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PROVINCIA AUTONOMA DI TRENTO

THE INTRODUCTION OF LIMITED LIABILITY IN NINETEENTH CENTURY ENGLAND

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ABSTRACT

In this paper I have analysed the development of company law from 1720 through to 1857. During this long period of time, company law assumed the characteristics it has now. At the starting point, company law stood with incorporation granted by the Crown or Parliament on one side and partnership regulated by common law on the other. The development of the modern corporation needed the definition of what were the problems connected to the fact that a firm is run in association and what is the legal framework that allows to solve efficiently with the lowest costs these problems. In this paper I show that the introduction of limited liability gets its meaning from the exact definition of many other aspects of company life, such as bankruptcy procedures, directors' power and responsibility, shareholders rights, publicity regime for company acts. Accordingly it's shown that the introduction of the limited liability regime can't be studied in isolation and it was just the last step in a complex development process.

INTRODUCTION

In its most stylized tenets the economic theory sees the firm as an institution that buys factors to produce goods and services with the objective of obtaining the maximum profit. This completely abstract concept of the firm is easily acceptable and it performs a pivotal role in the construction of a market model and in the construction of the supply side of an economy. While the development of a more detailed and precise definition of the firm proves much harder, it's nonetheless true that modern corporations seem to perform nearly the exact function of the firm. The development of the modern corporation as defined by company law has been however a very long process that took place together with the process of economic development in the western countries. Economic development and the development of economic institutions seem to be two joint processes where law gives a general framework for the settlement of concurring interests, and economic activity while taking advantage of the opportunities that law provides, it poses new challenges and new problems to the law makers.

In this paper I examine the evolution of the legal entity forming the joint stock company up to the establishment of limited liability in England.

The introduction of limited liability in England has been the object of a wide body of studies that see economic history, economic theory and law developing a stimulating debate. Smart (1996) suggests that "…any analysis of limited liability must seek to answer two classes of questions. First, what were the effect of limited liability legislation on nineteenth-century capital markets? Second, why had unlimited liability previously been the norm, and why did the change in liability rules occur when it did, in Great Britain and elsewhere?" (Smart, 1996, 3). Those two are in fact two core issues in the debate.

The effect of limited liability on the ownership structure of the firm is connected with the development of the stock market on theoretical basis (A. Winston, 1993) and on empirical base (C. R. Hickson, J. D. Turner, 2003; G. G. Acheson and J. D. Turner, 2004). The reaction of the stock market to different liability regimes has been investigated from the empirical point of view (P. Z. Grossmann, 1995; C. R. Hickson, J. D. Turner, C. McCann, 2005; M. I. Weinstein, 2003).[1] While the market for shares, when established, seems to be fairly indifferent to the companies' liability regime, the establishment of an efficient market for shares seems to be less likely if shares carry unlimited liability. The relationship between the introduction of the limited liability regime and the development of an organised stock-market is used as an argument in the debate about the timing and the success (or lack of success) of it's introduction in Great Britain.[2] The introduction of limited liability is said to have come late, companies are said to have adopted this liability regime slowly and these delays, preventing companies from having access to an efficient market for risk capital, may have contributed to the economic decline of the United Kingdom.

The link between the liability regime and the development of organised stock markets moves approximately along these following lines. Shareholders of a company with unlimited liability have a very high incentive to monitor not only the behaviour of the managers but the behaviour of the other shareholders as well and these activities are costly. Shareholders in a company with limited liability have a lower incentive to monitor managers' behaviour and above all they have no need to monitor other shareholders. The absence of the need to monitor other shareholders makes shares easily transferable facilitating the establishment of efficient share-markets. Some authors state that without limited liability there can't be a single price for a company share (P.Halpern, M.Trebilcock, S.Turnbull, 1980), other authors push the argument further, stating that marketability of ownership

[1] Grossman and Weinstein do study shares' prices under limited and unlimited liability regimes, but they treat proportional liability like unlimited liability. While proportional liability may be unlimited indeed, it is substantially different from joint and several unlimited liability. In most theoretical studies, a regime of limited liability is compared with a regime of joint and several unlimited liability.

[2] It's important to notice that Great Britain and England couldn't be used correctly as equivalent because the same laws didn't always apply to England, Scotland and Ireland.

solves the agency problem between shareholders and managers (F. H. Easterbrook, D. R. Fischel, 1985).

The introduction of limited liability reduces the incentive for shareholders to monitor the management's behaviour and it transfers risk from shareholders to creditors. Creditors have a higher incentive to monitor managers behaviour and that, not only will make worthwhile a higher level of monitoring, but it will allow the development of agencies (like banks) that specialise in this monitoring activity and will be able to perform it at a lower cost.

The theoretical debate defines the regime of limited liability as a very efficient one but that leaves open the question why wasn't it introduced earlier? A possible answer to this question is suggested investigating the possibility that on equity and debt-market adverse selection takes place toward limited liability companies so that in the end a limited liability regime is more costly for the company (J. L.Carr, G. F. Matthewson, 1988; K. F. Forbes, 1986). Another possible answer is that liability's restriction is costly and firm's size determine the ability to either support or to reduce these costs (S. Woodward, 1985).

In this debate about the relationship between limited liability and development of the stock market and about the timing of the introduction of limited liability in UK, limited liability is seen as an aspect of corporate law that may be seen quite in isolation.

In the following pages, I'll show how corporate law had to go through a long process of development before the issue of limiting the liability could become a central one. Historically, incorporation that brought with itself limitation of liability, was a regulated legal form that wasn't born for business enterprises run by people in association. Business enterprises were let to partnership and partnership was a common law's legal form. During the first fifty years of the nineteenth century a long process took place that saw the definition of the legal status of the business corporation. While the five incidents of incorporation (to have a common seal, to be able to sue and be sued by its corporate name, to have perpetual succession, to make by-laws or private statutes for the better government of the corporation, which are binding for its members unless contrary to the laws of the land, to buy and hold lands for its benefit) may have had one meaning when applied to the Archbishop of Canterbury, they must have had a completely different one when applied to a brewery. On the side of common law, partnership proved a quite ineffective framework for enterprise. The development of corporate law moved along two lines, on one side incorporation was slowly redefined so that it could satisfy business' need; on the other side single features of incorporation were extended to partnership to improve its effectiveness. Both lines of development can be seen a search for the legal status that would allow to run joint economic activities with the lowest transaction costs and the liability regime seem to be the last step along this line. The fact that limited liability was the last step taken, suggests that other aspects of incorporation were more useful to make partnership a workable legal status or it could be suggested that other aspects of incorporation allowed larger savings. Furthermore the reduction of costs connected with limited liability seems to have been not so necessary for the development of the stock market: during the first half of the nineteenth century in fact, organised markets developed for assets that were very different from shares of a limited liability company.

