm as a "holding company." I code a company as "foreign" if the Moody's description of the firm's location(s) and operations does not mention the state of incorporation.

[65] Author's calculations using data from Sanga (2019). Even in 1980, Delaware's foreign charter share was 58 percent, followed by New York (7 percent) and Nevada (3 percent).

well-known conglomerates such as U.S. Steel and Alcoa. All other mines in the *Handbook* operate in only one state.

3.3 Trends in the Market for Corporate Charters

All three samples show that the timing of New Jersey's rise and fall does not comport with the traditional narrative. Recall that the traditional narrative claims that New Jersey lost its initial lead after repealing its laws in 1913, upon which corporations flocked to Delaware.

The top panel of figure 1 uses the Moody's sample to graph state shares of corporate charters for New York, New Jersey, and Delaware from 1868 to 1922.[66] These three states are the only states to have led the market for corporate charters since the late 19th century. In the years leading up to 1900, New York was the leader. New Jersey then eclipsed New York, but only during the years 1901–1904. New Jersey's share of corporate charters reached its maximum in 1903 and then began a secular decline.[67] New Jersey thus began its decline 10 years before it repealed its laws (in 1913) and 7 years before Woodrow Wilson campaigned for governor (in 1910).

The bottom panel of figure 1 and both panels of figure 2 graph corporate charter shares for other large states. The shares of Western states are generally increasing throughout the entire period, while shares of Northeastern states are generally declining. This is largely reflective of the westward expansion of the United States economy.

Figure 3 graphs New York, New Jersey, and Delaware's share of new corporate charters. The trends here are even more pronounced, as they represent the annual flow of new charters (whereas figures 1 and 2 represent the stock of all charters). New Jersey's share of new charters jumped up at the turn of the century, but then precipitously declined from 1902 onwards. Again, this was well before New Jersey even considered repealing its laws.

The hand-collected Moody's sample tells a similar story. The top panel of figure 4 graphs New Jersey's share of new holding companies. The sample here is small. There are only 183 holding companies in the sample; 160 of these were incorporated on or after 1889 (the year of New Jersey's holding company statute). For this reason, the figure 4 pools the data into two-year bins.[68] From 1896 to 1907, New Jersey's share of new holding companies declined over 70 percentage points. The trend in new foreign charters is similar (bottom panel of

[66]As explained above, the Moody's volumes begin in 1900 and end in 1922. They include, however, firms incorporated as far back as 1799. I chose to begin the time series at 1868, somewhat arbitrarily, because 1868 is the first year in which the sample size is larger than 1,000.

[67]There were two small upticks of about 1 and 0.5 percent in 1912 and 1914, respectively.

[68]For example, the data for years 1900 and 1901 are pooled under the year 1900.

figure 4). From 1896 to 1907, its share declined over 60 percentage points.

Table 4 confirms the statistical significance of these trends in a regression framework. It reports the total change in state shares of new corporate charters over three time periods: "pre-repeal" (1900–1910), "post-repeal" (1911–1921), and "all" (1900–1921). I choose 1911 as a conservative (early) date for New Jersey's repeal, as it was the year that Wilson assumed office. The estimates of the change in state shares come form separate regressions for each state and time period. For example, to calculate the pre-repeal change for Delaware, I limit the sample to firms incorporated between 1900–1910 and use ordinary least squares to estimate

$$y_{it} = \alpha + \beta t + u_{it}, \tag{1}$$

where y_{it} is an indicator that firm i incorporated in year t was incorporated in Delaware and u is an error term. Delaware's trend is the estimate of β. The variable t has been rescaled to range from zero to one,[69] and so β should be interpreted as the state's total change in market share over the relevant period.

Table 4 lists states for which the total change is in the top or bottom decile (i.e., the top five and bottom five states). The largest loss in pre-repeal years was in New Jersey (-17 percentage points), followed by Pennsylvania (-3), West Virginia (-2), and Ohio (-2). In post repeal years, New Jersey was not in the bottom decile of losses. Its estimate is only -2 percentage points and is not statistically significant at conventional levels. The largest losses in post-repeal years were in Pennsylvania (-7), Maine (-3), and Illinois (-3). The largest gains in pre-repeal years were in Maine (6), Delaware (3), and New York (3). The largest gain in post-repeal years was in Delaware by a large margin (34), followed by Maryland (4) and Wyoming (1).

Figure 5 uses the Mining sample to show that a similar trend played out in the market for foreign charters. It graphs state shares of new foreign charters from 1900 to 1917. New Jersey's share declined from 14 percent to zero from 1900 to 1908. Delaware, on the other hand, increased steadily over the entire period (1900–1917) from about 10 to 30 percent. Maine and especially Arizona both waxed and waned over this period. Arizona achieved its highest share (36 percent) in 1904/5, while Maine achieved its highest (23 percent) in 1906/7.

