The origins of the 1855/6 introduction of general limited liability in England

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Abstract

The 1855/6 adoption of limited liability as a standard feature of companies incorporated under English law has puzzled historians. Members of a limited liability company have the reassurance of knowing that if the company gets into trouble, their personal financial assets will not be liable for company debts. Yet historians have found relatively little enthusiasm expressed by the investors or businessmen who might have been expected to benefit from the 1855/6 endorsement, prompting several to echo Philip Cottrell's observation that, 'it is extremely difficult to account for this sharp and dramatic change'.

This thesis provides a first, sustained attempt to examine this historical question in detail, and identifies neglected reasons why change came to seem important when it did. Opinion shifted seismically under the economic and social pressures of the late 1840s, when commentators, of whom John Stuart Mill was the most influential, interpreted railway 'mania', the 1847 financial crisis and then the 1848 French revolution in terms of a wider need for limited liability, as a means of expanding participation in companies and capital. Calls for financial democratisation acquired further momentum from the example of the United States and the large number of lawyers who joined Parliament following the election of July 1852. Political and commercial interest came together in a covert campaign organised by solicitor Edwin Field, shipowner Robert Lamont and politician Robert Lowe, who joined forces in early1853 to try and effect legislative change.

Knowing more about these events casts fresh light on the route that wider changes, grounded in steam-power and joint stock companies, took to limited liability. This helps illuminate a pivotal moment in British finance, when older-established intuitions about capital and companies, rooted in physical individuals, gave way to abstract, recognisably modern conceptions.

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The best research decision for this thesis was made at the outset, when trying to find a supervisor and academic institution. I have been exceptionally fortunate in having Anthony Howe as my supervisor, and to have benefited from the welcoming and supportive environment of the University of East Anglia. Amongst family and friends who have provided much-appreciated encouragement along the way, I owe a special debt to my parents. My father's passing remark that limited liability was 'one of our greatest gifts to the world' started me wondering if it really was, and first set me off down this road. My mother has led the chorus of those urging me to get to the end of it.

Introduction

On a September evening in 2003, the Royal Society for the Encouragement of Arts, Manufactures & Commerce - or RSA - held a debate on the question: 'The limited liability company: has its popularity peaked?'.[1] Long experience with economic debates apparently paid off, since at 6pm, a large number of interested business professionals had assembled ready to address the chosen topic. Perhaps mindful of their surroundings, they also proved ready to display a sense of history. When discussion began, the first speaker launched a defence of what he called 'one of the greatest and most influential British inventions', with a paean to Victorian achievement and the 'great Companies Act of the mid-nineteenth century'.[2] Not to be outdone, a second called instead for a return to the values of an earlier age. When limited liability companies were still under state-control, she said, they were 'in effect a public good'.[3] After further contributors had had their say, the chairman eventually drew formal proceedings to a close. He remarked as he did so that the division of opinion had proven a gendered one. Where the women had looked at the limited liability company and seen a social threat in urgent need of regulation, the men had seen a social saviour, widely misunderstood but still capable of transforming the world if only trusted to take care of itself.

The moral of this story is, as someone once said, that you don't have to be a Marxist to see that history repeats itself. About 150 years before this modern-day debate took place, the freedom to establish a limited liability company in England was first formally granted, and in the accompanying discussion, participants also took up polarised stances on either side of a moral divide. Since very few women took part in the Victorian debate, the division of opinion was not then noticeably aligned with gender. It was however, similarly split between those who feared moral degeneration and others happier to see moral maturity. The banker Lord Overstone was very definitely of the former camp, and

[1] *The Economist*/RSA conference, 18 September 2003, transcript from www.thersa.org
[2] John Micklethwait, RSA conference.
[3] Deborah Doane, RSA conference.

warned that under limited liability, 'the commercial world, like Nature under a poisoned atmosphere, [would] teem with all monstrous things'.[4] Robert Lowe, sponsor of the parliamentary Bill which prompted this response, anticipated an altogether rosier future: 'unlimited and unfettered liberty of action [would tend] to the prosperity and happiness of man'.[5] Others predicted either 'an act of great injustice upon every man who conducts his own business'[6] or nationwide 'elevation of character, dignified bearing, and increased self-confidence'.[7] Some clearly thought such rhetorical flights too much in evidence. Manchester MP John Bright, for one, found expectations 'grossly exaggerated on both sides'.[8] He would hardly be reassured by some of the contentions made since. Writing in 1912, the American philosopher Nicholas Murray Butler declared the limited liability corporation to be 'the greatest single discovery of modern times' - and his is only one of the more frequently quoted claims, a favourite introduction to American articles on the subject.[9] The British too have their community of true believers. One late-Victorian enthusiast, looking back on the events in which Bright, Lowe and Overstone participated, claimed that by 'the simple expedient of adding the word "Limited" to the company's name, … the greatest commercial revolution ever inaugurated was accomplished'.[10]

At first sight, it is not easy to see what these and many others found to get so excited about. A limited liability company is a company whose members have no liability for corporate debts beyond the nominal value of their share-holding. As such, it provides an insurance policy for investors, reassured that they know the extent of any potential losses, and that their private financial assets will not be called upon to cover company debts. What is there in this arrangement to inspire such vehemence? Faced with this and doubts as to the underlying economic interest, historians have acknowledged a distinct problem in trying to understand limited liability: namely, how to account for the sweeping nature

[4] *Hansard*, 3rd series, vol. 141, c140 (14 March 1856).
[5] *Hansard*, 3rd series, vol. 140, c138 (1 February 1856).
[6] William Hawes, *Observations on Unlimited and limited liability and suggestions for the improvement of the law of partnership* (London, 1854), p.30.
[7] 'Partnerships with Limited Liability', *Westminster Review*, October 1853, p.62.
[8] Manchester Chamber of Commerce Annual General Meeting, 4 February 1856, Proceedings of the Manchester Chamber of Commerce, 1849-58, M8/2/5, f474, Manchester City Library.
[9] Nicholas Murray Butler, *Why Should We Change our Form of Government? Studies in Practical Politics* (New York, 1912), p.82.
[10] Edward Manson, *Builders of our Law during the Reign of Queen Victoria* (London, 1904 edition), p.198.

of the endorsement given it in 1855/6, after decades of apparent reluctance to accept even partial reform. H. A. Shannon was the first to comment on the suddenness with which legal change apparently materialised, in his 1931 *Economic History* article, 'The coming of general limited liability'.[11] Shannon also left a question mark against economic motivation, seeing a contrast between politicians who had backed reform and 'successful big businessmen in their vested interests' who opposed it.[12] A few years later, J. B. Jefferys added to doubts about businessmen's interest, in calculating that by 1885 only 10 percent of what he termed 'important' English firms were accounted for by the limited corporation.[13] Also writing in the 1930s, economist Eli Heckscher noted that limited liability's absence apparently 'did not hinder the extension of enterprises', and concluded that it had 'neither in earlier history nor at the present time the economic significance which it may presumably have from a legal point of view'.[14] As this might suggest, lawyers and legal historians have proven a consistent source of limited liability studies, even if for the first half-century after its 1855/6 endorsement, they did not show much interest at all. The most eminent English-law jurist of the late nineteenth century, Albert Venn Dicey, showed more sympathy with the practices that the 1856 Act eclipsed, and confined acknowledgement of it to a factual footnote.[15] After a slow start however, a succession of lawyers as well as economists and historians have examined the formal endorsement of limited liability, while continuing to question the motivation behind it.[16] Doubts culminated in Philip Cottrell's 1980 *Industrial Finance, 1830-1914*, which concluded that 'the reasons for [the] dramatic change in the basis of company law had

[11] H. A. Shannon ,'The coming of general limited liability', *Economic History*, 2 January 1931, pp.207-91.
[12] Ibid., p.287.
[13] J. B. Jefferys, 'Trends in business organization in Great Britain since 1856, with special reference to the financial structure of companies, the mechanism of investment and the relations between shareholder and company' (Unpublished PhD thesis, University of London, 1938). See too Paddy Ireland, 'The Rise of the Limited Liability Company', *International Journal of the Sociology of Law*, 1984, 12, pp.239-60.
[14] Eli F. Heckscher, *Mercantilism*, vol 1 (London, 1935), p.367.
[15] Albert Venn Dicey, *Lectures on the Relations between Law and Public Opinion in England* (London, 1924), p.245 and p.246, n.2.
[16] See: David Perrott, 'Changes in Attitude to Limited Liability- the European Experience', *Limited Liability and the Corporation* (London, 1982), ed. Tony Orhnial, pp.81-116, p.115; Stephen B. Presser, 'Thwarting the Killing of the Corporation: Limited Liability, Democracy and Economics', 87 *North Western University Law Review* (1992) 148, p.1192; Graeme C. Acheson, Charles R. Hickson, John D Turner, 'Does Limited Liability matter? Evidence from nineteenth-century British banking', paper presented at the XIV International Economic History Congress, Helsinki, 2006; Charles R. Hickson, John D. Turner, Claire McCann, 'Much Ado about Nothing: the Introduction of Limited Liability and the Market for Nineteenth-century Irish Bank Stock', *Explorations in Economic History*, 42, 2005, pp.459-76.

little to do with the requirements of manufacturing industry'.[17] This has crystallised a recognised problem in the historiography. Following Cottrell, it has become almost *de rigueur* to begin or end a consideration of limited liability's approval by endorsing his observation that 'it is extremely difficult to account for this sharp and dramatic change'.[18]

In addressing this challenge, a number of relatively non-contentious points may be made. Considered as a before-and-after snapshot, it is at least easy to see why the change has been thought dramatic. Freedom to set up a limited company was first made generally available in England under the Limited Liability Act of 1855.[19] This was then incorporated into the Companies Act of 1856, when the minimum number of company members was reduced from 25 to seven.[20] Notably liberal (irresponsibly so, in the later judgment of some[21]) the 1856 Act required only that the seven or more shareholders who wished to establish a limited company should take up just a single company share - a share for which there was no minimum value and for which no money needed to have been subscribed. Immediately before these two Acts, anyone wishing to set up a limited liability company in England needed the official approval of Parliament or the Crown; thereafter, as summarised in Cottrell's account, 'joint stock companies with limited liability could be formed for most purposes by the simple process of registering a memorandum of association signed by seven shareholders'.[22]

There seems little doubt that the company here crossed a conceptual Rubicon. In a company with a personal or mixed liability regime, obligations could in principle be fulfilled by individual company members. In a limited company, creditors and other claimants had no recourse beyond the company itself. This shift in financial focus marked the company's coming of age, as the privately incorporated company took responsibility for its own debts. It is not too fanciful to say that it thereby matured metaphorically. It does not seem too fanciful either to claim this as a culturally seismic

[17] Philip Cottrell, *Industrial Finance 1830-1914: the finance and organization of English manufacturing industry* (London and New York, 1980), pp.33 and 41.
[18] Ibid., p.54.
[19] 18 & 19 Vict. c133.
[20] 19 & 20 Vict. c47.
[21] Geoffrey Searle considers the case for this, *Entrepreneurial Politics in mid-Victorian Britain* (Oxford, 1993), pp.187 and 193.

moment. In a moment of eclipse, physical individuals - and the sense of obligation which one might feel towards another - yielded formal precedence to an altogether more abstract world of balance sheets and other quantifications. The sociologist Ernst Gellner has argued that 'the liberation of economic relationships from social and political ones … is exceptional and requires elucidation' and, exceptional or not, it would be difficult to think of a better defining moment for such liberation than public endorsement of limited liability.[23] Or a better icon of capitalist faith than the limited company.

The question of what led people to endorse that faith is a topic for lengthier consideration, but it is easy to identify headline concerns. An obvious one was with joint stock companies - defined in one legal history as companies 'with a fluctuating membership engaged in the operation of a common capital fund for profit'.[24] Such companies managed ownership of the common fund through transferable shares. By the mid-nineteenth century, they were an established feature of the commercial world, acknowledged as effective capital-raising vehicles but frequently criticised for their potential to diffuse and dilute a sense of responsibility. An 1852 letter to a new London financial magazine pointed out that: 'It has become a proverb, that gentlemen sitting at a board ... have no hesitation in doing many things which, individually, they would shrink from.' Joint stock companies could be the means of achieving great things - building bridges, railways and other great infrastructure developments - but they also brought the risk that: 'In the attainment of mere physical force, we lose moral power.'[25] Many saw that risk exemplified in railway companies. Discussing these in 1855, the social commentator Herbert Spencer remarked upon 'the familiar fact that the corporate conscience is ever inferior to the individual conscience - that a body of men will commit as a joint act, that which every individual of them would shrink from did he feel personally responsible'.[26] Adding limited liability to such bodies, in which the effect of individual conscience was already diffused, could seem a social risk too far.

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[22] Cottrell, *Industrial Finance,* p.41.
[23] Ernst Gellner, *Conditions of Liberty: Civil Society and its Rivals* (London, 1994), p.145.
[24] Colin A. Cooke, *Corporation, Trust and Company: An Essay in Legal History*, (Manchester, 1950), p.59.
[25] 'Joint Stock Companies', *Lawson's Merchants' Magazine*, vol. 1 May-December 1852 (London, 1852) pp.259-62, p.261.
[26] Herbert Spencer, *Railway Morals and Railway Policy* (London, 1855), p.10.

Attitudes to that risk split attitudes to limited liability. For those wedded to a traditional sense of business-ownership, it seemed reckless to promote further 'that corporative feeling which is sure to be engendered when ... little or nothing is left to the personal responsibility of individual character'.[27] Others saw this as head-in-the-sand denial. Companies were an inescapable fact of modern life - as the *Leeds Times* put it in the summer of 1854 when reporting the latest round of parliamentary debate, 'the sign of the times is that 'firms' are everywhere.'[28] Rather than retreat into the past, effort should go into promoting good financial governance, and widespread participation in companies. Limited liability, by focusing attention on defined capital, might help with both.

To this end, proponents of limited liability were happy to sacrifice personal responsibility for company debts. Here it is necessary to qualify Gellner's observation, and acknowledge that limited liability's supporters did not so much renounce social ties as re-define them. Their arguments had their own social framework, and as such a pronounced moral element. Its nature is readily identified in broad terms, in that it relied upon faith in an independent-minded economic individual. If the bottom-line of any moral ethos is what one person intuitively feels another can be allowed to get away with, then by ring-fencing financial loss, limited liability signaled comfort with a bottom-line less concerned with threatening defaulting debtors with retribution and more actively supportive of individuals' efforts to appraise and control their own economic destiny. Favouring those efforts at the potential expense of communal obligation implied that it was more important to show initiative than to belong, effectively granting individuals permission to fail. Anthropologists and psychologists have seen in the acceptance of such failure (and the absence of an internalised need to punish it with rejection from the community) the key distinguishing feature of an individualist ethos.[29] In limited companies, and the ready access to them confirmed in 1856, permission to fail was institutionalised. Privately incorporated companies were to be allowed the responsibility of doing their own failing.

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[27] *Circular to Bankers*, 27 April 1838, p.341.
[28] 'Free trade in Partnerships', *Leeds Times*, 1 July 1854, p.4.
[29] For a review of thinking, see Batja Mesquita, 'Emotions as Dynamic Cultural Phenomena', *Handbook of Affective Sciences,* ed. R.J. Davidson, K.R. Scherer, H. Hill Goldsmith (Oxford, 2003), pp.871-87.

The interesting question is how they acquired it. Historians who have tried to answer that have usually tackled limited liability in the broader context of companies or the specialist requirements of the law, rather than considering the issue itself in detail. The result is an extensive but notably piecemeal historiography. Attention has largely focused too on the early 1850s, when limited liability became the subject of sustained public debate. If we want to understand the shape of that debate however, we need to go back further, to the arguments and concerns which started to come together a century before. Understanding better the influences at work, and how they were worked through in contemporary comment, may help us see how change came about and why it came to seem important when it did. It may even help us see too why the limited liability company turned out to be something to get so excited about.

Chapter 1: Limited liability's public emergence in England

When limited liability was discussed in nineteenth-century England it was understood in the same terms as today i.e. as a means of allowing an investor to share in company profits while their share of potential losses was limited to a defined amount, usually taken to be equivalent to the capital staked. If such a company failed, and debts exceeded available capital, its members would have no additional liability for the shortfall. Acceptance of limited liability has usually entailed finding a reason to think that acceptable.

Many such reasons have been forthcoming over time, and if no one has been able to locate the precise historical origins of limited liability, this is probably because the idea of a stakeholder ring-fencing commercial liability within a discrete pool of assets goes back as far as there have been assets to point to and ventures to want a piece of.[1] The earliest recorded instance usually cited in modern legal histories is the discretion which Roman law allowed slaves and minors (barred from owning property in their own right) to trade with a defined portion of their owner or father's property, known as a *peculium*. On the basis that the owner or father was technically liable only to the extent of the *peculium* for any debts which might result, it has been possible to conclude that the Romans, to quote one legal authority, 'had a well developed concept of limited liability'.[2] The legal accounts do not relate when supposed Roman precedent was first cited, but it was certainly freely invoked in mid-nineteenth century limited liability argument. At the height of public interest, a member of the Liverpool Chamber of Commerce claimed that the notion was 'as old as the year 533' and the Emperor Justinian's compilation of Roman law.[3] London's *Daily News* noted that, 'It has been shown by Mr Pardessus that the Romans made very similar contracts'.[4] Pardessus was a French jurist, and lawyers were

[1] For a discussion of the possible legal origins of limited liability, see Perrott, 'Changes in Attitude to Limited Liability'.
[2] Ibid., p.87.
[3] 'Meeting of the Chamber of Commerce - The Question of Limited Liability', *Liverpool Mercury*, 31 March 1854, p.11.
[4] *Daily News*, 7 May 1855, p.4.

the main source of Classical claims. An interest in continuity of form also led them to pay special attention to the *commenda* which emerged in mediaeval Northern Italian states as a vehicle for financing ships' voyages. A *commenda*'s complementary mix of investing and managing partners, with limited and unlimited liability respectively, descended through continental European law as the *société en commandite*, a form of limited partnership. For reasons speculated upon by legal historians but ultimately obscure[5], English law had no equivalent to *commandite* and anyone taking a share in a partnership was bound to take a share too in responsibility for its debts (*pace* the oft-quoted 1793 *Waugh v Carver* judgment that 'he who takes a share of the profits of a business takes part of the fund on which creditors rely for payment'[6]). There was therefore no official provision for the investing - or 'sleeping' - partner who participated financially in a business, but otherwise took no active part in it. Limited liability was however, a recognised feature of certain large corporations, in England and elsewhere. In these and *commandite*, as well as in other specialist or less formalised usages, reform-minded individuals found a variety of past and present examples to reinforce their own assertions.

Doubtless there was much revisionism in their attempts to credit consciousness of a concept of limited liability to Roman and Renaissance businessmen. In 1849, London's Society for Promoting the Amendment of the Law admitted that '[t]o what extent [limited] partnership was in use among the Romans is not very clear'.[7] How far putative early users had been conscious of a distinct principle which could be replicated in different contexts must be highly doubtful. Principle was a key concern of Victorian legal reformers however, operating in what has been described as an 'age of principles'.[8] For limited liability, some claimed an ancient principle (later subverted) in corporation law. The defining characteristic of a corporation was taken to be that it had 'an existence independent of its members', with implications for property-ownership, suing - and, for

[5] Cooke suggests that England's relatively late adoption of double-entry book-keeping may have worked against a distinction being made between company and partner accounts, *Corporation, Trust and Company*, p.46.
[6] As cited by Saville, 'Sleeping Partnership and Limited Liability, 1850-1856', *Economic History Review*, VIII, 1955, p.428, n.1.
[7] *Report of the Committee on the Law of Partnership* (London, 1849), p.9.
[8] Patrick Atiyah, *The Rise and Fall of Freedom of Contract*, (Oxford, 1979), pp.345-58.

some, limited liability.[9] Solicitor Edwin Field argued on this point in 1854 that: 'The very granting of a charter [was], by our old law, of itself, without any words to limit, a limitation of liability, or rather a notice to every body, that it [was] the corporate power alone that trades'.[10] The obvious fly in the ointment here is the 'without any words' element, and if some found this omission hard to gloss over when Field made his assertion, later legal authorities have continued to wrestle with how much licence to read between the lines of early charters, which established corporations under common law.[11] *Gower's Principles of Company Law* states that 'the fact that an individual member of a corporation was not liable for its debts [was] accepted in the case of non-trading corporations as early as the fifteenth century, and … was eventually recognised at the end of [the seventeenth century] in the case of trading companies.'[12] That same source then rather undercuts the purport of this however, by going on to point out that the creditors of such companies, while unable to hold company members directly responsible for company debts, could nevertheless require a company to levy assessments against its members, and so achieve the same result indirectly. Colin Cooke, in his 1950 analysis of English company law, interprets this to mean that

> 'unless there was an express limitation of liability in the instrument of incorporation which cut across any presumption of an obligation from the members to the corporation to meet the latter's debts, the members might be held indirectly liable ... [I]t would be too much to say that a charter implicitly contained [this specific limitation].'[13]

A distinction was thus made between personal and corporate assets, but it is easier to see in it concern to protect corporate assets from individuals, than concern to protect an

[9] Perrott, 'Changing attitudes to Limited Liability', p.83.
[10] Edwin Field, *Observations of a Solicitor on the right of the Public to form Limited Liability Partnerships and on the Theory, Practice and Cost of Commercial Charters* (London, 1854), p.59.
[11] Discussed by W. S. Holdsworth, *A History of English Law* (London, 1925) pp.192-222 and by Gary M. Anderson and Robert D. Tollison, 'The Myth of the Corporation as a Creation of the State', 3 *International Review of Law and Economics*, 1983, pp107-120. Robin Pearson considers late-seventeenth century treatment of the issue in the context of trusts, 'Shareholder Democracies? English Stock Companies and the Politics of Corporate Governance during the Industrial Revolution', *English Historical Review*, cxvii, 473, (September 2002), pp.840-866, p.848.
[12] Paul L. Davies, *Gower's Principles of Modern Company Law*, 6th edition, (London, 1997) pp.21-22.
[13] Cooke, *Corporation, Trust and Company*, p.78.

individual *per se*. This is important because, although there may be many forms of liability-limitation within the context of a company, it is protection of the *individual*, and their separate assets, which is taken as the defining test of limited liability. The rise of interest in the concept is thus closely bound up with a rise in concern for the individual. In the absence of much such explicit concern, legal historians have generally been happiest to see records from before the nineteenth century as *de facto* work-rounds rather than acknowledgement of any recognised principle.

The attempt to identify principles has been further complicated by the fact that there were two distinct bodies of English law pronouncing upon company activities, in common law and equity. Partnerships, which - unlike corporations - had no separate legal personality but 'traded through the personalities of [their] members', were mostly the subject of common law.[14] Jurisdiction over their internal relations developed however, under equity, the more innovative system, and joint stock arrangements were thus addressed by equity, even though joint stock was seen as a branch of partnership. A joint stock company was legally a large partnership. Joint stock companies might however, be incorporated by charter, and unincorporated companies also attempted to mimic a corporation's characteristics, in further equity developments. Their lack of recognition at common law confused legal debate for much of the first half of the nineteenth century, but unincorporated companies were nevertheless established as a recognised third company-form (and a third potential vehicle for limited liability) alongside corporations and partnerships. Cooke considers that

> 'by 1800 it [was] firmly established that the unincorporated company with a carefully drafted deed of association [could] conduct its affairs with all the advantages of incorporation. Such things as the unrestricted transfer of shares and the limitation of shareholders' liability were known and employed by these companies and were accepted by the Chancery [equity] Courts'.[15]

This state of affairs appears to have come about with relatively little public contention.

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[14] Aubrey L. Diamond, 'Corporate Personality and Limited Liability', *Limited Liability and the Corporation*, ed Orhnial, p.34.

[15] Ibid., pp.187. Cooke also states that 'It was by no means certain that an unincorporated company, with

The odd pronouncement apart, the judicial authorities were almost completely silent on the subject of shareholder liability before the nineteenth-century. This appears to reflect the fact that there was little investor-concern to deal with. Historians have found extensive enthusiasm for joint stock arrangements but very little publicly-expressed desire for limited liability.

This may seem a counter-intuitive response to the rising capitalist activity that is clearly identifiable through the eighteenth-century. If individuals were then investing in rapidly-growing numbers and in larger agglomerations of capital, would not commonsense alone have made them concerned to protect themselves from potentially catastrophic financial fall-out with limited liability? The assembled evidence - or lack of it - suggests otherwise. The lack of much overt interest can probably be attributed in part to the optimism habitually enjoyed by investors engaging in a new project - as the *Bankers' Magazine* observed laconically in an 1855 article on the subject, 'people do not embark their capital in order to lose it'.[16] The more technical reason appears to lie in the facility which individuals *did* make a public fuss about. For anyone harbouring doubts about the risk to their own assets involved in an economic venture, the standard answer before the nineteenth century seems to have been that they should transfer their holding and so get out of the venture. This was achievable through share-transfer, available in joint stock corporations and (less officially) unincorporated companies, if not (at all officially) in most partnerships. Share-transfer did not necessarily mean liability-transfer, but by the end of the eighteenth century it was commonly accepted that it did.[17] Legal historian David Perrott considers that the cake-and-eat-it option of securing both personal protection *and* a continuing interest was little entertained, and concludes that

> '[f]rom the sixteenth to the early nineteenth centuries, the English seem to have felt … that the facility of rapid realisation of the capital invested in a "going concern" was a more important incentive to investment than the protection of the non-invested capital on the failure of the concern.'[18]

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transferable shares, was illegal at common law', p.84.
[16] 'The New Law of Limited Liability', *Bankers' Magazine*, September 1855, pp.581-6, p.582.
[17] Discussed by Cooke, *Corporation, Trust and Company*, p.76.
[18] Perrott, 'Changes in Attitude to Limited Liability', p.95.

There was also the issue of a vehicle to attach limited liability to. In 1720, the Bubble Act officially restricted access to companies with transferable shares by outlawing the unincorporated company. The Act may have to be exonerated from any accusation of cutting off overt interest in limited liability in the process, since there does not seem to have been any, and the Act has nothing explicit to say on the point. It had a significant indirect effect however, in trying to prohibit unincorporated companies. One of the most obvious lessons from any review of limited liability's history is that concern with the issue gained ground more readily in that context than in partnership. The Bubble Act failed to put an end to unincorporated joint stock companies - these continued to proliferate - but meant that the prevailing technical regime for most English businesses, for most of the eighteenth century and into the nineteenth, was not one in which formal consideration of limited liability was particularly accessible. Perrott sees widespread indifference in legal records continuing for a century.[19]

Some were however, prepared to push a point. Desire for limited liability has first been found explicitly expressed in England in eighteenth-century charter requests for corporations, and provisions about liability-limitation appear in significant number from about the middle of the eighteenth century. Earlier references have been cited. Ron Harris, in his *Industrializing English Law*, identifies two late-seventeenth century legal rulings which appeared to him to confirm 'the exemption of shareholders of certain corporations from bankruptcy procedures' and the need for charters 'specifically to give power to levy calls-for-debt-coverage on corporation members', if this was to be understood.[20] Harris nevertheless concluded that legal treatment of limited liability was at this time 'confused and inconsistent'.[21] W. R. Scott, in his study of pre-1720 joint stock company practices, was struck by a bankruptcy clause in the East India, Guinea and Fisheries statute of 1662, which seemed to him to limit shareholder liability. The company is however, an isolated example, and, since the clause appears only to rule out liabilities incurred before an investment date (i.e. to protect against inherited liabilities) it

[19] Ibid., p.98.
[20] Andrews v Woodward (1653), concerning an East India Company shareholder (and confirmed by a1662 Act) and Salmon v Hamborough Company (1671), Ron Harris, *Industrializing English Law. Entrepreneurship and Business Organization, 1720-1844* (Cambridge, 2000), p.128.
[21] Ibid.

does not imply that investors should not be personally liable at all.[22] In his classic 1938 examination of eighteenth-century company developments, Armand DuBois identified an example from a century later - the Warmley Company's proprietors' 1768 (failed) attempt to obtain incorporation - as 'the earliest comprehensive recognition of the limited liability motive as a factor in incorporation'.[23] DuBois, a lawyer, was one of a number of American scholars who produced monographs on the technical development of English companies in the 1930s, taking up where Scott had left off. As he pointed out, liability-limitation was not mentioned in the Warmley Company's formal petition, but surfaced in a subsequent hearing, when opponents alleged that the intention was to limit subscribers' liability. The Warmley counsel 'frankly admitted the truth of this assertion' and the pattern of this motive emerging under questioning was not uncommon, as DuBois' extensive notes make clear. Most of the comment that he identified comes from lawyers, but occasionally a well-informed, potentially-vulnerable investor, such as industrialist Matthew Boulton, comes to the fore, to show that concern was not entirely of lawyers' own making. Quite when liability-limitation became routinely identified as a key advantage of incorporation is impossible to gauge from the small number of examples, but DuBois identified a range of arguments invoked from mid-eighteenth century. We should also acknowledge here a whole legalistic sub-genre (to which DuBois contributed) which has focused on the legal grey areas of bankruptcy clauses and mining company customs. These, even if unable to achieve full limited liability, had in view the same goal of investor protection. In the face of such variety, and as much creativity of argument against liability-limitation as for it, DuBois himself was happiest to see a trend towards *definition*, and an understanding that 'express authority for the exercise of a power must be found in the appropriate charter, act of parliament or deed of settlement'.[24] Harris also sees this as the time when the inclusion of a clause explicitly limiting shareholder liability became standard in incorporation statutes.[25]

It might be thought that such definition would provide a target for dispute, but this does

[22] W. R. Scott, The *Constitution and Finance of English, Scottish and Irish Joint-stock Companies to 1720* (Cambridge, 1912), Vol. I, p.270.
[23] A.B. DuBois, *The English Business Company After the Bubble Act 1720-1800* (New York, 1938), p.95.
[24] Ibid., p.436.
[25] Harris, *Industrializing English Law*, p.130, citing the 1764 English Linen Company, 1786 British Society

not appear to have taken off before the early nineteenth century, with the first of a number of intermittent booms in company formation. Perrott, from his study of case-law, considers that before then limited liability was '[not] seen by the establishment as particularly desirable or undesirable, [but] merely as technically unobtainable, outside formal incorporation by charter or act of parliament'.[26] Harris cites an 1804 source as evidence that by then incorporation was closely identified with limited liability and sought 'principally for the purpose of exempting the shareholders from any responsibility as partners'.[27] The earliest public disputes of the issue outside such formal identification appear to have been between insurance companies. In a 1787 example, the unincorporated Phoenix Assurance company is found, again by DuBois, arguing that incorporated competitors with limited liability are not to be trusted since 'holders of shares in [these] incorporations stand sheltered from any responsibility beyond the extent of their chartered capital'.[28] Harris similarly highlights the 1789 agitation surrounding the Westminster Assurance Company.[29] Here is clear evidence of both concern and public dispute. By 1810, unincorporated companies were actively testing the identification of limited liability with incorporation. DuBois considered that 'unincorporated groups operating a joint-stock [became] extremely bold in asserting that there was a limitation of liability'.[30]

Can crystallisation of public consciousness of limited liability be pinned down further? One way to do so, amongst Anglophones at least, might be to identify when the term 'limited liability' was coined as a neologism. The historiography has little to say on this. DuBois pointed out that the phrase 'stock limited', in use in the 1780s, 'suggests the term "limited company" of the nineteenth century', but did not otherwise trace development of terminology.[31] The one linguistic point which has elicited widespread comment is the 1855 formal adoption of the suffix 'ltd' for English limited liability companies. Credit for

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for Extending the Fisheries, and 1791 Sierra Leone Company Acts. See too p.185.
[26] Perrott, 'Changes in Attitude to Limited Liability', p.98.
[27] Harris, *Industrializing English Law*, p.130, quoting Joshua Montefiore, *The Trader and Manufacturer's Compendium Containing the Laws, Customs and Regulations Relative to Trade* (London, 1804), p.235.
[28] DuBois, *The English Business Company* p.96.
[29] Harris, *Industrializing English Law*, pp.105-6.
[30] DuBois, *The English Business Company*, p.223.
[31] Ibid., p.149, n.59.

this is commonly given to George Bramwell, a pro-limited liability barrister who served on the Mercantile Laws Commission of 1853 and later achieved eminence as a Law Lord. Bramwell was happy to claim responsibility for the innovation, usually credited to his contribution to the 1853 Commission.[32] Edward Manson, for many years Registrar of Companies, drew upon personal contact with Bramwell in writing an account of his career (first published in 1895) and said there that Bramwell was 'proud of the invention. "Mention it in my life," he said jocularly'.[33] Manson duly did so, even though what Bramwell actually recommended to the 1853 Commission at least was more complicated than the now-familiar 'Limited' tag.[34] His 'invention' has however, acquired folklore status. Sir Hubert Llewellyn Smith's 1928 *The Board of Trade* has Bramwell 'playfully' suggesting that 'limited' should be inscribed on his tombstone and credits him with a 'brilliant though simple idea'.[35]

Bramwell may deserve to be credited with an apt suggestion but he essentially helped formalise a notion already well-established amongst lawyers by the 1830s. Since it was then readily acknowledged that liability might be limited in a private contract (if it could be shown that consent had been given by all concerned) it was a logical - if controversial - step to extend this, through an emphasis on freedom of contract, into a general notice directed at all potential contractors. Submitting evidence to an 1836 Board of Trade inquiry, William Tinney KC was asked if it might be possible to introduce some distinguishing mark, to alert individuals to the fact that they were dealing with a partnership with a sleeping partner, who would have no liability for partnership debts, beyond his invested capital: 'Would you consider it a sufficient advertisement if those partnerships had some mark or designation which would enable the public to know it?'. Tinney agreed that it would, stipulating only that 'It should be a mark that all persons who deal with them would be likely to know.'[36] Several years later, solicitor John Duncan told

[32] Cf. '[I]n future, when you see that word "limited", some of you may, perhaps, think of the individual who is addressing you', 'The Law of Limited Liability' by the Right Hon Lord Bramwell. An address delivered before the Institute, Wednesday May 23rd, 1888, *Journal of the Institute of Bankers*, vol. 9 (London, 1888), pp.373-97, p.397.
[33] Manson, *Builders of our Law*, Preface to 2nd edition, p.vii, and p.198.
[34] *First Report of the Mercantile Laws Commission*, Parliamentary Papers [hereafter, 'PP'] 1854 (1791) xxvii 29.
[35] Sir Hubert Llewellyn Smith, *The Board of Trade* (London, 1928), p.165.
[36] *Report on the Law of Partnership*, (London, 1837) p.61.

an 1843 Select Committee that it should be easy enough to find suitable designations for 'proprietors liable companies', 'proprietors non-liable companies' and 'proprietors semi-liable companies' (i.e. unlimited liability companies, limited liability companies and *commandite* partnerships respectively).[37]

By mid-century, the idea had an established currency. In 1854, Charles Morrison, wealthy merchant banker, proposed a distinguishing mark of 'Associates' or 'Association' (not 'Ltd') with 'Company' reserved for unlimited liability companies, as the default standard.[38] Morrison did not acknowledge any debt to Bramwell, and neither did solicitor Edwin Field, who also argued in 1854 for '[registering] the names of [a firm's] associates; and where they [were] not on an unlimited liability basis, marking the firm's title with the word "limited".'[39] Field had made the same point - albeit without the neat suggestion of a 'Limited' tag - before a Select Committee three years earlier, and was not the only person then to do so.[40] Barrister John Ludlow suggested the same thing, and was then re-iterating a point he had made to another Committee the year before.[41]

If the official arrival of the 'limited' company is relatively clear-cut, the advent of the phrase 'limited liability' itself is harder to pin down. A trawl through parliamentary references from the first three decades of the nineteenth century shows a variety of descriptive phrase, and if there was a standard phrase, it was not 'limited liability'. Banker Hudson Gurney referred in parliament in 1825 to partnerships with 'limited responsibility', and this more personally-nuanced terminology was the commonest then in use.[42] Personal ownership can perhaps be detected too in the impulse to include indefinite articles, as in 'a limited liability', a common formulation which persisted into the 1830s.[43] 'Responsibility' and 'liability' were both by then readily used, and in 1833

[37] *First Report of the Select Committee on Joint Stock Companies, together with Minutes of Evidence (taken in 1841 and 1843*), PP 1844 (119) vii 209.
[38] Charles Morrison, *An Essay on the Relations between Labour and Capital* (London, 1854) p.153.
[39] Field, *Observations of a solicitor,* p.84.
[40] Edwin Field, *Report from the Select Committee on the Law of Partnership*, PP 1851 (509) xviii 147.
[41] J.M. Ludlow, ibid., 168 and *Report from the Select Committee on Investment for the Savings of the Middle and Working Classes*, PP 1850 (508) xix 11.
[42] *Hansard*, 2nd series, vol. 12, c1060 (16 March 1825).
[43] For example, Huskisson, 10 and 27 February 1826, *Hansard*, 2nd series, vol. 14, c243 and c889; the Attorney General and John Bowring, 19 April 1836, *Hansard*, 3rd series, vol. 32, c1188 and c1194; William Clay, 25 July 1839, *Hansard*, 3rd series, vol. 49, c815.

Chancellor of the Exchequer Lord Althorp covered both options in proposing that joint stock banks of deposit should be permitted to have partners 'liable or responsible only to the amount of their shares'.[44] Three years later, MP William Clay, again on joint stock banking, invoked a tripartite formula whose alliteration may have helped promote limited liability's currency as an expression: joint stock banks, he insisted, would be best served by a combination of 'limited liability, paid-up capital, perfect publicity'.[45] From the mid-1830s to mid-1840s, Clay waged a personal campaign for use of limited liability by joint stock banks - as a fellow MP observed, he made 'a hobby' of it.[46] From the mid-1840s however, with attention no longer so closely centred on banking, debate diversified. Parliamentary discussion shows 'limited liability', and its corollary of 'unlimited liability', now standard expressions. Their use was not universal, and Edward Cardwell could still refer in 1855 to 'joint stock companies of limited responsibility'.[47] Boyd Hilton has suggested that conservatives tended to favour the pejorative 'diminished responsibility', but it is hard to see the terminology following any very clear-cut divisions.[48] 'Responsibility' was perhaps more likely to be invoked in a partnership context - the Report of the 1853 Mercantile Laws Commission begins by using this for partnership and 'liability' for joint stock, though the association soon breaks down.[49] In general, everyone now referred automatically to 'limited liability' - or rather, in the principle-laden discussions of the mid-1850s, to 'the principle of limited liability'.

At some point then, during the second quarter of the nineteenth-century, the term 'limited liability' gained ground as a standard. It was during the second quarter too that references to limiting liability, however termed, proliferated in company prospectuses and contracts. Their claims were contested, but one practice at least - limiting liability by a clause in a contract with a named individual - had standing in law. This lent itself to exploitation by insurance companies. As DuBois shows, insurance companies had been disputing the relative merits of making shareholders personally liable or not since the 1780s but he says

[44] *Hansard*, 3rd series, vol. 18, c184 (31 May 1833).
[45] *Hansard*, 3rd series, vol. 33, cc842-859 (12 May 1836).
[46] P. Stewart, *Hansard*, 3rd series, vol. 76, c1183 (22 July 1844).
[47] *Hansard*, 3rd series, vol. 139, c345 (29 June 1855).
[48] Boyd Hilton, *The Age of Atonement: the influence of Evangelicalism on Social and Economic Thought, 1795-1865* (Oxford, 1988), p.257.

that it was 'not until the early years of the nineteenth century that policies appear with clauses limiting the liability of the company'.[50] The formalisation of these clauses appears to be one more instance of the increase that took place then in public assertiveness. DuBois also adds that 'the efficacy of such clauses in case of a contest may well be doubted'. They were nevertheless vigorously asserted. Sir Frederick Morton Eden, chairman of an insurance company which petitioned (unsuccessfully) for incorporation in 1806, argued that the long-term nature of insurance business made it especially suited to joint stock structures. He considered that the public 'affix little value to the general Liability of Property which is not exclusively pledged to them'[51], and two 'qualities' of a joint stock fund should rather provide them with reassurance. Firstly, the fund could be regulated and monitored, its accounts 'subjected to an undisguised publicity'. Secondly, it was 'peculiarly answerable for [its customers'] contracts; it is exclusively appropriated to their use; and cannot be effected by the private Dealings of the individuals composing the body corporate'. Eden was here stressing the ring-fencing of assets that was the basis of limited liability. The public should take reassurance from the definition offered by a joint stock fund. In contrast, 'the Amount of a personal Responsibility Fund never can be known'.[52]

Insurance company debate also contributed to a broader breakdown in associations between large companies and monopoly, as the numbers of large joint stock companies grew and supporters urged their claims, against the supposedly monopolising agendas of the Bubble Act and 'overgrown capitalists'.[53] An 1810 Select Committee on Marine Insurance pronounced against monopoly, and opened the way for more joint stock insurance companies (even though, following opposition from Lloyds, the committee's

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[49] *First Report of the Mercantile Laws Commission*, PP 1854 (1791) xxvii.
[50] DuBois, *The English Business Company after the Bubble Act*, p223. DuBois qualifies this by admitting that it is not entirely clear whether insurance companies were in fact limiting liability, in using 'the not too explicit [phrase] "the Capital Stock and Funds of the said Company shall be subject and liable to pay the said assured" ', p.257, n.66.
[51] Sir Frederick Morton Eden, *On the Policy and Expediency of granting Insurance Charters* (London, 1806), p.6.
[52] Ibid., pp.7-8.
[53] Henry Day, *A Defence of Joint Stock Companies, being an attempt to shew their legality, expediency, and public benefit* (London, 1808), p39. Day was Solicitor for the British Ale Brewery joint stock company. His reassurances for company-members concerned about 'the responsibility of a partnership' depended upon share-transfer and sound financial management, rather than limited liability, pp.33-6.

recommendations did not take full statutory effect until 1824). The liability-limitation clauses that these unincorporated insurance companies now routinely included in policies and deeds of settlement were not yet routinely accepted, but Cooke sees this as the time when they were established in case-law.[54] Deeds of settlement provided for arrangements *amongst* shareholders, and could also include provisions about a company's operation which set limits on debt-levels, or capital-loss, or other factors which might limit risk. The companies' lawyers argued that this could ensure that private assets would never be called upon in practice. As others pointed out however, a deed could not limit obligations to *external* creditors (since they were not party to the agreement it represented) and so provided no absolute guarantee. Francis Baily, in a guide to London life assurance companies, quoted Lord Chief Justice Ellenborough's opinion that to imply that a deed could limit liability to a shareholding was a 'mischievous delusion'.[55] Baily thought this opinion could not 'be made too public'.[56]

Despite the protests, limiting clauses had some prominent defenders. One was William Huskisson, who became President of the Board of Trade in 1823, and the following year quashed a parliamentary attempt to challenge liability-limiting clauses, as

> 'interference with private contracts. If a party chose to take the more limited responsibility of a joint stock rather than have his remedy against each individual, he was averse from interposing against the exercise of such discretion.'[57]

Significantly, Huskisson here makes an automatic association between joint stock and liability-limitation (although the exact form of that is unclear). This did not mean however, that he was necessarily in favour of their widespread use. Two weeks earlier, he had said that an insurance company incorporation Bill should not be approved without a personal-liability clause.[58] At the time he spoke, the Bubble Act, and its prohibition of unincorporated companies and transferable shares, was still officially in force. The Act might be openly flouted, as another boom in company formation gained momentum, but

[54] *Corporation, Trust and Company*, p.87.
[55] Francis Baily, *An Account of the several Life-assurance companies established in London, containing a view of their respective merits and advantages* (2nd edition, London, 1811), p.21.
[56] Ibid., p.20.
[57] *Hansard*, 2nd series, vol. 11, c1088 (3 June 1824).

Huskisson did not want to see wholesale liberalism in its place: 'To authorize an unlimited number of [incorporated] trading companies ... would be to do a material mischief to the country.'[59]

What Huskisson particularly objected to was *de facto* erosion of the Crown's authority over companies, under the volume of incorporation applications now being made to Parliament. He set out what he thought the correct, 'established practice' for company incorporation (and by implication for undisputed use of limited liability) in May 1824. This was to seek first the approval of the King in council, and then apply to Parliament for confirmation or qualification of the Crown's decision. Without such prior Crown approval, there could be no reassurance for the public that the charter of a delinquent corporation might be forfeit, since only Crown, and not statutory, approval of a charter could be revoked.[60] This system was being circumvented by companies who applied first to Parliament, arguing that a conditional grant could then be confirmed by the Crown. Huskisson defended the reputation of joint stock companies against the sweeping rhetoric of the Bubble Act, but disapproved of the status of forty gas companies operating without royal charters. The pull of partnership was apparent too in his assertion that the 'owners of shares ... might be considered as sleeping partners in trades of which they know nothing but the name'.[61]

We should also acknowledge here one other strand from early nineteenth century parliamentary debate, in discussion of *general* limited liability rules. Legal historians have debated at length what might qualify as the earliest general rule made under English law, with some support even for an Elizabethan candidate.[62] Most have however, settled on the 1782 Irish Limited Partnership Act.[63] Very little use was made of this Act - an outcome commonly attributed to political instability and the fact that it was hedged about with restrictions.[64] It was not until after the Napoleonic wars that a general rule was

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[58] *Hansard*, 2nd series, vol. 11, c843 (21 May 1824).
[59] *Hansard*, 2nd series, vol. 11, c609-10 (10 May 1824).
[60] Ibid.
[61] *Hansard*, 2nd series, vol. 12, c1075 (18 March 1825).
[62] See Cooke, *Corporation, Trust and Company*, p.68.
[63] 21 & 22 Geo III, c46.
[64] E. A. French discusses possible reasons for the Irish Act's failure, 'The Origin of General Limited Liability in the United Kingdom', *Accounting and Business Research*, vol. 21, no 18, 1990, pp.15-34.

discussed in the context of England. Historians have lighted on a brief exchange that took place in the House of Commons in April 1818. Saville terms it a failed attempt to introduce discussion of the *société en commandite*, and insofar as it was intended to apply to England, it did fail. City of London MP, Matthew Wood proposed the repeal and consolidation of Irish partnership laws and was accused of a broader attempt to legalise joint stock companies, 'leaving the parties to them liable only to the amount of their respective shares'. Wood denied any intention of pushing his proposal beyond Ireland, if MPs objected, though he did argue that, given the high levels of post-war unemployment in England, there 'could be no hesitation in adopting it for this country' once its provisions were understood. Here he was over-optimistic, but his resolution as it applied to Ireland ('where the importance of such a measure could not be denied') met with approval.[65] Wood was a well-known City figure, twice Lord Mayor, and from a Dissenter background. His chief parliamentary opponent on this occasion was Pascoe Grenfell, a prominent businessman and Evangelical. The pattern of reformist Dissenter opposed by conservative Evangelical was to be repeated in subsequent discussions of limited liability. As too, the argument that if there were objections to reform in England, then Ireland at least was a deserving cause. Liability-conservatives persisted in arguing that limited liability and joint stock were incentives needed *only* in jurisdictions such as Ireland and France, whose populations required stimulus to invest. At the time Wood made his proposal, that perception was routine.

This then was the position at the beginning of the second quarter of the nineteenth-century, with limited liability a readily recognised concept, and the subject of lawyers' ingenuity and occasional public questioning. In January 1825, the political economist Thomas Tooke formally tabled it for a first discussion at the Political Economy Club: 'Are there, and, if any, what disadvantages attending Partnerships en commandité - in other words, Joint Stock Companies?'[66] Over the succeeding quarter of a century, the Club would debate the issue a further eight times. 1825 also saw repeal of the Bubble Act, effectively a dead letter and a clear anomaly in the face of another company boom. Perrott says that repeal and 'the possibility of a rapid rise in the number of chartered

[65] *Hansard*, 1st series, vol. 38, c22-3 (13 April 1818).
[66] 10 January 1825, *Political Economy Club*, centenary volume, vol. vi (London, 1921), p.23.

limited liability companies'[67] triggered opposition to limited liability, and hence that 'the first move to facilitate the extension of genuine limited liability was paradoxically accompanied and vitiated by the first real unpopularity of the concept'.[68] The reaction was not perhaps so very 'paradoxical', since it is easy to believe that endorsement and opposition might have fed off each other. Indeed, there are grounds for thinking they had necessarily to do so, and that unusual company activity was needed to focus public attention on company matters. This is acknowledged by Saville's observation that: 'much of the comment was the product of exceptional circumstances; boom years and their aftermaths of failures and frauds provoked controversy about the nature of speculation.'[69] Unless feelings ran high, questions of company structure were easy to ignore. This was however, far from easy in late 1825, when feelings on company structures - and bank company structures in particular - ran very high indeed.

[67] Perrott, 'Changes in Attitude to Limited Liability', p.99.
[68] Ibid, p.100.
[69] Saville, 'Sleeping Partnership', p.418.

Chapter 2: *Public discussion, 1825-33*

Financial crisis and inquest

With hindsight, the year 1825 marks an obvious turning-point in public attitudes to limited liability. Before this, it is clear from statements such as Tooke's that an automatic association between joint stock and liability-limitation was readily made. This was no longer legally possible after the June 1825 repeal of the Bubble Act. With cancellation of the Act and its condemnation of company promotion, politicians faced a decision as to what sort of companies they wished to see promoted, and opted categorically for conservatism. The Bubble Act Repeal Act made explicit Crown discretion over incorporation, and gave the Crown power to make a corporation's members

> 'individually liable ... for the debts, contracts and engagements of such corporation, in such manner, and to such extent, and subject to such regulations and restrictions as His Majesty, His Heirs or Successors, may deem fit and proper, as shall be declared and limited in and by such charter; and the members of such corporation shall hereby be rendered so liable'.[1]

In other words, the Crown reserved the right to specify liability exactly as it saw fit. Whatever interpretation might be made of earlier statements, a charter of incorporation could not now of itself be assumed to confer limited liability. Cooke sees this as the point when incorporation and limited liability were first officially separated ('[t]he two had hitherto always gone together'[2]). The Crown's power over corporate privilege was to be administered by the Board of Trade, formalising a second route to limited liability, alongside Parliament.

In taking this approach, the authorities had responded to the prevailing investment climate, and public disparagement of the many new companies being formed. An 1824 letter to a newspaper attacked one chartered company as a 'hydra', 'an establishment of

[1] 6 Geo IV c91 (1825).
[2] Cooke, *Corporation, Trust and Company*, p.110.

limited responsibility ... without the safeguards of care and responsibility that always attaches to the individual Merchant but which becomes lost in the vortex of a joint-stock company'.[3] An 'Old Merchant' also declared it 'preposterous that an association of individuals should, by subscribing a deed, or by any other act or contrivance of their own, have it in their power to exempt themselves from the operation of the laws' and from 'the great and salutary safeguard of private responsibility' In support, he cited Adam Smith.[4]

Much of the criticism was directed at mining companies, the focus of an investment boom and the subject of questioning about limited liability.[5] An MP-supporter of one company told fellow MPs that 'the House could not expect that people would embark their property in speculations if they were liable for more than the sum they had subscribed'.[6] A succession of company Bills was presented to parliament in search of corporate privilege and provoked complaints there about the role of private influence. MP Hudson Gurney, called for 'one general law for the formation and regulation of all joint-stock companies - Whether the introduction of a law of registration of partnerships, with limited responsibility, as in France, and many other states of the continent, he was not competent to say.'[7] Comment continued after Bubble Act repeal. The *Monthly Review* advocated the free formation of joint stock companies as a remedy for the abuse of parliamentary influence, but thought personal (unlimited) responsibility essential to 'put an end to those fraudulent speculations which have been lately carried on so shamelessly'.[8] Evidently it had become significantly harder to ignore questions of liability-limitation, as too their standardised treatment.

This became still clearer when a major financial crisis broke out in December 1825. The 1825 financial crisis is notable for its severity, and for the 'happy exemption of Scotland' focusing attention on Scottish joint stock banks.[9] Scottish banks were not in fact

[3] 'West India Company', Letter to the Editor, *Morning Post*, 30 April 1824.
[4] 'Old Merchant', *Remarks on joint-stock companies*, (London, 1825), pp.69 and 92-3.
[5] *Hansard*, 2nd series, vol. 12, c719 (28 February 1825).
[6] *Hansard*, 2nd series, vol. 11, c530 (6 May 1824).
[7] *Hansard*, 2nd series, vol. 12, c1060 (16 March 1825).
[8] 'The Influence of Interest and Prejudice upon Proceedings in Parliament, *Monthly Review*, November 1825, pp.318-29, p.328.
[9] Bishop Carleton Hunt, quoting from an 1834 joint stock bank prospectus, 'The Joint-stock Company in England, 1830-1844', *The Journal of Political Economy*, vol. 43, no. 3 (June 1935), pp.331-64, p.339.

themselves exempt from the crisis, but perceptions were dominated by the shocking failure of 73 English banks.[10] Two banking models - private and joint stock - were identified with English failure and Scottish success respectively, and 'pointed a contrast in favour of the Scotch'.[11] Technically-informed comment argued that the English banks were in fact, like the Scottish, joint stock companies, distinguished rather by their smaller number of partners (restricted by English law to a maximum of six).[12] Limited liability was not a clear point of distinction either since, with the exception of the Bank of England and three Scottish chartered banks, the Scottish and English models were both subject to unlimited shareholder liability.[13] In practice however, the Scottish banks were identified as definitively joint stock, and associations between this and limited liability promoted debate.

By arising in a banking context, discussion of limited liability was at once diving in at the deep end and prone to ring-fencing. Consciousness of risk was acute in this context, and it was always easy to argue that banking was a special case. Against this, there was the argument that limited liability was needed in the situation in which England now found herself. If large joint stock banks had proven stable, and England wished now to break with tradition and encourage their establishment, then limited liability 'would, no doubt, induce many persons of great credit and fortune, to invest their money in shares of such banks'.[14]

In light of these considerations, Huskisson and Prime Minister Lord Liverpool urged limited liability for the English joint stock banks established in the wake of the crisis. They faced the objection however, that it was not much used in Scotland, 'where the banking system was most efficient'.[15] Crucially too, the Bank of England objected, and

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[10] Charles Kindleberger points out that 'the failure of 73 out of 770 banks in England ... was not a very different ratio than 3 out of 36 in Scotland ... but the large absolute number made a lasting impression', *A Financial History of Western Europe* (London, 1984), p.83.
[11] *The Bankers' Circular*, 25 July 1828, p.2.
[12] As discussed in 'Savings Banks and Country Banks', *Quarterly Review*, April 1824, pp.126-45, pp.135-9.
[13] The three Scottish chartered banks with limited liability were commonly taken to be: the Bank of Scotland, the Royal Bank of Scotland and the British Linen Company. Two other Scottish chartered banks did not have limited liability. The first three banks' limited liability status could be disputed - as could that of the Bank of England.
[14] Huskisson, *Hansard*, 2nd series, vol. 14, c231 (10 February 1826).
[15] *Hansard*, 2nd series, vol. 14, c890 (27 February 1826).

discussion ended in conservatism. Huskisson put on record his belief that if the Bank could be persuaded to relax its charter further at some future date, and 'permit the establishment of other chartered banks besides itself with limited responsibility', this would be to the country's 'permanent advantage'. He hoped to 'see the day when the Bank would concede to the public that part of its privileges'.[16] More broadly, he expressed 'anxiety, that the law of partnership ... should undergo some material alteration'.[17] For now however, the English Banking Co-partnerships Act of 1826 imposed liability on shareholders of joint stock banks, and held them potentially liable for corporate debts for up to three years from the sale of a share-holding.[18]

This three-year rule was one of a number of long-running issues now set in train. Another was the role played by the Bank of England. The Bank's price for agreeing to a relaxation of its charter was an understanding that joint stock banks - whose members must have unlimited liability - should not be set up within 65 miles of London. The argument that vested interest, in the shape of the Bank's Directors, had thereby blocked something of public benefit was to run for more than 30 years. Leading the chorus in the 1820s was Thomas Joplin, a Newcastle timber-merchant converted to the cause of joint stock banking by 'the failure of the banks in the north of England, where I was resident, and some acquaintance with Scotland, [which] led me to inquire into the difference of the two systems'.[19] Joplin was one of a number of local merchants co-opted to guarantee payments when Newcastle banks got into trouble. This was standard practice but ever-more-frequent appeals for help prompted the Newcastle merchants to consider whether they might regularise their role and form a bank themselves. Joplin had published his views on how to go about this in an 1822 pamphlet.[20] This had attracted interest before the financial crisis, as part of an early 1820s (failed) attempt to persuade Parliament to allow joint stock banks in England, outside London. That initiative followed on the 1821 abolition of similar restrictions in Ireland, and the setting up (with Joplin's help) of joint

[16] Ibid., c889.
[17] *Hansard*, 2nd series, vol. 15, c80 (22 March 1826).
[18] 7 Geo IV c46.
[19] *Report from the Select Committee on Promissory Notes in Scotland and Ireland* , PP 1826 (402) iii 109
[20] *An Essay on the General Principles and Present Practices of Banking in England and Scotland; with observations upon the justice and policy of an immediate alteration in the charter of the Bank of England, and the measures to be pursued to effect it* (Newcastle, 1822).

stock banks there, from 1824. Like the Scottish banks, these were unlimited liability banks, and this could evidently be an issue. Thomas Spring Rice, a director of one, told an 1826 Select Committee that it was necessary to have 'a rate of profit rather higher than the average', to compensate for the fact that there was 'no limitation of responsibility' and induce British capitalists to invest.[21] Joplin himself was a firm believer in a 'limitation of the responsibility of the Shareholders in Banks' as the 'best system for the country' (meaning England).

The issue of limited liability for new English joint stock banks had also already received a public airing, pre-crisis, in some northern towns. An attempt to establish a joint stock bank in Durham was later said to have failed because 'the parties willing to form a company required a charter to limit their liability to the amount of the capital subscribed, and the Government declined promising them [one]'.[22] Difficulties continued through and beyond 1825, with the abandonment of a proposed Northumberland joint stock bank ('though the country gentlemen were very desirous of the formation of a bank, they would not move without a charter to limit their liability, which could not be obtained.'[23]). Other initiatives were more successful, despite lack of limited liability, but in the aftermath of December 1825, Joplin took an uncompromising stance on the point. Once the public had had time to recover their nerve, he said, men would have no hesitation in forming joint stock banks, but: 'The unlimited responsibility is a bugbear, which, without any chance of benefiting the public, defeats the object of the law'.[24]

That argument was challenged by MP Henry Parnell, an acknowledged financial authority, who quoted Joplin's own earlier words against him.[25] As he pointed out, when Joplin had helped establish the Provincial Bank of Ireland several years before, he reported that many were at first apprehensive about the lack of a charter (and limited

[21] *Report from the Lords committees appointed a Select Committee to inquire into the state of circulation of promissory notes under the value of £5 in Scotland and Ireland,* PP 1826-7 (245) vi 35.
[22] 'Memoir of Mr Thomas Joplin', *Bankers' Magazine*, October 1846, pp.70-80, p.72.
[23] Ibid., p.76.
[24] T. Joplin, *An Essay on the general principles and present practice of banking in England and Scotland* (6th edition, London, 1827) p.149.
[25] Sir Henry Parnell, *Observations on Paper Money, Banking, and Overtrading; including those parts of the evidence taken before the Committee of the House of Commons, which explains the Scotch System of Banking* (London, 1827).

liability), 'but reflection, in the first instance, and subsequent experience, have proved to them how perfectly chimerical those fears were'.[26] Parnell concluded that 'though some cautious persons may be discouraged by the prospect of unlimited liability ... the rule of the law ought to be rigidly adhered to, and in the case of the banking trade above all others'.[27] In support, he quoted Edinburgh banker Thomas Kinnear, who had relayed to the post-crisis 1826 Commons Select Committee on Scottish and Irish banking, his opinion that recent banking failures would have been worse with limited liability.[28] Other Scottish bankers told Committees that a run on a bank was 'a thing totally unknown in Scotland'.[29] Parnell attributed this happy state of affairs to personal financial liability.[30]

Scottish banks (and their lack of limited liability) continued to loom over English banking debate in the years that followed. Partisans of English country banks, such as Henry Burgess, writing in his *Bankers' Circular* (re-christened the *Circular to Bankers* in September 1828) cited the failures amongst them to argue that people should not trust to larger joint stock banks at all.[31] Burgess had been arguing since the immediate aftermath of the 1825 crisis that

> 'The [English] public are under great delusion respecting the Scotch banks. Many of them, like the English banks, have only two or three partners; they are no more secure than ours, except that the more cautious and calculating character of the Scotch renders them more careful in selecting good securities in exchange for their money.'[32]

Burgess believed that 'Charter or share banks will never be generally established in England, from the different character of the people', and for good measure added the

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[26] Ibid. footnote to p.73.
[27] Ibid., p.126.
[28] *Report from the Select Committee on Promissory Notes*, PP 1826 (402) iii 139.
[29] *Report from the Lords Select Committee appointed a Select Committee ... Promissory Notes*, 1826-7 (245) vi 75, 92 and 123.
[30] *Observations on Paper Money*, p.129.
[31] *Circular to Bankers*, 30 January 1829, p.218.
[32] [Henry Burgess], *A Letter to the Earl of Liverpool, on the erroneous information that His Majesty's Ministers have adopted regarding the country banks and the currency in the manufacturing districts; and suggesting means for correcting some of the existing evils in the circulation of country bank notes. By a*

inconsistent rider that 'if they were, injurious consequences would at intervals result therefrom.'[33] He identified English country bankers with support of 'the active and productive classes' and larger, joint stock banks with 'delegated functionaries' and impersonal market-manipulation.[34] The government's promotion of joint stock banks was an example of the 'vast mischief which results from measures which appear to men who pass their time in the metropolis, and who know nothing of the economy of the country'.[35] Burgess had expounded upon his view that 'Scotch banking tends infinitely more [than the English country banking system] to promote speculation' in a July 1826 interview with Huskisson.[36] He continued in this vein in pamphlets addressed to other politicians. By 1830, he was prepared to admit that '[t]he public have a more absolute security for having all their demands paid in full, from a Joint-Stock bank, managed by persons of respectability than from a Bank of private copartnership, managed by similar persons', but continued to maintain (against the popular interpretation of 1825) that private banks were less likely to get into trouble in the first place.[37]

Not all argument about limited liability was in the context of banks. Also in the aftermath of the financial crisis, the jurist John Austin made a forceful pitch for its use for trading companies. Austin's article appeared in a weighty but short-lived publication edited by his barrister-brother Charles, and both men were part of the social circle surrounding the *Westminster Review*. Notably philosophical, the article argued for adoption of French law's *commandite* principle for large English joint stock companies. The members of such companies were 'inevitably passive' and unable to exercise effective supervision, so that to try and make them responsible for company debts served

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Manufacturer in the North of England, (London, 1826), p.20.
[33] Ibid.
[34] Henry Burgess, *A memorial addressed to the Right Honourable Lord Viscount Goderich, on the fitness of the system of the Bank of England, of the country banks, and of the branch banks of England, to the wants of the people; and the ample means of protection, which private banks and the public have, against the monopoly of the Bank of England*, (London, 1827), pp.11-14.
[35] Henry Burgess, *A Petition to the Honourable The Commons House of Parliament, to render manifest the errors, the injustice, and the dangers of the measures of Parliament respecting the currency and bankers; suggesting more just and practicable arrangements, and praying for an investigation* (London, 1829), pp.42-3.
[36] Henry Burgess, *A Letter to the Right Honourable George Canning* (London, 1826), p.73.
[37] *Circular to Bankers*, 26 March 1830, pp.282 and 285.

no useful purpose.[38] The repeal of 'the unintelligible Bubble Act' had replaced 'mysterious terrors' with something worse - a clear deterrent to the 'cautious man' who might otherwise support useful projects. Some of those projects, such as canals, might involve conflicting rights and need consideration by the authorities but most could be dealt with by a straightforward change in the 'general law of partnership', with no 'special sanction of Parliament or the Crown' needed. Austin thus cut through to a general rule. He urged politicians to disregard the rhetoric that habitually surrounded joint stock companies in an investment boom. The companies' effect was 'to enlarge the capital of the community', and anyone arguing against them must be prepared to argue too against other mechanical efficiencies, in manufacturing and agriculture. If a large company did occasionally result in a monopoly, it was 'a monopoly in favour of the public'.[39]

Austin's article, though unusual, was not an isolated example. Another, in the *Globe*, also criticised 'the imperfection of the law which prevents the formation of partnerships *en commendete* [sic]', and said this concentrated 'the surplus wealth of the country, [so that] instead of being diffused in more humble and less hazardous undertakings, [it is] directed in large masses to vast, showy, and often insubstantial undertakings'.[40] Post-Bubble Act definition had forced the liability issue and raised its profile in the context of trading companies.

