

# The Emergence of Corporate Governance: Economic Institutional Evolution in Toulouse 1372-1946\*

David le Bris<sup>†</sup>, William N. Goetzmann<sup>‡</sup> and Sébastien Pouget<sup>§</sup>

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<sup>†</sup>KEDGE Business School

<sup>‡</sup>Yale School of Management, Yale University

<sup>§</sup>Toulouse School of Economics (IAE, CRM, University of Toulouse)

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## Abstract

We document a sequence of institutional innovations associated with the corporate form over the course of several centuries in Toulouse. Shareholding companies that began in the 11th century formally incorporated themselves into two large-scale, widely held firms by 1373. In the years that followed they experienced the economic challenges and conflicts we now recognize as inherent in the separation of ownership and control. Using new and existing archival research, we show how the Toulouse firms developed institutional solutions including tradable shares, limited liability, governing boards, cash payout policies, external audits, shareholder meetings and mechanisms for re-capitalization.

We examine these developments in the context of institutional economic theory and the received history of the corporation. The Toulouse companies preceded the birth of the Dutch and English East India companies by centuries. Many of the elements of the corporate form attributed to the uncertainty and illiquidity of long-distance maritime trade appeared earlier in a quite different economic context. The Toulouse companies were grain-milling enterprises whose profits were relatively predictable and whose production and management effort were widely observable.

The Toulouse firms shed light on the necessary and sufficient conditions for the development of the corporate form. We show that the constellation of features associated with the corporation can appear in situations of relative economic certainty and in the context of Medieval legal code that did not require the granting of governmental approval or patent. The Toulouse firms are a unique case in which the corporation appears as a nexus of private contracts.

**Keywords:** corporate governance, economic history.

In this paper we document a sequence of institutional innovations associated with the corporate form over the course of several centuries in Toulouse. Shareholding companies that began in the 11th century formally incorporated themselves into two large-scale, widely held firms by 1373. In the years that followed they experienced the economic challenges and conflicts we now recognize as inherent in the separation of ownership and control. Using new and existing archival research, we show how the Toulouse firms developed institutional solutions including tradable shares, limited liability, governing boards, cash payout policies, external audits, shareholder meetings and mechanisms for re-capitalization.

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Located in Toulouse, the Bazacle and Castel milling companies were created in 1372 and 1373, respectively, from the merger of several independent, jointly-owned mills. The Bazacle company was situated on an island near a traditional ford across the Garonne River, downstream from the city. It, or its predecessor firms, had milled grain there since the 11th century. The Bazacle company switched to hydro-electric power generation in 1888 and

was incorporated into the French national electricity company, EDF in 1946. The Bazacle hydroelectric power plant is still operating today.

The Castel company was located upstream on an island in the Garonne near the original castle of Toulouse. Like the Bazacle company, it milled grain over several centuries before finally going bankrupt in 1910 after a fire destroyed its mills. The locations of both of these firms made them naturally suitable for milling operations and created the conditions for profitable and relatively stable business over approximately nine centuries.

Germain Sicard (1953), in his landmark study of the Toulouse companies in the Middle Ages, shows that they resembled modern corporations in many respects. They had shareholders who were not millers, who could sell their shares without the consent of their fellow shareholders and who received dividends in proportion to their shareholdings (see also Le Bris, Goetzmann, and Pouget, 2015). In this paper we build upon the archival research by Sicard and extend the analysis of the archives of these early firms from the 16th through the 19th centuries in order to trace the evolution of corporate governance mechanisms over the “longue durée.” While the corporate form is often modeled as a static structure, in this paper we document institutional “learning” as well as innovative, institutional problem-solving in response to major crises. We examine the emergence of the corporate form as a rational answer to economic issues identified by the modern economics literature.

The law and economics literature has proposed a set of conditions necessary for the existence of corporations. The historical approach to testing these fundamental requirements has focused on the conditions of their emergence. Scholars have intensively studied the period when the English and Dutch East India companies became publicly traded, limited-liability large-scale trading companies (see, e.g., Harris, 2005; Gelderblom, Jong, and Jonker (2013) and Dari-Mattiacci, Gelderblom, Jonker, and Perotti, 2013). This research has yielded important insights about how structural change occurs in response to economic challenges. The novel institutional development of the East India companies has also played an important

role in economic historiography. Douglass North, one of the seminal scholars in institutional economics, has argued that the appearance of these firms was a watershed in world history made possible by political and legal change (North, 1991). Dari-Mattiacci et al. (2013), show how the Dutch East Indies Company evolved as a result of problems particular to the financing of long-distance trade. Our research traces a parallel but separate and earlier developmental sequence that begins in a quite different political and economic context from that studied by North, and a quite different economic context from that studied by Dari-Mattiacci et al.

In this paper we decouple the historical narrative about institutional change in the Netherlands and England in the 17th century from more general hypotheses about the importance of institutions such as property rights (Hart and Moore, 1990), entity shielding (Hansmann, Kraakman and Squire, 2006) and mechanisms for addressing moral hazard (Holmstrom, 1979). This new analysis, together with the results of prior scholarship, shows that the corporate form did not depend on some conditions presumed to have been necessary, such as the governmental granting of rights to firms, or on the particular risks and informational limitations inherent in long-distance trade. By examining an alternative developmental path of the publicly traded corporation we separate historical circumstances from necessary institutional conditions.

Our findings challenge some long-held hypotheses from the institutional economics literature which were developed in the context of Northian traditional “genealogy” of the corporation in northern Europe (North and Weingast, 1989). Our analysis of the case of the Toulouse companies shows that a number of the basic principles of institutional law and economics hold true, but that the mechanisms by which (and the context in which) they are implemented may vary greatly. The emergence of companies with elaborated corporate governance mechanisms out of a medieval economic context that fundamentally differed from that of merchant empires engaged in overseas trade has implications for institutional

economic theory.

First, it suggests that the property rights were efficiently protected as early as the 12th century. Shareholders' property was respected for centuries, suffering government expropriation only during the 20th century. Moreover, the feudal institution of property appears to have had some pro-business virtues – contradicting the standard view of Medieval times as the “Dark Ages” of private enterprise (cf. Acemoglu, Johnson, and Robinson, 2005). This casts doubt on the novelty of the institutional revolution enjoyed by northern Europe during the 17th century and lends support to the literature questioning the true nature of these institutional changes (Clark, 1996; Cox, 2012; Coffman et al., 2013; Pincus and Robinson, 2011).

Second, it suggests that the corporate form, as a solution to a set of economic problems, is quite robust to initial conditions – especially institutional framework – since it has been invented at least twice. Grain milling and the Indies spice trade are two radically different businesses. In addition, medieval Toulouse and 17th northern Europe differed in their political governance. Never the less, the corporate form emerged in both contexts.

Finally, the development of the Toulouse companies challenges Northian accounts of the institutional evolution of modern economic institutions (North, 1994, Williamson, 2000). Corporations developed in Toulouse to exquisite perfection and yet they did not reproduce themselves as in England at the eve of the Industrial Revolution. There is little evidence that the sophisticated institutional structure of the mill companies was adapted to other enterprises elsewhere. What strikes us now in hindsight as a dramatic institutional innovation was not a watershed in the way business was conducted. The invention of the corporation was not a sufficient development to stimulate the emergence of modern enterprise.<sup>1</sup>

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<sup>1</sup>Two milling companies with similar organizational structures are found in other cities in the Toulouse region (Moissac and Montauban) but we have not yet collected archival evidence regarding their governance.

# 1 Historical and legal background

This section offers historical and legal context for the emergence of the Toulouse companies. It draws from Germain Sicard's (1953) study of the mills in the Middle Ages. Sicard's thesis was submitted in fulfillment of a degree in law, and hence supplies considerable information about the legal foundations of the property rights that secured the perpetual ownership and transferability of shares in the mill companies. We examine this evidence from the perspective of modern institutional economics.

## 1.1 Property rights in the feudal system

Institutionalism highlights the importance of property rights that protect owners against expropriation by the government and powerful elites. According to North and Weingast (1989), the Glorious Revolution limited the power of the crown and allowed better protection of property rights for English investors. Based on these strong property rights, financial markets flourished (Carlos and Neal, 2011), ultimately leading to the Industrial Revolution (Mokyr, 2005). Similar changes in political institutions also occurred in the Netherlands during the 17th century. Unquestionably, the right to property is a prerequisite to the birth of any corporate form. "The more likely it is that the sovereign will alter property rights for his or her own benefit, the lower the expected returns from investment and the lower in turn the incentive to invest." (North and Weingast, 1989, 803).

It is thus surprising that the property rights necessary for the emergence of corporations in Toulouse derived not from the restriction of monarchical powers but the institutionalization of them. In Toulouse, property rights to use of the Garonne River was necessary to investors to build a mill. By the same token, the right to use a river for private commercial benefit would seem to present a major challenge to both the rights of the monarch and the more general public interest, since a navigable, potable river is an essential public good. The legal

conditions existed in Toulouse to resolve this apparent conflict.

Sicard (1953) points out that, under the Roman and Visigothic laws that governed the city prior to the 9th century, a river was not subject to private ownership. However in the Carolingian era, control of navigable rivers was conferred to the monarch or feudal lord, who in turn could alienate it via gift, perpetual lease or term lease. This new property right established the basis for economic development of the Garonne. It also created a legal foundation for the development of a corporation as a nexus of private contracts without the need for an explicit government charter (see Mahoney, 2000).

The fundamental medieval property contract was the fief. A fief was enfeoffed (i.e., granted) by a lord to a vassal in return for compensation. The well-known case is the noble fief in which the vassal supports military duties but the most frequent was the common fief (fief roturier) in which the vassal's duty is to pay revenues to his lord. Shareholders in the Toulouse mill companies derived their ownership rights to the Garonne at specific locations from the enfeoffment of both the riverbanks and the river. The initial owner (the lord) can be himself the vassal of another lord or the owner of a freehold which is a land free of any lord.