Table 5 confirms the statistical significance of these trends using the same regression framework as in table 4. It reports changes in state shares of charters for new foreign charters over the same three periods: "pre-repeal" (1900–1910), "post-repeal" (1911–1917), and "all"

[69]In this case, $t = (year - 1900)/(1910 - 1900)$.

(1900–1917). In the pre-repeal period, the largest loss was, once again, in New Jersey (14 percentage points), followed by West Virginia (9) and Colorado (8). In post-repeal years New Jersey is again not in the bottom decile of losses. Its post-repeal loss is -2 percentage points and is not statistically significant. The largest losses in post-repeal years were in Maine (-18), Arizona (-17), and Wyoming (-6). The largest gains in pre-repeal years were in Arizona (11), Delaware (11), and Minnesota (7), though only the Delaware and Minnesota estimates are statistically significant at conventional levels.[70] The largest post-repeal gains were in Delaware (23). No other state had statistically significant gains over the post-repeal period.

Taken together, the results show that the timing of New Jersey's decline, as well as the timing and causes of Delaware's rise do not comport with the traditional narrative. All samples reveal significant competition in the charter market throughout the 1890s, 1900s, and 1910s. Most of New Jersey's decline occurred over the decade leading up to its repeal, while Delaware, and to a lesser degree other states, were increasing throughout the pre- and post-repeal periods.

4 Alternative Explanations

In my view, the essence of the traditional narrative's error is that it recasts the market for corporate charters as a deliberate legal "creation." It would be more accurate, however, to describe the market as an unintended consequence of interstate commerce. The argument is simple. In a world in which states discriminate against out-of-state corporations, a firm that operates in only one state is incentivized to incorporate at home. But a firm that operates in two states is necessarily foreign in at least one of them, while a firm that operates equally in every state is equally foreign no matter where it incorporates.[71] Thus, interstate commerce transforms principally domestic corporations into principally foreign corporations. In so doing, it eliminates the benefit of being incorporated at home. Indeed, for the firm that operates equally in every state, there is little meaning in the concept of incorporating "at home." Interstate commerce itself thus drives an implicit yet inexorable demand for foreign charters.

[70] From figure 5, this seems be because Arizona began declining 1904.

[71] Historically, there was one way to avoid this: obtain separate charters (or something like a charter) from each state. This practice, however, was cumbersome, mostly limited to railroads, and infeasible for truly national corporations; in any case, it also required a special act from each state legislature. Over the 19th century, states phased out the practice of issuing these special charters. See Hilt (2016) and footnote 1.

This implicit demand accelerated in the 19th century as interstate corporations grew from nonexistent to ubiquitous. At the time of Independence, corporations did not operate across state lines. Initially, the reason was simple: There were virtually no corporations. Even over the first few decades of the 18th century, as states chartered thousands firms, there was still little interstate corporate commerce because most corporations were confined to local public works projects.[72] By the end of the century, however, corporations reguarly operated across state lines.[73] Indeed, the business of some firms such as the Pullman Company (railroad cars) and the Western Union Telegraph Company (telegrams) *was* interstate commerce, and it is not surprising to find such companies at the forefront of litigation that challenged (typically unsuccessfully) state laws against foreign corporations.[74] Pullman and Western Union were incorporated in the same states as their principal headquarters (Illinois and New York, respectively). Yet because of their national reach, they conducted nearly all of their business as foreign corporations. They may as well have been incorporated in New Jersey or Delaware or any other state.

New Jersey's innovation, if it may be called that, was the recognition that by the late 19th century, the market for corporate charters was an accomplished fact. New Jersey's liberal corporate statutes thus did not create a new market any more than the Supreme Court did. New Jersey's liberal statutes, however, did catalyze the latent charter market by attracting "truly" foreign firms, i.e., firms with little or no connection to New Jersey.

New Jersey's corporate laws were too conspicuous and too popular for other states to ignore. New Jersey's demise thus lies within another well-appreciated facet of interstate relations: the tendency of states to copy each other's laws.[75] New Jersey's lead was concentrated in holding companies because it was the first to generally enable companies to deal freely in corporate securities. Yet within a few years, New York, Pennsylvania, Maine, West Virginia, Ohio, and others – not to mention Delaware – had all copied New Jersey's holding company statute,[76] and large holding companies began incorporating in these states well before New

[72]See section 1.

[73]See, generally, Howe (2007); White (2017).

[74]See section 2. For examples of such litigation involving Pullman and Western Union before the Supreme Court, see, e.g., Pensacola Telegraph v. Western Union, 96 U.S. 1 (1877); Western Union v. Massachusetts, 125 U.S. 530 (1888); Pullman v. Pennsylvania, 141 U.S. 18 (1891); Allen v. Pullman, 191 U.S. 171 (1903); Pullman v. Kansas, 216 U.S. 56 (1910); Western Union v. Kansas, 216 U.S. 1 (1910); Ludwig v. Western Union, 216 U.S. 146 (1910); Donald v. Philadelphia & Reading Coal & Iron Co., 241 U.S. 329 (1916) (consolidating a case involving Western Union).

