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# **‘Country rag merchants’ and English local currencies in the late eighteenth and early nineteenth century**

IAIN FRAME\*

*In the late eighteenth and early nineteenth century, communities across England used country bankers’ notes almost as much as they used coins and Bank of England notes. Accounting for the relative success of these alternative currencies is challenging, however, due to the frequency of financial crisis during the period. If, during a crisis, all note holders attempted to enforce the promise to pay in gold coin against the issuing banker, the “law-finance paradox” would leave some note holders with gold coin, but would leave many more with merely “country rags” or worthless pieces of paper. Building on both the credit approach to money and the relational approach to contract, this article shows note using communities successfully responding to financial crisis. They frequently did so by formalising the bonds of reciprocity and trust tying the community to its note-issuing banker – bonds sometimes made all the stronger by legal enforceability.*

## INTRODUCTION

In 1801, a Mr Grigsby presented for payment in gold coin one of the notes issued by a country banker, Oakes & Co., in Bury St Edmunds. The banker refused to pay. Grigsby responded to the banker’s refusal by taking the matter to court.<sup>1</sup> Both at the local level and on appeal, the court sided with Grigsby and insisted the banker honour his promise by converting the note into gold coin. Yet despite siding with Grigsby, the judgment of the

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\* *Kent Law School, Eliot College, University of Kent, Canterbury, Kent CT2 7NS, England*  
[I.Frame@kent.ac.uk](mailto:I.Frame@kent.ac.uk)

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<sup>1</sup> *Grigsby v. Oakes* (1801) 126 ER 1420. See also L. S. Pressnell, *Country Banking in the Industrial Revolution* (1956) at 156; F. W. Fetter, ‘Legal Tender During the English and Irish Bank Restrictions’ (1950) 58(3) *J. of Political Economy* 241, at 242-3; and J. K. Horsefield, ‘The Duties of a Banker-II. The Effects of Inconvertibility’ (May, 1944) 11 *Economica* 74, at 76. In 1797, owing to the commencement of hostilities with France, parliament suspended the obligation requiring the Bank of England to convert its notes into gold coin on demand by enacting the Restriction on Cash Payments Act 1797 (37 Geo. III c. 45). Left unclear by the legislation freeing the Bank of England from this obligation was whether it also applied to country bankers such as Oakes & Co. It was against this legislative background that Grigsby presented the note for payment. On the suspension of convertibility, and its resumption in 1819, see J. Clapham, *The Bank of England: A History* (1944) vol. II., 1-74; and A. Feaveryear, *The Pound Sterling: A History of English Money* (1963) 173-227.

appeal court was not entirely sympathetic. By demanding gold coin, Grigsby only added to the already difficult situation facing country bankers given the recent commencement of hostilities with France, a point recognised by the court when it added with emphasis, “Thank God few such creditors as the present Plaintiff have been found since the passing of the Act!”<sup>2</sup>

One way of comprehending the court’s unease in *Grigsby v Oakes* is to view the decision it faced through the lens of what Katharina Pistor has labelled the “law-finance paradox.” According to Pistor,

[I]aw and finance stand in an uneasy, paradoxical relation to one another. Law lends credibility to financial instruments by casting the benevolent glow of coercive enforceability over them. But the actual enforcement of all legal commitments made in the past irrespective of changes in circumstances would inevitably bring down the financial system. If, however, the full force of law is relaxed or suspended to take account of such changes, the credibility law lends to finance in the first place is undermined.<sup>3</sup>

The country banker’s note held by Grigsby was lent credibility by the “benevolent glow of coercive enforceability” offered by the court: should the holder of the note wish to enforce the banker’s promise to pay in gold coin on demand, the courts would ensure the banker kept his promise. Yet in the same moment as the court lent its authority to the note held by Grigsby, it also breathed a sigh of relief: thank goodness Grigsby alone was asking for the backing of the court. In a world of frequent financial crises, the credibility of country bankers and their notes was hard to sustain if too many individuals like Grigsby exercised their formal legal right to demand payment in gold coin. Without access to the Bank of England, too many such demands – a run on the bank – could leave the banker bankrupt and the note holder with

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<sup>2</sup> *Grigsby v. Oakes*, op. cit., n. 1, p. 1421.

<sup>3</sup> K. Pistor, ‘A legal theory of finance’ (2013) 41 *J. of Comparative Economics* 315, at 323.

a worthless piece of paper: hence the pejorative name given to bankers outside of London – “country rag merchants.”<sup>4</sup>

Despite the risk that they might be left holding a mere “country rag,” individuals used bankers’ notes of the kind held by Grigsby to such an extent that by the end of the Napoleonic Wars there were almost as many country bankers’ notes in circulation as Bank of England notes.<sup>5</sup> If we are to explain how these notes often survived and prospered in the shadow of financial crisis, the law-finance paradox tells us that the legal enforcement of the promise on the note may have hindered rather than enhanced the banker’s chances of survival. If legal enforcement of the banker’s promise is not enough on its own, how else might we explain the credibility of late eighteenth and early nineteenth century country bankers’ notes?

This article attempts to answer this question by combining insights from two schools of thought, the credit approach to money and the relational approach to contract. With respect to the former, this article draws on what some scholars in the credit theory tradition have labelled the hierarchy of money. Courtesy of this hierarchy we will see that not all promises to pay are equally credible. Some debts in the late eighteenth century – such as those of country bankers – were more credible than others primarily, I will argue, due to the importance of reciprocity. As we will see, country bankers who survived financial crisis were supported by reciprocal bonds that tied the note issuing banker to the note using community.

These reciprocal bonds meant the banker and the community expected to gain something in return from trusting each other. When viewed through the lens of the relational contract

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<sup>4</sup> The phrase was used by William Cobbett, the radical and widely read journalist (as well as farmer, soldier and, in the 1830s, Member of Parliament), who at every opportunity attacked paper money. See W. Cobbett, *Rural Rides ... during the years 1821 to 1832*, vol. I (1885) 17; and W. Cobbett, *Paper Against Gold* (1815) 25. Others refer to banking as the “rag trade,” see, for example, Anon [W. Reid], *The Life and Adventures of the Old Lady of Threadneedle Street* (1832) 8.

<sup>5</sup> In 1818, the Bank of England had £26.5 million notes in circulation, the country banks, approximately, £20.5 million. For information comparing the volume of Bank of England notes with the volume of country bank notes, see M. Collins, *Money and Banking in the UK: A History* (1988) 40; and E. Coppieters, *English Banknote Circulation 1694-1954* (1955) 21-34.

tradition, we will see that their relationship was not solely defined by the legal enforcement of the precise terms contained within the four corners of the country bankers' note. What also shaped their relationship was its on-going nature and immersion in other-than-legal norms and community dynamics. This article, then, aims to capture the social embeddedness of, and sense of trust running through, the relationship between the note-issuing banker and note-using community, a relationship which helped bankers to, on occasions, overcome the law-finance paradox.<sup>6</sup>

Yet this reciprocal interplay between banker and community was not just a product of both parties trusting each other in the hope that they would then receive mutual gains. As a close reading of much of the relational contract tradition shows, trust and law do not necessarily stand in opposition to each other.<sup>7</sup> Legal enforcement remains relevant – and not only because attempts to enforce the promise on the note might lead to the collapse of the banker. As this article will argue, legal enforcement also had a more positive role to play in facilitating a collective response from the note using community to the plight of its banker that sometimes helped bankers and their notes to survive financial crisis and the threat posed

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<sup>6</sup> On the concept of social embeddedness, see M. Granovetter, 'Economic Action and Social Structure: The Problem of Embeddedness' (1985) 91(3) *Am. J. of Sociology* 481.