1. AB IMMEMORE TO 1720

In this paragraph I summarize the development of the concept of incorporation up to 1720. I make a short review of what was the meaning of incorporation for English law up to that time and I highlight how the Crown and Parliament were the only two powers that could legally grant it. The legislation of 1720 makes in fact clear that incorporation was one special legal status that could not be achieved at common law.

Broadly speaking, a joint economic activity carried out for gain, can currently be organised following two main legal types: company and partnership, regulated by two different sets of rules. Despite the fact that the word "company" does not have a strict legal meaning per se, the two sets of rules are now well developed and allow a clear distinction between the two legal types:

incorporated companies on one side and unincorporated associations (partnership) on the other. The incorporation of a company implies the establishment of a legal entity, which is different from its member, and has "legal personality" i.e. it enjoys its own right and it is subject to its own duties (Davies, 1989).

Starting from this very general proposition it is clear that the establishment of an *artificial persona* existing only in contemplation of the law, poses many questions and the following among the others:

- how does this *artificial persona* come into existence and how does it cease to exist ?
- what powers, capacities and liabilities does this *artificial persona* have ?
- what is the relationship between this *artificial persona* and the members constituting the underlying body of persons ?
- what is the relationship between the members of the underlying body and any subject contracting with the company ?
- how does this *artificial persona* formulate and enact its choices ?

Many sections of company law regulate these aspects. Among the others, company law contains provisions on: how to establish a company, what are the organs and officers of a company, what are the powers of these organs and their relation, what are the shareholders liabilities, what protection shareholders and creditors have, what is the procedure to "wind-up" a company and what are the consequences of this procedure (Gower,1979).

Following Holdsworth (vol. III, pp.469 ff.), the rules for the creation of an incorporate person and the regulation of its activity can be traced back to the Middle Ages. They were developed for associations that did not have as their sole or main purpose an economic activity generating profits to share among the members, and they were quite well established by the late seventeenth century.

It was by then clear (Holdsworth, vol.IX, pp.45 ff.) that the first essential for a valid corporation was a "lawful authority of incorporation". An authorisation from the state was needed, like a Special Act of Parliament or a Royal Charter[3] which was granted under common law or under statute (Butler,1986).

By the late seventeenth century it was as well clear, that the following five incidents were inseparably annexed to any corporation

1. to have a common seal,
2. to be able to sue and be sued by its corporate name,
3. to have perpetual succession,
4. to make by-laws or private statutes for the better government of the corporation, which are binding for its members unless contrary to the laws of the land,
5. to buy and hold lands for its benefit.

When, through practice and doctrine, the law had gained sufficient familiarity with the idea of an *artificial persona*, its nature and the implication of its establishment, the possible benefits became apparent of applying this legal conception to associations having the sole scope of running an economic activity for gain. To incorporate a joint economic activity could give many advantages because it allowed there to be drawn a clear line between the acts and liabilities of the corporation and those of the corporators. For the corporators there could be limited liability[4], the freedom to dispose of their share of the activity, and the possibility to adopt majority decision rules; the corporation could be a perpetual body, it could act in law and take legal proceedings against third parties and against its members (Holdsworth, vol.VIII, pp. 196).

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[3] In earlier times a lawful authority of incorporation would include common law, prescription and in the Middle Ages implication. However a progressive limitation of the lawful authority took place and implication, prescription and common law, never seem to have had any role in the incorporation of joint economic activities run for gain (Holdsworth, ibid)

[4] To have an effective limited liability you need to have adequate accounting procedures to distinguish corporators' from company's capital accounts. Double entry book-keeping was developed in the fifteenth century Italy and was not well known in the British Isles late into the seventeenth century (Cooke, pp.46).

Without a Royal Charter or an Act of Parliament however, incorporation was not possible and it was then impossible at common law to obtain simultaneously all the benefit I summarised. An unincorporated company could be established by deed, and the deed could contain a wide range of provisions about the features of the company, but these provisions were subject to common law. To issue shares was possible but it was not clear if these could be freely transferable and in particular the benefits of limited personal liability was a crucial feature that could not be achieved at common law (Horrwitz,1946).

In the late sixteenth and during the seventeenth century, the first incorporated companies were established by Royal Charter or Act of Parliament, having as main objective to undertake an economic activity for gain using a joint stock.[5] The Russia Company was incorporated by Royal Charter in 1554, the Levant Company in 1581 (with a temporary charter, a permanent one following in 1605), the Virginia Company in 1606 (two other charters followed in 1609 and 1612), the Africa Company in 1618 (obtaining three following charters in 1631, 1662 and 1672) just to mention a few of the oldest, but I should mention for their relevance the Bank of England, established by charter in 1694, the (Hollow) Sword Blade Company chartered in 1691 and the South Sea Company incorporated in 1711. Joint stock companies were incorporated that were operating in almost any sector: foreign trade, banks, utilities, insurance, mines, plantations, iron and steel, industrials (Formoy, 1923 pp. 16 ff.). In any case their establishment was associated with the concession of some privilege from the state: some form of monopoly[6] was the most common, but patent letter was another and for the earlier companies involved in foreign trade the power of a company to rule over its member was de facto extended to non members (e.g. the East India Company, Cooke pp.60; or the Hudson's Bay Company; Holdsworth vol.VIII, pp.210).

This first wave of incorporations highlights that at the beginning of the eighteenth century the status of incorporated joint stock company was a privileged one. There was no right to obtain incorporation, this was granted on a case by case basis by the Parliament or the Crown within their legal power.[7] Incorporation was a privilege to be acquired in a formal, possibly complicated, almost certainly expensive way, but not out of reach.[8]

This first wave of incorporations was followed within a relatively short period of time by one of the first bubbles (if not the first bubble) of the stock market[9]: the so-called South Sea Bubble. The

[5] Charters were granted to newly established companies and to unincorporated companies already existing and created by deed of co-partnership (e.g. Mines Royal).

[6] By the seventeenth century it was clear that an Act of Parliament could give corporations any power, and above all those powers that without such authority would infringe common law; but it was clear as well that the law could not be changed by Royal Charter: a Charter granting powers going against the principles of common law would have been void (Holdsworth vol.IX, pp.48). The concession of monopolies had to be done within the boundries of the relative legislation (early statutes on monopoly date back to 1623). Sometimes a parliamentary Act was passed first, extending the powers of the Crown, and then the Crown could issue a Charter granting monopoly (e.g. the incorporation of the Bank of England).