[75]For examples of this in organizational law, see, e.g., Romano (1985); Ribstein (1995).

[76]There is some uncertainty as to whether New Jersey was "effectively" the first or second state to generally enable the holding company. New Jersey was the first statute to enable *all* corporations to act as holding companies in 1893. However, New York passed a similar statute one year prior (1892) that enabled all

Jersey considered repealing its own holding company statute (see table 2). The speed of New Jersey's rise and fall, as well as the significant competition that emerged immediately after New Jersey's liberalization, further suggest that New Jersey's liberal statutes generated only short-term gains because other states could (and did) copy them.

5 Conclusion

This paper evaluated two widely-held beliefs on the origins of the market for corporate law: (1) that the U.S. Supreme Court is responsible for creating a national market for corporate charters in the 19th century and (2) that Delaware became the leader in this market only because New Jersey (the initial leader) repealed its extremely liberal corporate laws in 1913. It presented legal and empirical evidence against both claims. The first claim is wrong because the Supreme Court consistently opposed the formation of a national market by affirming states' power to discriminate against out-of-state corporations. The second claim is wrong because New Jersey's repeal occurred well after it had declined in the market for corporate charters. It is more likely that the market for corporate charters emerged as a collateral consequence of interstate commerce, and that New Jersey declined because other states copied its popular laws.

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but "monied corporations" (i.e., companies that exercise banking powers) to act as holding companies. See Freedland (1955, n. 162) (quoting N.Y. Laws 1892, c. 688, §40).

Prior to New York's law, New Jersey had enacted three statutes related to holding companies: The first in 1888 authorized corporations that already possessed holding-company power (from a special charter issued by New Jersey or another state) to freely deal in corporate securities in New Jersey; the second, also in 1888, authorized holding companies but only for water companies and hotels; the third in 1889 broadly authorized holding companies in all industries, but included a vague proviso limiting the held companies to "companies owning, mining, manufacturing or producing materials, or other property necessary for [the holding company's] business" (the 1893 law removed this final proviso). See Freedland (1955) (quoting N.J. Laws 1889, c. 265, § 4, at 414.).

Other states had also granted individual firms or types of firms certain limited powers to act as a holding company on an ad-hoc basis. To the best of my knowledge, the first such grant was by New York in 1799 to The Manhatten Company (predecessor to JP Morgan Chase). See Freedland (1955).

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Table 1: State Shares of Corporate Charters (Moody's Sample, 1900–1922)

		Share of Corporate Charters			
Rank	*State*	*All*	*Industrials*	*Railroads*	*Utilities*
1	New York	0.13	0.14	0.10	0.12
2	Pennsylvania	0.10	0.07	0.14	0.12
3	New Jersey	0.10	0.12	0.04	0.07
4	Ohio	0.07	0.06	0.05	0.08
5	Massachusetts	0.06	0.06	0.03	0.07
6	Delaware	0.05	0.09	0.01	0.01
7	Illinois	0.05	0.04	0.06	0.06
8	Maine	0.04	0.06	0.03	0.03
9	Michigan	0.03	0.03	0.03	0.03
10	California	0.03	0.03	0.03	0.04
Number of corporations		19,298	10,974	3,539	4,785

Notes. This table lists state shares of corporate charters for corporations in the Moody's sample. A corporation is in the Moody's sample if it appears in the 1900, 1903, 1904, 1905, 1908, 1911, 1913, 1919, or 1922 edition of *Moody's Manual of Railroads and Corporation Securities.* The Moody's Manuals partition corporations into three categories: industrials, railroads, and utilities.

Table 2: State Shares of Corporate Charters (Hand-Collected Moody's Sample, 1908)

					Non-Holding Companies			
	All Companies		*Holding Companies*		*All*		*Foreign*	
Rank	*State*	*Share*	*State*	*Share*	*State*	*Share*	*State*	*Share*
1	New Jersey	0.22	New Jersey	0.53	New Jersey	0.18	New Jersey	0.39
2	New York	0.15	New York	0.11	New York	0.16	Maine	0.17
3	Pennsylvania	0.11	Maine	0.07	Pennsylvania	0.12	New York	0.10
4	Massachusetts	0.07	Pennsylvania	0.07	Massachusetts	0.08	West Virginia	0.08
5	Ohio	0.07	West Virginia	0.04	Ohio	0.07	Delaware	0.08
6	Maine	0.05	Delaware	0.03	Maine	0.05	Ohio	0.02
7	Illinois	0.04	Connecticut	0.03	Illinois	0.05	California	0.02
8	West Virginia	0.04	Ohio	0.02	West Virginia	0.04	Connecticut	0.02
9	Missouri	0.03	California	0.01	Missouri	0.03	Illinois	0.02
10	Connecticut	0.02	Colorado	0.01	Connecticut	0.02	Pennsylvania	0.02
Observations		1,558		183		1,375		304

Notes. This table summarizes the market for corporate law for firms in the hand-collected Moody's sample. The sample includes all corporations in the industrials section of the 1908 edition of *Moody's Manual of Railroad and Corporation Securities*. Each panel tabulates states shares of corporate charters for different types of companies. A company as "foreign" if the Moody's description of the firm's location(s) and operations does not mention the state of incorporation. (i.e., charters issued by a state other than the firm's principal headquarters).