Most comment however, focused on banks, with Joplin re-iterating his arguments in 1830. Unlimited liability might be a 'very proper' principle for private partnerships, but not for 'public companies, more especially [not for] banks.'[41] Joint stock investors had little to fear where liability was limited 'practically from the nature of the business' (as with the solidly physical undertakings of canals, bridges or mines) but the individual who embarked upon other joint stock investment without safeguards was likely to be thought 'little short of an idiot.'[42] For banks especially, 'this limitation must be secured by law, or people will be deterred from embarking in them'. Joplin's point was that bankers of all

[38] 'Joint Stock Companies', *Parliamentary History and Review* (London, 1826), pp.709-27, p.711.
[39] Ibid., pp.725-6.
[40] Reprinted from the *Globe* in the *Lancaster Gazette and General Advertiser*, 9 December 1826.
[41] Thomas Joplin, *The Principle of the Personal Liability of the Shareholders in Public Banks Examined* (London, 1830), p.3.
[42] Ibid., pp.4-5.

description resisted calling up any more capital than they thought necessary - too often, not enough. Limited liability focused public attention on paid-up capital, and without this salutary pressure, joint stock banking had imported into its operations one of the chief vices of private banking i.e. a tendency to trade on credit. English joint stock banks were 'joint credit banks' - large versions of private banks, and the associations of country gentlemen who hoped to make easy money without ever being required to put up much capital. Quoting remarks made by Liverpool, Huskisson and Robert Peel in favour of limited liability in 1826, Joplin argued that 'Parliament ought, no doubt, to have been allowed to do what it thought best for the interests of the public without any ... restraint' imposed by the Bank of England.[43] Reform was 'absolutely necessary to the well-being of the country'.[44]

An obvious opportunity to re-visit these points arose when the Bank of England's charter came up for renewal in 1832. A parliamentary Select Committee canvassed opinion from expert banking witnesses. Respected Somerset banker Vincent Stuckey, who had worked with Huskisson at the Treasury before joining the Stuckey family bank, agreed that 'chartered Banks, with a limited responsibility of partners, and a paid up capital, would establish a sound system of banking'. Although he did not believe limited liability essential to joint stock banks' stability, Stuckey thought it 'would hasten' it, because 'it would very much increase the number of respectable persons taking an interest and thus improve their management as well as their credit'.[45] William Browne, a partner in a Bath and Bristol bank that had failed in the 1825 crisis, took the same line in a pamphlet addressed to the Chancellor of the Exchequer, Lord Althorp. This urged the Bank of England to 'license Chartered Banks throughout the country, the *condition of whose charter of limited responsibility* being the *annual publication of their accounts*', and quoted authorities who had supported limited liability in 1826.[46] English joint stock banks had now had several years to do without it however, and other Committee

[43] Ibid., p.11.
[44] Ibid., p.12.
[45] *Report from the Committee of Secrecy on the Bank of England Charter*, PP 1831-2 (722) vi 91.
[46] William Browne, *Banking. Reasons in support of a Bill for rendering country bankers' circulation invariable and convertible into a metallic currency, and for granting licences to Chartered Banks. Most respectfully addressed to the Right Honourable Lord Althorp* (London, August 1832), pp.6-7. Author's emphasis. Copy in Althorp papers, BL Add MS 76396, H28.

witnesses were more equivocal. George Warde Norman (a director of the Bank of England) considered that the *commandite* partnerships in operation in France 'produce on the whole an advantageous effect', even though he did not 'perceive why they should be allowed in banking more than any other business'.[47] Henry Burgess was also asked for his opinion, but as Secretary of the Committee of Country Bankers, was too concerned to score points off joint stock banks (and rescue the reputation of the private banks he thought unfairly maligned in 1825/6) to find anything very positive to say about anything associated with joint stock banks. He raised the thorny issue of liability-enforcement, and argued that under the current state of the law it was 'an extremely difficult thing to recover money from Joint Stock Societies determined to resist payment'. Given that one partner could be made responsible for the obligations of all (with no guarantee that he could then recover money from his fellow partners), any intelligent man would feel morally justified in resisting a claim, and 'would undoubtedly put every legal obstacle to defeat [it]'.[48]

These cavils notwithstanding, the government decided to proceed with reform. Althorp introduced a Parliamentary Bill proposing that partners in joint stock banks which did not issue their own notes should be liable 'only to the amount of their shares'.[49] The exclusion of banks of issue was questioned, but the distinction proved academic when objections led to the proposal being dropped. Burgess had complained at the 'supineness' shown by private bankers in 1825/6, but they had now had time to organise - with Burgess's help - more effective representation. A meeting of the Country Bankers' Association, held in London in June 1833, issued the unanimous resolution that:

> 'the proposition of the Chancellor of the Exchequer to grant charters to incorporated companies, with limited responsibility, ought strenuously to be opposed, because Banks formed on that principle would be unjust in their operation, - would place the names of eminent and influential men as partners in a Bank, for the engagement of which their property is not liable, and thereby create

[47] *Report from the Committee of Secrecy on the Bank of England Charter,* PP, 1831-2 (722) vi 184.
[48] Ibid., 421.
[49] *Hansard,* 3rd series, vol. 18, c184 (31 May 1833).

a false and delusive credit'.[50]

This was followed by similar Memorials from provincial centres. The head of England's oldest country bank wrote to Althorp to warn that 'the indubitable effect of chartering Banking Companies with a limited responsibility must be to annihilate altogether the present establishments in a very few years ... [T]he whole body of Country Bankers are unanimous in that opinion'.[51]

In early July, faced with threatened technical obstructions, Althorp conceded defeat: 'Finding the opposition of the Country Bankers too strong for me on the question of limited liability, my colleagues and I have decided that I must not persevere in this proposition'.[52] Althorp's framing of the issue highlights again an association between limited liability and investment-stimulus - he had been forced to forego the 'encouragement which I intended to hold out for the formation of Joint Stock Banks'. Opposition had also come from joint stock banks themselves, with their representatives also meeting in June to consider their position. This, as reported in the *Circular to Bankers*[53], did not initially include any stated concern with limited liability, but by the time a 'Humble Memorial' was submitted to the Treasury a week later, a substantial section had been added, asserting that:

> 'personal liability is ... the surest safeguard of careful management, which is the essence of banking ... [T]o limit such personal responsibilities in the way proposed by the Right Honourable the Chancellor of the Exchequer ... would be to remove the safeguard of good management.'[54]

The Memorial was signed by Spencer Rogers, who had taken over as chair of the bankers' meeting after the departure of its original chairman (and after formulation of the

[50] 'A General Meeting of Country Bankers, held at Radley's Hotel, New Bridge Street, Blackfriars, London, June 21st, 1833', *Circular to Bankers*, 28 June 1833, pp.395-6.
[51] Joseph B. Sanders, Exeter. Letter dated 11 June 1833. Althorp papers, BL Add MS 76396.
[52] Letter to Governor of the Bank of England, 3 July 1833, as quoted by T.E. Gregory, *The Westminster Bank Through a Century* (London, 1936), p.40.
[53] 21 June 1833, p.389.
[54] *Memorial of Joint Stock Banking Companies in England issuing Notes, praying that their Interests may not be affected by any Legislative enactment on the expiration of the Bank Charter No 11, 896. Registered 21 June 1833*. As reproduced, Gregory, *The Westminster Bank*, p.118, Appendix I.

meeting's original resolutions). Rogers was Manager of the Manchester and Liverpool District bank, which took an assertive public line on unlimited liability. A few months after the Memorial it published a statement that,

> 'feeling that the security which Joint-Stock Banks professedly afford must depend upon the responsibility ... of their Proprietary, and that such security should be distinctly understood by the public, [the Bank has] determined ... to announce by advertisement the names of its shareholders'.[55]

A list of names followed. A prospectus for another Manchester joint stock bank similarly stressed the 'indubitable responsibility' of its members.[56] Althorp meanwhile made it clear that he regarded the abandonment of his proposal as postponed business, not the end of the matter. For now however, his acknowledgement that 'the opposition of the Country Bankers [was] so powerful as to make it almost impossible to carry that part of his measure which related to Joint Stock Banks with limited responsibility' was confirmed in parliament and the press.[57]

Small capitalists

One other aspect of the joint stock banking expansion of the late 1820s and early 1830s had implications for limited liability, in that many small investors became for the first time - technically, at least - exposed to the potential financial risk that unlimited liability joint stock companies could pose. Financial professionals questioned whether these new investors really knew what they were doing. Bill broker Samuel Gurney told an 1832 Select Committee that 'very many will take shares who are ignorant of the responsibility they incur'.[58] (He nevertheless had no doubt that 'the shareholders ought to be responsible, the same as is the case with private Bankers'.) George Farren, an insurance company director, warned in an 1833 pamphlet that such shareholders were deluding

[55] 25 January 1834 advertisement, *Manchester Guardian*, Althorp papers, BL, Add MS 76396.
[56] Prospectus of The Commercial Bank of England, Althorp papers, BL Add MS 76396.
[57] *Morning Chronicle*, 4 July 1833.
[58] *Report from the Committee of Secrecy on the Bank of England Charter*, PP 1831-2, (722) vi 265.

themselves if they believed the assurance of a 'Deed of Settlement or Foundation, that [their] responsibility is to be limited to the amount of [their] shares'. On the contrary, Farren warned colourfully, they might find that 'the very bed on which [they] slept might be seized' as payment for the bank's debts.[59]

Farren was here recycling arguments and copy he had first published in 1824, when life assurance companies were the subject of public debate.[60] His later pamphlet was part of the 1832/3 debate that surrounded the Bank of England charter renewal. It was reviewed by *The Times* (a point Farren made much of) and sold rapidly, prompting publication of further editions. It also prompted published responses from joint stock banks.[61] A notably robust one came from solicitor John Duncan, a partner in a law firm with a roster of joint stock clients. He dismissed Farren's melodramatic picture (where 'all is dark and fearful') as 'great balderdash'.[62] The safeguards included in a Deed of Settlement could effectively limit shareholders' liability, and Farren was merely trying 'to frighten those who do not understand ... the subject'.[63] Such fear-mongering was driven by 'spite' and vested interest, with London private bankers helping the Bank of England maintain its control of currency in return for help in blocking joint stock bank competition in London.[64] Such collusion against the public interest, argued Duncan, could not long prevail.

Duncan's was one of a blizzard of publications which appeared in the early 1830s, asserting the case for joint stock banks. Most were triggered by the Bank of England charter renewal, and the opportunity to argue for the right to establish joint stock banks in London. Though they had an obvious commercial agenda, they did not hesitate to claim moral superiority. Joplin had complained in the 1820s at the tactics used by provincial

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[59] George Farren, *Hints, by Way of Warning, on the Legal, Practical and Mercantile Difficulties attending the Foundation and Management of Joint-Stock Banks* (London, 1833), p.15.
[60] *A Treatise on Life Assurance. With an Appendix, including arguments particularly relating to the formation of joint-stock companies* (London, 1824), pp.33-4.
[61] '[Mr Farren is] a gentleman who verifies to the very letter, the old adage - *caecus iter monstrare vult*!' [A blind man wishes to show the way], The Commercial Bank of England prospectus, Althorp papers, BL Add MS 76396.
[62] [John Duncan] *Dialogue between Mr John Bull, a merchant of London, and Mr George Farren, respecting his 'Hints by Way of Warning', taken in short-hand* (London, 1833), p.8.
[63] Ibid., p.12.
[64] Ibid., p.31.

private bankers, to try and stop a joint stock bank being set up in their neighbourhood, and supporters of mooted London joint stock banks now complained that the same dirty tricks were being used in the capital, and included fear-mongering about unlimited responsibility. As before, the tactic would fail:

> 'Although in the provincial towns it was at first attempted in every shape, and more especially by the bug-bear of responsibility, and legal difficulties, from the number of partners, to terrify people from joining the Joint Stock Banks, the attempt was very unsuccessful; and such will be the case in London.'[65]

Lobbyists for joint stock banks argued that shareholders had nothing to fear from personal liability. Anyone doubting the truth of this should ask Scottish investors 'how much they have suffered in mind or pocket from being such shareholders'.[66] Farren and others had pressed into service 'every conceivable hypothetical calamity'.[67] (Farren himself responded to this with further attacks upon his 'bilious critics'.[68])

As one of the many publications pointed out however, opinion even amongst supporters of joint stock banks 'preponderated' for unlimited liability.[69] The great majority accepted its fact, and argued (inconsistently) that this was both reassuring for the public, and - as Scotland's experience allegedly showed - nothing for investors to worry about in practice. This view was supported by one of the leading names in joint stock banking: J.W. Gilbart, appointed first Manager of London's first joint stock bank, the London and Westminster, in late 1833. In a banking guide first published in 1827, he had pointed to Scottish example as the one to follow. Second in his list of Scottish solidity-promoting provisions (after the lack of a limit on the number of partners) was the fact that '[t]he

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[65] *Considerations on Joint Stock Banking: chiefly with reference to the situation and liabilities of shareholders* (London, 1833), p.7.
[66] Ibid., p.8.
[67] 'Civis', *A Few Facts and Reasons in Favour of Joint Stock Banks; in a reply to the pamphlet of George Farren, Esq, Resident Director of the Asylum Assurance Company, on the alleged legal, practical, and commercial difficulties attending the foundation and management of those establishments*, (London, 1833), p.10.
[68] George Farren, *Joint Stock banks: legal decisions affecting the security of, and remedies against, such associations* (London, 1840), p.3 .
[69] *A Proposed Joint Stock Bank Law, with observations thereon*, (Berwick, 1839), p.28.

private fortune of every partner is answerable for the debts of the bank'.[70]

In this discouraging climate, disciples of limited liability held to their convictions. They faced the challenge however, that when joint stock businesses were successful there was little obvious need for its insurance cover. Vincent Stuckey continued to argue in favour of limited liability but admitted that,

> 'I am sure I ought to feel very indifferent on the subject, when I state that, although the law makes the property of myself and every one of my partners answerable for the Bank debts ... it appears to me next to impossible that this private property can ever be called on'.[71]

Stuckey's confidence rested on sound financial management. The most commonly-cited source of shareholder-reassurance was however, the combination of two clauses now routinely included in joint stock bank Deeds of Settlement i.e. that any liability would be spread proportionately amongst shareholders (rather than fall heavily upon a single individual) and that in the event of a significant portion of a bank's capital being lost (usually specified as a quarter or a third), the bank would be wound up.[72] This, it was argued, made the risk of personal financial liability in a large bank illusory. In illustration of just how illusory, several pamphlets claimed that directors of the Bank of England had the same potential responsibility in law as ordinary joint stock bank proprietors (despite the protection popularly attributed to the Bank charter) and were probably serenely unaware of the fact.[73] One even claimed that the extensive proprietorship of a joint stock bank could provide *more* security than the Bank of

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[70] James William Gilbart, *A Practical Treatise on Banking* (4th edition, London, 1836), p.129. Author's emphasis.

[71] Vincent Stuckey, *Thoughts on the Improvement of the System of Country Banking. In a Letter to Lord Viscount Althorp* (London, 1836), p.37.

[72] Mark Freeman, Robin Pearson and James Taylor stress the significance of dissolution clauses, found in some gas, insurance, manufacturing and shipping deeds as well as banking, *Shareholder Democracies: Corporate Governance in Britain and Ireland before 1850* (London, 2012), pp.200-5.

[73] E.g. *Considerations on joint-stock banking*, p.9; *The safety and advantages of joint-stock banking, by an accountant* (London, 1833), p.10. See too, *Report from the Secret Committee on Joint-Stock Banks*, PP 1837 (531) xiv 251. Leonard Hein says that the Bank of England charter limited the Bank's debts to £1.2m and failure to observe that limit made shareholders individually liable for three times the amount borrowed, L.W. Hein, *The British Companies Acts and the Practice of Accountancy, 1844-1962* (New York, 1978), p.124.

England[74] though another dismissed any comparison as 'unfair and delusive'.[75] Most agreed however, that unlimited liability *added* reassurance for the public, and that,'[b]esides, experience proves, that the proprietary has always improved in wealth and influence, as the banks have acquired strength and stability.'[76] Limited liability would, according to this line of argument, become less of an issue with time.

All of the above represents professional comment, and it is difficult to gauge how much investor concern lay behind the claims and counter-claims. Henry Burgess remarked in 1833 that the details of investor-liability litigation

> 'come seldom before the public in such a way as to cause reflection and deliberate examination, but they are known familiarly in all their details by lawyers, and hence arises that caution and circumspection respecting Joint-Stock co-partnerships in which the rest of the community does not participate.'

He also argued however, that 'men of knowledge and experience in such affairs are beginning to perceive the danger', and that 'such questions are much more likely to be contested in London than in provincial towns'.[77]

This may well have been the case, but even in London, published contention still came from competing financial professionals (which included Duncan and Farren), sniping at each other. Select Committee witnesses who were asked about the views of investors said that these were too focused on the possibility of making money to worry much about liability, happy to leave legal detail to the professionals. Paul James, a Birmingham banker who (like Stuckey) had merged his own private bank into a joint stock bank, told an 1836 Select Committee that investors were 'generally influenced by their views of the state of the concern, rather than by the degree of liability'. Unlimited liability did 'not prevent persons embarking in joint stock banks properly conducted' and, given the

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[74] *Local issues: joint stock banks and Bank of England notes, &c, contrasted by A Merchant* (London 1834) pp.14-15.
[75] 'Vindex', *Letter to William Clay Esq., MP, containing strictures on his late pamphlet, on the subject of joint stock banks, with remarks on his favourite theories* (London, 1836), p.11.
[76] [W.S. Cassels], *Remarks on the formation and working of Banks called joint stock: with observations on the policy and conduct of the Bank of England towards these establishments* (London, 1836), p.9.
[77] *Circular to Bankers*, 13 September 1833, p.68.

already-strong investor interest, it was unnecessary to provide the 'additional encouragement' of limited liability.[78] Investors were perhaps not always as indifferent as this implies. Indications that they could be scared by having the risk brought to their attention are found in the claims and counter-claims that surrounded the 1833 establishment of the London and Westminster Bank.

The London and Westminster was London's first joint stock bank, with origins mired in legal controversy. By mid-1833, re-negotiation of the Bank of England charter was well-advanced, when Richard Roy, solicitor for a group of Scottish merchants, suggested that its wording had never explicitly prohibited joint stock banks within London. Roy's clients were the group who went on to form the London and Westminster, and their argument, when now put to government lawyers, gave pause for thought. According to Roy, a prohibition against joint stock banks within London would constitute grant of a new Bank privilege. Lord Althorp reported to the Bank of England his unwillingness now to include such a clause, given the government's desire to restrict, not increase, privilege. This unwelcome - and unexpected - news triggered loud opposition beyond the Bank and its lawyers. As was pointed out in Parliament by heavyweight sympathisers including the Duke of Wellington, the strongest argument against the government's interpretation, was the fact that no one had ever previously thought it worthwhile to draw up a formal application for a London joint stock bank. Now that the government had appeared to open a window of opportunity, one had been drawn up within 48 hours.

Whatever the legalities and politics, the government, once committed, was willing to carry its point. Althorp had conceded defeat two months before to the private bankers who put technical obstacles in his way, but now faced down opposition from the Bank of England. The prospective London and Westminster Bank was allowed to proceed, and formed a committee, which was immediately pulled into controversy and a public relations battle. The proposed new bank faced a slew of technical difficulties, but limited liability produced most public discussion, perhaps because it was the issue most readily comprehensible by laymen. The bank's committee went to considerable lengths to reassure potential shareholders about their personal risk, publishing case-studies of

[78] *Report from the Secret Committee on Joint-Stock Banks*, PP 1836 (591) ix 48.

existing joint stock companies to show that claims were unlikely to materialise in practice. T. E. Gregory's 1936 history of *The Westminster Bank through a Centur*y reproduces a 4 September 1833 minute from the Bank's archive, which instructs that 'the paper drawn up by [the Bank's solicitors] Messrs Blunt, Roy, Blunt and Duncan, [and] read to the Committee, regarding the liability of shareholders, etc, be printed and circulated with the [Bank's] Prospectus'.[79] Duncan is the probable author of this paper, which was reproduced in the following week's *Circular to Bankers*.[80] Henry Burgess was unconvinced by the arguments of 'some legal men of great sagacity and knowledge connected with the new London and Westminster Bank' and continued to complain that anyone associating with such a risky undertaking was under a 'delusion'.[81] Financier David Salomons joining the bank's committee in December 1833 helped silence such doubters, but the bank persisted thereafter with its assertive stance on shareholder liability. Statements stressed practicality over the letter of the law:

> '[W]hen it is considered that [a joint stock] Bank has a large subscribed capital, of which a great portion must necessarily be ... paid up - that the number of proprietors amounts to several hundreds - that a great proportion of these are persons of wealth, and consequence - the real practical effect of [statute] or of the common law, and the deed [of settlement] taken together is, that the individual responsibility of each Proprietor is ... strictly limited in *extent* to his number of shares, and in *duration* to the period of his continuing a partner'.

Shareholders seem to have accepted the reassurance 'that the partnership risk in a Joint Stock Company is indeed a blot patent enough in theory, but seldom or never hit in practice'.[82] As long as times were good, and shareholder liability not 'hit in practice', the issue might be left to lie.

As in 1825, discussion also extended beyond banking. The July 1830 French revolution prompted interest in *commandite* in the *Morning Post*'s Paris correspondent, who

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[79] T. E. Gregory, *The Westminster Bank Through a Century*, vol. I (London, 1936), p.86.
[80] 13 September 1833, p65. Also reproduced by Gregory, *The Westminster Bank*, vol. I, pp.86-90.
[81] *Circular to Bankers*, 13 September 1833, p.65 and 6 September 1833, p.58.
[82] *The London and Westminster Bank: hints by way of encouraging the formation of a joint stock banking company in London* (London, 1834), p.42.

reported on the 'great variety of establishments on this system throughout France, [which are] productive of effects of the most beneficial and diffusive kind'. If these had not so far appeared in England, then this

> 'may not ungenerously be attributed to the egotism, to the grasping and exclusive nature of the large capitals and capitalists which represent themselves in the House of Commons, and to whose absorbing capacities such a law would not be the most welcome'.[83]

This was a portent of what was to come eighteen years later, with another French revolution. Barrister Arthur Symonds also raised social questions in an 1834 article in the *Westminster Review*. Declaring that 'this is the age of small profits', he argued that there should be no reason 'why the law should prevent inferior capitalists from uniting to obtain the same advantages [as the great capitalist] as far as they can'.[84] This would offer hope to those currently without it. The mathematician Charles Babbage took a similar line.[85] Most comment was however, in the context of banks, and - with the example of Scotland to hand - inclined to the conservative. *The Times* may have acknowledged the justice of Farren's warnings, but it also thought anyone that needed them a fool. Underlying its argument was an assumption that it was possible for - and incumbent upon - a company member to monitor other company members' activities: 'if as a *sleeping partner* he chooses to be robbed, the public ought not to be robbed because he chooses to *sleep*'.[86] So far as introducing limited liability legislation in England went, *The Times* was 'persuaded that no such bill ever will be introduced'.

That was said in 1833. By 1836, *The Times* was prepared to acknowledge the justice of the sort of social argument deployed by the *Westminster*, and even echoed its language in regretting the tendency of credit 'to wither and impoverish the small trader'. It stopped short however, of agreeing that limited liability could provide an answer: 'No, it is to the wealthy shareholder that the public looks for security ... [Unlimited liability] is the only

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[83] 'Letter from our Correspondent at Paris', *Morning Post*, 8 October 1830.
[84] 'Law of Partnership', *Westminster Review*, January-April 1834, no. xxxix, pp.58-73, pp.55 and 61.
[85] *On the Economy of Machinery and Manufactures* (London, 1832).
[86] 27 September 1833, p.2. *The Times*' emphasis.

law on such a matter which is at once intelligible, just, and safe.'[87]

This was to prove the height of support for limited liability in the 1830s. By the time another banking Select Committee met in 1836, investor interest in joint stock banks was at an all-time high, and opinion had solidified against change. Even Stuckey admitted that with 'men of very large property' already supporting the banks, the need to reassure them with protection against personal liability had lessened.[88] He admitted too, in a pamphlet, that there was 'evidently a great disinclination to pass such a law in England'.[89] William Clay had called for this latest Committee, adamant that limited liability was of overwhelming importance, but few of those summoned to give evidence agreed.[90] Stuckey re-iterated his earlier arguments, and one other witness recommended the 'middle course' of *commandite*, but opinion was otherwise solidly sceptical.[91] Burgess chipped in with his take on an anti-limited liability article in the *Edinburgh Review*, which he correctly attributed to political economist John McCulloch. McCulloch, said Burgess, 'has much communication with the President of the Board of Trade ... [and] has probably undertaken the task at [his] instance, for the purpose of influencing public opinion on this important subject'. Digs about string-pulling apart however, Burgess agreed with McCulloch - at least as far as banks were concerned - that 'it should be our object not to lessen, but rather to increase responsibility'.[92]

Further banking Select Committees came and went in 1837, 1840 and 1841, with only occasional mention of limited liability, mostly by Clay. As will be examined in chapter 6, this was partly owing to the failure of American chartered banks, which cast a shadow over debate from 1837. Public interest ebbed and flowed too with the investment climate. In the immediate aftermath of the 1825 crisis, English banking had appeared to be in a situation analogous to that of France or Ireland i.e. one in which a stimulus to investment might be needed. In investment booms, and in the perceived solidity of Scottish banks however, individuals found reasons to resist change.

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[87] 14 May 1836, p.4.
[88] *Report from the Secret Committee on Joint Stock Banks*, PP 1836 (591) ix.88.
[89] Stuckey, *Thoughts on the Improvement of the System of Country Banking*, p.37.
[90] *Hansard*, 3rd series, vol. 33, c854 (12 May 1836).
[91] *Report from the Secret Committee on Joint Stock Banks*, PP 1836 (591) ix 127.
[92] [J. R. McCulloch], 'Joint-Stock Banks and Companies', *Edinburgh Review*, no 63, July 1836, pp.419-41,

Also working against change was the fact that the public nerve had been badly shaken in 1825. Symonds' 1834 piece claimed that the public had ever since 'stamped all large associations as bubbles and delusions'.[93] Bishop Carleton Hunt, an American scholar who made a study of this post-1825 period in the 1930s, notes public caution matched by the Board of Trade, which made remarkably little use of its discretion to grant limited liability:

> '[b]etween 1825 and 1834, out of a total of some thirty applications, partial [corporate] privileges appear to have been granted in only half a dozen cases and approval of full limited liability was extended to only one, the Nova Scotia Mining Company (1831)'.[94]

We should also note that, although limited liability was held to be incontestably obtainable only via incorporation, it was not a *necessary* feature of incorporation. Incorporation could be granted without it. Mark Freeman, Robin Pearson and James Taylor judge, from their analysis of company records, that 'it was probably not until the 1840s that limited liability could be identified as the chief distinguishing feature of the incorporated company.'[95] Outside incorporation, limited liability claims were constrained. Companies' clauses might limit liability in agreements with named individuals (the practice now routinely followed by insurance companies) but the law held them, as Lord Brougham confirmed in an 1832 case, 'wholly nugatory ... as between the company and strangers'.[96]

In the mid-1830s then, public discussion of liability-limitation in England was largely confined to the capital-centric activities of insurance and banking. For the issue to be perceived as a more general one, it would have to be discussed in a context less easily rationalised as a special case. An opportunity arose in the next speculative boom, which took off in the mid-1830s.

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p.432; quoted, *Circular to Bankers*, 5 August 1836, pp.17-8.
[93] 'Law of Partnership', *Westminster Review*, vol. 20, no xxxix (January-April 1834), pp.58-73, p.62.
[94] Hunt, 'The Joint-stock Company in England', p.334.
[95] Freeman, Pearson and Taylor, *Shareholder Democracies*, p.184.
[96] Walburn *v* Ingilby, *The English Reports - Chancery*, vol. 39 (London, 1904) p.609.

Chapter 3: *Public discussion, 1834-44*

Investment expansion

The mid-1830s boom was distinguished by a wider variety of companies than seen in the mid-1820s. Freeman, Pearson and Taylor have provided an analysis of these, split by industry-sector and by company-type[1] which shows that although 'entrepreneurs were seeking limited liability with unprecedented regularity'[2] it was not especially common, even amongst incorporated companies ('of eighty-six corporations in our sample, only twenty-four (27.9 percent) employed a limited-liability clause'[3]). Of individual sectors, Freeman *et al* see the picture becoming more complex in shipping (with mail contracts now a route to corporate charters) and mining (where companies exploited long-standing liability-limitation traditions). Accessibility of means was also a factor. Attempts to limit liability were commonest in insurance companies, which had ready means to hand in their agreements with policy-holders - about 70% of unincorporated insurance companies 'tried to limit shareholder liability to the extent of the unpaid portion of their shares'.[4] At the other end of the spectrum, they were rarest in banking.

Qualitative sampling of company records confirms these trends. The Manchester Marine Assurance Company prospectus of 1835 was careful to include a resolution 'that no shareholder shall be liable or subject to pay a larger amount than the amount of the shares held by him; and that this stipulation be a component part of every contract or obligation which the Directors shall enter into, on behalf of the Institution'.[5] Businesses unable to tie matters down through contracts had to rely on confidently expressed practical assurances - as in, 'no debt can be contracted, but ... everything must be bought at cash prices [and] you will perceive in this principle your guarantee against all liability beyond

[1] 'Limited Liability and Company Dissolution', in *Shareholder Democracies.*
[2] Ibid., p.184.
[3] Ibid., p.182. The proportion was rather higher, 37.5 percent, for new companies set up 1830-4.
[4] Ibid., p.192.
[5] No. 63, 'A collection of prospectuses of public companies and similar matter, for the most part formed by Thomas Glover of Manchester (1830?-62?)', British Library [hereafter, 'BL collection'].

the subscription of the shares'.[6] This assurance was offered by a mining company, grounded in physical solidity, but newer-fangled service companies took the same approach. A company offering translation services claimed that since it did not plan to deal in credit 'no liabilities can in any way arise'.[7] The Railway Carriage Building Company similarly undertook to 'abide by the principle of never [incurring] outstanding pecuniary liabilities'.[8] The commonest option was to refer to protection promised by 'deed of settlement'.[9]

Investment booms also habitually brought a round of incorporation Bills presented to Parliament. One such Bill was instigated by the Dublin Steam Packet Company, which first submitted an application for corporate privileges, including limited liability, in 1833. The company's Irish credentials meant that its application was then relatively uncontroversial. As Irish nationalist MP Daniel O'Connell pointed out too, 'there was an Irish statute which permitted [limited liability] in all companies, the object of which was not retail trade'. (He also claimed that 'many practical men regretted that it was not applicable to England also'.[10]) When the company applied for repeat privileges in 1836 however, in a bid to help raise more capital, opposition was more forceful. MPs questioned why other shipping companies and Bills had received less favourable treatment. The Dublin company did not, after all, limit its operations to Ireland. Attorney General Sir John Campbell (MP for a Scottish constituency with acknowledged shipping interests) argued that the company should either confine its activities to Ireland, or 'let them at once propose one general law upon the subject'.[11] Sir Henry Parnell admitted he differed from Campbell, and thought 'the principle of limited liability ... a bad one, ... attended with bad effects both in Ireland and France'.[12]

Board of Trade President Charles Poulett Thompson felt compelled to make a statement.

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[6] *Report of the Directors of Cornwall Great United Mines*, 29 September 1836, No. 11, BL collection.
[7] The London Polyglot Legal and Commercial Translating Institution and Bureau des Etrangers, 1845, p.2, No. 58, BL collection.
[8] Railway Carriage Building Company, 1845, No. 80, BL collection.
[9] The 'New Liverpool' British and Foreign Trading Company, prospectus issued May 1836, p2, No. 47, BL collection.
[10] *Hansard*, 3rd series, vol. 18, c1292 (28 June 1833).
[11] *Hansard*, 3rd series, vol. 32, c1187 (19 April 1836).
[12] Ibid., c1189.

Although he 'did not desire to have it understood that he had come to any decision on that great question of limited responsibility' he acknowledged the 'great variety of opinion' expressed in the House during the recent passage of eight private company Bills that had requested it (only two had been submitted which did not) and agreed action was needed. He had accordingly consulted 'a high legal authority', with a view to 'submitting some measure ... during the present Session or in the next ... [which would] put an end to the unfortunate state of the law as it now stood, by the introduction of a Bill for deciding the question generally.' Fellow MP John Bowring, closely associated with the *Westminster Review* and recent government investigations into overseas financial practices, applauded the initiative. He hoped 'the time [would] soon arrive when the principle of a limited responsibility will be recognised as the most judicious one'.[13]

Outside Parliament, Henry Burgess was also taking a close interest in '[t]he observations upon the general principle, which we regard as most important'. Although firmly against limited liability for banking and small enterprises, where he thought it conducive of 'waste, negligence and corruption', he was equally firmly in favour of it 'for undertakings too great, and too full of risk, for individual adventure'.[14] Significantly, he saw these objects most actively pursued by the United States.

Poulett Thompson's statement referred to his instigation of an inquiry led by barrister Henry Bellenden Ker, which solicited views on partnership reform between March and May 1836. Further views were solicited at a 2 June session of the Political Economy Club, to which Ker was invited as a guest.[15] His inquiry published its *Report on the Law of Partnership* in July of the following year. It rejected any extension of limited liability to partnerships, despite the fact that this had attracted eminent support. Political economists Nassau Senior and George Norman, Lord Ashburton (a wealthy member of the merchant Baring family, and former Chancellor of the Exchequer) and his son Francis Baring (joint secretary to the Treasury) had all gone on record in support of some form of limited liability. Baring had gone so far as to draft 'the heads of a proposed Bill' for

[13] Ibid., c1194.
[14] *Circular to Bankers*, 22 April 1836, pp.313-4.
[15] *Political Economy Club, Minutes of Proceedings, 1821-1882. Roll of Members and Questions Discussed vol. IV* (London, 1882), p.130. The topic was tabled by Jones Loyd (later Lord Overstone).

introducing limited partnerships, included in the Report as an Appendix. The support of Ashburton was a notable coup, since he was credited with the authority of a successful capitalist and practical, international experience of limited liability's workings. His endorsement would be frequently cited in future discussions. Most of the politicians, merchants and lawyers who now gave their opinion were however, *not* in favour of limited liability. As Ker summarised matters: 'by far the greater number of those who have been examined are decidedly unfavourable to its adoption under any circumstances whatever'.[16] Glasgow cotton merchant, Kirkman Finlay declared flatly that 'In my opinion there is no sound or safe system that can admit of limited liability'.[17] He did not have argument all his own way, and Ker also reported - in a formulation that rapidly becomes familiar to anyone who reads nineteenth century reports of limited liability discussions - that 'opinions … on this difficult and important question are at variance'.[18] Solicitor John Coles had '[no] doubt that beneficial results would arise from the establishment of such partnerships in England, under proper regulations'.[19] His was an isolated voice however, and even the cautiously optimistic Norman concluded that 'the reasons which induce me to think that limited partnerships would be useful in this country, appear to me to apply more strongly to the colonies'.[20]

Cooke, considering the outcome of this inquiry in 1950, thought that part of the problem was that Poulett Thomson had picked the wrong man for the job: 'As a common law man Ker could not see the equitable company other than as an unwieldy form of partnership.'[21] Because of this, he argued, the 1837 Report failed to offer any advance on the unincorporated company's deed of settlement, already available via equity and now recognised in statute law by the 1834 Companies Act. The result was a Report which reflected Ker's appreciation of 'the disability at common law of the unincorporated joint stock company', followed by a Bill which made 'a further attempt at the problem on the old line of approach' (i.e. common law grants of incorporation).[22]

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[16] *Report on the Law of Partnership* (London, 1837) p.22.
[17] Ibid., p.50.
[18] Ibid., p.22.
[19] Ibid., p.81.
[20] Ibid., p.36.
[21] *Corporation, Trust and Company*, pp.125 and 127.
[22] Ibid., pp.125 and 128-9.

For any supporter of limited liability, this was discouraging enough, but further obstacles were to come. In May 1837, two months before the *Report* was published, another financial crisis erupted, this time involving American merchants and banks. The years 1834-6 had seen the establishment of an unprecedented number of American chartered banks (with limited liability) - a fact of which English bankers and journalists were well aware - and their shocking and wholesale failure now reinforced distrust. The result of Ker's recommendations, the 1837 Letters Patent Bill, followed quickly on the crisis. When presented to parliament in June 1837 it acknowledged judicial rulings that recognised share-transfer and confirmed that the liability of a shareholder might now cease upon such transfer. It also confirmed that the corporate privileges granted by Letters Patent might in principle include limited liability, and explicitly extended that prerogative to trading companies, although it did little to make the officially-favoured, common law route of incorporation any easier or attractive in cost-terms. This was still sufficient to agitate Alexander Graham, a Glasgow whisky merchant, who urged his local Chamber of Commerce to take notice of the important principle he saw now conceded i.e. that limited liability might be extended to 'the ordinary branches of manufactures and commerce'.[23] Graham wrote to the Manchester Chamber to enlist their support and his Glasgow ally, Kirkman Finlay, 'waited personally on the [Manchester] Board' to follow up on Graham's letter and objections he had himself earlier made to Ker's inquiry.[24] The Manchester Chamber resolved to ask local MPs 'to use every exertion to prevent the passing of the Bill'. Although this proved fruitless, their fears went unrealised for the present. Administered by a conservative Board and offering no practical advance on facilities already available, the 1837 Letters Patent Act proved largely a dead duck.[25]

This effectively left matters much as before. There was nevertheless now a solid body of financially-informed opinion, convinced that the law must be reformed in order to take account of large joint stock companies. Burgess saw a moral in the much-publicised tribulations of the (unlimited liability) British Iron Company, attributing its directors' pursuit of expensive litigation to the 'apprehension of the consequences of personal

[23] Alexander Graham, *The Impolicy of Limitations of the Responsibility of Partnership in Manufactures and Commerce, as proposed to be introduced into the law of the United Kingdom* (Glasgow, 1838), p.4.
[24] 29 March 1837, Proceedings of Manchester Chamber of Commerce, M8/2/3, f459.

responsibility, weighing upon [their] minds'.[26] Private Bills had not become any less contentious either. When in May 1838, yet another was introduced in Parliament (to incorporate the National Loan Fund Assurance Company) objections were raised to the company acquiring 'powers others do not have'. Although this particular company had agreed not to 'do away with their own individual responsibility', Poulett Thomson objected to other 'wide powers' sought, and asked that the Bill's further progress be delayed to allow time for a general Bill to be drawn up.[27]

Poulett Thomson duly tabled a general Trading Companies Bill, which sought to allow limited liability (still subject to official authorisation) for companies set up by as few as three or four people.[28] This passed the Commons but was defeated by twelve votes in the Lords after Brougham attacked its limited liability provision as 'contrary to the whole genius and spirit of the English law'.[29] Under guise of an unconvincing disclaimer, the Whig *Morning Chronicle* then launched a character attack on Brougham, and his 'carelessness of the public interest in the gratification of a spiteful nature'.[30] Brougham had, the paper said, acted from malicious resentment at an attempt to rectify his own poorly-framed 1837 Act. As a result,

> 'Hundreds of thousands of pounds of capital, various useful undertakings ... have been suspended ... [T]he merchants and traders of this country may well ... regret the party and personal feelings by which their interests are sacrificed.'

Henry Burgess agreed in condemning Brougham. He had 'altogether mistaken and misrepresented the object of the Bill', designed not to introduce the small-scale *commandite* partnerships currently proliferating in France[31], but 'to give encouragement and facility for the formation of companies for great enterprises, where the capital

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[25] 7 Wm IV & 1 Vict c73.
[26] *Circular to Bankers*, 6 April 1838, pp.315-6.
[27] House of Commons, 31 May 1838, as reported in *The Mirror of Parliament*, vol. 6, (London,1839) pp.4483-4.
[28] 1837-38 (572). A bill to amend an act of the first year of Her Present Majesty, for better enabling Her Majesty to confer certain powers and immunities on trading and other companies. 9 July 1838. 2 Vict.
[29] *Hansard*, 3rd series, vol. 44 c840 (31 July 1838).
[30] *Morning Chronicle*, 15 August 1838.
[31] The *Journal of the Statistical Society of London* noted that the amount of capital invested in French *en commandite* societies had doubled between March and June, 'Joint Stock Companies in France', vol. 1, no.

required is too large for individual contribution'.[32] The *Circular* approved of Poulett Thomson's declared intention to re-introduce a general bill in the following parliamentary session.

Only a general bill might have offset accusations of special treatment, but it is clear many had trouble seeing limited liability as suitable for general use. Brougham later admitted that he had at first been favourably influenced by the pro-*commandite* arguments of 'my late friend, lord Ashburton' but changed his mind on reading the detail of Ker's *Report* and concluding that safeguards used by the French would be inadequate in England's assertive commercial climate. Fifteen years on, when recalling his doubts, he was still holding to the belief that *commandite* 'appears better adapted to a community which has [more] moderate mercantile capital and concerns than ours'.[33] Looking down on the French was relatively easy in this context, and, in the wake of the May 1837 financial crisis, looking down on the Americans was easy too. This international dimension was an important part of debate, and the historiography also includes comment from British colonies, where greater latitude was in operation. Walter Minchinton quotes the *Sydney Herald* attacking (as 'cheatery' and a 'new *London* piece of banking chicanery') the limited liability proposed for government-chartered banks in New South Wales in 1834[34] and Hunt reports that double liability was the Board of Trade's standard for colonial bank charters.[35]

Domestically however, very little changed in regulatory terms. In trying to account for this, it has to be said that, the many doubters apart, limited liability was not lucky in the personnel it found to support it at this time. Always a contentious issue, it required a degree of commitment which palpably failed to materialise. Huskisson, who might have had the will and political credibility to push through change, died in 1830, and so did not live to see the Bank of England Charter-renewal that he had looked forward to in 1826. Peel blew hot and cold on limited liability for banks. Supportive in 1826, he later

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2, June 1838, p.85.

[32] *Circular to Bankers*, 17 August 1832, pp.50-52.

[33] *Report from the Select Committee on the Law of Partnership*, PP 1851 (509) xviii 170.

[34] 'Chartered Companies and Limited Liability', p.148.

[35] Hunt, 'The Joint-stock Company in England', p.334, n.13.

changed his stance.[36] Althorp, more consistently supportive, was faced with the tricky context of banks while in office, and the lawyers and Board of Trade officials who filled the public gap thereafter were hardly of the stuff to make a more determined effort - even had they wanted to. Ker, the Board of Trade's conveyancing counsel and charter specialist, comes across in his own writings and the estimation of others as a clever but evasive man, who found it easier to criticise than take responsibility for recommendations of his own. Whether for reasons of constitution or circumstance, he was unable to commit to a clear line, much less carry it through.[37] By his own admission, the 'imperfections of the enactments' that followed his 1837 Report proved 'a subject of deep mortification', and he has left behind a detailed picture of failure to contend with lawyers, bureaucrats and politicians.[38] Sir John Campbell, who was (unlike Ker) an equity lawyer and Attorney General for several months during 1834 and then from 1835-41, showed willingness to consider a general limited liability rule on more than one occasion, but took no sort of lead. The only bill on corporate privilege that he brought in to parliament during his time in office, the 1834 Trading Companies Bill, focused on suing rights. Ker condemned the resultant Act as 'utterly useless', though hardly seemed happier with his own 1837 replacement.[39] Poulett Thomson made it clear he thought a general rule needed, but failed in attempts to promote one. Short on effective sponsorship, limited liability failed to sustain momentum, and the discussions of the second half of the 1830s proved overwhelmingly conservative in their conclusions. Legislators had considered introducing limited liability for joint stock banks and a standardised rule for trading companies, but done neither. Some things had however, changed, while politicians were procrastinating. As these would later prove important, we need to consider what they were.

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[36] see p.71.

[37] See the account given in *The Law of Partnership and the Investment of Savings of the Poor, being the evidence given by H Bellenden Ker, before the committee appointed to consider the subject of affording facilities to the investments of the savings of the middle and working classes. With prefatory remarks, in a letter to J.M. Ludlow, Esq.* (London, 1851).

[38] Ibid., pp.19-22.

Board of Trade discretion

One significant theme to emerge during the 1830s and early 1840s was criticism of the role of the Board of Trade. The Board's attitude to limited liability was consistently conservative, and earned it a reputation amongst joint stock supporters as unsupportive of enterprise.

The most important Board official of the period, with respect to limited liability, was Charles Poulett Thomson, Vice-president from 1830 and a devotee of Adam Smith. Sir Denis Le Marchant, who knew Poulett Thomson well as a Board colleague, said of him that he was 'thoroughly conversant with business', but if so it seems to have been more in the theory than the practice.[40] Even Sir Denis admitted that there was 'often an air of *doctrine*' in Poulett Thomson's reasoning.[41] When promoted to President of the Board in June 1834, he sent a long, didactic letter on limited liability to Sir John Campbell, Attorney-General. This had more to say about problems than potential solutions, the most fundamental being that the Board had found its 1825-bequeathed powers un-workable. Structural differences between private partnerships and joint stock companies (enumerated at length) meant that practices routine in the first context were 'impracticable' in the other.

The letter proceeded on the basis that shareholders would enjoy limited liability as an automatic consequence of incorporation, were it not for the 1825 Bubble Act Repeal Act. Board officials had searched departmental records for legal reasoning for the 1825 turn, but failed to find any. They had therefore concluded it was triggered simply by a desire to 'place some check upon the ruinous spirit of speculation' then in operation and secure a 'pledge of their Sincerity' from company promoters. The result was a headline decree with no practical follow-through, and a situation where to engage in unlimited liability companies meant 'the highest impeachment of any Man's Prudence and sober judgment'. Such companies attracted just the sort of people 'into whose hands it is peculiarly necessary with a view to the interest of Society at large that Commercial Undertakings of

[39] Ibid, pp.19-20.
[40] Sir Denis Le Marchant, *Memoir of John Charles, Viscount Althorp, Third Earl Spencer* (London, 1876), p.237.

magnitude should not be committed'. The Board therefore believed it necessary to introduce some 'considerable relaxation' in the 1825 rule to encourage 'trustworthy persons' to invest, but seemed uncertain as to the form this might take, beyond use of Letters Patent and simplified powers of suing. The least problematic option seemed double liability, backed by personal liability continuing beyond the date of a share-transfer (ostensibly to discourage stock-jobbing, in which a launch share price might be pushed by a small group, who then sold out at a premium and left a wider group of shareholders facing fallout from a burst bubble).[42]

The upshot of this letter, and Campbell's response, was the 1834 Companies Act. This allowed the Board of Trade to grant corporate privileges by Letters Patent as well as charter.[43] It thus recognised the role of unincorporated joint stock companies and gave a power to grant limited liability, in theory, even to ordinary partnerships. Perrott highlights this as an exceptional concession, but in practice it made negligible difference, because of the Board's continuing conservative approach to grants. The Act also required, for the first time, that shareholders register their interests publicly. That marked the official end of shareholder anonymity, and so made shareholder liability more of an issue.

Board conservatism was reinforced in 1837, upon further legislation, when a November 1834 Board Minute was made publicly available for general guidance.[44] This confirmed an overriding desire not to 'interfere with the course of private speculation and individual enterprise carried on under the ordinary partnership laws' and made grants of corporate privilege subordinate to the requirements of partnerships.[45] Limited liability should be granted only very exceptionally.

The product of this philosophy was a system which satisfied few. One criticism was that it fostered cronyism - an accusation which dated from the first confirmation of Board

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[41] Ibid., footnote to p.237.
[42] TNA, BT 3/25, 149-60, letter of 7 June 1834 to His Majesty's Attorney General.
[43] 4&5 Wm IV, c94.
[44] TNA, BT 5/42, Minute of 4 November 1834, 259-61. Published as *Copy of the Minute of the Lords of the Committee of Privy Council for Trade, dated 4th November 1834, on granting letters patent* , PP 1837 (337) xxxix.
[45] *Copy of the Minute ...on granting letters patent*, PP 1837 (337) xxxix 1.

involvement, in 1825. Scottish lawyer Alexander Mundell called then for a transparently-understood general rule: 'It is difficult to see why a commercial country like this should not have the benefit of competition by large as well as small companies equally as by individuals'.[46] Crown charters were an invitation to monopoly and suitable only for nations in their infancy.[47] Another lawyer made the same points against the Board in the context of the 1834 legislation:

> 'whereas in Parliament all must be open and straightforward ... yet before the [King's] Ministers [at the Board] there [will] be no open application - no means of opposition - no fair fighting; but backdoor influence and private friendship'.[48]

Like Mundell, he favoured a general Act, with the Board merely carrying out 'executorial' powers. Board officials themselves acknowledged that their powers of discretion made them uneasy, but failed to introduce the standardised procedures which might have offset complaints. (The 1837 Letters Patent Act did set out standardised requirements for some corporate privileges but these did not cover limited liability.) This left them open to criticism from business professionals inclined to question their fitness for their discriminatory task. In 1832, the *Circular to Bankers* termed the Board

> 'an establishment more for the purpose of receiving deputations from mercantile bodies, and devising the best means of dismissing the deputies, with courtesy, having, first, bewildered them with official mystifications ... than for any efficient purpose connected with the promotion of wealth'.[49]

That view was shared by Liverpool solicitor Matthew Lowndes who went into print in 1840 to protest. Lowndes believed that 'what I consider Mr Poulett Thomson's prejudice against Joint Stock companies' still held sway at the Board, after Poulett Thomson's departure for new challenges, and urged the straightforward registration of 'every trading company, consisting of 10 members or upwards … instead of the President of the Board

[46] Alexander Mundell, *The Influence of Interest and Prejudice upon Proceedings in Parliament* (London, 1825), p.146.
[47] Ibid., pp.152-4.
[48] *Observations on the Trading Companies Bill* (London, 1834), p.7.
[49] *Circular to Bankers*, 13 January 1832, p.202.

of Trade wasting his own or the public time in conjectures whether such and such a scheme would be beneficial to the public'.[50] Lowndes' concerns were to be broadly answered by the 1844 introduction of freedom of incorporation, but anyone wishing to secure a limited corporation had to continue thereafter to make a specific application. Sir Denis Le Marchant, Secretary to the Board for a total of nine years between 1836 and 1850, openly acknowledged that 'the rule has decidedly been to refuse them rather than to grant them'[51], and very few charters of incorporation were granted. *The Times* noted the conservative policy in 1840, and approved of the fact that since 1834, 'the Crown has never thought fit to grant any one patent conferring the privilege on a company of limited liability'. Companies were 'incompatible with the true principle of partnership in commerce'. Their place was 'peculiar and very limited.'[52]

After twenty years of this system, lawyers were claiming that the Crown's powers were practically a dead letter, and it is easy to see their grounds for saying so.[53] James Taylor has shown that between 1840 and 1844, the Board approved only eleven (of nineteen) applications for limited liability.[54] The number of applications to Parliament was far higher. During the same period Parliament processed over 500 private bill applications for some form of corporate privilege. These did not necessarily include an application for limited liability, but the great majority did.

Solicitors negotiating this system argued that it was best to pursue applications through Parliament, because the Board route was not significantly cheaper, and had the extra disadvantage of being open to a legal challenge.[55] As an unaccountable, expensive dispenser of privilege - an 'irresponsible tribunal'[56] - the Board became a symbol of impediment, and a target for reformists. Board officials were not of course the only

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[50] Matthew Dobson Lowndes, *Review of the Joint-Stock Bank Acts and the law as to joint-stock companies generally; with the practical suggestions of a solicitor for their amendment; in a letter to the Rt. Hon. the Chancellor of the Exchequer* (London, 1840) pp.41 and 44.
[51] *Report from the Select Committee on Investments*, PP 1850 (508) xix 25.
[52] 9 October 1840, p.4.
[53] For example, Woodford Ffooks, *The Law of Partnership an Obstacle to Social Progress* (London, 1854), pp.27-8.
[54] James Taylor, *Creating Capitalism: Joint-stock Enterprise in British Politics and Culture, 1800-1870* (Woodbridge, Suffolk, 2006), p.136.
[55] See *Observations of a solicitor*, pp.71-3.
[56] *Hansard*, 3rd series, vol. 76, c274 (3 July 1844).

people called to pass judgment on commercial liability questions at this time. Lawyers did too. And although they did not have to contend with any major changes in legal treatment of limited liability itself, they did participate in related changes that were to influence the shape of debate for the next twenty years.

Share-transfer and share reification

The one piece of legislation of the 1830s and early 1840s that made a direct reference to limited liability was the 1837 Letters Patent Act, which stipulated that a company member's personal liability could be limited (by letters patent) to a specified amount per share.[57] Liability, when limited, was here explicitly identified with a shareholding rather than a physical person. Official perceptions had registered an important shift.

Although transferable shares were now a recognised basis for limited liability, they were only a *potential* basis. Anyone wishing to secure limited liability still had to secure a corporate privilege. This followed the course set in 1825/6, when it was established beyond contention that transferable shares, characteristic of joint stock companies, might co-exist with personal liability. England was not the only jurisdiction with unlimited liability joint stock companies at this time. As will be discussed in chapter 6, American states had them too, and there is therefore no reason to think the position inherently untenable. That said, transferable shares clearly *do* promote the accessibility of limited liability, in making it more difficult to pin down personal liability, and in associations with quantified capital. France already had a close legal identification between transferable shares and limited liability - a point picked up by John Stuart Mill in *Principles of Political Economy*, first published in 1848. Under French law, Mill said, there was no such thing as an unlimited liability joint stock company, since the capital of unlimited partnerships could not be divided into transferable shares.[58] Only capital of a limited partnership could be so divided, either in the *commanditaire* section of a *société en commandite* or in a *société anonyme*. In France, transferable shares were identified

[57] 7 Wm IV & 1 Vict c73. Also known as the Chartered Companies Act.
[58] J. S. Mill, *Principles of Political Economy with some of their Applications to Social Philosophy* (London,

with the raising of capital, and accorded limited liability within that ring-fencing. In England too, transferable shares were associated with capital-raising, but the ring-fencing was not clear-cut, and limited liability was not controlled through them. Rather, it continued to be exposed to the need for specific justification.

Liability had nevertheless now been identified in law with shares, and - by implication - rather less with people. This can be seen as part of a broader association between (transferable-share) joint stock companies and a shift to abstraction, much discussed and commented-upon by legal historians. In Cooke's view, joint stock itself represented a shift in focus from 'the unification of a group of persons' (long-established in a corporation) to 'the agglomeration of a capital fund', which 'itself provided the common interest'.[59] Early 1840s comment shows that, in the ill-defined world of investors' part-payments, such capital could be termed 'liability'. Discussing nominal capital at an 1841 Select Committee, barrister Sir Peter Laurie suggested that, 'Perhaps liability would be a better term than "capital" to put in; [partners] are liable to put that sum in'.[60] Cooke sees lawyers in the eighteenth century first '[wrestling] hard with the new importance of a fund in place of people'.[61]

In trying to determine how that wrestling resolved into law, Cooke and others have taken the 1836-7 case, *Bligh v Brent* as pivotal.[62] Certainly it seems that Edward Alderson, the Exchequer judge called to try it, thought it might be 'of great importance, involving extensive consequences'.[63] He accordingly called in three 'learned brethren' to help and the case also involved, as lead counsel for the defence, the Attorney-General, Sir John Campbell. Defence arguments prevailed, with a judgment that focused unequivocally on money as central to the company in question's purpose, and rejected a longer-established identification between joint stock and physical assets.[64] The ruling did not necessarily

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1848), p.583.
[59] *Corporation, Trust and Company*, p.79.
[60] *First Report of the Select Committee on Joint-stock Companies, together with the minutes of evidence (taken in 1841 and 1843) Appendix and Index*, PP 1844 (119) vii 24.
[61] *Corporation, Trust and Company*, p.79.
[62] Ibid., p.152; Paddy Ireland, 'The Myth of Shareholder Ownership', *The Modern Law Review*, vol. 62, January 1999, pp.32-57, p.41.
[63] Bligh *v* Brent, *The English Reports*, vol. 160, Exchequer Division, XVI (London, 1917), p.407.
[64] Ibid., pp.408-9.

change established practice (part of the defence case was that this company's shares had been treated as personal, transferable property for 125 years[65]) but registered with lawyers. Alderson's observations about company-abstractions - made in the context of a statutory corporation - were quoted in the 1843 Joint Stock Companies Select Committee.[66] The ensuing 1844 Act established a corporate identity for such joint stock companies, ending the legal identification with partnership, and by 1847, the assistant registrar of companies could acknowledge that these were 'necessarily impersonal'.[67] Paddy Ireland, Ian Grigg-Spall and Dave Kelly consider that by the mid-1850s case-law had extended the reification to all types of company with transferable shares, with private partnerships continuing to be excluded by their lack of them.[68]

Ireland is also amongst those legal historians who see a parallel shift taking place in attitudes to shareholders.[69] In the late 1830s, it was still routine to argue that shareholders who felt themselves deceived in a joint stock company had only themselves to blame, for failing to be sufficiently vigilant. The 1844 Joint Stock Companies Act added legal complications to the practical difficulties of this, by giving directors, rather than shareholders, power to bind a company, and thus undermining the identification of shareholders as partners with power to bind all other partners.[70] Joint stock investors were now financially liable for company activities over which they were acknowledged to have little influence. By mid-century, the impracticality of expecting them to control company decisions was commonly acknowledged and, as Hilton remarked, investors were more likely to be characterised as innocent.[71]

Amongst these shifts in the roles of people and their shareholdings, the status of the

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[65] Ibid., p.404.
[66] *First Report of the Select Committee on Joint -stock Companies*, PP 1844 (119) vii 199.
[67] George Taylor, *A Practical Treatise on the Act for the Registration, Regulation, and Incorporation of Joint Stock Companies* (London, 1847), p.3.
[68] Paddy Ireland, Ian Grigg-Spall, Dave Kelly, 'The Conceptual Foundations of Modern Company Law', *Journal of Law and Society*, vo1.4, no. 1, Critical Legal Studies, Spring 1987, pp.149-165, pp.152-3 and 161.
[69] Ireland, 'The Myth of Shareholder Ownership', pp.42-4. See too Michael Lobban, 'Nineteenth Century Frauds in Company Formation', *Law Quarterly Review*, 1996, pp.318-9.
[70] Discussed by Lobban, 'Nineteenth Century Frauds', pp.298-9.
[71] *Age of Atonement*, p.265.

company continued to be linguistically ambiguous. Legal language shows joint stock company personality continuing to be reified as a *multiple* concept, reflecting multiple individuals, through the 1844 freedom of incorporation, to mid-century. We can see this in continuing references, odd to modern ears (and apparently odd to contemporary American ears[72]) to a company as 'they'. In the 1836/7 language of *Bligh v Brent*, a company was consistently plural.[73] By 1844, a company could be required to give the names of 'its' promoters.[74] Instability persisted however, and Ireland *et al* cite an 1851 case in which it was clearly 'they'.[75] The 1855 Limited Liability Act referred throughout to a company as 'it'[76], but the 1856 Companies Act - perhaps reflecting different drafters for different sections - termed a company 'it' in one section and 'they' in another.[77] The 1862 Companies Act[78] has generally been taken as definitive confirmation of a company's personality as single - not only separate from physical assets but recognisably separate from the physical individuals who constituted it, as an externalised entity.[79]

This chronology makes historical sense of terming a company 'limited' when what is meant is the limitation of the liability of its members (rather than of the entity itself). The 1855 Limited Liability Act, which introduced the tag, was 'An Act for limiting the liability of members of certain joint stock companies'. Companies were still understood to be composed of members, and there was thus clear logic in the suffix. The tag then survived as a relic of earlier understanding when the company came to be more clearly understood as a distinct entity. In approving limited liability, legislators may have been helping turn the company from a collection of individuals into an abstraction, focused upon capital, but in doing so they still had people in mind.

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[72] See Ireland, 'Capitalism without the capitalist: the joint-stock company share and the emergence of the modern doctrine of separate corporate personality' , *Legal History*, 17 (1996) p.47, and Taylor, *Creating Capitalism*, p.13.
[73] *The English Reports*, p.402.
[74] 1844 (244). 'A bill for the registration of joint stock companies', p.4.
[75] Myers *v* Perigal, as cited in *The Conceptual Foundations of Modern Company Law*, p.151.
[76] 18 & 19 Vict c133 Limited Liability Act, clauses I (3), II, III.
[77] 19 & 20 Vict c47 Companies Act, points 2,5 and 7 (all 'they') and 20 ('its').
[78] 25 & 26 Vict, c89.
[79] Lobban, 'Nineteenth century Frauds', p288; Ireland *et al* , 'The Conceptual Foundations of Modern Company Law', p.150.

Pivotal to this developing chronology was the 1844 granting of freedom of incorporation. Perrott sees widespread indifference to limited liability in court records continuing up until the mid-1840s.[80] Interest in limited liability itself did not at first increase noticeably even then, but interest in companies did, as insurance company frauds made it hard to ignore questions of company control. The 1841 Parliamentary Committee on Joint Stock Companies had been appointed to address shareholder protection and in 1843, with an expanded remit, came under the chairmanship of Gladstone, as President of the Board of Trade. Gladstone's Board was the motor behind four statutes of 1844, widely credited with laying the foundation of modern company law. They had very little to say about limited liability, but as an ambitious attempt to regularise the legal treatment of joint stock companies, provided a standard point of reference thereafter. We therefore need to understand in more detail what they said.

1844 company legislation

The first of the four company Acts introduced in 1844 was the Railways Regulation Act.[81] It took the lion's share of parliamentary time, but its only significance for limited liability lay in confirming that railway companies, once authorised, were routinely accorded it. Cooke considers the Act notable for embodying 'the principle ...that railway companies were one example of a class of company ... formed under special parliamentary sanction to carry on an undertaking of a special public nature'.[82]

The second Act, the 1844 Joint Stock Companies Act, dealt with joint stock companies not credited with this degree of public interest.[83] An Act 'for the registration, incorporation and regulation of joint stock companies', it provided a standardised process for their incorporation, and established a pecking order amongst debt claims, in stipulating that creditors should proceed first against company assets, before making claims against company members. This was designed to give some formal protection to

[80] Perrott, 'Changes in Attitude to Limited Liability', p.99.
[81] 7&8 Vict, c85.
[82] Cooke, *Corporation, Trust and Company*, p.136.
[83] 7&8 Vict, c110.

members, although their personal liability was upheld, and - in a provision taken from the 1834 Companies Act - was to continue for three years after transfer of a registered holding.[84] Lawyers very quickly complained that these provisions were practically useless. John Ludlow, a chambers colleague of Ker, thought this bound to be the case, as long as the difficulties of creditors' 'contribution suits' in Chancery went unacknowledged. The requirement to proceed first against failed companies merely saddled people with 'useless and expensive formalities'.[85]

A third statute, the Companies Winding-up Act, made an attempt to address these concerns.[86] Lawyers though had their doubts about this too. Ker recalled in 1851 how 'before [the Act] passed I was convinced by [London solicitor] Mr. [Edwin] Field, who took a great interest in the measure, that it would not answer its object'.[87] Field and his colleague Thomas Rigge suggested that one way round the Chancery issue was to re-direct claims to the Bankruptcy Court.[88] Field's 'continued perseverance' resulted in a second Winding-up Act in 1848 (drawn up by Ker, with Ludlow's assistance) and a further one, in 1849, which included amendments by 'Mr. Lloyd'.[89] Ker - unsurprisingly - did not approve of Lloyd's amendments, blaming his 'cumbrous mass of provisions' for the 1849 Act also proving largely unsuccessful, even when further amended.[90] Legal difficulties were only resolved with a fourth such Act in 1857. The fourth and last notable piece of 1844 company legislation was the Joint Stock Banking Act, which - again - made no mention of limited liability.[91]

This appears to have been in tune with contemporary expectations, which reflected pre-occupation with recent fraud cases. The Joint Stock Companies Bill in particular attracted very little parliamentary debate, with Gladstone choosing to interpret this as

[84] Provisions made by section 67 of the Act.
[85] J.M. Ludlow, *The Joint-Stock Winding-up Act, 1848* (London, 1850 edition), p. xxviii.
[86] 7&8 Vict, 111.
[87] *The Law of Partnership ... being the evidence given by H Bellenden Ker*, p20. See too Liverpool merchant Alfred Powles on the Act: 'I was told as soon as it was known, that it was bad law', *Report of the Proceedings*, p.38.
[88] 27 April 1846 to Bellenden Ker, as reproduced in Ludlow, *The Joint-Stock Winding-up Act*, pp. xxxv-xxxix.
[89] *The Law of Partnership and the Investment of Savings of the Poor*, p.20.
[90] Ibid., p.21.
[91] 7&8 Vict, c113.

confirmation that it had met with 'pretty general, or ... universal approval'. He acknowledged that the Bill had gained some 'notoriety outside Parliament', but claimed that comments received by the Board of Trade were overwhelmingly favourable.[92]

The lack of parliamentary debate about the Bill reflected too the stance of the preceding Select Committee. This had confined itself in its Report to joint stock companies - now defined as companies with transferable shares - and expressly ruled out the potential can of worms that was traditional partnership and *commandite*.[93] Despite the ring-fencing though, these subjects *were* raised by witnesses giving evidence to the Committee in July 1843. Discussions were led mostly by Gladstone himself, together with committee-members Clay and George Lyall, MP for the City of London. The Committee heard the views of nine lawyers - the bulk of the witnesses consulted - on limited liability. Clay asked the first, solicitor Thomas Farquhar, what he thought about it, but Farquhar replied only that he saw no difference in law between partnership and joint stock (although he was prepared to allow for the possibility that there should be one).[94] Thereafter, the subject only came up if a witness raised it himself - as several did.

