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Farrar, John H

*Published in:*
Bond Law Review

Bond University

# Bond Law Review

Volume 32 Issue 1

2020

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John Farrar
Bond University and University of Auckland

# A CONSPIRACY OF PAPER?

# WILLIAM PATERSON AND THE MYSTERIOUS ORIGINS OF BANKING AND COMPANY LAW

JOHN H FARRAR*

This article examines the creation of the Bank of England and other contemporary banks, the Scottish Darien Scheme and the South Sea Bubble. It considers the role of William Paterson,[1] a progressive Scottish merchant and economist, in all of these and the negotiations over the Act of Union of England and Scotland. The article reflects on the use of legislation and royal charters, together with the idea of joint stock and negotiability. It seeks to untangle the complex relationships of the Darien Company and the South Sea Company to banking operations of the time. Although Paterson had a minor role in the South Sea company, it was based on some of his ideas but he opposed the ultimate scheme to take over the national debt in exchange for stock which followed the policies of his compatriot John Law for France. Law in his turn had been influenced by the Bank of England and the Darien Scheme fund raising. The *Bubble Act 1720*, responding to the panic caused by collapse of bubble companies, was passed a year after his death and impeded the development of company and banking law for over a century.

What this history demonstrates is the difficulty in benefitting from innovation. How the idea of projection or promotion began as something which was thought of in dubious terms. Vested interests were keen to exploit innovation after they initially fought hard to resist it. Then speculative mania took over. The history also reflects a surprisingly high fiduciary duty on a director based on guild ideas before the modern concept developed. Notwithstanding this conflict of

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* Emeritus Professor of Law, Bond University; Honorary Professor of Law, University of Auckland. The title of this article is taken from David Liss, *A Conspiracy of Paper* (Random House, 2001), a very interesting novel on the South Sea Company.

[1] See Saxe Bannister, *William Paterson, Merchant Statesman and Founder of the Bank of England: His Life and Trials* (William Nimmo, 1858); James Barbour, *A History of William Paterson and the Darien Company* (William Blackwood and Sons, 1907); John Prebble, *The Darien Disaster* (Secker and Warburg, 1968); Andrew Forrester, *The Man Who Saw the Future* (Thomson Texere, 2004); Douglas Watt, *The Prince of Scotland: Darien, Union and the Wealth of Nations* (Luath Press Ltd, 2007).

interest was practised by influential people often with impunity until it became a political issue when the results were draconian but not necessarily consistent in the absence of modern winding up laws and insolvent trading. A similar picture is illustrated by the experience of John Law in France with the Banque Royale and the Mississippi Company. Their writings represent some of the earliest theorising on economics, banking and international trade more than fifty years before Adam Smith's *Wealth of Nations*. It was not simply a conspiracy of paper.

## I The Role of William Paterson

William Paterson is an interesting and somewhat neglected figure. He seems to have come from a family that was somewhere between farmers and minor gentry.[2] For political reasons connected with religion he left Scotland without going to University, but obviously had a good education.[3] He lived in England and the West Indies where he worked as a merchant.[4] Some say he was a missionary and even that he was chaplain to pirates, but this is probably nonsense.[5] He also travelled to Europe. He was familiar with Amsterdam, Brandenburg and Antwerp. He studied the bond and stock markets and had knowledge of accounting and early banking operations.[6] He seems to have been familiar with the constitution of the Dutch East India Company as well as that of the English East India Company.

Paterson was actively involved in the promotion of the Bank of England and named as a director in the charter, but fell out with the other directors.[7] Though obviously intelligent, he was an outsider.[8] He promoted the Darien Scheme after considerable research.[9] Although he did not invest in the company, he went with the first expedition, and suffered ill health as a consequence.[10] On his return he was in reduced circumstances for a time and tutored in mathematics.[11] He was involved

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2 See William Pagan, *The Birthplace and Parentage of William Paterson* (William Nimmo, 1865). For a good summing up of his character and achievements see Barbour (n 1).