<sup>7</sup> Early empirical scholarship in the broad relational contract tradition highlighted the dissonance between assumptions about the role of contract law and actual business practice, see in particular S. Macaulay, 'Non-Contractual Relations in Business: A Preliminary Study' (1963) 28 *Am. Sociology Rev.* 55; and H. Beale and T. Dugdale, 'Contracts between Businessmen: Planning and the Use of Contractual Remedies' (1975) 2(1) *Brit. J. of Law and Society* 45. As Macaulay argued in 1963, "[contractual] planning indicates a lack of trust and blunts the demands of friendship, turning a cooperative venture into an antagonistic horse trade," *id.*, p. 64. Yet this research did not find "that legal measures and legally enforceable agreements were of *no relevance* to the way in which business was conducted" (C. Mitchell, *Contract Law and Contract Practice: Bridging the Gap between Legal Reasoning and Commercial Expectation* (2013) 69. *Emphasis in original*). Recent scholarship, including by Macaulay himself, has built on this by developing a nuanced analysis of the interplay between legal and non-legal sanctions. See David Campbell, 'What Do We Mean by the Non-Use of Contract?' in J. Braucher, J. Kidwell, and W. C. Whitford (eds) *Revisiting the Contracts Scholarship of Stewart Macaulay* (2013) 159; S. Deakin, C. Lane, F. Wilkinson, 'Trust' or Law? Towards an Integrated Theory of Contractual Relations between Firms' (1994) 21(3) *J. of Law and Society* 329; and S. Macaulay, 'The Real and the Paper Deal: Empirical Pictures of Relationships, Complexity and the Urge for Transparent Simple Rules' (2003) 66(1) *Modern Law Rev.* 44, at 61. For a detailed overview of the relationship between law and trust, see F. B. Cross, 'Law and Trust' (2005) 93 *The Georgetown Law J.* 1457. My thoughts on the relationship between social norms and law have also been influenced by D. Kennedy, 'The Stakes of Law, or Hale and Foucault!' (1991) 15(4) *Legal Studies Forum* 327.

by the law-finance paradox.<sup>8</sup>

This article is structured as follows. It begins by introducing both the credit approach to money and the hierarchy of money. It is through a discussion of this hierarchy that I introduce the idea of reciprocity. The article then describes in more detail the role played by country bankers' notes in the late eighteenth and early nineteenth century, the enforcement by the courts of the promise to pay on these notes, and the limits to this enforcement. Although haunted by the law-finance paradox, country bankers and their notes could still survive moments of financial crisis when reciprocal ties between banker and community came to the fore, ties that are easier to see when viewed in light of the insights provided by the relational contract tradition. The remainder of the article investigates these reciprocal ties between the note issuing banker and the note using community in the context of late eighteenth and early nineteenth century England. It does so by providing an overview of the service the banker performed for his community, before then turning to the favour the community preformed in return for the banker, and the interaction between trust and legal enforcement that made such community support credible.

A caveat before we continue. My use of the term "community" in this article implies a sense of social solidarity which ignores the class, gender, and imperial conflicts that shaped the late eighteenth and early nineteenth century. I bracket these conflicts in this article on the assumption that, where communities were able to help their banker, they did so by managing or supressing the conflicts running through that community. The details about how communities managed, or failed to manage, these conflicts would make for a fascinating study, but that is not the study that I undertake here. In this article, I take a degree of social

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<sup>8</sup> On the role of law in facilitating the collective or group efforts that support the value of money, see R. Kreitner, 'Legal History of Money' (2012) 8 *Annual Rev. of Law and Social Science* 415; and C. Desan, 'The Market as a Matter of Money: Denaturalizing Economic Currency in American Constitutional History' (2005) 30(1) *Law and Social Inquiry* 1.

solidarity for granted and then explore how this helped to support the notes of country bankers.

## DEBT-CREDIT RELATIONS AND THE HIERARCHY OF MONEY

When I go to buy a chocolate bar from a corner store, I owe a debt to the owner of the store. Imagine that the elaborate monetary institutions of today are absent. How then might I pay for the chocolate bar? One option is to write the shopkeeper an IOU or a promissory note of my own, promising to perform some service equivalent in value to the chocolate bar at some future date. The shopkeeper might then decide to become my creditor by agreeing to hold this note representing my debt to her. If people think my promise to make good the debt is credible they too might accept the note in payment for a debt owed by the shopkeeper to them. The note starts to circulate as a means of payment.

The production of such IOUs emphasises the relations between creditors and debtors and the promise that binds them, and is frequently referred to as the credit approach to money.<sup>9</sup> Yet this approach comes up against a problem: unless the corner-store owner knows and trusts me personally, they run the risk that I will decide not to make good the debt. It is difficult for individuals to create a means of payment that circulates widely because it is difficult to get other people to agree to hold the debt: how do they know that the debtor will make good their debt?

As part of the credit approach tradition to understanding money, one scholar, Stephanie

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<sup>9</sup> In this section, I complement insights from the credit approach by drawing on a further approach to understanding money, the “state theory” or “Chartalism.” By emphasising the overlap between credit theorists and state theorists, this article follows the suggestion of L. R. Wray in his introduction to *Credit and State Theories of Money: the Contributions of A. Mitchell Innes*, ed. L. R. Wray (2004) 1. For examples of the state theory tradition, see L. R. Wray, ‘State Money’ (2002) 32(3) *International J. of Political Economy* 23; and G. F. Knapp, *The State Theory of Money* (1924). For examples of the credit theory tradition, see A. M. Innes, ‘The Credit Theory of Money’ (1914) 31 *Banking Law J.* 151; and G. Ingham, *The Nature of Money* (2004). For a discussion of some of the theories of money from a legal perspective, see C. Proctor, *Mann on the Legal Aspect of Money* (6<sup>th</sup> Ed. 2005).

Bell, has introduced what she calls the “hierarchy of money,” which we might also call a hierarchy of credit and debt.<sup>10</sup> All money is a debt that another accepts. But not all debts are the same because some debtors are more creditworthy than other debtors. The IOU that I write to the shopkeeper for the chocolate bar probably finds its place toward the bottom of the hierarchy, though much depends on my actual or perceived wealth. Nobody would accept an IOU written by a random stranger on the street, but we treat one written by a large corporation quite differently. Between the extremes of the state and a random stranger is a vast array of intermediate debt. To simplify as Bell does, we can imagine four tiers to the hierarchy moving from least to most credible. On the bottom tier sits the debt of households, such as mortgages and credit cards. On the third tier sits the debts of businesses, like commercial paper or bills of exchange. And on the second tier sit the liabilities created by commercial banks when they make loans. Banks occupy a privileged position in the hierarchy owing to their relationship with the issuer of the most credible money in the hierarchy, the central bank.<sup>11</sup>

It is through the central bank that modern governments issue their own money when they buy goods and procure services.<sup>12</sup> But why does the money created by the central bank sit at the top of the hierarchy of credit and debt? According to scholars like Wray and Bell, people and businesses accept this money because of the government’s assurance that it will accept it as payment for public obligations such as taxes, fees, and fines.<sup>13</sup> Because everyone shares these common obligations, businesses and households are constantly in debt to the state and so will need a constant stream of the money accepted by the state to cancel their obligations.

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<sup>10</sup> S. Bell, ‘The Role of the State and the Hierarchy of Money’ (2001) 25 *Cambridge J. of Economics* 149. See also D. K. Foley, ‘Money in Economic Activity’ in *The New Palgrave: Money*, eds. J. Eatwell, M. Milgate and P. Newman (1987) 519.

<sup>11</sup> Bell, *id.*, pp. 158-161.

<sup>12</sup> In the real world, there are significant differences between the government’s finance department and the central bank. For the sake of simplicity, however, this article consolidates the treasury and central bank, using the phrase “the state” to do so.

<sup>13</sup> See Bell *op. cit.*, n. 10; and L. R. Wray, *Modern Money Theory* (2012).