[7] The reasons way the State granted this privilege and what type of consideration was made in assessing each case may be investigated and have been investigated from a political, legal, historical and economical point of view. From this last point of view it can be argued that the State would grant this privilege to private citizens in view of some gain for himself. In the case of incorporation for companies involved in foreign trade the gain for the State could be an expansion abroad of his power. In the case of the Bank of England and the South Sea Company, the companies were established to improve the management of the national debt and the gain for the state is self evident. Less evident is the gain for the State deriving from the incorporation of a "Company interested in the Manufacture and Invention of Milled Lead, a small company dividend in only twelve shares, which obtained and Act of Parliament in 1670" (Cooke, pp.20). Following Patterson and Reiffen (1990) the State was anyway extracting revenues from the concession of a privileged status, and the policy of granting Charters and Private Bills could be analysed in tem of a monopolist (the State) maximising its revenue from the "sale" of a privilege.

[8] W.R. Scott gives an estimate of 150 companies existing already in1695 (Scott,vol.1, pp.327 ff.).

[9] For a short illustration of the organisation of the stock marker in London in the eighteenth century see S.R.Cope(1978), or the first chapter in R.Michie (1999).

literature covering the early development of the English financial market could not avoid dealing with the now famous bubble. Its possible causes and consequences have been studied in a wide body of studies[10] and economic historians have shown that the overoptimistic mood of the stock market in 1719 and early 1720 was accompanied by an explosion companies' promotions.[11] An event simultaneous to that bubble but less publicised in the economic literature, is the introduction on June the 11th 1720 of the "Bubble Act"[a]. When the prices bubble was peaking, the Parliament intervened, either to protect the public and to protect "trade and commerce", as stated in the official documents, or to make amendment for the improper behaviour of the government and some of its own members (Holdsworth,VIII,pp.219), or to preserve its ability to extract revenues (Patterson and Reiffen,1990). In the Bubble Act

- generically defined undertakings tending to create prejudice of the public trade and commerce and inconvenience to His Majesty's subjects were deemed to be illegal;
- a short list was included of what could have been such undertakings or their insignia: opening books for public subscription, presuming to act as a corporate body, pretending to make stock transferable, pretending to act under obsolete charters;
- penalties were introduced for brokers[12] dealing in shares of the illegal undertakings;
- and last undertakings established before the 24th of June 1718 were exempted from the Act and they were left under common law.

The act may have been poorly drafted to the point of obscurity, but: it made clear that trading in shares of unincorporated companies was illegal and implicitly freely transferable shares were a privilege belonging to corporations (Holdsworth,VIII pp.220). The act projected then a long lasting shadow of illegality on unincorporated companies.

2. FROM 1720 TO 1844

In this paragraph I summarize the development company law from 1720 to 1844. During this period it became evident that having common law on one side and incorporation by the State on the other was a situation unsuitable for a country experiencing the thrust of the industrial revolution. During this period legislation evolved introducing legal forms that were intermediate between common law company and corporation, giving common rules for the privileges that State and Parliament could grant, and introducing the Board of Trade as the authority competent for the administration of these privileges.

The Bubble Act remained on the statute book from June 1720 till May 1825, when it was repealed [b]. During this long period, so crucial to the economic development of the United Kingdom, the law regulating associations carrying on a trade for profit had on one side the privileged status of incorporated joint stock company authorised by the State, and on the other side the unincorporated company regulated by common law. How similar and how different the two types of organisation could and should be, was not clear partly because the Bubble Act, that sanctioned the distinction (and created heavy penalties which discouraged tests of the law), was in itself unintelligible and partly because the Parliament could and did create intermediate legal forms by special legislation and private bills (Shannon, 1931).

At common law companies were partnerships and partnership was based on the principle of agency. The lack of legal personality and the principle of agency did not allow the drawing of a neat distinction between the acts of the company and those of the partners, so there were many problems if this formula was adopted for an economic enterprise exceeding the small scale. Among the others, there were problems: to limit liability, to allow free transferability of shares, to solve controversies between partners, and to be active or passive subject of legal action. This last was a

[10] For a short analysis see P.M.Garber (1990).

[11] W.R. Scott reports that 190 companies' promotion can be identified in the year September 1719 to August 1720 (Scott, vol.3, pp. 445-458.).

[12] The broker profession was already regulated by law. Earlier rules date back to 1696-1697 (8 and 9 William III, c.32). Further Acts will then be passed in 1733 (7 Geo, II c.8) and 1767 (7 Geo III, c.48) (Formoy, pp.10)

particularly important problem because, to sue a partnership, the plaintiff must sue all its members. The plaintiff himself could not therefore be a member of the partnership, as it is not possible to be plaintiff and defendant at the same time.[13] The practical impossibility to act against a large partnership could then be used as an argument to qualify it as illegal, at least in the opinion of the Lord Chancellor Lord Eldon (Cooke, 1950, pp.99). These problems were solved as far as possible by establishing the company by carefully drafted deed of settlement (Farrar & Al.,1991, pp.23), by a further development of the trust formula that already existed at common law (DuBois,1938,Ch.III) and by private legislation conferring to unincorporated companies some of the privileges belonging to incorporation (Butler, 1986).

What could be achieved by the use of deeds of settlement was however limited by the fact that these by-laws were binding only for the partners subscribing them and not for third parties, except under very special circumstances. A partner liability for example could be limited to a certain extent towards the co-partners but in general this limit could not be enforced against third parties; only if a third party knew of this liability's limit there were some chances of making it effective against it.

Problems could arise between company and partners due to the fact that a person became a partner, with rights and duties toward the company, only when he had subscribed the deed of settlement. Because of that the establishment of an unincorporated company could run sometimes into difficulties in its earlier stages. To establish a company rising capital from a large number of partners, the following procedure seems to have been sometimes used (Formoy, 1923,pp.42 ff.): on application to the promoters, a future partner received a letter of allotment, with the letter of allotment he deposited at the company's bank what fraction of the nominal capital was stated and he received in exchange a receipt, with this receipt the subscriber obtained from the company's directors a script certificate and with the script certificate the future partners could sign the deed of settlement and obtained in exchange the share certificate. To make the subscription more attractive the initial deposit was limited to a small fraction of the share nominal value and letter of allotment, bank receipt and script certificate were all transferable. That had two relevant implications: first there could have been no relation between the person that originally applied and the person that in the end became a true shareholders; second but more important the bank receipt and above all the script certificate would have given the bearer the right to subscribe the deed and to become a partner, but it would have conveyed obligations toward the company that were enforceable only after the script holder had signed the deed. If the expectations about the company had changed for worst, the bearer of a script certificate, issued possibly for a fraction of the capital nominal value, could always choose not to subscribe the deed and then not have the shares. The script bearer would have forfeited what he paid, possibly net of the deposit that he could reclaim, and not having signed the deed he would have been free from obligations toward the company. The company on the other side would have had not power to call on him neither for further capital contribution nor for the full capital subscription, if that was the case, a troublesome end of the company would have followed.