3 See Bannister (n 1).

4 Ibid ch II.

5 This was alleged by Walter Herries who accused him of being a 'Pedlar, Tub-preacher and at last whimsical Projector.' Herries wrote two pamphlets which were hostile to Paterson. See *A Defence of the Scots Abdicating Darien: Including an Answer to the Defence of the Scots Settlement There* (1700). This was ordered to be burned by the Scots Parliament. He was used uncritically as a source by Lord Macaulay in his *History of England from the Accession of James II* (1849-61) vols 1-8.

6 See Bannister (n 1); Forrester (n 1).

7 See Forrester (n 1) 71; *A Brief Account of the Intended Bank of England* (1694). This has been attributed to Michael Godrey, a fellow Director, but was probably written by Paterson. This is now the view of the British Museum.

8 Ibid 71.

9 See William Paterson, *A Proposal to Plant a Colony in Darien; to Protect the Indians against Spain; and to open the Trade of South America to All Nations* (1701).

10 See Forrester (n 1); Watt (n 1).

11 See Bannister (n 1) 26.

in the management of the development of Queen's Square (now Queen Anne's Gate) in Westminster with Sir Theodore Janssen[12] and advised on the calculation of the equivalence provision in the Acts of Settlement 1707, for which he was an active propagandist.[13] He advised the government on the creation of a sinking fund[14] and on the development of international trade.[15]

Paterson was eventually compensated by the government for his contribution to the State by the grant of an indemnity of over 18,000 pounds, which is about 2-3 million pounds in today's money.[16] He was consulted over the South Sea company but opposed the idea of it taking over the national debt.[17] He opposed a number of the ideas of his fellow Scot John Law.

## II Banking and the Formation of The Bank of England and Other Banks

Banking in the United Kingdom took some time to develop. Money lending in the early period was in the hands of Jews and, later, Lombards.[18] By the 17th century it was mainly in the hands of goldsmiths in the city of London, who held deposits of gold and lent money on the strength of it.[19] Banks were formed in Italy and later in the Netherlands and Hamburg. From 1690 onwards there were various proposals for banks in the City of London. Paterson put up proposals for a public transferrable fund of perpetual interest which was an early conception of a permanent National Debt.[20] The bills of such a fund payable in coin on demand were to be transferable without endorsements. He was supported by prominent merchants such as Michael Godfrey and the Minister Charles Montagu.[21]

After an initial rebuff, a revised scheme was adopted by subterfuge in the *Tonnage Act 1694*.[22] The long title to the Act stated "An Act for granting to their Majesties several Rates and Duties upon Tunnage of Ships and Vessels, and upon Beer, Ale and other Liquors; for securing certain Recompenses and Advantages, in the said Act mentioned, to

12 Ibid.
13 Ibid ch XXII.
14 Ibid ch XXV.
15 Ibid XIII.
16 Ibid 431.
17 Ibid ch XXIII.
18 See John Giuseppi, *The Bank of England: A History from its Foundation in 1694* (Evan Bros Ltd, 1966) 5-6; David Kynaston, *Till Time's Last Sand, A History of the Bank of England 1694-2013* (Bloomsbury, 2014) 2.
19 Ibid 7.
20 Ibid 10.
21 Ibid 11. See also Sir John Clapham, *The Bank of England: A History* (Cambridge University Press, 1694-1797) vol 1, 15.
22 Ibid. See W Paterson, *A Brief Account of the Bank of England* (1694) for a defence of the scheme. See also M Godfrey, *A Short Account of the Bank of England* (1695).

such persons as shall voluntarily advance the Sum of 1,500,000 pounds towards carrying on the war against France." Buried in there is the origin of the Bank of England, which was incorporated by royal charter. This later became known as the *Bank of England Act 1694*. There were originally twenty-four stockholders. The business was to be supervised by a governor, deputy governor and twenty-four directors. The bank was not to engage in any trade except in bills of exchange and in gold and silver bullion. The initial capital of 1,200,000 was subscribed 25% paid up within twelve days.

In the same year the Scots parliament passed the *Bank of Scotland Act*, but Paterson was not directly involved.[23] This used legislation as the vehicle and did not involve a royal charter. Unlike the Bank of England, it was a trading bank and issued its own bank notes from 5 to 100 pounds. It was prohibited from lending to government without Parliamentary approval. It had 172 stockholders and thirty-eight were London based. The early subscribers included four officials of the East India Company and it may have involved a tactical move by the Company against the Bank of England. John Holland, the first Governor of the Bank of Scotland, had been an official of the company.