Table 3: State Shares of Corporate Charters and Mine Locations (Mining Sample, 1900–1917)

	Corporate Charters						*Mine Locations*	
	Non-Holding Companies				*Holding Companies*[a]			
	All		*Foreign*					
Rank	*State*	*Share*	*State*	*Share*	*State*	*Share*	*State*	*Share*
1	Arizona	0.26	Arizona	0.21	New Jersey	0.36	Arizona	0.21
2	Utah	0.13	Maine	0.14	New York	0.27	Utah	0.13
3	Nevada	0.08	Delaware	0.12	Delaware	0.09	Nevada	0.13
4	Colorado	0.06	Washington	0.08	Maine	0.09	Colorado	0.08
5	Washington	0.06	Utah	0.06	Montana	0.09	Foreign country	0.07
6	Maine	0.05	New Jersey	0.04	Pennsylvania	0.09	Montana	0.07
7	Idaho	0.05	New York	0.04			Idaho	0.07
8	Delaware	0.05	Nevada	0.04			Michigan	0.05
9	Montana	0.04	Wyoming	0.04			California	0.05
10	Michigan	0.04	South Dakota	0.03			Washington	0.03
Observations		1,712		644		11		1,712

Notes. This table summarizes the market for corporate law for firms in the Mining sample. A firm is in the Mining sample if it is included in the 1918 edition of *The Mines Handbok*. See Weed (1918). Over 98 percent of these firms were incorporated between 1900 and 1917. The "holding companies" come from the section of *The Mines Handbook* on national mining companies, which describes the operations of mining companies that operate in multiple states. The non-national mining companies operate in only one state. A company holds a "foreign" charter if it is not located in its state of incorporation.

[a] The 11 companies (and state of incorporation) are: American Smelting & Refining Co (NJ), Metallurgical Company of America (NJ), New Jersey Zinc Co (NJ), United States Steel Corporation (NJ), International Agricultural Corporation (NY), Phelps Dodge Corporation (NY), The American Metal Co, Ltd (NY), General Development Co (DE), Yukon Gold Co (ME), International Smelting Co (MT), Aluminum Company of America (PA).

Table 4: Change in State Shares of New Corporate Charters 1900–1921 (Moody's Sample)

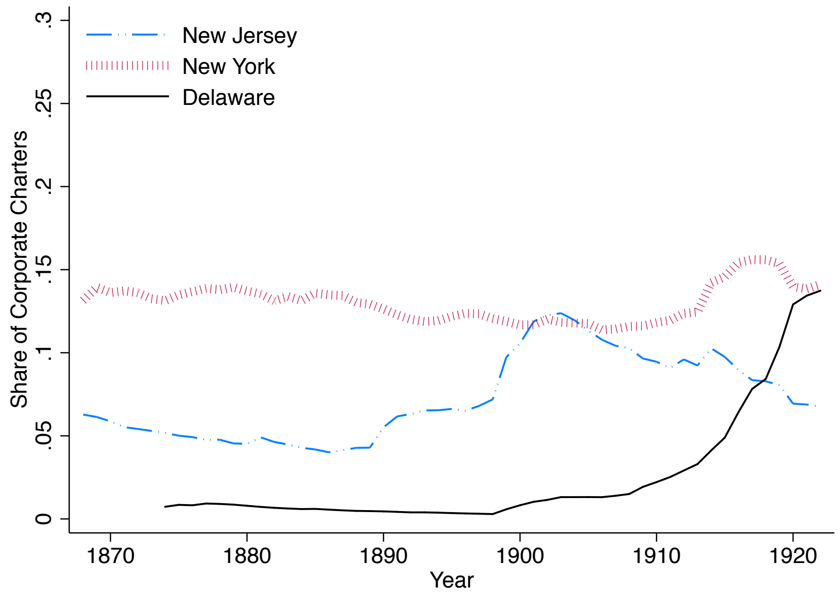
	Over Years 1900–1910			*Over Years 1911–1921*			*Over Years 1900–1921*		
Rank	*State*	*Change*	*S.E.*	*State*	*Change*	*S.E.*	*State*	*Change*	*S.E.*
1	Maine	0.06	0.01**	Delaware	0.34	0.02**	Delaware	0.31	0.01**
2	Delaware	0.03	0.01**	Maryland	0.04	0.01**	New York	0.08	0.01**
3	New York	0.03	0.01**	Wyoming	0.01	0.00**	Massachusetts	0.06	0.01**
4	Massachusetts	0.02	0.01**	Virginia	0.01	0.01	Virginia	0.04	0.01**
5	Michigan	0.02	0.01**	Oregon	0.01	0.00*	Maryland	0.03	0.00**
46	South Carolina	-0.01	0.00**	Connecticut	-0.02	0.01**	Colorado	-0.02	0.00**
47	Ohio	-0.02	0.01*	Michigan	-0.02	0.01**	West Virginia	-0.02	0.00**
48	West Virginia	-0.02	0.01**	Illinois	-0.03	0.01**	Arizona	-0.03	0.00**
49	Pennsylvania	-0.03	0.01**	Maine	-0.03	0.01**	Pennsylvania	-0.06	0.01**
50	New Jersey	-0.17	0.01**	Pennsylvania	-0.07	0.01**	New Jersey	-0.20	0.01**
	Observations		8,520			3,480			12,000