A unique word, honor, was used in the Toulouse region in medieval times to designate both a common fief and a freehold (Castaing-Sicard, 1959). The term found its way into English to denote a "seigniorship of several properties held under one feudal lord" (OED). The term honor was applied to a milling entity in Toulouse at least as early as the enfeoffment of the precursors to the Castel Narbonens [the original Occitan name of the Castel company] in 1183. As an indication of the crucial role played by the designation of an honor institution, the term "honor" was used up to the 19th century in the name of milling corporations (e.g., "Honneur des Moulins du Bazacle").

The initial owners of the properties on which the two milling companies operated were the Count of Toulouse, who owned the banks at the Castel by inherited feudal right from

the Carolingian era, and the monastery of the Daurade which had been conferred the banks as a freehold property at the Bazacle (see Mot, 1910:74 and Sicard, 1953:56). These two feudal owners (lords) then enfeoffed the properties to two groups of investors who served as vassals.

The two lords received an annual rent (a census called a “maienca”, paid in specie and in wheat), a tax on transactions such as sale and pledge, and a financial penalty when a complaint was lodged to the lord (Sicard, 1953:75). In exchange, the vassal was free to sell or pledge a mill or a share of a mill, called “uchau.” He needed the “agreement” of his lord (Count or Prior) for the transaction but this agreement was most likely only a pro-forma ratification to assure that the tax on transaction was paid (Richardot, 1935:337). Moreover, the lord provided a guarantee (“guirens”) – a proof of property in the event that the owner’s title was challenged, and addressed judicial issues in case of litigation.

### **1.1.1 Mill ownership through pariage**

The fiefs used to convey the property rights to the Toulouse mill companies were on a particular legal type of mutual ownership called “pariage.” The pariage institution is a form of economic cooperation among owners – not simply joint ownership but the result of a common desire that survives individual lives (Sicard, 1953: 146, 157-161). The first mention of the mills appeared in the charter of the foundation of Sancti Raimundi Hospital around the end of the 11th century without any indication of the nature of the enfeoffment (Douais, 1887), however in 1182, the enfeoffment of the Castel mills by the Count of Toulouse was made to several persons called “pariers,” and to anyone else they wished to add (Mot, 1910: 16). This extension explicitly allowed for the increase in the capital base of the group of investors acquiring the rights to the property. At the Bazacle, the first enfeoffment of 1177 does not mention the term parier, but the word is present in the second enfeoffment in 1184. Several persons associated by pariage thus owned the fiefs.

We can distinguish two levels of association in these fiefs. At the first level, several pariers form a group to own one mill in common. At the second level, an association of several groups of pariers contract together with the lord to own the fief. The first level of association in the pariage allows several owners to cooperate using a theoretical division of the asset in different shares called *uchau*. This theoretical division of the asset is attested in the first documents pertaining to the firm. In the Castel's enfeoffment of 1182, it is clearly explained that mills can be sold by shares since the amount of tax on sales is detailed for half, third, quarter or smaller part of the mill (Mot, 1910: 16). Thus, permanent capital (divided into shares) is present from the beginning of the mills. In contrast, capital was of limited duration in the original capitalization of Dutch and English East India trading companies and the English trading companies that preceded them. Permanent capital was achieved thanks to state intervention in 1612 for the Dutch East India Company [VOC] (Dari-Mattiacci et al., 2013) and in 1657 for the English East India Company (Harris, 2005). Permanent capital constituted a key evolutionary transition for these northern European companies, but not for the Toulouse companies we study. It existed prior to their formation, thanks to Medieval law.

### **1.1.2 Share transferability and entity shielding**

A parier was free to sell his share of a mill without the consent of the other pariers (Sicard, 1953:150). In the share sale contracts found in the archives (the first one dates from 1221), there is no mention of the assent of other pariers whereas the permission of the lord is explicitly mentioned, before gradually disappearing (Sicard, 1953: 151). This is an important point, because the joint ownership of a contract implies no mutual contribution of labor among owners. The tradability of shares of the mills is thus also present at the beginning of their development whereas it constituted an important step in the VOC's evolution in 1602 (Gelderblom and Jonker, 2004).

As early as the 12th century – an likely from the very outset of milling operations in Toulouse there was at least a partial separation between ownership and control. Some pariers were capitalists; they were investing rather than working as millers in the companies. The capitalist nature of these initial properties is demonstrated by the identity of the owners. The Daurade monastery was a parier (in addition to its ownership as lord). Moreover, two out of the nine pariers in Bazacle mills in 1177, and seven out of the eight in Daurade mills in 1194 had been, were, or would be consuls of the city – a position of political influence and power. It is unlikely that a consular position would be held regularly by a miller, but not unlikely that it would be held by a person of wealth. (Sicard, 1953: 154).<sup>2</sup> This pariage system among a limited number of shareholders who collectively owned a feif but who independently owned owned mills in key locations on the river worked well for several centuries and only evolved into a larger company in the 14th century.

Among the many important features implied by the transferability of multiple ownership shares is the implication that the law recognized a self-perpetuating mutually owned organization that was not liable for debts of its individual owners. Joint ownership implies entity shielding (Hansmann, Kraakman and Squire, 2006). Pariers were not at risk for each others' debt. There is no evidence that there is a risk of seizure or liquidation of the mills due to a claim against an individual parier.

### 1.1.3 Legal context

These property shares in pariage, based on an enfeoffment contract, took place in a specific legal context. The medieval legal system in Toulouse is probably derived from the Alaric Code, written when Toulouse was the Visigothic capital. Derived from the vestiges of Roman law, local legal practices were developed by the city consuls – who came primarily from the merchant bourgeoisie. This had some differences from Roman law, despite a common origin.

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<sup>2</sup>The Daurade mills constituted a third group of mills that were merged with the Bazacle mills in the fourteenth century.

Legal scholars like Placentin, who moved to Montpellier (a city close to Toulouse) around 1170, reintroduced the Justinian codification of Roman law into southern France from Bologna. After the Albigensian crusade, the Treaty of Paris in 1229 created a university in Toulouse with two professors “explaining Justinien” (Picavet, 1929). Initially, local legal practitioners refused to adopt Justinian Roman law. In the enfeoffment of the Bazacle in 1248, it is clear that parties renounced the Roman law and instead followed traditional contract law. In 1286, the Custom of Toulouse is written in a charter that presents the traditional local law. Gradually, however, Roman law influenced the legal status of the mill companies. For example, in the new partial enfeoffment of the Castel in 1351, and in the last enfeoffment of the Bazacle in 1474, the term *fief* is replaced by *emphyteusis* (Sicard, 1953), a Roman institution first adopted by scholars and then practitioners to describe the enfeoffment.<sup>3</sup>

## 1.2 Protection of property rights

### 1.2.1 Cost of feudal protection

The enfeoffment contract was an efficient institution for protecting property rights in the 12th century. An early challenge to the property of mills as *fiefs* was a trial in 1177 between the Prior of the Daurade (the lord) and the owners of the mills of the Bazacle. The mill owners started to build a dam in the Garonne, but the Prior claimed that the construction was forbidden according to previous agreements. The two parties agreed to arbitration by three arbitrators. The records of this arbitration, discussed in detail by Sicard (1953) reveals an efficient defense of the respective property rights. The arbitration permitted the mill owners to conclude the building of their dam, but the Prior obtained a higher rent and kept the right to establish more mills. However, when doing so, he is instructed to seek the

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<sup>3</sup>As described by Tisserand (2013), medieval scholars such as Pierre Hélie, a law professor at Toulouse University around 1350, have theorized a transition from *fief* to *emphyteusis*.

advice of eight owners of the mills and dam.

Despite the evolution of their initial contract, the rights of the owners were maintained through time. Gradually, both the feudal nature and its financial implications decreased. The rights of the mill owners became known as “*proprietas*” after 1404 (Sicard, 1953: 90). In 1404, the pariers of the Castel called themselves “lords for 6/7.” The King was called “lord for 1/7” since he owned 1/7th of the shares thereby omitting that he was in fact the true lord, in the feudal sense, as successor of the Count of Toulouse. When this royal participation was sold on April 8, 1514, only 1/7th of the shares were mentioned, but not the initial feudal rights of the King as lord.

Overall, the feudal rights on the mills seem to have lost their prevalence over time. At the Bazacle, in the middle of the 15th century, the pariers signed a *pariage* with the King of France regarding fishing rights. As if they were lords, they did this without ratification from their own true lord, the Prior of the Daurade. But in 1474, the last *enfeoffment* restated this feudal link with the Prior of the Daurade, still providing his guarantee against eviction (Sicard, 1953: 90). Later, in the mid-seventeenth century, the kingdom organized a commission to study feudal rights not perceived in the Languedoc, the Toulouse region. A lawsuit in 1671 indicates that the pariers of the Castel had not paid any feudal rights for decades.

This mitigation of the feudal nature of property was accompanied by a fall in its cost. First, the amount of the rent paid fell in real terms. In the Castel, the census was a fixed amount of 1 shilling *toulza* for each mill (contract of 1183). In 1177, one shilling *toulza* represented 11.29 grams of pure silver (Blanchet and Dieudonné, 1936: 236). In 1500, due to monetary inflation, the same shilling *toulza* was paid with only 2.09 grams of silver – thus a fall of about 80% in real terms. In 1700, the value in silver of this shilling *toulza* was only 0.66 grams of silver.

At the Bazacle, the census included two parts: one in silver and a second in wheat (one

“carton” per mill, and thus 12 cartons for the 12 mills). We know that in 1367, the mills provided at least 341 cartons to the pariers; the feudal burden is thus about 3.5% of the revenues of the mills. In the last enfeoffment of 1474, this rent in wheat decreased to about 7.5 cartons, while the amount distributed to the pariers was 756 cartons (in 1470); thus the burden dropped to about 1% of the revenues. The firm still paid the rent to the Daurade (in the form of wheat) up to 1603. At this time, the firm bought this right (for 3,630 Tournois Pounds).<sup>4</sup>

### 1.2.2 Avoiding expropriation

Institutional protection of property rights was highly effective in Toulouse during the Middle Ages and into the early modern period. We only identify four attempts of expropriation over the entire eight centuries of existence of the mill companies. A first attempt appears during a trial involving the Castel company around 1428-1432. It was argued that the Garonne could not be a private property according to the rediscovered Roman Law but the firms' pariers succeeded in defending their rights over the river (Sicard, 1953: note 325).

