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**“COUNTRY RAG MERCHANTS” AND “OCTOPUS TENTACLES”: AN  
ANALYSIS OF LAW’S CONTRIBUTION TO THE CREATION OF MONEY IN  
ENGLAND AND WALES, 1790-1844**

**I**

**INTRODUCTION**

This dissertation analyses the role of law in the creation of money in England and Wales during the late eighteenth and first half of the nineteenth century. Yet showing law’s role in creating money requires confronting an opposing view of law. To introduce this opposing view of law, this dissertation begins by considering the world of money and banking of the late eighteenth and early nineteenth century from the perspective of three puzzles. It is by making sense of these puzzles that this dissertation will capture law’s contribution to a formative period in the history of money and banking in England and Wales.

**A. Three Puzzles**

Imagine a merchant in England in the 1820s. As the merchant travels from Newcastle in the northeast to Cornwall in the southwest, passing through Birmingham in the Midlands as he makes his way, he buys and sells goods using distinct country bankers’ notes. All of these notes are promises to pay in gold coin

on demand, issued by a lone banker, or small partnership of bankers, each with close ties to their local community.

Occasionally on his route, the merchant uses bills of exchange to pay some of his debts. Bills are not as convenient as country bankers' notes – for instance, they are not convertible into gold coin on demand (instead they are a promise to pay at some future date) – but in busy commercial ports, such as Liverpool and Bristol, they nonetheless serve as a means of payment.

The merchant almost certainly does business in London, a key centre of commerce and government then just as it is now. In London, he presents to the City's bankers in Lombard Street the country bankers' notes and bills of exchange he receives on his travels through England and Wales.<sup>1</sup> In return, he expects gold coin or, just as often, the notes of the Bank of England, which together dominate the paper circulation of the capital.

The merchant then uses not just one type of paper money but three: Bank of England notes, country bankers' notes, and bills of exchange. All three are convertible, either on demand or at some future date, into a fourth type of money – gold coin.

Country bankers' notes and bills of exchange too in their role as currency throw up a puzzle, however. Money, of whatever type, typically derives its credibility from public backing, such as support from the state. For instance, around 1800, the state

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<sup>1</sup> The notes issued by country bankers were frequently payable – convertible into gold coin or Bank of England notes – either in the place of issue or in London. As is explained in detail later, the London banker would act as an agent for the country banker. Country bankers' notes payable in London were usually more attractive and hence circulated more widely.

stamped and issued gold coins via the Royal Mint, and the state backed Bank of England notes through its tax revenues. Country bankers' notes and bills of exchange present a puzzle because the state did not support or issue them.

Despite this absence of state support, both country bankers' notes and bills of exchange as currency flourished between 1790 and 1825. On occasions, they also faced the whirlwind of crisis. A merchant holding a batch of country bankers' notes in the winter of 1825 had good reason to share in the "indescribable gloom ... diffused through the City [of London]."<sup>2</sup> Given that the state did not issue or support country bankers' notes, when a country banker failed, those left with bankers' notes held merely worthless pieces of paper. Hence, the pejorative name given to bankers outside of London – "country rag merchants."<sup>3</sup>

Through the 1830s and into the 1840s, merchants travelling outside of London increasingly encountered Bank of England notes. Wealthy merchants even conducted their banking business in the provinces directly with the Bank of England through the latter's network of branches that, according to one contemporary, helped to stretch its "octopus tentacles" beyond London.<sup>4</sup> With the spread of Bank of England notes, bills of exchange served less as currency. The same was true of country bankers' notes, which, by the 1830s, were increasingly unlikely to carry the

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<sup>2</sup> THE TIMES, 13 December 1825.

<sup>3</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 Cobbett's famous pamphlet PAPER AGAINST GOLD 41 (1815). Others refer to banking as the "rag trade," see, for example, ANON [WILLIAM REID], THE LIFE AND ADVENTURES OF THE OLD LADY OF THREADNEEDLE STREET, 8 (1832).

<sup>4</sup> The Birmingham banker and radical MP, Thomas Attwood coined the phrase. See THOMAS. ATTWOOD AND JOHN SINCLAIR, THE LATE PROSPERITY AND THE PRESENT ADVERSITY OF THE COUNTRY EXPLAINED 55-58 (1826).

name of a lone banker or small partnership of bankers owing to the rise of large and ambitious provincial joint stock banks.

The rise of joint stock banking outside of London brings a second puzzle into view. In the 1830s, especially in large towns like Liverpool and Birmingham, many of the new joint stock banks opted not to issue their own notes. Instead, these banks circulated the notes of the Bank of England after striking a “bargain” with the Bank. Following the turmoil of the crisis of the winter of 1825, the Bank of England concluded that country bankers’ notes were a factor contributing to speculative booms. To persuade joint stock banks to decide against issuing their own notes, the Bank of England offered them a “bargain.” In return for ceasing to issue their own notes, the Bank of England guaranteed these banks access to cheap credit in the form of the Bank of England’s own notes.

This “bargain” made sense for a joint stock bank as a means of boosting its profits. But in 1837 another financial crisis struck and the Bank of England’s arrangement with select provincial bankers came under scrutiny.<sup>5</sup> What concerned contemporaries was the Bank of England’s decision to offer joint stock banks access to Bank of England loans at a low rate of interest. Was the Bank of England not merely replacing one source of cheap credit with another?

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<sup>5</sup> SAMUEL JONES LOYD, REFLECTIONS ON THE CAUSES AND CONSEQUENCES OF PRESSURE ON THE MONEY MARKET 22-26 (1837), SAMUEL JONES LOYD, FURTHER REFLECTIONS ON THE STATE OF THE CURRENCY (1837), FRANCIS C. KNOWLES, THE MONETARY CRISIS CONSIDERED 28-29 (1837), Robert Torrens, *A Letter to the Right Honourable Viscount Melbourne, On the Causes of the Recent Derangement in the Money Market* 65 EDINBURGH REVIEW 61, 68-69 (1837), A MERCHANT, OBSERVATIONS ON THE CRISIS, 1836-37, 20-21 (1837), THE CIRCULAR TO BANKERS, 9 September 1836, at 58-59.

Running parallel to the second puzzle is a third puzzle concerning joint stock banks in London. For much of the 1820s, no one seriously doubted that the Bank of England was the only joint stock bank permitted to operate in London. Yet by 1833, it was commonplace to question whether it is possible to form other joint stock banks in and around London. And by the end of 1833, the Bank of England no longer had a monopoly in joint stock banking in London. Hence, the third puzzle. While in 1830, the Bank of England's monopoly over joint stock banking in London looked secure, a mere three years later it was widely doubted. Making sense of this third puzzle calls for an account of this transformation.

This dissertation treats these three puzzles as vantage points from which it will view a formative period in the history of money and banking in England and Wales. These puzzles touch on the commitments underpinning money and credit, the conflicts and compromises shaping the consolidation of national money, and the tensions and contradictions influencing the emergence of central banking, all against the backdrop of a gold standard monetary regime. Yet addressing the conundrums thrown up by these puzzles is challenging because of the inadequate view of law running through the economic histories of the period. To address these three puzzles, this dissertation will remedy this inadequate view of law.

## **B. The Limits of Functionalism**

What then is inadequate about the view of law that undercuts the economic histories of money and banking covering the eighteenth and nineteenth centuries? The problem is the dominance in these histories of what legal historian Robert Gordon

identifies as “functionalism.”<sup>6</sup> A functionalist view of law holds that the economy has needs, and the function of law is to respond to these needs. Matters get more complex when law fails to respond to these needs thereby placing a fetter in the way of economic change. Further complexity follows when “needs” turn into the “interests” pursued by different groups and individuals. These groups and individuals then lobby and campaign to have law respond to their interests, while placing fetters around the interests of their rivals.

The standard twentieth century accounts of the history of money and banking in England and Wales covering the eighteenth and nineteenth centuries, despite their often vast differences, serve as examples of functionalist accounts of the relationship between law and the economy because they see law either as responding to or as fettering economic needs or interests. Simpler accounts present the English and Welsh banking system as evolving through stages of development, starting with its defective and “troubled childhood” before recounting the emergence of a “cohesive and orderly system.”<sup>7</sup> In their history of joint stock banking, Crick and Wadsworth write, for instance, that

*The history of banking in England until recent years is largely concerned with an effort to keep abreast of rapid economic progress, a task made all the harder by misguided legislation. In banking the old system of monopoly under Government patronage, which dominated the commercial world in the reign of*

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<sup>6</sup> Robert Gordon, *Critical Legal Histories*, 36 STAN. L. REV. 57 (1984). See also Robert Gordon, *Critical Legal Histories Revisited: A Response* 37 LAW AND SOC. INQUIRY 200 (2012) and MARK KELMAN, A GUIDE TO CRITICAL LEGAL STUDIES, 213-241, 242-268 (1987).

<sup>7</sup> W. F. CRICK AND J. E. WADSWORTH, A HUNDRED YEARS OF JOINT STOCK BANKING 36 (1936).

*Elizabeth [1558-1603], took stronger and more lasting hold than in trade, and competitive enterprise was forced into channels that could not but lead to periodic disaster. Not until the third decade of the nineteenth century did the long struggle bring a partial escape from the fetters of law, and even after that time the development of banking in England was hesitant and slow and interrupted by setbacks many of which need never have occurred. [...] The emergence and general adoption of the joint stock form is an essential condition of a banking system possessing the quality of stability based upon diversification of risk, along with the capacity to expand in support of advancing trade and industry. So long as the condition was absent, as it was until well on in the nineteenth century, stability was unattainable and healthy growth impossible, and the efficiency of the banking system was bound to lag behind the progress achieved in the organization of production and distribution.<sup>8</sup>*

In Crick and Wadsworth's account, the banking system is trying desperately to support or meet the "needs" of the evolving and growing industrial economy. Law, however, through "misguided legislation" fetters and restricts the banking system, preventing it from offering this support until well into the nineteenth century when monopoly and patronage are at last replaced by "wiser and more liberal legislation."<sup>9</sup> Crick and Wadsworth's account is not unique. Thomas, for example, suggests the choice facing policy makers in the 1820s and 1830s was one of "free banking"

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<sup>8</sup> *Id.*, 9-10.

<sup>9</sup> *Id.*, 42.

versus “regulated banking”: either law fettered and constrained the pre-legal activity of banking, or it freed banking from these fetters.<sup>10</sup>

Accounts that are more complex replace universal needs with interest groups, with law fettering the interests of some through restrictive legislation and responding to the interests of others courtesy of permissive or liberalizing legislation. As an example, consider first the account of banking in the 1820s and 1830s offered by P. L. Cottrell and Lucy Newton. According to Cottrell and Newton, “the rising circulation of bank-notes beyond London after 1750 was predominately due to the activities of the increasing number of largely small, private banks. These were unfettered by state-imposed restrictions except with regard to the number of individuals that constituted banking partnerships.”<sup>11</sup> Cottrell and Newton’s focus is on the “liberalizing legislation”<sup>12</sup> of 1826 that removed this fetter, and they show a keen awareness of the importance of interest group contestation over the formation and impact of this legislation. But other than through discrete pieces of legislation, law is not central to their account. It either fetters or it liberalizes, but outside of these two options, the legal regime disappears from view.

Michael Collins’s contribution to the nineteenth century history of money and banking holds a similar view of law to that offered by Cottrell and Newton. According to Collins,

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<sup>10</sup> S. E. THOMAS, *THE RISE AND GROWTH OF JOINT STOCK BANKING* 101 (1934).

<sup>11</sup> P. L. Cottrell and Lucy Newton, *Banking Liberalization in England and Wales*, in *THE STATE, THE FINANCIAL SYSTEM AND ECONOMIC MODERNIZATION* 75, 78 (Richard Sylla, Richard Tilly and Gabriel Tortella eds., 1999).

<sup>12</sup> *Id.*, 76.

*Since 1708 the Bank of England had been the only English bank able to raise capital from a large body of proprietors, all other banks in England and Wales being restricted by Act of Parliament to a maximum of six partners. The Joint-Stock Bank Act [of 1826] attacked this legislative monopoly and permitted the formation of banks with an unlimited number of partners, or shareholders, outside a radius of 65-miles from London.*<sup>13</sup>

The “growth in scale, and the increase in stability”<sup>14</sup> that then followed for these joint stock banks was not, Collins continues, predominately due to law or the legal system,

*Legislation also played some part, yet it rarely took a leading role. Obviously the legal framework was one of the broader parameters governing bank operations but, on the whole, the law was permissive and, with the exception of note-issuing, it placed few restrictions on the type of business bankers could undertake.*<sup>15</sup>

Collins is more explicit about changes in the banking system responding to changes in the “pace of economic development” than Cottrell and Newton.<sup>16</sup> Consequently, his narrative of nineteenth century banking has hints of inevitability about it, which

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<sup>13</sup> MICHAEL COLLINS, *MONEY AND BANKING IN THE UK: A HISTORY* 10 (1988).

<sup>14</sup> *Id.*, 64.

<sup>15</sup> *Id.*, 65.

<sup>16</sup> *Id.*, 12. On the same page, Collins continues, “The pervasive rise in the scale of economic activity made specialisation, including financial specialisation, more feasible and economic development called for more advanced mercantile and financial arrangements.”

Cottrell and Newton largely avoid through their focus on interest group contestation.<sup>17</sup> Yet what Collins shares with Cottrell and Newton is an understanding of law that sees law as either fettering people through restrictions or as liberating people through pieces of permissive legislation. In Collins's account, however, such legislation is only sometimes important, with the real action occurring elsewhere.

Crick and Wadsworth differ from Cottrell and Newton, and perhaps Collins, over the evolutionary developmental path of banking. What they all have in common, however, is a view of law as either restricting economic development or as freeing economic actors from these fetters through liberalizing legislation. All of these accounts present a functionalist understanding of the relationship between law and the economy because they see economic actors as having needs, and law changing to accommodate or frustrate these needs. In the more sophisticated accounts, interests replace needs. Law then either responds to or fetters competing interest groups through either restrictive or liberalizing legislation.<sup>18</sup> Law in all of these accounts usually refers to legislation. Outside of this legislation, law is a marginal force.

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<sup>17</sup> Cottrell and Newton are not sympathetic to an evolutionary account of banking in the nineteenth century, explicitly ruling out this understanding early in their article. See Cottrell and Newton, *supra* note 11, at 75-6.

<sup>18</sup> In some of the older accounts, where needs are stressed more than interest group conflict, an evolutionary dimension is added to this functionalism. Yet it is inaccurate to suppose that evolutionary functionalism is a relic of the early twentieth century. It is (regrettably) alive in accounts of the history of money and banking today. For an example of this, see NEILL FERGUSON, *THE ASCENT OF MONEY* (2008), especially the Afterword, in which Ferguson presents an evolutionary understanding of the development of finance through analogy to the insights of Darwin. According to Ferguson,

*market selection is the main driver [of financial history]. Financial organisms are in competition with one another for finite resources. At certain times and in certain places, certain species may become dominant. But innovations by competitor species, or the emergence of all together new species, prevent any permanent hierarchy or monoculture from emerging. Broadly speaking, the law of survival of the fittest applies. Institutions with a 'selfish gene' that is good at self-replication and self-perpetuation will tend to proliferate and endure (350-51, footnote omitted).*

Functionalism, then, dominates the economic histories of money and banking. It also exerts influence over many legal histories that deal with economic change. Recent accounts of law's relationship to economic change tend to divide the legal historiography covering the eighteenth and nineteenth centuries into three camps.<sup>19</sup> One camp sees law as a functional reflection of economic change, in much the same way as economic historians. The second camp, by contrast, sees law as possessing a high degree of autonomy that allows the legal system to develop through its own doctrines and theories independent of economic changes. The third camp offers a compromise, where law is autonomous with respect to the development of legal doctrine but is functionalist in the "real" world when businessmen use the legal system.<sup>20</sup> Many legal histories, then, fail to escape from functionalism. And those that do, ignore law's role in economic change altogether.<sup>21</sup>

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Significantly, however, Ferguson does acknowledge one important feature of finance that does not sit easily with his analogy to evolution – regulation. Yet law in the guise of regulation is for Ferguson a force that restricts or permits at the margins of economic change. As I hope to make clear in this dissertation, the form taken by financial institutions does not follow a natural and necessary course as dictated by the survival of the fittest. The institutions that come to dominate do so largely because of the choices made, and conflicts contested, by individuals against and through the background legal regime.

<sup>19</sup> See RON HARRIS, *INDUSTRIALIZING ENGLISH LAW: ENTREPRENEURSHIP AND BUSINESS ORGANIZATION, 1720-1844*, 3-11 (2000). Joshua Getzler identifies the first two camps in *A HISTORY OF WATER RIGHTS AT COMMON LAW*, 3-6 (2004).

<sup>20</sup> For references to examples of legal history scholarship that fit into these three camps, see HARRIS, *supra* note 19, at 3-11. According to one review of Harris's book, Harris's own position flip-flops between camps one and two, see Paddy Ireland, *History, Critical Legal Studies and the Mysterious Disappearance of Capitalism*, 65(1) *MOD. L. REV.* 120, 122 (2002). The best overviews of English legal history covering the eighteenth and nineteenth centuries tend to reject the second camp by considering legal developments within the context of wider social, economic, and political changes. Yet in doing so, they also tend to see law as responding to social, economic, and political prompts rather than as a force shaping the economy, society, or politics. Examples of this legal history include, W. R. CORNISH AND D DE N. CLARK, *LAW AND SOCIETY IN ENGLAND, 1750-1950* (1989); and PATRICK ATIYAH, *THE RISE AND FALL OF FREEDOM OF CONTRACT* (1979). A more doctrinally focused history is A. H. MANCHESTER, *A MODERN LEGAL HISTORY OF ENGLAND AND WALES, 1750-1950* (1980).

<sup>21</sup> Approaches to legal history that assert law's importance but eschew functionalism include Gordon *supra* note 6; KELMAN *supra* note 6; and, G. R. RUBIN AND D. SUGARMAN, *D, LAW, ECONOMY AND SOCIETY, 1750-1914: ESSAYS IN THE HISTORY OF ENGLISH LAW* (1984).

Given the prevalence of functionalism in the work of legal historians and in the standard accounts of the history of money and banking in England and Wales, how do functionalist accounts of law's relationship to the economy explain the three puzzles presented in the previous section? Consider the first puzzle. From a functionalist perspective, it is possible to argue that both country bankers' notes and bills of exchange as currency represented a failure of law to respond to an economic need felt by an emerging commercial class. Coins issued by the Royal Mint failed to meet the population's currency needs because there were too few of them. The problem with Bank of England notes was that prior to the late 1820s they did not circulate extensively outside of the greater London area. Legislation only helped to perpetuate this situation by preventing men of commerce from forming joint stock banks that might issue credible notes. Yet there was a demand for a medium of exchange not met by scarce Royal Mint coins and notes issued by the Bank of England in London, as captured by the emergence of both country bankers' notes and bills of exchange as currency. On one reading then, legislation before 1826 served as a fetter forcing people outside of London to respond to the absence of an adequate means of exchange by spontaneously creating their own money.<sup>22</sup>

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<sup>22</sup> According to one economic historian,

*In 1770 no merchant could remember the time when the country had been blessed with an adequate currency. It was something they accepted. Sometimes money was said to be too dear, sometimes too cheap, but always there had been too little. Disputes over who should control the currency and how this could be achieved were traditional. No solution had been found, but merchants from time immemorial had adapted themselves to the needs of their situation and devised ways and means of paying for goods to be carried from their place of origin to their place of consumption. It had not been easy and the risks were high; but in 1770 it was becoming much easier and the volume of trade was expanding steadily. This growing trade demanded a satisfactory currency. What had always been desirable was becoming a necessity. If the government would not, or could not, meet this demand, there were growing number of persons in the provinces who were willing to respond to it. These were the country bankers whose numbers increased so rapidly in this period. F. Stuart Jones, *Government, Currency and Country Bank in England, 1770-1797*, 44 SOUTH AFRICAN JOURNAL OF ECONOMICS 252, 253 (1976).*

Consider next a functionalist account of law's relationship to the economy that turns to the legislation of 1826. This legislation allowed the formation of joint stock banks outside of London. By doing so, it removed the fetters preventing law from adequately responding to the need of the growing commercial class for stable banks and an adequate supply of national money. This legislation then, serves as an example for economic historians of a triumph for those seeking reform by challenging monopoly and privilege. The legislation of 1833 permitting joint stock banking in London is a similar triumph. Yet those whose interests favoured reform did not always get their way. The legislation of 1826 and 1833 was "permissive" and "liberalizing," but on occasions the Bank of England and the interests supporting it fought back by preserving, for example, the Bank's privileges over the issue of paper money in London.

The view of some scholars that both country bankers' notes and bills of exchange as currency thrived as a response to the scarcity of both Royal Mint coins and Bank of England notes outside of the greater London area is highly plausible. Likewise, "liberalizing" is a plausible description of the legislation of 1826 and 1833 since both pieces of legislation allowed people to form joint stock banks when before they could not, and helped to unleash a period of conflict in the 1830s between the interests behind the Bank of England and those supportive of the new banks. Nevertheless, functionalist accounts also oversimplify, evidenced by their failure to help resolve the three puzzles. Although it is possible to see the proliferation of both country bankers' notes and bills of exchange as currency as a response to legal

fetters on the development of money and banking, viewing these notes and bills in this way does not tell us what made them credible in the absence of state backing. Moreover, although the legislation of 1826 “freed” banks from restrictions and helped to create a period of conflict between different banking interest groups, neither “liberalizing” legislation nor interest group conflict explains why the Bank of England came to offer its rivals access to cheap credit. Similarly, although the legislation of 1833 “freed” banking in London from the Bank of England’s monopoly in joint stock banking, the appearance of this legislation does not explain why people came to doubt the legal basis of the Bank’s monopoly in London in the first place.

Making sense of these puzzles requires calling into question functionalist explanations of the relationship between law and the economy. Functionalist accounts do not resolve these three puzzles because they see law as distinct from the economy, with the latter serving as the driving force behind change, and the former either adapting to or fettering such change. A functionalist account sees law and the legal system either responding to the “needs” of the economy, as defined through interest group conflict, or creating fetters preventing the fulfilment of these needs. Either law is a fetter, prohibiting and restricting people and groups, or it is a liberalizing and permissive force, freeing people and groups from these fetters. Either way, law is detached from the real action: it prohibits and permits but always at a distance.

This dissertation argues that viewing law through a functionalist lens, as a force detached from the real action, leaves little room for addressing the questions raised

by the puzzles introduced earlier. To make sense of these puzzles, this dissertation adopts the starting point of dropping the distinction between law and the economy. An economy is a legal creation. Whenever historians discuss markets, commodities, merchants, money, creditors, debtors, or bills of exchange, they are discussing the role of law in defining and constructing, sometimes creatively, the social relations that lie behind each of these categories. It is by bringing this constitutive role of law – and law’s capacity for creativity made possible by this role – to the surface that this dissertation will make sense of the puzzles affecting money and banking in England and Wales in the period 1790-1844.

### **C. The Structure of the Dissertation**

The dissertation has three main chapters. Each of these chapters is an attempt to come to terms with one of the three puzzles introduced earlier. After this Introduction, Chapter II takes up both the country bankers’ notes and bills of exchange that played such a prominent role in the English and Welsh economy in the late eighteenth and first quarter of the nineteenth century. These notes and bills are puzzling because for a form of currency to circulate it usually needs some kind of state backing. Yet the British state of this period did not back or issue country bankers’ notes or bills of exchange. In reality, the opposite was closer to the truth, for rather than backing these notes and bills, the framework provided by the government meant only banks of six partners or less issued notes or endorsed bills. The absence of direct state backing explains why both country bankers’ notes and bills of exchange as currency were on occasions unsustainable. But more often these notes and bills did weather the onset of crisis. Chapter II explains why both country

bankers' notes and bills of exchange frequently flourished even without the direct backing of the state. The key element to the explanation offered in Chapter II is the role the legal regime played in constructing the institutions that provided these notes and bills with an alternative form of public backing, one that drew not on the support of the central government, but on the support of local communities across England and Wales.

The classic account of country banking, which includes a wealth of information on both country bankers' notes and bills of exchange as currency, is Leslie Pressnell's *Country Banking in the Industrial Revolution*.<sup>23</sup> Pressnell notes the support local communities gave to their banker during moments of crisis to support the bankers' notes. So do a number of other historians of banking.<sup>24</sup> Yet these accounts either confine the phenomenon whereby local communities backed the notes of their banker to their footnotes or they limit their description of what happened to a regurgitation of the reports found in contemporary local newspapers. As the footnotes to Chapter II testify, these accounts provide valuable information. But they all fail to analyze the contribution these pledges make towards understanding the nature of money. Moreover, there is no mention of the role of law in enabling local communities to support the notes of their local banker. Chapter II analyzes these notes and the legal regime that made them possible. In doing so, it describes local rather than national money, as well as a monetary system without a central bank of the type we know today.

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<sup>23</sup> L. S. PRESSNELL, *COUNTRY BANKING IN THE INDUSTRIAL REVOLUTION* (1956).

<sup>24</sup> See, for example, Pat Hudson, *The Role of Banks in the Finance of the West Yorkshire Wool Textile Industry, c. 1780-1850*, 55(3) *BUSINESS HISTORY REVIEW* 379, 382 (1981). For other examples, see references in sections D and E in Chapter II.

Following the legislative changes of 1826, and the emergence of both joint stock banking and a regional network of Bank of England branches, country bankers' notes played a less prominent role in the economy of England and Wales. Consequently, in Chapter III, the focus of the dissertation shifts from country bankers' notes to the new joint stock banks and the Bank of England's branches. Chapter III explains why a select group of these new joint stock banks got favourable access to credit from the Bank of England, despite the Bank of England's efforts at curtailing the capacity of provincial banks to contribute towards speculative credit creation. To explain the Bank of England's contradictory policy, Chapter III focuses again on the role of the legal regime. The legislation of 1826 was one discrete enactment replacing monopoly privileges with freedom to form joint stock banks. To understand why the Bank of England in the 1830s ended up conferring benefits on its rivals, Chapter III goes beyond this discrete piece of legislation by bringing into view all of the other rights, duties, powers, and immunities conferred onto the Bank of England and the "liberalized" joint stock banks by the legal regime. These entitlements, supplied in particular by property and contract and brought into play by the legislation of 1826, allowed the Bank of England and the joint stock banks to then bargain with each other. To explain why a select group of joint stock banks received favourable terms from the Bank of England, Chapter III considers the bargaining power of the joint stock banks and the Bank of England, as defined and constructed by this legal regime.

By focusing on the bargaining between the Bank of England and joint stock banks outside of London, Chapter III takes up the centralization of paper money against the

backdrop of a Bank of England ever more conscious of its wider responsibilities. Fortunately, there is a decent sized literature on the Bank of England's branches and an even larger literature on nineteenth century joint stock banking. Unfortunately, the literature on the Bank of England's branches presents the joint stock banks that borrowed from these branches as largely identical to each other,<sup>25</sup> while accounts of joint stock banking only briefly consider, if they consider at all, the Bank of England's branches.<sup>26</sup> Chapter III fills this gap by exploring the relations between the Bank of England's branches and two joint stock banks from Lancashire, the Manchester and Liverpool District Bank and the Northern and Central Bank of England, and does so by paying close attention to institutional organization of these two banks.<sup>27</sup>

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<sup>25</sup> For information on the Bank of England's network of branches after their creation in 1826, see M. Collins, *The Bank of England at Liverpool, 1827-1844*, 14(2) BUSINESS HISTORY 144 (1972); DIETER ZIEGLER, CENTRAL BANK, PERIPHERAL INDUSTRY: THE BANK OF ENGLAND IN THE PROVINCES, 1826-1913 (1990); R. O. Roberts, *Bank of England Branch Discounting, 1826-1859*, 25 ECONOMICA 230 (1958); David J. Moss, *Central banking and the Provincial System: the Bank of England and the 3% discount account, 1832-1837*, 2 FINANCIAL HISTORY REVIEW 5, 12 (1995); David J. Moss, *The Bank of England and the Establishment of a Branch System, 1826-1829*, 27(1) CANADIAN JOURNAL OF HISTORY/ANNALES CANADIENNES D'HISTOIRE, 47 (1992); David J. Moss, *The Bank of England and the Country Banks: Birmingham, 1827-33*, 34(4) THE ECONOMIC HISTORY REVIEW 540 (1981); R. O. Roberts, *Financial Crisis and the Swansea 'Branch Bank' of England*, 11 NATIONAL LIBRARY OF WALES JOURNAL/CYLCHGRAWN LLYFRGELL GENEDLAETHOL CYMRU 76 (1959-60); F. Stuart Jones, *The Bank of England in Manchester*, 11(1) BANKHISTORISCHES ARCHIV 28 (1985).

<sup>26</sup> The chapters in COLLINS, *supra* note 13 on commercial banking in the nineteenth century (64-91) make no mention of the Bank of England's branches. Cottrell and Newton, *supra* note 11, at 76 explicitly rule out a discussion on the Bank's branches in their work on banking liberalization in the 1830s. In their history of joint stock banking in England and Wales, CRICK AND WADSWORTH, *supra* note 7, do not provide any detailed discussion of the Bank's branches. THOMAS, *supra* note 10, by contrast, does discuss the Bank's branches in his history of joint stock banking, but only provides brief accounts of their origin (84-87), early years (160-164), and role in rediscounting bills of exchange (303-304). P. W. MATTHEWS AND A. W. TUKE, A HISTORY OF BARCLAYS BANK LIMITED (1926) does not contain a chapter on the Bank's branches. By contrast, R. S. SAYERS, LLOYDS BANK IN THE HISTORY OF ENGLISH BANKING (1957) does contain a very informative chapter on the Bank's branches (139-156).

<sup>27</sup> There is no book detailing the history of either bank. Valuable information on both banks is nonetheless in FRANK STUART JONES, THE DEVELOPMENT OF BANKING INSTITUTIONS IN MANCHESTER, 1770-1850 (PhD Thesis, University of British Columbia, 1975), chapters III and VI, where Jones details the history of early joint stock banks in Manchester. Further information on the Northern is in THOMAS, *supra* note 10, at chapter VII. This dissertation draws on both of these accounts in Chapter III.

Chapter IV, like Chapter III, is about the conflict between the Bank of England and the new joint stock banks. Distinguishing Chapter IV is its focus on the new joint stock banks formed in London. The puzzle that Chapter IV addresses is how forming joint stock banks in London became possible given that the legislation of 1826 referred only to banks outside of London. Whereas in the late 1820s it was widely agreed that the Bank of England retained its monopoly in joint stock banking in London, by the early 1830s there was no longer such general agreement. To account for this transformation, Chapter IV explains the transformation in what people understood by the term “banking.” Lawyers took centre stage in the battles over the definition of “banking.” Those in favour of a “liberal” interpretation of “banking” won the argument and joint stock banking became possible in London after 1833. Yet the role of the legal regime in defining and constructing joint stock banking in London did not end with this further piece of discrete legislation, but remained pivotal throughout the 1830s as London’s first joint stock bank, the London and Westminster, fought to survive against a hostile Bank of England. As Cottrell and Newton observe, the only account of early joint stock banking in London is T. E. Gregory’s excellent history of the Westminster Bank.<sup>28</sup> Chapter IV borrows from Gregory’s account to document the conflict between the Bank of England and the London and Westminster, but in far more detail than Gregory explores the legal arguments developed by both sides before Parliament and the courts.

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<sup>28</sup> T. E. GREGORY, *THE WESTMINSTER BANK* 66-7 (1936). Cottrell and Newton, *supra* note 11, at footnote 2. The London and Westminster Bank changed its name to The Westminster Bank in 1923. Cottrell and Newton at 85-87 provide a very brief account of joint stock banking in London during the 1830s. CRICK AND WADSWORTH *supra* note 7, at 276-326 cover joint stock banking in London from the 1830s through until the end of the nineteenth century. Their discussion of the 1830s is short but a good complement to Gregory’s book.

Uniting these three puzzles is a story about a formative period in the history of money and banking in England and Wales. The central transformation tying these three chapters together is the shift towards a single national paper money supported by an emerging central bank. The analysis of country bankers' notes in Chapter II covers a period when all paper money was local rather than national and where the country's largest bank, the Bank of England, was reluctant to fund other banks during a period of crisis.<sup>29</sup> Distinguishing the post-1826 period from the pre-1826 period analysed in Chapter II, is the consolidation of national paper money and the emergence of central banking. This dissertation will pinpoint the role played by law in shaping this transformation. Law in the period 1790-1844 did not merely respond to economic "needs" or interest group politics. Rather it was through law that the economy of England and Wales in the late eighteenth and early nineteenth century was constructed and the needs of interest groups within that economy defined.

By arguing for law's constitutive role, this dissertation will add complexity to the largely functionalist accounts that dominate the economic history of the period. But the dissertation will also add more than the insight that history is complex. Stressing the role of law in economic change does make history complex, because a legal analysis gets at important nitty-gritty details. These details help us to make sense of, for example, the processes behind making money credible, changes in the cost of credit, and re-conceptualizations in the meaning of "banking" – that is, these details help with understanding those parts of history that can leave us puzzled. Yet the nitty-gritty details are important, not only because they add complexity, but also

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<sup>29</sup> Although the Bank of England was reluctant to fund other banks during a crisis, there were exceptions. See Michael C. Lovell, *The Role of the Bank of England as a Lender of Last Resort in the Crises of the Eighteenth Century*, 10 (1) *EXPLORATIONS IN ENTREPRENEURIAL HISTORY* 8 (1957).

because they highlight the autonomy that humans possess to shape and re-shape their relations with one another.

In the process of creating money, credit, banking, and central banking during the late eighteenth and early nineteenth century, the people of England and Wales used law and the legal regime in creative and imaginative ways. While arguing for the constitutive role played by law during this period, this dissertation also argues for a perspective that sees law and the institutions that law makes possible as malleable and open to reinvention. What makes the study of history so captivating is its capacity to surprise us. History is surprising because events are not inevitable and necessary. People act collectively, sometimes in conflict, other times by compromising. By doing so, they make use of law and the legal regime, not as a reaction to some preconceived plan, but as an act of making history itself.

## II

### GUINEAS, “PIG-ON-PORK” BILLS, AND “COUNTRY RAG MERCHANTS,”

#### 1790-1825

This chapter’s task is to make sense of the first of the three puzzles introduced earlier. This first puzzle centres on country bankers’ notes and bills of exchange as currency. To circulate widely as a means of exchange, money of whatever type usually requires state backing. The puzzle is that these local currencies<sup>30</sup> did circulate widely even though they did not receive state backing during the eighteenth and first half of the nineteenth century. How then are we to account for the relative success of these alternative forms of currency from the late eighteenth century until the 1820s?

Functionalist accounts claim that the rise of local currencies was a response to an economic need that the government and the Bank of England were unable or unwilling to meet. Indeed, by restricting the size of country banks to a maximum of six partners, the state was fettering the capacity of a growing commercial class to fill the currency void left by the scarcity of gold coins and Bank of England notes. These fetters on economic change then led individuals to improvise spontaneously their own local currencies as an alternative.

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<sup>30</sup> The remainder of this chapter refers to country bankers’ notes and bills of exchange as “local currencies” or “alternative currencies.”

In this chapter, I accept as largely accurate the claim made by some economic historians that the emergence of these local currencies was a consequence of inadequacies affecting the coinage and Bank of England notes. But viewing the rise of alternative forms of currency solely as a response to fettering legislation fails to answer the first puzzle. To work out the source of the credibility that enabled local currencies to circulate in the late eighteenth and early nineteenth century, this chapter approaches this first puzzle without falling into the trap of seeing law as separate from the economy. Separating law from the economy encourages the functionalist view that law's role in relation to alternative currencies was either one of fettering the smooth functioning of the monetary system, or one where legislation liberated the monetary system from these fetters. As an alternative, this chapter argues that law and the economy are inseparable, for the former constitutes the latter. Viewing the relationship between law and the economy in this way opens up the possibility that the role of the legal regime is not limited to placing fetters around the currency or freeing that currency from these fetters. The further possibility pursued in this chapter is that the legal regime made these currencies possible. To solve the puzzle affecting these local currencies, this chapter analyses the role played by law in defining and creating country bankers' notes and bills of exchange.

#### **A. Alternative's to Barter: Currencies and their Foundations**

Part A offers a defense of a claim made, but not justified, in the Introduction: for a form of currency to circulate widely, it needs some kind of state, or public, backing. To justify this claim, Part A begins by presenting two contrasting understandings of

money, the commodity approach and the credit approach. By describing these two approaches, Part A substantiates the claim that money typically derives its credibility from public backing that might come from the state but might also take other forms. After considering these two approaches, Part A then explores a legal rule situated at the background rather than at the forefront of thinking about money, but which takes centre stage when untangling the mysteries wrapped around the local currencies of the period 1790-1825. That legal rule, which is the essence of a gold standard monetary regime, is the contractual promise to pay in gold coin found in writing on eighteenth and nineteenth century bank notes and bills of exchange.

### **1. *The Commodity Approach***

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 barter: in exchange for the chocolate bar, I give the owner of the store some of the beer I have taken to brewing. We might imagine a whole economy made up of transactions similar to a chocolate bar in exchange for beer. My apples for your oranges, his jam donuts for her wooden table, and so on. Assuming the parties can negotiate a shared sense of equivalence (so many apples is equivalent to so many oranges), the people who make up this type of economy are largely equal.<sup>31</sup> Nevertheless, barter turns out to be quite inefficient. How am I to get hold of that chocolate bar if the shopkeeper is not

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<sup>31</sup> To see the sense of equality I am getting at, we might think of the contract doctrine of consideration. Consideration depends on a sense of a reciprocal *quid pro quo*. Both parties get something from the exchange, presumably something they want otherwise why consent to the deal.

interested in my homebrew? And what happens if I can't find anything else to offer the shopkeeper? For barter to succeed there has to be a double convenience of wants, as otherwise the exchange will not take place.<sup>32</sup>

Theoretical solutions aimed at resolving the problems of barter have traditionally taken two routes. One route, known as the commodity approach to money, emphasizes the role particularly valuable commodities play in facilitating exchange, in particular precious metals like gold. Owing to gold's unique features – it is typically scarce, homogeneous, durable, and inherently valuable – it tends to be easily marketable, that is, others are always happy to accept it in exchange. According to the commodity approach, provided I possess gold I'll be able to obtain the chocolate bar because I can offer the shopkeeper a commodity in exchange that in all likelihood she'll be happy to accept, in part at least because she knows others too will accept gold in their exchanges with her. An economy of equals entering into voluntary exchanges remains in place, only now it is more efficient owing to the intermediary role played by gold as the universal equivalent (i.e. the commodity all others are convertible into).

According to the commodity approach, the state only enters the story when it adds its stamp to the gold for the sake of convenience “to save the trouble of having to weigh it every time.”<sup>33</sup> But the state's stamp, so theorists of the commodity approach

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<sup>32</sup> For example, where A has oranges but wants apples and B has apples but wants oranges making a mutually satisfactory exchange is easy – there has been a double convenience of wants. The situation is less straightforward where both A and B have apples but both want oranges, or where A has oranges and wants apples but B, despite having apples, has no interest in oranges, preferring, say, pears instead.

<sup>33</sup> J. SCHUMPETER, HISTORY OF ECONOMIC ANALYSIS 63 (1994).

claim, does not give gold coin its value. This emerges, instead, from the inherent and natural characteristics of the commodity serving as money. The state's role is equally marginal when paper money or ledger entries become widespread. It is again owing to the interactions between individuals looking to exchange commodities that otherwise intrinsically worthless tokens or pieces of paper come to serve as money. Paper money, so argue the proponents of the commodity approach, is more efficient because it frees up gold for other investments. Crucially, however, the paper has value provided a precious metal backs it, and this is just as true, so advocates of this approach claim, for government issued paper money.

The example from history used to add empirical support to the commodity approach understanding of money is the text by R. A. Radford on the fascinating case of a prisoner of war camp in Germany during the Second World War.<sup>34</sup> On a regular basis, the Red Cross delivered the prisoners a parcel, containing cigarettes, biscuits, chocolate and the like. Initially the prisoners bartered their goods, exchanging some of what they did not want, but others did, for what others were willing to part with in exchange. Out of these barter exchanges, it became clear that the article that all other items were valued in relation to was the cigarette. Cigarettes then emerged as money without any declaration by the public authorities. Cigarettes worked well as money, but they had a flaw. Unscrupulous individuals removed tobacco before resealing the cigarette, reducing the intrinsic value of the cigarette. To overcome this flaw in the use of a pure commodity as money, the prisoners introduced a type of paper money called "Bully-Marks" backed by good quality (i.e. not tampered with) cigarettes.

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<sup>34</sup> R. A. Radford, *The Economic Organisation of a P.O.W. Camp*, 12 *ECONOMICA*, 189 (1945).

How then might the commodity approach to money help to explain the relative success of country bankers' notes in the late eighteenth century? A promise to pay supported each note issued by a country banker. That promise committed the banker to pay gold coin on demand when requested to do so by the holder of the note. Therefore, according to the commodity approach to money, the notes were valuable because a commodity of intrinsic, inherent, natural value supported them. The courts ensured that the banker kept his promise to pay by enforcing the contract. And the Royal Mint, by stamping the gold, guaranteed the gold paid out was equal to the amount quoted on the note.

The commodity approach to understanding money has benefited from the endorsement of an illustrious group of figures throughout history.<sup>35</sup> There is a problem with the theory, however, that follows from viewing money as an object in the natural world, which humans only need to discover.<sup>36</sup> As we have seen, that object, whether gold or cigarettes or something else, lies dormant as a form of money while humans grow frustrated with the inefficiencies of barter. Out of these

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<sup>35</sup> These include Aristotle and John Locke, see Charles Goodhart, *The Two Concepts of Money* 14 EUROPEAN JOURNAL OF POLITICAL ECONOMY 407 (1998). Probably the most famous proponent of a commodity approach to understanding money is Karl Menger, in large part thanks to his essay *On the Origins of Money*, 2(6) ECONOMIC JOURNAL 293 (1892). Menger's work has attracted a number of followers, including Kevin Dowd, *The Invisible Hand and the Evolution of the Monetary System* in WHAT IS MONEY? 139 (John Smithin ed., 2000), and Peter G. Klein and George Selgin, *Menger's Theory of Money: Some Experimental Evidence* in WHAT IS MONEY? 217 (John Smithin ed., 2000).

<sup>36</sup> Influencing my thoughts on the problems that follow from a commodity approach to understanding money are the following texts. Alexander James Field, *One the Explanation of Rules Using Rational Choice Models*, 13(1) JOURNAL OF ECONOMIC ISSUES 49 (1979); Geoffrey M. Hodgson, *Carl Menger's Theory of the Evolution of Money: Some Problems* 4(4) REVIEW OF POLITICAL ECONOMY 396 (1992); Gerald P. O' Driscoll, Jr. *Money: Menger's Evolutionary Theory* 18(4) HISTORY OF POLITICAL ECONOMY 601 (1986); Malcolm Rutherford, *Institutional Economics: Then and Now*, 15(3) JOURNAL OF ECONOMIC PERSPECTIVES 173 (2001); and Viktor Vanberg, *Carl Menger's Evolutionary and John R. Commons' Collective Action Approach to Institutions: A Comparison*, 1 REVIEW OF POLITICAL ECONOMY 334 (1989).

frustrations, according to the commodity approach, the previously dormant qualities that lie within specific objects come to the fore, and do so without the need for any declaration from the public authorities.

The problem with focusing on the physical object that serves as money, however, is that commodity theorists then assume as natural and given the institution of the market, the existence of a stock of goods, and that individuals trade these goods, which in turn depends upon assuming legal institutions such as property and contract. Radford's text fits the mould. He takes for granted the background role played by the POW camp, the Red Cross delivery of food parcels, and that all of the prisoners in the camp were well versed in the use of money in their lives as civilians before the war. An alternative approach to understanding money is to have all of these institutions, and a multitude of others besides, take centre stage, with the result of shifting the analysis of money away from the physical object serving as the medium of exchange and towards instead interactions between humans.

## **2. *The Credit Approach***

How then might our understanding of money, including the alternative currencies of the late eighteenth and early nineteenth century, be refined if we emphasize less the object that serves as money by concentrating more on the relations behind the exchange? A second approach, called the credit approach,<sup>37</sup> has attracted scholarly

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<sup>37</sup> As I hope becomes clear in this section, the credit approach to money shares much with another approach, known as "state theory" or "Chartalism." By emphasizing the overlap between credit theorists and state theorists, this dissertation follows the suggestion of L. Randall Wray in his

support as an alternative to the commodity approach that has social relations at its core. Imagine, when I go to buy that chocolate bar, instead of bartering with the shopkeeper, I write her 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 – aided by the tendency of the courts to enforce the contract created by the promise – 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.

In contrast to the commodity approach considered earlier, no commodities with intrinsic value are involved. Instead, the emphasis is on relations between creditors and debtors and the promise that binds them. Yet the credit 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? One answer, of course, is enforcement of the promise by the courts. Yet if all it takes is enforcement by the courts to get our promises to pay to circulate, why then do we not see many more such promises circulating as means of payment?

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introduction to CREDIT AND STATE THEORIES OF MONEY: THE CONTRIBUTIONS OF A. MITCHELL INNES (L. Randall Wray ed., 2004). For examples of the state theory tradition, see L. Randall Wray, *State Money*, 32(3) INTERNATIONAL JOURNAL OF POLITICAL ECONOMY 23 (2002) and G. F. KNAPP, THE STATE THEORY OF MONEY (1924). For examples of the credit theory tradition, see Mitchell Innes, *The Credit Theory of Money*, 31 BANKING LAW JOURNAL, 151 (1914) and GEOFFREY INGHAM, THE NATURE OF MONEY (2004).

Proponents of the credit approach typically offer a response by pointing to the standing, or credibility, of the debtor whose promise supports the IOU. The historical example lending authority to this perspective is the Irish economy of around 1800, where the IOUs of shopkeepers and other prominent figures supported trade.<sup>38</sup> And perhaps this focus on circulating IOUs helps to explain the rise of local currencies in late eighteenth and early nineteenth century England and Wales too. These currencies did not represent the credit of merely anyone: they were a promise to pay – not at a future date, but on demand – by an individual of wealth and standing, such as a local banker or merchant.

As part of the credit approach tradition to understanding money, one scholar, Stephanie Bell, has introduced what she calls the “hierarchy of money,” which we might also call a hierarchy of credit and debt.<sup>39</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 the Coca Cola Corporation quite differently. Between the extremes of the state and a random stranger, is a vast array

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<sup>38</sup> See J. FULLARTON, ON THE REGULATION OF CURRENCIES 53-5 (1845) and T. TOOKE, AN INQUIRY INTO THE CURRENCY PRINCIPLE 21-2 (1844). These references were brought to my attention by P. Mehrling, *The Relevance to Modern Economics of the Banking School View* in MONEY IN MOTION: THE POST KEYNESIAN AND CIRCULATION APPROACHES 331 (G. Deleplace and E. J. Nell eds., 1996).

<sup>39</sup> S. Bell, *The Role of the State and the Hierarchy of Money* 25 CAMBRIDGE JOURNAL OF ECONOMICS 149 (2001). See also D. K. Foley, *Money in Economic Activity* in THE NEW PALGRAVE: MONEY 519 (J. Eatwell, M. Milgate and P. Newman eds., 1987) and D. K. Foley, *On Marx's Theory of Money*, 1-2 SOCIAL CONCEPT 5 (1983-85).

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 today or bills of exchange in the nineteenth century. 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 government or the central bank.

Compared to the commodity approach to barter, where gold facilitates exchange, the credit approach focuses on a hierarchy of credit and debt. Moreover, the credit approach also holds a radically different view of the role of government. The government issues its own money when it buys goods and procures services. People and businesses accept this money because they know the government will accept it as payment for taxes owed. Because everyone shares this common tax obligation, businesses and households are constantly in debt to the government and so will need a constant stream of the government's money to cancel their obligations. Because households and businesses need the government's money, they both tend to write up their own IOUs in terms of the government's money (promises to pay accounted for in Pounds Sterling or US Dollars). The crucial point is this: when a household or a corporation seeks to pay off a debt, it needs to acquire the money that everyone else will accept, i.e. the government's money. But when the government seeks to pay off a debt, it does not need to obtain the money or widely accepted IOUs of any other entity. Instead, the government can create more of its own money, subject to self-imposed restraints, such as a gold standard.

Recall that country bankers promised to pay on demand in the money of the state. In the eighteenth century that meant gold coins. As this chapter described earlier, proponents of the commodity approach argue that the value of gold coins stems from gold's inherent and natural characteristics. The state merely adds its stamp for the sake of convenience, so that people using the coins do not need to weigh them constantly in order to ascertain their value. By bringing into the discussion the power of the state to levy taxes, credit theorists offer an alternative perspective on the value attached to gold coins in the eighteenth century, centering on the willingness of the state to accept these coins as a means of cancelling taxes owed.

Does the concept of a hierarchy of money help us to resolve this chapter's puzzle? Recall that the alternative currencies considered in this chapter present a puzzle because the state did not back them with tax revenues. The local currencies of the period 1790-1825 were, however, convertible into gold coin – state issued and verified money accepted in payment of taxes – on demand in the case of country bankers' notes, and at a set date in the case of bills of exchange. Is this promise to pay, backed by the courts, sufficient to resolve the puzzle? In this chapter, I argue that, although a necessary part to the story of these local currencies, their convertibility into gold coin does not sufficiently explain their source of the credibility. To see why, this chapter now turns to the contractual commitment underpinning the promise to pay.

### 3. *“I promise to pay the bearer on demand ...”*

The state's money in eighteenth century England took the form of gold coin and Bank of England notes. Yet although the promises to pay of the state are generally highly credible that does not mean they are always problem free. Both the coinage and the circulation of Bank of England notes undoubtedly had problems during the eighteenth century. 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>40</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>41</sup> Due to the failure of the state to provide a medium of exchange, economic historians point to the role of local currencies in filling the void.<sup>42</sup> To these economic historians, the economy needed a

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<sup>40</sup> On the coinage, see C. E. CHALLIS, *A NEW HISTORY OF THE ROYAL MINT* (1992), chapter 4 and A. FEAVEYER, *THE POUND STERLING: A HISTORY OF ENGLISH MONEY* (1963), Chapters VI and VII.

<sup>41</sup> Contemporary references to Bank of England notes circulating mostly in and around London include, *Copies of communications between the first lord of the Treasury and the chancellor of the Exchequer, and the governor and deputy governor of the Bank of England; relating to an alteration in the exclusive privileges enjoyed by the Bank of England.*, BRITISH PARLIAMENTARY PAPERS (1826) (2) XIX at 4; the evidence of Henry Thornton to *the Committee on the Outstanding Demands of the Bank of England and on the Restriction of Cash Payments* BRITISH PARLIAMENTARY PAPERS (1797), XL at 163; HorselyPalmer to *the Committee on the Bank of England Charter*, BRITISH PARLIAMENTARY PAPERS (1831-32) (722) VI at 7 (Q: 3). On the Bank of England in the eighteenth century, see J. CLAPHAM, *THE BANK OF ENGLAND: A HISTORY* (1944) Volume I. Clapham discusses the extent of the Bank of England's note circulation at 167. It seems Bank of England notes circulated outside of London during the first half of the eighteenth century in larger numbers than in the second half of that century, see Clapham, *id.*, 150. 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 107, 146, 150.

<sup>42</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 37.5% of the means of payment; banknotes, 12.5%; and bills of exchange, around 50%. In 1811, precious metals comprised 7% of the means of payment; banknotes, 20.9% (bank deposits, 7%); and bills of exchange, around 65.1%. In 1830, precious metals comprised 18.1% of the means of payment; banknotes, 17.4% (bank deposits, 24.1%); and bills of exchange, around 40.4%. The figures are from Rondo Cameron, *England, 1750-1844* in *BANKING IN THE EARLY STAGES OF INDUSTRIALIZATION* 15, 42 (Rondo Cameron, Olga Crisp, Hugh T. Patrick, and Richard Tilly eds., 1967). For information

circulating medium, yet Parliament placed fetters in the way of fulfilling this need. Consequently, individuals responded to economic imperatives by finding a way around this fetter.<sup>43</sup> Perhaps this perspective holds some truth. But pointing to the role played by individual spontaneity does not solve the puzzle affecting these alternative currencies because such spontaneity fails to explain what made these notes and bills credible.

As explored earlier in this chapter, for an IOU or a promise to pay – such as underpinned alternative currencies in the eighteenth century – to circulate extensively, it needed users to recognize it as credible. A connection to the tax system provided gold coin and Bank of England notes with this credibility, notwithstanding their other problems.<sup>44</sup> Locating the source of public backing that made alternative currencies credible requires looking elsewhere however, due to the indirect connection tying these notes and bills to the institutions of central government and the tax system, though there were nonetheless such connections, which this chapter explores later.

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comparing the volume of Bank of England notes with the volume of country bank notes, see COLLINS, *supra* note 13, at 40; and EMMANUEL COPPIETERS, *ENGLISH BANKNOTE CIRCULATION, 1694-1954*, 21-34 (1955). In 1818, the Bank of England had £26.5 million notes in circulation, the country banks, approximately, £20.5 million. By 1833, the Bank of England circulation stood at around £19 million, that of the country banks (both private and joint stock), around £8 million. By 1840, the Bank of England's circulation was around £17 million, that of the country banks (both private and joint stock), around £10 million. The figures for 1818 are from *Reports from the Secret Committee on the Expediency of the Bank Resuming Cash Payments*, BRITISH PARLIAMENTARY PAPERS (1819) (202, 282) III, Appendix B. 2, at 323; and Appendix F. 8, at 414. The figures for 1833 and 1840 are from *Report from the Select Committee on Banks of Issue*, BRITISH PARLIAMENTARY PAPERS (1840) (602) IV, Appendix 34, at 354.

<sup>43</sup> See, for example, Jones, *supra* note 22, at 253 and John A. James, *English Banking and Payments before 1826*, 28 RESEARCH IN ECONOMIC HISTORY 117, 119 (2012).

<sup>44</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 JOHN 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 PETER G. M. DICKSON, *THE FINANCIAL REVOLUTION IN ENGLAND: A STUDY IN THE DEVELOPMENT OF PUBLIC CREDIT, 1688-1756* (1967).

The courts provided one alternative source of public backing. Enforcement by the courts could and did make such promises to pay credible by holding bankers and merchants of perceived or known wealth to their word. Recall that each banker's note was a promise to pay in gold coin on demand, backed by the banker's word that when the holder presented the note for payment, the banker had sufficient gold coin on hand to fulfil his obligation.<sup>45</sup> Bankers generally got their notes into circulation by discounting bills of exchange presented to them by merchants. Bankers, then, relied on merchants fulfilling the promise to pay made on the bill, a promise the courts ensured the merchant met.

The notion of fidelity to one's word is important here. If an individual makes a commitment to another that she will do something in the future, that individual provides grounds for the other party to expect performance.<sup>46</sup> The state takes on the role of enforcing many of these promises because by doing so it ensures individuals keep their word, facilitating, so the theory goes, the projects of both parties. Part of the story explaining why individuals used local currencies to facilitate their economic relations is that they could do so safe in the knowledge that each holder

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<sup>45</sup> The courts further helped bank notes to circulate by treating them as interchangeable with specie (*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 1704 (3 & 4 Ann. c. 9 (1704) [Promissory Notes Act]). On the history of the currency of paper money in England, see David Fox, *Bona Fide Purchase and the Currency of Money*, 55 (3) THE CAMBRIDGE LAW JOURNAL 547 (1996). On the law of negotiable instruments in the eighteenth and nineteenth centuries, see J. MILNES HOLDEN, *THE HISTORY OF NEGOTIABLE INSTRUMENTS IN ENGLISH LAW* (1955), JAMES STEVEN ROGERS, *THE EARLY HISTORY OF THE LAW OF BILLS AND NOTES* 110 (1995).

<sup>46</sup> For a defence of the idea that promise is the basis of contract law, see C. FRIED, *CONTRACT AS PROMISE* (1981).

could rely on the courts to enforce the bankers promise to pay in gold coin on demand. And enforcement of the merchant's promise to pay on each bill of exchange that they created or accepted made the banker's promise credible.

Yet, crucially, in the period 1790-1825 reality frequently made fidelity to one's word challenging. Prices for articles transported long distance over many weeks and sometimes months did not tend to hold steady, while war in the eighteenth century was never far away.<sup>47</sup>

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.<sup>48</sup> 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>49</sup> The failure of a banker then became a self-fulfilling prophecy. Because the majority of those holding the notes feared for

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<sup>47</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 BOYD HILTON, *A MAD, BAD AND DANGEROUS PEOPLE: ENGLAND, 1783-1846*, 23 (2006). 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 War of Independence (1775-83); the War of the First Coalition (1793-1797); and the Napoleonic Wars (1797-1815).

<sup>48</sup> A more detailed explanation of bill discounting is in Part B (2) of this chapter and in Appendix 1 to this dissertation.

<sup>49</sup> See COBBETT *supra* note 3.

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.<sup>50</sup>

Between the late 1780s and 1830 England experienced no less than seven such crises.<sup>51</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>52</sup> But when all other country bankers tried to do the same concurrently – the mark of a crisis – the supply of the most valued forms of money seldom kept pace with demand. In such circumstances, the average country banker was 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>53</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.

Yet, as I show in this chapter, many communities across England and Wales refused to let the value of their means of exchange collapse. What allowed these communities to formulate an alternative to failure was the concentration of influence

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<sup>50</sup> See PRESSNELL, *supra* note 23, at Appendix 20, at 538-39 for figures on the number of country banks that faced bankruptcy each year until 1825.

<sup>51</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, *supra* note 23, at 441-500. See also Julian Hoppit, *Financial Crisis in Eighteenth-Century England*, 39 (1) THE ECONOMIC HISTORY REVIEW 39 (1986).

<sup>52</sup> An overview of the relationship between country bankers and their London agent is in Part C (1) of this chapter.

<sup>53</sup> An overview of the late eighteenth and early nineteenth century bankruptcy regime is in Part C (3) (b) of this chapter.

and prestige in local elites before the era of large-scale central government. In parts of the country, as in Liverpool and Bristol, these elites owed their position to commercial success. Outside of commercial towns, elite's rose to prominence on the back of their ownership of large country estates. It is towards these local elites across England and Wales, and away from the central government in London, that this chapter turns to find the source of authority lending credibility to local currencies during the period 1790-1825.

In this chapter, I argue that the credibility of country bankers might and often did survive a period of falling confidence and lower prices when, led by its landowning and/or commercial elite, the people of the community of the town and neighbourhood to which the bank belonged rallied around to assist the banker. This assistance took a variety of forms. In the case of Liverpool in 1793, the city temporarily issued its own paper money, backed by the tax revenues of the local population, to guarantee the bills created and circulated by local merchants and bankers. In Newcastle at the outbreak of the Napoleonic Wars, local citizens of perceived or known wealth guaranteed the repayment of the local country bankers' notes in gold coin should any of the bankers collapse. These collective commitments – common throughout the period 1790-1825 – made the debts of bankers and merchants credible. They also represent an alternative institutionalization of the public. Not the public in the sense of the state as a whole, but the public at a local level, centred on towns, districts, and their elites throughout England and Wales.

The contractual relations underlying such promises to pay made these alternative solutions possible, though on first viewing that might not appear obvious. The

problem is the tendency of contract scholars to present agreements based on promises as voluntary transactions made by self-constituting, self-reliant individuals pursuing their own independent ends. Viewed through this contractual prism, discrete transactions between the banker and a series of strangers underpinned the local currencies of the period 1790-1825. When this self-reliant banker found himself in trouble, the law of contract surely only hindered his efforts at survival, because others more successful at the game of self-reliance had promises from the banker that the courts ensured the banker kept. How then could contract, centred on such discrete promises, provide solutions to a collective problem?

This chapter draws on a different view of contractual relations to capture the way communities constructed and sustained the local currencies that circulated through their economy.<sup>54</sup> Through this alternative formulation, instead of considering contract in individualistic terms, dominated by discrete transactions between strangers, contractual relations are understood as both reliant on continuity and shaped by the larger community of which they are a part. Although country bankers' notes and bills of exchange depended upon a promise to pay supported by the law of contract, it does not follow that these notes and bills were solely the product of the

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<sup>54</sup> Texts supporting a different perspective on contract include, S. Macaulay, *Non-Contractual Relations in Business: A Preliminary Study*, 28 AM. SOC. REV. 55 (1963) and I. MACNEIL, *THE NEW SOCIAL CONTRACT: AN INQUIRY INTO MODERN CONTRACTUAL RELATIONS* (1980). Contract scholars generally group the work of Macaulay and Macneil as part of "relational contract" theory. The rise to prominence of so-called "relational contract" theory, with its focus on long-term or continuing relationships rather than one-off exchanges, owes much to the alleged deficiencies of traditional or "classical" contract law. Classical contract law is deficient, so scholars like Macneil argue, because it is mostly concerned with contracts where the terms are set by strangers, performance is instantaneous (such as buying a bus ticket or a chocolate bar), and the parties act out of self-interest. Yet these characteristic features of classical contract law only catch a fraction of what contracting involves, while nonetheless retaining their influence over the rules of contract law. By exploring contract law "in action" rather than in the books, relational contract theorists aim to question the assumptions made by classical contract law and capture more of the social norms and conventions that influence contractual behaviour.

interactions between discrete, self-reliant individuals. The promise at their core was the outcome of continuous relationships embedded in community. It was this dependence on community, albeit community immersed in the social hierarchies of the time, which made these alternative currencies a public form of money capable of weathering the all too common eighteenth and nineteenth century experience of financial crisis.