Solicitor Thomas Bothamley was the first of these. He said that unlimited responsibility had quite the reverse effect of that intended, a point already made in the Committee's 1841 incarnation ('the heavier the liabilities, the less responsible persons you will obtain'[95]). Birmingham solicitor and parliamentary agent, Joseph Parkes, also brought up the topic. Although willing to allow that 'the aggregation of capital in joint stock companies ... has been a most material cause of our national greatness and prosperity'[96] he thought its intrusion upon areas of business traditionally handled by private enterprise an 'evil' - a view evidently shared by Gladstone. Parkes' jaundiced view of the profit-swallowing 'salaried agents' employed by joint stock companies echoed Henry Burgess's.[97] The 'honorary directors' listed in joint stock prospectuses he considered a

[92] *Hansard*, 3rd series, vol. 75, c475 (10 June 1844).
[93] *First Report of the Select Committee on Joint-stock Companies,* PP 1844 (119) vii vi.
[94] Ibid., 86.
[95] Ibid., 19, evidence of Sir Peter Laurie.
[96] Ibid., 238.
[97] Ibid., 238.

nuisance, and - in a phrase that would acquire notoriety within a few years - a 'decoy'.[98]

By far the most eloquent proponent of limited liability, and joint stock's staunchest advocate, was John Duncan, the solicitor who had taken on Farren in print ten years before (when he had been occupied 'for months together ... in writing pamphlets ... proving that ... acknowledged and known difficulties could be surmounted') and now had a client list that boasted many of the best-known joint stock company names.[99] Like fellow-solicitor Matthew Lowndes, Duncan had little time for the approach confirmed in the Board of Trade's 1834 Minute.[100] His extensive experience of company-formation - and knowledge of steps taken to evade the law - engaged Committee-members, and he reported to them his

> 'strong impression … that joint stock companies never will be respectable generally, or respected, until the law has been altered to allow companies to be formed of the nature of the commandité and Anonyme partnerships in France.'[101]

Duncan already saw a problem in persuading men to act as directors of unlimited liability companies. Since honest men wished to associate with other honest men, the effect was to restrict participation to 'a particular class of individual' willing to take on the risk. This wariness was in contrast to the ignorance of the wider public. The law deterred an informed, potentially useful class of investor (who sounded remarkably like Duncan himself): 'private gentlemen ... who are not adapted by their habits or their information to join in trade, but who would be very glad to be able to put their money in concerns that they thought were well-managed, and to take the profits of trade without the anxieties'. Asked if reform would not tempt investors into areas they did not understand, he pointed to (limited liability) railway companies, which already had, he said, both a 'vast number of private individuals' investing in them (including many women) and as much 'stupidity' as was to be found anywhere.[102]

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[98] Ibid., 232.
[99] Ibid., 178.
[100] Ibid., 209.
[101] Ibid., 167.
[102] Ibid., 217.

Railway companies also came in for sharp words for the scrip issued in advance of incorporation. This created 'extreme difficulty' in tracing money due - or even in maintaining the expectation that it *was* due. Duncan contrasted the cost-book system of mining companies, and their insistence upon paid-up capital, with the dubious practices pursued by railway companies 'under the very nose of Parliament'. Wholesale reform was needed: 'I repeat ... it is partnership liability, and the excessive danger it produces, which causes parties to evade the law and actually infringe it by endeavouring to carry on business with scrip shares'.[103]

In what he said about railways, as in much else, Duncan was the herald of themes commonplace from the late 1840s. He effectively ran down a checklist of points later made in favour of wider use of limited liability. Bad company law '[forced] capital in bad and unhealthy channels'.[104] The United States offered the best example of how to use limited liability (though Duncan thought the 'go-ahead system' in use there would need 'checks and restraints' if introduced in England).[105] Above all, he spoke up unequivocally for the claims of dynamic, democratic capital. Asked whether he would recommend joint stock investment for 'minute' as well as large objects, he replied:

> 'I certainly would. Keep capital active, whether it belong to one or many; let skill and science be assisted with money; knock away every impediment which obstructs energy or activity; an aggregate of several sums should be employed in any trade, just as readily as the private individual's purse'.[106]

When it came to compiling their Report however, the Committee stuck to their professed brief and proceeded to pick and choose amongst Duncan's evidence accordingly. His recommendation that unlimited liability joint stock companies be allowed to develop 'unfettered' was adopted (and confirmed in freedom of incorporation) but his supplementary call for equally unfettered 'semi-liable' *commandite* partnerships was left unaddressed, as outside the scope of the Report.[107] In what it prescribed for joint stock, it

[103] Ibid., 170.
[104] Ibid., 172.
[105] Ibid., 178.
[106] Ibid., 209.
[107] Ibid., 217.

followed Duncan, who - typically or not - considered that the Board of Trade had 'regulated [the administration of charters] so far as I know most satisfactorily' and recommended that they should continue to control completely 'non-liable' companies.[108] This recommendation had however, been made in the context of an accompanying insistence on a need for limited liability in alternative (partnership) form, and this part of his advice found no place in the Report. Duncan had agreed that joint stock's main use was for 'matters of magnitude or matters of considerable risk and speculation'. Private traders and their smaller companies, he allowed, had no need to be completely 'non-liable'.[109] The Committee focused on joint stock companies and left their use of limited liability to charters. It ignored the question of a potential application to smaller companies and private traders, along with *commandite*.

Saved the immediate trouble of contention and practical detail, the Committee was happy to allow for the possibility of partnership reform. It recommended that a Bill 'for granting certain privileges to Private Partnerships' be considered. One was even drawn up by Ker (the first port-of-call for such work) and presented to Parliament.[110] It dealt only with the question of suing however, with no mention of *commandite*, and failed to make headway. When Gladstone resigned as President of the Board of Trade in February 1845, he left his successor a list of outstanding issues. Item 23 dealt with 'Private Partnerships', against which Gladstone noted the previous Session's aborted Bill and his opinion that: 'The question was too much of a legal character for me to be able to form a judgment in it [but] the practical defect … is obvious and pressing'.[111] The pattern of partnership law attracting more ink than willpower was to continue.

Limited liability enjoyed slightly more air-time in parliamentary discussion of the Joint Stock Banks Bill. Clay took the opportunity to raise the subject again in the Commons, cataloguing bank failures to argue that these would only be avoided 'by limiting the responsibility of the shareholders [and putting] a stop to that spurious credit grounded on

[108] Ibid., 217.
[109] Ibid., 218.
[110] 18 July 1844, *8 Vict*.
[111] Printed as Appendix V, Llewellyn Smith, *The Board of Trade*, p.268.

private fortunes'.[112] Other MPs did not agree. Peel had supported limited liability for new joint stock banks in 1826, but now argued that:

> 'Limited responsibility would be apt to make persons of influence and property who became shareholders in banks comparatively careless about the management of these establishments, as their chance of loss in consequence of mismanagement would be limited to the probably trifling amount of shares held by them.'[113]

Merchant banker James Morrison agreed, and added his interpretation of the 1837 financial crisis in support. American banks 'after having tried the system of limited, were establishing the system of unlimited liability'. It had not been found 'necessary' to insist on limited liability in England, and he believed it would be 'highly impolitic' to introduce it now.[114] Benjamin Hawes, another member of Gladstone's Committee, took issue with Peel's sweeping statement that 'all authority [was] against' introduction of limited liability, and supported Clay, but opinion was otherwise with Peel. Clay's proposal was 'negatived'. The subsequent Act made it compulsory for joint stock banks to have a charter of incorporation, and comply with costly and demanding regulations. One industry sceptic later termed its provisions 'so insurmountable that the existing Joint Stock Banks are said to have a monopoly of banking'.[115]

Some modern legal authorities have written as though the very exclusion of limited liability from the 1844 legislation made subsequent focus upon it inevitable. *Gower's Principles of Modern Company Law* says that 'the next 10 years saw the battle fairly joined on this issue'[116] and Patrick Atiyah writes as though discussion set in train in 1825 had already reached boiling point.[117] It is hard to see historical grounds for this. Gladstone's intuitions reflected his political times, and the tone taken in contemporary publications. Thomas Corbet's *An Inquiry into the Causes and Modes of the Wealth of Individual*s, first published in 1841, showed a traditional lack of sympathy for sleeping

[112] *Hansard*, 3rd series, vol. 76, c1182 (22 July 1844).
[113] Ibid., c1184.
[114] Ibid., c1185.
[115] James Knight, letter to the Board of Trade, 2 July 1847, TNA, BT1/467/4 (City of London).
[116] Davies, *Gower's Principles of Modern Company Law,* p.40.
[117] Atiyah, *The Rise and Fall of Freedom of Contract,* p.565.

partners.[118] The lack of headline interest is reflected in the historiography, with historians having very little to say about what happened to discussion of limited liability during the remainder of the 1840s. Saville says more than most, in considering that '[t]here was no discussion of *en commandite* or of limited liability in Parliament between 1844 and 1849 and comment outside was meagre'.[119] This is nearer the mark than *Gower*'s or Atiyah, but still needs revision. Although there was very little parliamentary debate, the issue *was* raised, and comment outside Parliament was considerably more than 'meagre'. It followed the pattern of earlier investment cycles, with inquest following on collapse of a round of speculation. It also saw some engage with limited liability as an issue of national social significance. The next chapter looks at where this brand of interest came from, starting with what historians have made of it.

[118] pp.92 and 99.
[119] Saville, 'Sleeping Partnership', p.419.

Chapter 4 - *Cultural investment in limited liability*

A 'mid-century change of mood'

In 1988, limited liability's historiography acquired a pronounced moral dimension, with the publication of Boyd Hilton's *The age of atonement: the influence of evangelicalism on social and economic thought, 1785-1865*. Hilton devoted a chapter to considering limited liability in the context of that influence ("'Incarnate and Incorporate": The Lord of Limit'), and saw it as the beneficiary of a new, expansive social model which eclipsed retributive, Evangelical intuitions at mid-century. This opened up discussion of a seismic cultural change and its influence on financial matters. (Olive Anderson's *A liberal state at war: English politics and economics during the Crimean War* had covered similar territory twenty years before, but with only passing mention of limited liability.) Geoffrey Searle noted the new importance of 'shifts in moral and theological perspective' to the historical debate, and concluded that 'the probability is that [the] divisions of opinion cannot be explained in purely economic terms at all.'[1] Hilton's social focus was criticised by Maxine Berg, who - while she agreed that there were striking parallels in theologians' and political economists' terms of reference - argued for greater appreciation of an optimistic element in economic debate, attached to the values of 'useful labour, industry, invention, productivity and enterprise'. This still however, left a problem for limited liability, in that politicians were there endorsing not so much 'useful labour', as the 'artificial or fictitious wealth' that Berg saw marked out as beyond the moral pale.[2]

Following Hilton, there have been two further notable contributions to moral and social aspects of the Victorian debate. Timothy Alborn's 1998 *Conceiving Companies: joint-stock politics in Victorian England* explored joint stock companies' - especially banks' - use of republican rhetoric, and saw in the 1856 Act industrialists '[restoring] to their credit transactions the ideal of self-government that had once been the trademark of

[1] Geoffrey R Searle, *Entrepreneurial Politics in mid-Victorian Britain* (Oxford, 1993), p.191.
[2] Maxine Berg, 'Progress and Providence in early nineteenth century political economy', *Social History*, 15, 1990, pp.365-75, p.374.

English joint-stock banks'.[3] Linguistic analysis provided insights into that ideal, but, in the absence of much information about who held to it, did little to contradict Cottrell and Jefferys' conclusion that industrialists had not in fact been notable supporters of limited liability. An article by Donna Loftus, 'Limited Liability, Market Democracy, and the Social Organization of Production' (first published in *Victorian Studies* in 2002 and re-worked several years later) also analysed linguistic tropes, and explored the debt that early-1850s interest owed to Christian Socialist influence.[4] A tentative suggestion that this might help explain why far-reaching reform was passed abruptly in the mid-1850s rather fell down however, on an accompanying acknowledgement that - as Saville, Hilton and Cottrell had all agreed - Christian Socialist political interest had by then dissipated. James Taylor's 2006 *Creating Capitalism: joint-stock enterprise in British politics and culture, 1800-1870* went some way towards addressing this central question of what re-ignited public debate, with a narrative of political interest as it developed from February 1852. Taylor expanded too on Hilton's social perspective but, like him, focused on those who objected to reform. Adoption of limited liability was 'as much about stability as growth', pushed through despite continuing belief that 'the individual [was] superior to the company', and commercial perceptions that 'had altered barely at all in decades'.[5]

The net result of this expanded historiography is that we now have a much greater appreciation of a moral element in nineteenth century debate about limited liability, but remain very short of information about any moral motivation for limited liability's proponents. Moralising has been largely identified with liability-conservatives - with, indeed, many historians seeming to doubt whether reformists had any moral motivation at all. This tendency pre-dates Hilton's work, and has continued thereafter. It is especially apparent in 'discourse analysis' treatments of mid-nineteenth century novels,[6] which tend

[3] Timothy L. Alborn, *Conceiving companies: joint-stock politics in Victorian England* (London, 1998), p.127.
[4] Donna Loftus, 'Limited Liability, Democracy, and the Social Organization of Production in mid-Nineteenth Century Britain', *Victorian Investments*, ed. Nancy Henry, Cannon Schmitt (Bloomington, IS, US, 2009).
[5] James Taylor, *Creating Capitalism: joint-stock enterprise in British politics and culture, 1800-1870* (Woodbridge, Suffolk, 2006) pp.161 and 159
[6] N.N. Feltes discusses Charles Dickens' *Little Dorrit* (originally titled 'Nobody's Fault' and first published in instalments, 1855-7) and George Eliot's *The Mill on the Floss* (published 1860) in 'Community and the Limits of Liability in two mid-Victorian Novels', *Victorian Studies*, June 1974, 17, pp.351-369; Bruce

to reflect the pre-occupations of the novels' authors. Adding to the list of those which have focused on conservatives' fears would be very easy. Elizabeth Gaskell's *North and South* for example (first published in Charles Dickens' *Household Words*, 1854-5) has a hero, John Thornton, who views speculation with horror, and relies upon commercial values shaped by early struggle to pay off his late father's business debts. His career-path of patient loyalty rewarded was the classic trajectory urged by liability-conservatives, who argued that businessmen should 'be content to progress slowly'.[7]

With conservatives dominating moral analyses, limited liability's supporters have been left to claim the realm of hard-headed financial gain. A Marxist-sympathetic 1997 article by Robert Bryer invoked classical rational interests to account for the 1855/6 changes, with unnamed drivers of change simply said to be 'the rich', 'wealthy commercial capitalists and financial aristocracy'.[8] Perrott also followed this line, in seeing limited liability's prospects fluctuating according to 'whether [the] prevailing ideology [was] materialist-expansionist or idealistic and conservative'[9] and Hilton himself was inclined to credit change to parliamentary *rentiers*.[10] When Thatcherism prompted Searle to re-visit Victorian economic debates in the late 1990s, he concluded that reconciling market philosophy with 'moral and social duties' had been as difficult in the nineteenth-century as the twentieth, and left his reader in little doubt that he thought the challenge one twice failed.[11] Paul Johnson has pointed out that this leaves one having to presume a 'developing schizophrenia in Victorian society as the way in which people behaved increasingly ran counter to the moral beliefs they held'.[12] Johnson allowed 'this may well have been the case'. In his view, general limited liability represented 'the final removal of

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Robbins considers Dickens' *Bleak House* (1852), 'Telescopic Philanthropy: Professionalism and Responsibility in *Bleak House*', *Nation and Narration*, ed. Homi Bhabha (London, 1990), pp.213-30 and Andrew H. Miller addresses Elizabeth Gaskell's *Cranford* (1851-3), 'Subjectivity Ltd: The Discourse of Liability in the Joint Stock Companies Act of 1856 and Gaskell's *Cranford*', *English Literary History*, 61, 1, Spring 1994, pp.139-57.

[7] *Report of the Proceedings*, p.48.

[8] R.A. Bryer, 'The Mercantile Laws Commission of 1854', *The Economic History Review*, vol. 50, no. 1, February 1997, pp.37-56, pp.38 and 40.

[9] Perrott, 'Changes in Attitude to Limited Liability', p.85.

[10] Hilton, *Age of Atonement*, pp.262-3.

[11] Geoffrey Searle, *Morality and the Market in Victorian Britain* (Oxford, 1998), p.vii.

[12] Paul Johnson, 'Civilizing Mammon: Law, Morals, and the City in Nineteenth-century England', *Civil Histories*, ed. Burke, Harrison, Slack, (Oxford, 2000) p.303.

the vestiges of a "moral economy" '.[13]

As a framework for a cultural shift, this 'marketplace-for/morality-against' framework is unconvincing, at odds with both what we know of Christian Socialist mid-century interest in limited liability, and with a broader revision of recent years, when morality-free rationality has been largely consigned to the realm of economic theory. As anthropologist Alan Fiske asserted in one much-cited 1991 article on the subject, people 'do not engage in market pricing behavior only because they are self-interested, but also because they are socially interested ... the goal is always to relate to others according to some proportional standard.'[14]

Despite the preoccupation with conservatives' moralising, moral counter-arguments do occasionally feature in limited liability's historiography. The clearest instance of a reformist 'proportional standard' is the republican rhetoric identified in joint stock banking by Alborn.[15] He quotes a *Bankers' Magazine* 1847 claim that 'every joint-stock banking company [is] a little republic within itself'.[16] Importantly for limited liability, Alborn sees the rhetoric also having a wider application 'in the realm of finance, where a narrow circuit of virtuous members could replace "irresponsible" aristocratic credit with a newly vigilant creditor-debtor relationship'.[17] As will be discussed, republican rhetoric appealed strongly to supporters of limited liability, who saw in it hope of reduced dependence upon 'aristocratic' credit, identified with the City.

With little guidance in the historiography as to how this took effect, we are pushed back onto the intuitions themselves if we wish to try and understand the working of reformist social argument. Hilton saw support for limited liability characterised by optimistic sympathy, endorsing Kitson Clark's comments on a pivotal 'mid-century change of mood', when 'the tone of England became gentler' and concern with debt faded.[18] Social

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[13] Paul Johnson, *Market Disciplines in Victorian Britain,* (London , 2005) p.26.

[14] Alan Page Fiske, *Structures of Social Life - the four elementary forms of human relations: communal sharing, authority ranking, equality matching, market pricing* (New York, 1991) pp.18 and 394.

[15] Alborn, *Conceiving companies*, pp.8, 12 and 86, and 'The Moral of the Failed Bank: Professional Plots in the Victorian Money Market', *Victorian Studies*, vol. 38, no. 2, Winter 1995, pp.199-226.

[16] 'The Moral of the Failed Bank', p.205, citing the *Bankers' Magazine*, 1847, 7:84.

[17] *Conceiving companies*, p.93.

[18] Kitson Clark, quoted by Hilton, *Age of Atonement*, p.268.

scientists have provided a framework which promises help with identifying the respective priorities of both sides of debate more closely, at the same time illuminating why supporters of limited liability could dismiss much moral disapprobation as a side-show, and conservatives find so much to say about it. The psychologist Jonathan Haidt claims that this signature pattern emerges with any social liberalisation because moral disapprobation tends to be relatively diverse. In a narrowing of focus on the individual, he argues, previously-important areas of cultural concern may be de-sensitised (thereby exciting the attention of conservatives attached to them) and attachment to surviving areas intensify. In the process, a 'thicker moral world' cedes ground to an intensified focus upon values associated with autonomy.[19]

A narrowing and intensification of focus has also characterised anthropological perspectives on social individualism. In an influential 1998 article, Angeline Lillard saw willingness to credit external influences typically replaced by intensified focus upon cognition, elaboration of conceptions of intention, and institutions which provide 'training in abstraction'.[20] As mental and emotional states come under social focus, she argued, so their elaboration expands, and a tie between emotion and action can be reified as motive and intention. When these are held to be important and knowable, public attention focuses less on what people do and more on what they think. We should perhaps here note too Lillard's warning that cultures habituated to well-defined notions of personal responsibility tend to over-estimate their significance and objectivity.[21] Psychologist Daniel Wegner has endorsed this and cites Lillard[22] to support his belief that a sense of agency can be inflated (even when a physical impossibility) simply by inflating a person's self-consciousness.[23] On this evidence, moral individualists project emotion-infused cognition onto their environment, just as those with a greater tendency to 'situational attribution' may do. The former may prefer to tackle unexplained events with self-

[19] Jonathan Haidt and Fredrik Bjorklund, 'Social Intuitionists Answer Six Questions about Moral Psychology', *Moral Psychology*, vol. 2, ed. Walter Sinnott-Armstrong (Cambridge, MA and London, 2008), pp.181-217, p.209.
[20] Angeline Lillard, 'Ethnopsychologies: Cultural Variations in Theories of Mind', *Psychological Bulletin*, 1998, vol. 123, no 1, pp.3-32, pp.3 and 25.
[21] Ibid., p.14.
[22] Daniel M. Wegner, *The Illusion of Conscious Will*, (London, 2002), pp.64 and 318.
[23] Ibid., p.95.

sufficient theory, rather than supernatural intervention, but the responses are not necessarily as different in kind as they may seem. The key distinction for a shift towards more individualist values is not a lack of susceptibility to moral emotion, but a contracted range of acknowledged elicitors.

With this in mind, we can look at two aspects of the moral content of limited liability argument, the first of which is made explicit in Lillard's article. As she observes, legal systems vary, along with cultures, in the degree to which they rely upon 'estimations of others' intentions', and mention of systems in which 'intention is not important in assigning blame; only the actual effect of one's action is considered'[24] brings to mind the concept of 'strict liability', which holds an individual at fault simply 'by virtue of a wrongful act, without any accompanying intent or mental state'.[25] A decisive shift away from strict liability is one of several mid-nineteenth century developments discussed by legal historians in connection with limited liability. David Abraham takes George Bramwell, a prominent mid-century champion of limited liability, as emblematic of a reformist legal generation bent on tackling 'the lethargy and hideboundness of Tory England and its "strict liability" world' and identifies their sympathy for liability-limitation with sympathy for 'capital entrepreneurship'.[26] Patrick Atiyah also sees Bramwell as representative of a wider 'shift in the basis of liability from benefit to will',[27] with support for limited liability 'part of a broad process ... to limit the responsibility of contracting parties' engaged in commercial enterprise.[28] Also stressing the enhanced role of mental intention, Margot Finn sees 'the legislative category of the fraudulent debtor', with its emphasis on conscious intention, increasingly used in legal justifications after reforms of 1838-46.[29] This suggests that we should understand limited liability as, amongst other things, the beneficiary of a broader shift in the moral assumptions behind liability-related commercial law, marked by a greater focus upon - and definition of - an

[24] Lillard, 'Ethnopsychologies', pp.11 and 25.
[25] As defined by Cornell University Law School, www.law.cornell.edu/wex/strict_liability
[26] David Abraham, 'Liberty and Property: Lord Bramwell and the Political Economy of Liberal Jurisprudence Individualism, Freedom, and Utility', *The American Journal of Legal History*, vol. 38, no. 3, July 1994, pp.288-321, pp.292 and 289.
[27] Atiyah, *Freedom of Contract*, p.496.
[28] Ibid., p.566.
[29] Margot Finn, *The Character of Credit: Personal Debt in English Culture, 1740-1914* (Cambridge, UK, 2003), pp.173-4 and 176.

individual's acknowledged responsibility. In notions of foresight and intent, lawyers could find reason to attribute responsibility - and reason to excuse it too. Conservatives tended to pick up on the excuses, but formalisation of self-consciousness made its own demands of individuals.

This is especially evident in arguments made by George Bramwell, frequently cited by legal historians in this context. Bramwell himself was seemingly happy to be cast as the nemesis of outmoded Tory thinking on limited liability.[30] Although he did not always side with industrial enterprise and took the part of 'strict liability' in one mid-century landmark case,[31] he was, as all accounts agree, a consistent defender of defined bargains - a characteristic often attributed to his banking background. Abraham sees his 'deference toward limiting liability' most clearly displayed in the 1856 case, *Blyth v Birmingham Water Works Company*, and the case-report provides insight into his guiding intuitions. A Mr. Blyth had brought an action against Birmingham Water Works for damage from leaking water-pipes, but Bramwell excused the Waterworks company its failure to allow for an unusually cold winter. He considered the plaintiff 'under quite as much obligation to remove the ice and snow which had accumulated, as the [Waterworks Company]' - an opinion which seems extraordinary, given the interference with Waterworks property this would have entailed. To say nothing of the knowledge required to pre-empt a leak, 'the cause of which was so obscure, that it was not to be discovered until many months after the accident had happened'.[32] Bramwell however, judged it 'monstrous' to have expected the required care or foresight from the Waterworks company, and seems to have been determined to keep responsibility away from them.

An emphasis upon personal agency and initiative, as urged here, provided the moral basis for limited liability argument. From the late-1840s, it was used to justify limited liability's applicability to workers' organisations, and - increasingly - the status of a social right. Against this, liability-conservatives generally showed more sympathy with social

[30] See his 23 May 1888 speech to the Institute of Bankers, in which he characterised his opponents on the 1853 Mercantile Laws Commission as 'Tories ... who look[ed] upon any change as a very suspicious thing', 'The Law of Limited Liability', *Journal of the Institute of Bankers*, vol. 9 (London, 1888), pp.373-97, p.376.
[31] Rylands v Fletcher, 1868.
[32] Blyth *v* The Company of Proprietors of the Birmingham Waterworks, February 6, 1856, *The English*

effect, insisting that limited liability was a straightforward licence to renege on debts - a social effect they found impossible to ignore. Reformists' standard answer to this was that individuals should be left to make up their own minds about the basis on which they dealt with each other, and that debts that they had not first agreed to take on were not debts. (The point was made by six separate speakers in the Liverpool Chamber of Commerce's 1854 debate on limited liability.[33]) Conservatives struggled with this, but generally accepted its validity in the context of a private contract. They baulked however, at taking it as a social assumption for a population - a fault-line visible in argument about usury repeal. Once usury laws were repealed in the early 1850s, some conceded that it no longer made sense to hold the line against limited liability's wider use: a high rate of interest and investment profit were much the same thing. The political economist John McCulloch held out against that equation however, on the grounds that usury was concerned with loans, and since loans were by their nature *private* undertakings, its treatment was irrelevant in the context of limited liability.[34] Forced to choose between a public parading of mental self-sufficiency and an intuitive attachment to connections and effect, conservatives held to the latter, and argued that profit-seeking individuals could not decide not to be bound. As one lawyer, discussing the implied legal principles, put it: 'I cannot escape the liability by resolving in my own mind ... that I will not pay'.[35]

The same framework of dispute over a public, formal contraction of moral intuition onto the individual can also be applied to a second way into limited liability's moral dynamic i.e. the weakening attachment to providential punishment highlighted by Hilton. It appeared to Hilton that change took effect remarkably quickly, over just a few years at mid-century.[36] To try and see what changed when, and how it affected limited liability's position, we need to look at what happened to the tenor of economic discussion after the 1844 round of company legislation.

Reports, vol. 156, Exchequer Division xii (London, 1916), pp.1047-9, p.1049.
[33]*Report of the Proceedings*, pp.19, 26, 33, 55, 59, 75.
[34] John Ramsay McCulloch, *Considerations on Partnerships with Limited Liability*, (London, 1856).
[35] George Sweet, *Observations on the existing and the proposed rules for ascertaining the debtor in mercantile dealings* (London, 1855), p.44.
[36] *Age of Atonement*, pp.270-1; 'Moral Disciplines', p.233.

Economic believers

When Hilton looked for a pivotal moment in a shift to the more forgiving moral culture that he identified with support for limited liability, he concluded that 'it was very possibly the Irish famine that discredited the idea of a deliberately vengeful God'.[37] The famine followed quickly on the 1844 legislation, and one thing it unquestionably did was provoke discussion. Faced with a disaster of Biblical proportions that had intruded into the modern world, individuals launched into an exchange of views about its moral and economic meaning.

One who did so was Edward Alderson, the Exchequer judge who presided over *Bligh v Brent* and of whom it has been said that his case-list 'reads like a broad survey of the legal problems of emerging capitalism'.[38] Alderson, a devout churchman as well as a liberal judge, managed to reconcile sympathy with individuals with continuing faith in divine oversight:

> 'This suffering is probably intended for our cure from the wickedness which deserves it. For though I do not believe that suffering as to individuals is a proof of sin, for it is often quite the reverse, yet I do believe that wicked nations (the corporate nation having no soul) are almost always punished by the infliction by the Almighty of temporal calamities. The time is delayed sometimes; but unless delay produces repentance, the calamity comes at last.'[39]

Here, divine retribution operated at the level of the system rather than individuals, but still had a place in it. Others were however, unwilling to allow even for that. *Jerrold's Weekly Newspaper* epitomised many of the softer mid-century values enumerated by Kitson Clark, campaigning for abolition of capital punishment - and arguing in favour of *commandite*. Its response to the famine was to take up arms against Evangelical moralising and scorn, even ridicule, it. Ridicule was made easier by the opportunity to

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[37] Hilton, *A Mad, Bad and Dangerous People*, p.633.
[38] Steve Hedley, *Oxford Dictionary of National Biography* entry for Sir Edward Hall Alderson (bap. 1787, d.1857).
[39] Letter to Amelia Opie. Charles Alderson, *Selections from the Charges and other Detached Papers of*

point out that retribution had in this instance apparently been delivered to earth in the form of a potato. Those favouring this interpretation had 'no other retreat from the accusation of hardness of heart, save in the imbecility of understanding'. *Jerrold's* targets included representatives of the established church, from the Archbishop of Canterbury downwards.[40] Better sense was to be found in Unitarian chapels, delivered by James Martineau and others who spoke of benevolence and human responsibility.[41] Divine retribution was a convenient place for complacent authority to park responsibility: 'Nothing so easy as for men to lay the sin of their own indifference or selfishness upon Providence'.[42]

Political economists also laboured to make sense of events. William Hancock, Professor of Political Economy at Dublin University, tackled the challenge in a paper presented to the Dublin Statistical Society in 1848, when he took exception to an *Edinburgh Review* article by Charles Trevelyan, co-ordinator of the British government's famine relief effort, and known for his own attachment to a sternly-correcting Providence. Trevelyan had predicted that posterity would see in the famine 'a salutary revolution', and 'acknowledge that, on this, as on many other occasions, Supreme Wisdom has educed permanent good out of transient evil'.[43] Hancock refuted the interpretation with a robust assertion of human capabilities. The famine was not a divine message about agricultural priorities, 'laid bare by a divine stroke of an All wise and All-merciful Providence, as if this part of the case were beyond the unassisted power of man'.[44] Men were capable of working out for themselves how to organise economic activity, and failure meant only that they must try harder. Abdication of responsibility was no answer.

As Mary Daly has shown, this was not the only time that Hancock attacked the '[vain] endeavour to conceal from ourselves the consequences of human folly, by representing

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Baron Alderson (London, 1858), p.101.
[40] 'The Potato Blight and the Preacher', *Jerrold's Weekly Newspaper*, 13 February 1847, p.186.
[41] ' "Providence" and the Potato Blight', *Jerrold's Weekly Newspaper*, 20 February 1847, p.218.
[42] Ibid., p.217.
[43] C. E. Trevelyan, *'The Irish Crisis': Reprinted from the 'Edinburgh Review', No. CLXXV, January 1848* (London, 1848), p.1.
[44] W. Neilson Hancock, *Two Papers read before the Dublin Statistical Society: I On the effects of the usury laws on the funding system II A notice of the theory "that there is no hope for a nation which lives on potatoes"* (Dublin, 1848), p.7.

the misery and distress produced by man's neglect as inevitable dispensations of the beneficent Authority'.[45] The famine represented a hard-to-dodge test of faith in the nature of God and in human ability to control a physical environment. One could either attribute it to God (with the necessary acceptance of harsh discipline) or - as Hancock and *Jerrold's* did - take it as a springboard for assertion of human responsibility and capability. Both perspectives could use deductivist terminology, but in the latter interpretation, economic reasoning was to be trusted to individuals, without God-given penalties needed to oversee the process.

Such self-sufficient moral and economic faith, with its conscious rejection of externally-imposed penalties, was strongly characteristic of support for limited liability, and it seems therefore important to try and understand the social and chronological scope of its appeal. In a 2008 article, Philip Williamson examined the chronology of changing attitudes, through an examination of 'State Prayers, Fasts and Thanksgivings'.[46] He noted that the picture of religious concern presented by Hilton and others was 'usually an account of decline', and argued for a more nuanced view, with a succession of individuals and event-triggers (including disease and war, as well as famine) all playing a part. Amongst the variables however, he noted a significant shift in public attitude, represented by a pivotal refusal by the then-Home Secretary Lord Palmerston to sanction an 1853 fast-day in response to an outbreak of cholera. Palmerston observed that 'it had pleased Providence to place within the power of man the means to check cholera', and, this being so, that 'an appeal to Providence to make up for human neglect is not very pious'. This is the response of Hancock and *Jerrold's*. Williamson cites sources to support a claim that by 1853, it was 'increasingly common not just amongst liberal churchmen ... but also in serious newspapers'. Providence and prayer were still invoked but 'operated not within material nature but in the moral world'.[47]

Like changes in law, this can be seen as part of a public shift away from what might be termed a more 'radioactive' world, in which situational intuitions were more in evidence,

[45] Mary E. Daly, *The Spirit of Earnest Inquiry: The Statistical and Social Inquiry Society of Ireland 1847-1997* (Dublin, 1997), p.21.
[46] Philip Williamson, 'State Prayers, Fasts and Thanksgiving. Public Worship in Britain 1830-1897', *Past & Present*, no. 200, August 2008, pp.121-74.

towards overtly self-centred concerns. The shift was important for limited liability's social applicability. In the early 1850s, with moral emphasis on self-sufficiency more socially prevalent, it became markedly commoner to argue for limited liability's use across a population. In such a framework, limited liability could more easily be seen as a right, rather than a privilege.

Such intuitions clearly varied across social groups. Hilton, focusing on religious circles, considered social groups where situational intuitions were relatively prevalent. Within them however, he identified support for limited liability as 'a victory for Unitarian perspectives' and it is noticeable how many mid-century advocates were Unitarians.[48] Political economist Francis Newman was one, and typical in the connection he made between limited liability and social concern. He dated his own conversion to Unitarianism to the example of an older man's demonstration of tolerance and 'tenderness of spirit'.[49] Unitarians consciously rejected the harsh form of divine discipline espoused by Evangelicals. Discipline commonly involves repeated physical reinforcement (as in the religious tradition of scourging and less punitive forms of drilling) and in a religious context could be physically intuited, and its erosion physically-intuited too - as in the draining of power from notions of hell and punishment noted by Hilton. Unitarians saw less need for constant discipline from outside sources, whether from divine prompting or other people. Commercial cultures were similarly receptive to a contracted field of moral intuition. Hilton alluded to this in considering that, 'in adjusting to [a] more serene philosophy ... fashionable thought was merely catching up with what political economy had long adumbrated'.[50] One of the Evangelicals whom he quotes regretting widespread 'disbelief in the existence of retributive justice' in 1849, went on to say, in words not quoted, that disbelief was especially widespread 'in regard to social and political questions'.[51]

Turning to how such moral intuitions varied over time, it is important to note that they

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[47] Ibid., p.160.
[48] *Age of Atonement*, p.301.
[49] F. Newman, *Phases of Faith; Or, Passages from the History of my Creed* (London, 1850), p.101.
[50] *Age of Atonement*, p.277.
[51] Letter to F.D. Maurice, 18 November 1849, *Life and Letters of Fenton John Anthony Hort*, ed. A.F. Hort (London, 1896), p.118. Extracts cited in *Age of Atonement*, pp.274 and 278.

tended to be validated - and challenged - in times of acknowledged common crisis. Several years after the famine, another such time was the mid-1850s Crimean war. Edward Cox, conservative editor of the *Law Times*, in one of his weekly critiques of 'Joint-Stock Companies Law', urged a tough line then against French-style commercial liberalisation: the war threatened otherwise to produce financial as well as bodily suffering and 'no man can doubt that it must do so, unless he doubts the existence of a Providence, or denies that it is retributive equally with nations as with individuals'. [52] The same internalised sense of physical punishment was being expressed about the same time by Christopher Bushell, the prolix wine-merchant who led opposition to limited liability in the Liverpool Chamber of Commerce. He warned that Britain's commercial body was about to be 'weakened and dismembered to serve selfishness' by a limited liability 'Delilah', that would sap national strength.[53] He then followed this up with a claim that 'the only true standard of 'justice' is the Divine Law'.

Bushell was speaking in a public forum, and his example is worth considering further for the wider light it can cast on prevailing attitudes at mid-century. His 1854 warning was a response to a recently published pamphlet by Charles Buxton, which had concluded with the claim that reform would show that 'God, not the devil, gave its laws to the world.'[54] Buxton was unusual amongst limited liability advocates in invoking divine support for his cause, although not unique. Leone Levi, an authority on international commercial law who prided himself on being 'for years in advance of public opinion' on limited liability, could also end a commercial argument with claims for divine endorsement - 'Righteousness exalteth a nation'.[55] Statistician George Porter, another advocate of limited liability, invoked Providence in a commercial context too, when criticising in 1851 a lack of faith in future economic progress, for '[imputing] a capital deficiency to the intention of Providence, [which] amounts to a practical denial of the power, wisdom, and goodness of the Almighty.'[56]

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[52] 'Joint-Stock Companies' Law Journal - Limited Liability', *Law Times*, 29 September 1855, p.21.
[53] *Report of the Proceedings*, p.53.
[54] Ibid., p.53, quoting the concluding paragraph of Charles Buxton's 1854 pamphlet, *The Cream of the Pros and Cons, as to the Law of Partnership.*
[55]Lecture at King's College, London, as reproduced in 'Banking and Commercial Law', *Bankers' Magazine,* November 1855, p.720.
[56]G. R. Porter, *The Progress of the Nation, in its various social and economical relations* (London, 1851),

These examples are all notably beneficent - in Williamson's terms, more God as Holy Father than stern judge. They are also relatively rare, and limited liability's advocates did not by this point usually rely on claims about Providence or divine endorsement. Bushell's opponent answered him by saying that if the unlimited liability Marine Insurance Company and Glamorganshire Bank (two well-known recent failures) were 'to be held up as Divine institutions', then all he could say was that God had not done well by their widows and orphans.[57]

Other reformists treated divine claims similarly. A Liverpool Chamber of Commerce report in favour of limited liability acknowledged that conservatives were apt to invoke the argument, 'very properly premised' on moral grounds, that limited liability contravened 'those higher laws which should govern men in their relations to one another'. Its answer was to bring the issue promptly down-to-earth: 'the question resolves itself into one of expediency' i.e. whether a creditor could better trust people whose ability to pay he knew very little about, or those who had committed to a defined amount. Since the answer was clearly the latter, limited liability 'would neither sanction immorality ... nor inflict injustice on the creditor'. Rather, it would leave responsibility where it belonged, in 'the conscience of the individual'.[58] This is the intuitive response of Palmerston.

The same intuitions were in evidence when Robert Lowe included a rare mention of Providence in his presentation of two limited liability Bills to parliament in 1856. The endorsement he claimed then was firmly anchored in the individual. The proposed legislation would promote individuals' own vigilance - 'that safeguard which Providence intended for them'.[59] Mill, the most frequently cited public supporter of limited liability, was categorically contemptuous of any moralising at all on the basis of 'what is called the order of Providence'.[60] This is perhaps to be expected of a moral philosopher, but there is evidence - beyond Mill's own pre-eminent status amongst limited liability's supporters -

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pp.630-632.

[57] *Report of the Proceedings*, pp.54 and 57.

[58] *Report of the Special Committee of the Council on the subject of the law of Partnership. Received 30th January 1854* (Liverpool, undated), pp.8-10.

[59] *Hansard*, 3rd series, vol. 140, c138 (1 February 1856).

[60] Letter to Walter Coulson, 22 November 1850, no. 33, *The Later Letters of John Stuart Mill, Collected*

that it accorded with wider norms for financial topics, and that divine argument did not by then necessarily play well in this context in any form. The anonymous writer who noted in 1856 that 'belief in providence is nearly as completely effete among us as belief in miracles', saw the extinction already complete in capitalist contexts: 'The idea of providence in a counting-room or on 'Change, seems ridiculous and monstrous ... The man who would speak of it would be laughed at'.[61] Limited liability was then being championed in the name of a distinctively self-sufficient, overwhelmingly secular form of economic and moral belief. The next step is to look at who was likely to be in sympathy with it.

'Free Trade in all its completeness'

Key to understanding the pattern of public sympathy for limited liability, as it emerged in the late-1840s, is the Irish famine, which helped define a generation politically as well as morally. Writing in later years of its effect, the Peelite politician the Duke of Argyll, recalled that:

> 'When the crash of the potato famine came ... I became a convinced Free Trader. But it was in Free Trade in all its completeness that I alone believed ... It seemed evident to me that the battle of open competition with the foreigner could not be fought unless the skill, capital, and enterprise of our own people had access freely to the employment of all these resources.'[62]

Anthony Howe has noted a similar systematising effect on Gladstone[63], part of a wider formalisation that took place from July 1846, as free trade was adopted by many politicians as an article of faith for national guidance.[64] The systematisation was reflected in a new political fault-line, drawn between an association of Whigs (willing to contemplate application of free trade principles to land) and Disraeli's brand of self-

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Works vol. xiv, ed. Francis E. Mineka (Toronto and London, 1972), p.53.
[61] *The Trade Spirit versus the Religion of the Age: a Discourse* (Edinburgh, 1856), pp.36-7.
[62] The Duke of Argyll, *The Unseen Foundations of Society* (London, 1893), pp. ix-x.
[63] Anthony Howe, *Free Trade and Liberal England, 1846-1946* (Oxford, 1997), pp.11-12.

consciously pragmatic Toryism. On the liberal side of this line, prominent individuals, in Howe's words, 'left behind some of the evangelical caution of the earlier liberal Tory generation … rapidly [eroding] the providentialist arguments of the Liberal Tories'.[65]

This re-alignment was to be important for mid-century political support for limited liability. As several accounts have noted, support cut across political groups, and could include Conservatives, as well as those towards the radical end of the political spectrum. There were however, identifiable centres of gravity in the respective camps. Most of the leading Peelites - including Sir James Graham, Edward Cardwell, Gladstone and Peel himself - expressed opposition to limited liability, as did a number of older aristocratic Whigs, notably Lord John Russell. Against this, lawyer-MPs and others who gravitated towards Palmerston in the mid-1850s, were the most reliably supportive. Argyll was unusual in being a Peelite who supported limited liability - and unusual too in being a long-lasting Peelite member of Palmerston's 1855 Cabinet.

As also noted in the historiography, both sides of limited liability disputes were keen to claim free trade's endorsement. Taylor has examined conservatives' use of free trade rhetoric, to counter the claims of reformists, but does not expand upon what prompted each group to adopt their respective stances.[66] Those who claimed free trade's applicability to limited liability tended to have a high value for social inclusiveness. This was an intuition reliably triggered by social disturbance in France. When the 1830 French revolution sparked English interest in *commandite*, the classic antithesis between capital and labour was first cited in the context of limited liability. In 1834 the *Westminster Review* warned of the social risks inherent in its exclusive use, and that, '[u]ntil ... freedom of action [is] the rule in matters commercial, ... there is no security for property.'[67]

That theme was taken up with renewed interest by financial writers in the late 1840s. Free trade orthodoxy held that artificial blocks led to class conflict, and when another

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[64] Ibid, p.39, citing Viscount Ponsonby's 1851 observation.
[65] Ibid., p.11.
[66] James Taylor, 'The Joint Stock Company in Politics', *Reform and Reformers in Nineteenth century Britain*, ed. Michael J. Turner (Sunderland, 2004), pp.99-116.
[67] 'Law of Partnership', *Westminster Review*, vol. 20, January-April, 1834, No xxxix, pp.58-73 , p.73.

French revolution brought a burst of anti-capitalist, socialist rhetoric, the state of English partnership law was stigmatised as a classic block. By favouring those who could stand extensive financial risk - or were too incautious to worry about it - unlimited liability, it was argued, worked to concentrate capital. In the interest of social stability, capital must flow freely, accessible by all. The most committed to this cause were the Christian Socialists, but a wider, politically-interested audience also engaged with it. Lord Hobart, a clerk at the Board of Trade with an interest in Irish economic affairs, took up limited liability and made the same connection as Argyll did between unblocked capital and social progress:

> 'One great proposition stands out clear and unimpeachable, viz., that pauperism and its attendant evils will ... disappear in proportion as capital is productively invested ... When "unproductive consumption" [of capital] is denounced as the prolific source of national suffering, it is forgotten that, however strong may be the desire of the owners of property for its productive investment, their opportunities are not always equal to their inclination.'[68]

A socially-responsible modern state must provide these opportunities. This argument made much play of social sympathy and dynamic capital. For those, like Hobart, happy to project the one onto the other, limited liability was emancipatory, freeing up channels of investment and capital-flows. For those readier to credit discipline, it was interventionist, designed to shift behaviour artificially away from tried-and-tested practice and the promptings of social ties and competition.

Competition itself became a bone of contention, in another interpretative split acknowledged in the historiography. In a 1976 review of James Winter's biography of Robert Lowe, Hilton took issue with Lowe's claim that unlimited liability was 'the Corn Law of the Capitalist', and argued that since limited liability protected investors from the consequences of their decisions it - and not unlimited liability - was the protectionist option. Limited liability was 'in fact a retreat from the competitive economic model'.[69]

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[68] *Essays and Miscellaneous Writings by Vere Henry, Lord Hobart*, vol. 1, ed. Mary, Lady Hobart, (London, 1885) , p.66.

[69] Boyd Hilton, Review of *Robert Lowe*, by James Winter (Toronto, 1976), *The Historical Journal*,

This needs qualification but has undeniable validity in that some of Lowe's own allies acknowledged that limited liability took the edge off competition, and that this might be problematic. One answer was simply to agree that unlimited liability did indeed promote competition, but say that everyone had had more than enough of both, and would be better off with less. In 1854, the pro-limited liability *Leeds Times* argued that:

> 'Unlimited competition comes from unlimited liability, and unlimited competition is the curse of our social life. There would be less competition, and therefore more honesty and soundness, if there were fewer competitors; and there would be fewer competitors if there were more associations ... After all, capital and labour is in partnership now, and it is a better sort of partnership we want'.[70]

Others made more of an effort to appropriate competition to their own cause. Hobart did so in an 1853 pamphlet, where he acknowledged that limited liability:

> 'may indeed, at first sight, seem to ignore the principle of individual competition ... But competition is by no means excluded from the system to which we refer, since the various associations may and must … compete with each other; and ... under the industrial arrangements which at present prevail, it is not so much the operative as the capitalist whom competition stimulates to exertion'.[71]

Competition was here re-focused on associations rather than individuals, and on mental rather than physical exertion. The result was an *inclusive* competitive model - the competitive model of a league rather than the knock-out cup competition of unlimited liability. It was this socially-inclusive model for competition and capital that took on the weight of England's accumulated commercial experience in arguments made for limited liability in the late 1840s. The next step is to look at how it did so.

December 1976, pp.1036-7.
[70] 'Free trade in Partnerships', *Leeds Times*, 1 July 1854, p.4.
[71] *Essays and Miscellaneous Writings*, p.68.

Tackling tradition

Anyone arguing for wider use of limited liability in the second half of the 1840s faced one long-standing, much-recited objection i.e. that the existing system had apparently produced exceptional success. In 1836, John McCulloch argued that limited liability's adoption would mean 'the abolition of a law under which the manufactures and commerce of the country have grown up to their present unexampled state of prosperity'.[72] Twenty years later, he was still saying the same thing.[73]

Other factors too tended to make unlimited liability a relatively hard habit to break. One was England's proverbial possession of a 'great reservoir of accumulated capital' - and an accompanying argument that there was little need for capital-friendly incentives.[74] Historians have endorsed the material grounds for this perception, finding 'remarkably little evidence to suggest that British industry ever found it difficult to raise capital.'[75] Liability-conservatives pictured the abundant capital as a store of solidity. At the time he was listening to evidence in the 1843 Select Committee, Gladstone was publishing his confident view that Britain's 'enormous capital may waste for generations before it sinks to the level of equality with that of any other country'. This being so, he saw no need to risk 'sudden and vast extension of credits'.[76]

Another deterrent to change - rhetorical and structural - was manufacturing, central to much British economic discussion. Britain's manufacturing partnerships had traditionally eschewed limited liability, with the result that manufacturing did not do much to help limited liability argument before the late 1840s. Argument that looked to overseas example was also readily rationalised by conservatives when identified with France. Isaac Cory, a barrister and academic considering the issue in 1839, thought limited partnerships might do very well in a country 'where levelling principles have destroyed

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[72] 'On Joint Stock Banks and Companies', *Edinburgh Review*, LXIII (1836), pp.419-41, p.431.
[73] *Considerations on Partnerships with Limited Liability*, p.26.
[74] *Circular to Bankers*, 17 August 1838, p.52.
[75] K. Theodore Hoppen, *The Mid-Victorian Generation 1846-1886*, (Oxford, 1998), p.299.
[76] [Gladstone], 'Course of Commercial Policy at Home and Abroad', *The Foreign and Colonial Quarterly Review*, I, pp.243 and 249.

large fortunes to make what in England would be but a moderate capital'.[77] *Commandite* was:

> 'applicable to a country distressed for capital ... but very inapplicable to a country like England, in which capital abounds ... Here, where mercantile houses are in the habit of drawing cheques daily to the amount of the whole capital of [French] petty joint-stock companies, we smile at these little doings in France, which we observe immediately below our eyes, and we let them alone'.[78]

In the late 1840s, this framework was challenged by a different one, significantly less impressed with England's competitive position. Faced with the body of experience routinely cited by conservatives, reformists argued that Britain should let go of the past, embrace the excitement of new technology, and recognise that this had inaugurated a correspondingly new and dynamic age, deserving of its own dynamic and democratic company structures. As one limited liability enthusiast put it: 'that, in the progressive state of the country, new forms and appliances were necessary for the development of its resources'.[79] Identified with the perceived dynamism, intuitively and technically, was the joint stock company. Joint stock had traditionally been seen as appropriate for individuals or enterprises in need of help - a relatively soft option, said to be suitable for immature communities in need of support. These connotations had frequently been used in argument against limited liability. An 1824 letter to a newspaper complained that chartered companies should be redundant in England, as only useful 'in the infancy of commerce, and before Merchants acquired sufficient capital'.[80] Henry Burgess (admittedly not an impartial observer) similarly claimed in 1830 that: 'Joint-stock banks are, unequivocally, good institutions in feeble or infantine communities.'[81]

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[77] Isaac Preston Cory, *A Practical Treatise on Accounts, Mercantile, Partnership, Solicitor's, Private, Steward's, Receiver's, Executor's, Trustee's, &c, &c: Exhibiting a view of the discrepancies between the practice of the law and of merchants; with a plan for the amendment of the law of partnership, by which such discrepancies may be reconciled, and partnership disputes and accounts adjusted* (London, 1839), p.216. (Cory's suggestions impressed Ker, who recommended them to the 1844 Select Committee, *First Report of the Select Committee on Joint-stock Companies*, PP 1844 (119) vii192.)
[78] Ibid.
[79] J. Liddell, Banking Institute meeting, 14 December 1852, as reported by the *Bankers' Magazine*, January 1853, p.14.
[80] *Morning Post*, 30 April 1824.
[81] *Circular to Bankers*, 26 March 1830, p.281.

With an infusion of social sympathy and a systematic approach however, these connotations could be interpreted more positively. Writing twenty years after Burgess, George Porter saw the 'formation of joint-stock arrangements for the production of sugar' fostering energetic self-reliance and mental acuity in Britain's colonies.[82] Combined with the effects of steam-powered mechanisation, joint stock could be a recipe for powerful social and economic alchemy. Social concern helped argument for limited liability in the context of both *commandite* and joint stock, but it was the latter that proved politically more successful. *Commandite* continued to be discussed, and even posited in parliamentary Bills, but it laboured under the double disadvantage of too little interest from capitalists and too much from lawyers. Accessible as an idea while partnership and France were standard terms of reference, it nevertheless depended largely upon state sponsorship (as it had in France and in the US) rather than grass-roots interest. By contrast, limited liability enjoyed both technical and capitalist advantages in a joint stock context, with objections tending to focus on its social justification. The late-1840s saw a significant shift in this position, with argument that joint stock, associated with limited liability and impressive infrastructure developments, represented the future and should be central to Britain's own future. The shift from peripheral to central concern, and from association with the immature to the dynamically mature, drew momentum from three key sources, all infused with social concern and grounded in changes brought by steam-power. One was a dynamic conception of capital which gained hold from 1848. A second was the railways, which put argument onto a definitively *national* basis. And a third was the United States, which - as a self-consciously commercial nation - proved a more persuasive incentive to change than France. Even in the mid-1850s, France could still be patronised as having 'of late made great progress [but still] military rather than commercial'.[83] The United States was however, developing extremely rapidly in just those areas of manufacturing and infrastructure where Britain was traditionally pre-eminent. Drawing on examples from home and abroad, writers argued that structural change was overdue.

Joint stock companies were not only emblematic of modern dynamism but, as Alborn

[82] G.R. Porter, Preface to *The Progress of the Nation* (1851), pp. xix-xx.

identified, a receptive vehicle for anti-aristocratic moralising. This could be a powerful rhetorical combination, as shown in a *Daily News* 1850 claim that it was:

> 'almost impossible in the present state of society to exaggerate the importance of [joint stock] associations. By their aid England stands out pre-eminent at least amongst European nations for the mighty works which, during the last twenty years, have been accomplished ... in spite of the most determined opposition. If it had not been for the principle of joint-stock association these results could not have been attained; any private individual must have succumbed before that powerful opposition of landowners which was able for three successive years to defeat the endeavours of the London and Birmingham Railway Company to obtain their act of incorporation.'[84]

This format had the power to eclipse achievements made under unlimited liability partnerships. When, in the early 1850s the *Westminster Review* again took up the cause of limited liability, it observed - without intended irony - that,

> 'It seems, indeed, almost marvellous, that commerce should have been successfully carried on under a law so discouraging to its prosecution; and still more that a nation so hampered should have attained to that material prosperity which England has reached.'[85]

As any limited liability-sceptic, reading that, might have said: how very true. The *Westminster* writer found the answer to his own conundrum 'in the frequent invasions which have been made upon the law.' These invasions - joint stock companies with limited liability - were now credited with definitive national success, demonstrating 'the necessity of bending the feudal law to the wants of a later age' and changing it into line with them.[86]

The next chapter looks at how this adjustment in public commercial faith took effect,

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[83] *Report of the Proceedings*, p.51.
[84] *Daily News*, 5 October 1850, p.4.
[85] 'Partnership, with Limited Liability', reprinted from *Westminster Review* (London, 1854) p.8.
[86] Ibid.

with joint stock made the centre of a national story. Understanding its public appeal means acknowledging how moral change works. Haidt maintains that most moral reflection carried out by individuals merely reinforces existing intuitions (i.e. changes little) but that: 'moral reasons passed between people have a causal force. Moral discussion is a kind of distributed reasoning ... [M]oral judgment is best understood as a social process'.[87]

To effect a shift in attitudes to a moral issue, people had to talk. This was true of limited liability - always a moral issue - as of the broader cultural intuitions already considered. Its ability to mobilise 'distributed reasoning' depended upon people finding reasons to talk and moralise about capital. In the second half of the 1840s a succession of such reasons transpired. The most dramatic owed their existence to unpredictable circumstance, the subject of the next chapter, but before considering those, we should acknowledge one fundamentally important one that had been around for some time. This was steam-power.

Steam-power

Britain's adoption of steam-power was important for limited liability at root because steam-power drove mechanisation. Large-scale mechanisation required large-scale capital investment, and the scale of capital focused - and polarised - disputes about limited liability.

The question of the relationship between steam and capital occupied a great deal of public attention over the second quarter of the nineteenth century, as acknowledged by historians. In *The Machinery Question and the Making of Political Economy, 1815-1848*, Maxine Berg examined some of the more formal answers found, and identified two pivotal moments in their development.[88] Berg saw capital formation first becoming the dominant organising principle of economic theory in the 1830s (supplanting the division

[87] Haidt and Bjorklund, 'Social Intuitionists', p.181.
[88] Maxine Berg, *The Machinery Question and the Making of Political Economy, 1815-1848* (Cambridge, UK, 1980).

of labour), and then a further shift occurring after 1848, as 'political economists and their public submitted to the all-powerful discipline of the physical forces apparent in steam'.[89] In a move away from a definition of fixed capital as a 'material substance', influential theorists built models of sustained dynamism on the legacy of David Ricardo.[90] Faith in mechanisation was here conceptualised as abstract, self-regulating and limitless. Circulating capital had a central role to play in feeding and sustaining mechanised dynamism.

Berg's analysis considers political economists who took a self-consciously intellectual approach to steam-powered mechanisation, but others have tried to relate cultural change to more concrete, experiential inputs. In a usefully wide-ranging review of what economists and anthropologists have made of the historical acceptance of capitalism, Jack Goody, like Berg, focuses on steam-driven machinery and distinguishes the 'shift to machines, not commerce' as the key means by which a concept of capitalism was culturally assimilated in 1850s England, distinct from earlier, more personalised references to capitalists.[91] When discussing the mechanics of acceptance, he cites a classic assertion that 'the transition to capitalism occurs when wage labour becomes dominant in the economy as a whole'.[92] This is useful for timing - further reinforcement of the mid-century shift to financial reification that others have identified - but does not help for the mechanics of limited liability, since those closest to wage-labour, particularly in manufacturing, largely failed to value a wider role for limited liability. As will be discussed, steam and capitalism took other routes to limited liability.

Besides its implications for capital, steam-power also had a powerful cultural effect, in focusing attention on invention and its potential to supersede human labour. Britain's industrialisation can thus be seen as a stand-out instance of the sort of social elevation of mind identified by Lillard. Contemporaries were extremely self-conscious about this phenomenon, often taken as definitive - Simon Schaffer quotes a Manchester factory-

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[89] Ibid., p.130.

[90] Ibid., p.341.

[91] Jack Goody, *Capitalism and Modernity: the Great Debate* (Cambridge, UK, 2004). Goody cites the Oxford English Dictionary reference from William Thackeray's 1854 novel, *The Newcomes*, as evidence of the term's currency, p.128.

guide saying that steam-power gave 'to the present age its peculiar and wonderful characteristic, namely the triumph of mind over matter'.[93] As Schaffer also says, the emphasis on mind 'made the problem of workers' intelligence vital in political debate'.[94] The stakes involved here could seem very high (even after the violent clashes of the 1830s had passed) since steam engines held out the prospect of a future world which might have very little use for human physical activity, given the dramatic replacement of human labour already seen. As the political economist Richard Jones quantified the effect:

> 'The force employed in various tasks by steam-engines in England, is estimated to be that of six hundred millions of men ... That the existence of capitalists ... has practically led to that result, it is impossible to doubt.'[95]

Some were better-placed than others to cope with such a world - as too to credit themselves with meriting recognition and reward in it. Given the association between capital and mental activity made by many professionals, it is not surprising that intelligence featured strongly in limited liability disputes. It was not in itself a point of distinction. All who engaged in discussion accepted the importance of mental activity in the industrialised nation that Britain had become. And it was not possible to have an argument when one side thought there was nothing to argue about - liability-conservatives simply dismissed the idea that limited liability had anything to do with mental activity either way. Supporters of limited liability however, frequently emphasised its value, as they took up the cause of circulating capital in a crusading spirit. Steam power had changed the nation, and social awareness demanded that manual workers be given the opportunity to participate in a thinking, capitalist future. They stressed the 'importance of affording to the artisan every inducement to develope his

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[92] Ibid., p.128, citing W.G. Runciman.
[93] *Manchester as it is; or Notices of the Institutions, Manufactures, Commerce, Railways etc of the Metropolis of Manufactures* (Manchester, 1839. 1971 reprint), p271, as cited by Simon Schaffer, 'Babbage's Intelligence: Calculating Engines and the Factory System', *Critical Inquiry*, vol. 21, no. 1, Autumn 1994, pp.203-27p.220, n.30.
[94] 'Babbage's Intelligence', p.223.
[95] 'Of the Successive Functions of Capital in the Production of Wealth - Leads to Skill in Workmen, And to Knowledge in Masters', *Literary Remains, Consisting of Lectures and Tracts on Political Economy of the late Rev Richard Jones, edited, with a prefatory notice, by the Rev William Whewell* (London, 1859), p.456.

abilities ... The steam engine being now used to perform so much of the hard labour, full scope should be given to the mind and ingenuity of man.' The state of partnership law 'crippled' this scope and perpetuated a social gulf.[96] Company law had failed to move forward 'in accordance with the progress of intelligence and time'.[97]

These arguments were reinforced by an assertion of moral intuition. The assertion was not unselfish - people were voting for a world that accorded with their own social and material comfort - but neither was it mere cynical assumption. Animating it was a belief that Britain stood in urgent social need of a new, inclusive financial model that took account of the central importance of circulating capital.

This is displayed in the writings of financial commentators who argued in the late-1840s that the capital needed to drive a modern, mechanised nation must be democratised, and that limited liability might help achieve that - the subject of the next chapter. As Saville identified, limited liability commonly came in for public examination when crisis prompted inquiry. It was then that moral exchange, of the type identified by Haidt, commonly took place. The second half of the 1840s - acknowledged at the time as a period of 'especial notoriety'[98] - presented a protracted challenge of peculiar severity for anyone trying to make moral sense of economic events. Famine was followed by another commercial crisis in late 1847, and then the capital-threatening rhetoric of the 1848 French revolution. We should however, begin examination of the challenge with where it started, in an unprecedented surge in railway investment.

[96] John Howell, Banking Institute discussion, as reported in the *Bankers' Magazine*, February 1853, p.76.
[97] 'Partnership Liability', *Bankers' Magazine*, December 1853, p.840.
[98] David Morier Evans, *The Commercial Crisis, 1847-1848* (London, 1848), p.1.

Chapter 5: *The late 1840s and the role of the railways*

Engine of change

In the estimation of Shannon, the railways 'won the acceptance of limited liability' in England.[1] Shannon did not however, elaborate on his claim, leaving unanswered the question of what their role actually was.

The railways' role was to establish limited liability, and its attendant values, as a social norm. Railway companies and their investors translated the idea of limited liability into familiar reality, and, emblematic of modern progress, fostered debate about a wider application. Railway-development had self-evidently achieved great things, but was associated too with huge financial problems, feeding questions as to whether Britain was technologically modern but financially and socially outmoded. The railways provided a touchstone for such questioning and intuitions about the answers - as too, a focal point round which proponents of limited liability could re-frame the nation's economic success story.

Like much else in the story of limited liability's emergence, the association between limited liability and railway development dates from 1825. That year, Parliament began authorising railway companies, and railway investors acquired a public profile. Railway investment really took off however, - spectacularly - in the mid-1830s speculative round. By 1837, the general investment surge had given way to a contraction, but the continuing success of railway companies stood out from late-1830s depression failures. Joint stock banks were still much-discussed but increasingly representative of joint stock companies were railway companies.

These had been associated with limited liability from their inception. There were at the outset few objectors to railway companies being given limited liability status. This was to change later, with some questioning why railway companies had ever needed such a privilege in the first place, but the initial granting was straightforward. As Shannon

points out, the question of unfair competition did not arise in a new industry, and the appropriation of land, together with the scale of investment involved, pointed to a community mandate.[2] Importantly too, the first railway companies were not seen as necessarily monopolistic. Conceived, literally, as rail*roads*, it was envisaged that they would function much as roads already did, with public access granted on payment of a toll. Only when they began operation did the conviction grow that a turnpike model would not work, and that railways should have exclusive sway over their own line. In the 1820s however, this belief lay in the future, and, launched in a spirit of open competition, the railways secured the official blessing of limited liability, to encourage investor participation. The more difficult question is why they should have made it imperative, in the opinion of some, to encourage investors into other projects.

Key was a combination of two attributes: railways' obvious and undeniable scale and their association with a distinctive set of forward-looking social values. According to financial journalist David Morier Evans, the railways were responsible for 'one of the mightiest moral and social revolutions that ever hallowed the annals of any age'.[3] In 1845 Thomas Wilson, a cotton manufacturer who a few years later would begin lobbying for limited liability, wrote of railway development that:

> 'it accelerates the march of mind, no less than of industry ... It tends to equalise conditions, to redress the overbearing ascendancy of great capital and capitalists; to raise the humble and the labourer in the social scale.'[4]

Importantly, these changes were felt to be taking place on a national scale. Railway development was supported by a whole *population* of ordinary investors, dealing in an unprecedented volume of shares. In 1837, the reality of their and others' capitalist activity was recognised in the legal reification of (transferable) shares and approved transfer of debt-liability. Railway investors were not however, taken to be definitive of joint stock investment. Not all joint stock investors were deemed to be making a public

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[1] Shannon, 'The coming of general limited liability', p.287.
[2] Ibid., p.287.
[3] *The Commercial Crisis, 1847-1848*, p.8.
[4] *The Railway System and its Author, Thomas Gray, now of Exeter. A Letter to the Right Honourable Sir Robert Peel, Baronet* (London, 1845), p.38.

contribution, and protection from personal liability was accordingly still ring-fenced within officially-approved projects, judged to be in the public interest. That ring-fencing was reflected in the 1844 round of legislation. The 1844 Railways Regulation Act was predicated on the basis that, as Cooke has put it, 'railway companies were one example of a class of company which was formed under special parliamentary sanction to carry on an undertaking of a special public nature'.[5] The Joint Stock Companies Act, enacted the same year, dealt with another type of joint stock company: commercial companies, which operated in the areas identified by Adam Smith as suitable for individual enterprise. As Cooke also says, the pull of partnership was strongly apparent in their conception.[6] As with investors in traditional partnerships, investors in these companies were not protected with limited liability.

