

The Struggle for Fungibility of Joint-Stock Shares  
As Revealed in  
W. R. Scott's  
Constitution and Finance of English, Scottish, and Irish  
Joint-Stock Companies to 1720

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Susan Woodward

UCLA

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About the middle of the sixteenth century the progress in commerce and industry presented the known world with productive opportunities of a scale and riskiness that was unprecedented. It was not feasible in these projects for the number of persons necessary to provide the requisite capital to also be personally involved in the day to day management of their undertaking. A new institution was called for. At this point the first joint-stock companies were formed. The first joint-stock companies were distinguished from previous organizations for the purpose of manufacture and commerce chiefly by the separation of ownership and management.

Along the way in its evolution towards the modern corporation the joint-stock company had to acquire three more important features:

- (1) transferable shares
- (2) perpetual succession
- and (3) limited liability.

The desirability of these features lies in the contribution they make to the fungibility, and hence liquidity, of the paper

claims to real assets represented by shares of stock in corporations. The absence of these features gives rise to conflicts of interest among the shareholders of a firm, and the main topic of this paper is how the early joint stock companies coped without them, especially the third, limited liability, since transferable shares and perpetual succession were well established within the first fifty years of joint-stock company history.

### I. Transferable Shares

The advantage of transferable shares is evident: individual desires to allocate consumption over time and to alter positions in risk-taking can be accommodated by revisions of individual portfolios and need not affect the real production decisions of the investment projects in which the shares represent an interest.

### II. Perpetual Succession

Perpetual succession is desirable when productive opportunities have long-lived specific capital. "Winding-up" (the sixteenth century term for liquidating) the capital of such an enterprise results in a real economic loss of the specific capital involved if the assets are truly liquidated. Even if a new organization is formed to re-acquire and operate the same assets, the specific capital may be preserved but the full present value of it captured only by those who invest in all of the subsequent projects.

It turned out that nearly all joint-stock company undertakings indeed had such long-lived capital. For example, the first joint-stock company, The Russia Company, (formally known as The Mysterie and Companie of the Merchants Adventurers for the Discoverie of Regions, Dominions, Islands, and Places Unknown)<sup>1</sup> was organized for a single voyage to Russia for the purpose of trade with Russia. But this single voyage resulted in cultivating relations with the Czar, the establishment of forts and warehouses in Russia, knowledge of the routes to Archangel, and the discovery of the hiding places of the dreaded Portugese and other pirates. The next voyage went with the benefit of the valuable capital created on the first. The only way an adventurer (shareholder) in the first voyage could capture the rent of this benefit was to subscribe to the second, and to the third, and so on.

But of course winding-up the capital of a single voyage does give individual adventurers an opportunity to liquidate their interest in non-transferable shares. With non-transferable shares, adventurers may achieve a preferred intertemporal allocation of consumption by liquidating even if it means the sacrifice of the specific capital. But transferable shares in a perpetual succession institution would be more valuable than non-transferable shares in a sequence of limited succession ventures because they would enable the adventurers to capture the rents by selling the shares even if they did not want to remain adventurers.

### III. Limited Liability

The chief advantage conferred by limited liability is the contribution it makes to the transferability of the shares and consequently to the potential for the separation of production and consumption, a celebrated property in economic theory. This feature of limited liability I have argued in Woodward (1985). The basic point is that in order to be enforceable, any extension of liability beyond the assets of the firm to the personal assets of the shareholders creates conflicts of interest among the shareholders and gives them incentives to restrict the terms on which a shareholder may sell shares to others. This restriction is costly, and for the company with publicly traded shares, outweighs the costs of limited liability.