Solving the puzzle affecting country bankers' notes and bills of exchange requires analysing the public backing that these notes and bills received from many of the local communities of England and Wales as an alternative to backing from central government. What made this local form of collective backing possible was the role played by law, in particular the law of contract, in providing the institutions that translated the commitments of individuals into collective commitments. The relative success of local currencies in the period 1790-1825, then is not an example of law serving to fetter economic change, with individuals innovating ways round these legal fetters. Instead, explaining the relative success of country bankers' notes and bills of exchange requires placing law at the centre of the story, since without the institutions provided by the legal regime, such local currencies would not have survived financial crisis with the frequency that they did.

In what follows, Part B begins by describing the historical context in which local currencies rose to prominence by outlining the structure of the social hierarchy of the time. As Part B describes, with prestige and influence dispersed so too was capital. Different regions developed distinct economic specializations. The bill of exchange tied this highly localized and fragmented collection of economies together.

By discounting bills of exchange, local bankers grew in stature, aided by the tax system. The second half of Part B describes the workings of this system of bill finance and local banking.

Part B shows that alternative currencies flourished partly owing to the problems undermining other forms of money, partly due to the structure of the tax system, and partly because they complimented, and in certain areas of England were integral to, the system of bill finance. Yet the very mechanism – bill discounting – that at times allowed country bankers’ notes and bills of exchange to flourish was at other times the source of their fragility.

Part C takes up this fragility, emphasising the country banker’s dependence on his agent in London. Part C also considers the factors that made crises so frequent, as well as the difficulties experienced by bankers as they sought to fend off hordes of desperate creditors hoping to hold the banker to his obligations. One option for the banker, should his past promises to pay overwhelm him, was bankruptcy. Those who depended on a local alternative currency had to avoid that outcome if possible. This chapter considers moments when bankers avoided bankruptcy with the help of their local community in Part D.

## **B. The Rise of Country Bankers’ Notes**

### ***1. The Place of the country gentry and merchant oligarchs in Eighteenth century social hierarchy***

Those who owned land in eighteenth century England controlled the country's main source of wealth and influence because it gave them a stake in most raw materials, much of the food supply, and many employment opportunities. As was increasingly the case as the eighteenth century advanced, land was not the only important type of property since wealth also derived from commercial sources. But as Mingay points out, land was supreme because it was "more tangible than the Funds, more stable than merchants' stock in trade, and certainly more valuable than industrialists' machines and implements."<sup>55</sup> Compensating for land's lower profitability as an investment compared to these other forms of property, was the higher social status that it conferred onto its owner.

The degree of prestige and influence that followed for the landowner depended on the extent of his holdings. Distinguished more or less by reference to the amount of land in their possession, the landed interest in eighteenth century England consisted of three categories of people: the peers, the gentry, and the freeholders.<sup>56</sup>

The peers, sometimes referred to as the nobility, were relatively small in number,<sup>57</sup> and tended to derive the bulk of their wealth from their ownership of large estates. Their political function distinguished them from the other two categories. They were members of the upper house of Parliament, the House of Lords, and tended to fill

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<sup>55</sup> G. E. MINGAY, *ENGLISH LANDED SOCIETY IN THE EIGHTEENTH CENTURY* 3 (1963).

<sup>56</sup> *Id.*, 6-8.

<sup>57</sup> There were about 150-160 peers for most of the eighteenth century until William Pitt's time as Prime Minister (1783-1801, 1804-1806) when the number nearly doubled. See MINGAY, *Id.*, 27.

most government posts.

The second category, the gentry, was far larger in number than the peers and was less exclusive. Although it included some small landowners who farmed their own land, the vast majority of its members obtained sufficient income from their land to allow them to live the leisurely lifestyle of a gentleman. The gentry limited their political ambitions, however, to the lower house of Parliament, the House of Commons, and to local affairs in the neighbourhood of their land holdings.

The final category of people was that of the freeholders. Unlike the nobility and the gentry, they did farm their own land rather than live off the income this land generated.<sup>58</sup>

These three groups shared a common interest in land that fostered cohesion. It was possible, for instance, for merchants, lawyers, and later bankers to accumulate as much wealth as many members of the gentry. But these groups could only obtain and maintain wealth through close attention to a form of business. The gentry, by contrast, received revenue through rents from farmland, which they used on educational and cultural pursuits shared with the nobility. There was some fluidity between the tiers of this social hierarchy. Merchants moved into the ranks of the gentry by first acquiring land, and, over time, educational and cultural habits.

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<sup>58</sup> Most freeholders fell into one of two groups, either those who farmed their own land (while also renting additional land), or those who were small absentee owners, who let out land to others. The freeholders, as property owners, held the vote, and so could influence the fate of a member of the gentry aspiring to a seat in the Commons.

Marriage confirmed a change of rank. And it was again through marriage that members of the gentry moved into the ranks of the nobility. But notions that this social hierarchy was fluid should not be pushed too far. There was hostility to the path of accessing the ranks of the gentry through wealth generated by mere trade.<sup>59</sup> The process for a merchant making that transition was a long one and required them to cast aside one identity by slowly acquiring the land and cultural traits that would allow them, or future generations of their family, to form another. There might, then, be some modest movement in terms of the individuals and families that made up each group, but this was qualified by the widely – almost uniformly – held belief in a natural and inevitable order to society ordained by providence.<sup>60</sup>

Although land lacked the diversity of application and speed of multiplication that characterized many other forms of property, it compensated for this by its relative permanence and stability. It also gave its owner a base from which to exert power. Eighteenth century England was a largely agricultural society. Consequently, most of the population had ties more or less direct to the land. From the base of their country estates, the most affluent amongst the gentry represented their county in Parliament, often regarding their local shire as a self-regulating community.<sup>61</sup> But Parliament and London living was too expensive for most of the gentry. As a result, they channelled their political ambitions into local affairs, which, in any case, frequently gave them far greater influence than they would ever have had sitting in

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<sup>59</sup> G. E. MINGAY, *THE GENTRY: THE RISE AND FALL OF A RULING CLASS*, 6 (1976).

<sup>60</sup> JOHN CANNON, *ARISTOCRATIC CENTURY: THE PEERAGE OF EIGHTEENTH CENTURY ENGLAND*, 151 and 169 (1984).

<sup>61</sup> MINGAY, *supra* note 59, at 74-5.

Westminster. The matters that concerned Parliament in the eighteenth century were on balance very detached from the day-to-day concerns of most of the population. Given the large number of people who lived and worked on, or performed services for the estates of the landowning interest, the political dealings of the local parish and county was of far more immediate concern to the majority of population. Due to their holdings of land, the local gentry had wealth and the social standing that enabled them to dominate parish and county politics.<sup>62</sup>

With this power and influence came a sense of responsibility. Most of the landed interest felt a sense of commitment to their local community, a feeling of “*noblesse oblige*” requiring that they promote their understanding of the public good, and act as benefactors for the poor and unfortunate.<sup>63</sup> On the one hand, then, the preeminence of the landed interest lent a sense of inevitability to their authority both in London and locally. On the other, this sense of responsibility induced by custom and patronage, though feeling like a burden to some, must have felt like a safety net to many more.<sup>64</sup>

Nonetheless, the rise of new forms of wealth during the eighteenth century qualified the power and influence of the landed interest.<sup>65</sup> Because the political system was based on the possession of real property (most notably, land) the growing influence of those whose stature depended on moveable property (money, shares, professional

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<sup>62</sup> *Id.*, 75-6.

<sup>63</sup> *Id.*, 121 and 163-4.

<sup>64</sup> CANNON, *supra* note 60, at 169-70.

<sup>65</sup> MINGAY, *supra* note 55, at 77.

skills, intellectual property) failed to impact significantly on Parliament until well into the nineteenth century.<sup>66</sup> Yet the prominence of merchants, manufacturers, and professionals did have an impact on local politics. That impact was most apparent in large towns where wealth derived from overseas trade in commodities such as sugar and slaves, Bristol and Liverpool serving as the leading examples. As Cannon puts it, these towns “were outside the aristocratic embrace and were run by their own financial and commercial oligarchs.”<sup>67</sup> The typical English and Welsh town and its agricultural hinterland of the eighteenth century sat somewhere between the extremes of land owning elites and commercial oligarchies.

Regional specialization shaped the social and economic geography of these typical English and Welsh towns and their agricultural hinterland. In Lancashire, cotton textiles predominated, in the West Riding woollens and worsteds, in Coventry silks, in the East Midlands lace, in Birmingham the metal trades, in Sheffield cutlery, in North Staffordshire pottery, in Newcastle coal and ships, in the Black Country coal and pig iron.<sup>68</sup> Local capital markets tied together by personal contacts surrounded each concentrated specialization.<sup>69</sup> These small and localized commercial elites

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<sup>66</sup> Even after Parliamentary reform in 1832, three quarters of MPs still came from constituencies where land was the dominant form of wealth. See MINGAY, *supra* note 55, at 113.

<sup>67</sup> CANNON, *supra* note 60, at 124.

<sup>68</sup> See HILTON, *supra* note 47, 14 and PAT HUDSON, *THE GENESIS OF INDUSTRIAL CAPITAL* (1986). See also John Langton, *The Industrial Revolution and the Regional Geography of England*, 9(2) *TRANSACTIONS OF THE INSTITUTE OF BRITISH GEOGRAPHERS* 145 (1984), and Pat Hudson, *The Regional Perspective* in *REGIONS AND INDUSTRIES: A PERSPECTIVE ON THE INDUSTRIAL REVOLUTION IN BRITAIN* 5 (Pat Hudson ed., 1989).

<sup>69</sup> The mortgage market played a key role in early capital markets. Because the mortgage market relied on the services provided by attorneys, the attorney was integral to eighteenth century finance before the rise of country bankers. On the attorney as a financier, see B. L. Anderson, *The Attorney in the Early Capital Market in Lancashire* in *LIVERPOOL AND MERSEYSIDE: ESSAYS IN THE ECONOMIC AND SOCIAL HISTORY OF THE PORT AND ITS HINTERLAND* 50 (J. R. Harris ed., 1969); and, M. Miles, *The Money Market in the Early Industrial Revolution: the Evidence from West Riding Attorneys c.*

increasingly came to exert influence on local politics across typical English and Welsh towns and regional communities. Yet their influence was always a matter of degree and seldom surpassed the landed interest in terms of wealth and prestige during this period. Later this chapter considers the relationships these local elites had with their bankers, and returns to the rise of commercial oligarchs, as well as the sense of responsibility many of the country gentry felt towards the population in and around their estates.

## **2. *Bankers as intermediaries tying the country together***

Though localized, the specialized economies of England and Wales were far from isolated. Excess capital tended to accumulate in the wealthy agricultural counties of East Anglia and the southwest. Without branch networks,<sup>70</sup> it was difficult for country banks to channel this capital toward emerging industrial regions in the Midlands or further north generally experiencing a demand for credit far in excess of the savings of the local population. The task of connecting these different regions of England fell to the London money market. London banks and later bill brokers borrowed funds from agricultural regions before lending to up-and-coming

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*1750-1800*, 23(2) BUSINESS HISTORY 127 (1981). For a general account of the eighteenth century mortgage market, see B. L. Anderson, *Provincial Aspects of the Financial Revolution of the Eighteenth Century*, 11(1) BUSINESS HISTORY 12 (1969).

<sup>70</sup> Statutes in 1707 (6 Ann. c. 59 (1707) [Bank of England Act], also referred to as 6 Ann. c. 22 (1707)) and 1708 (7 Ann. c. 30 (1708) [Bank of England Act], also referred to as 7 Ann. c. 7 (1708)) prohibited all banks besides the Bank of England from having more than six partners. Due to their size, these small banks seldom established branches.

manufacturing districts. In the process they loosely tied together an otherwise highly localized, fragmented system of finance.<sup>71</sup>

The bill of exchange made it possible for London banks to tie together banks located across the country. Bills were especially adept in situations where people wanted to make payments over long distances. Imagine a situation where a manufacturer ships a cargo to a foreign market in search of people willing to purchase the cargo.<sup>72</sup> The purchaser and the seller agree to a price, but a potential obstacle is the timing and mode of payment. The problem for the purchaser is that he needs time before making the payment: he must convert the goods he has received or a portion of these goods into money first. If forced to pay up front, the transaction will not go ahead because the purchaser simply lacks the ready funds. The problem for the seller is that he cannot wait until the money owed by the purchaser appears because the seller probably also owes debts to others, including shipping expenses. The bill of exchange offers a solution by reconciling these two positions. The purchaser calculates the time required to make a return on his purchase. He then draws a bill that he offers to the seller. The bill will order a credible person with whom the purchaser has a close connection, in the place where the seller normally resides, or at the seller's next port of call, to pay the seller at some future date. The date selected depends on the purchaser's estimation as to when he will have sufficient funds to cancel the debt.

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<sup>71</sup> PRESSNELL, *supra* note 23, at 76. See also Iain Black, *Geography, Political Economy and the Circulation of Finance Capital in Early Industrial England*, 15(4) JOURNAL OF HISTORICAL GEOGRAPHY 366, 369-376 (1989).

<sup>72</sup> The description of how bills of exchange worked is based on WILLIAM ROSCOE, THOUGHTS ON THE CAUSES OF THE PRESENT FAILURES 9-11 (1793) and B. A. HEYWOOD, OBSERVATIONS ON THE CIRCULATION OF INDIVIDUAL CREDIT AND ON THE BANKING SYSTEM OF ENGLAND 36-38 (1812). See also R. T. HAWTRY, A CENTURY OF BANK RATE 4-9 (1962).

Typically, the usance of a bill – the length of time allowed before payment – varied from shorter lengths of thirty to sixty days covering transactions within Britain (inland or local bills), to longer bills facilitating overseas transactions like the one above: ninety day bills were common, though bills were also be drawn for 120 days or even two years. The length of time between drawing a bill and its maturity date was usually longer than necessary. This extra breathing space gave the “credible person” drawn on by the purchaser a longer span of time before payment was due, and it gave the purchaser drawing the bill ample time, all going well, to make a return on their sales to cover the cost of what he owed his creditors. By the eighteenth century, London had emerged as the focal point of bill finance in Britain and increasingly the world. The “credible person” on whom the bill was drawn was in early times a representative or agent of the drawer. By the eighteenth century, such agents had transformed into London bankers, and the bill of exchange executing these payments had become known as the “bill on London.”

The seller’s problem was that he had to cover his own obligations while giving the purchaser time to make enough money to pay for the goods. Good quality bills of exchange, bearing the names of credible parties and ideally with a short usance, helped to solve this problem because they were easily negotiable and often taken as a means of payment. This was famously the case in Lancashire, where bills comprised the local currency during the latter period of the eighteenth century and first quarter of the nineteenth.<sup>73</sup> It was also a common practice in other regions of

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<sup>73</sup> T. S. Ashton, *The Bill of Exchange and Private Banks in Lancashire, 1780-1830*, in PAPERS IN ENGLISH MONETARY HISTORY 37 (T. S. Ashton and R. S. Sayers eds., 1953). According to the Member of Parliament and London banker, Henry Thornton, “At Liverpool and Manchester all Payments are made in either Coin or in Bills of Exchange.” HENRY THORNTON, AN ENQUIRY INTO

England.<sup>74</sup> Those receiving the bill might then use the bill to cover their own obligations.

Bankers typically received bills 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 drawee/acceptor named on the bill might not pay up.<sup>75</sup> When they discounted a large bill of, say, £2,000, Lancashire bankers encouraged the circulation of bills as currency by reissuing smaller bills they had previously discounted as an alternative to issuing demand notes.<sup>76</sup> Each successive holder added their endorsement to the bill, making them contingently liable should the party ordered to pay fail or refuse to do so at maturity.<sup>77</sup> In theory then, the more a bill circulated and accumulated signatures, the stronger the guarantee of a cash payment when the bill matured.<sup>78</sup> Many bills had an extensive

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THE NATURE AND EFFECTS OF THE PAPER CREDIT OF GREAT BRITAIN 296 (1801). In the case of *Thompson v Giles* (1824) 107 E.R. 441, the court heard that

*the circulation of the town of Lancaster and the county at large was conducted in a great measure by bills ... paid in, and afterwards paid away by the bankers; and if that had not been done, each bank would have required an immense unemployed capital of [Bank of England] notes or been obliged to draw upon their correspondents in London, and thereby considerably increase their expense.*

Bills of exchange became the customary means of payment in Lancashire in the same way as country bankers' notes served as the means of payment elsewhere. See also *Lockyer v Jones* (1796) 170 E.R. 142n. and J. K. Horsefield, *Gibson and Johnson: A forgotten Cause Celebre*, 10 *ECONOMICA* 233 (1943).

<sup>74</sup> On Yorkshire, see Hudson, *supra* note 24, at 380.

<sup>75</sup> For more on bill discounting and rediscounting, see Appendix 1 to this dissertation.

<sup>76</sup> Cottrell and Newton, *supra* note 11 at 105.

<sup>77</sup> On the legal rules applicable to bills of exchange, see HOLDEN, *supra* note 45; and ROGERS, *supra* note 45.

<sup>78</sup> See Ashton, *supra* note 73, at 37-8 and PRESSNELL, *supra* note 23, at 171.

circulation. When the London and Manchester banker, Lewis Loyd, was asked in 1826 whether it was common for bills drawn for £10 to have fifty to sixty signatures added to them, he replied that he had seen twice that number of endorsements, “I have seen slips of paper attached to a bill as long as a sheet of paper could go, and when that was filled up another attached to that.”<sup>79</sup>

### 3. *The banker’s promise as a source of local currency*

The phenomenon whereby bills circulated as currency depended on not only the quality of the bills, but also on the quantity of bills created by merchants and bankers. In areas where eighteenth century trade and manufacturing was less intense, the relative shortage of bills representing the credit of merchants may partly explain the rise of country bankers’ notes.<sup>80</sup> Until the second half of the eighteenth century, a prominent local shopkeeper, merchant, or manufacturer performed the banking function in towns and villages across England and Wales. Because of their place at the centre of “the credit ‘nexus’ of the local community” some shopkeepers morphed into bankers.<sup>81</sup> Moreover, this shopkeeper also provided his local community with an outlet into inter-regional credit networks.

To see the place of the shopkeeper within the credit matrix of their local community

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<sup>79</sup> Loyd to *the Select Committee of the House of Lords on the Circulation of Promissory Notes*, BRITISH PARLIAMENTARY PAPERS 1826-27 (402) III at 186.

<sup>80</sup> Ashton, *supra* note 73, at 40-41.

<sup>81</sup> B. A. Holderness, *Credit in a Rural Economy, 1660-1800*, 3(2) MIDLAND HISTORY 94, 106 (1975).

– a community, especially if it was rural, that “generally financed their own needs for all purposes except the sale of commodities outside the region”<sup>82</sup> – imagine the credit relations between a farmer, a brewer, and a shopkeeper. The farmer sells barley to the brewer. The brewer pays for the barley by drawing a bill on the shopkeeper – that is, the brewer writes up a bill of exchange that says, in 60 days time, the shopkeeper will pay the farmer a certain amount. The brewer then brews his beer, which he sells to the shopkeeper. Before the bill of exchange held by the farmer matures, the shopkeeper has to sell the beer and generate the funds to pay the farmer.

Imagine now, another set of credit relations, this time involving a merchant, an innkeeper, and the same shopkeeper. The innkeeper needs beer for his inn, which he purchases from the shopkeeper. To pay for the beer, the innkeeper offers the shopkeeper a bill of exchange written up by a merchant who has recently stayed at the inn. The merchant’s bill instructs his banker in London to pay the holder of the bill in 30 days time. Upon accepting the bill from the innkeeper as payment for the beer, the shopkeeper obtains credit drawn against a London banker.

Notice the place of the shopkeeper at the centre of these two examples, examples that we might multiply into an almost endless web of interactions between creditors and debtors.<sup>83</sup> The shopkeeper was a debtor to the many people from whom he

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<sup>82</sup> *Id.*, 106.

<sup>83</sup> Porter captures well the role played by the bill of exchange, and other forms of “paper credit,” in tying together creditors and debtors when he writes,

*The paper economy grew. Bills of exchange passed into circulation from clients to shopkeepers, from retailers to wholesalers, from manufacturers to their raw-material*

bought produce and goods. And he was simultaneously a creditor to all who then bought the produce and goods he sold. The shopkeeper might pay his creditors using the bills of exchange given to him by his debtors, cancelling, for example, his debt to the farmer using the bill of exchange supplied by the merchant. Typically, a shopkeeper and other traders kept at their disposal a reserve of bills with different maturity dates. As Ashton explains the practice in the second half of the eighteenth century,

*Just as the trader to-day keeps a balance at the bank on which he can draw cheques when necessary, so at this period a trader kept by him a supply of bills, and when a payment was required he would select from his stock such bills of the right maturity as would make up the sum due.*<sup>84</sup>

Moreover, eighteenth century shopkeepers did not only buy goods from local vendors. They also bought goods from further afield and, just like the merchant in the above example, routinely drew bills on an agent in London instructing that agent to make payments on their behalf.<sup>85</sup> To cover these payments the shopkeeper accepted bills, like the one offered by the innkeeper for the beer, which they used to cover debts locally, such as their debt to the farmer, or remit to London to cover

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*suppliers. All forms of credit-worthy paper – even lottery tickets – tended to become negotiable and pass into circulation. In the provinces merchants, goldsmiths and attorneys became bill brokers and discounters (they often grumbled, yet such transactions proved profitable),* ROY PORTER, ENGLISH SOCIETY IN THE EIGHTEENTH CENTURY 188 (1990).

<sup>84</sup> T. S. ASHTON, AN EIGHTEENTH CENTURY INDUSTRIALIST: PETER STUBS OF WARRINGTON, 1756-1806, 105 (1936).

<sup>85</sup> On the role of the London agent, see Part C (1) of this chapter.

their debts there. Receiving bills of exchange in return for goods sold was one means by which shopkeepers accumulated the bills they needed to cover their debts. Another was by discounting bills of exchange – that is, by buying bills from those who did not need goods from the shopkeeper, but who needed gold coins or Bank of England notes.<sup>86</sup>

Although we might imagine an eighteenth century shopkeeper as a dealer in produce and other goods, he was also a dealer in bills of exchange.<sup>87</sup> By necessity, he had to supply his own shop. But in the process of supplying his own shop, the shopkeeper kept records of the credit and debit balances of his customers. Sometimes, as in the above example, the farmer was a creditor and the innkeeper was a debtor. At other times, the reverse was true. In the spring, when the farmer sowed his seeds, he depended on having access to credit. While, during times of the year when the inn was busy, the innkeeper accumulated more bills than he could use to keep his inn running. If the shopkeeper decided to deal in bills beyond the needs of his own shop – a move in the direction of becoming a banker – he might discount the innkeeper's excess bills, applying the proceeds to the innkeeper's credit balance at the shop. The shopkeeper might then allow a customer like the innkeeper to draw on the shopkeeper's agent in London. Alternatively, the shopkeeper might offer the

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<sup>86</sup> On the emergence of early bankers and bankers' notes in England, see the narrative presented in HENRY THORNTON, *AN ENQUIRY INTO THE NATURE AND EFFECTS OF THE PAPER CREDIT OF GREAT BRITAIN* 156-8 (1801).

<sup>87</sup> See ASHTON, *supra* note 84, chapter 8, *The Medium of Exchange* and T. S. WILLAN, *AN EIGHTEENTH-CENTURY SHOPKEEPER: ABRAHAM DENT OF KIRKBY* STEPHEN, chapter VII, *The Dealer in Bills*. The shopkeeper in the account offered by Willan, Abraham Dent, began to deal in bills in the manner described here 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 also ROGERS, *supra* note 45, at 110.

innkeeper interest on his credit balance, though only on the condition that the innkeeper give notice before asking for the money back. The shopkeeper might then use the bills he has discounted for the innkeeper as a source of funds allowing him to invest further in his business or increase his bill discounting.<sup>88</sup>

In return for offering the innkeeper interest on his credit balance, the shopkeeper gave the innkeeper an interest-bearing note containing the following information: (i) the sum lent/deposited, (ii) the rate of interest, and (iii) the terms of repayment.<sup>89</sup> These interest-bearing notes were transferable to third parties, but two factors limited their circulation. First, a promissory note bearing interest was less a means of payment than a claim to income, plus the principal.<sup>90</sup> Second, many only with reluctance accepted the note as a means of payment if the note had some time to go before payment. Should the party accepting the note require cash before the notes maturity date, they had to take less than the notes face value to cover the risk of default. Notes the bearer could cash on demand circulated with greater freedom. Since that placed early bankers in a precarious position, the banker reduced the interest on demand notes over time until these notes carried no interest at all. The banker's depositor/lender, like the innkeeper in the example, was willing to accept interest-free demand notes owing to the higher value such notes possessed as a means of payment.<sup>91</sup> It benefitted the banker – for, once the shopkeeper has ceased

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<sup>88</sup> THORNTON, *supra* note 86, at 156-8.

<sup>89</sup> *Id.*, 157.

<sup>90</sup> PRESSNELL, *supra* note 23, at 138.

<sup>91</sup> Late eighteenth century bankers issued both demand notes (not bearing interest) and interest bearing notes – see J. A. S. L. LEIGHTON-SMITH, *SMITHS THE BANKERS, 1658-1958*, 147 (1958). Deposit receipts later replaced interest-bearing notes. In 1832, one prominent banker, Vincent Stuckey, supplied evidence to the committee investigating the renewal of the Bank of England's

to buy and sell goods, dealing instead only in bills of exchange, that is what he becomes – to issue demand notes that circulated for as long as possible. Notes passing from hand to hand in the community did not drain the banker’s reserves of gold coin locally or in London allowing the banker to facilitate local trade by making loans.

Shopkeepers morphed into bankers in the second half of the eighteenth century, then, 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. Being at the centre of the “credit ‘nexus’ of the local community”<sup>92</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 local grocers, bakers, butchers, maltsters, booksellers, stationers, cordwainers, fellmongers, hatters, tailors, soap-boilers, chandlers (dealers in sails and ropes), joiners, brickmakers, and builders.<sup>93</sup>

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Charter in which he stated that, in addition to issuing bearer, or cash notes, payable on demand and not carrying interest, his bank also issued notes given for deposits that did pay interest. See Stuckey to *Committee on Renewing the Bank of England Charter*, BRITISH PARLIAMENTARY PAPERS (1831-32) (722) VI at 72 (Q: 945-947).

<sup>92</sup> Holderness, *supra* note 81, at 106.

<sup>93</sup> LEIGHTON-SMITH, *supra* note 91, at 38-9. This pattern, where one prominent and unique local trade sustained commonplace trades, repeats in towns across England and Wales. In Hull, due to its east coast location, the town’s economy had close connections with northern European trade, connecting English merchants to Archangel, St. Petersburg, Narva, Riga, Pillau, Königsberg, Hamburg, and Amsterdam (LEIGHTON-SMITH at 199). The records of the local bank feature accounts belonging to

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, as described earlier, 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>94</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% interest where "our friends lodge money with us for a year certain."<sup>95</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

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merchants and traders connected to these trade routes as well as local shipbuilders. Yet this trade also provided the foundation for a wide range of other activities, such as millers, "snuff and tobacco manufacturers," grocers, tea dealers, paper merchants and printers, mercers and linen drapers, cabinet makers, "common brewers," and even two pawn-brokers (LEIGHTON-SMITH at 215). To take one further example, that of Derby, the pattern repeats again. In Derby, the focal point of the local economy was silk. The customers of the local bank, hence, included hosiery, calico and brushes, linen and woolen drapers, mercers, merchants and "colour-men," a currier, and a leather cutter. The success of the silk economy then supported other trades and crafts, the town's bank holding accounts for a gamekeeper and a saddler, millers, maltsters, cornfactors, bakers, butchers, grocers, cheesefactors and cheesemongers, liquor merchants, a taylor, a stationer, a bookseller, a printer, a jeweler, a publican, a "hand-wareman," and a builder; carpenters, joiners, plumbers, painters, and coal merchants; a wharfinger, a pottery maker, a woolstapler, a dyer, a white-lead manufacturer, tin manufacturer and dealers, a silk throwster, an umbrella maker and, last and most important, W. G. & J. Strutt, the cotton spinners (LEIGHTON-SMITH at 257-8).

<sup>94</sup> On the role of London bankers as agents for country bankers, see Part C (1) of this chapter.

<sup>95</sup> GEORGE CHANDLER, *FOUR CENTURIES OF BANKING*, VOLUME 1 60 (1964).

credit, with the banker paying them interest, other times in debit, with the client paying interest to the banker. Tradesmen and craftsmen, such as the 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>96</sup>*

In manufacturing centres country banks further aided traders, craftsmen, and emerging industrialists by providing them with a means of paying wages.<sup>97</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. As an example, consider the bank operated by Vincent Stuckey in Somersetshire. The grazing of cattle was central to Somersetshire's economy and Stuckey's bank formed close ties with the agricultural interest, in particular, landowners and tenant farmers. Farmers needed accommodation from May to October, for during these months they were out of cash. Taking the Somersetshire region as a whole, Stuckey's bank found itself committed to loans of between £40,000 and £50,000

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<sup>96</sup> ASHTON, *supra* note 84, at 112.

<sup>97</sup> See PRESSNELL, *supra* note 23, at 153-6. For an example of a manufacturer issuing his own paper currency, see GEORGE URWIN, SAMUEL OLDKNOW AND THE ARKRIGHTS: THE INDUSTRIAL REVOLUTION AT STOCKPORT AND MARPLE 176 (1967).

between late spring and early autumn. The bank lent to farmers those deposits unlikely to be withdrawn at short notice. In return, Stuckey received personal security from the farmer, typically a promissory note. A joint note bearing two names in addition to the farmers was ideal, as well as a deposit of deeds to the farmer's house or his orchard.<sup>98</sup>

On occasions, Stuckey extended assistance, often on little or no security, to tenant farmers who had rent to pay but lacked sufficient funds to meet their obligation.<sup>99</sup> "It may happen that one of the farmers may come possibly a day before, and say, I have got 500*l.* rent to pay to-morrow, but I have only 300*l.* with you, will you let me have 200*l.*; in that case, we generally do."<sup>100</sup> On other occasions, Stuckey and his co-

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<sup>98</sup> Stuckey to *the Committee on Renewing the Bank of England Charter*, BRITISH PARLIAMENTARY PAPERS (1831-32) (722) VI at 73 (Q: 972).

<sup>99</sup> "We paid in the month of May last 20,000*l.* through our Banks, for rent to noblemen and gentlemen, Lord Burlington, Lord Egremont, Mr. Portman, and others" (Stuckey to *Committee on Renewing the Bank of England Charter*, BRITISH PARLIAMENTARY PAPERS (1831-32) (722) VI at 73(Q: 978)). According to Stuckey, the steward of the estate, in his role as rent collector for the landowner, attended the rent-day. Until recent times, that meant the steward received between £2,000 and £3,000 in an assortment of different notes, though in the case of Somersetshire the majority of the notes belonged to Stuckey and his partners. The steward then took the notes to Stuckey's bank where, instead of cashing them for gold coin, the landowner had the value of the notes applied to the balance of his account at the bank. Through Stuckey, the landowner then had the option of transferring funds onto his banker in London. Moreover, the landowner could have those bankers' notes not issued by Stuckey applied to his balance because Stuckey sent those notes to his agent in London who, through the London clearinghouse, passed these notes onto the London agent of the banker who issued them. If the notes originated in the West of England bank, Stuckey could send them to the local "settling":

*the country bankers are kept constantly in check by daily exchanges going on with each other; we have a settling every day in the week with some banker or other in our neighbourhood, so that the moment our notes go out of the district and go into another, we immediately pay the difference in London; there is a very respectable bank at Bridgeport; we exchange with them at Chard; they have an establishment there; every thing we receive of theirs goes to Chard, and what they receive of ours goes there also, and we do the same at Bristol ...* (Stuckey to *the Select Committee on Banks of Issue*, BRITISH PARLIAMENTARY PAPERS (1841) (410) V at 57 (Q: 627)).

<sup>100</sup> Stuckey to *Committee on Renewing the Bank of England Charter*, BRITISH PARLIAMENTARY PAPERS (1831-32) (722) VI at 73 (Q: 978).

bankers loaned money to a farmer – after enquiring about what the loan was for – to allow for the purchase of more oxen at the fair, or to cover the costs incurred in the spring at seedtime. Such requests for assistance apparently happened every day.<sup>101</sup> The terms of the loan to the farmer, which Stuckey would “be sorry to refuse him,”<sup>102</sup> might be £200 at perhaps two months, with the possibility of extending this to four months.<sup>103</sup>

I want to use these examples to emphasize the central role that bankers played in their local community.<sup>104</sup> 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

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<sup>101</sup> Stuckey to the *Select Committee on Banks of Issue*, BRITISH PARLIAMENTARY PAPERS (1841) (410) V at 46 (Q: 462).

<sup>102</sup> *Id.*, 46 (Q: 466).

<sup>103</sup> In his evidence, Stuckey observed the increased use of the cheque instead of country bankers’ notes. In 1836, Stuckey noted, “within these few years almost all the farmers have begun to keep accounts with a bank.” In the above example of the farmer buying cattle, the transaction took place “by transfer” and “no actual money passed” between the parties, see Stuckey to the *Secret Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX AT 84 (Q: 1371). Previously, Stuckey would have made the advance in his own notes.

<sup>104</sup> The remarks of Richard Page, written in the 1840s though equally applicable to this earlier phase of banking, capture the place of banks and bankers within their local community that this chapter attempts to capture. Page opens his book by remarking,

*Banking, in a commercial community, is every man’s affair. In the present relations of society it 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. More truly than nine out of the ten millions of things to which the quotation has been applied – ‘Tis like the air we breathe - if we have it not, we die.’ It pursues us in the streets, follows us to our homes, pierces each household nook and cranny, embraces our whole existence, public and private, and constitutes the very soul and being of all our pursuits, interests, relations, undertakings, dependencies, and possessions. What is there in all this broad and stirring land of ours 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? There is nothing of which we can treat - nothing upon which we can act - nothing to which we can allude - which is not closely mixed up and deeply compounded and amalgamated with it, [RICHARD PAGE], BANKS AND BANKERS 1-2 (2<sup>ND</sup> ED. 1843).*

manufacturers,” tradesman and craftsmen (“bricklayers, carpenters, butchers, butter and bacon dealers, shoemakers, cattle-jobbers),”<sup>105</sup> farmers, and wage labourers. Without the role played by their banker, the cohesion of the local community suffered. Yet, as this chapter explores later, while the community needed their banker, the relationship was reciprocal because the banker could not prosper long without the backing of his local community.

#### **4. *The role of the tax system in supporting country bankers***

As the last section explained, many of the original country bankers started out as shopkeepers, merchants, tradesmen, or manufacturers. Yet although they all relied on bill finance to a greater or lesser extent, very few shopkeepers, tradesmen, and manufacturers became bankers. What in part helps to explain the emergence of some prominent local figures as bankers is the relationship they had with the system of tax collection. It is worth describing the structure of the tax system in some detail, for it is through these links to taxation that we can connect country bankers to the more conventional story that links the credibility of money to the tax system.

Until well into the nineteenth century, the administration of taxes across England and Wales, especially the land tax and assessed taxes,<sup>106</sup> was a local matter. To the members of these communities, having their tax liability assessed by one of their peers was an arrangement offering the taxpayer protection from the arbitrary will of

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<sup>105</sup> David Robinson, *The Country Banks and the Bank of England*, 22 BLACKWOOD’S EDINBURGH MAGAZINE 734, 741 (Dec. 1827).

<sup>106</sup> Assessed taxes included, for example, duties paid on windows, houses, male servants, carriages, and carts.

the Crown: according to Stebbings, one of the four key principles of English taxation was localism.<sup>107</sup> The value of local knowledge made the local nature of tax assessment and collection relatively effective, even though the collector/assessor was not salaried and was essentially an amateur. As Stebbings points out, “[l]ocal knowledge meant acquaintance with individual traders, knowledge of their methods of business and their profits, of local economic conditions, of local land values, and of everyday matters and problems in local commercial life.”<sup>108</sup> Such local knowledge was exactly what the country banker possessed.

The local assessment of land taxes, assessed taxes, and duties such as those on stamps made the greatest use of this local knowledge. By contrast, salaried officials employed by central government administered Excise duties and the Customs. Prompt payment to the Crown by these officials was mandatory. With respect to land and assessed taxes, however, partly because a salary did not accompany the job, compensation took the form of delayed payment, that is, the tax collector got to use the collected revenue for a period of time before the money found its way to the government. These delays in payment occurred at each of the stages between the taxpayer and the Exchequer: upon payment of the tax locally; upon its remittance to London; and before payment in London to the appropriate government department.<sup>109</sup> At each stage, a role opened up for the banker.

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<sup>107</sup> The other three being that taxes should be voluntary, non-inquisitorial, and necessary. See Chantal Stebbings, *Localism v. Centralism: tensions in the administration of tax in nineteenth-century England and America* in LAW IN THE CITY 119, 121 (Andrew Lewis, Paul Brand and Paul Mitchell eds., 2005).

<sup>108</sup> *Id.*, 127.

<sup>109</sup> L. S. Pressnell, *Public Monies and the Development of English Banking*, 5(3) ECONOMIC HISTORY REVIEW 378, 379 (1953). For detailed information on how the system of tax collection worked in

About fifty (sixty-six from 1821) Receivers-General (divided into county divisions and sub-divisions) assessed and collected the land and assessed taxes.<sup>110</sup> The Receivers put up security to hold the post, which frequently meant the local landowning gentry filled the position. On occasions, however, the local gentry assigned the post to a banker: in 1780, there were seven Receivers-General identified as bankers, with six more appearing over the next decade. Indeed, many bankers emerged having previously taken on the role of Receiver for their area – as was the case in Worcester where the draper Joseph Berwick, who had been the Receiver for the county for a number of years, moved into banking in the early 1780s.<sup>111</sup> Bankers need not hold the position of Receiver to benefit from the collection of tax revenue, however. As the amount of tax collected increased towards the end of the eighteenth century, many Receivers needed help from others to cover the cost of the security deposit. Bankers were a potential source of assistance, but only contributed towards the cost of the security deposit if they secured the remittance of the revenues. Few Receivers had sufficient wealth to say no. And that meant many bankers came to dominate the second stage in the tax collection process, the remittance of funds from the country to London.

The delay in payment at this stage in the process was central because it allowed

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England and Wales in the eighteenth and early nineteenth century, see *Report of the Select Committee on the Duties of the Receivers General of Land and Assessed Taxes*, BRITISH PARLIAMENTARY PAPERS (1821) (630 + 667) VIII; and *Report of the Commissioners for Examining the Public Accounts*, BRITISH PARLIAMENTARY PAPERS (1780).

<sup>110</sup> In addition, there were Deputy-Receivers and Parish Collectors, as well as ninety-five Distributors of Stamps.

<sup>111</sup> Pressnell, *supra* note 109, at 382.

country bankers a period of time when they could put these deposits of money to work at a profit at the government's expense. The Receivers of the land and assessed taxes, and their bankers, "... commonly retain in their hands the whole of each quarterly collection for about six weeks, being equivalent to an advantage of retaining the whole year's collection for about six weeks in the year ..."<sup>112</sup> Large sums passed through the country bankers' accounts book. A Bristol banker who failed in the 1760s benefitted from holding the account of the local collector of Customs, who paid into an account around £3,600 a month, resulting in the remittance of over £132,700 over the previous few years. In Worcester and Cornwall, country bankers remitted similar sums after the usual delay of a year or more. Some local collectors retained the money for two years.<sup>113</sup> In the meantime, these funds could be lent out locally at a profit. Indeed, "... any banker in the country would remit ... (taxes) ... to town without any charge for so doing, on account of the benefit which he would derive from the mere transition of the public money through his hands."<sup>114</sup>

We should be careful not to exaggerate the profits country bankers made from remitting tax revenue, however. This tax revenue did need to find its way to the Exchequer in London at some point, which limited its use as a fund for lending locally. And, in the role of Receiver-General, the banker had to account for the expense of collecting the taxes. A Norwich banker in 1820, who served as the

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<sup>112</sup> *Id.*, 381.

<sup>113</sup> *Id.*, 380.

<sup>114</sup> *Id.*, 383-4, quoting Joseph Hume [1777-1855], a radical MP who kept a close watch on the government's public spending. The quotation is from 1821.

Deputy-Receiver for Norfolk, calculated that the cost involved in collecting land and assessed taxes absorbed at least 70% of his gross profit.<sup>115</sup> But the value of handling public revenue was not solely measured in terms of how much or how little profit was generated. Of greater importance was the impact that the collection of such a large and consistent sum had on the credibility and prestige of the banker. The revenue gathered through taxation is consistent year in, year out. That meant a consistent flow of funds to the banker privileged to hold the account into which tax revenues flowed. Should the local Receiver-General choose to allow the payment of taxes in the local bankers' own notes, the banker found his prestige enhanced further. Given the wider context characterised by the scarcity Royal Mint coins and, outside of London, Bank of England notes, payment of taxes in other media was often not a choice, but a necessity. Pressnell provides examples from across England where revenue collectors – of the Land and assessed taxes but also Excise duties – willingly accepted country bankers' notes.<sup>116</sup> They were persuaded to do so, partly because these notes were payable at the country banker's agent in London.<sup>117</sup>

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<sup>115</sup> *Id.*, 386.

<sup>116</sup> On other occasions, tax collectors refused to take the notes of a country banker, harming thereby the standing of the bank. As an example, consider the following notice that appeared in the *North Wales Gazette* on 27 October 1810,

*The Receiver-General will attend the places and on the days following between the hours of the and three o'clock for the purpose of receiving the first moiety of Land Assessed Taxes for the year 1810 (due on the 10<sup>th</sup> of October) and all outstanding Arrears of Property, Land and Assessed Taxes for the year 1809. He has found himself under the necessity of coming to a resolution not to receive any country Bank Notes whatever,* in REG CHAMBERS JONES, ARIAN: THE STORY OF MONEY AND BANKING IN WALES 111 (1978).

<sup>117</sup> *Id.*, 383. Part C (1) of this chapter explores the country banker's relationship with his London agent. When the holder of a country banker's note presented that note for payment, either to the banker who issued the note, or to that banker's agent in London, the note holder had the option of demanding payment in gold coin. Another option involved foregoing gold coin and accepting instead a credit balance with the banker. As Part B (3) of this chapter explained, that credit balance allowed the note holder to draw on the country banker's London agent. When the holder of a country banker's note presented that note to the banker in payment of a tax obligation, the note holder opted to forego gold coin to obtain instead a credit balance with the country bankers. Through the country banker's

## **C. Flourishing to Floundering**

### ***1. The country banker's dependence on his London banker***

As described earlier, banks across England and Wales did not have branches largely because of legislation limiting the size of banks to no more than six partners. The bond they all shared with London, made possible by the bill on London, connected all of these banks and the wider economy together, thereby both preventing isolated banking and reinforcing a national economy. Money flowed to London, the site of government and a trade centre. London bankers orchestrated these flows of money, many of whom held an account at the Bank of England. This allowed them to discount bills at the Bank, giving them direct access to Bank of England notes and Royal Mint coins. Access to the most prestigious forms of money ideally positioned the London bankers to complete the third and final stage of the process of channelling money from the taxpayer to the government. Like their country cousins, the London bankers benefited from their place in this system of tax collection because they too delayed payment of the money remitted to them. Before payment to the Exchequer, London bankers used this public money for private profit.

A consequence following from both the volume of the funds flowing through London and the close links between London banks and the Bank of England was that

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agent in London, that credit balance became available to pay to the government in London to cancel the note holder's tax liability.

bankers from elsewhere in England and Wales turned to their London agent in search of investment outlets, capital, and, during a crisis, emergency finance. That made London bankers essential to the prosperity of their country clients, frequently referred to as “correspondents.” As one contemporary described it

*the Business of the banker in London is to pay the notes of the country banker to whom he is an agent, to accept his drafts, and pay them, to execute his stock orders, and do any other business that he may wish to have done in London in the way of money transactions.*<sup>118</sup>

To conduct this business, country bankers kept an account with their London bankers that formed their main reserve should an economic crisis arise. The arrangement for managing the account was one of the following: (i) a permanent deposit, on which no interest was paid, but which the agent used to cover the cost of managing the account; (ii) a current account, on which interest was paid by the country banker when the account was in debit, but on which the country banker earned interest when it was in credit; (iii) a commission, paid to the London banker for managing the account, which might be fixed or vary with turnover; (iv) or a combination of deposit and commission.<sup>119</sup> The London banker used the funds left in this account to invest in stocks and bills 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

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<sup>118</sup> Lewis Jones Loyd to *the Committee on the Bank Resuming Cash Payments*, BRITISH PARLIAMENTARY PAPERS (1819) (282) III at 164. Loyd was a banker in the City of London and a partner in a Manchester bank.

<sup>119</sup> PRESSNELL, *supra* note 23, at 116.

and early industrialists from across England and Wales to access the wealth passing through London. Moreover, country bankers in search of reserves in an emergency turned to their London agent.<sup>120</sup>

The influence of the London bankers stemmed from this widespread reliance upon their services. Although country bankers had influence within the regions across England and Wales where they operated, these bankers were in turn dependent on the bankers in London. Family connections between the agent and correspondent banks frequently consolidated this dependence,<sup>121</sup> as did the practice of some London banks around the turn of the century of promoting the establishment of country banks.<sup>122</sup> In general, however, the London agent had to negotiate the terms of their relationship with their correspondent.

Consider the relationship between the Newcastle bank of Surtees & Co. and its London agent, Glyn's Bank in the mid 1790s. The Newcastle bankers hoped to exploit the potential for profits brought about by wartime finance. To do so they intended to employ a stockbroker to hold an account for them independent of their account at Glyn's. The London banker soon brought a halt to the scheme. Instead of allowing Surtees & Co. to use part (to the amount of £5,000) of their larger than expected London balance to employ an independent stockbroker, Glyn's decided

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<sup>120</sup> Note though that, should a country bank fail, its London agent accepted no responsibility for the losses then suffered by the country banker's customers. The courts upheld this position in *Russell v Hankey* (1794) 101 E.R. 409, and in *Adams v Peters* (1849) 175 E.R. 302. In the latter case it was argued that "the custom and course of business that there was no accountability between London bankers and the customers of their country correspondents; all monies received to the use of country correspondents were paid to or placed to the credit of the country banker."

<sup>121</sup> PRESSNELL, *supra* note 23, at 114.

<sup>122</sup> *Id.*, 118-120.

that the minimum balance required of Surtees & Co. should increase by £5,000. Glyn's defended this decision by noting that Surtees & Co. balance was greater than expected largely because the volume of transactions going through the London account was far higher than anticipated. Glyn's compensation for managing this business remained a fixed deposit. Glyn's had managed the additional business despite the inadequacy of this deposit to cover the costs of running the account: hence the decision to increase the size of the deposit. Surtees & Co. fell into line because they dared not risk jeopardizing their relationship with their link to London. Whilst the use of the £5,000 employed with a stockbroker would likely have brought them short-term profits, it would have soured their connection with Glyn's. In times of strain, the one thing Surtees wanted more than anything else was a reliable link to the London money market, for otherwise getting gold coin and/or Bank of England notes was difficult. Note, however, Surtees & Co. was acting from experience. During the crisis of 1793, the rumour spread that their London agents at that time, Messrs. Smith, Payne, & Smith, was on the verge of collapse. Surtees & Co. found it could not get the assistance from London that it needed. As a result, it suspended payment, albeit temporarily.<sup>123</sup>

Country bankers depended on their London agents both to access funds from across England and to obtain gold coins and Bank of England notes when the demand for such forms of currency became pressing. Country bankers, of course, were obliged to convert their notes into gold coin on demand. In order to honour this commitment they had to maintain a link to a source of gold coin, or at least Bank of England notes. That necessitated that they remain on cordial terms with their London agent.

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<sup>123</sup> *Id.*, 86-88.

Yet although the London banker largely thereafter determined the terms of their business with their country correspondents, the country bankers had a limited though far from insignificant set of options at their disposal when it came to countering prescriptions from London. Country banks sometimes switched from one London bank to another<sup>124</sup> or, from the early nineteenth century onwards, though only significantly after 1825, they employed bill brokers.<sup>125</sup> The tactic favoured the most by country banks in the last decade of the eighteenth century, however, amounted to establishing their own London bank. That is, a country correspondent set up an office in London. Thereafter, they drew bills on their London partner. Facilitating this approach to banking was the variation on the bill of exchange known as accommodation paper, informally referred to as a “pig-on-pork” bill.<sup>126</sup>

## 2. “Pig-on-pork” bills

An accommodation bill, in the eighteenth and nineteenth centuries, was a device that was the product not of an actual sale of goods between merchants but of an endeavour by these merchants to “raise funds ... even though they had not actually engaged in sales transactions.”<sup>127</sup> Ensuring the wide circulation of such bills required that they look as much as possible like “real” bills (bills supporting a transaction

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<sup>124</sup> *Id.*, 107.

<sup>125</sup> *Id.*, 90. For an explanation of bill discounting and the role of bill brokers in the London money market, see Appendix 1. On the growth of bill brokers in the London money market in the early nineteenth century, see W. T. C. KING, *HISTORY OF THE LONDON DISCOUNT MARKET* 1-34 (1936); and K. F. DIXON, *THE DEVELOPMENT OF THE LONDON MONEY MARKET, 1780-1830*, (PHD THESIS, LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE, 1962).

<sup>126</sup> See generally PRESSNELL, *supra* note 23, at 108-116, and J. CLAPHAM, *THE BANK OF ENGLAND: A HISTORY*, VOL. II, 164 (1944).

<sup>127</sup> ROGERS, *supra* note 45, at 225.

with a buyer and a seller of goods). A merchant made an accommodation bill look more “real” by finding a second merchant to “accommodate” the transaction. The second merchant offered a helping hand by accepting the bill even though no exchange of goods took place.

The process might take the following form. Merchant A draws a bill on Merchant B. The amount corresponds to the cost of a typical shipment of goods. Merchant B accepts the bill. Merchant A then discounts the bill, typically with a banker, for gold coin or Bank of England notes. When the bill is due to mature, Merchant B raises the funds to pay the debt by this time drawing a bill on Merchant A. Merchant A accepts the bill. Merchant B then discounts the bill with another banker. With gold coin or Bank of England notes in hand, Merchant B pays off the debt owed on the first bill. To solve the problem of the same names reappearing, the parties add bogus names to the bills.<sup>128</sup> This process of accommodation worked provided Merchant A and Merchant B could discount the bills they had created, an outcome made possible by the facilities provided by bankers. Yet should Merchant A and Merchant B fail to get their bills discounted, they would find themselves with neither the money nor the tangible goods to make good even a portion of their debts.

Merchant A and Merchant B need not be merchants. The process of accommodation – the creation of “pig-on-pork” bills – worked equally well for bankers based in, say, Liverpool who had a partner set up a firm in London that specialized in accepting

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<sup>128</sup> *Id.*, 225-6. See *Gibson v. Minet* (1791), 1 BL. H. 569, 624-25 (Heath J.) where it was declared that “the obvious reason of inserting the name of a fictitious payee is, that too many bills should not appear in circulation in the same name at the same time.”

bills drawn in Liverpool. The Liverpool banking house of Caldwell, Smith, Forbes & Gregory set up arrangements of this sort when they had Forbes and Gregory establish a business as merchants in London. Having agents in London who were partners in the banking house in Liverpool eliminated the discipline provided by an independent London banker. Having bills drawn in Liverpool accepted in London became straightforward, allowing the Liverpool bankers greater scope to access funds in the London money market. And, as Pressnell has noted, “a draft on a London bank, albeit of a “pig-on-pork” variety, might have been less unattractive in country payments than many ordinary mercantile bills.”<sup>129</sup> A “pig-on-pork” bill was still a bill on London. For those with payments due in London it represented access to the funds they needed to pay their debts. Indeed, such bills also carried attractions for the conventional London banker. The Bank of England’s policy in the late eighteenth century was only to discount bills carrying two London names. For a conventional London banker like Glyn’s to get the bills they had endorsed discounted, they needed the endorsement or acceptance of another London banker. “Pig-on-pork” bills, such as the type created by Caldwell & Co., were by their nature designed to secure a London signature.

The problem, however, was that “pig-on-pork” bills were ultimately less secure than ordinary bills. Whereas in the latter case two banks created the bills, the credit of only one bank supported the former. Moreover, all types of accommodation paper brought risks because they lacked any tie to productive activity. Bankers like Caldwell & Co. nonetheless exploited “pig-on-pork” bills because, though formally separate, the London firm expanded and contracted its operations at the command of

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<sup>129</sup> PRESSNELL, *supra* note 23, at 108-9.

the Liverpool house. Without a London banker to check its credit advances, Caldwell & Co. found itself in serious financial difficulties by the spring of 1793.<sup>130</sup> Their failure had repercussions for the whole of Liverpool, a story that this chapter takes up shortly.<sup>131</sup>

### 3. *When web's of credit unravel*

According to Feaveryear, the first appearance of “rhythmic fluctuations in business activity – punctured by periodical commercial and financial crises – which continued throughout the nineteenth century” marked the second half of the eighteenth century.<sup>132</sup> The crisis of 1793 was one of the worst because the number of country banks, almost all with a note issue, increase to around 400 after ten years of peace.<sup>133</sup> The amount of credit had correspondingly also increased far in excess of the countries reserves of gold coin.<sup>134</sup>

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<sup>130</sup> The story of Caldwell & Co's difficulties is told in two court cases. See *Pedder v Watt* (1795) PEAKE ADD. CAS. 40 and *Bolton v Puller* (1796) 1 BOS. & PUL. 539.

<sup>131</sup> Banks with close connections, tied together by “pig-on-pork” bills, were common during the Napoleonic Wars. According to PRESSNELL, *supra* note 23, at 115,

*By 1813 there were at least sixteen 'pig-on-pork' banks, with at least 103 correspondents – about one in every six country firms. Five other London firms with country partners were agents for ninety-one banks. A further seven, with 132 correspondents, at one time included a country partner. In short, almost one-third of the 660 country bankers listed in the Post Office London Directory were served in 1813 by London firms that had direct contact with country banks (footnote omitted).*

<sup>132</sup> FEAVEERYEAR, *supra* note 40, at 173.

<sup>133</sup> *Id.*, 177.

<sup>134</sup> Francis E. Hyde, Bradbury B. Parkinson, and Sheila Marriner, *The Port of Liverpool and the Crisis of 1793*, 18 *ECONOMICA* 363, 363-4 (1951).

As the bankers Caldwell & Co. soon found out, the expanding port of Liverpool was in an especially precarious position given its roles as an inlet for raw materials from the West Indies and the southern USA, and as an outlet for the manufacturers of Lancashire, West Yorkshire, and the Midlands. “Pig on pork” bills undermined the stability of these trade relations but so too did transactions based on the sale of goods at *bona fide* prices as the following example illustrates.<sup>135</sup>

A textile manufacturer agrees to sell his product, with the purchaser promising to make a payment in ninety days time by drawing a bill of exchange. The textile manufacturer discounts the bill with a banker. With cash in hand the manufacturer pays off the debts he owes to others. With these debts paid and perhaps a profit made, the textile manufacturer commences with the purchase of raw cotton for the manufacture of textiles to meet orders paid for by additional bills drawn at ninety days. Cotton producers, seeing this demand for their product, purchase the materials needed for the cotton production process, drawing bills in order to accomplish their transactions. This same process repeats across numerous textile manufacturers in Lancashire and cotton producers in the southern US. Other related economic activities benefit and experience similar growth. In each production process, the materials bought on credit produce goods that the producer intends to sell later. Both the textile manufacturer and the cotton producer aim to use the proceeds of these sales to cover what they owe on the bills they have drawn.

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<sup>135</sup> The example draws on Hyman Minsky, *The Financial-Instability Hypothesis: Capitalist Processes and the Behaviour of the Economy* in FINANCIAL CRISES: THEORY, HISTORY AND POLICY 13 (C. P. Kindleberger and J-P. Laffargue. Eds., 1982); and (discussing specifically Liverpool of the late eighteenth and early nineteenth century) S. G. Checkland, *The Lancashire Bill System and its Liverpool Protagonists, 1810-1827*, 21 *ECONOMICA* 129 (1954).

Following this increase in demand for raw cotton and finished textiles, the price of each commodity goes up. With high prices comes a large flow of income not only for those who are paid what they are owed through bill discounting, but also for all who hold stocks of raw cotton or finished textiles. Those holding stocks of these goods will then see a boost to their profits. They can discount with a banker the bills they receive for these sales at increased prices. Flush with cash, they can pay off their own debts to others. They will then be in a position to invest further in their own economic activity, and they have every incentive to do so partly because of their recent profits and partly because this profitability enhances their credit worthiness. Spending then becomes even easier, credit expands further, and the feedback loop of rising prices is reinforced.

A boom follows. Bills drawn on *bona fide* prices pay for the trade in raw cotton and finished textiles. With the progress of the boom, some cotton importers become suspicious of the trend of rising prices and import less, drawing fewer bills as a result. By contrast, others anticipate that the trend of rising prices will continue, and so further fuel the boom. Recall, however, the point from where this example started. The manufacturer of textiles, having reinvested in his business through the purchase of more raw cotton, has to ensure that he is in a position to cover what he owes others on the bill drawn to pay for the cotton. The textile manufacturer anticipates being able to do so because he invested in a production process with the materials purchased. Through selling the goods that are the outcome of this production process, the manufacturer intends to raise the funds needed to pay his debts. The potential, and all too often real, problem, however, is that the credit created by the bill of exchange is based on a promise to pay made with respect to a

very uncertain future. The purchaser who owes money on the bill cannot know that a market will exist for his goods in ninety days, and should a market exist, he cannot know if the price he receives will be adequate to cover what he purchased on credit earlier.

Perhaps due to war, increased competition, ships delayed by weather, new import restrictions, or an array of other possibilities,<sup>136</sup> at some point the textile manufacturer finds that he cannot sell the textiles he has manufactured. He then lacks the funds to cover what he owes on the bills he has agreed to pay at maturity. In normal times, when a merchant or manufacturer lacked the funds needed to cover their obligations, they turned to a banker for a loan. However, in a situation where the change in expectations is serious enough to affect not just any one individual trader or manufacturer but the economy as a whole, networks of interconnected, interdependent promises begin to unravel, and bankers holding discounted paper find many of these bills dishonoured. With their funding curtailed, bankers refuse to lend and a liquidity crisis ensues. The demand for cotton falls as do prices. More debts go unmet. Discounting accommodation paper might procure temporary aid for those who can obtain it, though in the longer term such debt might only serve to aggravate the situation by prolonging it.<sup>137</sup>

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<sup>136</sup> A key possibility is that the rise in prices caused by the boom result in people of modest to low incomes being unable to buy the now more costly goods and services. With fewer people able to consume, demand drops and the textile manufacturer finds they have stock that they cannot sell. Textile manufacturers holding unsold stock do not receive the income stream they had hoped for to pay off the debts they owe for the imported cotton.

<sup>137</sup> Consider the situation facing John Coleman, a bread and biscuit maker from Liverpool in 1793, a crisis considered below, at Section D (1). After making a fortune contracting to feed French prisoners of war in Liverpool, he then expanded his business during the American Wars of Independence. He made profits initially, but then problems set in. In 1793, those who owed him money were unable to meet their debts. The problem for Coleman was that without the money owed to him he could not meet his own debts. That meant he had to fall back on his banker, Heywood. But when Heywood's

(a) *The London reserve as a first line of defence*

In such circumstances, bankers bore the brunt of the crisis given their place at the centre of these 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, typically a monetary instrument with explicit public backing, such as gold coin and/or Bank of England notes, both of which had state backing. 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 in flow 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 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.

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refused to extend Coleman's overdraft, bankruptcy followed. Here is how Coleman described the events of 1793 in his own words,

*[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. Coleman, quoted in CHANDLER, *supra* note 95, at 190 (Vol I).*

It was in such situations that access to a reserve of funds in London became necessary. Take the reaction of the Banbury Bank, in north Oxfordshire, to the unfolding of events in 1825 as an example of a standard response for not only the 1820s but for earlier moments of crisis too.<sup>138</sup> Rumours that some large London banking houses were likely to suspend payment first reached Banbury on 11<sup>th</sup> December. As an initial response, the Banbury bank's partners wrote instructions for £10,000 worth of gold coin even though their balance at Curtis's, their London agent, was low. They managed to procure £11,000 worth of gold coin, including "a Box of £6,000 that was intended for some other Bank."<sup>139</sup> This was merely the first line of defence as in all likelihood matters would get worse before they got better. So, the partners set to the task of mobilizing their other assets. One of the bank's partners, Joseph Gibbins, owed the partnership £27,000, and another partner, J. A. Gillett, urged Gibbins to present some marketable paper as security for this debt. Gibbins did provide bills, though some were of doubtful quality, and a collection of annuity deeds that could convince large depositors that all was well.

A week after the Banbury partners started mobilizing their defences, their caution proved well founded, as the prominent London bank of Sir Peter Pole and Co. suspended payment. They served as agents for 43 country banks. The £11,000 from Curtis's proved invaluable at meeting the demands for cash that followed. The next day, however, another London bank, Williams and Co., collapsed. The Banbury Bank now desperately needed more hard cash. One partner headed to Birmingham, another to London. But nowhere could bills of exchange be turned into gold coins.