When this legislation was followed by a third burst of railway investment however, that line came under pressure. The railways were not the only development to test it, but they brought both social sympathy and - crucially - scale into discussions, together with a universally-recognised forum for debate. Through associations with national ambition and a body of ordinary investors, they provided the basis for a belief that not just some but *all* capitalists could represent the national interest.

As joint stock companies - capital-raising vehicles - railway companies could represent messages about democratic capital. The railways were not alone in this - joint stock banks carried similar connotations - and neither were they themselves uniformly identified with democracy. They were however, early associated with independence from the City and from 'aristocratic' finance. In 1835 the *Circular to Bankers* stressed that:

> 'the Rail-way system advanced and became established in the public confidence almost wholly without the assistance of the Stock Exchange. The support afforded to it was derived almost exclusively from the capitalists and men of thrift and opulence in the mining and manufacturing districts of the north of England ... Taking into account all the railways now in operation … not one-twentieth part of

[5] *Corporation, Trust and Company*, p.136.

> the capital expended upon them was furnished by members of the Stock Exchange or Stock-brokers … It is useful to mark the progress of the connection of the Stock Exchange with this new system. Now, if any Rail-way be advertised in London we would venture to suggest that applications would flow in from the Stock Exchange for at least one-quarter part of the whole number of shares.'[7]

The moral of this for readers was clear: the City would always be happy to profit in self-interested fashion from established opportunities, but could not be relied upon to show initiative or courage in opening up new areas of enterprise. For that, Britain must look to the sort of thrifty, enterprising spirits which - in Henry Burgess's opinion anyway - were more likely to be found in the provinces than in the City. Whether this thrift-driven picture actually bore much relation to the reality of Britain's capital-accumulation, even within the railway industry, was not really the point. What mattered was that the headline assessments had, in the context of railway investment, enough relation to perceived reality to carry social credibility and generate public sympathy. It was this public sympathy that legitimised a new financial identity for a mechanised nation, built upon a diversified body of ordinary investors. In the third burst of railway-speculation, which took off in 1845, it forced itself on the national consciousness in emphatic fashion.

'Railway-mania'

Of the three surges of public interest in railway investment which punctuated the second quarter of the nineteenth century (in the mid-1820s, 1834-7 and 1845) the third was by far the greatest, identified then and since as a 'railway-mania'. Investor-interest took off seven years after the previous spate, beginning in 1844, when an investment boom followed a succession of good harvests. An influx of capital created rising demand for shares in existing railway companies, and new companies were floated on the back of the rising share prices. Paul Johnson has quantified the sharp intensification of investor interest that occurred the following year:

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[6] Ibid., p.146.
[7] *Circular to Bankers*, 6 November 1835, p.123.

> 'in the first 10 months of 1845, 1400 companies were proposed, over 800 of which were registered in September and October ... Demand was so intense that an active market developed in letters of allotment and scrip certificates, which required deposits of only a small fraction of the value of the (putative) paid-up share'.[8]

Investment thus came to float on credit. Some City professionals and journalists, observing this, expected the bubble to burst. When October brought a rise in the Bank Rate, it duly did.

In the fall-out, it was likely that somebody would have to be to blame. For a substantial portion of the press, including specialist railway publications, this was *The Times*, which 'came out at a special crisis with a sweeping denunciation of all railway schemes'.[9] *The Times* itself put the blame elsewhere, but continued to be impugned as the source of 'nearly all the havoc and ruin which have fallen on the property of the industrious middle and lower classes.'[10]

The 'industrious classes' might themselves have been another target for moralising, since railway investors drawn from them had not, as might have been expected, moderated their behaviour as share prices rose, but followed each other, sheep-like, into ever higher prices. With hindsight at least, this did not reflect well on their judgment, and could temper the sympathy accorded them. Many however, also saw investors as victims - gullible perhaps, but 'innocent mostly as well as unfortunate' and duped by those who knew better than they how to manipulate the system.[11] And, deserving of sympathy or not, they were supporting a national enterprise, extending through a network of railways and provincial stock exchanges. In the inquest that followed the 'mania' it became clear that investment's reach now extended throughout the nation and society. As the *Glasgow Citizen* had put it in June 1845, 'Everybody is in the stocks now... [A]ll have entered the

[8] Paul Johnson, 'Market Disciplines', p.4.
[9] *The Railway Times*, 22 November 1845, p.2288, quoting the *County Chronicle*. Other publications to blame *The Times*, also quoted, were: the *Morning Chronicle*, *Morning Herald*, *Morning Advertiser* and *Railway Director*.
[10] Ibid.
[11] *The Observer*, 12 April 1846, p.4.

ranks of the great monied interest'.[12] Litanies of investor-types were common. For the first time, Britain appeared as a nation of investors.

She was also a nation that talked more about investor-liability than ever before. A decade earlier, pamphleteers had alerted joint stock bank investors to the dangers of personal liability, but many more such warnings were published for railway investors. Public discussion had begun before the share-crash, as interest in railway shares mushroomed. In December 1844, the *Bankers' Magazine* reported that:

> 'At the present time, when transactions in Railway Shares have become so general ... we are led to believe that a plain outline of the liabilities incurred by the holders of this description of property ... will be both useful and interesting to a large proportion of our readers'.[13]

If readers were still un-enlightened after reading this, they were advised to consult Farren's latest publication, *The liabilities of Members of existing and future Public Companies and Partnerships*, one of a number prompted by 'extensive alterations effected in the law of joint-stock partnerships by the recent Act, 7 & 8 Vict, cap110'.[14] Other recommendations included 'Mr. Wordsworth's very able work on the Law of Railways and Joint Stock Companies' and Mr. Alexander Pulling ('barrister-at-law')'s *The Rules of Law Affecting the Formation of Joint Stock Companies, and the Rights and Liabilities of the Promoters and the Shareholders*.[15]

As investor activity increased through 1845, so the advice and publications proliferated. Most were produced by lawyers, and often directed at the general reader. Barrister George Lewis's *The Liabilities incurred by the projectors, managers and shareholders of railways and other joint-stock companies* was 'written expressly for non-professional use' and quickly ran to several editions.[16] Another book, by two more barristers, was

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[12] 'The Stock Mania', *Glasgow Citizen*, as quoted by *The Economist*, 28 June 1845, p.601.
[13] *Bankers' Magazine and Journal of the Market*, December 1844, p.131.
[14] Ibid., p.174.
[15] Ibid., December 1845, p.148 and March 1847, pp.378-88.
[16] George Henry Lewis, *The Liabilities incurred by the projectors ,managers and shareholders of railway and other joint-stock companies considered* (London, 1845).

'intended principally for the use of non-professional persons'.[17] Lawyers were predicting a nasty shock for some of these even before the share-crash. Lewis warned that

> 'not a small number of persons are in the habit of engaging in ... the "Share Trade", ... without being sufficiently aware of the responsibilities which attach to them ... [M]any of the projects now afloat are but shadows ... The shareholders in these Companies will have to stand the day of reckoning, and may then learn, what it would be well if they learned beforehand, the responsibilities attaching to their position'.[18]

As one sceptical reviewer warned however, 'Cassandra prophesied without effect'.[19]

A markedly more optimistic tone was at this point still being taken by the specialist railway press, chief site of inquiries and advice. The doyen of railway publications was the *Railway Magazine,* started in 1836 by John Herapath, and issued weekly from 1839. Together with the other main weekly, *The Railway Times* (which had the largest circulation), it dominated comment until 1844, when a rash of other publications joined the field. Both the *Railway Magazine* and *The Railway Times* were associated with campaigns on behalf of individual railway companies, and their editorial objectivity was frequently questioned. By the mid-1840s however, some publications prided themselves on a self-consciously independent stance.

In the second half of 1845, as share prices continued to rise, railway investor-liability was a hot topic in these and other specialist publications. In August, under the heading 'Liabilities of Railways Shareholders', the *Bankers' Magazine* quoted the *Railway Times* as saying that 'We are constantly receiving applications for information as to the liabilities of shareholders'. The *Railway Times* judged - wrongly, as it turned out - that the answers to the queries were 'very simple'.[20] The following month, the *Bankers' Magazine* published another piece, and in October 'Railway Speculation' was the leading

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[17] John Blackham and A. Hickey, *Advice to Promoters, Subscribers, Scripholders, and Shareholders, of Joint-Stock and Railway Companies* (Dublin, 1846).
[18] Lewis, *The Liabilities incurred*, p.1.
[19] *The Spectator*, 25 October, 1845, p.17.
[20] *Bankers' Magazine*, August 1845, p.296.

article. Information on the liability of holders of railway-scrip drew on the professional opinion of Mr M.J.H. Shaw, commissioned by the *Leeds Mercury* on behalf of its readers. On 18 October, *The Railway Monitor* published an article on the 'Liability of Original Subscribers to Railways' in which it said that, judging by letters received, the subject was little understood. The *Monitor* warned that restrictions on liability, though common, might not hold good, and that 'Nothing short of an Act of Parliament can restrict the liabilities of partners (as in this case all shareholders are)'.[21] This was said against a background of growing stockmarket jitters. The same day as the *Monitor*'s piece appeared, *The Railway Times* tried to steady the ship, taking occasion to observe that 'alarm is groundless.'[22] This proved over-optimistic, and a week later, the *Monitor*'s leading headline was 'The Crisis in the Share Market'.[23] Railway share-prices had collapsed from their August peak, and, as panic-selling spread, fell still lower. By the end of November, they were down more than 18% from their August high, sinking into a trough that was to continue for five years.

This was the trigger for a flood of queries and articles on the subject of railway shareholder liability. The interest may seem odd, given that railway investors were routinely accorded limited liability. Railway companies had however, first to be set up as unincorporated companies, and during that stage their members had unlimited liability status. For most types of company this stage was expected to be of short duration, a prelude to registration and incorporation. Because of their interest in land however, railway companies were, like other transportation companies with the same interest, subject to an additional Parliamentary authorisation. The standard two-stage process was to register a company provisionally (as an unincorporated company, in which investors could register an interest in the form of scrip - the same scrip which constituted an actively-traded market in itself in the autumn of 1845) and then apply to Parliament for approval. The provisional registration was not in itself unusual, being the first stage of incorporation, but - as now became all too clear - legislators had thereby created an opportunity for confusion and contention. Provisionally-registered, as-yet-

[21] *The Railway Monitor* (published as part of *The Economist*), October 18, 1845, p.1013.
[22] *The Railway Times*, 18 October, 1845, pp.1961-2.
[23] *The Railway Monitor*, 25 October, 1845, p.1045.

unincorporated railway companies could draw in capital and incur expenses, but their participants' responsibilities, if the company should fail, were far from transparent. One investor guide warned that they might be 'exceedingly onerous.'[24] In the failures that followed railway 'mania', the possibility of personal liability - reasonably remote while companies seemed to flourish - suddenly became all too real. When, post-crash, creditors presented unpaid bills to these provisional companies they were confronted with the ambiguous status of their directors ('provisional committeemen') and resorted to the law to try to hold them accountable. The result was financial liability debate on an unprecedented scale.

Contention was not at first anticipated. In one of the first test-cases, in the Court of Exchequer, a stationery supplier brought an action against the Irish West Coast railway company, and the judge - once again, Edward Alderson - observed,

> 'that no possible doubt could exist as to the liability of the [Provisional Committeeman] defendant. He became responsible from the day when he consented to act on the provisional committee [and] was liable to all the contracts from that day'.[25]

The railway press were pleased to agree. *The Railway Times* thought it self-evident that provisional committeemen should be liable for creditors' unpaid bills, the only issue being how they were then to partition liability amongst themselves:

> 'What can be more just? Tradesmen trust, not the Company which they are to be instrumental in calling into life, but the men whose names they see prefixed to it, and it would be a little too bad that this confidence should be rendered worthless by a legal technicality'.[26]

The Times took the same line. The provisions of the 1844 legislation were admittedly 'confused', and 'to attempt to explain what these various responsibilities may amount to, would be for us as hopeless, as it will be for Her Majesty's courts of law and equity an

[24] Blackham and Hickey, *Advice to Promoters*, pp.17-8.
[25] Barnett *v* Burdett, as reported in *The Railway Monitor*, 24 January, 1846, p.118.
[26] *The Railway Times*, 30 May, 1846, p.770.

overwhelming task'.[27] But there could be no doubt that

> '[a]t common law the liability of the promoters of any scheme, mine, or canal, or railway, has long been established ... [and] that every man who has signed a consent to have his name published on the provisional committee has made himself personally liable for every debt contracted by the so-called company. Every thinking man knew this long ago.'[28]

The Railway Times' reference to a legal technicality gives an indication however, that all might not prove straightforward in practice. All the legal advice agreed that, in principle, 'before [a railway company's] provisional registration, the promoters are solely liable [and] after provisional and before complete registration, they continue still liable and subscribers [for shares] may [also] become [liable] by acts of interference'.[29] Promoters' liability extended however, only to such expenses as were necessary for a company to secure registration, and in this and the definition of subscriber 'interference' (which might trigger liability) there was scope for interpretation. As case followed case, it became apparent that a provisional committeeman who could show he had protested at a railway company's expenditure might get himself off the hook. *The Railway Times* found this - and a legal argument that creditors needed to show that committeemen had agreed, as individuals, to pledge their credit - ridiculous: 'no man, in point of fact, gives "an actual authority to pledge his credit" '. The authority was to be assumed from committee-membership, 'and private dissent [had] nothing to do with the question'.[30]

Creditors, of course, agreed. 'A Tradesman' wrote to *The Railway Times* at the end of 1846, after some well-publicised judgments had gone against creditors, to protest against the implied grilling of individual committee-members that might have satisfied legal argument.[31] *The Times* sympathised.[32]

By now however, it had become clear that creditors might need to show that

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[27] *The Times*, 26 November, 1845, p.4.
[28] *The Times*, 21 January, 1846, p.4.
[29] Blackham and Hickey, *Advice to Promoters*, p.21.
[30] *The Railway Times*, 6 June, 1846, p.801.
[31] *The Railway Times*, 2 January, 1847, p.15.
[32] *The Times*, 25 December 1846, p.4.

committeemen had agreed to a personal contract. In the absence of an incorporated company, this could be all the recourse the law afforded them. After a year of litigation, this was confirmed in the view of Sir Frederick Pollock, Lord Chief Baron of the Exchequer, 'that there is no proof Provisional Committeemen were associations for the participation of profit and loss'. To which *The Railway Times* responded that, 'no man unconnected with railway and the law' would think any Provisional Committeeman ever joined a Committee without profit as a main objective.[33]

That view was repeated across the railway press. *Herapath's Railway and Commercial Journal* also thought that 'no uninterested man of common sense and of ordinary natural conscience can doubt that Provisional Committeemen ought to be responsible to the creditors of the Company', while acknowledging that Mr. Edward Cox's recently-published pamphlet, *Railway Liabilities*, took the opposite view.[34] Cox was not alone. *The Economist* also reviewed his pamphlet, and sympathised with its argument that it was not enough for a creditor to show that an individual was a committee-member in order to prove a claim against him. Cox argued that claimants needed to show as well that when an individual had become a member, he had intended to take on managing responsibilities. Otherwise, since provisional committeemen were not partners, with relationships 'in the nature of a partnership', they could be held responsible only for their own contracts. Attempts to extort money from them were 'villainy' and 'plunder'. *The Economist* did not go that far, but thought that Cox's arguments 'seem[ed] to bring the law back to a question of fact and common-sense', sympathising with a view of committeemen as victims, the 'dupes of solicitors and schemers'.[35]

Cox had another outlet for his views on railway liabilities as editor of the *Law Times*. Over the critical period of March-August 1846, when litigation and press interest was at its height, the *Law Times* monitored key court cases[36] and noted approvingly the shift in focus away from committeemen (many of whom 'merely lent their names in the belief

[33] *The Railway Times*, 2 January, 1847, p.15.
[34] *Herapath's Railway and Commercial Journal*, 9 January 1847, p.39 and 2 January 1847, p.14.
[35] 'Railway Liabilities', *The Economist*, 16 January 1847, p.70.
[36] On 28 March , 9 May, 16 May, 13 June, 20 June, 15 August.

that they were advancing works calculated to be of great public benefit'[37]) to the liabilities of share-allottees. In the 9 May 1846 edition, Cox was pleased to credit 'Mr A 'Beckett' with being the first to query committeemen's liability.[38] Thomas Turner à Beckett was another lawyer who had gone into print on the subject, admitting that his was 'not the popular view of the question', but holding his ground.[39] Other lawyers disagreed and thought it '[b]etter that [provisional committeemen] should suffer than honest creditors be deprived of remedy'.[40] Nor was opinion confined to lawyers. An investment guide observed that, 'the only difference between an Allottee and a Provisional Committee-man [seems] to consist in making the latter (when not one of the concocters of the scheme) the principal victim'.[41]

Blame was vigorously debated in the press, with railway publications in no doubt that creditors were the principal sufferers. R.W. Kostal has carried out an analysis of railway court-cases, from which he too concludes that, '[t]he railway scrip which flooded the securities markets in 1845 was paid for, in effect by a multitude of small businessmen.'[42] Whether these businessmen were really such innocent victims was robustly contested. The *Law Times* asserted in May 1846, that, 'It is known that some newspapers and some newsagents have made out very heavy bills against the committees of different railways [of] at least fifty per cent. beyond the regular charges'. Others even less scrupulous were engaging in an 'ingenious scheme of plunder', whereby 'a nefarious bargain [was] made between the creditor and his attorney', with the creditor handing the attorney all his debts, to collect as he might, in return for an agreed share of profits from litigation based upon the debts.[43]

Provisional committeemen joined in press debate themselves. One wrote to *The Times* at the beginning of 1847 to protest that his local tradesmen had elected 'a set of directors, engineers, solicitors &c' who then generated costs out of all proportion to any necessary

[37] 'Railway Litigation', *Law Times*, 9 May 1846, p.126.
[38] Ibid.
[39] Thomas Turner à Beckett, *Railway Litigation, and how to check it* (London, 1846) pp.20-3.
[40] Blackham and Hickey, *Advice to Promoters*, p.18.
[41] *A Short and Sure guide to Permanent Investments in Railways. By a Successful Operator* (London, 1846), p.16.
[42] R.W. Kostal, *Law and English Railway Capitalism, 1825-1875* (Oxford, 1994), p.58.
[43] 'Railway Litigation', *Law Times*, 16 May 1846, pp.150-1.

for registration.'[44] Another self-styled 'Victim' committeeman complained that:

> 'as for all the talk about poor tradesmen as third parties, that is mere gammon, put forth to enlist the support of jurymen ... Tradesmen's accounts form but a petty item in the list of enormous bills and charges sued for by attornies and surveyors'.[45]

He and his fellow committeemen had accordingly 'settled all bills but solicitors' '. Amidst claim and counter-claim, many could agree to blame solicitors, generators of their own exorbitant fees, and well-placed to exploit the system. A network of lawyers, scurrying about their localities, was popularly held to be the real motor behind the mania.[46] A letter to *The Railway Times* from a shareholder 'In Several Railway Companies', described how:

> 'A lawyer takes a map of England in his hand, and sees a space of a few square miles without the intersection of a railroad. He sets off, calls upon two or three of the landowners of his neighbourhood, and writes to all his friends and acquaintances and invites them to join the Committee. They of course take plenty of shares [and] what can they do sufficiently for him? Why they present him with two or three hundred shares, pay his bills without looking at them, and often give him a large sum of money on obtaining their Act.'[47]

As lawyers came in for public ire, so committeemen began to slip off the hook. In all three of the main classes of action brought in the wake of the crisis, the railway press saw the same pattern confirmed.[48] An initial wave of moral indignation (acting in favour of those trying to enforce personal liability) had been followed by legal dispute, and a reaction in favour of higher-status individuals. This was either a victory for clarification

[44] Letters to the Editor, *The Times*, 2 January 1847, p.6.
[45] Ibid.
[46] Comment to this effect, and the evidence for its justification, is discussed by Kostal, *Law and English Railway Capitalism*, pp.32-52.
[47] 'Railway Speculations'; Letter addressed 'To the great body of Railway Scripholders of the United Kingdom', *Railway Times*, 25 October 1845, p.2061.
[48] Kostal categorises the court activity as: (i) Creditors vs. Provisional committeemen, for payment of bills (ii) Scrip purchasers vs. Provisional committeemen, for return of deposits (iii) Provisional directors vs. allottees of scrip, for unpaid deposits.

of legal principle or - as the railway press would have it - class bias. *Herapath*'s saw the experience of the pivotal year of 1846 in class terms: when financial pressure came, 'the Provisional [Committeeman] protested against the notion that he was liable ... ; at the first declaration the judges quashed such a defence, - the wealthy man persists against judges in their own courts, and, it would seem, at length gains the day'.[49] Through the disputes and ever-more-refined judgments, lawyers repeated the mantra of partnership.

Few of their pronouncements matched the confident tone of Cox's *Law Times*. When court cases first started in late 1845, *The Law Magazine* published a discussion of the personal liability of provisional committeemen, from which it concluded equivocally that,

> 'although our law does not appear to favour the notion of limited liability in cases of this sort, still, in the absence of express contract, the jury should be left to decide whether credit was given to the members of the committee personally, or to the fund which was to be at their disposal.'[50]

Guidance became longer rather than clearer in subsequent articles. The following year, with court cases in full flood, the *Magazine* published a fifty-page article on 'Railway Liabilities', which included a review of three publications produced by lawyers for professional and lay guidance. At the end of this lengthy piece, the *Magazine* took pious satisfaction in having 'added our mite to that discussion of the subject, which can only make manifest the law, and guide the speculator and practitioner in their thorny and troublous path'.[51] One can only wonder how useful speculators and practitioners found it. The following year, reviewing yet another publication on 'The Law of Partnership, Railway and other Joint-Stock Companies', *The Law Magazine* confirmed that, 'As regards railway projects, and joint-stock companies, the law cannot be said to be entirely settled'.[52] That was something of an under-statement. Faith in the operation of company law had been de-stabilised by the sheer scale of litigation. As *The Times* asked in April 1846, surveying the extent of unresolved railway-related court cases, 'Is this a state of

[49] *Herapath's Railway and Commercial Journal*, 2 January 1847, p.14.
[50] 'Joint Stock Projects', *The Law Magazine*, August-November 1845, p.15.
[51] 'Railway Liabilities', *The Law Magazine*, February-May, 1846, p.175.
[52] *The Law Magazine*, February-May 1847, p.83.

things which ought to be?'[53] Something else had become manifestly obvious too. As another Editorial pointed out, when it came to matters of personal liability, there could be 'a vast difference between theory and practice'.[54]

System failure

Railway 'mania' raised awareness of investor liability, through a huge expansion in the number of investors; its fall-out raised awareness of the value of investor-protection. The implications for limited liability extended however, beyond general awareness levels and beyond the railway industry itself. One industry which suffered a particularly important knock-on effect was banking. Banking had its own crises, and one of the most obvious lessons from reading through banking publications is that debate about personal liability ignited whenever a bank failed or when there was a need to encourage investment. Ten years before railway-mania, with joint stock bank investment at an all-time high, these had not been common concerns. When another Select Committee met in 1841 the subject of limited liability was hardly raised at all.[55] A contemporary publication asserted proudly that the 'constitution of the joint-stock banks with their unlimited liability and their capitals publicly proclaimed, affords all but perfect security'.[56]

The balance of opinion on these considerations changed decisively in the wake of the railway-share crash. Disparities that had existed before were now felt more acutely. Banking industry observers complained that the scale of railway investment had fundamentally changed the investment game by sucking in huge amounts of capital. Defenders of the status quo might argue that limited liability should be used only exceptionally, but when deployed for something as popular as railway investment, how exceptional was it? Actuary James Knight's 1847 review of London banking stressed that, with railway companies able to lure investors *en masse* with limited liability, joint stock banks no longer had pools of unemployed private capital that they could draw

[53] 22 April 1846, p.5.
[54] *The Times*, 25 April 1846, p.6.
[55] *Second Report of the Select Committee of Secrecy on Banks of Issue*, PP 1841 (410) v 220.
[56] Samuel Bailey, *A defence of joint-stock banks and country issues* (London, 1840), p.97.

upon.[57] Henry Burgess also complained that banks now had to compete on an uneven playing-field.[58] Burgess may have been sceptical about the value of limited liability for banking, but he did not approve either of it being made the effective preserve of the railways, to the exclusion of other large-scale joint stock companies. Unprecedentedly popular, railway investment had distorted the system - or rather, as was increasingly said, made it plain that there was now a new system, for which traditional assumptions could no longer apply. As was observed too in the *Circular* at the end of 1847, in a review of recent bank failures: 'It is when difficulties arise [that] the wits of debtors and persons disposed to litigation become sharpened.'[59]

Bank 'difficulties' were always a highly sensitive issue, but had a particularly emotive tinge in the context of joint stock banks. In the years before railway-mania, when 'calls' on shareholders' private assets were rare and words were cheap, it was common to parade bank-shareholders' liability as a source of reassurance. An 1840 guide to joint stock banking proudly asserted that 'no establishment could possibly be constituted on principles better adapted to secure safety to the public'.[60] In the fall-out of railway share-collapse however, as banks passed the effects of a financial squeeze onto their shareholders, this position came under pressure.

Pressure first became apparent in early 1846. The *Bankers' Magazine* published an article then on 'Liabilities of Joint Stock Bank Shareholders', in which it confessed it had not expected, given 'the manner in which the Joint Stock Bank system is now carried on' that 'there would be occasion for questions on bank shareholder liabilities'. 'Recent failures' - in Leeds, Sheffield and Newcastle-upon-Tyne - had however, 'provided it'.[61] In reply to a reader's query as to the extent of joint stock bank shareholder liability, the *Magazine* confirmed that personal liability continued for three years after sale of shares. Two banks were rumoured to be in trouble because of 'an incautious employment of money, in advances on railways securities of indifferent character'.[62] Now that resolve

[57] James Knight, *A Review of the private and joint stock banks in the metropolis* (London, 1847), p.24.
[58] *Circular to Bankers*, 8 January 1847, p.235.
[59] *Circular to Bankers*, 1 December 1847, p.171.
[60] G. M. Bell, *The Philosophy of Joint Stock Banking* (London, 1840), p.5.
[61] 'Liabilities of Joint Stock and Shareholders', *Bankers' Magazine*, March 1846, pp.351-2.
[62] 'Bank Stoppages', *Bankers' Magazine*, February 1846, p.304.

was to be tested, the *Magazine* had no hesitation in taking a tough line. If necessary, shareholders must pay up, in the interest of wider stability:

> 'We trust that *other* bankers ... will let these stoppages act as a strong incentive for them to be prepared to meet the demands upon them, at any sacrifice of present interest. Nothing less will prevent the most serious calamities.'[63]

By this time, the railway industry was contending with its own versions of this sort of problem, with significantly more trouble in securing funds. Contention was especially rife in the area of railway scrip, where even lawyers could not discern clear legal principles. George Lewis's guide to railway investment considered it illegal to issue scrip before provisional company-registration or deal in letters of allotment before full incorporation, while admitting that railway promoters did both. Another lawyer acknowledged 'much difficulty in the construction of the Joint Stock Act as affecting railway companies, and so much doubt with regard to the transfer of scrip, [that it] exposes both seller and buyer to much uncertainty, liability, and probable litigation'.[64] *The Law Magazine* thought the Joint Stock Companies Act, and its multiple provisions, so badly worded that it was difficult to tell what did or didn't apply to railway companies.[65]

Like provisional committeemen, railway investors who resisted demands for payment used the press to make their case. A scripholder signing himself 'Fair Play' wrote to *The Times* to complain at 'a flagrant case of railway bullying ... a requisition received under a threat of legal proceedings'.[66] The railway press urged scripholders to stand firm against demands. In August 1846, the *Railway Times*, discussing a projected meeting of scrip-holders in Birmingham, gave its opinion that:

> 'As the case stands, the Provisional Directors are clearly liable for every shilling of the expenses that have been incurred. The scripholders will no doubt resist the audacious attempt to saddle them with payments to lawyers and surveyors, when

[63] 'The Recent Joint Stock Bank Stoppages', *Bankers' Magazine*, February 1846, pp.306-7.
[64] Blackham and Hickey, *Advice to Promoters*, pp.33 and 38-9.
[65] 'Railway Liabilities', February-May 1846, pp.124-133.
[66] 'Who Shall Bear the Cost?', Letter to the Editor, *The Times*, 16 April 1846, p.7.

> the law clearly says that the expenses of abortive projects shall be wholly borne by the promoters.'[67]

As promoters persisted with trying to raise funds, so the advice from railway journals continued to be to disregard solicitors' letters.

Meanwhile, banking articles reported continuing 'difficulties' and extrapolated from the particular to the general. In October 1846 a *Bankers' Magazine*, piece[68] kicked off a year-long debate about bank shareholder liabilities in the Correspondence section.[69] As the *Magazine* observed: 'The unfortunate position of so many of the projected railways, has rendered the law relating to the liabilities of parties connected with them, very familiar to a large portion of the mercantile world'.[70] The wider press made the same point. Articles on liability were printed across the provincial press, from the *Aberdeen Journal* to the *Sherborne Mercury*, and could include a technical observation on the state of partnership law. In April 1846, the *Sheffield and Rotherham Independent* commented that:

> 'The Railway mania has, rather unexpectedly, forced upon the attention of Parliament the defective state of the Law of Partnership. It has often been a subject of complaint that, in a commercial country like this ... the Law of Partnership should be without system ... Why not grapple with the whole system of partnership, and authorise persons to become partners in trade, with limited liabilities, similar to the French Law *en commandite*?'[71]

Comment to this effect received a further boost when the autumn of 1847 brought another of the financial crises which periodically disrupted confidence and economic activity.

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[67] *Railway Times*, 15 August 1846, p.1139.
[68] 'The Two Systems of Banking', *Bankers' Magazine*, October 1846, pp.1-5.
[69] Editions of October 1846 to June 1847, inclusive.
[70] *Bankers' Magazine*, March 1846, p.351.
[71] 'Money Market', *Sheffield and Rotherham Independent*, 18 April 1846, p.5.

'Money famine'

The 1847 financial crisis was presented in press articles as the moment when economic distress was brought home to many of the more financially-comfortable in England in terms they could feel directly:

> '[S]ome millions of cultivators in the southwest of Ireland [may] be involved, literally speaking, in the horrors of famine ... But ... the thing which the [British] commercial classes certainly did not expect is this: - *The calamity has now reached themselves* ... [M]onied distress [was] never more severe.'[72]

Real famine had been followed by what the press termed 'money famine'.[73] This was swiftly followed in turn by heated debate amongst financial professionals about what had caused it.

A large part of this discussion was uncontroversial. Everyone agreed in attributing the crisis in some form to the effect of two poor harvests, compounded by railways' financial pressures. Less clear was why grain purchases and railway 'calls' for capital had produced such strains in the money market. In the firing line were the Bank of England and Robert Peel's 1844 Bank Charter Act, which required the Bank to issue only notes covered by bullion. Money-market difficulties had first surfaced in April 1847, with a sudden reversal of Bank of England discount policy. These had dissipated relatively quickly but continuing high interest rates prompted a merchants' petition against the Bank Charter Act in June. Money-market pressures then erupted into a much worse crisis in October, with a catastrophic credit-crunch and the failure of many merchants, particularly those dealing in corn. Problems emerged with the bill system used by merchants to finance their domestic trading and (through London's Royal Exchange) dealings with overseas markets. The usual practice was to take a bill, which might be for a payment due - say - three months hence, to a bank or other financial institution and raise cash against it, at a discounted rate. In the October crisis this system was squeezed. Merchants who presented bills in the usual way found them refused, and those who

[72] 'Lessons from the Famine', *Blackwood's Edinburgh Magazine*, April 1847, pp.515-24, p.517.
[73] 'The Currency Question', *The Times*, 6 October 1847, p.5.

needed to raise cash found themselves in trouble. The credit-squeeze thus set businesses against the financial interest - a framing that proved important. Public meetings asked why monetary policy could not be 'elastic [enough] to admit of the Bank [of England] replacing for a time the amount we had been obliged to pay for corn?'. Why should 'the whole interests of this country [be mortgaged] to the foreign trade by tying us down to the exchanges'? so that 'first the population must starve, and then the commercial interest be ruined!'.[74]

As the government of Lord John Russell sought to stem fears and restore confidence, the financial press were on their mettle to account for what had gone wrong, and how to rectify it. *The Economist*'s response was to publish a stream of lectures on the importance of recognising the difference between fixed and floating capital. This was a favourite hobby-horse, already much ridden in the context of railway investment. In characteristically deductive style, the paper reported that:

> 'the great and important reflection which arises out of these [business] failures ... is, that they give rise to a just suspicion that some essentially unsound principle rankles at the root of our commerce ... Does commerce, in its pure and legitimate course, necessarily involve such imminent risks and hazards?'[75]

The Economist's answer, reassuring or otherwise, was that it did not. Errors could have been avoided. At the heart of the problem was floating capital, and merchants' failure to manage it properly - an interpretation not calculated to endear itself to merchants. They had failed to appreciate the importance of convertibility of capital, and dealt in illiquid commodities whose value could not be realised under pressure. *The Economist* illustrated the point with lists of what they should or should not have agreed to deal in. Also printed, over several pages, was a longer and sorrier list of those that had failed in the crisis. Prepared by the *Bankers' Magazine*, it included names of well-known businesses, assumed until recently to be safe. *The Economist* appeared sympathetic to the role played in this latest crisis by money-men - banking had learned in 1825 the overriding importance of floating capital. The issue now was that 'what was done for

[74] Ibid.

banking by the panic of 1825 remains to be done for commerce in 1847'.[76] Merchants still had lessons to learn.

Others saw things differently. *The Times* was happy to focus on the immediate priority of blaming the Bank of England, responsible for the 'jerks by which ... the whole frame-work of our commercial system is every now and then entirely dislocated', but thought there were also deeper-seated problems. Something was wrong when well-placed railway-capitalists 'Mr. Glyn, Mr. Hope Johnstone and Mr. Hudson' could continue making huge demands on Britain's pool of floating capital, while 'mercantile firms with securities in their hands find a difficulty in obtaining, for any period, or at any rate, a few comparatively small amounts'.[77] The *Circular to Bankers* had been making this point since April. Burgess thought Glyn's actions then,

> 'singularly characteristic and illustrative of the present times ... Here is ... one of our principal City bankers, treating a contemplated additional outlay of eight-and-a-half millions sterling ... as so insignificant an affair that he will not recommend an abatement of one hair's breadth of his grasp, at a time when the Bank of England could not discharge her ordinary duty of paying the government's dividends, without borrowing money to pay them ...We are astonished to see the nonchalance with which Mr. Glyn treats the difficulties of the Bank Directors - difficulties which he and other Railway magnates have in part contributed to produce.'[78]

The *Circular* had been predicting disaster from the combined effect of railway demands and Peel's 1844 Act since October 1845:

> 'To our minds this Railway speculation, in its extended and extreme manifestation, is fraught with infinite and altogether incalculable mischief ... This brings us to the astounding exhibition of giving encouragement to such a system immediately after placing the currency of the country in fetters ... The catastrophe

[75] 'The Money Crisis and its Remedy', 2 October 1847, p.1131.
[76] Ibid, p.1132.
[77] *The Times*, 6 October 1847, p.3.
[78] *Circular to Bankers*, 16 April 1847, pp.370-1.

> may fall principally on Railway speculators, but it will not be limited wholly to that class'.[79]

'Fetters' meant the Bank Charter Act, and when the predicted catastrophe materialised, the worst of Burgess's ire fell upon 'Mr. Samuel Jones Loyd', *eminence grise* behind the Act. Burgess accused Loyd of hijacking parliamentary process through Bank of England Director George Norman and Chancellor of the Exchequer Sir Charles Wood.[80] The effect of the Bank Charter Act had been to wreck mercantile bills, while enriching Jones Loyd & Co, bankers. Blame was to be laid at the door of two men, Loyd and Peel, whose personal fortunes had been made by their fathers on the back of just the merchant bills now undermined.[81] Burgess saw the current crisis as the culmination of 37 years' theorising by 'vain, clever, self-confident' men (of whom James Wilson at *The Economist* was merely the latest) who found 'ignorant statesmen' easy prey. Its lesson must be that free trade and tight monetary policy did not mix. His end-of-year verdict on 'the convulsion of 1847' was that 'now for the first time men have lost confidence in the power and use of credit'.[82]

The 1847 financial crisis thus brought open criticism of the power wielded by large capitalists. Others besides Burgess saw self-interest in 'the obstinate retention of a contracted currency'. 'It is for the interest of capitalists to lower the price of everything except money, and render it as dear as possible'.[83] The very wealthiest, with resources to withstand the squeeze, were doing well from the crisis: '[t]he large fish are swallowing the smaller with a vengeance. Seldom have the usurers reaped a richer harvest, and their laudations of Peel rise in proportion to the extent of plunder they are accumulating.'[84] Also aired was a notion that their influence might be offset by widespread availability of limited liability. This association had a long genesis. In 1834 the *Westminster Review* had told readers that England's partnership law favoured 'the large and skilful capitalists, who being able to command an extensive market, can work with less profits'. The tone

[79] Ibid., 31 October 1845, p.131.
[80] Ibid., 22 October 1847, p.155.
[81] Ibid., 15 October 1847, pp.140-1.
[82] Ibid., 24 December 1847, p.269.
[83] 'How to Disarm the Chartists', *Blackwood's Edinburgh Magazine*, June 1848, p.664.
[84] *Jerrold's Weekly Newspaper*, 2 October 1847, p.1250.

was then however, quite temperate:

> 'These men thrive and justly ... If under the present system all the advantage is with the great capitalist, then, without quarrelling with him ... the smaller capitalist must exert himself by such means as are in his power, to lessen the difference of advantage ... and the most direct way of doing that, is to join with others'.[85]

Now there were accusations that large capitalists were thriving far from justly, with limited liability brought into the picture by some. This was not a common concern or priority. There was for example hardly any mention of limited liability in the exhaustive parliamentary discussion of the crisis. The only participant to make an unequivocal connection with lack of limited liability was Durham manufacturer, the Quaker and former MP Joseph Pease. Pease saw dangers in an over-concentrated financial system, exacerbated by the obstacles put in the way of joint stock banks:

> 'I do not believe that that you could at present get any persons of capital in the county of Durham, to enter a joint-stock bank at any price ... and the reason for that is, that the indefinite liability of all parties who enter joint-stock banks entirely prevents a man of capital from joining them. I want to see greater facilities of banking. I do not mean cheap banking ... but I want facilities of banking with a limited responsibility'.[86]

Pease was 'very much afraid of centralization in this country going too far', and wished to see 'capital and currency [made] easy'.[87]

That sentiment was echoed in specialist financial publications. A link between de-centralisation of financial power and limited liability was not common even there, but some did make a connection. Prominent amongst them were merchants and writers who prided themselves on international awareness. Thomas Wilson was a Haarlem-based

[85] 'Law of Partnership', *Westminster Review*, January-April 1834, pp.58-73, p.61.
[86] *First Report from the Secret Committee on Commercial Distress*, PP 1847- 48 (395) viii.361.
[87] Ibid.

British cotton-manufacturer who now took a distinctly confrontational stance on large capitalists. In 1848 he published his views - anonymously at this point - under a title which highlighted the potential contribution of *commandite* to addressing the problem.[88] Like Burgess, he singled out the role in successive crises played by money-men, such as Jones, Loyd and Co. Little had been learned through the crises of 1825, 1835 and now 1847, so that, 'The old system continues unchanged to this day, with the same effect - failures and ruin'.[89] Like Burgess too, Wilson had no great opinion of *The Economist* or its editor, whom he thought fixated with the notion that railways converted floating into fixed capital. Wilson blamed not merchants but discount-brokers and pressures on the 'Bill System' used for trading with remote markets. The financial system itself was at fault. England was afflicted by '[a]n overpowering money-aristocracy, with banks which foster the bill and credit system ... leading to commercial difficulties which constantly derange the whole system of business'.[90] The problem was a

> 'Monopoly, among a few, of the available capital of the country, employed in business ... This [capital] has been moved, from time to time, for the benefit of individuals, banks and speculators - with the result, almost inevitably to the detriment of the public of large, and to fair trade ... [In the credit crisis] the monopoly-houses engrossed an enormous and undue share of business'.[91]

Wilson thought the British government should have seen this problem coming - a Select Committee had first identified an issue in 1833, and American credit-crises of the late 1830s (when American rather than British businesses had failed) given due warning of what might happen when huge amounts of capital were controlled by 'a few [who] would fain monopolise everything'.[92] A better approach was limited companies, whose capital was 'not to be called in at a moment's notice, to the derangement of operations on which

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[88] *Partnership 'en commandite' or Partnership with Limited Liabilities (according to the commercial practice of the continent of Europe, and the United States of America), for the employment of capital, the circulation of wages, and the revival of our home and colonial trade*, (London, 1848). Wilson had already published two French-language criticisms of English capital-management practice.
[89] Ibid., p.xxvii.
[90] Ibid., p.133.
[91] Ibid., pp.6 and 133.
[92] Ibid., p.210.

it might be employed'.[93] Productive deployment of capital was now crucial to regional destinies. England was '[p]lethoric in her wealth' and - careless of how capital was directed - could not have built a financial system less calculated to help the Irish if she had 'framed [a law] for the express purpose of *preventing* the improvement of Ireland'.[94] (Wilson ignored the Irish Anonymous Partnerships Act.) What was needed was partnership reform and a 'safer and steadier and honester system of business.'[95]

Wilson made an effort to promulgate his message amongst the influential. He sent a copy of his book to Peel (which, judging from its still near-pristine state in the Senate House collection, Peel did not read) and to Disraeli[96], and later submitted another to the 1850 Select Committee on Investments. He had more obvious success with newspaper editors, some of whom reproduced lengthy excerpts from his work. Welcomed as an exposé of the technicalities behind the crisis, it struck a chord in mid-1848. The *Manchester Courier* called *Partnership en commandite* an 'extraordinary book ... because it discards altogether the modern rule of expediency and tells the truth'[97], while *The Morning Post* recommended that it be 'read by commercial, and still more by parliamentary men.'[98] *Jerrold's Weekly Newspaper* gave Wilson's book a glowing review and kept it to hand to reinforce subsequent argument.[99] The *Glasgow Herald* likewise considered that 'we do not often fall in with books so full of interesting matter' and recommended it for 'attentive and careful perusal by merchants and political economists'. This because 'at the present time there are no subjects which deserve, or which have more thought directed towards them'.[100]

Another who looked at Britain's financial system as an outsider, the American economist Henry Carey, took a similar view to Wilson. His opinions on England's financial crises were also published in England in 1848. Most people were, he said,

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[93] Ibid., pp.73-4.
[94] Ibid., pp.169-70.
[95] Ibid., p.209.
[96] Copy now in Harvard University Library, digitised version available via Google Books.
[97] *Manchester Courier*, 8 July 1848, p.4.
[98] *The Morning Post*, 14 July 1848, p.3.
[99] 'Partnership en commandite', *Jerrold's Weekly Newspaper*, 17 June 1848, p782. See too 'Prospects of British Industry', 8 July 1848, p.867.
[100] *Glasgow Herald*, 11 September 1848, p.1.

> 'ignorant of the cause of difficulty; and unaware it was to the perpetual error of English [financial] policy ... All facility for local investment has been denied and capital has been forced ... into great towns and cities filled with starving operatives living in filthy cellars ... To add to the stagnation and centralization thus produced, the habit of local union among the little communities throughout the kingdom is as far as possible restrained by law, for the benefit of larger unions in the metropolis; and for that of the larger capitalists, bankers and manufacturers, there and in the principal towns. Centralization is the rule'.[101]

The answer was diffusion through free trade in capital:

> 'Freedom of trade, whether in money or in cotton, goes hand in hand with civilization. The bank restriction acts are a step, and a serious one, towards barbarism ... They tend to prevent the local application of capital, and to force it into London, to be driven abroad: when, if used at home, it would yield twice the return. They are not in keeping with the time'.[102]

Henry Burgess read the same anti-centralization moral into the crisis:

> 'The whole of Sir Robert Peel's measures have tended to drive capital to the head and heart of the system, where it cannot be absorbed and again thrown off into wholesome circulation for the support of enterprise, industry, and trade.'[103]

Like Carey too, Burgess considered this carried a social threat. Frustrated workers were likely to ask 'why should there be a want of employment in a country where capital increases faster than population?' Disturbances in 'the vital organ of circulation' had a dangerous effect on labourers.[104]

At the heart of this socially-unhealthy system was the Bank of England - not a new target of blame. In the previous cycle of boom and bust, ten years before, it was also blamed as 'the creator of mercantile panic [and] the stimulator to wild and foolish and unprofitable

[101] Henry C. Carey, *The Past, the Present, and the Future* (London, 2nd edition, 1856), pp.125, 135, 167-9.
[102] Ibid., p.208.
[103] *Circular to Bankers*, 6 September 1844, p.76.
[104] *Circular to Bankers*, 8 November 1844, pp.154-7.

speculation.'[105] In the wake of 1847 Carey banged this drum with force, and blamed the Bank for years of 'extraordinary fluctuations in the supply of money'.[106] British governments had found one excuse after another for the successive crises of the past 30 years. Every reason, in fact, but the right one viz., that: '[t]he trade in money requires no more law than that of shoes. It requires, on the contrary, perfect freedom'.[107] The British were still in thrall to unlimited liability ('*solidarité*'), the mark of involuntary association and serfdom. Ignoring *commandite*, Carey saw the French as even worse off in this respect. Britain and France were the world's 'meddlers', exporting the consequences of their own flawed social and financial systems round the world.[108]

Carey's arguments were taken up by John Stuart Mill, who quoted them in *Principles of Political Economy*, also published in 1848, where he argued that partnership reform and limited liability were necessary counters to financial polarisation: 'It is only by combining, that the small means of many can be on anything like an equality of advantage with the great fortunes of a few.'[109] In *Principles of Political Economy*, Mill provided the key text for proponents of limited liability, who would quote from it again and again in speeches of the early 1850s. Carey also went into particular detail on English unlimited liability joint stock banks, and how poorly they compared with the best of American banks.[110] Along with Mill, 'Mr. Carey's' views on New England banking practices were to be quoted a few years later by participants in limited liability debates.[111]

Other writers too now questioned concentrated power over capital and made a connection with limited liability. The political theorist and journalist Thomas Hodgskin, a staff writer on *The Economist*, reviewed Carey's book in October 1848 and found it full of 'valuable information, all tending to support that perfect freedom of industry, which is one of the general demands of the age'.[112] Shortly afterwards, he was asked to review another book by an American economist, equally exercised at capital's concentration in a

[105] *Strictures on the report of the Secret Committee on joint-stock banks* (London, 1836), p.17.
[106] Ibid., pp.173-4.
[107] Ibid., pp.177-9.
[108] Ibid., p.191.
[109] *Principles of Political Economy*, p.582.
[110] Ibid., pp.239 and 324.
[111] As in the Liverpool Chamber of Commerce's 1854 debate, *Report of the Proceedings*, pp.14, 29-30, 65.
[112] *The Economist*, 28 October 1848, p.1228.

few hands. Edward Kellogg had been prompted by the 1837 American financial crisis to consider how capital-flows might be better managed, in the public interest. Hodgskin rejected his suggestion of capped interest rates and looked to:

> '[t]he gradual progress of society, by which capital and labour seem more and more to become united in the same hands ... All the schemes that have been suggested in France and England for more equally distributing, by some kind of partnership *en commandite*, the produce of combined exertions, have for their object to lessen - and will in effect lessen - the evils that are complained of [in accumulation of capital in a few hands]'.[113]

Hodgskin agreed with Kellogg that concentration of capital was likely to be a greater problem in the US than in the 'old societies' of Europe, where the urge to convert wealth into land and adopt 'aristocratic manners' had the effect of capping capitalist fortunes. Within a few years however, just the reverse perception was being widely aired in the British press. Journalists and other writers argued that the US had democratised capital, while Britain persisted with socially-dangerous polarisation. The 1847 crisis was readily framed as one in which great capitalists profited at the expense of others. In its fall-out, limited liability had found some very useful social targets.

Sea-change

The financial pressure, court-cases and public debate of the second half of the 1840s made it hard to claim that investor 'calls' for capital were a largely theoretical concern, unlikely to materialise in practice. A grandly dismissive assertion that 'we may treat any apprehension of a liability involving the whole body of shareholders to any considerable extent beyond the paid-up capital as perfectly chimerical' clearly pre-dated late-1840s stresses.[114] At the same time, it had become obvious that payments might be hard to secure in practice - a combination that promised uncertainty and the worst of both worlds. In 1840, a supporter of unlimited liability could dismiss the 'doctrine' that nominal capital

[113] Review of Edward Kellogg, *Labour and other Capital*, *The Economist*, 17 March 1849, p.304.

might in practice prove 'a nonentity'.[115] Ten years later, the 'nonentity' boot was likely to be on the other foot. An investment guide now warned that 'in case [a large company] should have to fall back upon their shareholders' assistance, they would probably find that the great inducements held out to the public, by a large and guaranteed capital, were merely nominal'.[116] And, as would be pointed out at a parliamentary Select Committee a few years later, a failed attempt to secure payment was in any case 'a kind of indirect limited liability'.[117] Lawyers were more conscious of this than most, and legal publications of this period show preoccupation with the inadequacies of the Winding-up Acts. If liability was not routinely enforceable, then investors were suffering uncertainty for no advantage.

There was also a shift in press attitudes. Press campaigns for limited liability would really take off in earnest from mid-1853, but it was in the fall-out of railway-mania that the press cut their teeth on the issues involved. One particularly intense debate centred on *The Times*.

Three men took a prominent role in this. Frederick Spackman was the economic statistician whose estimate of the millions of pounds supposedly on call in railway companies had first been published in *The Times* on 17 October 1845, and was widely blamed for precipitating a share crisis. Spackman, unrepentant, repeated his calls for solid financial quantification in his own publication[118] and further *Times* articles. He accused railway companies of being complicit in their own financial problems, in the practices John Duncan had stigmatised before Gladstone's 1843 Committee. Finding it easier to suck in more new money than deliver unpalatable messages, the companies had failed to deal straightforwardly with investors and 'call on the shareholders to discharge their obligations' upfront.[119] The results were now clear to see.

Two other men echoed these sentiments, and led a marked change in the editorial

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[114] D. Gavin Scott, *History of the Rise and Progress of Joint Stock Banks in England* (London, 1837), p.75.
[115] Bell, *Philosophy of Joint Stock Banking*, p.93.
[116] Robert Ward, *A Treatise on Investments* (London, 1852), p.76.
[117] *Report from the Select Committee on Investments*, PP 1850 (508) xix 7.
[118] William Frederick Spackman, *An analysis of the railway interest of the United Kingdom* (London, 1845).
[119] Ibid., pp.7 and 10.

position of *The Times* on limited liability. The year before railway 'mania' broke out, the paper was still holding firmly to its traditional line. Talk of joint stock banks perhaps being granted limited liability was:

> 'a very startling proposition to the sound city men, who all along have clung to the opinion, that there can be no protection to the public from mismanagement by banks, unless the responsibility of the shareholders is without limit'.[120]

A few years later, there had been a decided change of tune. This is almost certainly attributable in large part to the departure of Thomas Alsager, a known conservative on joint stock companies, who was replaced as City Correspondent by Marmaduke Blake Sampson in the autumn of 1846. Sampson emerged from this period as a supporter of limited liability, and later attributed the 1847 crisis to individuals made careless by unlimited liability, 'secure that they can ultimately fall upon the unhappy shareholders' and call up more capital.[121] Alsager's departure also meant a freer hand for editor John Delane, who had had to share editorial responsibilities with him. By 1848, there had been a complete about-turn on limited liability.[122] Discussing a 'memorial' that called for its use in joint stock banks, *The Times* acknowledged that: 'Practical experience ... certainly seems to show that the establishments founded on the system of limited liability have on the whole been conducted with far more safety than the others'.[123] Although the question of its use for banks was 'of too great magnitude' to come to any 'hastily formed' opinion, the paper admitted that 'late joint stock failures in England, India and elsewhere' had led to a 'rapid deterioration in the description of people who are now willing to hold shares in a bank of any kind to which unlimited liability may attach'. Some 'remedy' was now needed, if unlimited liability was not to be a 'snare'.[124]

A sea-change can also be seen elsewhere, notably in attitudes to parades of wealthy

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[120] 'Money Marker and City Intelligence', *The Times*, 22 May, 1844, p.6.
[121] Marmaduke Sampson, *The currency under the Act of 1844, together with observations on joint stock banks, and the causes and results of commercial convulsions. From the City articles of The Times*. (London, 1858), p.50.
[122] The about-turn thus pre-dated Robert Lowe's influence at *The Times*, by several years. Taylor, *Creating Capitalism*, p.128 wrongly attributes the paper's changed stance to Lowe.
[123] 'Money Market and City Intelligence', *The Times*, 18 October, 1848, p.3.
[124] Ibid.

individuals' names. Spackman considered it 'very doubtful whether the public ever attached much, if any importance' to the strings of names listed in railway prospectuses, but, whatever they might have thought privately, they were now much less inclined to put up with the parades in public.[125] By early 1847, it was evident that, in the absence of legal enforcement, provisional committeemen were likely to leave creditors unpaid. And if 'names' were not putting themselves on the line in any real sense, then what were they but a 'sort of decoy-duck'?[126]

That phrase became a stock expression in accounts of railway committeemen's debt-repudiation. Some names had been used without permission, and others fabricated, but in the popular estimation many 'decoys' had simply been greedy. A letter to *The Times* argued that:

> 'if a man from avarice, or facility, or from whatever other motive, allows himself to be used as a decoy-duck, it seems only just that he should be held fast in the trap into which he has been the means of inveigling others'.[127]

Politicians also talked of provisional committeemen as 'decoys presented to the public'. One parliamentary discussion highlighted a railway prospectus's naming of 172 provisional committeemen - '172 decoys in all'.[128]

A shift in attitudes was occurring too in banking. In January 1848, shareholders of the troubled North of England Joint Stock Bank met to discuss creditors' demands, and resolved, 'to the utmost of their power, [to] aid the directors in raising the sum requisite to meet the pressing demands upon the bank'.[129] The shareholders knew what was expected of them, and were apparently ready to act accordingly. Sympathy for bank shareholders' plight had however, been growing, under the reality of payments. Later that year, the *Bankers' Magazine* admitted that 'opinion is daily becoming stronger, that the present unlimited responsibility of the shareholders of these banks is the means of inflicting a

[125] Spackman, *An analysis of the railway interest*, p.15.
[126] *Railway Times*, 2 January 1847, p.15.
[127] 'Liability of Provisional Committeemen', *The Times*, 5 January 1847, p.6.
[128] *Hansard*, 3rd series, vol. 85, c947 (23 April 1846).
[129] *Bankers' Magazine*, April 1847, p.23.

serious injustice upon a considerable portion of the public.'[130] A high-sounding principle had now to be balanced against investor-caution, and a growing belief that the banking arrangements of some northern towns was being compromised. In Newcastle, 'the uncertain liability incurred by the ... shareholders [in a succession of Joint Stock banks that have failed] has effectually prevented all attempts at present to establish another bank with a respectable proprietary.'[131] Local banker John Coulson had already noted, the year before, 'the inadequacy of the banking capital of the two Counties of Northumberland and Durham' and hoped that legislators might consider encouraging bank-investment with *commandite*.[132] Like Henry Burgess, he believed railways' use of limited liability had distorted capital flows, and undermined banks' attractiveness as an investment: with railways granted limited liability and banks denied it, 'the distribution is not regular'. Coulson hoped that a 'want so manifest, so prospectively beneficial to all, will not remain longer unsatisfied'.[133]

It was against this background that Newcastle MP Thomas Headlam brought his motion for a Bill 'to render lawful the formation of incorporated joint-stock banks, based upon the principle of a limited liability of the shareholders' before the House of Commons in May 1849. Headlam was a barrister committee-member of London's Law Amendment Society, and in November 1848 supported a motion there for a committee 'to consider the Law of Partnership, more especially with reference to the liability of Partners in Joint-Stock Banks and other undertakings'.[134] When he took the resultant recommendation of limited liability to Parliament, he argued that the 'retributive justice' of unlimited liability had been 'forced upon the Government against its own views by the Bank of England stipulating for its own interests'.[135] He also stressed that times had changed. When joint stock banks had first been introduced, 'men were sanguine of their success, as they usually are of new commercial experiences [and] [t]he extent of the liability was grossly

[130] 'Proposed limited liability of joint-stock bank shareholders', *Bankers' Magazine*, June 1848, p345.
[131] Ibid., p.346.
[132] John Coulson, *Remarks on Banking Generally, and upon the bearings of 7&8 Vict Cap 113, for regulating Joint Stock Banks or Chartered Banks* (Newcastle, 1847), p.20.
[133] Ibid., pp.19-20.
[134] *Society for Promoting the Amendment of the Law. Report of the Committee on the Law of Partnership on the Liability of Partners* (London, 1849), p3. The Society's decision to appoint a committee for this purpose was reported in the *Daily News*, 14 November 1848.
[135] *Hansard*, 3rd series, vol. 105, c123 and 130 (8 May 1849).

misrepresented; and it is only by degrees that experience is forcing upon the minds of men an accurate knowledge of what that liability really is'.[136]

Headlam's motion was opposed by the government, and by Liverpool ship-owner William Brown, one of the greatest of great capitalists. As Chairman of the Bank of Liverpool, Brown had attracted criticism in the aftermath of Althorp's 1834 tussle with private bankers, accused of trying to stifle competition.[137] Now however, he had parliamentary opinion on his side. Limited liability was always a tricky political topic, and - with the notable exception of 1825 - politicians never showed much appetite for starting on it with banks. Brown needed to do little more than invoke the American chartered banks that had failed in recent memory. Edward Cardwell joined in, arguing that 'if there were one business in which, more than another, they should abstain from giving a limited liability ... it was the business of banking'.[138] Chancellor of the Exchequer Charles Wood rationalised Headlam's request as a peculiarity of Newcastle, 'where this notion of limited liability had taken hold of the public mind'. Headlam, as a Newcastle MP, was following in the footsteps of Joplin and his fellow Newcastle merchants. From no other part of the country, said Wood, had he received a 'single representation in favour of the principle of limited liability'.[139] Headlam's proposal was soon withdrawn.

The *Bankers' Magazine* reported that it had excited little parliamentary debate, and that '[its] fate was known to be settled before it was discussed'.[140] If politicians' doors remained closed however, opinion was changing amongst bankers themselves. The *Bankers' Magazine* believed that the only reason reform was now not more 'urgently pressed' was because deeds of settlement had proven largely successful in providing investor protection.[141] In the face of domestic pressures and some high-profile bank failures in India, the *Magazine* now acknowledged that unlimited liability might be 'in a

[136] Ibid., c126.
[137] Joseph Macardy. Letter of 29 April 1834, Althorp papers, BL Add MS 76396.
[138] *Hansard*, 3rd series, vol. 105, c148 (8 May 1849).
[139] Ibid., c136.
[140] 'The Unlimited Liability of Bank Shareholders', *Bankers' Magazine*, June 1849, pp.305-8.
[141] Ibid.

high degree illusory to the creditors, and not involve the advantage it imports'.[142] This was an important shift, even if - in the absence of further crisis - 'at present we think the law may safely be left as it is'.[143]

Limited liability was also the subject of debate by shipping companies, in another version of the complaints about railway-finance made by Burgess and Coulson. From 1848, the Steam Shipowners' Association logged the 'attempts, on the part of railway companies, to obtain powers enabling them to become ship-owners' and called for 'constant vigilance' in combating it. If rail companies' expansion proposals were once allowed to gain a hold, they would 'of necessity extinguish competition'. This, because

> 'neither shipping companies, nor individuals, liable as they are to the entire extent of their fortunes, and possessed too of comparatively small capital, could possibly contend successfully with a railway company, backed by its large resources [and] protected by its limited liability.'[144]

The ship-owners successfully defeated limited liability clauses in parliamentary Bills brought in the late 1840s by the Eastern Counties, Norfolk and Lowestoft railway companies. A Bill from the Chester and Holyhead provided a stiffer challenge however, when it passed a Second Reading in the Commons. This company claimed, by virtue of its connection with traffic to Ireland, to be a special case, but for the shipping interest this was the thin-end-of-the-wedge: 'the privilege once conceded to a single railway company, would soon be claimed and obtained by all'. They quoted President of the Board of Trade Henry Labouchere saying more or less this in another context, and warned that railway companies were only biding their time before raising their charges and exploiting the public at will.[145] Railways were inherently monopolistic. The Chester and Holyhead Bill was eventually defeated by 'a very active opposition', backed by financial support from the General Steam Navigation and Dublin Steam Packet Companies. Further railway company Bills and agitation continued through 1849, but by 1850 the issue had subsided.

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[142] *Bankers' Magazine*, April 1850, p.239.
[143] 'The Unlimited Liability of Bank Shareholders', p.308.
[144] General Association of Proprietors of Steam Shipping, Report of 28 February 1848, as reproduced *London, Liverpool and North American Screw Steam Ship Company* , PP 1852-3 (730) xcv 72.
[145] *Reasons Against Conceding to the Chester and Holyhead Railway Company Power to become a Steam*

Within two years however, it would re-surface with a vengeance.

Social unrest and legacy of railway 'mania'

One further impact of railway 'mania', significant for limited liability, was crystallisation of investor sympathy. This fed off a perception that it was a mass of ordinary people who had lost out. As Thomas Wilson pointed out in his 1848 recommendation of *Partnership en commandite*, the perception was factually verifiable, as - in contrast to earlier crises - there were now Blue Book public records to show who had invested in railway shares. These confirmed that more than two-thirds of investors were from 'the middle ranks of life ... professional men, naval and military men, small manufacturers, shopkeepers, clerks, tradesmen, engineers, schoolmasters, clergymen, annuitants, pensioners, placemen [or] their widows, daughters, or sisters'. 'These', Wilson said 'and not the great commercial men, risked money in such speculations.' They were the people whose property - 'the bulk of the available property of the country' - had been '[s]educed by the names of parties of known standing, wealth and ability, advertised as the Directors of [railway] projects'.[146] These were the people the system had failed.

Suspicions that they had been manipulated by self-interested financial professionals fed calls for greater transparency in capital's treatment. Capital might be plentiful in England, but if it was misappropriated, misdirected or simply too static it was not fulfilling its proper economic or social function. To be socially useful, capital must *flow*, unimpeded, through every part of society. Failure to ensure this could threaten social as well as financial stability.

That argument gained further momentum from the revolution that broke out in France in early 1848, widely interpreted in the British press as 'a revolt of labour against capital'. *Blackwood's Magazine* saw in it 'the rise of the communist and socialist party, whose abomination is capital, whose idol is labour'.[147] If politicians did not want similar

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Ship Company with Limited Liability (London, 1850) pp. 6 and 8.
[146] *Partnership en Commandite ... colonial trade*, pp.72-3.
[147] 'Fall of the Throne of the Barricades', *Blackwood's Edinburgh Magazine*, April 1848, p.417.

inflammatory sentiments to take hold in England they should take steps to involve workers in a capitalist future. In the sort of watery metaphor that became common, *Jerrold's Weekly Newspaper* argued that the many 'must conquer not by destroying capital, but by sending it in fertilising streams through the greatest mass of the people'.[148] Limited liability would promote capital-flows.

Such argument commonly invoked free trade, although not all advocates of limited liability were enthusiasts. Wilson and John Byles, barrister-author of the successful *Sophisms of Free Trade*, were two committed advocates of limited liability but neither had time for free trade rhetoric. Wilson saw it as deluded cant, periodically invented by economically-dominant countries to suit their own ends. This did not stop him however, from thinking capital-blockages a threat to social stability: '[as] the middle classes, from being unable to obtain reasonable interest for their money, run into mad speculations ... [they] lose ... the honest feeling which once so particularly distinguished them.'[149] And the effect on workers was likely to be worse: blockages in investment and wage-circulation threatened employment, and 'out-of-work men are easily influenced by clap-trap speeches and writings. Can you be surprised that, when the soil is thus ready, the seed of Revolution should so quickly and so strongly take root?'.[150]

Wilson had seen revolution for himself in continental Europe, but others did not need that personal experience to urge action, and make a connection with limited liability.[151] An article in the *Law Review*, published by London's Law Amendment Society, reviewed and endorsed Wilson's *Partnership en Commandite* in this light. Reform was

> 'peculiarly necessary at this time ... for meeting a desire for change in the shape of socialism and communism, which will become overwhelming here as well as elsewhere, unless means be taken to allow of fit arrangements of an intermediate character'.[152]

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[148] 'Employer and Employed', *Jerrold's Weekly Newspaper*, 20 May 1848, p.658.
[149] *Partnership en Commandite ...colonial trade*, p.202.
[150] Ibid., p. xxxvi.
[151] Wilson described his experience of the 1830 revolution, including the burning of his factory by a mob, in *England's Foreign Policy, or Grey-Whigs and Cotton-Whigs, with Lord Palmerston's pet Belgian constitution of Catholics and Liberals* (London, 1852) p.171.
[152] 'Limited Liability in Partnership', *Law Review*, November 1848 - February 1849 (London, 1849), p.74.