To see the connection between alienability and limited liability, consider a firm with unconditionally saleable shares which tries to extend liability to the shareholders (where the liable party is the holder of the shares at the time the request for resources is made). Were bankruptcy to threaten such a firm, any shareholders with assets worth the creditor's pursuit could simply sell their shares rather than pay up. The only willing buyers of the shares would be those whose wealth is too small for the creditors to bother pursuing. Thus, whenever the creditors try to reach beyond the assets of the firm to the other assets of the shareholders, they will find no such assets. Because the shares are unconditionally saleable and liability extends only to the current holder of the share, extended liability simply cannot be enforced.

Between the extremes of perfectly saleable shares and perfectly inalienable shares (wherein shareholders could not escape liability) is an array of restrictions on transfer which could help enforce extended liability. For example, if only persons who had a required level of wealth were permitted to own shares, some level of assurance would be provided that shareholders would be able to meet their obligations in a bankrupt firm. Alternatively, shareholders could be required to buy insurance which would cover their liabilities in the event of bankruptcy.

The incentive to restrict transfer arises among both the shareholders and the creditors of a firm with extended liability. To examine the incentives to restrict transfer, we must specify the liabilities of the shareholders. The most extreme form of extended liability worried the holders of the first joint-stock company shares.<sup>2</sup> They were afraid that by becoming investors in one of these new organizations, they would not merely each be responsible for all of the debts of the firm itself, but for each others' personal debts as well. More commonly the shareholders were regarded as jointly and severally liable for the debts of the firm. If the firm was unable to meet its debts, each shareholder was initially responsible for the fraction of the debts proportionate to his shareholdings, but if the other shareholders were unable to meet their obligations, each remaining shareholder could be held responsible for the obligations of the others. A milder form of extended liability holds shareholders responsible for only a fraction of firm debts

proportionate to their shareholdings, leaving those debts unmet by individual shareholders on the creditors, not the other shareholders. An even milder form (referred to in legal discussions as assessability), which prevailed on some U.S. bank shares even into the twentieth century, holds shareholders liable only for a specified amount per share.

Under a joint and several liability rule, shareholders have a clear interest in whether or not other shareholders will be likely to meet their debts through extended liability, and a clear interest in making sure that sales of shares do not erode the ability of other shareholders to pay. Under a proportionate or assessment liability rule, if a shareholder who can meet his extended liabilities sells to one who cannot, clearly the creditors are worse off. The future creditors can retaliate, however, by altering the terms on which they extend credit. This implies that even under a proportionate or assessment liability rule, extended liability gives rise to conflicts of interest among the shareholders ex ante of bankruptcy. Shareholders who can expect to meet their liabilities bear the cost of those who cannot in the form of these worsened credit terms. Limiting liability eliminates these conflicts of interest among shareholders.

Of course, limited liability does not eliminate risk, it merely reassigns it. Insofar as the creditors are those to whom a risk has been assigned knowingly -- contracting creditors -- they will be on average compensated for the risk they bear

through limited liability. (Tort creditors are beyond the scope of this paper. For a discussion of limited liability and tort creditors, see my 1984 paper.) The creditors will make forecasts of the payoffs of doing business with a limited liability firm, and the terms they offer will reflect these forecasts. The shareholders of the firm thus pay the creditors for risk transferred to the creditors by the limitation of liability.

Limited liability reduces some transaction costs by resolving the conflicts of interest among shareholders that prevail with extended liability. But it also increases some other transaction costs by exacerbating the conflicts of interest between the firm and its creditors. These are the kinds of costs which Adam Smith believed would be the ultimate demise of the joint-stock company.

When a firm has a non-equity source of financing, the equity holders have an incentive to manage the firm's assets in a more risky way than if the firm were financed purely with equity. In an all-equity firm, all profits and losses fall directly on the equityholders. With some debt financing and limited liability, losses beyond the equity are borne by the creditors. Creditors anticipate the incentives for the equity holders to take larger risks with borrowed money, and charge accordingly.

If the creditors could easily monitor the activities of the firm and influence the decisions about how assets are managed, they would make contracts to guarantee that the assets would be managed the same way regardless of the financing arrangements. But monitoring is costly. Firms will only monitor to the point



where the marginal cost of monitoring equals the marginal benefit.