The companies also resisted state appropriation of the private rights on the river. In 1666, the agent of the King of France, Louis XIV, observed that no taxes had been paid on share transactions for decades. Several buyers were condemned to pay the standard tax on transactions, which is 1/12th in Toulouse. The pariers sued the agent of the King in court to contest the level of this tax. The agent of the King claimed that the enfeoffment of 1351 makes no exceptions, and that they thus had to pay the standard tax in Toulouse. The pariers answered that the enfeoffment of 1351 was only partial (following a destruction of the mills in 1346) and the title they were subject to was the original enfeoffment of 1192, which mentions a tax of five shillings toulzas. The court, the “Conseil d’Etat,” recognizes the

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<sup>4</sup>As for the rent, the value of the transaction tax paid to the lord quickly became close to nothing. Regarding the last known cost of a fief, the feudal justicia, it had already disappeared by the beginning of the 16th century, as it had also been the case for other real estate properties in Toulouse.

validity of this original enfeoffment, which at the time is almost five-centuries old, leading to a tax of five shillings toulzas, i.e., almost nothing due to monetary inflation.

Another attempt at state appropriation occurred in 1669. The King appropriated the rivers of France (ordinance of 1669, title 27, art. 41) except for properties owned according to a title dating back before 1566. This exception is confirmed in 1683 and again in 1693. It remains in force today (Sicard, 1953: 67). The two Toulouse mills resisted this expropriation attempt thanks to documents proving the age of their ownership.

Paradoxically, property rights became weak only in the 20th century. A true state expropriation occurred at the Bazacle in 1946 when all of the French electricity producers were nationalized to create the state company EDF.<sup>5</sup>

Overall, the story of the property rights of the pariers with respect to the mill companies in Toulouse does not confirm the Northian assertion about the high risk of expropriation before the 17th century, at least in the region of Toulouse. The Toulouse mills as well as other supporting evidence (see Angeles, 2011) suggest that clear expropriation was, for a long period in the history, an exceptional measure used only in exceptional circumstances in Western Europe. It does confirm, however, that strong property rights create the conditions for the development of the corporate form.

## 2 Emergence of corporate governance institutions

This section documents how the Toulouse mill companies' owners designed various corporate governance institutions. It highlights the economic factors that triggered the design of these novel mechanisms and shows how this process relates to the lessons from modern economic theory. We use the ancient terms “pariers” and “uchaux” to refer to shareholders and shares, respectively. Sicard (1953) demonstrates that, even if they did not have the name, the

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<sup>5</sup>The Castel company was bought by the city of Toulouse at the beginning of the twentieth century, in 1910, when the firm was close to bankruptcy.

Toulouse mill companies were indeed shareholding companies. As an illustration, the formal transformation of the Bazacle company from an ancient-style company to a shareholding company occurred in 1910 with the direct transformation of the term *parier* into shareholder and of the term *uchau* into share. We use ancient terms to highlight the differences in cultural and legal background that surrounded the emergence of corporate governance institutions. Despite these differences, the governance institutions are strikingly similar to the modern ones.

## 2.1 The integration towards large companies

Having secured property rights against expropriation by the state and powerful elites, mill owners could experiment with increased cooperation. The level of integration increased gradually as we demonstrate in this section.

Prior to the formal mergers in 1372 and 1373, two initial forms of cooperation existed to manage the mills. Each of the several independent mills at the location of the Bazacle and the Castel was owned in common by several *pariers*. This was a first step towards cooperation. At the location level, i.e., at the Bazacle and at the Castel, owners of different mills acted in common vis-à-vis the lord to rent the fief. This second level of cooperation between owners of different independent mills gradually increased. One way to increase the return on capital was to increase productivity. The price for milling services was fixed by regulation.<sup>6</sup> An effective way to increase productivity was thus to spread fixed costs and to increase cooperation between mills using more complex contractual agreements.

A first step beyond the ancient *pariage* was a form of mutual insurance at the Castel, signed as early as 1194. In case a mill was destroyed by a flood, it would be rebuilt at the expense of all the *pariers* of the Castel mills, and the *pariers* of the destroyed mill would

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<sup>6</sup>Milling activities were regulated as early as 1152, with a rule of the city consuls stating that a miller could not take more than 1/16 as payment for his service; this ratio remained constant up to the 19th century (Limouzin-Lamothe, 1932).

be allowed to use the other mills until the rebuilding was completed (Sicard, 1953: 153). Remarkably, this insurance agreement was perpetual and committed successors (“pro eorum successoribus per omnia tempora,” see appendix 7 in Sicard, 1953).

At the Toulouse mills, cooperation eventually increased further. During the 13th century, mills were still independent but different owners also acted in common in each location – not only in relation to their lords, but for many other purposes like lawsuits, dam maintenance and mill rentals (Sicard, 1953: 178). Gradually, common business in each location became more important than the business of each individual, independent mill; several times (in the Castel in 1296 and the Bazacle in 1367) all mills from one location are leased together by their pariers (Sicard, 1953: 188). This is not surprising, given that the firms were all exposed to the same exogenous economic shocks and had caps on profits. They differed only in their respective costs and physical capital. As cooperation equalized costs, the relative efficiency of physical capital; i.e. access to the stream, number and quality of millstones and efficiency of mill buildings must have been the only economically relevant distinguishing factors.

Additional evidence of the importance of the common component of their business is offered by a huge financial penalty paid in 1367 by all the pariers of the independent mills of the Bazacle: 1,000 Tournois Pounds (to be compared to an estimated total value of the mills in 1372 of 13,280 Pounds). This financial penalty implies a primitive form of incorporation, as the penalty was paid by pariers who were not present in the company at the time the fault was committed (Sicard, 1953: 109-113, 302).

Recognizing the increasing need for common action, the independent mills merged twice. They first tried a temporary merger before signing a permanent association. At the Castel, all mills were destroyed in 1346, which helped foster unification. In 1351, the pariers chose to be associated for 4 years after the beginning of the rebuilding. A perpetual association occurred in 1373 (Sicard, 1953: 179). At the Bazacle, the management of the company was unified for a two-year period, starting in 1369, while properties remained separate. Revenues

were shared according to a rule that recognized different mill qualities. Expenses were only partially shared (Sicard, 1595: 181). Then, a unique company was created via a merger of twelve firms in 1372.

We have little information about the 1373 merger of the Castel firms, but the unification contract of the Bazacle is still available in the Toulouse archives (see the great charter of 1372 at the Bazacle, ADHG 5j12). The contract uses the principle of property exchange, which was considered an irrevocable sale in Toulouse law (Castaing-Sicard, 1959). A group of pariers calling themselves the major and senior parts (“maior and sanior pars”) decided to perpetually merge their properties “to improve the governance, conservation, tuition and defense of the mills as of the honor.” Governance (“gubernatione” in the text) is thus clearly indicated as the first motivation for the merger.<sup>7</sup>

**Proposition 2.1.** *Improving governance of the business activities was invoked in the great charter of 1372 as one of the main motivation for creating large companies.*

These developments appear broadly in line with the modern theory of the firm. Coase (1937) suggested that activities should be carried out within a given firm when the costs of contracting on a regular basis outweigh the benefits of market competition. One important implication of the 1372 Bazacle merger contract is that it demonstrates the feasibility of creating a corporation entirely via contract, as opposed to the granting of governmental rights (cf. Butler, 1989). In this respect it renders the Toulouse companies susceptible to modern economy theory of the firm which tends to focus on the firm as a nexus of contracts as opposed to an entity created by the government grant. As documented above, the feudal roots of the Toulouse firms in effect already conferred entity status prior to the 1372 and 1373 mergers.

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<sup>7</sup>The owners of each mill that participated in the merger were endowed with eight uchaux of the newly-created company. To compensate pariers for differences in mills’ valuation, three pariers were chosen to estimate the valuation of each mill. The average valuation was then computed. Pariers of mills with a value below the average paid a compensation in specie to pariers of mills above the average.

## 2.2 Hold-up prevention

Common ownership of productive assets is plagued with the risk of opportunistic behavior by some of the partners (Hart and Moore, 1990). The pariers had to find a way to protect the mill companies from such a behavior. This was all the more crucial that, according to Roman Law (at least since the Twelve Tables and later on in the Justinian code), none can be forced to remain in an undivided ownership. This legal disposition could trigger a holdup problem if one parier were to ask to realize his or her assets. This potential problem was explicitly solved thanks to special written renunciations, as in other forms of pariage (Débax, 2012).

In particular, at the Bazacle, when shareholders signed the merger in 1372, a long list of renunciations to special rights was indeed attached: "... those with privilege obtained from the King, the Pope or other, by inhabitants of bastides, soldiers due to wars or fight against companies of thieves in Occitania, or even to support the transfer overseas to the Holy Land... and all others, canon or civil, from God or man, new and old, published and to be published, written and non-written, uses, customs, statutes, privileges, in the whole or in part... renounce any special rights" (ADHG 5j12). Pariers thereby indicated their willingness to be equally unable to break their commitment.

