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# When Limited Liability was (Still) an Issue: Mobilization and Politics of Signification in 19th-Century England

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**Abstract**

The corporation is a constitutive element of modern capitalism. In its contemporary form, the corporation comes with a striking legal feature: ownership is associated with limited liability. Today, we take for granted both the principle of limited liability and its association with the corporate form. Not so long ago, though, in the mid-19th century, the principle of limited liability was highly contentious, generating heated discussions and debates. This article explores the social movement dynamics that crystallized around the principle of limited liability in 19th-century England – intense framing strategies and politics of signification, collective articulation of resources and mobilization tactics as well as opportunistic use of dynamic opportunities. Interestingly, social movement dynamics did not imply in this case the structuration of a unitary social movement but involved instead a stunning 'coalition of the unlikely'. Two strikingly different groups championed limited liability on distinct grounds – 'enfranchisement of men' against 'enfranchisement of capital'. In the end, the latter framing imposed itself and debates found a resolution in the formal institutionalization of limited liability as a constitutive legal feature of incorporation. Altogether, these social movement dynamics proved highly consequential – marking a turning point in the history of capitalism, with profound implications for our contemporary understanding of responsibility in economic life.

**Keywords**

corporate revolution, corporation and responsibility, limited liability, social movement and institutionalization

## Introduction

The corporation is a constitutive element of contemporary capitalism. It can be hailed as the historical motor of economic development and global wealth production. Or it can be denounced

as the source of all contemporary evils – a power-hungry bureaucratic monster, a profoundly psychopathic artificial individual or a sprawling global octopus taking capitalist appropriation to new heights. Whether we view it positively or not, though, the corporation has become one of those institutions we take for granted.

In its modern legal form, the corporation has three striking features. First, it is treated as a fictional individual. As a legal entity in its own right, the corporation exists, potentially, in perpetuity, and at least well beyond the life span of its original shareholders. It can contract, own property, sue and be sued. As a legal entity, the corporation is protected by strong asset partitioning and it benefits from complete entity shielding. The creditors of owners or shareholders have no claims over the assets of the corporate entity (Hansmann & Kraakman, 2000; Hansmann, Kraakman & Squire, 2006). Second, ownership of the modern corporation means the holding of shares. In its modern form, corporate ownership tends to be dispersed and shares are easily transferable and marketable. This generally implies the decoupling of ownership and management and translates into multiple types of agency failures (Berle & Means, 1932). These failures have generated a rich literature on corporate governance (Clarke & Branson, 2012; Roe, 1996). Third, modern corporate share ownership is associated with the principle of limited liability. Shareholders cannot be made liable for the debts and liabilities of the corporation beyond the value of their holdings.

The focus of this article is this third feature: the principle of limited liability. Limited liability is a mechanism that protects owners and shareholders and, as such, could simply be seen as the logical counterpart of legal entity-shielding (Hansmaan, Kraakman & Squire, 2006). But limited liability is benign only in appearance. It has profound implications, particularly when it comes to the responsibility of corporations. Today, we tend to take for granted both limited liability and its association with the corporate form. Functional arguments are mobilized to underscore the ineluctable nature of contemporary corporate capitalism and its defining features – including limited liability (Hunt, 1936; Shannon, 1931). Instead, in this article I treat capitalism as a 'cultural system' (Arnsperger, 2006) and propose that limited liability should be seen as a key dimension of that cultural system. The objective, in the pages that follow, is to question the claim of a tight, ahistorical and ineluctable coupling between the corporate form and limited liability. The limited liability corporation is an institution. All institutions are both historical and social constructs, and their apparent stability and resilience should not blind us to their contingent and fragile sides. The end result may be quite consensual, whereas the process leading to institutional stabilization is often complex, contested and conflicted. Before it became an undisputed and taken-for-granted feature of contemporary capitalism, the limited liability principle generated heated discussions. It was a highly contentious issue around which different groups of actors mobilized. I explore, in this article, the social movement dynamics that crystallized around the principle of limited liability in 19th-century England.

The article examines the intense politics of signification, the collective articulation of resources and mobilization tactics, and the opportunistic use of dynamic opportunities (Gamson & Meyer, 1996). The politics of signification and mobilization at work in this case were not only motivated by economic arguments. They also had social, political and even ethical dimensions. Business and investor communities were not the only actors involved. Many other actors took part in those highly charged debates: policy makers and politicians, a budding group of policy thinkers, intellectuals and journalists, and 'civil society,' at least in the form of various pressure groups. The story, in other words, suggests that social movement dynamics were instrumental in the process of institutional transformation that turned limited liability from a rare and dubious privilege into a legal right associated with incorporation. At the same time, social movement dynamics did not imply in this case the structuration of a unitary social movement but involved instead a stunning

'coalition of the unlikely'. Two strikingly different groups championed limited liability on distinct grounds with weak coordination, at times, and distance and dismay at others. Still, I propose that this unlikely combination of 'bootleggers and Baptists' (Yandle, 1983) could explain the relative rapidity of the institutional transformation process despite reluctance and powerful resistance in many spheres of British society.

In the first section of this article, I review what we know about the instrumental role of social movement dynamics in processes of institutional emergence and change. I suggest moving the debate forward by integrating the 'bootleggers and Baptists' argument proposed by some theorists of regulation (Yandle, 1983, 2012). Then, in the second section, I discuss the methods and present important elements of context – underscoring a volatile social climate in mid-19th-century Britain and the vitality of contentious politics. In the third section, I follow the politics of signification and the social movement dynamics that crystallized around the notion of limited liability. The fourth section brings out the mechanisms through which debates were progressively resolved – social movement dynamics around that issue died out in the process. From this exploration, I draw a number of lessons. First, we should remind ourselves that limited liability is not a natural attribute of capitalism but a socially constructed feature that imposed itself through time in a partly accidental manner. Second, the coupling between incorporation and limited liability is also historical and in no way natural. Third, social movement dynamics can be instrumental in processes of institutional change – even when there is no clear, unitary social movement but instead a loose 'coalition of the unlikely'. Fourth, contentious politics will sometimes end in the clear triumph of one side. Arguably, this is what happened in this case. Understanding the mechanisms through which social movement dynamics are resolved or overcome is a theoretical challenge in itself. I believe it also represents a welcome bridge between social movement theory and institutional theory – where institutional theory can be used to illuminate certain dimensions of social movement dynamics. A social movement that triumphs might dissolve into a process of institutionalization. Finally, I propose that such crystallization is always reversible. The historical deconstruction of a potent institution through a social movement dynamics lens renders that institution contingent and fragile. Hence, it allows us to think of change and alternatives even when the institution seems deeply grounded and stable.

## Institutionalization and Social Movement Dynamics: A Fruitful Paradox

In the 1970s, the revival of institutional perspectives in different social science disciplines – otherwise known as the neo-institutional turn – came together with a focus on the constraining and resilient character of institutions. Institutional persistence and its structural and behavioural impact were core preoccupations across different variants of neo-institutionalism (Greenwood, Oliver, Sahlin & Suddaby, 2008; Powell & DiMaggio, 1991). Beginning in the 1990s, calls for a radical reorientation were heard loud and clear. The time had come to explore institutional dynamics: institutional change, emergence and demise (Clemens & Cook, 1999; Oliver, 1992). In the process, institutions became dependent rather than independent variables (Djelic, 2010).

This reorientation toward institutional dynamics came about in different ways. Some studies pointed to the role of external shock and profound ruptures. Those external shocks could be associated with a process of institutional diffusion – and most likely parallel translation – that represented a powerful change mechanism (Czarniawska & Sevon, 1996; Djelic, 1998; Westney, 1987). Others pointed to the spontaneous emergence of contradictions through time in any institutional situation. The multiplicity of institutional remnants lying around created opportunities for conflict and

competition but also for bricolage, reconfiguration, layering or conversion (Schneiberg, 2007; Thelen, 2003). More recent work has underscored the role of ideas and ideologies in institutional dynamics (Campbell, 2004; Czarniawska & Sevon, 2005; Meyer, Sahlin, Ventresca & Walgenbach, 2009). The notion of agency was also mobilized in particular through the concept of 'institutional entrepreneurs' (DiMaggio, 1988). DiMaggio identified 'institutional entrepreneurs' as those individuals able to 'create a whole new system of meaning that ties the functioning of different sets of institutions together' (DiMaggio, 1988, p. 14). Since then, many contributions have attempted to tease out the 'mindful deviations' associated with institutional entrepreneurship (for a review, see Hardy & Maguire, 2008). We need to keep in mind, though, that institutional entrepreneurship is rarely of the heroic kind. It is often a spatially and temporally dispersed process that involves multiple actors with different kinds of resources and complex patterns of embeddedness (Lounsbury & Crumley, 2007; Munir & Phillips, 2005).