Limiting liability increases the equity interests' motivation to manage assets in a more risky fashion, simply because creditors assume the burden of a larger share of the losses. We can thus expect the costs associated with conflicts of interest between creditors and stockholders to be higher with limited liability than with extended liability. This cost of limiting liability must be weighed against the costs of extending liability.

The more numerous the shareholders, the higher the costs of extending liability. The costs of limiting liability are not related to the number of shareholders, but rather to the nature of the productive process itself and how amenable it is to effective monitoring, and of course to the level of debt. The firm whose riskiness and scale call for the full access to capital markets afforded by publicly traded shares is therefore more likely to limit liability than a small firm, simply because with a multitude of shareholders, it is cheaper.

This, I believe, explains the pattern of liability limitation among firms in the twentieth century: All firms with publicly traded shares have limited liability. Among firms which are privately held, it is very common for liability to be extended in the form of shareholders' personal guarantees on loans, even though the basic corporate charter may provide for limited liability.

Given that an investment is to be undertaken with an organization which separates ownership and management, the appeal of transferable shares, and for most projects, also perpetual succession, is enormous. Limited liability reduces the costs of transferable shares.

#### IV. Evolution of Corporateness in the Early Joint-Stock Companies

From the earliest records of the joint-stock companies we know that adventurers (shareholders) desired to, and did, transfer shares by sale. It is also clear that perpetual succession was a feature of nearly all joint-stock companies by 1600. Limited liability, however, was slow to be formally established. As the shareholders became more numerous and transactions became more frequent, and pressure for both a formal secondary market and for limited liability arose. Even though it was one hundred and fifty years between the establishment of the first joint-stock companies and the emergence of formal secondary markets, (mid 1690s) the absence of limited liability surely gave rise to conflicts of interest among shareholders. The resolution of these conflicts illuminates the nature of these organizations and the struggle for fungibility of joint-stock company shares.

Among the measures used to cope with the absence of limited liability we shall find

1. Pure equity financing;
2. Non-transferable Liability;
3. Limitation of shareholdings to a small, elite group;
4. De facto limited liability -- episodes in which debtors

claims were "written-down" even though the company did not have

explicit limited liability;

Most of the details of the dealings of these early companies discussed in this paper are taken from W.R. Scott's Constitution and Finance of English, Scottish, and Irish Joint-Stock Companies to 1720. This history is remarkably complete, and details every issue of stock and every company that operated with joint-stock form during this period. Even most loans and transactions with the government are included. The date 1720 provides a natural break in corporate history because the Bubble Act of 1720, following the famous South Sea Bubble and the corresponding collapse in the 25 year old stock market, ended 170 years of relatively regulation-free development of the corporation. The Bubble Act made it illegal to establish companies with transferable shares without the grant of a government charter. It was another hundred years before the Bubble Act was repealed.

#### IV.a. Important Details of the Financing of the Early Joint-Stock Companies

The first chartered joint-stock company was organized for the purpose of trade with Russia; it was typical of the joint-stock companies of the sixteenth century. It had a predecessor without a charter. The unchartered expedition was organized in 1553 with somewhere between 200 and 240 adventurers purchasing 240 shares of 25 Pounds each for a total capital of 6,000 Pounds. In this expedition two ships were frozen in the ice with all hands lost, but a third made a landing near Archangel and succeeded in establishing relations with the Czar.

When this voyage was returned, a charter was sought to secure the sole right of the concession for the persons who had undertaken the risk. This charter, granted in 1555, thus conferred not merely the right to operate as a joint-stock company, but also a monopoly in trade with Russia through the north and as well military protection, a very desirable input to international trade. Monopoly privileges were a very common feature of the joint-stock company charters of both the sixteenth and seventeenth centuries, in lines of business as diverse as mining, smelting, textile manufacture, international trade, city water, city lighting, fishing, and insurance.