Because households and businesses need the state's money, they both tend to write up their own IOUs in terms of the state's money (promises to pay accounted for in, say, Pounds Sterling). Moreover, when a household or a corporation seeks to pay off a debt, it needs to acquire the money that everyone else will accept – the state's money. By contrast, when the government of a state that controls its own currency seeks to pay off a debt, it does not need to obtain the money or widely accepted IOUs of any other entity. Instead, that government, via its central bank, can create more of its own money, subject to restraints such as a gold standard or the threat of higher than acceptable inflation. And, indeed, it is the unlimited power of a currency-issuing central bank to create more of that currency that allows states to escape from the law-finance paradox: should a state in control of its own currency need to honour all of its commitments at the same time, it can do so by creating more of that currency.<sup>14</sup>

With respect to the state's money, notice the implicit reciprocal commitments tying together state and citizens: the state issues money that citizens accept for goods provided and services procured; in return, the state accepts that citizens can use this same money to cancel public obligations. This same reciprocity was at work in late eighteenth and early nineteenth century England. Gold coins and Bank of England notes sat at the top of the hierarchy of credit and debt because of the implicit reciprocal commitments that bound the public authorities to the citizens of the polity and made the promises underpinning these forms of money highly credible. Citizens accepted payment in the state's currency, whether coin or paper notes, and in return, the state promised to accept gold coins and Bank of England notes when citizens fulfilled their public obligations, such as the payment of taxes.<sup>15</sup>

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<sup>14</sup> Wray, *id.*, ch. 4.

<sup>15</sup> Currency made credible by ties to the tax system assumes an effective tax system. The system of tax collection became increasingly effective during the eighteenth century. See J. Brewer, *The Sinews of Power: War, Money and the English State, 1688-1783* (1990). On the role these taxes played in supporting government borrowing, made possible by a process historian Peter Dickson describes as the "Financial Revolution," see P.

Yet although these reciprocal commitments made gold coin and Bank of England notes valuable that does not mean these forms of currency were always problem free. When it was profitable to do so, people melted down and exported gold guinea coins and silver and copper coins, coins seldom issued in sufficient quantities in the first place.<sup>16</sup> Bank of England notes proved inadequate in their own way, for they only circulated in large quantities in and around London. Little wonder, then, that contemporaries pejoratively labelled the Bank of England the “Bank of London” during the eighteenth century.<sup>17</sup> Given these deficiencies in gold coin and Bank of England notes, communities across England came to rely on their local country banker – or, more typically, small partnership of no more than six bankers<sup>18</sup> – to supply them with a means of payment.<sup>19</sup> Yet the promises to pay issued by country bankers faced problems of their own. As we will now explore in detail, the law-finance paradox haunted country bankers’ notes: given credibility by the willingness of the courts to enforce the promise to pay, that credibility was severely put to the test when too many concurrent demands left the banker unable to honour his commitments.

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G. M. Dickson, *The Financial Revolution in England: a study in the development of public credit, 1688-1756* (1967).

<sup>16</sup> On the coinage, see C. E. Challis, *A New History of the Royal Mint* (1992) ch. 4 and Feaveryear, *op. cit.*, n. 1, chs. VI and VII.

<sup>17</sup> See J. Clapham, *The Bank of England: A History* (1944) Volume I, 150 and 167. The phrase “Bank of London” comes from a pamphlet of 1721, Anon., *Proposals for Restoring Credit, for Making the Bank of England more useful, etc, etc* (1721). Clapham uses the phrase frequently in Volume I of his history of the Bank of England, see for example, at pp. 107, 146, 150.

<sup>18</sup> Legislation prohibited “any body politic or corporate whatsoever,” as well as all associations of more than six persons in England and Wales, from issuing notes payable on demand. See S. E. Thomas, *The Rise and Growth of Joint Stock Banking* (1934) at 5-16. The relevant legislation is The Bank of England Act 1707 (6 Ann. c. 59) [also referred to as 6 Ann. c. 22], Section 9, repeated in The Bank of England Act 1708 (7 Ann. c. 30) [also referred to as 7 Ann. c. 7], Section 61. Since country banks could not have more than six partners, estimates indicate £10,000 as the average capitalisation of country banks in the first decade of the nineteenth century, see Pressnell, *op. cit.*, n. 1, pp. 226-227.

<sup>19</sup> Between 1750 and 1820, coins declined as a percentage of the means of payment while bank notes increased. In 1750, precious metals (turned in to coin by the Royal Mint) comprised 37 percent of the means of payment; banknotes, 12.5 percent; and bills of exchange, around 50 percent. In 1811, precious metals comprised 7 percent of the means of payment; banknotes, 20.9 percent (bank deposits, 7 percent); and bills of exchange, around 65.1 percent. In 1830, precious metals comprised 18.1 percent of the means of payment; banknotes, 17.4 percent (bank deposits, 24.1 percent); and bills of exchange, around 40.4 percent. The figures are from R. Cameron, ‘England, 1750-1844’ in *Banking in the Early Stages of Industrialization*, eds. R. Cameron, O. Crisp, H. T. Patrick, and R. Tilly (1967) 15, 42.

## “THE BENEVOLENT GLOW OF COERCIVE ENFORCEABILITY” AND ITS LIMITS

By siding with the note holder in *Grigsby v Oakes*, the court signalled to communities across England using local currencies that they could do so safe in the knowledge that each holder could rely on the courts to enforce the bankers promise to pay in gold coin on demand.<sup>20</sup> Moreover, while each banker was a debtor on the notes they issued, they were also a creditor owing to the bills of exchange they discounted.<sup>21</sup> Like bankers’ notes, bills of exchange were backed by a promise to pay, except that the promise in the case of bills was not to pay on demand but at some specified date in the future. Fidelity to one’s word was important here: bankers and merchants both made promises upon which others depended, promises made credible by the “benevolent glow of coercive enforceability” cast over them by the courts.

Yet, crucially, in the late eighteenth and early nineteenth century reality frequently made fidelity to one’s word challenging. Prices for articles transported long distances over many weeks and sometimes months did not tend to hold steady, while war in the eighteenth century was never far away.<sup>22</sup>

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<sup>20</sup> The courts further helped bank notes to circulate by treating them as interchangeable with state issued coins (*Miller v. Race* (1758) 97 E.R. 398). Only the latter was legal tender, though the courts considered a bank note good tender provided the party receiving the note did not object to the note as the form of payment (*Wright v. Reed* (1790) 100 E.R. 729). Promissory notes had been “payable to X or bearer” since the Promissory Notes Act 1704 (3 & 4 Ann. c. 9). An Act of 1775 (15 Geo. III, c.51) prohibited demand notes of less than £1; a further Act in 1777 (17 Geo. III, c.30) extended the prohibition to demand notes under £5. The prohibition on the issue of demand notes under £5 was lifted in 1797 (37 Geo. III, c. 32), but was reintroduced in 1816 (56 Geo. III, c.21). An Act of 1808 (48 Geo. III, c. 149) required all note-issuing bankers to take out a license. On the history of the currency of paper money in England, see D. Fox, ‘Bona Fide Purchase and the Currency of Money’ (1996) 55 (3) *The Cambridge Law J.* 547. On the law of negotiable instruments in the eighteenth and nineteenth centuries, see J. M. Holden, *The History of Negotiable Instruments in English Law* (1955); and J. S. Rogers, *The Early History of the Law of Bills and Notes* (1995).

<sup>21</sup> Bankers typically received bills of exchange when the holder wanted to discount the bill. The holder of the bill would get money up front in the form of coins, Bank of England notes, or country bankers’ notes. The total was, however, less than the face value of the bill because a discount off set the risk that the merchant(s) named on the bill might not pay up.