Which legal form to adopt for an economic activity based on a joint stock enterprise was a matter for the partners to decide. Incorporation by Royal Charter (with its incidents) with its associated procedures, seems to have been difficult and expensive to obtain after the passing of the Bubble Act so this form of incorporation was the least commonly used. Incorporation by private bill was easier to obtain and then more common (Dubois, 1938, pp.12.ff); companies needing special privileges or powers, granted exclusively by Parliament, could petition to obtain those together with incorporation. The canal companies are a numerous example of this case: they needed special powers, like the right to buy land, and this was a privilege granted by Parliament, and many of them were incorporated.[14] Unincorporated companies could be established by deed of settlement, but the provisions contained were not binding for third parties, at least in principle. Unincorporated

[13] To know who the partners were could be a problem for a plaintiff in the case of a fluctuating body, but Formoy (1923, pp.33 ff) illustrates with a clear example the problems for a plaintiff to sue a partnership, and for a large partnership to sue someone.

[14] Before 1800 more than one hundred canal companies had been founded under Canal Acts (Cooke,1950, pp.92).

companies could however petition the Parliament for special legislation conferring privileges or powers and the power to sue (and be sued) in the name of the principal officers was sometimes obtained. The trust formula allowed to have a class of partner, the trustees, with special rights and duties toward the other partners and third parties. Trusts too could be established by deed, they too could petition the Parliament to obtain privileges and special powers, or they could be established by private Acts like the turnpike trusts.[15]

In the early eighteen-twenties, following a period of economic growth, the financial market started to grow fast and with this growth another period of optimism, companies' promotion and rising asset prices developed (Hunt, 1935). Like one hundred years before, an explosion in joint stock companies promotions accompanied this financial boom, notwithstanding the long shadow of the Bubble Act and notwithstanding all the problems connected to the use of unincorporated companies and trusts for large economic activities.[16] The Parliament intervened again. In May 1825 an act was passed that repealed the Bubble Act, explicitly putting under the rule of common law those undertakings that were previously forbidden. The same Repealing Act extended the powers of the Crown to grant charters of incorporation to trading companies. It was for the Crown to decide if and what limit to set for the corporators' liability. The Crown could now grant incorporated status without the incident of fully limited liability. The Repealing Act separated then incorporation from limited liability and that implied that to apply for incorporation didn't guarantee the achievement of limited liability (Cooke, 1950, pp.124).

The separation between incorporation and the associated privileges went further with the passing of the Trading Companies Act[c] in 1834. The Trading Companies Act stated that powers were granted to the Crown for the case of associations which "…. would be inexpedient to incorporate by Royal Charter, … although it would be expedient to confer upon such association some of the privileges of and incident to corporations created by Royal Charter". Powers were given to the Crown to confer to a company by "Letters Patent" any of the privileges that might be granted by incorporation, either at common law or according to the Repealing Act. With the Trading Companies Act, the Crown was now entitled to create a company that was nor a corporation nor a partnership.

After the passing of the act, a company could obtain a restriction of liability for its members and the power to stand in legal proceeding through its clerks and officers both by a Private Bill, to be obtained from Parliament, or by Letters Patent, to be obtained from the Crown. Companies had two alternative ways to reach the same legal status. Hunt (1969) reports that between 1834 and 1837 there were about 25 application to the Crown for Letters Patent, with only "three or four" (sic) being met with success, while in the 1835 and 1836 a total of 406 Private Bills were submitted to Parliament and 251 were passed. The Crown seems to have used extremely sparingly its new powers, while Parliament seems to have being both more liberal in its concessions and the option of choice for companies seeking those two privileges.

Another two points of this act are worthy mentioning: publicity was introduced for the concession of the privileges; past shareholders' liability was explicitly taken into consideration. This act prescribed that publicity should be given before any privilege could be effective and the same act prescribed a regime of publicity for the content of the Letters Patent. The grant, the names of principal clerks and officers were to be registered in the Office of the clerk of patents and available to the public. Execution against a shareholder could not be obtained three years after he transferred his shares (Evans, 1908 [a]).

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[15] The Turnpike Acts gave these bodies some features of the incorporated companies, like to be permanent and to have its own funds. The concomitance of: permanent succession, well distinguished assets, partners having greater rights and heavier duties and a founding Act of Parliament, made these trusts very similar to incorporated companies which they were not. The use of this formula became so widely used that Parliament passed a series of general Acts on this subject and in 1773 the General Turnpike Act (13 Geo III, c 84) (Cooke,1950,pp.86 ff.).

[16] Smart (1912, vol II, pp.295) reports an estimate of 276 companies issuing shares between 1824 and 1825. Cooke (1950,pg 102,ff.) reports that 250 private bills concerning companies were in Parliament and that 600 companies issued prospects between 1824 and 1825.

During the years immediately following the passing of this act a further wave of companies' promotions followed, mainly led by railway companies, and the unsatisfactory state of the situation was highlighted.[17]

Companies could be partnerships at common law or incorporated or they could have a quasi-corporate status obtained either by Parliament or the Crown. The Crown could grant incorporation by Royal Charter or privileges by Letters Patent, Parliament could grant incorporation, privileges and further rights by Private bill. In any case the state was called to take position about the best legal framework for a specific economic enterprise but its position could be misinterpreted as a judgement about the merit of the underlying project.

Each company applying for incorporation or other privileges either to Parliament or the Crown would be judged on a case by case basis and each Private bill, Charter or Letters Patent was a unique set of rules that applied only to the company which obtained it.