Paterson was appointed one of the directors of the Bank of England but fell out with his colleagues over his promotion of the Orphans Fund.[24] This was said to be prejudicial to the bank and a breach of trust. The Orphans Fund was a proposal to create something like a land bank based on funds held by the City of London on behalf of widows and orphans.[25] It was designed as a fund to insure title to land, to negotiate trusts and settlements, and to borrow and lend money on the security of land. It also involved an early idea of a voluntary land register.[26]

Paterson submitted that there was no conflict of interest, but was effectively tried in his absence without a right of reply. His colleagues operated more like a guild fraternity than a modern board. This was the subject of an anonymous pamphlet which argued that he had been dealt with unjustly.[27] He may or may not have been involved in the authorship of the pamphlet which bore the initials JS, probably James Smyth. Both the Bank of England and the Bank of Scotland were based on the idea of joint stock. The early history of both institutions involved difficulties which were eventually overcome.

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[23] *Bank of Scotland Act 1695* (Scot). See A Cameron, *Bank of Scotland 1695-1995: A Very Singular Institution* (Mainstream Publishing, 1995) ch 2.

[24] Giuseppi (n 18) 25-26.

[25] See *Some Account of the Transactions of Mr William Paterson in Relation to the Bank of England and the Orphans Fund: In a Letter to a Friend* (1695).

[26] Ibid.

[27] Ibid 9. The idea of a Land Bank was thought to be in conflict at the time. Two of the Bank of England directors later were on the board of the South Sea Company when it was manifestly in competition with the Bank.

Under the *Bank of Scotland Act*, the bank had a monopoly of banking. Paterson did not know this until later. When the Darien company was set up there was no reference to banking, but the company – at Paterson's suggestion – began to issue its own notes. This was disputed by the bank, but since the Darien company was popular it was difficult for the bank to challenge it. However, since the whole of the capital of the company was tied up in its colonisation scheme, it never came to much. The company's notes were finally retired in 1701.[28]

The Orphan's Fund ceased operations by the early 1700's. By that time Paterson had returned to Scotland and been to Darien. The Bank of England had a troubled relationship with the South Sea company, as did the Bank of Scotland with the Darien company. Both banks were prejudiced by their involvement with these companies.

The *Tonnage Act* provided that the notes issued by the Bank of England were negotiable by endorsement and gave the endorsee the right to sue in his or her own name. This seems to have been the first authoritative statement of full negotiability in English law.[29] Although there were no reported cases, there was some doubt in the courts, until Lord Mansfield's judgement in *Miller v Race* [30] which held such paper negotiable even in the hands of a purchaser from a thief. Lord Mansfield did not mention the Act. Bank notes as tender came later in England.

Stock in the bank was traded like stock in the East India Company and South Sea Company.[31] Unlike in some European jurisdictions, bearer shares or stock did not develop until later. Although some corporations, like the Sword Blade Company, did banking operations, these were eventually outlawed.[32] Deed of settlement companies, using partnership and trust ideas, however, were used to avoid these restrictions until the 19th century.

The Sword Blade Company is interesting in its own right.[33] Formed originally as a manufacturer of swords, it started dealing in land and in some banking activities. One of its tactics was to issue stock which it exchanged for government debt issued by the army pay master. This was negotiated by John Blunt, who became a leading light in the South Sea Company. Indeed the affairs of the two companies became increasingly intertwined. The Sword Blade Company became the South Sea Company's banker and was involved in the corrupt practices of the directors of the latter. The Sword Blade Company ceased business

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28 Barbour (n 1) ch 2.

29 See F K Beutel, 'The Development of Negotiable Instruments in Early English Law' (1938) 51 *Harvard Law Review* 813, 842.

30 (1758) 1 Burr 452.

31 See A Mays and G Shea, 'East India Company and Bank of England Shareholders During the South Sea Bubble' (Working Paper No 7, Centre for Dynamic MacroEconomic Analysis Working Paper Series, St Andrews, July 2011).