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<sup>138</sup> The account of the Banbury Bank's response to the events of 1825 draws on AUDREY M. TAYLOR, GILLETTS: BANKERS AT BANBURY AND OXFORD 9-13 (1964). See also P. W. MATTHEWS AND A. W. TUKE, A HISTORY OF BARCLAYS BANK LIMITED 281 (1926).

<sup>139</sup> TAYLOR, *supra* note 138, at 9.

Both partners returned to Banbury without additional cash. To meet the demand for extra cash from their customers at Christmas, the partners procured a loan of £1,000 from their local banking rival Cobbs. Thereafter, Gillett and Gibbins attempted a second time to try to find cash in London. Whilst in London, with their parcel of bills and other securities in tow, the two partners discovered that Gibbins's father had obtained £5,000 worth of gold coin for the bank and was on his way to Banbury. But hopes that these gold coins would keep the bank open until their return proved unfounded, the remaining partner in Banbury suspending payment the following day. Handbills circulated through the town carrying the announcement that the bank would make no payments until the following Wednesday.

Gillett and Gibbins did not know about the suspension of payment and continued their search for gold coin through the City of London's depressed streets. Everywhere they turned, however, they were confronted with others doing exactly as they were doing, with just as little success. Eventually they reasoned that if gold coin was too difficult to find, Bank of England notes might be a better bet. Although the Bank refused to offer a loan on the bills Gillett and Gibbins offered as security, it was prepared to discount some of their bills if the Banbury bankers found a London banker with an account at the Bank, besides their agent Curtis, who was willing to endorse the bills. With that help forthcoming, Gillett and Gibbins secured £6,200. The partners quickly returned to Banbury. But the pressure remained severe, so severe that by the Wednesday of the following week, the bank was unable to reopen.

(b) *A second response: bankruptcy*

Eventually, the bank at Banbury did reopen largely owing to the support the inhabitants of the town offered to their bankers. We will turn to these forms of community support in Part D of this chapter. The remainder of this section explores where many other bankers landed following a crisis during which adequate support from London was not forthcoming – bankruptcy.

It was better to avoid bankruptcy. Bankruptcy stained the banker's notes with uncertainty and so drastically curtailed the region's means of exchange. Whereas the failure of a manufacturing partnership brought distress to the partners, employees, and customers of the firm, this distress was at least somewhat contained. The failure of a banker was of a different magnitude because the banker's notes circulated throughout the region bringing into the orbit of the bank a broader range of people. Moreover, without the discounting facilities offered by bankers, manufacturers and merchants would find it challenging to offer credit to their customers.

Where bankruptcy was the outcome,<sup>140</sup> helping the situation of the debtor was the

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<sup>140</sup> Bankruptcy was only one amongst many methods by which creditors could deal with debtors in the late eighteenth and early nineteenth century. Bankruptcy was common where one or more of the creditors believed the debtor could not pay his debts. Where the creditors believed that the debtor could pay his debts but was refusing to do so, the law of insolvency allowed the creditors to either threaten the debtor with imprisonment, or, alternatively, obtain legal judgment on the debtor's property. Bankruptcy and the law of insolvency dealt with debtors owing large sums of money. Pursuing those with modest debts meant taking the matter before the small debt courts (Courts of Request and Courts of Conscience), which were limited geographically and mainly served shopkeepers pursuing their customers.

The above three options (bankruptcy, insolvency, and the small debt courts) were formal legal institutions. They all involved bringing third parties into the process, such as the courts (in one form or another) and the Lord Chancellor. Creditors also had two further options, both of which kept the process of dealing with the debtor under the control of the creditors. The option pursued depended on whether the debtor's inability to meet his obligations was temporary or permanent. If the debtor was able to convince his creditors that his inability to meet his debts was temporary – most likely by allowing them to inspect his books – then the creditors might allow the debtor to continue in business in the expectation that the debts would eventually be met. Recognizing this state of affairs, the creditors issued the debtor with a letter of license. In addition, the creditors could opt to monitor the debtor's subsequent transactions closely via a deed of inspection.

shift in the structure of the bankruptcy regime since the early eighteenth century. When bankruptcy entered the statute book in 1543,<sup>141</sup> the general attitude towards debtors was harsh and unsympathetic. Bankrupts were people who had made a conscious and premeditated decision to evade payment for just debts. Further legislation enacted in 1571<sup>142</sup> and 1603<sup>143</sup> reinforced this attitude. Honest bankrupts had to wait until 1706<sup>144</sup> for legislation that acknowledged, albeit partially, their plight.<sup>145</sup>

The legislative changes of 1706 became permanent in 1731.<sup>146</sup> Although honest

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In a scenario, however, where the creditors were convinced that the debtor was permanently unable to meet his obligations, a further option was to close down the debtor's business and realize the debtor's assets via a process known as compositions. A composition assigned the assets of the debtor to one of the creditors, who acted as trustee for the others. The trustee then sold these assets with the proceeds distributed amongst all of the creditors on a *pro rata* basis. Compositions had an advantage over formal bankruptcy proceedings because responsibility for administering the debtor's estate did not pass to a third party but remained with the creditors, often working closely with the debtor. The process stalled where a single creditor objected to a composition, perhaps because he felt the debtor was capable of paying more. It was often challenging to determine whether the debtor was permanently or only temporarily insolvent because many creditors saw fit to object to the composition and to seek the payment of the debt via bankruptcy or insolvency proceedings.

On the different options available to creditors pursuing debtors in the late eighteenth and early nineteenth century, see JULIAN HOPPIT, *RISK AND FAILURE IN ENGLISH BUSINESS IN THE EIGHTEENTH CENTURY* (1987). For contemporary sources on compositions, see W. FORSYTH, *A TREATISE ON THE LAW RELATING TO COMPOSITION AND ARRANGEMENTS WITH CREDITORS* (3<sup>rd</sup> ed., 1854) and B. MONTAGU, *A SUMMARY OF THE LAW OF COMPOSITIONS WITH CREDITORS* (1823).

<sup>141</sup> On this statute, see W. J. JONES, *THE FOUNDATIONS OF ENGLISH BANKRUPTCY: STATUTES AND COMMISSIONS IN THE EARLY MODERN PERIOD*, 11-18 (1979).

<sup>142</sup> 13 Eliz. I c. 7 (1571) [Bankrupts].

<sup>143</sup> 1 Jas. I c. 15 (1603) [Bankrupts].

<sup>144</sup> 6 Ann. c. 22 (1706) [Bankrupts Act].

<sup>145</sup> Many opposed this reform, arguing that honest debtors did not need a bankruptcy regime because, provided debtors were honest and decent, they would win the understanding of their creditors. In response, those who favoured reform stressed that only a small number of bankrupts were fraudulent. The law should protect the majority, many of whom had taken risks in the hope of reviving their fortunes but without success. By offering protection to such risk takers, the new legal regime recognized that risk taking and a certain amount of business failure marked a vibrant economy.

<sup>146</sup> 5 Geo. II c. 30 (1731) [Bankrupts Act].

bankrupts gained recognition, there remained no route for debtors to declare bankruptcy voluntarily, and this remained true until the 1820s.<sup>147</sup> Furthermore, the bankruptcy regime only applied to (i) “traders,”<sup>148</sup> (ii) debts of at least £100,<sup>149</sup> and (iii) circumstances where an “act of bankruptcy” had been committed.<sup>150</sup> The starting point in the bankruptcy process was for one or more of the creditors to petition the Lord Chancellor,<sup>151</sup> asking for the initiation of bankruptcy proceedings against a specific debtor. The debtor had no say in the matter at this stage, as the timing of bankruptcy proceedings was entirely under the control of the creditors.<sup>152</sup>

Upon receiving a petition, the Lord Chancellor opened a commission of bankruptcy, which first required nominating commissioners, usually lawyers, from the same district as the debtor and creditors. These commissioners were responsible for determining whether the debtor was a bankrupt in accordance with the three conditions outlined above. If they decided the debtor met these conditions, an

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<sup>147</sup> 6 Geo. IV c. 16 (1825) [Bankrupts (England) Act].

<sup>148</sup> In the context of bankruptcy, the distinction between “traders” and “non-traders” originated in the legislation of 1571 and survived until the mid nineteenth century. A “trader” made a living from buying and selling. The intention behind maintaining the distinction was to prevent landowners and the farming community from falling under the jurisdiction of bankruptcy.

<sup>149</sup> The requirement that debts be of at least £100 limited bankruptcy proceedings to the likes of wholesalers and manufactures rather than retailers, or those who owed debts to shopkeepers, and artisans. More precisely, the debts had to be of at least £100 if owed to one creditor; £150 if owed to two creditors; and, £200 if owed to three or more creditors.

<sup>150</sup> An act of bankruptcy involved “an action which had sought to deny creditors the satisfaction of their just claims” (HOPPIT, *supra* note 140 at 26). Such an action might include taking flight, remaining indoors with the doors locked, lying in jail under the insolvent debtors laws for more than two months, or committing a fraudulent conveyance.

<sup>151</sup> The Lord Chancellor is a member of the Cabinet with responsibility for the functioning of the courts. Until 2005, the Lord Chancellor was the presiding officer of the House of Lords and head of the judiciary.

<sup>152</sup> Upon presenting the petition, the creditors were additionally required to lodge a bond of £200 to safeguard against malicious petitions.

announcement of a declaration of bankruptcy followed in the *London Gazette*, and the bankrupt was notified, marking the first chance for the debtor to put forward their side of events. Each creditor then had an opportunity to prove their debts, with the commissioners sitting in judgment. To assist the commissioners, the Lord Chancellor appointed assignees to collect, value, and sell the bankrupt's estate.

While frequently in the position of creditors proving their debts before the commissioners,<sup>153</sup> bankers, on occasions, found themselves in the position of the bankrupt. Consider the example of the Western Bank, in Exeter, Devonshire, in 1810.<sup>154</sup> When the Western Bank stopped payment on its notes in July of that year, panic spread throughout the city owing to concern over the viability of the city's other bankers and the value of their notes. To stop the panic and prevent the break out of widespread banking bankruptcies, the town held public meetings, which I consider in detail later. The declarations of support for the town's bankers that followed from these meetings safeguarded both Exeter's bankers, and other bankers all over southwest England. The response came too late for the Western Bank, however, which then faced bankruptcy proceedings.

After being notified of the bankruptcy proceedings, the bank's three partners, John Wilcocks, Edward Wilcocks, and Alexander Frazer, appeared before the Guildhall,

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<sup>153</sup> See, for example, Stephen C. Hicks and Clay Ramsay, *Law, Order and the Bankruptcy Commissions of Early Nineteenth Century England*, 55 *TJDSCHRIFT VOOR RECHTSGESCHIEDENIS* 12 (1987).

<sup>154</sup> The details presented here concerning the bankruptcy proceedings faced by the proprietors of the Western Bank are from JOHN RYTON, *BANKS AND BANKNOTES OF EXETER, 1769-1906*, 68-71 (1984).

London's commercial court,<sup>155</sup> where an examination commenced into their property holdings and the extent of their debts. For local creditors, meetings followed in Exeter at the end of October so that the commissioners might "receive proofs of debt." The situation faced by creditors seeking to prove the legitimacy of their debts was a difficult one,

*The multitude assembled on the occasion was so great and tumultuous that it was found necessary to have eight constables to prevent disorder. Upwards of six hundred persons proved their debts but many that came from distant parts were unable to gain admission, and were obliged to remain in the city until this day, and will have difficulty to effect their business, as a very large concourse of people encompass the inn door, and only six are admitted at a time.*<sup>156</sup>

The commissioners stamped the word "proved" on a debt, such as one of the banker's notes, which they deemed genuine. While the creditors of the Western Bank set about proving the validity of their debts, the assignees appointed by the commissioners got on with the task of selling the property of the bankrupts to meet the payments owed to these creditors. That included the homes of each partner, and a life interest<sup>157</sup> of Edward Wilcocks that raised almost £12,500 when sold at an auction. The creditors received the first dividend of eleven shillings in July 1811,

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<sup>155</sup> E. Welbourne, *Bankruptcy Before the Era of Victorian Reform*, 4(1) CAMBRIDGE HISTORICAL JOURNAL 51 (1932).

<sup>156</sup> WOOLMER'S GAZETTE, describing the meeting held at the Globe Tavern on 31 October 1810.

<sup>157</sup> A life interest confers a right onto a person (usually known as a life tenant) that allows them to receive an income from, typically, a trust fund for the rest of their life.

more or less a year after the collapse of the bank. To receive what they were owed, creditors had to appear in person “at the counting house of Mr. William Lee near the Guildhall”<sup>158</sup> where they presented their “proved” notes. Upon the payment of the dividend, the note was stamped “dividend paid.” In the lead up to a dividend payment, the “proved” notes circulated again, changing hands at a discount on the understanding that future payments on the notes would be forthcoming. The creditors of the Western received two further dividend payments, in January 1812 (eight shillings) and in June of 1812 (one shilling). In total, a creditor of the Western Bank received twenty shillings in the pound, almost the complete repayment of their debts. This was an unusual outcome. Moreover, the process of repaying the banks creditors took a full two years.

Bankruptcy was not a desirable outcome for either the banker or the community that he served. Bankruptcy ruined the banker’s credit, the community lost its means of payment, and those left holding the banker’s notes held a potentially worthless piece of paper, a mere “country rag.” Should a note issuing banker fail, nobody wanted to be in possession of the banker’s notes. Unlike bills, where the liability of each endorsee lasted until the acceptor of the bill, all going well, met the debt due on the bill, liability on bank notes ceased upon transfer. There was no contingent liability. If the bank failed, the holder of the note was unable to take action against anyone other than the failed partnership of bankers.<sup>159</sup> Even if the notes might turn out to be

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<sup>158</sup> RYTON, *supra* note 154, at 71.

<sup>159</sup> The only exception was for the note holder to try to take action against the person who had directly transferred the note to them. Since bearer notes were transferrable without endorsement, it was not possible to bring the action on the note itself. Instead, the holder would have to bring an action on the underlying obligation for which they had accepted the note. In the early eighteenth century, the courts reasoned that taking a note in payment did extinguish the underlying debt, provided there was a sale of goods at the same time. But where the note was taken to cancel a pre-

worth something, even more or less their full value, the process of receiving payment from the bankrupt's estate was a long one. Regrettably for the local community, during this time the notes of the banker ceased to serve as a means of payment.

#### **D. Alternatives to Failure: The Reappearance of “the public”**

Bankers on the verge of collapse need not fail because there was an alternative, the essence of which was captured in a letter to the *Newcastle Courant* at the height of the crisis of July 1816, “That we may receive credit *from* them [the bankers], let us give credit *to* them, and then mutual confidence ... will be once more re-established ...”<sup>160</sup> Country bankers might and often did survive a period of falling confidence and lower prices when the community to which the bank belonged rallied round to assist the banker. The response in Newcastle was not an isolated instance. Such forms of community support were one of the most reoccurring responses to crisis

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existing debt, rather than for goods there and then, the underlying debt was not extinguished.

Complicating the situation further was another exception. Where the note cancelled a pre-existing debt, but was not presented for payment within a “reasonable time,” then the underlying debt was discharged (*Williams v Smith* (1819) 106 E.R. 447). Consequently, as Rogers explains,

*when a person who had paid a debt with a bank note or draft was sued on the underlying debt, he could defend by arguing that the loss was really the creditor's own fault. If the creditor had been more diligent in presenting the note or draft for payment, he would have been one of the lucky people who got paid just before the bank failed, rather than one of the unlucky ones left holding the notes of the failed bank, ROGERS, supra note 45, at 203.*

What constituted a “reasonable time” was left to the jury to determine throughout the eighteenth century, though juries were typically instructed by the court to give due regard to the practice of most London bankers, who considered a “reasonable time” to mean twenty-four hours. What followed was a version of “pass the parcel” or “musical chairs”: if you are not quick enough, and are holding the note when the music stops, then too bad, you are out the game, left with nothing but the “rag” of a mere “country merchant.” Besides Rogers, see also J. K. Horsefield, *British Banking Practices, 1750-1850: Some Legal Sidelights*, 19 *ECONOMICA* 308, 309 (1952).

<sup>160</sup> NEWCASTLE COURANT, 27 July 1816. Emphasis in original.

from the 1790s until the 1820s. It is to examples of this community support during periods of commercial distress that this chapter now turns.

### ***1. The Liverpool Corporation and the crisis of 1793***

When firms from the industrial heart land of England were unable to pay what they owed in the early months of 1793, the Liverpool banking houses that either had discounted or accepted bills on behalf of these firms saw their income stream dry up. Confidence in the value of bills evaporated, as it did, therefore, in Lancashire's medium of exchange.<sup>161</sup> Consequently, people who wanted to use bills of exchange to pay what they owed found that they could not. Banks, some on the verge of collapse, refused to discount, preferring instead to use the gold coin they held to meet their own obligations. Those who withdrew their savings tended to hoard them. Writing some years later, one contemporary recalled, "... Those who had any money [gold coin], not knowing where they could place it with safety, kept it unemployed, and locked up in their coffers ...."<sup>162</sup> The pressure on the banks became so severe that MP and banker Henry Thornton reported in a letter to Prime Minister William Pitt "I am sorry to have to add that all the banks at Liverpool or all but one have stopped payment."<sup>163</sup> One major banking house, Charles Caldwell & Co., did fail. Reports suggested it stopped payment with debts of close to £2 million.<sup>164</sup>

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<sup>161</sup> On the role of bills of exchange as a means of payment in Lancashire, see *supra* Part B (2).

<sup>162</sup> D. Macpherson, quoted in PRESSNELL, *supra* note 23, at 23.

<sup>163</sup> *Id.*, quoted at 25. The letter is dated 7 March 1793.

<sup>164</sup> CLAPHAM, *supra* note 41, at 260.

In times of strain, only the most credible promise to pay would cover debts, and the value of bills was frequently in doubt. These concerns were allayed vis-à-vis gold coins and to a lesser degree, Bank of England notes. Gold coin was legal tender and unequivocally regarded as money. It sat at the top of Stephanie Bell's hierarchy of credit and debt<sup>165</sup> primarily because a collective commitment supported its value. Citizens agreed to accept payment in the government's promises, whether coin or paper notes, and in return, the government agreed to accept gold coins and Bank of England notes when citizens fulfilled their tax obligations. Because of this arrangement, the intake of tax revenue from the population supported this debt, making the promises to pay of the state highly creditable. Bank of England notes were almost as credible, supported as they were by the credit of the Bank of England. The Bank of England's biggest borrower was the British government, meaning that, though indirectly, the tax returns of the British government underpinned the notes issued by the Bank. When the pressure became unbearable, people turned to these "public" promises to pay.

By contrast, bills of exchange in the 1790s varied markedly in the quality of their underlying commitment. In times of crisis, such as 1793, almost all merchants and bankers who had created these bills found their resources stretched. The creditability of the bill depended on the promises to pay of the drawer of the bill, the acceptor, and all intermediary endorsers. Periods of crisis placed these promises and the bills they supported in doubt.

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<sup>165</sup> See Bell, *supra* note 39.

In the spring of 1793, the bankers and merchants of Liverpool were fully aware of the gravity of their situation. One of the city's most prominent bankers, Heywood, borrowed £40,000 from the Bank of England in late March, but this sum proved insufficient given the magnitude of the situation.<sup>166</sup> Heywood had turned to the Bank because his London agent lacked the resources to help. Liverpool's remaining bankers found that they too could not rely on their London connections in these extreme circumstances. Recall that Caldwell's London agent was essentially an extension of the Liverpool bank based in London.<sup>167</sup> This arrangement had afforded Caldwell's greater freedom to procure funding in London in good times, but it also meant withdrawing a potential safety net when times turned tough. By the spring of 1793, Caldwell's had failed, with the effect of deepening the crisis. To avoid the same fate, Liverpool's remaining banking houses had to find a response in the absence of help from the London banks. They needed radical and coordinated action. Conscious of the desperate predicament of the city's four remaining banks, 112 Liverpool merchants petitioned the Mayor to ask the Liverpool Corporation to obtain a loan of £100,000 from the Bank of England, pledging the Corporation's tax revenues as security.<sup>168</sup>

While the Corporation entered into negotiations with the Bank of England, Liverpool's merchants sought to modify the promises buttressing each bill of exchange. They did so by declaring their short-term support for the remaining banks via public notice, stating that, "we ... do mutually pledge ourselves to each other, and

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<sup>166</sup> Hyde et al, *supra* note 134, at 368.

<sup>167</sup> See *supra* Part C (2).

<sup>168</sup> Hyde et al, *supra* note 134, at 368.

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>169</sup> If a lack of confidence in the promises supporting bills of exchange was the problem, then a temporary show of confidence might provide temporary relief. Shortly after this first public declaration, in a further public announcement the committee appointed by the 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>170</sup>

The declaration encouraged everyone due payment on a bill of exchange, and not just merchants, to try to support the promise to pay written on the bill. The committee suggested “making payments easy” and showing “indulgence” as two methods of easing the strain on hard pressed debtors, as least in the short term. Of

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<sup>169</sup> 223 merchants and firms signed the notice. The public notice, issued on 20 March 1793, is reproduced in JOHN HUGHES, LIVERPOOL BANKS AND BANKERS 147-8 (1906).

<sup>170</sup> *Id.*, 149. Hughes reproduces this later announcement (148-9), made on 25 March 1793. Emphasis in original.

course, individual creditors in Liverpool might demand payment of debts owed. But the consensus of the community was that sticking to the strict letter of each agreement would be counterproductive. Circumstances had changed and, hence, so too should the terms of the promises supporting the bills of exchange that served as the community's currency.

This show of community support had its limits, however, principally because each creditor was also a debtor. Contrary to many of the assumptions of contract law, the promises underpinning bills of exchange are not the product of discrete transactions between self-reliant individuals. To have the debtor to the contract default or renegotiate the terms of the agreement did not merely affect a single detached creditor. The impact of changing the terms of a contractual agreement was far more comprehensive owing to the wider ensemble of promises that comprised and made possible the commercial community at the heart of Liverpool. As the committee was 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." Each creditor was a debtor to others, and those to whom they owed money had to be willing to renegotiate the terms of payment. Renegotiating a debt usually meant postponing 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.

An alternative was to find someone else to bear the risk. If a creditor agreed to allow

a debtor an extra thirty days to pay the sum owed on the bill, the creditor ran the risk that in thirty days the debtor would still lack the funds to make the payment. But what if the debtor borrowed gold coin from some other party? The debtor could then use the coins to pay the debt owed to the first creditor. The challenge in this scenario was persuading the lender to agree to make the loan, a difficult task given that the security on offer was no better than that offered to the original creditor. For that reason, in the spring of 1793, those with gold coins hoarded them because they believed, probably correctly, that no safe investments existed. Their best strategy was to hold onto the gold coin that everyone else wanted.

There was still another possibility, however. If individual debtors could not be trusted, a better alternative was an entity representing the community as a whole. While it was a challenge to anticipate which individuals owing money on bills of exchange were likely to make good on their promises to pay, and, consequently, almost impossible to get a coordinated response while each creditor negotiated separately with each debtor, some creditors would receive payment at some point in the future. A portion of the community would then be able to meet their tax obligations, meaning that a fund of money existed that belonged to the community as a whole and was independent of each individual creditor and debtor. It was the guarantee of these tax receipts that the Liverpool Corporation, acting on behalf of the community as a whole, prepared to offer the Bank of England as security for a loan in the spring of 1793.

The Bank of England refused to help, however. Recall that the events of 1793

affected the whole of Britain.<sup>171</sup> It was to the Bank of England, after exhausting the assistance of his London agent, that every banker turned. As a result, the Bank was unable, or perhaps just unwilling, to offer sufficient assistance to all who came calling. The government was next in line as a potential source of cash but, probably due to the size of the credit expansion in Liverpool before 1793, the relief that arrived in the form of Exchequer Bills was inadequate.<sup>172</sup>

When negotiations broke down between the Bank of England and the city of Liverpool, the city considered a bold alternative remedy. In the same way that the tax base of Britain supported the value of the government's promises to pay, the city of Liverpool struck on the idea of using the more limited, but quite substantial, tax receipts of the city of Liverpool to underpin an issue of paper money. Rather than using the city's tax base to guarantee a Bank of England loan, these same tax receipts could support the circulation of the Corporation's own paper currency. What the British state could do on a large scale, the city of Liverpool could replicate locally.

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<sup>171</sup> See CLAPHAM, *supra* note 41, at 260-61.

<sup>172</sup> Hyde et al, *supra* note 134, at 372. The statute authorizing the issue of Exchequer Bills was 33 Geo. III c. 29 (1793) [Exchequer Bills Act]. To help bankers and others in the grip of commercial crisis, the government issued £5 million in Exchequer Bills in denominations of £100, £50, and £20. Exchequer Bills were government promises to pay bearing interest, in this instance 3 ¾ %. The government lent the Exchequer Bills to approved bankers, merchants, and manufacturers at a rate of 5%, with a special group of commissioners determined who was eligible for assistance. The bankers, etc who borrowed the Exchequer Bills did not want to hold the bills as an investment since they were paying a higher rate to the government than the government was paying on the Exchequer Bills. Rather, those borrowing the Exchequer Bills hoped that these bills would serve as a substitute for gold coin and Bank of England notes given that Exchequer Bills also had the backing of the government's tax revenues. The scheme adopted by the Liverpool Corporation, explained later in this section, was essentially the same as the government's scheme using Exchequer Bills, with the difference than in Liverpool the issue of paper notes was a local rather than national initiative. On the government issue of Exchequer Bills in 1793, see FEAVERYEAR, *supra* note 40, at 178; and CLAPHAM, *supra* note 41, at 264-5.

An anonymous contribution in the local *Advertiser* newspaper first mooted the idea while negotiations continued with the Bank of England.<sup>173</sup> With the prospect of a Bank of England loan dead in the water, but the collapse of credit still real, the Mayor of Liverpool petitioned Parliament for an act authorizing the Liverpool Corporation to issue negotiable notes up to a fixed amount. The Liverpool Note Issue Act<sup>174</sup> passed with speed, perhaps indicating the influence held by Liverpool's commercial elite at the time.<sup>175</sup>

With the requisite permission in place, the scheme worked as follows.<sup>176</sup> The Act empowered the Corporation to issue notes of £100 and £50 with interest not exceeding the lawful rate (5% in 1793), redeemable 12 months after issue in return “for value received and other due security.” The Corporation could issue notes for two years, from 25 May 1793 onwards, with the option of an extension. Moreover, it was permissible for the Corporation to issue non-interest bearing notes of £10 and £5 on adequate security. However, the redemption of these notes was only possible three years after issue. Furthermore, the Act granted the Corporation the power to convert interest-bearing notes into those not bearing interest. The total note issue was not to exceed £300,000.

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<sup>173</sup> HUGHES, *supra* note 169, at 149.

<sup>174</sup> 33 Geo. III c. 31 (1793) [Liverpool Note Issue Act].

<sup>175</sup> E. C. K. Gonner, *Municipal Bank Notes in Liverpool, 1793-5*, 6 *ECONOMIC JOURNAL* 484, 485 (1896).

<sup>176</sup> The description of how the Corporation's note issue worked draws on Hyde et al, *supra* note 134, at 369-70.

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. In an effort to give the notes a wider circulation, the Corporation appointed the banking firm Joseph Denison & Co. as their London agent.<sup>177</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 a loan from the Corporation. The Corporation would make the loan by issuing paper money either in £100 and £50 notes bearing interest, or in smaller denominations of £10 and £5 not bearing interest. 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 a set date 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 repaid their debt in legal tender coins, plus interest if applicable. 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

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<sup>177</sup> Joseph Denison & Co.'s job was to offer the services typically performed for a country correspondent by their London banker, see *supra* Section C (1). Having a London agent made the notes convertible into gold coin or Bank of England notes in London, thereby giving the notes a wider circulation.

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 exchange.<sup>178</sup>

Supplementing both the pledge by the merchants of Liverpool that they would accept in payment bills bearing the name of the remaining Liverpool bankers, and the request that all residents of Liverpool show restraint when demanding the payment of debts, was another commitment. This further commitment saw the Liverpool Corporation promise to underwrite the obligations of those merchants and bankers to whom it issued loans. For the Corporation to achieve its goal of relieving the commercial distress affecting Liverpool, it needed a reciprocal commitment from the inhabitants of Liverpool. The Corporation made clear in a public announcement to the "Merchants and Inhabitants of Liverpool" (28 May 1793), "the remedy in a considerable degree is now within your powers, and that is by receiving the notes to be issued in discharge of all your simple contract debts."<sup>179</sup> The Corporation knew that if the majority of the population of Liverpool refused to accept the notes in payment of debts, the scheme would collapse. That the notes had the backing of the tax revenues of the city ought to have helped install confidence, but to get the initiative moving the Corporation also hoped that each member of the community would inspire confidence in all of the other members,

*that you may inspire each other with confidence in this respect, it is*

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<sup>178</sup> HUGHES, *supra* note 169, at 152-3 reproduces an overview of the revenues of the Liverpool Corporation in 1792 (most likely prepared for submission to the Bank of England), dated 21 March 1793.

<sup>179</sup> HUGHES, *supra* note 169, at 154 reproduces this public announcement.

*recommended that you signify your ascent to do so [i.e. accept the notes in fulfilment of debts] publicly and without reserve. It has been suggested that this intention will be most easily collected by signing your acquiescence at Mr Gore's shop near the Exchange.*<sup>180</sup>

Once enough people displayed their confidence in the notes, and therefore in the future financial health of the Corporation, the Corporation hoped that the notes would become generally acceptable, and the crisis, in Liverpool at least, would ease.

Such an innovative approach to dealing with commercial distress was not without its problems. For instance, in June 1793, with the crisis at what turned out to be its peak, the Corporation agreed to broaden the type of security acceptable to the Loan Office.<sup>181</sup> Forty-five commercial firms, including the city's banks, received assistance, with two of these firms obtaining more than £5,000. Many smaller firms operating in the cotton industry found it hardest to get help from the Loan Office, and often had to make more than one application. Those who had difficulty finding adequate security were the hardest hit.<sup>182</sup> Yet given the repayment of all of the loans made by the Corporation, many earlier than agreed, and the general alleviation of the commercial strain affecting the economy of Liverpool, the scheme was largely a success.

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<sup>180</sup> *Id.*, 154.

<sup>181</sup> Gonner, *supra* note 175, at 486.

<sup>182</sup> Hyde et al, *supra* note 134, at 370-1.

When the commercial distress of 1793 first hit Liverpool, the initial response of the city's merchants and bankers was to turn to their connections in London. With most debtors in danger of default, there was a general shift away from the bills representing the debts of merchants towards gold coins and Bank of England notes that had the backing, even if indirectly, of the state. But this high demand for gold coin and Bank of England notes made it difficult to obtain them, even more so under the constraints of a gold standard monetary regime.<sup>183</sup>

When the people of Liverpool responded to the commercial distress of 1793 the contractual relations underpinning money came to the fore. Yet these contractual relations did not follow from discrete transactions between autonomous, self-reliant individuals, and they did not result in fixed, inflexible agreements. In fact, the importance of re-working the agreement behind each bill of exchange was a key response to the crisis advocated by, not just the city's merchants, but the community as a whole. Significantly, however, the people of Liverpool also understood contractual renegotiation as only a partial response. The problem was that in a climate of commercial uncertainty, the promises supporting the debts under renegotiation could not be, under the circumstances, rationally considered credible. Given the difficulty, perhaps impossibility, of obtaining gold coin or Bank of England notes, there existed barely any credible promises.

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<sup>183</sup> Under a gold standard monetary regime, all paper money is convertible into gold coin on demand. Limiting the amount of paper money is the amount of gold coin that the paper money issuer can access. During a crisis, when gold coin was in high demand, the Bank of England faced a dilemma. If it issued more of its own notes, it increased the amount of notes in circulation at a time when its reserve of gold coin was declining. It hence placed at risk its commitment to convert all paper notes into gold coin on demand. Yet if the Bank of England opted not to issue more of its notes, it risked making the crisis worse by depriving merchants, bankers, and others of a credible means of payment. This dissertation explores the dilemmas faced by the Bank of England under a gold standard in Chapter III.

The solution utilized by Liverpool focused on an alternative source of public authority. Later this chapter explores many communities across England and Wales that turned to the most prominent members of their local landowning gentry in times of financial and banking distress, benefitting thereby from the sense of responsibility many of the gentry felt towards the wider community. In Liverpool, however, that option was not up for consideration. Liverpool, as a commercial port, sat outside the gentry's sphere of influence,<sup>184</sup> but that did not result in a power vacuum. In the absence of the landowning gentry, and their sense of *noblesse oblige*, the city's politics was dominated by a powerful commercial oligarchy that controlled the city's Corporation.<sup>185</sup> Consequently, when access to money with the guarantee of the British state was not forthcoming, the city of Liverpool turned to the collective promise of the community to pay their taxes. It was that promise – institutionalized in the form of the Liverpool Corporation and buttressed by the willingness of the community to use the new money – that created a substitute source of public backing and provided the circulating medium of Liverpool with the credibility needed to weather the crisis.

## 2. *Bankers' notes in Newcastle during the crisis of 1793*

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<sup>184</sup> In the late eighteenth century, Liverpool had strong ties to the Atlantic economy. Yet its economy, and that of its hinterland, was also more diverse than the phrase “commercial port” suggests. See John Langton, *Liverpool and its Hinterland in the Late Eighteenth Century* in *COMMERCE, INDUSTRY, AND TRANSPORT: STUDIES IN ECONOMIC CHANGE ON MERSEYSIDE 1* (B. L. Anderson and P. J. M. Stoney, eds., 1983).

<sup>185</sup> On Liverpool politics during the late eighteenth and early nineteenth century, see Jon Stobart, *Culture Versus Commerce: Societies and Spaces for Elites in Eighteenth Century Liverpool*, 28 (4) *JOURNAL OF HISTORICAL GEOGRAPHY* 471 (2002); and F. E. Sanderson, *The Structure of Politics in Liverpool, 1780-1807*, 127 *TRANSACTIONS OF THE HISTORIC SOCIETY OF LANCASHIRE AND CHESHIRE* 65 (1978).

The crisis of 1793 spread across Britain, undermining bills of exchange in Liverpool and country bankers' notes elsewhere. This section turns to events in Newcastle, in the northeast of England, and the ways the regions commercial and landowning elite responded to the difficulties faced by the town's bankers.<sup>186</sup>

The challenge facing bankers in Newcastle in the spring of 1793 was that of remaining faithful to the promise to convert their notes into gold coin on demand. The bankers found it difficult to fulfil their obligations, partly because of the difficulties experienced by local traders and industrialists. These traders and industrialists had borrowed from the banks, but owing to the state of the economy now found it an onerous commitment to repay these loans. With confidence low, people holding country bankers' notes and bills of exchange wanted to convert into money with government backing, such as gold coin. The holders of country bankers' notes could obtain gold coin by cashing in these notes. Yet if they all tried to do so as at the same time, the banker lacked the reserves to honour his commitment.

If Newcastle's bankers relied exclusively on their own reserves, each banker was unable to cover his obligations. If each note holder thought only of their own claim to gold coin, most note holders risked finding themselves with only worthless pieces of paper. If the bankers and note holders in Newcastle had been self-reliant, self-interested strangers, the banks would have collapsed, and most note holders would

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<sup>186</sup> The account of the response in Newcastle and the northeast of England to the events of 1793 draws on MABERLY PHILLIPS, *A HISTORY OF BANKS, BANKERS AND BANKING IN NORTHUMBERLAND, DURHAM AND NORTH YORKSHIRE* (1894).

have held nothing more than a country “rag.” But the country bankers’ notes that circulated in Newcastle were not the result of promises between self-reliant, self-interested bankers and self-reliant, self-interested strangers. Instead, ties of reciprocity bound the banker to his community and the community to their banker. Although formally each note holder could claim gold coin on demand in exchange for the note, making such a claim would precipitate the collapse of the bank and the community’s means of exchange. Supporting the notes issued by Newcastle’s bankers called, accordingly, for a collective response that drew on the strength of the local community.

The strain experienced by the bankers resulted in a public meeting in April that led to declarations of support for the banks and, as was also the case in Liverpool, led to the appointment by the city of a committee set with the task of exploring the options open to the town and region. The committee’s report established the outstanding note circulation of the four banks at £230,000.<sup>187</sup> The banks were solvent, however.<sup>188</sup> Their problem was one of confidence and a shortage of gold coin. Getting hold of the latter was difficult due to the distance from London, and the

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<sup>187</sup> *Id.*, 48. The date of the meeting was 8 April 1793.

<sup>188</sup> The committee established in Newcastle closely resembled the alternative to bankruptcy frequently pursued by creditors during times when they believed debtors were only temporarily unable to meet their obligations (see *supra* note 140). During such moments, a debtor would convince his creditors that he was solvent, generally by allowing the creditors to inspect his books, as happened here. The creditor then issued the debtor with a letter of license, and retained the power to continue to inspect the debtor’s transactions through a deed of inspection. Although I cannot show that a letter of license and deed of inspection were formally issued here, we do know that the committee allowed the Newcastle bankers to continue on the assumption that the banks were most likely solvent in the long run. The committee appointed by the city also continued to monitor the banks closely for the rest of 1793. My guess is that this process of inspection, license, and ongoing supervision, which was perhaps the most common means of dealing with temporarily insolvent debtors during the period, was the institutional mechanism resorted to most often by communities when their bankers were on the verge of collapse. As this chapter explores later, other instances of community support for insolvent bankers resemble in many respects the response in Newcastle, and hence contain elements similar to this process of inspection, license, and ongoing supervision.

expense and dangers of transportation in volatile times.<sup>189</sup> As was the case in Liverpool, restoring confidence in the short-term was possible through a declaration of support made at the public meeting.<sup>190</sup> The pledges of support made at the public meeting meant that the majority of the community had opted not to exercise their right obliging the banker to fulfil the promise on the note. But, as in Liverpool, a public pledge to accept but not cash the notes said nothing about the longer-term viability of the banker's obligation to honour their promise on the note.

The committee's search for a solution in Newcastle had to deal with the same underlying problem faced by Liverpool – long-term uncertainty. In addition, the proposed remedy in Newcastle had to give due regard to the nature of the local economy in the northeast of England. Whereas Liverpool was an expanding port with a population of about 60,000, second only to London, Newcastle was around half that size. Owing to Liverpool's role as a linkage point between English and Welsh manufacturing centres and the Atlantic trade, bills of exchange served as the main source of credit, and as a prominent means of payment. Bills of exchange were not absent in Newcastle, but country bankers' notes tended to serve as the means of payment. Newcastle was a significant east coast port and due to mining and shipping

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<sup>189</sup> PHILLIPS, *supra* note 186, at 45 provides an example taken from a York newspaper illustrating the dangers of travelling between London and towns further north,

*1782, Aug. 10.—An attack on one of the York diligences was perpetrated on Finchley Common about dusk. The villains robbed the coach and passengers of everything valuable. They had two carts at hand in which they deliberately deposited the stolen property and went off unmolested.*

*1790, Feb 1.—The York and Newcastle coach with a guard all the way and carrying five inside passengers, sets out from York Tavern, the George, and the Black Swan Inns alternately every morning at 6 o'clock. This coach meets at the above places the Highflyer and Paul Jones post coaches, carrying six inside passengers with a guard all the way and sets out from York every morning at 5 o'clock for London. Fares, Newcastle to York, inside £1 4s., outside 12s ; York to London, inside £2 10s., outside £1 5s.*

<sup>190</sup> PHILLIPS, *supra* note 186, lists those who made the pledge of support at 49.

had some manufacturing. But the city was also closely connected to the agricultural economy of the northeast and to the neighbouring towns of Sunderland and Durham. Consequently, social prestige and influence in Newcastle and the northeast of England was a mixture of elements drawn from both a growing commercial elite and long established landowners from the peerage and gentry.<sup>191</sup>

The committee's report<sup>192</sup> on how to support the credit of Newcastle's bankers reflected in its proposals the situation faced by Newcastle.

*... 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, and that proper persons should be authorized to call for the sums subscribed, or any part of them, if ever they should be necessary to aid the funds of the Banks*

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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

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<sup>191</sup> On the economy of the northeast of England during period 1750-1850, and the role of bankers within it, see JOHN DAVID BANHAM, BUSINESS DEVELOPMENT AND BANKING IN NORTH EAST ENGLAND, 1755-1839 (PHD THESIS, UNIVERSITY OF SUNDERLAND, 1997).

<sup>192</sup> PHILLIPS, *supra* note 186, reproduces the report at 50-1.

<sup>193</sup> *Id.*, 51.

signing the declaration was willing to contribute to the guarantee fund. The sums varied from £500 to £20,000. The citizens of the nearby town of South Shields offered £60,500. The total raised was £320,000, £90,000 more than the city needed to cover the note issue of its four banks.<sup>194</sup> The towns of Gateshead, Sunderland, and Durham all held their own public meetings, making further pledges of support to the Newcastle bankers. The Newcastle committee continued to make public announcements each week on the state of the four banks. By late April, they reported that the guarantee fund had risen to £490,600.<sup>195</sup>

A municipal note issue in Newcastle would have added more notes on top of the £230,000 already in circulation. In the spring of 1793, the citizens of Newcastle and the northeast of England were not necessarily looking for more notes. Instead, they needed a guarantee that the notes they held would retain their value. While doubts over the future viability of the city's bankers persisted, the value of each bank's note issue was questionable. The solution was to guarantee that each note remained payable in gold regardless of the fate of the banks.

In contrast to Liverpool, where the tax revenue of the city supported the promise on the notes, the approach in Newcastle was to call on individuals to pledge voluntarily sums to a guarantee fund. Newcastle was a smaller city than Liverpool in the 1790s, so perhaps the Corporation of Newcastle lacked the revenue stream or the political will from influential figures from the Corporation to cover such a large level of debt with confidence. Regardless, a public promise on the part of those local citizens of

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<sup>194</sup> *Id.*, 51-2.

<sup>195</sup> *Id.*, 52-4.

known or perceived wealth, both merchants and gentry, guaranteeing the promise on each note should any of the banks fail, served the same purpose. It used the wealth of the community to underwrite the commitments of the city's bankers, wealth that the city could have taxed but in Newcastle did not.<sup>196</sup>

The solutions adopted in Newcastle and Liverpool differed in their specifics owing to the presence of country bankers' notes in the former and bills in the latter. Despite this difference, both examples illustrate that money ultimately depends on public commitment for its success. These public commitments saw the resources of the community, especially prominent members of the local elite, used to underwrite the local currency. Moreover, such commitments serve as examples of contractual arrangements that expose the inadequacy of the conventional assumptions belying traditional accounts of contract. Country bankers' notes and bills of exchange were not the products of promises following from discrete transactions between self-reliant autonomous bankers and note holders. Instead, they depended on community conventions that looked upon contracts as settlements open to renegotiation rather than fixed agreements. When the communities of Newcastle and Liverpool responded collectively to the potential losses that economic crisis threatened, they drew on local sources of influence, prestige, and convention to inspire institutional innovations that compensated for the absence of one source of public backing – the tax intake of the British state – by bringing forth an alternative form of public support.

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<sup>196</sup> It seems plausible that because Liverpool was a port the Corporation could tax all of the trade going through the city, adding to its revenue. Newcastle was likewise a trading city, but it was also located in a prominent agricultural region. That would have led to less revenue ending up in its Corporation and more staying in the land, i.e. with the gentry, who played such a prominent role when assisting Newcastle's bankers.

To the extent that their responses differed, the key distinguishing feature was the composition of the local elite. Merchants and traders in Liverpool drew their stature from overseas trade, while the influence of the gentry in Newcastle stemmed from the agricultural estates in the northeast, though Newcastle's own merchant elite was also significant. Both communities successfully institutionalized the collective commitments that made their local currencies credible. Others across England and Wales were less fortunate, prompting, eventually, the legislative reforms that this dissertation turns to in Chapter III.

### **3. *Communities supporting their bankers, 1797-1825***

Not all communities across England and Wales rescued their banks from imminent collapse with the success of Liverpool and Newcastle. It was not rare, however, to find other similar successes, spearheaded by a local merchant elite, and/or by the local gentry, most often by a combination of the two.<sup>197</sup> Collective action initiated by communities in support of their local banker became increasingly necessary with the commencement of the Napoleonic Wars, particularly following the suspension of convertibility. It is to these examples of collective action that this chapter now turns.

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

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<sup>197</sup> References to this phenomenon in contemporary pamphlets include, ANON., A LETTER TO PEEL ON THE ISSUES OF COUNTRY BANKERS 13-14 (1819). Other pamphlets recognized the public, though local, nature of country bankers' notes, see A. H. HOLDSWORTH, A LETTER TO A FRIEND IN DEVONSHIRE ON THE IMPORTANCE OF COUNTRY BANKERS 7-8, 17 (1818).

coin on demand.<sup>198</sup> Left unclear by the legislation freeing the Bank of England from this obligation was whether it also applied to country bankers. The courts were given an opportunity to resolve this uncertainty in 1801 when a Mr Grigsby presented for payment in gold coin one of the notes issued by a banker, Oakes & Co., in Bury St Edmunds. The banker refused to pay in gold coin, citing the legislation of 1797 suspending convertibility. Grigsby responded to the banker's refusal by taking the matter to court. Both at the local level and on appeal before the Court of Common Pleas, the court sided with Grigsby.<sup>199</sup> Although the legislation of 1797 suspended the Bank of England's obligation to convert its notes into gold coin on demand, it said nothing about the obligations of country bankers. The Court of Common Pleas interpreted this silence as an indication that the legislation did not apply to country bankers, and hence, the banker from Bury St Edmunds was obliged to convert his notes into gold coin on demand.

Despite siding with Grigsby, the judgment of the Court of Commons Pleas was not entirely sympathetic to his argument. The judgment explained that,

*... with respect to individuals, it [the legislation of 1797] was not intended to prevent any creditor who should be so disposed from captiously demanding a*

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<sup>198</sup> 37 Geo. III c. 45 (1797) [Restriction on Cash Payments Act]. Following the peace of 1815, the controversy over whether the Bank of England should be obliged to resume payments in gold coin re-emerged. Legislation in 1819 followed (59 Geo. III c. 49 (1819) [Resumption of Cash Payments, etc Act]), setting down a timeline aimed at re-establishing the convertibility of Bank of England notes into specie, which occurred in 1821. On the suspension of convertibility, see CLAPHAM, *supra* note 126, at 1-74; and FEAVEYER, *supra* note 40, at 173-227.

<sup>199</sup> *Grigsby v Oakes* (1801) 126 ER 1420. See also PRESSNELL, *supra* note 23, at 156 and Frank Whitson Fetter, *Legal Tender During the English and Irish Bank Restrictions*, 58(3) THE JOURNAL OF POLITICAL ECONOMY 241, 242-3 (1950).

*payment in money, though such a creditor is deprived of the benefit of arresting his debtor. Thank God few such creditors as the present Plaintiff have been found since the passing of the Act! But yet, whatever inconvenience may arise, and to whatever length they may go, Parliament and not this Court must be applied to for a remedy.*<sup>200</sup>

Grigsby was entitled to demand gold coin in exchange for country bankers' notes because the court felt unable to apply the legislation of 1797 to country bankers. Nevertheless, the court considered Grigsby's actions "captious." By demanding gold coin, Grigsby pointed to a fault or defect with the 1797 legislation, but in doing so, he only added to the already difficult situation facing country bankers, a point recognized 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!" In the difficult commercial climate brought about by the war with France, the credibility of country bankers and their notes was hard to sustain if too many individuals like Grigsby exercised their formal legal right to demanded payment in gold coin. Without access to the Bank of England, too many such demands – a run on the bank – would leave the banker bankrupt. What bankers needed instead was the support rather than captiousness of their local community. They were fortunate, as the court was pleased to note, that since the passing of the 1797 Act, they had found an abundance of the former and little of the latter.

In 1797, the threat of invasion hung in the air, and public meetings took place across

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<sup>200</sup> *Grigsby v Oakes*, *supra* note 199, at 1421.

England, where communities made declarations of public support for beleaguered local bankers. In the northeast of England, the residents of Newcastle again passed a resolution, this time declaring, “That we whose names are hereunto subscribed will receive the notes of All the Banks here, in Payment as usual.”<sup>201</sup> The document contained the signatures of many prominent local merchants. Meetings in Sunderland, Durham, South Shields, and Berwick followed with the same result. 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 promising 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>202</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 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*

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<sup>201</sup> PHILLIPS, *supra* note 186, at 64.

<sup>202</sup> MATTHEWS AND TUKE, *supra* note 26, at 280-1.

*until the sense of parliament on the subject shall be known.*<sup>203</sup>

By demanding payment in gold coin, Grigsby was doing exactly the opposite of what those behind the declarations in Newcastle, Banbury, and Bristol asked of note holders. In earlier sections of this chapter, we saw the same plea in Liverpool and Newcastle in 1793, when the authorities asked creditors to show forbearance by not demanding the payment of all debts owed. Grigsby, by contrast, ignored pleas of this sort; he had a right to gold coin and was not interested in placing the execution of this right on hold. And to an extent he or any other holder of a country bankers' note was rational to do so. If they held the note upon the failure of the banker, they held only the "rag" of a "country merchant."<sup>204</sup> Yet if everyone did what was in his or her own individual self-interest, and all did so at the same time, some would get gold coin while many others would not. 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.

Creditors like Grigsby were relatively rare, however. It should not be surprising that it is difficult to find other cases brought by individuals demanding payment in gold coin, despite the formal legal obligation requiring that country bankers stand ready

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<sup>203</sup> CHARLES H. CAVE, *THE HISTORY OF BANKING IN BRISTOL, 1750-1899*, 18 (1899).

<sup>204</sup> Recall that, in general, the note holder could only bring an action against the failed banker. In some circumstances, they could sue the person who had given them the note. Suing someone other than the banker proved difficult, however, if the defendant could show that the plaintiff had failed to present the note to the banker for payment within a "reasonable time." See *supra* note 159.

to do so,<sup>205</sup> because currency cannot prosper if people behave as if they live in a self-reliant, autonomous void. Currency prospers when people find ways of collectively acting together to support it. To make their local currency viable during the first three decades of the nineteenth century, communities rallied round their banker by collectively choosing not to exercise their formal legal entitlement to have the note converted. These collective acts of forbearance were only possible provided the members of each community maintained the collective ties that bound that community together. They had to cooperate rather than pursue self-interest alone; and they had to allocate losses collectively rather than leave each individual to fend for themselves. When people think of each other as discrete and self-reliant individuals, they will struggle to sustain a local currency. Conversely, in the early nineteenth century, local currencies prospered in adverse circumstances where the local community drew on a code of behaviour that stressed the collective ties binding its members together.

When one banker failed, the community often had to act, regardless of their attitude towards the failed banker, because the collapse of one banker posed a threat to other bankers in the area. Consider events in Halifax, West Yorkshire, where in 1803 both of the town's banks, Swaine's and Ingham's, experienced a run at the same time. One hundred and fifty local manufacturers and traders (towns in Yorkshire were

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<sup>205</sup> At least one economic historian has expressed his surprise that following the decision in *Grigsby v Oakes* there were no other similar cases. In Fetter's opinion,

*the decision seemed to open the door for every creditor to demand payment in specie. In view of this, it is surprising that there is no other known record in Great Britain, up until 1811, of a demand either against country banks or against private parties for payment in specie* (Fetter, *supra* note 199 at 243).

The event of 1811, when a landowner, Lord King, demanded that his tenants pay their rent in gold coin and not Bank of England notes, is described by Fetter, *Id.*, from 244.

closer to Liverpool in having strong mercantile elites) put their names to a public document declaring their willingness to accept the notes of the two banks in payment.<sup>206</sup> By 1807, however, another panic brought together the creditors of Swaine's who decided it was best to wind up the banking house. Yet if it was reasonable to doubt the solvency of Swaine's bank, was it likely that Ingham's finances were any more solid? Many felt that Ingham's deserved their confidence, and made their opinion known publicly via advertisements in the local newspaper, the *Halifax Journal*, declaring, for instance, that "Robert Fell of Skipton will give cash, or bank paper for Messrs. Ingham's Halifax Notes ...."<sup>207</sup> A further notice then appeared in the same paper, and reappeared weekly for two months, stating "*To the Public*. Messrs. Ingham's Notes will be taken in payment of Calicos by Mr. Dyson, North Bridge Mills, Halifax." Other advertisements in the paper, such as for the sale of furniture, made it clear that "Halifax Bank Notes Taken at Full Value."<sup>208</sup>

There was a similar response in Exeter, Devonshire, in the summer of 1810 following the collapse of the Western Bank.<sup>209</sup> At a public meeting, five hundred prominent citizens pledged their support to the four remaining banks. The following day, the front pages of the two local newspapers, the *Woolmer's Gazette* and the *Flying Post*, printed these five hundred names, each name confirming "reliance and confidence in the above-mentioned banks which they so amply merit." Doing so

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<sup>206</sup> H. LING ROTH, *THE GENESIS OF BANKING IN HALIFAX*, 5 (1914) and Pat Hudson, *supra* note 68, at 382.

<sup>207</sup> HALIFAX JOURNAL, 3 October 1807.

<sup>208</sup> HALIFAX JOURNAL, 21 November 1807. Italics in original.

<sup>209</sup> For a description of the bankruptcy proceedings connected with the Western Bank, see *supra* Part C (3) (b).

guaranteed the credit of the remaining banks in the wake of the collapse of the Western.<sup>210</sup> There was a similar response in Darlington, in the county of Durham, in 1815. When Mowbrey, Hollingsworth and Co. stopped payment, the town's citizens came together and expressed publicly their support for Backhouse Bank.<sup>211</sup> The document contained the names of the most influential men in the region, particularly local gentry, who rallied behind the bank partly thanks to the actions of men like Mr. Ord and Mr. Thornton,

*[Mr. Ord], at this time – 1815 – banked with Messrs. Backhouse, in whom he had the greatest of confidence in every respect. In proof of which he mounted horse and, accompanied by a neighbour, Mr. Robert Thornton, called upon every influential gentlemen in the district, obtaining in every instance a signature to a Declaration of Confidence in the Banking House of Jonathan Backhouse ...Early next morning (being the market day) ... [Mr. Ord] ... rode into Darlington and there beheld large posters having printed upon them the*

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<sup>210</sup> RYTON, *supra* note 154, at 24, 69-70.

<sup>211</sup> The Declaration of Confidence reads as follows:

*A report having been industriously circulated that Messrs. Jonathan Backhouse and Co., Bankers, Darlington, have been under the necessity of suspending their payment for a short time, the friends of the Bank have great pleasure in assuring the public that there was not the least foundation for such a report, as Messrs. Backhouse and Co. have had no occasion whatever, either before or since the failure of Messrs. Mowbrey and Co., to suspend their payment for a single moment, and it appears but justice to the community at large that they should be informed that the commercial and agricultural interests of Darlington, and its neighbourhood, have unanimously come forward to testified their approbation and support for Messrs. Backhouse and Co., and that the utmost confidence is reposed in them, a confidence justly merited by the substantial manner in which they have uniformly and uninterruptedly carried their business for forty years. Having the most perfect confidence in the stability and security of the Bank of Messrs. Jonathan Backhouse and Co., a confidence fully justified by the substantial manner in which they have carried on business uninterruptedly for the space of forty years, we, the undersigned, of the agricultural interest, think it due to them to publicly state that it is our determination to receive their notes in payment to any amount as usual (Darlington, 24 July 1815).*

*Declaration of Confidence and all the signatures which his loyalty and energy had procured ....*<sup>212</sup>

Many believed they owed something to their banks. As noted earlier, with the spread of panic across the northeast of England in 1816 to include Newcastle, a letter in the *Newcastle Courant* made an argument in support of the banks in the following terms, “That we may receive credit *from* them [the bankers], let us give credit to them, and then mutual confidence ... will be once more re-established ....”<sup>213</sup> Many shopkeepers thereafter responded to the plight of the banks by declaring, “The *Notes* of all the *Banks* in Newcastle will be taken here.”

No banker could take such declarations of support for granted since the decision whether or not to support a banker was a gift from the bank’s creditors, including the local community who used the country banker’s notes. During the crisis of 1825, the citizens of Bath held a meeting where they expressed their confidence in three town banks. There was no mention, however, in the declaration of Messrs. Cavenagh, Browne, Bayley and Browne who thereafter collapsed.<sup>214</sup> And, on occasions, it was felt that liquidation was the best option for all concerned, as was the case with Swaine’s bank in Halifax in 1807, and the East Grinstead Bank in Sussex in 1816. The latter’s creditors appointed a committee of local gentlemen to oversee the liquidation process. It was not easy to call in all of the debts owed to the bank. In

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<sup>212</sup> MATTHEWS AND TUKE, *supra* note 26, at 200-1.

<sup>213</sup> Quoted in PHILLIPS, *supra* note 186, at 79.

<sup>214</sup> A.G.E. Jones, *The Banks of Bath*, NOTES AND QUERIES 277, 281 (July, 1958).

particular, local landowners had borrowed from the bank, though some loans had gone to men of little means, such as the labourer William Hills, who had borrowed £50. He was now unable to pay this debt. The local parish stepped in by offering the trustees £10 for the value of the debt, which was accepted.<sup>215</sup>

By the 1820s, country bankers' notes remained formally convertible into gold coin on demand, though there were indications that much of the public believed that they were not. For instance, in 1825 Mr Fredrick Jones walked into the Castle Bank at Bristol and demanded gold coin in exchange for £6 of the bank's own notes. The Castle Bank refused, just as Oakes and Co. had refused to meet Grigsby's demand 24 years earlier. The Castle Bank cited the legislation leading to the resumption of convertibility in 1821 that referred only to the Bank of England.<sup>216</sup> According to their understanding, they were obliged to convert their notes into Bank of England notes, as they had offered to do for Jones, but the law only required the Bank of England to convert its notes into gold coin.

The problem for the Castle Bank was that no Act of Parliament had ever suspended the requirement that country bankers' convert their notes into gold coin on demand. The statute suspending convertibility in 1797 applied only to the Bank of England and its notes, a point emphasized by the court in *Grigsby v Oakes*. Similarly, the statute re-establishing convertibility in 1821 referred only to the Bank of England. It did not need to refer to country banks because the suspension of convertibility had

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<sup>215</sup> PETER R. JENKINS, A HISTORY OF BANKING IN SUSSEX 32-5 (1987).

<sup>216</sup> See *supra* note 198, for discussion of and references on the resumption of convertibility.

not applied to them in the first place. Subsequent legislation dealing with the affairs of country bankers, such as that allowing country bankers to continue issuing small denomination notes,<sup>217</sup> did not refer to convertibility. Against this legislative background and with the help of prominent public figures, Jones submitted a petition to Parliament asking for clarity over the convertibility of country bankers' notes. Parliamentarians responded to the petition by making clear that the notes of country bankers were convertible into gold coin on demand.<sup>218</sup>

Perhaps we might explain this episode involving Mr Jones and the Castle Bank of Bristol as a product of the confusion that followed the resumption of convertibility. After more than twenty years of inconvertible Bank of England notes followed by a complex timeline aimed at restoring convertibility, it seems plausible that many people may not have been aware of the formal position with respect to the convertibility of different types of notes. Perhaps that interpretation is too generous to the Castle Bank however. The bank's proprietors might have thought they could get away with refusing to convert their banks notes into gold coin, working under the assumption that few note holders would go to the trouble of bringing the matter to court, or exposing it to the public by petitioning Parliament.<sup>219</sup> In Jones, however, they found one of the few note holders who was prepared to go to the trouble, aided

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<sup>217</sup> 3 Geo. IV c. 70 (1822) [Negotiation of Notes and Bills Act].

<sup>218</sup> See William Cobbett, *POLITICAL REGISTER*, 2 July 1825; PRESSNELL, *supra* note 23, at 482-3; and LEIGHTON-SMITH, *supra* note 91, at 166.

<sup>219</sup> On hearing that Jones was bringing a petition before Parliament, the Castle Bank "sent an attorney at Bristol to Mr. Jones's house to offer him payment in gold; but Mr. Jones had not the notes in his possession: he had sent them to his attorney in London ..." (Cobbett, *supra* note 215). The implication being that the Castle Bank knew that it was obliged to pay in gold coin on demand but deliberately refused to do so knowing how hard it was for the note holder to force them to do otherwise.

by relatively influential allies who were no friends of country bankers.<sup>220</sup> Both of these interpretations are plausible, but so is a third. The third interpretation is that country bankers grew accustomed to not having to pay out in gold coin upon the presentation of the notes they had issued. When trade was buoyant, confidence in the future was high and extended to country bankers' notes. Yet even when such confidence vanished, country bankers notes' retained their value in those areas where the community collectively pledged to support the banker and his note issue. As a result of such declarations of support, the community opted to forego their right to demand gold coin and eased the pressure on their local banker. So widespread were these declarations of support from the 1790s until the 1820s that, I would like to suggest, the formal legal position – that country banker's notes were convertible into gold coin on demand – drifted into the background. In fact, it drifted so far into the background that many country bankers could ignore the formal convertibility of their notes altogether, because they knew that few within the local community were prepared to exercise this formal right.

Even after Parliament reminded the holders of country bankers' notes in 1825 that these notes were convertible into gold coin on demand, it remained a common practice during the crisis of 1825-26 for local communities to issue public declarations in support of their local banker.<sup>221</sup> Despite the resumption of

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<sup>220</sup> William Cobbett – the man who coined the phrase “country rag merchants” – was the main protagonist helping Jones. See *supra* note 3.