The corporations also used written contractual arrangements in the form of statutes to explicitly state internal rules. The first corporate statute (and, to the best of our knowledge, the oldest documented corporate statute in the world) was written in 1417 by the pariers of the Castel (AMT 18th series). It is a short document of seven articles, written in Occitan. It is clear that this document was intended to offer solutions to problems arising within the company, as it only deals with a few specific points. In particular, the text says that, in case of a dispute among pariers, each party should provide a memory that seems fair and reasonable (Article 5 of the Castel statute). Another article indicates that the king of France, owner of 1/7 of the shares, should contribute to the company's expenses as any other parier

(Article 7 of the Castel statute).<sup>8</sup>

**Proposition 2.2.** *In the great unification charter of 1372 and in the corporate statute of 1417, shareholders commit to not exercising any special right based on their personal or social status in an attempt to hold up their fellow shareholders.*

Apart from the (failed) expropriation attempts discussed in the previous section, we did not identify in the archival documents any attempt by a parier to break the commitment and hold up his or her fellow pariers. This indicates that the contractual renunciation of specific rights embedded in the unification charter and in the corporate statute was strong enough not to be disputed for centuries.

### 2.3 General meetings

The origin of shareholder general meetings at the Toulouse companies can be traced back to the feudal legal system. In 1177, an arbitration tribunal required an assembly of pariers to provide advice to the lord of the Bazacle before he created new mills. This first council was composed of eight people: four owners of mills and four from the “estanco” (which probably meant the dam). Another council of 12 owners was organized in 1184 by the lord to resolve litigation among millers about the payment of maintenance costs for the dam (Sicard, 1953: 78, 153). The existence of these councils may have been due to the fact that the lord was a religious institution accustomed to collegial decisions.

A feudal institution that protected property rights was thus at the origin of both the first council of owners and the first resolution of a conflict among owners. This evidence shows the capacity of the feudal legal system to accommodate collaborative decision-making. The settlement of a real estate litigation by a council under the patronage of the lord was standard in feudal Toulouse: the Custom of Toulouse, written in 1286 to fix age-old practices, states

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<sup>8</sup>This evidence is interesting because it sheds some light on the debate regarding the states commitment to respect private property (North and Weingast, 1989).

that the lord organizes, more than judges, a lawsuit (article 127 of the Custom; see Gilles, 1969, for a transcription of the Custom of Toulouse and an early comment). Each party chooses one or two people to compose the Court (article 134). In case of a tied decision, the lawsuit is transferred to the city consuls (article 139). It is the lord who is responsible for organizing the justice in his fief by gathering a council of owners to resolve (by themselves) problems of economic coordination.

The councils of pariers eventually became permanent: several documents indeed reveal the reliance on a majority of pariers in a vote on important decisions, which implies the existence of a council. For example, a shareholder meeting existed in 1278 when an agent (“procureur”) is chosen by the “pariers all together to represent them in justice (Sicard, 1953: 268). A first mention of the majority rule is found in the minutes of a trial in 1308 (Sicard, 1953: 295). In 1372, the pariers who led the unification of the Bazacle mills called themselves “maior and sanior pars, a formula coming from canonic law that is used often in the two mills.

The first clear mention of a shareholder general meeting (“cosselh general dels senhors paries”) appears in the Castel’s corporate statute of 1417.<sup>9</sup> The general meeting was designed to take decisions on important issues, and these decisions were recorded. An accounting document from 1443-1444 at the Castel mills company mentions an expense to pay a notary to record minutes of meetings (Mot, 1910: 56). Between 15 and 45 pariers (out of a total of about 80) participated in meetings from 1463 to 1473 despite the possibility to be represented; it seems that decisions were taken on a one parier one vote basis (Sicard, 1953: 269).

This deviation from the one-share one-vote rule is interesting in light of recent scholarship regarding how concentrated ownership could influence corporate externalities. According to Hilt (2008), many corporations in New-York at the beginning of the 19th century applied graduated voting rights schemes rather than a one-share one-vote rule to attract the partic-

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<sup>9</sup>The full denomination of the meeting was: “cosselh general dels senhors paries dels molis del Castel Narbones de Tholosa am gran deliberacio.”

ipation of small investors in a context of weak legal protections. Hansmann and Pargendler (2013) argue for a different interpretation. They note that many early U.S. corporations were created to supply a public good, such as a bridge or turnpike, and the voting rules they adopted favored small investors over large ones. They argue that this prevented larger shareholders from influencing decisions which would affect users of the infrastructure. The smaller investors could prevent favoritism with respect to the location of the road or bridge. The fact that the Toulouse mill companies were, in effect, regulated utilities whose decisions had large externalities aligns them with this U.S. example. The one-shareholder one-vote would have kept in check the designs of larger shareholders to preferentially capture the external benefits which would affect smaller investors and Toulouse consumers alike.

**Proposition 2.3.** *As revealed by the corporate statute of 1417, a shareholder meeting is in place early in the history of the milling companies.*

In a later period for which more documentation exists, the general meeting appears well structured. In 1639, the rule for the Bazacle company is that a parier must own at least one-half uchau to participate in meetings (ADHG 5j438.194). According to the notes of a general meeting of the Bazacle in 1618, to guarantee an informed vote, a parier cannot vote if he was not present during the presentation of the issue at stake (ADHG 5j438.336). With a similar goal, information about technical choices was printed in 1771 by the Castel before a General Meeting to prepare the vote: “everybody must form his opinion in advance with wisdom, otherwise, the shares of the mills will fall and everyone will be ruined” (AMT 17ème série carton 8). In short, a system of shareholder representation appears to have evolved from an ad hoc feudal council to an annual general meeting with rules to ensure decisions acceptable to all, and recognizing the benefit of independence of opinion in the decision-making process.

## 2.4 Limiting moral hazard

The governance system of the mill companies reveals a radical way of controlling management. The revenues of the mills (1/16 of the grain milled) were paid directly to the pariers. Indeed, when the granary of the mills was full, the grain was distributed via an operation called a “partison,” which occurred about once a month. The firm itself only earned secondary revenues, such as rents on non-grain mills or fees from leasing fishing rights. Part of companies’ current expenses were paid out of these secondary revenues. The remaining costs were covered by an annual contribution from pariers (called a “talha”). At the beginning of each annual general meeting, the treasurer presented estimates of revenues and expenditures for the next year. Based on these estimates, pariers voted a budget for future talhas (see, e.g., general meeting of the Bazacle in December 21st, 1676, ADHG 5j439.7). In case of an unexpected expense, an exceptional talha could be voted by an exceptional general meeting. These unexpected talhas were clearly distinguished in the accounting; during certain periods, they were even named differently (“coécation”).

The talha mechanism represented a radical solution to the free cash flow problem identified by Jensen (1986): the Toulouse mill companies’ governance was such that there was no free cash flow at all. Managers had to justify all major future expenses before collecting the corresponding financial resources: for example, in 1667, one general meeting of the Bazacle voted to allow managers to keep and sell wheat (an operation called “burning a partison”) to reimburse a debt (ADHG 5j.438.347). The pariers clearly explained that the money coming from this sale could not be used for anything else. The talha mechanism resulted from a gradual adaptation of the governance system of the mills over the years. According to Sicard (1953: 225), before the end of the 14th century, the mills retained part of the wheat to pay the expenses but this mechanism is later abandoned.

This talha mechanism contrasts with the governance of modern shareholder corporations in which shareholders are distributed only the residual cash flows. A drawback of this

mechanism is that financial resources to cover unexpected expenses need time to be obtained. The statute of the Castel in 1417 clearly shows that pariers were aware of this drawback. In article 3, the statute indicates that managers can keep and sell wheat in case of urgent needs because collecting an extraordinary talha would require too much time and would delay the execution of important actions. The article explicitly indicates that giving the exceptional right for managers to keep and sell wheat enables the firm to avoid major damage (“esquivar maior dampnatge”). This shows that pariers were aware of a tradeoff between the control of managers and the speed of action in the firm.

**Proposition 2.4.** *A strict “no free cash flow” policy was in place that could only be bypassed in exceptional situations as stated in the corporate statute of 1417.*

Towards the end of the 18th century, the talhas gradually disappeared. During the Revolution, inflation related to the creation of paper money (“Assignats”) renders difficult the implementation of the talha system because the amount to be paid by pariers lost a large part of its value between the time of the vote and the time at which the expenses were actually paid (ADHG 5j807). During this period, at the Bazacle, the company sets the talha as a percentage of partison, i.e., in wheat, rather than Tournois Pounds. A last huge talha is imposed in Germinal Francs in 1814 to repair the mills after an important fire. The talha system is replaced in 1843 by a standard dividend payment. Thus, the mechanisms for controlling the agency relationship evolved through various phases over four centuries in Toulouse in a setting in which shareholders were aware of the economic tradeoffs that arise when trying to address the free cash flow issue.

## **2.5 Financing expenditures: limited liability and outside equity**

The downside of the “no free cash flow” policy analyzed above was that one parier could refuse to pay his share of the expenditures. The firm solved this problem by adopting an

interesting system that enable the firm to receive external equity financing while avoiding dilution. This system preserves limited liability for pariers because it does not force them to pay for their share of the expenses.

When a parier did not pay his talha, the firm could respond in several ways. First, the pariers unpaid but owed talha became a claim used to pay expenses of the mills (Sicard, 1953: 264), a technique akin to securitization of a parier's obligation towards the mills, and suggests that the firm at times extended what amount to negotiable credit to pariers. Second, the share of wheat due to the parier as dividend could be sold to pay his talha (according to Castel corporate statute of 1417). This solution was sufficient in regular times, i.e., when the value of the partison was higher than the talha, but was not enough in cases of large talhas, such as those required to repair the mills or the milldam.

In case of important capital expenditures that needed to be financed, another solution was to seize uchaux of noncontributing pariers and to sell them via auction in order to obtain outside capital. The procedure of seizure/auction is clearly explained in the Castel corporate statute of 1417 (article 4). In 1369 at the Bazacle, even before the merger into one unique company, one parier said that his share was "occupied and kept" by co-pariers, and that he then lost it (Sicard, 1953: 264).