One way to reconcile institutional dynamics with a complex model of agency is through the notion of 'institutional work'. This notion implies institutionalization and deinstitutionalization as combination and aggregation of situated practices that closely interact with 'existing social and technological structures in unintended and unexpected ways' (Lawrence & Suddaby, 2006, p. 219). This notion is compatible with the growing interest, among institutionalists, for social movements (Bartley, 2007; King & Pearce, 2010; King & Soule, 2007; Schneiberg & Lounsbury, 2008; Schneiberg & Soule, 2005). A social movement perspective reconciles agency with complexity, multiplicity of nodes, time and unintended consequences in a way that is highly compatible with most cases of institutional dynamics. Such a perspective analyses 'institutional path creation as a contested process grounded in sequences of mobilization, disruption and conventional institutional dynamics' (Schneiberg & Lounsbury, 2008, p. 652). Researchers have documented the high degree of complementarity between institutional theory and a social movement perspective (e.g. King & Soule, 2007; Schneiberg & Soule, 2005) and they have begun to articulate it theoretically (Fligstein & MacAdam, 2011; Schneiberg & Lounsbury, 2008).

This article builds upon this body of existing work and follows the fruitful contemporary trend of applying a social movement lens to processes of institutional emergence or change. Here, I use this particular theoretical combination to explore the emergence and stabilization through the time of an important institution of contemporary capitalism – limited liability. Institutional change or emergence generally 'entails reconstructing the power relations and cultural infrastructure of a field' and social movements are often key actors in this process (King & Pearce, 2010, p. 255). In this article, I use the definition of social movements as reformulated recently by Snow and Soule:

> Social movements are collectivities acting with some degree of organization and continuity, partly outside institutional or organizational channels, for the purpose of challenging extant systems of authority or resisting change in such systems, in the organization, society, culture or world system in which they are embedded (Snow & Soule, 2010, p. 6).

This definition is broad and allows for active and violent 'contentious politics' (McAdam, Tarrow & Tilly, 2001; Tilly & Tarrow, 2006). But it does not reduce social movement dynamics to violent or non-violent physical acts of defiance. This broad definition makes it possible to think of social movements as articulating mostly around politics of signification, framing strategies, discursive debates and conflicts, resource mobilization, and the seizing of dynamic opportunities (Benford & Snow, 2000; Gamson & Meyer, 1996; King & Pearce, 2010).

Although this article directly continues the flourishing body of literature that looks at institutional dynamics through a social movement lens, the nature of the case explored makes it possible

to propose some further steps. Social movement dynamics can turn out to be instrumental in a process of institutional transformation – even when no clear, unitary, social movement exists. Particularly surprising and interesting are situations in which unlikely coalitions emerge and work, in spite of themselves, toward an objective that is only the same in appearance and from afar. The regulatory literature started to point to the significance of this type of configuration and I borrow from it the 'bootlegger and Baptist' argument (Yandle, 1983, 2012). This argument takes its original cue from the unlikely coalition of bootleggers and Baptists that formed to support legislation restricting the sale of alcoholic beverages on Sundays in certain US states. 'Baptists prefer a world where less alcohol is consumed…[while]…Sunday closing laws shut down legitimate sellers, giving an open field in which bootleggers can sell their wares' (Yandle, 2012, p. 25). This type of configuration may be more frequent than we expect. Exploring empirical cases of this kind could be theoretically fruitful, as I propose in the last section of this article.

This article also suggests another promising path for theory development. The paradoxical interplay between institutional theory and social movement perspectives has two sides. While a social movement perspective can help us reconstruct institutional dynamics, an institutional perspective is also likely to enrich our understanding of social movement dynamics: the emergence, transformation or even demise of social movements. On the one hand, people often form social movements with the hope of 'changing the world'. In certain circumstances, they contribute to the disruption of resilient institutions. This is the first side of the paradoxical interplay: social movements disrupt institutions. On the other hand, social movements are successful when they manage to transform their challenger claims into new institutions. This is the second side of the paradox: institutionalization may destroy social movements.

In this article, I explore this paradoxical interplay and its dynamics through time. I remain interested in the ways social movement analysis can help theorize institutional dynamics – the ways social movement dynamics contest existing institutions and suggest alternative paths. But I am also interested in the ways institutional accounts can help theorize social movement dynamics – when institutionalization weakens, absorbs or destroys social movements. This particular take resonates with recent calls not to treat institutions and social movements as reified distinct realities and instead to focus on 'strategic action fields' as a common 'underlying phenomenon' (Fligstein & MacAdam, 2011, p. 2; see also Schneiberg & Lounsbury, 2008, pp. 654–5).

## Methods and Contextualization

### *Methods and Data*

This article engages in an in-depth historical case study (Skocpol, 1984). Historical case studies belong to the category of 'process research' (Langley, 1999). They are particularly well suited to exploring processual sequences and bundles of causal patterns that lead up to a key historical event (Skocpol, 1984; Van de Ven & Sminia, 2012). The key event I explore in this article is the formal integration of limited liability into corporate legislation in 19th-century Britain (the Limited Liability Act 1855). This is a key historical event for several reasons. First, it pioneered in Europe the tight legal coupling of incorporation and limited liability. Second, this legal innovation served as a model and was broadly imitated across the world. Third, in 1844, limited liability was a rare and dubious privilege, whereas the 1855 Act turned it into a 'natural' attribute of a widely accessible (by then) corporate status. Finally, this innovation is arguably an important turning point from a path dependency perspective – a structuring moment in the development of contemporary capitalism (Mahoney, 2000).

In this article, I follow the process that led to this key event, with a particular focus on the period between 1844 and 1855. The entry point is the framing of limited liability as an issue in the British context – or when limited liability was first put on the agenda. The case itself is the process of mobilization and the politics of signification that ensued. I follow the sequence until its formal resolution in 1855 when limited liability was inscribed symbolically in the liberalized incorporation Act. I provide a meso-level analysis, exploring the sequence of events as well as the institutional, historical and meaning embeddedness of events, debates and conflicts (Amenta, 2009). The in-depth case study approach makes it possible to capture interactions from multiple standpoints (Yin, 2003).

The data presented here reflect the classic combination of primary and secondary data used in historical studies. Primary data sources are 'forms of evidence produced during the historical period under investigation' (Witkowski & Jones, 2006, p. 72). In this case, I have accessed, read and analysed reports, pamphlets, speeches and autobiographies written by important actors on different sides of the debate. I have explored the Chartist, Christian Socialist and Liberal press of the time for discussion of the issue and accounts of various events related to the politics of signification around limited liability. The latter include public lectures and debates, exhibitions, and meetings of clubs and learned societies. I have done a systematic search for 'limited liability' in two flagship newspapers: the Chartist *Northern Star* and the liberal *The Economist*. I have accessed, read and analysed the full transcripts of parliamentary debates that dealt with the issue as well as the reports of the select committees and the royal commission that worked on limited liability. I ensured data triangulation by systematically consulting relevant secondary data sources. Secondary data sources are the books and articles written at a later stage by historians or scholars. I have looked at all available publications on the key event of interest: the formal integration of limited liability into corporate legislation in 19th-century Britain. And I complemented that research by consulting necessary background readings on 19th-century British society, economics and politics.

## *Contextualization: Putting Limited Liability on the Agenda*

In order to understand the social movement dynamics that crystallized around limited liability in mid-19th-century Britain, one needs three important elements of context. First, limited liability only became an issue after a highly confrontational debate surrounding incorporation was settled in 1844. Second, by the mid-19th century in many parts of the world, limited liability was still a highly marginal principle in economic life. Third, the fights around limited liability inscribed themselves within a broader ideological and political debate, which reflected a highly charged social context. In Britain, the first industrial revolution led to many social disruptions. In reaction, the Chartist social movement championed a radical emancipation agenda. The Chartist social movement also ran parallel to, and sometimes even joined forces with, the liberal movement that was fighting at that time for an identity and a place in conservative Britain.

*Incorporation: from rare privilege to legal right.* In early modern Europe, incorporation was a regal privilege that a prince could bestow on groups of individuals as they engaged in projects serving the public interest (Williston, 1888). During the 16th and early 17th centuries monarchs granted the first corporate charters for the purposes of overseas trading (Gaastra, 2003). The charters were associated with privileges: monopolies, tax exemptions, legal *persona* or the free transferability of shares. In the late 17th and 18th centuries, corporate charters were granted more broadly – for mining, banking, insurance or certain infrastructure or manufacturing projects (Hickson & Turner, 2005).