Notes. This table lists the total change in state shares of new corporate charters from 1900 to 1910 (inclusive). The estimates of change come form separate regressions for each state. For example, to calculate the change for Delaware, I estimate $y_{it} = \alpha + \beta t + u_i$, where y is an indicator that corporation i incorporated in year t was incorporated in Delaware and u is an error term. The variable t is rescaled to range from zero to one. Delaware's trend is the OLS estimate of β. Robust standard errors are in parentheses. * and ** indicate statistically significantly different from zero at 90 and 95 percent confidence, respectively. The table lists only states with estimates in the top or bottom decile. A corporation is in the Moody's sample if it appears in the 1900, 1903, 1904, 1905, 1908, 1911, 1913, 1919, or 1922 edition of *Moody's Manual of Railroads and Corporation Securities.*

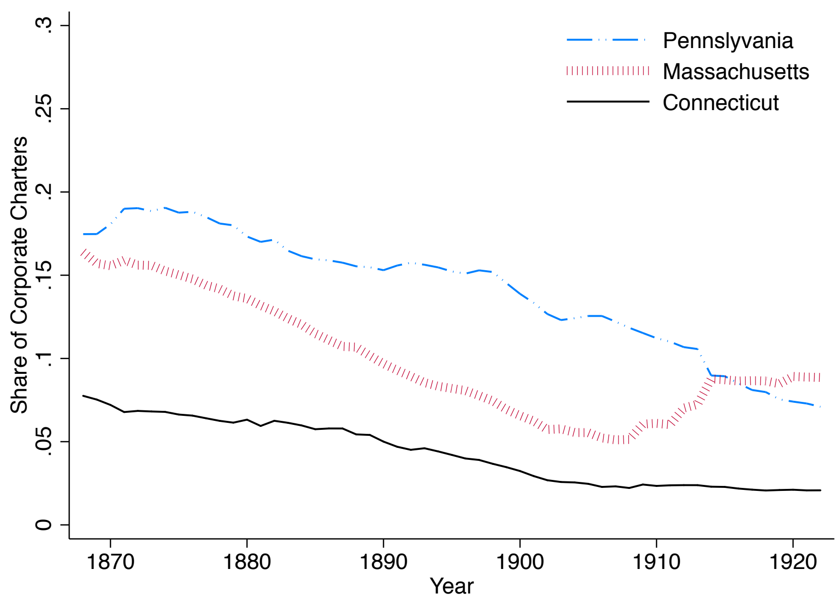
Table 5: Change in State Shares of New Foreign Charters 1900–1917 (Mining Sample)

	Over Years 1900–1910			*Over Years 1911–1917*			*Over Years 1900–1917*		
Rank	*State*	*Change*	*S.E.*	*State*	*Change*	*S.E.*	*State*	*Change*	*S.E.*
1	Arizona	0.11	0.08	Delaware	0.23	0.08**	Delaware	0.32	0.05**
2	Delaware	0.11	0.06*	New York	0.05	0.04	Washington	0.08	0.05*
3	Minnesota	0.07	0.04**	Utah	0.05	0.06	New York	0.07	0.03**
4	Nevada	0.06	0.05	Washington	0.05	0.07	Utah	0.06	0.04
5	Maine	0.05	0.08	Nevada	0.04	0.03	Virginia	0.03	0.02
46	Utah	-0.03	0.04	California	-0.04	0.04	Wyoming	-0.05	0.03*
47	Washington	-0.04	0.05	South Dakota	-0.06	0.04	Colorado	-0.06	0.03**
48	Colorado	-0.08	0.05	Wyoming	-0.06	0.03*	New Jersey	-0.08	0.03**
49	West Virginia	-0.09	0.06	Arizona	-0.17	0.08**	West Virginia	-0.09	0.03**
50	New Jersey	-0.14	0.05**	Maine	-0.18	0.08**	Arizona	-0.15	0.06**
	Observations		293			201			494

Notes. This table lists the total change in states' market shares of new corporate charters for three time periods: 1900–1910, 1911–1917, and 1900–1917. The estimates of change come form separate regressions for each state. For example, to calculate the change for Delaware, I estimate $y_{it} = \alpha + \beta t + u_i$, where y is an indicator that corporation i incorporated in year t was incorporated in Delaware and u is an error term. The variable t is rescaled to range from zero to one. Delaware's trend is the OLS estimate of β. Robust standard errors are in parentheses. * and ** indicate statistically significantly different from zero at 90 and 95 percent confidence, respectively. The table lists only states whose estimates exceed 1.5 percent in absolute value. A corporation is in the Mining sample if it appears in the 1918 edition of *The Mines Handbook*.