Seizure had to be ratified beforehand by the Parliament of Toulouse (Mot, 1910: 41; Sicard, 1953: 266). A trial in 1450 applied this rule at the Castel and it was also effective at the Bazacle as early as 1432 (Sicard, 1953: 311). The article 4 in the Castel corporate statute explicitly mentions the risk of fire sales that may depreciate the capital obtained in case too many uchaux are being sold at the same time. The text indicates that "los governadors ... applicar a ... conservar la honor dels ditz molis e la resta del pretz ... sera observat si trops uchaux dels ditz molis se vendian" meaning that the governors of the Mills will endeavor to preserve the mills company and its share price by observing if too many shares of the Mills are being sold.

The need to find outside funding delineates pariers' limited liability. In article 4 of the statute of the Castel in 1417, this limited liability is clearly stated. The company could not ask more from one parier than the value of his share in the mills (in the text of the statute: "aytant o plus que no val la part que an en los ditz molis"). Hence, limited liability appeared in some business enterprises by the 15th century, nearly 200 years before the appearance of corporations in Northern Europe. The provision of limited liability to shareholders was a long and complicated path for the East India companies. This solution is reached in 1623 by the Dutch VOC, more than 20 years after its creation (Gelderblom et al., 2013). For a long time, limited liability remained a privilege granted by the state. Hansmann and Kraakman (2000) observe that limited liability was believed to be infeasible via pure private contracts.

The Toulouse mill companies' institutional form demonstrates that the limited liability was achievable by private contracts without any explicit public intervention. The source of this institutional form may be traced back to feudal practices of seizure and re-ensfeoffment of fiefs and to the business law described in the Custom of Toulouse that allowed, under explicit conditions, a creditor to seize and auction a debtor's assets to cover unpaid debt.

Given the significance of limited liability as an important feature of the corporate form, it is useful to provide more detail on this topic. First, the seizure/auction mechanism is related to feudal law. The failure to pay the talha amounted to the abandonment of a fief. When the feudatory abandons his fief, it returns to the lord to be again ensfeoffed. In a case in which a fief is shared among several owners in pariage, the new feudatory needs to be agreed on by the others. It must pay the talha that the prior parier failed to pay.

For example, in 1331, a flood destroyed the Castel mills. Fifteen years later, many pariers in the Castel firms had not paid their talha for repair. This situation had negative externalities. The city suffered because enemy soldiers were able to cross the river without a boat due to the destruction of the Castel milldam. The potential occupation threatened the city with starvation (Mot, 1910: 19). The agent of the king (the Sénéchal) called the

pariers and asked them to pay to rebuild the dam. Twenty-six abandoned their shares to the King who then applied a new partial enfeoffment to 5 others (all five of whom were money changers) in exchange for an offer to contribute to the repair. The twenty-six pariers who surrendered their shares evidently no longer were obliged to contribute to the rebuilding of the dam their obligations were transferred to new shareholders.

We conjecture that, with the gradual decline of the role of the lord, the pariers would do the same without the lord – the honor eventually assumed the role of the enfeoffing body. Seizure and re-enfeoffment appears to have evolved into the surrender of shares to the firm in lieu of talha payment. This process of absolution of debts through seizure and re-auction appears to have been a standard mechanism in bankruptcy. Medieval Toulouse law allowed seizure and auctioning of personal assets to pay debts after proper validation by the city council (Castaing-Sicard, 1959). Regardless of the origin of the limited liability, it was not related to any explicit state decisions, as in the Dutch and English East India companies' case.

## **2.6 Debt in the capital structure**

The mill companies used debt contracts to finance their operations. We observe the use of debt by the predecessor firms to the Bazacle and Castel, and there is evidence of debt used by the Bazacle company in 1413 (ADHG 5j8.30). Debt contracts were issued in the name of the companies. Moreover, we never observe, in the archival material, any reference to the fact that these debts are repaid from the personal wealth of a parier. This indicates that limited liability was enforced on counterparties of the milling companies.

On the contrary, in 1711, a kind of Chapter 11 protection was obtained by the Bazacle company from the Parliament of Toulouse after the dam was destroyed in 1709 and was difficult to rebuild. This protection stated that creditors of the Bazacle could not undertake any action because of their debts until August 1, 1722 (ADHG 5j2.8). This protection

helped the firm concentrate its resources on repairs. Several pariers preferred “to abandon their shares, rather than add to the loss” (ADHG 5j65). Many uchaux were integrated into the firm since no one attended the auction (ADHG 5j65). Again, this indicates that no creditor of the firm had a claim on the personal wealth of pariers.

**Proposition 2.5.** *Shareholders benefited from limited liability. We observe debt financing, as early as 1413, in the name of the company without any evidence that a debt could be or has been paid back by a shareholder, despite several episodes of financial distress.*

The seizure/auction mechanism enabled to raise money after major events such as mill or dam destructions. In 1351, the Castel mills raised money from investors. This seems to also have been the case in 1418, according to a sale of 6 uchaux owned by the mills to finance repairs (Sicard, 1953). However, a legal innovation reduced the effectiveness of this procedure. Sometimes before 1597, a parier who saw his or her shares seized and auctioned was granted an option to repurchase them (“recrobit”) at a strike price equal to the auction price plus all the subsequent talhas. We do not have the exact date of this legal change: the first case we observe is the sale in 1597 of 6.25 uchaux with an option to rebuy. The presence of this option persisted, showing up in auctions for Bazacle shares both in 1613 and 1648 (ADHG 5j.438.179.182).

The introduction of a option to buy back the seized shares had negative consequences for the financing capacity of the mill companies. Upon facing major capital expenditures, no investor would be willing to buy shares and contribute to the rebuilding of the mills given that they could not benefit from the upside. The mill companies found two different answers to this problem, demonstrating a certain level of creativity and flexibility in governance design to adapt to circumstances.

First, uchaux not sold by auction were simply reclaimed as permanent assets of the firm. The former owner then had no possibility of repurchasing the uchaux. In 1654, 3.5 uchaux were owned by a minor under guardianship; he had not paid his talhas after the dam

destruction and nobody was willing to purchase his shares during auctions. They were thus integrated into the body of the mill company. Later, when the mills were working again, the minor asked to rebuy his shares but the un-auctioned uchaux remained the property of the firm (AMT 17ème série boîte 5).

As early as 1365, mill firms own uchaux. The company was recognized as a standard parier in the partison register to receive grains, and was called to pay talhas. This is an early instance of a company's self-owned shares. These uchaux could then be sold (Sicard, 1953: 314). In a Bazacle general meeting of 1639, the integration of non-auctioned uchaux was justified "so as to not delay payment of amounts due" (ADHG 5j438.192). Pariers who accepted the future payment of the talha would also pay the talha of those who did not want to pay their own; while they supported all the investment, they would also benefit from all the potential return. This solution would be unsatisfactory if all the initial pariers could not or would not pay more than the initial talha for their own uchaux.

The mill companies designed a second solution to raise capital and avoid the negative consequences of the option to buy back. In 1597, they called on the judicial authority to obtain a limitation of the option duration: a Parliament sentence confirms that shares of non-paying shareholders at the Bazacle can be seized and auctioned, and states an explicit limitation of the option: the seized owner could not rebuy for 30 years (De La Roche-Flavin, 1745, p. 590).<sup>10</sup> This latter provision amounted to a thirty-year European-style call warrant.

The seizure/auction mechanism could be ineffective in case of major disasters. At two occasions, the mills remained out of order for several years until the design of two clever financial solutions. In 1641, the Castel company collected a huge talha of 300 Tournois Pounds thanks to a 12-year protection against the option to buy back (AMT 16th series). In 1643, the mills still did not work. Minutes of meetings show pariers lamenting that things were almost "hopeless and abandoned" (AMT 16th series). The Castel mill company needed

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<sup>10</sup>This decision is important enough to be printed in several books of the jurisprudence of the Toulouse Parlement.

50,000 more Pounds to repair the dam, but several pariers did not want, or could not, invest further. On December 2, 1643, a group of 16 pariers intended to establish a new company to provide money for repairs, offering other existing pariers the opportunity to join them. This initiative found a strong opposition by at least one important parier, the Chapitre Saint Etienne.

Three general meetings, on December 21 and 28, 1643, and on January 3, 1644, were needed to resolve the issue (AMT 16th series). The group explained first that everybody wanted the “public good and chose to make repairs following the “old orders that consist in imposing each uchau” – or 714 Pounds by uchau (50,000/70). The problem was that several pariers did not pay. The solution was for the group of 16 to pay for them under “reasonable conditions,” described in several articles allowed by a notification of the Parliament of Toulouse. By accepting this agreement, the group of 16 proved “their desire to do good for that mill, it was the key to the business, without which it was impossible to conclude anything.” The group of 16 accepted, signed and expressed their “will not to cause any prejudice to property rights.”

The uchaux of pariers who did not pay were transferred to the group of 16 using the standard sale after seizure for non-payment of talhas. However, the group of seized pariers would have the option to rebuy from the mill after 6 years, fixed at a price equal to the capital plus the accumulated interest at 6.25 % (“Denier 16”). During the 6 years while the mills were being repaired, the group of 16 would receive fixed interest of 6.25% per year from the firm. During this time, the officers of the mills company would be appointed only by pariers who paid their talhas. Others would appoint one representative without the right to know the accounting of those who paid. The accounting would be presented in a monthly general meeting with four pariers appointed to help the officers during the repairs. Thus, as a result of the re-organization, the firms capital structure combined two kinds of equity claims, with one providing a fixed interest for a 6-year period.

Sixty years later, a similar disaster occurred at the Bazacle leading to another innovative financial solution. The dam was destroyed by ice in 1709. Despite 100,000 Pounds being spent by 1714, the dam was not fixed. An engineer, Mr. Abeille, agreed to undertake the repairs (both technically and financially) in exchange for half the uchaux and the appointment as perpetual chairman of the company, as long as he owned at 30 uchaux (ADHG 5j65). This is an example of financing and advising being jointly offered as analyzed by Casamatta (2003). He decided to abandon the initial dam to build a new one in a closeby location. The repairs were difficult. Abeille sold half his shares to Geneva investors and other pariers sued him for not fulfilling his commitments (ADHG 5j3.9.22). After 12 years of inaction, the Bazacle mills resumed operations on October 4th, 1720. Abeille would sell all his uchaux over 3 months in 1732, allowing the company to return to its initial corporate governance with an elected board of directors (ADHG 5j3.63).