The obligations of the charter turned out to be considerable. Elizabeth I was smuggling naval munitions from Flanders for which cash had to be paid. The royal finances were at this time very strained due to the profligate habits of Elizabeth's father, Henry VIII. The Russia company was ordered to bring naval munitions from Russia, which they did (with the good-will of the Czar) and for which the company paid cash, but which they had to deliver to Elizabeth on credit.<sup>4</sup>

This non-arms-length transaction between the crown and a chartered company was by no means isolated. The Africa Company, the second joint-stock organization, was, in 1561, lent four men of war by Elizabeth as well as 500 Pounds for provisioning them on condition of receiving one-third of the profits of the voyage.<sup>5</sup> The transaction between the Queen and the Russia Company, in which the Queen was made a loan under pressure, is much more representative of company-Crown dealings than is the

the experience of the Africa Company. It is perhaps shocking how non-laissez-faire are the roots of the corporation -- a quintessentially laissez-faire institution.

The means by which these early companies raised fresh capital is of great interest because it is also the device by which extended liability obligations would be met. When the governors of the company deemed additional resources were warranted, they would "call-up" a specified amount per share. If the call were for 10 Pounds, for example, each adventurer was expected to contribute another 10 Pounds for each share owned.

How these calls were treated on the books of the company provides some insight into the difficulties experienced in working out profit-sharing rules for companies with many shareholders but with no organized secondary market. The stock was put on the books at "par" value, the amount initially subscribed, and augmented by the amount subscribed by calls. These par values were the basis of the profit shares.

From the very beginning companies had trouble collecting the calls. (The instances of shareholders refusing to pay up their calls in Scott are too numerous to recount here.) As early as 1564 the books of the Russia company make clear that not all calls on shares had been paid. The report is that the shareholders were discouraged and there was great difficulty in inducing them to pay the amounts due. In 1568 the company is found paying interest of 12 to 13 percent on a loan of 4,000 Pounds.<sup>6</sup>

If all shareholders paid all calls, the par-value profit sharing rule would result in returns to shareholders that would be the same as if they bought their shares in a competitive market. Once shareholders pay up differential amounts of their calls, this ceases to be the case, and the "book" methods of dividing the profits do not correspond to present value earned. But given the absence of a secondary market, this is probably the best they could do. This concept of par value on publicly traded equity prevailed into the twentieth century, although it has been used only as a device for computing assessments in those few companies that have extended liability. At present there are still publicly traded companies which indicate par value of equity on their books, but it is strictly vestigial.

The existence of the loan on the books of the Russia Company poses an important question about early financial dealings: why did they debt-finance? There was at this time no income tax with deductible interest to motivate debt financing. So taxes, the favorite explanation for twentieth century corporate debt, cannot explain sixteenth and seventeenth century corporate debt. Optimism on the part of equityholders can often explain the presence of debt. If equityholders have not the resources to finance the entire project themselves with equity, and are more optimistic about the project than other potential equity financiers, and consequently cannot get the equity price they believe the project to be worth, one alternative is to borrow. But here it seems that it was the pessimism of at least some of the shareholders, and their consequent refusal to pay up their

calls, which resulted in the company taking on a loan.

Another example reveals the attitude of the times towards joint-stock companies: Adventurers in the First Virginia Company had counted on profits from the first voyage to pay the calls for the second. The first voyage was not profitable, the adventurers refused to pay up their calls, and the company found itself borrowing on security of the unpaid calls to finance the second voyage.

The system of calls on shares for raising new capital motivated many transactions. There are numerous instances of adventurers selling some shares to meet calls on the rest, or selling shares in one company to meet calls on another. Shareholders in the Providence Island Company were allowed to subdivide their shares so parts could be sold to pay calls on the rest.<sup>7</sup> There are other instances as well of companies splitting their shares to accommodate sales to help adventurers pay calls.