The *Law Review* also thought, like Wilson, that 'ruthless and unscrupulous' competition had gone too far, and that until 'partnerships *en commandite* can be freely made ... [the] well-spring of wholesome commercial energy will not flow rightly'.[153]

The complementary structure of *commandite* seemed to others a particularly apposite means of bringing capitalists and workers together, in the inclusive identity needed for a modern nation. This format appealed especially to the Christian Socialists who, as Saville identified in a 1954 essay, took up limited liability after 1848 in the hope of offsetting the capital/labour antagonism in evidence in France.[154] The sort of identity that *commandite* could help with was admittedly always quite a specialist one. No one took an interest in it or any other use of limited liability who was not also interested in capital or company structure. An interest in Britain's moral standing was not in itself enough. Churchmen and other professional preachers moralised endlessly about the nation, and even about business and companies, but they did not talk about limited liability, even when discussion was at its height in the mid-1850s. Jane Garnett has noted the complete absence of limited liability references from morality tracts.[155] Those who talked about it prided themselves on a technical grasp of national potential. *Commandite* was used as a generic means of referring to limited liability structures, as well as more precisely, and could accommodate both those who saw capital as complementary to labour and those happier to focus on capital as a definitive social currency. Thomas Hodgkin admonished political economist George Rickards in *The Economist* for forgetting that 'labour is the source of all capital', and for talking as though capital were itself the centre of all economic activity, yet both were supporters of *commandite* and of limited liability. Rickards' capitalist focus was increasingly common. Henry Burgess complained in 1845 that capital was becoming 'the God of idolatry for political economy'.[156]

Democratic concern also helped argument for joint stock. Managed through joint stock arrangements, articles argued, capital could be at once dynamic yet stable. In 1846, *The*

The article wrongly attributed Wilson's book, initially published anonymously, to Dr Shelton McKenzie.
[153] Ibid., p.87.
[154] John Saville, 'The Christian Socialists of 1848', *Democracy and the Labour Movement. Essays in honour of Dona Torr*, ed. J. Saville (London, 1954), pp.135-59, p.150.
[155] Jane Garnett, 'Aspects of the relationship between Protestant ethics and economic activity in mid-Victorian England' (Unpublished D.Phil. thesis, University of Oxford, 1986), p.83.

Railway Times quoted approvingly from an 'admirable article' in the *Daily News*, which described how this system, as exemplified by railway investment, was supposed to work:

> 'The railway proprietary is an immense body, of which the constituent atoms are constantly flying off and being replaced ... Among [the constituent particles] possible loss is distributed over such an extent of surface as to be scarcely felt by individuals, and thus disturbances in the general system are prevented'.[157]

If that vision had failed in 1845, then some were convinced that the law was to blame. Disgusted by the turn that court-judgments had taken by November 1846, *The Railway Times* considered that 'the whole powers of the law have been called into requisition to defeat the course of justice, and to secure to the dishonest the whole of their felonious booty'.[158] *Herapath's* saw judges 'split [on] the question of partnership'[159] and the 1844 Joint Stock Companies Act came in for particular criticism. Spackman told the President of the Board of Trade in 1846 that: 'the experience of the present time is conclusive that [the Act] falls far short of the security required by the Public against the periodical recurrence of such excessive evils'.[160] Two years later, *The Law Magazine* pronounced it a failure. In its over-prescriptive 'mazes' and 'plentiful sprinkling of blunders', the Act had failed to provide the needed regulation.[161]

Also apparent in late-1840s comment is a strong sense that it was *domestic* investment that had been betrayed. This gained from an identification between railway-investment and domestic usefulness first established in the 1830s boom. An 1838 article reported a local railway-investor saying that:

> 'If I should succeed in diverting the attention of any capitalist from investing in foreign securities ... and bubble mining schemes, to projects of really useful and prospectively profitable character, I shall consider I have done some little good

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[156] *Circular to Bankers*, 22 August 1845, p.51.
[157] *Daily News*, as quoted in 'Capital for Railways', *The Railway Times*, 29 August 1846, p.1221.
[158] 14 November 1846, p.1625.
[159] 'Liability of Provisional Committeemen'', *Herepath's Railway and Commercial Journal*, 9 January 1847 p.39.
[160] Spackman, *An analysis of the railway interest*, p.iii.
[161] 'Mutual Assurance Companies under the Joint Stock Companies' Registration Act, 7 & 8 Vict c110',

for my fellow townsmen'.[162]

That sentiment was widely voiced in the aftermath of the railway share-crash. The fact that this latest crash had come twenty years after the 1825 crisis invited direct comparison between the two episodes. Investors in the mid-1820s had also seen a bubble of speculative interest build in scrip, and, when that bubble collapsed, their holdings wiped out along with companies. Had nothing been learned in twenty years? Problems seemed if anything to have grown. The 1840s bubble was self-evidently much larger than the 1820s one and as such now seemed to define a national problem. Overseas mining companies had been prominent casualties in 1825, but twenty years later, the one comfort was said to be that capital fallout had this time been kept at home. This was a point already being made before railway share prices collapsed. Burgess observed in late 1844 that,

> 'In a national point of view it is infinitely better that speculations should take the direction of railways - where, whoever wins or loses, all, or nearly all, the money pushed into that channel must be spent among ourselves - than in mining enterprises in South America or even public work in the United States.'[163]

In the months that followed the crash, the chorus swelled. As a speaker at one of the many public meetings said,

> 'they had reason to congratulate themselves that the money did not on this occasion go out of the country, ... as no doubt it would have done after some foolish thing, if it had not been for the railway speculations'.[164]

James Morrison, leading parliamentary advocate of closer state control of railway companies, confirmed that:

> 'It has been said and repeated again and again at Railway meetings, and the

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August-November 1848, pp.38-9.

[162] 'Railway Speculations', *Liverpool Journal*, as reproduced by *The Railway Times*, 17 February 1838, p.75.

[163] *Circular to Bankers*, 4 October 1844, p.108.

[164] Mr Dunlop, addressing a public meeting held at Glasgow Merchants' Hall, 20 March 1846, *Report and*

> language has often found an echo in the legislature, that it is better that the country should benefit by the employment of its capital at home, than that capitalists should be tempted by higher profits to embark in schemes for the improvement of other countries.'[165]

In the public estimation, this distinguished 1845 from 1825.[166] Although capital had again been wasted, the outcome was '*not unproductive*' because capital was still in domestic circulation.[167]

That this was the one good thing that might be said about railway-mania became axiomatic, and gave limited liability a patriotic Teflon-coating against accusations that it might cause money to be wasted. Importantly, warnings about speculation failed to stick when framed in a railway context. This would become apparent when limited liability was again the subject of official inquiry in the early 1850s. A member of the 1851 Select Committee on the Law of Partnership asked Bankruptcy Commissioner Cecil Fane if his favoured limited liability might not induce speculation and the sort of waste of public capital seen in railway-mania? Fane replied that he did not think capital ever wasted, unless it built 'things that are of no use to anybody'. Money lost in South American mining schemes was however,

> 'all thrown away so far as concerned England. Had that money been spent in England upon the construction of railways, even if the railways had produced no benefit to the individual subscribers, in consequence of their having been greatly deceived, still that expenditure would have been very advantageous to the people of England.'[168]

Money invested in railway schemes that had built nothing had at least gone 'out of one Englishman's pocket into another Englishman's pocket'. Pro-limited liability argument repeatedly made this point in the early 1850s. In his 1854 call for limited liability, MP

Resolutions of a Public Meeting held at Merchants' Hall, Glasgow (Glasgow, 1846), p.11.
[165] James Morrison, *The Influence of English Railway Legislation on Trade and Industry* (London, 1848), p.71.
[166] ' "1825" and "1845" ', *Bankers' Magazine*, March 1845, p.318.
[167] *Partnership en commandite ... colonial trade*, p.85.
[168] *Report on the Law of Partnership*, p.88.

Edward Warner claimed that 'the capital which has been sunk in Railway enterprises has for the most part only changed hands, and the execution of these great works, even when ruinous to the speculators, has added largely to the general wealth.'[169]

Reformists did not have railway-based argument all their own way, as conservatives also used it against limited liability. A solicitor wrote to *The Times* in October 1848 to say that limited liability should be kept for 'undertakings where the expenditure and range of credit, as in the case of railways, bridges, &c, is limited and defined'.[170] Others thought even that a step too far. James Morrison argued, also in 1848, that:

> 'Railways, when undertaken with due consideration, are exposed to less risk than almost any other works which can be named ... Railways did not require to be fostered by the temptation to inordinate speculation. From the very beginning they were popular among all classes of the community.'[171]

Morrison dismissed too any need to incentivise domestic against overseas investment. If capital occasionally went abroad in pursuit of higher rewards, 'it returns when it becomes advantageous that it should no longer remain abroad.'[172] Charles Wood, another sceptic, pointed to 'the utter falsification of accounts, and the utter mismanagement of [railway] concerns', to show that companies could not generally be trusted with limited liability.[173] William Clay paid Wood back in kind by saying that the true lesson of the railways in this context, was in creditors who 'always took care that the railway companies were solvent before they dealt with them.'[174]

In this way the railways took on a pivotal role in company debate. Too big to ignore, they re-focused and re-defined debate in their own terms, polarising opinion on limited liability and fuelling calls for wholesale change. Their effectiveness in doing so had more to do with heuristics and emotion than the letter of the law. They served the same re-defining function for share-panics, which now seemed to be establishing a worryingly

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[169] *The Impolicy of the Partnership Law*, p.43.
[170] 'Money Market and City Intelligence', *The Times*, 30 October 1848, p.3.
[171] Morrison, *The Influence of English Railway Legislation*, pp.64-5.
[172] Ibid., p.73.
[173] *Hansard*, 3rd series, vol. 105, c139 (8 May 1849).
[174] Ibid., c142.

recurrent and violent pattern. John Byles saw railway-era panics as more comprehensively destructive than ever before.[175] Burgess agreed, and attributed this modern-day violence to the distorting effect of railways' use of limited liability:

> 'all public enterprise at this epoch takes the direction of Railways, which are protected [by limited liability]. There is nothing like these three extraordinary developments of speculation in the three periods of 1824-5, 1835-6, 1844-5, to be found in our commercial history'.[176]

This too became a stock argument for limited liability in the early 1850s. Railway investment had shown the risk in directing capital into specific channels. Under a system distorted by partial use of limited liability, financial crises were now more violent and involved more people, with none 'more fatal' than that of 1845.[177] Worse, they seemed to be coming round about once every seven years.

The power of that pattern was felt in the early 1850s. When seven years was roughly the time that had elapsed since 'railway-mania' had broken out, some argued it was now a matter of urgency to take steps to avoid a repeat. One much-touted step was wider use of limited liability. This, it was argued, would help stabilise both the financial system and society. The railways had re-focused company debate and would provide the commonest point-of-reference for social and technical argument for limited liability in the 1850s. Before looking at how this played out however, there is one further important factor to consider. This is the growing influence of the United States.

[175] John Barnard Byles, *Sophisms of Free Trade and Popular Political Economy* (London, 1851), p.351.
[176] *Circular to Bankers*, 11 July 1845, p.3.
[177] 'Phases in the Mania', *Bankers' Magazine*, June 1853, p.425.

Chapter 6: *The American example*

By the second half of the 1840s, limited liability had secured a greater degree of formal acceptance in the United States than in England. Limited liability corporations were authorised for private, for-profit enterprise in some American states from as early as 1811, and American states generally led the way in two key respects. Firstly, they were early adopters of limited liability for manufacturing corporations (and, rather later, for banks). Secondly, the introduction of self-incorporation statutes made authorisation of limited liability corporations for manufacturing and other designated industries straightforward and cheap. The first of these changes began to take effect early in the nineteenth-century and the second took off at mid-century. Self-incorporation statutes were usually concerned with large-scale, public undertakings, commonly transport and infrastructure initiatives. Manufacturing was the exception rather than the rule for the type of activity covered. They were not applied to small-scale companies, and limited liability had not been applied as a universal rule.

The emergence of limited liability enterprise in American states is a huge topic in itself, but a review of its historiography is worthwhile for the light which a cross-border comparison can cast on the British experience. This is both because the American example came to exert a strong influence on British arguments (even if little considered in the historiography) and because a comparison offers hope of extrapolating broader historical lessons. These can illuminate, in turn, the powerfully attractive role that American success played mid-nineteenth century in re-orienting the British story.

Recognising limited liability in American states

As in England, consciousness of limited liability arose in the US with attempts to outlaw it, and, as in England too, public consciousness has proven hard to discern before the beginning of the nineteenth century. Walter Minchinton says that before then, the corporate form was not 'to be resorted to' in America unless in the public interest, and that

'there was opposition to industrial projects being given limited liability'.[1] Ronald Seavoy similarly sees limited liability reserved for 'franchise' undertakings, meaning initiatives given a mandate by state authorities to pursue an activity held to be in the community interest. As in England too, the ambiguity of early charters provided grounds for dispute, once public engagement gained momentum.[2] This took hold with the growth of manufacturing industry.

Manufacturing was not a significant forum for dispute in England, with reasons for the disparity between the two countries unclear. The commonest suggested explanation for limited liability's relatively early adoption in the US is that American manufacturing's need for capital was significantly greater, and certainly this was claimed by British observers at the time. Manufacturing corporations (as opposed to partnerships) were also relatively prevalent in the United States. Reviews of their experience have however, led some to conclude - perhaps counter-intuitively - that it was not their capital needs that drove change.

In considering the grounds for this, it is important not to exaggerate the difference between the English and American manufacturing industries. Corporations were more common in the United States than in Britain, but the partnership structure was still dominant in American manufacturing, as in English, for most of the first half of the nineteenth century. However, the corporation also came to be used in eastern American states and, significantly, its expansion there was very marked indeed in absolute terms - a phenomenon which surely helped it impinge on legislators' perceptions. In 1809, the Massachusetts state legislature granted charters to as many manufacturing corporations as had been authorised in the preceding twenty years. This pattern was repeated in other eastern states, and continued through the 1812 war with England, so that 'the growth of industry was accompanied by a great increase in the number of American manufacturing company charters.'[3] One must be cautious in inferring too straightforward a connection

[1] Minchinton, 'Chartered Companies and Limited Liability' p.145.
[2] Discussed by Louis Hartz, *Economic Policy and Democratic Thought: Pennsylvania, 1776-1860* (Cambridge, Massachusetts, 1948) p.256.
[3] Edwin Merrick Dodd, 'The Evolution of Limited Liability in American Industry: Massachusetts', *Harvard Law Review*, September 1948, pp.1351-1379, p.1356.

between this and limited liability's spread, since Massachusetts, the state with the highest number of factories, also adopted a relatively conservative limited liability policy. Even there however, rapid expansion of the corporation's use clearly raised consciousness of limited liability (even if that then prompted reactionary laws). Edwin Dodd concluded from a 1940s review of these developments that it was indeed 'primarily the cotton-textile industry that made the ... incorporated, limited liability joint-stock company seem desirable to American industrialists and thus led to efforts on their part to obtain corporate charters - if possible, limited liability charters.' He did not however, attribute this to limited liability being essential to their operations. Manufacturing corporations typically had 'a rather small number of owners' and Dodd thought it 'doubtful whether the development of corporations of that type and the growth of American industry through their instrumentality would have been greatly retarded if all the states had withheld the privilege of limited liability'.[4] Kevin Forbes has also noted that 'the introduction of limited liability in Massachusetts did not coincide with an increase in the average number of incorporations in textiles'[5] and, citing Caroline Ware's 1931 assessment that over $1 million in capital was amassed in unlimited liability Massachusetts textile firms during the 1820s, points out its absence was apparently not much of a block to investment there.[6] This suggests that other factors connected with the manufacturing corporation were significant.

In trying to identify what these might be, Dodd's 1948 study, mentioned here, merits further consideration as one of the very few accounts to have focused specifically on limited liability. Dodd reviewed limited liability's post-Revolution legal treatment in Massachusetts (the leading American industrial state of the period) and began by noting that 'even in England the evidence as to what men of the eighteenth century thought on this subject is extremely meager and in the United States it is almost nonexistent'.[7] Despite this, he produced an analysis which, though restricted in geographic scope, is comparable to DuBois' consideration of contemporary English experience. Dodd saw the

[4] Ibid., pp.1355 and 1379.
[5] Kevin F. Forbes, 'Limited Liability and the Development of the Business Corporation', *Journal of Law, Economics and Organization*, vol. 2, no. 1 (Spring 1986), pp.163-77, p.167.
[6] Forbes, p166, citing Caroline Ware, *Early New England Cotton Manufacture* (1931) p.147.

rapid growth in Massachusetts manufacturing corporations soon provoking a conservative backlash, as legislators sought to eliminate ambiguity. Dodd's review of Massachusetts case-history shows that legal precedent existed there for treating a corporation's debts as its own, but the corporations where this was openly endorsed were obvious community concerns, such as schools. The possibility that protection from debt might be extended to for-profit manufacturing corporations prompted judicial desire to draw a line: '[a]s soon as manufacturing companies began to be formed in substantial numbers, the Massachusetts legislature [adopted] an unlimited liability policy, to which it adhered, with relatively minor modifications, for twenty-one years'.[8]

The means of enforcing this was the 1809 Massachusetts Manufacturing Corporation Act, the first clear statement on limited liability by an American state legislature, and a conservative one which 'expressly [made] shareholders in all industrial corporations directly liable to creditors'.[9] The Act did not extend personal liability to other types of corporation - perhaps because it was not thought necessary. As Dodd pointed out, 'there was probably no great likelihood that companies engaged in so relatively riskless a business as that of supplying water would dissolve without paying their debts'.[10] There is some evidence though, that the clearer line, prompted by expansion of private profit-seeking, cut two ways, and that at the same time as unlimited liability was imposed on selected for-profit corporations, shareholders in corporations more readily identified with community interests were officially excused it. Dodd mentions that 'the early practice of imposing substantial shareholder liability on the shareholders of canal companies was abandoned'. He concludes that 'the only corporations, other than manufacturing companies, on which shareholder liability of a seriously burdensome sort continued to be imposed were banks.'[11] Even banks were not though subject to the same liability provisions as manufacturing corporations. Banking and manufacturing were both subject to 1818-22 debt legislation, but only manufacturing corporation-members were made subject to full unlimited liability.

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[7] Dodd, 'The Evolution of Limited Liability in American Industry: Massachusetts', p.1356.
[8] Ibid., p.1361.
[9] Ibid., p.1357.
[10] Ibid., p.1364.

Manufacturing was also singled out for special attention in other eastern American states, with a mixed response. Ronald Seavoy identifies New York as 'probably [having] led the nation in [the] shift of attitude toward private debt'[12], the decisive breakthrough being its 1811 general Act for manufacturing charters. The 1811 Act has acquired iconic status in some accounts, as the first Act to extend limited liability to a whole class of for-profit (manufacturing) corporations. Its endorsement and subsequent importance were however, highly contingent. As Seavoy makes clear in his history of New York corporate law, the Act was seen at the time as an exceptional, emergency statute, temporarily justified by war.[13] As such, it was hedged about with constraints, and conditions which could trigger personal liability. Shaw Livermore, considering these 'unattractive features' in 1935, judged its provisions 'equivalent in practice to the ordinary liability of partners of shareholders in an association'.[14]

Two aspects of the 1811 Act's endorsement can nevertheless be singled out as illuminating. Firstly, it shows the importance of patriotism in achieving formal change. In the eyes of the New York Convention, a threatened war against England (eventually, the war of 1812) 'excused' domestic manufacturing companies as patriotic, and entitled them to the temporary privilege of limited liability, because they supplied the domestic population with essentials during an embargo on English imports - Seavoy quotes State Governor Daniel D. Tompkins stressing that 'economic self-sufficiency was a major ingredient in waging a successful war'.[15] Once the war ended, as Seavoy states, 'there were strong doubts about the political expediency of keeping the 1811 manufacturing statute in force'[16] but it proved difficult to rescind an Act believed to have been useful in practice. This highlights a second important circumstance: direct experience. Although limited liability attracted considerable support in eastern American states over the first half of the nineteenth century, it persisted in dividing opinion sharply and breakthroughs

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[11] Ibid., p.1364.
[12] Ronald Seavoy, *The Origins of the American Business Corporation, 1784-1855: broadening the concept of public service during industrialization* (London, 1982), p.258.
[13] Ibid., p.75.
[14] Shaw Livermore, 'Unlimited Liability in Early American Corporations', *Journal of Political Economy*, October 1935, pp.674-87, p.685.
[15] Seavoy, *The Origins of the American Business Corporation*, p.63.
[16] Ibid., p.75.

came when discussion was either kept to a minimum or something occurred to cut through it. Debates could otherwise become stuck in entrenched positions. One notable instance of this was to occur in 1846, when the report of the New York Convention's 'Committee on Incorporations other than Banks' was followed by a three-month discussion and two close votes, leading to stalemate and a situation where, in Seavoy's words, 'the whole liability issue was in utter confusion'.[17] Debate-stalemate is a recurring feature of the English experience too.

Difficulties in this respect are seen in the vacillations over the 1811 Act which continued in New York state until 1821, when the Act was finally permanently enacted. Even thereafter the status of the Act's limited liability clause proved 'ambiguous', variously interpreted as authorising limited liability or the more conservative double liability. Ambiguity continued until 1828, when full limited liability was confirmed for all corporation shareholders (not just shareholders in manufacturing corporations) whose shares were fully paid-up, the one exception being for banking corporations ('a politically explosive issue'[18]). Dodd shows the Massachusetts state legislature persisting with unlimited liability for manufacturing corporations for two further years, finally approving in 1830 (with the high-profile sponsorship of Governor Levi Lincoln) an Act which proved lasting. Other north-eastern states were similarly indecisive. New Jersey's experience mirrored New York's, in continuing to flirt with double liability, and, most indecisive of all, the Maine state legislature hopped back and forth between limited and unlimited liability as a standard for manufacturing corporations no fewer than nine times between 1820 and 1857. When Forbes and others state that the other American industrialised states were 'not long in following New York's lead' they are therefore presenting an over-purposeful picture, air-brushed by hindsight.[19] It is true that once limited liability had been temporarily allowed for manufacturing corporations in New York, it proved hard to put the cat back in the bag (as Forbes notes, New Hampshire and Connecticut followed with their own legislation in 1816 and 1818 respectively). The

[17] Ibid., p.186.
[18] Ibid., p.94.
[19] Forbes, 'Limited Liability and the Development of the Business Corporation', p.172. Also asserted in Henry Hansmann, Reinier Kraakman, Richard Squire, 'Law and the Rise of the Firm', *Harvard Law Review*, vol. 119, March 2006, pp.1333-1403, p.1394.

New York Act was however, only the beginning of a protracted debate. Authorisation of limited liability for manufacturing corporations continued to be widely controversial for decades and came close to being reversed in the 1840s. Securing its formal acceptance across the industrialised United States took the best part of half a century.[20]

At this point, it is appropriate to turn to a second development which distinguished the American experience of limited liability and which came to the fore in the second half of the 1840s: general incorporation statutes. Naomi Lamoureaux supports the common explanation for their adoption, in citing 'Jacksonian opposition to the favoritism inherent in [the]system of granting charters'.[21] Seavoy sees the 1837-44 depression as critical in achieving the key breakthrough, the New York State Convention's 1846 decision to allow general incorporation statutes for for-profit enterprise.

Here it was the extension to for-profit enterprise that marked a change. General incorporation laws for *non*-profit, self-evidently socially useful organisations were a legacy of the Revolution, and found in most American states by the end of the eighteenth century.[22] It was not until 1846 however, that their use was extended to commercial enterprise. Seavoy identifies the 1838 approval of banking self-incorporation as pivotal to the New York Convention's acceptance of self-incorporation generally.[23] Because banking was a controversial industry, its fate determined, in Seavoy's eyes, 'whether it was desirable or sound policy to open the privilege of incorporation to all entrepreneurs in those types of enterprises where the corporation was the usual form of organization.'[24] Self-incorporation statutes, through use of standardised questionnaires, made authorisation routine and cheap. Before their introduction, a corporation wishing for limited liability status had to apply for an individual statute (and could do so thereafter, if that was the preferred route). With the exception of grants made to manufacturing

[20] Louis Hartz shows Pennsylvania state authorities introducing and then again removing personal liability provisions for manufacturing and mining corporations in the 1850s, *Economic Policy and Democratic Thought: Pennsylvania, 1776-1860* (Cambridge, Massachusetts, 1948), p.257.
[21] Naomi Lamoureaux, 'Partnerships, Corporations, and the Limits on Contractual Freedom in U.S. History: An Essay in Economics, Law and Culture', in *Constructing Corporate America: History, Politics, Culture*, ed. Kenneth Lipartito and David Sicilia (Oxford, 2004) pp.29-65, p.30.
[22] See Cooke, *Corporation, Trust and Company*, p.94.
[23] Seavoy, *The Origins of the American Business Corporation*, p.265.
[24] Ibid., p.258.

corporations, the American experience of limited liability had not been so qualitatively different from the English, distinguished primarily by identification with the corporation. Even after 1846 the type of industry identified with limited liability did not change greatly, but the rate at which limited liability corporations were authorised did.

Some explanation of this acceptance seems necessary, since corporations were certainly not regarded by Americans as necessarily beneficial. Larger associations posed an obvious threat to individual businessmen, and there are numerous instances from the late eighteenth and early nineteenth centuries of American politicians and newspapers decrying corporations as aristocratic and exploitative. Louis Hartz's study of attitudes in Pennsylvania says that anti-charter sentiment was then 'one of the most powerful, repetitious, and exaggerated themes in popular literature'.[25] Hartz also stresses however, that opposition was strongest 'on the philosophic plane' rather than the economic, and amongst the explanations put forward as to how antipathy was overcome, perhaps the most convincing is that corporations were simply found undeniably useful.[26] Minchinton suggests that '[the] link between the corporation and the numerous enterprises of a public nature that a large and rapidly developing country needed may in part explain the early growth of the corporation in this country, which appears phenomenal when compared with British and continental European experience.'[27]

If the early experience can be termed phenomenal, what ensued at mid-century was even more so. As Stuart Bruchey notes, 'nearly half of all corporations chartered between 1800 and 1860 [in America appeared in the 1850s]', facilitated by ease of authorisation.[28] Massachusetts introduced a self-incorporation statute for manufacturing in 1851, but it is New York's 1847-55 burst of industry-specific general incorporation statutes which is most remarkable. The transport, educational and charitable institutions featured in that burst (listed by Seavoy in full) were notable for their number but, with the significant exception of the 1848 general incorporation statute passed for manufacturing, their nature

[25] Louis Hartz, *Economic Policy and Democratic Thought*, p.69.
[26] For a discussion of historians' views, see Minchinton, 'Chartered Companies and Limited Liability', p.145.
[27] Ibid., p.147.
[28] Stuart Bruchey, *The Roots of American Economic Growth 1607-1861: An Essay on Social Causation*

would not have alarmed Adam Smith.[29] Seavoy states that it was not until long after 1855 that 'general incorporation codes [allowing] incorporation for virtually any legitimate purpose [and extending] the privilege of self-incorporation to all classes of business for profit' were enacted there.[30] Seavoy suggests that a franchise analogy (identifying for-profit initiatives with non-profit ones, both providing services of obvious benefit to the community) was easier to make where an industry was sparsely populated. Here, corporations could be granted limited liability without raising the spectre of a potential clash with competing, usually smaller firms.

This suggests that the *rate* of expansion of a particular industry, as well as the nature and scale of its individual businesses, facilitated limited liability's take-up. Although the historiography considered here has little to say on the point, it seems likely that the relative explosiveness of industrial and infrastructure development in a vast country - not just in railways (which obviously enjoyed explosive growth in Europe too) but in other transport industries and in manufacturing - made innovation relatively easy to countenance. Seavoy says that limited liability was not controversial in New York state for 'new businesses, …. organized as corporations from their inception.' He goes so far as to claim that early nineteenth-century ring-fencing of corporate activity there, kept distinct from the concerns of single proprietorships and partnerships, was such that '[u]ntil banking instability emerged after 1811, there appeared to be no strong objection to general incorporation statutes and limited liability for all businesses that did not take land by eminent domain proceedings and did not compete with full-liability enterprises.'[31] He also says that '[b]anks were the great exception to this generalization' - that is, to the assertion that the business corporation was essentially non-controversial in New York by 1825 - and that this was because 'the public wanted the full redemption of banknotes of insolvent banks from the assets of stockholders.'[32] According to his analysis, the manufacturing corporation was relatively uncontroversial in New York from the second

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(London, 1965), p.137.

[29] Seavoy, *The Origins of the American Business Corporation*, pp.191-2.

[30] Ibid., p.7.

[31] Ibid., p.74. Seavoy identifies typical 'competitive businesses', where full-liability was the model, as: retail and wholesale merchants, export-import brokers, ship builders, stage, canal and river freight lines, and real estate developers, p.257.

quarter of the nineteenth century. Seavoy also points out that American ocean steamship corporations were granted limited liability from as early as 1814, in a sparsely-populated sector, where such competition as existed was international.[33]

Effectively echoing the point that change was more readily accepted in new or rapidly-expanding industries, historians of the British experience have judged that limited liability met with more opposition in older industries. Jefferys sees this as most intense in shipping, cotton and wool manufacture, and in the iron and steel industries.[34] Freeman, Pearson and Taylor claim too that liability-limitation made relatively little headway in manufacturing and shipping.[35] New or rapidly-expanding industries offered a clearer field for new habits and less potential for clashes between individual and corporate enterprise. Whenever a clash *did* threaten, American attitudes were seemingly not so different from English. The American historiography is full of quotations from individuals petitioning against charters, many from the 1830s.[36] Seavoy states that the New York legislature 'never incorporated a shipbuilder or canal boat transportation company because those businesses were traditionally full-liability enterprises and highly competitive.'[37] Hartz sees attitudes shifting significantly in the 1840s and 1850s, as the values of individual initiative came to be associated with incorporated as well as unincorporated enterprise.[38] The scope of the 1847-55 statutes suggests that scruples carried weight however, and that very few industries were identified as 'corporation' industries. Those few seem to have been clearly defined. Demarcation by industry seems to have made it possible to countenance limited liability within defined parameters, without prompting too many accusations of unfair competition.

One factor which might have disrupted this relatively demarcated picture is the limited

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[32] Ibid., p.261.
[33] Ibid., p.44
[34] Jefferys, 'Trends in business organisation', p.35.
[35] Freeman, Pearson, Taylor, *Shareholder Democracies*, pp.190-192.
[36] 'Remonstrance of George W Cushing & Others' (1838), as quoted, 'Incorporating the Republic: the corporation in antebellum political culture', *Harvard Law Review*, vol. 102, no. 8, (June, 1989), pp.1883-1903, p.1901. See too Hartz, *Economic Policy and Democratic Thought*, p.195, and Ted Nace, *Gangs of America. The Rise of Corporate Power and the Disabling of Democracy* (San Francisco, 2003), pp.49-53.
[37] Seavoy, *The Origins of the American Business Corporation*, p.73.
[38] Hartz, *Economic Policy and Democratic Thought*, p.79.

partnership. Facilities for limited partnerships certainly existed in American states, and Naomi Lamoureaux notes that, '[l]egislation permitting [limited partnerships] was first passed by the New York and Connecticut legislatures in 1822, and then by most states over the next couple of decades'.[39] It appears however, to have been an economic footnote to the main story. As Lamoureaux also observes, '[w]hat is most interesting about the limited partnership form … is how rarely it was used'.[40] Dodd mentions - appropriately enough, in a footnote - that '[l]imited liability [became] available in Massachusetts as early as 1835 for inactive members of a partnership under the Limited Partnership Act of March 10, 1835' but goes on to say that 'very little use seems to have been made of that act by manufacturing enterprises'.[41] Despite their widespread availability, limited partnerships were rarely used. An obvious, but important lesson from the American experience is the significance of the corporation as a vehicle of change.

Lessons from America?

From a perhaps rather insular, British perspective, the United States' role in endorsement of limited liability looks like an instance of 'round-tripping'. Eastern American states took up a corporate form first imported from England through colonial law, developing corporation law independently after 1775 and establishing its usefulness as legislative responsibility was devolved to state level and individual states caught the habit from each other. In the middle of the nineteenth century, in discussion of American manufacturing and self-incorporation statutes, the results were exported back to England.

A cross-Atlantic comparison throws up some lessons as to how this was achieved. The most obvious is the importance of the corporation, since American use of limited liability was overwhelmingly in this context. Many contemporary British commentators understood this, but engrained habits of discussing limited liability in the context of

[39] Lamoureaux, 'Partnerships, Corporations, and the Limits on Contractual Freedom in U.S. History', p.34.
[40] Ibid., p.35.
[41] Dodd, 'The Evolution of Limited Liability in American Industry: Massachusetts', n.69, pp.1370-1.

'partnership' led to some vagueness in terminology and notions of the precise company-forms in use in the US. In April 1853, *Lawson's Merchants' Magazine* gave an accurate description of American state laws, but inaccurately attributed striking development to the prevalence of limited partnership. *Lawson*'s was written and edited by Bethel Strousberg, a one-man publishing phenomenon of early 1850s London (before his departure for the continent) who prided himself on an international outlook. He advised his readers - misleadingly - that 'in the United States ... the principle of partnership *en commandite* has been carried out very extensively and with signal success'.[42] This was a common error - part of a popular but inaccurate narrative arc, whereby *commandite* originated in Italian republics, spread to France, Holland and Germany, 'and finally reached the United States, where it flourishes with greater vigour than elsewhere'.[43] Some did question the accuracy of this supposed progression. The *Westminster Review*, reviewing Thomas Wilson's *Partnership 'en commandite'* in 1848, thought it confused two company forms, and, quoting definitions given by Mill, suggested that American progress was better identified with the *société anonyme* (in which all, not just some, partners, enjoyed limited liability) than *commandite*.[44] Francis Troubat 'of the Bar of Philadelphia' did understand the difference between the various company forms and added his own momentum to discussions with the 1853 publication of *The Law of Commandatary and Limited Partnership in the United States.* This was reviewed in the English legal press, and much cited by Edwin Field, the London solicitor who was to play a leading role in campaigning for legislative change in the early 1850s.[45] In a classic demonstration of 'the grass is always greener', Troubat argued that the US had erred in pursuing limited corporations, source of de-stabilising speculation, and that the best exemplar of steady progress in use of limited liability was continental Europe's use of *commandite*, best represented technically in France's Code de Commerce. Field chose to interpret Troubat in his own fashion, and constructed a narrative in which the United States had adopted the 'commanditary system' from France, and - feeling its constraints - moved swiftly on to wholesale adoption of limited liability. Field thereby (erroneously)

[42] 'Our Commercial System', *Lawson's Merchants' Magazine*, April 1853, Footnote to p.247.
[43] 'The Law of Partnership', *Bankers' Magazine*, August 1854, p.424.
[44] *Westminster Review*, April-July 1848 (London 1848), pp.546-7.
[45] Francis J. Troubat, *The Law of Commandatary and Limited Partnership in the United States*

expunged past as well as present unlimited liability corporations: 'America ... may now, I believe, be said not to have one unlimited liability share company in its whole empire.'[46] The US experience shows clearly that unlimited liability corporations were not unique to England. Naomi Lamoureaux, reviewing early nineteenth-century American experience, stresses the similarities in how corporations and partnerships were then viewed, and says that 'shareholders often were fully liable for their corporation's debts, just like members of partnerships'.[47] In English official inquiries into limited liability in the early 1850s, Americans themselves were to try and counter the mistaken perception that American unlimited liability share companies did not exist.

These preferences and confusions notwithstanding, the American limited liability vehicle of choice was the corporation. A headline cross-border comparison suggests that partnership structures are largely a red herring for wider limited liability rules. Continental European jurisdictions with some form of limited partnership did not produce such a rule, while a jurisdiction which - unusually - did not have limited partnerships (England) did. Economists commonly name Sweden as the first country to introduce a general rule[48] (though its claim to general status has been contested[49] - as indeed has that of the 1856 English law[50]) and interestingly, Sweden was one of the few jurisdictions that, like England, had no limited partnership facility in the mid-nineteenth century.[51] On this evidence, limited partnerships look to be a brake on change rather than otherwise - or something that only assumes importance when withheld. Little in the historiography suggests American limited partnerships played a significant role.

Another characteristic of the American experience is speed of change. This should not be overstated. Although, for example, American acceptance of corporate abstraction pre-

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(Philadelphia, 1853).
[46] Cf. *Observations of a solicitor*, pp.82-5.
[47] Lamoureaux, 'Partnerships, Corporations, and the Limits on Contractual Freedom in U.S. History', p.32.
[48] For example, Ha-Joon Chang, *23 Things they don't tell you about Capitalism* (London, 2010), p.13.
[49] Discussed by Oskar Broberg, 'The Emergence of Joint-stock Companies during the Industrial Breakthrough in Sweden', *Finance and Modernization* (Farnham, Surrey, 2008), pp.168-85, p.171.
[50] Michael Lobban argues that in 1856 '[t]here was in effect no general limited liability, for small partnerships were denied the right', 'Corporate Identity and limited liability in France and England 1825-67', *Anglo-American Law Review* (1996) 25, pp.397-440, p.433.
[51] See the responses from Stockholm and Gottenberg, *Replies from foreign countries to questions relating to the law of Debtor and Creditor*, pp.38-9.

dated English, Lamoureaux shows corporate 'personhood' still seen as an artificial construction, subject to wider moral obligations (which could include personal liability) for much of the first half of the nineteenth century.[52] The American experience was however, marked by very rapid expansion in manufacturing and in transport infrastructure, leaving relatively clear fields for acceptance of limited liability. Railway development is conspicuous by its absence from the historiography considered here, but Hartz and others have shown that it played an important role. Explosive expansion was relatively common in the United States, and the infrastructure-corporation was there readily formalised through self-incorporation statutes. These constitute one of the three key means by which the limited liability corporation established itself in the US. The other two were the special cases of banking and manufacturing. All three strongly influenced British perceptions of limited liability.

American banking influence

Banking is a peculiar industry where limited liability is concerned. Evidently it could prove decisive, in that if limited liability could be accepted in this context (as happened in New York state) it might then be relatively easy to accept in other contexts. The gearing cut two ways however, and if a limited liability bank failed, this could constitute an effective mental block. American use of limited liability banks institutionalised just such a block in British perceptions. This was set firm by the 1837 crisis, but had taken root earlier - Henry Burgess catalogued American joint stock bank failures from the late 1820s.[53] In the 1832/3 Bank of England charter debate, lobbyists for London joint stock banks complained that 'the unbroken faith of the Joint Stock Banks of Scotland, Ireland, and England are unnoticed, or merged in comparisons with some of the insolvent Banks of America'.[54] American failures prompted speculation as to what might have produced such different results in two different locations. One pounced-upon variable was

[52] Lamoureaux, 'Partnerships, Corporations, and the Limits on Contractual Freedom in U.S. History', pp.32 and 44-5.
[53] *Circular to Bankers*, 27 August 1829, p.18; 26 March 1830, pp.283-5; 18 September 1835, pp.66-7; 5 August 1836, p.18.
[54] *Remarks, on the objections to joint stock banks* (London, 1833), p.9.

American bank charters' use of limited liability.

Rhetorical competition between Scottish and American banking was a reasonably even contest until the 1837 crisis. In 1836, when William Clay called for yet another official inquiry into English joint stock banks, he urged consideration of practices adopted by the American people, since 'none exists more sagacious, more practically wise, or more capable of drawing useful lessons from experience'. Clay had examined 23 charters of American state banks, and found that nearly all showed limited liability. He told fellow MPs that they would 'I am sure, feel how important is the lesson we may derive from the experience of our trans-Atlantic brethren'.[55]

Some were of course disinclined to take an American lecture on this point even then. One opponent came back at Clay with:

> 'Having before us the example of Scotland, we would be foolish indeed to take our models ... from the other side of the Atlantic ... In position and circumstances there is a striking resemblance between us and our near neighbours, but none whatever between us and the Americans.'[56]

And not everyone willing to admit American banking virtues thought that these had much to do with limited liability: 'that degree of stability exhibited by American banks, which Mr. Clay seems to think is the result of limited liability in all probability arises chiefly from active competition.'[57]

A year later, Clay's critics were scoffing at the idea that there was even any case to answer. The May 1837 financial crisis affected both British and American businesses, and brought the failure of dozens of American chartered banks. Interpretations of what had happened differed on either side of the Atlantic. British observers were quick to see shortcomings in the American banking system and its use of limited liability. *The Times* reprinted the 'Limited Liability' section of 'Mr. Gilbart's history of banking in America',

[55] *Hansard*, 3rd series, vol .33, c857 (12 May 1836).
[56] 'Vindex', *Letter to William Clay*, pp.16-7.
[57] H. S. Chapman, *The Safety- Principle of Joint-Stock Banks and other Companies, exhibited in a modification of the law of partnership* (London, 1837), p.46.

(written by the General Manager of the joint stock London and Westminster Bank) together with a flat assertion that 'Unlimited liability gives greater security to the public'.[58] Americans generally blamed the British. American journalist Richard Hildreth pointed to the Bank of England's rapid reversal of discount policy, which had left American merchants suddenly called upon to pay huge sums to 'the great English mercantile houses, known as the American Bankers'.[59] Henry Carey also blamed the Bank of England.

Henry Burgess thought Americans unfairly maligned by much British comment on the crisis[60] but sided with Gilbart in saying that it was:

> 'abundantly clear that as a whole the system of chartered banks acted upon in America is inferior to the system of Joint-Stock banks acted upon in Scotland ... No legislative enactment will ever be able to make [the American banks] equally efficient and trustworthy with Banks of unrestricted liability ... There is one astounding fact which the advocates of restricted liability will find it difficult to reconcile with their view of its expediency, viz. that all the Chartered Banks of a great commercial country failed at once.'[61]

Others too thought that the failures confirmed their worst fears. The political economist Thomas Tooke had given evidence - and a sceptical opinion on limited liability - to Ker's 1836 inquiry. He observed in the second volume of his *History of Prices*, published the year after the crisis (and Ker's Report) that the British system of 'unlimited responsibility' joint stock banks 'stands out in pre-eminently advantageous contrast to the discreditable exhibition of American banks, with their state charters and limited responsibility'.[62] Two years later, the 1840 Select Committee on Banks of Issue asked Bank of England Director George Norman what he knew of American banks. He replied that he had studied them 'only generally', and knew them to be 'chartered ... usually with limited

[58] 'American Banking', *The Times*, 25 May 1837, p.3.
[59] Richard Hildreth, *The History of Banking, to which is added a demonstration of the Advantages and Necessity of a free competition in the Business of Banking* (Boston, 1837), pp.i-iii.
[60] *Circular to Bankers*, 25 August 1837, pp.60-1.
[61] *Circular to Bankers*, 27 April 1838, pp.340-1.
[62] Thomas Tooke, *History of Prices*, vol. II, (London, 1838), p.317.

responsibility'. He believed that:

> 'every check that ever has been suggested, has been applied in the United States ... and the only check that I am aware of that has not yet been tried (though, I believe, it is about to be tried) is that of introducing unlimited responsibility on the part of the shareholders'.[63]

Claims that the 1837 crisis had led Americans to 'retrace their steps' and adopt personal liability in banking became common.[64] Those making the claims did not usually cite supporting evidence, but there are grounds for thinking they had justification. Hartz shows the Pennsylvania authorities keen to '[define] stockholder liability in bank charters more rigorously than before', though the form of liability used was usually double rather than full unlimited liability.[65]

Once established, a British perception that American chartered banks were peculiarly risky proved hard to expunge. As Burgess predicted, the sheer number of failures was key. William Brown and Chancellor of the Exchequer Charles Wood invoked this to counter Headlam's 1849 limited liability initiative, with Wood also quoting Gilbart.[66] When Clay talked again about American banks, Brown rightly said that he 'could not have cited a more unfortunate case for his argument'.[67] In mid-1850s discussion of limited liability, reformists tried to counter this image with specifics. New England banking practices were said now to be working 'magnificently'[68] and New York state banks were similarly impressive.[69] The blanket-impression of American chartered banks as peculiarly risky never however, entirely went away.[70]

The 1837 crisis was followed in the US by state defaults, and a catastrophic loss of credibility with international investors that did not begin to dissipate until 1843. In the

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[63] *Report from the Select Committee on Banks of Issue*, PP 1840 (602) iv 175.
[64] William Brown, *Hansard*, 3rd series, vol. 105, c149 (8 May 1849).
[65] *Economic Policy and Democratic Thought*, pp.256 and 258.
[66] House of Commons debate, 8 May 1849, *Hansard*, 3rd series, vol. 105, c140.
[67] Ibid., c149.
[68] *Report of the Proceedings*, pp.28-30.
[69] Field, *Observations of a solicitor*, pp.86-8.
[70] See for example, John McCulloch, *Considerations on Partnerships with Limited Liability* (London, 1856), p.18.

mid-1840s however, sentiment began to change, and when revolution once again broke out in continental Europe in 1848, American economic example was in a way to being taken much more seriously. European revolution heightened the appeal of American models for the British journalist who saw a growing 'feeling of mutual respect, a spirit of cordiality ... as the conviction of the common interest of the two countries becomes more palpable'.[71] If continental Europe had once again failed to provide a suitable model for social change, then a better one might be on offer in the US. In particular, it might be on offer in American manufacturing.

American manufacturing influence

Importantly, Americans' use of limited liability companies for manufacturing did not impinge strongly on British perceptions until the late 1840s. This meant that the legacy of the previous half-century was absorbed into potential British lessons in the context of a mechanised nation, facing challenges felt to be particular to that condition. As seen, manufacturing corporations made use of limited liability in individual American states from early in the century, but it was not until several decades later that their technical structures registered with Britons as a point worthy of note. In the 1830s and early 1840s, British observers who compared American manufacturing with their own domestic experience focused on mechanical and cost efficiency, not company structure. In 1840, James Montgomery, a Scottish factory-superintendent who had emigrated to work in the Maine cotton industry, published a comparison between British and American cotton manufacturing practices, in which he praised the impressive productivity of Massachusetts factories.[72] Montgomery thought it would not be long before the Americans caught up in skill and quality as well.

In his classic review of nineteenth century American and British technological

[71] *Blackwood's Edinburgh Magazine*, June 1848, p.784.
[72] James Montgomery, *A Practical Detail of the Cotton Manufacture of the United States of America; and the state of the cotton manufacture of that country contrasted and compared with that of Great Britain; with comparative estimates of the cost of manufacturing in both countries* (Glasgow, 1840), pp.138-9 and 162.

development, H. J. Habakkuk claims that observations like Montgomery's became increasingly common in the 1840s. Although British technology was in general still far ahead of American (and continued to be so into the second half of the century) British engineers and manufacturers noted that the Americans excelled in certain mechanical areas. In seeking to account for this, Habakkuk comments that: 'It seems obvious - it certainly seemed so to contemporaries - that the dearness and inelasticity of American, compared with British labour, gave the American entrepreneur with a given capital greater inducement than his British counterpart to replace labour by machines'.[73]

Comment to this effect exploded in British newspapers and periodicals at mid-century, fanned by the American mechanical expertise on display at the 1851 Great Exhibition. When John Newall urged the Board of Trade in 1852 to allow greater use of limited liability, he warned that 'the year 1851 has opened our eyes to the fact ... that [the Americans] have already excelled us in more than one of the most essential arts'.[74] In July 1852, a pro-limited liability writer in the Dissenter-monthly, the *Eclectic Review*, urged the English to lose their superiority-complex about economic questions:

> 'God has done more for us than we have ever done for ourselves; and among the chief things that we have not done for ourselves is to discover a mode equal to that of our neighbours of France, Italy, Belgium, America, &c, by which men of capital may combine together to carry out works of vast public good, adding largely to national and individual wealth ... The wonders of the great Exhibition ought to have largely diminished our national vanity.'[75]

Commentators asked whether Britain was doing enough to foster the inventiveness which could drive forward a modern nation, and - perhaps even more importantly - provide for its social stability. How might a modern nation accommodate the workers who had traditionally provided the physical impetus for national progress and might now feel excluded from a mechanised future?

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[73] H. J. Habakkuk, *American and British Technology in the Nineteenth Century; the search for labour-saving inventions* (Cambridge, 1967), p.17.
[74] John Newall, *A Letter to the Right Honourable Henry Labouchere MP, on the formation of Companies and Partnerships, and limiting the liability of their members* (London, 1852), p.4.
[75] 'Responsibility of Joint stock Companies', *Eclectic Review*, July 1852, pp.68 and 70.

On this question, it seemed to many that the United States might have much to teach. For Charles Morrison, wealthy son of MP and railway-critic James Morrison, American workers appeared distinguished not just by physical strength but by *mental* self-reliance.[76] Morrison did acknowledge, in passing, the United States' four million slaves, but chose to focus rather on her free workers. He highlighted 'the readiness of invention, freedom from prejudice, and intelligence with which Americans carry on all kinds of productive labour, and particularly … the constant application of their minds to the saving of labour by every possible contrivance.'[77] Unlike too many of their British counterparts, American workers accepted machinery as their friend, the means to respectable self-reliance. Morrison expected this awareness 'to become more sensible with every advance in their own intellectual and moral state.'[78]

Scottish publisher William Chambers took a similar view, in a work published after an 1853 tour of North America. He too admired Americans' 'intelligence sharpened by education', and saw in 'the spectacle of well-educated, thoughtful, independent America' a lesson for a better future.[79] Edwin Field may not actually have been to the US but this did not stop him also praising American workers' 'inventive ingenuity'.[80] Equally commonplace was a view that British workers fell short in comparison. Authoritative endorsement came from the great mechanical engineer Joseph Whitworth, who reported from his tour of American manufacturing districts that:

> '[American] combinations to resist [the] introduction [of machinery] are unheard of ... The principles which ought to regulate the relations between the employer and the employed seem to be thoroughly understood and appreciated in the United States'.[81]

These views being widely shared, opinion varied only in what was thought to have

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[76] Morrison, *Labour and Capital*, p.233.
[77] Ibid., p.190.
[78] Ibid., p.192.
[79] William Chambers, *Things as they are in America* (London and Edinburgh, 1854), pp.345-6.
[80] Field, *Observations of a solicitor*, p.78.
[81] *New York Industrial Exhibition. Special Report of Mr. Joseph Whitworth*, as reprinted in Nathan Rosenberg, ed., *The American System of Manufactures: The Report of the Committee on the Machinery of the United States 1855 and the Special Reports of George Wallis and Joseph Whitworth 1854* (Edinburgh,

brought about Americans' enviable traits, and might now promote similar behaviour in Britain. Manchester calico-printer Edmund Potter read Chambers' account, and though he agreed that British workers placed too much store by 'mere manual toil, requiring little thought and invention', was adamant that limited liability had nothing to contribute to their education.[82] Morrison, Chambers, Field, Whitworth and others however, suggested that it might help release workers' latent intelligence. It was even possible to find an American ready (when suitably prompted) to agree - though others found Americans willing to attest just the opposite. On both sides of debate, lessons were mapped onto the US, and transferred to the allegedly fertile or infertile soil back home.

There was much at stake in who might be right. If machinery could free a nation from not only labour, but - effectively - labourers too, this might help chart a course through one of the great challenges of the age: how, safely, to admit manual workers to the political franchise. Educated workers might be admitted if (as the US showed) they had hope of achieving a property-stake in the social order. The prospect of granting political power in advance of such a stake alarmed many. Morrison admitted that not even the US had tried this, employing instead a vast population of slaves.[83] Hope was however, offered by a combination of Anglo-Saxon lessons. The US had shown that it was possible to infuse a nation with the ambition to rise 'to be possessors of property and employers of labour in their turn'. And England's tradition showed that only 'a very small property is sufficient to give a man the feelings of a proprietor'. Importantly for an industrialized nation, these intuitions could be felt by 'a mechanic who had invested an equal sum from his savings … in a Joint Stock Company'.[84]

This formula offered hope of social harmony, and drew on established joint stock connotations. For social and commercial liberals, the favourite exemplar of the sort of socially-encouraging American joint stock enterprise they admired was Lowell, the outstandingly successful manufacturing centre built at Waltham, Massachusetts over the first half of the nineteenth century and known for its predominantly female workforce

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1969) pp.388-9.
[82] Edmund Potter, *Practical Opinions against Partnership with Limited Liability* (London, 1855), p.8.
[83] Morrison, *Labour and Capital*, p.280.
[84] Ibid., pp.280-1, p.296.

and distinctive, all-encompassing approach to employee conduct and governance. Lowell's famous factories served as a mid-century touchstone for debating the lessons of American manufacturing, and its use of limited liability. Englishmen with personal experience of manufacturing tended to be sceptical. William Hawes ran a well-known London soap factory, and took a prominent part in limited liability debate of the early 1850s. He was familiar with the manufacturing success-stories of Lowell and St Etienne in France, but did not think their lessons transferable to Britain.[85] Potter, another manufacturer, also thought Lowell's example irrelevant, emanating as it did from a country unusually well-endowed (by virtue of its immigrant population) with middle-class impulses.[86] Enthusiasts of American manufacturing corporations did sometimes acknowledge that special conditions - hard to ignore in the case of Lowell's female workforce - should give pause for thought. Morrison owned that '[t]here are certainly favourable circumstances in the position of the factory population of Lowell which can hardly be expected to be fully equalled in the immense population of our great manufacturing districts. Still', he concluded more resolutely, 'so many of the evils which are to be found in the latter might be removed with little or no sacrifice, that it may be hoped that they will gradually give way.'[87]

Edwin Field entertained few doubts on this score. He quoted in support from *An Englishwoman's Experience of America*, published in 1853 by fellow-Unitarian Marianne Finch. Finch came from a Liverpool family with close ties to the US, and a tradition of active social reform. Her father, John Finch, was an ironmaster and merchant who pursued social change amongst Liverpool's workers, inspired by his grandfather Joseph Priestley and by Robert Owen. In a temperance tract published in the 1830s, he appears to have anticipated a time when

> 'the whole population of Great Britain, Ireland, and all other countries will unite in forming joint-stock companies, with from 500 to 8,000 members, each having one common capital, and one common interest, living together [and] working for

[85] Hawes, *Observations on Unlimited and Limited Liability*, p.33.
[86] Potter, *Practical Opinions*, p.47.
[87] Morrison, *Labour and Capital*, p.194.

each other.'[88]

His daughter may not have displayed that degree of visionary faith, but she was similarly interested in joint stock's social potential. When she made an extended trip to the United States, as her father had done a generation before, she, like him, published a book of her findings. Making the standard tour of New England's manufacturing districts, she observed that their

> 'manufactories for cotton are not individual speculations, as with us, but joint-stock companies, like the railroads ... [This system] seems to recommend itself strongly to the workpeople, by giving them an opportunity of holding shares in the mills where they are employed. Taking advantage of this organisation, they might gradually, and without risk, become the capitalists as well as the labourers .... Several who were working at the looms, were pointed out to me as proprietors.'[89]

Field cited these observations, and their promise of social progress, to show how absurd he thought an opponent's apprehension at the British government potentially granting 'charters to the Lancashire cotton-mills'.[90] William Chambers was similarly impressed with the Lowell operatives' 'orderly behaviour', and attributed it to their 'hope of a permanent improvement of their condition'.[91] Bethel Strousberg, making the case for *commandite* in April 1853, also highlighted Lowell's use of 'contributory shares'.[92] The *Westminster Review* made the same connections, and asked 'how can the mechanics of London or cotton-spinners of Manchester, hope to raise themselves to a similar position in the scene of their toil?'[93] Chambers too held that '[p]ractically, the [English] operative is without hope', whereas,

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[88] 'The Foolery of Drinking Drunkard's Drinks', No 3, *Temperance Tracts* (Preston, 1836), as cited by R.B. Rose, 'John Finch, 1784-1857. A Liverpool disciple of Robert Owen', *Transactions of the Historic Society of Lancashire and Cheshire*, vol. CIX (Liverpool, 1958), p.173.
[89] Marianne Finch, *An Englishwoman's Experience in America* (London, 1853), p.43.
[90] Field, *Observations of a solicitor*, p.53.
[91] Chambers, *Things as they are in America*, pp.222-3.
[92] 'Our Commercial System', *Lawson's Merchant's Magazine*, vol. II, January-December 1853 (London, 1853), April 1853 issue, footnote to p.247.
[93] 'Partnership with Limited Liability', *Westminster Review*, October 1853, p.385.

> 'In America ... hope is stimulated in an extraordinary degree...[and] there is the greatest possible reason for economising and becoming capitalists ... I feel sure that this tends to explain the superior character of the American workman.'[94]

This connected limited liability to powerful social images and went to the heart of Britain's progressive national identity. It is important to stress that the images carried more sway with British writers than they did with British manufacturing's own practitioners. But for those observing matters from the outside at least, American manufacturing challenged the identification of national progress with personal liability, and the perception of joint stock as the preserve of the commercially immature.

One reason for its effectiveness in doing so was the undeniable *speed* of American progress in manufacturing, as more generally. Americans themselves were proud of this national characteristic. Henry Carey portrayed his country as definitively dynamic:

> 'Everyone feels he *can* go ahead if he *will* ... All have to work hard to keep up ... If they pause but for a moment they are left behind ... No capital need remain idle.'[95]

Britons noted the dynamism, which could inform even a *Law Magazine* technical article about limited liability.[96] Lowell was emblematic of this speed of progress, as of social harmony, and scarcely ever mentioned without an accompanying observation on the near-miraculous way it had mushroomed from nothing: 'In 1815 the site ... was a wilderness ... It has now twelve manufacturing corporations employing 12,630 hands.'[97] Many highlighted capital-association as '[the] stimulus ... which has caused it to take such gigantic strides.'[98] In 1840, James Montgomery had acknowledged the Lowell corporations, without seeing any need to comment on their financial structure. Samuel Laing, a lawyer and secretary at the Board of Trade, did the same in his 1844

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[94] Chambers, *Things as they are in America*, pp.344-5.
[95] *The Past, the Present, and the Future*, pp.151 and 154. Author's emphases.
[96] 'Limited Liability', *The Law Magazine*, August-November 1855, p.237.
[97] Finch, *An Englishwoman's Experience in America*, p.37.
[98] *Partnership en Commandite ... colonial trade*, pp.101-2.

examination of Lowell's social lessons for England.[99] Just a few years later however, its financial arrangements were seen as central to the city's progress. And Lowell was only the best-known of a host of such success-stories: 'Lowell, Rochester, Lockport and Paterson [have all] sprung into importance within a few years.'[100]

In the face of such striking progress, some warned that Britain risked being left behind. Strousberg stressed that while Britain's 'absolute advance' since the end of the Napoleonic wars had been rapid, 'the contrary has been the case if we take into review the comparative progress made by other countries during the interval.' The situation would have been worse - and more widely appreciated - had it not been for the revolutions of 1848, which had temporarily derailed continental competitors. The US had suffered no such set-back, and her progress had been 'more rapid within the last twenty-five years, since her general adoption of the [*commandite*] principle [than] in the whole course of her previous career as an independent power.'[101] *The Economist*, not usually very impressed with sweeping claims about limited liability, agreed that 'it is unquestionable that much of the rapid development of American enterprise is owing to the facilities which [a *commandite* law] offers'.[102] At mid-century this rapid development was especially apparent in infrastructure.

'A common intelligence'

The 1837 financial crisis had one other important, negative effect on British perceptions of Americans' use of limited liability, in that much British capital was invested in American infrastructure companies which failed along with American banks. Before this, Henry Burgess had noted in early 1836 how

> 'The Americans have found by experience that the productive and commercial

[99] Samuel Laing, *Atlas Prize essay. National Distress; its causes and remedies* (London, 1844), pp.80-2.
[100] 'The Progress of America', *Chambers's Papers for the People*, vol. xii, (Edinburgh, 1851) no 95, pp.1-32, p.28.
[101] 'Our Commercial System', pp.250-1.

> powers of the country would be unduly restricted, unless the public policy could be directed to the giving of charters of corporation with limited liability. Few great enterprises, so necessary to a new country abounding with undeveloped resources of wealth, could be undertaken, without such protection to give scope and freedom to co-operative agency.'[103]

Burgess himself supported limited liability for such 'great enterprises'.[104]

That argument suffered a major setback in 1837. Isaac Cory, already disposed to dismiss French limited companies, asserted in 1839 that:

> 'the vast projects set on foot in America have dazzled us. Their companies [are] upon a scale of almost reckless magnificence; and the land is covered with roads, canals, and public works. In these we have deeply speculated; and upon us the loss is principally shifted ... America, no doubt, is benefited, but England has dearly paid for it'.

Cory saw the United States as still akin to a colony - an immature economic entity which might itself benefit from joint stock investment, but could in the process cost investors dear. He characterised the American companies as limited partnerships, and, in the wake of the 1837 failures, thought *commandite* 'something very nearly approaching to a fraud.'[105]

Despite this, some persisted in asking if Britain was doing enough to support large-scale projects. Prompted by the failure of the 1838 Trading Companies Bill, Burgess warned of 'the force of commercial rivalry springing up against us':

> '[T]he Americans have already grasped at the packet-trade by their "Liners", and at the carrying trade by their merchantmen ... [T]heir trading voyages in the Pacific ought to make us blush for our want of the legitimate spirit of commercial

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[102] 'Investment for Savings. Partnership en commandite', *The Economist*, 18 May 1850, p.537.
[103] *Circular to Bankers*, 22 April 1836, p.315.
[104] Ibid., pp.315-6.
[105] Cory, *A Practical Treatise*, pp.216-7.

> enterprise and of power to combine the energies of industry with capital for novel and remote undertakings ... Such [limited liability joint stock] associations have proved the most powerful means of raising up suddenly the American Republic nearly to a level with England in her commercial station.'[106]

American-style enterprise, and not *commandite* - 'the petty, trickish, miserable system of the French' - was where the real game was being played for limited liability.[107] Burgess warned that Britons were proving sluggish in response.[108] Americans were not only 'intelligent, industrious, and frugal', but

> 'distinguished for a spirit of daring and enterprise, which never suffers them to slumber or rest ... Hence they are rapidly outstripping the kingdoms of the Old World, not excepting England, in commercial connections.'[109]

One reason for the greater display of initiative was said to be greater prospect of reward. Carey's views on this, originally published in an American commercial magazine, were given a boost in circulation when quoted by Mill in 1848 in *Principles of Political Economy*.[110] Mill followed Carey in concluding that 'The best existing laws of partnership appear to be those of the New England States'.[111] Carey saw England's small capitalists condemned to 'sell themselves for life for small fixed incomes', provided by government bonds and life assurance contracts, while in the US, ambitious small capitalists were 'the most useful of all classes'.[112] American capital, although not as plentiful or cheap as English, was more democratic and more dynamic, and as such better-employed. Mill, like Burgess, stressed the scale of many modern industrial developments, and how this had changed requirements made of capital:

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[106] *Circular to Bankers*, 17 August 1838, p.52.
[107] Ibid., p.153.
[108] *Circular to Bankers*, 20 April 1838, p.330.
[109] 'The Progress of America', p.31.
[110] Mill, *Principles of Political Economy*, p.584, citing *Hunt's Merchant's Magazine*, May-June, 1845.
[111] Ibid., p.583.
[112] *The Past, the Present, and the Future*, pp.320 and 324.

> 'The progress of the productive arts requiring that many sorts of industrial occupation should be carried on by larger and larger capitals, the productive power of industry must suffer by whatever impedes the formation of large capitals through the aggregation of small ones'.[113]

Here limited liability had both an economic *and* a social imperative.