<sup>221</sup> Other examples of community support for their bank 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

convertibility in 1821, during this crisis, 73 banks across England collapsed. As far as banking crises go, it was “one of the most violent of the century”<sup>222</sup> and brought the English economy to “within twenty-four hours of barter.”<sup>223</sup> Local communities set in motion the by now customary range of responses. Bankers first looked to their agent in London, as the house at Banbury had done. Gibbins, Gillett & Tawney, despite their vigorous efforts, proved unsuccessful, however.<sup>224</sup> When it was no longer possible to secure gold coin and Bank of England notes, two options remained for country bankers across England and Wales. On the one hand, there was bankruptcy. On the other, they looked to their local community for support. The Banbury Bank was fortunate to benefit from the latter. Local shops displayed notices in their windows declaring their willingness to take the bank’s notes.<sup>225</sup> And on 28 December, the town’s tradesmen, as well as many of the local gentry and lawyers, delivered a Statement of Confidence to the *Oxford Journal* for publication. It read,

*We the undersigned, Creditors of Messrs. Gibbins, Gillett & Tawney, have this day examined a statement of their affairs; from which it appears to us that they have effects belonging to the concern, without resorting to the property of either of the parties, not only equal to answer all demands upon it, but to leave a very considerable surplus.*

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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.

<sup>222</sup> C. Crosby, *Financial*, in *A COMPANION TO VICTORIAN LITERATURE AND CULTURE*, 225, 230 (H. F. Tucker ed. 1999).

<sup>223</sup> KING, *supra* note 125, at 36-37.

<sup>224</sup> See *supra* Part C (1).

<sup>225</sup> TAYLOR, *supra* note 138, at 12-13.

*Owing to the difficulty of discounting Bills at present we have advised that the Bank be not re-opened until the 15<sup>th</sup> of February next, when the greater part of the bills they hold will have become due.*

*Our further reasons for this advice will be seen in the Resolutions of the meeting this day held, which are left for the inspection of any of the Creditors who may wish to see them.*<sup>226</sup>

Largely due to this support from the Banbury community, the bank reopened earlier on 25 January. A similar demonstration of public support was forthcoming in Ipswich, when “the mercantile Interests of the town and the Landed Interests of the Neighbourhood” signed and circulated a declaration announcing their confidence in Alexander’s Bank and in the Ipswich Town and Country Bank. The latter bank benefited from the introduction of three new partners.<sup>227</sup> In Sussex, the response was more selective. Although many Sussex banks had collapsed in December 1825, when the rumour spread that the Lewes Old Bank was on the verge of suspending payment, thirty-seven “local gentlemen and merchants” signed and published a declaration guaranteeing the note issue to the extent of £183,000, mostly in sums of £5,000. Handbills were then printed and distributed in the town and beyond. Each handbill read:

*We, the undersigned, having full Confidence in the Integrity and Responsibility of Messrs Hurly, Molineux, Whitfield, and Dicker, of the Lewes Old Bank, and wishing to prevent the public and private Evils consequent on the Prevalence*

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<sup>226</sup> *Id.*, 13.

<sup>227</sup> A. C. E. Jones, *Early Banks in Ipswich*, NOTES AND QUERIES 402, 405 (Sept., 1951) .

*of any unfounded Alarm respecting the Safety of their Bank-Notes, do hereby undertake to indemnify the Holders, during the next Six Months, of such Notes to the Amount of several Sums set against our respective Names.*

Most of the individuals offering to guarantee the notes of the bank were also depositors, perhaps explaining the bold action.<sup>228</sup>

All of these instances of community support for beleaguered bankers highlight the significance of contractual relations as the foundation upon which money rests. Not contractual relations in the sense of bargains between self-reliant, autonomous individuals – the bankers considered here were far from self-reliant and autonomous. In reality, these bankers were at the mercy of their local communities, for better or worse. Local communities, sometimes led by merchants and traders, the local gentry, or both classes working together, used this power in various ways. On occasions, the community saved some bankers while restructuring others. At times, many communities rescued their banker owing to a sense of ethical responsibility, though at other times, self-interest helped to guarantee the banker's notes. And it was not uncommon for the local community to use their influence, not to save a local banker, but to allow him to fail. True throughout, however, was that the banker's promise underpinning his notes was not fixed and irreversible. Instead, such a banker found that he could renegotiate the terms of his relationship with the local community as circumstances changed. Through the renegotiation of these terms, the conventions and norms of each community came to the fore and made

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<sup>228</sup> JENKINS, *supra* note 215, at 40.

strikingly apparent the public role the local community played in the success or failure of each country banker.

## **E. Conclusion**

This chapter's task has been to make sense of the puzzle created by the circulation of both country banker's notes and bills of exchange as currency during the late eighteenth and early nineteenth century. How could these alternative currencies circulate without the direct backing of the state? To make sense of this puzzle, this chapter goes beyond the state to find other forms of public backing, in particular, the collective commitments provided by local communities across England and Wales as they lent support to the notes and bills that comprised their local currency.

By focusing on the source of credibility that allowed these notes to survive periods of crisis, in this chapter I have moved beyond, and called into question, "functionalist" accounts of the relationship between law and the economy. Law played a profound role in making these local currencies possible. Law was not, then, merely a "fetter" that through restrictive legislation limited banks to a maximum of six partners, forcing commercial interests to find ways round this legislation by spontaneously creating a currency of their own. There was nothing spontaneous about country bankers' notes. A promise to pay underpinned these notes and was enforceable by the courts, while each note grew out of the intricate credit networks of local communities across England and Wales. Each community depended on their

banker for a medium of exchange. During moments of crisis, they changed places, with the banker becoming dependent on the collective support furnished by the local community.

This support required that the community make public their collective commitment to sustain the bank. Communities did so by covering the bank's debts. Regardless of the precise forms taken by these collective commitments, they all used law to shift and adapt contractual relations. Frequently, the contractual modification included placing promises to pay on hold. Through public declarations in Liverpool, Newcastle, Bristol and a long list of other towns, bill or note holders exercised forbearance at the request of local representatives. Although the note holder could cash that note on demand, and the bill holder could cash the bill at maturity, by choosing not to do so, the holders of these alternative currencies extended a form of credit to bankers otherwise bound by the promise to pay on the bill or note.

On occasions, collective forbearance was accompanied by the creation of institutions designed to collectivize losses should they result. The response of the Liverpool Corporation to the crisis of 1793 stands out as the most institutionalized answer to the threat this crisis posed to the city's bankers and means of exchange. The Liverpool Corporation obtained an Act of Parliament that authorized the creation of a paper currency, as well as the committees and offices needed to facilitate the circulation of this currency. Through the creation of this paper currency, the Liverpool Corporation re-worked the contractual promises to pay that the city's economy depended upon. As prices fell promises to pay looked less and less credible. The city responded by replacing one set of promises (on the bills of

exchange drawn by Liverpool merchants and endorsed by the city's bankers), with an alternative set of promises (on the notes issued by the Corporation), made credible by a third set of promises (the tax liabilities of the local population). The response and level of institutionalization in Liverpool in 1793 was unique. Other less institutionalized responses stand out from elsewhere. These responses also collectivized losses, though the action taken was less formal in that it did not call for an Act of Parliament and did not use tax revenues as collateral. Yet when local communities asked local gentry and merchants to guarantee the notes issued by local bankers, potential losses were again collectivized and contractual commitments rewritten.

As communities searched for and found ways of maintaining their currencies, what is striking about these responses – collective forbearance, community guarantees, and the creation of local authority backed paper money – is the range of options made possible by the legal regime. Law's role was not solely as a fetter, standing in the way of the expansion of the economy and the commercial classes. Rather, making possible, and then rendering sustainable, both country bankers' notes and bills of exchange as currency was law, in particular the malleable legal regime provided by contract.

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This chapter has described the reciprocal relations between banker and community. Communities needed the means of exchange provided by their banker. Conversely, and especially during times of crisis, the banker needed the help of the wider

community to support this means of exchange. Yet communities and their elites became vulnerable when they extended assistance to their local banker. To illustrate this vulnerability, consider the events in Newcastle during the crisis of 1816.

In 1816, all four of the country banks in Newcastle found themselves in a state of discredit and run on each of them soon commenced. To reassure the bank's creditors, one of the typical responses documented in this chapter was set in motion. A number of "respectable inhabitants" from the town and neighbourhood publicly declared their willingness to not only take the notes of the four bankers in payment for debts owed, but to guarantee the ultimate payment of the notes in gold coin. One of the "respectable inhabitants" who lent his signature to the public declaration of confidence in the bankers was the timber merchant and contemporary monetary theorists Thomas Joplin.<sup>229</sup>

Joplin was acutely aware of the dilemmas and dangers involved in making a pledge of this nature. The pledge, as Joplin recognized, could easily ruin those who gave it should any of the banks fail. A bank had, for instance, failed in the northeast of England a few years before paying only 4s. in the pound to its creditors. If others had guaranteed the bank's debts, those providing the guarantee would have been liable for the rest.<sup>230</sup> Surely, Joplin reflected, there must be an alternative to small

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<sup>229</sup> For a consideration of Joplin's contribution to nineteenth century monetary theory, see P. D O'BRIEN, THOMAS JOPLIN AND CLASSICAL MACROECONOMICS: A REAPPRAISAL OF CLASSICAL MONETARY THOUGHT (1993).

<sup>230</sup> As Joplin noted with respect to the public guarantees of 1816,

*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. Within these few years, pledges of this kind were repeatedly issued in favour of the Durham, Stockton, and Sunderland*

banks of only a handful of partners, dependent during hard times on the “respectable” and “propertied” from the local community, “blindly entering into an obligation” to support the credit of the bank.

Joplin’s reflections soon led him to a possible solution: “it would be better, for each party [pledging to support the bank], to become surety for his own Bankers, for a specific sum, not only in periods of difficulty, but at all times.”<sup>231</sup> In this solution, the parties would offer to guarantee the debts of otherwise independent bankers on a permanent basis, providing the foundation for a further possibility,

*Such an idea being once started, it was only necessary to go a step further, and imagine that these parties, instead of guaranteeing another Bank, should pay up a capital, and form a Bank of their own, to be managed by such a Committee, in order to arrive at the notion of a Joint Stock Banking Company*  
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Guaranteeing the debts of a banker during moments of crisis placed those providing surety at considerable risk without offering them any direct and formal control over the activities of the banker during “normal” times. The solution imagined by Joplin

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*Banks, all of whom ultimately failed. As, however, they were not attended with any serious consequences, it is probable that the Banks did not stop payment immediately when they were issued, or perhaps the public might have overlooked the obligations contracted, and, from inadvertency, not have called upon the parties to redeem the pledge they had given, THOMAS JOPLIN, AN ESSAY ON THE GENERAL PRINCIPLES AND PRESENT PRACTICE OF BANKING 3-4 (1827).*

That is, when some of the banks in the northeast of England did collapse the banks creditors appear to have overlooked the obligations contracted.

<sup>231</sup> THOMAS JOPLIN, AN ANALYSIS AND HISTORY OF THE CURRENCY QUESTION 2 (1832).

<sup>232</sup> *Id.*, 3. W. C. E. HARTLEY brought this reference to my attention in his book, BANKING IN YORKSHIRE 39 (1975).

was for those guaranteeing the debt of the banker to unite their credit together on a permanent basis by forming a joint stock bank. The legislation in 1826 opened the doors to allow joint stock banks.<sup>233</sup> Chapter III takes up the story of these first joint stock banks, their interactions with the Bank of England, and the consequences that followed for the creation of money in England and Wales.

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<sup>233</sup> 7 Geo. IV c. 46 (1826) [Country Bankers Act].

### III

#### **BARGAINING WITH “OCTOPUS TENTACLES”: THE BANK OF ENGLAND’S BRANCHES AND THE FIRST JOINT STOCK BANKS, 1826-1844**

In the late 1820s, the Bank of England believed that it faced a problem in its management of the gold standard monetary regime re-instated in 1821.<sup>234</sup> This regime required the convertibility of paper money into gold coin at the bearers’ request. As described in Chapter II, country bankers across England and Wales issued paper money alongside the Bank of England and, after 1826, provincial joint stock banks did so too.<sup>235</sup> According to the Bank of England, the problem it faced was that, should protecting the gold standard require reducing the quantity of paper money in circulation, there was no guarantee of provincial banks falling into line quickly enough. To control these “independent” issues and smooth the workings of the gold standard, in the early 1830s the Bank of England innovated and came up with “circulation accounts” through which it offered favoured provincial joint stock

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<sup>234</sup> 59 Geo. III c. 49 (1819) [Resumption of Cash Payments, etc Act]. This statute came into effect in 1821.

<sup>235</sup> The legislation of 1826 prohibited joint stock banks outside of London from issuing notes payable on demand in London (7 Geo. IV c. 46 (1826) [Country Bankers Act], section II). Consequently, the value of demand notes issued by provincial joint stock banks was not initially large, standing at just over £1.3 million in December 1833 (by contrast, the note issue of banks of six partners or less in December 1833 was valued at just over £8.8 million). The number of joint stock banks formed before 1833 was also not large (38 before the end of 1833). Legislation in 1833 (3 & 4 Will. IV c. 83 (1833) [Bank Notes Act]) repealed the prohibition on joint stock banks issuing demand notes payable in London. Thereafter, the number of joint stock banks increased rapidly. Around 79 joint stock banks appeared in 1834-1836. The note issue of joint stock banks increased accordingly, reaching a value of £4.2 million in December 1836. By contrast, the value of the note issue of banks with less than six partners in December 1836 was £7.7 million. The figures on the value of the note issue of private banks and joint stock banks are from the *Report from the Select Committee on Banks of Issue*, BRITISH PARLIAMENTARY PAPERS (1840) (602) IV at Appendix 2. The figures on the number of joint stock banks are from THOMAS, *supra* note 10, Appendix M. For commentary on the problems joint stock banks faced before 1833, see THOMAS, *supra* note 10, at 180-181.

banks cheap access to Bank of England notes in return for these banks giving up their own note issue. By, as one contemporary put it, stretching its “octopus tentacles”<sup>236</sup> through its new network of branches,<sup>237</sup> the Bank’s directors aimed at “monopolizing to themselves the circulation of the country”<sup>238</sup> by replacing local notes with those of the Bank of England. Their hope was that by monopolizing the circulation, they would ease the burden they faced managing the convertibility of paper money into gold coin.

The use of circulation accounts as a means of managing the gold standard is puzzling, however. In return for giving up their note issue and circulating only Bank of England notes, the provincial bank discounted bills of exchange at the their local Bank of England branch at below the London discount rate up to a set maximum. Agreements of this sort both spread Bank of England notes at the expense of “independent” notes, and gave the Bank some influence over the discounting habits of the new provincial joint stock banks. By placing boundaries around the credit creating capacity of joint stock banks, the Bank of England’s directors hoped to enhance the responsiveness of the monetary system to changes in the state of the foreign exchanges to safeguard the convertibility of bank notes into gold coin. Although the circulation accounts did place boundaries around the capacity of

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<sup>236</sup> The Birmingham banker and MP, Thomas Attwood, coined the phrase. See THOMAS ATTWOOD AND JOHN SINCLAIR, *supra* note 4, at 55-58.

<sup>237</sup> Section 15 of 7 Geo. IV c. 46 (1826) [Country Bankers Act], empowered the Bank of England to set up branches. Between 1826 and 1844, the Bank of England opened thirteen branches, mostly in key commercial centres across England and Wales. Branches were opened in Gloucester, Manchester and Swansea (1826), Birmingham, Liverpool, Bristol, Leeds and Exeter (1827), Newcastle (1828), and Hull and Norwich (1829), see ZIEGLER, *supra* note 25, at 7.

<sup>238</sup> CLAPHAM, *supra* note 126, at 114, quoting C. S. Forster, debate on the Bank Charter Act, HANSARD, HC VOL. 18, COL. 203 (31 May 1833).

provincial joint stock banks to create their own notes, the problem was that these same accounts also guaranteed the contracting bank access to a cheap source of credit whenever that bank wanted it. On those occasions when the Bank of England wanted to protect the gold standard by curtailing the creation of new money and credit, it was conceivable that its commitment to discount bills for those provincial banks with a circulation account might prevent it from doing so.

The puzzle, then, is that on exactly those occasions when the Bank of England needed to restrict the creation of credit, the circulation accounts compelled the Bank's branches to do the opposite. This is what happened in 1836 when the foreign exchanges "turned against Britain." The Bank of England tried to end the credit boom of the previous three years by raising its rate of discount. But the Bank had tied its hands in the provinces. As the *Circular to Bankers* observed in late July 1836,

*they [the directors of the Bank of England] raise the value of money to the London merchants to four and a half percent. while they continue to lend to non-note-issuing bankers in the country at three per cent; and thus on the one hand they propose to put more money into circulation in districts where the prices of manufactured goods and the raw materials of manufacturers may be raised or affected in price by money lent at low interest; while on the other they propose in London ... to restrict accommodation and render money difficult to be obtained.*<sup>239</sup>

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<sup>239</sup> CIRCULAR TO BANKERS, 29 July 1836, at 13.

It was “not in the power of the bank” to cancel its arrangement with banks outside of London “till the expiration of the time for which the agreement was concluded,” leaving the Bank with little choice but to continue with this “inconsistent course of ... proceeding.”<sup>240</sup>

How are we then to account for the expansion of credit through contractual arrangements that were intended to have given the monetary authorities greater control over the currency and the creation of bills of exchange? Towards addressing this puzzle, let us start with a watershed event in the period dealt with in this chapter – the legislation of 1826 that permitted people to form joint stock banks, that is, banks of any number of partners.<sup>241</sup> A great deal of talk about “freedom” surrounded this piece of legislation. Those in favour of joint stock banking believed that the restrictions preventing people from forming banks with an unlimited number of partners were an assault on their “commercial freedom.” As one contemporary campaigner in favour of an end to restrictions on joint stock companies put it, “Are we now, in this age of civil liberty, to be deprived of commercial freedom? Are the people of small capitals to be restrained from making them productive by uniting to trade as a body?”<sup>242</sup> Many of the interest groups behind the reform argued that the Act of 1826 freed banking from unnecessary and counterproductive legislative

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<sup>240</sup> *Id.*, 13.

<sup>241</sup> 7 Geo. IV c. 46 (1826) [Country Bankers Act].

<sup>242</sup> Bishop C. Hunt, *The Joint-Stock Company in England, 1800-1825*, 43(1) THE JOURNAL OF POLITICAL ECONOMY 1, 7 (1935) quoting [Philopatris], OBSERVATIONS ON PUBLIC INSTITUTIONS, MONOPOLIES AND JOINT STOCK COMPANIES (1807).

fetters, and represented a success for those hostile towards the Bank of England's monopoly.<sup>243</sup>

Yet the rhetoric of freedom was not the sole preserve of the proponents of joint stock banking. Those against "corporate privileges" stressed the artificial nature of joint stock entities, contrasting them with the enterprise of individuals not aided by legislative advantages. As the lawyer, John George, argued,

*The Joint Stock Company is, in substance, saying – 'We, by means of our great capital, shall be able to supply you with milk, or garden stuff, or fish, at a lower price than the ordinary milkman, market gardener, or fishmonger can afford them to you for. But from our very numbers we are exposed to some natural and necessary inconveniences in the bringing of actions, which we will thank you to remove, in order that we, who are a giant, may the more successfully oppose and drive out of the market the common tradesman, the little isolated dealer, who is working to support himself and his family by his exertions.'*<sup>244</sup>

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<sup>243</sup> As one commentator in an article entitled *Hints by way of Warning, on the Legal, Practical, and Mercantile Difficulties, attending the foundation and management of Joint Stock Banks* 20 (39) WESTMINSTER REVIEW 58, 71 (1834) argued in 1834 with respect to corporate privileges in general

*whatever facilities are now granted by charter or by Act of Parliament ought to be a matter of common right, upon the principle of Laissez-nous faire. Whether a person should embark all his capital in one enterprise or more, as an individual, or in one of these companies, should be a matter left to his own discretion.*

<sup>244</sup> JAMES TAYLOR, *CREATING CAPITALISM: JOINT-STOCK ENTERPRISE IN BRITISH POLITICS AND CULTURE, 1800-1870*, 45 (2006) quoting JOHN GEORGE, *A VIEW OF THE EXISTING LAW AFFECTING UNINCORPORATED COMPANIES* 73 (1825).

To the list of milkman, market gardener and fishmonger, George might have added banker. George's point was that large partnerships, that is, joint stock companies, tended to grow so large that to operate effectively they needed special privileges, such as the right to sue and be sued in the name of a public officer. Smaller partnerships, such as the banks of six partners or less explored in Chapter II, needed no such special benefits. The problem as George saw it was that affording these benefits to joint stock companies threatened the freedom of the individual trader.<sup>245</sup>

Both sides presented their case in terms of freedom, either from restrictions on the number of partners, or from rivals with unfair advantages. Even the circulation accounts between the Bank of England and select joint stock banks reflect, on one reading, "freedom of contract," understood as the unfettered freedom of the joint stock banks and the Bank of England to contract as they saw fit. The joint stock banks got cheap credit. The Bank of England got control over paper money. Both sides satisfied their individual preferences through exercising their freedom.

The concern in this chapter with all of this talk about freedom, however, is that it does not help us resolve the second puzzle addressed by this dissertation. There is a danger in either seeing law as a means of ordering people by compelling or prohibiting conduct through legislative fetters, or as marginal force easily dispensed with after liberating people from these prohibitions through permissive legislation.

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<sup>245</sup> As a broker stressed in 1825,

*it should be a leading principle with Parliament, never to give sanction to any plan, by which numerous bodies of men propose to carry on any trade or business, which it is in the power of individuals to carry on; because every plan of that kind operates as a direct injury to the little trader and leads to monopoly and extortion,* in TAYLOR, *supra* note 244, at 45, quoting from WEEKLY DISPATCH,, 20 March 1825).

The body of criminal law does direct human conduct through rules that compel or forbid, and it is tempting to view all law in this light. Through the lens of compulsion and prohibition, for example, law's significance with respect to banking in 1826 was the removal of a clear prohibition, a statute forbidding banks of any number of partners. The legislation of 1826 was vague, however, in the sense that it failed to tell bankers what to do or not to do. It liberalized banking, but without any further provisions directing the conduct of bankers, or compelling the creation of one kind of banking over another. Without such explicit directives, it is tempting to view law's role as marginal until further legislation in the 1840s.

Moreover, an interpretation that views law as either prohibiting conduct or as a source of liberation from such fetters, runs the danger of encouraging a functionalist view of the legal regime's role in the 1830s. In a sense, it may be that the legal regime before 1826 served as a fetter preventing the banking system from responding to the needs of a growing commercial class. This class then responded to these fetters by agitating for and eventually achieving legislation that allowed them to establish the type of banks that served their interests. But if we follow Duncan Kennedy and define freedom as "doing or getting what one wants,"<sup>246</sup> then viewing the legislation of 1826 through the lens of freedom misses too much.

Although the legislation of 1826 made joint stock banking possible in the provinces, the interests behind these new banks could not do anything or get everything they wanted. The circulation accounts are a case in point, something I demonstrate in this chapter. Although from one perspective the circulation accounts represent "freedom

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<sup>246</sup> Duncan Kennedy, *The Stakes of Law, or Hale and Foucault!* 15(4) *LEGAL STUD. F.* 327, 328 (1991).

of contract” and the satisfaction of preferences, in reality they did not always look so satisfying. The joint stock banks lost their note issue and the Bank of England endangered the gold standard. And we today are left with a puzzle: why did the Bank of England endanger the gold standard by offering joint stock banks an alternative source of cheap credit to compensate these new banks for the notes they gave up?

Perhaps, then, there is more to the story besides the removal of restrictions by liberalizing legislation. Perhaps law was significant beyond sometimes responding to, at other times fettering, the commercial “needs” of interest groups. And perhaps by building on a different view of law, we can address the puzzle explored in this chapter: in this “liberalized” and “free” banking environment, why did the Bank of England offer provincial joint stock banks cheap credit?

As a start to answering this puzzle, this chapter adopts a different view of law. Not all conceptions of law follow an image of the criminal law based on prohibition and compulsion, and the alternative to compulsion and prohibition is not a legal vacuum. The non-directive institutions of private law, such as property and contract, provide a further alternative. These institutions provide “the rules of the game” within and through which people pursue objectives.<sup>247</sup> As they pursue their objectives, they do not have unlimited freedom. Rather, this freedom is qualifying by the freedom of others, such as the Bank of England, London bill brokers, and manufacturers in search of credit, to take three of the most important groups that joint stock banks entered into relations with in the 1830s. The conflicts between the first joint stock

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<sup>247</sup> *Id.*, 357.

banks and these groups prevented the parties from getting everything they wanted. All were forced, or “coerced,” to accept something less.<sup>248</sup>

The extent to which some can get more of what they want, while guarding against the impact of the choices made by their opponents, depends on how well endowed they are by institutions like property and contract.<sup>249</sup> This chapter focuses on the advantages that the combined property of their shareholders, or proprietors, conferred onto the first joint stock banks, wealth that these banks then used in the 1830s to bargain with, or “coerce,” the Bank of England. The significance of the legislation of 1826, then, was not so much that it “freed” interest groups from unnecessary legislative fetters, but rather that it allowed individuals to combine their capital in a single entity, transforming thereby the property relations that shaped the outcome of the bargaining between those responsible for the creation of money and credit in the 1830s. As this chapter demonstrates, it is by focusing on these new bargaining powers that we stand the best chance of solving the puzzle affecting the Bank of England’s circulation accounts.

Part A of this Chapter describes the theoretical underpinnings of the gold standard that the directors of the Bank of England were steeped in from the 1820s onwards. Part B turns to how the circulation accounts worked. The Bank of England’s use of its circulation accounts is puzzling because through them joint stock banks received

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<sup>248</sup> See R. L. Hale, *Bargaining, Duress, and Economic Liberty*, 43 COLUM. L. REV. 603 (1943), and R. L. Hale, *Coercion and distribution in a supposedly noncoercive state*, 38 POLITICAL SCIENCE QUARTERLY, 470 (1923). For an introduction to Hale’s work, see Kennedy, *supra* note 246 and Warren J. Samuels, *The economy as a system of power and its legal basis: the legal economics of Robert Lee Hale*, 27 U. MIAMI L. REV. 261 (1973).

<sup>249</sup> Samuels *supra*, note 248, at 305.

privileged access to credit despite the adverse impact these arrangements had on the Bank's management of the gold standard. Addressing this puzzle grapples with the factors that shaped the bargaining powers of the Bank of England and the joint stock banks. As Part C explores, joint stock banks turned to London bill brokers to obtain finance independent of the Bank of England. To explain why London bill brokers discounted liberally for joint stock banks, in Part D this chapter turns to the tensions undermining the Bank of England in the mid 1830s, and in Part E considers the constitution of the early joint stock banks.

Provided provincial joint stock banks maintained the backing of their proprietors, London bill brokers happily discounted bills carrying the endorsements of these banks because that meant the bill was guaranteed by the unlimited liability of the banks community of shareholders, or co-partners. As long as this faucet of cheap finance flowed, joint stock banks backed by a large body of proprietors were less concerned about maintaining a circulation account with their local Bank of England branch. To persuade these banks to stop issuing their own notes, the Bank had to offer something more enticing to bring joint stock banks to the table.

As Part F explains, the backing of the proprietors of the first joint stock banks made the debt of the bank credible. Conversely, if a joint stock bank lost the backing of its proprietors, it lost much of its bargaining power. Maintaining this backing was not straightforward. The proprietors upon whom the credibility of the first joint stock banks rested, were not a homogenous group. Although all had ties to the same town or region, some remained relatively passive investors, others became depositors, many borrowed from the bank they owned, while a select group took over the

management of their bank. The organisation, or constitution, of the bank through its deed of settlement determined the role played by these groups.<sup>250</sup> It also influenced the degree to which the bank took on debt relative to its assets, the property of its proprietors. Joint stock banks that managed the tensions between their proprietors successfully maintained their bargaining position against the Bank of England, a point Part G demonstrates by referring to the Manchester and Liverpool District Bank. But where a joint stock bank failed to mediate these tensions successfully, its bargaining position vis-à-vis the Bank of England would collapse, as shown by the example of the Northern and Central Bank of England, also taken up in Part G.

#### **A. The Foreign Exchanges, Convertibility, and the Country Note Issue**

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<sup>250</sup> T. L. ALBORN, *CONCEIVING COMPANIES: JOINT-STOCK POLITICS IN VICTORIAN ENGLAND* (1998), describes the joint stock banks of the period 1826 to 1836 as “local republics” of shareholders. Pearson, in his study of the highly personalized local business networks that shared risk and pooled resources in the insurance industry of Leeds, Liverpool, and Manchester, considers the legal and institutional arrangements supporting these “local republics” or, to use Pearson’s phrase, “shareholder democracies.” Pearson in particular stresses the “associational conventions” provided by “deeds of partnership, constitutions, and by-laws” through which early joint stock companies operated. This chapter follows Alborn and Pearson by considering the role played by the deed of settlement in mediating the relations between the members of local communities who formed the first joint stock banks. The quotations are from Robin Pearson and David Richardson, *Business Networking in the Industrial Revolution*, 54(4) *ECONOMIC HISTORY REVIEW* 657, 660 (2001). See also Robin Pearson, *Shareholder Democracies? English Stock Companies and the Politics of Corporate Governance during the Industrial Revolution*, 117 *ENGLISH HISTORICAL REVIEW* 840 (2002). The work of Alborn and Pearson contains much in common with the work of Ireland and others on the legal conceptualization of early nineteenth century companies. On the changing relationship between the shareholders and the company they owned during the nineteenth century, see Paddy Ireland, Ian Grigg-Spall and Dave Kelly, *The Conceptual Foundations of Modern Company Law*, 14(1) *JOURNAL OF LAW AND SOCIETY* 149 (1987). As Ireland et al show, neither popular opinion nor legal treatises at the time identified the first joint stock companies, despite their often large body of shareholders, as separate legal entities distinct from their shareholders. The shareholders were, when aggregated together, associated with the company, and the company was always associated with its shareholders. Contemporaries understood a company as “a collection of many individuals united into one body,” “a “they” rather than an “it,”” Paddy Ireland, *Property and Contract in Contemporary Corporate Theory*, 23(3) *LEGAL STUDIES* 453, 457 (2003).

The theory<sup>251</sup> behind the operation of the gold standard owes much to David Hume.<sup>252</sup> Working under the assumption that gold is the only money, Hume's model tells us that when gold flows into a country, the money supply increases, and that money finds its way into the pockets of the general population who then spend more on goods and services. Following this increase in demand, goods and services increase in price. As these goods and services increase in price, they become less competitive relative to cheaper goods and services elsewhere in the world that have not seen the same price increases. The inflow of gold that led to an increase in prices will then reverse itself as gold flows overseas to take advantage of the cheaper goods and services found there. Domestic prices then start to decline before the whole process repeats. Hume's conclusion is that this monetary system based on gold self-adjusts automatically provided governments do not meddle in the flows of gold that settle the balance of payments between countries.

Matters become more complex when paper money is introduced into the model. For the theory to continue to apply in this context, the paper money issued by, say, the central bank has to increase and contract in proportion to the flows of gold into and out of the country. One device for holding in check the creation of paper money is "fiduciary money," paper money convertible into gold coin on demand. Central banks can create as much paper money as they please, provided they always stand ready to convert that paper money into gold coin at the bearers' request. If gold

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<sup>251</sup> On the theory outlined in this section, see ELMER WOOD, *ENGLISH THEORIES OF CENTRAL BANK CONTROL, 1819-1858* (1939) and COLLINS, *supra*, note 13, at 123-166.

<sup>252</sup> See DAVID HUME, *ESSAYS, MORAL, POLITICAL AND LITERARY* (1752), Book II, Essay V, *On the Balance of Trade*. The theory summarized by Hume influenced the Bullion Report that considered the suspension of convertibility during the Napoleonic Wars, see EDWIN CANNAN, *THE PAPER POUND, 1797-1821: A REPRINT OF THE BULLION REPORT* (1925); and David Ricardo, *The High Price of Bullion, 1810-11* in *THE WORKS AND CORRESPONDENCE OF DAVID RICARDO, VOLUME III* (Piero Scraffa ed., 2005). For a commentary on David Hume's ideas on money, see DOUGLAS VICKERS, *STUDIES IN THE THEORY OF MONEY, 1690-1776* (1968), Chapter 11.

starts to flow overseas because domestic prices are internationally uncompetitive, the central bank must somehow contract the circulation of its own notes, or find too many of its notes in circulation relative to its reserve of gold.

In 1820s Britain, many influential contemporaries argued that there was an additional problem. The Bank of England, the largest bank at that time and what we today call a central bank, was not the only issuer of paper notes. As Chapter II explored, before 1826 country banks of six partners or less also issued paper notes.<sup>253</sup> After 1826, they continued to do so alongside banks of any number of partners, known as joint stock banks. The paper notes issued by both the country banks and the joint stock banks were convertible into Bank of England notes or gold coin. To maintain the convertibility of their notes, country banks and joint stock banks formed close ties with bankers in London who had access to gold coin and Bank of England notes. In theory, then, the note issue of provincial bankers could not expand out of line with monetary conditions in London. Nonetheless, according to those later known collectively as the “Currency School,”<sup>254</sup> a problem remained.

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<sup>253</sup> See PRESSNELL, *supra* note 23.

<sup>254</sup> The Currency School refers to the group of writers in the late 1830s and early 1840s who sought a means of ensuring that a paper currency behaved in the manner called for by Hume’s model. They argued for a mixed currency of paper and gold to vary in accordance with flows of gold into and out of Britain, but did not believe that convertibility alone was a sufficient means of guaranteeing against an over issue of paper money. Their remedy, that restricted the capacity of the Bank of England and the country banks to create paper money independent of gold backing, gained Parliamentary approval in Peel’s Act of 1844. “Currency School” refers to those thinkers who conceptualized Peel’s Act in the late 1830s and early 1840s, though writers in the 1820s and early 1830s expressed similar views without proposing the same reform. The same reform was proposed, however, in HENRY DRUMMOND, *ELEMENTARY PROPOSITIONS ON THE CURRENCY* (1826).

In the 1840s, the Banking School arose in opposition to the Currency School. While writers associated with the Currency School believed that a central bank could control the quantity of money, and that it was imperative that it do so under Hume’s model, those writers grouped under the heading “Banking School” believed that a central bank could not and should not try to control the quantity of money. The Banking School were committed to the gold standard just like the Currency School, but unlike the Currency School believed that convertibility alone was sufficient to prevent an over issue of paper notes. They supported this position by arguing that bankers issued their notes in response to demand from the public (i.e., the “needs of trade”), and the public borrowed to pursue ventures they hoped would be profitable. As the borrowed notes then circulated, the option belonging to each note

As summarized by the economic historian Jacob Viner, the problem identified by the Currency School was “that the country banks could expand their note issue relatively to the Bank of England note circulation for a long enough period to create difficulties, without being adequately checked by the resultant adverse balance of payments with London.”<sup>255</sup>

In the late 1820s, the Bank of England director, and soon to be Governor, Horsely Palmer,<sup>256</sup> adopted a perspective of the monetary system comporting with much of the thinking later associated with the Currency School. Palmer wanted the currency regulated by inflows and outflows of gold as in Hume’s model. But Palmer was also conscious of the failure of the gold standard to operate smoothly in the years after 1821. In a circular dated 1827 sent to country bankers throughout England and Wales, Palmer explained,

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holder of returning the note to the bank of issue for conversion into gold coin prevented the development of an excess circulation. Hence, according to the Banking School, and in opposition to the view of the Currency School, country bankers’ notes did not cause high prices because note holders converted any excess notes into gold.

For an overview of the Currency-Banking debate, see Marion R Daugherty, *The Currency-Banking Controversy* 9 SOUTHERN ECONOMIC JOURNAL 140 (1942). For a summary of the ideas of the key writers associated with each school, see WOOD, *supra* note 251, at 28-43. Perry Mehrling provides an analysis that connects the Banking School view to modern ideas about the monetary system, see Perry Mehrling, *The Relevance to Modern Economics of the Banking School View* in MONEY IN MOTION: THE POST KEYNESIAN AND CIRCULATION APPROACHES 331(G. Deleplace and E. J. Nell eds., 1996).

<sup>255</sup> JACOB VINER, STUDIES IN THE THEORY OF INTERNATIONAL TRADE 235 (1955). For further discussion of the relationship between the monetary base and other forms of credit, see R. S. Sayers, who at one point in his article observes, “If it was right to assume that the superstructure of credit could not for very long get out of line with the supply of basic money, experience very quickly showed that the possible time-lag could be of devastating importance.” R. S. Sayers, *Monetary Thought and Monetary Policy in England*, 70 THE ECONOMIC JOURNAL 710, 718 (1960).

<sup>256</sup> Horsely Palmer [1779-1858] was the Governor of the Bank of England from 1830-1833 and the Deputy Governor of the Bank of England from 1828-1830. He became a Director of the Bank of England in 1811.

*under the present system of issues by the Bank of England, and the Country Bankers, there is the greatest difficulty, amounting almost to an impracticality, of so regulating the paper money currency as to attain the objects [of maintaining a paper currency convertible on demand]. The confliction of action and interest between these two descriptions of issues is the main difficulty; the fact being that, as prices expand, and even where the notes are returning upon the Bank for gold to be exported, the issues of the country bankers are extending, and are never attempted to be withdrawn, until the Bank makes an evident demonstration to the country of contracting from a continuance of the drain upon that establishment for gold.*<sup>257</sup>

Palmer believed that during periods when gold was moving overseas to take advantage of lower prices, country bankers expanded their note issue to fill the gap left in the domestic currency.<sup>258</sup> Prices then failed to drop as Hume's theory dictated they should. Moreover, an increase in paper notes in conjunction with gold moving overseas rendered vulnerable the commitment to convertibility. By the time the

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<sup>257</sup> See *The Bank of England and the Country Banks*, in the *MORNING CHRONICLE*, 30 May 1827. The Bank of England sent the circular reproduced by the *Morning Chronicle* to prominent country bankers, though the Bank of England denied having any knowledge of the circular. Although the circular was published anonymously, its authorship has been attributed to Horsely Palmer, see JAMES TAYLOR, *A LETTER TO HIS GRACE THE DUKE OF WELLINGTON ON THE CURRENCY* (1830); Marion R Daugherty, *The Currency-Banking Controversy* 9 *SOUTHERN ECONOMIC JOURNAL* 140, 144 (1942); and, Cottrell and Newton, *supra* note 11, at 87. Palmer's views on the currency in this circular are consistent with the views he expressed in 1832 before the Parliamentary inquiry into the Bank of England's Charter. See, for example, Horsely Palmer to *the Committee on Renewing the Charter of the Bank of England*, *BRITISH PARLIAMENTARY PAPERS* (1831-32) (722) VI at 28 (Q: 361).

<sup>258</sup> A. ANDREADES, *HISTORY OF THE BANK OF ENGLAND, 1640-1903*, 274 (4<sup>TH</sup> ED. 1966). Palmer and writers associated with the Currency School, such as Samuel Jones Loyd (later known as Lord Overstone), were clear that the circulations of the Bank of England and the country banks moved in opposite directions, and that a contraction in the Bank's issue led to an expansion in the issue of the country banks. As Elmer Wood has argued, there is no evidence from the 1820s and 1830s showing the accuracy of this view held by Palmer and Loyd (See WOOD, *supra* note 251, at 25 and 32). Regardless of the factual accuracy of the view held by Palmer and the Currency School, they nonetheless held the belief that the note issue of the country banks expanded because the Bank of England contracted its note issue. This belief then shaped the policy pursued by the Bank of England under Palmer, and the reforms proposed by the Currency School.

authorities in London responded to flows of gold overseas by contracting credit, Palmer feared that country bankers would have already expanded their note issue. Because country bankers kept their reserve in London, over time, they moved in the same direction as the Bank of England.<sup>259</sup> But Palmer and others believed in the short term they did not.<sup>260</sup> This “confliction of action and interest between these two descriptions of issues”<sup>261</sup> was, for Palmer, the root cause of financial panic in the 1820s and 1830s, and the main threat to the credibility of the commitment underpinning the gold standard.

Palmer and the directors of the Bank of England regarded maintaining the gold standard as sacrosanct. So too did those who later in the 1830s argued from the vantage point of the Currency School. When crises unfolded, both Bank of England officials and public figures associated with the Currency School, blamed reckless provincial bankers.<sup>262</sup> As a later section of this chapter explores, it was common in

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<sup>259</sup> See WOOD, *supra* note 251, especially at 23-7.

<sup>260</sup> CIRCULAR TO BANKERS (16 September 1836) captures this divergence between the Bank of England and those running businesses in England’s centres of commerce,

*the Bank had no such effect as we anticipated. We thought it [raising the Bank’s discount rate] sufficiently significant of approaching difficulty, but we must confess that it was not so regarded in the manufacturing districts: there, every individual engaged in large pecuniary transactions still continued to act under the influence prevalent in his particular circle; he looked singly and almost exclusively at the local circumstances of his neighbourhood, and gave but little attention to the proceedings of the Bank of England. When safe and profitable business is offered, it is in the nature of enterprising Englishmen to take it, and in that manner to promote the circulation that it creates.*

<sup>261</sup> *The Bank of England and the Country Banks*, *supra* note 257.

<sup>262</sup> See J. HORSELY PALMER, THE CAUSES AND CONSEQUENCES OF PRESSURE ON THE MONEY-MARKET WITH A STATEMENT OF THE ACTION OF THE BANK OF ENGLAND (1837) and SAMUEL JONES LOYD, REFLECTIONS ON THE CAUSES AND CONSEQUENCES OF PRESSURE ON THE MONEY MARKET (1837). Those associated with the Currency School tended to divide blame between the provincial joint stock banks and the Bank of England. They directed their criticism of the Bank of England at the so-called Palmer Rule. Horsely Palmer developed this rule to guide the Bank of England’s efforts at ensuring that the paper currency expanded and contracted in response to the foreign exchanges. The rule stated that when the foreign exchanges were at par, that is, when specie was neither imported nor exported, the securities held by the Bank of England, such as government debt and bills of exchange,

the 1830s for joint stock banks to lend recklessly. Yet the obligation on the Bank of England to maintain the gold standard also played its part in the crisis of 1836-37.

To see the relationship between the gold standard and crisis, it is worth recalling the reality of early nineteenth century credit relations explored in Chapter II. During periods when merchants, manufacturers, and bankers invested heavily in the expectation of future profits, they created credit in the form of bills of exchange and country bankers' notes that they hoped to pay off with the returns generated by their investments. If these expectations were not met, the debts created could only be sustained with additional credit. The manufacturers then turned to merchants, who in turn looked to their local banker. The local banker drew on his line of credit in London. But when all other provincial bankers did the same, the London bankers found themselves short, and called upon the Bank of England for accommodation.

Under a gold standard regime, when the foreign exchanges had turned against Britain, the Bank of England was, in theory, not supposed to lend. But if the Bank

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should be equal to two-thirds of the Bank's liabilities. Whether bullion was then imported or exported, the Bank should hold its securities constant and allow its liabilities to vary in accordance with in flows and out flows of specie. Currency School thinkers like Loyd came into conflict with the Bank of England over the operation in practice of the Palmer Rule. The main point of controversy concerned the meaning of "liabilities." The Currency School did not consider deposits to be a form of money making the Bank's paper notes its only liabilities. By contrast, the Bank of England's directors considered its liabilities to be both its notes and its deposits. When people exported specie overseas, the Bank of England found that those with claims on the Bank of England converted deposits into gold just as often as they converted the Bank's notes. Consequently, when people exported gold from Britain, the Bank's note issue did not contract to the same extent because some of the reduction in the Bank's liabilities fell on the deposits held by the public. Authors such as Loyd focused on the failure of the Bank's note issue to fall at the same rate as gold was leaving the country. The Currency School feared that there were too many notes in circulation relative to reserves of gold. In this situation, commentators such as Loyd reasoned that it was foolish for the Bank to keep its securities constant. Rather, the Bank should sell these securities until it had absorbed enough paper money to offset flows of gold overseas. Loyd had additional grounds for criticising the Bank because in practice the Bank failed to keep its securities constant, not because it sold securities, but because it purchased bills of exchange. The Bank did so partly because it was obliged to do so owing to its circulation accounts with provincial bankers. Palmer defended the actions of the Bank of England against Loyd's criticisms in J. HORSELY PALMER, REPLY TO THE REFLECTIONS OF MR SAMUEL JONES LOYD (1837). On the Palmer Rule in theory and its operation in practice, see R. C. O. MATTHEWS, A STUDY IN TRADE-CYCLE HISTORY: ECONOMIC FLUCTUATIONS IN GREAT BRITAIN, 1833-1842, 168-175 (1954).

refused to provide accommodation, bankers, merchants, and manufactures all collapsed. If the Bank did provide accommodation, even at increased cost, most London bankers borrowed what they could to meet the demand from other bankers and the merchants and manufacturers dependent on this additional credit. In this latter scenario, the Bank of England circulated more of its notes at a time when gold was leaving the country. The quantity of Bank of England notes increased without any corresponding increase in its gold reserve. Therefore, while one scenario led to widespread bankruptcy, the other left the Bank's commitment to convertibility looking weak, as was the case during the crisis of 1825-26.<sup>263</sup>

Reversing the 1819 decision to restore the gold standard would have freed the Bank of England from this dilemma. But the Bank of England was in favour of the gold standard, and so too was much elite opinion.<sup>264</sup> The alternative to abolishing the gold standard was to attempt to make it work in accordance with the dominant theory of the time drawn from David Hume. To make the gold standard work, the Bank of England under the leadership of Horsely Palmer believed that it had to control the creation of money, including country bankers' notes, and influence credit conditions outside of London.<sup>265</sup> The Bank's most innovative policy towards achieving these

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<sup>263</sup> In January 1825, the Bank of England's bullion reserve stood at £9.4 million. By November 1825, the reserve had fallen to £3 million and by December to £1.2 million. The figures are from THOMAS, *supra* note 10, at 54. The Bank of England suffered a similar drain of bullion during the crisis of 1836-37. Between January 1833 and December 1835, the Bank of England's reserve of gold did not fall below £6.7 million. In 1837, the average was just over £4 million but shot up again in 1838 to almost £9 million. The figures for the 1830s are from *Report from the Select Committee on Banks of Issue*, BRITISH PARLIAMENTARY PAPERS (1840) (602) IV, Appendix 24, at 261.

<sup>264</sup> See FRANK FETTER, *DEVELOPMENT OF BRITISH MONETARY ORTHODOXY* (1965).

<sup>265</sup> During his time as Governor of the Bank of England, Palmer was convinced that the Bank of England should have a monopoly over the creation of paper money in England and Wales. See Horsely Palmer to *the Committee on renewing the Charter of the Bank of England*, BRITISH PARLIAMENTARY PAPERS (1831-32) (722) VI at 35 (Q: 469) and at 39 (Q: 503); CLAPHAM *supra* note 126, at 114; J. K. Horsefield, *The Opinions of Horsely Palmer, Governor of the Bank of England, 1830-33*, 16 *ECONOMICA* 143, 150-52 (1949); and THE CIRCULAR TO BANKERS, 7 June 1833 at 372.

ends was through circulation accounts with provincial joint stock banks. It is to these circulation accounts that this chapter now turns.

## **B. The “octopus tentacles” Take Hold: The Three Percent Circulation Accounts**

In October 1834, the Manchester and Liverpool District Bank concluded an agreement for a circulation account with the Bank of England. It was not the first such agreement entered into by the Bank of England, but it was arguably the most generous yet. In return for ceasing the circulation of its own notes through its branches in Cheshire and the Potteries, the District received discounts from the Bank of England’s branches at Liverpool and Manchester at a fixed rate of 3%. By contrast, the Bank of England’s discount rate in London was 4%. The maximum amount the District could discount at any one time was £400,000, a sum that shocked the *Circular to Bankers* given the District’s note issue stood at around £120,000-£130,000. As the editorial in the *Circular* observed,

*[w]hatever the state of the money market, this sum they [the Bank of England] must continue to advance to the District Bank for, at least, one or two years to come, because in transactions of this nature it would be impossible to*

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On Palmer’s interest in having the Bank’s branch agent’s influence local credit conditions, see CLAPHAM *supra* note 126, at 118-9. Amongst those who supported the country banks, there was widespread fear over the Bank of England’s intentions. Consider, as an example, the view of the cloth merchant and financial journalist (and editor of the *Circular to Bankers* in the 1830s), Henry Burgess, who captured the fears of many country bankers when he observed, “The bank directors certainly intend to take the whole circulation of the country into their own hands. They receive and pay dividends and transfer money gratis, and they will certainly be resorted to by some amongst the country gentlemen for depositing without interest their surplus money,” in THE CIRCULAR TO BANKERS, 10 August 1827.

*withdraw an accommodation abruptly, according to the precise terms of the contract.*<sup>266</sup>

Although the Bank of England had persuaded the District to cease issuing its own notes, and could now exert some influence over the quality of the bills the District discounted,<sup>267</sup> the agreement placed a strain on the Bank's capacity to meet its obligations under the gold standard. The *Circular's* editorial board stated that the terms obtained by the District highlighted the "diminishes power which the Bank exercises over the gold currency of the realm." It explained that,

*the suppression of a comparatively small circulation by a method which at the same time has a tendency to increase the circulation of Bills of Exchange cannot have the slightest effect in bringing the entire currency of the kingdom more under the control of the Bank of England; it must indeed have a precisely contrary effect.*<sup>268</sup>

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<sup>266</sup> CIRCULAR TO BANKERS, 3 April 1835, at 290-1.

<sup>267</sup> See Appendix 1 to this dissertation for more on the Bank of England's eligibility rules on discounting bills at its branches.

<sup>268</sup> CIRCULAR TO BANKERS, 3 April 1835, at 290. *The Circular* was not alone in observing this tension. See THOMAS *supra* note 10, at 307-8; the evidence of James William Gilbart before the Parliamentary inquiry of 1837, *Report on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1837) (531) XIV at 114 (Q: 2055); COPPIETERS, *supra* note 42, at 99-100; and A MERCHANT, OBSERVATIONS ON THE CRISIS, 1836-37 (1837), arguing (at 20) that

*A mass of mercantile credit may ... be created in any locality, by Joint Stock Banks who do not issue notes of their own, but who command a certain amount of Bank of England paper, at a given rate of interest, by agreement with the Bank. For the time that these loans of notes are given (and they are given for extended periods), the Bank of England loses all control over the amount of her issues, and the Joint Stock Banks being irresponsible for the payment of the notes in Bullion, make the most of them possible, by discounts and facilities of various kinds, and as soon as the notes are returned they may be issued anew in the shape of fresh facilities.*

From the late 1820s to the mid 1830s, the District was not the only beneficiary of cheap credit from the Bank of England.<sup>269</sup> Walters, Voss & Co. from Swansea provides one of the earliest examples of a circulation account between the Bank of England and a provincial bank. In February 1829, the Bank of England wanted Walters, Voss & Co. to cease issuing its own notes. As an enticement towards making this acceptable to Walters, Voss & Co., the Bank granted “a Discount and Drawing Account for general purposes.” The account was limited to £10,000 worth of discounts at any one time. Yet whenever Walters, Voss & Co. needed access to Bank of England notes, they had a guaranteed £10,000 at their disposal at the Swansea branch, on the condition that Walters, Voss & Co. presented a sufficient amount of bills for discount that met the Bank’s standard of “legitimate.”<sup>270</sup>

Though the discount rate was no different to that available to the Bank’s other account holders, Walters, Voss & Co. of Swansea could discount £10,000 at any time. Later in 1829, the Bank hit upon a further innovation that, instead of applying a uniform rate of discount, made greater use of its ability to vary its discount rate. In December 1829, the Prime Minister and the Chancellor of the Exchequer granted the Bank of England permission to provide discount facilities at its branches at 1% below the Bank’s London rate of discount. A bank granted this privilege agreed, in return, to cease circulating its own notes.<sup>271</sup>

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<sup>269</sup> For more information on the Bank of England’s branches, and the circulation accounts entered into with provincial joint stock banks, see the references at *supra* note 25.

<sup>270</sup> Roberts, *supra* note 25, at 234-5. On the Bank of England’s standard of “legitimacy,” see Appendix 1 to this dissertation.

<sup>271</sup> CLAPHAM, *supra* note 126, at 140.

The first account of this type opened in January 1830 after the Bank reached an agreement with the Birmingham Banking Company.<sup>272</sup> With the Bank of England's London rate at 4% (it remained steady at that level from 1828 to 1835),<sup>273</sup> the newly formed Birmingham Banking Company could discount bills (either its own drafts or commercial bills) at 3% up to a maximum of £200,000. As part of the agreement, the Birmingham Banking Company promised not to issue any demand notes of its own. Instead, in return for the bills it discounted with the branch it received Bank of England notes, which it then lent out to customers at a higher rate.<sup>274</sup> Having reached an agreement with a major Birmingham bank, a largely identical deal followed in December 1831 with the Bank of Liverpool, which agreed not to circulate bills of exchange as currency. By the summer of 1838, the Bank of England had used its branches to arrange twenty-one contracts for circulation accounts with banks across England and Wales, though most agreements were with banks in Manchester, Liverpool, and Birmingham.<sup>275</sup>

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<sup>272</sup> See *Report on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1837-38) (626) VII, Appendix 8.

<sup>273</sup> See CLAPHAM, *supra* note 126, Appendix B at 429.

<sup>274</sup> The discount rate charged by provincial bankers at that time for almost all bills that came their way was 5% (Moss, *supra* note 25, at 12). The Birmingham Banking Company now had the option of either continuing to discount commercial bills at 5%, which it could then rediscount at the branch at 3%, or it could undercut its rivals by discounting below 5%, safe in the knowledge that it would still make a profit provided the discount rate it charged for commercial bills remained above 3%.

<sup>275</sup> See *Report on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1837-38) (626) VII, Appendix 8 at 123. The Bank of England's note issue shot up in Manchester, Liverpool, and Birmingham and their hinterlands. In 1829 the circulation of Bank of England notes in Lancashire (by far the largest concentration of its notes outside of London) was not much more than £500,000. By the late 1830s, it had increased to over £2million out of a total branch circulation of around £4million, ZIEGLER, *supra* note 25, at 27. The Bank of England's branch circulation also increased as a percentage of the Bank's total circulation during the 1830s, propelled largely by this growth in its Lancashire circulation. See *Report on Banks of Issue*, BRITISH PARLIAMENTARY PAPERS (1840) (602) IV, Appendix 16 at 106-246.

Why then did the Bank of England agree to arrangements that left it contractually obliged to meet the demand from provincial bankers for discounts at a reduced rate, even when the Bank wanted to contract the supply of currency? The Bank of England had a longer-term goal of monopolize the paper currency of the country in order to safeguard the gold standard, and that necessitated exerting some influence over the creation of credit outside of London. By contrast, joint stock banks outside of London wanted to retain their influence over local credit. That task was easier, and their profits higher, if they could access cheap credit in both good times and during a crisis. To an extent, then, each side had what the other side wanted. On the one hand, the joint stock banks controlled the local currencies that the Bank of England wanted abolished. And, more generally, they influenced the local credit conditions over which the Bank wanted to exert a greater degree of influence. On the other hand, the Bank of England's notes were the most credible in the country because the Bank was the government's biggest lender. As a result, the tax base of the British state ultimately backed the Bank's own liabilities, including its notes. The Bank of England, then, had the leeway to offer cheap credit in good times, and the resources to support other banks during a crisis, precisely the type of resources to which the joint stock banks wanted access.

It was the capacity of both sides to withhold what the other side wanted that ultimately shaped the outcome of the bargaining process between the Bank of England and the provincial joint stock banks in the 1830s. The key question is to what extent could the joint stock banks prosper without access to the credit facilities provided by the Bank of England. Answering this question calls for an account of the alternative source of credit joint stock banks tapped into to by-pass the Bank of

England. As I explore in this chapter, the attractiveness of this alternative source of credit ultimately depended on the property relations underpinning both Bank of England and the joint stock banks.

### **C. Rediscounting in the London Money Market as an Alternative to Bargaining with the Bank of England**

As Chapter II explained, prior to 1826 few banks in England and Wales had branches. Even after 1826 and the arrival of joint stock banks, most networks of branches confined their activities to the region surrounding the head office. The highly localized structure of English and Welsh banking meant banks, both private and joint stock, called upon the intermediary services of the London banks or bill brokers to transfer funds from regions and districts with surpluses to areas where capital was in short supply. Regions with an abundance of savings, like East Anglia, deposited sums in London with banks or, more often after 1830, bill brokers, which merchants, manufacturers, and bankers from capital hungry regions, like the Midlands, Yorkshire, or Lancashire, borrowed.

Bill rediscounting<sup>276</sup> in London allowed joint stock banks from industrial regions in the 1830s to procure the funds they needed to expand their lending beyond the paid-up capital of the bank's proprietors and the deposits left by savers. Joint stock banks discounted the bills presented to them by their customers using the banks existing capital or the deposits at its disposal. To continue discounting after the exhaustion of

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<sup>276</sup> For an overview of bill discounting and rediscounting, see Appendix 1 to this dissertation.

the bank's capital and deposits, the bank turned to the London money market. There, bill brokers rediscounted the bills joint stock banks from Yorkshire and Lancashire sent them, bills that the brokers purchased to satisfy the investment needs of their clients, often joint stock or private banks from agricultural regions.<sup>277</sup> In return for supplying bill brokers with bills, Yorkshire and Lancashire joint stock banks received cash, which they used to discount more bills, with the process then repeating itself.

The appearance of the Bank of England's network of branches after 1826 offered new sources of credit. Rather than calling upon London banks or bill brokers, provincial joint stock banks could now have a direct relationship with the Bank of England. The high credibility of the Bank of England's notes and its potential as a source of cheap credit due to its sheer size attracted bankers outside of London. Moreover, working with the Bank of England freed joint stock banks from dependency on the London banks and bill brokers for credit. But the Bank of England had its own interests not necessarily in tune with those of the provincial banks. If the Bank of England was going to concede benefits to the joint stock banks, in particular, access to Bank of England notes and cheap credit, joint stock banks had to offer something in return. What the Bank of England wanted was an

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<sup>277</sup> Simon Martin, a banker with the Norwich house of Gurney, Birkbeck & Martin, acknowledged in 1836 that his bank did not rediscount in London because it accumulated more money than it could invest locally. This excess money supplied the London money market with the funds to rediscount bills sent from manufacturing districts. See Simon Martin to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS, (1836) (591) IX at 145 (Q: 2349-2351). See also the evidence of John Amery, the general-manager of the Stoubridge and Kidderminster Banking Company, who disliked the practice of bill rediscounting, probably because his bank accumulated more cash than it had investment outlets locally, and so had little need to rediscount. See John Amery to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS, (1836) (591) IX at 36 (Q: 548-550) and 40 (Q: 641, 644).

end to the independent note issue orchestrated by joint stock banks and some influence over the quality of local credit.

Joint stock banks from regions like Lancashire had a choice to make between turning to credit from the Bank of England and credit from the London money market. If the credit offered by the Bank of England's local branch was significantly cheaper than that offered by bill brokers in London, the decision was relatively easy. The availability of cheap credit in London made the decision less straightforward.<sup>278</sup> In the mid 1830s, two factors came together to influence the price of credit and the choice facing joint stock banks like the District. First, the Bank of England felt pressure to lend because of the property relations structuring the choices open to the Bank. Second, it is again to the structure of property relations that we must look for an explanation of the widespread credibility of joint stock banks.

#### **D. Shareholders and Dividends at the Bank of England**

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<sup>278</sup> Banks were not in an either/or position. For instance, the first circulation accounts introduced by the Bank of England at its branches in Birmingham and Liverpool soon encountered what was, from the Bank of England's perspective, a problem. At these branches, the initial agreement was a 3% discount rate up to a fixed maximum of £200,000, in return for the termination of the circulation of both bills and notes as currency. Significantly, these agreements did not stipulate a fixed minimum. Consequently, when interest rates were low in London – below 3% – the contracting banks in Birmingham and Liverpool discounted bills with London bill brokers. Yet when the discount rate was high in London – above 3% – the branch found itself under pressure, as the contracting banks took up their maximum amount of discounts. If one of the aims behind these discounting arrangements with favoured provincial banks was to enhance the Bank of England's degree of control over the currency, then arbitrage by joint stock banks initially thwarted that aim. In August 1833, the Bank of Liverpool had £181,000 under discount, and by October of the same year, it had £231,000. The fluctuations in the Birmingham Banking Company's account were also extreme. It had a mere £28,000 under discount in August 1833. By October, the figure had leaped up to £143,000. The figures are from Moss, *supra* note 25, at 14. See Collins, *supra* note 25, table 6, for the average market discount rate in London between 1827 and 1844. See *Report on Bank Acts*, BRITISH PARLIAMENTARY PAPERS 463-4 (1857) (200) X at Q: 4876 for Overend Gurney's discount rate throughout the second quarter of the nineteenth century. The Bank of England responded to these arbitrage opportunities exploited by joint stock banks by requiring that a fixed minimum (usually £150,000) be under discount at all times. See also WOOD, *supra* note 251, at 100-101.