32 Giuseppi (n 18) 44.

33 See S Bell, '"A Masterpiece of Knavery?" The Activities of the Sword Blade Company in London's Early Financial Markets' (2012) 54 *Business History* 623.

eventually and a connected business was taken over by Wilkinson Sword.

## III The Darien Company

We will deal in some detail with the Darien Scheme, since it has been neglected outside Scotland and even there is the subject of conflicting views. The Darien Scheme was promoted by Paterson in the 1690's.[34] The idea was to set up a commercial settlement in the Darien region of Panama.[35] The problem was that this was a Spanish colony, although Spain claimed more than it actually possessed or occupied. It was thought that a colony of Scots settlers could be set up which could use this as a base for international trade. There was even discussion of a possible creation of a canal between the Atlantic and Pacific oceans. This eventually took place in 1914. Much of the information and many maps assembled by Paterson came from privateers who had visited the region.[36]

"An Act for a Company Trading to Africa and the Indies" was passed by the Scottish parliament on 26 June 1695. The long title to the Act read:

> His Majesty understanding that several persons as well Forreigners as Natives of this Kingdom, are willing to engage themselves with great Soumes of money, in an American, Affrican and Indian trade, to be exercised in and from this Kingdom, if enabled and encouraged thereunto, by the concessions, powers and privileges needful and usual in such cases.[37]

The twenty promoters named in the Act and other investors who subscribed within twelve months of 1st August 1695 were constituted as "one body incorporate and a free incorporation with perpetual Succession by the name of the Company of Scotland trading to Affrica and the Indies." At least half of the capital was to be held by "Scottish men within this Kingdom" and shares had to be sold to other Scotts to maintain 50% ownership. The powers of the company included "power

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34 See Bannister (n 1); Forrester (n 1). For a rather bigoted account see Sir John Clapham, *The Bank of England: A History* (Cambridge University Press, 1694-1797) vol 1, 14. Clapham regarded Paterson as an over-rated person. He might have changed his mind if he had done more thorough research.

35 See Prebble (n 1); Watt (n 1).

36 Paterson is sometimes said to have been a pirate or chaplain to pirates. This is incorrect. He was a merchant operating in the West Indies and Boston. He also knew some of the writers on these regions such as William Dampier, some of whom had been privateers. Dampier had mentioned the fact that the indigenous people of Darien were friendly and yet opposed the Spaniards. See William Dampier, *A New Voyage Round the World* (Argonaut Press, 1927) 129-130; Diana and Michael Preston, *A Pirate of Exquisite Mind – The Life of William Dampier* (Corgi Books, 2005) 317-321. Dampier's book was first published in 1697. Paterson was a teetotaller but frequented coffee shops where he made many of his contacts and picked up lots of his information. See Forrester (n 1) 59-60; Preston (n 36) 323-4.

37 Watt (n 1) 27.

to plant Collonies, build Cityes Touns or Forts, in or upon the places not inhabited, in or upon any other place, by consent of the Natives or Inhabitants thereof or not possest by any European Soveraign, Potentate, Prince, or State."[38]

The company was given a monopoly on trade to Asia, Africa and America for thirty-one years, and given exemptions from tax for twenty-one years.[39] The company was given protection by the King with the possibility of State compensation for loss of its rights.[40] This was not the first time that attempts had been made to set up a Scottish rival to the East India Company. An earlier attempt in 1617 was bought off by the latter.[41] The East India Company and the Royal Africa Company challenged the new company.[42] It seems that the Act was not submitted to William III for approval, although it had the formality of Royal Assent in Scotland.[43] William III was not amused.

Initially there were some London investors.[44] Later when the company was challenged in London, the financing became exclusively Scottish. The capital raising began in Edinburgh on 16 February 1696 and was popular. Indeed there was an investment mania at the time. The largest shareholders included a Duke and Duchess, Lords and the Glasgow and Edinburgh corporations. This sucked up most of the liquid wealth of Scotland, although the amount paid up was half this amount. The pattern of shareholding was different from English joint stock companies, where merchants dominated. In the case of the Darien company, it was mainly small landowners and the professions.[45]

The directors who were appointed included two nobles, eight merchants and fifteen lairds.[46] This membership was unusual for the time and did not bode well. A number of the directors did not attend meetings. The result was mismanagement and failure to monitor incompetence and fraud by the company's agents. An investigation into embezzlement by Smyth cleared Paterson of personal wrongdoing. Paterson forfeited his stock and compensated the company out of his own funds. He regarded it as a matter of honour. Once the expedition set sail, there were the usual problems of communication, and the directors were unaware of the vicissitudes of the settlers. As a result, further mistakes were made.