Additional important features of these companies in terms of the dealings among shareholders and between shareholders and creditors are first, that the shareholders were an elite and wealthy group; second, that there were regular dealings between the crown and the companies, an additional source of "discipline" on the organization; third, that the means whereby fresh capital was raised was essentially primitive and hand-to-mouth; the details of issuing new equity had not been worked out, both because the understanding of accounting was primitive and because there was no secondary market to offer an objective value on the

stock.

IV.b.1. Devices for Coping Without Limited Liability:  
Pure Equity Financing

Whether a company has limited liability is not much of an issue if the company is financed only with equity. Since there are no debts to escape, the shareholders have no conflicts of interest over who shall pay them.

This was overwhelmingly the most popular method of finance among the the companies established before 1720. Although these companies were on average profitable, many found their usefulness to come to an end. Of the 84 or so companies established, fewer than 25 were still in business at the time of the Bubble Act (1720). Nearly all of these companies seem to have gone out of business quietly. Some sold their remaining assets, but most divided the assets among the shareholders. Several of the companies for colonizing the New World, for example, divided the land owned by the shareholders and left it to the shareholders to dispose of it as they wished.

Some of the companies went out of business leaving small debts, and there is doubt as to whether the debts were ever paid. It is certain that calls on the shares were necessary for the payment, but not clear the calls were ever made. The Guiana Co., an organization for planting in Guiana, even dissolved with receivables due, (an indemnity from the Spanish for burning warehouses and other damage) and continued to meet only in pursuit of the receivables. When the indemnity was collected,<sup>8</sup> the shareholders ceased to meet.



#### IV.b.2 Devices for Coping: Non-Transferable Liability

Another way to eliminate conflict of interest with extended liability is to allow only the shares to be transferable, not the liability. This was a device created by one of the earliest joint-stocks, the Africa Company, organized at the same time as the Russia Company.

The Africa Company was a highly advanced institution for its time.<sup>9</sup> The first voyage departed in 1553 without a charter, (it continued to operate without a charter until 1672) but undoubtedly was financed by a number of adventurers of London acting in partnership. The first voyage was enormously successful, returning about ten times the capital risked. Three more expeditions returned also highly lucrative. In 1561 the company took Elizabeth I into partnership, borrowing four of her men of war and 500 Pounds for one third of the profits. The loan of the ships and money was treated as a debt with a senior claim. With such an important creditor, the liability of the other adventurers was especially specific. In this undertaking there were five chief adventurers who were personally responsible for the debt to the Queen, and each had several adventurers under him. The chief adventurers, however, got a share of the profit which was greater than the proportion they financed to compensate them for this additional risk.

Although this seems a rather straightforward manner in which to deal with liability, it is an isolated case. There are no other instances of classes of equity financing, some with liability and some without.

#### IV.b.3. Devices for Coping: Elite Shareholders

The shareholders of these early companies were privileged and wealthy members of the English aristocracy. Many of the charters explicitly state that the organization is to be "confined to privileged persons"<sup>10</sup> and an association of "noblemen and gentlemen". Transactions in the shares of the trading companies seem to have taken place exclusively at times when the company was wound up and new voyages were subscribed. But there were three mining and smelting companies established between 1561 and 1571, with perpetual succession, and there are records of transactions in these companies' shares. They are very infrequent before the 1660s. It seems also that this knowledge of the wealth of the other shareholders and their ability to pay calls and meet debts should provide some of the protection necessary to make extended liability workable.

These companies were, by modern standards, extremely small. Up to 1600, the company with the largest number of shareholders was still the original Russia Company with 200 or so adventurers, although on subsequent voyages they dwindled to fewer than a hundred. Next was the East India Company, with 198. The rest of the companies had between 5 and 50 shareholders. By 1617, however, the East India Company organized its second joint-stock with 934 shareholders and total capital of 1,630,000 Pounds, the largest company by an order of magnitude.<sup>11</sup>

The only companies with more shareholders than the East India Company in the entire period up to the Bubble Act were the Bank of England, with 1,200 shareholders and 1,200,000 Pounds

equity capital, and the Company of Scotland for trade with Africa with 1,317 shareholders. Throughout the seventeenth century and up to the Bubble act, most companies had fewer than 100 shareholders.