Early on, the corporation and its privileges aroused vocal opposition (Hickson & Turner, 2005). Were corporations serving the public interest? What if monopolistic corporations were nothing more than the 'by-products of cash-strapped monarchs selling privileges to the highest bidders' (Taylor, 2006, p. 4)? Among the most vociferous early critics, we find no less than Adam Smith. Smith argued that corporations distorted competition, encouraged speculation and embezzlement, and weakened all form of responsibility:

> The directors of such companies, however, being the managers rather of other people's money than of their own, it cannot well be expected that they should watch over it with the same anxious vigilance with which the partners in a private copartnery frequently watch over their own…Negligence and profusion, therefore, must always prevail, more or less, in the management of the affairs of such a company (Smith, 1999 [1776], p. 741)

Still, by the end of the 17th century, the corporate form had become increasingly attractive (Harris, 1994; Ireland, 1984). A traffic in charters developed, old charters being sold for the development of new projects. The trading in shares for short-term profit or 'stock-jobbing' became a real sport (Harris, 1994; Hunt, 1936). Speculation increased further when the sovereign started to use corporate charters to convert public debt into tradable shares (Hickson & Turner, 2005). In England, the South Sea Company was redefined in 1719 for that purpose. Other companies soon imitated its aggressive marketing schemes, which generated a bubble (Patterson & Reiffen, 1990). Parliament reacted in 1720; the Bubble Act reaffirmed that joint stock companies could only exist if they were chartered by royal or parliamentary fiat (Harris, 1994). This episode significantly slowed down the progress of legal incorporation in Britain for the rest of the century.

At the beginning of the 19th century, though, a new speculative boom was in process and many unincorporated joint stock companies were created – in blatant disregard of the Act's provisions (Harris, 1994). Debates resurfaced and critics of the Bubble Act became vocal. Their key argument was that the Bubble Act was an outmoded and stifling legal constraint that blocked the industrial development of the country. After lengthy and conflicted discussions, Parliament finally repealed the Bubble Act in June 1825. In 1841, Henry Labouchere, the president of the Board of Trade, moved for a select committee to explore the rising occurrence of fraud associated with joint stock companies, whether incorporated or not. In 1844, that committee concluded that fraudulent behaviour was all the more prevalent when companies were not incorporated. It suggested, as a solution, 'a course of legislation calculated to make every joint stock company respectable, whether successful or not' (Select Committee on Joint Stock Companies, 1844, pp. 162–74). The idea was a bill for general incorporation, where registration would be automatic under certain criteria. Lo and behold, this amounted to a complete reversal of common-law logic. The bill introduced on the basis of those conclusions was solving two (contradictory) problems. First, it satisfied those who called for a liberal regime of incorporation. Second, it brought all companies within the law, subjecting them to scrutiny and hence reducing opportunities for fraud. That the bill managed to bridge such contrasting preoccupations possibly explains why it passed. The Joint Stock Companies Registration and Regulation Act of 1844 created a Registrar of Joint Stock Companies. All partnerships with more than twenty-five members and freely transferable shares were required (and hence de facto allowed!) to register as corporations. To obtain and retain their corporate status, companies had to provide and publish regular information about their members and their holdings. They had to appoint auditors, who received and examined accounts. Because it turned incorporation into a general regime, the Act of 1844 'marked an epoch in the history of English company law' (Hunt, 1936, p. 94).

*Limited liability: a marginal principle in economic life.* Historically, economic activity in Europe had been associated with the principle of unlimited liability. In fact, the more trade intensified in medieval Europe, the more the principle of unlimited liability became predominant in merchant practice as a means to secure trading and ensure the maintenance of commercial obligations (Guerra Medici, 1982). Economic undertakings engaged the full responsibility of individuals and even of their kin; all (personal) assets and wealth were potentially at risk. The dominance of the unlimited liability principle lasted well toward the 20th century in continental Europe (Perrott, 1982). In Britain, unlimited liability remained the default under common law for a good part of the 19th century (Livermore, 1935). It was championed in that context as powerful insurance in business ventures, particularly those of a more risky nature:

> Most people engaged in business, as at present carried on, are impressed with the well founded conviction that their interests will be best promoted by their preserving an unblemished reputation. And as they all act under the heaviest responsibility (in the current system of unlimited liability), the chances are ten to one that they will behave discreetly, fairly and honourably. (McCulloch, 1856, p. 16)

Still, while unlimited liability remained the dominant regime of responsibility, the principle of limited liability was gaining ground. In medieval Europe, limited liability was used in a strictly controlled manner for the expansion of overseas trade. The high costs associated with sea trade compelled traders to search for funds outside narrow kin circles. The high risks associated with this type of investment spurred a legal innovation in commercial Italian cities: the *commenda* (Carney, 1995; Guerra Medici, 1982). In contrast to a partnership (*compagna*), the *commenda* counted two groups of associates. The owner of the ship had unlimited liability but the liability of his investing partners was limited to the extent of their investment. The Napoleonic code of 1807 institutionalized this hybrid legal form (*Société en commandite*) and contributed to its diffusion across continental Europe.

With respect to corporations, the progress of limited liability was even slower. In Britain, an Act of Parliament in 1662 granted limited liability selectively to a few corporations, including the East India Company. In principle, though, common law still prevailed and 'the liability of members of even a chartered corporation was unlimited unless their charter specified that it was limited' (Hunt, 1936; Livermore, 1935; Perrott, 1982, p. 91). The 1844 Act did not change that. Limited liability remained a rare privilege and unlimited liability was the general (common law) regime for firms incorporating under that Act. By the end of the 1850s, this had changed. The episode we explore below is the story of that key turning point – when limited liability became formally connected to legal incorporation in Britain.

*The Chartist social movement and its Liberal cousin: a highly charged context.* In retrospect, it is difficult to assess the net effect of the first Industrial Revolution in Britain (Lindert & Williamson, 1983). In the 19th century, debates were already intense. Sceptic observers underscored the negative social, sanitary, cultural and moral consequences of industrial development (Chadwick, 1965 [1842]; Dickens, 2003 [1854]; Engels, 2009 [1845]). The factory system disrupted communities and families, accelerated urbanization, increased workers' dependence on salaried employment and pushed the extraction of value in favour of capital on a scale rarely seen before. Because it generated squalid living conditions, some even believed that it encouraged moral turpitude.

This gloomy assessment had led, by the late 1830s, to the development of a broad-based social movement for political and social reform (Loftus, 2002; Ludlow & Lloyd Jones, 1867; Taylor, 2006). Chartism, as this movement was called, fought many battles between the 1830s and the

1860s (Royle, 1996). The Chartists' general objective was the 'progress of the working classes' with a double agenda – 'bread and liberty' to use the words of one of its leaders, William Aitken (Hall, 1999; Ludlow & Jones, 1867). Chartists employed a range of protest tactics – from strikes and violent street mobilization to debates and public lectures; from the writing, publication and diffusion of tracts, newspaper articles and pamphlets to various kinds of cooptation tactics (Royle, 1996). By the end of the 1830s, the Chartist movement was clearly associated with radical politics and seditious tactics. Chartist leaders were often placed under arrest or police scrutiny (Hall, 1999; Royle, 1996). Toward the end of the 1840s, the movement became less radical. It even gained a handful of allies within Parliament and could mobilize formal institutional channels such as parliamentary select committees. Traditionally, select committees have been used in Britain as a mechanism to explore issues of significance – with a legislative project in mind that might or might not materialize.

Christian socialism was an important intellectual strand within Chartism. The London Workingmen's Association (LWA), created in 1836, was a key pillar of the Chartist movement (Rowe, 1967; Royle, 1996). William Lovett and Francis Place, the two founders of the LWA, were self-educated workers turned activists. They were closely connected to the trade union movement but also to Owenism and Christian socialism. The Chartist agenda, hence, was connected to the fight for improving conditions for the working classes that was characteristic of Christian socialism and of the 'mutual aid' or 'friendly societies' movement (Ludlow & Jones, 1867; Royle, 1996). An active dedicated press relayed this agenda; the *Northern Star*, a Chartist newspaper launched in 1838 by Feargus O'Connor, was particularly influential (Epstein, 1976). Other important Chartist newspapers were *The Poor Man's Guardian, The Weekly Police Gazette, The Charter, The Chartist Circular* and *The Champion* (Allen & Ashton, 2005).