<sup>22</sup> In 1750, it took forty hours to travel the 120 miles between Bristol and London. The growth of turnpike roads cut that travelling time down to less than twenty-four hours by 1783 and to less than twelve hours by 1811, see B. Hilton, *A Mad, Bad and Dangerous People: England, 1783-1846* (2006) 23. Between 1680 and 1815, England and then Britain fought seven major wars: the Nine Years War (1688-97); the War of the Spanish Succession (1702-13); the War of Austrian Succession (1739-48); the Seven Years War (1756-63); the American

Since merchants' plans seldom went without disruption, one consequence was that promises made three months prior were often unrealistic come the agreed date of payment. Where an acceptor of a bill of exchange failed to pay what was due on the bill, the banker who had discounted the bill found he did not have the inflow of cash needed to cover his note circulation. A thought then spread throughout the community: if merchants cannot fulfil their debts, what about bankers? If the issuing banker failed, the promise on the note to redeem the note in gold coin on demand was empty. Those left with the notes held merely a worthless piece of paper, hence the use of the phrase "country rag merchants."<sup>23</sup> The failure of a banker then became a self-fulfilling prophecy. Because the majority of those holding the notes feared for the bank's future, there was a tendency for each note holder to demand payment in gold coin at the same time as everyone else – a classic "run on the bank" – creating a strain on the banker's reserve of gold coin that could be too overwhelming a burden to bear.

Between the late 1780s and 1826 England experienced no less than seven such crises.<sup>24</sup> In the event of such a crisis, a typical country banker tried to reinforce his position by attempting to obtain gold coin and/or Bank of England notes from his agent in London.<sup>25</sup> But when all other country bankers tried to do the same concurrently – the mark of a crisis – the supply of the gold coin and Bank of England notes seldom kept pace with demand. With the banker struggling to find the money necessary to fulfil their promises, the note holder might attempt to enforce the promise on his note by turning to the courts. Yet bear in mind the law-

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War of Independence (1775-83); the War of the First Coalition (1793-1797); and the Napoleonic Wars (1797-1815).

<sup>23</sup> Cobbett, *op. cit.*, n. 4.

<sup>24</sup> Country banks were in danger of collapse during moments of crisis in 1788/89, 1793, 1797, 1806, 1810/11, 1815/16, and 1825/26. See Pressnell, *op. cit.*, n. 1, pp. 441-500. See also J. Hoppit, 'Financial Crisis in Eighteenth-Century England' (1986) 39 (1) *The Economic History Rev.* 39.

<sup>25</sup> To conduct his business, each country banker kept an account with a London banker that formed their main reserve should an economic crisis arise. The London banker used the funds left in this account to invest in corporate shares, bills of exchange, and government debt to suit the investment needs of country bankers and the country banker's customers. Alternatively, the London banker used these funds to accept bills drawn by the country banker, thereby enabling merchants and early industrialists from across England to access the wealth passing through London. See Pressnell, *op. cit.*, n. 1, pp. 116-125.

finance paradox: too many concurrent demands on debtors left these debtors unable to honour their commitments, while confirmation from the courts that the debtor's commitment remained legally enforceable only added to the debtor's burden. As unfulfilled contractual commitments built up, the average country banker was left only a hair's breadth from bankruptcy, and that is where all too many ended up in first few decades of the nineteenth century. Bankruptcy might result in creditors getting a portion of what the banker owed them.<sup>26</sup> But it came too late to save the country banker's notes as a means of payment, for bankruptcy meant the banker's credibility was gone and his notes lost their value.

The extent to which country bankers ended up bankrupt led Leslie Pressnell, the leading historian of country banking, to observe that,

The instability of country banks seems at first sight unmistakable. Between 1750 and 1830 at least 343 firms, the members of which described themselves as 'bankers', failed in the country; 334 of them failed between 1790 and 1826, sixty-seven in the three years between 1814-1816, and sixty in the period July 1825 to June 1826.<sup>27</sup>

To further contextualise these figures, 18 bankers failed in 1792-93 out of a total of 280; 67 bankers failed between 1814 and 1816 out of a total in 1814 of 733.<sup>28</sup> A failure rate of 6-9 percent is high, but it also indicates that many more bankers survived than succumbed to financial crisis. Why then were some bankers able to sustain their promises to pay?

As we saw earlier, all money is a debt, but not all debts are the same because some debtors are more creditworthy than others. Between the money issued by the state and the IOUs of a random stranger sit a vast array of intermediate debts. In Stephanie Bell's four tier model, banks sit on the tier immediately below the state's money because of their close ties to the

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<sup>26</sup> On the bankruptcy regime of the time see J. Hoppit, *Risk and Failure in English Business in the Eighteenth Century* (1987).

<sup>27</sup> Pressnell, *op. cit.*, n. 1, p. 443.

<sup>28</sup> *Id.* The figures on the number of country banks each year between 1784 and 1842 are on p. 11. The figures on the number of bankrupt country bankers each year up until 1825 are on pp. 536-538.

central bank. Today, owing to these close ties the IOUs of banks are interchangeable with the currency issued by the state.<sup>29</sup> Crucially, in the late eighteenth and early nineteenth century the ties between country bankers and the Bank of England were often strained, especially so during moments of financial crisis when country bankers most needed the assistance of the Bank of England. During such moments the Bank of England was often accused of not doing enough to ease the strain on hard-pressed merchants and bankers. Consider the following view of the Bank of England as expressed by one contemporary in the aftermath of the financial crisis of 1793:

Trustees of a great trading company, instituted not less for the public good than for private emolument, it might have been expected that they [the Bank of England's directors] would step into the breach, and have given the weak and wounded individual time to escape ... Instead ... the directors pusillanimously led the way in the general discomfiture, or were active only in enriching themselves from the spoils of those who had fallen in the struggle.<sup>30</sup>

An explanation of the reluctance of the Bank of England to assume responsibility “for the public good” during this period is outside the scope of this article. The aim of this article is, instead, to consider the resilience of many country bankers and their notes notwithstanding the reluctance of the Bank of England to fully embrace the role of what we today call a central bank. Part of what helps to explain this resilience is that, even in the absence of close ties to the Bank of England, the promises of country bankers did not sit on the same tier of the hierarchy of money as the promises of a random stranger. The relationship between Grigsby and the bank in Bury St Edmunds may appear at first sight as a one-off exchange between strangers, amounting to little more than the presentation of a note in exchange for gold coin. And the role of law in these relations may appear initially to amount to little more than the documentation of the terms of the contract between the note-issuing banker and the

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<sup>29</sup> On the ties between the Central Bank and commercial banks, see Wray, *op. cit.*, n. 13, ch. 3.

<sup>30</sup> [Roscoe], *Thoughts on the Causes of the Present Failures* (1793), 20, quoted in F. Fetter, *Development of British Monetary Orthodoxy* (1965) 14.

note-using public as detailed on the note itself, such as the name of the party issuing the note, the amount due in exchange for the note, and the fact that the note was payable on demand to bearer. It was exactly these explicit terms that the court in *Grigsby v Oakes* focused on when it confirmed that the promise to pay was legally enforceable. And by concentrating on these terms, the court did in fact treat Grigsby and Oakes & Co. as strangers to a one-off transaction: all going well, when the holder cashed the note the transaction was complete and the relationship between the parties over. But there was more to both the transaction and the role of law than this.