The Darien Scheme was probably a flawed concept, but it fell foul of the political influence of the East India Company and the

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38 Ibid 28.
39 Ibid.
40 Ibid 29.
41 Ibid 24.
42 Forrester (n 1) 121-126.
43 Barbour (n 1) 7 fn 1.
44 See Watt (n 1) ch 5.
45 Ibid 57.
46 Ibid ch 6.

complexities of William III's foreign policy. As a result it had no chance of success. The first expedition set sail in 1698 and set up new Edinburgh in the Darien region of Panama.[47] Attempts were made to establish relationships with Indigenous people which were successful at first. An attempt to establish friendly relationships with Spanish authorities was not successful but the settlers fought off Spanish attacks. Later lack of supplies and serious health issues affected the colonists. There were problems in getting supplies, particularly after an embargo imposed by the authorities in Jamaica. The first settlers vacated and were replaced by a second expedition in 1699, which proved to be equally disastrous. William Paterson went on the first expedition but returned to Scotland to recover his health and reputation. His second wife died in Darien.

The whole venture was mismanaged but also affected by the changing diplomatic context. William III was reluctant to jeopardise relations with Spain.[48] The prejudice suffered by the Darien Company was recognised in the negotiations over the union. Many people lost money as a result of the collapse of the Darien Scheme and rather than acknowledge their foolishness and the mismanagement of the company, they blamed the English.[49]

The Scottish economy, for various reasons, was in bad shape before the union.[50] It was underdeveloped. There had been famines and much liquidity had been exhausted by the Darien Scheme. Paterson was involved in the negotiations over the union and calculated the amount needed for equivalence.[51] The equivalence was the amount allowed to compensate the Scots for their estimated share after the union in repaying England's large national debt. The amount was 398,000 pounds (about 26 million pounds in today's values). Some of this was allowed to compensate for the losses sustained by the investors in the Darien Scheme.[52] When this was paid, the holders constituted themselves into the Society of Subscribed Equivalent Debt and eventually used its funds in 1727 to set up the Royal Bank of Scotland, which was a chartered corporation set up as a rival to the Bank of Scotland set up by statute in 1695.[53]

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47 See the sources cited in footnote 1. Barbour gives a detailed account in chs VI and VII and app B sets out the Declaration of the Council.
48 Bannister (n 1) ch XII fn 1.
49 The most recent and impartial account is Watt (n 1) ch 17.
50 See T M Devine, *The Scottish Nation 1700-2007* (Penguin Books, 2006) ch 3.
51 For the role of Paterson see Bannister (n 1) 367 and ch XXII; Forrester (n 1) 307; Watt (n 1) 227.
52 Devine (n 50) 13.
53 Forrester (n 1) 308.

## IV The South Sea Company

The South Sea Company was a joint stock company promoted by Robert Harley, who had previously favoured a land bank. It was set up by royal charter and Act of parliament in 1711.[54] It was never intended as a serious trading corporation, although it appeared to resemble the Darien company in its conceptions and claims. The fact that England was at war with Spain in 1711 and controlled Central and most of South America made this impractical. It became more of an investment vehicle, bordering on an elaborate ponzi scheme, and developed proposals to take over the national debt for stock in the company.[55]

There was a Governor and Deputy Governor and thirty ordinary directors, of which nine were political appointments. Stockholders included government, goldsmiths, merchants, gentlemen and thirty-seven foreigners. Eventually a small group of directors led by John Blunt ran the Company and the board as a whole failed to monitor them.