On a number of fights, the Chartist movement joined forces with individuals aspiring to liberty in a Whig tradition – men who were planting the seeds of the liberal movement.[1] In fact, one could see Chartism as a source movement that played a key role, historically, in the structuration of the liberal agenda (Hall, 1999; Harrison & Hollis, 1967). There are clear intellectual and personal 'continuities from early 19th-century radicalism, through Chartism, and into the Liberal party' (Biagini & Reid, 1991, pp. 1–2). The Chartist leader William Aitken exemplified this type of continuity. His career and style of leadership 'spanned both radicalism and Liberalism, cementing their shared vision of the world' (Joyce, 1991, pp. 37–8). One could even surmise, reading Aitken's autobiography, that he 'saw no fissure between the two: Liberalism was completing the business of Chartism, and both were yet one more step in the history of liberty' (Joyce, 1991, pp. 14–15). Robert Lowery, George Howell and many others were further exemplars of this continuity (Biagini & Reid, 1991; Harrison & Hollis, 1967). In other words, the British Gladstonian liberalism of the second half of the 19th century – with its strong emphasis on liberal economics and free trade – has some of its roots and structuring battles deeply inscribed in the radical hotbed and Chartist social movement of the 1830s and 1840s.

By the mid-1840s, liberalism was still a challenger movement in Britain – intellectually and politically – with many remaining battles to fight. The Liberal Party was not formally set up until 1868. The Incorporation Act 1844 was undeniably a liberal victory. So was the repeal of the Corn Laws in 1846. The 1815 Corn Laws had set trade barriers to protect British cereal producers; their repeal, which came rapidly after the liberalization of incorporation, underscored the progress of a free trade agenda within Britain. On the Corn Laws fight, the Chartist movement was split. The Anti-Corn Law League framed the cause in terms of the national interest. Repeal would bring down the price of corn and of bread, thus it seemed aligned with the Chartist 'bread' agenda. So, parts of the Chartist movement eagerly joined the battle, pushing the cause together with liberals

from the middle classes. The other side of the coin, though, was that cheaper bread could depress wages. Feargus O'Connor and other Chartist leaders, closer to Christian socialism, hence denounced the league as essentially an employers' association (Finn, 2003; Royle, 1996). Still, Chartists and liberals joined forces in a number of other fights too – including fights against different kinds of taxes and duties (Epstein, 1976).

## A Coalition of the Unlikely: Mobilizing around Limited Liability

The battle for limited liability took place in that context and hence wove itself into the broad Chartist social movement, at least at the beginning. The limited liability battle started out as one more Chartist battle and it inscribed itself originally within the broad agenda of the 'progress of the working classes'. Strong and conflicted politics of signification were involved, between the champions of limited liability and others within British society who were highly reticent about – if not strongly opposed to – the progress of limited liability. Interestingly, the politics of signification around limited liability also increasingly came to divide the coalition of champions, bringing to the fore, its uncomfortable and unlikely character.

Throughout this period, the movement struggled to put limited liability on the agenda and to associate with it a particular meaning; this project generated intense debates. Activists organized campaigns, using some of the traditional channels inherited from Chartist fights: newspapers, debating societies, diffusion of tracts and pamphlets, organization of public lectures and open meetings. In 1850, the debate moved to Parliament, when the unattached MP for Shrewsbury, Robert Slaney, an active social reformer with connections to key leaders of Christian socialism, obtained the setting up of the Select Committee on Investments for the Savings of the Middle and Working Classes (SC on IfS, 1850). Throughout the period of debate on limited liability, different kinds of arguments were mobilized: economic and political but also, as documented below, social, cultural and even ethical (Hunt, 1936, pp. 116–17; Taylor, 2006).

### *The Framing of a Chartist Agenda: The 'Baptists'*

Inspired by Chartism, Owenism and French Utopian socialism, a group of radical reformers soon labelled its agenda 'Christian socialist'. In the late 1840s these reformers attempted to promote the notion and structures of cooperation as a mechanism toward the 'progress of the working class' (Ludlow & Jones, 1867). Frederick Maurice, Charles Kingsley, Thomas Hughes, Edward Vansittart Neale and John Malcolm Ludlow were key leaders of that group, which believed that 'an all-embracing conception of "association" was to provide, when combined with Christianity, the basis for a new moral world' (Backstrom, 1963, p. 208). In spite of some differences between them, Christian socialists rapidly agreed on one thing: legal changes were necessary in order to promote association. The Christian socialist community soon promulgated the idea that 'both corporate identity and limitation of liability be cheaply and readily available to working class cooperatives' (McQueen, 2009, p. 70). In 1852, Ludlow would note in retrospect that

> Many who otherwise opposed the introduction of limited liability enterprises were prepared to concede it in the case of these working class enterprises, as they believed such ventures ought to be encouraged. (cited in Christensen, 1962, p. 310)

In that context, Christian socialists heard about Robert Slaney's select committee. Slaney had a long career as social reformer. By 1819 he had written and circulated an *Essay on the Employment*

*of the Poor*. By the mid-1840s, he was well known for his 'benevolent exertions to ameliorate the conditions of the poor' (Hunt, 1936, p. 118). The select committee was finally appointed in March 1850 and, initially, Slaney found it hard to generate public support. Christian socialists, led by Ludlow, saw the committee as a 'potential vehicle for pushing their own campaign' in favour of association and limited liability (McQueen, 2009, p. 71). They 'saw a good deal of Mr. Slaney then and afterwards' (Ludlow, 1981, p. 194) and became closely involved in the work of the committee.

Although Christian socialists had managed to push the limited liability agenda into Parliament, they remained active outside Parliament too. In April 1850, a number of Chartists were released from prison and supporters held a large public meeting to denounce the laws restricting the right of public expression. Christian socialists participated, taking the opportunity to call for cooperatives with limited liability as the only sure path toward progress for the working classes (Shaw, 2009). In June, they created the Society for Promoting Working Men's Associations with the aim of championing the idea of cooperation and supporting the forming of cooperatives through an active form of fundraising. Within a few months, fourteen workingmen's associations were created in London and more than twenty in the rest of Britain (McQueen, 2009, pp. 67ff). At the same time, Ludlow and a few others launched a newspaper, *The Christian Socialist: A Journal of Association*, which formalized Christian socialism as a movement with its own identity within the broader Chartist lineage. The newspaper became a powerful mouthpiece for the struggle for association and limited liability.

In February 1851, Slaney moved to appoint another select committee to 'consider the Law of Partnership'. The objective was to transform the law of partnership by introducing limited liability to facilitate the collective and cooperative undertakings that would contribute to the 'progress of the working class' (House of Commons, 1851). In his introductory remarks, Slaney insisted that the present law of partnership, associated with unlimited liability, prevented 'enterprise and employment. The humbler classes were prevented from combining together for the welfare of their neighbours and their own advantage' (House of Commons, 1851, p. 847).

In each of the two select committees, fifteen members of Parliament were involved, mostly Whigs or Liberals. Eighteen witnesses testified for the Savings Committee and fifteen for the Partnership Committee, which sent a preliminary report seeking comments to twelve more persons, intellectuals or practitioners of high repute. John Stuart Mill was a witness for the Savings Committee and commentator for the Partnership Committee (SC on IfS, 1850; SC on LP, 1851). Of the eighteen witnesses for the Savings Committee, six were closely associated with the Christian socialist movement and two more were workmen. Ultimately, these two committees did not have a direct legislative impact on limited liability. Together with Christian Socialist activism, however, they significantly contributed to the framing of limited liability into a national issue deserving public and legislative attention. The minutes and reports of the two committees show that supporters presented limited liability as a tool for broad-based economic and industrial development, with a dense local base, which would benefit all – the middle and working classes in particular. The focus was on limited liability for the Law of Partnership; no mention was made of an association of limited liability with the 1844 Incorporation Act.