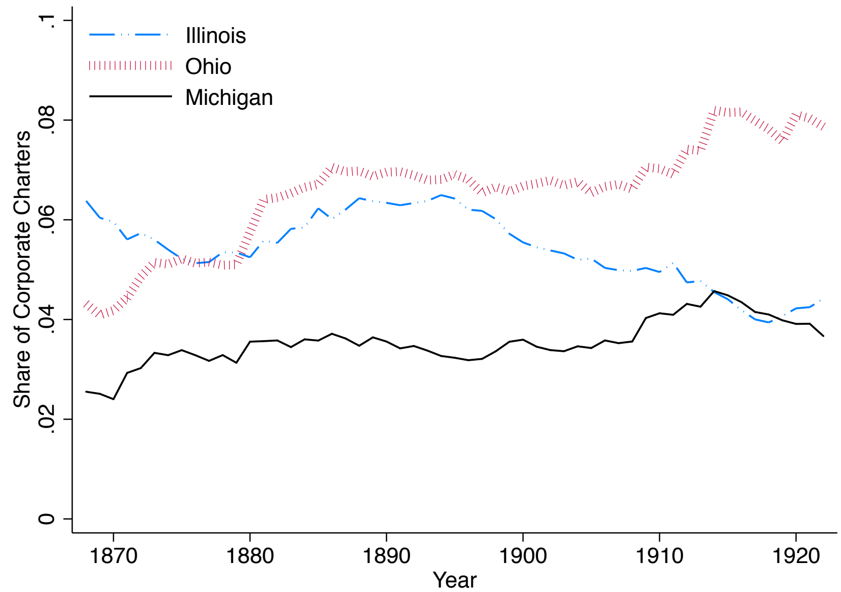


(a) New York, New Jersey, Delaware

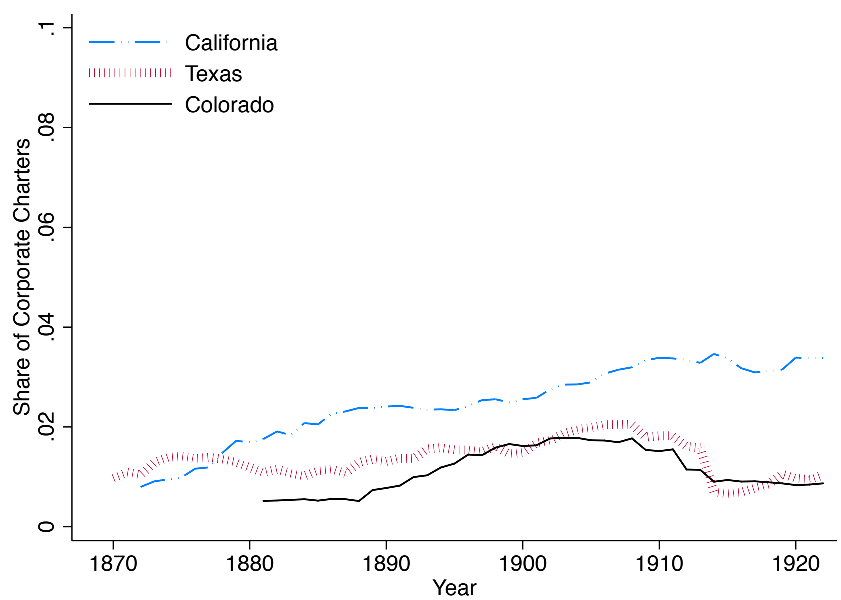


(b) Northeast

Figure 1: State Shares of Corporate Charters (Moody's sample, Eastern states)
Notes. Each panel graphs a selection of state corporate charters shares over time.



(a) Midwest



(b) West

Figure 2: State Shares of Corporate Charters (Moody's sample, Western states)
Notes. Each panel graphs a selection of state corporate charters shares over time.