The Bank of England was unquestionably a “public” institution in the nineteenth century given its intimate relationship with the government, its monopoly over the creation of money in London, and its past and present privileges, manifested most dramatically in the limited liability protection enjoyed by its shareholders. Yet much of the historiography covering the nineteenth century monetary system refers to the Bank of England as a “private” institution.<sup>279</sup> The best explanation for this common mischaracterisation of the Bank of England is the emphasis placed on its pursuit of profits. More precisely, the Bank of England had shareholders and these shareholders, less they take their investment elsewhere, expected a consistently high dividend each year.

The tensions faced by the Bank of England in the 1830s grew out of its Janus-faced character.<sup>280</sup> The Bank had public obligations due to its close ties with the government, of which one of the most significant was its obligation to uphold the gold standard by guaranteeing the convertibility of its notes into gold coin on demand. Simultaneously, however, the Bank owed obligations to its shareholders, particularly to produce a consistent dividend. Life was not easy for the Bank of England’s directors in the 1830s because safeguarding one of these obligations frequently placed the other at risk.

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<sup>279</sup> See, for example, J. L. Broz and R. S. Grossman, *Paying for Privilege: the Political Economy of Bank of England Charters, 1694-1844*, 41(1) *EXPLORATIONS IN ECONOMIC HISTORY* 48, 49 (2004); and COLLINS, *supra* note 13, at 167.

<sup>280</sup> H. V. Bowen, *The Bank of England During the Long Eighteenth Century, 1694-1820*, in *THE BANK OF ENGLAND: MONEY, POWER AND INFLUENCE 1694-1994*, 1 (Richard Roberts and David Kynaston, eds., 1995).

Following the removal in 1833 of the East India Company's monopoly over trade with China, the Bank of England faced exactly this sort of dilemma.<sup>281</sup> To prepare for the increased competition it would now face, the East India Company elected to sell off assets. Since it did not immediately need all of the funds thereby raised, the East India Company deposited the surplus with the Bank of England and received a favourable rate of interest of between 2% and 3%.<sup>282</sup> To pay the interest owed on the funds deposited by East India Company, while still generating a profit to pay the dividend its shareholders expected, the Bank of England needed to make a return on its own investments sufficient to cover these expenses. The Bank identify London's bill brokers as an outlet for these funds and offered them loans at a rate of between 2 ½ % and 4%. To cover what they owed to the Bank of England the bill brokers in turn charged their clients, including most prominently provincial joint stock banks, a discount rate of between 2 ¾ % and 4 ¼ % between 1832 and 1836.<sup>283</sup> The key point is that with an excess of funds looking for an investment outlet, the cost of borrowing from the bill brokers in the London money market was low.<sup>284</sup>

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<sup>281</sup> Two further events from the same period were also significant. The first event saw the Trustee Savings Banks deposit £3 million at the Bank of England. The second event was the Emancipation Act of 1834 that freed West-Indian slaves. Under the terms of this Act, the owners of the slaves were to receive compensation from the government. To pay this compensation, the government directed the Bank of England to organize a loan. Those subscribing to the loan made their payment to the Bank of England. As these subscriptions accumulated, the Bank made them available to borrowers at 3 ½ %. Loans of this sort were available from the Bank of England from 5 August 1835 to 15 April 1836. See MATTHEWS, *supra* note 262, at 171-172.

<sup>282</sup> See MATTHEWS, *supra* note 262, at 171-172. For the figures, see KING, *supra* note 125, at 87-88.

<sup>283</sup> See figures referenced *supra* note 278.

<sup>284</sup> For contemporary references to the cheap money available in the London money market in the mid 1830s, see MANCHESTER CHAMBER OF COMMERCE, REPORT ON THE EFFECTS OF THE ADMINISTRATION OF THE BANK OF ENGLAND UPON THE COMMERCIAL AND MANUFACTURING INTERESTS OF THE COUNTRY 3-4 (1839) on the affect of the Bank's policy on the cost of money. See also J. B. SMITH, EFFECTS OF THE ADMINISTRATION OF THE BANK OF ENGLAND: REPLY TO THE LETTER OF SAMUEL JONES LOYD (1840).

Flooding the London money market with funds looking for a return was not, as one might expect, strictly in tension with the gold standard in the mid 1830s. Although the theory behind the gold standard required the Bank of England to curtail its note issue when gold was flowing out of Britain, when gold was flowing into Britain the reverse was true. With the foreign exchanges running in Britain's favour in 1833, in theory, the Bank of England was free to expand its note issue by increasing its lending.<sup>285</sup> There was a further factor to consider however. By lowering the cost of borrowing in London, the Bank of England created conditions favourable to joint stock banks in search of cheap credit. And since the joint stock banks could now obtain funds from bill brokers in London for around 3% with no strings attached, the attraction of borrowing from their local Bank of England branch under comparatively onerous terms and conditions was less compelling.

To keep the Bank of England's branches competitive, the cost of borrowing from these branches in industrial regions would have to fall. We can now start to see why the Bank of England offered the District a guaranteed amount of cheap credit in 1834. Without such advantageous terms, an agreement with the Bank of England was not compelling given the availability of funds from other sources in London. Yet from the Bank of England's perspective, once a circulation account was in place, the Bank was compelled to lend cheap credit over a period of time regardless of the state of Britain's balance of payments. Hence the puzzle pervading each circulation account: set up with the intention of helping the Bank of England manage the gold standard, their implementation in reality threatened to undermine this very objective.

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<sup>285</sup> MATTHEWS, *supra* note 262, at 172.

## E. Shareholders and their Joint Stock Banks

As this chapter explored in Part D, joint stock banks took advantage of cheap credit in London in part because the Bank of England was itself in search of a return on the funds it held as interest-bearing deposits. If the Bank failed to cover the cost of these deposits, it risked paying out a below average dividend to its shareholders. Yet this is only half the story. Creating an environment where low cost loans are available is one thing, being able to take advantage of the availability of this cheap money is quite another. Crucially, in the mid 1830s bill brokers in London were only too happy to lend money to provincial joint stock banks.

To understand the high regard the London bill brokers had for the debts of the first provincial joint stock banks in England and Wales, we must keep in view the property relations supporting each joint stock bank. Joint stock banks made money when rediscounting bills of exchange in the London money market because the rate charged to the original party discounting the bill in, say, Lancashire or Yorkshire was higher than the rediscount rate the bill brokers in London charged the joint stock banks.<sup>286</sup> The latter rate was generally lower because with the endorsement of a joint stock bank on the bill, the unlimited liability of the bank's wealthy and/or numerous

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<sup>286</sup> According to Moss, in the 1830s the discount rate charged by provincial bankers for almost all bills was 5% (Moss, *supra* note 25, at 12). Joint stock banks could expect to rediscount these bills in the London money market for between 2 ¾ % and 4 ¼ % between 1832 and 1836 (See *Report on Bank Acts*, BRITISH PARLIAMENTARY PAPERS (1857) (200) X at 463-4 (Q: 4876) for Overend Gurney's discount rate throughout this period), or for 3% from a Bank of England branch if the joint stock bank had a circulation account.

proprietors guaranteed the payment of the sum due on the bill.<sup>287</sup> As one contemporary described the benefits of joint stock banking,

*a Joint Stock Bank can hold out to the public ... the most UNQUESTIONABLE SECURITY for its liabilities of every kind. This security arises from its numerous body of partners, whose property guarantees to the creditors of the Bank, whether they be note holders or depositors [or the holders of re-discounted bills], an assurance of payment, which no private banking form can undertake ... [I]f some persons prefer to have the security of one, two, or three individuals for their deposits and bank notes, instead of 500, 700, or 1,000 individuals ... no one has a right to quarrel with their taste on this score ... But [...] there is no denying the extent of the security [of a joint stock bank] because the faithful return of the deposits is ensured by the guarantee fund*

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<sup>287</sup> A number of economic historians of banking during this period note the importance of the unlimited liability of the joint stock bank's shareholders to the credibility of the bank's debts. See Cottrell and Newton, *supra* note 11, at 106; COLLINS, *supra* note 13, at 98; MATTHEWS, *supra* note 262, at 196; KING, *supra* note 125, at 92-94; THOMAS, *supra* note 10, at 309-10; and WOOD, *supra* note 251, at 100 (footnote 61). By contrast, the original party discounting the bill in the provinces could expect London bill brokers to charge him a higher rate if he chose to buy pass his local joint stock bank because only he or, at most a handful of others, guaranteed the bill.

<sup>288</sup> ANON., AN EXPOSITION OF THE PRINCIPLES OF JOINT STOCK BANKING IN REFERENCE TO THE DISTRICT SYSTEM OF THE NORTHAMPTONSHIRE BANKING COMPANY 6 (1836). The manager of the Birmingham Banking Company, Paul Moon James, made a similar point before the 1836 Parliamentary inquiry into joint stock banking,

*if losses are incurred, the joint stock system enables the banking company to pass off those losses by calls on a greater number of proprietors, without stopping or exciting alarms in the community. Losses that have occurred to some joint stock banks would have shaken the credit of private banks,* Paul James Moon to the Committee on Joint Stock Banks, BRITISH PARLIAMENTARY PAPERS, (1836) (591) IX at 44 (Q:689).

One of the architects of joint stock banking, Thomas Joplin, made a similar point by reference to the Northern and Central, a bank this chapter looks at in detail later. According to Joplin in THOMAS JOPLIN, ANSWER TO THE JOINT STOCK BANKS REPORT 13-14 (4<sup>th</sup> Ed. 1837),

*The Northern and Central Bank of England, for instance, has 1,200 partners; the whole property of each partner is liable for the engagements of the Bank, and the paid up capital is*

The crucial element behind the credibility of the debts of the first joint stock banks was the unlimited liability of the bank's owners. By virtue of the legislation permitting joint stock banking, the property of the bank's proprietors now served as security for the obligations of the bank, whether notes, deposits, or rediscounted bills.<sup>289</sup> Moreover, although the legislation of 1826 prevented the proprietors from limiting their liability to outside creditors, through the deed of settlement they could limit their liability to their proportionate share of the debt. Gilbart explained the potential offered by the deed of settlement to his contemporaries thus,

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*£700,000. This, if there be any degrees in perfect safety, renders it safer than the Bank of England....*

Joplin then went on to note that "The superior credit of Joint Stock Banks gives them, both in the form of deposits, and by means of re-discounting, a greater command of capital than private banks ..."  
(*Id.*, 18).

Joplin was not the only proponent of joint stock banks who emphasized the advantage these banks derived from the backing of their shareholders. Joplin and the other supporters of joint stock banking were not neutral observers. Their pamphlets defended joint stock banks and countered the attacks launched by, for example, private bankers. Though biased their central point was correct: the unlimited liability of the bank's proprietors backed the debts of the joint stock banks. In addition to pamphlets written by Joplin, other pamphlets supporting joint stock banking by stressing the credit generated by the combined wealth of the banks proprietors include, ANON., [A. MERCHANT], LOCAL ISSUES: JOINT STOCK BANKS AND BANK OF ENGLAND NOTES CONTRASTED 6-7 (1834); SAMUEL BAILEY, MONEY AND ITS VICISSITUDES ... WITH A POSTSCRIPT ON JOINT STOCK BANKS 191 (1837); G. M. BELL, THE PHILOSOPHY OF JOINT STOCK BANKING 7 (1840); PETER WATT, THE THEORY AND PRACTICE OF JOINT-STOCK BANKING 43 (1836); and FRANCIS C. KNOWLES, THE MONETARY CRISIS CONSIDERED 42 (1837). See also the evidence of Simon Martin, a banker with the Norwich house of Gurney, Birkbeck & Martin, to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS, (1836) (591) IX at 150 (Q: 2422-2423).

<sup>289</sup> 7 Geo. IV c. 46 (1826) [Country Bankers Act], Sections XII. This was subject to two requirements applicable to all joint stock banks. The first of these required the lodging of an action for the recovery of a debt owed by the bank against the public officer (as registered at the Stamp Office) of the bank, at least initially (Section IX). If the bank was liable, the banks funds rather than those of the shareholders covered the debt until the bank's resources ran out. The second requirement focused on former shareholders, stipulating that those who had transferred their shares were no longer liable, provided the remaining body of shareholders was able to cover the debt owed. Only in extreme circumstances was a former shareholder called upon to contribute towards paying the debts of the bank in which they no longer held shares. And, at any rate, shareholders were completely free of all liability three years after the sale of the shares, (Section XIII). For a contemporary commentary on the Act, see JAMES WILLIAM GILBART, A PRACTICAL TREATISE ON BANKING 56 (1828).

*The act of parliament [of 1826] says to every shareholder, “you are responsible to the whole extent of your property for all the debts of the bank.” The deed of settlement says to him, “if any claims be made upon you, while a shareholder, by the creditors of the bank, we, the other shareholders, engage to pay our proportion of the debt; and if you have ceased to be a shareholder, we indemnify you against any claim whatever.”*<sup>290</sup>

As Thomas puts the point, “the *body* of shareholders, by accepting the Deed, guaranteed *each* individual shareholder from any liability in excess of the amount of his shares.”<sup>291</sup>

One way, then, by which the proprietors in the first joint stock banks managed the extent of their personal liability vis-à-vis each other, was by limiting liability to an amount proportionate to their shareholding.<sup>292</sup> Such an arrangement meant there was less chance of one proprietor left solely responsible for the banks debts. But it did not entirely remove this risk because if the bank’s other proprietors had only modest property to their names, an action brought against them under the deed of settlement

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<sup>290</sup> *Id.*, 57.

<sup>291</sup> S. E. Thomas, *The First English Provincial Banks*, 3 ECONOMIC HISTORY 129, 132 (1934). Emphasis in original. For the problems that nonetheless arose respecting the proportionate distribution of losses between shareholders, see Appendix 2 to this dissertation.

<sup>292</sup> In addition to the proportionate sharing of debts, the typical deed of settlement drawn up by the first joint stock banks further limited the liability of the bank’s shareholders by stipulating that should a set amount of capital be lost by the bank, then the bank should cease operating. For this check to work, the shareholders were required to keep a careful watch on the bank’s directors to catch the moment the bank overstretched (See Thomas, *supra* note 291, at 132).

might result in the recovery of some of the debt, but it might not lead to the proportionate distribution of loss.<sup>293</sup>

The threat that some proprietors might bear more of the burden than their fellow proprietors encouraged each proprietor to take an interest in the affairs and management of the banks of which they were members. In particular, in the late 1820s until the 1830s, proprietors assessed the character of their fellow proprietors and the likely qualities they would bring to the bank. The approaches taken by joint stock banks fell into two broad categories.<sup>294</sup> Those who argued for and practiced the first strategy, recommended the issue of shares that only those of wealth could afford, using the wealth of each proprietor to uphold the credit of the bank.<sup>295</sup> The

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<sup>293</sup> These points depend on the assumption that joint stock bank shareholders could bring actions against each other in respect of the bank's debts. Doing so was not necessarily straightforward in the 1830s, as Appendix 2 to this dissertation explains.

<sup>294</sup> See ALBORN, *supra* note 250, at 85-107. As many scholars have noted, and regardless of the differences in how joint stock banks selected their members, a regional character was common to almost all joint stock banks formed in the 1830s. Communities formed joint stock companies within their own towns and districts with the objective of having the new bank serve the "wants of the district in which the bank is located," Thomas, *supra* note 291, at 137, quoting BELL *supra* note 288. Whether the membership was restricted to people of wealth and rank, or whether it was, to a greater or lesser degree, broad based, the bank drew its membership from the local population that the bank intended to serve. The names of joint stock banks formed after 1826 reflect this sense of localism. The "District Bank" was a common name, such as the Manchester and Liverpool District Bank (established in 1829) and the Northumberland and Durham District Bank (1836). Others aimed to cover a larger geographical region and had names reflecting that fact, such as the East of England Bank (1836), the North of England Joint-Stock Banking Company (1832), or the North Wiltshire Banking Company (1835). The Union Bank (1836), based in Manchester, was even more confined geographically, determining that its shares could only be held by residents of Manchester. The Bank of Manchester (1829), and the Manchester and Salford Bank (1836), both adopted the same measure. So too did Commercial Bank of Liverpool, which preferred its shares to go "chiefly to residents of Liverpool ... with a view to securing to the Bank, as far as possible, the profits arising from the business of its own Subscribers" (ALBORN, *supra* note 250, at 102-3, quoting from LIVERPOOL CHRONICLE, 24 Nov. 1832). The Leeds Banking Company (1832) likewise set a geographical boundary around those who could own its shares (*Id.*, 103). The practice was common across England and Wales, emphasizing the extent of the connection between particular localities and *their* joint stock bank. On the geographical concentration of the shareholders in the first English joint stock banks, see Lucy Newton, *Towards Financial Integration: the Development of English Joint Stock Banks in London and the Provinces* in BUSINESS AND EUROPEAN INTEGRATION SINCE 1800: REGIONAL, NATIONAL AND INTERNATIONAL PERSPECTIVES 316 (Ulf Ollson ed., 1997).

<sup>295</sup> Stuckey's Bank (formally known as the Somersetshire Banking Company) in Somersetshire represents the best example of a joint stock bank following the model of offering shares that only the

second route was to encourage a broad base of less individually wealthy shareholders. Doing so involved offering affordable shares to the public in the hope that a large number of investors would offer their support to the bank. Although the separate property of each proprietor in this second model could be modest, the combined wealth of all of the proprietors backed the bank's liabilities, who often numbered in the hundreds, sometimes in the thousands. The Manchester and Liverpool District Bank pursued a compromise between the two approaches. The Northern and Central Bank of England is a clear example of the second. This chapter considers both of these banks in detail, but first it is worth pausing to reflect on how the strong property base of the joint stock banks affected their bargaining position against the Bank of England.

In the mid 1830s, the joint stock banks exploited internal tensions within the Bank of England. Caught between the conflicting obligations of protecting the gold standard and satisfying its shareholders, the Bank of England prioritised the latter, thus contributing to the low interest rates of the period. The joint stock banks were first in line for the cheap credit made available by these low rates because the property of their proprietors guaranteed any debts incurred by the bank. In the play of forces

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wealthy could afford. Formed in 1826 upon the combination of five small private banks (including the banks of Vincent Stuckey himself), the bank aimed at restricting its shares to men of property and respectability. Consequently, the shares had a price of £100, half of which had to be paid-up upon purchase. Shares at £50 paid-up were too expensive for all but elite merchants and manufacturers. But Vincent Stuckey wanted wealthy shareholders, ideally with some banking experience, because only figures of "known integrity and prudence, would be entitled to the confidence of the public," PHILIP SAUNDERS, *STUCKEY'S BANK* 24 (1928). Before the Parliamentary inquiries of the 1830s, Stuckey set the absolute minimum he would contenance for paid-up capital at £25 per share. Any less, he feared, would encourage "little people" to become shareholders, see Stuckey to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS, (1836) (591) IX at 92 (Q: 1522). By "little people," he meant those of modest property who would be unable to cover the full extent of the bank's debts should it fail. Stuckey's emphasis on the "respectability" of his fellow proprietors meant that the bank had by the mid 1830s only 35 – albeit very wealthy – proprietors. On the history of Stuckey's Bank, see PHILIP SAUNDERS, *STUCKEY'S BANK* 24 (1928), and Stuckey's own account, VINCENT STUCKEY, *THOUGHTS ON THE IMPROVEMENT OF THE SYSTEM OF COUNTRY BANKING* (1836).

between the Bank of England and the joint stock banks, the latter found that the low cost of money in London worked to their advantage. As long as interest rates remained low, joint stock banks could access generous quantities of cheap credit from London bill brokers, retain control of their note issue, and avoid the scrutiny of the Bank over the quality of the bills presented for discount. In these circumstances, why put up with the scrutiny and the loss of independence that came with ties to the Bank of England when credit was available elsewhere at a similar price.

Although their proprietors aided the bargaining position of the first joint stock banks against both the Bank of England and the London bill brokers, these same proprietors could also be the undoing of their bank. As the next section explores, many proprietors of joint stock banks from Lancashire wanted cheap credit in return for guaranteeing the debts of their bank. Crucially, where a joint stock bank was unable to resolve the conflict between upholding its credibility and providing the loans some of its members wanted, it faced a severely weakened bargaining position against the Bank of England.

## **F. The Perils of Publicly Guaranteed Banking**

Recall from Chapter II that country banks of no more than six partners needed the support of their local community during times of crisis, but that those who offered this support placed themselves in a vulnerable position if the bank failed. To make this vulnerability more acceptable, Thomas Joplin proposed joint stock banking. Those guaranteeing the debts of the bank would now do so not only during periods

of economic crisis, but permanently and in return could expect to exert some influence over the running of the bank.

In order to prosper, then, joint stock banks, like the country banks before them, needed the backing of the community of which they were a part. Conversely, the community needed the finance that banks made available. This was increasingly the case in the 1830s, especially in areas characterised by intense industrial competition such as Yorkshire and Lancashire, where merchants and manufacturers needed the backing of their local banker during the first decades of the nineteenth century more than ever before due to the increase in British manufactured goods exported to the US. This increase in exports in the face of the risks brought by Trans-Atlantic trade reflected a change in the practice of British manufacturers away from manufacturing to order towards the production of large volume of goods as cheaply as possible. The profit generated by each article under this approach may have been low but the possibility of mass sales made it worthwhile.<sup>296</sup>

Mass sales depended on the full exploitation of the export market. To quicken the process of transferring goods from the factory to the point of sale, manufacturers

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<sup>296</sup> Here is how Gabriel Shaw, a partner in a London firm of commission merchants, described the process in 1833,

*the savings arising from operations upon a very large scale are considerable; for instance a difference of three to four percent between operating with £20,000 and operating with £40,000, and these savings I believe may be greatly increased. Some of our manufacturers employ £100,000 or £200,000 or £300,000 capital. Suppose I make 100,000 pieces of goods, and I made ten percent [profit] upon 75,000 pieces, there is a positive gain [in manufacturing on this scale]; then I export the residue and incur a small loss; I am fully compensated for that loss by the profits I realized upon the three-fourths . . . [and] I produce the whole cheaper.*

Shaw is quoted in S. D. Chapman, *Financial Restraints on the Growth of Firms in the Cotton Industry, 1790-1850*, 32(1) *THE ECONOMIC HISTORY REVIEW* 50, 55 (1979). See also HUDSON, *supra* note 68, at 168-169.

consigned their goods to a commission agent<sup>297</sup> who had the power to sell them.<sup>298</sup> In theory, until the commission agent sold the product and made payments, this system left the manufacturer out of pocket. In practice, the system benefited the manufacturer because the commission agent drew a bill of exchange with a typical usance of four months or less, with payment guaranteed by an acceptance house.<sup>299</sup> The knowledge of a commission agent combined with the guarantee of an acceptance house made it possible to create four month bills on which the promise to pay appeared credible. It was then easy to find a banker<sup>300</sup> or bill broker willing to discount these bills.

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<sup>297</sup> The export trade to the US was fraught with risks, not the least of which was the time between the sale of and payment for the goods exported. Bills of exchange drawn with 12 months until maturity were common in the early nineteenth century. As Buck observes, “cash transactions were so rare as to be negligible,” NORMAN SIDNEY BUCK, *THE DEVELOPMENT OF THE ORGANISATION OF ANGLO-AMERICAN TRADE, 1800-1850*, 112 (1969). Consequently, merchants, unless they had a specific order, were reluctant to purchase goods from British manufacturers for export to the US market. With merchants reluctant to purchase this enlarged volume of exports, manufacturers initially opted to export their surplus themselves, but that was difficult to do well without some knowledge of the importing market. In time, the manufacturers turned to commission agents working under the consignment system (*Id.*, 121).

The commission agent had in the past operated as a merchant, buying the goods outright from the manufacturer. Early in the nineteenth century, buying the goods outright had become too risky for many merchants. Still, as Buck observes, merchants nonetheless

*had the specialized knowledge of the needs of different markets, and of the technique of shipping, which could be of value to the manufacturer. Therefore, if circumstances were such as to discourage him [the merchant] from purchasing directly from the manufacturer, he could at least serve him by acting as his commission agent (Id., 125).*

<sup>298</sup> Pat Hudson described the process as follows: “A common form of organization ... was consignment by a manufacturer to a commission merchant who then reconsigned them to his agent abroad and settled with the manufacturer when he received the proceeds of their sale,” HUDSON, *supra* note 68, at 169.

<sup>299</sup> Acceptance houses, sometimes called merchant houses, facilitated international trade by granting acceptance credits. The house of first-class credit agreed to accept bills on behalf of someone of second-class credit in return for a commission payment. These bills were easier to discount because they carried the endorsement of a respectable acceptance house. See ELIAS T. POWELL, *THE EVOLUTION OF THE MONEY MARKET, 1385-1915*, 374 (1915), and S. D. CHAPMAN, *THE RISE OF MERCHANT BANKING* (1984). In the late eighteenth century, credit of twelve months had been the standard. An emphasis on low prices and high turnover provoked the move to shorter credits. See HUDSON, *supra* note 68.

<sup>300</sup> Bankers preferred to discount bills of exchange drawn at four months to those drawn at twelve months, because the former matured sooner. Given that the banker’s own debts to the holders of his notes or to his depositors were payable on demand, holding short-dated, self-liquidating investments was preferred over those with longer maturity dates. The manufacturer also benefited from short-

Due to the intensity of competition between manufacturing firms exporting to the US, the more short-dated bills the manufacturer discounted with a banker, the more funds he could then reinvest in his production process to maintain a high turnover and low prices.<sup>301</sup> Accepting bills of exchange as payment worked within this competitive environment provided discounting the bills remained easy. With the help of commission agents, acceptance houses, and bankers, this was relatively straightforward in the 1830s, to the point where it became too easy.<sup>302</sup>

The willingness of bankers to discount kept the process liquid, and helped to prop up the export trade from Britain to the US. Any manufacturer who could not get bills discounted by a banker was out of the game. By contrast, manufacturers who could get large volumes of bills discounted at low rates gained advantages over their rivals. To guarantee the support of a bank, some found ways to back one, and some even went so far as to found one. The banks they backed worked to the beat set by their owners, and a large number of proprietors, including merchants and manufacturers, desired generous lending facilities.

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dated bills because the banker charged lower rates for discounting four-month than for discounting twelve-month bills. See HUDSON, *supra* note 68.

<sup>301</sup> Manufacturers were happiest when they received cash payments, expressing their approval by giving the buyer a discount, see CHAPMAN *supra* note 299, at 117, and HUDSON, *supra* note 68, at 179.

<sup>302</sup> The number of bills of exchange in circulation increased throughout the 1830s. In 1832, just over 356 million bills entered circulation in Britain and Ireland (89 million in circulation at any given time during that year). By 1836, the figure stood at almost 486 million (with more than 121 million in circulation at any given time). Following the crisis of 1837 the figure dropped to 455 million (113 million in circulation at any given time) but by 1839 had surpassed the 500 million mark (132 million in circulation at any given time). Figures from THOMAS, *supra* note 10, at 302), based on Stamp Office records.

In the 1830s, therefore, becoming a proprietor in a joint stock bank often came with access to loans and or discounts.<sup>303</sup> As the general manager of the Stourbridge and Kidderminster noted in 1836, “No doubt every man who is a shareholder becomes to a certain degree his own banker.”<sup>304</sup> The manager of the Birmingham Banking Company, when asked

*... do you consider that the relation which exists between a joint stock bank and a great commercial community, being proprietors or shareholders, affords any increased facility for acquiring custom on the part of the bank and obtaining accommodation on the part of the customers?*

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<sup>303</sup> The following articles provide evidence that a large number of proprietors in the first joint stock banks were merchants and manufacturers: Newton, *supra* note 294, at 324-7; Hudson, *supra* note 24, at 280; and, especially, Lucy Newton, *The Birth of Joint-Stock Banking: England and New England Compared*, 84 BUSINESS HISTORY REVIEW 27, 44-5 (2010). In her article from 2010, Newton provides evidence showing the percentage of lending by joint stock banks going to their own shareholders. In 1836, 59% of total business credit granted by the Ashton Bank went to its shareholders. In 1836, the equivalent figure for the Bliston District Bank was 44%, and for the Liverpool Union Bank, 43%. A number of witnesses before the 1836 Parliamentary inquiry into joint stock banking explained that their bank made most of its loans to its own shareholders. See, for example, General Austin (director and manager of the North of England joint stock banking company) to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 125 (Q: 2101-2102), and Joseph Gibbins (a director of various joint stock banks) to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 69 (Q: 1089). On the influence of textile manufacturers over banking in Lancashire, see JONES, *supra* note 27; Stuart Jones, *The Cotton Industry and Joint-Stock Banking in Manchester*, 20 BUSINESS HISTORY 165 (1978); Stuart Jones, *The Manchester Cotton Magnates' Move into Banking*, 9 TEXTILE HISTORY 90 (1978); and ANTHONY HOWE, *THE COTTON MASTERS, 1830-1860* (1984).

<sup>304</sup> John Amery to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 36 (Q: 567). Peter Watt, a proponent of joint stock banking, echoed the attitude that those who owned shares in a joint stock bank should be recognized as bankers,

*If an over-powering argument in favour of joint-stock banking were required, it ought to be found by the public in the consideration of how much the customers lose by giving away their bank profits to a few individuals, in place of becoming an association of bankers themselves ... retaining among themselves the profits of banking.* See PETER WATT, *THE THEORY AND PRACTICE OF JOINT-STOCK BANKING* 15 (1836), emphasis in the original.

echoed the view of his counterpart at the Stourbridge and Kidderminster, answering that “I think it does, every proprietor becoming a customer.”<sup>305</sup>

This practice of extending credit liberally to proprietors who were merchants and manufacturers came with a downside. Should the bank suffer losses, the onus was on these same proprietors to meet the debts incurred. In theory, that meant there was an incentive for the proprietors to monitor the extent of the bank’s lending. As was the case in practice, one consequence that followed from the risk borne by the proprietors was that each proprietor took a close interest in the character of their fellow proprietors. Hence, the early joint stock banks guaranteed their obligations through, either a small number of wealthy members, or through partners who, though of modest individual wealth, countered this by uniting with a large number of others to form a bank backed by their collective wealth.<sup>306</sup>

Moreover, the proprietors of joint stock banks could further check the capacity of the bank to multiply its liabilities through both restrictions in the deed of settlement on the discretion of the directors,<sup>307</sup> and strict rules on the security needed by borrowers

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<sup>305</sup> Paul Moon James to the *Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 44 (Q: 690).

<sup>306</sup> See discussion at *supra* Part E of this chapter.

<sup>307</sup> Safeguards were put in place by a number of joint stock banks to prevent the directors lending, either to their own firm, or to the businesses of family members. The Liverpool Union Bank, for example, barred directors from participating in the decisions concerning loan applications,

*wherein he, either solely or in partnership with any other person or persons, is or may be interested ... [or] wherein any person standing towards him in relationship either of consanguinity or affinity is or may be interested, if the other directors then present, or any of them, shall object*, THE DEED OF SETTLEMENT OF THE LIVERPOOL UNION BANK (1835), Article 24.

The deed of settlement of many joint stock banks also stipulated that should a set amount of capital be lost by the bank, then the bank should cease operating. For this check to work, the shareholders were required to keep a careful watch on the bank’s directors to catch the moment the bank

to obtain a loan.<sup>308</sup> But placing formal restrictions on the types of loans a bank could make risked leaving the bank marginalized from those it hoped to serve. The first joint stock banks were up against stiff competition from other joint stock banks, and, frequently also, established private banks with intimate knowledge of local credit networks.<sup>309</sup> If one joint stock bank chose to apply strict lending criteria, its rivals in the 1830s would almost certainly fill the void with less exacting standards.

A flexible and informal attitude towards lending led many joint stock banks to lessen the effectiveness of the provisions in their deed of settlement limiting the freedom of

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overstretched, see Thomas, *supra* note 291, at 132. On the qualifications needed to become a director, see Newton, *supra* note 294, at 327. For examples of other safeguards adopted by the first joint stock banks, see Cottrell and Newton, *supra* note 11, at 89-90.

<sup>308</sup> The Surrey, Kent and Sussex Joint Stock Banking Company limited credit beyond six months to that supported by adequate security, defined as “sufficient freehold, leasehold, or copyhold, hereditaments, government stocks or funds, or sufficient collateral personal security,” see THE DEED OF SETTLEMENT OF THE SURREY, KENT AND SUSSEX JOINT STOCK BANKING COMPANY (1837), Article 31. Moreover, the objection of a single director blocked the loan (*id.*, Article 31).

<sup>309</sup> Some private bankers (i.e. banks with six partners or less) believed their system of banking was inherently superior to that of the new joint stock banks. According to Henry Burgess, the secretary of the country bankers’ lobby, private banks of at most six partners were best suited to meet the needs of their customers. What gave them their edge was that the banker interacted personally with those looking for accommodation, using his intimate knowledge of both the surrounding region and the characteristics of his customers to judge the prudence or otherwise of his lending. Burgess, in his evidence before the Parliamentary inquiry of 1832, then went on to remark that

*the lending of money to the productive classes of the country is a matter of great nicety; it requires an extremely nice discrimination as to the character and circumstances of the party borrowing. I think it is the sort of discrimination that the managers of a Public Bank [whether the Bank of England or a joint-stock bank], who have not an individual interest in the management, rarely exercise; and consequently I think they are liable to much greater losses because they have not the same vigilance and experience as the private bankers, and they are not so constantly animated by a desire for success as a private banker, who looks to the profit of the bank as a means of establishing his family in life, and whose personal character is identified with his conduct as a banker, Henry Burgess, to the committee on the Bank of England Charter, BRITISH PARLIAMENTARY PAPERS (1831-32) (722) VI) at 422-3 (Q: 5253).*

“Fixed principles of management” hindered the “public” banks – the Bank of England and the joint stock banks. Burgess thought that joint stock banks, though restrained by regulations to a lesser degree than the Bank of England, still possessed only limited scope to discriminate between their customers than the private bankers owing to the fact that “[t]he business of a Joint Stock Bank is not directed by a single individual, or two, but by cumbrous Boards of Directors and Managers, who meet perhaps only once a week to decide upon such matters as advances of money to applicants,” *Id.*, at 418 (Q: 5199).

their directors by delegating considerable discretion to their directors elsewhere in the deed of settlement.<sup>310</sup> When the proprietors actively monitored the bank, or when the directors closely supervised each other,<sup>311</sup> the bank could contain the biggest dangers brought by the strong demand for credit from many proprietors. But what if the proprietors failed to supervise the bank's directors with sufficient care? The first joint stock banks found themselves in an environment where an increasing number of merchants and manufacturers needed financial support, and it was to the new joint stock banks that they turned, often in their capacity as the bank's owners. Yet the task of monitoring excessive or oblique lending then fell to these proprietors, typically the merchants and manufacturers most in need of financial backing from a joint stock bank. Some private bankers noticed the inherent conflict. John Harding, who part owned a private bank at Burlington, Yorkshire, observed with respect to the joint stock banks,

*we find those partners all promiscuously assembled, good, bad and indifferent; every one has an interest in extending the business of the concern within his own circle, and it is impossible that so great a number should have*

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<sup>310</sup> For example, few banks prohibited loans where the only security offered was the bank's own shares. Although most joint stock banks stopped short of allowing their shareholders the right to demand loans on the security of the bank's shares, almost all left the option open. It seems many early shareholders understood that they did hold such a right. Banks, formed after the mid 1830s tended to, in their deed of settlement, explicitly rule out any entitlement to such loan, though they left open the possibility at the discretion of a bank's directors. On joint stock banks lending to their shareholders on the security of the bank's own shares, see THOMAS, *supra* note 10, at 250-252. See also Hudson, *supra* note 24, at 390.

<sup>311</sup> In an effort to curtail long-term loans made on little or no security, many joint stock banks assigned to their directors the power to veto loans. See, for example, THE DEED OF SETTLEMENT OF THE BIRMINGHAM TOWN AND DISTRICT BANKING COMPANY (1836), Articles 18 and 19, THE DEED OF SETTLEMENT OF THE COUNTRY OF GLOUCESTER BANKING COMPANY (1836), pages 37-38, and THE DEED OF SETTLEMENT OF THE HEREFORDSHIRE BANKING COMPANY (1836), Article 53. Problems arose when the directors did not monitor each other but acted nefariously in concert. See Part G (2) of this chapter for an analysis of this problem in relation to the Northern and Central Bank of England.

*the discretion or knowledge of the true principles of banking to make the distinction [between good and bad loans] in a judicious and proper manner.*<sup>312</sup>

Joint stock banks, then, accessed cheap credit by bill rediscounting thanks to the unlimited liability of the bank's proprietors, and this cheap credit fuelled the demand for loans from these same proprietors in their role as local merchants and manufacturers. Rediscounting allowed joint stock banks to walk a perilous line, in particular when no one monitored the extent of the debt the bank then assumed through rediscounting. One anonymously written pamphlet from 1834 captures the potential trap well,

*The practice [of the early joint stock banks] seems to be, to establish a Bank upon a nominal capital of £500,000 or a million, upon which a deposit of £50,000 or £100,000 only (as a guarantee capital) is called up. Upon the strength, or rather weakness, of these inefficient means, the new Bank, by virtue of deposits entrusted to it, or notes issued, advances, by way of loans or discounts, say £400,000 or £500,000, which of itself is quite sufficient*

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<sup>312</sup> John Harding to the *Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 132 (Q: 2168). Harding then continued (at 132 (Q: 2171)), "Those who take shares in the newly established banks seem to consider themselves, and I think are considered by the company, as not only interested in getting but engaged to get all the shareholders and all the business they can." Others who observed the tensions faced by the early joint stock banks include ANON., [A MERCHANT], *OBSERVATIONS ON THE CRISIS, 1836-37*, 19-20 (1837),

*It will be seen that an immense superstructure of Commercial Bills may thus be raised on a basis of on the basis of Joint Stock Bank Notes, the notes themselves created on the mere credit of the shareholders, and a majority of these shareholders being the very parties receiving the Bank facilities.*

Joint stock banks supported this lending to their own shareholders by rediscounting in the London money market, and sometimes at their local Bank of England branch.

*engagement in proportion to the paid up capital; but in fact, too many of these institutions go far beyond this, because, whenever the bills offered to them exceed the amount of available capital, of the deposits in hand, and the notes issued, they still go on discounting all that is offered, relieving themselves by re-discounting the excess in London, and thus running into liabilities upon a scale more imprudent than any now practiced by the private bankers ...*<sup>313</sup>

Rediscounting worried many observers of banking in the 1830s because it allowed joint stock banks to assume, taking one modest estimate, liabilities of 6 to 8 times their paid up capital.<sup>314</sup> Practically without exception, private banks, not to mention many joint stock banks from less capital hungry regions, viewed the tendency towards rediscounting as unsafe because of the extent of the bank's liabilities in excess of its capital. Moreover, they considered it "degrading to the character of a private banker placing himself in the character of a bill-broker."<sup>315</sup> The majority of MPs sitting on the committee set with the task by Parliament in 1836 of inquiring into the state of joint stock banking echoed these concerns as to both the safety and the appropriateness of rediscounting. This inquiry also, however, offered those joint stock banks that practised rediscounting the chance to present their point of view.

As part of the inquiry, the committee requested from all joint stock banks across England and Wales a return of their liabilities and assets. Some joint stock banks –

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<sup>313</sup> ANON., HINTS BY WAY OF ENCOURAGING THE FORMATION OF A JOINT STOCK BANKING CO IN LONDON, ETC , 11-12 (2<sup>nd</sup> Ed. 1834).

<sup>314</sup> John Amery to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 37 (Q: 592).

<sup>315</sup> *Id.*, 39 (Q: 630).

most notably the Bank of Manchester and the Manchester and Liverpool District Bank – were reluctant to provide such information, especially details relating to “bills bearing the endorsement of or guaranteed by the bank.” Their fear was that the subsequent disclosure of the bank’s liabilities “would lead to very erroneous conclusions,”<sup>316</sup> “prejudicial to their company.”<sup>317</sup>

As the general manager of the District Bank, John Stanway Jackson, pointed out in his evidence before the committee, the liabilities incurred on adding an endorsement to a bill of exchange were “contingent, but not absolute.”<sup>318</sup> In order to demonstrate the “great difference betwixt the contingent and the actual liability on endorsement,” Jackson noted that his bank “had in bills dishonoured (many of which were afterwards paid) only 7s. 4d. out of every 100l. of the bills we had rediscounted in one half year, which, I believe, is a very fair criterion of previous half years.”<sup>319</sup> Jackson’s point was that the joint stock banks liability on the bills it endorsed and then rediscounted only kicked in should the other parties named on the bill fail to meet their obligations. The primary obligation lay on the acceptor of the bill. Failure to meet that obligation resulted in payment then falling on the drawer of the bill. It was only in a scenario where the drawer of the bill was also like the acceptor unable to meet their obligations, that the holder of the bill called on the District to meet its contingent liability.

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<sup>316</sup> John Stanway Jackson to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 6 (Q: 57).

<sup>317</sup> Edmund Burdekin to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 2 (Q: 22).

<sup>318</sup> John Stanway Jackson to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 7 (Q: 70).

<sup>319</sup> *Id.*, 7 (Q: 74).

Yet as Jackson additionally stressed, it was possible to take precautions against the possibility that both the acceptor and the drawer of the bill might fail to fulfil their obligations. First, when the bank considered whether to discount a bill, it took account of the “character” of the drawer and the acceptor, that is, the likelihood that they would keep their respective promises. Second, as Jackson also noted, “there are bills of exchange which have passed through many joint stock banks.” Having added their endorsement, each of these joint stock banks was contingently liable for the same debt on the bill. Hence, “as each joint stock bank must make a return of all these bills as liabilities, an impression would be made upon the public that the aggregate liabilities of joint stock banks were much greater than they really are.”<sup>320</sup> In reality, a joint stock bank shared the liability on the bills it had discounted with other joint stock banks, as well as others parties that had also added their endorsement to the bills. Yet when the joint stock bank tallied up its liabilities, it was difficult to convey that it was merely contingently liable on these debts. The full extent of the bank’s liabilities would only ever fall due if every drawer, acceptor, and endorser that the bank shared liabilities with simultaneously failed.

Notwithstanding the general validity of Jackson’s arguments, there was a potentially serious flaw in the practice of bill rediscounting not captured in Jackson’s evidence. The flaw was that rediscounting left joint stock banks from industrial regions dependent on others, typically banks from agricultural areas, maintaining their willingness to buy bills of exchange as an investment through the intermediation of bill brokers. During periods of falling prices and lower confidence, individuals and

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<sup>320</sup> *Id.*, 8 (Q: 76).

organizations alike tended to prefer liquidity, swapping investments for money. At such moments, joint stock banks dependent on rediscounting to fund the credit needs of their customers, found London bill brokers reluctant to buy further bills, given that those on whose behalf the bill brokers bought the bills wanted money rather than an investment. It was a moment such as this that brought the Northern and Central Bank of England to the Bank of England in search of emergency assistance in the winter of 1836, a drama explored later in this Chapter.

The Bank of England, then, was not the only bank struggling to resolve the tensions between its conflicting obligations in the mid 1830s. Joint stock banks, especially those from Lancashire and Yorkshire, faced their own internal conflicts. First and foremost, they had to uphold the value of the bank's property because it was owing to the value of this property that others lent to the bank. Yet the credibility of a joint stock bank was strained by the demands for credit of local merchants and manufacturers, who were simultaneously debtors and proprietors of the same bank. While many joint stock banks found their bargaining position enhanced against the Bank of England by the inability of the latter to resolve its conflicting obligations, on occasions there was a reversal in the terms of the struggle. On these occasions, joint stock banks found that the property of their shareholders struggled to cover the magnitude of the bank's liabilities. One such occasion was the crisis of 1837. To survive, joint stock banks like the District and the Northern had to mobilize their proprietors despite the bank's liabilities, or risk finding themselves at the mercy of the Bank of England.

With respect to the District and the Northern, in the next section I delve into the organizational structure that they adopted. The District initially pursued a variation on the strategy of appealing to a select but wealthy group of proprietors, while the Northern offered low cost shares in the hope that a large body of proprietors would lend credibility to the bank. In the next section, I also discuss the consequences following from the adoption of these respective strategies. Both the District and the Northern found it difficult to contain the demand for credit that some of their proprietors wanted in return for guaranteeing the debts of the bank. To meet these demands for credit, the District and the Northern went down different avenues. The former opted for a circulation account with the Bank of England, and the latter exploited alternative sources of cheap credit in the London money market. When money became tight and crisis engulfed the English and Welsh banking system in 1837, the District was able to call upon the further support of its proprietors, but the Northern was not, leaving it exposed to the dictates of the Bank of England.

### ***1. The Manchester and Liverpool District Bank***

From its formation in 1829, the District operated in a challenging environment due to competition from the Bank of Manchester<sup>321</sup> and Manchester's private banks.<sup>322</sup>

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<sup>321</sup> The District Bank initially struggled partly because its early rival, the Bank of Manchester, had the backing of many leading Manchester merchants, whereas the District did not. While the Bank of Manchester could boast a board of twelve directors, included seven merchants (three from the cotton trade), the District's ten directors had only one merchant (dealing in corn rather than cotton). Otherwise, the District's board was comprised of what *The Circular to Bankers* (5 December 1834) described as "men of an inferior grade in society" representing a hodgepodge of business ventures and professions. These included a journalist; a surgeon; two hat makers; a solicitor; a cutter, tanner and leather seller; a grocer and tea dealer; and a Manchester shopkeeper. See JONES, *supra* note 27, at 176, 178; see also LEO H. GRINDON, *MANCHESTER BANKS AND BANKERS*, 242, 252 (1878).

The District worked to avoid this competition by building a support base of shareholders from the towns and countryside surrounding Manchester and Liverpool. During the course of 1829, the District's promoters established "district committees," which had the task of raising capital by marketing the shares of the bank throughout the towns of Lancashire and beyond. According to the historian of banking in Manchester, Frank Stuart Jones, by the middle of 1829, "committees had sprung up in the Potteries, Liverpool, Birmingham, Stockport, and more were planned for the numerous cotton towns."<sup>323</sup> To reinforce further the bank's support base in September 1829, the bank's management in Manchester went so far as to send out deputations to local gentry and nobility in Lancashire, Cheshire, and Staffordshire in an attempt to procure further backing.

The District looked outside of Manchester as a strategy for tapping into the spare capital held by those from across the industrial heartlands of England and Wales. In order to entice people, especially merchants and manufacturers from towns like Oldham, Stockport, and Rochdale,<sup>324</sup> to offer their backing to the bank, it needed to offer advantages, not least because the nominal value of the bank's shares was on the high side at £100. In the late 1820s and early 1830s, the second approach taken

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<sup>322</sup> Both the Bank of Manchester and the District posed a threat to Manchester's established and relatively prosperous private bankers. The private bankers were characterized by THE CIRCULAR TO BANKERS as "old, sagacious, experienced bankers of great experience and unquestionable stability," 5 December 1834.

<sup>323</sup> JONES, *supra* note 27, at 179.

<sup>324</sup> In 1836, the District listed the following towns, in addition to Manchester and Liverpool, as the locations of its branches: Stockport, Oldham, Hanley, Nantwich, Warrington, Ashton-under-Lyne, Bury, Blackburn, Stafford, Wigan, Preston, Stalybridge and Rochdale. The bank listed its sub-branches as Leek, Burslem, Lane End, and Cheadle (all within 10 miles of Hanley); Market Drayton (13 miles from Nantwich); Hyde and Glossop (both within 10 miles of Ashton-under-Lybe); and, Rugeley (8 miles from Stafford). See *Report on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 240. For an outline of the District's planned branches and sub-branches at its establishment, see the MANCHESTER TIMES, 22 AUGUST 1829.

by joint stock banks to the selection of the membership – low priced shares aimed at attracting a broad base of shareholders – was not yet a common practice. The District’s approach was more in line with banks like the Stourbridge and Kidderminster Bank (1834) and the Birmingham Banking Company (1829). These two banks maintained a high nominal share price, but attracted a broad base of members by allowing members to pay for the shares over a number of instalments, up to half of the share’s value.<sup>325</sup> The District adopted a variation on this approach.<sup>326</sup>

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<sup>325</sup> To address the danger of attracting the “wrong kind” of investors by making the bank’s shares too affordable, authority was delegated to the directors of the bank giving them discretion over the allocation of shares. This strategy was adopted by the Stourbridge and Kidderminster Bank, whose general manager boasted in 1836 that “Our shares are 25*l.*; and I think I may venture to say, there are very few proprietors more respectable and more wealthy than ours: with only one exception we have not had a transfer of any share from a resident in Stourbridge,” John Amery to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 41 (Q: 651). The bank was only interested in members who were either “principal traders, manufacturers and merchants” or who were “very wealthy landed proprietors.” And it was possible for the bank to reinforce and preserve these characteristics because, under the bank’s deed of settlement, “no one can become a shareholder, by purchase or otherwise, except with the approbation of our board of directors, testified in writing” (*Id.*, 42-3).

Other banks were equally selective. For example, the Birmingham Banking Company, instead of advertising for prospective members by public notice in the local newspaper,

*only distributed some of the prospectuses to such persons we were desirous should unite in the concern; and as soon as a certain number of shares were subscribed for, we considered the company formed, reserving the other shares to be distributed among the persons who were likely to promote the interest of the bank,* Joseph Gibbins to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 60 (Q: 913).

The Gloucestershire Banking Company adopted a similar approach, seeking out a “respectable proprietary” (*Id.*, 65 (Q: 1022)) through a circular, rather than a public advertisement, sent to those whom the promoters of the bank hoped would be interested (*Id.*, at 62 (Q: 944)).

For more on the role of the directors of the first joint stock banks in allocating the bank’s shares, see Lucy Newton, *supra* note 294, at 319-20; Cottrell and Newton, *supra* note 11, at 92; and THOMAS, *supra* note 10, at 223-6.

<sup>326</sup> While the District’s shares had a nominal value of £100, only £15 was paid-up over four relatively modest instalments (£1 upon the granting of the share(s); £4 per share, 1 October 1829; £5 per share, 1 June 1830; and £5 per share, 14 February 1835. See *Report on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 240). For a list of the District’s shareholders as of March 1838, see ANON., A LIST OF THE COUNTRY BANKS OF ENGLAND AND WALES, PRIVATE AND PROPRIETARY; ALSO OF THE NAMES OF ALL THE SHAREHOLDERS OF JOINT-STOCK BANKS 233-245 (1838).

The advantages the District offered proprietors built on its efforts at attracting members in 1829. Restructuring the committees as “local boards,” the deed of settlement empowered the boards to manage the branch in their locality. Although in theory each local board was subject to supervision from the General Board of Directors sitting in Manchester, the reality was that the latter body was under the control of the local boards. According to Article IX of the deed of settlement,

*... for the first year the General Board shall consist of the whole of the Local Directors; after which they shall be chosen at the Annual General Meeting of Shareholders, out of the Local Directors, and shall consist of such number, not exceeding twenty-one or less than fifteen, as such General Meeting shall agree upon. Provided that each branch be fairly represented, and that Liverpool and Manchester have an equal number of Directors included in such General Board.*<sup>327</sup>

Under the deed of settlement the local boards had scope to control the general board, despite the fact that the creation of the latter was supposed to lead to controls over the former. That meant the bank’s members from towns outside Manchester, such as Oldham and Stockport, gained control of a branch only loosely under the influence of the bank’s other directors based elsewhere. Furthermore, the locally controlled branch could draw upon the vast credit made possible by the bank’s 834 members.<sup>328</sup>

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<sup>327</sup> DEED OF SETTLEMENT OF THE MANCHESTER AND LIVERPOOL DISTRICT BANKING COMPANY (1831), Article IX.

<sup>328</sup> See *Report on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX, Appendix at 240.

Gaining control of a branch was the first benefit proprietors received from the District. The power to determine lending decisions was the second. The deed of settlement permitted the local boards to favour the bank's own shareholders, presumably part of the inducement used to entice people in places like Oldham and Stockport to lend their backing to the bank in the first place. While it was "lawful for the local Boards of Directors to give credit upon Cash Accounts to the partners of the Company," and for them to do so on the security of the bank's own shares,<sup>329</sup> other parties applying for credit had to produce substantial forms of security.<sup>330</sup> Moreover, although the members served by the local board were not "entitled to demand or insist" upon credit, it was nonetheless noted in the deed of settlement that "the same shall be given or withheld, at the discretion of the General Directors." The board of general directors comprised of representatives from each of the local boards, meaning that discretion over granting credit effectively lay with the local directors.

Through the advantages conferred onto the bank's members running its local boards, in the early 1830s the Manchester and Liverpool District Bank attracted the support of men involved in the production of and trade in cotton from outside of Manchester, based predominately elsewhere in Lancashire. Despite a lukewarm reception from

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<sup>329</sup> DEED OF SETTLEMENT OF THE MANCHESTER AND LIVERPOOL DISTRICT BANKING COMPANY (1831), Article XLII. With respect to the security shareholders had to provide for loans from the local boards, Article XLII read:

*... it shall be lawful for the local Boards of Directors to give credit upon Cash Accounts to the partners of the Company, to such an extent or amount of their advanced stock, as they may think proper, not exceeding one half of the stock paid-up, without further security, except the security arising from the right of retention competent to the Company ...*

<sup>330</sup> According to the DEED OF SETTLEMENT OF THE MANCHESTER AND LIVERPOOL DISTRICT BANKING COMPANY (1831), Article XLII, loans were not to be made to non members, "unless on security (except the General Board shall otherwise approve and direct the same;) and if the security be personal, then, the party requiring the advance, shall produce not less than two sureties, in addition to the principal party, who shall be bound in the usual way ..."

potential proprietors within the town of Manchester, the District raised sufficient capital to commence with, and consolidate its position in, the business of banking. Soon enough, the lack of interest in the bank from Manchester's own cotton merchants and textile manufacturers began to recede. The favourable borrowing facilities offered to members allowed the District to offer credit on terms that were sufficiently attractive to draw cotton merchants away from Manchester's private banks. By the summer of 1833, a group of Manchester textile manufacturers had joined the bank. They soon dominated the local Manchester board and influenced the general board. Given the more than 800 proprietors backing the bank's credit, these Manchester textile manufacturers doubtless wanted to dominate the District completely, but owing to the bank's structure, they were unable to do so.

The powers the deed of settlement conferred upon the other local boards stood in the way of the Manchester local board controlling the lending decisions of the entire bank. All of the local boards had to be "fairly represented" on the general board. Consequently, the composition of the District's general board in January 1834 consisted of a reasonably even distribution of representatives from all fifteen of the bank's local boards.<sup>331</sup> All board members had one vote each.<sup>332</sup> While the Manchester representatives had nine votes, the other representatives combined controlled forty-seven.

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<sup>331</sup> The Manchester board had the largest contingent, with nine representatives; the Liverpool and Ashton boards could delegate six; three boards had five representatives; two boards had four; six boards had three; while the local board at Nantwich provided only two representatives (see JONES, *supra* note 27, at 182).

<sup>332</sup> DEED OF SETTLEMENT OF THE MANCHESTER AND LIVERPOOL DISTRICT BANKING COMPANY (1831), Article XI.

Although the conflict between the District's different groups of directors could leave those based in Manchester up against the rest, alliances sometimes also formed along other lines, such as manufacturing towns (like Manchester, Oldham, and Blackburn) against relatively rural areas (such as Cheshire and the Potteries). Characterizing a prominent dispute within the District in 1832, touched on earlier, was such a town versus country divide, and concerned whether the District should cease issuing demand notes in return for a Bank of England circulation account. The textile manufacturers wanted guaranteed access to rediscounts from the Bank of England to free them from dependence on London banks and bill brokers. Yet many of the Districts branches in rural areas found issuing demand notes advantageous as a means of meeting the needs of their customers, typically farmers looking for seasonal advances. The manufacturing interest on the bank's board held the greater number of votes, and hence the bank sacrificed its note issue in return for closer ties with the Bank of England. This chapter will analyse some of the consequences that followed from this circulation account with the Bank of England shortly, in particular the extensive bill rediscounting that it enabled. Before doing so, let us consider the Northern.

## **2. *The Northern and Central Bank of England***

Established in Manchester in 1834, the Northern and Central Bank of England (the "Northern") came into a banking environment where the Bank of Manchester and the older private banks dominated banking within Manchester. Moreover, the District was a powerful presence in large towns within a thirty-mile or so radius of Manchester. The Northern aimed to compete with these established banks by

attracting a large body of shareholders by offering shares at the low price of £10, fully paid up. Its strategy was successful. By 1836, the Northern had over 1,200 proprietors, the District, by contrast, had around 800.<sup>333</sup> Furthermore, to bypass head-to-head competition with other banks in and around Manchester, the Northern strategized that its prospects would improve if it exploited the desire for banking services further away from Manchester.<sup>334</sup> Not one of the District's branches was more than 52 miles from head office, and the vast majority closer. By contrast, the Northern had a branch 80 miles from head office in Nottingham to the southeast, 103 miles from head office in Bangor to the west, and 83 miles from head office in Birmingham to the south. South of Birmingham, the Northern even had a branch at Worcester, 110 miles from head office, and a "sub" branch at Eversham, 15 miles south of Worcester, and so 125 miles from head office.<sup>335</sup>

A problem accompanied this geographical dispersion in that a branch located at, say, 100 miles from head office was subject to minimal supervision. To deal with this, the bank needed to limit the discretion of their agents through provisions in the deed

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<sup>333</sup> See *Report on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX, Appendix at 224. For a list of the Northern's shareholders as of March 1838, see ANON., A LIST OF THE COUNTRY BANKS OF ENGLAND AND WALES, PRIVATE AND PROPRIETARY; ALSO OF THE NAMES OF ALL THE SHAREHOLDERS OF JOINT-STOCK BANKS 284-294 (1838).

<sup>334</sup> There were still instances of head-to-head competition, such as in Manchester itself, and in other major manufacturing centres like Birmingham and Liverpool, where the District and the Northern came into conflict with other new joint stock banks like the Commercial Bank of England (also headquartered in Manchester). In the case of Preston in Lancashire, the District, the Commercial, and the Northern battled for business alongside the Lancaster Banking Company. In Nantwich, the District and the Northern went head-to-head. In Rochdale, the conflict was between the District and the Commercial. While in Chester, locals in need of a bank had the Commercial and the Northern vying for their custom. See *Report on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX, Appendix at 224 for the Northern and Central; 226 for the Commercial; 240 for the District; and 243 for the Bank of Manchester.

<sup>335</sup> See *Report on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX, Appendix at 224.

of settlement, such as the requirement that the directors in Manchester approve all advances.<sup>336</sup> Enforcing such formalities was difficult, however, given the reality that many of the bank's proprietors expected advantages in return for guaranteeing the bank's debts.<sup>337</sup> As James R. Lyle, the accountant at the Northern remarked in 1837, "it would be considered quite an offense if any person came to you in Manchester with a bill if it was not instantly cashed."<sup>338</sup> Lyle's views echoed those of the Northern's London representative, Walter Gibson Cassels, who noted that,

*where customers are liberally supplied at one bank, those in the same line of business with them, and possessing equal means, and whose business could be done with equal safety, say, "why can not we have our business done in the same way theirs is done; it is very strange that you should pinch us."*<sup>339</sup>

A striking feature about the Northern was its diverse scope that included industrial Lancashire where the bank's customers took advantage of cheap credit, and

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<sup>336</sup> The branch agents had "no right whatever to give advances without applying to the Directors at the head-office." Officials at the Northern recognized both the possibility that local agents might enter into transactions without the consent of the directors from the head office, and that the bank would have to honour the obligations thereby assumed because "it would be unfair to the public if it were otherwise," Walter Gibson Cassels to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 115 (Q: 1896). Nonetheless, countering the risk in their view was the security provided by each agent upon taking up their post. The security provided by the agent depended on the volume of business head office anticipated at a particular branch, but varied from £1,500 to £10,000. Each agent had to secure the backing of two sureties, *Id.*, 115 (Q: 1892).

<sup>337</sup> The Northern's deed of settlement allowed the bank's proprietors to borrow up to one-half of the value of their investment. See Walter Gibson Cassels to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 97 (Q: 1593); and THOMAS, *supra* note 10, at 250. The Northern also allowed some proprietors to borrow without providing any security, see Walter Gibson Cassels to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 110 (Q: 1806-1807).

<sup>338</sup> James R. Lyle to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1837) (531) XIV, at 92 (Q: 1773).

<sup>339</sup> Walter Gibson Cassels to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 100 (Q: 1629).

agricultural regions where fewer opportunities existed for large-scale investments. Because of the unitary structure of English banking prior to 1826, banks from across the country called on the intermediary services of London banks or bill brokers to transfer funds from regions with a surplus of savings, like East Anglia, to areas where capital was in short supply, like Lancashire. The model of banking adopted by the Northern aimed at cutting out the intermediary role of the London banks and bill brokers by opening branches in areas where people saved before transferring these funds to those areas where there was a demand for capital. As the Northern's London agent described the system in 1836,

*There are two descriptions of branches, one a branch debtor to the head office, and many others which are creditors to the head office; for instance, the deposits of money which are obtained at the branch, go to supply the demands in other places where they are called upon for large discounts. There are a number of branches in various parts which require no assistance, and where the discounts are almost nothing, but where the deposits amount to 30,000l. 40,000l..<sup>340</sup>*

While debtor branches served the bank's proprietors by providing discounts, proprietors served by branches with a surplus of savings had no need for borrowing facilities. Rather, they were looking for interest on their deposits and, ideally, high dividends from their investment in the bank. To maintain the support of these proprietors/depositors, the Northern met their demands. As the Northern's

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<sup>340</sup> *Id.*, 106-7 (Q: 1724). Elsewhere, Cassels also elaborated on the difference between the "two descriptions of branches," see *Id.*, at 104 (Q: 1679).

representatives confessed before the 1836 Parliamentary inquiry, “We pay interest on everything deposited,” including on approximately £100,000 worth of deposits available for withdrawal without notice.<sup>341</sup> Because the bank’s shares were affordable at £10 fully paid up, “many ... persons in the humbler walks of life and the middle classes,” invested their savings – ranging from £100 to £1000, even £1500 – in the bank by buying its shares.<sup>342</sup> On occasions, the promise of high dividend payments tempted them to do so.<sup>343</sup>

Interest payments on all deposits and the promise of competitive dividends ensured the Northern had deposits and share capital to work with in those regions where the bank had proprietors looking to borrow. Not only was the bank now in a stronger position to lend, it faced a strong imperative to do so in order to meet both interest payments on deposits and a dividend sufficient to counter any temptation the banks shareholders might have to sell up and move their capital to another bank or investment. Provided the Northern was able to maintain interest payments and a competitive dividend, it would attract and retain a large body of proprietors. During 1835, the bank became one of the largest in England and Wales, with over 1,200 proprietors, its membership bolstered further by the reach of its branch network and

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<sup>341</sup> *Id.*, 112 (Q: 1846-1849).