During this early period of 'signification work', supporters of limited liability succeeded in framing limited liability as a powerful instrument for building local communities and binding them together through a common project and shared investment (Loftus, 2002, p. 108). In association with the Partnership Act, supporters of limited liability also defined it as serving the cause of the working class, serving the goal of the 'enfranchisement of men'. By contrast, unlimited liability was depicted as blocking initiative and self-help within the middle and working classes:

> Another great obstacle to investments in all undertakings to be carried on by combined capital is to be found in the existing law of unlimited liability of partners…[this] has impeded many local projects of improvements, some of which might afford a reasonable prospect of fair investments for the middle and working classes. (SC on IfS, 1850, p. vi)

The working and middle classes, when choosing investments, were 'more influenced by the certainty of safety than by the hope of great profits' (SC on IfS, 1850, p. 47). Hence, proponents of limited liability believed it would facilitate the creation of 'associations of working men working for common profits' (SC on IfS, 1850, p. 48). John Stuart Mill went further: he proposed that limited liability would allow capital and profit-sharing schemes where workers and employees had a stake in common. This, he argued, was not only beneficial to the 'operatives employed' but also served 'the general interest of social improvement' (SC on IfS, 1850, p. 13). On the 'Baptist' side, supporters of limited liability also deployed arguments against the oft-heard criticism that limited liability encouraged speculative behaviour and fraud. Corporations with unlimited liability, they argued, were particularly risky for middle- and working-class investors, as reckless behaviour of a few could have dramatic consequences for all. In contrast, corporations with limited liability would attract level-headed investors and be less interesting to the high flyers of speculative risk. All in all, unlimited liability had

> the effect of preventing prudent and cautious persons who would be the best managers…from entering into [association]…[In contrast], supposing a dozen individuals were to associate together, if they could show that they were not at the mercy of any dishonest member of the association, they could offer better security for advances of capital than they can now. (SC on IfS, 1850, pp. 14, 49)

### *The Progressive Emancipation of a Liberal Agenda: The 'Bootleggers'*

The 'Baptist' agenda – progress of the working class and 'enfranchisement of men' – initially drove most initiatives that favoured limited liability within and outside Parliament. As debates deepened, though, advocates of a second line of argument increasingly asserted themselves. Proponents of the 'Bootlegger' alternative – progress of the market and 'enfranchisement of capital' – initially presented their case in a manner that underscored compatibilities and common objectives with the 'Baptist' project. Progressively, though, the two agendas became increasingly distinct and even came to suggest profound incompatibilities.

During that period, liberals were gaining ground in Britain. Within Parliament, a small coalition of Whigs and Peelites – otherwise known as liberal conservatives – was asserting itself. As underscored above, this group had been active in the repeal of the Corn Laws. In that context, they had been working in close connection – sometimes an uncomfortable one – with Chartist and Christian socialist leaders. The end of the 1840s and the beginning of the 1850s saw the progressive emancipation of the 'Bootlegger'/liberal group and an increasingly sharp affirmation of identity that culminated in the creation of a Liberal Party in 1868. This liberal posture was relayed within civil society through clubs and debating societies, newspapers, and publications: for example, *The Economist* (founded in 1843), the *Quarterly Review* and the *Westminster Review* (Loftus, 2002, p. 107).

During the initial debates, between 1850 and 1852, liberals appeared to endorse the 'Baptist' agenda. With a twist, they underscored how the progress of the working class would stabilize British society and reduce social tensions:

> It would be desirable to remove any obstacles, which may now prevent the middle and working classes from taking shares in such investments, under the sanction of and conjointly with their richer neighbours; as thereby their self-respect is upheld, their industry and diligence encouraged, and an additional motive is given to them to preserve order and respect the laws of property. (SC on LP, 1851, p. vii)

Liberals underscored the compatibility between the progress of the working class and their own ultimate objective – the extension of the market. The broad diffusion of limited liability would open up opportunities for investment and democratize access to entrepreneurial initiative. Richard Cobden, an active Liberal MP and founder of the anti-Corn Laws League, argued that unlimited liability should be 'repealed' as it was the 'corn law of the capitalist' – limiting competition and 'preventing the poor to do business' (Goldman, 2004, p. 36). In an attempt at synthesis, the *Quarterly Review* suggested that limited liability would solve many social issues through an extension of the market and without recourse to social welfare:

> (Limited liability) combines all the requisites and avoids nearly all the prohibitions which mark out the legitimate path to philanthropic aid. It interferes with no individual self-action; it saps no individual self-reliance. It prolongs childhood by no proffered leading strings. (*Quarterly Review* as quoted in Loftus, 2002, p. 107)

As time went on, the liberal agenda became clearer and purer, detaching itself from social preoccupations: Britain should strive for economic development and limited liability would help. In the words of G. W. Norman, a director of the Bank of England, Britain should take

> the crowning step in removing the fetters from human industry, by removing from her code the last of those enactments which (could) impede a free development of her industrial resources. (RCML, 1854, p. 170)

Hence, liberal champions of limited liability came to demand the 'enfranchisement of capital', its right of association on equal terms in the name of freedom of contract (Bryer, 1997, p. 38). As a consequence, they came to associate limited liability with a modification of the Incorporation Act 1844 – and not with the Law of Partnerships. They argued that the 1844 Act had gone in the right direction by liberalizing the right to incorporation. However, they went on, this Act could not really be effective without limited liability – as an enticement to greater risk taking (Perrottt, 1982).

Beyond the ideological argumentation, self-interest also played a role. In the business community, liberal champions of limited liability were often themselves involved in the corporate and/or speculative drives (Taylor, 2006). Limited liability would no doubt ensure that, as investors, they 'might sleep more easily at night, their rest less frequently disturbed by dreams of bankruptcy and destitution' (Reader, 1982, p. 191).

### *Resource Mobilization outside Parliament*

As argued above, an active group of Christian socialists used the select committees of 1850 and 1851 as forums and sounding boards to frame and diffuse their crusade in favour of limited liability. However, their fight for association and limited liability had started outside Parliament, as a continuation of the Chartist emancipation movement. Non-parliamentary activism remained significant within and around this group, particularly until 1853 (Christensen, 1962; Shaw, 2009). The Society for Promoting Working Men's Associations, created in 1850, was an important node

of this civil society activism; it organized lectures, produced and circulated pamphlets, and orchestrated newspaper reactions. *The Christian Socialist* relayed the limited liability agenda along with some of the Chartist newspapers. The *Northern Star* proved particularly active (NCES, 2012).

Some debating clubs and societies participated in the campaign for limited liability. The National Association for the Promotion of Social Science, for example, and the Royal Society of Arts both 'took up the cause of limited liability as a means of reflecting and promoting social empowerment' (Loftus, 2009, p. 91). The Great Exhibition that the Royal Society of Arts organized in 1851 was a paean to the social and economic benefits of a productive association between capital and labour – an association that would only be possible with the introduction of limited liability (Loftus, 2009). In 1854, the Royal Society organized another great exhibition; this one focused on 'working men'. The objective was to explore a multiplicity of issues related to the 'progress of the working class' (Loftus, 2009, p. 92). Organizers framed limited liability as a powerful mechanism that would improve the conditions of the working class. Robert Slaney, Robert Owen and many Chartist leaders attended, along with leaders of the Christian socialist movement and forty-nine trade associations.

By then, though, the 'Baptist' framing of limited liability had been weakened and the 'Bootlegger' alternative had imposed itself within and outside Parliament. The two select committees did not have a direct legislative impact on limited liability, but they led to the passing of the Industrial and Provident Societies Act of 1852 (Lambourne, 2008). After Robert Slaney took the initiative and Christian socialists actively lobbied, the Act gave cooperatives a unique corporate identity. Arguably, the passing of the 1852 Act was a symbolic turning point for the limited liability movement. The 'Baptists' obtained half of what they had fought for: a freer right of association. However, they were disappointed by the lack of a limited liability clause (McQueen, 2009, p. 74). Commenting on the 'Slaney Act', the *Northern Star* (1952a) noted: 'True the measure does not do all we could wish. It does not, for example, confer limited liability'. The energy they were ready to deploy after that point waned significantly (Loftus, 2009; McQueen, 2009). Liberals, on the other hand, were warming up to the fight. Initially, the Christian socialists and Chartists viewed this development positively. When the Liberal MP, Robert Lowe, a well-known free trader entered the fight, the *Northern Star* (1952b) rejoiced: 'The advance of Mr. Robert Lowe in favour of limited liability partnership is a political event, which our working class readers have scarcely the means to appreciate as it deserves'.

Liberal clubs and debating societies seized upon limited liability and organized a vigorous campaign. The emergent liberal press also became a forceful champion. In 1843, the liberal businessman and politician James Wilson had launched *The Economist* to campaign for free trade. Until 1852, *The Economist* made scant mention of limited liability: it ran two articles on the Slaney commission in 1850 and a letter to the editor in 1851 that was rather critical of limited liability. Suddenly, in 1853, the tone changed and *The Economist* published three long articles championing limited liability (*The Economist*, 2012). In 1854, *The Economist* published four more articles that forcefully advocated limited liability and advertised a number of books and pamphlets that did the same. In 1855, the campaign intensified. Twenty articles were published in less than seven months before 26 July when Parliament finally passed the Limited Liability Act (18&19 Vic.c.133). The same kind of intensive campaign took place the following year; seventeen articles were published before June, when lawmakers passed the Joint Stock Companies Act of 1856 (19&20 Vic.c.47), which further liberalized access to both corporate status and limited liability.