It is at this juncture that the relational approach to contract becomes helpful. In keeping with the insights of this approach, “the common type of commercial exchange” is one found “among participants in continuing relations, members of interactive communities whose projects themselves, as well as expectations about how they will be carried out, are partially created by community.”<sup>31</sup> The creation of country bankers’ notes was a “common type of commercial exchange” in the late eighteenth and early nineteenth century that emerged from “continuing relations” between “members of interactive communities.” This community embeddedness made the IOUs of country bankers qualitatively different from the IOUs created by a random stranger. The IOUs of the random stranger sit on the bottom tier of the hierarchy of money because no one will accept them; there is an absence of reciprocity. By contrast, a reciprocal interplay supports the credit of the state on the top tier. As we have seen, citizens accept the state’s money, and in return the state promises to accept this money back again when citizens fulfill their public obligations. A similar movement underpinned country bankers’ notes: the banker supplied the community with a means of payment and, in return, the community lent their backing to the banker during times of crisis. It was this reciprocity between the note issuing banker and the note using community that sustained

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<sup>31</sup> R. W. Gordon, ‘Macaulay, Macneil, and the Discovery of Solidarity and Power in Contract Law’ (1985) *Wisconsin Law Rev.* 565, at 569.

demand for the banker's notes and allowed these notes to sit in the top half of the hierarchy of credit and debt. Our task now is to detail this reciprocal relationship between the note issuing banker and the note using community.<sup>32</sup>

The next section explores the service the banker performed for the community. Thereafter, this article turns to the community's response. In the circumstances of a financial crisis a choice confronted the note using community. Each member could "stand on their rights" and demand fulfilment of the promise in accordance with the strict terms of the contract as written on the note. By so doing, some would perhaps get gold coin, but most would not and the banker would likely end up bankrupt. The alternative choice was for the community to lend its collective backing to the banker, to "lend ... mutual support, rather than [stand] on [its] rights."<sup>33</sup> This mutual support took three different forms, each of which sought to sustain demand for the notes. The first and most common was a collective act of forbearance by which members of the community publicly declaring their faith in the banker and willingness to forgo their right to cash in the note. The other two forms of support were bolder still since they pushed beyond trust without legal backing and instead used legally binding commitments as a means of formalising the trust that underpinned the reciprocity between banker and community.

## THE BANKER'S SERVICE TO THE COMMUNITY

Until the second half of the eighteenth century, a prominent local shopkeeper, merchant, or

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<sup>32</sup> An additional factor that helped to add credibility to country bankers' notes follows from the ties that often existed between the note issuing banker and the system of tax collection and remittance. In situations where the note holder could use the country banker's promise to pay to cancel tax obligations, a current of demand supported the banker's notes. On the connections between country bankers and the system of tax collection in the early nineteenth century, see L. S. Pressnell, 'Public Monies and the Development of English Banking', (1953) 5(3) *Economic History Rev.* 378.

<sup>33</sup> Gordon, *op. cit.*, n. 31, p. 569.



manufacturer performed the banking function in towns and villages across England.<sup>34</sup> Shopkeepers, in particular, morphed into bankers in the second half of the eighteenth century owing to a combination of their central position within the networks of local creditors and debtors, and their close links to commercial centres like London. By performing this function, the early banker “began to subsume the credit which had been a part of the innumerable small transactions in the early modern period.”<sup>35</sup> Through the extension of his own credit, the banker’s IOU replaced the personal trust tying together the credit relations between, for example, a farmer and an innkeeper. Instead of the farmer accepting the IOU of the innkeeper, or vice versa, both parties came to use the impersonal credit of a third party, the country banker.<sup>36</sup>

Being at the centre of the “credit ‘nexus’ of the local community”<sup>37</sup> meant the banker held accounts for a cross section of that local community. In Nottingham, for example, the key local trades were knitting and hosiery. Consequently the town’s banker, Smiths, held the accounts of those who supported this trade, including framesmiths, stocking-needle makers, threadmen, woolcombers, and dyers, not to mention the larger merchants like linen and woolen drapers, mercers, and clothiers. Owing to the success of the knitting and hosiery sectors, other trades and crafts flourished too, as evidenced by the accounts Smiths held for a wide cross sections of local businesses.<sup>38</sup>

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<sup>34</sup> See T. S. Ashton, *An Eighteenth Century Industrialist: Peter Stubs of Warrington, 1756-1806* (1936)105, and T. S. Willan, *An Eighteenth-Century Shopkeeper: Abraham Dent of Kirkby Stephen* (1970) ch. VII. The shopkeeper in the account offered by Willan, Abraham Dent, began to deal in bills of exchange but not to the extent that would allow him to become a banker. As Willan notes, “As Dent’s trade in commodities declined, his dealings in bills rose. Perhaps he was moving tentatively along that road which, in other cases, turned the shopkeeper and merchant into the banker. But he hardly achieved that metamorphosis” (127). On the emergence of bankers out of shopkeepers, see H. Thornton, *An Enquiry into the Nature and Effects of the Paper Credit of Great Britain* (1801) 156-8; Rogers, op. cit., 20, p.110; and Feaveryear, op. cit., n. 1, pp.162-164.

<sup>35</sup> C. Muldrew, ‘Interpreting the market: the ethics of credit and community relations in early modern England’ (1993) 18(2) *Social History* 163, 182.

<sup>36</sup> See Pressnell, op. cit., n. 1, p. 138. On the triangular relations between the two parties using the money and the issuer of the money, see G. Ingham, ‘Revisiting the credit theory of money and trust’ in J. Pixley (ed.) *New Perspectives on Emotions in Finance: The sociology of confidence, fear and betrayal* (2012) 121 at 128-129.

<sup>37</sup> B. A. Holderness, ‘Credit in a Rural Economy, 1660-1800’ (1975) 3(2) *Midland History* 94, 106.

<sup>38</sup> J. A. S. L. Leighton-Smith, *Smiths the Bankers, 1658-1958* (1958) 38-9. This pattern, where one prominent and unique local trade sustained commonplace trades, repeats in towns across England and Wales. On Hull, see

The town's banker brought all of these trades and crafts together. In so doing, the banker provided services that matched the status of his customers. Some customers had a net credit balance. Such customers, typically a town or region's local landowning gentry and its principal traders and manufacturers, looked to their local banker as an outlet for their investments. Through his agent in London, the country banker directed these investments towards government debt or other securities.<sup>39</sup> The country banker also offered an investment himself, by providing those who left a credit balance with interest payments. The Kendal Bank, in Westmorland, north Lancashire, for example, allowed 4 percent interest where "our friends lodge money with us for a year certain."<sup>40</sup>

The Kendal Bank's "friends" were those customers it considered "gentlemen," including the gentry and those wealthy enough to leave a credit balance untouched for months at a time. Bankers distinguished "Gentlemen" from "tradesmen," as the accounts of the latter tended to fluctuate over the course of a year, sometimes in credit, with the banker paying them interest, other times in debit, with the client paying interest to the banker. Tradesmen and craftsmen, such as saddlers, millers, maltsters, cornfactors, bakers, butchers, grocers, and so on, sent bills they received in payment to their bankers and drew on the bankers to make payments they owed to others. As Ashton describes the relationship,

Instead of keeping his own portfolio of bills, a trader could send those he received direct to his banker, who would discount them for him and set the balance to his credit. Instead of himself taking or sending a bill for acceptance or payment, he could leave this troublesome business to a banker.<sup>41</sup>

In manufacturing centres country banks further aided traders, craftsmen, and emerging

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Leighton-Smith at p. 199 and p. 215. On Derby, see Leighton-Smith at pp. 257-8.

<sup>39</sup> See op. cit. n. 25.

<sup>40</sup> G. Chandler, *Four Centuries of Banking*, vol. 1 (1964) 60.

<sup>41</sup> T. S. Ashton, *An Eighteenth Century Industrialist: Peter Stubs of Warrington, 1756-1806* (1936) 112.

industrialists by providing them with a means of paying wages.<sup>42</sup> In agricultural regions, country bankers played a key role in facilitating the payment of rent by tenants to landlords and often channeled seasonal assistance to farmers.<sup>43</sup> So central was the banker to the endeavours of the community of which he was a member that one contemporary remarked,

In the present relations of society it [Banking] not only affects us one and all, more or less directly, but is so potent and penetrating that there is no escaping from its influence, or getting on without direct and intimate connexion with it ... What is there ... that a man can begin without a Bank; and what, however well begun or conducted, that will not, when the Bank refuses accommodation, at once stop, sink, and be for ever extinguished?<sup>44</sup>

I want to use these examples to emphasise the central role that bankers played in their local community. The banker provided the link between the different levels of social hierarchy. And that meant the banker tied together with each other gentry and landlords, prestigious merchants and professionals, “middling and small manufacturers,” tradesman and craftsmen (“bricklayers, carpenters, butchers, butter and bacon dealers, shoemakers, cattle-jobbers”),<sup>45</sup> farmers, and wage labourers. Without the role played by their banker, the cohesion of the local community suffered. Yet, as this article now explores, while the community needed their banker, the relationship was reciprocal because the banker could not prosper long without the backing of his local community.