<sup>342</sup> Thomas Broadbent to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1837-38) (626) VII at 110 (Q: 1592).

<sup>343</sup> One widow, for example, invested the huge sum of £15,000 in the bank. The directors had informed her that she was likely to make around £4,000 per year, see F. Stuart Jones, *Instant Banking in the 1830s: the Founding of the Northern and Central Bank of England*, THE BANKERS MAGAZINE 130, 133 (March, 1971). The bank’s dividend in 1835 was a respectable 7%, see *Report on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 225. A dividend of 7% was in line with what most joint stock banks paid to their shareholders. For example, the Huddersfield Banking Company paid between 6% and 8 ¾ % between 1829 and 1835, The Bank of Liverpool 6% every year until 1835 when it increased to 7%, and the Commercial Bank 6% at the end of its first year (1835). The figures are from *Id.*, 218, 227 and 226.

the low price of its shares. With over 1,000 proprietors backing the bank through their unlimited liability, the public regarded the bank's notes highly, making it easier for the bank to lend, which in turn attracted further proprietors as a virtuous cycle kicked in. Moreover, the guarantee provided by the bank's members also made it easier for the Northern to rediscount in the London money market,<sup>344</sup> supplying the bank with further funds to meet the borrowing needs and investment expectations of its diverse body of proprietors. There was no arrangement for a circulation account with the Bank of England for, in these circumstances, the Northern's directors perceived there to be no need.<sup>345</sup>

### **G. The Crisis of 1837**

The boom that took hold of Lancashire and beyond gathered momentum in the mid 1830s spurred on by new joint stock banks like the District and the Northern, cheap cotton imports, and the perception of export opportunities to the United States. As observed by Chapman, however, "the period of abundant credit was very short: in Manchester it did not begin until 1830 and ended with the crisis of 1836-7."<sup>346</sup> As

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<sup>344</sup> When the London and Westminster Bank agreed in 1836 to open an account for the Northern and Central, it did not consider it necessary to investigate the day-to-day management of the Northern because the London and Westminster's management "knew there was 800,000*l.* paid-up capital, and about 1,200 shareholders. We [the London and Westminster's management] had seen the list of their shareholders, and knew they were, many of them, persons of property," J. W. Gilbart to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1837) (531) XIV at 107 (Q: 1934).

<sup>345</sup> According to Cassels evidence before the 1836 Parliamentary inquiry, the Northern had informal discussions with the Bank of England about the possibility of opening a circulation account, see Walter Gibson Cassels to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 103-4 (Q: 1670-1676). These discussions did not lead to an agreement, however, the Northern concluding that its own note circulation was more profitable (*Id.*, 104 (Q: 1689).

<sup>346</sup> Chapman, *supra* note 296, at 60.

we have seen, joint stock banks had a number of mechanisms available to generate funds for lending. Finding a profitable outlet for this money was more challenging. The result was, as one contemporary put it, “*That party obtains a privilege to largely overdraw, this an exorbitant advance upon slender securities, whilst, with a third, it will be agreed to discount his bills of exchange at a very low rate – a rate which often absorbs a portion of the bank’s ordinary profit.*”<sup>347</sup>

The manufacturers and tradesmen were happy to take advantage of the easy credit made available to them by banks like the District and the Northern because they needed it to compete with their rivals in the battle for a foothold in overseas markets. As the *Manchester Gazette* pointed out to its readers in 1829, “you can sell neither cloth nor twist at any price that will cover your expenses ... you cannot make profits; you cannot save yourself from loss ... Your eyes are wondering over the map of the world for new markets.”<sup>348</sup> Moreover,

*the struggle for new markets was a particularly arduous one in the period between 1815 and 1850, a struggle in which expanding manufacturers were sooner or later involved. While a capital of £5,000 or £6,000 was adequate to build a spinning or weaving mill in the 1830s, £10,000 to £15,000 was*

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<sup>347</sup> Joseph Macardy, quoted in Chapman, *supra* note 296, at 59. Emphasis in original. Macardy was a Manchester stockbroker and promoter of joint stock banks, including the District and the Northern. Speaking in 1840, the Bank of England’s Manchester agent was willing to give Macardy credit for helping to establish almost all of the joint stock banks in Manchester, the agent writing to head office, “Mr Macardy is the individual, who in succession, established every joint stock bank in Manchester, and who was up to a certain point connected somehow or other with all of them.” Yet each time Macardy helped to form a bank, before long he had to move on because, as the Bank of England’s agent continued, “the truth is, he [Macardy] has always held in utter contempt every director and official with whom he has been associated.” The quotations are from JONES, *supra* note 27, at 100.

<sup>348</sup> Quoted in Chapman, *supra* note 296, at 56.

*considered a small capital to enter the distant markets to which cotton was increasingly directed ...*<sup>349</sup>

Little wonder manufacturing firms seized upon bank finance. Yet in an environment characterized by stiff competition and high costs, there was no guarantee of a profit. Textile firms and the banks that supported them could harm their rivals in the race to lower prices, increase worker productivity, develop new manufacturing techniques, and find alternative sources of credit. Simultaneously, however, each textile firm, and its supporting bank, was at the mercy of the aggressive tactics of competing firms and financiers.

Both the District and the Northern had access to large amounts of money, either through a circulation account with the Bank of England or via the London bill brokers. They both had branches at the disposal of directors or agents under minimal supervision. And they both had proprietors demanding loans, and sometimes other proprietors looking for a return on their savings. In this environment, both banks soon became entangled in loans unlikely to be repaid, culminating in the crisis of 1837.<sup>350</sup>

### ***1. Shareholders rescue the District***

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<sup>349</sup> Chapman, *supra* note 296, at 56.

<sup>350</sup> The crisis of 1837 is only considered here in so far as it affected the District and the Northern, and the latter bank's relations with the Bank of England. For a more detailed consideration of this crisis, see Ralph W. Hidy, *Cushioning a Crisis in the London Money Market*, 20 (5) BULLETIN OF THE BUSINESS HISTORICAL SOCIETY 131 (1946).

In 1838, the Bank of England's Manchester agent estimated that the District had around £500,000 tied up in bad debts to nine firms.<sup>351</sup> In fact, most loans on which the District was unlikely to receive payment stemmed from the bank's relations with two manufacturing firms.<sup>352</sup> One account belonged to the firm of Taylor, Sons, and Gibson ("Taylor"), opened at the Manchester branch in August 1830. Two years later, it had become apparent to the District's board at Manchester that there was "serious liability connected with the bills then current in this account, many of which, to a very large amount, appeared of very doubtful character, and turned out upon inquiry, to be mere accommodation paper of little or no value."<sup>353</sup> More precisely, Taylor owed the District £120,764, more than two thirds of which was comprised of bills of exchange that the District had discounted or accepted.<sup>354</sup>

The District responded<sup>355</sup> by having Taylor's "paper" – bills of exchange and promissory notes bearing the name of the firm – "withdrawn from circulation, or, in

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<sup>351</sup> Chapman, *supra* note 296, at 60.

<sup>352</sup> The account that follows of the losses suffered by the District draws on the District's own investigation, later presented to the bank's shareholders, and reproduced in the CIRCULAR TO BANKERS, 8 Feb 1839; the MANCHESTER TIMES, 3 Feb 1839; the MANCHESTER TIMES, 3 August 1839; the LIVERPOOL MERCURY, 1 Feb 1839; and the LIVERPOOL MERCURY, 2 August 1839.

<sup>353</sup> CIRCULAR TO BANKERS, 8 Feb. 1839 at 250.

<sup>354</sup> *Id.*, 251, 252.

<sup>355</sup> The directors in Manchester had two courses of action to choose between. One option was to force Taylor into bankruptcy by denying the firm access to further credit. Although the District would then have to write off a portion of what Taylor owed, the loss was capped at just over £120,000, and would in all likelihood be mitigated by whatever sum they could claim back via bankruptcy. The disadvantage to pursuing this option, however, followed from the debts that Taylor owed to others besides the District. Without the support of the District, these debts would go unmet. Knowledge of the failure of Taylor would then spread throughout Lancashire and beyond. The demise of Taylor carried risks for the District, for, as Taylor's bank and source of credit, suspicion as to the extent of the losses sustained by the District would spread throughout the commercial community of Lancashire. Attention would then shift to whether the District had the resources to withstand a severe dent to its standing in the eyes of both its shareholders and the broader commercial community in Manchester and Lancashire.

As this chapter explored earlier, in the early 1830s the District was only gradually beginning to establish itself as a bank that might credibly serve the needs of local manufacturers, merchants, and

common phrase, ‘taken up.’”<sup>356</sup> By purchasing the bills of exchange drawn by Taylor, the District continued to extend credit to the ailing firm while simultaneously preventing these debts from ending up in the possession of those who might demand payment come maturity. A creditor demanding payment from Taylor would expose the inability of the latter to meet its obligations. The District wanted to avoid this scenario because it would signal to the commercial community of Lancashire and beyond the financial plight of Taylor, raising questions by association about the financial strength of the District given its ties to Taylor.

The District extended loans to Taylor that totalled £212,505 by October 1834. Then the 1830s cotton boom kicked off and with it Taylor’s debt, which by December 1838 stood at £495,472.<sup>357</sup> It seems conceivable that, after the debts of Taylor stabilized around 1834, the District reasoned the best way of making the firm profitable was to take advantage of the cotton boom. Rather than reversing the trend of losses, the District’s gamble that the cotton boom would turn Taylor’s fortunes around backfired, with the firm’s debts multiplying. That the losses sustained by Taylor began to mount at an accelerated rate after October 1834 is significant. The autumn of 1834 marked the commencement of the District’s circulation account with the Bank of England. The guaranteed and cheap discounts the District could

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investors. Following the District’s early struggles in Manchester, potential losses to the amount of about 14% of the bank’s paid-up capital (CIRCULAR TO BANKERS, 8 Feb 1839, at 252), which the Manchester directors feared might occasion “great peril to the bank” (*Id.*, 250), were best avoided if possible. And it seems the directors in control of the Manchester branch thought it was possible, for in their opinion the risk of loss “could be materially reduced, if not altogether extinguished” (*Id.*, 250). The directors presumably believed in the long-term profitability of Taylor’s business: hence their decision to increase, rather than withdraw, their support.

<sup>356</sup> CIRCULAR TO BANKERS, 8 Feb. 1839, at 252 quoting the MANCHESTER CHRONICLE.

<sup>357</sup> *Id.*, 251.

obtain from the Bank of England made the District's further extension of credit to Taylor possible.<sup>358</sup>

I cannot say with confidence that any of the partners in Taylor, Son and Gibson were shareholders in the District. Probably they knew shareholders in the bank, and possibly, they knew the directors who controlled the lending decisions of local branches. Branches in places such as Manchester and Stockport, at the heart of England's textile industry, had worked together in order to secure a Bank of England circulation account and the funding that came with it. This cheap and guaranteed funding then found its way to those manufacturers who needed extensive external finance to help in the battle with their commercial rivals in the ultra-competitive 1830s.<sup>359</sup>

Through its relations with firms such as Taylor, the District stacked up losses by 1837-38 totalling £788,158. In 1836, after the completion of the four calls on its proprietors, the banks paid up capital stood at £749,600. A mere handful of accounts had wiped out the investment of the bank's proprietors. Faced with this precarious situation, the District's General Board of Directors had three possible responses to

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<sup>358</sup> *Id.*, 251, 253.

<sup>359</sup> The second account on which the District suffered large losses during the same period belonged to the firm of Brown and Powell. This account was opened at the Stockport branch in December 1831, and was initially unremarkable. By July 1832, Brown and Powell owed the District £9,952, but this was set off against security in the firm's machinery valued at £15,500, (CIRCULAR TO BANKERS, 8 Feb 1839, at 251). By November of 1834, the amount owed by Brown and Powell had increased to £25,206. That was a manageable figure, at least when contrasted with the account of Taylor, which in the autumn of 1834 was more than five times that amount. Yet between the autumn of 1834 and 1837, with cheap and accessible credit from the Bank of England at its disposal, the District channelled funds in the direction of Brown and Powell in much the same manner as they did with Taylor. If the Stockport directors anticipated Brown and Powell profiting from the cotton boom of the mid 1830s, they were left disappointed. By August 1837, Brown and Powell's account was in debt to the sum of £136,133. A year later, the firm owed the District £292,686 (*Id.*, 251).

consider. One option was to turn to the Bank of England for assistance. By the mid 1830s, the District's circulation account with the Bank guaranteed them access to between £500,000 and £600,000 worth of discounts. Was not the advantage of close ties with the Bank of England the availability of credit when need be? The problem facing the District, however, was that it had consistently taken up its guaranteed discounts with the Bank of England.<sup>360</sup> No other bank in England and Wales enjoyed recourse to £600,000 worth of Bank of England credit, yet the District had already pushed this to its limit. If the District wanted further assistance from the Bank, it would have to negotiate a higher line of credit.

A second option was to bypass the Bank of England and seek discounts from bill brokers in London. Even in the mid 1830s, when the District had benefited from large discounts with the Bank, it had nevertheless turned frequently to London bill brokers.<sup>361</sup> As we will see shortly with respect to the Northern, however, during times of weak demand and falling prices, discounts were either costly or nonexistent. Unlike the terms of their deal with the Bank, the District had no guarantee from the London bill brokers that credit would always be on hand.<sup>362</sup>

The District could only avoid being at the mercy of the Bank of England or London bill brokers by drawing on a third response, one that called for the support of the

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<sup>360</sup> CIRCULAR TO BANKERS, 8 Feb 1839, at 253.

<sup>361</sup> *Id.*, 253. See also *supra* section C.

<sup>362</sup> The District, like the Northern, negotiated a deal with the London and Westminster Bank to help alleviate the danger of the discount market in London freezing up. Both deals guaranteed £100,000 when needed, plus £50,000 worth of discounts at the prevailing market rate. This funding was for use in emergencies, but it was not sufficient to rectify the losses the District had suffered by early 1837. The District's deal with the London and Westminster commenced on 1 January 1835. Gregory reproduces the agreement in GREGORY, *supra* note 28, at 302-303.

bank's community of shareholders, and is reminiscent of the community support local communities offered to their banker before 1826. As I explained in Chapter II, before 1826, when a bank of six partners or less was in trouble, it frequently survived owing to the backing it received from the community of which it was a part. With the advent of joint stock banking from 1826, the shareholders in the new banks became fully liable for their banks debts. Unlimited shareholder liability institutionalized the ad hoc community backing by which bankers had frequently weathered crisis before 1826. That liability became real for each proprietor in the event of the bank failing. Moreover, failure also carried repercussions for the bank's depositors and borrowers. While proprietors lost out because of their responsibility to compensate the bank's creditors, depositors and borrowers also suffered, the former losing access to money, the latter to credit.

It was, however, possible to delay, or, more optimistically, to avoid such losses altogether. As described earlier, the District sought to mediate the path between, on the one hand, too many proprietors of insufficient wealth, and, on the other, too few proprietors, by offering shares to the public that carried a high nominal value of £100, of which only £15 was paid up over four instalments.<sup>363</sup> The aim was to attract sufficient investment without encouraging so-called "little people" of modest means to become proprietors.<sup>364</sup> Because only £15 had been paid up front for the £100 shares, the bank still reserved the right to call on funds from its shareholders. Whether to demand payment or not was within the discretion of the District's directors, subject to Article XXXIII of the deed of settlement, which limited calls to

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<sup>363</sup> *Report on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 240.

<sup>364</sup> The phrase "little people" belongs to the Somersetshire banker, Vincent Stuckey. See *supra* note 295 and the discussion in section E of this chapter.

£5 per share per year.<sup>365</sup> Any calls for a greater sum required the consent of the majority of proprietors at a general meeting, and even then, a £20 per share per year limit curtailed the discretion of the directors further.

In the autumn of 1836, it would have raised suspicion if the District's directors had demanded that the bank's proprietors contribute £20 per share at a time when obtaining funds from London was growing challenging. Asking the proprietors for £20 per share meant asking for £1 million in total. Few proprietors would vote for such a measure without the bank's directors first providing a convincing explanation of why the bank needed so much money at short notice. If the bank's directors made public the extent of the debts owed to the District, the bank's solvency would come into question. Demanding £5 per share from the proprietors was less likely to provoke suspicion. The drawback to this option, however, was the mere £250,000 that it would raise. By the turn of 1836 into 1837, the District had already taken on losses of more than £500,000 due to the state of the accounts of firms such as Taylor. The District's directors needed a more radical alternative.

Helping the directors find such an alternative was, partly, the fact that the District had long since found owners for its 50,000 shares. Not infrequently, other banks had retained a portion of their shares upon the establishment of the bank with distribution left at the discretion of the directors. The idea was that the directors should use these shares to attract proprietors who would bring business and/or prestige to the bank. The District followed a similar strategy initially, issuing 30,000 to establish the bank while the remaining 20,000 were thereafter "distributed ... for

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<sup>365</sup> DEED OF SETTLEMENT OF THE MANCHESTER AND LIVERPOOL DISTRICT BANKING COMPANY (1831), Article XXXIII.

the benefit of the company.”<sup>366</sup> By the mid 1830s, all of the bank’s 50,000 shares had found buyers. Yet with the onset of the cotton boom alongside the strong demand generally for the shares of joint stock banks, those joint stock banks, such as, for example, the Northern, with unissued shares found they could sell them at a premium. A possible solution for the District, then, was to issue more shares, in the knowledge that these new shares would sell at a premium given the strong demand for the shares of joint stock banks at that time. The development of this plan occupied the District’s directors during the autumn and winter of 1836 and 1837, before the bank’s precarious financial position became public.

To issue new shares, the District’s directors needed to get the consent of the bank’s existing proprietors. They could obtain that through Article LXX of the deed of settlement, which allowed for the modification of the deed provided two-thirds of the shareholders agreed to the change.<sup>367</sup> Before making their proposal to the existing proprietors, however, the directors had concerns to address. The District’s directors risked making the bank’s shares uncompetitive if they asked the proprietors to sanction the creation of, say, 20,000 new shares, each with a nominal value of £100, the existing value of the bank’s shares. Although only £15 paid up over instalments, many prospective proprietors would find the unpaid liability of £85 daunting especially given the availability of more affordable options in the mid 1830s. The shares of the Northern, for example, were £10 fully paid up, and those of the Commercial Bank of England were just £5 fully paid up. Yet the District’s

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<sup>366</sup> See the District’s prospectus, reproduced in JOSEPH MACARDY, *OUTLINES OF BANKS, BANKING AND CURRENCY* 157 (1840).

<sup>367</sup> *DEED OF SETTLEMENT OF THE MANCHESTER AND LIVERPOOL DISTRICT BANKING COMPANY* (1831), Article LXX.

directors did not wish to go to the extreme pursued by the Northern and the Commercial of making shares so affordable that even large numbers of “little people” could buy them. Such a move would alter the character of the bank, something the District’s proprietors would most likely veto.

To deal with these concerns, the District’s directors presented a middle course to the bank’s proprietors. The bank would issue new shares by converting from its present arrangement – 50,000 shares of £100 each – to 100,000 shares at £50 each, £15 paid up over instalments. The capital of the bank remained the same at £5 million. But, courtesy of the conversion, the bank would double, once the conversion was complete and all shares taken up, its working capital from £750,000 to £1.5 million. Moreover, each proprietor would face the less daunting though still considerable prospect of £35 contingent liability on their £15 paid up £50 shares. The plan received the backing from the requisite number of existing proprietors, who benefitted from first refusal of the new shares.<sup>368</sup> By March 1837, the District had allotted 30,000 of these shares, £5 paid up on purchase. The District had kept its losses under wraps in the spring of 1837 so its new shares sold at a premium, adding £2 to the price of each share. Because of this strategy, the District had already added £226,000 to its working capital, with double that figure expected once shareholders contributed the remaining £10 on each of the 30,000 shares so far allotted. Moreover, the bank now had 20,000 additional shares, which the directors could dispose of as they saw fit.

## **2. *The Northern at the mercy of the Bank of England***

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<sup>368</sup> See the MANCHESTER TIMES, 6 August 1836.

When the District found recourse to the Bank of England unattractive and to the London money market impossible, it weathered the 1837 crisis because it called upon the support of its proprietors. In the same crisis, the Northern was not so fortunate. Like the District, the Northern saw losses mount during the mid 1830s. By the time of its liquidation in early 1837, the debts owed to the bank stood at £1.3 million. The Northern's proprietors owed the bank much of this debt, as the bank's manager, T. Evans, admitted before the Parliamentary inquiry of 1837, "A great many of the shareholders are customers of the bank, certainly."<sup>369</sup>

Owing to the distance between the branches and the head office in Manchester, the directors could do little when an agent running a branch did not obey orders from the head office.<sup>370</sup> Yet even if the Northern's branches had not been so distant from the head office, losses may well have resulted regardless. The problem was that the bank's 10 Manchester directors borrowed from the bank to an extent surpassing the branch agents, largely because no one took on the role of monitoring them. The Manchester directors channelled loans to their own firms, rediscounting with

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<sup>369</sup> Thomas Evans to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1837) (531) XIV, at 67 (Q: 1331). When pushed by the committee for specific information, Evans acknowledged that out of the 52 accounts at the Manchester branch where the holder owed the bank £2,000 or more, 35 belonged to the Northern's shareholders. A similar situation prevailed at Liverpool, where, out of the 29 accounts where the holder owed the bank £2,000 or more, 21 belonged to the bank's shareholders, *Id.*, 67, (Q: 1332, 1333).

<sup>370</sup> Henry Moulton to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1837) (531) XIV, at 39 (Q: 756). At the Leeds branch, the bad debt was £40,000. Under the deed of settlement, the agent running the branch provided security, but this only covered between £2,000 and £2,500. At Nottingham, the losses totalled £12,000, at Sheffield, between £12,000 and £14,000. The security provided by the agent in both cases was only £2,000. See Henry Moulton to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1837) (531) XIV, at 40 (Q: 768, 769).

London bill brokers to raise the money.<sup>371</sup> Combined, the Northern's directors owed their bank £255,000.

To maintain this level of lending to its own proprietors, the Northern needed access to cheap credit.<sup>372</sup> The Bank of England was one potential source of such funding, but the Northern, in contrast to the District, was unwilling to meet the Bank's terms, particularly the requirement that it forego issuing its own demand notes. As an alternative, the Northern turned to bill rediscounting with London bill brokers, which proved to be a cheap source of funding in the mid 1830s.<sup>373</sup> Borrowing from

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<sup>371</sup> One director, a picture dealer called Agnew, overdrawn on his account to the sum of £23,903, the only security for the loans being the bank's own shares that Agnew had still to pay for, see Henry Moulton to the *Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1837) (531) XIV, at 14-15 (Q: 264-278). Braidley, a manufacturer, had overdrawn the sum of £30,347 by January 1836. Only £6,500 of this appeared in the bank's public accounts book (the book that the bank's clerks had access to). A "private" accounts book recorded the rest, accessible only to a handful of directors and the bank's accountant. Braidley's sole security for these loans was a single long-dated bill of exchange drawn on someone who apparently owed him money in London (*Id.*, 15 (Q: 293-298)). The biggest liability, described by the 1837 Parliamentary Committee as an "immense credit," was owed to the bank by a director called Hardie, a "general agent" with ties to banks in Ireland, and totalled £70,000 (*Id.*, 16 (Q: 306)).

<sup>372</sup> Before turning to external sources of credit, the Northern had at its disposal the capital of its shareholders and the deposits left by savers. Upon its establishment in 1834, the Northern had created 100,000 shares. By 1836, 71,186 of these had owners. All of the shares were £10 fully paid up over four instalments of £2 10s. per share. After the final instalment in March 1835, the bank's working capital, upon which the bank could make no further calls, stood at £711,160, see *Report on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 225. The funds the bank raised through receiving deposits, especially from agricultural areas where it established branches to tap into pools of savings, supplemented this working capital. By the time of the Northern's collapse, in January of 1837, it held £700,000 worth of deposits (CIRCULAR TO BANKERS, 30 Dec. 1836 at 195). Moreover, the Northern had the option of making loans through its own note issue, the circulation of which stood at £300,000 by January 1837. The problem with both using deposits and creating notes to supplement the bank's capital was that these sources of funding were liabilities. The account holder could withdraw the sums deposited with little or no notice, and the note holder could insist on payment in gold coin or Bank of England notes on demand. The Northern had to make sure it had access to funding sources independent of its shareholders, depositors, and note holders. The main source of such funding was the London money market.

<sup>373</sup> The Northern's Chairman, Henry Moulton, claimed in 1837 that, "discounts were very easy in 1834," Henry Moulton to the *Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1837) (531) XIV, at 43 (Q: 830). In March 1834, the bill brokers, Overend Gurney, charged a discount rate of 2 ¾ % (the Bank of England, by contrast, charged 4 %). Overend Gurney's rate did not rise above 3 ½ % during the first half of 1834 and during 1835 it was always within the range of 3 ½ % to 4 %. In the second half of 1836, however, it reached 5 %. When the Northern turned to the Bank of England for help in December 1836, Overend Gurney's rate stood at 5 ½ % and the Bank of England's stood at 5%. The figures are from *Report on Bank Acts*, BRITISH PARLIAMENTARY PAPERS

bill brokers brought considerable risks however. Whether or not to supply discounts was completely within the control of bill brokers. When bill brokers refused to rediscount bills, banks like the Northern could only hope the banks serving as their London agents would help them out. The Northern had to be careful here too, however. Each London bank served a number of country correspondents. If all of these correspondents requested funds at the same time, the London bankers would have to disappoint some.<sup>374</sup>

Despite these risks, in the mid 1830s the Northern pushed bill rediscounting to the limit. In December 1834, Walter Gibson Cassels, the person soon to be appointed as the bank's permanent employee in London, complained about the extent of the

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(1857) (200) X at 463-4 (Q: 4876), which contains Overend Gurney's discount rate throughout the 1830s; and CLAPHAM, *supra* note 126, Appendix B, at 429, which contains the Bank of England's discount rate.

<sup>374</sup> During the crisis of 1825-26, banks dependent on funds from London found that when they all turned to London at the same time for emergency supplies of gold coin and Bank of England notes, the London banks could not keep pace with demand. When the 1836 Parliamentary Committee learned that the Northern's emergency lines of funding consisted of "[I]n the first place ... a large amount of gold coin and Bank of England notes lying at head office [and] in the second place ... very great facilities altogether in London, which we could make available at the shortest notice," they sensed vulnerability. (The quotation is from Walter Gibson Cassels to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 108 (Q: 1747)).

Despite the Northern's claim that it had the "power to go to a very considerable extent with our [London] bankers" (*Id.*, 108 (Q: 1748)), to perhaps £50,000 or £100,000 (*Id.*, 108 (Q: 1749)) in an emergency, the committee was sceptical. They wondered if the Northern had "not heard of periods at which bankers in London have been obliged to take care of themselves, and not encumber themselves with such engagements" (*Id.*, 108 (Q: 1751)). When the Northern's representative was pushed, he admitted that he did not know if the Northern had any legally binding agreement committing their London bankers, Barnett, Hoare & Company, and Prescott, Grote & Company, to supply them with such aid in an emergency (*Id.*, 109 (Q: 1774, 1775)). In fact, the Northern kept their balance with their London bankers "as bare as we can" (*Id.*, 109 (Q: 1763)) during normal times because their London bankers did not pay interest on idle balances. Consequently, one committee member, Sir James Graham, wondered whether it was likely that their London bankers would show the Northern good will should they need it, asking the Northern's representative, "As you studiously keep your London bankers, as you term it, bare, do you expect that any moment they would advance 100,000*l.* for you on an emergency?" (*Id.*, 109 (Q: 1772)). Due to the absence of interest payments on their credit balances at their London bankers, the Northern turned instead to bill rediscounting with London bill brokers. The bill brokers also served as a potential source of assistance in an emergency. But, as was the case with the bankers, bill brokers were not reliable in an emergency, a fact the Northern's representative made clear when pushed by the committee, "they [the bill brokers] might refuse to discount any of our bills at any moment" (*Id.*, 109 (Q: 1784)).

bank's liabilities falling due that he had to raise the funds to cover, either from their London bankers or by rediscounting. The bank needed to make payments to depositors, note holders, and on bills of exchange it had accepted that totalled £100,000 per week. The bills held by Cassels – bills the Northern had discounted and held until maturity – generated around £21,000 per week. The head office in Manchester also remitted funds to London every day, placing at Cassels disposal a further £30,000 each week. That left a shortfall of, typically, between £40,000 and £50,000 per week, which Cassels covered by rediscounting those bills yet to mature with bill brokers.<sup>375</sup>

The problem, then, for the Northern was that it had just enough bills that it could rediscount to cover its obligations. Ideally, the bank wanted to work with a larger margin, so that when payments fell due it was not desperately trying to raise cash. When the bank needed all the cash it could raise, it became dependent on bill brokers, who then dictated a higher rate of discount knowing that the Northern had no choice but to accept the terms imposed.<sup>376</sup> As Cassels put the point,

*Now the simple fact is, that we can get money if we have bills to offer and do not object to the rate demanded, but we are not supplied with bills sufficient*

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<sup>375</sup> WALTER GIBSON CASSELS, A NARRATIVE OF THE DISPUTE BETWEEN THE NORTHERN AND CENTRAL BANK OF ENGLAND AND WALTER GIBSON CASSELS (1838), Appendix at 2, letter from Cassels in London to the head office in Manchester, 12 December 1834.

<sup>376</sup> Cassels wanted the bank to reduce its liabilities to give it greater independence from bill brokers. In his correspondence with head office he stressed that,

*We must get more independent to be at all comfortable. On this view I think we must either have increased means or as soon as possible diminish the number of branches and lesson the amount of advances both at H.O. and branches. In short curtail the business so as to bring it into a manageable compass,* CASSELS, *supra* note 375, Appendix at 2, letter from Cassels in London to the head office in Manchester, 12 December 1834. Emphasis in original.

*for the demand. The result of this is ... that at times we have not bills to give in time to meet our demands, and consequently we cannot drive a bargain such as we might do, if we had to make it in anticipation of our wants.*<sup>377</sup>

Dictating a high rate of discount was one option for bill brokers faced with a bank desperate for cash.<sup>378</sup> They also held another option at their disposal that Cassels was conscious of, noting in one of his letters to head office “brokers can give up taking bills whenever they please and of course we must bear the brunt of it.”<sup>379</sup> In a scenario where bill brokers refused to discount, perhaps owing to the curtailment of their own funds as investors moved into assets other than bills, banks like the Northern looked to their London bankers, as in fact happened in May 1836.<sup>380</sup> But when their line of credit with a London bank ran out, there was no option left for the Northern other than to turn to the Bank of England.<sup>381</sup>

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<sup>377</sup> *Id.*, Appendix at 3, letter from Cassels in London to the head office in Manchester, 4 August 1835.

<sup>378</sup> During 1836, bills of exchange carrying the endorsement of joint stock banks such as the Northern became even more expensive to rediscount because of a new policy of the Bank of England to refuse discounts on any bill previously rediscounted by a joint stock banks that issued its own demand notes. Bill brokers who rediscounted bills offered to them by the Northern, a bank with its own note issue, knew that they could not thereafter rediscount these bills with the Bank of England (bill brokers might wish to convert bills into cash should those who left funds with them for investment recall these funds). The decline in the liquidity of bills carrying the endorsement of a joint stock bank of issue made it more expensive for these banks to rediscount. On this particular Bank of England strategy, see THOMAS, *supra* note 10, at 304-305.

<sup>379</sup> CASSELS, *supra* note 375, Appendix at 9, letter from Cassels in London to the head office in Manchester, 23 May 1836.

<sup>380</sup> *Id.*, Appendix at 7-8. In May 1836, the Northern negotiated an agreement with the London and Westminster Bank. Through this agreement, the London and Westminster became one of the Northern’s London agents, agreeing to accept bills of exchange drawn by the Northern of a combined value of £100,000, and to provide discounts totalling £50,000. August and September of 1836 proved especially challenging for the Northern, and it exhausted the credit provided by the London and Westminster almost immediately (see *Id.*, Appendix at 11-24). On the Northern’s relationship with the London and Westminster, see J. W. Gilbart to the *Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1837) (531) XIV at 107 (Q: 1933). Chapter IV of this dissertation explores joint stock banking in London in the 1830s, including the early years of the London and Westminster.

<sup>381</sup> As section G (1) explained, the District turned to its proprietors for support. This option was not available to the Northern. Whereas the District initially issued £100 shares, £15 paid up, giving the bank the option of making further calls on its shareholders up to £85 per share, the Northern had

The Northern first turned to the Bank of England for assistance in early December 1836, when it asked for £100,000 to cover its obligations falling due that week. The Bank of England entered negotiations, partly owing to the unique circumstances surrounding the Northern's request for help,<sup>382</sup> partly also because of the consequences that might follow should the Northern collapse. By the autumn of 1836, the Northern was one of the biggest financial institutions in England with approximately 1,200 proprietors, over 40 branches stretching from the north of England to south of Birmingham, £300,000 worth of notes in circulation, and around £800,000 worth of deposits. If the Northern could now not get credit from London's banks and bill brokers, it risked defaulting on its obligations. Should a bank the size of the Northern default, concern would spread amongst those members of the public who held the notes of or had deposits with less prestigious banks. To prevent a crisis of confidence from undermining England's banking system, the Bank of England's directors sat down to thrash out a deal with those representing the Northern.

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issued shares of £10, fully paid up. Hence, the Northern could not make any further calls on its shareholders. Cassels thought this arrangement made the Northern less prone to taking on risky loans because "when they [the bank's directors] really know they have the full amount of their capital paid up, and they can command no more, they proceed the more steadily to make their arrangements, and conduct their operations in every respect prudently," Walter Gibson Cassels to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1836) (591) IX at 102 (Q: 1655). Through the rest of 1836 and into 1837, events proved Cassels wrong. And when the Northern found itself in financial difficulties despite its fully paid up capital, the bank was unable to make a call on its shareholders. The Northern's Chairman, Henry Moulton, was sure that if the Northern had been able to make a call on its shareholders, the bank would have survived its difficulties, saying, "If we had not had the whole of our capital paid up then, as soon as we felt embarrassment we should immediately have made a call, and that call would have been responded to, and relieved us from our difficulty," Henry Moulton to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1837) (531) XIV at 49 (Q: 955).

<sup>382</sup> The Northern turned to the Bank of England for help because, in late November 1836, two of the Northern's representatives who had just arrived in London misplaced a parcel containing a large number of bills of exchange that they had brought to London to rediscount. Although a "cab-man" found the parcel within a day of it going missing, its return did little to alter the Northern's fate. For more on the amusing episode of the missing parcel of bills, see the evidence of Benjamin Braidley (one of the Northern's directors) to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1837) (531) XIV at 68-84; and the CIRCULAR TO BANKERS, 9 Dec. 1836, at 171-4.

The Northern required around £100,000, certainly no more than £200,000. Its liabilities were extensive, large enough to force the Bank of England into negotiations, though not as large as the Bank had expected. The Northern claimed, albeit “verbally – but seriously, deliberately, and advisedly,”<sup>383</sup> that it had only £240,000 worth of deposits. The Bank of England was suspicious as before the Parliamentary inquiry earlier that year the Northern’s deposits had totalled a figure closer to £800,000. Its suspicion roused, the Bank presented the Northern with an ultimatum: accept a minimum advance of £500,000, or take no advance at all. The Northern accepted and further agreed to the Bank of England’s only major condition that the Northern close all of its branches, save the one in Liverpool, by July 1837. This seemed to be a good deal for the Northern, especially because its independent note issue was left untouched, a point noted by *The Circular* when it observed, “It is remarkable that there was no stipulation for the withdrawal of the notes in circulation amounting to some little more than £300,000.” *The Circular* then speculated that the Bank was biding its time over the note issue, the newspaper’s position being that “this [the note issue] we conclude must eventually follow the other arrangements agreed upon; and that the Bank of England will make a similar bargain to that made by them with the ... District Bank.”<sup>384</sup> Given that the Northern was now dependent on Bank of England credit, it is unlikely that the terms of any such circulation account would be anywhere near as favourable as those obtained two years earlier by the District.

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<sup>383</sup> THE CIRCULAR TO BANKERS, 30 December 1836, at 194, reproducing a report from the MORNING POST, 24 December 1836. The quotation is from the report in the *Morning Post*.

<sup>384</sup> THE CIRCULAR TO BANKERS, 9 Dec. 1836, at 173.

In fact, the issue of the Northern's note circulation was resolved by January 1837, though there was to be no circulation account, not even one on terms less generous than received by the District. By 1837, the Northern was simply not in a position to ask for one. Despite claiming that the £500,000 placed at its disposal by the Bank of England was more than sufficient, the Northern had within weeks drawn on the full amount. When the Bank of England received the Northern's written accounts, it was plain that the Northern's summary of its assets and liabilities submitted verbally at the meeting in early December was woefully inaccurate. Instead of £240,000 worth of deposits, the true total was £700,000. Instead of £900,000 in advances to borrowers, the true total was £1.3 million. The Northern soon needed an additional £500,000 worth of credit from the Bank of England. In return, the Bank of England took over the management of the Northern with the intention of winding it down.<sup>385</sup>

The Northern's bargaining position worsened as public knowledge about the extent of its plight grew. The property of its proprietors had become a joint stock banks' key bargaining chip but when it became apparent that the Northern's investments might not cover its obligations, creditors turned to the property of the bank's proprietors. That property could not both compensate the bank's creditors and continue to support the bank's ability to borrow. To state the obvious, joint stock banks like the Northern were only able to borrow cheaply provided the property of their proprietors remained intact. The moment creditors called upon that property to satisfy the debt the bank owed them, the major source of the joint stock bank's strength was gone.

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<sup>385</sup> The figures are from THE CIRCULAR TO BANKERS, 30 Dec. 1836, at 195-196.

## **H. Conclusion**

This chapter set out to understand a feature of the Bank of England's circulation accounts that is puzzling. These arrangements, whereby the Bank supplied provincial banks with cheap credit and Bank of England notes in return for these banks giving up their independent note issue, are puzzling when viewed against the prevailing economic theory of the time. In order to manage the gold standard, the Bank of England's directors believed that they needed to exert greater influence over the circulation of money and the provision of credit outside of London. By replacing the independent note circulation of provincial bankers and by giving the Bank of England's "octopus tentacle" branches some influence over local credit markets, the Bank saw its circulation accounts as a means towards exerting this influence. Yet the cheap credit the Bank of England made available on demand to contracting banks forced the Bank to increase its supply of notes and extend further credit to the provinces during exactly those moments when theory dictated the Bank should have been doing the opposite.

This chapter examined the bargaining power of the joint stock banks of the 1830s to address this contradiction. These banks could obtain favourable terms from the Bank of England in the mid 1830s because their bargaining position was at that point strong. Their ready access to cheap credit from sources other than the Bank of England gave them the space to ignore the Bank. Bill brokers willingly lent to provincial joint stock banks because guaranteeing the debts of these banks was the unlimited liability of a large body of proprietors.

Provided joint stock banks like the District and the Northern could maintain the perception that their debts were highly credible, they could continue to borrow cheaply. The Bank of England's difficulties at mediating its often conflicting obligations in the 1830s between, on the one hand, managing the gold standard, and, on the other, securing a dividend for its shareholders, also weighed in favour of the joint stock banks. Responding to the interests of its shareholders, the Bank contributed to the general conditions of easy credit that joint stock banks, backed by the property of their proprietors, ably reinforced before exploiting. Out of this environment, the District bargained for a surprisingly advantageous circulation account from the Bank of England.

Banks like the District and the Northern had to walk a fine line to ensure that they kept their own internal conflicts under control, lest their bargaining position turn unfavourable. The greatest difficulty faced by banks like the District and the Northern was the pressure from shareholders who expected cheap loans in return for guaranteeing through their unlimited liability the bank's debts. Both the District and the Northern found it difficult to limit their lending, not least to their own shareholders. When the extent of the bank's liabilities overwhelmed the property of its shareholders, joint stock banks no longer stood up to the Bank of England. Instead, there was a reversal in the terms of the struggle, with the Bank of England dictating terms to the joint stock banks. At least that is what happened to the Northern. The District did not find itself at the mercy of the Bank of England in 1837 because, despite its losses, it was able to call in payments from its proprietors.

Helping to resolve the puzzle with which this chapter started is a view of law that captures the way organizations such as banks are simultaneously empowered and left exposed by the legal regime. Such a view of law requires seeing beyond the legal regime as either fettering some interests to benefit others, or as liberating interests from these fetters before taking its place on the margins of social and economic change. Although the legislation of 1826 did “liberalize” banking in the sense that it made joint stock banking possible, those interests agitating against the Bank of England’s monopoly were not thereby empowered to do anything or get everything they wanted. Similarly, although the Bank of England lost one part of its monopoly, it retained much power and influence. The legal regime was not on the margins of the bargaining that then followed between the Bank of England and the provincial joint stock banks, but instead underpinned the moves the each side could make.

The joint stock banks could obtain cheap credit from bill brokers in London partly because the proprietors of provincial joint stock banks were *liable* for all of their banks debts. The Bank of England helped to fuel this cheap credit by lending to the bill brokers, but did so because it was contractually *obliged* to meet interest payments on the East India Company’s deposits. The Bank had to cover these interest payments while also securing a dividend for its shareholders. These shareholders were in a *privileged* position for they could shift their investments from the Bank to other securities, such as government bonds, at their discretion. But while the Bank of England faced conflicting considerations – let us not forget also the obligations underpinning the gold standard that lay in the background – so too did the joint stock banks. Written into their deed of settlement, more often than not, was

a provision that allowed the bank's proprietors favourable borrowing *rights*. To preserve their credibility, joint stock banks had to make sure they maintained a balance between their assets and the liabilities that these borrowing rights sometimes resulted in.

Liabilities, obligations, privileges, and rights underpinned all of the moves that the joint stock banks and the Bank of England might make, both against each other and internally. In particular, contractual commitments – contingent liability on bills of exchange, interest payments on deposits, circulation accounts, borrowing rights, dividends on bonds or shares, to name the most prominent examples – pervade the story told in this chapter. The same was true of property relations, such as those, to take three leading examples, between the Bank of England and its shareholders; between the proprietors of joint stock banks; and between joint stock banks and the holders of the bills of exchange bearing the endorsement of the bank. To claim, as the banking historian Michael Collins has done, that “the law was permissive and, with the exception of note-issuing, it placed few restrictions on the type of business bankers could undertake,”<sup>386</sup> ignores the role played by many of these legal relations underpinned by contract and property.

One of this dissertation's arguments is that it is important to keep these legal details centre stage, rather than to confine them to “the broader parameters governing bank operations” as Collins and a host of other economic historians tend to do. It is important to keep these legal details at the centre of our historical understanding of money and banking because the details reveal the creative powers of law. Legal

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<sup>386</sup> COLLINS, *supra* note 13, at 65.

creativity could not be stifled in the history of 1830s banking analysed in this chapter, partly because the Bank of England and the joint stock banks were constantly on the lookout for new ways of getting the better of each other. A nascent central bank lending directly to banks owned by manufacturers; banks owned entirely by segments of their local community; “district” banks controlled by local boards, boards which controlled decisions over lending; branch banking that allowed regional banks to bypass the centre of finance in London. Before the 1830s, central banks, locally owned joint stock banks, district banks, local boards, and branch banking were all either unheard of or marginal features of the English and Welsh financial landscape. By the end of the 1830s, these features had become both undeniable and impossible to imagine outside of their legal regime. Nascent central banking in the 1830s required a *contract* for a circulation account. Banks owned by their local community involved combining disparate *property* holdings through a deed of settlement. Lending this *property* through local boards or through branches involved drawing up a *contract* allowing others to borrow in accordance with this deed of settlement and under the supervision of the general board. People designed and constructed these innovative moves in the 1830s owing to the legal regime provided by property and contract.

According to many contemporaries, however, the legal regime of the 1830s gave too much scope for creativity. As shown in this chapter, many condemned the innovative use of circulation accounts as counterproductive given the prevailing theory behind the gold standard.<sup>387</sup> Besides targeting its relations with joint stock banks, criticism of the Bank of England also targeted the Bank’s discretionary

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<sup>387</sup> See *supra* note 5.

control of its note issue.<sup>388</sup> Although the Bank had to ensure the convertibility of its notes into gold coin on demand, determining what constituted a safe ratio of paper notes to gold reserves was a decision left to the judgement of the Bank's directors in the 1830s. The Bank's directors tried to reassure its critics that the Bank expanded and contracted its note issue in response to changes in the foreign exchanges.<sup>389</sup> But the Bank's critics, especially those who came to be grouped as the Currency School, produced a stream of pamphlets claiming to show that the Bank was failing to adhere to its own self imposed rules. These failures had contributed to the flow of too much money when there should have been a contraction. Consequently, as argued by Currency School thinkers like Samuel Jones Loyd, the Bank of England's discretion over its note issue was to blame for the crisis of 1836-37. The remedy proposed by the Currency School was the removal the Bank's discretionary control of its note issue.

That is what the famous Bank Act of 1844 achieved, when it was required that all Bank of England notes above a fixed fiduciary issue of £14 million be 100% convertible into gold coin.<sup>390</sup> Hence, for every note issued by the Bank of England above £14 million, the Bank had to keep a corresponding amount of gold coin in reserve.<sup>391</sup> The Act also ended the Bank's use of circulation accounts,<sup>392</sup> yet even if there had been no formal end to these accounts, they would have proved less useful to the Bank after 1844 owing to the severe curtailment in this same legislation of the

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<sup>388</sup> See *supra* note 262.

<sup>389</sup> See discussion at *supra* note 262.

<sup>390</sup> 7 & 8 Vict. c. 32 (1844) [Bank Charter Act or "Peel's Act"].

<sup>391</sup> *Id.*, Section II.

<sup>392</sup> *Id.*, Section XXIII.

independent note issue of provincial banks.<sup>393</sup> The Act of 1844, then, benefited the Bank of England by consolidating the centralization of paper money in England and Wales, while simultaneously hindering the Bank by removing its ability to create paper money free from direct gold backing. Driven by the demand for credit from joint stock banks, the London money market continued to grow in the 1840s. Yet, deprived of its 1830s discretion, the Bank of England was unable to meet the requests for assistance that arrived from bill brokers and bankers during periods when an economic boom turned into a crisis. Accompanying the centralization of paper money, then, was a central bank in chains.

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The moves and countermoves between the Bank of England and the first joint stock banks featured prominently in the economic landscape of the English and Welsh provinces after 1826. These moves and countermoves did not characterize banking in London, at least not initially. The legislation permitting provincial joint stock banking in 1826 did not apply to a 65-mile circle in and around London. Yet by the end of 1833, joint stock banking was possible in London, and for the rest of the 1830s the moves and countermoves between the Bank of England and joint stock banks became a feature of banking in London as well as the provinces. Chapter IV takes up the fight for joint stock banking in London and the contests in the 1830s between the Bank of England and the first joint stock bank in London, the London and Westminster.

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<sup>393</sup> The legislation, at Sections X-XIII, only permitted banks issuing notes on 6 May 1844 to continue to do so, and only on the condition that (i) the bank did not exceed its average issue as of the twelve weeks ending 26 April 1844; and (ii) the bank's issue remained continuous (i.e. the bank could not resume a lapsed issue). See CLAPHAM, *supra* note 126, at 183.

## IV

### **“A CURIOUS PICTURE OF LAW AND LEGISLATION”: THE BANK OF ENGLAND AND THE FIRST JOINT STOCK BANKS IN LONDON, 1833-1844**

In late August 1833, Parliament passed legislation renewing the Bank of England’s Charter. As always, the renewal of the Bank’s Charter provoked heated debate between the Bank’s supporters and its opponents. One point of debate concerned the scope of the Bank’s monopoly over joint stock banking in and within 65 miles of London. Parliament resolved that debate by permitting, via a so-called “declaratory” clause in the legislation of 1833,<sup>394</sup> the formation of other joint stock banks in and around London on the condition that these banks did not issue their own bank notes payable on demand. Yet such an outcome would have seemed highly improbable only months before and left many contemporaries shocked even after the legislation had passed through Parliament.

*The Times* captured the sense of surprise by observing that the declaratory clause had passed through Parliament “notwithstanding the old and general impression that by the Bank Charter just expired they [other joint stock banks in and around London] had been wholly prohibited.”<sup>395</sup> The famous philosopher and economist, John Stuart Mill, shared in this sense of surprise, though he also discerned one possible explanation for the inclusion of the clause. According to Mill, “For this amendment to the Bank Charter [the clause declaring joint stock banking lawful in

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<sup>394</sup> 3 & 4 Will. IV c. 98 (1833) [Bank of England Act], Section III.

<sup>395</sup> THE TIMES, 31 August 1833.

and near to London] we are indebted to no conviction, to no enlightenment of the understandings of our Whig Ministers, nor yet to the wisdom of the House overruling their folly. We owe it to a singular discovery.”<sup>396</sup> The “singular discovery” identified by Mill concerned the traditional interpretation of the Bank of England’s Charter, an interpretation that, as *The Times* observed, created the impression that the Bank of England was the only joint stock bank permitted in or within 65 miles of London. The discovery was “that this [traditional] interpretation of the law was wholly erroneous.”<sup>397</sup> That an alternative interpretation could swiftly replace the traditional view of the Bank’s Charter was for Mill “a curious picture of the law and of legislation.”<sup>398</sup> In Mill’s opinion, there could be only one explanation,

*that what it is peculiarly and strongly men’s individual pecuniary interest to know, they will know; for of all the innumerable adventurers, or those who would gladly have been adventurers, in banking speculations, or who have actually founded numerous associations for banking purposes in other parts of the kingdom since 1826, if there had been one who had inspected the Act [the Bank’s Charter] and given a fee to Sir William Horne and Sir John Campbell for telling him its real meaning, he must have learned the very fact which those functionaries, as the law authorities of the Crown, have just promulgated to a wondering public.*<sup>399</sup>

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<sup>396</sup> JOHN STUART MILL, NEWSPAPER WRITINGS 590 (1986).

<sup>397</sup> *Id.*, 590.

<sup>398</sup> *Id.*, 591.

<sup>399</sup> *Id.*, 591, footnote omitted. Sir William Horne and Sir John Campbell were, respectively, the Attorney General and the Solicitor General at the time, and in these capacities offered legal advice to the government. We return to their role in the story told in this chapter in a later section.

The men with a strong “individual pecuniary interest to know” that the Bank of England’s monopoly over joint stock banking in and around London was not as clear cut as previously thought, went on to create in early 1834 the first joint stock bank in the capital besides the Bank of England, the London and Westminster Banking Company. Yet they did not initially attempt to challenge the traditional interpretation of the Bank’s Charter regarding joint stock banking in London.<sup>400</sup> In their first petition to Parliament of early August 1833 calling for an end to the Bank of England’s monopoly in joint stock banking in London, the promoters of the London and Westminster accepted the broad interpretation of the Bank of England’s monopoly that prevented the establishment in London of any bank with more than six partners. The argument of the petitioners focused instead on the practical benefits joint stock banking would bring.<sup>401</sup> When those challenging the Bank of England’s monopoly also supplemented their argument by questioning the traditional interpretation of the Bank’s Charter,<sup>402</sup> on making the new interpretation public “throughout the banking community in the City, it was received with derision. Some laughed, some were very angry, calling the innovators bad names, designating them

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<sup>400</sup> The idea of establishing a joint stock bank in London gained ground at the start of 1833 through the efforts of W. R. Douglas, a Scottish merchant with the firm of Douglas, Anderson & Co. He consulted the firm’s solicitor, a Mr. Roy, about the legality of such an endeavour. Roy’s advice reiterated the traditional interpretation: the Bank of England’s Charter made it illegal for more than six partners to form a bank within London or within a sixty-five mile radius around London. See GREGORY, *supra* note 28, at 66-7.

<sup>401</sup> In particular, they emphasized that by

*the association of numerous partners the security and accommodation of the public will be materially promoted and advanced – the greater Union of Capital and responsibility naturally affording the public the fairest prospect of those advantages and facilities, whether in times of quiet or panic, which in this large commercial and trading community is of the very deepest importance,* GREGORY, *supra* note 28, at 68-9.

<sup>402</sup> They did so in a second petition to Parliament. GREGORY, *supra* note 28, at 68-72, reproduces both this petition and the first petition on the practical merits of joint stock banking.

as the Winchester thieves.”<sup>403</sup> Moreover, the government too, which like the promoters of the London and Westminster was looking to strengthen its bargaining position against the Bank of England, initially accepted without debate the traditional interpretation of the Bank’s monopoly over joint stock banking in London. In the course of its negotiations with the Bank of England over the latter’s Charter renewal during the spring and early summer of 1833, the Bank and the government initially settled on a deal that protected the Bank “against the establishment of *any* joint stock bank within the sixty-five mile limit.”<sup>404</sup>

Despite the conventional view held even by the Bank’s challengers, the Bank of England lost its monopoly over joint stock banking in and within 65 miles of London. How did such a dramatic turnabout occur so quickly? Partly, the Bank lost this monopoly because the traditional interpretation of the Bank’s Charter lost its hold over the government and the Bank’s opponents. This chapter takes on the puzzle of how the traditional interpretation collapsed.

John Stuart Mill’s observations provide us with a starting point towards addressing this puzzle. Mill’s explanation for the about face was the pressure for change exerted by well-funded interest groups hostile towards the Bank’s monopoly.<sup>405</sup> These

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<sup>403</sup> The passage is quoted by GREGORY *supra* note 28, at 66-7, and comes from an unsigned printed paper in the possession of the Westminster Bank, of unknown date, though later than 1875.

<sup>404</sup> GREGORY *supra* note 28, at 37. Emphasis in original.

<sup>405</sup> The promoters of the London and Westminster raised a capital of £10 million very soon after issuing the bank’s prospectus. See GREGORY *supra* note 28, at 48. One opponent of the new interpretation noted

*neither the Bank of England nor the public believed that such was the law (as now declared),*

interest groups wanted an end to legislative fetters, such as the Bank's monopoly over joint stock banking in London, and to take its place they envisioned a "liberalized" banking regime suited to the needs of the growing commercial classes in London for large, stable banks.<sup>406</sup> Mill was correct to view the struggles over the renewal of the Bank of England's Charter as immersed in interest group conflict. The government, the Bank of England, the promoters of the London and Westminster, and London's private banks, to take the four of the most prominent groups, all had positions to defend or to assert. The Bank of England and London's private banks looked to protect themselves from the competition of joint stock banks by arguing that joint stock banks could not meet the needs of London's commercial class.<sup>407</sup> The promoters of the London and Westminster disagreed, arguing that the

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*namely, the fact that, on the one hand, no such joint-stock banks were ever thought of during the joint-stock mania, while, on the other hand, forty-eight hours had not elapsed from the moment that it was promulgated, on the authority of the law officers of the Crown, that such might be legally established, before a prospectus, involving a capital of 10,000,000l., was issued and acted upon, Lord Bexley, HANSARD, HL VOL. 20, COL. 861 (23 August 1833).*

<sup>406</sup> For an example of these views, see ANON., HINTS BY WAY OF ENCOURAGING THE FORMATION OF A JOINT-STOCK BANKING COMPANY IN LONDON (1834).

<sup>407</sup> See, for example, Samuel Jones Loyd to the *Committee on Renewing the Bank of England Charter*, BRITISH PARLIAMENTARY PAPERS (1831-32) (722) VI at 232-249. See, in particular, Loyd's answer to Q: 3306 (at 236), where he states with respect to proposed joint stock banks in London,

*I think that Joint Stock Banks are deficient in every thing requisite for the conduct of the banking business, except extended responsibility; the banking business requires peculiarly persons attentive to all its details, constantly, daily and hourly watchful of every transaction, much more than mercantile or trading business. It also requires immediate, prompt decisions upon circumstances when they arise, in many cases a decision that does not admit of delay for consultation; it also requires a discretion to be exercised with reference to the special circumstances of each case. Joint Stock banks being of course obliged to act through agents and not by a principal, and therefore under the restraint of general rules, cannot be guided by so nice a reference to degrees of difference in the character or responsibility of parties; nor can they undertake to regulate the assistance to be granted to concerns under temporary embarrassment by so accurate a reference to the circumstances, favourable or unfavourable, of each case.*

Loyd's comments echo the remarks of those who opposed joint stock banks in the provinces, including Henry Burgess, see discussion at *supra* note 309. Loyd (later known as Lord Overstone), it should be noted, was a partner in a private bank in London. He was also instrumental in bringing about the Banking Act of 1844, see *supra* note 390 and surrounding text. For more on those critical of London joint stock banks, see THOMAS, *supra* note 10, at 120-2.

prohibition on the number of partners who could form a bank created instability harmful to commercial interests.<sup>408</sup>

Interest group conflict, alongside a view of law as either prohibiting through fetters, or liberalizing through the removal of these fetters, is only a starting point towards resolving this chapter's puzzle, however. The puzzle that we address in this chapter is the rendering of a relatively stable interpretation of the Bank of England's Charter unstable. The push for banking liberalization by the Bank's opponents is part of the explanation. Yet the push towards that goal does not explain the efforts at reinterpreting the Bank's Charter given that the Bank's opponents could advocate for liberalization by stressing the practical benefits joint stock banks would bring. Given the practical benefits associated with liberalized joint stock banking, why did the Bank's opponents also target the established interpretation of the Bank's Charter? One possibility is that doing so was a further strategy complimenting their

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<sup>408</sup> The promoters of the London and Westminster claimed that "the formation of a Joint-Stock Bank of Deposit ... is ... called for by the distrust which has of late years prevailed as to the security of the system upon which Private Banking is conducted," ANON., HINTS BY WAY OF ENCOURAGING THE FORMATION OF A JOINT-STOCK BANKING COMPANY IN LONDON 8 (1834). In particular, these private banks were vulnerable owing to the tendency of their engagements to assume a level far greater than the capital of the bank's partners (*Id.*, 11). That left the private banks exposed during moments of crisis with the result that "in every season of distrust, the independent depositors transfer their floating balance to the Bank of England" (*Id.*, 14). Since 1826, the Bank of England had witnessed an increase in the number of private depositors opening accounts (*Id.*, 19. See also CLAPHAM, *supra* note 126, at 122). But the Bank of England, as pointed out by those associated with the London and Westminster, was not ideal as a safe place to deposit savings because it did not pay interest. Nor was the Bank a convenient source of funding for those engaged in business because of its strict rules on the eligibility of both customers and bills. For a list of further inconveniences that made the Bank less attractive for business, see ANON., HINTS, 19-20. According to the London and Westminster, as articulated most clearly by the bank's manager, J. W. Gilbart, the banking services offered by London private banks and the Bank of England "were adapted only for the rich." As Gilbart continued,

*An indispensable condition of having an account was that a certain sum should be kept unproductive in the [private] banker's hands. Thus the middle class of society who had the means of employing the whole of their capital in their respective occupations were altogether excluded from the advantages of banking. To remedy this defect the London and Westminster determined to open accounts with persons who had not the means of keeping large balances unemployed, but who were willing to pay the Bank a small commission for running their accounts,* JAMES WILLIAM GILBART, A RECORD OF THE PROCEEDINGS OF THE LONDON AND WESTMINSTER BANK DURING THE FIRST THIRTEEN YEARS OF ITS EXISTENCE 7 (1847).

other non-legal arguments. Yet even if reinterpreting the Bank's Charter did serve as a further strategy, I believe its significance extends beyond this. As this chapter demonstrates, the reinterpretation of the Bank's Charter presents a view of law not so easily dismissed as "a curious picture of the law and of legislation,"<sup>409</sup> partly because it allows us to move beyond understandings of law limited to categories such as prohibition and liberalization. By moving beyond these categories, we can begin to see law's role in shaping what we think of as possible.

In the spring and early summer of 1833, joint stock banking in London was conceivable as illustrated by the efforts of those in favour of it to articulate to the public the practical benefits that would follow from such banking. But owing to the Bank's Charter, most observers thought joint stock banking difficult to realize. The Bank's Charter served to set limits on what London's commercial and governmental elites imagined as practical options. Chapter III made the point that the legal rules shape the capacity of people and organizations to get what they want. Later in this chapter, I endeavour to reinforce that point further. Before doing so, I demonstrate the role played by the legal regime in conditioning, as Robert Gordon puts it, "not just our power to get what we want but what we think (or think we can get) itself."<sup>410</sup> As long as it was widely perceived – by the Bank of England, by the proponents of the London and Westminster, and most importantly of all, by the government – that courtesy of its Charter, the Bank of England held a monopoly over joint stock banking in and near to London, limits formed around what these players saw as possible. The government and especially the Treasury were in many ways the key

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<sup>409</sup> MILL, *supra* note 396, at 591.