A slight but relevant step to amend the situation was the Chartered Companies Act "An act for better enabling Her Majesty to confer certain powers and immunities on trading and other companies" passed on the 17th of July 1837[d]. This act repealed the Trading Companies Act, the part of the Repealing Act conferring to the Crown the power to grant charters without fully limited liability. The same powers were then conferred again to the Crown, but many more details were given about the features of Letters Patent, the publicity regime, the content of the company's deed, shareholders liability and rights, the mechanic of shares' transfers and finally the administration of the act was a matter for the Board of Trade. According to this act:

- there were prescriptions about the content of the deed of settlement;
- the grant of the Letters Patent was to be registered with the Enrolment Office of the Court of Chancery together with details about the company. These details included liability's limit and a list of the shareholders stating the number of shares held, the amount paid by the shareholders or repaid to them by the company;
- the shareholder's liability was now to cease with the transfer of its shares, but only when this transfer was registered with the Enrolment Office. Execution could be taken against shareholders when a judgement was obtained against the officers and shareholders could then reclaim the amount from the company. Notice further that under this act the shareholder's right to dividends did cease only when the transfer of its shares was registered;
- application for Letters Patent was to be advertised both in the London Gazette and in newspapers published in the area where the company had its main place of business.

The same act granted furthermore the power to the crown to incorporate companies for a fixed term.

The Act of 1837 made little change to the legal status of the company, but it spelled out some elements that were relevant for the further development of the company law: the Board of Trade was competent on the matter, application for the privileges was to follow a minimum standard form, there was to be a regime of publicity for companies acts, shareholders rights and liabilities were linked to the respect of a publicity regime (Holdsworth, vol. XV, pp.45, Formoy pp.57, Cooke pp.129).

3. MAJOR CHANGES IN THE MID 1840'S

In this paragraph I describe the changes in company's law that took place in the first half of eighteen-forties. During this period company law underwent major changes. While incorporation remained in the domain of the privileges that the State could grant, trading companies could achieve "*quasi incorporation*" (incorporation without the benefit of limited liability) simply via an administrative process. The development of company law was however very comprehensive and it saw a systematic redrafting of the legislation that deals not only with the establishment of a company but with its dissolution or winding-up as well and via the issue of laws aiming at an

[17] Hunt (1969) referring to the parliamentary "Report of The Selected Committee on Joint Stock Companies, VII 1844", produces and estimate of 300 company promotions in the period 1834-1836. The total nominal capital of these companies was £135,248,500 and railways accounted for nearly £70 millions.

harmonisation of the legal features of all existing companies.

During the mid twenties and mid thirties of the eighteen century, close in time with the approval of the new legislation dealing with the companies' legal status, the financial market experienced two speculative bubbles. The later one was closely linked with the growth and success of the railways' sector because the existing railways were very profitable and prices for their shares grew rapidly. High dividends and capital gains of the existing railways companies prompted large outbursts of railway companies promotions but companies' promotion involved other sectors as well. Kostal (1994) gives a detailed description of the railways' promotions. Following his description the mechanic of these promotions wasn't very different from the promotion I described above: in most cases subscribers were first issued with scripts that were transferable and actively traded on the market. The script was not any form of share of an existing company but just a receipt giving some form of right to become shareholders when a company was eventually to come to existence.[18] The collapse of a project left open a problem of liability which was extremely difficult to solve because a promoted company had no legal status on its own. When the bubbles of the mid-twenties and the mid-thirties burst, a large part of the promoted companies ended their life before obtaining a state sanction (Royal Charter, Private Bill or Letters Patent). That brought to the fore the problem of the legal status of a company that was just promoted and not yet sanctioned by Parliament or the Crown.

The collapse of the mid-thirties' bubble was amongst the events that prompted the government to set up in 1841 a Select Committee "to inquire into the law respecting joint stock companies (banking companies excepted) with a view to the prevention of fraud" (C. A. Cooke, 1950, pp.132). This committee published its report in 1844 when another Select Committee, set up to investigate railways, ended its work. The reports of these two committees had a major impact on the comprehensive review of the legislation on the joint stock companies that took place in the following years.

The Joint Stock Companies Act of 1844[e] is possibly most important of the eighteen-forties' acts and it represent for many aspects a major change for company law.

The various acts I considered so far were based on the principle that incorporation was a privilege to be granted from the State. The subsequent acts gave the Crown the power to confer some of the incorporation incidents upon special request, following its judgement and without granting incorporation itself. In some respect incorporation was divided from its incidents and these incidents could then be granted according to the best judgement of Crown and Parliament. The Joint Stock Companies Act of 1844 changes completely this framework: without special application to the Crown and simply complying with an administrative procedure, incorporation could be obtained but for limited liability, that ceased to be a necessary incident of incorporation.

This act with the definition of its range of application contained a first legal definition of joint stock company: 'every partnership with shares transferable without the consent of the co-partners' and all partnership with more than twenty-five members. The provisions of the act did apply to all insurance companies irrespective of their nature and size, while banks and companies doing parliamentary works (like railways, bridges, waterworks etc.) were excluded.[19] Some non-profit or mutual help organisations like schools, literary and scientific institutions, friendly loan and building societies were excluded as well.

All companies existing before the 1st of November 1844 had to register within three month of the passing of the act, irrespective of them being incorporated by Royal Charter or act of Parliament, or them having privileges granted by Letters Patent, or them being established by deed of settlement. Registration of these companies didn't imply that the company was falling under the provision of

[18] Railways and utilities companies needed special powers to complete their undertakings and these companies had to apply to Parliament for special legislation. The establishment of a company could then take a fairly long time.

[19] Some sections of the act did however apply to this last type of companies too.

the act, but companies could bring themselves under the act if they so wished.[20]
Shareholders' liability for the company's debt was unlimited but execution of a judgement could be taken against them only if the company's assets were insufficient to satisfy the execution. Shareholders were still liable without limits towards company's creditors, but their liability became a subsidiary liability subject to unsuccessful execution against the company's assets (Horrwitz, 1946). Shareholders' liability didn't involve only the current shareholders, but it extended to passed one as well. For three years after selling his shares a person remained liable if a company was sued over a contract made while he was a shareholder. Shareholders that suffered an execution could then find remedy against the company and ask for contribution from other shareholders.

The act created the office of the Registrar of the Joint Stock Companies that was to administer the act and the process of the companies' registration was defined in a detailed way. Two types of registration were created: a provisional and a complete one.
The provisional registration did regulate the promotion of companies' formations: minimal information about a company and above all its promoters' names had to be filed with the Registrar before the intention to establish the company could be made public. The company could obtain a provisional registration that lasted one year but was renewable giving further information about the company, including promoters' details, the written consensus of the formation committee members, and prospectuses. When the company had received its provisional registration certificate, it had paid a £5 fee, and it had added "registered provisionally" to its name, it could then act in its capacity, taking all the necessary steps to come definitely into existence. At this point companies' promoters could open books for subscription accepting a maximum deposit of £0.5 for every £100 of nominal capital and the company could apply for Charters, Letters Patent or other private legislation if it was needed.