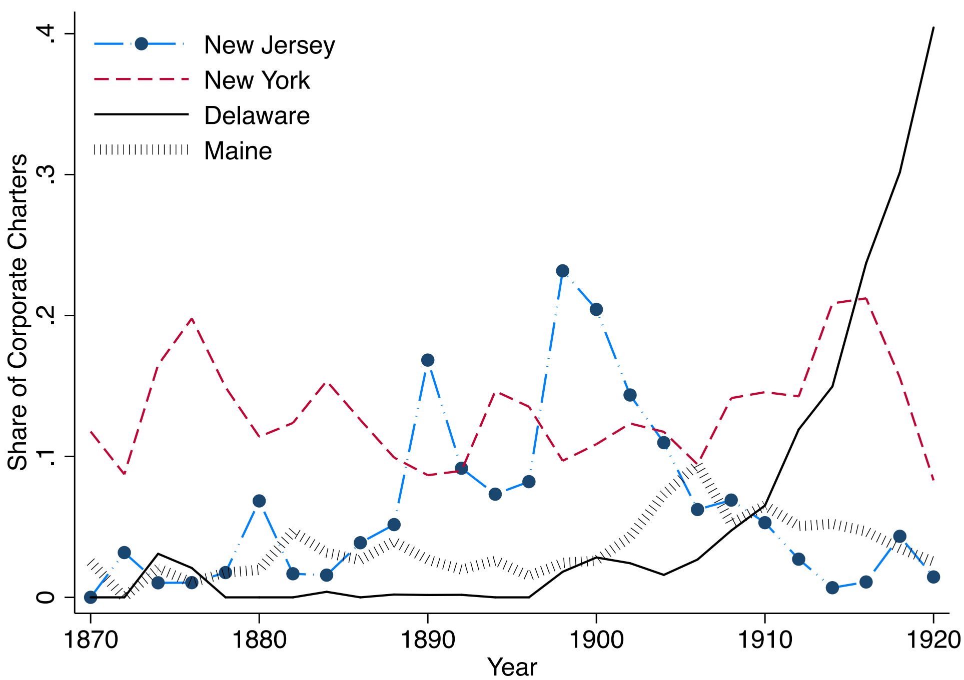
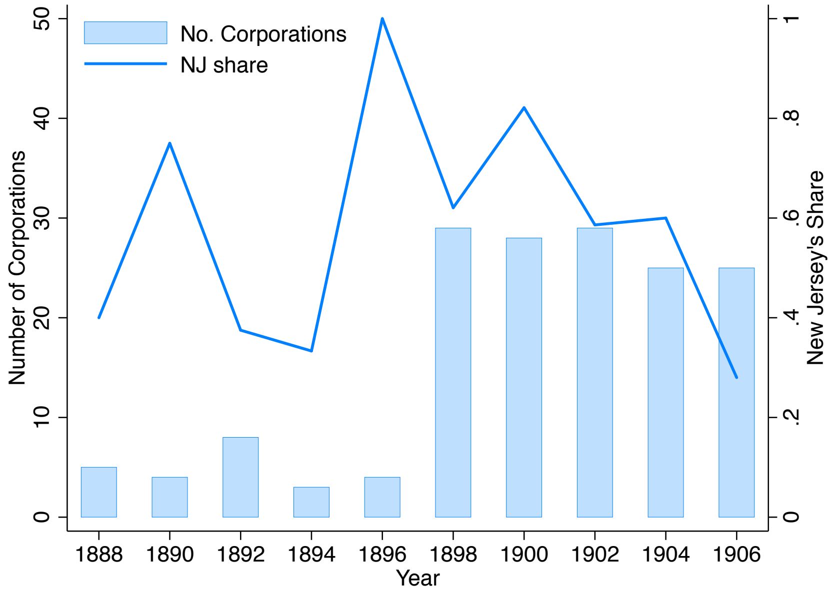
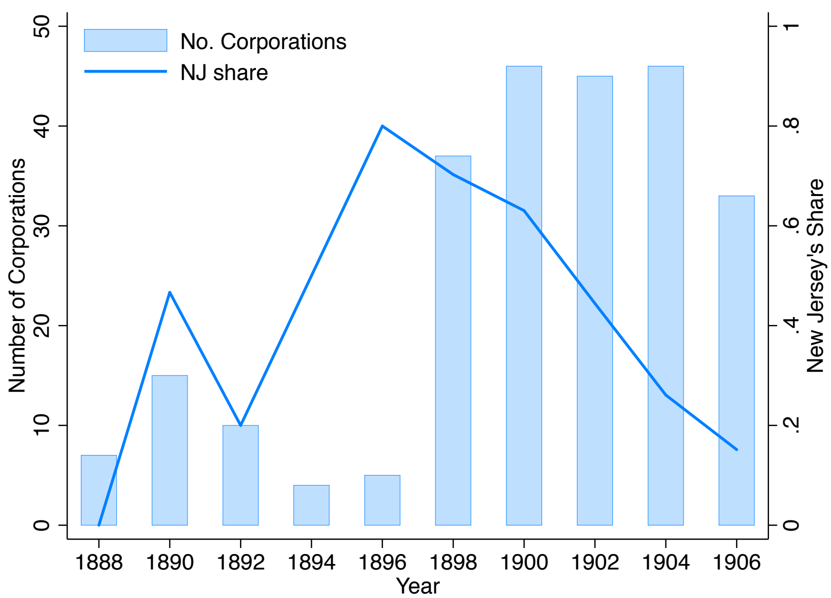


Figure 3: State Shares of New Corporate Charters (Moody's Sample)
Notes. The top panel graphs new corporate charter shares of New York, New Jersey, and Delaware. The bottom panel graphs the total number of new corporate charters issued by all states each year.