<sup>410</sup> Gordon, *supra* note 6, at 111.

players because they had influence over Parliament and could change the rules of the game under which banking operated. Much then depended on what the Treasury thought possible. If the Chancellor of the Exchequer thought that the Bank of England had clear, unambiguous monopoly rights over activities conventionally understood as “banking,” limits formed around what the Chancellor considered practical options. But if the Chancellor could be persuaded that the scope of the Bank of England’s monopoly was less clear and unambiguous than previously thought, partly owing to alternative understandings of what “banking” involved, then an expanded range of options might open up.

Expanding the range of options that government ministers thought possible depended on transforming the clearly unambiguous into murky ambiguity. To understand how such a change happens, this chapter builds on the “indeterminacy thesis.” As articulated by the legal theorist Mark Tushnet, “The indeterminacy thesis claims ... that legal propositions will be indeterminate when some socially significant group finds it useful to raise legal claims that theretofore seemed frivolous; their arguments will become first professionally respectable and then reasonably powerful as their social and political power increases.”<sup>411</sup> Hence, a legal rule (or claim) is determinate when all those with an understanding of the legal system agree on the content and requirements of that legal rule. As a result, any alternative understanding of that legal rule appears frivolous while the legal rules in play (the rules that lawyers use when making legal arguments) seem to compel professionally respectable lawyers to one specific, clear, unambiguous answer. Significantly, however, the rules in play are not the only legal rules of potential

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<sup>411</sup> Mark Tushnet, *Defending the Indeterminacy Thesis*, 16 QUINNIPIAC L. REV. 339, 345 (1996).

relevance. In addition, there are background rules, that is, rules not presently used by lawyers as they make their legal arguments. The answer to a legal question becomes indeterminate when professionally respectable lawyers find a background rule that they bring “into play” and use as a counter-argument, or a counter rule or claim against the rule or argument that had previously seemed to compel a single, clear, uncontentious answer. “The indeterminacy thesis claims that, with respect to every (or nearly every) apparently determinate legal proposition, somewhere in the background rules there is at least one which, if put in play, would provide the basis for a powerful contrary argument of the sort that ... eliminates determinacy.”<sup>412</sup>

To address this chapter’s puzzle – the rendering of a relatively stable interpretation of the Bank of England’s Charter unstable – I shall demonstrate in Part A of this chapter how one set of respectable lawyers brought a background rule into play that acted as a counter-argument to the established, traditional interpretation of the Bank’s Charter. The counter-argument used by these lawyers focused on unsettling conventional definitions of “banking.” This argument was sufficiently successful, with the result that by the time the Bank’s Charter was renewed this counter-argument was accepted by government and a majority in Parliament as the correct and authentic interpretation of the Bank’s Charter. Hence, the inclusion of the declaratory clause in the Bank’s renewed Charter making clear that it was legal to establish in London joint stock banks that did not issue their own bank notes.

Parts B and C of this chapter also consider moments when creative arguments unsettled established legal interpretations, while, moreover, developing further the

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<sup>412</sup> *Id.*, 346.

type of analysis undertaken in Chapter III. My aim in Chapter III was to move beyond seeing the legal regime as either fettering some interests to benefit others, or as liberating interests from these fetters before taking its place on the margins of social and economic change. As I demonstrated in Chapter III, law was far from marginal because it was through the legal regime that the Bank of England and the provincial joint stock banks bargained with each other as they pursue their objectives.

Similarly, this Chapter is not merely interested in the legislation of 1833 as a discrete enactment that liberalized banking before confining law to the margins. Rather, like the legislation of 1826, the legislation of 1833 rearranged the terms of the conflict between the Bank of England and others who sought to create money and credit in the capital, including the London and Westminster. The moves that the Bank of England and the London and Westminster might then make against each other as they pursued their often conflicting objectives depended on their endowments from the legal regime. As Parts B and C of this Chapter explain, in the mid 1830s the legal regime hampered as much as it served the London and Westminster. The challenges that the London and Westminster faced, in particular concerning its ability to sue and be sued and its capacity to accept certain classes of bill of exchange, were magnified by the actions of the Bank of England, which seized on these legal vulnerabilities in an attempt to curtail the influence of its new rival.

#### **A. Banking Re-imagined**

The reinterpretation of the Bank of England's Charter that caused a stir in 1833 did not appear out of a void.<sup>413</sup> Chapter III noted the role played by Thomas Joplin in advocating for joint stock banks. It was courtesy of Joplin's advocacy that there appeared in 1822 the first coherent articulation of an alternative interpretation of the Bank's Charter. Joplin observed that although the Bank of England was the only bank with more than six partners permitted to issue bank notes payable on demand, the Bank's Charter did not expressly extend this monopoly to include other types of banking. Deposit banking, for instance, through which banks borrowed money and discounted bills, but did not issue bank notes payable on demand, had escaped the terms of the Charter, at least according to Joplin's interpretation.<sup>414</sup>

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<sup>413</sup> See THOMAS, *supra* note 10, at 109-10; and George C. Glyn to the *Committee on Renewing the Bank of England Charter*, BRITISH PARLIAMENTARY PAPERS (1831-32) (722) VI at 224 (Q: 3132-3), where Glyn, a London private banker, states, "we have always conceived that such was the law," meaning that he and others had long thought that banks of any number of partners could form in London provided they did not issue demand notes, though he acknowledged others disagreed with this interpretation. Glyn offered his remark in evidence to the inquiry on 3 July 1832. Perhaps Glyn is correct that many in the City of London had long held the view that the Bank of England's monopoly did not extend to deposit banking, but it is difficult to find further evidence supporting such a claim. My point is not that there was universal acceptance of the traditional interpretation of the Bank of England's monopoly in the first half of 1833. On the contrary, by the start of 1833, the traditional interpretation was already under stress, as Part A of this chapter describes. Rather, my point is that a large and influential portion of public opinion stuck with the traditional interpretation for the first half of 1833, including the government, the proponents of the London and Westminster, and influential parts of the press, such as *the Times* and *the Circular*. In the background, a contrary position emerged and grew throughout 1833 until it received official recognition when the Attorney General and the Solicitor General defended it, and the government itself adopted it.

<sup>414</sup> The Bank of England's Charter was renewed in 1800 (39 & 40 Geo. III c. 28 (1800)), the last renewal before the events of 1833. Joplin was working from Section XV of 39 & 40 Geo. III c. 28, which read,

*to prevent any Doubts that may arise concerning the Privilege and Power given, by former Acts of Parliament, to the said Governor and Company [of the Bank of England], of exclusive Banking, and also in regard to the erecting any other Bank or Banks by Parliament, or restraining other Persons from Banking during the Continuance of the said Privilege, granted to the Governor and Company of the Bank of England, as before recited; it is hereby further enacted, and declared, That it is the true Intent and Meaning of this Act, that no other Bank shall be erected, established, or allowed by Parliament; and that it shall not be lawful for any Body Politick or Corporate whatsoever, erected or to be erected, or for any other Persons, united or to be united in Covenants or Partnerships, exceeding the Number of Six Persons, in that part of Great Britain called England, to borrow, owe, or take up any Sum or Sums of*

The legislation of 1826 failed to resolve the ambiguities surrounding the extent of the Bank of England's exclusive privileges. That legislation, as Chapter III described, permitted note issuing joint stock banks outside of the 65-mile circle around London.<sup>415</sup> Within and around London the prohibition on banks with more than six partners issuing bank notes payable on demand remained.<sup>416</sup> But this legislation failed to clarify the point raised by Joplin. Did the terms of the Bank's Charter, reiterated by this new legislation, prevent banks in London with more than six partners from issuing notes *and* from engaging in all other banking activities, such as deposit banking? Or, as Joplin claimed, did the terms of the Bank's Charter,

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*Money on their Bills or Notes payable on Demand, or at any less Time than Six Months from the borrowing thereof....*

The crucial line picked up by Joplin was the passage stating that banks or other entities of more than six persons were not allowed "to borrow, owe, or take up any Sum or Sums of Money on their Bills or Notes payable on Demand." Joplin accepted that this passage granted the Bank of England a monopoly over the issue of bank notes, but queried whether the Bank's monopoly extended to other forms of banking.

When Joplin first published his insights in 1822 – that is, before the legislation of 1826 liberalising joint stock banking outside of London – he applied his argument to the whole of England and Wales, *including* London. Indeed, in 1824 Joplin went so far as to publish a prospectus for a joint stock banking company he hoped to help establish in London with a capital of £3 million. The proposed London bank would not issue notes, but would instead conduct its business in the same manner as the existing private banks in London of less than six partners. According to Joplin, "The business of London bankers ... does not consist in issuing notes, but in holding deposits, discounting the bills of others, and acting as agents for the country Banks, which business a Public Bank [i.e. a joint stock bank], with trifling limitations, is not prevented from transacting" (JOPLIN, *supra* note 230, at 151). As far as Joplin was concerned, this bank was permissible under the Bank of England's Charter of 1800, "an alternation to the charter of the Bank of England is not essential to the establishment of this company" (*Id.*, 151). Yet, recognizing that his interpretation was not the conventional one, Joplin could see the value in altering the Bank's Charter to clarify the limits to the Bank's monopoly.

<sup>415</sup> 7 Geo. IV c. 46 (1826) [Country Bankers Act], Section I.

<sup>416</sup> *Id.*, Section II. The legislation did not

*enable or authorize any such Corporation or Copartnership exceeding the Number of Six Persons, so carrying on the Trade or Business of Bankers ... to issue or re-issue in London, or at any Place or Places not exceeding the Distance of Sixty-Five Miles from London, any Bill or Notes of such Corporations or Copartnerships, which shall be payable to Bearer on Demand ...* B. L. ANDERSON AND P. L. COTTRELL, MONEY AND BANKING IN ENGLAND: THE DEVELOPMENT OF THE BANKING SYSTEM, 1694-1914, 253 (1974). Emphasis in original.

merely reiterated in 1826, only prohibit banks from issuing bank notes in London, thereby allowing all other kinds of banking, including deposit banking?

It is likely, or at least some contemporaries suspected, that the promoters of the London and Westminster were familiar with Thomas Joplin's insights.<sup>417</sup> It seems plausible that Joplin's insights soon influenced government lawyers and ministers too. The government minister with responsibility for negotiating the terms of the renewed Charter with the Bank of England was the Chancellor of the Exchequer, Lord Althorp. In the spring and early summer of 1833, Althorp accepted the traditional interpretation of the Bank's Charter on the scope of joint stock banking, stating in his correspondence with the Bank of England, "[T]hat no Bank shall be established within the Metropolis, or within twenty-five miles from London, consisting of more than six partners."<sup>418</sup> Yet when Althorp introduced the Bill renewing the Bank of England's Charter to Parliament some months later, he remarked at the end of his speech, "Joint Stock banks issuing the paper of the Bank of England may be established, of course, within the shorter distance of the Metropolis."<sup>419</sup> Contrary to his earlier statements in his correspondence with the

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<sup>417</sup> Some, such as the *Circular to Bankers*, suspected Joplin's involvement with the promoters of the London and Westminster. According to the *Circular*, the first petition submitted to Parliament by these promoters owed much to Joplin "or some one of that gentlemen's coadjutors in the enterprise of raising up a National Bank," see CIRCULAR TO BANKERS, 2 August 1833 at 18-19 and GREGORY, *supra* note 28, at 68. Joplin, along with his "coadjutors," was at that time in the process of forming the National Provincial Bank of England. If Joplin influenced the first petition, it is even more probable that he had an impact on the second petition, given that the legal argument contained in the second petition was one Joplin had done much to publicize to the extent of proposing a joint stock bank of deposit in London as early as 1824.

<sup>418</sup> *A Copy of all Correspondence and Minutes of any Conferences between the Government and the Directors of the Bank of England ...* in BRITISH PARLIAMENTARY PAPERS (1833) (352) XXIII at 1, Lord Althorp to the Governor and Deputy Governor of the Bank of England, 1 April 1833. By 15 April, the distance around London within which the Bank of England's monopoly applied was back to 65 miles from the 25 miles mentioned by Althorp in his correspondence of 1 April, see *Id.*, at 8.

<sup>419</sup> Althorp quoted in GREGORY, *supra* note 28, at 38.

Bank of England, Althorp was now willing to allow joint stock banks to form in London provided they carried out their transactions using the notes of the Bank of England rather than their own notes. When the Bank of England protested that Althorp's new position contravened his earlier agreement with the Bank,<sup>420</sup> the Chancellor responded by claiming that,

*The promise which I made in conversation that I would insert a provision in the Bank Charter Bill to prevent the establishment of Joint Stock Banks of Deposit nearer the Metropolis than Sixty-five miles, was on the supposition that such was at present one of the exclusive privileges of the Bank of England: I never intended or contemplated the increase of these exclusive privileges. I have, therefore, now to state to you, that I think it will be inconsistent with my public duty to propose this alternation to the Bill.*<sup>421</sup>

Althorp was willing to allow the Bank of England to retain a monopoly over all joint stock banking in London, both note issuing and deposit banking, provided such a monopoly was compatible with the Bank's Charter of 1800. The traditional interpretation of the Bank of England's Charter was that the Bank did possess a monopoly over all joint stock banking in London. During the summer of 1833, Althorp came to doubt this traditional interpretation, so much so that he even feared

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<sup>420</sup> According to the Governor of the Bank of England, "it was expressly stipulated by the Draft of the Bill [to renew the Bank of England's Charter] ... that no Bank having more than Six Partners should carry on or transact any Banking business within the Metropolis, or within Sixty-five miles thereof." See *Copies of all Communications that have passed between the Government and the Bank of England, having reference to the Terms on which the Renewal of the Bank Charter is to take place ...* 6 July 1833 in BRITISH PARLIAMENTARY PAPERS (1833) (728) XXIII at 2.

<sup>421</sup> In GREGORY, *supra* note 28, at 42; Hansard 10 August 1833: 499; and *Copies of all Communications that have passed ...*, BRITISH PARLIAMENTARY PAPERS (1833) (728) XXIII, 6 August 1833 at 3.

a clause in the Bank's new Charter implying the Bank's monopoly covered all joint stock banking, both note issuing and deposit banking, would increase rather than merely confirm the Bank's privileges. Reshaping Althorp's sense of the permissible boundaries of banking in London was the legal advice he received from the Attorney General and the Solicitor General.<sup>422</sup>

### **1. *Interpreting the Bank of England's monopoly narrowly***

This section begins by describing the legal arguments formulated by the Attorney General and the Solicitor General in support of a revised interpretation of the scope of the Bank of England's monopoly over joint stock banking in London. Thereafter, the section turns to the legal arguments developed by the Bank of England's lawyers, arguments that sought to defend the traditional interpretation of the scope of the Bank's monopoly. The significance of these legal arguments is that they contain contrasting views on how to define "banking." The new interpretation of the Bank's Charter exploited the different forms that banks can take. Banks might issue notes payable on demand, but they might also or alternatively discount bills of exchange or receive interest-bearing deposits. As Joplin had shown, the Bank of England's Charter of 1800 was not as clear as it might have been. Yet to exploit this ambiguity,

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<sup>422</sup> The Attorney General for England and Wales is the chief legal advisor to Crown and to the government. The Solicitor General serves as the deputy of the Attorney General.

It seems probable that, by the time the Attorney General and the Solicitor General formulated their legal opinion, they would have been familiar with the two petitions presented to Parliament on behalf of those campaigning for joint stock deposit banking in London. Gregory's investigations have failed to reveal any direct correspondence between the solicitors representing those campaigning for joint stock banks in London and the government. But it seems highly plausible that these campaigners and the legal reinterpretation they advocated sparked a reassessment on the part of Lord Althorp and his government's lawyers as to the extent of the Bank of England's monopoly. There is no doubt that Althorp worked closely with the government's lawyers, see *Copies of all Communications that have passed ...*, BRITISH PARLIAMENTARY PAPERS (1833) (728) XXIII, communications between Althorp and the Governor and Deputy Governor of the Bank of England, 8 and 9 August 1833 at 6.

it was necessary to convince ministers like Althorp that resolving this ambiguity called for a narrow view of the Bank's privileges. The strategy adopted by the Attorney General and the Solicitor General drew on a background rule that required a narrow construal of monopoly powers, and which had hitherto played no role in debates on the scope of the Bank's monopoly. By bringing to the fore this background rule, in partnership with a clever redefinition of banking, a legal argument was able to reshape Althorp's sense of what was possible in the context of banking in London.

The opinion of the government's lawyers,<sup>423</sup> William Horne (the Attorney General) and John Campbell (the Solicitor General),<sup>424</sup> starts with the common law definition of banking in England and Wales. They then apply this common law definition to the statutes defining the scope of the Bank of England's powers. What then, according to the government's lawyers, was the definition adopted by the common law with respect to banking? Early in their opinion, Horne and Campbell note, "We must premise that the common law knows no distinction between joint stock companies and any other partnerships."<sup>425</sup> If legislation prohibited joint stock banking

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<sup>423</sup> The date of the legal opinion is 19 August 1833. THE TIMES reproduces this opinion in its edition of 20 August 1833. A further copy of the opinion is in OPINIONS OF SIR JAMES SCARLETT, SIR EDWARD B. SUGDEN AND MR RICHARDS ON THE PRIVILEGE OF THE BANK OF ENGLAND (1833) (last two unnumbered pages of the pamphlet). All quotations in the text are from this legal opinion.

<sup>424</sup> Sir William Horne [1774-1860], was a Whig/Liberal politician and a lawyer who served as Solicitor General from 1830-1832 and as Attorney General from 1832-1834. Sir John Campbell [1779-1861] was a Whig/Liberal politician and a lawyer who served as Solicitor General from 1832-1834 and as Attorney General in 1834 and again from 1835-1841. Campbell later served in the House of Lords (1850-1859) and as Lord Chancellor (1859-1861).

<sup>425</sup> In the same paragraph of their opinion, Horne and Campbell go on to add, "and that if a joint stock deposit bank within 65 miles of London be prohibited, any banking company of more than six partners, within the same limits, we conceive, is equally illegal." Read as originally written in THE TIMES and as re-produced here, this passage is peculiar for it merely restates itself: that is, if joint stock deposit banking in London is illegal then, of course, banks with more than six partners operating in London (by definition also joint stock banks) are also illegal. The passage makes sense

companies, then, as we will see in a moment, these statutes prohibited all other types of banking too, including London's existing banking partnerships of less than six partners. Such an interpretation of the legal position of banking in London was surely far too broad. As Horne and Campbell carefully noted, the general impulse of the common law was to consider an act permissible provided there was no express prohibition by statute.<sup>426</sup> Moreover, even where a statute, such as the one creating and maintaining the Bank of England's monopoly, limited the common law right to carry on the business of banking, the construal of such statutes ought to be, in accordance with the common law, as narrow as possible. "[Such] statutes ... as they are in restraint of trade, they ought, according to an established rule, to be construed strictly against the corporation, and favourably for the public."<sup>427</sup>

Against this common law background, Horne and Campbell considered the most important statutes that set in place, refined, and upheld the Bank of England's powers and privileges, starting with the statute of 1694.<sup>428</sup> This statute laid down the

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and ties in with the rest of the paragraph (I explain why in the next paragraph) when the word "more" is treated as a misprint and replaced by the word "less."

<sup>426</sup> "Such a [joint-stock deposit] bank is not contrary to the common law, and it can only be considered as prohibited by the statutes connected with the monopoly of the Bank of England." See Horne and Campbell, *supra* note 423.

<sup>427</sup> Horne and Campbell do not refer to any past cases in their opinion. When referring to restraint of trade doctrine, and the belief that monopolies should be construed narrowly so as not to inhibit lawful conduct, they presumably have in mind the case of *Mitchell v. Reynolds* (1711) 88 E.R. 660. In this case, Chief-Justice Parker stated that

*Grants, charters, &c. erecting monopolies, are void for two reasons: first, because they are against the freedom and birthright of the subject: second, because they are contrary to Magna Carta. But it is otherwise where ... the grant or charter is made for the good regulation and government of trade; for the public good is ever to be preferred to a private loss.* (661).

Chief-Justice Parker later in his opinion added that where the restraint of trade is "given by Act of Parliament, the Act must be strictly pursued." (664).

<sup>428</sup> 5 & 6 Will. & Mar. c.20 (1694) [Bank of England Act or "The Tonnage Act"].

rules regulating the Bank of England but said nothing about other banks. Further legislation followed in 1697, which increased the capital of the Bank, and declared with respect to other banks,

*during the continuance of the corporation of the Governor and Company of the Bank of England, no other bank or any other corporation or society, fellowship, company, or constitution, in the nature of a bank, shall be erected or established, permitted, suffered, countenanced or allowed, by act of parliament within this kingdom.*<sup>429</sup>

Interpreting this statute narrowly, Horne and Campbell emphasized the importance of the last line, claiming that this legislation prohibited the establishment “by an act of parliament” of further banks. That left, however, banks established under common law untouched, since such banks did not need an Act of Parliament.

Horne and Campbell then supplemented their argument by contextualizing and historicizing the word “bank.” It was worth recalling, they noted, that the word “bank” in the decades around the formation of the Bank of England meant an entity established by statute. The equivalent in the late seventeenth century to the London private banks of the 1820s and 1830s, which took deposits at interest before lending out these deposits to their borrowers, were not known as bankers but as goldsmiths. Yet if “bank” was interpreted broadly, Horne and Campbell observed that, “no banking could have been carried on by any number of persons or by any individuals

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<sup>429</sup> 8 & 9 Will. III c. 3 (1697) [Bank of England Act].

in London or any part of the kingdom, except by the Bank of England, for the enactment is universal, containing no exception as to place or number of persons.” Under such a broad construction, even London banks of less than six partners ought to have been illegal. To avoid such a construction, a narrower interpretation was required, and that is precisely what Horne and Campbell claimed the common law called for.

Horne and Campbell next dealt with the statutes of 1707 and 1708, which, as Chapter II explored, very explicitly prohibited all other banks, besides the Bank of England and those with six partners or less, from issuing demand notes.<sup>430</sup> On Horne and Campbell’s reading, however, this left as before both deposit banking and all other banking besides note issuing. This was the legislative position repeated throughout the eighteenth century. Legislation of 1800 combined that of 1697 and 1708 by declaring that “parliament shall not interfere to legalize any bank which would not be lawful by the common law, and that no paper to be used as cash shall be issued by any corporation or partnership consisting of more than six persons.”<sup>431</sup> Again, reading this narrowly, the Attorney General and the Solicitor General stressed that it meant Parliament could not publicly charter another bank to compete with the Bank of England, and that banks with more than six partners could not issue demand notes. But all this legislation said about other forms of banking was that they should remain free of restrictions under the common law. If the legislation of 1800 intended

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<sup>430</sup> 6 Ann. c. 59 (1707) [Bank of England Act], also referred to as 6 Ann. c. 22 (1707), Section 9, repeated in 7 Ann. c. 30 (1708) [Bank of England Act], also referred to as 7 Ann. c. 7 (1708), Section 61.

<sup>431</sup> 39 & 40 Geo. III c. 28 (1800) [Bank of England Act], Section 15.

to extend the Bank of England's monopoly to include deposit banking, "words ought to have been added to that effect."<sup>432</sup>

Horne and Campbell close their opinion by touching on two additional matters. First, they cite the most recent statute regulating banking at the time, the Act of 1826,<sup>433</sup> and second, they tackle the question that their opponents frequently asked: if joint stock deposit banking had long been permitted, why had a bank with more than six partners carrying on the business of banking without issuing demand notes not appeared before now? Dealing with the legislation of 1826, Horne and Campbell noted its purpose was to relax the legislation of 1708 by allowing banks outside of a sixty-five mile radius around London to issue demand notes. What Horne and Campbell considered the pre-1826 common law position on banking in London therefore remained unaffected,

*The result appears to be, that all banking companies which could exist, and be carried on by the authority of the common law, may still lawfully exist and carry on any banking business from which they are not expressly prohibited. We therefore think they may be established as banks of deposit in London, or within 65 miles thereof, or in any part of England.*

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<sup>432</sup> Horne and Campbell, *supra* note 423, even provide an example of what such a clause might have looked like,

*that it should not be lawful for any corporation or partnership consisting of more than six persons to have or receive money for safe custody from any of his Majesty's subjects, or to pay any money upon any check or order, or to lend or owe any money, although no bill, note, or security may be given or taken for the same.*

<sup>433</sup> 7 Geo. IV c. 46 (1826) [Country Bankers Act].

To account for the absence of deposit banks with more than six partners in London given that, according to Horne and Campbell, forming such banks was legal under English common law required legal manoeuvring. Horne and Campbell engaged with their opponents by pointing to two factors that would have made banking for large partnerships difficult regardless of their legality. First, they pointed out that such banks did not have permission to accept bills of exchange at a shorter date than six months. Second, they explained that such banks, in the absence of Parliamentary approval, would have been unable to sue and be sued in the name of one of its officers. When joint stock deposit banking did appear on the London banking scene after 1833, both of these factors took centre stage, a story taken up later in this chapter.

## **2. *Interpreting the Bank of England's monopoly broadly***

As one legal opinion opened up new options for Althrop, the Bank of England's lawyers formulated an opposing opinion aimed at closing these options by reasserting the traditional interpretation of the Bank of England's Charter.<sup>434</sup> The lawyers working for the Bank of England rejected the narrow construal of the Bank of England's Charter put forward by Horne and Campbell by arguing that the Bank's "exclusive privilege of banking" should be interpreted broadly. That meant the

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<sup>434</sup> This opposing opinion is in *OPINIONS OF SIR JAMES SCARLETT, SIR EDWARD B. SUGDEN AND MR RICHARDS ON THE PRIVILEGE OF THE BANK OF ENGLAND* (1833). Sir James Scarlett [1769-1844] was a politician and lawyer. For much of his life he was a Whig, but became a Tory when a Whig government passed the Reform Act in 1832. Scarlett served as Attorney General on two occasions, from 1827-1828 and from 1829-1830, even though on both occasions he served in a Tory government (he did so with the consent of the Whig leadership). Sir Edward Sugden [1781-1875] was a Tory/Conservative politician and a lawyer. He served as Solicitor General from 1829-1830 when Scarlett was the Attorney General. Interestingly, in 1821 the daughter of James Scarlett married John Campbell, the Solicitor General in 1832 arguing against the position of the Bank of England.

legislation of 1697,<sup>435</sup> declaring, “that the Bank of England, and no other bank or any other corporation, etc. in the nature of a bank, should be allowed by Act of Parliament within the kingdom,” referred to banking in the sense of not only note issuing but all banking activities.

The Bank of England’s lawyers developed their legal argument in support of a broad understanding of the Bank’s monopoly powers. They started by emphasizing that the impulse behind the statutes of 1707 and 1708<sup>436</sup> was that the Bank of England’s “exclusive privileges” courtesy of legislation in 1697 had been “broken in upon by corporations” that had been dealing as banks contrary to the intent of Parliament by, in particular, issuing demand notes. Legislation followed in 1707 and 1708 preventing all partnerships with more than six partners from issuing demand notes. At this point, Horne and Campbell interpreted the legislation of 1707 and 1708 narrowly by arguing that by preventing larger partnerships from issuing notes, this legislation left all other banking activities free of hindrance. That remained true, in their view, regardless of the statute of 1697, which they argued only prevented the establishment of other banks, besides the Bank of England, by Parliamentary charter.

The Bank’s lawyers produced a different interpretation. The legislation of 1697 in their view gave “exclusive privileges” in England and Wales over all banking by joint stock corporations to the Bank of England. These privileges included note

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<sup>435</sup> 8 & 9 Will. III c. 3 (1697) [Bank of England Act], Section 18.

<sup>436</sup> 6 Ann. c. 59 (1707) [Bank of England Act], also referred to as 6 Ann. c. 22 (1707), Section 9, repeated in 7 Ann. c. 30 (1708) [Bank of England Act], also referred to as 7 Ann. c. 7 (1708), Section 61.

issuing as well as all other banking business. When other corporations in the early eighteenth century had then interfered with the Bank's privileges with respect to "borrowing or owing money upon notes and bills at short dates," Parliament moved not

*to limit or diminish the exclusive privileges of the Bank of England, but more effectually, to protect them, by prohibiting not only all professed rival banks of deposit, but all corporations or societies which ... had evaded the [legislation of 1697], by undertaking to deal in that part of the business of the Bank which consisted of issuing notes or bills for money borrowed.*<sup>437</sup>

As the Bank of England's lawyers put the point, "This [the statutes of 1707 and 1708] was a fence thrown around" the Bank's monopoly over note issuing "but in no manner weakened its original force."<sup>438</sup> The breadth of the 1697 statute remained in place covering not only note issuing, now even further protected by new legislation of 1707 and 1708, but also all other forms of banking. To the Bank's lawyers, the Bank's "exclusive privileges" referred to banks and banking "in the most universal sense that can be applied to them, embracing as well that part of the business of banking which consists of receiving deposits, as that which consists of issuing notes or bills for money borrowed."<sup>439</sup> The statutes of 1707 and 1708 reinforced these privileges; legislation throughout the eighteenth century had reiterated them; while

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<sup>437</sup> John Scarlett, *supra* note 434, at 7-8. Emphasis in original.

<sup>438</sup> Edward Sugden and Griffith Richards, *supra* note 434, at 13.

<sup>439</sup> James Scarlett, *supra* note 434, at 10.

the Act of 1826<sup>440</sup> had modified them, but only to the extent that joint stock banks outside of a sixty-five mile radius around London could now undertake banking business. Within that sixty-five mile circle, the *status quo* remained.

### 3. *Whigs and bankers*

Evidence suggests that the arguments developed by the Bank of England's lawyers made Althorp think twice about his course of action.<sup>441</sup> Yet resort to these arguments also illustrates the degree to which the destabilization of the traditional interpretation of the Bank's Charter had already had an effect. In the spring of 1833, the government, much of London's commercial community, and most legal opinion recognized as uncontroversial the established interpretation of the Bank of England's Charter that the Bank of England had a monopoly in all banking business in and near to London. Most contemporary opinion regarded as frivolous and/or inaccurate suggestions of the type put forward by Joplin that the Bank's Charter only gave it a monopoly over note issuing leaving other forms of banking, such as deposit banking, unhindered.<sup>442</sup> Under the *status quo* legal regime, the default position that

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<sup>440</sup> 7 Geo. IV c. 46 (1826) [Country Bankers Act].

<sup>441</sup> Before the House of Commons, Althorp admitted, "that contrary opinions had been given on this subject, of which he had not previously been aware, when he stated that no barrister had given a different opinion from what he then stated." See Lord Althorp, HANSARD, HC VOL. 20, COL. 774 (19 August 1833).

<sup>442</sup> For example, the *Circular to Bankers* saw no basis to the alternative interpretation of the Bank of England's Charter, writing

*Banks of deposit are banks 'to borrow, owe, or take up any sum or sums of money'; and whether they undertake to pay them back upon 'bills or notes', or by virtue of an entry made in the books of a bank, is immaterial; the Bank of England was empowered to prohibit the formation of all banks with more than six partners in London under its original constitution when its charter was first obtained and that power is still in force. See THE CIRCULAR TO BANKERS, 3 August 1833, at 20.*

interpreted the Bank of England's monopoly to cover all banking business stood as a barrier in the path of those who believed they could benefit from joint stock deposit banking in and around London. The Bank of England gained from such an understanding because as a publicly chartered company with limited liability for its shareholders it stood as a banking giant over dwarfs in both London and across England and Wales. London banks of six partners or less also benefitted because they complimented the Bank of England free from the threat that joint stock rivals would pose to their position.

Those who would later form the London and Westminster Bank threatened this *status quo*. Adding bite to their threat was a legal argument that brought into play a background rule previously left untouched by those who had interpreted the legality of deposit banking in London. According to the advocacy of Horne and Campbell, people should be free to undertake the business of banking unless prohibited from doing so, in whole or in part, by statute, and where such a statute existed, such as the Bank of England's Charter, it merited a narrow interpretation. Yet as Horne and Campbell argued, the Bank of England's Charter had been interpreted too broadly to cover all banking, including note issuing and, in their view incorrectly, deposit banking.

The key to the success of those pushing for reform was the conversion of Lord Althorp to their side, which was possible partly because the new interpretation of the Bank's Charter opened up new possibilities. Yet the mere existence of this new interpretation does not explain Althorp's openness to these new possibilities, since

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he had two equally plausible interpretations of the Bank of England's Charter open to him. One interpretation construed the Bank's Charter narrowly, while the other interpretation construed the Charter broadly. So, why did Althorp chose one interpretation over the other? To understand Althorp's sympathy for the new over the traditional interpretation, the remainder of this section considers the relationship between the government and the Bank of England in the early 1830s.

Government ministers played a central role in shaping the boundaries of banking in the 1830s, principally by negotiating the terms of the government's relationship with the Bank of England. The details of the compact between the government and the Bank of England were not permanent. There was always scope for adjustment over, for instance, the terms of what the government borrowed and what the Bank lent, or over the details of the Bank's privileges vis-à-vis the rest of the banking system. These details were especially open to revision in the build up to the renewal of the Bank's Charter, and it is plausible to suggest that the Bank had fixed term Charters, rather than a permanent one, to permit precisely this kind of flexibility.<sup>443</sup> At the time of the 1833 Charter renewal, many viewed the Bank of England as “a locus of Old Corruption,”<sup>444</sup> making it vulnerable to the reforms of the Whigs who took control of government in 1830 and carried into effect the famous Reform Act of

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<sup>443</sup> Broz and Grossman, *supra* note 279, at 53.

<sup>444</sup> ALBORN, *supra* note 250, at 57-8. See also Anthony Howe, *From 'Old Corruption' to 'New Probity': the Bank of England and its Directors in the Age of Reform*, 1 FINANCIAL HISTORY REVIEW 23 (1994). Many were conscious of the opportunity the government had to reform the Bank of England. See, for example, SAMUEL WELLS, A LEGAL STATEMENT OF THE REAL POSITION OF THE GOVERNMENT WITH RELATION TO THE BANK OF ENGLAND (1832), where Wells also details the history of the government's past “bargains” with the Bank.

1832.<sup>445</sup> Nevertheless, the government dared not squeeze the Bank of England too hard, primarily because both institutions were dependent on each other. The government needed the Bank of England for loans, while the Bank of England relied on the government servicing these loans for its profits. Over time, it was possible to adjust the precise terms of this relationship of mutual dependence. But the mutual advantages arising from the relationship were too valuable to place at risk by adjustments that overly undermined either party.

Rather than undermining the Bank of England, its renewed Charter of 1833 brought it a range of benefits.<sup>446</sup> Despite the passage of the Reform Act, the government in 1832 of which Althorp was a member was not itself radical. It was a Whig aristocratic government, “acquiesced in the existing order,” and only inclined towards reform “to reduce discontent, to undermine the extremes, to solidify the centre, and thus to promote stability.”<sup>447</sup> While willing to tackle some of the more deplorable instances of “Old Corruption,” the government was too pragmatic to consider “wild and extravagant projects” such as refusing altogether to renew the Bank of England’s Charter. According to one historian of the period, even on economic matters, on which most Whig ministers were reluctant to intervene in the

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<sup>445</sup> The Reform Act of 1832 extended voting rights to include more categories of persons, made a start at encouraging fairer elections by, for example, abolishing “rotten boroughs” (seats with very small populations), and gave Parliamentary representation to new industrial towns such as Manchester and Birmingham.

<sup>446</sup> 3 & 4 Will. IV c. 98 (1833) [Bank of England Act] renewed the Bank of England’s Charter for a further twenty-one years, though the government had the option of reviewing the Bank’s Charter after ten years; retained the sixty-five mile radius around London within which other banks could not issue demand notes; made Bank of England notes legal tender, though the Bank remained obliged to convert these notes into gold coin on demand; and excluded bills of exchange with three months to run from the 5% cap under the Usury Laws. See CLAPHAM, *supra* note 126, at 127.

<sup>447</sup> IAN NEWBOUND, *WHIGGERY AND REFORM, 1830-41*, 103 (1990), quoting Lord Acton [1834-1902], the English historian, writer, and politician.

market and tended towards *laissez-faire* positions, “[t]hey learned quickly to forge economic policy from amongst the competing economic and political interests in a manner which seemed consistent with the maintenance of civil order.”<sup>448</sup>

Althorp’s policy towards banking was no different. The government’s own account of the Charter renewal set out a defence of the government’s decision not to undertake radical reform of the Bank of England, despite the considerable body of opinion attacking the Bank’s privileges and monopoly.<sup>449</sup> Once in place, the Reform Act’s middle class backers, principally shopkeepers, manufacturers, and merchants, had had enough of political uncertainty for the disruption it caused to their trades.<sup>450</sup> Given the government’s number one objective of restoring and maintaining stability, Whigs like Althorp dared not take reform of the Bank of England too far.<sup>451</sup>

Yet amongst government ministers in 1833, there was a genuine desire to undermine the extremes of the old system and deal with abuses where they could.<sup>452</sup> Moreover, Althorp had developed a keen interest in economics through his friendship with

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<sup>448</sup> *Id.*, 104.

<sup>449</sup> D. LE MARCHANT, *THE REFORMED MINISTRY AND THE REFORMED PARLIAMENT* 37-41 (1834).

<sup>450</sup> “Quiet times are good for all trade but agitated times are the death to a man with a host of armed creditors. This makes the middle class, especially in London, a solid and compact body against such changes as seem only experiment,” MICHAEL BROCK, *THE GREAT REFORM ACT* 319-20 (1973) quoting Edward Lytton Bulwer [1803-1873], an English politician, poet and novelist.

<sup>451</sup> The government argued in 1834,

*The immense majority by which the resolution [renewing the Bank of England’s Charter] was carried, the triumph in argument achieved by its supporters, has crushed forever the expectations of those who would unsettle all the monetary transactions of the Empire, and has given a degree of confidence to the industrious and productive classes of the community, which no other event could have inspired,* D. LE MARCHANT, *supra* note 344, at 44.

<sup>452</sup> NEWBOUND, *supra* note 447 at 102-103.

Henry Parnell, a vocal critic of the Bank of England's monopoly.<sup>453</sup> Although Althrop was unwilling to follow Parnell's radical call for the Bank to lose its monopoly over note issuing in London, the legal reinterpretation of the Bank's Charter opened up another possibility to Althrop, one that had seemed closed to him in the spring of 1833. Althrop could leave secure and even enhance the position of Bank of England whilst also accommodating "competing economic and political interests in a manner which seemed consistent with the maintenance of civil order"<sup>454</sup> by adjusting the Bank's privileges over joint stock banking in London.

A legal argument opened up this option to Althrop by turning a relatively determinate understanding of the legal position governing the extent of the Bank's monopoly in London into an indeterminate one. By clarifying this uncertainty, Parliament permitted joint stock banks in and near to London.<sup>455</sup> Yet the extent to which government minister such as Althrop could cross the Bank of England required careful judgment. Althrop's about face in 1833 incensed the Bank of England's directors.<sup>456</sup> Perhaps Althrop did not anticipate how much this concession

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<sup>453</sup> *Id.*, 105. See also HENRY PARNELL, A PLAIN STATEMENT OF THE POWER OF THE BANK OF ENGLAND AND THE USE IT HAS MADE OF IT (1833).

<sup>454</sup> NEWBOUND, *supra* note 447, at 103.

<sup>455</sup> Legalizing joint stock deposit banking in London was the declaratory clause contained in 3 & 4 Will. IV c. 98 (1833) [Bank of England Act] Section III. The clause asserted,

*That any Body Politic or Corporate, or Society, or Company, or Partnership, although consisting of more than six persons, may carry on the trade or business of Banking in London, or within sixty-five miles thereof, provided that such Body Politic or Corporate (etc.) ... do not borrow, owe or take up in England any sum or sums of money on their Bills or Notes payable on demand, or at any less time than six months from the borrowing thereof, during the continuance of the privileges granted by this Act to the said Governor and Company of the Bank of England.*

<sup>456</sup> See GREGORY, *supra* note 28, at 40-44.

to the London and Westminster's supporters would infuriate the Bank of England. It is possible he felt he had pushed the Bank of England too far, which would at least explain Althrop's stance in 1834 when the Bank of England clashed with the newly formed London and Westminster Bank over whether or not the latter institution could have the power to sue and be sued in the name of a public officer. It is to this clash and Althrop's decision to side with, on this later occasion, the Bank of England that this chapter now turns.

## **B. Suing and Being Sued in the Name of a Public Officer**

The declaratory clause of 1833 was the sole piece of legislation regulating joint stock banks in London. While joint stock banks based elsewhere in England and Wales had Parliamentary approval (courtesy of the legislation of 1826)<sup>457</sup> to sue and be sued in the name of the public officer of the bank, the same was not true of joint stock banks in London because the declaratory clause said only that these banks could not issue demand notes.

Without Parliamentary approval to sue and be sued in the name of an officer of the company, the London and Westminster had two routes for ensuring the recovery of debts owed to the bank and the debts the bank owed to others. The first route was through partnership law. Although theoretically an avenue for claiming debts owed, the law of partnership turned out to be inadequate for an institution like the London and Westminster because it had businesses of only a handful of partners in mind.

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<sup>457</sup> 7 Geo. IV c. 46 (1826) [Country Bankers Act].

Listing three or four partners by their several and distinct names on a suit presented few problems, but listing the names of hundreds of members carried the risk of the suit collapsing should only one name be inadvertently omitted.<sup>458</sup>

Conscious of the inadequacies of partnership law, the London and Westminster Bank appointed through its deed of settlement five trustees in whose name the bank could sue and be sued. This required that each customer opening an account at the bank sign a separate contract drawn up between themselves and the five trustees. Through this contract, the trustees guaranteed to the account holder that the London and Westminster would honour its debts to him, and the account holder agreed to pay to the trustees any balance owed on his account at the London and Westminster. In addition, all other debts owed to the London and Westminster, or upon which the London and Westminster might owe a debt, such as bonds, mortgages, bills of exchange and promissory notes, were in the name of the bank's trustees.

The London and Westminster Bank, then, could sue and be sued through its trustees, though it was uncommon for joint stock companies to operate in this way. Legislation allowed provincial joint stock banks to appoint a public officer in whose name the bank could sue and be sued.<sup>459</sup> Other joint stock companies frequently received Royal or Parliamentary sanction allowing them to do likewise. The London

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<sup>458</sup> The legal problems faced by joint stock banks are the subject of George Farren's pamphlet *HINTS BY WAY OF WARNING ON THE LEGAL, PRACTICAL AND MERCANTILE DIFFICULTIES, ATTENDING THE FOUNDATION AND MANAGEMENT OF JOINT STOCK BANKS* (1833). For responses to Farren, see ANON., *DIALOGUE BETWEEN A MERCHANT OF LONDON AND MR. GEORGE FARREN* (1833); and ANON. ["CIVIS"], *A REPLY TO THE PAMPHLET OF GEORGE FARREN* (1833). Further information on the inadequacies of partnership law as affecting joint stock banks is in Appendix II to this dissertation.

<sup>459</sup> 7 Geo. IV c. 46 (1826) [Country Bankers Act], Section IV.

and Westminster Bank wanted the same,

*because it was the generally recognized mode of large associations carrying on legal proceedings; and because, never having been denied to such associations legally formed, the granting it appeared to them [the bank's directors] to follow as a necessary consequence of an enactment so clear and explicit as the declaratory clause ...*<sup>460</sup>

Furthermore, the London and Westminster feared that its position was “imperfectly understood by the public,”<sup>461</sup> potentially undermining widespread confidence in the bank. For all of these reasons, many key figures associated with the bank were “desirous that the facility of suing and being sued should be given to the Bank in the name of its Manager, under Royal or Parliamentary sanction, without varying any other condition connected with the partnership.”<sup>462</sup>

### ***1. Interpreting the declaratory clause***

Obtaining legislation allowing the London and Westminster to sue and be sued in the name of its public officer required building on the success of the year before that

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<sup>460</sup> Circular issued by London and Westminster to its shareholders, 16 August 1834, in GREGORY, *supra* note 28, at Appendix III, 180-4.

<sup>461</sup> Letter from W. R. K. Douglas (a director of the London and Westminster) to Lord Althorp, 15 January 1834 in GREGORY, *supra* note 28, at 127. For the full letter, see GREGORY, *supra* note 28, at 125-8.

<sup>462</sup> *Id.*, 127.

had seen the inclusion of the declaratory clause in the Bank of England's Charter.<sup>463</sup> According to the London and Westminster, the declaratory clause limited the Bank of England's monopoly to note issuing only, and freed up the possibility of additional legislation favourable to deposit banking in London.<sup>464</sup> The Bank of England's lawyers responded to this interpretation by looking closely at the precise terms of the declaratory clause. All that this clause provided for, they stressed, was that "joint-stock companies for deposit shall and may be established," but otherwise it "did not alter the law as it previously existed in the slightest degree."<sup>465</sup>

Consequently, the controversy centred on whether allowing banks such as the London and Westminster to sue and be sued interfered with the Bank of England's remaining privileges not covered by the declaratory clause. From the perspective of the London and Westminster, the declaratory clause made joint stock banking possible *and* empowered Parliament to provide for all that goes with such banking, such as the capacity to sue and be sued in the name of a public officer. The Bank of England's lawyers, by contrast, adopted a narrow understanding of the declaratory clause by arguing that Parliament had left other privileges deliberately out of the clause,

*as well the Law Officers of the Crown as the Chancellor of the Exchequer,*

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<sup>463</sup> In February 1834, the bank's solicitors prepared a Bill that the bank's supports in Parliament presented to Parliament on the bank's behalf. For more information on this, see GREGORY, *supra* note 28, from 122.

<sup>464</sup> For a summary of the London and Westminster's legal arguments on why it should be allowed to sue and be sued in the name of a public officer, see CHARLES WORDSWORTH, *THE LAW RELATING TO JOINT-STOCK COMPANIES*, 51-2 (1837).

<sup>465</sup> Solicitor-General, HANSARD, HC VOL. 23, COL. 1310 (26 May 1834).

*expressly declared, while the declaratory clause was under consideration, that it would not entitle parliament to grant any facilities [such as the privilege of suing and being sued] to bodies seeking to act as deposit banks under that clause.*<sup>466</sup>

Such facilities required the consent of the Bank of England because otherwise there would be an infringement of the Bank of England's remaining and quite extensive monopoly privileges.

The lawyers arguing the position of the Bank of England laid particular stress on those Acts of Parliament that had in the past declared, "that no other bank should be erected, established, or allowed by Parliament," and by which the Bank of England in 1800 had been "declared to be and remain a corporation, with the privilege of exclusive banking, as before recited."<sup>467</sup> All of these statutes, according to the Bank's lawyers, remained in force following the declaratory clause, subject to a single modification that made joint stock deposit banking in London legal. One of these exclusive privileges was that as a corporate entity the Bank of England was entitled to sue and be sued in its corporate name. The London and Westminster desired this advantage too. Yet the declaratory clause said nothing about suing and being sued in the name of a public officer. The London and Westminster inferred from this silence that Parliament should act in the spirit of the clause, passing whatever legislation was necessary to realize fully the benefits of joint stock banking

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<sup>466</sup> WORDSWORTH, *supra* note 464, at 50.

<sup>467</sup> Solicitor-General, HANSARD, HC VOL. 23, COL. 1308 (26 May 1834).

in London. The Bank of England's lawyers saw the matter differently, arguing that,

*it was vain to deny, that by the existing law, there were inconveniences in respect to partnerships in banking concerns, but this was one of the exclusive privileges conceded to the Bank of England. If, therefore, facilities were given to a joint-stock company to carry on the banking business in the way proposed, a gross violation of the [act of 1800] would be the consequence.*<sup>468</sup>

According to the Bank of England's lawyers, partnership law continued to hinder banks such as the London and Westminster because that was the intention of the declaratory clause. By leaving untouched matters besides permitting joint stock deposit banks in London, this clause had allowed the Bank of England to retain all of its remaining privileges. Allowing the London and Westminster to possess one of these privileges would be a step in the direction of incorporating another bank in London besides the Bank of England, a move legislation, like that of 1800, very explicitly ruled out.<sup>469</sup>

## **2. Honour, good faith, and sanctity of contract**

These conflicting interpretations of the declaratory clause left Lord Althorp, still at this point Chancellor of the Exchequer, again facing a choice just as he had the year

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<sup>468</sup> *Id.*, 1309.

<sup>469</sup> Sir James Scarlett, HANSARD, HC VOL. 23, COL. 1317 (26 May 1834).

before. Legal arguments once again attempted to sway that choice, only this time the legal argument that persuaded Althorp undermined the London and Westminster. The lawyers arguing for the Bank of England helped Althorp reach his decision by reinforcing the narrow interpretation of the declaratory clause against the London and Westminster's broad understanding by drawing on the "background rule" that for reasons of "honour and good faith,"<sup>470</sup> the parties must respect the terms of the contract they had made. Althorp was open to this line of thinking – I shall offer a theory as to why in a moment – and made frequent reference to it when defending his opposition to the London and Westminster Bill before Parliament, stressing, "that he was bound to maintain the bargain which he had entered into with the Bank."<sup>471</sup> The bargain Althorp had in mind was the renewal of the Bank of England's Charter. Respecting the Charter from the Bank of England's perspective required the government adhere to all past statutes conferring exclusive privileges onto the Bank.

Although the London and Westminster could turn legal arguments based on sanctity of contract to its own advantage,<sup>472</sup> it faced a bigger problem, an exploration of

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<sup>470</sup> J. C. Herries, HANSARD, HC VOL. 23, COL. 1313 (26 May 1834).

<sup>471</sup> Lord Althorp, HANSARD, HC VOL. 23, COL. 1318 (26 May 1834).

<sup>472</sup> The London and Westminster argued that the declaratory clause did not contain an express sub-clause preventing banks of deposit from obtaining legislation allowing them to sue and be sued. The London and Westminster's supporters speculated, tongue-in-cheek, about the possibility of a, "... secret clause in the bargain with the Bank ...," (Sir William Clay, HANSARD, HC VOL. 23, COL. 1307 (26 May 1834)). If there was such a sub-clause, they demanded to see it (GREGORY, *supra* note 28, at 140 (footnote)). And, at any rate, respecting bargains was a game they could play too. They noted that the declaratory clause, "after being consented to and becoming the Law of the Land, should be acted upon in good faith, according to its plain meaning." ANON., CASE OF THE LONDON AND WESTMINSTER BANK 11 (1834). The plain meaning, from the London and Westminster's perspective, was that joint stock deposit banking was now legal in London. Was not denying joint stock banks in London the facilities they needed to operate effectively a violation of the clause too?

which will help us to understand Althorp's unwillingness to help the London and Westminster on this occasion. The London and Westminster's problem stemmed from the relationship between the Bank and the government. Recall that the government and the Bank of England needed each other, for loans and for profits respectively. Both parties bargained over the details of their relationship, but because of their mutual dependence, neither party wanted to harm the other excessively. The problem for the London and Westminster in 1834 was that the Bank of England felt undermined by the government's stance on the Charter renewal of the year before. As one MP subtly put it, "the Bank had accused the noble Lord [Althorp] of not having dealt with perfect fairness towards it."<sup>473</sup>

Although the declaratory clause was now a fact, the government could make that fact easier for the Bank of England to live with by refusing any additional support to new London joint stock banks. Lord Althorp did that by opposing the London and Westminster's Bill before Parliament. To support this position, Althorp and his allies made recourse to the argument that parties must honour past contracts. Uncertainty over the details of the Bank's Charter once or twice a generation was acceptable provided it allowed some adjustment over the fine print. By contrast, to revise that contract only a year later, in a manner that favoured competing joint stock banks in London, raised the possibility of the London and Westminster eating into the Bank of England's business, and reducing the latter's profits and attractiveness to its shareholders. Moreover, others feared that allowing joint stock banks in London additional corporate privileges was only the start, for "[i]f the right of suing and being sued were conceded to this bank, he [Mr. Herries] saw no reason why the right

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<sup>473</sup> Sir William Clay, HANSARD, HC VOL. 23, COL. 687 (7 May 1834).

of issuing their own paper might not follow.”<sup>474</sup>

While these perceived threats had the potential to undermine the Bank of England, the Bank was quick to stress the risks they carried for the government too. All who in Parliament or legal briefs stressed the importance of not violating the contract with the Bank rammmed home the point that violating the Charter would “break the national faith,”<sup>475</sup> and constitute a “severe blow to the security of the public credit of this country.”<sup>476</sup> Revising the Bank’s Charter again to remove more of its privileges would lead to a fall in profits. If profits suffered, the Bank feared that it could no longer provide government with the borrowing facilities underpinning the national debt. Given that the Reform Act was only two years old, and that the government continued to prioritize “civil order” and “monetary stability,” Althorp had no desire to jeopardize the government’s ability to borrow. Hence, he backed away from further confrontation with the Bank of England under the cover of respecting the contract his government had signed with the Bank the year before.<sup>477</sup>

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<sup>474</sup> J. C. Herries, HANSARD, HC VOL. 23, COL. 1313 (26 May 1834).

<sup>475</sup> Lord Althorp, HANSARD, HC VOL. 23, COL. 1318-19 (26 May 1834).

<sup>476</sup> Solicitor-General, HANSARD, HC VOL. 23, COL. 1317-18 (26 May 1834).

<sup>477</sup> Althorp’s decision to favour the Bank of England’s position in the dispute over the passage of the London and Westminster Bill through Parliament deprived the London and Westminster of the government’s support. The London and Westminster persevered regardless, hoping they might gain enough support in Parliament even without the backing of the Chancellor of the Exchequer. Although the London and Westminster rallied support to see their Bill navigate the House of Commons, it was before the House of Lords that the government and the Bank of England rallied support to their side.

In the Lords, despite the combined efforts of the government and the Bank, there was a split in opinion to such an extent that the Lord Chancellor concluded that “There were many able lawyers who had deliberately arrived at one conclusion, and there were at the same time many gentlemen of no inconsiderable eminence in the profession, and whose opinion would have much weight with the public out of doors, who had arrived at a conclusion altogether different,” Lord Chancellor, HL VOL. 24, COL. 436-7. See also GREGORY, *supra* note 28, at 137-138. To settle the dispute, the Lord Chancellor called on the judicial division of the House of Lords to ascertain,

The significance of the London and Westminster's efforts at obtaining legislation allowing it to sue and be sued in the name of an officer of the company is twofold. First, in both the London and Westminster's own efforts at obtaining this legislation, and in the response of the Bank of England, creative legal arguments shaped the limits of what people thought possible. The difference on this occasion, in contrast to the arguments that led to the declaratory clause, was that Althorp found persuasive a legal argument closing down possibilities rather than opening them up. Second, the London and Westminster's efforts carry significance because of what they reveal about law's role in shaping the capacity of people and organizations to pursue objectives. Although the declaratory clause of 1833 empowered people to form joint stock banks in London, it left such banks once formed vulnerable in other respects. One such source of vulnerability was the inadequacy of partnership law.

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*Whether there was anything in the proposed provisions [the London and Westminster's Bill before Parliament] which would amount to an infraction of the legal rights of the Bank of England under subsisting statutes – that was, whether there might be permitted to exist in the metropolis a joint-stock banking company of more than six partners, with power of suing or being sued in the name of their secretary or one of their partners (Id., 137-138).*

On the 20 June 1834, the House of Lords, acting in its judicial capacity passed judgment, though as Gregory observes, the proceedings that day amounted to little more than farce. Despite being called upon to add clarity to a dispute overwhelmed by divergent legal opinion,

*His Majesty's Judges after considering the question which has been proposed to them, find it proposed in terms which render it doubtful whether it is a question confined to the strict legal construction of existing acts of parliament, and they therefore, with great deference and respect to your Lordships, request to be excused from giving an answer.*

His Majesty's Judges did not feel inclined to decide one way or the other, pleading as their excuse the wording of the question. They asked for the submission of a new appropriately worded question, but that never happened because the Parliamentary session for that year had ended. The London and Westminster would have to try again in 1835, though by the time it contemplated doing so, other legal challenges had taken centre stage in its battle with the Bank of England.

With matters stalled before the Lords, the London and Westminster set about making clear that even without this legislation the constitution of the bank was structured such that carrying out its business was not hindered by the absence of the capacity to sue and be sued in the name of a public officer. The bank's main means of stressing to both its own shareholders and the broader public that it was capable of operating without legislative assistance was to circulate a statement "to explain the exact mode of operating by Trustees," see GREGORY, *supra* note 28, at Appendix III to Chapter IV. The circular appeared in many newspapers, including THE CIRCULAR TO BANKERS, 22 August 1834.

Having lost the fight over the declaratory clause, the Bank of England could still exploit the vulnerabilities of the new joint stock banks, or prevent banks like the London and Westminster from remedying these vulnerabilities. Crucial to the Bank of England's efforts at exploiting the vulnerabilities affecting others, was its ability to manage its own vulnerabilities. One such source of vulnerability was the Bank's relationship with the government. The Bank's inability to hold the government to the traditional interpretation of the Bank's Charter had led to legislation in 1833 allowing joint stock banks in London. By contrast, the Bank's ability to manage its relationship with the government only a year later – largely through stressing the degree to which the government needed a strong Bank of England – prevented legislation consolidating the first of London's joint stock banks.

A further vulnerability hampering the London and Westminster in the mid 1830s also stemmed from the wording of the declaratory clause. It is to this further vulnerability, and the ways that the Bank of England tried to exploit it to strengthen its position against the London and Westminster, that this chapter now turns.

### **C. Accepting Bills of Exchange Drawn at Less than Six Months**

The London and Westminster performed agency or correspondent services for provincial banks.<sup>478</sup> As Chapter II described,<sup>479</sup> by drawing bills of exchange,

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<sup>478</sup> These services contributed to the London and Westminster's early prosperity. In March 1835, the amount of paid up capital the London and Westminster had to work with stood at £244,945, which by December had increased to £400,000 following a further call on the bank's shareholders. An upward

country bankers made funds available in London to their customers that London bankers agreed to supply. The country banker and his London agent typically had an arrangement in place by which the London banker made clear the terms on which he was willing to do business on behalf of the country banker, including the volume and value of payments he was comfortable meeting at any one time. If the country banker stretched the tolerance levels of his London agent by drawing a greater number of bills than agreed, the London banker could refuse to accept any more bills above the agreed threshold. If all went smoothly, the acceptance of a London banker – traditionally, a banker with close ties to the Bank of England – added credibility to the bills created by small and frequently unstable country bankers, giving these bills, as a result, a wider circulation.

Soon after its establishment, the London and Westminster forged relations with provincial banks across England and Wales, offering these bankers the agency services commonly performed by London bankers, including accepting bills of exchange. Yet while London bankers had been in the business of accepting bills of exchange for their country clients for decades, the London and Westminster, and all other joint stock deposit banks formed in London during the 1830s, soon encountered an obstacle to their involvement in the business of accepting bills that the Bank of England was intent on using against them.

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trend also marked the banks intake of deposits. In 1834, funds deposited at the bank totalled just over £180,000. A decade later, that figure had risen dramatically to over £3.5million. And the bank was profitable. In its first year net profits were a modest £3,540; the following year, the bank generated over £11,000; in 1836, over £29,000; and, in 1837, over £32,000. Profits continued to increase year on year over the next decade so that by 1846 the bank's net profit was over £74,000. All figures are from JAMES WILLIAM GILBART, A RECORD OF THE PROCEEDINGS OF THE LONDON AND WESTMINSTER BANK 71-2 (1847).

<sup>479</sup> See discussion at *supra* Chapter II, Part C (1). See also Appendix I to this dissertation.

According to the Bank of England, the Bank's Charter prohibited joint stock banks of deposit from accepting bills of exchange with less than six months to run until maturity. The Bank cited the declaratory clause of 1833, which permitted joint stock banks to operate in and near to London on the condition that they "do not borrow, owe, or take up in England any sum or sums of money on their bills or notes payable on demand, or at any less time than six months from the borrowing thereof ...." The Bank of England argued that the declaratory clause prohibited joint stock banks in London from issuing demand notes, and from accepting, by borrowing, owing, or taking up, bills with six months or less to run until maturity.

One of the London and Westminster's country correspondents was George Muskett, who opened a bank in St Albans around the same time as the founding of the London and Westminster. A typical service performed by Muskett for his customers was drawing bills of exchange and promissory notes, payable at less than six months, on the London and Westminster, which the London and Westminster accepted in the name of its trustees.<sup>480</sup> By September of 1834, the Bank of England was aware of this practice and, having taken the advice of its lawyers, was convinced of its illegality under the Charter. Having caught wind of the Bank's likely objection to their accepting bills with less than six months until maturity, the London and Westminster, following the advice of its own lawyers, declared its intention to continue to "accept Bills of Exchange and transact all other Agency

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<sup>480</sup> Muskett was operating a one-man bank. Consequently, having the London and Westminster add their signature to his bills made the bills vastly more credible. This aided his customers because the bills were now easier to transfer.

business for banks or other persons in the country.”<sup>481</sup> The stage was set for another public confrontation between the Bank of England and London’s largest joint stock bank, conducted yet again through the arguments of their lawyers. This time though, the stage upon which the dispute played out was not Parliament, but the courts, after the Bank of England sought an injunction to stop the London and Westminster from accepting bills drawn at less than six months.