Another important player in the 'Bootlegger' fight was the Society for Promoting the Amendment of the Law. James Stewart, a barrister and MP, created the Society in 1844 with a view to 'promote the careful and cautious improvements of the Laws of England' (Goldman, 2004, p. 33). By the

mid-1850s, the Society had around 300 members, nearly half of whom were barristers or solicitors. Robert Lowe and Richard Cobden were both early members. Between 1844 and 1857, a general estimate is that the Society 'had been instrumental in securing the enactment of no fewer than forty statutes' (McGregor, 1981, p. 18). From 1852 on, the Society expended significant energy on limited liability – particularly with the goal of associating it with the Joint-Stock Company Act (Goldman, 2004, pp. 33ff). This work contributed to the fact that 'the small and localized interest generated by the 1850 and 1851 Select Committees with respect to limited liability had broadened out considerably by 1856' (McQueen, 2009, p. 75). In 1855, Robert Lowe became vice president of the Board of Trade, and in 1856 no less than ten members of the Society were involved in the reshuffled, liberal, Palmerston government. Two lawyers, members of the Society, drafted the bills of 1856, discussed below (Goldman, 2004, p. 36).

## *Deadlocks and the Discourse of Resistance*

By the end of 1851, limited liability remained a divisive issue in Britain (Taylor, 2006). Arguments in favour were gaining ground, but it seemed a long way before common law would be modified. In 1852, Robert Slaney moved for the next step, the creation of a royal commission. The Royal Commission on the Mercantile Laws and the Law of Partnership was set up in 1853, and produced a report in 1854 (RCML, 1854). Eight Commissioners were in charge: all members of the British establishment, lawyers, politicians, merchants and bankers. In striking contrast to the select committees, the Royal Commission focused from the start on investments for the middle and richer classes (Bryer, 1997; Taylor, 2006). Discussions turned to limited liability for the Incorporation Act. The Royal Commission sent out lengthy questionnaires and asked informants their blunt opinion on whether or not they were in favour of limited liability.[2] Debates proved intense within the commission but also took place throughout the country – in newspapers, pamphlets, clubs, debating societies, local assemblies of businessmen, and chambers of commerce (Taylor, 2006, p. 150).

In the end, the case remained split. Commissioners underscored as late as 1854 that they were

> much embarrassed by the great contrariety of opinion…Gentlemen of great experience and talent have arrived at conclusions diametrically opposite and in supporting these conclusions have displayed reasoning power of the highest order. (RCML, 1854, p. 5)

Table 1 documents this great 'contrariety': thirty-six opinions in favour and thirty-eight against the association by right of limited liability with the Incorporation Act. Although merchants and manufacturers were split equally, professionals and intellectuals tended to be in favour, while bankers were clearly against. This 'contrariety of opinion' existed throughout the country. The Liverpool Chamber of Commerce, for example, had 'debated those issues for three days and the result was a vote of 107 in favour of limited liability and 209 against' (House of Commons, 1854, p. 796).

The Commission published its report in June 1854. Five of the eight Commissioners signed, recommending against general limited liability with the argument that it would not 'operate beneficially on the general trading interests of the country' (RCML, 1854, p. 5). In their separate opinions, the three dissenters expressed their wish to see a general extension of limited liability. In 1854, the majority opinion in Britain was against the generalization of limited liability. Far from being marginal, the naysayers represented a great diversity of social groups. It is useful, at this stage, to explore the arguments they mobilized against limited liability.

In continuity with Adam Smith, a key argument bore upon the governance impact of limited liability. Adam Smith had warned that the corporation, because it separated management from

**Table 1.** Opinions of Witnesses before the Royal Commission on Whether Limited Liability Should be Extended to Joint Stock Companies by Right.

| Occupation/Residence | YES | NO |
|---|---|---|
| Merchants/manufacturers | 17 | 18 |
| Legal profession | 9 | 6 |
| Bankers | 3 | 14 |
| Academics/MPs | 7 | 0 |
| London | 18 | 15 |
| Rest of UK | 18 | 23 |
| **Total** | **36** | **38** |

*Source*: RCML (1854), as compiled in Taylor (2006, p. 151).

ownership, created a string of governance issues. From that perspective, the extension of limited liability to corporate share ownership would create a second layer of governance problems. Owners under limited liability would not be so eagerly watching over, monitoring and controlling managers and 'carelessness' would 'be immeasurably increased if people may limit their liabilities at pleasure' (McCulloch, 1856, p. 6). The generalization of limited liability would only further negligence, mismanagement and risky or fraudulent behaviour in corporations (Amsler, Bartlett & Bolton, 1981; Saville, 1956; Shannon, 1931). Another fear was that limited liability would create imbalance in most industries (Taylor, 2006). Corporations with limited liability would drain capital, making it more difficult for traditional partnerships or non-corporate firms to thrive or survive:

> The benefit to be acquired by the managing or limited partners will be at the expense of a more than countervailing amount of injury to traders bearing the burden of unlimited liability, who will have to enter into competition with those who enjoy the protection to be given in the proposed law. (RCML, 1854, p. 6)

The project to extend limited liability created another type of imbalance: this one against creditors. Granting limited liability to shareholders meant transferring some – if not most – of the risks to creditors. Hence, bankers were generally opposed, particularly as the extension of limited liability to the banking and insurance industries was never discussed in that period (Saville, 1956, pp. 426–7; Taylor, 2006).

In parallel, most conservative politicians were also wary of limited liability. They pointed to the fast pace of industrialization in Britain. Limited liability could be justified in countries such as France, where investment was sluggish. In Britain, there was no shortage of capital, and opening the floodgates further could generate dangerous speculation (RCML, 1854, p. 19). Thomas Baring, from the Barings dynasty, strongly argued along those lines when he proposed that competition was already too fierce in Britain and should not be encouraged (Bryer, 1997, p. 41). Another striking argument often used against limited liability was that its extension contradicted common law. The 'natural justice' associated with individual responsibility and embodied in common law implied unlimited liability. 'Society is founded on the principle that every man and set of men shall be responsible, in the widest sense of the term, for his or their proceedings' (McCulloch, 1856, p. 14). In other words, 'he who feels the benefit should also feel the burden' (RCML, 1854, p. 15). This principle, it was argued, had built the reputation of British traders and merchants across the world and was the foundation of British wealth and prosperity (Saville, 1956). Opponents of limited liability believed it would endanger that principle:

> The advocates of limited responsibility proclaim in their superior wisdom that the scheme of Providence may be advantageously modified, and that debts and obligations may be contracted which the debtors, though they have the means, shall not be bound to discharge. (McCulloch, 1856, p. 10)

The morality of the British merchant was, in other words, inscribed in common law and secured through unlimited liability. The introduction of limited liability risked weakening that morality, as Adam Smith himself had already feared:

> This total exemption from trouble and from risk, beyond a limited sum, encourages many people to become adventurers in joint-stock companies, who would, upon no account, hazard their fortunes in any private copartnery. (Smith, 1999 [1776]: Book V, ch. 1)

From that perspective, the issue was not only economic, but ethical and cultural as well. The extension of limited liability challenged common law and questioned an ingrained identity. The debate was between 'two profoundly conflicting worldviews' (Bryer, 1997, p. 38).

Indeed, the generalization of limited liability was a cultural and ethical revolution. A number of social reformers, pamphleteers and socialist critics argued along this line – the most famous being Charles Dickens (Dickens, 2003 [1854]; Feltes, 1974). Those vocal critics came strikingly close, in their analysis, to diehard conservatives. The new culture brought with it seeds of irresponsibility and greedy speculation (Feltes, 2002). Conservatives believed that a limited liability culture would ruin established traders and disrupt the deep-seated social order they fought to preserve. Meanwhile, social reformers felt it would create wild expectations in the working and lower classes that were bound to crash in the end upon hard realities (Dickens, 2003 [1854]).

## *Moving to (Formally) Close the Debate: Seizing Dynamic Opportunities*

Even though the Royal Commission clearly recommended against an extension of limited liability, activism did not abate either within or outside Parliament. Upon receiving the report, on 27 June 1854, Robert Collier, a lawyer and liberal MP, moved a resolution to 'permit persons to contribute to the capital of partnerships…without incurring a liability beyond a limited amount' (House of Commons, 1854, p. 764). He called for wide changes in the law and suggested that 'but for its violation we should still have travelled in stage coaches and voyaged in sailing packets' (Hunt, 1936, p. 133). The attack against naysayers became organized and intense. The liberal group, which had by then significantly gained clout and power, was on all fronts claiming to have public opinion on its side (Hunt, 1936, p. 133). Richard Cobden, the apostle of free trade, challenged those who opposed limited liability. He had been surprised 'to find men with whom he formerly acted in advocating sound economical opinions now giving utterance to the most erroneous sentiments' (House of Commons, 1854, p. 783). Men of business who opposed limited liability, Cobden went on, worked against themselves:

> A law of limited liability could not benefit anyone if it did not benefit the capitalist. I could not imagine anything more suicidal on the part of capitalists than to oppose this proposition, which would afford new…openings for their capitals. (HOC, 1854, p. 784)

Robert Lowe forcefully championed the virtues of competition, even if it led to the disappearance of certain players.