## THE COMMUNITIES SERVICE TO ITS BANKER

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<sup>42</sup> See Pressnell, *op. cit.*, n. 1, pp. 153-6. For an example of a manufacturer issuing his own paper currency, see G. Urwin, *Samuel Oldknow and the Arkwrights: The Industrial Revolution at Stockport and Marple* (1967) 176.

<sup>43</sup> The best example is Vincent Stuckey’s bank in Somersetshire, see Stuckey to Committee on Renewing the Bank of England Charter, *British Parliamentary Papers* (1831-32) (722) VI.

<sup>44</sup> The passage was written by Richard Page in the 1840s though it is equally applicable to this earlier phase of banking, [Richard Page], *Banks and Bankers* (2<sup>nd</sup> Ed. 1843) 1-2.

<sup>45</sup> D. Robinson, ‘The Country Banks and the Bank of England’ (Dec. 1827) 22 *Blackwood’s Edinburgh Magazine* 734, at 741.

Bankers needed the support of their local note using community more than ever during moments of financial crisis. At such moments, bankers bore the brunt of the crisis given their place at the centre of local and inter-regional credit arrangements. Following the general collapse in confidence, the credibility of the promise to pay on each bill of exchange was in doubt. To cover debts owed, creditors needed an asset on which they could rely, preferably gold coin and/or Bank of England notes since these had state backing and sat towards the top of the hierarchy of money. One obtained these forms of money by demanding the fulfilment of the promise requiring the issuer of the note to pay in gold coin on demand, or by withdrawing funds deposited with a banker. Either way the banker faced a demand from his creditors for state backed forms of currency at precisely the moment when the banker's inflow of money from his debtors, those who owed money on the bills of exchange he had discounted, was drying up. The suggestion that the banker was unable to fulfil the legally enforceable obligations he owed to note holders and depositors only reinforced the crisis by unnerving the bank's remaining note holders and depositors, potentially setting off a run on the bank.

A run on the bank benefited no one. Since the banker's promise was legally enforceable, some note holders – if they were quick enough – might get gold coin or Bank of England notes. Yet even those who converted the country banker's notes into gold coin before the banker ran out of gold coin would lose out owing to the collapse of the local currency. Without a medium of exchange, the community as a whole suffered, including people like Grigsby. Note using communities had to avoid that outcome if possible. Avoiding that outcome required grappling with, and finding a way of managing, the law-finance paradox. As we will now explore, many communities were successful in their efforts. Although a banker's promises to pay were legally enforceable, there was no rule that said either (i) that the note holder had to enforce the promise, or (ii) that some other party could not assume the

banker's responsibilities.

The most common type of support offered by communities to their banker followed from option (i) and took the form of a collective act of forbearance by which members of the community publicly declared their faith in the banker and willingness to forgo their right to cash in the note. Although the promise on the note remained legally enforceable, the note holder placed that legal entitlement on hold by choosing to ignore the terms contained between the four corners of the note. The effect of this type of support was to ease the pressure on the banker.

Consider these examples from the 1790s. In 1793 the strain experienced by the bankers of Newcastle resulted in a public meeting in April that led to the following declaration of support from local citizens for the town's banks: "Resolved unanimously:—That we in our several Capacities will, as usual, accept in payment the Notes issued by any of the above-mentioned Banks, and will do our utmost Endeavours to induce others to do the Same."<sup>46</sup> Similar declarations can be found in the same year in Liverpool, where the city's merchants sought to re-enforce the promises buttressing each bill of exchange.<sup>47</sup> They did so by declaring their support for the city's banks via public notice, stating that, "we ... do mutually pledge ourselves to each other, and to the public, that we are ready and willing to receive in payment the bills of the several Banking Houses of this town ... at One or Two months' date, as hath been the usual and customary practice."<sup>48</sup> Shortly after this first public declaration, in

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<sup>46</sup> Maberly Phillips, *A History of Banks, Bankers and Banking in Northumberland, Durham and North Yorkshire* (1894) 48.

<sup>47</sup> In Lancashire bills of exchange comprised the local currency during the latter period of the eighteenth century and first quarter of the nineteenth. When they discounted a large bill of, say, £2,000, Lancashire bankers encouraged the circulation of bills of exchange as currency by reissuing smaller bills they had previously discounted as an alternative to issuing notes payable on demand, see T. S. Ashton, 'The Bill of Exchange and Private Banks in Lancashire, 1780-1830' in *Papers in English Monetary History*, eds. T. S. Ashton and R. S. Sayers (1953) 37; and P. L. Cottrell and Lucy Newton, 'Banking Liberalization in England and Wales' in *The State, the Financial System and Economic Modernization*, eds. Richard Sylla, Richard Tilly and Gabriel Tortella (1999) 75, at 105.

<sup>48</sup> 223 merchants and firms signed the notice. The public notice, issued on 20 March 1793, is reproduced in J. Hughes, *Liverpool Banks and Bankers* (1906) 147-8.

a further public announcement the committee appointed by the Liverpool Corporation to consider courses of action for the city declared that they,

taking into consideration the difficulties that may arise in providing for the bills which may be returned in the present critical state of credit, DO MOST EARNESTLY RECOMMEND to the holders of such bills ... to make the payments as easy to the parties who may be called upon as shall be consistent with prudence to themselves: And, as in many cases, Forbearance may be a wise measure for the interest of the public in general, and for the bill holders in particular, this Committee recommend as much indulgence as the exigency of the times and their own discretion will admit, and as may be prudent and eligible, in every point of view.<sup>49</sup>

Further examples can be found later in the decade. In 1797, owing to the commencement of hostilities with France, parliament suspended the obligation requiring the Bank of England to convert its notes into gold coin on demand.<sup>50</sup> It was in this context that Grigsby demanded payment in gold coin in return for the country banker's note. Not all creditors behaved like Grigsby, however. In the Midlands, at Banbury, a meeting in the town hall led to declarations of support not only for the local banks, but also for the Bank of England, with the town inhabitants asked to "take in payment from both banking houses in Banbury not only the notes of the Bank of England but also the notes of both banking houses; the general concern of the said houses being in situations of the greatest respectability."<sup>51</sup> While in the southwest, the Mayor of Bristol called a meeting attended by seventy leading citizens, including the most prominent bankers, where it was resolved unanimously that,

In order to prevent any inconvenience that may result to the community, and to preserve public confidence in this emergency, we will accept, and we earnestly recommend our fellow citizens to take payment in, the promissory notes of the several Bankers in the city in lieu of cash: and

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<sup>49</sup> *id.*, p. 149. Hughes reproduces this later announcement (pp. 148-9), made on 25 March 1793. Emphasis in original.

<sup>50</sup> See summary at *op. cit.* n. 1.

<sup>51</sup> P. W. Matthews and A. W. Tuke, *A History of Barclays Bank Limited* (1926) 280-1.

we recommend to the several Bankers that they do not make any payments in specie, or demand specie for any bills in their hands from any person who shall tender Bristol or Bank of England notes to the amount of such bills: and this resolution shall be in force until the sense of parliament on the subject shall be known.<sup>52</sup>

Through these responses, the communities of Newcastle, Liverpool, Banbury, and Bristol made a public commitment to their bankers comprised of two parts: first, they would forgo their formal legal right and not demand conversion of the note into gold coin; and, second, they publicly declared their willingness to continue to accept the banker's notes in fulfilment of debts others owed to them. Such acts of forbearance were common during all financial crises during the late eighteenth and early nineteenth century.<sup>53</sup> And courtesy of such declarations, communities found a way of managing the law–finance paradox: after all, there is only a paradox if the banker faces too many simultaneous demands to honour legally enforceable promises.