**Proposition 2.6.** *Ad-hoc temporary solutions such as special share provisions in 1597, dual shares in 1644, and takeover by a skillful shareholder in 1714, were found at several points in time to collect outside financing.*

## 2.7 Delegated management

Shareholding companies are structured to delegate operations to agents, who operate the firm's assets for the ultimate profit of shareholders. The delegation decision to agents outside or inside the firm depends on organizational costs and contracting frictions (Coase, 1937, Williamson, 1975). Early in the history of the mills, this delegation took an extreme form: pariers rented out all the mills to outside operators. This occurred in 1374, 1383 and 1389 (Sicard, 1953: 190). Moreover, fishing rights were rented out in the 15th century. Finally, secondary activities of the mill – sawing, sharpening and tanning – remained rented out for

most of the time up to the 19th century.<sup>11</sup>

The pariers were comfortable delegating powers. Already, in the first enfeoffment contracts, one parier could represent others (Sicard, 1953: 151). The construction of the dam leading to the trial of 1177 implies already a form of governance, though we do not have documentation about this. On July 2, 1234, 59 pariers (including women) of the Castel signed the purchase of land for themselves, other pariers and their successors (Sicard, 1953: 156, 295).<sup>12</sup> This act implied a form of delegation and governance – deciding and negotiating a transaction among more than 59 owners. We see pariers acting in common with a representative agent, called a bayle or procureur, at the end of the 13th century (1278 in the Bazacle, 1292 in the Castel, Sicard, 1953: 178, 202, 268). At the end of the 14th century, these agents had various names: bayle, regent, procureur, gouverneur or recteur. They managed revenues and expenditures (Mot, 1910: 52).

We know how management worked in the Bazacle company in 1369 when different mills merged for 2 years. At the end of the year, the pariers chose two or three among themselves as representatives (Sicard, 1953: 203). At a given location, these pariers managed the mills, decided on repairs, asked other pariers for contributions and fought in court on behalf of the various mills. But they could not affect the capital structure or modify statutes (Sicard, 1953: 204). Other agents had more specific tasks: collecting the talhas (first mentioned in 1358), acting in a trial (the agent being called “procureur”) or supervising repairs (first mentioned in 1364) (Sicard, 1953: 206). Sometimes, the procureur was not a parier himself, as in a trial in the Parliament of Paris in 1384 (Sicard, 1953: 207). But most of the time, management was associated with ownership since the owners chose amongst themselves agents to represent them and to act as managers.

Another step in the delegation of management was taken with the separation of owner-

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<sup>11</sup>It is remarkable that, in the history of the Toulouse firms, we observe internal management for the central business of the companies coupled with a willingness to contract externally for peripheral operations.

<sup>12</sup>As early as the enfeoffment of 1192 in the Castel, women are mentioned as pariers “predicto capicio molendinos habent vel habuerint quod aliquis homo vel femina non faciat molendinos...”

ship and control. In 1374 at the Bazacle, we observe a new kind of agents (“aconseilhars”) who represent the pariers. They controlled the management of the firm. This new institution allowed a clear dissociation of ownership and management. The manager could be disinterested in the success as a parier because he was under the control of the aconseilhars. The manager (“bayle”) needed the approval of at least 4 of 8 aconseilhars for important decisions.<sup>13</sup> The word bayle then came to be used for technical employees. One bayle recorded the grain exchanges (“receptors bladorum”) and another one monitored specie (“receptor pecuniarium”).

Separation of ownership and control proved an efficient form of specialization. A large part of the research in corporate governance investigates the optimal contract between shareholders and managers. Shleifer and Vishny (1997) define corporate governance as “the ways in which the suppliers of finance to corporations assure themselves of getting a return on their investment.” An increasingly complete capital market allowed shareholders to diversify their portfolios through different assets and thereby specialize in risk bearing. The presence of specialized risk bearers, in turn, opened the executive suite’s door to professional managers, who lacked the resources for ownership but who specialized in managing. This movement appears in the United Kingdom only between 1720 and 1844 as demonstrated by Freeman et al. (2012). Their central thesis is that, in this period, corporate governance shifted from shareholder participation in company affairs to rule by a managerial elite who purportedly represented shareholders interests.

The statute of 1417 reveals the separation of ownership and control as a *fait accompli* except for one crucial function: the treasurer. This charge remains in the hand of one parier. This statute mentions several agents (“administrador de la presa et de la despensa,” “los regidores,” “gobernado de la recepta”...) different from the representatives of the pariers (“los administradors” and “los paries deputatz”). The most important agent seems to be

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<sup>13</sup>This organization is in place starting in 1379 at the Bazacle and in 1388 at the Castel (Sicard, 1953: 210).

the *administrador de la presa e de la despensa* which is a form of treasurer. He collects the *talhas*, but potential excess is for the honor and nobody outside the honor can ask him about these *talhas* (Article 1 in the statute). This article indicates that the amounts received by the Mills companies could not be seized – a manifestation of “entity shielding” (Hansmann, Kraakman and Squier, 2006). The treasurer provides an accounting of the *talhas* collected (Article 2) and also of the sales of seized *uchaux* (Article 4). In the 16th century, the treasurer of the Castel was still a *parier* chosen as the “most adequate and able” (Mot, 1910: 54). The chosen treasurer could not refuse the charge, as demonstrated by an *arrêt* of the Parliament of Toulouse in 1565 (Mot, 1910: 54).

Contrary to the Castel statute, the one adopted in the Bazacle more than a century later, in 1587, is exhaustive. It includes 59 articles that were probably written in 1531, corrected in 1587, and then reprinted in 1699 and again in 1728. Only this last version is still in the archives. This document fits well with the Renaissance movement towards rationalization (Bonnet, 2012).

The statute of the Bazacle in 1587 allows us to more clearly understand management and agents. The first article of the statute states that the administration starts the first day of January and runs until the same day one year later. On this day, a board meeting takes place to deal with issues selected by some members from the previous board who remain in charge for an additional year (Article 2). The main manager is called the “*Conterôle*” (Articles 10-16): he may or may not be a *parier* and “takes care of all business and commercial activities of the mills” (Article 10). He must live in the mill (Article 16). The *conterôle* appears as the Chief Executive Officer of the modern corporations; the statute itself uses the term “*Officers*” to refer to the main managers of the companies.

Other officers include the “*Trésorier*” who is the book-keeper for specie. He cannot pay anything without a signed order from the Regents, the members of the board of *pariers*’

representatives (Articles 17-20).<sup>14</sup> This procedure already exists in the first accounting documents we have from the middle of the 15th century. The “Syndic” is in charge of all lawsuits, of the archives and of the title of property of uchaux (Articles 21-23). The “Greffier” writes all contracts, meeting minutes and firm correspondences (Article 24). The “Saint Martin” is the foreman (crew chief) (Articles 25-27). A “Mande” alerts the pariers of the days of partison payments (Article 54).

**Proposition 2.7.** *The corporate statutes of 1417 and 1587 demonstrate clear delegation of business operations to special agents. The attributes of the chief executive officer are explicitly detailed in the Statute of 1587.*

The role of the treasurer has evolved, as can be seen for the Bazacle during the 17th century. As stated in the Statutes of 1587, the treasurer may or may not be a parier. Various evolutions have increased the independence of the treasurer. According to the minutes of the 1642 General Meeting, a term limit of the treasurer was set at three years (ADHG 5j438.224). Then after 1648, the treasurer was appointed by the General Meeting, and not by the board as it used to be (ADHG 5j438.266). To avoid nepotism and self-interest, it was decided in 1661 that uncles, nephews, brothers and sons of the treasurer would not participate in board elections (ADHG 5j438.318). Around 1679, it was decided that a parier of the Castel could not be treasurer at the Bazacle (ADHG 5j439.45). Finally, after 1679, the treasurer could not be a parier (ADHG 5j439.45). The process of complete separation of ownership and control is thus achieved after more than four centuries of evolution.

**Proposition 2.8.** *Separation of ownership and control is fully achieved in 1679. Before this date, the treasurer could be (but did not have to be) chosen among shareholders.*

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<sup>14</sup>An analysis of the evolution of the board is offered below.

## 2.8 Incentives

Financial incentives existed to align the interests of agents and those of pariers. As revealed by the registers of the Bazacle mills company, even though it was not written in the corporate statutes, the main managers received, in addition to a fixed wage, a variable remuneration in the form of a fixed quantity of wheat for each partison. Thus, the more partisons the mills realized, the more they earned.<sup>15</sup>

Standard workers (millers, “toqueases” in charge of the donkeys,...) also had an additional economic incentive since they earned 1/10 of the grain – the remaining 9/10 was distributed to the pariers – in addition to their fixed remuneration. This 10% share of revenues was used to finance half the costs of the beasts of burden used by the firm; the firm needed donkeys to pick up the grain and return the flour to clients. In case of the death or voluntary departure of an employee, the former worker or his heirs received the monetary value of his share of the donkeys (Articles 46 and 47).

Like everyone else, workers and pariers had to pay the standard regulated fees of 1/16 for milling their own grains (Article 58); this constitutes another evidence of entity shielding (Hansmann et al., 2006). The constraint on millers was strong because if they broke the rules they were excluded from milling activities, according to a decision of the city consuls of February 22, 1222 (Mot, 1910: 65).

Pariers also used intrinsic incentives to align workers’ interest with that of shareholders (see Benabou and Tirole, 2003, for theoretical work on this issue). One way of relying on intrinsic incentives is to resort to religious beliefs. Although the Christian religion was never used to justify decisions, there are cases in which it is referred to. The statute of 1417 states that a new parier must swear on the “Sans Evangelis de Dieu Nostre Senhor” to respect the statute and obtain his grain (Article 7).<sup>16</sup>

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<sup>15</sup>A partison was made when the granary was full, so this mechanism incentivized managers to try and maximize the amount of wheat grained.