> As a free trader, I can see nothing but good in increased competition and if the result of it should be…to drive small traders and partnerships with unlimited liability out of the field, this could only be by cheapening production, from which the public would gain far more than individuals would lose. (RCML, 1854, p. 84)

Others agreed. How could limited liability generate undue competition? Competition was always good; the more, the better. How could it be possible for a country to be 'too rich'? With all due respect to the commissioners, Robert Collier suggested, they had shown '[he] would not say ignorance but a total disregard of the principles of political economy' (House of Commons, 1854, p. 758). *The Economist* concurred, defending what had become a clearly formulated liberal dogma:

> The objection to limited liability that it will injure other kinds of partnerships is the objection of the handloom weavers to the use of machinery. If such are to be its effects, it must be more advantageous than the liability it is to displace; and the objection is the strongest argument that can be urged in its favour. (*The Economist*, 1854)

Robert Lowe also attacked the principled reference to common law. He agreed that 'he who feels the benefit should also feel the burden' was true 'enough as a principle of natural justice', but he added that this was true only 'in the absence of contract'. Freedom of contract pre-empted common law (RCML, 1854, pp. 195–6).

Government was at a loss. The report of the Royal Commission suggested that nothing should be done. But debates still raged within and outside Parliament, and the political landscape was changing fast. In 1850, the Conservative (Tory) government of the Earl of Derby was in place. That government, with Henry Labouchere as president of the Board of Trade, was strongly against an extension of limited liability. In December 1852, the Tory government fell. The new Prime Minister, the Earl of Aberdeen, was a Peelite and his team, which was still in place in July 1854, proved more receptive to a liberal agenda. However, on the issue of limited liability, that government was split. Edward Cardwell, then president of the Board of Trade, was not convinced. William Gladstone, Chancellor of the Exchequer, was also sceptical. On the other hand, Home Secretary Lord Palmerston, a Tory turned Liberal, was clearly in favour of general limited liability.

In January 1855, the Aberdeen government fell, following a vote of no confidence on the Crimean War. Lord Palmerston became the new Prime Minister. In March, Lord Stanley of Alderley took over as president of the Board of Trade, and Edward Pleydell-Bouverie stepped in as vice-president. Bouverie was a liberal. Immediately, the new Palmerston government presented two bills. One proposed an extension of limited liability to corporations; the other focused on partnerships. The first bill passed both houses. The second failed. The Limited Liability Act 1855 (18&19 Vic. c.133) was an extension of the Joint-Stock Companies Act 1844. Provided that a company had at least twenty-five shareholders and shares of no less than £10, it would be granted limited liability on complete registration. Insurance and banking were excluded. The information requirements present in the 1844 Act were maintained and companies also had to add 'Limited' or 'Ltd' to their name.

In August 1855, Bouverie left the Board of Trade. Robert Lowe took over as vice-president and presented two new bills. Once again, the bill associated with partnerships did not pass but the other bill did. The Joint-Stock Companies Act of 1856 (19&20 Vic. c.47) was a consolidating statute, which considerably simplified the registration process. The Act extended access to limited liability to all registered companies of seven or more members and got rid of the £10 share qualification. Rather than having strict legal requirements on information, the Act proposed that companies

could voluntarily adopt a set of bylaws with a focus on governance. To justify these developments, Robert Lowe decidedly placed the debate at a philosophical level:

> My object at present is not to urge the adoption of limited liability. *I am arguing in favour of human liberty* – that people may be permitted to deal how and with whom they choose without the officious interference of the state… in my judgment, the principle we should adopt is this – not to throw the slightest obstacle in the way of limited companies being formed – because the effect of that would be to arrest ninety-nine good schemes in order that the bad hundredth might be prevented. (House of Commons, 1856, pp. 130–1)

Robert Lowe's speech as he defended powerfully (and convincingly as a majority in Parliament seemed to agree) the new version of the joint-stock company bill revealed a strong liberal agenda – if not dogma – that had narrowed its focus on the 'enfranchisement of capital':

> Who could have imagined it possible that a state of society resting on the most unlimited and unfettered liberty of action, where everything may be supposed to be subject to free will and arbitrary discretion – would tend more to the prosperity and happiness of man than the most matured decrees of senates and of States? These are the wonders of the science of political economy, and we should do well to profit by the lesson, which that science has taught. (House of Commons, 1856, p. 137)

By contrast, Robert Lowe only briefly mentioned and discussed the Partnership Act, with none of the philosophical urgency he had used to champion the Joint-Stock Company Act (House of Commons, 1856).

## Discussion and Conclusion

This is not the end of the story of limited liability in Britain. Two acts, in 1858 and 1862, extended limited liability to the banking and insurance sectors and a revision of the Industrial and Provident Societies Act, in 1862, integrated limited liability into the corporate statute designed for cooperatives (Lambourne, 2008). Still, the acts of 1855 and 1856 are a suitable place to end this account, as they mark the formal institutional inscription, in British law, of the corporation with limited liability. In the words of Robert Lowe again:

> The process is this – it begins with prohibition, then becomes a privilege, and last of all a right. Till 1825, the law prohibited the formation of joint-stock companies. From that time to the present it has been a privilege; but now we propose to recognize it as a right. So with limited liability. (House of Commons, 1856, pp. 129–30)

### *From Social Movement to Formal Institutionalization*

With a focus on limited liability, this article has pointed to mobilization and intense politics of signification. The early period of the fight for limited liability was set in the continuity of Chartism, a broad-based social movement that fought for 'bread and liberty' and 'progress of the working class' in the rough context of British industrialization. Chartists and Christian socialists promoted limited liability 'as a mechanism for reforming society' (Loftus, 2009, p. 97). Throughout the period explored here, debates remained divisive. British society was split between those who favoured the extension of limited liability and those who categorically opposed it. The split cut across classic boundaries such as class, occupation or geography. Until 1855 and the passing of the

limited liability act, a majority within British society viewed limited liability as a radical and frightening legal innovation that was bound to profoundly disrupt the economic, social and cultural status quo.

As documented in this article, social movement dynamics help explain the legal institutionalization of limited liability, despite strong resistance, particularly from dominant conservative groups. Interestingly, though, no unitary social movement formed; the actors were a loose 'coalition of the unlikely'. The 'Baptists' (Christian socialists and Chartist reformers) and the 'bootleggers' (liberals and champions of free trade) of the story both fought for limited liability, but each group clearly did not mean nor expect the same things (Yandle, 1983). An active group of Christian socialists initiated and launched the fight for limited liability. They used the arena provided by two select committees to set an agenda and turn limited liability into an issue. Within and outside Parliament, they worked on framing a coherent discourse that connected limited liability to welfare and economic progress for the working classes along with democratization and the 'enfranchisement of men'. Initially, liberals jumped on the bandwagon, mobilizing arguments that were essentially compatible with that particular framing. Progressively, though, during the 1850s, liberals and free traders imposed themselves and claimed a clear and distinct identity, creating significant distance from their Chartist roots. In the process, they deployed their own politics of signification, appropriating the fight for limited liability while imposing a profoundly transformed framing. Liberals shifted the focus from solidarity and collaboration to competition, from welfare to wealth, from democratization to individualization, from the 'enfranchisement of men' to the 'enfranchisement of capital'. In the decade covered here, the balance of power changed significantly within this 'coalition of the unlikely'. The 'Baptists' led the way and launched the fight, but the 'bootleggers' asserted themselves after a few years and took over, ultimately playing a key role as they seized a political window of opportunity to secure formal legal inscription.