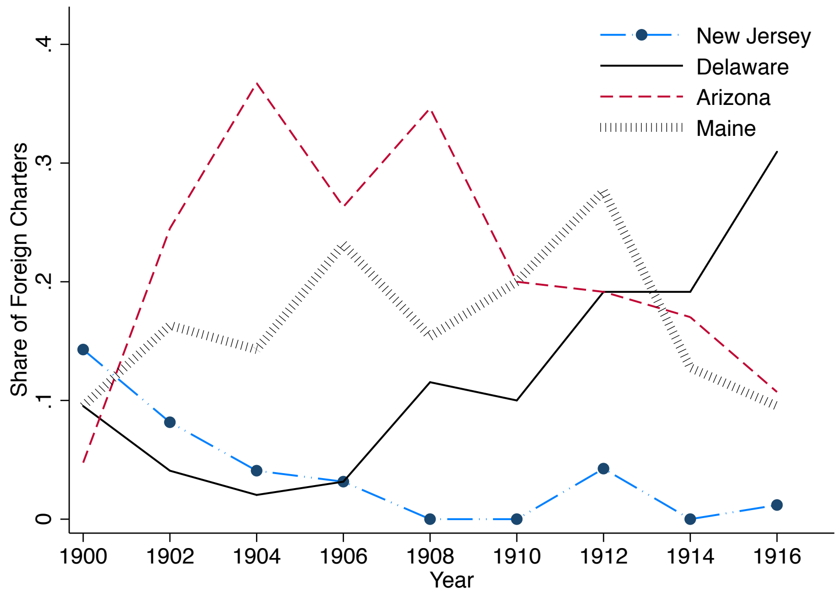


(a) Holding Companies

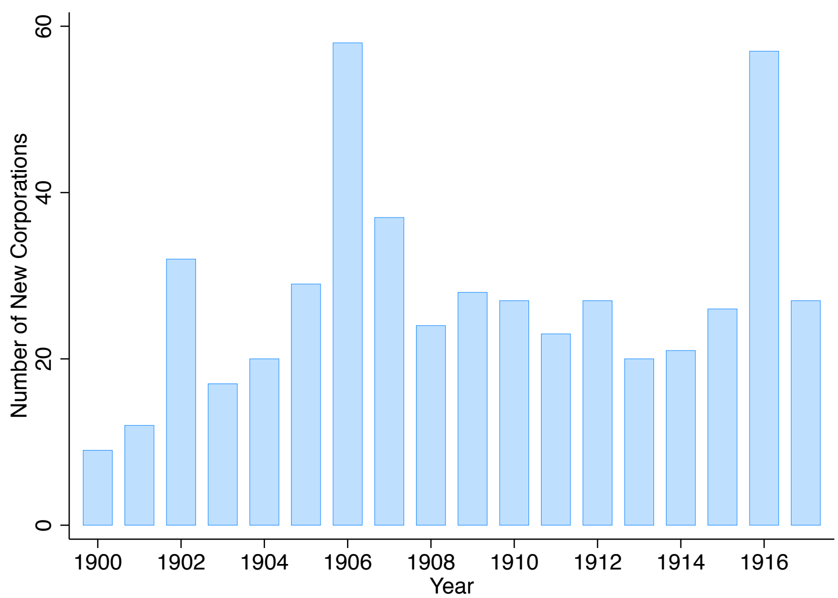


(b) Foreign corporations (non-holding)

Figure 4: New Jersey's Share of New Corporate Charters (Moody's Hand-collected Sample)
Notes. Each panel graphs the number of new corporations (left axis) and New Jersey's share (right axis). The top panel includes only holding companies. The bottom panel includes only non-holding companies. The data for both panels has been pooled into two-year bins. For example, the data for years 1900 and 1901 would be pooled under the year 1900. Both panels use the hand-collected Moody's subsample, which comes from the industrial section of the 1908 edition of *Moody's Manual of Railroad and Corporation Securities.*



(a) State Shares



(b) Number of New Foreign Corporations

Figure 5: State Shares of New Foreign Charters (Mining Sample)
Notes. Each panel graphs the number of new corporations (left axis) and New Jersey's share (right axis). The top panel includes only holding companies. The bottom panel includes only non-holding companies. The data in the top panel has been pooled into two-year bins. For example, the data for years 1900 and 1901 would be pooled under the year 1900. Both panels use the hand-collected Moody's subsample, which comes from the industrial section of the 1908 edition of *Moody's Manual of Railroad and Corporation Securities*.