### ***1. Accepting bills of exchange: Typical deposit banking or quasi note issuing?***

The London and Westminster and its lawyers accepted that the declaratory clause in the Bank of England’s renewed Charter reinforced the Bank’s monopoly over the note issue in London. But, they stressed, the declaratory clause also “legalized everything which is incidental to the business of banks of deposit.”<sup>482</sup> Consequently, joint stock deposit banks faced no further restrictions in London besides the note issue. The London and Westminster also argued that accepting bills of exchange drawn by country bankers was a typical activity performed by banks of deposit, one that London private banks had undertaken for decades. Given, therefore, that the declaratory clause had confirmed the legality of joint stock deposit banking in London, and that a standard service performed by banks of deposit included accepting the bills drawn by their country clients, the London and Westminster saw no reason why it too, as a legally established joint stock bank of deposit, should not

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<sup>481</sup> GREGORY, *supra* note 28, at 151-2.

<sup>482</sup> *Bank of England v. Anderson* (1837), 2 Keen 328 [48 E.R. 655]. All quotations are from the English Law Reports. The quote in the text is at 676. Anderson was a director of the London and Westminster and a partner in the firm of Douglas, Anderson and Co. — the same Douglas as W. R. Douglas who set in motion in early 1833 the drive towards making joint stock banks of deposit possible in London. See THE CIRCULAR TO BANKERS, 2 Dec 1836.

also accept bills drawn by country bankers.

The Bank of England feared that the London and Westminster had intentions beyond operating as a bank of deposit. The London and Westminster's deed of settlement, for instance, stressed the bank's intention of circulating demand notes at some point in the future should Parliament permit them to do so.<sup>483</sup> In the meantime, the Bank of England's Charter very clearly prohibited issuing demand notes. To get round this unambiguous prohibition, the Bank of England claimed that the London and Westminster had accepted short dated bills of exchange.

The problem for the London and Westminster, and the point seized on by the Bank of England, was the overlap between accepting bills drawn by provincial bankers and issuing short-dated bills as a means of exchange. Both the Bank of England and the London and Westminster recognized that the acceptance of a London banker added credibility to bills of exchange drawn by country bankers. A promise to pay by a one-man bank, such as Muskett's bank in St Albans, was less credible than the same promise to pay supplemented by an additional promise to pay from a bank with more than four hundred proprietors all liable for its debts. In the present case, the holder of the bill drawn by Muskett presented it to the London and Westminster for acceptance a mere two days later, with payment due twenty-one days after the original order. Nineteen days stood between the London and Westminster's acceptance and the day on which the bill matured. Consequently, the bill could

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<sup>483</sup> See DEED OF SETTLEMENT OF THE LONDON AND WESTMINSTER BANK (1834), Article 96, which gave to the bank the power "to issue notes, payable on demand, within His Majesty's dominions, of, and when, and wherever, the law permits." A summary of the London and Westminster's deed of settlement is in GILBART, *supra* note 478, at 23.

circulate for nineteen days with the backing of the shareholders of a large joint stock bank.

The Bank of England's concern, then, was "that bills of exchange, payable at a short date, accepted by an opulent joint stock banking company in London, are liable to get into extensive circulation."<sup>484</sup> From the Bank's perspective, these short-dated bills were a devious attempt by a joint stock bank of deposit at bypassing the Bank of England's Charter that limited the creation of demand notes in London to those of the Bank of England.

The London and Westminster did not dispute the claim that the public considered credible bills bearing its endorsement because it hoped to draw business away from established private banks in London by emphasizing the security provided by its large body of proprietors. Nonetheless, the London and Westminster claimed that it held no intention of seeing these bills circulate in competition with Bank of England notes. According to the London and Westminster, there had been no "attempt at a fraudulent evasion of the exclusive privileges of the Bank of England by the introduction of a new species of circulating medium which should come into competition with the notes of the Bank of England."<sup>485</sup> The transaction with Muskett was not fraudulent. Rather, "the transaction in question was a *bona fide* acceptance of a bill drawn by a customer and given by the acceptors for a *bona fide* debt due to

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<sup>484</sup> *Bank of England v. Anderson*, *supra* note 482, at 666.

<sup>485</sup> *Id.*, 677.

the customer.”<sup>486</sup> Such a bill might then circulate extensively, but there was little danger of it competing with the circulation of Bank of England notes. As the London and Westminster’s lawyers argued,

*It would be long before a bill of exchange would be received as a substitute for the currency of the country, and passed generally from hand to hand as the representative of so much coin. If the bill of exchange is not due, the party taking it has to consider the names of the drawers and acceptors, and the rate of discount before he can form a judgment of its value. If the bill of exchange is overdue, it is subject to all the equities of the persons through whose hands it may have passed from the time at which it was payable, and no prudent man will readily take a bill of exchange which is overdue. Bills of exchange, therefore, even if they were made payable at five days from the date, which is a case put in the certificate, are never likely to answer the purposes of the current coin of the realm, or to come into competition with the notes of the Bank of England.*<sup>487</sup>

Central to the London and Westminster’s position then, was the claim that accepting bills of exchange drawn by its customer was a distinct activity from circulating short-dated bills. The London and Westminster had no intention of violating the Bank of England’s Charter either by issuing demand notes, or putting into

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<sup>486</sup> *Id.*, 677.

<sup>487</sup> *Id.*, 678.

circulation bills of exchange that were a close equivalent to demand notes.<sup>488</sup> “The real object and design of the company was to carry on the business of a bank of deposit,”<sup>489</sup> including accepting the bills drawn by country banks. Furthermore, according to the London and Westminster's lawyers, “the *onus* lies on the other side to shew that the accepting of a bill of exchange, drawn by a customer, is not a part of the ordinary business of a bank of deposit.”<sup>490</sup>

The dispute between the Bank of England and the London and Westminster centred, then, on the second half of the declaratory clause that permitted the establishment of joint stock banks in London provided they “do not borrow, owe or take up in England any sum or sums of money on their bills or notes payable on demand, or at any less time than six months from the borrowing thereof.” The London and Westminster claimed that these terms covered only those banks that intended to issue bank notes. Other forms of banking, not involving the issue of notes, stood outside the prohibitions outlined in the declaratory clause, including those services typically performed by deposit banks such as accepting bills of exchange drawn by country correspondents. In opposition to this claim, the Bank of England asserted that the terms of the clause were broader than that, and not only prevented banks other than the Bank of England from issuing demand notes, but also caught banks of deposit that crossed the line into quasi note issuing. The London and Westminster's task then, was to show that the terms of the second half of the declaratory clause did not cover joint stock deposit banks. By contrast, the Bank of England had to

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<sup>488</sup> *Id.*, 663.

<sup>489</sup> *Id.*, 663.

<sup>490</sup> *Id.*, 676.

demonstrate that the terms of the clause applied to all banks, whether banks of issue or of deposit.

## 2. *The meaning of “bills” and “borrowing”*

The London and Westminster’s lawyers adopted the strategy of focusing on two key terms in the second half of the declaratory clause to show that these terms did not apply to those activities common to banks of deposit. First, they identified “bills.” The Bank of England’s position depended on the assumption that “bills” as used in the declaratory clause referred to bills of exchange given the Bank of England’s claim that short-dated bills of exchange accepted by large joint stock deposit banks circulated as an alternative currency to Bank of England notes. To counter this assumption, the London and Westminster’s lawyers argued that “bills” in the declaratory clause did not refer to bills of exchange, and did so by bringing to the fore the history of the Bank of England’s Charter.

From its creation in 1694, the Bank of England issued two types of paper notes. The first were cash notes, not bearing interest and payable on demand. The second were known as “sealed bills,” which bore interest and could be transferred by endorsement.<sup>491</sup> In its early years, the Bank of England encountered difficulties and these two forms of paper money both circulated at a discount. To reinforce the position of the Bank of England, in 1697 Parliament assured the Bank that it would

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<sup>491</sup> R. D. Richards, *The Evolution of Paper Money in England*, 41(3) THE QUARTERLY JOURNAL OF ECONOMICS 361, 397-8 (1927). The Bank of England’s original loan of £1.2 million to the English government took the form of sealed bills rather than cash notes.

not establish a rival bank without the Bank's consent, and in 1708 the Bank had its note issue bolstered by a clause prohibiting banks of more than six partners from issuing notes payable on demand. It was courtesy of this second piece of legislation that the language of the second half of the declaratory clause first appeared. According to the London and Westminster's lawyers, that language referred to paper money in the sense of both demand notes and "bills." Given the history of the Bank of England up until 1708, however, the London and Westminster's lawyers stressed that while notes referred to cash notes payable on demand, bills referred to sealed bills and not to bills of exchange.<sup>492</sup>

By the 1830s the Bank of England had long since ceased to issue sealed bills, limiting itself to interest free notes payable on demand. But the language of 1708 had persisted through to the 1830s. Consequently, when the Bank of England examined the declaratory clause and saw the words "bills and notes," it read into that language bills of exchange and demand notes. The point made by the London and Westminster's lawyers was that "bills" in the statutes regulating the Bank of England did not refer to bills of exchange, but to an antiquated form of paper money no longer in use by the 1830s. The Bank of England's understanding that these statutes did refer to bills of exchange drew a perfectly legitimate practice of deposit banking – accepting bills drawn by country bankers – under the rubric of legislation designed with a quite different type of banking in mind, one centred on the issue of bank notes.

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<sup>492</sup> *Bank of England v. Anderson*, *supra* note 482, at 660-662.

The second term homed in on by the London and Westminster's lawyers was "borrowing." As part of the Bank of England's argument, its lawyers claimed that accepting bills of exchange, an act not explicitly mentioned in the declaratory clause, amounted to the same thing as the act of borrowing, owing or taking up. The Bank of England's lawyers had in mind, I think, the classic example of London's seventeenth century goldsmiths, who would borrow, owe or take up gold coin from their depositors, and, in return, issue a receipt equivalent in value to the sums borrowed. These deposit receipts then circulated as a substitute for coins. Accepting bills of exchange resembled the practice of the goldsmiths because the acceptor only added their signature to the bill provided the drawer had deposited adequate funds to cover the debt when it fell due. Depositing such funds involved the acceptor, the London and Westminster, building up a reserve, by borrowing, owing or taking up funds from the drawer, such as Muskett in St Albans. This reserve looked similar to the deposits left with goldsmiths, and the acceptor's signature on the bill of exchange resembled a goldsmith's receipt.<sup>493</sup>

The London and Westminster rejected the claim that "bills of exchange were accepted for monies borrowed by the company."<sup>494</sup> Conceivably, any deposit of funds by their country correspondent need not precede the acceptance because the London and Westminster could accept bills in the expectation that the country

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<sup>493</sup> To be clear, the analogy to the operations of the goldsmiths was not an explicit part of the argument pursued by the Bank of England's lawyers. I refer to the analogy because it sheds light on the thinking underpinning the Bank of England's position. Bills of exchange accepted by London joint stock banks of deposit resemble demand notes, like the receipts of goldsmiths. The resemblance stemmed from the fact that the operations necessary to create the deposit receipt of a goldsmith were similar to the requirements necessary to create a bill of exchange bearing the signature of a joint stock bank.

<sup>494</sup> *Bank of England v. Anderson*, *supra* note 482, at 664.

banker would ensure the delivery of funds to the London and Westminster before the bills fell due. Furthermore, recall that the declaratory clause required “sums of money” to be borrowed, etc, “on *their* bills or notes” (my emphasis). The London and Westminster’s lawyers argued that although the London and Westminster accepted these bills, it did not issue them, for “The acceptors are not the issuers of a bill of exchange.”<sup>495</sup> It was the drawer, in this instance Muskett in St Albans, who created the bill and determined its maturity date. By contrast,

*The drawee [the party presented with the bill for acceptance, here the London and Westminster], of a bill of exchange has no interest in or control over it, if he does not accept it, and, if he retains it in his possession, an action of trover lies against him: therefore it is not his bill.*<sup>496</sup>

Because the bill did not belong to the drawee (the London and Westminster), it was inaccurate to claim that the London and Westminster had borrowed sums of money on *their* bills or notes. If they had borrowed money at all, something they also disputed, they had done so on bills belonging to Muskett of St Albans.

Given that accepting a bill of exchange did not necessarily involve borrowing money, and that the London and Westminster did not create the bills it accepted, how was it possible that the London and Westminster fell afoul of legislation requiring “a borrowing” as the basis for the issue of demand notes? To put the point

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<sup>495</sup> *Id.*, 687, 683.

<sup>496</sup> *Id.*, 687.

another way, goldsmiths borrowed money and issued receipts. By contrast, the London joint stock banks made their credit available to others and accepted bills of exchange issued by others. Moreover, while goldsmiths created the type of demand note that Parliament wanted to limit to the Bank of England, the London joint stock banks, by contrast, depended on others creating the bills in question, bills not payable on demand but at a future date. Hence, the London and Westminster and its lawyers concluded that the second half of the declaratory clause was inapplicable to its activities as a bank of deposit.

### 3. *Preserving the Bank of England's privileges*

The London and Westminster's interpretation of the declaratory clause was highly plausible. The word "bills" probably did mean sealed bills in 1694 and 1708, and it was by no means clear that "to borrow, owe or take up" was equivalent to accepting a bill of exchange drawn by someone else. Yet, although the declaratory clause was supposed to clarify, it did the opposite, a point not lost on Thomas Joplin, a keen contemporary follower of the case. As Joplin observed,

*[e]ven the most scrupulous declarations of law are frequently of ambiguous interpretation; but when the law is an ambiguity itself, saying one thing, and meaning another, then is the door thrown wide open for that spirit of strife and encroachment.*<sup>497</sup>

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<sup>497</sup> THOMAS JOPLIN, ARTICLES ON BANKING AND CURRENCY FROM 'THE ECONOMIST' NEWSPAPER, 29 (1838). Emphasis in original.

Such ambiguity gave the Bank of England cause for optimism. “Bills” to most observers referred to bills of exchange, and by their very nature, banks of deposit such as the London and Westminster borrowed money while adding their signature to bills of exchange that tended to circulate. In short, the court had legal ground for going either way.

In the event, the Bank of England’s perspective found favour with both the Master of the Rolls and the Court of Common Pleas.<sup>498</sup> To the judges sitting in these courts, the matter of what “bills” had referred to in 1694 or 1708 mattered less than what Parliament had subsequently intended. Consequently, Lord Chief Justice Tindal asked rhetorically, “Suppose this statute [of 1833] had stood alone, would anyone, at this time of day, hesitate in construing it to intend bills of exchange and promissory notes?”<sup>499</sup> Then there was the issue of whether the London and Westminster was “borrowing” on the bills of exchange it accepted. The court answered that it was,

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<sup>498</sup> As noted earlier, the Bank of England sought an injunction requiring the London and Westminster to refrain from accepting bills of exchange with less than six months to run until maturity. As an injunction is an equitable remedy, the Court of Chancery heard the case. The Lord Chancellor heard cases brought before Chancery, assisted by a team of clerks including the Master of the Rolls. The Master of the Rolls frequently heard cases on his own as happened here. (The Judicature Act of 1873 abolished the Court of Chancery and fused together the administration of equity and the common law. This Act also moved the Master of the Rolls to the newly formed Court of Appeal). The Court of Chancery decided cases by referring to equitable principles. Should a purely legal question – such as the interpretation of a statute – come before it, the court of equity turned to a court of law for an opinion (the exception was if the case before the court of equity was urgent; in this circumstance, the court of equity resolved the question of law itself). In the case between the Bank of England and the London and Westminster, both parties agreed that the resolution of their dispute was not urgent (*Bank of England v. Anderson* at 668). Consequently, the Master of the Rolls referred the matter of interpreting the various statutes regulating the Bank of England to the Court of Common Pleas (the Court of Common Pleas was a common law court that heard disputes between subjects not involving the Sovereign). After the Court of Common Pleas gave its opinion on statutory interpretation (see *Bank of England v. Anderson* (1837) 3 Bing (N. C.) 590 [132 E.R. 538], 668-676), the case returned to the Master of the Rolls in Chancery for a final judgment on whether an injunction should be granted.

<sup>499</sup> *Bank of England v. Anderson*, *supra* note 482 at 674.

*... it appears to us ... that the acceptance of a bill under the circumstances stated in the case, is to be considered a borrowing in point of law. By taking the acceptance, the customer consents that his money will remain in his banker's hands until the bill becomes due; he has no power or right, after receiving the acceptance, to change his mind, cancel the acceptance, and compel the banker to pay his money on demand. The drawing and accepting the bill forms a contract between the drawer and acceptor, which can only be rescinded by the mutual consent of both; for what would be the condition of the banker, who may have lent the money of his customer on the face of the forbearance given, if the law were otherwise? The relative position, therefore, of the customer and the banker seems undistinguishable, as to its legal consequences, in any material respect, from that of lender and borrower.<sup>500</sup>*

In the courts view, “bills” referred to bills of exchange and accepting a bill of exchange constituted a “borrowing.” But was the bill of exchange issued by the London and Westminster? The declaratory clause prohibited London bankers from borrowing, owing or taking up “on *their* bills or notes” (my emphasis). If the bill of exchange here was primarily the liability of the drawer, Muskett, then it did not belong to the London and Westminster. The court reached a different conclusion,

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<sup>500</sup> *Id.*, 674. The court goes on to add,

*Whenever the drawer of a bill of exchange [and the drawee ordered to make a payment by the drawer] accepts it, he becomes a debtor to the holder of the bill to the amount of the sum specified in the bill; and the holder gives credit to the acceptor to that amount until the maturity of the bill. The relation of debtor and creditor, thus created by the acceptance of the bill, appears to be considered by the Legislature as equivalent to an actual borrowing of the money owed on the one hand, and credited on the other, Bank of England v. Anderson, supra note 482, at 674.*

however, by deciding that since the London and Westminster bore primary responsibility for the payment of the debt owed on the bill,

*... we are of the opinion that, if the bankers are to be held borrowers, and the acceptance of the bill drawn upon them is the security they give for the debt, they do, in common parlance, borrow on their bills when they borrow on their acceptances. The acceptor is as much a party to the bill as soon as he becomes a party to the bill as the drawer; indeed, he is the person primarily liable on the bill, as soon as he becomes party to it by giving his acceptance.*<sup>501</sup>

In the opinion of the court, the London and Westminster borrowed from the public those funds left as deposits, which it used to accept bills of exchange with maturity dates of less than six months on which it bore primary liability. Furthermore, these bills, with the backing of a highly credible institution like the London and Westminster, were likely to circulate extensively in the London area. The fear of a competing note circulation had led the Bank of England to take action against the London and Westminster, a fear the court considered justified. In the opinion of Lord Chief Justice Tindal, if the London and Westminster's case was successful, "bills of short date might be issued to any amount by bankers in London, and thus a paper circulation be created which would enable other large bodies to enter into competition with the Bank of England."<sup>502</sup> If that happened, the court feared for the

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<sup>501</sup> *Bank of England v. Anderson*, *supra* note 482 at 675.

<sup>502</sup> As reported in THE TIMES, 14 January 1837.

Bank of England's privileges over the note issue.

#### **D. Conclusion**

The courts accepted the Bank of England's contention that the London and Westminster intended to have bills carrying its acceptance enter into competition with the Bank's own notes. Since the London and Westminster could not issue demand notes, an alternative involved having a bank outside of London, or a private bank of six partners of less in or near to London, such as Muskett's bank in St Albans, draw bills on the London and Westminster, which the London and Westminster would then accept. In so doing, the London and Westminster became primarily liable for the debt owed, giving these bills the backing of an institution more credible than any other bank not backed, directly or indirectly, by the government.

Nonetheless, the London and Westminster did not issue demand notes, but rather added its name to bills of exchange payable at some future date, not issued in the first instance by the London and Westminster, but by a client it controlled to only a limited degree.<sup>503</sup> As the London and Westminster's lawyers pointed out, promises to pay backed by the London and Westminster were, though credible, hardly equal to the notes of the Bank of England.

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<sup>503</sup> See GREGORY, *supra* note 28, at 245 for difficulties arising from relations with country correspondents. I touch on this later in this conclusion.

Why then did the Bank of England invest so much energy in stopping the London and Westminster from accepting bills drawn by country bankers? The same question is also relevant to the Bank of England's opposition to the London and Westminster's attempt to obtain legislation allowing it to sue and be sued in the name of a public officer. Appreciating the Bank of England's hostility to the London and Westminster requires considering the Bank's wider objectives in the 1830s.

As I discussed in Chapter III, the Bank of England attempted to assert greater control over the note issue in the 1830s through its circulation accounts to meet its obligations under the gold standard. As we explored in Chapter III, agreeing to a circulation account with the Bank of England guaranteed the contracting bank access to the Bank of England's notes, boosting the amount of credit available to the provincial bank. Yet at times provincial banks found other sources of credit besides the Bank's branches. The presence of the London and Westminster, and other similar London joint stock banks, presented one such alternative source of credit.

The prestige, resources, and inducements offered by the London and Westminster,<sup>504</sup> convinced a large number of provincial joint stock banks to seek out its services.<sup>505</sup> By attempting to undermine the capacity of the London and Westminster

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<sup>504</sup> For examples of the inducements offered by the London and Westminster as a means of convincing provincial banks to use the London and Westminster as their London agent, see GREGORY, *supra* note 28, at 236. The principal inducement was shares in the London and Westminster.

<sup>505</sup> GREGORY, *supra* note 28, at 238-9. The London and Westminster reached agreements with, for example, the National Provincial's Birmingham branch, the terms of which were that

*we [the London and Westminster] should come under engagement to discount for them at any time Bills to the amount of One Hundred Thousand Pounds (£100,000) at the current rate of*

to sue and be sued and accept bills of exchange, the Bank of England hoped to curtail the London and Westminster's ability to supply credit to provincial banks. Offering such support required that the London and Westminster accept bills of exchange drawn on it by country bankers who might question the wisdom of continuing to do so given the restrictions on the bills London joint stock banks could accept. Furthermore, should the relations between the London and Westminster and any of its correspondent banks turn sour, the Bank of England hoped to render hazardous any attempts at recovering these debts unless the parties to the action complied with all of the formalities of partnership law.

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*the day, and that we should moreover waive charging Commission on Transfers of money from ourselves to their other London agents.*

With the Manchester and Liverpool District Bank, the London and Westminster agreed to, in April 1838, £20,000-£40,000 worth of bills allowed under discount at one time, at 2 ½ %, undercutting the Bank's branch rate for those with a circulation account, though the amount under discount was considerably less. This deal replaced the London and Westminster's earlier arrangement with the District, see *supra* note 362. Further deals followed with the Royal Bank of Ireland and with the National Bank of Scotland (GREGORY, *supra* note 28, at 241-2), amongst others.

The terms of the agreements reached with country correspondents came under strain during moments of falling demand and lower prices. At such times, merchants, manufacturers, and bankers had difficulty meeting their obligations. When crisis followed, like the one in 1837, the London and Westminster's correspondent banks made use of the advances and discounts available to them, in the same manner as the Bank of England's client banks utilized their line of credit with the Bank. During these moments, the London and Westminster's country correspondents pushed the terms of their deal with the London and Westminster to its limit.

In January 1837, for example, the East of England Bank sought £10,000 at very short notice despite having previously promised to give notice of more than one day. From the spring of 1837 through until 1840, the Herefordshire Banking Company consistently exceeded the limits of its agreement with the London and Westminster. In the case of the North and South Wales Bank, the original agreement with the London and Westminster came under strain during the period 1837-39. In November 1839, the two banks arranged new terms, the London and Westminster allowing the North and South Wales Bank to borrow to the extent of £110,000. In return, the North and South Wales Bank agreed to (i) lodge with the London and Westminster all of the securities it held, including bills of exchange drawn on Liverpool trade and title deeds to the bank's new premises; (ii) close its branch in Liverpool, and, from January 1840, confine its business exclusively to Wales; and (iii) guarantee the repayment of its debt to the London and Westminster by paying £50,000 by March 1840, the remainder by June (the directors of the North and South Wales Bank pledged £20,000 each towards meeting the first instalment). The London and Westminster had especially fraught relations with two banks that also caused the Bank of England difficulties, the Northern and Central Bank of England and the Leamington Bank. We considered the tangled web involving the Northern and Central and the Bank of England in Chapter III, see *supra* section G (2), Chapter III.

The Bank of England, then, found obstacles to throw in the path of the London and Westminster by exploiting those points where the legal regime left the London and Westminster vulnerable. Yet, though inconvenienced, the London and Westminster conjured up responses. What turned out to be a key battleground between these two institutions was the matter of interpreting the only, and very short, legislative provision explicitly regulating joint stock banks in London, the declaratory clause in the Bank of England's renewed Charter of 1833. From the London and Westminster's perspective, this clause made possible joint stock banking in London *and* required the future elaboration of an adequate legal framework to facilitate the activities of these banks. In opposition to this broad reading of the declaratory clause, the Bank of England, and both the government and the courts after 1833, responded with a narrow interpretation.

According to this narrow interpretation, the London and Westminster was wrong to presume that, by passing the declaratory clause, Parliament had intended to remove every inconvenience impeding joint stock banks in London. These new banks had to coexist alongside what remained of the Bank of England's monopoly. As part of that monopoly, as those who argued in favour of a narrow interpretation emphasized, the Bank of England was the only London bank that could sue and be sued in the name of its public officer. Furthermore, joint stock banks in London could not accept bills with maturity dates of less than six months, ostensibly to protect the Bank's monopoly over demand notes in London. Both Parliament and the courts sided with the Bank of England's interpretation of the declaratory clause, leaving the first joint stock banks in London with the mere shell of a legal framework through which to operate.

That, at least, was what the Bank of England hoped. As a response to the Bank of England's hostility, the London and Westminster improvised creative legal solutions to its problems through refusing to see the legal regime in either/or terms. Accepting the risks brought by partnership law was one response open to the London and Westminster after its defeat in Parliament, while after its defeat before the courts, it would have been easy for the London and Westminster to curtail the credit available in London to provincial joint stock banks without exploring any further options. Instead of accepting these limitations, the London and Westminster found ways of bypassing them by grasping the openness of the legal regime to further possibilities. We touched on the alternative to legislation that allowed the London and Westminster to bypass the inadequacies of partnership law when we described the appointment of five trustees in whose name the bank could sue and be sued under the authority of the separate contracts drawn up between the trustees and all of the London and Westminster's customers. If amending partnership law through an Act of Parliament to meet the needs of a joint stock banking company was impossible, the London and Westminster found the flexibility it required through trustees.

Furthermore, the London and Westminster continued to make credit available in London to its customers because it sidestepped some of the formalities involved in accepting bills of exchange. When a bill of exchange was drawn by a provincial banker (the drawer) ordering the London banker (the drawee) to pay some third party at a future date, the conventional practice involved the drawee (the London banker) adding their signature to the face of the bill shortly thereafter. By endorsing the bill, the drawee became the acceptor, and guaranteed payment to the holder of

the bill at maturity. Traditionally, the acceptance of a London banker enhanced the bill's creditability because they had access to the Bank of England. The more credible the bill, the more likely it was to circulate extensively, making it easier for each holder to discount the bill should they need to do so.

Although the London and Westminster did not hold an account at the Bank of England, its large body of wealthy shareholders made bills carrying its endorsement credible. The ruling by the courts prohibiting joint stock banks in London from accepting certain classes of bill compromised the capacity of the London and Westminster to add its endorsement to bills of exchange. Thomas Joplin, ever the promoter of joint stock banking, attempted to cushion the blow. He pointed out that the acceptance of London banks, whether private or joint stock was not quite so paramount post-1826 because, as this dissertation described in Chapter III, provincial joint stock banks had the backing of a large body of shareholders.<sup>506</sup> Yet Joplin also acknowledged the role that a London joint stock bank could continue to play by, instead of accepting the bill by signing it, having the drawer write on the bill something like the following: "Twenty-one days after date pay (without acceptance) to [the payee], or order, Seventy Pounds Sterling, value received." Distinguishing this bill from a conventional bill of exchange were the words "without acceptance," which allowed the drawee (the London joint stock bank) to *not* accept the bill so as to avoid falling foul of the prohibition against London joint stock banks accepting bills with less than six months until maturity. But the London bank was still named on the bill as the drawee, that is, as the party due to make the payment upon

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<sup>506</sup> JOPLIN, *supra* note 497, at 29-33. See also GILBART, *supra* note 408, at 3.

maturity.<sup>507</sup>

The drawback to this strategy stemmed from the power of the drawee to refuse to make the payment at maturity since, because he had not formally accepted the bill, the courts would not hold him liable. For this reason, the bill was technically less secure, which placed greater importance on the London and Westminster's intention to meet the debt at maturity even though it had not formally accepted the bill. The formality of acceptance added extra confirmation to the arrangement in place between the drawer (the provincial bank) and the drawee (the London joint stock bank). In the absence of this confirmation, the drawee had extra scope to get out of their obligations. But given their existing arrangement with the provincial bank, it was highly unlikely that the London joint stock bank would want to jeopardize such relations by making use of their extra privilege.

Moreover, the holder could still discount bills drawn "without acceptance" because, though not formally accepted by a London joint stock bank, they contained the name of one as the place where payment was due. The only doubt for parties contemplating endorsing such a bill was whether the drawer of the bill had the authority to draw on the London joint stock bank named on the bill. Easing this doubt in the absence of a formal acceptance from a London joint stock bank were

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<sup>507</sup> Writing "without acceptance" on the bill was one option. Another was to have a private individual accept the bills on behalf of the bank. The London and Westminster's rival, the London Joint Stock Bank, pursued this second option by having its manager accept bills of exchange drawn on the bank. The London Joint Stock Bank then provided its manager with the money to pay the bills at maturity. This second option failed to survive scrutiny from the courts because, in *Bank of England v Booth*, (1837) 2 Keen 485 [48 E.R. 278], the court determined that this scheme was merely a means of getting bills of exchange accepted indirectly when there was a prohibition against doing so directly. See also THOMAS, *supra* note 10, at 242-3.

endorsements by provincial joint stock banks backed by hundreds, sometimes thousands, of shareholders. The country correspondents of, say, the London and Westminster were not obscure merchants, but included some of the largest and most prestigious provincial joint stock banks. Few would doubt the word of a joint stock bank when it drew bills saying it had credit at the London and Westminster, with or without the latter's formal acceptance serving as confirmation.<sup>508</sup>

The London and Westminster's use of informality and trustees helped the bank overcome the vulnerabilities that the law of negotiable instruments and the law of partnership exposed it to, and that the Bank of England attempted to exploit. That the London and Westminster found ways of responding to these vulnerabilities and the Bank's efforts at exploiting them demonstrates the capacity for creativity that law holds. Law's contribution, then, to 1830s banking in London was not merely in the form of a discrete piece of legislation removing a fetter protecting the Bank of England from competition. Rather, law played a prominent role for through it the London and Westminster and the Bank of England pursued their often competing objectives, and shaped not only the form taken by banking in London, but also the relations between London banks and their provincial clients.

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<sup>508</sup> Those discounting bills of exchange still had to exercise caution, however, given the scope for fraud in a system where adding bogus names to bills was a common practice. The London and Westminster was a victim of one such fraudulent scheme in the autumn of 1837. Bills of exchange drawn by the "Sheerness and Queensborough Bank" and the "Flintshire District Banking Company" named the London and Westminster Bank as the place of payment in London. Various provincial joint stock banks in the Birmingham area, including the Birmingham Banking Company and the Commercial Bank of England, discounted the bills. The "Sheerness and Queensborough Bank" and the "Flintshire District Banking Company" did not exist, however. Those behind the fraudulent scheme added plausible sounding joint stock banks, and a credible London agent, to the bills to add credibility to their scheme. For an account of this episode, see *THE CIRCULAR TO BANKERS*, 20 October 1837, at 125-6.

At the outset of this chapter, we explored the creative use of legal arguments to help address a puzzle. In early 1837, the Bank of England's Charter was widely understood to prohibit other banks in London with more than six partners, yet within a relatively short space of time this widely accepted understanding of the Bank's Charter lost its hold over the government. This transformation was partly possible through the use lawyers made of an unconventional but plausible legal interpretation of the Bank's Charter that unsettled a hitherto largely undisputed interpretation. Through this reinterpretation, government ministers re-imagined the limits of the possible in the context of banking in London. When the London and Westminster became a reality in early 1834, its greatest strength was its realization that, despite all the obstacles the legal regime placed in its way, that same legal regime contained an array of further possibilities.

## CONCLUSION

This dissertation challenges histories of money and banking covering the late eighteenth and the first half of the nineteenth century that adopt a functionalist perspective. Functionalist accounts of money and banking during this period assume an economy with needs, where either law helped to fulfil these needs through permissive legislation, or it fettered the fulfilment of them through restrictive legislation. Either way, from a functionalist perspective, law's contribution to economic change was marginal. This dissertation has challenged such a functionalist perspective by exposing functionalism's inability to solve three puzzles about money and banking during this period. Solving these puzzles exposes functionalism's inadequacies because the solutions to all three puzzles bring centre stage the role of law.

The first puzzle concerns the role played by both country bankers' notes and bills of exchange as currency in the late eighteenth and first quarter of the nineteenth century. That they did so is puzzling because for a currency to circulate it typically requires public backing, usually from the state, yet these local currencies had no such state backing. Instead, small banking partnerships issued country bankers' notes and endorsed bills of exchange. From a functionalist perspective, notes and bills with the backing of a small partnership of bankers were a response to restrictive

legislation that prohibited banks from having more than six partners, and to the inability of the government and the Bank of England to supply sufficient quantities of, respectively, Royal Mint coin and Bank of England notes. But a functionalist approach does not explain the credibility of these alternative currencies given the absence of state backing.

The mistake made by functionalist approaches is to view law and the economy as two separate domains, with the former either facilitating or fettering the latter. This dissertation has adopted a different perspective, one that captures the legal foundations of economic life. The role of law in relation to these local currencies did not end with restrictive legislation on the size of banks. Through the rules on, for instance, negotiable instruments or principal-agent relations, law was a constant presence in the background. Yet the most striking contribution of the legal regime to the circulation of notes and bills came to the fore during periods of economic crisis.

During these periods, people preferred to hold promises to pay backed by the government. Consequently, there was a tendency for the holders of notes or bills to enforce the banker's promise to pay by having the note or bill converted into government stamped coin. Yet if everyone attempted to convert notes and bills at the same time, the banker lacked access to enough gold coin to meet this demand. The banker's notes risked becoming the mere "rags" of a "country merchant." If communities wanted to avoid the collapse of their local banker and the means of exchange he provided, they had to find ways of acting collectively to support the banker's credit.

As Chapter II explored, communities across England and Wales did find ways of collectively supporting the credit of their local banker, and their doing so helps to address the puzzle affecting both notes and bills as currency. These local currencies flourished without the direct backing of the state partly because during times of economic crisis these notes and bills received public backing not from the state, but from the people of the towns and regions where the notes and bills circulated. This collective backing took various forms including collective forbearance, community guarantees, and local authority backed paper money. All of these forms of collective support drew on law ranging from note holders opting not to enforce their formal legal right, through to the unique and highly institutionalized response in Liverpool where the city's Corporation issued its own paper currency. Moreover, regardless of its form this support had to be collective. A currency cannot prosper if all it has for support are self-reliant, autonomous individuals. For a currency to prosper, it needs the support of communities willing to find ways of acting collectively together. Through their flexible and creative deployment of the legal regime, communities across England and Wales in the period 1790-1825 found the means to support the notes issued and the bills endorsed by their bankers.

Although many made the pledge to back their local banker, contemporaries were aware of the risks brought by both country bankers' notes and bills of exchange as currency. The nature of the risk varied with one's perspective. Those who guaranteed a country banker's notes risked ending up liable for all of the promises to pay written on the banker's notes without gaining in return any direct control over the banker. Joint stock banking was a response to this risk for, in return for

guaranteeing on a permanent basis all of the bank's debts through their unlimited liability, the bank's shareholders got a say in the running of the bank. Yet from the point of view of those with responsibility for maintaining the gold standard, the guarantees underpinning alternative currencies were a side issue. To maintain the gold standard in the 1830s, the key issue involved ensuring the convertibility of paper money into gold coin on demand. The task of fulfilling this obligation fell to the directors of the Bank of England who were convinced, from the late 1820s onwards, that the independent note issue of country bankers placed the gold standard at risk.

The emergence from the late 1820s of, on the one hand, the Bank of England's goal of maintaining the gold standard through stretching its "octopus tentacle" branches, alongside, on the other, the new joint stock banks backed by the unlimited liability of their shareholders, led to the second puzzle explored in this dissertation. The Bank of England set about ending both the circulation of country bankers' notes and bills of exchange as currency by offering provincial bankers cheap credit on the condition that these bankers agreed to give up their note issue. This bargain, however, presents a puzzle for through it the Bank of England replaced one means of credit expansion with an alternative source of cheap credit in the form of discounts at the Bank of England's branches. While functionalists might explain the rise of joint stock banking as a response to interest group pressure, such an explanation does not explain why the Bank of England offered its rivals cheap credit despite the danger posed by this cheap credit to the Bank's obligations under the gold standard. To explain this second puzzle, we again must turn to the role played by law during this period.

The Bank of England's push for a single form of paper money across England and Wales was fraught with tension because of the powerful bargaining position of the new provincial joint stock banks. Their bargaining position was strong because these banks could maintain an independent note issue and access cheap credit thanks to the availability of funds in the London money market. Rediscounting bills of exchange with London bill brokers was cheap for provincial joint stock banks partly because conflicting obligations caught the Bank of England between its shareholders and the gold standard, and partly because bill brokers regarded debts guaranteed by provincial joint stock banks as highly credible.

Collective action reminiscent of the collective support orchestrated by local communities in support of their banker up until 1825 made credible the endorsements on bills of exchange provided by provincial joint stock banks. Those who guaranteed the debt of provincial joint stock banks after 1825 differed from those providing the earlier collective guarantees considered in Chapter II because, in the case of joint stock banks, the guarantee was permanent while before 1825 such a guarantee had been temporary. Yet whether permanent or temporary, the orchestration of this collective support was a legal enterprise. Before 1825, local communities called upon collective forbearance, community guarantees, and local authority note issues. After 1826, and with the advent of joint stock banking, the orchestration of this collective support took place through the deed of settlement that constituted and regulated these new banks. As Chapter III explored with reference to the Manchester and Liverpool District Bank and the Northern and Central Bank of England, the details in the deed of settlement could and, in 1836-37, did have

significant repercussions.

In Chapter II and Chapter III, law served as a tool that enabled people to construct institutions, often creatively, for the pursuit of collective projects. In Chapter III, joint stock banks facilitated this collective action, backed by the unlimited liability of their shareholders. This backing made the debts of a joint stock bank credible and enabled the bank to discount cheaply in the London money market. If the Bank of England wanted to compete with London bill brokers for the discounts of provincial joint stock banks, it had to offer a competitive discount rate. Given its obligations under the gold standard, the Bank of England felt compelled to entice provincial banks to give up their notes. The result was that one means of credit expansion replaced another, and the gold standard remained vulnerable.

Joint stock banks succeeded in gaining advantages from the Bank of England because they managed to coordinate otherwise disparate individuals towards a collective goal. The way that these banks did so brings to the fore law's role in constructing institutions for the pursuit of collective action. It also brings another view of law centre stage. The Bank of England and the provincial joint stock banks, whether in cooperation or in conflict, constantly looked for strategic moves that might give one side an advantage over the other. Their respective endowments from the legal regime shaped how well each side was able to pursue its own objectives while guarding against the countermoves of the other side.

The Bank of England had to manage its obligations arising from its relations with its

shareholders and the government, while also maintaining its obligations under the gold standard. Sometimes these obligations clashed creating opportunities for those hostile to the Bank of England. Yet joint stock banks had obligations of their own to their depositors, borrowers, and ordinary shareholders. Provincial joint stock banks had to manage the potential for conflict between these groups since failing to do so left opportunities for those hostile to joint stock banks.

Managing the tensions between their conflicting obligations brought to the fore the deed of settlement that governed each joint stock bank. Just as communities before 1826 assisted their banker during a crisis in a range of ways, so too joint stock banks after 1826 drew on the permanent support of their local community through a deed of settlement that, while similar to other such documents, also provided a unique distribution of rights, obligations, privileges, and powers between all with a stake in the bank. As Chapter III explored, the District, through the powers conferred on its directors by its deed of settlement, was able to survive the crisis of 1836-37 without finding itself at the mercy of the Bank of England. The Northern, partly owing to its own deed of settlement that left the bank unable to call on further assistance from its shareholders, was not so fortunate.

Like Chapter III, Chapter IV surveyed law from the perspective of the strategic moves and countermoves between rivals. Yet Chapter IV also considered a third view of law, one that helped to solve the third puzzle explored in this dissertation. Before 1833, few doubted that legislation barred joint stock banks from operating in and around London. Yet by the end of 1833, a clause inserted in the renewed Charter

of the Bank of England allowed people to form such banks in and around London. Functionalist accounts acknowledge this “liberalizing” legislation, but these accounts cannot explain why an alternative interpretation of the Bank’s Charter displaced the traditional interpretation so suddenly. To account for this transformation, Chapter IV explored law’s role in constructing arguments that had the potential to reshape the boundaries of what people thought possible.

This dissertation, then, has explored the different forms taken by law as it contributed towards the creation of money during the late eighteenth and early nineteenth century in England and Wales. At times, law created institutions for the pursuit of collective action. At other times, law provided people and organizations with the rights, powers, and privileges for the pursuit of their strategies. While, on occasions, law constructed the arguments shaping perceptions of what people thought possible.

All three of these forms taken by law contribute towards resolving puzzles that functionalist accounts of the history of money and banking fail to explain adequately. Explaining the consolidation of national paper money needs more than an account of restrictive legislation giving way to liberalizing legislation. English and Welsh paper money was once regional rather than national because local communities found ways of collectively backing their local banker. Restrictive legislation is a minor part of that story. Similarly, liberalizing legislation is a relatively minor part of the story about the shift to national paper money. A bigger part of the story is the continuing importance of local communities’ findings ways to

back collectively their local banks. Because of the support that joint stock banks enjoyed, the Bank of England could not mould the monetary system to its will, but had to contend with joint stock banks in London and elsewhere just as skilful as the Bank at manoeuvring within the legal regime to obtain advantages and limit vulnerabilities.

As this dissertation has shown, law defines and constructs economic phenomena like money and banking. Often, law does so creatively. Collective forbearance, community guarantees, local authority paper money, high denomination joint stock bank shares, fully paid up low denomination joint stock bank shares, circulation accounts, share conversions, “district” banks, local boards, branch banking, a bill of exchange “without acceptance,” banking in the name of trustees. All of these innovations serve as testimony confirming law’s creativity.

Such creativity is important because it captures the range of institutional options available to those who constructed the money and banking of the late eighteenth and early nineteenth century in England and Wales. They had options, notwithstanding functionalist accounts suggesting historical change driven by economic needs and interest group imperatives. And the available choices varied more than opting between the state or the market.

The state was not absent in the story told in this dissertation. It stamped Royal Mint coins, and staffed the courts that enforced contracts and property rights, while the government fought wars overseas and battled domestically with Parliament over

taxation, Parliamentary reform, and the return to the gold standard. Moreover, the Bank of England was an institution of the state despite its attempts, aided by many historians, to present itself as a “private” bank no different from any other bank.

The state and the government did not dominate the story told in this dissertation, yet the term “market” does not capture adequately the alternative. Exchange, where people buy and sell, was a big part of the story told in the previous chapters: in Chapter II, communities bought and sold their country bankers’ notes; in Chapter III, shareholders bought credit sold by joint stock banks; in Chapter IV, provincial bankers bought credit from London joint stock banks; while throughout these chapters, people bought and sold bills of exchange. Yet fully understanding these exchanges required investigating the construction of each market to identify the institutions that added credibility to, for example, country bankers’ notes, bills endorsed by joint stock banks, and bills accepted by London joint stock banks. The construction of these institutions was a legal enterprise, with questions of public authority always in the background. It was also an enterprise with no fixed form driven not by necessity, but by people making their own history.

## VI

### APPENDIX 1

#### A. Bills of Exchange, Bill Discounting, and Bill Rediscounting

To understand bill rediscounting, it is first important to understand the relations behind a bill of exchange, and then to appreciate the role performed by bankers as bill discounters.

A bill of exchange is an order by one merchant instructing another merchant to pay a third party in typically 90 days time. For example, imagine that A owes a debt to B and C owes a debt to A. To cancel these debts, A (the drawer) writes or draws a bill ordering C (the drawee) to pay B (the payee) a certain sum at a future date. When the party to whom the bill is addressed (the drawee, C in this example), signs the bill they become the acceptor and confirm that they will pay B when the bill matures. If B receives payment from C when the bill matures, C's debt to A is cancelled, as is A's debt to B.<sup>509</sup>

Prior to the bill's maturity date, the third party (the payee, B in this example) holds a bill of exchange that will produce cash in 90 days time. But what if the holder of the bill wants cash upfront? To accommodate those who want cash for bills, bankers use their capital and the deposits entrusted to them to discount bills of exchange. By so

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<sup>509</sup> See B. JACOBS, A SHORT TREATISE ON THE LAW OF BILLS OF EXCHANGE, CHEQUES, PROMISSORY NOTES, AND NEGOTIABLE INSTRUMENTS (1924)

doing, they provide the holder of the bill with money up front, minus a discount that secures, all going well, the banker a profit on the transaction. Upon discounting the bill with a banker, the holder of the bill signs his name to the back of the bill. By doing so, he becomes an endorser of the bill. Should the acceptor or the drawer of the bill fail to pay the debt owed on the bill, liability shifts to the endorser. The banker discounting the bill becomes an endorsee, and becomes an endorser liable for the debt on the bill should he later resell the bill. More often than not, having discounted a bill, the banks of six partners or less that featured in Chapter II, retained the bill until it matured. Upon maturity, the banker presented the bill to the acceptor for payment.

The practice of joint stock banks considered in Chapter III of this dissertation differed subtly but significantly from that of banks of six partners or less. In general, joint stock banks from manufacturing regions did not hold the bills they discounted until maturity. Instead, such joint stock banks turned these bills into money before they matured. London bill brokers, who specialized in finding buyers for those selling bills, assisted the joint stock banks with the task of raising this money. By selling bills in this way, joint stock banks engaged in the practice known as rediscounting.<sup>510</sup>

#### **B. Rediscounting at the Bank of England's Branches**

In the 1830s, rediscounting in the London money market was one option available to provincial joint stock banks wishing to raise finance beyond their paid up capital and the funds left by depositors. Another option was to rediscount at their local Bank of

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<sup>510</sup> KING, *supra* note 125, at 40.

England branch. Despite the attractions of a “circulation account,” rediscounting at the Bank of England was not always attractive to provincial joint stock banks owing to the Bank of England’s rules on the type of bills eligible for discount at its branches.

In general, the rules formulated by the head office in Threadneedle Street for the conduct of the Bank of England’s branches favoured the “respectable” or affluent customers of each region, and sanctioned only those bills of exchange that met the Bank’s strict test of “legitimacy.” Those of sufficient standing who passed the Bank’s test of eligibility often started with an “open account.” These accounts placed a maximum on the number of the account holders own bills that the branch would discount at one time. Over this maximum, the bills brought into the branch for discount had to be general trade bills rather than the customers own bills.<sup>511</sup>

The rationale behind the preference for bills that had come into the discounter’s possession during the normal course of trade over bills drawn by the customer/discounter himself was twofold. First, the Bank of England’s directors and branch agents reasoned that customers who offered the Bank only their own drafts for discount “and never offers business bills, *not drawn by himself*, it may without hesitation be assumed that he is leaning on the bank for capital.”<sup>512</sup> The Bank of England and its branches preferred general trade bills over the customers own bills because the former served as evidence that the discounter had engaged in buying and selling goods with others as opposed to relying on accommodation paper, that is,

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<sup>511</sup> Collins, *supra* note 25, at 149-50 (1972).

<sup>512</sup> Roberts, *supra* note 25, at 232, correspondence between the Bank of England branch at Swansea and the head office in London between 1828 and 1833.

bills not supporting an underlying sale of goods in transit. Second, the Bank and its branches preferred bills arising from the normal course of trade because by discounting such bills the Bank hoped “to check in a limited degree their circulation as money.”<sup>513</sup>

The Bank’s agenda with respect to bill discounting, then, was, on the one hand, to encourage the circulation of its own notes over both country bankers’ notes and bills as currency, and, on the other, to limit the creation of so-called accommodation paper, which the Bank’s directors regarded as inherently speculative. To be eligible for discount, bills should be the product of “bona fide transactions” that “really represented the Trade of the district.” Consequently, “Discounts are effected by the Bank not to enable manufacturers to *hold* but to dispose of their goods – to give facilities to actual traders and not to encourage the increase of manufacturers which the present state of the market evidently proves to be unnecessary.”<sup>514</sup>

To assist the Bank in achieving its goal of curtailing the flow of accommodation paper, the head office tightly controlled the type of bills eligible, limiting its discounts to those bills judged “first class,” bearing “respectable” London known and approved names. Based on information provided by branch agents, head office investigated the reputation of the drawee and the acceptor. The Bank of England seldom discounted bills drawn by one branch of a firm on another (i.e. “pig on pork bills”). It was difficult for large partnerships or joint stock companies to get bills

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<sup>513</sup> *Id.*, 232, correspondence between the Bank of England branch at Swansea and the head office in London between 1828 and 1833.

<sup>514</sup> *Id.*, 232-3, correspondence between the branch bank at Swansea and the head office in London, January 1829. Emphasis in original.

discounted if there were doubts about the authority of the person accepting them. Moreover, the Bank and its branches refused to discount bills with longer than three months to run before maturity.<sup>515</sup> The Branch Bank Committee sitting in London made decisions over which bills to discount, and tended to look with suspicion on any bills bearing only one name “known” in London.

As an example of the Bank of England’s approach to bill discounting, consider its relationship with the Bank of Manchester in the early 1830s.<sup>516</sup> According to the Bank of Manchester’s representatives, the relationship turned sour because of the Bank of England’s “minute examination of the quality of bills”<sup>517</sup> and rejection of even those widely considered “of the first quality ... drawn upon first-rate houses in London.”<sup>518</sup> In particular, a major problem stemmed from the ignorance of the Bank’s branch agent, who often did not know the parties named on the bills presented to him for discount. Consequently, the representatives of the Bank of Manchester had to explain “so much about the private affairs of the drawers and acceptors of those bills, that it became an irksome duty.”<sup>519</sup> To relieve this “irksome duty,” the practice of the Bank of Manchester was

*on the day prior to wanting discounts, to send a considerable number of bills into the Branch, in order that the agent might select such as he approved, and*

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<sup>515</sup> Collins, *supra* note 25, at 151, and ZIEGLER, *supra* note 25, at 20.

<sup>516</sup> See *Report on the Bank of England Charter*, BRITISH PARLIAMENTARY PAPERS (1831-32) (722) VI.

<sup>517</sup> *Id.*, 306, (Q: 4132).

<sup>518</sup> *Id.*, 306, (Q: 4132).

<sup>519</sup> *Id.*, 312, (Q: 4178).

*return the remainder, and thus prevent the continued explanations as to the character of parties, which I was before under necessity of giving.*<sup>520</sup>

The Bank of Manchester then replaced the rejected bills with paper that it hoped was paper more acceptable to the Bank of England.

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<sup>520</sup> *Id.*, 306, (Q: 4132)

## APPENDIX 2

### Joint Stock Banks under Partnership Law

A regime of unlimited liability made the proprietors of joint stock banks formed under the Act of 1826 liable for all of the bank's debts.<sup>521</sup> J. W. Gilbert, who later managed the London and Westminster, played a prominent role in explaining the workings of unlimited liability, doing so in an early pamphlet through the following example, or, as Gilbert put it, "extreme case." Imagine a wealthy individual who buys five shares in a bank with a stock of 10,000 shares. Then imagine that the bank's entire paid up capital, whatever that might be, is lost and the bank finds itself £20,000 in debt. In such a scenario, the creditors of the bank could sue its public officer.<sup>522</sup> Obtaining judgment against him, the creditors could then demand from the bank's shareholders the payment of the debt by, in the language of the 1826 Act, "[issuing] execution against any person or persons who was or were a member or members of such corporation or copartnership at the time when the contract or contracts ... in which such judgments may have been obtained was or were entered into ...."<sup>523</sup>

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<sup>521</sup> 7 Geo. IV c. 46 (1826) [Country Bankers Act], Sections XII.

<sup>522</sup> Under the 1826 Act, joint stock banks could sue and be sued in the name of a public officer. This privilege was not available to the bank's shareholders *inter se* (see below), nor was it available to joint stock banks formed in London after 1833, the consequences of which Chapter IV explores.

<sup>523</sup> 7 Geo. IV c. 46 (1826) [Country Bankers Act], Sections XIII.

The wealthy shareholder in this example only owns five shares, and the proportion of the debt he owes is £10. Nevertheless, under the terms of the Act of 1826, the creditors could issue execution on him for the full amount of the debt, something they were likely to do if we assume this shareholder's wealth to be a widely known fact. Consequently, on behalf of the creditors, the sheriff's officers had authority to seize goods, and other property belonging to this shareholder, until they had raised the sum of £20,000.

Dealing with what the bank owed to its creditors using the 1826 Act of Parliament ensured the fulfilment of the bank's obligations. Left open, however, was the possibility that the burden might fall disproportionately on some shareholders more than others, and as the above example testifies, it was conceivable that the full extent of the loss might be borne by a single shareholder alone. It was here (at least in theory; for the reality, see below) that the deed of settlement kicked in through a clause stipulating that no shareholder was responsible for the debts of the bank to a larger sum than a figure proportionate to their shareholding.<sup>524</sup> By virtue of this clause, the shareholders guaranteed each other against the full extent of the debts of the bank falling on one, or only a few, of their number. With respect to the above example, although the wealthy shareholder was still obliged to pay the bank's creditors, he had recourse, in theory, to his own remedy under the deed of settlement against the other shareholders. As soon as he obtained judgment, he could issue

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<sup>524</sup> See, for example, DEED OF SETTLEMENT OF THE MANCHESTER AND LIVERPOOL DISTRICT BANKING COMPANY (1831), Article III.

execution against the property of the other shareholders until he had his £20,000 back, minus the £10 he owed as his proportionate share of the bank's debts.<sup>525</sup>

Despite Gilbert's best efforts at reassuring those thinking of investing in the shares of a joint stock bank, the likely reality was that enforcing the clause in the deed of settlement on the proportionate allocation of the bank's losses faced problems courtesy of English partnership law. Under English partnership law, the general rule was that one partner could not bring an action against another partner or partners in respect of a partnership transaction.<sup>526</sup> An action like the one described by Gilbert, where a shareholder attempted to recover the share of the debt owed by the other partners, was likely to fail because it involved bringing such an action against the other partners in respect of a partnership transaction. Moreover, if the action was against the public officer of the bank, a further problem was that the 1826 Act – that allowed joint stock banks to sue and be sued in the name of a public officer – only referred to actions by and against the bank, not actions between shareholders.<sup>527</sup> Even if the action was against an individual shareholder rather than the company as a whole, that shareholder could claim they were not liable except in conjunction with all of the other shareholders.<sup>528</sup> The plaintiff was then back to claiming against either the public officer (difficult given the likely inapplicability of the 1826 Act), or their

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<sup>525</sup> GILBART, *supra* note 289, at 57-58

<sup>526</sup> See *Report on the Law of Partnership*, BRITISH PARLIAMENTARY PAPERS, (1837) (530) at 3; and NIEL GOW, A PRACTICAL TREATISE ON THE LAW OF PARTNERSHIP 73 (1837). Gow explains that before settling the claim, the court would need to review the partnership's accounts, a task a jury was not equipped to do. Hence, the general rule against such claims. For more on the rationale behind this rule, see FRANCIS M. BURDICK, THE LAW OF PARTNERSHIP 317-319 (1899).

<sup>527</sup> See GEORGE FARREN, HINTS BY WAY OF WARNING ON THE LEGAL, PRACTICAL AND MERCANTILE DIFFICULTIES 17-18 (1833); and evidence of C. T. Swanston to *Communications to the Board of Trade Respecting the Law of Partnership*, BRITISH PARLIAMENTARY PAPERS, (1837) (530) at 52

<sup>528</sup> See GAVIN SCOTT, HISTORY OF JOINT STOCK BANK WITH A STATEMENT OF THE LAW RELATING TO THEM 37 (1837).

fellow shareholders (difficult given the general rule against such claims). The only option left for a shareholder bearing a disproportionate share of the bank's debt was a bill in equity. Yet a bill in equity required listing all of the shareholders as plaintiffs or defendants.<sup>529</sup> Omitting the name of only one shareholder (joint stock banks had hundreds, sometimes thousands, of shareholders) would allow the defendant to enter a plea of abatement and the case would collapse.

Despite the likely difficulties over ensuring the proportionate distribution of loss between the shareholders in joint stock banks, no such disputes appeared before the courts. Yet those disputes between shareholders that led to public controversy or that ended up before the courts in the late 1830s, posed problems owing to the same defects in partnership law. These disputes involved shareholders who were at the same time customers of their bank, such as a depositor or borrower. In a scenario where a shareholder in a joint stock bank deposited money with the bank, and where the bank then refused to return the deposit when asked to do so, it was difficult for the shareholder to reclaim their money. If the shareholder/depositor brought an action before the law courts, they came up against the rule preventing one partner from bringing an action against the other partners in respect of a partnership transaction. Moreover, they could not bring the action against the public officer of the bank owing to the likely inapplicability of the 1826 Act. If the shareholder/depositor brought a bill before a court of equity, they confronted the

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<sup>529</sup> For an explanation of the rationale behind this rule, see GOW, *supra* note 526, at 94-95. See also THOMAS, *supra* note 10, at 238-240; and Peirce Mahony to the *Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1837) (531) XIV at 230-267.

procedural hurdle requiring that they enter all of the other shareholders on the bill as plaintiffs or defendants.<sup>530</sup>

A similar problem confronted joint stock banks that lent money to their own shareholders – a common practice in the mid 1830s, as chapter III explores. While partnership law left shareholders who deposited money in their own bank vulnerable, in the case of those shareholders who borrowed from their own bank, partnership law this time left the bank vulnerable.<sup>531</sup> If the shareholder refused to repay the borrowed money, it was difficult for the bank to bring an action before the law courts because doing so involved the bank’s partners bringing an action against another partner in respect of a partnership transaction, an action made even harder given the likely inapplicability of the 1826 Act. If the bank then turned to the courts of equity, they faced the procedural complexities noted above. Exactly these dilemmas faced the Northern and Central in 1837, whose shareholders, mostly the bank’s directors, owed the bank more than £400,000.<sup>532</sup> The Northern and Central’s solicitor sought legal advice on the question of whether the bank was likely to succeed in an action against its own shareholders, but was told, “It appears very doubtful whether a person indebted to a joint-stock banking company, and who may happen to be a shareholder, can be sued at law for the debt which he may owe to the

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<sup>530</sup> Legislation in 1838 (1 & 2 Vict. c. 96) remedied this problem. The Act allowed the members of a joint stock bank to sue the bank’s public officer in the same way as individuals who were not shareholders could bring an action against the public officer. See arguments of the defendants in *Seddon v Connell*, 10 SIM. 57 [59 E.R. 534] 538.

<sup>531</sup> The problems facing joint stock banks attempting to claim debts owed by their shareholders were also dealt with by the same legislation in 1838 (1 & 2 Vict. c. 96).

<sup>532</sup> Thomas Broadbent to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1837-38) (626) VII at 109 (Q: 1576).

bank, in consequence of his being a partner.”<sup>533</sup> Soon after, the courts confirmed this interpretation in a case involving the Agricultural and Commercial Bank of Ireland, which collapsed at around the same time as the Northern and Central.<sup>534</sup> Proceeding before a court of equity was not a realistic alternative, however, in part owing to the problems noted by the Northern and Central’s solicitor in 1838,

*every time a shareholder sells his shares, the new party must be made a party [to the bill in equity] by a supplemental bill; and in like manner, in the event of a shareholder becoming bankrupt, his assignees would have to be made parties; or if a party died, his executors would have to be made parties, by filling supplemental bills; so that the suit could never by possibility end.*<sup>535</sup>

Settling a debt between shareholders, or between the bank and a shareholder, or between a shareholder and the bank, faced a number of obstacles in the 1830s. Despite these obstacles, the shares of joint stock banks were popular, and frequently sold at a premium.<sup>536</sup> Moreover, none of the above problems affected the bank’s creditors who did not own shares in the bank

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<sup>533</sup> Copy Opinion of Attorney-general [J. Campbell], Sir Frederick Pollock, and Sir William W. Follet reproduced by William Seddon to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1837-38) (626) VII at 3 (Q: 36).

<sup>534</sup> See *Hughes v Thorpe* (1838) 5 M. & W. 655. For a description of the problems faced by the Agricultural and Commercial Bank of Ireland as it pursued debts owed by its shareholders, see the evidence of the bank’s solicitor, Peirce Mahony, to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1837) (531) XIV at 230-267.

<sup>535</sup> William Seddon to *the Committee on Joint Stock Banks*, BRITISH PARLIAMENTARY PAPERS (1837-38) (626) VII at 2 (Q: 20).

<sup>536</sup> On the market for the shares of joint stock banks, see Graeme G. Acheson and John D. Turner, *The Secondary Market for Bank Shares in Nineteenth Century Britain*, 15 (2) FINANCIAL HISTORY REVIEW 123 (2008); and J. R. Killick and W. A. Thomas, *The Provincial Stock Exchanges, 1830-1870*, 23 (1) THE ECONOMIC HISTORY REVIEW 96 (1970).

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