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<sup>52</sup> C. H. Cave, *The History of Banking in Bristol, 1750-1899* (1899) 18.

<sup>53</sup> References to this phenomenon in contemporary pamphlets include Anon., *A Letter to Peel on the Issues of Country Bankers* (1819) 13-14; T. Joplin, *An Essay on the General Principles and Present Practice of Banking* (1827) 3-4; and A. H. Holdsworth, *A Letter to a Friend in Devonshire on the Importance of Country Bankers* (1818) 7-8, 17.

Instances of community support for their bank during the crisis of, for example, 1825 include those documented in *The Times*, 15 Dec 1825 and 16 Dec 1825 (covering declaration of support from across England and Wales); *The Bristol Mercury*, 19 Dec 1825 and 26 Dec 1825; *The Derby Mercury*, 21 Dec 1825; *The Leeds Mercury*, 24 Dec 1825, 21 Jan 1826, 28 Jan 1826, 4 Feb 1826, and 4 March 1826; and *The Morning Post*, 19 Dec 1825 and 20 Dec 1825 (like *The Times*, the declarations are from across the country). As London newspapers, *The Times* and the *Morning Post* carried declarations from across the country. Almost all country bankers' notes were payable in London as well as at the bank that originally issued the note (the banker's agent in London taking responsibility for payment in London). During a crisis, declarations of support aimed to reassure all of the bank's note holders, locally and elsewhere. To reassure local note holders, the declaration appeared in the local papers. To reassure note holders elsewhere, the London press also carried the declaration.

Other references to the phenomenon can be found in the following sources: Pressnell, op. cit., n. 1, pp. 459, 461, 467, 484; A. C. E. Jones, 'Early Banks in Ipswich' (Sept., 1951) *Notes and Queries* 402, at 405; H. Ling Roth, *The Genesis of Banking in Halifax* (1914) 5; P. Hudson, 'The Regional Perspective' in *Regions and Industries: A Perspective on the Industrial Revolution in Britain*, ed., P. Hudson (1989) 382; J. Ryton, *Banks and Banknotes of Exeter, 1769-1906* (1984) 69-70; Matthews and Tuke, op. cit., n. 51, pp. 200-201; A.G.E. Jones, 'The Banks of Bath' (July, 1958) *Notes and Queries* 277, at 281; and P. R. Jenkins, *A History of Banking in Sussex* (1987) 32-5 and 40.

Yet these declarations of public support only worked in the long-term provided the note holder could forgo payment of their own debts too, a point illustrated by the declaration of support offered by Liverpool's merchants. That declaration encouraged everyone due payment on a bill of exchange to try to support the promise to pay written on the bill, and suggested "making payments easy" and showing "indulgence" as two methods of easing the strain on hard pressed debtors, as least in the short term. Yet such short-term forms of support had their limits, a reality that John Coleman, a Liverpool bread and biscuit maker, knew only too well. Coleman described his situation in 1793 in the following terms,

[O]ne of my principal debtor's stopped payment, owing me a sum of nearly two thousand pounds and some others owing me large sums, but could not or would not pay any money on account of the lost confidence ... not a house of any note or consequence in town but what was either fail'd, or reported must soon stop payment – all business at a stand, the three Banks shut up, every morning bringing with it a declaration of new bankruptcies ... Such scenes of alarm and distress was never before experienced in any town or city (most probably) in the world... I was one of the unfortunate number in the list of bankruptcies.<sup>54</sup>

As those behind the Liverpool declaration were aware, a party due payment on a bill could only rework the terms of payment with those who owed them money to an amount "consistent with prudence to themselves." The problem facing someone like John Coleman in 1793 was that each creditor was a debtor to others, and those to whom they owed money had to be willing to renegotiate the terms of payment. During the spring of 1793, few had faith in the capacity of others to pay what they owed at any point in the near future, and that made it difficult to convince widely dispersed and now risk-averse creditors to place the repayment of debts on hold. Consider the fate of John Coleman: those who owed him money were unable to fulfil their obligations, leaving Coleman without the money to meet his own debts.

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<sup>54</sup> Coleman, quoted in Chandler, *op. cit.*, n. 40, p. 190.



Coleman may have been more than willing to indulge his debtors, but the fact remains that he ended up bankrupt.<sup>55</sup>

Collective acts of forbearance faced an additional problem. All that the meetings in Newcastle, Banbury, Bristol, and Liverpool could do was “recommend” that note holders continue to accept the notes of the city’s bankers “in lieu of cash.” The decision about whether or not to follow the recommendation lay with each note holder. These public meetings did not have the legal authority to change that fact and, hence, could not compel a creditor like Grigsby to give up his formal right that obliged the banker to convert the note into cash. Weight was added to the recommendation when a large number of prominent local citizens added their backing to the declaration and its recommendation. But even so, there was no means of compelling these citizens to honour their word: these were statements of intention not legally binding commitments.

An alternative solution was to turn statements of intention into legally binding commitments, and that’s what happened in Newcastle and Liverpool in 1793 – though, as we will see, both solutions were made possible by quite different legal mechanisms. Let us consider Newcastle first. There, the same public meeting that produced the public declaration of support for the city’s bankers also led to the appointment by the city of a committee set with the task of exploring additional options open to the town and region. The committee’s report<sup>56</sup> on how to support the credit of Newcastle’s bankers reflected in its proposals the need for a longer-term solution.

... we suggest the propriety of all, who are any way connected with the landed or Commercial interests of this town, and the adjoining counties, entering into a guarantee for the space of twelve months, securing to the holders of the notes of these Banks, the full sums due upon them. It is our idea that every gentleman should name the sum for which he will be answerable,

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<sup>55</sup> The final straw came for John Coleman when his banker, Heywood’s, refused to extend his overdraft. See Chandler, *op. cit.*, n. 40, p. 190.

<sup>56</sup> Phillips, *op. cit.*, n. 46, pp. 50-51 where Phillips reproduces the report.

and that proper persons should be authorised to call for the sums subscribed, or any part of them, if ever they should be necessary to aid the funds of the Banks ...<sup>57</sup>

The report concluded with the signatures of 148 local gentlemen and merchants, who each added a figure after their name. The figure was the sum each person signing the declaration was willing to contribute to the guarantee fund. The sums varied from £500 to £20,000. The total raised was £320,000, £90,000 more than the city needed to cover the note issue of its four banks.<sup>58</sup> By late April, the committee reported that the guarantee fund had risen to £490,600.<sup>59</sup> Courtesy of this fund, the promise on each note remained payable in gold coin because the wealth of a section of the community underwrote the commitments of the city's bankers.<sup>60</sup>

In Liverpool, the alternative to public declarations of support for the city's bankers was even bolder. With the prospect of a Bank of England loan dead in the water, the Mayor of Liverpool petitioned parliament for an act authorising the Liverpool Corporation to issue negotiable notes up to a fixed amount. The Liverpool Note Issue Act<sup>61</sup> passed with speed, perhaps indicating the influence held by Liverpool's commercial elite at the time,<sup>62</sup> and gave the Corporation permission to issue paper currency up to a limit of £300,000.<sup>63</sup>

The idea was that merchants and bankers, presently unable to discount or receive payment for bills and/or goods in their possession could use these bills and goods as security to obtain

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<sup>57</sup> *id.*, p. 51.

<sup>58</sup> *id.*, pp. 51-2.

<sup>59</sup> *id.*, pp. 52-4.

<sup>60</sup> Underwriting the debts of the town's bankers placed those contributing to the guarantee fund at risk of personal financial ruin, a point observed by at least one contemporary, the timber merchant and monetary theorists Thomas Joplin, who, reflecting on a similar pledge of support in 1816, noted: "It is not unusual for the friends of a Bank so situated, to issue out Bills or Notices, pleading themselves to the public, to take its Notes in payment, to any amount. By this measure, should the Bank happen to stop, many of them would necessarily be ruined." See Joplin *op. cit.*, n. 53, pp. 3-4.