Upon filing further information with the Registrar of the Joint Stock Companies (copy of the deed of settlement, nominal capital, number of shares, names of directors and auditors etc.) and proving that the deed has been signed by at least a quarter of the subscribers representing no less than a quarter of the nominal capital a company could obtain complete registration. With complete registration the company was granted incorporation and all its incidents, except limited liability. After receiving complete registration the company should drop "registered provisionally" form its name and replace that with "registered", it had to pay a fee of £5 plus £0.05 for every £1,000 of nominal capital declared in the deed and it was then able to begin its life.

The act gave guidance about the content of the deed and it spelled out a detailed set of rules for the internal working of the company (Evans, 1908 [b]). In many respects the act defined the relationship between management and shareholders and it gave a relevant role to the publicity of the companies' act and to the office of the Registrar of the Joint Stock Companies. The act prescribed a very modern set of accounting rules: companies had to keep accounts to be audited and balance sheets had to be sent to shareholders and to the office of the Registrar of the Joint Stock Companies together with the auditors' report. Interestingly enough, these rather stringent requirements that highlighted the importance of providing shareholders with reliable information about the company performance, were later repealed and then reintroduced only in 1900 (G. J. Benston, 1976). Shareholders' rights to dividends and vote were explicitly regulated as it was the right of the shareholders to inspect books, register of shareholders, deed and internal regulations. Directors' duties, powers and liability were clearly defined. Sanction from a shareholders' meeting was needed for the use of company's found to trade in company's shares, to make loans to directors or officers of the company and for contracts made on behalf of the company where directors' interest could be involved.

[20] A company established before November 1844 could put itself under the umbrella of the act, if its deed of settlement complied with the request of the act. If the deed didn't comply, the act itself granted special powers to the directors of these companies so that they could promote and support the needed changes.

Since liability's transfer was connected with shares' transfers, the mechanic of this transfer was clearly defined and returns of these transfer were to be made to the Registrar of the Joint Stock Companies twice a year or on request.

It may well be that the provisions of this act put into the form of statute what the best practice of company creation at common law had already prepared (Cooke, 1950), but still this act contained the very base of the company law that followed and it gave the company the structure which it still has.

Since the Joint Stock Companies Act joined incorporation with shareholders' unlimited liability, new rules needed to be established for the case of bankruptcy of such body. The bankruptcy of a partnership passed trough the bankruptcy of the partners, the bankruptcy of an incorporated body with limited liability didn't involve the shareholders at all, but the registered companies were nor one nor the other.

The Companies' Winding-up Act, which applied to commercial companies incorporated by Charter or Act of Parliament, to commercial companies privileged by Letters Patent, to any company provisionally or completely registered, contained provisions for the new case. The act is very comprehensive; it deals with companies' bankruptcy and the fraud aspects of bankruptcy introducing the elements for the definition of directors' liability and it states procedures in great detail. A few points are particularly important and need to be highlighted. According to this act: the bankruptcy of a company was similar to the bankruptcy of an individual and it didn't imply the shareholders' bankruptcy; the company itself could declare itself insolvent through its directors and it could start a bankruptcy procedure; proceedings against a company had to be taken in the Bankruptcy Court and assignees of the assets could apply to Chancery's Court for a winding-up order. The execution against shareholders needed the sanction of Chancery Court and execution against shareholders could not be levied if the Chancery court had already issued an order to call on them. The subsidiary liability of the shareholders was to become effective accordingly to the Court of Chancery decision.

The Joint Stock Companies Act and the Companies Winding-up Act provide the general framework of company law in the mid-forties. Their relevance wasn't determined only by the definition of their application field, but was determined as well by the interaction with other statutes passed in the same and in the following year.

As I have shown, the Joint Stock Companies Act didn't apply to railways but that only meant, that these companies wouldn't have been incorporated when the registration process was completed. Railways companies needed to follow the registration procedure, before they could apply for the private legislation, which would have incorporated them in the end. Railways companies were then subject to the registration process that wasn't sufficient for incorporation, but was necessary to establish the company by private act. The railway sector for it's enormous importance in terms of resources it needed and collected, for the profits it could generate, and for the legal implications its development had[21], was subject to a specific legislation. I won't analyse at this point legislation governing the railways companies, but a couple of points are worthy mentioning. The establishment of railways companies was subject to The Railways Regulation Act [f], passed in July 1844. This act, containing common rules for the establishment of railways companies, not only kept their incorporation under State control but in fact extended the scrutiny of the state on these companies and their activity.[22]

[21] Railways companies needed the special power to buy land, but to give to the railways companies the power to buy or expropriate land was interfering with land property rights (Kostal, 1994).

[22] The Railways Regulation Act contained amongst the other provision that the State could assess the profitability of the railways companies and accordingly it could change the rates that companies were paying. Furthermore the State could buy railways companies twenty one years after they obtained their charter.

Banks, like railways, were excluded from the Joint Stock Companies Act and the banking sector with its speciality connected to the issue of notes and to the special status of the Bank of England was regulated by special legislation. The establishment of a bank was subject to concession of Letters Patent. Nonetheless the Joint Stock Bank Act of 1844 brought the banks under the prescriptions of the Companies' Winding-up Act. The establishment of banks was regulated by special legislation but their bankruptcy followed the rules of any other commercial company.

The process of homogenisation of company law was taken a further step forward in 1845 when the Companies' Clause Consolidation Act[g] and the Railways Clauses Consolidation Act[h] were passed. The objective of both acts was to provide a set of common rules that were to apply to all companies needing incorporation by special act. The establishment of common rules had many consequences and among the other I mention that the special legislation was to be simpler because single provisions could be replaced with references to statute, a whole class of companies could be regulated by changes in the statute and finally companies shared a common and uniform legal status.

As I have shown a comprehensive reform of company's law has taken place by the mid 1840's. If the general framework and the principles underlying the various act can only be seen a step forward in the development of company law, the provisions contained in the various acts were far from perfect. In some case the acts had consequences that were the exact opposite of what was intended and their weakness were soon to become evident.

The Joint Stock Companies Act imposed registration as a first necessary step to establish a company and above all, provisional registration was a prerequisite for a company's promotion. This rule imposing a well-defined publicity regime for companies' promotions was clearly trying to give the public the necessary information to correctly distinguish between bona fide promotions and frauds. Unfortunately the act only created a publicity regime and didn't go to the core of the issue: what was the legal status of a promoted company and what was the relationship between promoters, members of the formations' committee and the subscribers (shareholders to be upon complete incorporation).