With so few shareholders and such elite shareholders, it would seem that creditors should be able assume debts would be paid by the shareholders if not by the company.<sup>12</sup> Yet from the records it seems that this was not the case. We shall see that although creditors may have considered the corporate veil piercable, the equityholders, and usually the courts, did not.

#### IV.b.4. Devices for Coping: De Facto Limited Liability

As noted earlier, debt financing and the presence of liabilities was not common for pre-Bubble Act companies. These companies were consistently financed with pure equity as long as their investments were profitable. It was only when they had spells of bad luck that shareholders refused to pay their calls and the companies operated with debt. If shareholders would not pay calls for more equity financing, it bodes ill for the creditors to expect that they would pay calls to pay the company's debts.

The Russia company, the earliest joint-stock, found itself in court for non-payment of debts on a regular basis. In 1624, interest payments on bonds issued in 1617 were in arrears.<sup>13</sup> Although smooth transactions provided for the raising of capital and winding up of successive voyages, there was confusion regarding the rights and obligations of particular assets and liabilities.

It seems that the Dutch had burned some warehouses belonging to the Company in Russia in 1614, and the Company believed it had an indemnity due from the Dutch of 22,000 Pounds. In addition, a total of 2,300 Pounds had been lent the company in 1617 by Mary Brocas and Mary Overton. Then in 1622, a subsidiary of the company, the Greenland Adventurers, a company for whaling, was formed and spun-off by a subset of the adventurers in the Russia Company. Half of the Russia Company's debt was assigned to the Greenland Company. Mary Brocas and Mary Overton sued both companies for redress, and the shareholders of the spun-off Greenland Adventurers sued the Russia Company claiming that too much of the debt has been assigned to them, and moreover, that they were due part of the indemnity due from the Dutch. The principals of the Company took advantage of the confusion in order to pass the pound.

The Lords called the governor and other leading adventurers before them and "told them they deserved to be punished for their contempts", and ordered their accounts audited. They then ordered that previous assessments (calls) uncollected should now be paid, and that the company should carry on its business until all the debts were paid. This transaction is of great interest because the Lords did not order the company to immediately call up the sums necessary to satisfy the creditors, but only the amounts previously called and unpaid, leaving the rest to be satisfied out of ordinary revenues.

In 1638 another assessment (call) was made for the Company's debts and when one of the Company's former governor's refused to pay, he was imprisoned. In 1644 the then Governor, Sir H. Garraway, was discharged from office and imprisoned for the poor state of the Company's finances. The Company soon abandoned the joint-stock form and returned to its earlier form as a regulated company.<sup>14</sup> These imprisonments for company debts appear to be rather isolated episodes in joint-stock company history. The common factor in the decisions where the courts pierced the veil and punished debtors seems to be an element of fraud in the management of the company, not unlike the twentieth century policies.

The management of the Greenland Adventurers had better luck with the courts. Instead of being imprisoned, they were simply ordered to admit as members (offer equity positions to) the parties seeking redress.<sup>15</sup>

In 1630 the Africa Company was in debt and three decrees had been obtained against it in the Court of Wards. It was alleged that shareholders had not paid their calls and that these calls were uncollectible. The Privy Council ordered a levy of 3 Pounds per ton on the Company's red-wood, and 4s. per cwt. on ivory in favour of the creditors. It was estimated that these levies should clear off the debts in three years.<sup>16</sup> No mention is made of anyone going to prison. Again, the courts chose to satisfy the debts out of ordinary revenues rather than pursue the adventurers individually so long as the company still had income.