## *The Melancholy of the 'Baptists'*

The 'Baptists' obtained in 1852 half of what they wanted: the Industrial and Provident Societies Act was a specific corporate status for worker associations. It made association between workers relatively free and easy even though the Act did not come with limited liability. From that moment on, the 'Baptist' mobilization in favour of limited liability waned (Loftus, 2009; McQueen, 2009). Several developments combined to explain this. First, the fight for the 1852 Act had drained the energy of many (Lambourne, 2008). The sense of achievement the Act generated was enough for some (McQueen, 2009, p. 76). Second, once this Act passed, the prospect that it would become associated with limited liability became distant at best. And this reflected also on the likelihood that limited liability would come to be associated with the partnership Act. Most Christian Socialists only fought for limited liability in association with the partnership Act. They were extremely wary of its potential association, on the other hand, with the corporate Act. Hence, the fight for limited liability receded in the list of priorities of the 'social ameliorationists' (McQueen, 2009, pp. 70ff). Third, this development was reinforced by the emergence of a powerful new agenda around 1852. Key leaders within the 'Baptist' group, including Frederick Maurice and John Malcolm Ludlow, turned their interest and energy to the cause of the workingman's education. The result was the setting up of the Working Men's College in 1854 – a development that absorbed a lot of energies and resources within the Christian Socialist community (Davies, 1904). The limited liability ground was all but left to the 'bootleggers'.

The 'Baptists' welcomed, initially, the growing involvement and mobilization of the 'bootleggers' in favour of limited liability. They even willingly handed over the fight. However, they soon

realized that in the process the fight might be changing in nature. In 1855 and 1856, the bills that affected partnerships failed, whereas those that proposed limited liability for joint-stock companies passed. This demonstrated the shift in the balance of power within the 'coalition of the unlikely'. The 'bootleggers' still took care to present limited liability as 'the logical extension of laissez faire economy, extending its privileges to the labouring classes and to the poor' (Hunt, 1936, p. 116). But by the mid-1850s, the 'Baptists' were not to be fooled. As an anonymous pamphlet, published in the *Times* on 30 June 1855, lucidly observed: 'When E. P. Bouverie presented the limited liability Bill to the Commons, the hon. Member threw overboard all the working class claims' (Anonymous, 1855). Limited liability had gone from being defined as a tool for radical social reform to becoming the ultimate expression of free trade and contractual freedom (House of Commons, 1856).

In practice, limited liability was not an instant success. For some years and even decades, the new corporate form diffused only slowly; 18 percent of total annual registrations in 1866, unchanged from the 1856 figure (McQueen, 2009, p. 136). In spite of negative externalities, sluggish adoption rates and lingering resistance, there was never any attempt at legal reversal. By the end of the 19th century, the formal coupling between incorporation and limited liability had become deeply institutionalized in Britain – and in fact other countries had followed the British lead (Saint-Léon, 1907).

## *Some Lessons for Today*

This paper demonstrates the important role social movement mobilization plays in fostering significant institutional change. But it also shows that, in certain circumstances, the success of a social movement can lead to its self-destruction. In the case explored here, the social movement was successful in the sense that limited liability became institutionalized and inscribed in law when it had been, until then, a marginal and suspicious privilege granted in spite of dominant legal principles. As indicated above, though, only one side of the coalition could really consider inscription in corporate law as an unmitigated success – the 'bootleggers'. The 'Baptists', on the other hand, who had been fighting for limited liability from the perspective of the enfranchisement of (working) men, had hoped for inscription in the partnership act. Mostly, they felt betrayed and let down. As the 'Baptists' had lost steam as a group since 1852 and the 'bootleggers' achieved what they wanted with the 1856 Act, the social movement was all but dissolved. In the few years that followed, social movement dynamics moved – albeit in weak and unstable form – to the other side. Among outright opponents to limited liability, bitterness lingered on for many years. Reacting to the passing of the 1856 Act, the conservative weekly of the legal profession, *The Law Times*, fiercely deplored this legal transformation:

> The new joint stock companies Act not merely introduces a novelty into morals and commerce – it is as strange in form as it is monstrous in conception…Every protection, which the former law had provided against fraud, folly and abuse, has been swept away. (*Law Times*, 1856, p. 205)

A few dramatic failures, between 1856 and 1858, which were clearly associated with the legal innovation, seemed to prove opponents of limited liability right:

> When we styled the limited liability Act the 'Rogues' charter,' we certainly did not anticipate that it would so speedily approve its claim to the title. It is little more than two years old and already what a mass of villainy it has engendered!... Limited liability has had a fair trial and has proved to be an egregious failure for all good purposes, and fertile only of ill. (*Law Times*, 1858, p. 14)

Debates surged again after the devastating crisis of 1866, which opponents of limited liability depicted as the direct consequence of the extension of limited liability to the banking and insurance sectors (Taylor, 2006).

In light of this case, it is interesting to reflect on what accounts for the fact that certain movements will dissolve when they are successful and others will not. Legal inscription is one path to success for social movements. However, depending upon the complexity of the cause and its contentious character in a particular society, legal inscription may or may not be enough. The landmark Civil Rights Act of 1964 was an important success marker for the American civil rights movement but it did not automatically imply, far from it, the end of racial discrimination in the United States. The civil rights movement still had a lot to do after 1964! In the case of limited liability in Britain, legal inscription was also only one step towards institutionalization. As indicated above, registrations under the new Act were sluggish for many years after 1856. But forces of conservatism and opposition to limited liability did not compare by then to what the civil rights movement had to face in 1964. There was less risk of legal reversal and hence less need to defend and protect the cause. The remaining challenge was mostly one of institutionalization – how to move from legal inscription towards behavioural appropriation. Understanding institutionalization as a multi-step and differentially contested process hence makes it possible to explain variation in the resilience of social movements as institutionalization proceeds.

The story of limited liability as told in this article is a social movement story, but it is also a story of institutional change. On the one hand, the institutional transformation described here was profound, consequential and surprisingly rapid: in a little less than twenty years, from 1844 to 1862, British common law was completely overturned on the two major issues of corporate status and limited liability. On the other hand, if we consider the overall timeline, the transformation happened through several successive steps and stages that built, through time, upon each other (Djelic & Quack, 2007). There was no hero in the story of the corporation with limited liability in Britain, only a nexus of actors who were all embedded in multiple sets of constraints and perceived interests. There was significant agency, but it was of a collective and aggregative kind, revealing a diversity of motives, complex interactions and power games as well as different degrees of ambivalence, if not resistance. As a consequence, the path of change was not a linear one that could have been recognized or traced a priori. The end result – the institutionalization of the corporation with limited liability – would have been difficult to predict at the beginning of the 19th century. Furthermore, the kind of corporation we have today, as a more or less direct consequence of these developments, is probably quite far from what many actors in this story were aiming at.

## *Remaining Questions*

I chose, in this article, to focus on Britain, where debates were particularly rich and intense. But this study clearly begs for complementary research. Our understanding of the limited liability revolution would benefit from exploring the debates that took place elsewhere – and particularly in France, Prussia and the United States. In fact, the story of limited liability is in part a transnational story. Beyond a simple cross-country comparison, we need to identify the transnational mechanisms and channels that connected national debates and developments.

The crystallization of the corporation with limited liability that was ultimately the consequence of the social movement dynamics explored in this paper was not an evolution written in the 'laws of nature' – *pace* Robert Lowe. The systematic exploration of the social movement dynamics that turned limited liability into an agenda worth fighting for underscores the fragility in historical terms of what seems today a potent institution: the corporation with limited liability. Rediscovering

the fragility of institutions is a first step toward allowing us to think of change and alternatives, as the historian Ernst Badian suggests:

> It is the constant danger of lack of historical training – such as unfortunately has become more common and is becoming almost respectable in some circles today – that a given situation may come to be regarded as God-given (or natural), and our prejudices to be erected into moral criteria, with any alternative inconceivable and thought of only with a shudder. (Badian, 1972, p. 12)

This paper demonstrates how an institution we take for granted – the corporation with limited liability – is, in reality, a recent innovation. It took time and many complex developments before the corporate form became uncontroversial and widespread. It also took time and many unexpected turns before limited liability went from being a rare privilege that generated distrust to becoming *the* undisputed and legitimate definition of responsibility in economic life. Finally, it took time and many surprising steps before the corporate form and the principle of limited liability became tightly intertwined. The limited liability corporation is not a 'natural' fixture of capitalism; instead it is a socially constructed institution that imposed itself through time in a partly accidental manner. Some of the shortcomings of contemporary capitalism, which have become strikingly visible in the context of the world crisis, could probably be connected to the limited liability principle; this would be an important complementary contribution to this article. It is surprising, furthermore, that we have not seen as yet a revival of social movement dynamics around limited liability – this time against it. This may still come, however, and would empirically confirm that, even as institutions appear highly entrenched, they are never completely insulated from controversies, debates, contestation and the revival of social movement dynamics.

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## Notes

1. Liberal is understood here in the European sense of the term.
2. 132 questionnaires were sent – about half to individuals and half to organizations (including Chambers of Commerce). There were 74 replies from the UK (including 5 unsolicited) and 16 from France or the US (RCML, 1854).

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