Some of the promoters engaged in insider trading and bribery of government ministers to get favourable treatment.[56] The company traded in its own stock and engaged in market manipulation. It was in competition with the Bank of England, although at least two of the latter's directors were on the board of the company.[57] Its charter was partly based on the bank's charter and the Act referred to the scheme to take over the national debt. Its aim was to capture the Bank's cash flow from its connection with Government. Only later did it obtain the benefit of the Asiento to trade in slaves with Spanish colonies in Central and South America.[58] The slaves were simply purchased from the Royal Africa Company.

Its biggest deal based on John Law's Mississippi Scheme was with government to take over most of the unconsolidated national debt which stood at over 30 million pounds in exchange for stock in the company when the proposal was presented to parliament. Parliament invited the Bank of England to make a counteroffer. This led to a bidding war which the South Sea Company won.[59] The company then found that it had bitten off more than it could chew. It had to defer dividends for twelve months.[60] It ramped up its stock price.

At this time, there were many other companies competing for capital. Many of these were bubble companies.[61] The *Bubble Act* was really aimed at them and the South Sea Company for a time benefitted.[62]

54 See J Carswell, *The South Sea Bubble* (Alan Sutton, 1993) 45; Kynaston (n 18) 23.
55 Ibid 87.
56 Dorothy Marshall, *Eighteenth Century England* (1962) 121-130.
57 Sir Theodore Janssen and Sir James Bateman.
58 Carswell (n 54) 55.
59 Ibid 43.
60 Ibid 114-118.
61 Ibid 117.
62 Ibid 119.

However, the bubble burst and banks and goldsmiths were affected. Parliament investigated the matter and it led to legislation. Sir Robert Walpole negotiated a bailout deal between the company and the Bank of England.[63] Later, changed market conditions caused the bank to renege on the deal and the dispute went to arbitration in 1722.[64] This led to a settlement which allowed the company to continue in a less ambitious way for over a century.

Paterson's ideas influenced the promoters of the company, but he only had a minor role. He was consulted and may have had an administrative role in connection with subscriptions. He opposed the ponzi type of scheme which was based on the writings of his compatriot John Law. Paterson favoured a proper sinking fund for the national debt.

## V The Mississippi Company

John Law was a fellow Scot and grandson of a minister of the Church of Scotland who was too liberal for the times. One of his sons became a goldsmith and John Law was one of his grandsons. Law's father died young and left John as his heir.[65] Law moved to London as a young man but killed another in a duel and had to flee to France. He was also a professional gambler with a head for mathematics. In Paris he set up a private bank which developed the use of paper money. It was nationalised as the Banque Royale at Law's request. He later became connected with the companies that eventually became consolidated in the Mississippi Company. The plan was to merge this with French state companies involved in international trade, creating an immense monopoly.[66]

The new corporate entity lent the French state 1.5 billion livres at 3% interest to pay off the national debt. This was funded by issuing further shares in the company. By 1720, all the French trading companies, tax farms, a tobacco farm, the mint, the French national debt and a quasi-central bank were all part of the giant conglomerate. The share price rose astronomically, but speculation eventually led to a decline in share prices. In the chaos which ensued, Laws had to flee. Shares and notes were converted back into government bonds with the debt burden back to its 1718 level and with a reduction of interest. This achieved some

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63 Giuseppe (n 18) 44; Kynaston (n 18) 26.

64 Giuseppe (n 18) 45; Kyneston (n 18) 27.

65 See Janet Gleeson, *The Moneymaker* (Bantam Books, 2000) ch 2.

66 Ibid ch 9; Anton Murphy, *John Law: Economic Theorist and Policy Maker* (Oxford University Press, 1997). See Murphy ch 2 for reference to Law's writings. Law's *Essay on a Land Bank* (1704) seems to have been influenced by the Orphans Bank. His *Money and Trade Considered with a Proposal for Supplying the Nation with Money* (1705) seems to have been influenced by Paterson's writings.

kind of balance in a rough and ready kind of way.[67] Law died in relative poverty.

The idea of combining a bank with commercial activities in international trade was new at the time but was later copied to some extent by the Japanese when they westernised their economy in the nineteenth and twentieth centuries. The close relationship of state, banks and the economy has also been a feature of the German and Chinese economies.