The same year that Mill published this, Thomas Wilson published his *Partnership en Commandite*. Wilson saw the US using limited liability to build 'a chain of internal and instant communication of intelligence - commercial, political, or personal - such as a few years ago, before science had begun to apply herself to work for the happiness and welfare of mankind, would have been ridiculed as impossible'.[114] Emblematic of this new age of dynamic connection was the electric telegraph, closely identified with the railways and - as one of its historians has put it - 'a potent emblem of the far-reaching influence of human intelligence'.[115] Tom Standage considers that telegraph companies really took off in Britain in 1851, after the Great Exhibition.[116] In many mid-century British assessments, the telegraph capped a trinity of modern, dynamic communication said now to be bringing people and countries together. Burgess had waxed lyrical in 1837 on the way in which 'railways and steamboats are beginning to break down the obstructions to commerce in every climate and among all complexions and characters of people'.[117] Ten years later, Wilson's three icons of modern communication were: 'Steam Navigation, Railway intercommunication and the yet more rapid transmission of thought, by means of the Electric Telegraph'.[118]

A progression from shipping - an area in which it was acknowledged that the US already challenged Britain - to other, definitively modern forms of communication had become

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[113] *Principles of Political Economy*, p.577.
[114] *Partnership en Commandite ... colonial trade*, p.122.
[115] Iwan Rhys Morus, 'The Electric Ariel: Telegraphy and Commercial Culture in Early Victorian England', *Victorian Studies*, vol. 39, no 3, Spring 1996, pp.339-378, p.374.
[116] Tom Standage, *The Victorian Internet: the remarkable story of the Telegraph and the Nineteenth Century's on-line pioneers* (New York and London, 1998) p.61.
[117] *Circular to Bankers*, 13 January 1837, p.210.
[118] *Partnership en Commandite ... colonial trade*, p.115.

common. In September 1851, *The Economist* warned that it was now 'not only in building and managing ships that the Americans surpass us'[119] while *Chambers'* listed the United States' areas of pre-eminence as 'her railways, telegraphs, ship-building'. Less concrete but no less important demonstrations of her practical strengths were, 'the universality of education, [and] the cheap diffusion of knowledge'.[120] Americans were combining capital and intelligence in a productive network. Joseph Whitworth considered that:

> 'the advantages to be derived from the adoption of the Electric Telegraph, have in no country been more promptly appreciated than in the United States ... In the operations of commerce, the great capitals of the North, South and West are moved, as it were, by a common intelligence.'[121]

The telegraph, symbol of shared intelligence, was used by British observers to point up a contrast between England's archaic partnership law and the democratising demands of modern technology. John Newall lamented that 'the most extraordinary [invention] of the age, has in this country, to struggle under the disadvantage that all who take a share in a Company ... are liable "to their last shilling and acre" '.[122] Wilson warned that Britain must recognise the lessons and ask herself 'why have so many useful men emigrated?'.[123] When he put this question in an 1852 publication, his earlier book about limited liability was re-advertised with an endorsement linking *commandite* to American progress.[124] The message was driven home in his latest book:

> 'America is every day getting ready to receive our mechanics and artisans, by offering a quiet, active use of their labour and capital, by a Law of Partnership which ... gives them the means of being workers and partners in the profits.'[125]

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[119] *The Economist*, 6 September 1851, p.980.
[120] 'The Progress of America', *Chambers'*, p.31.
[121] *Special Report*, as reprinted in *American System of Manufactures*, p.368.
[122] *A Letter to the Right Honourable Henry Labouchere*, p.14.
[123] Wilson, *England's Foreign Policy*, p.171.
[124] 'The United States are chiefly indebted for her rapid and prodigious rise to this system of commercial association, especially in the extraordinary growth of her manufactures, in which 6,000,000*l* is now invested, giving employment to more than 10,000 persons, exclusive of those engaged in the cultivation of cotton. *Douglas Jerrold*'.
[125] Wilson, *England's Foreign Policy*, p.173.

Strousberg likewise pictured British men 'of inventive and creative minds [leaving] the country in disgust'.[126] Henry Colles, a Dublin barrister, told the city's Social Inquiry Society in 1852 that unlimited liability's 'gulf between capital and labour' contrasted with the 'great improvement of the habits, feelings and contentment ... of the [American] people in general'.[127] Carey, remorselessly anti-aristocratic, took the argument into the realm of conspiracy theory, and Field also commented on Americans' instinctive tendency to attribute England's lack of limited liability to 'the sinister opposition of the millionaire'.[128]

All these themes came together in a *Times* Editorial of November 1853:

> '[I]t is to be hoped that the Legislature will take up [the subject of *partnership en commandite*], and deliver this country from the incubus of a bad law, which presses on all its energies. Limited liability has tended to make America what it is. There almost every man is in business in one form or another. A country does not prosper so much by the operation of a few capitalists as by the united enterprise of the multitude of men who have a little money; and in the United States there is full scope for such. There half a dozen men own a ship, twenty an hotel, and small capitals are utilized which here lie idle; and not only the capital, but the energies of its owners; for under such a system men embark in concerns which they understand and can help to manage, and are not obliged to trust their money blindly to a body of *millionaire* directors whom they can only inefficiently control ... There can be little doubt that a similar law in this country would develope the industry of the middling class and add largely to the national wealth.'[129]

Although *The Times* presented Americans' use of limited liability as straightforward, it had taken the best part of half a century to reach this point. Relatively little had changed in English law over the same period, but at mid-century things now began to move faster.

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[126] 'Our Commercial System', *Lawson's Merchants' Magazine*, vol. 1, May-December 1852, pp.341-2.
[127] Henry Colles, *An Inquiry as the Policy of Limited Liability in Partnerships* (Dublin, 1852), pp.10 and 13.
[128] *Observations of a solicitor*, p.34.
[129] *The Times*, 7 November 1853, p.6.

Chapter 7: *In pursuit of a capitalist community of interest, 1850-2*

Unusually, the next round of public interest in limited liability in England was sparked not by a financial crisis but an economic boom. In the early 1850s, the economic climate eased and, in Hilton's words, 'an unequivocally positive attitude to growth set in'.[1] At the same time, the experience of continental revolution lent urgency to calls to combat social polarisation. The two themes of social concern and economic momentum came together in April 1850 when MP Robert Slaney moved for a Select Committee to enquire into facilities for 'the Savings of the Middle and Working Classes'. Justification was said to be the 'rapid increase in population and in wealth of the middle and industrious classes within the last half-century'.[2]

Slaney was later recalled by John Ludlow, a leading Christian Socialist who had contact with him at this time, as,

> 'a very worthy well-meaning man, but hazy-minded, so that while always fumbling after some good end or other he was seldom able either to see it clearly or to grasp the means for carrying it out.'[3]

As Ludlow also said, Slaney's 'special hobby was *commandite'*. He therefore had a cause, but - as yet - no witnesses to support it before his Committee. Through two contacts, Henry Vaughan Johnson (a veteran of government inquiries) and the Christian Socialist writer and barrister Thomas Hughes, he was introduced to Ludlow, who was at this time a junior member of Ker's chambers - the 'only liberal' there. Ludlow had an interest in France, having grown up there, and had investigated French workers' associations and their use of limited liability.[4] As a specialist in incorporation law, he had relevant technical expertise, and through contacts with workers' associations he was now able to nominate working-men for Slaney's Committee.

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[1] Hilton, *A Mad Bad and Dangerous People?* p.123.
[2] *Report from the Select Committee on Investments for the Savings of the Middle and Working Classes*, PP 1850 (508) xix iv.
[3] *Autobiography of a Christian Socialist*, p.194.
[4] Ibid., p.40.

Ludlow was personally convinced of the necessity of limited liability for larger companies. He thought the mixed-liability regime of *commandite* 'exceedingly dangerous' in that context, citing French experience to claim that it merely resulted in use of men of straw. For large companies, he said, 'you want *absolutely* limited liability ... It seems to me that the greater the capital the more necessary it is.'[5] He thought limited liability of limited relevance to workers, whose 'real safety ... lay in this, that very few of them had anything to lose'. 'At the same time' however, he went on, 'I must note as a remarkable fact that, whilst the legal knowledge of English working men is generally very slender, we [have] found amongst them a very general fear of the unlimited responsibility of partners.'[6] As David Lambourne has shown, Ludlow took practical steps to counter this fear, by providing a work-round based on loans.[7]

When the Select Committee convened in April 1850, chaired by Slaney, it heard evidence from workers, lawyers (who included Ludlow and a reluctant Ker), one civil servant, one businessman and a building society actuary. The composition of witnesses drew heavily on the Christian Socialists (represented by Ludlow, Hughes and Edward Vansittart Neale) and on London's Law Amendment Society (also represented by Vansittart Neale and by its founder-treasurer, James Stewart). Vansittart Neale handed in a report, acknowledged by the Committee as: 'a late able Report of the Association for Improvement of the Law [which] has summed up the arguments on the question [of partnerships with limited liability], and gives the preponderance of the opinion in favour of such a change'.[8] Although the report had been initiated by concern for joint stock banks, it adopted a broader remit and, in its published form, talked largely about *commandite*.[9] The Christian Socialist activists had also secured the coup of persuading John Stuart Mill to appear as a witness. Mill had made it clear he disagreed with much in Christian

[5] *Report from the Select Committee on Investments*, PP 1850 (508) xix 2 and 10. Ludlow's opinion on this point was supported before the Committee by A L Jules Lechevalier. For Ludlow's advocacy of *sociétés anonymes*, see ibid., 73-4.
[6] *Autobiography of a Christian Socialist*, p.193.
[7] David Lambourne, *Slaney's Act and the Christian Socialists. A study of how the Industrial and Provident Societies Act, 1852, was passed*, (Peterborough, 2008), pp.16-7.
[8] *Report from the Select Committee on Investments*, PP 1850 (508) xix vi.
[9] The report was read before the Law Amendment Society on 26 February 1849 and its recommendations adopted on 26 March by a small majority. It was then published as the *Report of the Committee on the Law of Partnership on the Liability of Partners* (London 1849) and in the *Law Review*, May-August 1849, pp.123-148.

Socialism, but was willing to speak in support of workers' associations and limited liability.

The Committee that assembled to hear what these people had to say was made up of Board of Trade officials and MPs with an acknowledged interest in industrial relations or related philanthropic initiatives. The most senior Board official involved - President, Henry Labouchere - was of the sky-may-fall-in camp on limited liability. He had recently made two parliamentary statements on the subject, both negative. In February he had objected to the British Electric Telegraph Company's request for limited liability,[10] and in April he objected to Slaney's request for a Select Committee. He 'did not see how the present law of partnership could be altered, so as to allow persons to invest a limited capital on the principle of limited liability, without increasing the spirit of gambling amongst all classes of the community, which must lead to disastrous consequences'.[11]

The Committee's most effective questioner proved to be MP John Abel Smith, member of a prominent banking family and openly sceptical as to the value of limited liability. His and others' questions were primarily concerned with workers' co-operative associations, with partnership law accorded support-role status as '[a]nother subject of complaint'.[12] Witnesses were divided as to how much benefit workers were likely to derive from limited liability.

The star witness was undoubtedly Mill, whose views (published in the July 1850 Committee Report) would be quoted repeatedly in later discussions. In the wake of the 1848 revolutions, financial polarisation, and its implications for social discontent, had become a popular topic for political economists. George Porter investigated the grounds for the perceived polarisation (and disproved them to his own satisfaction)[13] and on 4

[10] *Hansard*, 3rd series, vol. 108, cc1287 (22 February 1850).
[11] *Hansard*, 3rd series, vol. 110, c425 (16 April 1850).
[12] *Report from the Select Committee on Investments*, PP 1850 (508) xix iii.
[13] G.R. Porter, 'On the accumulation of capital by the different classes of society'. Paper read before the Statistical Association of the British Association for the Advancement of Science, August 1850, *Journal of the Statistical Society of London*, vol. 14, no 3, September 1851, pp.193-9.

April, Mill had raised the subject at the Political Economy Club.[14] A few weeks later he reported to Slaney's Committee his concern about:

> 'the advantages which the possession of large capital gives, which are very great, and which are growing greater and greater inasmuch as it is the tendency of business to be conducted on a large scale; these advantages are at present ... to a great degree a monopoly in the hands of the rich, and it is natural that the poor should desire to obtain those same advantages by association, the only way in which they can do so ... I do not think [intelligent working people] feel so much ... the inequality of property [as] the inequality consequent upon it, which unhappily exists now, namely that those who already have property have so much greater facilities for getting more, than those who have it not, have for getting it ... There is a very growing feeling of that kind.'[15]

Like Ludlow, Mill pointed out that workers were unlikely to have extensive resources that could benefit directly from limited liability's protection.[16] In *Principles of Political Economy* he had argued that, 'the great value of a limitation of responsibility, as relates to the working classes, would be … to enable the rich to lend to those who are poor.'[17] Now he went further, in envisaging workers also becoming entrepreneurs themselves. He even thought there was 'no reason why they should not succeed', and added an important rider: even if 'experiments failed, the attempt to make them succeed would be a very important matter in the way of education to the working classes, both intellectually and morally.'[18]

'Experiment' became a watchword in arguments for limited liability that had no downside. Succeed or fail, the 'experiments' would be worthwhile. Dublin barrister Jonathan Pim was one of many who would cite Mill, agreeing that:

> 'workmen may be wrong in their opinion [that uniting their small capitals will

[14] *Political Economy Club*, p.64.
[15] *Report from the Select Committee on Investments,* PP 1850 (508) xix 79, 82 and 84.
[16] Ibid., 77.
[17] Ibid., 78.
[18] Ibid., 79.

> enable them to secure both the wages of labour and the employer's profit] but that is no reason that they should not have every facility afforded for making the experiment'.[19]

Ludlow too told the 1850 Committee that workers' experimentation with capitalist enterprise was worthwhile even if it failed, because it 'would promote [workers'] submission to things as they are'.[20] Watchmaker Joseph Millbank had more faith in workers' financial success, but when pushed on the point by the Committee politely acquiesced in a suggestion that it was important to 'make the experiment' and, if necessary, be 'undeceived'.[21] Abel Smith clearly thought all such schemes a pipe dream. Ludlow later reported him taking Millbank aside after his evidence, to press him further: 'Mr Millbank, surely you are too clever a man really to believe what you have been telling the committee?'[22]

Thomas Wilson also gave evidence (and a copy of his 1848 book) to the Committee - a rare contribution by a businessman. Several years on from the last financial crisis, Wilson argued that to steer capital into the railways and other selected large projects, through grants of limited liability, was to invite another - a point also made by Ludlow.[23] Wilson told the Committee that, 'nothing would drive out panics so much in England as societies *en commandite* ... I say that nothing will cure you but limited partnerships.'[24]

The inquiry's findings were addressed in detail in the legal press. *The Law Magazine* thought Slaney exceptionally 'fortunate' in his witnesses, and judged Mill's evidence (reproduced in full) 'the strength of the Report'.[25] The *Law Times* reported that 'all the witnesses, with a single exception, strongly [advocated] a modification of the present

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[19] *On Partnerships of Limited Liability*, p.15.
[20] *Report from the Select Committee on Investments*, PP 1850 (508) xix 10-11.
[21] Ibid., 49.
[22] *Autobiography of a Christian Socialist*, p.146.
[23] *Report from the Select Committee on Investments*, PP 1850 (508) xix 4.
[24] Ibid., 38.
[25] 'Laws of Partnership and Principles of Co-operation', August-November 1850, vol. 13 (London 1850) p.200.

law, by permitting partnerships with limited liability'.[26] This appeared to be in tune with the *Law Times*' own view that the current law 'takes too much care of creditors'. There had in fact been two exceptions to the otherwise unanimous support for change: Sir Denis Le Marchant and actuary James Henry James. Lawyer-witnesses had however, all supported reform and said that it was now standard practice to tell clients to have nothing to do with unlimited liability joint stock companies.[27] Vansittart Neale claimed that most lawyer-members of the Law Amendment Society now favoured reform - it was amongst the commercial men that opinion remained divided.[28] Relatively little reference was made by witnesses to the United States. Ludlow disliked Americans' use of capital 'calls' as 'reverting to a certain extent to the principle of unlimited liability'.[29]

Despite these claims, some on the Committee remained hard to convince. Abel Smith disputed with fellow Committee-members John Ellis (a railway promoter) and William Ewart (Slaney's parliamentary ally in matters philanthropic, and a founder, with Brougham and Stewart, of the Law Amendment Society) whether unlimited liability really deterred the cautious.[30] Abel Smith doubted that the 'spirit of enterprise, already so much more developed [in England] than in any other part of Europe', needed further encouragement from limited liability.[31] Workers needed financial security, not encouragement to speculate. The workers themselves received a good press. In the months following the inquiry, the Board of Trade approved a number of charters for worker-related philanthropic schemes while continuing to hold the line against commercial initiatives.[32] The Committee's final Report lamented the legal 'obstacles' put in the way of 'intelligent' workers, while avoiding much mention of technicalities.[33] Opinion was clearly divided on these even amongst limited liability's supporters. Ludlow

[26] 'Joint-Stock Companies' Law Journal', *Law Times*, 19 October 1850, p.75.
[27] *Report from the Select Committee on Investments*, PP 1850 (508) xix 4 and 14.
[28] Ibid., 15.
[29] Ibid., 5.
[30] Ibid., 5.
[31] Ibid., 9.
[32] BT 5/59, f249/2063; BT 5/59, f343/2548; BT 5/59, f367/2690. A request by a Life Assurance association (promising that 'the directors bind themselves not to exceed the amount of Subscribed Capital') was refused, on the grounds of its 'effect of limiting the liability of the Shareholders of the Association', BT 5/59, f350/2595 and f458/3278.
[33] *Report from the Select Committee on Investments*, PP 1850 (508) xix 11.

had favoured full limited liability for joint stock companies, with doubts about *commandite*, while Mill had given an 'unqualified opinion' in favour of *commandite* and 'an undecided opinion' for joint stock use.[34] Limited liability had nevertheless received clear endorsement.

The Committee's findings were also reported in the wider press, with extensive interest in the social angle, a topical concern. Walter Cooper, a tailor who had appeared before the Committee as a representative of a workers' association, referred in his evidence to *Morning Chronicle* articles which had made 'a very great impression on the public mind'.[35] These were the 'Labour and the Poor' series written by campaigning journalist Henry Mayhew and published throughout 1850. Occasionally a newspaper ventured a technical opinion. One Scottish article noted in September 1850 that:

> 'The Joint-Stock Companies Act, by creating an unlimited responsibility ... and yet depriving them of all control over their directors, and all right of prosecution in the event of misapplication of the funds of the society - has had a very damaging effect on private enterprise. The means of investment are narrowed, the opportunities of commercial enterprise frequently frustrated ... and the operative population are entirely prevented from reaping the advantages, which industry, sobriety, and union of interests might otherwise effect.'[36]

Legal shortcomings were tied unequivocally to social polarisation: 'We are daily becoming more wealthy as a nation, but we, at the same time, see the chasm between the wealthy and the poor daily widening.'[37]

Magazines and periodicals were also chiefly interested in the social implications of the Report - *The Economist* commended *commandite* as a 'most desirable resource for the savings of the industrious poor'.[38] Ludlow contributed an article for *Chambers's Papers for the People*, in which he said again that practical experience would teach working men

[34] Ibid., 87.
[35] Ibid., 52.
[36] 'Joint Stock Companies', *Aberdeen Journal*, 18 September 1850, p.8.
[37] Ibid.
[38] 'Investment for Savings. Partnership en commandite', *The Economist*, 18 May 1850, p.537.

respect for capital-management and encourage them to 'acquiesce in the existing relations between labour and capital'.[39]

Social concern often took systematic form. When Charles Babbage had considered 'limited responsibility partnerships' in 1832, he envisaged:

> 'many persons possessed of moderate capital, who ... might [find] out inventive workmen, whose want of capital prevents them from realizing their projects. If they could enter into a limited partnership with persons so circumstanced, they might, ... by supplying to judicious schemes, render a service to the country, and secure a profit for themselves.'[40]

This vision was now projected onto a whole population of workers and capitalists. Francis Newman, Unitarian and political economist, enthused about the promised combination of social sympathy and systematisation, and thought that:

> 'no country in Europe offers so great facilities as England for thus blending and interfusing the elements of our national Economy ... In a moral point of view the law of Commandite would be of great value in England ... Altogether, its tendency would be *to cement opposite orders*'.[41]

With most such comment framed in the context of *commandite* and workers' associations, French terms of reference predominated but American ones were occasionally cited too. These were more likely to focus on competitiveness than social concern. A *Times* leading article warned in December 1850 that Britain's merchants and shipowners were now engaged in a race with 'a gigantic and unshackled rival'. This prompted 'A Banker' to write in to ask why

[39] [Ludlow] 'Industrial Investments and Associations', *Chambers's Papers for the People*, vol. XI, Edinburgh 1851, no. 87, pp.1-32, pp.28 and 32.
[40] Babbage, *On the Economy of Machinery and Manufactures*, p.361.
[41] Francis William Newman, *Lectures on Political Economy* (London, 1851), pp.79 and 325. Newman's emphasis.

> 'Americans would seem to take such a decided lead of us in the building and equipment of ships? ... May not, or does not, the evil lie in the laws which regulate the distribution of capital in this country? ... Why should not an Englishman have the same facilities for disposing of his capital as an American?'[42]

In response, 'A Trader' wrote to ask how, if this were correct, so 'many of our most distinguished merchants who began life with no capital have risen to the high position they now enjoy'?[43] To which, the reply came back that 'English energy and English industry overcome the greatest difficulties.' This was followed by a call to action: 'let our laws not be such as to make capital a monopoly'.[44]

Slaney was sufficiently encouraged by the response to his Committee to request a second, this time specifically to consider partnership law. His rhetoric on making the request suggests he may have found time in the interim to read something by Henry Carey. '[T]hree millions of the most intelligent and industrious of the community' were left in a 'state of depression and degradation' by lack of limited liability, in contrast to 'the splendour, the magnificence, and the luxury' enjoyed by a few. Unreformed partnership law was 'cramping the energies of the people', so that,

> 'hundreds ... had been eager to ... expatriate themselves to the other side of the globe [and] seek a livelihood across the Atlantic ... [T]here being no easy mode for the investment of capital by the middle and humbler classes, it was driven into the great bankers' hands, and into the hands of the great monopolists, who would only lend it to persons of great credit and position in the country ... [The law] limited the distribution of money to the great capitalists, who thus absorbed the whole wealth of the country.'[45]

In support, Slaney cited Mill, and his endorsement of American practices. Men rushed into bubble companies 'only because they were prevented [from] embarking in really

[42]Letter to the Editor, *The Times*, 6 December 1850, p.2.
[43] *The Times*, 16 December 1850, p.2.
[44] *The Times*, 19 December 1850, p.6.

beneficial schemes'.[46]

It fell to Labouchere to respond. He rejected all suggestion that 'the application of capital had been crippled' and repeated his fears of 'a paralysation of trade' were limited liability to be made widely available. He allowed however, that this was 'an important and a much controverted question'. Unfortunately, it was not one on which he had been able 'to come to any very decided opinion', and authorities were 'almost equally divided'.[47] The answer was clearly to hold another inquiry.

The Committee that met in February 1851 for this purpose included several names from the year before, including Abel Smith. Notable MP additions were Richard Cobden, George Glyn (a banker, and known critic of joint stock banks) and the independent Conservative Thomas Sotheron, who all took an active part in discussions. The composition of witnesses was notably narrower than before. Workers had been present in 1850, but a year later, as Donna Loftus has pointed out, 'on the whole, the working classes were conspicuous by their absence'.[48] Nominally, they were still present, but as tractable subjects under discussion, rather than physical presences who might speak for themselves. In the absence of social cues to the contrary, professionals were free to assume that their abstractions represented a natural way to order and control reality. Absent, along with workers, was any suggestion that profits might be the moral preserve of physical labour. Witnesses took the legitimacy of capitalist profits for granted, and when they reached for an illustrative example were likely to describe someone like themselves. Cecil Fane, a Bankruptcy Commissioner cited the instance of a disappointed would-be investor, deterred by potential liability, who was, like himself, 'a successful lawyer'.[49] James Stewart, another lawyer, simply talked about himself.[50]

About half the witnesses - thirteen of the twenty-seven - were lawyers and their evidence took up nearly all the discussion time. A further four were academics or writers:

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[45] *Hansard*, 3rd series, vol. 114, cc844-6 (20 February 1851).
[46] Ibid., c847.
[47] Ibid., cc848-9.
[48] Loftus, 'Capital and Community', p.104.
[49] *Report from the Select Committee on the Law of Partnership*, PP 1851 (509) xviii 72.
[50] Ibid., 46.

Babbage, Mill, Porter (who all submitted evidence in written form) and law-reformer Leone Levi. All four gave categorically-strong statements in favour of reform. Mill did not do much more this time than state flatly that the case against limited liability had been lost, now that usury had been conceded. To continue to hold out, and argue that 'the profits of business should be wholly monopolized by those who have had time to accumulate, or the good fortune to inherit capital' was 'evidently absurd'.[51] Evidence was also provided by six merchants (whose opinions on reform were mixed) and a number of overseas representatives who reported favourably on international experience of limited liability.

Most discussion centred on *commandite*. Barrister John Phillimore thought the full-limited-liability *société anonyme* 'open to great dangers' (though then declined to elaborate on what these might be, not having been asked in advance to look at it).[52] He also took the same line as Ludlow the year before, in saying that he had 'no doubt at all that [had alternative investment outlets been available through limited partnerships] railway speculation among the middle classes would not have been carried to the extravagant extent to which it was carried'.[53] Pushed by Abel Smith on whether economic performance had not anyway been very strong in England, and usury-repeal done enough to encourage it further, he gave a now-standard answer. The nation might have done very well in absolute terms, but 'not in proportion to its resources'.[54] Like a number of witnesses, he did not see why banking should be excluded from limited liability.

In pro-reform evidence, railway-mania was now a standard point of reference for warnings about the dangers in keeping capital artificially dammed up. In the interests of competitiveness and social stability, it must be dispersed and allowed to flow freely. In describing how this should work, City merchant John Howell, like many others, favoured water-based metaphors: 'it is irrigation, and not inundation, that fertilizes our fields'.[55] Legislators must look beyond the 'bugbear' of overtrading and recognise that they were

[51] Ibid., 160.
[52] Ibid., 2.
[53] Ibid., 8.
[54] Ibid., 8.

living in a new age, in 'the infancy of grand scientific discoveries'.[56]

Howell also submitted a copy of a report drawn up by a City committee, of which he was a member.[57] This had solicited the views of European and American contacts (chiefly lawyers) on questions framed with an eye to Slaney's inquiries. Its clearest finding was lack of support for *commandite*-enabled workers' associations; these were only found in France, a product of the 1848 revolution, and unknown elsewhere. Even in France, the most positive thing any professional could find to say about them was that the 'experiment' was 'too recent to give a decided opinion'.[58] Most judged them a failure. *Commandite* companies 'with shares' also received a decided no-confidence vote, as a magnet for fraud. *Commandite* partnerships, with investor-partners but no transferable shares, were however, widely endorsed, although the full-limited liability *en nom collectif* was said to be more popular in Belgium. An Amsterdam lawyer affirmed that *commandite* partnerships had 'produced great good and little evil', but that 'Anonymous societies are much more dangerous' - a view shared by others.[59] Respondents drew correlations between company-forms and varying economic fortunes, with perhaps the most sensible coming from the Dutch lawyer who said that 'Commandite partnerships are proved by experience to be advantageous to the community; but are subject to the vicissitudes of commerce'.[60] Limited partnerships were in use in New York, and given enthusiastic endorsement by lawyers there, but not in other American commercial centres. The report made the caveat that limited liability's use (except in the US) was backed by stronger bankruptcy laws than existed in England. There could though be no doubting the endorsement given *commandite.* Howell said that this had convinced some City sceptics of the value of limited liability. These did not include William Hawes, chair of the City committee and largely responsible for compiling its report. Hawes was a well-connected business figure, brother of an MP, and himself a long-standing chairman of the Society of Arts and committee-member of the Law Amendment Society.

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[55] Ibid., 26.
[56] Ibid., 25.
[57] *Replies from Foreign Countries to questions relating to the Law of Debtor and Creditor, and to the Law of Partnership, circulated to the Committee of Merchants and Traders of the City of London, appointed to promote the improvement of the Law relating to Debtor and Creditor* (London, 1851).
[58] Ibid., p.13.
[59] Ibid., p.24.

His own evidence to Slaney's Committee was more sceptical than Howell's: 'I cannot approve of the principle of *commandite* as an abstract proposition'.[61] Greater use of limited liability should not be contemplated in advance of bankruptcy reform.

Another copy of the Law Amendment Society's 1849 report on partnership law was also handed in to the Committee by Stewart. Although he agreed with its pro-reform conclusions, he was diffident about its pedigree and suggested that if the Committee wanted substantiation they should interview Bankruptcy Commissioner Cecil Fane.

Fane's subsequent evidence provided the meat of reformist argument, an eloquent testimony to 'everything which is calculated to unite enterprise and capital'.[62] He had made his own inquiry into the 1793 *Waugh v Carver* judgment, and concluded it was 'not law, but mistaken political economy'.[63] England would be nothing without joint stock companies.[64] Railways were emblematic of modern dynamism, and 'we all know that railways never would have been made but for the law of limited liability'.[65] Fane talked freely of '[i]nnocent creditors and innocent shareholders'.[66] High-sounding names were the outdated mark of unlimited liability. If Parliament wished to check bubble-schemes, it should cancel company promoters' individual liability, and make all companies subject to the law of bankrupts.[67] The fact that England had managed to do so well without reform until now was evidence only of 'the extreme industry and vigour of our people'.[68]

American experience was also more in evidence than a year before. American diplomat and lawyer Bancroft Davis testified in person, stressing the lack of social stratification in American enterprise ('we are all working people there'[69]). He wished to correct the impression that Lowell's arrangements were typical of New England manufacturing corporations (most had 'individually liable' stockholders) but, in answer to a leading

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[60] Ibid., p.25.
[61] *Report from the Select Committee on the Law of Partnership*, PP 1851 (509) xviii 103.
[62] Ibid., 68.
[63] Ibid., 74-5.
[64] Ibid., 76.
[65] Ibid., 84.
[66] Ibid., 80.
[67] Ibid., 81.
[68] Ibid., 85.
[69] Ibid., 127.

question, agreed that a 'stake in the hedge' worked well there and in banks.[70] British banks, by contrast, were discussed in the unfavourable light of the North of England Joint Stock Bank failure. Press reports had been monitoring the mounting cost of this to shareholders, with '£70 per share already engulphed by this awful and most distressing concern'.[71] Two solicitor-witnesses, Thomas Lietch of North Shields and Edwin Field, now gave details of the failure, blamed by both on unlimited liability. Lietch criticised bank officials for looking to 'the composition of the share list', when they should have been monitoring the quality of the paper in which the bank dealt.[72] Abel Smith suggested the problem was not with the expected regulation, but with officials' failure to implement it well. Lietch however, held his ground. Joint stock banks should not be looking to 'the credit of innocent shareholders, who know nothing of what is going on'. They needed their own processes and checks, not the misapplication of private bank ones.[73] Unlimited liability pointed people in the wrong direction[74] and finding reputable directors willing to take it on was not as easy 'as it would have been 20 years ago'.[75] Leitch refused to be drawn on American banking practices, and made short shrift of Scottish banks' use of unlimited liability. The Scots had always known anyway to look to paid-up capital, and not 'the character of persons composing the company' as the basis of credit.[76] They did not need limited liability to instil good habits.

Solicitor John Duncan, summoned to give evidence yet again, was equally forthright: 'the time has arrived when joint-stock companies framed under the Joint Stock Companies' Act ought to get limited liability introduced into all deeds of settlement for their formation'.[77] As reported in the *Legal Observer*: 'a great majority of the witnesses examined ... and singular to say, *all the professional witnesses*, were favourable to the introduction of the Law of *Commandite*'.[78] The exceptions were William Cotton (former

[70] Ibid., 129.
[71] *Bankers' Magazine*, January 1850, p.64, quoting the *Newcastle Journal.*
[72] *Report from the Select Committee on the Law of Partnership*, PP 1851 (509) xviii 138.
[73] Ibid., 139.
[74] Ibid., 139.
[75] Ibid., 140.
[76] Ibid., 143.
[77] Ibid., 152.
[78] 'Select Committee on the Law of Partnership', *Legal Observer*, 1 November 1851, p.3. Publication's own emphases.

Governor of the Bank of England), Brougham and Ker. Cotton took the same view of joint stock banks as Henry Burgess (only country bankers lent to 'useful occupations') and could not contemplate company-liberalisation without seeing first 'a great deal more intelligence among the general mass of the people'.[79] He did not believe that investors paid much heed to numbers - 'most people' still only looked at names.[80] Brougham had been deterred from backing reform by reading Ker's 1837 report. Ker could not bring himself to contemplate more than a relaxation in the availability of charters. He lamented the current state-of-affairs (the Joint Stock Companies Act was 'an infliction' and the Winding-up Acts 'little less than a public nuisance') but remained gloomily 'hopeless as regards legal reform'.[81]

When the Committee came to issue its Report it made two clear recommendations: that the cost of charters be reduced, and that industrious men defrauded by a partner in small-capital associations should have legal remedy against such fraud. It was otherwise longer on polemic than commitments, with much of that polemic distinctly paternalist. The wealthy were the 'best guides for their humbler and less experienced neighbours' and their names in prospectuses 'afford[ed] security that the enterprise ... was likely to be well conducted.' Charters should be granted 'under the supervision of a competent authority', with double liability also used. This was a Board of Trade preference, and Board influence was more apparent in the Report than in the evidence-sessions. This latest Report referred back to the Board's 1837 Report, 'where opinions entitled to great weight, were almost equally divided'. The reality of usury-reform was acknowledged, in allowing that lenders should be able to lend money for twelve months at an interest rate varying with the rate of profits. Partnership reform and limited liability were however, postponed for consideration by a proposed Commission 'of adequate legal and commercial knowledge'. It was important to guard against 'undue or undeserved credit or encouragement to speculation'. This conservatism reflected the editorial oversight of Edward Cardwell, rather than Labouchere, 'prevented by a domestic calamity from

[79] *Report from the Select Committee on the Law of Partnership*, PP 1851 (509) xviii 96.
[80] Ibid., 98.
[81] Ibid., 167.

attending this Committee'.[82] Cardwell proved a like-minded substitute: 'I was able to be present only at the preparation of the Report. I succeeded in rejecting every thing proposed by Mr. Slaney in favour of limited liability'. Cardwell favoured 'the high authority of Mr. Cotton' over the opinions of the twenty-five people who disagreed with him.[83] The Report trod a cautious line, and repeated *verbatim* Labouchere's earlier statement that 'the best authorities are divided on the subject'.[84]

Whatever may have been the truth of this, supporters of limited liability were - in modern parlance - now 'on message', and putting out predictably consistent statements. The most obvious source of these was the Law Amendment Society, making efforts to live up to its name. The Society was not universally popular amongst London lawyers, some of whom thought it elitist or the vehicle of a self-righteous cabal. The *Legal Examiner* complained that 'the real business of the Society is in the hands of a few individuals' and was no more complimentary about the Society's quarterly *Law Review* ('full of twaddle') which tended to publish more discursive pieces than were found in other legal publications.[85] A reformist element had now been pushing the cause of limited liability in Society discussions and publications (and occasionally beyond) since the General Meeting of March 1849.[86] It had to contend with significant disagreement on detail, as well as the opposition of die-hard conservatives. Prominent amongst these was John Elliott, a merchant-member with a recognised interest in bankruptcy law, who could be relied upon to decry limited liability and its associated intuitions at any opportunity. Elliott's physically-intuited sense of punishment was in evidence at an 1856 General Meeting, when he told Henry Mayhew (also a member) that his hopes of abolishing capital punishment went against 'the just and natural sentiment of vengeance, which ought to be encouraged in the heart of everyone'.[87] A Society of Arts debate about flogging saw him

[82] Cardwell, 'Limited liability'. Confidential Cabinet memorandum, 14 January 1853, p.4, Gladstone papers, BL Add. MS 44570, f169, p.4. The calamity was the death of Labouchere's wife.
[83] Ibid.
[84] *Report from the Select Committee on the Law of Partnership*, PP 1851 (509) xviii vii.
[85] 'Society for the Amendment of the Law', 7 August 1852, p.473. On accusations of elitism, see Daphne Glick, 'The Movement for Partnership Reform ' (University of Lancaster PhD thesis, 1990), pp.26-9.
[86] As reported in 'The Law of Partnership', *Newcastle Guardian*, 31 March 1849, p.3. William Hawes led objections, while Cecil Fane called for 'one broad and intelligible principle'. According to the report, 'discussion was prolonged for some time'.
[87] *Law Amendment Journal: being the weekly journal of the Law Amendment Society, during its thirteenth session,* 1855-6 (London, 1856), p.51.

take on Slaney and 'the effeminate and diseased sentimentality which was [now] too common': juvenile offenders 'must be hurt'.[88] He voiced similar sentiments at an 1852 Banking Institute discussion of partnership reform[89], and told Slaney at another 1854 Society of Arts session that it was socially irresponsible to go about saying partnership laws were made for the rich.[90] Limited liability was peddled by 'theoretical dreamers'. Elliott was in a minority in the Law Amendment Society, albeit a persistent one. Pro-limited liability reformists could usually count on resolving discussion in their favour, with opposition consigned to a statement of protest or qualification.[91] The Society was a largely metropolitan entity, though it made efforts to establish connections on a national scale. It was particularly proud of its merchant and politician membership, drawn from beyond the world of practising lawyers. Robert Lowe became a member at this time, before his 1852 election to Parliament, and took an active part in discussions.

Beyond the Society, limited liability was also now widely supported in the legal press. *The Legal Magazine* took a self-consciously even-handed stance,[92] but the *Legal Observer* (edited by solicitor Robert Maugham) joined the *Law Review* in backing reform. Even the *Law Times* was at this time approving, though, as discussion moved beyond headline proposals to detail, that was soon to change.

Limited liability was also now benefiting from intellectual connections. Arguments about initiative and national dynamism tied it to the campaign for patent law reform, and in his 1851 evidence, John Duncan made a direct connection in saying that partnership law was the 'chief oppression' to which an inventor was exposed.[93] Both issues played off the social threat that loomed behind stifled initiative, and could still scare property-owners in the aftermath of 1848. The *Law Review*'s first detailed consideration of limited partnerships recommended them as a way of 'meeting a desire for change in the shape of

[88] *Journal of the Society of Arts*, no 128, 4 May 1855, p.424.
[89] Report of 14 December 1852 Banking Institute meeting, *Bankers' Magazine*, January 1853, p.13.
[90] Meeting of the Society of Arts, as reported in the *Morning Chronicle*, 1 June 1854, p.2.
[91] See Law Amendment Society, *Sixth Annual Report*, (13 June 1849), p.6; Special General Meeting, 18 February 1856, *Law Amendment Journal* (London, 1855-6), p.5.
[92] See contrasting articles: August-November 1854, vol. 21 (London, 1854), Article V, pp.68-70; February-May 1855, vol..22 (London, 1855), Article XIII, pp.149-153; August-November 1855, vol. 23, (London, 1855), Article I, pp.215-58.
[93] *Report from the Select Committee on the Law of Partnership*, PP 1851 (509) xviii 155.

socialism and communism, which will become overwhelming here as well as elsewhere, unless means be taken to allow of fit arrangements of an intermediate character'.[94] Patent-law correspondence in the *Journal of the Society of Arts* carried similar warnings.[95]

There was also now a standard argument about systemic fault. Arthur Scratchley was a 'consulting actuary', employed by a number of large insurance companies, and a 'well-known writer on building societies'.[96] He published a book on associative investment in 1851, in which, like others, he traced:

> 'the cause of many a monetary crisis ... to the contracted nature of existing investments, so that, when a new speculation arises, the promoters of which succeed in ... obtaining unusual facilities by an expensive charter or special act, there is ... an unnatural rush to the new outlet.'[97]

Companies were 'in the hands of reckless speculators, whose unlimited liability is good for nothing'. The answer was to administer a 'great impetus to the institution of superior trading companies' through *commandite*.[98] In support, Scratchley cited *The Times*.

All these represented professional concern, but there are indications that interest could spill over into the public. On 27 October 1851 local MP William Fox gave a well-received talk in Oldham in support of Slaney and partnerships *en commandite* (which he erroneously said were 'very frequent indeed in America').[99] A more contentious instance occurred in London on 10 September, when promoters of the new Marylebone Gas Consumers' Company ran into flak at a 'densely crowded' meeting of local ratepayers, held in a pub. The Marylebone company was one of a new breed of metropolitan gas companies, which promised consumers the chance to take control of their own gas-supply (and its pricing) and in the process attracted vociferous opposition from rival gas

[94] 'Limited Liability in Partnership', review of [T Wilson] *Partnership en commandite...colonial trade*, *Law Review*, November 1848 - February 1849 (London, 1849), p.74.
[95] For example, 12 August 1853, p.470.
[96] *Law Times*, 7 October 1854, p.29.
[97] Arthur Scratchley, *Industrial Investment and Emigration* (London 1851), p. viii.
[98] Ibid., pp. vii-viii.
[99] *Manchester Guardian*, 29 October 1851, p.6.

companies. Order - of a sort - was being kept at the meeting by a police presence[100] when trouble was triggered by a question 'as to the liability of shareholders', put by one well-informed ratepayer, a Mr. Burgess (apparently no relation to Henry or the rival companies). The Marylebone company Secretary attempted to deflect the resultant 'uproar' with a flat statement that 'the liability of the shareholders is to the amount of their shares and no more'. This however, failed to wash, as later reported in the press. Mr. Burgess quoted the Joint Stock Companies Act, section 66, to him, and was unimpressed by 'an opinion given by three first men at the bar'. 'Was it not true that ... the Great Central [Gas Consumers'] Company applied to Parliament, at the expense of many thousand pounds, to get an act to limit the liability of shareholders to the amount of their shares'? When told that the Marylebone company had no intention of applying for such an act, he said that he 'had known many people ruined by such partnerships, and ... confessed that he should not like to take shares after the feeble explanation which had been offered.'[101]

This meeting ended in two men shaking their fists at each other and trading insults, egged on by hecklers. No doubt the ratepayers of Marylebone enjoyed their evening's entertainment, but underlying the company officials' discomfiture was a judgment call that threatened to come unstuck. Underlying the judgment call was some complicated law. As Mr. Burgess said, joint stock companies were still governed by the 1844 Act, now as amended by further Acts of 1845 and 1847.[102] The 1845 Act had made general provisions for joint stock a matter of statute. As Cooke describes it: 'Parliament no longer had to deal with the joint stock aspect of a public utility company [but] only with the powers that should go into the special act for the specific purpose concerned ... [I]ndividual companies might need a statute ... letters patent ... or merely registration' according to which 'clothing of corporate privileges' they were thought to need.[103] The choice of those depended upon more law and not a few conventions, but even lawyers did not agree on how these worked.[104] Gas companies who applied for limited liability could

[100] *The New Gas Movement in Marylebone* [London, 1851], p.1.
[101] 'The New Gas Movement in Marylebone', *The Observer*, 15 September 1851, p.2.
[102] Companies Clauses Act, 8 and 9 Vict. c.16; Companies Act, 10 and 11 Vict. c.78.
[103] *Corporation, Trust and Company*, pp.142-3.
[104] See disagreement between solicitors John Duncan and John Newall as to which industry sectors could

usually expect to be granted it but were not necessarily thought to need it, since they were not traditionally thought to need protection from creditors.[105] It emerged at the Marylebone meeting, under questioning, that the Great Central Gas Consumers' Company had applied for a parliamentary Act because the Commissioners of Sewers had insisted on it. Mr. Burgess's conclusion was that if the Marylebone company failed to do likewise, 'we can have little confidence in them'.[106]

A few months after this rumpus, Ipswich MP John Cobbold told a Parliamentary committee that times had indeed changed. Telegraph companies, such as the one he had recently joined, had formerly been able to raise money without a guarantee of limited liability, but now:

> '[t]he money market and capitalists generally had objections to advance money to companies of this description without a proviso of limited liability. It was a comparatively easy thing for the old Electric Telegraph Company, whose liability under their act of Parliament was not limited, to raise their capital, but it was a very different and difficult thing for a second company to do, in the face of a confederated monopoly. Many instances might be mentioned of joint-stock companies failing for want of limited liability.'[107]

Telegraph companies were usually associated with railway finance - an area in which limited liability was the norm. Men associated with railway capital feature heavily in limited liability disputes, from John Duncan, a 'speculating solicitor' with an interest in several railway companies, to Samuel Morton Peto, chairman of the Eastern Counties and Chester and Holyhead railway companies, and deputy-chairman of the Commission of Sewers at the time that the Great Central Gas Consumers' Company was negotiating its way through contracts. All three of these companies aroused controversy, some of it

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expect to be granted which corporate privileges. Both men criticised the Board of Trade as inconsistent. Duncan, *Report from the Select Committee on the Law of Partnership*, PP 1851 (509) xviii 151; Newall, *A Letter to the Right Honourable Henry Labouchere*, pp.9-14.

[105] See George Sweet, barrister: 'Gas companies are generally established with unlimited liability, and the fear of it has never kept a town in darkness', *Limited Liability. Observations on the existing and the proposed rules for ascertaining the debtor in mercantile dealings* (London, 1855), p.36.

[106] *The Gas Question in Marylebone*, [London, 1851] p.7.

[107] 'The Electric Telegraph Companies', *Morning Chronicle*, 22 May 1852, p.3.

remarkably bitter, about their use of limited liability. A common complaint was that they would use capital-raising clout to establish a monopoly, beginning with artificially-low rates but only waiting to clear the field of competitors before putting up prices. The same accusations - and some of the same names - were to feature in the next round of parliamentary agitation about limited liability. Meanwhile, from the other end of the social spectrum, a social threat continued to be invoked. In December 1851, the *Daily News* warned that:

> 'Already in France a fierce war has broken out between capital and labour. England likewise has felt the shock ... Old institutions are powerfully assailed; and who shall say that a new era may not be at hand? Capital is denounced as the tool of selfishness. Its interests are painted as hostile to those of the mass of mankind ...What device can be more seasonable and more salutary than the conversion of the workmen into fellow capitalists with the master? What can consolidate so firmly a community of interest between those whom the tendency of the age is apt to array in direct antagonism to each other? Partnership *en commandite* seems admirably adapted to bring about these valuable results.'[108]

Not everyone was so inclined to rate the chances of a company-structure averting revolution. The *Morning Chronicle* was 'sceptical as to the validity of the grounds on which [reform] is deprecated', but nevertheless backed Mill.[109]

This was the context at the beginning of 1852, when Slaney decided to try again for action. In February, he moved in Parliament for 'a Standing Committee or unpaid Commission' to examine 'obstacles' in the way of investment by the 'humbler classes'.[110] Seconded again by Ewart, he invoked Porter, Mill 'and several other intelligent persons' to make his case.[111] In response, Labouchere confirmed that he 'still remained averse to any such great fundamental change'. He had taken advantage of a recent Bill to reduce charter costs by 'one-fourth', and would allow that it was regrettable that the 1844 Joint Stock Act should - inadvertently - deter workers' associations. It was a pity it was not

[108] *Daily News*, 19 December 1851, p.4.
[109] 'Opinion', 5 January 1852, p.4.
[110] *Hansard*, 3rd series, vol. 119, c668 (17 February 1852).

possible merely to repeal those aspects of the Act that affected workers' associations, but the law was constructed in such a way that a broader review was needed. He hoped this could be done without overturning unlimited liability, a business-standard 'suited ... to the circumstances and habits of the country'.[112]

This position was immediately attacked by MPs Cobden, Headlam and George Moffatt, who all said that the weight of evidence was against Labouchere. Cobden then went on to say considerably more. He 'could never see why any given number of gentlemen, because they had capital, power, and influence enough in that House to carry their Bill, should obtain a privilege which they denied to humbler individuals'. The effect of the current law was to give protection to City men who did not need it. It could hardly be surprising if William Cotton had shown himself 'hostile' to reform, in the recent inquiry in which they had both participated. City opposition was however, characterised by a 'total absence of argument' and typical of men 'accustomed to decide the course of the market by their will and word, and not accustomed to give reasons for what they did'. Cobden finished with a standard call for free-flowing capital: limited liability 'would diffuse capital in this country'.[113]

In response, Abel Smith and Sotheron said that limited liability would not help workers, whose real grievance was the lack of a forum for resolving their disputes with commercial partners.[114] In the various exchanges it was evident that there were two points at issue - workers' associations and limited liability - and that each had its own sponsors. Labouchere did his best to smooth over the differences between them and recover his own position, with the promise of another inquiry and an assurance it would take an open-minded approach. He had merely been stating his own position on limited liability. Urged on both sides to accept the promise of a Commission, Slaney withdrew his motion.

The prospect of another official inquiry into limited liability, however hedged about by the Board of Trade, drew another flurry of comment from lawyers. A *Law Magazine*

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[111] Ibid., c672.
[112] Ibid., cc675-7.
[113] Ibid., cc679-83.

article, arguing for limited partnerships, stressed the dynamism of modern capital.[115] Matthew Begbie, yet another barrister interested in the topic, wrote a clever piece for the *Magazine*, reprinted as a pamphlet, which claimed to show how *commandite* investment could be achieved under current law.[116] (Legal press reviews gave him marks for effort, but did not agree he had managed it.[117]) Solicitor and parliamentary agent John Newall published a pamphlet in the form of an open letter to Labouchere.[118] Partnership reform and limited liability had now been discussed so many times without action, he said, that 'at last the mercantile community begin to despair of any measure being adopted'.[119] Too many workers were being tempted across the Atlantic, and when the next wave of speculative investment came, it too would be heading to the US. Newall's assessment of the 1844 Act differed from Labouchere's: 'I believe I may assert, without fear of contradiction, that a more unpopular piece of legislation was scarcely ever passed'.[120] Newall called for a straightforward general company law, lower fees for Special Acts, more access to limited liability, the introduction of *commandite* partnerships (with registration requirements for *commanditaires*' capital), and a forum for resolution of partnership disputes.[121] The *Law Times* 'approve[d] most heartily' of his suggestions, and added its own criticism of the 1844 Act.[122]

Whether the promised inquiry would have proved any more conclusive than its predecessors was destined to remain unknown, as before it could materialise, the government of Lord John Russell fell. On 27 February 1852 it was replaced by a new administration, led by Lord Derby. For Ludlow and the Christian Socialists at least, this signaled a turning-point in their fortunes. Ludlow had become increasingly frustrated with the lack of political support for a proposal to give workers' associations liability-

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[114] Ibid., cc678 and 683-4.
[115] 'Law of Partnership', *The Law Magazine*, February-May 1852, pp.255-66.
[116] 'Is Partnership en Commandite recognized and permitted by the present law of England?', *The Law Magazine*, February-May 1852, vol..16 (London 1852), pp50-66. Solicitor Robert Ward also outlined a 'suggestion...for carrying out schemes of *quasi* partnerships with limited liability under the present state of the law', *A Treatise on Investments* (Second edition, London, 1852), p.v.
[117] Cf. *The Legal Examiner*, 14 February and 8 October 1852.
[118] John Newall, *A Letter to the Right Honourable Henry Labouchere MP, on the formation of Companies and Partnerships, and limiting the liability of their members* (London, 1852).
[119] Ibid., p.3.
[120] *A Letter to the Right Honourable Henry Labouchere*, p.19.
[121] Ibid., pp.29-34.

protection under the Friendly Societies Act, and repeated attempts to promote a draft Bill had come to nothing. The latest blow was a discouraging interview with Labouchere in January.[123] Now however, 'in place of an effete Whig Ministry which had shilly-shallied with us through two sessions, we had a dashing Tory one, anxious to curry favour with the working class'.[124] By early March, the Christian Socialists' cause had been taken up by a 'Cabinet Minister',[125] and a further Select Committee - on Friendly Societies - was convened on 30 April. This presented a confused picture on limited liability. One witness reported that 'lawyers consider that the [current] Friendly Societies Acts give to any society enrolled under them the same privileges as a charter [including] a limited liability'.[126] Another described how a group of clergymen had explicitly made themselves personally liable in order to underwrite a mutual association.[127] The case for reform was meanwhile given a boost by W.R. Greg's 'Investments of the Working Classes', published in the *Edinburgh Review* and as a pamphlet, and widely discussed in the press.[128] Greg was more interested in workers' associations than limited liability *per se*, but nevertheless favoured *commandite*. He advised politicians to stop worrying about workers losing their savings ('it is the birthright of Britons to play at ducks and drakes with their money'[129]) and maintained that though their associations had had a bad press overseas, they were more likely to succeed in Britain.[130] Britain's workers were no longer children and should be given scope to invest, in accordance with their 'power' and 'intelligence'.[131] To withhold this was to invite class enmity and Socialism.

The Christian Socialists had expected the parliamentary Bill that resulted from this debate to include limited liability but, as Ludlow later reported, 'the enemy [then played] a trick' by inserting a clause which applied unlimited liability. After Hughes and Vansittart Neale went to see Slaney and Sotheron, two of the Bill's sponsors, the clause was revised,

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[122] 'Notices of new law books', *Law Times*, 21 February 1852, p.211.
[123] Deputation of 27 January 1852, as reported in *Journal of Association*, 2 February 1852, pp.44-5.
[124] *Autobiography of a Christian Socialist*, p.196.
[125] As reported in *Journal of Association*, 8 March 1852, p.83.
[126] *Report from the Select Committee on Friendly Societies*, PP 1852 (531) v 14.
[127] Ibid., p.62.
[128] W.R. Greg, *Investments for the Working Classes* (London, 1852). Reprinted from the *Edinburgh Review*, No CXCIV, April 1852. Greg used data compiled by Arthur Scratchley.
[129] Ibid., p.83.
[130] Ibid., p.47.
[131] Ibid., p.120.

though not to Ludlow's complete satisfaction. '[A]ll we could eventually obtain was a limitation of the liability ... to two years after a member's ceasing to belong to the society, being one year less than in joint stock companies'.[132] A last-ditch attempt by Samuel Carter to add limited liability to the Bill at its third Commons reading came to nothing.[133] The *Daily News*, which saw the Bill as 'a step, but a very short step, towards amending the law of partnership', thought the lack of limited liability a fatal flaw, which would mean the resultant Act would 'not be productive of the benefit to the working classes its benevolent author intended that it should'.[134] Ludlow however, accepted the compromise and told workers' associations they should not let it deter them.[135] The 1852 Industrial and Provident Societies Act permitted workers' organisations to be formed on a trustee basis, and effectively marked the end of Christian Socialist sponsorship of partnership reform. There is widespread agreement in the historiography on this point. Cottrell, Hilton and Saville all consider that the momentum which limited liability gained by association with co-operatives and working-class investment was largely offset by the 1852 Act.[136]

Other avenues to public interest were however, still open. One was banking, where continuing difficulties ensured that shareholder liabilities remained an ever-present concern. In October 1850, the *Bankers' Magazine* had noted that the 'principle of unlimited responsibility of the shareholders shows its efficacy with terrible earnestness' in the latest bank-failure.[137] Bank shareholders were effectively being singled out for payments 'not exacted from any other class of proprietors'.[138] In November 1851 the failure of the Monmouth and Glamorganshire Joint-stock Bank prompted another round of gloom.[139] It also prompted a pamphlet by John Bailey Brown, which called for limited liability for bank shareholders and blamed the 1847 crisis on lack of it.[140] Brown echoed

[132] *Autobiography of a Christian Socialist*, p.197.
[133] *Journal of Association*, 7 June 1852, p.188.
[134] 'Social Condition of the People - Industrial and Provident Societies', *Daily News*, 9 August 1852.
[135] *Journal of Association*, 21 June 1852, pp.202-3.
[136] Cottrell, *Industrial Finance*, p.50; Hilton, *Age of Atonement*, p.266; Saville, 'Sleeping Partnership', p.422.
[137] 'The Failure of the Scotch Exchange Banks', *Bankers' Magazine*, October 1850, p.575.
[138] July 1851, p.399.
[139] November 1851, p.672.
[140] John Bailey Brown, *The Evils of our present Joint-Stock Banking System considered, with a few*

Carey, in saying that 'the law shuts out small capitalists, who are ... the class who most require safe investments'.[141] In April 1852, his pamphlet was discussed by the *Bankers' Magazine*, which offered some guarded recommendations of its own.[142] Brown then wrote in to say that 'in my humble opinion ... [these] do not grapple with the real evil we have to contend against, viz., unlimited liability'. Respectable men recoiled 'in perfect horror' from taking this on, and without reform 'all attempts to ensure good banking ... will only end in disappointment'.[143] A Swansea bank manager wrote to join in debate, which rumbled on through several editions.[144] Meanwhile, a July ruling by the Lord Chancellor in a North of England Banking Company case again highlighted difficulties in holding shareholders liable.[145] In November, a correspondent wrote to complain at the 'continual process of degeneracy' that personal liability had produced in banking, thereby setting off another dispute.[146]

Books also weighed in with argument. In July 1852 journalist John Lalor published *Money and Morals: A Book for the Times*, which included a section calling for 'Reform in the law of Partnership.'[147] Lalor was closely-connected to some of limited liability's strongest supporters, a friend of both Mill and Field.[148] He was also a convert to Unitarianism, editor of *The Inquirer*, and his arguments had a strong social content. These were governed by an overriding desire to avert socialism.[149] Lalor cited Babbage, Mill and Greg in support of his belief that workers should be free to make their own economic mistakes, and so 'grow both in wisdom and in charity'.[150]

Thomas Wilson also published another book at this time, now under his own name. England had been guilty of 'wild, reckless and wicked trading' in 1847 and must reform

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Practical and Practicable Suggestions for its Improvement (London, 1852).
[141] Ibid., p.6.
[142] April 1852, p.164.
[143] June 1852, pp.315-6.
[144] Stroud's letter appeared in the January 1852 edition, pp.40-42.
[145] July 1852, pp.365 and pp.378-9.
[146] 'Effects of the present law of unlimited responsibility of joint-stock bank shareholders', November 1852, pp.599-600.
[147] John Lalor, *Money and Morals: A Book for the Times* (London 1852), pp.199-207.
[148] Lalor consulted Mill on the book, 27 June [1852], Letter 80, *Collected Works of John Stuart Mill, vol xiv. The Later Letters of John Stuart Mill*, ed. Francis E. Mineka, (Toronto and London, 1972), p.92.
[149] Lalor, *Money and Morals*, p.199.
[150] Ibid., p.203.

her financial system if she wished to retain the respect of her trading partners.[151] Memories of the 1847 crisis loomed over discussion. As David Morier Evans had predicted in its immediate aftermath, 'commercial distress .. cannot fail to carry ... disagreeable remembrances'.[152] When Dublin barrister Jonathan Pim now urged adoption of limited liability, he too recalled how in 1847:

> 'The world was surprised by learning the weakness of many whose solvency it had considered as indubitable, and by finding that business to such a vast extent had been carried on with such a disproportionate amount of capital.'[153]

Pim blamed this on unlimited liability and concentrated financial power, which needed to be diffused. Apprehension that it might otherwise flood and again de-stabilise the financial system meant that amongst the myriad metaphors about free-flowing capital were others more concerned with pinning capital down. Brown's pamphlet argued that limited liability would institute 'a permanent in place of a floating capital' in banks.[154] John Howell warned the 1851 Select Committee that in the absence of reform, 'the capital of the country is becoming a floating capital by bills of exchange'.[155] The sort of anti-City language used by Cobden was increasingly taking on the colour of conspiracy theory. A *Law Review* article saw vested interest propping up the status quo: 'the great capitalist profits by the present law, [which] driv[es] away from home, or keep[s] ... dormant, capital which would ... be brought into competition with his.'[156] *The Times* now claimed that 'the rich dread the competition of the associated capital of the poor'. Unlimited liability was 'a high protective duty in favour of the virtual monopoly of accumulated capital ... which in so many trades a few large capitalists notoriously possess'.[157] This has the ring of Lowe, who had begun writing *Times* leaders in April 1851, and used them to make the same points as in Parliament - some of them uncompromisingly personal.

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[151] Thomas Wilson, *England's Foreign Policy*, p.135.
[152] *The Commercial Crisis*, 1847-1848, p.126.
[153] Jonathan Pim, *On Partnerships of Limited Liability: A Paper Read Before the Dublin Statistical Society, on Thursday 6th February, 1852*, (Dublin, 1852), p.12.
[154] *The Evils of our present Joint Stock Banking System*, p.10.
[155] *Report from the Select Committee on the Law of Partnership*, PP 1851 (509) xviii 25 and 30.
[156] 'Limited Liability in Partnership', *Law Review*, November 1852 - February 1853 (London 1853) p.357
[157] 5 August 1852, p.4.

No one reading such rhetoric in the wake of the 2008 sub-prime crisis can fail to be struck by modern-day parallels, or the sense of being let down by high finance. Events of the late 1840s had helped generate the moral context for change, even if those most interested in social change failed themselves to produce any movement on limited liability. That would take more robust personalities and organisation than had been mustered by Slaney. It also took another round of instability, although this time it was political rather than financial. In July 1852, just months after taking power, Lord Derby dissolved Parliament.

Chapter 8: *The push for parliamentary action, November 1852 - July 1856*

The election which followed the July 1852 dissolution of Parliament produced relatively little obvious political change (a continuing minority government was still led by Derby) but an unusually high proportion of lawyer-MPs - a *parliamentum doctissimum*. This was much-commented upon by lawyers themselves. The *Legal Examiner* thought it 'quite clear that the amendment of the law must now occupy a much larger share of public attention than it has hitherto done', and looked forward to 'great and radical changes ... under the guidance of the Profession.'[1] In anticipation, the Law Amendment Society held a 15-17 November 1852 conference to discuss mercantile law reform, and invited participation by Chambers of Commerce from across England, Scotland and Ireland. The conference's main theme was the assimilation of mercantile law across the different jurisdictions, but partnership reform was also urged in a report circulated by the Liverpool Chamber[2], and a paper by Leone Levi, another Liverpool figure. The *Law Review* was optimistic about prospects for change: 'we shall indeed be surprised if in the important law reform session about to open, a bill is not brought in, fully discussed, and probably carried, establishing ... the principle of limited liability in partnership'.[3]

At first it seemed that surprise would be called for. On 22 November the Marquess of Clanricarde took advantage of a Lords discussion of the Great Exhibition's charter to express disappointment that partnership reform was not on the agenda for the new session. This was regrettable, as the Board of Trade's oversight of charters was governed

> 'by no fixed rule whatever. That was a great grievance because it gave to large capitalists the power to enter into speculations ... whereas a large number of small capitalists who were inclined to invest their money ... were unable to do so'.[4]

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[1] 17 July 1852, p.425.
[2] *Report of the Special Committee on Mercantile Law Reform and Tribunals of Commerce, read at a special meeting of the Council, and ordered to be printed 16th August and adopted by the Council, Sept 6th, 1852*. Liverpool Chamber of Commerce. (Liverpool, 1852), p.13.
[3] 'Limited Liability in Partnership', *Law Review*, November 1852 - February 1853 (London, 1853), pp.350-60, p.360.
[4] *Hansard*, 3rd series, vol. 123, c276 (22 November 1852).

Two weeks later, contention moved sharply from the general to the particular, when William Brown - ship-owner, Liverpool MP and consistent opponent of limited liability - again raised the subject in the Commons. On 7 December he tabled a request that all papers relating to a recent charter-application by the London, Liverpool and North American Screw Steam-ship Company - a 'body of Speculators'[5] - be made public. Brown had been surprised, he said, to learn that City of London MP John Masterman had accompanied the company's deputation to the Board of Trade, and could only suppose this to be a routine courtesy.[6] As in the past, Brown invoked the 1837 crisis, and claimed that Americans were now moving away from charters with limited liability ('these shrewd people were retracing their steps from known evils'[7]). He sympathised with the Board's difficult task, in contending with the 'contradictory views impressed' on it, but trusted that it would uphold the principle of unlimited liability in a field well-served by private enterprise, refuse the charter and maintain 'unrestricted competition'.[8]

Board of Trade President Joseph Henley clearly felt his hand was being forced by Brown's request. Expressions of sympathy would be more convincing, he said, if not accompanied by actions which made the Board's task still more difficult. Brown should either have waited for a decision or asked 'the House to rescind [the Board's] power ... to grant charters altogether'. They could then have debated the question 'on its general merits'. He disagreed with Brown's tactics and his interpretation of this particular case: he had 'hardly condescended to notice [its] exceptional character ... until he [Henley] called [Brown's] attention to ... the Company's proposal to open a steam communication with Canada.'[9] While the case was *sub judice*, no papers would be released.

Other MPs weighed in on either side. New Liverpool MP Charles Turner claimed the North American company directors wanted a charter 'simply to raise their shares to a premium in the market' and turn a quick stock-jobbing profit (a charge they later

[5] *Hansard*, 3rd series, vol. 123, c1072 (7 December 1852).
[6] This was over-optimistic, as Masterman endorsed the venture as backed by the 'principal merchants of the City', 'Screw Steam Communication with London and Liverpool and Canada and New York, *Evening Standard*, 29 November 1852.
[7] *Hansard*, 3rd series, vol. 123, c1074 (7 December 1852).
[8] Ibid., c1075.
[9] Ibid., cc1076-7.

refuted[10]).[11] Other speakers took a more general interest in limited liability. They included Lowe, caught unawares by Brown's request but ready to offer a direct challenge in return. He

> 'thought it rather too much, when gentlemen came to the House and asked them to interfere with the important duties of a department of Government, in order to prevent a competitor being introduced into the field of enterprise, [and then] to colour such a Motion with the name of "unrestricted competition". It was precisely the reverse'.

Lowe trusted that the 'day was not far distant' when the Board of Trade would be relieved of its 'invidious and annoying duty' in having to temper the injustice of unlimited liability, - not, as James Clay had just suggested, by bringing charter-authorisations back to Parliament, but by leaving people free to make their own decisions.[12] Nearly all speakers sympathised however, with Henley's position, and Brown withdrew his motion.