The development of the "railway mania" of 1845-46 and its consequences clearly highlights this point. By that time, existing railways companies proved to be extremely successful and profitable as the provision of the Railways Regulation Act about companies' dividends and rates shows. The public benefit to the economy connected with the development of these infrastructures and the private benefit to the shareholders connected with profitability made railways companies in high demand for their services and their shares. The new legislation giving apparently clear rules about companies' promotion possibly dispelled the shadows of the previous bubbles and a huge wave of company promotions took place. According to government data (reported by Todd, 1932) by late 1845 there were about a thousand registered companies and by the same time there were 1,200 provisionally registered railways (Levi, 1870). Letting aside the apparently numerous cases of illegal promotions, this wave of perfectly legitimate and regulated companies' promotion followed the well established pattern of issue and trade in companies' scripts and when the bubble did collapse the limits the new legislation became clear. There were no provisions dealing with the liability of promoters, script-holders and original subscribers towards creditors, and there were no provisions dealing with the liability of promoters, script-holders and original subscribers toward each-others.

The Winding-up Act, despite being very detailed, put the winding–up of a company under the authority of both the Court of Chancery and the Bankruptcy Court. The result of having two different authorities in charge of the winding-up process was a conflict amongst the two and that made the process cumbersome and inefficient. According to this same act, shareholders couldn't start the winding-up process and since they were carrying unlimited liability for the company debt, they had little protection from management wrongdoing: shareholders had no way to cut their losses

by winding-up their company. This and other shortcomings of the act were amended by two later acts: the Winding-up Act of 1848[i] and the Winding-up Act of 1849[j].

The first of these two acts gave the shareholders right to apply to the Court of Chancery for the winding-up of their company upon the happening of some events as wide as "… if any other matter of thing can be shown which, in the opinion of the Court shall render it just and equitable that the company should be dissolved". According to this act, publicity was prescribed for the winding-up procedure and the powers of the Court of Chancery were extended. The core problem of having two different authorities in charge of the process wasn't solved and it was possibly made worst by having now the shareholders that could promote the winding-up of the company in competition with the creditors.

The second of these two acts contains a few amendments to the Winding-up Act of 1848, but above all it brings under that act all partnerships, association and companies of more than six people whenever formed with the exceptions of railways and some mining companies. By this act the winding-up of any type of company was substantially regulated by a single set of rules.

4. ONE SMALL STEP FOR THE DRAFTER BUT ONE GIANT LEAP FOR COMPANY LAW?

In this paragraph I describe how the benefit of liability limitation was introduced. The introduction of the "limited liability" formula was the last step in the definition of the company status we are familiar with and made incorporation freely available to anybody. At this stage incorporation was an administrative process that generated a standardised legal status. Joint economic activities run for profit were now regulated by law and not by a case by case intervention of the State.

The changes in company law of the mid and late eighteen-forties weren't sufficient to reach a stable framework and in the early eighteen-fifties there was intense parliamentary activity aiming at improving the situation. Three different parliamentary committees dealt with the issue of company law from different points of view: the Selected Committee on Investment and Savings of the Middle and Working Classes, which reported in 1850, the Selected Committee on the Law of Partnership, which reported in 1851, and the Royal Mercantile Law Commission which reported in 1854. These parliamentary works provided the background for the preparation of the Limited Liability Act[k], passed on 14th of August 1855.

The Joint Stock Companies Act 1844 allowed companies to be incorporated without the incident of limited liability by simply filing with the office of the Registrar of the Joint Stock Companies certain information and by paying a fee. The Limited Liability Act gave companies the right to obtain incorporation with limited liability at the end of the registration process subject to their choice and the fulfilment of a few requisites or it could be said imposing few restrictions. A new company could obtain incorporation with limited liability provided that: in the application for the registration it was stated that the company was to have limited liability, the word "limited" was attached to the name, the liability's limit was stated in the deed of settlement, the deed of settlement had been signed by at least 25 shareholders holding at least 75% of the nominal capital and having paid up at least 20% of the capital, the shares had a nominal value of at least £10 and at least one of the appointed auditors was approved by the Board of Trade.[23] Companies which were already registered under the act of 1844, with the exception of insurance companies and companies incorporated by Private Act, could obtain incorporation with limited liability according to the Limited Liability Act if: a qualified majority of 75% of the shareholders, in number and by capital, agreed to change the company's name, the deed of settlement and the share's nominal value as requested by the 1855 act; and if an audit of the company's account by a person appointed by the Board of Trade had shown the company to be solvent.[24]

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[23] The same act made directors fully liable for loans made to shareholders and fully liable for the company's debt, if they declared and paid dividends when the company was known to be insolvent.

[24] The rights of creditors at the date when the limited liability certificate was obtained were unaffected by the change in company's status.

Under the Limited liability Act 1855, limitation of liability was a limit to the execution against shareholders. Limited liability meant that execution against a shareholder could not exceed the unpaid part of a share and it could only be taken in default of the company and by order of the Court. It's worthy noticing that shareholders were still liable towards the company's creditors.
Companies registered with limited liability were subjected to compulsory winding-up in accordance with the Winding-up Acts of 1844, 1848 and 1849, if the audited accounts showed that three quarters of the subscribed capital had been lost.

The principle of limited liability was introduced by a short act that made only a few changes to the registration process and set a few restrictions to obtaining the liability's limit: to have a minimum size, to have approved auditors and to be subject to compulsory winding-up. The Limited Liability Act kept however the registration process as it was in 1844 allowing provisional and complete registration and the benefit of limited liability was to be achieved only after complete registration. In this respect this act didn't bring much improvement, since it let open the problem of liability for the provisionally registered companies. The pros and cons of this act didn't have time to come to light because the act had a very short life, being repealed in 1856.

In February 1856 Parliament passed the Joint Stock Companies Act[1]. This act didn't bring any change to the legal form that joint stock enterprise could choose, but it's provisions gave to company law not only the structure it still has but a shape which was almost unchanged for the following half a century.

This act repealed the Joint Stock Companies Act of 1844 and the Limited Liability Act of 1855. According to the new act the registration process was now a single step one, and provisional registration didn't take place any more. The benefit of limited liability was reached as soon as the company came into existence and this clearly removed the problem of the legal status for provisionally registered (and possibly promoted) companies. Associations of more than seven people could register themselves as companies by filing not a deed of settlement but a memorandum of association signed by the subscribers and filing the articles of association. The act provided the form for the memorandum of association and in its schedules a default template for the articles of association. A company was incorporated when the memorandum of association was registered.