In 1662 Parliament granted limited liability to the Africa Company, the East India Company, and the Mines Royal. By 1671 the Africa Company had occasion to use the privilege. The bankrupt old Africa Company was wound-up and reorganized into a new Africa Company in which the creditors had stock whose par value equaled 10% of their claims against the old company. The Company again reorganized in 1712, again paying creditors with equity on written-down debts.<sup>17</sup>

In 1633 Lord Chamberlain's Association for Fishery went out of business with unpaid calls and unpaid debts. The calls and debts alike were never paid, but no record exists of penalties against individuals. It was a difficult decade for fishing; Lord Portland's Association, also a joint-stock for fishing, also went out of business with unpaid calls and unpaid debts taken out on the security of unpaid calls. Again, neither were paid and no debtors imprisoned.<sup>18</sup>

In the first two decades of the eighteenth century there was a boom in insurance companies of the joint-stock, private, and mutual forms. They dealt in marine insurance, life insurance, fire insurance, marriage and children insurance (although these policies seem to have more the aspect of a savings account), ransom insurance for travelers, as well as even more exotic forms of insurance. This form of business created a large new class of creditors -- customers. These companies were plagued by two problems. First, embezzlement. At least two of them were dissolved when the Treasurer absconded with the company's funds.<sup>19</sup> The policyholders went uncompensated.

The second and larger problem was the difficulty in collecting accurate actuarial data on which to price the policies. Some companies found the claims larger than the premiums collected. The Mercers' Company had promoted annuities for the widows of the clergy. The Company's commitments erred on the side of generosity, and it appealed to Parliament to reduce the annuities by one-third. Permission was granted.<sup>20</sup>

The details of the few bankruptcies of companies who had debts exceeding assets at the time of their dissolution reveal much about the impenetrability of the corporate veil even at a time when shareholders were nominally responsible for corporate debts. We see that part of the answer to how companies operated with extended liability is that they didn't. Some creditors voluntarily chose not to pursue shareholders, and in many cases the courts protected the shareholders.

#### Conclusion

There are at least four ways in which the early joint-stock companies could have dealt with the liability shareholders bore for debts of companies in which they owned stock. First, the companies could be all-equity financed. Second, they could assign liability which was not transferable. Third, they could limit ownership to a select, elite, wealthy group. Fourth, they could attempt to proceed as if they had limited liability anyway.

Overwhelmingly it was the first, pure equity financing, and a lesser degree the fourth, tacit assumption of limited liability, which prevailed to 1720. Although there is an

isolated instance of non-transferable liability, it is probably better explained by the presence of the Queen as a senior creditor than as a true experiment in extended liability management. The reliance on an elite group of shareholders seems to have helped not at all. In the companies which were pure equity financed their integrity was not called upon, and among the companies whose debts exceeded assets, it proved to be of little value. This historical investigation thus serves the point that limited liability prevails because transferable shares are not compatible with any other liability assignment.



## Footnotes

- 1 W.R.Scott, Vol.IIp.36
- 2 Powell, p. 175
- 3 Scott, Vol.II, p. 40
- 4 Scott, Vol.II, p. 44
- 5 Scott, Vol.II, p. 6
- 6 Scott, Vol.II, p. 44
- 7 Scott, Vol.II, p. 330
- 8 Scott, Vol.II, p. 323
- 9 Scott, Vol.II, p. 7
- 10 Scott, Vol.II, p. 365
- 11 Scott, Vol.III, p. 462-481
- 12 Harold Demsetz suggested to me that the nobility of the shareholders might have the reverse implication. They may have such influence in the courts that creditors could not expect to prevail against them.
- 13 Scott, Vol.II, p. 59
- 14 Scott, Vol.II, p. 66
- 15 Scott, Vol.II, p. 70
- 16 Scott, Vol.II, p. 15
- 17 Scott, Vol.II, p. 19
- 18 Scott, Vol.III, p. 370
- 19 Scott, Vol.III, p. 360
- 20 Scott, Vol.III, p. 368

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