## VI A Comparison Between the Darien Company, the South Sea Company and the Mississippi Company

The Darien Company, the South Sea Company and the Mississippi Company had things in common but also points of difference. They all resulted in boom and bust. The Darien Company and the Mississippi Company had genuine international trade aims, whereas the South Sea Company was an elaborate investment scheme based on capturing the National Debt in competition with the Bank of England.

The Darien Company was a genuine attempt to settle a new colony in Central America, and not just an investment bubble. Although the South Sea Company covered the same territory, there was never any idea to settle in Central or South America. The Darien Company was financed by Scottish capital and its failure depressed the Scots economy. The South Sea Company raised money all over the United Kingdom. It was an elaborate scheme to take over the national debt in exchange for corporate stock and depended like an elaborate ponzi scheme on a constantly hyped stock price.[68] It was not entirely an elaborate ponzi scheme. It had the benefit of the Spanish Asiento, which was a monopoly to export slaves to the Spanish Americas. This was profitable for a time. The company in fact continued to exist largely as a shell until the 1850s.

The failure of the Darien Company was compensated by the UK parliament. The failure of the South Sea Company led to three major Acts: *An Act to Restore Public Credit*, the *South Sea Sufferers Act* and the *Bubble Act*. The first provided a rescue plan, the second provided for penalties and sequestration of some of the assets of directors, and the third Act prohibited activity as a body corporate without

67 Gleeson (n 65) 244.

68 See Richard Dale, *The First Crash Lessons from the South Sea Bubble* (Princeton University Press, 2004). For an interesting reassessment of the South Sea Bubble see Julian Hoppit, 'The Myths of the South Sea Bubble' (2002) 12 *Transactions of the Royal Historical Society* 141. For an interesting reappraisal in rational terms see Helen Paul, *The South Sea Bubble: An Economic History of its Origins and Consequences* (Routledge, 2011). This is reviewed by Aaron Graham in (2011) 18.2 *Financial History Review* 243. He argues that Paul has not presented enough evidence to justify the challenge to the existing historiographical consensus that investment in the company was determined primarily by its status as one of the largest holders of government paper.

incorporation by royal charter or Act of Parliament. This was rough justice and the *Bubble Act of 1720* impeded the growth of joint stock companies for over a century. Some companies avoided the Act by the drafting of complex deeds of settlement. At the same time, the effect of the South Sea Company exercise was to transform an insurmountable mountain of government debt into a more manageable proportion. A portion of the government debt was repudiated with the cost thrust upon the unsuspecting public.[69] Paterson had got a better deal for Scottish investors in the Darien company. The aftermath of the Mississippi Bubble was even more rough and ready than the South Sea Bubble.

As regards the impact of the *Bubble Act* on access to capital in Great Britain, recent research[70] shows that the historic view downplays the extent to which the Bank of England, though founded as an institution to manage public debt, in fact provided the entire financial system with liquidity in the 18th century through its discounting operations. It was the institutional nature of the company and banking law which was held back by the Act. It was only from the 19th Century onwards that we see that beginning to develop.

Apart from ensuring adequate compensation for the Scots investors, the Darien Company and the Bank of England represented creative use by William Paterson of the experience of the East India Company, the Dutch East India Company and the Bank of Amsterdam, and led to the development of the ideas of joint stock, negotiability, improved accounting and a refinement of the concept of capital. In this sense, the Darien Scheme and the bank represented a learning curve. Paterson anticipated some of Adam Smith's ideas of free trade and is a curiously neglected figure in legal and economic history. Law is more famous perhaps for the wrong reasons. He had talent as an economist and anticipated many modern ideas.

The experience provides an interesting background to the 2014 referendum. Scotland needed to be bailed out in 1707, just as it did in 2007. The Scots benefitted greatly from the union, with expanded horizons in the East India Company, North America and imperial administration and the armed forces.[71] These things tend to be forgotten in the fog of political rhetoric.

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69 See Douglas French, *Early Speculative Bubbles and Increases in the Supply of Money* (Ludwig von Mises Institute, 2009) 102.

70 See W McColloch, 'A Shackled Revolution? The Bubble Act and Financial Regulation in 18th Century England', *Department of Economics Research Paper Series* (University of Utah, 2013) <https://www.econ.utah.edu/_resources/documents/working_papers/2013_06.pdf>.

71 See generally Devine (n 50).