<sup>61</sup> The Liverpool Note Issue Act 1793 (33 Geo. III c. 31).

<sup>62</sup> E. C. K. Gonner, 'Municipal Bank Notes in Liverpool, 1793-5' (1896) 6 *Economic J.* 484, at 485. On Liverpool politics during the late eighteenth and early nineteenth century, see F. E. Sanderson, 'The Structure of Politics in Liverpool, 1780-1807' (1978) 127 *Transactions of the Historic Society of Lancashire and Cheshire* 65.

<sup>63</sup> The description of how the Corporation's note issue worked draws on F. E. Hyde, B. B. Parkinson, and S. Marriner, 'The Port of Liverpool and the Crisis of 1793' (1951) 18 *Economica* 363, at 369-70.

a loan from the Corporation.<sup>64</sup> The Corporation would make the loan by issuing its own paper currency either in £100 and £50 notes bearing interest, or in smaller denominations of £10 and £5 not bearing interest.<sup>65</sup> The hope was that these notes might then circulate, and in the process provide a means of fulfilling debts. The key to the appeal of the notes was that at set dates in the future the holder could present them to the Corporation to be redeemed for their value in legal tender currency. By the time the note holder could redeem the note, the Corporation anticipated that those who had borrowed the notes in the first place would have re-paid their debt in legal tender coins. Assuming the repayment of these debts, the Corporation would have the funds available to redeem the notes without suffering any loss. If those who had borrowed failed to repay the loan, and if the security offered, in many instances bills of exchange, turned out to be worthless, the notes could still be redeemed using the Corporation's tax income. It was this guarantee that made the notes a valuable means of payment.<sup>66</sup>

## CONCLUSION

At first glance it may seem surprising that the responses to the law-finance paradox documented here involved the creation of additional legal obligations. After all, the problem identified by the law-finance paradox is that financial commitments made credible by legal enforcement can be rendered worthless when large numbers of creditors try to enforce these commitments regardless of changed circumstances. The essence of the paradox is that law

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<sup>64</sup> The Act tasked a Loan Office with determining who was eligible for assistance. A separate committee saw to the day-to-day business of the note issue. Adequate security included 2/3 of the value of goods, wares, and merchandise. The Loan Office might also consider bills of exchange of no longer than nine months until maturity. The Act, however, placed restrictions on the use of real estate as security. In addition, no one was to receive a loan of more than £3,000.

<sup>65</sup> Interest bearing notes were redeemable 12 months after issue and bore a rate of interest of 5 percent (the legal maximum in 1793) or less. Redemption of non-interest bearing notes was only possible three years after issue.

<sup>66</sup> Hughes, *op. cit.*, n. 48, pp. 152-3 reproduces an overview of the revenues of the Liverpool Corporation in 1792, dated 21 March 1793.

offers credibility that it cannot fulfil, at least not when needed most by creditors. Yet because finance is hierarchical, not all promises rank the same. The incentives to accept the state's money are strong, while they are weak with respect to an IOU offered by a random stranger. The task of this article has been to identify why, in the absence of support from the Bank of England, country bankers' notes sat high enough up the hierarchy of money to sometimes survive moments of financial crisis. The answer is that the notes of bankers who survived crises were supported by reciprocal bonds that tied the note issuing banker to the note using community – bonds that were, on occasions, made all the stronger by legal enforceability.

Sometimes these bonds were not strong enough to prevent the failure of the banker. Country bankers failed in part because of the law-finance paradox and in part because relational contracts are immersed in relations of power and domination as well as in relations which promote solidarity.<sup>67</sup> Class, gender, and empire all shaped the late eighteenth and early nineteenth century; my sense is that further research might well reveal a role for all three during moments when country bankers collapsed. Yet those moments where bankruptcy replaced reciprocity have not been the focus of this article. Instead, this article has focused on those bankers who survived crisis.

Bankers survived in part through the support they received from the community to which they belonged. Although the three forms of community support considered in this paper differed in their specifics, they were united by a willingness on the part of a community to assume responsibilities on behalf of beleaguered bankers. Public declarations of support from the note using community saw these note holders publicly declare their faith in the town's banks and willingness to continue to accept the bankers' notes. By so doing, they assumed the risk that the note might still end up as worthless as a "country rag." The problem was that not all note holders found it "consistent with prudence to themselves" to assume such risk. What

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<sup>67</sup> Gordon, *op. cit.*, n. 31, pp. 570-571.

they needed was a form of community support that afforded a stronger guarantee that the banks would eventually honour their commitments.

The initiatives in Newcastle and Liverpool managed the risk of the banks collapsing by using a deeper pool of wealth to provide that stronger guarantee. Part of what makes the state's money valuable is that it is desired by all who must honour public obligations. There follows a strong current of demand that helps to keep the state's money lodged firmly on the top tier of the hierarchy of credit and debt. The initiatives in Newcastle and Liverpool succeeded because these communities found ways of creating demand for local forms of currency just as the state created demand for gold coin and Bank of England notes. In Newcastle, people were less willing to reject the notes once they knew that payment of the promise on the note was legally guaranteed not just by the banker, but by all who had indemnified the note holder against loss. These guarantees then stabilized demand for the notes. In Liverpool, the notes of the Corporation were even more desirable because they were guaranteed by the city itself. Echoing events in Newcastle, the guarantee of the Liverpool Corporation helped to stabilize demand for its notes. The difference between the initiatives in Newcastle and Liverpool was their size: in Newcastle, prominent citizens indemnified the notes of the town's bankers, while in Liverpool the guarantee fund consisted of the city's entire tax intake.

Despite its contribution to the law-finance paradox, legal enforceability played a key role in buttressing this demand. Legally enforceable commitments only pose a problem for the debtor in a scenario where the debtor faces demands for payment far greater than they have the resources to meet. The communities of Newcastle and Liverpool managed this problem during the financial crisis of 1793 by ensuring that the debtor – in this case their town's bankers – had the requisite resources. They did so by making commitments to which the law lend credibility by casting over them “the benevolent glow of coercive enforceability.” These

commitments turned the promises of the local bankers into secured transactions: should the banker fail to keep his promise, the injured party could claim some other asset of equivalent value – such as the indemnity provided by a guarantor or the security offered by tax revenue.<sup>68</sup> Provided the community's security matched the value of the banker's note issue, together community and banker could manage the law-finance paradox.

That they sometimes did so successfully tells us something about the relationship between law and trust. Just as the law-finance paradox exposes the often uneasy relationship between law and finance, the relational approach to contract exposes the similarly uneasy relationship between legally enforceable obligations and the interpersonal trust necessary in successful business relationships. And, indeed, managing the law-finance paradox at first glance appears to involve replacing law with trust since the paradox highlights the limits of legally enforceable obligations. The responses in Newcastle and Liverpool overcame these limits because they allowed law and trust to complement each other rather than stand in opposition, and did so by using the promises of guarantors and local government “as a way of formalising trust, or as a form of institutionalised trust.”<sup>69</sup>

By institutionalising trust, communities formalised the reciprocal tie that bound banker and community together. While the community's banker provided that community with a means of payment, during times of crisis the community returned the favour by pooling resources and covering the banker's obligations – sometimes via acts of forbearance, at other times by indemnifying the banker's notes, and occasionally through guarantees supported by tax revenues. By so doing, these communities orchestrated collective responses to crisis that allowed courts such as the one in *Grigsby v Oakes* to breathe a sigh of relief: rather than standing on their rights and demanding payment, note holders stood together as a community

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<sup>68</sup> See Macaulay, *op. cit.*, n. 7, ‘The Real and the Paper Deal’, p. 61, where he suggests “Secured transactions are where I think effective law matters most.” See also Campbell, *op. cit.*, n. 7, p. 169.

<sup>69</sup> Mitchell, *op. cit.*, n. 7, p. 93.

and in the process allowed the notes of their bankers to survive financial crises.