From Board of Trade records and newspaper comment, it is possible to trace how conflict over the proposed North American company had reached this point. The original list of provisional committeemen submitted to the Board on 16 October 1852 gave only five names, but six weeks later these had been joined by a further fifteen. They included Robert Lamont, a Scottish Liverpool ship-owner who brought with him a Canadian shipping contract, and experience with screw-propellers. Ship-owner Samuel Cunard protested to the Board that the company had 'only introduced this Canadian contract ... as a pretext for obtaining the charter, which they could not ask for on any other grounds'.[13] The charter-application included a proposal to operate screw steamers on a number of Atlantic routes, notably between New York and Liverpool, where Cunard had hitherto enjoyed a monopoly, backed by a British government mail contract. Cunard's objections

[10] *London, Liverpool, and North American Screw Steam Ship Company*, PP 1852-3 (730) xcv 44.
[11] *Hansard*, 3rd series, vol. 123, c1085 (7 December 1852).
[12] Ibid., cc1080-81.
[13] *London, Liverpool, and North American Screw Steam Ship Company*, PP 1852-3 (730) xcv 30.

were supported by the Liverpool press[14] and memorials from other ship-owners and Chambers of Commerce. Some of these said that they did not object to a charter in itself if its privileges were made available to all. This was the stance taken too by *The Times*, which, two days after the Commons debate, was arguing that 'it is by the uncertain, and not by the general and impartial bestowal of charters, that private enterprise is damaged'.[15] (It said too that, 'In the United States the law of limited liability prevails, but it has never been complained of as a check to individual enterprise' - a claim demonstrably untrue.[16]) Others supported the charter-application, and claimed that Cunard had orchestrated a campaign of opposition. Both sides engaged in personal attacks, and both accused the other of seeking a monopoly.

Cunard pulled no punches in his attempts to combat the new company. He may well have felt moral as well as commercial antipathy towards it - Crosbie Smith has argued that, in his frequently-expressed attachment to Providence and trial, Cunard came 'to identify with the evangelical faith of his Scottish partners', brothers David and Charles MacIver.[17] Cunard told Henley that the North American company's 'grasping directory' was nothing more than a 'monopolising squadron' bent on destroying him[18] and that he would have 'no confidence in running in opposition to such a company, with limited liability'.[19] In contrast, he talked of his own 'duty' in fulfilling a government contract.[20] Running through the claims and counter-claims was railway-capitalism, and its attempts to expand into sectors connected by steam or infrastructure. Cunard complained that the projected company had 'received a subsidy from an American railroad company', and was himself required by Henley to answer allegations of having injured the Great Western Steamer company by aggressively reducing rates.[21] Peto's activities were also pulled in,

[14] See *Liverpool Albion*, 4 October 1852, *Liverpool Mercury*, 10 December 1852, p.6 and 17 December 1852, p.7.
[15] 'Money Market and City Intelligence', 9 December 1852, p.6.
[16] *The Times* contradicted its own point in the same piece, by claiming that anti-private enterprise language used in the Commons debate was borrowed from the US.
[17] Crosbie Smith, ' "A most terrific passage": Putting Faith into Atlantic Steam Navigation', *Commerce and Culture in Nineteenth Century Business Elites*, ed. Robert Lee, (Farnham, Surrey, 2011), pp.285-316, p.307. David MacIver had died in 1845.
[18] *London, Liverpool, and North American Screw Steam Ship Company*, PP 1852-3 (730) xcv 61.
[19] Ibid., 57.
[20] Ibid., 53 and 57.
[21] Ibid., 16, 53 and 55.

in the form of the North of Europe Steam Navigation Company, which had recently requested (and been refused) a steam ship charter of its own. Lamont submitted evidence to support a claim that ship-owners had only previously mobilised opposition when threatened by railway interests - concerns with enough financial clout to scare them. Eleven charters had recently been granted to ocean-steamer companies, and none been opposed. Spoiling tactics only came into play with companies who could offer serious, lasting competition.

The North American Screw Steam-ship charter dispute thus represented a clash between two generations of capitalists. This was partly a straightforward question of age: Cunard was 56 at this time, Brown 68, and Lamont a relatively youthful 33. It was still more a question however, of two business generations, with different interests, habits and expectations. One was represented by shipping traditions, and the other by practices associated with railway-finance. With hindsight, it is not surprising to see the clash brought to a head in a shipping dispute. Although the sector displayed relatively little of the overt social concern which characterised preceding discussion of limited liability (the only workers to feature were the emigrants who might be better-accommodated by new steam-ships) it did involve a host of the other justifications and concerns commonly invoked: national and colonial development, notions of public service, Ireland,[22] American competition, large infrastructure companies and technological efficiencies driven by steam. It also made plain the difficulty in keeping limited liability ring-fenced in an international context. The North American company argued that the only effect of withholding a charter would be to deliver traffic into the hands of Americans backed by limited liability, or even the French. And as the company dug for more mud to sling at its opponents, it became clear that some of those - including Brown - already had personal interests in overseas shipping companies with limited liability.[23] Above all, the sector involved very high stakes. Moralising featured in this as in every other discussion of

[22] The company's deputation to the Board included MPs for Cork and Dublin, 'who, in the most painful terms, described the crying necessity for the establishment of this company, in consequence of the heartrending misery and distress experienced by the unfortunate Irish in their passages, by closely crammed sailing vessels, to New York and Canada', 'Screw Steam Communication with London and Liverpool and Canada and New York', *Evening Standard*, 29 November 1852.
[23] See allegations made in *London, Liverpool and North American Screw Steam Ship Company*, PP 1852-3 (703) xcv 32 and 44, and Field, *Observations of a solicitor*, footnote to p.54.

limited liability, but it was ultimately capital that forced the issue. Specifically, the huge amounts needed for the ever bigger shipping companies looking to exploit new technology. For all Cunard's protestations of unrestricted competition, it was widely acknowledged that these were unlikely to be committed without some reassurance. The North American company framed their charter-request as a counter to Cunard's government-contract, and said that if they had been subsidised by such a contract they would not need to request a charter.[24] In response, Cunard broke their proposal down into its constituent parts and argued that each was well within the reach of private capital. Liverpool newspapers sympathised, and reported that Brown's antipathy towards limited liability was of long-standing and as such deserving of respect.[25] Lamont took on this 'opposition expressed by the Liverpool press generally' in letters sent to newspapers.[26] The *Liverpool Times* printed the letters but stuck by Brown, calling Lamont's arguments 'altogether fallacious':

> 'it does not appear to us desirable to build up the screw-steam interest of Liverpool upon so uncertain a foundation as a chartered joint-stock company, got up chiefly in London ... If limited liability is necessary in such schemes, it is because no one has much confidence in them when set up in opposition to the prudence and economy of private enterprise'.[27]

Lamont said in response that 'private enterprise [was] much more likely to be destroyed by enormous payments of [Cunard's] kind than by limited liability'.[28] Cunard and the American Collins line (for which Brown was the Liverpool agent) were trying to enforce a cartel: '[the] violence of their opposition stems from knowledge that failure to obtain a charter would ensure them a near-monopoly'.[29] Lamont emphasised the huge demands of modern technology: 'the fact is, that no ocean steam company requiring a capital of half-

[24] *London, Liverpool, and North American Screw Steam Ship Company*, PP 1852-3 (730) xcv 22 and 47.
[25] See press article reproduced in *London, Liverpool, and North American Screw Steam Ship Company*, PP 1852-3 (730) xcv 57-9, citing Brown's stance as Chairman of the Bank of Liverpool.
[26] Letter of 1 December 1852, sent to *Liverpool Times* and *Liverpool Mercury.*
[27] 'London, Liverpool, and North American Screw Steam Ship Company', *Liverpool Mercury*, 3 December 1852, reprinted from *Liverpool Times.*
[28] *Liverpool Mercury*, 3 December 1852.
[29] 'Limited Liability - London, Liverpool and North American Steam-Ship Company', *Liverpool Mercury*, 17 December 1852, p.7, reprinted from *Liverpool Times.*

a-million of money *ever has been* or can be established ... unless either on the one hand a return for the capital invested is made certain by a large public grant, or, on the other, the liability of the shareholders is limited'.[30]

One further factor in the mix was Henley, who was apparently happy to authorise more Board of Trade charters than before (even while repeating the official line on the prior claims of private enterprise). James Taylor has shown how the volume of charter-applications increased in the early 1850s: 'in the three years 1850-2, the Board received sixty-two applications, one more than ... for the entire period between 1837 and 1849'. This reflected increased economic activity, but fed too off raised expectations, with the Board 'granting limited liability to eighteen out of the thirty companies that applied during [Henley's] brief tenure of office'.[31] An expectation that the North American company's charter was about to be granted seems to have prompted Brown's move. Ten days after the Commons debate, Cunard wrote to Henley to express his '[mortification] that the present Government have ... expressed so strong a determination to injure me'.[32] It seems that Henley gave verbal approval for the Canadian line at least. The North American company held out however, for a charter covering the full package of routes requested, including the contentious New York/Liverpool route. This strategy came unstuck. On 19 December, just two days after Cunard's letter, Derby's minority government fell. It was replaced by a coalition government led by Lord Aberdeen, and Henley was replaced at the Board of Trade by Edward Cardwell, an intuitive conservative on limited liability (and, until the recent election, a Liverpool MP). Against mounting complaints at the delay - especially from Lamont - he re-opened discussion about whether private enterprise could reasonably be expected to supply the routes listed in the charter-application. Cunard renewed his protests with fresh purpose, and on 22 February 1853 the North American Screw Steamship company's charter was refused.

By this time, the company was anticipating rejection. Rumours had reached them of Cardwell's intention to suspend charter-grants in favour of a broader policy review, and

[30] *Liverpool Mercury*, 3 December 1852.
[31] Taylor, *Creating Capitalism*, p149.
[32] Letter to Henley, 17 December 1852, *London, Liverpool, and North American Screw Steam Ship Company*, PP 1852-3 (730) xcv 53.

though they had protested that this should not affect their application, the continued delay did not augur well. Cardwell had set out his position in a 14 January memorandum to the Cabinet, which communicated his wish to resuscitate Labouchere's proposed Commission, while making clear his personal aversion to limited liability.[33] He also acknowledged that '[a]t present the chief demand for charters is that of steam-boat companies [who] allege the great advantage which they would derive from establishing themselves on a gigantic scale'. Cardwell allowed there to be some truth in their assertions, but thought giving way to them would 'lead to an irresistible claim for similar concessions' and effective abrogation of the law.[34] Since he agreed with the spirit of the current law, he wished to avoid this. In a separate letter to Aberdeen he admitted that the 'high authority of the Attorney General', Sir Alexander Cockburn was against him on this.[35] 'High' was Cardwell's favourite adjective when evaluating opinions on limited liability, and he was also pleased to report that fellow-Peelite Henry Goulburn had given him 'the high sanction of his entire concurrence'.[36] Goulburn, a former Chancellor of the Exchequer, was by this time too old to participate in government but Cardwell also had the support of Gladstone, the current Chancellor.[37] He had less luck with the new Home Secretary, Palmerston, who, high or not, sent him a robust contradiction of the position set forth in his memorandum. It had not 'altered the opinion which I have long entertained that the present law of Partnership is unwise and unjust, and the principle of limited liability would be the most consistent with reason and justice, and the most conducive to the encouragement of Industry and to the development of our Natural Resources'.[38] Palmerston then moved swiftly on to the personal: 'the principal objectors to Limited Liability are the great capitalists whom you mention in your paper; and naturally, for they wish to avoid competition'. The question was one 'between monopoly and Free Trade' and, if it did not prove possible to introduce reform in the near future, he hoped Cardwell would at least exercise 'liberally' the discretion vested in him over

[33] Cardwell, 'Limited Liability'. Confidential memorandum to the Cabinet, 14 January 1853, Gladstone papers, BL Add. MS 44570, f169.
[34] Ibid., pp.8-9.
[35] Letter of 4 February 1853, Aberdeen papers, BL Add. MS 43197,f 258.
[36] Ibid., f258, p.4.
[37] Gladstone's marginalia on the Cabinet memorandum confirm his agreement with Cardwell, BL Add. MS 44570, f169.
[38] 15 February 1853, Palmerston papers, BL Add. MS 48578, f3.

charters.

The new government thus included diametrically opposed views on limited liability. No one had any objection to a Commission of inquiry however, and on 21 February, backed by Cabinet approval, Cardwell announced in the Commons his intention of reviving Labouchere's promise.[39] In answer to a friendly question as to how the proposed Commission might affect applications already before the Board, he confirmed a conservative line. While the Commission was pending, he thought it 'desirable to be guarded, and not to give a limited liability where the object could be accomplished by private competition'.[40] The following day, the Board of Trade rejection letter was sent to the North American company's solicitors, and Cardwell re-iterated his position with rejection of another charter request in the Commons.[41]

The refusal of the North American Steam-ship charter had several repercussions. The immediate one was that the company re-submitted its charter-application (as originally prepared by Ker) with an added proviso that it would not operate in areas relating to the contentious New York/Liverpool route without the Board of Trade's prior consent. This was refused. A further application, in the name of the hastily-formed Canadian Steam Navigation Company, then requested a charter for the Canadian route alone - something the applicants said Henley had already approved, as the default option.[42] This was also refused, on the grounds that they had earlier said it would not be feasible to pursue the Canadian route in isolation. Lamont then faced the challenge of fulfilling his Canadian contract without a charter from the British authorities or - when a technicality made it clear that the company was not eligible in its current form - the Canadian. This he did by turning the Canadian Steam company into a private partnership and persuading 'some of the wealthiest men in England' to join it, in the expectation that a Canadian charter would

[39] *Hansard*, 3rd series, vol. 124 cc 348-9 (21 February 1853).
[40] Ibid., c349.
[41] Her Majesty's Theatre Association Bill debate, *Hansard*, 3rd series, vol. 124, cc397- 403 (22 February 1853). The debate shows that requests submitted to parliament were thought likely to be treated with more flexibility than at the Board of Trade, c405.
[42] 'We fully understood that the question to be decided by Mr. Henley was only between the extended or restricted charter, and we were prepared to accept the latter if he should refuse to recommend the former', Letter to Cardwell, 10 March 1853, *London, Liverpool, and North American Screw Steam Ship Company*, PP 1852-3 (730) xcv 95.

be confirmed once the company was re-structured and the technicality ironed out.[43] He later recalled that the abortive English charter applications 'cost me individually several thousand pounds' for nothing (for which he blamed Cardwell) and was too furious at his treatment to take it lying down. In a later memoir, he recorded his response, when still 'smarting under the injustice':

> '[I]mmediately after the refusal of the charter, the author and his solicitor, the eminent and well-known Mr. E. W. Field, of Lincoln's Inn, formed a league at the cost of many hundreds of pounds to the author to agitate the country and Parliament for an alteration in the law of partnership. This league, to which the author acted as honorary secretary, was composed principally of members of Parliament and men of genius. A systematic agitation and education of the mercantile community, by means of newspaper articles published periodically in all parts of the three kingdoms, and also by the circulation of pamphlets upon limited partnerships, was resorted to'.[44]

In a letter he sent to the Board of Trade in later life, Lamont gave further, colourful details of the league's formation, and how it now proposed to go about its task:

> 'Mr. Field told Mr. Cardwell in my presence, when the latter communicated his decision [to refuse the Canadian Steam Navigation charter] to me, that he would never rest until the law was altered, nor until every Briton had freedom to trade with his Capital - as was his Birthright, just as he pleased - with Limited or unlimited liability ... Mr. Field and I commenced an agitation on the day Mr. E Cardwell refused me the charter, by together going down to the House of Commons, and forming a league comprising some of the geniuses of the Land - who were to send to me in Liverpool each at least once a month a paper on

[43] Lamont. Letter to the Hon Jean Chabot, Chief Commissioner of Public Works (Quebec), 23 January 1855, *Return to an Address from the Legislative Assembly, of the 2nd instant, for information relative to the contract between the government and Messrs McLean and McLarty, for ocean steam communication service* (Quebec, 1855) p.23.

[44] Robert Lamont, *The Principal Sources of England's Greatness. A Retrospect, being reminiscences of the origin, progress, and great extension of screw steam shipping, and also of the origin and enormous growth of limited liability joint stock companies since the law was altered permitting such companies to be formed in the United Kingdom. With authentic statistics supplied direct from Somerset House.* (London, 1888), pp.16-17.

> Limited partnerships, I undertaking to get the same inserted in the leading papers in the United Kingdom, from John O'Groats to Lands End and from Belfast to Cork. This I did, and Lord Palmerston had one on his Breakfast Table every Monday morning - [until] we fell foul of Mr. Cardwell and Mr. W. E. Gladstone on the subject - for Gladstone was as far behind the age as his Peelite brother Cardwell (sneaks all, in my opinion!) ... This agitation continued for four or five years, costing me at least £500 - aye more - although no one - except Mr. Field and Mr. Robert Lowe ... knew who was pulling the strings and paying the expenses.'[45]

The Canadian charter-refusal thus brought a capitalist, a lawyer and a politician together in a concerted effort to achieve change. Something of the effect has been noted by historians, who have noticed how press and other comment increased from this time. The league was not however, about to be content merely with increased noise-levels. Lamont claimed that 'when completed [it] comprised many MPs', of whom he named Joseph Hume and Sir Seymour Fitzgerald, one a radical and the other a Conservative. Hume said soon after this that he was a relatively recent 'convert' to limited liability, and as such must be excused a convert's zeal.[46] He had however, long been convinced that commercial law reform was too important to be left to commercial men ('fully as limited in their views, fully as selfish as the landed interests'[47]). Fitzgerald, a barrister, was one of the 1852 intake of lawyer-MPs. Not all league-supporters were MPs or lawyers - Lamont also named brewer 'Fowell Buxton',[48] by which he almost certainly meant Charles Buxton, son of the anti-slavery campaigner Thomas Fowell Buxton and his wife Hannah, a member of the Quaker Gurney family.[49] Buxton's nonconformist/philanthropic background was typical of many who took an interest. The

[45] Lamont to Thomas Farrer, 3 July 1880 letter requesting a copy of a recent Partnership Bill and enclosing a copy of the Canadian Steam Navigation Company Act and Prospectus, BT 22/34/3.
[46] *Hansard*, 3rd series, vol. 130, c310 (7 February 1854).
[47] Letter to Leone Levi, as quoted in Leone Levi, *The Story of My Life. The First Ten Years of My Residence in England, 1845-1855* (London, 1888), p.31.
[48] Lamont to Board of Trade, 3 July 1880, BT 22/34/3.
[49] Thomas Fowell Buxton had a son of the same name, older brother of Charles and known as 'Fowell' to distinguish him from his father, but he did not show any identifiable interest in limited liability. Charles Buxton's campaigning interest is documented in his diaries (Buxton papers, British Library). Lamont seems to have taken 'Fowell Buxton' to be the family name.

most important however, was undoubtedly Lowe, who 'on many occasions met with' Field and Lamont and 'gave most valuable assistance' to the league - a version of events later endorsed by Lowe himself.[50]

The league's formation is a useful point at which to take stock of the task they faced, and the state of opinion on limited liability in the spring of 1853. Within London, they already had widespread support within the legal profession. Some senior figures continued to resist limited liability in principle (and more would dispute detail) but they were now few in number. Brougham seems to have revised his stance about now, and conceded that usury-repeal made continued opposition untenable.[51] The Law Amendment Society was effectively managed by Field, and the league could also count on the support of the *Legal Review*, the *Legal Observer* and many in the financial press. *The Economist*'s acknowledgement of limited liability was generally restricted to the correspondence column, or a studiedly cool passing notice, but this was more a question of tone than any inherent objection. Banking continued to be a tricky forum for debate. The Banking Institute, set up in 1851 by John Dalton (editor of the *Bankers' Magazine*), had recently held three discussions of limited liability, led by Institute solicitor George Shaw, Levi and then Dalton himself.[52] Dalton's premature death at the end of 1852 had however, also cut short the life of the fledgling Institute, which folded about this time. Banking articles continued, but it seems the league now set out to mobilise a wider circle of interest. John Forster, editor of *The Examiner*, acquired a comprehensive set of pamphlets sent by league-supporters (as too, once their campaigning took effect, copies of the counter-blasts supplied by their opponents).[53] Of London's newspapers, the *Morning Chronicle* and *Daily News* had already lent support, but the bastion from which

[50] In an 1889 letter, Lowe confirmed his view that Lamont's pamphlet, *The Principal Sources of England's Greatness*, contained 'the true doctrine on the subject'. Lamont reproduced the letter in a draft Memorial 'To the Merchants, Under-writers, Bankers (Limited Especially), Screw-steam ship Owners and Traders of the United Kingdom', SOAS, PPMS1 Mackinnon papers, 142, f14. See too Lamont, *The Principal Sources of England's Greatness*, p.19.

[51] See Brougham's comment that 'the repeal of the Usury Laws two years ago seemed at once to dispose of the question', 'Extract of Letter from Lord Brougham to the Earl of Radnor', *Law Review*, Article VII, vol. xxiii, November 1855 - February 1856, p.72.

[52] As reported in the *Bankers' Magazine*: December 1852, p661; January 1853, pp.5-15; February 1853, p.76; March 1853, pp.181-9.

[53] Forster papers, National Art Library, Victoria & Albert Museum, pamphlet collections F 37 A11, D8 and K 11.

regular broadsides were launched was *The Times*, where editor John Delane allowed Lowe to push a forceful line in leaders, supported by Sampson in the City column. If Edward Cox is to be believed, *The Times* now blocked any attempt to publicise an opposing view in its pages.[54] The league was therefore in a strong position to control a message within London - something which annoyed opponents, who argued that it gave a false view of opinion. They had less influence within the City, but this is unlikely to have worried them unduly. Some City figures did support limited liability, and the opposition of 'great capitalists' was now in any case the dominant theme of lobbying. The league also had mixed success with political economists. Together with opposition from well-known City names, this left them open to criticism from anyone inclined to credit technical authority or City status. Amongst political economists, Nassau Senior, Thomas Hodgkin and George Rickards had joined Mill in support of reform but Tooke and McCulloch continued their opposition, while others failed to express any public opinion. The announcement of a government inquiry had brought yet another discussion of limited liability by the Political Economy Club on 3 March, with Lowe now in attendance as a member, but we do not know what was said.[55] The league's main concern within London is likely anyway to have been MPs. For all the claims to superior reasoning, reformist public pronouncements show little concern with the niceties of economic argument. They were primarily concerned to emphasise, over and over, the headlines of a case. In their desire to win, others besides Lowe were prepared to deliver personal attacks, and they had the advantage of organisation and a secure metropolitan base from which to work.

They faced a much stiffer task in their ambition to 'agitate the country'. Provincial press articles that did more than report parliamentary debate on limited liability are rare before this point, and when parliamentary interest waned, so did press coverage. The league evidently took steps to address that, but its main challenge outside London was the indifference or active opposition of businessmen wedded to a partnership tradition. There is no sign that the league ever occupied itself with smaller businesses, whose

[54] 'It is not perhaps generally known that *The Times* will not give insertion to any communication differing from the views it has adopted on this question.' *Law Times*, 26 April 1856, p.57.
[55] Political Economy Club. *Minutes of Proceedings, 1821-1882*, pp.176-7. *Centenary Volume, vol. VI*

representatives had a history of conservatism on debt issues.[56] These were not in any case much-represented in Chambers of Commerce, which provided the main forum for debate beyond the press. Chambers were a well-established phenomenon (by 1840 there were at least sixteen) but some, including those in the major industrial centres of Birmingham and Leeds, had become dormant during the second quarter. They revived however, in the economic expansion of the early 1850s and together with the Manchester Commercial Association, provided the main outlet for opinion. In a 1990 thesis, Daphne Glick reviewed six English chambers' documented interest in partnership reform, which shows no recorded engagement by Birmingham, Bristol or Leeds before this time. Of the others, the Bradford Chamber, dominated by the wool trade, had invited Levi to give a talk in 1852 (which included promotion of limited liability) and then printed 2,000 copies for members.[57] And the self-consciously high-profile Liverpool and Manchester Chambers had already expressed forceful opinions. The Manchester Chamber was of unusually long standing, founded in 1820, and had a correspondingly long record of opposition to limited liability. From the late 1830s, it maintained a vigilant guard against its use in private Bills, and sent protests to parliament.[58] Asked by Gladstone's Board in 1843 for its views on joint stock companies, it reported that it did not see how shareholders' obligations could be lessened without danger to the public. This it saw confirmed in the experience of local joint stock banks, observing with grim satisfaction that thanks to 'the immense sacrifices to which shareholders in Banks in this town have been subjected ...depositors ... have been held secure'.[59] Both the Chamber and the Manchester Commercial Association disregarded an 1851 suggestion by a local businessman that they might consider *commandite*.[60] Scottish and Irish chambers had also already shown interest in limited liability, as had the Dublin Statistical and Social Inquiry societies. Irish discussions generally came out in its favour (the Belfast Chamber

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(London, 1921), p.67.
[56] Discussed by Margot Finn, *The Character of Credit*, pp175 and 289-90.
[57] Glick, 'The Movement for Partnership Reform ', p139. Glick also reviewed the record of English provincial law associations and found practically no interest at all.
[58] Proceedings of the Manchester Chamber of Commerce, M8/2/3 f459, f687; M8/2/4 f121, f179
[59] Ibid., M8/2/4, f279 and ff285-8.
[60] Ibid., M8/2/5, f170 and Manchester Commercial Association, 1845-58, M8/7/1, meeting of 6 March 1851.

produced a pro-reform report at this time[61]) and Scottish against. The Glasgow Chamber had produced a strongly anti- report on limited liability in 1851.[62] Commerce would prove problematic for the league. Many of its representatives - especially manufacturers - proved as conservative as Hume would have expected. Searle has observed that 'it took businessmen a long time to make up their minds as to whether they wanted limited liability' and many never in fact did so.[63]

The great exception to this picture of widespread commercial indifference in England was the Liverpool Chamber of Commerce, already engaged in active lobbying for reform. The Liverpool Chamber was as elitist as any, dominated by ship-owners, wealthy merchants and insurance-brokers. Membership also reflected a wider social split in Liverpool between more socially-conservative Anglicans (who included the Gladstone family) and Unitarian radicals, who exercised disproportionate influence on the Chamber's Council. That influence had almost certainly been felt in the response to the North American Steamship charter dispute. The Council had refused a request from 'one of the Directors' to petition the Board of Trade against the granting of shipping charters. After 'the fullest consideration', they concluded that 'the question of limited partnerships ... should be approached with the utmost caution', deferring the matter 'until the Council can fulfil its intention of taking up the entire subject'.[64] Board of Trade papers thus include a protest from the Liverpool Ship-owners' Association, but none from the Liverpool Chamber, to set alongside those from other shipping-oriented Chambers. The decision not to memorialize the Board was flagged at the Liverpool Chamber's February 1853 annual meeting, which took place while a decision on the North American charter was still pending. The meeting's Chairman, merchant Thomas Bouch, commended the recent report on commercial law reform prepared by Council-members Charles Holland

[61] Report dated 8 April 1853, reprinted in *First report of the commissioners appointed to inquire and ascertain how far the mercantile laws in the different parts of the United Kingdom of Great Britain and Ireland may be advantageously assimilated and also whether any and what alterations and amendments should be made in the law of partnership as regards the question of the limited and unlimited responsibility of partners*, PP 1854 (1791) xxvii 141.
[62] Reprinted as part of the Glasgow Chamber's submission to the Mercantile Laws Commission, *First report of the commissioners*, p.63.
[63] Searle, *Entrepreneurial Politics*, p.187.
[64] *Liverpool Chamber of Commerce. Third Annual Report of the Council, presented to the Chamber at the General Meeting, held February 7, 1853* (Liverpool, 1853), p11. *The Times* reported the meeting's views

and Edward Heath (as circulated at the November Law Amendment Society London conference) and said that, like its authors, he personally also favoured limited liability.[65] Present at the meeting was Brown, who, moving for adoption of the annual report, then took the opportunity to say that he did *not* favour limited liability - now, he said, 'a matter of serious discussion with shipowners'. Brown also gave details of his past experience with joint stock banks, which make it clear that some Manchester bankers at least had favoured limited liability.[66] His anti-limited liability stance on this occasion was promptly countered by merchant Alfred Powles who, seconding the report's adoption, said that he also *did* favour it.[67] This split was to carry on through subsequent discussions.

Back in London, the Law Amendment Society seemed resolved to keep up pressure. On 14 March 1853, Brougham asked Aberdeen in the House of Lords about the status of his pet project of mercantile law assimilation, as too of partnership reform. The two issues had been associated since their airing at the previous November's Law Amendment Society conference. Brougham said that Derby had then expressed support. Would the new government now honour that commitment? The subsequent parliamentary interchange, with its references to multiple lordships and inquiries, confused parliamentary reporters, but Aberdeen confirmed willingness to pursue both law-assimilation and partnership reform. Little then seems to have happened however, and Lamont records that the league sent a deputation to Palmerston in May, to urge action.[68] On 1 June, Palmerston appointed Commissioners for the promised inquiry.

The inquiry's remit was law-assimilation *and* partnership reform, a twinning which the *Legal Examiner* thought supporters of limited liability might have cause to regret. It thought the Commissioners better-equipped for law-assimilation and 'not quite the sort of persons to whom exclusively we should desire to commit the inquiry into the subject of partnership'. It would have preferred to see the inclusion of someone versed in 'political

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verbatim, 'Charters with Limited Liability', 8 February 1853, p.7.
[65] Ibid., p.6.
[66] Ibid., p.16.
[67] Ibid., p.19.
[68] *The Principal Sources of England's Greatness*, p.23. At the distance of 30 years, Lamont mistakenly

and social economy' and workers' issues.[69] Slaney agreed, and asked to be included as an unpaid member of the Commission, a request that was refused.[70] The eight Commissioners were: Thomas Cusack Smith (Irish Master of the Rolls), Sir Cresswell Cresswell, John Marshall (Lord Curriehill, a Scottish judge), George Bramwell, James Anderson, Kirkman Daniel Hodgson, Thomas Bazley and Robert Slater. The first five were lawyers and the last three businessmen and financiers. Most were in their late fifties, with Bramwell and Hodgson rather younger at 45 and 39 respectively. In the name of the Commissioners, Secretary William Fane sent out 152 questionnaires (including some overseas), soliciting opinions from individuals and Chambers of Commerce, and then awaited replies. These came in between October 1853 and February 1854.

In the meantime, public discussion continued. Parliamentary time was now increasingly taken up by the possibility of war, but charter requests ensured that limited liability continued to be raised. In July, railway-involvement in steam shipping again triggered debate, in a House of Lords dispute over a South Eastern Railway Bill.[71] Objecting to its limited liability clause, Lord Monteagle (formerly, Thomas Spring Rice) catalogued the history of such steam/rail disputes since 1847. Board of Trade Vice-president Lord Stanley of Alderley then re-interpreted the same catalogue in favour of the Bill and limited liability.[72] Other speakers emphasised either the steamship element (if against limited liability) or the railway (if in favour).[73] A week later, Cardwell was asked to justify his criteria in granting a charter to the Australian Direct Steam Navigation Company.[74] His response drew on 'precedent' and a now-standard argument that privilege was justified by mail contracts. *The Times* had already made clear its opinion of this line, by declaring the withholding of limited liability 'wholly inconsistent with the

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recalls Palmerston as 'then Prime Minister' rather than Home Secretary.
[69] 8 October 1853, p.473.
[70] As reported by Slaney to the Society of Arts, 'On Limited and Unlimited Liability in Partnerships', *Journal of the Society of Arts*, no 80, 2 June 1854, p.482.
[71] *Hansard*, 3rd series, vol. 129, cc159-64 (14 July 1853).
[72] 2nd Baron Stanley of Alderley, often referred to in politicians' correspondence as 'Ben' . Lord Derby's son, also a politician, was also known as Lord Stanley.
[73] Ibid., c163.
[74] *Hansard*, 3rd series, vol. 129, cc652-3 (22 July 1853).

practice of granting enormous subsidies in the shape of postal contracts'.[75] Cardwell took refuge in the ongoing official inquiry and 'trusted that before long the system would be placed on a better footing'.[76]

Outside Parliament, the 1 August release of Board of Trade papers on the North American charter dispute provided an opportunity for another burst of agitation in *The Times* on 4 August.[77] The following day the paper printed a letter from the North American company's Chairman which it said added to complaints about Board conduct. Cunard had apparently had sight of the company's communications with the Board, while they 'did not know until last week that Mr. Cunard had addressed a single letter to the Board of Trade'. They had only been made aware of objections in general terms. Had they been shown the substance of Cunard's communications, they could have refuted the allegations. Indignant at Cunard's preferential treatment, they trusted that Cardwell would be able to 'satisfy the House of Commons and the public' as to the propriety of his actions.[78] The same day, yet another charter request raised the subject in the Commons.[79] On 10 August, Norwich MP Edward Warner followed up with a Commons question as to whether the government intended introducing a partnership reform Bill in the next Session.[80] Cardwell reiterated his view that it would be 'manifestly improper' to make any declaration in advance of the current inquiry's report. Meanwhile, he hoped parliament and the Board would follow 'established precedent'.

It also seems that league-members were going about their task. Lord Hobart published a generally well-reviewed pamphlet at this time, calling for limited liability.[81] Mill, sent a copy by the author, commended its 'closeness of reasoning'.[82] Hobart had stressed the volume and speed with which capital might fly away in the modern world, if denied

[75] 'Money Market and City Intelligence', *The Times*, 9 December 1852 p.6.
[76] Australian Direct Steam Navigation Company debate, c653.
[77] Money Market and City Intelligence', *The Times*, 4 August 1853, p.6.
[78] 'Money Market and City Intelligence', *The Times*, 5 August 1853, p.6.
[79] South Sea Company's Arrangement and Trusts Bill debate, *Hansard*, 3rd series, vol. 129, cc1395-8 (5 August 1853).
[80] *Hansard*, 3rd series, vol. 129, cc158-9 (10 August 1853).
[81] Vere Henry Hobart, Baron Hobart, *Remarks on the law of partnership liability* (London, 1853). The pamphlet attracted mostly favourable reviews, though criticised by the *Manchester Examiner*, 24 December 1853, p.6.
[82] Mill to Hobart, letter of 17 August 1853, reprinted in *Essays and Miscellaneous Writings by Vere Henry,*

outlets at home.[83] He took railways as the definitive exemplar of modern investment and said that to withhold limited liability was to argue that railways could have been built without it, 'a proposition which (it is believed) has never yet been advanced'.[84] Others were to put him right on that.

Hobart's pamphlet was followed by an October article in the *Westminster Review* which attracted still more favourable notice.[85] Along with Mill's 1850 evidence it became a standard point of reference for reformists. The same month, the *Legal Examiner* published a similarly comprehensive piece, which made it clear how much a vote for limited liability was a vote for companies: 'Everything leads us to believe that trade will henceforth be more advanced by the steady and sustained energy of ... associations than by individual enterprise'.[86] A November leader in *The Times* called attention to American progress, and tied unlimited liability to the 'dirty, ignorant and depraved state' of England's labouring classes.[87] Other nations might not have attained the heights of Britain's economic eminence but neither had they 'sunk to her degradation'. Banking articles also addressed the issue.[88]

Comment also now extended beyond London. Some of this was in the nature of free gifts - the *Times* November article was picked up in the provincial press[89] - but there are signs too of more pro-active efforts. A detailed letter to the *Manchester Examiner* took issue with the newspaper's American correspondent and his criticism of limited liability, and recalled arguments traded in the letter columns of *The Times* three years before.[90] It also recommended Levi's and Wilson's books, in the sort of cross-referencing and would-be educational tone now typical. In Dublin, a call for the local Chamber of Commerce to

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Lord Hobart, p.70.
[83] Hobart, *Remarks*, pp.11 and 15.
[84] Ibid., p.13.
[85] 'Partnership, with Limited Liability', *Westminster Review*, October 1853, reprinted as a pamphlet, London 1854.
[86] 'Partnership with Limited Liability', *Legal Examiner*, 8 October 1853, pp.471-2.
[87] *The Times*, 5 November 1853, p.6.
[88] cf. 'Partnership Liability', *Bankers' Magazine*, December 1853, p.837and 'Responsibility of Public Companies', *Circular to Bankers*, 10 December 1853, p.382.
[89] *Salisbury and Winchester Journal*, 12 November 1853, p.4.
[90] Letter from 'ETC', *Manchester Examiner*, 14 September 1853, p.7.

support reform in its questionnaire-response to the Royal Commission recommended the 'first number of Mr. Sullivan's Journal of Industrial Progress' for anyone who wished to educate themselves further in the topic.[91] The *Leeds Times* also recommended this and another 'clever' recent article on limited liability.[92]

One significant boost to reformist hopes owed nothing to league efforts. On 6 February 1854 the great mechanical engineer and entrepreneur, Joseph Whitworth published his *Report on the New York Industrial Exhibition*. The *Report* had been anticipated in the press for some time and was now widely discussed. Whitworth had travelled to the US as an officially-appointed British Commissioner to the New York Exhibition, but a six-week delay in its opening presented him with an opportunity to tour American industrial districts, where,

> 'the law of limited liability affords the most ample facilities for the investment of capital in business [and] the intelligent and educated artisan is left equally free to earn all that he can.'[93]

Whitworth saw a particularly close connection between limited liability and *inventiveness*, supported by a lack of bureaucracy:

> 'If a company, or even a private individual, should propose to build a telegraph line, and can show that it would be beneficial to the public ... he may obtain an Act authorising him to proceed, as a matter of course ... With a celerity that is surprising a company is incorporated, the line is built, and operations are commenced. Similar facilities are also afforded ... by general laws authorising the construction of railways.'[94]

The 'trifling' cost of incorporation was highlighted, in stark contrast to Board of Trade fees. In one instance of American cut-price initiative, 'where the capital of the company

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[91] 'Obstacles to Industry - the Law of Partnership', *Freeman's Journal*, 30 December 1853 p.2.
[92] *Leeds Times*, 21 January 1854, p.6.
[93] *New York Industrial Exhibition. Special Report of Mr. Joseph Whitworth*, as reprinted in Rosenberg, ed., *The American System of Manufactures*, pp.388-9.
[94] Ibid, p.369.

amounted to $600,000 (£120,000), the total cost of obtaining the act of incorporation was 50 cents (2s 1d)'.[95]

That sentence was reproduced in British newspaper articles, sometimes embellished with incredulous exclamation marks. Also quoted were the reports of Whitworth's fellow Commissioners, Wentworth Dilke and art-educationist George Wallis. Dilke was impressed by the growth of American 'special partnerships',[96] but Wallis's views were much more cautious. Coming from a native of Wolverhampton, they were of especial interest to the *Birmingham Gazette*, which reprinted them *verbatim*.[97] Wallis kept faith with Adam Smith, in arguing that 'the true basis' of industrial management must forever be 'a distinct interest, combined with full powers and complete responsibility'. He was anxious to counter the 'erroneous impression [that] appears to exist in England as to the extent of the responsibility of all shareholders or partners in the joint-stock manufacturing companies of the United States', arguing that 'limited responsibility is wisely confined to the non-managing shareholders'. Limited partnerships had proven useful in the US - exceptionally - 'as a means of developing the individual powers and natural resources of a new country'.[98]

American lessons were a popular theme in early 1854. Charles Morrison's *Labour and Capital* (considered in chapter 6), which covered much of the same ground as Whitworth, was published at this time, and what it had to say about limited partnerships and social progress 'excited [the] deep interest' of penal reformer Matthew Davenport Hill.[99] Hill was yet another Law Amendment Society activist, a member of the Committee that had produced the Society's 1849 report.

Another to draw a direct connection between Americans' 'greater self-reliance, energy, morality and intellectual qualifications' and limited liability in early 1854 was Edwin

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[95] Ibid., p.339.
[96] *New York Industrial Exhibition. Special Report of Mr. Dilke*, PP 1854 (1801) xxxvi 100-102.
[97] 'The New York Exhibition - Mr Wallis's Report', *Birmingham Gazette*, 6 March 1854, p.1.
[98] Ibid., footnote to p.205, and p.206.
[99] As reported by Hill's daughters in Rosamund Davenport-Hill and Florence Davenport-Hill, *The Recorder of Birmingham. A Memoir of Matthew Davenport Hill* (London, 1878), p.380. Hill wrote to Morrison about his work, 7 May 1854, and reviewed it favourably in *The Spectator*, 2 September 1854.

Field, late with his league homework.[100] Field admitted he had been meaning to commit pen to paper for some months, but was happy to see that the *Westminster Review* and Francis Troubat had recently covered much of what he wished to say.[101] He found plenty of alternative material however, in charter costs. Like Lowe, Field was also prepared to issue a personal attack, and criticised Cunard and Brown[102] (which brought a letter from Brown[103]) and businessmen he thought lacked objectivity in the face of a threat to profits[104] (which brought a pamphlet from William Hawes, who, in return, had something to say about lawyers[105]). Field saw 'ambition among working men now altogether stifled' in Britain and stressed the dynamism of labour and capital in the modern world.[106] In his conception, capital was the very antithesis of a fixed substance, searching out opportunity across jurisdictions with lightning speed, in a universal, scientific system which combined the attributes of a fluid and an electric telegraph:

> 'the fugitiveness of capital as to its place of application, and the electric rapidity with which it transports itself over the entire globe, from domicil to domicil, is a phenomenon of commercial science quite as wonderful as any that natural science can produce.'[107]

Chambers of Commerce were also now engaging in discussion, in response to Mercantile Law Commission questionnaires. The Liverpool Chamber was predictably quick to engage, with a Special Committee reporting strongly in favour of change: 'what is claimed is simply freedom of action', needed as a 'general principle' and to dispel working-class notions 'that there is a necessary antagonism between labour and capital'.[108] Also prompt was the Leeds Chamber, which held a seven-man Council

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[100] Field, *Observations of a solicitor*, p.76.
[101] Troubat, *On the Law of Commanditary and Limited Partnership in the United States*
[102] *Observations of a solicitor*, footnote to p.54, pp.56-9, p.91.
[103] As copied to the Liverpool Chamber of Commerce and reported in 'The Chamber of Commerce - Limited Liability', *Liverpool Mercury*, 4 April 1854, p.8.
[104] Ibid., p.33.
[105] William Hawes, *Observations on Unlimited and Limited Liability* (London, 1854), pp.26 and 35.
[106] *Observations of a solicitor*, p.79.
[107] Ibid., pp.25-6.
[108] Liverpool Chamber of Commerce. *Report of the Special Committee of the Council on the subject of the law of Partnership*. Received 30th January 1854. (Liverpool, 1854), pp.5 and 12.

meeting on 11 January to consider its response.[109] Cloth merchant Charles Bousfield spoke 'at some length' against change, and made the unexpected claim that limited liability would work to accumulate capital in a few hands (a claim he admitted was 'just to the contrary' of the Commissioners' suggestions). Against this, Edward Irwin, another merchant, thought some change in the law a 'necessity', and was in favour of limited liability joint stock companies - a view supported from practical experience of American companies by William Firth. Since opinion was divided, and the Commission had asked for two submissions and 'the individual views of the members rather than the collective view of the whole body', the Chamber fulfilled their brief by submitting the opposing views of Bousfield and Irwin.[110] The Chamber's minutes were reproduced verbatim in the *Leeds Times*, now lining up in support of limited liability against the opposition of the *Leeds Mercury*.[111]

The Leeds minutes were also reproduced in the *Journal of the Society of Arts*, taking its own interest in the topic.[112] On 30 January, the Society held a London conference, widely discussed in the press, to address the topical concern of 'Strikes and Lock-outs', and asked whether these might be averted by limited liability. As Loftus says, the conference had the ambitious aim of improving employer/worker relations by taking them 'out of the workplace and into a civilized public space'.[113] Few judged it a success on this score. Employers refused invitations to participate, and largely left the floor to workers' associations and politicians. The workers were happy to agree that limited liability might improve their position but, in common with others present, thought this had little to do with the fraught question of strikes and combinations. Many were sceptical as to the value of limited liability for manufacturing. Here, under a real threat to social order, it seemed that optimism ran out.[114] The conference triggered further debate about limited liability in the Society's *Journal*. A piece on *commandite* made extensive reference to the US, with no mention now of France.[115] Railway engineer William

[109] Leeds Chamber of Commerce, Minutes of Proceedings. MS Dep. 1951/1, item 2, 122-8.
[110] 'Leeds Chamber of Commerce - The Law of Partnership', *Leeds Times*, 21 January 1854, p.3.
[111] Ibid.
[112] 'The Law of Partnership', *Journal of the Society of Arts*, vol. 2, no. 62, 27 January 1854, pp.166-7.
[113] Loftus, 'Limited Liability, Market Democracy and the Social Organization of Production', p.90.
[114] *Supplement to the Journal of the Society of Arts*, vol. 2 no. 63, 3 February 1854, pp.189-210.
[115] 'Partnership and Limited Liability', *Journal of the Society of Arts*, no 61, 20 January 1854, p.145.

Bridges Adams (a stalwart of the Correspondence section) wrote to say that he saw no reason why workers should not 'have a small share in a mill as well as in a railway'. His view of a limited liability future was notably visionary:

> 'As time rolls on, and as artificial difficulties are removed, the principle of shareholding now applied so largely to public works, such as railways, will be more and more largely applied to every kind of machine-facture, and all our best workmen will grow up into a race of small proprietors - not of land, but of shares in mills and machines. The result will be such an increase of wealth as the world has never yet beheld, such a bonded nation as to be impregnable to external circumstances.'[116]

Barrister Thomas Webster added support[117] while Leone Levi wrote to say that he was 'in favour of introducing partnerships with limited liability ... but[did] not conceive they would work well in factories or mills' (where he thought the divinely-instituted relation of master and servant bound to prevail).[118] Press coverage of the conference cited Whitworth in support of argument that limited liability would off-set strikes[119] and noted that 'on one point [the conference attendees] seemed to be unanimously agreed - that an alteration in the law of partnership would be beneficial'. Faced with the intractable difficulties of industrial strife, this was a default option on which conference attendees could agree. A closing resolution 'in favour of a law for limited liability in partnership' was 'carried unanimously'.[120]

One other now-prominent theme is worth noting here. In its conference coverage, the Society's *Journal* counseled readers to take comfort in the fact that agitation at least showed that England's workers were 'not serfs but freemen'.[121] Such references were increasingly common, fed by the looming likelihood of war with Russia. Woodforde Ffooks, another reformist lawyer who went into print at this time, argued that partnership

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[116] 'Strikes and Lock-outs', *Journal of the Society of Arts* no. 61, 20 January 1854, p.150.
[117] 'On Laws relating to Property in Designs and Inventions', Journal , no. 62, 27 January 1854, p.158.
[118] 'Strikes and Lock-Outs, and Limited Partnerships', *Journal of the Society of Arts*, no. 62, 27 January 1854, p.170.
[119] 'Conference on Strikes and Lock-outs', *Journal of the Society of Arts*, no 64, 10 February 1854, p.221.
[120] 'Conference on Strikes at the Society of Arts', *Observer*, 6 February 1854, p.6.
[121] 'Strikes and Lock-outs', *Journal of the Society of Arts*, 20 January 1854, p.150.

law showed that 'much of the debris of feudalism [had] yet to be swept away'.[122] Edward Warner struck the same note in a pamphlet which also took a side-swipe at the 'old Patent Law'.[123] Warner was another of the league's MP collaborators, a reliable contributor to parliamentary discussions, and he made clear what he thought the priorities. An official Commission was all well and good, but 'not likely to result in much practical good, until public opinion is formed, and can be brought to bear upon Parliament'.[124] In preparatory notes for his own pamphlet, Charles Buxton identified the same need to overturn 'the gross ignorance of Parliament and of the nation'. He accordingly planned to distribute his publication to all MPs and 'very freely' beyond.[125] Warner was particularly vociferous on the subject of Russia - Britain might now be about to regret the loans made to 'a not over-scrupulous [Russian] despot'.[126] Limited liability, the mark of self-reliance, would reduce national dependence upon loans, and reform thus concerned 'the internal stability of the political system, and, it may be, the destinies of the empire'.[127] Such rhetoric became still more pronounced once war was declared on 27 March.

War also coloured debate at the Liverpool Chamber of Commerce, which held a meeting to discuss limited liability a few days after the declaration. When the Chamber had received its Commission questionnaire, its Council appointed a 10-man committee to consider the response. This reported in favour of limited liability by seven votes to three (one of those three being Brown) but the Council was clearly uncomfortable at this being taken to represent the Chamber's views. At a meeting on 23 January, they resolved to consider the report for another week, and then referred it for further discussion at the imminent annual General Meeting. When held on 6 February, this proved, as *The Times* reported, 'of unusual interest'.[128] It was enlivened by Cunard's associate, Charles MacIver, who by his own admission had never previously attended any Chamber meeting but, incensed at the copy of the committee report he had seen reprinted in local newspapers, arrived at this one 'to stamp my foot upon the report as not being the opinion

[122] Ffooks, *The Law of Partnership*, p.32.
[123] Edward Warner, *The Impolicy of the Partnership Law* (London, 1854), p.10.
[124] Ibid., p.4.
[125] Diary entries for 10 January and 19 February 1854, Buxton papers, British Library, Add. MS 87169.
[126] *The Impolicy of the Partnership Law*, p.43.
[127] Ibid., p.13.
[128] 'Liverpool Chamber of Commerce', *The Times*, 8 February 1854, p.12.

of the Chamber of Commerce'.[129] MacIver called partners who wished to invest without liability 'pickpocket[s]' and took personal offence at government contracts being presented as equivalent to limited liability.[130] Defending the report in response, Charles Holland effectively singled out Brown, as the only member of the committee who had been unable to separate the question before them from self-interest.[131] The Chamber 'would all probably recollect the debate which took place ... upon the question of a charter about eighteen months ago'.[132] He had predicted at the time that, if the Chamber protested against the charter ('which he was happy to say they did not') the company would simply be set up in Canada instead of Liverpool - like the 'thousands' now 'got up in France' and 'trading in this country under fictitious colours'. The divisive report was referred back to the Council who again discussed it 'long and earnestly' at two special meetings on 20 and 27 February.[133] *The Times* reported after the second that 'the attendance of directors was larger than usual, and the council sat three hours and a half, during which a very animated and interesting discussion took place'.[134] The Council then resolved by 12 votes to 8 to follow Holland's procedural recommendation and refer the report to the full Chamber.

The result was three discussion sessions, held at the Liverpool Exchange's Cotton Salesroom on 29 and 30 March and 1 April. These displayed a certain self-consciousness about Liverpool's status as a pre-eminent commercial metropolis, now called upon to debate 'this great question', and included further blunt exchanges, but were mostly good-humoured, and notable for the numbers who attended.[135] 73 were present for the first session, and though this had declined to about 45 by the third, it still represented the largest assembly to address the issue outside London. Chairman Thomas Bouch began by noting the recent history of limited liability's consideration, marked by division. He

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[129] *Liverpool Chamber of Commerce. 4th Annual Report of the Council, presented to the Chamber at the General Meeting, held February 6, 1854* (Liverpool, 1854), p.28.
[130] Ibid., pp.26-7.
[131] Ibid., p.30.
[132] Ibid., p..31.
[133] *Report of the Proceedings at a Special Meeting of the Liverpool Chamber of Commerce, summoned to receive the Resolution on the Law of Partnership; held on the 29th and 30th March, and 1 April, 1854* (Liverpool, 1854), p.7.
[134] 'Partnerships with Limited Liability', *The Times*, 2 March 1854, p.7.
[135] *Report of the Proceedings*, p.5.

expected - correctly - to find opinion still divided. The committee-members who then launched a defence of their report did their best however, to present a picture of near-uniform agreement on limited liability. Reform, they argued, was now opposed only by isolated voices such as the *Law Times* (which had recently declared against the 'monstrous doctrine' of limited liability'[136]) and the *Liverpool Times* (where editor Thomas Baines took the same line as older brother Edward Baines at the *Leeds Mercury*). Speakers at the sessions were evenly split between 11 in favour of limited liability and 10 either equivocal or against. There was no obvious distinction in age or occupation between the two sides.[137] Lamont was one of those to speak for change. He dated 'the beginning of the question now before the meeting' to the refusal of his Canadian charter.[138] He was, he said, proud that the Chamber had resisted the request by Robert Rankin (Chairman of the Liverpool Shipowners' Association) to memorialize the Board of Trade against it. MacIver then took occasion to list all the ship owners who had objected to the charter, including William Lamport. Lamport however, 'reminded Mr MacIver that he had already avowed a change of opinion on this subject'.[139] The session ended with reformists pushing for a vote by those present. This was successfully challenged by their opponents who rightly judged that a general poll would prove more conservative. When taken later, it recorded 107 votes in favour of limited liability and 209 against.[140]

The Liverpool debate attracted considerable press interest, both at the time and when speeches were printed a few months later as a pamphlet. The *Hull Packet* [141] and the *Derby Mercury*[142] joined the *Law Times* ('honoured' to be cited in debate[143]) in opposing limited liability, but most published comment favoured reform. Liverpool was unique in holding such a debate. The Manchester Chamber dealt with the Commissioners' request summarily, by leaving it to four board-members to submit their views. These and opinions from eight other Chambers (Belfast, Dublin, Dundee, Edinburgh, Glasgow,

[136] 'The Law of Partnership', *Law Times*, 25 March 1854, p.2.
[137] See Appendix.
[138] Ibid., p.70.
[139] Ibid., p.77.
[140] As reported to the House of Commons by Brown, *Hansard*, 3rd series, vol. 134, c795 (27 June 1854).
[141] 24 March 1854, p.7.
[142] 21 June 1854, p.8.

Huddersfield, Leeds, Leith) and from the Guild of Aberdeen and the Manchester Commercial Association, were included in the Mercantile Laws Commission Report, published at the beginning of July.

By the time the Commissioners' Report was officially published, it had been widely leaked and discussed in the press for weeks.[144] It was thus already known that the Commissioners had pronounced against limited liability, with three dissenting voices from their younger element, in Bramwell, Anderson and Hodgson. 72 questionnaire responses had been received from individuals within the United Kingdom (and another sixteen from abroad, mostly from lawyers) with views on limited liability that can be broken down as follows:[145]

Merchants:	23	14 in favour, 9 against
Lawyers:	17	13 in favour, 4 against
Bankers/brokers:	12	1 in favour, 11 against
Bank of England directors:	7	4 in favour, 3 against
Writers/academics:	5	5 in favour, 0 against
Manufacturers:	4	1 in favour, 3 against
Other:	4	3 in favour, 1 against

At one end of the spectrum, lawyers and professional political economists gave clear support for limited liability, and at the other, bankers and manufacturers were clearly against it. All six of Manchester's representatives (merchants, manufacturers and a banker) voted against - as had Commissioner Thomas Bazley, a Manchester cotton-

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[143] 'Law Pamphlets', *Law Times*, 17 June 1854, p.134.
[144] See, for example: 'The Law and Lawyers', *Law Times*, 27 May 1854, p.89; 'Limited Liability in Partnership', reprinted from the *Liverpool Mercury*, *The Carlisle Seminal*, 9 June 1854, pp.4-5.
[145] Alternative breakdowns have been given by Bryer ('The Mercantile Laws Commission', p.43) and Taylor (*Creating Capitalism*, p.151). Both combine merchants with manufacturers and treat the different types of banker as one category. This obscures the fact (acknowledged by Bryer) that many merchants favoured change - unlike solidly-conservative manufacturers and private bankers.

spinner and President of the Manchester Chamber of Commerce. Merchants were divided as a group but came down largely in favour - a result reinforced when taken together with the opinions of the merchant-directors or former directors of the Bank of England. We may also note here the unsolicited letters that the Board of Trade received direct from merchants in 1853-4, urging limited liability.[146] The questionnaire-respondents were all men and, successfully established in life, generally middle-aged. Those voting against limited liability tended to be older. Their average age was 60, while the average age of those voting in favour was 50.[147]

Journalists, politicians and other commentators gave their own breakdowns and interpretations of the Commission's results. For limited liability's supporters, the most important point was that a group of conservative Commissioners had overridden a majority vote in favour of change. Slaney, given sight of an advance copy of the Report, gave a talk at the Society of Arts at the end of May, at which he said this result was 'just what might have been expected' from a group drawn from 'eminent lawyers, a few great merchants, but ... no statesmen or representatives from the industrial classes' i.e. a report 'hostile to limited liability, though in favour of charters at a cheaper rate'.[148] Opponents of limited liability were 'timid men, unwilling to move at all, or great capitalists', who gave credence to 'names and authority' rather than 'acts and reasons'.[149] Slaney's talk provoked prolonged debate so that, as in Liverpool, a further session was needed to accommodate it. Edward Heath, one of the authors of the Liverpool Chamber's 1852 report, and Hobart were amongst those who attended. Opposition was led by Elliott and Hawes.[150]

The most important clash occurred however, in parliament, where reformists organised an attack on the Commissioners' conclusions. This was led by Robert Collier, another of the 1852 intake of lawyer-MPs, and at 37 already in command of a considerable legal

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[146] From: William Scholey (London, 19 February 1853); Jacob Player (Devizes, 9 December 1853); John Macfarlane (Manchester, 1 April 1854). BT 22/34/3, nos. 2271 and 636. Macfarlane's letter took issue with Brown and Henry Ashworth (cotton manufacturer and vice-president of the Manchester Chamber of Commerce) and was also sent to the *Manchester Examiner*.
[147] See Appendix.
[148] 'Society of Arts', *Morning Chronicle*, 1 June 1854, p.2.
[149] 'On Limited and Unlimited Liability Partnerships', *Journal of the Society of Arts*, 2 June 1854, p.483.
[150] 'Adjourned Discussion', *Journal of the Society of Arts*, 16 June 1854, pp.507-14.

reputation. Collier had a particular interest in commercial law. In February, he had proposed reforms for the Stanneries courts used for mining litigation, and at the same time proposed making this a pilot test-case for limited liability. If successful, it could be rolled out through 'the whole kingdom, and he would not shrink from the consequences of that'.[151] Other MPs had then lined up in predictable fashion, with Hume and Moffatt in favour, and Brown against. Viscount Goderich, Christian Socialist sympathiser and son of a former prime minister, showed himself a convert to the limited liability cause, revising the position he had taken in the Canadian charter dispute.[152] Cardwell urged reliance upon the 'eminent legal and commercial men' of the Commission.[153]

That position unraveled in the Commons debate held on the evening of 27 June. Collier proposed a motion

> 'That the Law of Partnership, which renders every person who, though not an ostensible partner, shares the profits of a trading company, liable to the whole of its debts, is unsatisfactory, and should be modified as to permit persons to contribute to the capital of such concerns on terms of sharing their profits, without incurring liability beyond a limited amount.'[154]

This was seconded by Goderich and supported by a string of others. Collier questioned the authority of *Waugh v Carver* ('frequently doubted by eminent lawyers'[155]) while Richard Malins - yet another new lawyer-MP from the 1852 intake - attacked the confused legacy of the 1844 Act.[156] In response, Cardwell asked for time to consider the Report, and quoted Tooke's conviction, from an earlier report, that limited liability was self-evidently 'a privilege [without] the shadow of foundation in natural right'.[157] This proved a miscalculation of the House's mood. The idea that the question of partnership

[151] *Hansard*, 3rd series, vol. 130, c309 (7 February 1854).
[152] Goderich supported Cunard in the Canadian charter dispute (to Henley, 13 November 1852, *London, Liverpool, and North American Screw Steam Ship Company*, PP 1852-3 (730) xcv 89-90) but a year later had changed his stance (to Henry Austin Bruce, 3 December 1853, British Library, Add. MS 43534 f11).
[153] *Hansard*, 3rd series, vol. 130, c314 (7 February 1854).
[154] *Hansard*, 3rd series, vol. 134, c752 (27 June 1854).
[155] Ibid., c753.
[156] Ibid., c786.
[157] Ibid., c768.

reform might not yet be 'ripe for consideration'[158] when it had 'been before the country more than twenty years'[159] provoked derision. The subsequent rout provided parliamentary reporters with better entertainment than they were accustomed to get from this subject. The *Manchester Guardian* thought it unfortunate that the government 'should have devolved on Mr Cardwell the task of dealing with Mr Collier's proposition':

> 'as the debate proceeded, it became evident that there really was but one opinion among men of the most varied schools and parties... [A]ll gave in their adhesion to Mr. Collier's doctrine; even Mr. Glyn, the representative of London capital, only hinted a modified disapproval'.[160]

Collier signaled his willingness to accede to government requests from Palmerston and Attorney-General Sir Alexander Cockburn (both declared supporters of limited liability) to wait for debate by a fuller House and 'general concurrence'.[161] MPs' objections showed however, that there 'was no ground for his being content with empty praise when solid pudding was within his reach'. Declining to 'waive the victory which was already at his feet', he secured a resolution 'without even the formality of a division'.[162] An amendment extended it to Ireland.

The Commons debate was a gift for newspapers. The *Manchester Examiner* told readers that it was about 'the letting in of the little man, which of all things the great men dislike.'[163] Limited liability was being resisted - as the electric telegraph and corn-law reform had been - by those with a vested interest in the status quo. Besides Collier, the star of most accounts was Cobden. The *Leeds Times* described his clash with 'six or seven great capitalists who were sitting close to him', and agreed this was an argument the capitalists could not win: 'in offering an opposition to us, you are using the best possible argument against yourselves'. The capitalists had 'all risen to speak at the same time as Mr. Cobden, but only one of them, Mr. Glyn, ventured to rise after Mr. Cobden,

[158] Ibid., c765.
[159] Ibid., c799.
[160] *Manchester Guardian*, 1 July 1854, p.6.
[161] *Hansard*, 3rd series, vol. 134, c798 (27 June 1854).
[162] *Manchester Guardian*, 1 July 1854, p.6.
[163] 'Limited Liability and the Liverpool Chamber of Commerce', *Manchester Examiner*, 5 July, 1854, p.4.

and he had only a few words of submissive deprecations to offer'.[164] Cobden had faced down opposition by lambasting capital's 'tendency to accumulate in great masses and in few hands' as 'one of the social blots in this country'.[165] The *Leeds Times* thought his speech 'magnificent' and endorsed its conclusions. 'If associations of £50 shares for a railway, why not associations of £5 for a mill or a workshop? There is no difference in principle'.[166]

The day after the debate, *The Times* swung into action. Given the 5-3 vote of the Commissioners, it expected it to take time to push through reform, but judged that the current law could not now stand long: 'the question is now settled'. Manufacturing must follow the railways' lead, and governments give up trying to 'spare us the trouble of thinking for ourselves'.[167] Slaney followed this up with a letter to the Editor[168] and Lowe with a characteristically categorical editorial.[169] This ridiculed Board failure to support the attempt to connect Liverpool and Canada by steam -'one of the noblest applications of capital which could possibly have been suggested'. A Commission which continued to think charter-discretion should be left to an arbitrary tribunal was clearly out of touch. 'We cannot pretend to attach much weight to the opinion of such a Commission'.

The wider press was overwhelmingly in agreement. The *Leeds Mercury* stood by its belief that people should not invest in companies if not prepared 'to keep a vigilant eye on their management', but most coverage agreed with *The Times*.[170] The *Morning Chronicle* thought 'that the strong feeling evinced by the House of Commons will lead to the speedy removal of [this] legal restriction'[171] and the *Bankers' Magazine* also thought it 'quite certain that the law as it now stands is doomed'.[172] *The Examiner* however, advised reformists not to get ahead of themselves: 'the capitalists, we may be sure, are not going to give in yet'. The Commons debate had not provided a serious test of likely opposition:

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[164] 'Free trade in Partnerships', *Leeds Times*, 1 July 1854, p.4.
[165] *Hansard*, 3rd series, vol. 134, c785 (27 June 1854).
[166] 'Free trade in partnerships', *Leeds Times*, p.4.
[167] *The Times*, 28 June 1854, p.8.
[168] 3 July 1854, p.10.
[169] 7 July 1854, p.9.
[170] 'Partnership with Limited Liability', 5 August 1854, p.4.
[171] 4 July 1854, p.4.
[172] 'The Report on the Law of Partnership', *Bankers' Magazine*, July 1854, p.423.

> '[A]lthough, in a thin House ... no one was found sufficiently bold to declare himself openly against the manifest feeling of the majority ... neither of the members for Manchester, nor indeed (with the exception of Lord Goderich) for any of the large manufacturing towns [supported] the proposed reform, while Mr. Glynn, so largely connected with the interests of large capital, preserved a strict if not a hostile neutrality ... We must not expect that a question which has equally divided the Liverpool Chamber of Commerce, will be finally disposed of by an abstract resolution of the House of Commons'.[173]

Comment extended to a wide range of publications. London weekly *The Era*, a trade publication for the entertainment industry, expected to see the issue 'discussed again and again before the matter is ripe for legislation'.[174] In the *Bankers' Magazine*, James Knight and J.W. Gilbart re-iterated their now-familiar stances for and against limited liability for banks.[175] The *Law Times* was willing to allow for liability-protection for dormant partners whose names were not used publicly, but anything more would be 'the most daring violation of the cause of justice and morality ever proposed in this country'.[176] The *Law Review* enjoyed giving full rein to rhetoric: large capitalists - 'those flourishing pets of the reporting Commissioners'[177] - had received a clear message from MPs. Unreformed partnership law that treated workers as 'the mere serfs of capitalism' could not stand long.[178] Limited liability was now 'feared by the capitalist, as the repeal of the Corn Laws was by the landed proprietor'.[179] The *Legal Observer* agreed with the sentiment but, like others, anticipated disagreement as to the exact *'mode of proceeding*'.[180]

Opinion had now divided into two camps. On the reformist side, Bramwell was added to the roster of supporting authorities, while Manchester manufacturers had emerged as a

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[173] 1 July 1854, p.407.
[174] 'Profits of Trade and Liabilities', *The Era*, 2 July 1854, p.9.
[175] *Banker's Magazine*, July 1854, pp441-3; October 1854, pp.563-6.
[176] *Law Times*, 29 July 1854, p.186; 23 December 1854, p.142.
[177] 'On the Law of Limited Liability', *Law Review*, vol. 21, no. 42, November 1854 - February 1855 (London 1855), p.317.
[178] Ibid., p.326.
[179] Ibid., p.325.
[180] *Legal Observer*, 2 December 1854, p.81.

centre of opposition. One of them, Henry Ashworth took the opportunity presented by discussion of the recent Preston strike to re-iterate his opposition to limited liability - an assault on 'the absolute freedom which the English capitalist demands'. He also attacked the 'impertinent' Society of Arts conference of the previous January, which, he said, had produced an entirely predictable result. The 'literary men present risked nothing' in supporting limited liability - unlike the 'master manufacturers whose capital it was proposed to put in fetters'. Proposals to share commercial power in partnership with workers were 'impracticable and useless'.[181] *The Economist*, whilst it had backed Collier's motion and reform[182], also thought worker-conciliation claims for limited liability futile. William Pare's suggestions, in a paper for the Dublin Statistical Society, were summarily dismissed.[183]

Meanwhile, the expectation of legislation had produced an uncertain state of affairs for charter applicants, unsure whether to press ahead with an application or await reform. In July, Manchester MP John Bright asked Cardwell, on behalf of a Manchester and Liverpool steam-ship company, if the government intended to bring in a Bill in the next parliamentary session? It was 'not a very easy task to get at the information'.[184] Cardwell again played for time: when the matter had been 'fully considered, then the determination of Government would be known'.[185] In October another company was told that Board charters had now been suspended, pending expected legislation.