Companies registered under the 1844 act had to register under this act within three months. Other companies legally established having more than seven partners were allowed to register under the 1856 act. If these companies wanted to change their liability regime from unlimited to limited, the change had to be approved by three-quarter of the shareholders in number and by value. The deed of settlement, Royal Charter, Letters Patens and the by-laws of these already existing companies, were to be recognised by this act.
Partnerships of more that twenty members could not legally carry on their business without registering as companies under this act if they had profit as main objective. On the other side, if the membership of company registered under this act with limited liability was to fall under seven partners the company would loose the benefit of the limited liability or it could be wind-up by the Court.

The provisions of this act didn't apply to banks and insurance companies.

Part II of the act gave provisions about the relationship between management and shareholders, making clearer the powers of the directors versus the powers of the meeting of the shareholders. Part III of the act gives provisions for the winding-up of the company. The Winding-up acts of 1844, 1848 and 1849 didn't apply to the companies registered under this act nor to companies registered under the act of 1844 and re-registered under the act of 1856. The power to wind-up a company were transferred from the Court of Chancery to the Court of Bankruptcy which was now the sole authority and the company could now wind-up itself without any intervention of the courts. Under this act, calls on shareholders were treated as debt toward the company. Shareholders ceased to be liable toward the company's creditor and became liable only toward the company.

The Joint Stock Companies Act of 1856 by repealing the acts of 1844 and 1855 and by changing the registration process brought few but important changes to company law. This act removed some of the restrictions in forming a limited liability company: the registration process was a simpler one, the limit of at least twenty-five shareholders to establish a company was replaced with the limit of just seven, any limit to shares nominal value and paid-up part was as well removed as it was the need to appoint an approved auditor. No limit was put for loans to shareholders and if three-quarters of the nominal capital were lost, winding-up was possible but not mandatory. The removal of these limits was accompanied by an increase in the information about the company's capital and the shareholders that companies had to file annually with the Office of the Registrar, and by an increase in publicity of the company's legal status. Information about the company's accounts was instead made less accessible to shareholders and to the public in general.

The Joint Stock Companies Act of 1856 was slightly amended shortly after, by the Joint Stock Companies Act[m] of 1857. This act removed the requisite of a minimum of seven members for a registered company and it removed compulsory conversion of partnerships with more than twenty partners into companies.[25] The same act introduced penalties for companies that failed to register under the 1856 Act and allowed a few capital changes like converting fully paid shares into stock and selling part of the company's properties in exchange for shares in another company during voluntary winding-up.

With the Acts of 1855, 1856 and 1857, company law had enacted most of the principles that still govern it. The limited liability company was well defined in its character and in its features. The limited liability company wasn't yet a universal model for associations run for profit, but its establishment was clearly regulated and almost completely free from State interference.
According to Formoy (1923, pp.114) the introduction of limited liability is "the most important part of the evolution of joint stock companies", B. C. Hunt (1969) quotes from the Economist 1855 a different opinion: "never, perhaps, was a change so vehemently and generally demanded, of which the importance was so much overrated", and C.A. Cooke (1950) quotes, from 1856 sources, that the limited liability legislation was hastily introduced by the government just to show that it was doing something beside asking money for the Crimean War. It's perhaps impossible to give a clear-cut judgement of the relevance of the introduction of limited liability; nonetheless it's hard to deny that it was the last step that brought company law into its modern shape.

5. CONCLUSIONS

In this paper I have resumed the development of company law from 1720 through to 1857. During this long period of time, company law assumed the characteristics it has now.

At the starting point when I start my analysis, company law stood with incorporation granted by the Crown or Parliament on one side and partnership regulated by common law on the other. Incorporation was a legal form that wasn't specific to business companies and it was tailored to measure for every application. That made incorporation expensive to achieve and a very varied legal status. Companies applying for incorporation were granted a rather wide and complex set of legal attributes, including limited liability, and each charter defined the legal status of each corporation, according to what was needed and to what was seen as necessary. When considering this process of incorporation it should be noticed that not only it would produces a wide range of legal forms, but that such process creates a problem of selection. Parliament or the Crown had to solve not only the problem of assessing each applications but to assess competing applications as well (e.g. in the case of railways, companies developing competing projects applied for incorporation and it was for the State select the deserving one). The process of granting incorporation by the State was not only expensive for the applicants, not only it was generating a very wide spectrum of legal bodies but it was difficult and expensive to administer as well. As far as economic associations are concerned, the process of incorporation by the State was then slowly

[25] If a partnership had more than twenty members, each single partner was to be liable for the whole partnership's debit without joinder of any other partner.

amended and eventually it was abandoned when incorporation, with or without limited liability, was made freely available.

Partnership was a common law legal form that proved rather ineffective to run modern firms. Just to recall one major problem, I mention here the difficulties to start legal proceedings by a partnership or by a third party against it. Crown, Parliament and later the Board of Trade were given the power to grant companies legal incidents that allowed them to work more efficiently. The incidents of incorporation that were more useful were granted to companies through a process that became simpler through time.

The last step in the development of company law was to produce a definition of incorporation that was suitable for associations born for with an economic objective an to made this form of incorporation freely available. It wasn't anymore the State to select the best legal form to run a business but it was for the enterprise to adopt the legal form that best suited it.

This long development of company law needed a process of definition of what are the problems connected to the fact a firm is run in association and what is the legal framework that allow to solve efficiently with the lowest costs these problems. The same company liability needed to be defined and an effective way to partition it, needed to be found. It's true that direct, ad hoc legislation, and very detailed and complex contracts, to be eventually tested in court, could mimic the whole set of features that characterize the modern limited liability company and these law and contracts could solve all the problems arising from the fact that an economic activity is run in an associated form, but such institutional arrangement imply very high costs for all contracting parts and the ability on their side to foresee all possible contingencies. The long and complex development of company law can be seen as a process of reduction of the very high costs otherwise connected to running an enterprise in association form. When studying the introduction of limited liability it should be remembered that the introduction of this limitation gets its meaning from the exact definition of many other aspects of company life, e.g. bankruptcy procedures, directors' power and responsibility, shareholders rights, publicity regime for company acts.

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[j] 1849 Joint Stock Companies Act, *12 & 13 Vict. c.108*
[k] 1855 Limited Liability Act, *18 & 19 Vict. c.133*
[l] 1856 Joint Stock Companies Act, *19 & 20 Vict. c.47*
[m] 1857 Joint Stock Companies Act,20 *& 21 Vict. c.14*