<sup>16</sup>Pariers were afraid that some of them would use the granary for their own private interest thereby

The statute of 1587 of the Bazacle mentions the obligation, for each new employee, to swear the usual oath, but we don't know the nature of the oath. Sometimes, "Ave Maria" or "Jhesus" are mentioned at the beginning of companies' documents. Jhesus is also often written at the top of the pages of the accounting registers. Independent mills, as they appear in the merger of 1372 in the Bazacle or later, were almost all named after saints. A last presence of religion was the overseer of millers who was called after a saint, San Martin. Each year for centuries, the Bazacle firm offered free bread and organized a party on San Martin day. It is a line of expenditures in the accounting statements.

**Proposition 2.9.** *Both explicit and implicit incentives were provided to agents of the mills as indicated by the Statutes of 1417 and 1587.*

## 2.9 Monitoring management

According to Tirole (2001), much of the debate about corporate governance focuses on what constitutes an efficient monitoring structure. Monitoring is important because it determines the ability to find external funds. Three mechanisms enable the monitoring of management by pariers: the board of representatives, the accounting auditors, and shareholder engagement.

### 2.9.1 Board of shareholders' representatives

Separation between ownership and management in the 14th century was allowed by a new governance institution aiming at monitoring management: the "Aconseilhars." This new institution has its own evolutionary sequence leading to a modern board. It is likely that the reliance on a council derives from the political organization of Toulouse itself, which was governed by an autonomous city council at the image of the Consuls of the Roman Republic (cf. Goetzmann and Pouget, 2011).

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inducing overloading of the granary.

In 1390 in the Castel, six *aconseilhars* also called “*Conselhes*” and “*Regents*” were chosen by their predecessors and confirmed by the assembly of *pariers*. It was the same in the Bazacle at the end of the 15th century, with eight *aconseilhars*. The board of *aconseilhars* had a staggered structure: two *aconseilhars* remained in charge for one extra year so that only six were nominated every year. The choice of the *aconseilhars* was made at the end of the year and they could not be reelected (Sicard, 1953: 211-213).

The statute of 1587 clearly explains how the board is composed. This indicates that *pariers* were concerned about potential moral hazard at the level of monitors (Tirole, 2001): board members were acting on behalf of all the *pariers* and thus these *pariers* were willing to ensure a good functioning of the board. The statute indicates that, a few days before the end of the year, the members of the board (*Regents*) elected their successors including the ones who continued for an extra-year. These were called “*Surintendant*” or “*Old Regents*” (Article 4).

In addition to the company statutes, management often refers to the “ordinances and customs” or to the “*antic rules*” – terms that appear early in the Middle Ages (Sicard, 1953: 311). To keep track of the old uses, the Bazacle firm wrote in 1782 an index of all the issues contained in the general meeting registers since 1618. One of these registers indicates that the board meeting proposed the points of the general meeting, indicating its ability to highlight potential issues in front of the other *pariers* (ADHG 5j439.15). Another register states that a board meeting took place before each general meeting in the 18th century (ADHG 5j442.81).

The members of the board took turns every quarter exerting the main monitoring activities. They were called the quarter regents. The chair of the board was thus collegiate and rotating during the year. The quarter regents were supposed to be very active in monitoring the business. They signed the expenses proposed by the *conterôle*, i.e., the CEO, before they were paid by the treasurer. The quarter regents attended each *partison* in order to

control operations and to record the amount of grain distributed to each parier (Article 5 of the statute of 1587). Since they changed frequently, to be recognized, the regents wore a particular dress and hat during partisons (the general meeting voted to buy two new uniforms in 1694, ADHG 5j439). The quarter regents of the Bazacle, at least in the 18th century, set up the agenda of the board meetings (ADHG 5j440.38). In the same vein, in 1623, they lead the general meetings (ADHG 5j438.24).

The fact that board members were elected for only one year mitigated the temptation to use the charge as a way to obtain private benefits. However, it limited the continuity of monitoring and made it difficult to oversee the implementation of important projects. The two Surintendants provided the necessary continuity. To improve management, the general meeting of 1768 discussed appointment of four instead of two Surintendants; thus, during each quarter, one new and one old Regent would be in charge. The minutes of the general meeting clearly state the economic motivation for this new governance arrangement: “... the management would be better directed given that there were many cases in which a quarter had only new regents without experience that prevented the assembly to take actions” (ADHG 5j442.56). The general meeting even decided an exemption to this annual rotation. On December 21st, 1727, after a destructive event, all the regents remained in charge for an extra year in order for the repairs not be delayed “due to the lack of knowledge of the new board” (ADHG 5j440.9). When M. Abeille bought half the uchaux, he became perpetual Regent and run the repairs.

Apart from the exceptional circumstances described above, the traditional governance of the mill companies of Toulouse involved a board with a double rotation: board members changed on a yearly basis and the chairman position was held by two of them on a quarterly basis. This double rotating structure of the board might have allowed to escape the issue of monitoring the monitors.<sup>17</sup>

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<sup>17</sup>Apart from monitoring activities, board members had some executive functions. In particular, the board appointed the officers of the mills. According to Article 8 of the statute of the Bazacle of 1587, the board

**Proposition 2.10.** *As early as 1390, shareholders monitor management through a board of directors. The board displays a double rotation: directors seat on the board for one or two years and are in charge of monitoring operations on a quarterly basis.*

Any parier could be elected as regent and could not refuse, but several exceptions existed. In the case of rebuff, the corporation first kept the parier's grain, and then it forced him to accept the charge of regent using the judicial system as demonstrated by a trial in 1571 involving the Castel (AMT 19th series number 3 piece number 21). This way of involving the shareholders was the same for the elected treasurer. These charges were not remunerated, but were necessary for the common benefit of the pariers because having some pariers monitoring the management was the condition for an efficient separation between ownership and management. This duty to act as regent may have been a solution to alleviate the free-rider problem. However, it appears problematic to have a regent or a treasurer without his explicit consent. Thus, cases of trials that are bound to impose a charge on a parier are difficult to rationalize. Perhaps these rare trials were engaged to ascertain the credibility of the nomination process.

Several situations prevented a parier from becoming a regent. In 1585, only a parier with an uchau free of the repurchase option could be a regent of the Castel (Mot, 1910: 48). Otherwise the regent could be forced to sell his share during the year and this would undermine his willingness to monitor management on behalf of pariers. In 1641, the general meeting of the Bazacle imposed a delay of five years before becoming a regent a second time; this period was reduced to four years in 1667 (ADHG 5j438.214 and ADHG 5j438.344). In 1648, a parier of the Castel couldnt be regent at the Bazacle, probably to avoid conflicts

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appointed the “conterôle, trésorier, syndic, greffier, Saint Martin, pagelaire, pourgeurs, meuniers, toqueases, faure and maitre d’oeuvre.” The board also attributed leases “to the highest and last bidder” using a “candle auction” after public notification at several points of the city (Article 9 of the Statutes). Board members in their executives attributions were themselves monitored by pariers via the general meeting. In 1626, we observe a clear prohibition to debate in a board meeting what was decided in a general meeting (ADHG 5j438.44). Moreover, the board could not spend more than 100 Tournis Pounds without a deliberation of the general meeting (ADHG n.5 F. 57, 59, 61, 76, and 96 ; n.7 F. 34).

of interest with the main competitor (ADHG 5j438.269). Finally, in 1693, a minimum of one-half uchau was required to become regent (ADHG 5j437.48). This is probably to ensure that the parier had enough at stake to be willing to incur monitoring costs (Tirole, 2001).

### 2.9.2 Accounting auditors

A second crucial institution used to monitor management was accounting auditors. As early as 1381, two pariers of the Bazacle, who were not seated on the board of regents, controlled the accounting kept by the treasurer (Sicard, 1953: 229). At the Castel in 1524, the custom was to have three accounting auditors appointed by the regents.<sup>18</sup> At the Bazacle, the statute of 1587 states that, a few days before the end of the year, the regents vote to elect two pariers as accounting auditors.

All the accounting registers still present in the archives are signed by the auditors. Auditors signed the accounts after writing down and validating the sum of the expenses and the sum of the revenues. The practice at the Bazacle evolved over time: according to a general meeting of January 24th, 1694, regents could not elect the accounting auditors (ADHG 5j439.201). Incentivizing auditors was probably an issue because, in 1693 at the Bazacle, only pariers with at least one-half uchau could be an auditor (ADHG 5j437.48).

**Proposition 2.11.** *As early as 1381, some shareholders were designated to audit the accounts on a yearly basis.*

### 2.9.3 Shareholder engagement

Private investors were involved in a third type of monitoring activity: shareholder engagement. Monitoring was facilitated by the fact that accounting books showed as their first entry the amount of talhas paid, in total and per uchau, during the year: the oldest accounting books that are present in the archives dates from 1443 at the Castel and 1469 at the

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<sup>18</sup>“L’an 1524 ainsi que es de bona costoma se son trobatz les messieurs conselhes vielhs et novels losquals an deputatz auditors de contes 3 paries” (Mot, 1910: 55).

Bazacle (AMT 19th series 44 and ADHG 5j573, respectively). We document the behavior of two institutional investors, the College of Mirepoix, part of the University of Toulouse, and the Chapitre Saint Etienne, attached to the Toulouse cathedral. These investors were large and long-term oriented, thus having a great incentive to exert voice rather than to exit (Hirschman, 1970).

The College of Mirepoix bought one uchau in the Castel in 1433 and two half-uchaux of the Bazacle in 1433 and 1434 (Foissac, 2010). These investments were important enough to be covered in one specific article in the Statutes of the College dealing with “de cura molendinorum” (on the care of the mills). The chaplain of the college was obliged to take part in meetings, to visit the mills twice per month and to present the accounting of the Mills companies to the College each January 2nd with a specific oath (Fournier, 1890-1894: 785).