A briefing paper for government 'determination' was being prepared by James Booth, fifty-seven year old Secretary to the Board of Trade, and widely believed to be opposed to limited liability. Field, who had addressed his pamphlet to Booth as an old friend and colleague, said that he was aware he was there attacking 'theories which I fear you approve'.[186] In the *Confidential Report* delivered at the beginning of November, Booth largely fulfilled those fears. He believed it:

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[181] Henry Ashworth, *The Preston Strike, an enquiry into its causes and consequences.* (Manchester, 1854), pp.64-6.
[182] 1 July 1854, pp.698-700.
[183] Review of William Pare, 'The Claims of Capital and Labour; with a sketch of practical measures for their conciliation', *The Economist*, 2 September 1854, p.963.
[184] *Hansard*, 3rd series, vol. 130, c1045 (31 July 1854).
[185] Ibid., c1047.
[186] *Observations of a solicitor*, title-page.

> 'impossible in a trading community such as that of this country to frame any system of limited liability which will not have the effect of opening the door widely to uncertainty, fraud and litigation ... I feel very strongly that the cry for limited liability in general, whether in the way of *commandite* ... or of joint-stock association, should be resisted.'[187]

If however, 'the cry ... should prove too strong to be resisted in the House of Commons', then the double liability used for colonial banks might 'very considerably mitigate [limited liability's] evils'.[188] He also recommended that joint stock companies should be required annually to make good their nominal capital. Booth's overriding concern was however, to minimise use of limited liability, as he argued that the burden of proof lay with those wishing to introduce change. Overseas experience was rejected as inapplicable to England's situation, and the Mercantile Commissioners' Report mentioned only for Overstone's comments on the unreliability of company accounts. Booth thus ruled out the possibility of a general limited liability rule (on the grounds that there would not then be an option in practice) as well as the need for reform for very small businesses. He also dismissed arguments about workers' grievances, and thought government should '[endeavour] by its legislation rather to discourage than to encourage the poorer and less educated classes from risking their money in enterprises that must necessarily be hazardous or doubtful'.[189] *Commandite* was criticised as a flawed compromise, in which neither managing- nor investing-partners would feel the necessary sense of ownership. Such exceptions as Booth was prepared to suggest were confined to large joint stock companies, showing the influence of American rather than French example. This was not however, followed up with a recommendation for American-style industry-specific statutes. Booth acknowledged the particular interest in charters shown by shipping companies, and ruled out making any change in banking and insurance, but otherwise made little reference to industry discrimination. Rather, he recommended an across-the-board line for qualifying joint stock companies (which would still have to secure a charter), in a minimum capital requirement of £500,000 for shipping companies and

[187] James Booth, *The Question of granting Limited Liability to partnerships. Confidential Report of the Board of Trade* (London, 1854), pp.5 and 15.
[188] Ibid., pp.6 and 15.

£200,000 for others - a size-based demarcation which was to prove important.

In preparation for the expected government proposal, the Law Amendment Society held a meeting on 6 November at which Andrew Edgar, a bankruptcy specialist, reviewed the case for reform.[190] This was followed by resolutions which set out proposed requirements (and showed that they were unlikely to be satisfied by Booth's framework).[191] These included a recommendation that any *commanditaire* partners should be required to register their capital-interest. This was not in itself surprising, having first been recommended in the Society's 1849 report[192], but was to provoke controversy. Meanwhile, with still no government announcement, *The Times* was soon talking of '[w]ell-founded complaints' at the legislative delay.[193] It had 'never expected that [a] manifestation of the growth of public opinion in favour of a broader principle' would result in no action, a suspension of the 'palliative provision' of Board of Trade charters, and an even worse state of affairs than before. The seriousness of the situation was exacerbated, it said, by the 'anxieties of the war' - a company that hoped to make paper from flax (as opposed to the hemp previously supplied by Russia) was unable to secure a charter.[194] The *Journal of the Society of Arts* reprinted the comments in support[195] - and prompted a reply from John Elliott, saying that it was no loss if joint stock companies were 'in abeyance' and only 'lawyers, philosophers, litterateurs, poets [and] painters' wanted limited liability[196]. In late December *The Times* noted 'fresh remonstrances' made to the Board about the need to act, and renewed the call in its New Year editorial.[197] Hopes appeared to be realised when on 23 January Cardwell gave notice to bring in 'a bill to amend the law of partnership'.[198] This was tabled for the following Monday, 29 January, but wider events then took a hand. When the Monday

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[189] Ibid., p.14.
[190] Andrew Edgar, *A Paper on Partnerships upon the principle of Limited Liability. Read at a General Meeting of the Law Amendment Society, November 6th, 1854.* As reprinted, *Law Review*, November 1854-February 1855 (London, 1854) pp.367-77.
[191] Ibid., p.375.
[192] *Report of the Committee on the Law of Partnership on the Liability of Partners*, p.4.
[193] 'Money Market and City Intelligence', 2 December 1854, p.19.
[194] 'Money Market and City Intelligence', 6 December 1854, p.7.
[195] 'Law of Partnership', *Journal of the Society of Arts*, 8 December 1854, pp.58-9.
[196] 'The Law of Limited Liability in Partnerships', letter from J. A. Elliott, 15 December 1854, pp.77-8.
[197] 'Money Market and City Intelligence', 20 December 1854, p.8; 1 January 1855, p.6.
[198] As reported in *The Times*' parliamentary coverage, 24 January 1855, p.4. See too 'Money Market and

came, the expected parliamentary business was postponed, as the government was besieged by questions about the war. Aberdeen's Ministry fell under the pressure of a threatened inquiry into the war's conduct and, as Taylor has put it, Cardwell's Bill was 'lost in the wreckage'.[199]

Taylor's account is also notable here, for its questioning of Hilton's belief that Aberdeen's departure now marked a turning-point in limited liability's fortunes.[200] Taylor argues that this overlooks the Aberdeen government's concrete attempt to introduce change, with Cardwell's Bill. This is no doubt fair enough, but the end of Aberdeen's ministry was surely still a turning-point. The new prime minister, Palmerston, was a declared supporter of limited liability, and his ministry saw the departure of several Peelites and other intuitive conservatives.[201] Over the first few months of the new administration, Gladstone and Sir James Graham, as well as Whigs Lord John Russell and Sir Charles Wood - all known opponents of limited liability[202] - left their Cabinet posts.

Cardwell was still at this point in place at the Board of Trade. The press continued to anticipate the re-presentation of his Bill,[203] although nothing was tabled. Meanwhile, a split had developed in the Law Amendment Society over investor-partner registration, as recommended in the resolutions that followed Edgar's presentation. Field was adamant that this represented a wrong-turn. In a 26 February presentation to the Society[204], he took on opponents, and after a protracted tussle 'over five evenings', secured a narrow victory, confirmed in a further set of resolutions on 7 May.[205] Field's was now the

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City Intelligence', 25 January, p.5, and 'Parliamentary Notices', 29 January, p.7.

[199] *Creating Capitalism*, p.153.

[200] Ibid., citing *Age of Atonement*, p.258.

[201] Lamont evidently took this view - see p.209. Lowe also attributed the delay in tabling parliamentary bills to 'the disfavour of the Board of Trade authorities and, as has been generally understood, of the Peelite section of Lord Aberdeen's Ministry', *The Times*, 7 August 1855, p.8.

[202] Gladstone's and Wood's views are discussed above, pp.91 and 131; Graham backed the 1853 Commissioners' Report when speaking against the second Partnership Bill in the 4 July 1856 Commons debate (*Hansard*, 3rd series, vol. 143, c347), and voted against the Bill in the subsequent division; Russell told McCulloch he was 'much disposed to agree' with his aversion to limited liability, Russell to McCulloch, letter of 5 May 1856, *The Correspondence of Lord Overstone* ed. D. P. O'Brien, vol. II (Cambridge, 1971), p.646.

[203] For example, *The Inquirer*, 3 March 1855, p.137.

[204] 'Limited Liability Partnerships. What should be the frame of the law to establish them?', published in advance of Field's presentation in the *Legal Observer*, 27 January 1855, pp.229-30, and afterwards in the *Law Review*, May - August 1855 (London 1855), pp.138-49.

[205] As reported in 'Limited Liability. Parliamentary conflict of views on the right way to establish this law',

Society's official position.

Field was supported in his stand against registration by Cecil Fane, who chaired the 7 May meeting and published his own hard-hitting pamphlet about this time. As Edgar had done, Fane drew a distinction (without any supporting evidence) between sectors that were and were not affected by lack of limited liability. Manufacturers could afford to oppose reform because they were not personally short of capital. Other enterprise was however, being deprived by the self-interest of 'wealthy capitalists' - a 'large and influential class, [who] believe limited liability to be hostile to their interests, and [have] surrounded [the question] by a halo of delusion'. But, said Fane, 'knowledge of the truth [has spread] and resistance to the supremacy and exclusiveness of the mercantile magnates is beginning to prevail.'[206]

Fane could point to good grounds for his claim, but opposition now included lawyers with doubts about the detail of partnership proposals, as well as established sceptics. A *Law Magazine* article recommended a 'breathing pause' before legislating, and rejected Field's advocacy of non-registration arguments from the US ('of all countries, [that] whose example we should least readily follow').[207] The more categorical opposition of Manchester manufacturers was energetically represented by Edmund Potter, a successful calico printer in his early fifties, who now published a pamphlet under his own name[208], and sent letters to the press as 'A Manchester Man'. His pamphlet was generally well-received, although *The Economist* did not think it would do anything to stop demands for reform.[209] In urging personal responsibility for business debts, Potter knew whereof he spake, since his early career had included a failed partnership, whose debts he later

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Legal Observer, 14 July 1855, p.193 and 'Limited Liability in Partnerships', *Law Review*, May-August 1855 (London 1855), p.355. Field also referred to the 'seven nights' discussion last year' on the point, 'Special General Meeting of the Society, 18th February 1856', *Law Amendment Journal*, vol. 1 (London 1856), p.3.

[206] R.G.C. Fane, *Limited Liability: its necessity as a means of promoting enterprise* (London, undated), pp1 and 5-6. The pamphlet can be dated to early 1855 by internal references, which show it was written after the Law Amendment Society resolutions of November 1854 and before the late-May1855 announcement of two parliamentary Bills.

[207] 'Unlimited Liability', *The Law Magazine*, February- May 1855 (London 1855) vol. 22, pp.149-53, p.149.

[208] Edmund Potter, *Practical Opinions against Partnership with Limited Liability, in a letter to a friend* (London, 1855).

[209] *The Economist*, 27 January 1855, p.94.

discharged. This did not however, feature in his public statements on limited liability, more concerned to reject American lessons for British manufacturing. Britain did not, he said, need props suitable for nations in their infancy. Americans were now coming to realise that limited liability was 'rather a bar [to prosperity] than otherwise' and changing their own ways, as they matured.[210] This was a common narrative-structure amongst liability-conservatives. Another, Swinton Boult, told the Liverpool Literary and Philosophical Society that the US was now approaching the point when it might do without limited liability.[211] And Boult had some other robust rejoinders for reformists. Arguments that unlimited liability had a detrimental effect on joint stock banks were 'a mere fiction'[212], and claims to social concern, merely 'self-interest [taking] the guise of consideration'.[213] Ship owners too were continuing their battle with railway interests, with a petition to block the Manchester, Sheffield and Lincolnshire railway's move (backed by limited liability) to charter steam vessels.[214]

With Board of Trade charters suspended, the only possible route for such a move was a private parliamentary bill. *The Times* reported that the flax-paper company had had to resort to the 'trouble and expense' of one[215], and a letter to *The Economist* complained at the continuing 'indefensible' delay by 'our "aristocratic" government'[216]. On 22 March, with the paper company's Bill raising questions in the House of Lords, Lord Derby asked Board of Trade Vice-President, Lord Stanley of Alderley if the government had any intention of acting. Stanley said in response that a Bill should be expected shortly after Easter (8 April).[217] This was not to be presented by Cardwell, who left the Board on 31 March.[218] He was succeeded by Stanley, with Edward Pleydell-Bouverie becoming Vice-President. After one more false start and last-minute postponement[219] - and yet

[210] Potter, *Practical Opinions*., pp.45 and 60.
[211] Swinton Boult, *Trade and Partnership: the Relative Duties and Proper Liabilities of the Merchant and the State* (London, 1855), pp.33-4.
[212] Ibid., p.22.
[213] Ibid., p.12.
[214] As reported in 'Limited Liability in Shipping Affairs', *Hull Packet*, 18 May1855, p.6.
[215] 'Money Market and City Intelligence', 27 February 1855, p.8.
[216] 'Limited Liability', 17 March 1855, p.286.
[217] *Hansard*, 3rd series, vol. 137, cc 943-7 (22 March 1855).
[218] *The Times* referred to Cardwell on 27 February as 'the late President of the Board of Trade' ('Money Market and City Intelligence', p.8) although he had not then been replaced.
[219] 10 May postponement of the Bills due to be introduced the following day, Palmerston, House of

more questions about the paper company[220] - a Partnership Amendment Bill and Limited Liability Bill were finally put before Parliament for a First Reading on 27 May.

Legislation

The 1855 Partnership Amendment Bill[221] sought to allow individuals to invest in small partnerships without personal liability (but with registration) while the Limited Liability Bill[222] provided for investment in companies of a minimum capitalisation of £20,000, with shares of £25+. Banks and insurance companies were excluded - as too was Scotland since, as was confirmed in answer to a parliamentary question, the proposals used the 1844 Act's registration 'machinery', and this covered only England and Ireland.[223] The Political Economy Club marked the Bills' presentation with one of its traditional airings of the topic, with Bramwell in attendance.[224]

It was not until late June however, that the House of Commons had the opportunity to debate the Bills, in a 'thin' House.[225] (This despite there being, according to one participant, 'probably no subject of domestic legislation which attracted more general attention'.[226]) By this time, the session was 'practically over except as concerns the Limited Liability Bills', so that there was little of domestic political interest to distract attention.[227] The Bills were introduced by Bouverie, in a speech that made all the usual references to Ireland, inventors, the railways and French and American example. The fact that companies were set up abroad to circumvent the law showed, he said, the 'futility' in trying to restrict capital.[228] A Board of Trade review had revealed the arbitrary nature of past awards, and confirmed that the Board had been given a duty it was 'not competent to

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Commons, *Hansard*, 3rd series, vol. 138, c296.
[220] *Hansard*, 3rd series, vol. 138, cc 867-72 (22 May 1855).
[221] 1854-55(151). A bill to amend the law of partnership. 25 May 1855. 18 Vict.
[222] 1854-55 (150). A bill for limiting the liability of members of certain joint stock companies. 25 May 1855. 18 Vict.
[223] Question put by Alexander Dunlop, *Hansard*, 3rd series, vol. 138, c1407 (5 June 1855).
[224] Discussion of 7 June 1855. *Political Economy Club. Minutes of Proceedings, 1821-1882,* p.185.
[225] *Hansard*, 3rd series, vol. 130, c342 (29 June 1855).
[226] Cardwell, ibid., c342.
[227] Goderich, letter to Bruce, 19 June 1855, BL Add MS 43534 f23.
[228] *Hansard*, 3rd series, vol. 130, cc310-329 (29 June 1855).

perform'.[229] People cited fraud as an argument against reform, said Bouverie, because they noticed fraud cases, and not the honest majority (an emphasis on the aggregate which was to be a recurrent theme). The best protection against fraud was to ask people to protect themselves. Bouverie disowned the Mercantile Commissioners' efforts as 'very meagre and unsatisfactory', and urged reform in the name of free trade and free competition.[230]

This was supported by Collier, who said, in common with other speakers (and *The Times*[231]), that the Limited Liability Bill was the more important of the two. He asked that the government reduce its minimum capital requirement to £10,000, with shares of £10, and also asked them to cancel the Partnership Bill's provision imposing unlimited liability for failure to comply with registration requirements (to which Bouverie agreed). He urged MPs not to block the Bills if, like him, they thought they should go further. It was important to secure a vital principle in law. The country's greatest undertakings were owing to limited liability and the proposed reforms would 'bridge over the gulf which divided capital and labour'.[232]

Opposition was led by Glyn, who warned MPs not to rush into rash legislation - a request which brought the predictable riposte that 20 years should have been enough time for collective reflection.[233] Glyn backed registration for investor-partners, as did some supporters of the Bills, including Richard Malins.[234] Hugh Cairns, yet another fast-rising lawyer from the 1852 intake, anticipated that the Partnership Bill would fail because of such contention.[235] He also thought the Limited Liability Bill the more important, and that its capital requirements should be reduced. Cardwell recommended his own earlier Bill for government consideration,[236] with a lengthy disquisition that gave Lowe the opportunity to score points at his expense ('you could hardly tell on which side the right

[229] Ibid., c325.
[230] Ibid., c328.
[231] 'The [Bill] for which the public cares most is the Limited Liability Bill', Leader, *The Times*, 26 June 1855, p.8.
[232] *Hansard*, 3rd series, vol. 130, cc329-333 (29 June 1855).
[233] Ibid., cc335-6.
[234] Ibid., c338.
[235] Ibid., c354.
[236] Ibid., c344.

Hon Gentleman argued with greater cogency'[237]). Lowe himself urged a more comprehensive re-definition of partnership - the end of the Usury laws had cleared the way, and the Partnership Bill would not work in its current form. He disagreed with Collier's claim that the Bills would combat labour antagonism - the Limited Liability Bill's minimum capital requirement favoured the rich, and 'Had any hon Gentleman ... given a shadow of a reason for conferring on a Joint-stock Company an advantage which was not given to a grocer's shop?'.[238] Brown and Archibald Hastie added their opposition to Glyn's, and Liverpool MP Thomas Horsfall asked that the Partnership Bill be left to the next parliamentary session.

In the sessions that followed, rhetoric resolved into conservatives' insistence that the Bills were unwanted by commerce - purely 'theoretical'[239] - and reformists' counter-claims that they were wanted by MPs and the wider community. John Bright reported that 'wherever he went he met with the most anxious enquiries with regard to the passing of the Bills'.[240] Following a proposal by Goderich, the Commons scrapped the Limited Liability Bill's minimum capital requirement in Committee (and reduced the minimum share-price to £10).[241] This was applauded in the press - 'as [MP] Mr Henley pertinently asked, does Free Trade stop at 20,000*l*?'[242] Cairns' attempt to reduce the minimum number of company members required by the Limited Liability Bill from 25 to six was however, narrowly defeated in a division.[243] Another Cairns proposal - for an alternative Bill that made every joint stock company a corporation - met with some technical approval amongst his peers but also failed.[244] Much press comment agreed with Lowe that the Partnership Bill was a poor compromise, but registration continued to divide opinion. The *Law Review* printed a piece that argued against the stance of Field, Fane and Lowe,

[237] Ibid., c350.
[238] Ibid., c352.
[239] Muntz, *Hansard*, 3rd series, vol. 139, c1380 (26 July 1855).
[240] *Hansard*, 3rd series, vol. 139, c1352 (24 July 1855).
[241] PP 1854-55 (279). A bill [as amended in committee and on re-commitment] for limiting the liability of members of certain joint stock companies. 31 July 1855. 18 & 19 Vict.
[242] *Daily News*, 27 July 1855, p4. The point was also made by Bill opponents such as the *Leeds Mercury*, 5 July 1855, p.2.
[243] *Hansard*, 3rd series, vol. 139, cc1518-9 (30 July 1855). Ayes 27, Noes 39.
[244] Discussed by the *Legal Observer*, 'Limited Liability. Parliamentary conflict of views on the right way to establish this law', 14 July 1855, p.195. Lowe was less complimentary about Cairns' suggestions, *The Times*, 7 August 1855, p.8.

but backed them in its own editorial.[245] The *Legal Observer* agreed, and summarised this position as 'Repeal *Waugh v. Carver* and leave the rest to Nature'.[246] Field's victory at the Law Amendment Society had been followed by appointment of a committee (which included Lowe), charged with '[waiting] on the Vice-President of the Board of Trade, to urge upon him the importance of excluding all provision for compulsory registration from the Bill now ... in preparation'.[247] By the time the deputation visited the Board on 16 June,[248] preparation was complete, and Field quoted Troubat to Stanley of Alderley and Bouverie in order to try and convince them to amend their existing Bill.[249] This was followed by a Memorial to the Commons, presented by Edgar, Field, George Hastings and William Hawes.[250] As Cairns had predicted however, the Partnership Amendment Bill sank under the weight of registration difficulties (and lack of time) and was abandoned. When the Limited Liability Bill was sent to the Lords, Stanley of Alderley, as the government representative there, faced committed opposition, led by Monteagle. Stanley's own affiliation to the league was apparent - Lamont's Canadian case had first convinced him of the 'very objectionable state of the law of partnership'[251] - and he cited the 'almost universal opinion of the country, as indicated by the public Press' to counter objections.[252] He failed however, to withstand pressure for additional 'safeguards'[253] and indeed seems to have felt from the outset that a cautiously-constrained measure was the wisest course - this to avoid antagonizing 'shopkeepers' in the Commons, and Conservatives who might otherwise take the 'weighty authority of great Commercial Names' as an excuse to oppose the government. If opposition proved as weak as

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[245] 'Limited Liability in Partnerships', *Law Review*, May-August 1855 (London, 1855), pp.355-68. Answered by 'Note by Editor', pp.367-8.
[246] 'Limited Liability. Parliamentary conflict of views on the right way to establish this law', *Legal Observer*, 14 July 1855, p.193.
[247] *Legal Observer*, 14 July 1855, p.193. The Committee members are listed as Fane, Field, Richard Couch, Frederic Hill, George Woodyatt Hastings, Thomas Anstey and Lowe.
[248] 'Report of the Deputation to the Board of Trade', 'Twelfth Annual Report of the Society for Promoting the Amendment of the Law', *Law Review*, May- August 1855 (London, 1855), pp.399-414. The deputation consisted of: Anstey, William Ayrton (a bankruptcy commissioner), Couch, Edgar, Fane, Field, Hastings, William Hawes (who, though he expressed doubts about limited liability, had no doubts as to the inadvisability of registration if it were introduced) and Frederic Hill. Brougham also took this position, 'Extract of Letter from Lord Brougham to the Earl of Radnor', *Law Review*, November 1855 - February 1856 (London, 1856), p.72.
[249] 'Report of the Deputation to the Board of Trade', p.405.
[250] As reported in *The Times*' 'Money Market' column, , 25 July 1855, p.7.
[251] *Hansard*, 3rd series, vol. 139, c1919 (7 August 1855).
[252] Ibid., c1896.

Palmerston anticipated, minimum requirements could later be reduced.[254]

The Limited Liability Bill was thus sent back to the Commons with a string of amendments, deplored by government supporters there but largely accepted as the price of pushing through legislation. Following government pressure and what the *Daily News* called a 'burst of patriotic lava' from 'a sudden and menacing eruption of Mount Palmerston', the Bill passed its third Commons reading on 11 August.[255] The resultant Limited Liability Act 1855 confirmed limited liability for members of companies of 25+ shareholders (holding at least 75% of the nominal capital, with at least 20% paid-up) who were willing to sign up to the prescribed terms of a deed of settlement.[256]

Chambers of Commerce had taken a close interest in proceedings throughout. All approached matters from a partnership perspective, with even the Manchester Chamber conceding there was 'no doubt that some amendment [to partnership law] is needed'.[257] They were unclear however, as to what this might be, beyond an insistence upon investor registration. This focus might have been predicted, since the compulsory registration of all partners was a long-standing request, independent of limited liability.[258] The newly-revived Birmingham Chamber gave an unconditional endorsement of the Partnership Bill (on the understanding it included registration), but a lone Council-member who proposed that the Limited Liability Bill be similarly endorsed could not find anyone to second it.[259] The Chamber sent a petition asking that it be postponed.[260] The Glasgow Chamber, supported by local MP Alexander Hastie, sent Memorials against both Bills.[261] Leeds also asked for amendments, despite apparently having concluded by early July that the Partnership Bill would not pass in the current session. A petition asking the Lords to

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[253] *Hansard*, 3rd series, vol. 139, c2046 (9 August 1855).
[254] 15 May 1855 letter to Palmerston, GC/ST/12/1, Broadlands papers, University of Southampton
[255] *Daily News*, 27 July 1855, p.4.
[256] 18 & 19 Vict c133 (Limited Liability). 14 August 1855.
[257] 'Report of the Annual Meeting of the Manchester Chamber of Commerce, *Manchester Guardian*, 10 February 1855, p.8.
[258] The Manchester Chamber memorialised the Board of Trade for this in 1841, Minutes, M8/2/4, ff152-5, f161.
[259] Meeting of 20 June 1855, Chamber of Commerce Midland District Minutes 1855-61, Birmingham Chamber of Commerce, p.22.
[260] Ibid., p.23.
[261] Memorials received 17 July 1855, Board of Trade ref 1253, 'Registration of Partnerships - History of agitation and attempted legislation', BT22/34/3.

postpone the Limited Liability Bill arrived too late.[262] The Liverpool Chamber's President optimistically hoped that feelings might have cooled since their last discussion ('differences of opinion which then existed, I think I may say, are lessened now') but the reformist Council could not bring itself either to represent views with which it disagreed or to take on a conservative Chamber-membership, and resolved the dilemma by opting out altogether: 'the Directors have considered themselves precluded from using the influence of the Chamber on the bills brought into Parliament'.[263] The February 1856 General Meeting noted a member's comment that it was regrettable if politicians legislated on commercial questions without 'the cognizance and consent of such an important commercial body as this', and that 'more might have been done'.[264] The Manchester Chamber thought all the bills' proposals, other than servants taking a profit-share without incurring liabilities, 'so subversive of that high moral responsibility which has hitherto distinguished our Partnership Laws, as to call for their strongest disapproval'.[265] Edmund Potter, now on the Manchester Chamber board, went with a delegation to London to petition against both Bills (Stanley quoted press comment to them, in return[266]). An attempt to involve other Chambers in this came to nothing.[267] Undeterred, Potter, Bazley and Ashworth mustered local support from beyond the Chamber, and sent another petition, from the 'Bankers, Merchants, and Manufacturers of the City of Manchester', to the House of Lords.[268] The Manchester Commercial Association, less rigidly conservative, sent petitions 'cordially approving' (subject to amendment) the Partnership Bill, but anticipating 'much injury' to the public from the Limited Liability Bill's support for joint stock.[269] Potter continued too his personal campaign to overturn the weight of press opinion: another pamphlet re-iterated his view

[262] Meetings of 4 July, 11 July, 30 July and 15 August 1855, Leeds Chamber of Commerce Minutes of Proceedings, 1851-70, Brotherton Library, MS Dep. 1951/1/2, ff 196, 197, 198 and 200.
[263] *Liverpool Chamber of Commerce. 6th Annual Report of the Council presented to the Chamber, at the General Meeting, held February 4, 1856* (Liverpool, 1856) p.6.
[264] Ibid., p.20.
[265] 'Petition to Commons - Limited Liability', 13 June 1855, Proceedings of the Manchester Chamber of Commerce, 1849-58, M8/2/5, f448.
[266] *Hansard*, 3rd series, vol. 139, c1896 (7 August 1855).
[267] 1 August 1855, Proceedings of the Manchester Chamber, M8/2/5, f451.
[268] Meeting of 9 August 1855, Proceedings of the Manchester Chamber, M8/2/5, ff452 and 456-7.
[269] Meetings of 4 July, 9 August and 3 October 1855, Manchester Commercial Association Minutes, 1845-58, M8/7/1. Copies of petitions, 3 October 1855.

that '[n]either a domestic household nor a mill can answer conducted as a republic'[270] and said that the Preston strike should have taught workers that a limited liability-enabled share in business was 'not so apparently valuable'.[271] A letter to *The Economist* urged the railways to adopt the unlimited liability standards of manufacturing partnerships.[272]

This was in marked contrast to opinion exhibited in the press, where each round of parliamentary opposition was met with a blitz of comment - notably a display of sustained *chutzpah* from Lowe in *The Times*. Messrs 'Muntz, Glyn, W. Brown, Strutt, Spooner, J. Forster, Mitchell and Hastie' - 'all capitalists' - were pilloried as the block to reform:

> 'it does really seem to us a most invidious proceeding that a dozen wealthy men ... should come down to the House in a body for the purpose of debarring the man with small means from using those means to the best advantage, except at the risk of everything he has in the world ... This evident conspiracy of capitalists, unbecoming and suspicious enough in itself, wears a still uglier aspect when it resorts to the pettiest mode of opposition [and exploits] the forms of the House.'[273]

This was a reference to a Lords procedural objection, interpreted by their opponents as a stalling tactic, designed to see that the Bills would run out of time. Palmerston dealt with that by threatening to sit through September. The press claimed the result as a victory for '[p]ublic opinion', although 'the secret hostility of the capitalists is not the less active'.[274] Disraeli ridiculed the amount of government time devoted to limited liability - a distraction, he said, from the war[275] - and even those who supported reform thought Palmerston's pose partly 'an electioneering squib'.[276] The pro-limited liability *Daily News* sympathised too with questions raised by Cairns and Samuel Laing (another lawyer who

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[270] *Practical Opinions*, pp.15-6.
[271] *The Law of Partnership. A Reply to the Speech of the Right Hon E.P. Bouverie, MP Vice-President of the Board of Trade, on moving the second reading of the "Partnership Amendment Bill" in the House of Commons, on Friday June 29th, as reported in "The Times" of the following day. By a Manchester Man* (London, 1855), p.13.
[272] 'A Manchester Man', letter to the Editor, *The Economist*, 13 October 1855, p.1128.
[273] Leader, *The Times*, 28 July 1855, p.8.
[274] *Daily News*, 27 July 1855, p.4.
[275] *Hansard*, 3rd series, vol. 139, cc810-12 (12 July 1855).
[276] *Daily News*, 27 July 1855, p.4.

had entered Parliament in 1852) - not to be confused with 'the stupid commercial Toryism' of Archibald Hastie.[277] Pushing through change undoubtedly became a test of government competence[278] but also gained popular momentum, of which press reports give a flavour. When the half-yearly meeting of the London, Brighton and South Coast Railway was told that Laing had been unable to attend, because of 'his anxiety to be in the House during the reading of the bill for limited liability', the announcement was greeted with 'cheers'.[279] Reformists enjoyed taking rhetorical pot-shots at 'decoy ducks', 'commercial feudality' and Lord Overstone.

Against this background, the Limited Liability Act was seen on all sides as an 'instalment' only.[280] The *Legal Observer* had anticipated that some 'expiatory ceremony of registration' might be necessary to secure a limited partnership Act, but was disappointed to see no such Act at all.[281] Parliament had, in its view, 'passed the wrong Bill; though perhaps ... the most pressing'. The task now was to address the 'defects'.[282] Edward Cox attributed the new Act to some 'insulting' and 'disreputable' parliamentary tactics[283] and considered that the law had departed from 'righteous' rule.[284] He nevertheless advised people to engage with the results, and ensure they obtained whatever protection was available. Barrister George Sweet, who had earlier argued that the law had erred in making limited liability 'routine' for railways[285], said the same and now published a guide to the new Act's provisions. In it, he made plain his belief that these had been foisted on the public by 'a well organized agitation by some capitalists and speculators, who have been unable to obtain charters from the Board of Trade'.[286] These had, he said, never intended that the Partnership Bill should pass. He was not alone in thinking this or in blaming organized agitation - Potter also said that '[t]he whole thing was in the hands of

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[277] Ibid.
[278] Ibid. For the same point made by an opponent of the Bills, see *Leeds Mercury*, 5 July 1855, p.2.
[279] *Daily News*, 27 July 1855, p.6.
[280] 'Limited Liability', *The Economist*, 25 August 1855, p.925.
[281] 14 July 1855, p.193.
[282] 'Limited Liability. Result of the recent Act and its defects', *Legal Observer*, 8 September 1855, p.353
[283] *Law Times*, 11 August 1855, p.221.
[284] Edward Cox, Preface, dated 2 October 1855, to *The Law and Practice of Joint-stock Companies* (London, 1855).
[285] George Sweet, *Limited Liability. Observations*, p.35.
[286] George Sweet, Preface, dated 2 September 1855, to *The Limited Liability Act, 1855, and the acts for the registration, incorporation and regulation of joint-stock companies (7&8 Vict c110, 10&11 Vict c78) under*

the lawyers and certain capitalists in London'[287] while the *Liverpool Daily Post* stated bluntly that 'the demand for the new permissive law originates in those who have found the Board of Trade insufficiently flexible in conceding charters'.[288] Sweet was answered publicly by Field's ally at the *Legal Observer*, Robert Maugham, who said - sarcastically and probably disingenuously - that the idea of agitators having co-opted 'a large portion of the public press' was news to him. Mr. Sweet must know better of course, since he gave his opinion so confidently, but he preferred to think that reform had come about because 'a masterly argument [by] Mr. Bramwell [seemed] to a majority of the Legislature, unanswerable and conclusive'.[289]

Hopes of a more comprehensive law now largely rested with Lowe, who had replaced Bouverie as Vice-President of the Board of Trade during the latter stages of the Limited Liability Bill's passage. A new Partnership Amendment Bill and a Joint Stock Companies Bill were published on 1 February 1856, and the following week, Lowe tabled limited liability for discussion at the Political Economy Club.[290] On 18 February, the Law Amendment Society set up a committee to consider its own response.

Those impatient to see broader change clearly felt they had the right man in Lowe. The *Bankers' Magazine* welcomed the appointment of 'the most thoroughly practical trade minister the country has for many years seen' and applauded the 'boldness and comprehensiveness of conception, combined with a mastery of detail' shown in his Commons presentation of the two Bills.[291] Lowe now had like-minded support at the Board of Trade, in secretary Thomas Farrer, working with parliamentary draftsman Henry Thring and Bramwell.[292] This inner circle evidently relished taking on Cardwell ('mercilessly chaffed') and Overstone, labeled by Lowe the 'Common Vouchee' - a

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which companies with limited liability are to be formed (London, 1855), p.v.

[287] Manchester Chamber of Commerce Annual General Meeting, 4 February 1856, Proceedings of the Manchester Chamber of Commerce, 1849-58, M8/2/5, f474.

[288] 'Limited Liability Partnerships Bill', *Liverpool Daily Post*, 12 June 1855, p.2.

[289] 'Notices of new books - George Sweet - The Limited Liability Act, 1855', *Legal Observer*, 8 December 1855, pp.110-1.

[290] 7 February 1856, *Political Economy Club. Centenary Volume*, p.72.

[291] 'Mr. Lowe's Partnership and Joint-Stock Companies Bills', *Bankers' Magazine*, March 1856, p.157.

[292] Farrer's father and uncle had worked with Joplin to establish, 'in the teeth of much opposition' , the Provincial Bank of Ireland. His own sympathies were clearly with Lowe and not Gladstone on limited liability, as recorded in *Some Farrer Memorials* (London, 1923), pp.34-5 and 92.

(lawyer's) dig at Overstone's known propensity to be absent when a parliamentary debate reached a critical juncture.[293] Lowe took what Farrer called a 'characteristic' approach to the Partnership Amendment Bill, in deciding the only thing needed was to reverse *Waugh v Carver*.[294] The Bill thus contained just one stipulation i.e. that, for all trades other than Banking, advancing money to an undertaking would not make an individual liable as a partner.[295] The Law Amendment Society congratulated itself (and Field) on this being 'in accordance with the recommendations of the Society made last year to Parliament and the Government'.[296] Lowe presented the clause as a corollary of usury reform - as a parliamentary sympathiser put it, he simply wished to call a creditor a creditor. If he hoped thereby to bypass the traditional calls for registration however, he was disappointed. The Leeds[297], Birmingham[298], and Bristol[299] Chambers all sent petitions to say they could not support the Bill without this, and the newly-formed Wolverhampton Chamber soon followed suit.[300] The Manchester Commercial Association, having now got the registration-bit firmly between its teeth, marshaled support from a dozen Chambers for inclusion of registration in the Bill and as a general partnership requirement.[301] Those lending support included the Liverpool Chamber, which had responded to the rebuke of the previous year, by appointing a committee to consider both Bills.[302] This had still to report when the Chamber held another, February discussion of limited liability, dominated by conservatives. (Bushell's speech took up six pages of the printed report.) Edward Heath, Charles Robertson and Lamont proposed a string of reformist-motions, to try and counter the tenor of the meeting, but lost these and a final

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[293] A. Patchett Martin, *Life and Letters of the Right Hon Robert Lowe, Viscount Sherbrooke, vol. II* (London, 1893) p.115.
[294] Ibid., p.119.
[295] Partnership Amendment. A bill to amend the law of partnership. 19 Vict. I February 1856.
[296] 'Special General Meeting of the Society, 18th February, 1856', *Law Amendment Journal, vol. 1* (London, 1856), p.3.
[297] Memorial of 27 March 1856, ref no 618, 'Registration of Partnerships. History of agitation and attempted legislation', BT 22/34/3.
[298] Meetings of 19 February and 20 June 1856, Birmingham Chamber of Commerce, Midland District Minutes, 1855-61. Petition dated 31 July 1856, ff119-20.
[299] 'Law of Partnership and Joint Stock Companies', House of Commons Petition. Appendix to *Report and Proceedings of the Bristol Chamber of Commerce at the half-yearly meeting of the members, held in the Commercial Rooms, Bristol on Wednesday the 30th July, 1856* (Bristol, 1856), p.16.
[300] *Record of the Wolverhampton Chamber of Commerce, 1856-1956* (Wolverhampton, 1956), p.55 .
[301] Meetings of 6 February, 6 March, 23 April, 11 June 1856, Minutes M8/7/1.
[302] *Liverpool Chamber of Commerce, 1857. 7th Annual Report of the Council presented to the Chamber at the General Meeting, held February 2, 1857* (Liverpool.1857), p.6.

vote on a conservatively-worded petition by a ratio of 2 to 1.[303] Heath's last-ditch request that a dissenting statement from those in favour of limited liability be included with the petition also failed and after 'a very protracted sitting', reformists conceded defeat.[304] Charles Holland, as Chamber President, was thus required to sign a petition that must have gone sorely against the grain, asserting as it did that limited liability in partnership was 'unwanted by the great mass of the mercantile community' and 'fraught with evils of the greatest magnitude'.[305] The Manchester Chamber Council, untroubled by internal dissent, simply repeated its petition of the year before[306], with added vehemence, and asked the Mayor to organise a protest meeting at the Town Hall.[307]

Registration was also raised in parliament, where the pull of personal obligation was apparent in insistence that 'a partnership ought to resemble as much as possible the individual replaced'.[308] A suggested amendment that a lender not be able to recover money until after creditors' claims had been satisfied (resisted by Lowe even though recommended by Field[309] and adopted by the Law Amendment Society[310] and Liverpool reformists[311]) proved a sticking-point. A long, well-attended Commons debate on 4 July saw Lowe lose a divisional vote on the point by three votes. Those voting for the amendment included Cardwell and Goderich, as well as the predictable Glyn and Muntz.[312] Lowe had already intimated that the Bill might be given up, and although

[303] *Limited Liability. Special Meeting of the Chamber of Commerce, Liverpool, held on Saturday February 23, 1856, to consider the Government Bill for amending the Law of Partnership, (Limited Liability)*, (Liverpool, 1856), pp.12, 14 and 15.
[304] Ibid., p.16. The press reported the meeting taking 'upwards of four hours', *Liverpool Daily Post*, 25 February 1856, p.3.
[305] Ibid., p.2. The press (though not the official printed report) reported Holland warning the Chamber that 'he would take no responsibility in the matter ... and retained his right to dissent, and that he would not take office if compelled to be an active agent in doing what he thought wrong' (*Liverpool Daily Post*, 25 February 1856, p.3). He appears to have signed the petition and then resigned.
[306] 21 February 1856, M8/2/5, ff485-6.
[307] 6 March 1856, M8/2/5, f487.
[308] Thomas Baring, *Hansard*, 3rd series vol. 142, c657 (27 May 1856).
[309] 'Special General Meeting of the Society', p.4.
[310] The Society confirmed their adoption of Field's recommendation, *Society for Promoting the Amendment of the Law. Report of the Special Committee on the Partnership Bill. Report of the Special Committee appointed at the Special General Meeting held on the 18th February, 1856, to consider and report on the Partnership Bill. Received at the General Meeting on the 25th February, and then received and adopted*, p.1. This was after a 'strenuous protest, and by a narrow majority', *Law Amendment Journal, 1855-56*, p.5. Hastings and others agreed with Lowe.
[311] *Special Meeting of the Chamber of Commerce, Liverpool, held on Saturday February 23, 1856*, p.14.
[312] Ayes 83, Noes 80, *House of Commons Library. Division lobby. Divisions 1856*. No. 162, p.325.

Palmerston and Stanley of Alderley considered it still worth pursuing in its amended form,[313] further proposed changes and another narrow divisional defeat on Gazette notices forced its abandonment at the third reading on 14 July.[314]

The Joint Stock Bill met with an easier parliamentary reception, with most comment focused on administrative detail rather than principle. The Lord Advocate's claim that 'Everybody knew that a Joint-stock Company was not a partnership in the proper sense of the term [but] a combination in which the stocks and not the partners constituted the principal objects' apparently held true.[315] The Law Amendment Society questioned the Bill's seven-person minimum (as too high) and the winding-up provisions, and asked that these use the Bankruptcy courts, rather than Chancery. Despite jibes that this last point was being urged by the 'solicitor who enjoys the largest bankruptcy practice in London',[316] it was adopted at the Bill's Committee stage, after meetings with Stanley and Lowe.[317] Resistance to the Bill was left to Monteagle and Overstone, who registered a formal Lords protest at its 'immoral course'[318] (dismissed by the Law Amendment Society as 'unreasoning prejudice'[319]) and presented further petitions from the Manchester and Glasgow Chambers.[320] The Manchester Commercial Association also sent a petition, and a deputation to protest that the new Bill was even worse than the 1855 Act it replaced.[321] Stanley said these views were at odds with those of the wider commercial community, as evidenced by the fact that Manchester and Glasgow MPs had not received or voiced objections (a now-standard line).[322] He admitted the current Bill did not contain the 'restrictions and safeguards' of the previous session's Act (a reference to publicity requirements now omitted) but contended these were 'of no value whatever'.[323] Edward

[313] Letter to Lowe, 7 July 1856, Palmerston Letter book, BL Add MS 48580, ff205-7.
[314] Ayes 108, Noes 102, *Divisions 1856*. No. 174, p.347.
[315] James Moncreiff, *Hansard*, 3rd series, vol. 143, c360 (4 July 1856).
[316] *Legal Observer*, 8 March 1856, p.354. The solicitor was Edward Lawrance.
[317] *Law Amendment Journal, 1855-56*, pp.85 and 102.
[318] *Hansard*, 3rd series, vol. 142, c1490-3 (16 June 1856).
[319] *Law Amendment Journal, 1855-56*, p.105.
[320] *Hansard*, 3rd series, vol. 142, c1474 (16 June 1856). The Manchester petition was recorded in full under 12 May 1856, M8/2/5, f510.
[321] Manchester Commercial Association 1845-58 Minutes, M8/7/1, 23 April 1856, petition to House of Lords. 6 May deputation to Board of Trade reported in 'Court Circular', *The Times*, 7 May 1856, p.9.
[322] Ibid., c1477. This was said too by the Law Amendment Society, *Law Amendment Journal, 1855-56*, p.105.
[323] Ibid., c1479.

Cox recorded his disgust in the *Law Times* - Lowe had learned from his time in Australia commercial principles fit only for 'a convict colony'[324] - and local newspapers reported the Manchester and Liverpool Chambers' discussions in detail, thereby ensuring conservatives some publicity. They were otherwise conscious of again being outgunned in the press. After one mauling too many in *The Times*[325] Overstone wrote to Lowe to protest, and complained to the government's Leader in the Lords, Lord Granville that it was 'perfectly easy for two or three Writers, having connections with the Press, to get up a very fallacious appearance of public opinion'.[326]

Despite the protests, no one seems to have doubted that the Joint Stock Companies Bill would pass. The MP William Lindsay, a ship-owner, elicited Cobden's support for a March pro-limited liability pamphlet[327] and Edward Moss, a solicitor with an extensive joint stock practice, published another[328] but public debate had peaked the year before. On 14 July 1856, the Companies Act 19 & 20 Vict. c47 became law. It repealed the Companies Acts of 1844 and 1847, as well as the Limited Liability Act of 1855, and ruled that Winding-up Acts of 1844, 1848 and 1849 should not apply to companies registered under it. It thus sought to make a break with earlier confusion. Seven or more persons could now set up a company with limited liability by subscribing to a Memorandum and Articles of Association (which replaced the deed of settlement) and complying with their requirements. Banks and insurance companies, and anyone who particularly wanted limited liability in the form of a partnership, would need to wait longer, but the general availability of limited liability, as a standard feature of a registered company, had been confirmed.

[324] *Law Times*, 12 April 1856, p.35; 31 May 1856, p.109; 7 June 1856, p.121.
[325] 22 March 1856, p.6.
[326] *The Correspondence of Lord Overstone*, p.644.
[327] William Schaw Lindsay, *Remarks on the Law of Partnership and Limited Liability*, (London, 1856).
[328] *Remarks on the Act of Parliament 18 and 19 Vict c133for the formation of companies with Limited Liability* (London, 1856).

Conclusion

The 1856 Companies Act did not end debate about limited liability, either in the immediate aftermath of the legislation or in the longer term. Although legislative faith in limited liability has generally held firm, each new financial crisis has brought a fresh bout of questioning, with 2008 no exception.[1] The failure to pursue *commandite* has also had an extended after-life, periodically lamented as a missed opportunity. City merchant John Howell was one of the first to take this line in 1856, complaining that the government had been led astray by 'ultra-theorists'.[2] Another financial crisis in 1866 only confirmed his poor opinion of the approach taken. Guilty of 'wanton liberalism', Lowe had shown too much faith in 'human wisdom', too little in authority and 'failed to see that discipline belongs to man in commerce as well as in social relationships'.[3]

Howell thought that if the government had been unable to push through a Bill for limited liability in partnership ('consonant with natural justice'[4]) before one for joint stock they should have dropped both. It is perhaps not difficult to see why the government, bedeviled by dispute about registration and offered a relatively straightforward path for joint stock, failed to pursue this course in 1856. Historians have however, puzzled over why the 1856 Act took as liberal an approach as it did, and in particular why it was quite so ready to abandon publicity requirements - a move that subsequent legislation would counter. Cottrell has agreed with Howell that Lowe here contradicted his own previously-declared faith in publicity.[5] Taylor has seen in the abandonment a devious attempt to boost shareholder activism, by making it necessary for shareholders to attend meetings in person in order to obtain information not available otherwise. This seems to owe more however, to a broader argument about the persistence of traditionally personalised conceptions of companies, than any evidence or logic, and such

[1] See for example the case for re-instatement of unlimited liability in banks presented by John Turner, *Banking in Crisis. The Rise and Fall of British Banking Stability, 1800 to the present* (Cambridge, 2014)
[2] 'The Law of Partnerships', *Morning Post*, 28 February 1856, p.3.
[3] John Howell, *Partnership-Law Legislation and Limited Liability reviewed in their relation to the panic of 1866* (London, 1869), p.9.
[4] Ibid., p.14.
[5] *Industrial Finance*, p.52. Howell pointed out that Lowe supported requirements to publish capital and audit accounts at the 1853 Mercantile Laws Commission, *Partnership-Law Legislation*, p.9. cf. *First*

Machiavellianism can surely be discounted.[6] Hein suggests that abandonment of publicity should not appear so unexpected in itself, with a precedent in the 1847 repeal of the 1844 Act's prospectus-registration requirements.[7] Parliamentary draftsman Henry Thring provided a possible insight into the thinking of Lowe's inner circle, in the commentary on the 1856 Act that he published at the end of that year, in which he talked repeatedly of regulation-evasion, and argued that 'no system of accounts can be devised, that will protect shareholders from dishonesty'.[8] No other communication appears to have survived that might clarify the government's thinking further, and perhaps the declared aim to simplify the 1855 Act together with insistence upon self-reliance were sufficient reason in themselves for a sweeping approach. Any assessment has also to take account of Lowe's characteristically robust approach to pushing through reform. Lowe was avowedly suspicious of refinements proposed by 'scarce concealed enemies' who, like Cardwell, professed themselves in favour of limited liability but were somehow never quite ready for it.[9] He would have been extraordinarily obtuse not to have realised by the time he arrived at the Board of Trade that talking about limited liability clauses did not generally help progress matters. The more people talked about limited liability, the more strongly they tended to feel, and by the mid-1850s, debate had polarised into well-rehearsed oppositions. Some people did change their minds on the question. Samuel Laing changed his at some point between youthful assertion that 'the best practical security' for joint stock banks 'must always consist in the knowledge that the business is conducted by men of wealth ... who have their all at stake in it' and participation in parliamentary debates ten years later.[10] Brougham and ship-owner William Lamport also evidently revised earlier objections. They are rare exceptions however, and even rarer is the individual who, like the sole participant in the Liverpool Chamber 1854 debate to say

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Report of the Mercantile Laws Commissioners, PP 1854 (1791) xxvii 84-5.

[6] *Creating Capitalism*, p.164. The same privileging of supposedly 'traditional notions' of shareholder duties is apparent in an argument that 'the assumption of shareholder passivity implicit in the *commandite* system clashed fundamentally with dominant attitudes in Britain as to the responsibilities of shareholders [and] was almost certainly the chief factor blocking the system's introduction in Britain', pp.163-4. This fails to explain why shareholder passivity should have been acceptable in a joint stock context but not *commandite*, or to take account of capitalist interest in the different vehicles.

[7] Hein, 'The British Company Acts', p.129.

[8] Henry Thring, *The Joint Stock Companies' Act, 1856* (London, 1856), p.46.

[9] Lowe's description of Cairns, Cardwell and Glyn, *The Times*, 7 August 1855, p.8.

[10] Laing, *National Distress*, p.120.

so, changed their mind through the course of a discussion.[11] Most took a view on limited liability and held to it, some with remarkable obduracy. Gladstone was still calling the 1856 Act a mistake in 1893.[12]

This meant that acceptance of limited liability was largely a question of generation, as individuals increasingly habituated to large infrastructure companies accepted the idea that it should be on offer. To Howell's other accusation, it is certainly the case that some advocates of limited liability gave good reason to think them theoretical. Field in particular was capable of some quite staggering assertions of deductive faith in the cause.[13] Yet if circumstance demanded it, even Field could change tack smartly, and acknowledge that though 'We are all fond of building up laws on the shallow *à priori* foundation of our own wits' it might be better to look to 'the solid inductive basis of experience.'[14] The likelihood must be that supporters of limited liability did what people arguing a case usually do i.e. formulated a stance with which they felt comfortable and found reasons to justify it. The pattern of comfort was broadly predictable by age and occupation, as confirmed in the 1854 Mercantile Laws Commission Report. Where individuals from a shared background differed, age or occupation can usually be identified as a predictably differentiating factor. James and Charles Morrison, as father and son, were from different generations. Brothers Francis and Swinton Boult also took opposing stances, the former supporting Lamont from his position as head of the family shipping firm in Liverpool, and the latter taking pride in his professional experience of unlimited liability insurance companies. Manufacturers were always likely to object to limited liability. Manufacturer William Hawes took a more sceptical stance than his MP brother Benjamin, before eventually coming round to a reformist point-of-view.

Generational shift also helps account for the fading of interest in *commandite*, which lost ground in reformist rhetoric once technology became more dominant, and French terms of reference gave way to American. A good representative turning-point is the 1851 Great Exhibition. *Commandite* continued to be considered beyond this and Thring's

[11] Wylie, *Report of the proceedings*, pp.22-3.
[12] As reported by Farrer, *Some Farrer Memorials*, p.92.
[13] *Observations of a solicitor*, pp.5, 7 and 51.
[14] 'Report of the deputation to the Board of Trade', 16 June 1855, *Twelfth Annual Report of the Law*

commentary makes it clear that he at least believed it could play a useful role in England. However, despite his claim that it had been introduced to 'great advantage' in 'various American states', the most striking thing about *commandite* is how little grass-roots support it enjoyed - a pattern confirmed by the American experience.[15] Its persistent appeal for technically-informed commentators owes more to an intuitive desire for balance than economic interest.[16] Nineteenth century English interest in *commandite* was generated by limited partnerships' use in France (where they had been introduced by the state as an investment incentive and received a further state boost after 1848), lawyers' fondness for the cogency of the *Code de Commerce* and long-standing habits of thinking and talking in terms of 'partnership'. These made *commandite* an accessible point of reference for much of the second quarter of the century. Thomas Wilson, familiar with French and Dutch government-sponsored vehicles, referred readily to it as shorthand for limited liability companies (with some contemporaries questioning if *commandite* was really what he meant). The habit persisted through to mid-century - the draft limited partnership Bill that Francis Baring prepared for Ker's 1836 inquiry continued to be reproduced at the back of government reports (and by Wilson) into the 1840s, as a standard pro forma. By the mid-1850s however, it had been replaced in appendices by Massachusetts corporation statutes.

Lawyers' noise, coupled with a failure to appreciate how narrow the interest-base in *commandite* really was, seems the reason that so many historical treatments have followed Saville in expressing surprise that limited partnership was 'left outside the main discourse' in 1855/6.[17] From such a perspective, the breakthrough of 1855 can seem 'almost accidental'.[18] The existence of an orchestrated (albeit covert) campaign from Spring 1853 shows however, that change, when it came, was far from accidental, and that accounts that have 'pointed to the absence of any evidence suggesting a campaign by

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Amendment Society, as reported in the *Law Review*, vol. 22, March-August 1855, no 44, pp.399-414, p.405.
[15] Thring, *The Joint Stock Companies' Act*, p.26.
[16] For a discussion of this point that draws upon development patterns in different European jurisdictions, see Alceste Santuari, 'Freedom of Association and Limited Liability vs. State Interference. Business Associations in England, France and Italy during the period 1800-1920: historical evolution and comparative outlines.' (Unpublished PhD thesis, University of Cambridge, 1993), pp.81-3. For an example of a 'best of both worlds' lament, see Perrott, 'Changes in attitude to Limited Liability', p.93.
[17] Harris, *Industrializing English Law*, p.274.
[18] Lobban, 'Corporate Identity and Limited Liability', p.399.

business interests' are simply wrong.[19] Lamont's efforts invalidate claims that '[l]arge capitalists played little or no role in securing the passage of the legislation'.[20] Some of the very largest capitalists, established in business and often relatively advanced in years, were loud in opposition, but capitalism was nevertheless actively represented. Once campaigning is recognised, the role of shipping also becomes clearer - as too the fact that several of those who opposed reform suspected that something in the nature of a co-ordinated campaign was going on.

Looking more closely at what actually happened then, we can see that Henry Burgess was right, and that the single biggest factor in limited liability's acceptance was the joint stock company. It is the joint stock company that accounts for limited liability's emergence as a global phenomenon. To the extent that it diffuses individual responsibility and focuses attention on capital, limited liability is indeed 'the natural consequence of the selling of shares'.[21] Larger share companies make it harder to justify tying financial liability to individuals, and limited liability's adoption is largely the story of that acceptance. We should now be in a position to say more too about its mechanics. We can rule out here the incremental cost-driven calculations favoured by economic theorists, which would have investors hovering between shareholder-monitoring and balance-sheet-monitoring costs. Advocates of limited liability certainly talked a great deal about cost in headline - usually catastrophic - terms, but there is no evidence of concern with transaction costs. Much analytical effort has also been expended on the relative contributions of corporate structures and joint stock funds to making the idea of limited liability accessible. It is clear however, that limited liability could be prompted by either, it being a peculiarity of the English experience to focus attention on joint stock. When joint stock and corporate structures were forced apart in 1825, public debate shifted onto joint stock's closer identification with capital, and spent 30 years going round - sporadically - in a circle. It took the fall-out from railway 'mania' to force acknowledgement that companies and capital-ownership had changed in ways too big to be ignored. To this extent, change was driven by wider forces, rooted in technology. An

[19] Rob McQueen, *A Social History of Company Law. Great Britain and the Australian Colonies 1854-1920* (Farnham, Surrey, 2009), p.77.
[20] Ibid., p.123.

air of inevitability must though be qualified by recognition that investors committing capital did not necessarily feel a need for insurance as much or as consistently as lawyers and economic theorists tend to think they must have done. Hidden in a wider shareholder-base, and reassured by legal professionals or deeds of settlement, they seem largely to have accepted risk before railway 'mania' - especially if times were good, or court cases could be kicked into the long grass of Chancery. An important lesson is that acceptance of limited liability is best thought of as a capitalist *habit*,[22] for which railway investment provided the social tipping-point in England. Railway investment taught many to regard limited liability as a norm, and to think that where it was not available they were missing out.

Acceptance of limited liability was thus a two-level process, in which changing habits were periodically punctuated by financial shock and public adjustment. This leaves us with the question of why that adjustment appears more marked in England than elsewhere. We should perhaps not be too surprised by sharp legal change in itself, given Kuhnian observations on paradigm-shifts, and the likelihood that an older paradigm may persist until a new one replaces it entirely. As detailed in chapter 4, the English experience offered unusual encouragement to persist with an old paradigm. The 1855/6 adjustment looks especially sharp too in comparison with the US (which could seed change in individual states) and France (where social breakdown prompted state initiatives) and both these countries controlled limited liability through other means, in corporations and transferable shares respectively. In England it was exposed to debate as a distinct issue. Limited liability needs a social excuse and, following freedom of incorporation, its excuse emerged in England from the experience of the late-1840s as decidedly democratic.

It is therefore in a strongly socialised context, that the contribution of individuals must be assessed. When John Stuart Mill read in *The Times* in February 1855 of the government's intention to bring in legislation, he told his wife that 'I did it', on the grounds that, but for

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[21] Santuari, 'Freedom of Association and Limited Liability', p.51.

[22] For an extension of this framework to events after 1856, as an explanation of why there was 'no quick revolution' in limited liability's adoption by industries accustomed to partnerships, see J. H. Clapham, *An Economic History of Modern Britain, II, Free Trade and Steel 1850-1886* (Cambridge, 1933) pp.133-8

his 1850 Select Committee evidence, there would 'have been a great overbalance of political economy authority against it'.[23] Mill made support for limited liability intellectually respectable, and in the process saved many the trouble of doing more than cite or quote him. In the aftermath of legislation, others recorded their views on individuals' contributions. Solicitor John Duncan thought that amongst limited liability's 'many most able champions', an honourable mention should be accorded Cecil Fane.[24] Thomas Farrer, asked by Lowe's biographer Arthur Patchett Martin in the early 1890s for his nominees, named the publicly successful men whom he knew best personally, in Lowe, Bramwell and Thring. Substitute Palmerston for Thring, and that seems a reasonable picture of reform's mid-1850s public face. By the time he recorded his opinion, Farrer had read the letter that Lamont sent him at the Board of Trade in 1880, outlining his own role, but did not mention either Lamont or Field (who had died unexpectedly in an accident some years before).[25] Both men though deserve to be written back into the story, for the momentum they generated in the press and amongst politicians. The day they marched over to the Houses of Parliament was the day that support for limited liability finally became politically effective. Lamont's role also highlights the significance of shipping as the conduit through which capitalism pushed its way through a charter-granting system, and made it plain that this had broken down. It seems appropriate that the message should have been delivered by an industry with a long tradition of shares and liability-limitation[26], and - in the risks to which ocean-going ships and their passengers were exposed - notably high moral stakes.

These were of paramount importance to Robert Slaney, who told an 1854 Society of Arts audience, that when they looked to identify who had come out in support for limited liability 'above all you will find those who earnestly desire to improve the social condition of the Working Classes'.[27] Anyone who looks at the campaigning gear-change of 1853, must think that legislation ultimately owed more to capitalist interest and less to a moral imperative than this implies. Yet, moralising was never absent from reformist

[23] Letter to Harriet Mill, Naples, 6 February 1855, *Collected Works of John Stuart Mill*, vol. xiv, p.332.
[24] John Duncan, *Practical Directions for forming and managing Joint-stock Companies: with limited liability or otherwise, under the provisions of the Joint Stock Companies Act, 1856* (London, 1856), p.6.
[25] 6 July 1880, BT 22/34/3.
[26] For a discussion, see Harris, *Industrializing English Law*, pp.189-90.

argument, changing rather than diminishing, and it would be a mistake to dismiss it as a mere 'debating tool'.[28] Support for limited liability is always a test of social faith - as true today as it was in 1856 - and those ultimately responsible for pushing through change make very unconvincing 'financial aristocracy'.[29] If any of them were deluding themselves as to the wider import of their motives, they made a very thorough job of it. When Farrer reminisced with Lowe in the latter's 'failing years', it was the thought that he had achieved something of lasting significance which brightened Lowe's mood.[30] Farrer and Patchett Martin both credited Lowe with democratising capital. Even Lamont, with a clear capitalist vested interest, approached reform in the spirit of a crusade. And social intuition is a more convincing explanation for the way in which the issue caught hold amongst politicians in the climate engendered by the Crimean war than a straightforward desire to exceed the return available from Consols. John Bright understood this, in saying that amongst the 'overwhelming majority' of MPs who favoured limited liability,

> 'probably very many of them have not examined the question much, and they think no doubt that it is offering facilities for persons of smaller means to go into business and make their way in the world, with a better chance than they have hitherto had'.[31]

Social intuition provided a short-cut to understanding limited liability, and made the 1855/6 endorsement as decisive as it was. Support for it was undoubtedly capitalist, but self-centred rather than selfish, felt as a vote against polarisation. For those who thought diversified capital the best social currency available for a modern, dynamic nation - better than land or Californian gold or the labour-interest that threatened Socialism - change was important and limited liability companies were something to get excited about.

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[27] Robert Slaney notebook, RAS/2/6, Slaney papers, Cadbury Research Library.
[28] Taylor, *Creating Capitalism*, p.155.
[29] Bryer, 'The Mercantile Laws Commission', p.40.
[30] Patchett Martin, *Life and Letters*, p.122.
[31] 'Chamber of Commerce - Annual Meeting'. Newspaper report of the 4 February 1856 annual meeting of the Manchester Chamber of Commerce, Proceedings of the Manchester Chamber of Commerce, 1849-58, M8/2/5 f474.

Appendix

I. Age and occupation breakdown for 1854 Liverpool Chamber of Commerce speakers, from a random sample of five speakers on either side of the debate (i.e. 50% of the total). Robert Lamont, at 34, was significantly younger than other speakers.

For limited liability:
William Lamport, age 39, shipowner
Charles Holland, age 55, merchant
Joshua Dixon, age 44, cotton merchant
Thomas Powles, age 54, merchant
Francis Boult, age 47, shipowner
Average age: 47

Against limited liability:
Francis Shand, age 54, West Indies merchant
William Keates, age 53, copper merchant
John Torr, age 41, broker
Christopher Bushell, age 44, wine merchant
William Tomlinson, age 49, shipbroker
Average age: 48

II. Age breakdown for 1853 Mercantile Laws Commission respondents, from a random sample of 15 respondents for and 15 against limited liability.

For limited liability:
Sir George Rose, age 71
Leone Levi, age 32
Robert Slaney, age 61
Robert Lowe, age 42
Thompson Hankey, age 48

Charles Holland, age 54
John Ludlow, age 34
Charles Babbage, age 62
George Warde Norman, age 60
Charles Lawson, age 58
Edward Vansittart Neale, age 43
John Hollams, age 33
Cecil Fane, age 57
George Rickards, age 41
John Stuart Mill, age 47
Average age: 49

Against limited liability:
William Cotton, age 67
David Baxter, age 60
Lord Overstone, age 67
William Entwisle, age 45
JG Hubbard, age 48
William Brown, age 69
JW Gilbart, age 59
William Hawes, age 48
Henry Ashworth, age 59
Henry Bellenden Ker, age 68
Edward Ede, age 57
James Bristow, age 57
James Freshfield, jun, age 54
J Aspinall Turner, age 56
Clement Tudway Swanston, age 70
Average age: 60

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