**Proposition 2.12.** *To ensure that the mill companies are managed in their interest, institutional investors as soon as 1433 formalize their asset management policy that includes engagement.*

The Chapitre St Etienne was, for centuries, also very active in monitoring management. It was the main shareholder in the two companies. We do not have direct evidence on how it performed its monitoring activities, but indirect information attests to important engagement episodes by this religious institution. This institution may have had interests that diverged from those of secular pariers. Part of the conflict of interest was due to different investment horizons: religious institutions were longer-term investors (several of them held uchaux for centuries) than lay investors. We know of one such conflict due to the “droit de bienvenue” (welcome fee) paid to the firm by a new parier. Secular pariers complained that the uchaux of religious institutions never had to pay the droit de bienvenue.<sup>19</sup>

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<sup>19</sup>Religious institutions answered that they paid via the firm the tax called the vingtième (5%) although they are exempt. They ask for reimbursement of these taxes in the general meeting of 1770 (ADHG 5j442.130). A transaction is found in March 1788 (Astre, 1791).

In the general meeting of December 27th, 1627 of the Bazacle company, the Chapitre sought to appoint a regent each year. A deliberation states that “the statute is the law of the mill” and “none of its members can have a privilege” (ADHG 5j438.64). Remember, that the rule is that one parier with at least one-half uchau has one vote, and thus the numbers of uchaux held by St Etienne did not impact its influence in the decision process. But, St Etienne maintained its claim and we can see, in 1640, the regent of St Etienne continuing for one more year (ADHG 5j438.195).

In 1660s, a lawsuit took place between the firm and the Chapitre. It followed an eventful story with one step in the Parliament of Grenoble and a final judgment by the Parliament of Pau on June 10th, 1664. This judgment indicated that the Chapitre St Etienne could appoint a regent each year, but that the regent could not be the same person for two consecutive years unless he was chosen by others to be Surintendant. This regent was obliged to participate in person and could not be represented by another member of the Chapitre. Presidency of the general meeting was assigned to one member of the Parliament, if any parier present at the meeting was also a member of the Parliament, or to the regent appointed by the Chapitre St Etienne. This arbitration did not completely solve all conflicts since the claims of St Etienne returned in 1766 (ADHG 5j16).

In sum, the corporate governance of the Toulouse mills companies appears to have been highly effective in defending the rights of the pariers, or, in modern parlance, shareholder interests. The strict control of management by an active board reduced the moral hazard between owners and management. The one-year term of the board members, the two-step process of nomination (three potential successors named by past members before an election by the general meeting with duty to act in case of election) and the weak latitude of the board left most choices to the general meeting and reduced the potential moral hazard between the formal monitors and other standard investors. Passive monitoring was facilitated thanks to the talha system and the explicit vote on expenses during shareholder meetings. Occasional

conflicts arose between the firms and activist shareholders, but the one-shareholder one-vote rule mitigated against capture by a controlling or influential shareholder.

### 3 Conclusion

The existence of modern corporations in medieval Toulouse constitutes an important empirical observation for three fields of research.. All these corporate arrangements contributed to protecting shareholder value by addressing shareholders potential conflicts and agency issues. Generally, investors were protected without legislative regulation, but rather by these specific rules of governance. The corporate governance deployed in the Toulouse milling companies appears very similar to the standard “Anglo-Saxon” form of corporate governance, introducing a new, independent observation in the debate on the origin and explanation of capitalism’s observed variety (Hall and Soskice, 2001; Guinnane et al., 2007). The observation of efficient corporate governance in a Roman law area does not support the law and finance theory which claims the weak ability of a codified legal regime to adapt institutions to economic needs (Beck et al., 2003). Moreover, this sophisticated governance system evolved to allow these two firms to enjoy more than 500 years of life. The presence of modern institutions in medieval Southern Europe also balances, to some extent, the institutional explanation for the Little Divergence; the higher economic growth in Northern Europe compared to Southern Europe since the end of the Middle Ages (de Pleijt and van Zanden, 2013).

The revelation of the existence of modern corporations in medieval Toulouse has also important conceptual implications. The genesis of the modern corporation we analyze in this paper is totally different from the Northean account, and from the narrative of the genesis of the East India companies. This independent genesis provides an opportunity to distinguish among the institutional changes occurring in the Netherlands and England

in the 17th century which innovations are a function of specific context as opposed to an equilibrium institutional solution. For companies involved in long-distance trade, a major challenge was to find long-term capital and to extend that investment over multiple voyages (Dari-Mattiacci et al., 2013). In the case of the mills of Toulouse, due to the nature of the business, the capital was permanent from the beginning. The second step for the East India companies was the tradability of shares. In case of the Toulouse mill companies, due to the nature of the asset and to the institution of *pariage*, the tradability was a basic feature already mentioned in the first *enfeoffement* at the end of the 12th century. The division of an asset into transferable shares was a recognized institutional practice due to the rule of strict equality among heirs in the Roman law (including for girls through a dowry) (Débax, 2012).

In terms of institutional analysis, the main difference between the Toulouse and Dutch corporate governance evolutions is that the way to get to a modern corporation in the case of the Toulouse companies had little to do with legislative decisions allowed by the limitation of the state power, as was the case in East India companies (Dari-Mattiacci et al., 2013). The development in Toulouse of a business structure with many features of modern corporations achieved via private contracting provides a counter-example to the hypothesis of a required legislative role (Hansmann and Kraakman, 2000). This is a potentially important difference because, among other things, it suggests that strong legal institutions (i.e. contracting and property right institutions) as opposed to strong legislative institutions (i.e. a parliamentary control on the state decisions) are sufficient to support the emergence of the corporation. In fact, the Toulouse political framework over the life of the companies passed through various stages of strength and weakness as its ultimate incorporation into the French state evolved.

From the perspective of research interested in the necessary and sufficient conditions to support the development of the corporation and related corporate-like forms. A potential survival bias exists by focusing on the successful East India companies as original models

of the corporate form when other examples of corporations may exist elsewhere in Europe. We identify in the feudal regime a favorable institutional environment for the emergence of a corporate form. Several of the predecessor mill companies flourished in a time and a place where the state was very weak and individual rights well defended by the city consuls; the Count renounced most of his rights in 1189, and the King of France was not really present for a long time. Thus, these mills enjoyed in medieval Toulouse a favorable institutional context as did the later VOC in the Netherlands (Gelderblom, 2013).

The development of the corporate form in Toulouse does not refute the standard view that this evolution required efficient property right institutions with a limited state power. Rather, it refutes the idea that this kind of environment was not available in medieval times and appears only in the English-Dutch countries of the 17th century after credible commitment of the state (Coffman et al., 2013). Perhaps medieval Toulouse was an exceptional window of opportunity. However, despite the rise of the power of the French king, these institutions continued to prosper for centuries.

The existence of a corporation in medieval Toulouse to mill wheat also suggests that the corporate form is robust to business and legal context. Indeed, the Dutch maritime trade and the Toulouse milling industry are radically different. But in the two cases, the corporate form emerged as an efficient solution to solve economic problems.

According to New Institutional Economics, a favorable institutional environment is a precondition to complex economic development. “Once property rights have been defined and their enforcement assured, the government steps aside. Resources are allocated to their highest value as the marvel of the market works its wonders” (Williamson, 2000). In the Toulouse area, these favorable rules of the game led to only few institutional examples of the corporate game being played, and in any case, the European economic take-off did not start there. Empirical tests of the relation between institutions and growth frequently suffer an endogeneity bias (institutions cause development but development also causes institutions).

In the Toulouse case, it appears that a modern institution was not accompanied by “modern growth,” raising the question of how to reconcile this unusual situation.

Three explanations seem reasonable. First, a powerful economic takeoff took place in the Middle Ages especially in the Toulouse area but may have been impeded by other factors such as the cost of the Crusade to the Holy Land for the Count of Toulouse, its inclusion in the French kingdom after the Albigensian crusade, the plague of 1348 or the Hundred Years war. According to this explanation, we can suspect that the absence of growth after the design of effective corporate governance mechanisms is not due to an institutional factor because the Toulouse companies survived for a long time afterward.

A second potential explanation for the existence of modern corporate institutions without growth is that the presence of efficient institutions is a necessary but not sufficient condition for economic growth. This explanation would encourage to look for other determinants of economic growth. Besides institutions, what was present in late 18th century England that was not present in 14th century Toulouse? Contemporaneous research investigates potential candidates such as Atlantic trade (Acemoglu, et al., 2005), demographic transition (Voigtlander and Voth, 2006) and coal (Pomeranz, 2000).

A third explanation could be that the European economic takeoff is a longer process than generally accepted. Europe had been developing institutions since the Middle Ages – the Toulouse companies are forerunners of this evolution. This view joins recent research finding a long-term correlation between current levels of development and very long-term history (Spolaore and Wacziarg, 2013). It would also be consistent with the concept of the “Western legal tradition” of Berman (1985) which is the particular set of legal institutions, values, and concepts capable of growth and development over an extended period. The understanding of the evolution of the governance of the Toulouse companies could help design pro-business policies for tomorrow.

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Corporate governance is only part of the larger economic context in which firms operate that includes, for example, macroeconomic policies and the degree of competition in product and factor markets. The corporate governance framework also depends on the legal, regulatory, and institutional environment. In addition, factors such as business ethics and corporate awareness of the environmental and societal interests of the communities in which a company operates can also have an impact on its reputation and its long-term success. Individual's desires to expand wealth in the face of scarcity underlie the evolution of rules and institutions of governance, as individuals attempt to reduce the transactions costs that impede...<sup>Â</sup> Economic Theory Transaction Cost Public Finance Comparative Advantage Modern State. These keywords were added by machine and not by the authors. This process is experimental and the keywords may be updated as the learning algorithm improves. This is a preview of subscription content, log in to check access. Preview.